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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

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REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 36)

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MATSCH, 12 Proceedings before the HONORABLE RICHARD P.
13 Judge, United States District Court for the District of
14 Colorado, commencing at 7:59 a.m., on the 20th day of
October,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

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23
24
Transcription
Street,
629-9285

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

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1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
Western
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
GEOFFREY
6 MEARNS, and JAMIE ORENSTEIN, Special Attorneys to the
U.S.
7 Attorney General, 1961 Stout Street, Suite 1200,
Denver,
8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
and
10 JANE TIGAR, Attorneys at Law, 1120 Lincoln Street,
Suite 1308,
11 Denver, Colorado, 80203, appearing for Defendant
Nichols.

12

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13

PROCEEDINGS

14

(In open court at 7:59 a.m.)

15

THE COURT: Be seated, please.

16

Good morning.

17

I'll hear from the Government first on the

18

Government's motions.

19

MR. RYAN: Good morning, your Honor.

20

THE COURT: Good morning.

21

ARGUMENTS AND RULINGS ON MOTIONS TO EXCLUDE

JURORS

22

MR. RYAN: Your Honor, the Government would

move to

23

excuse Juror No. 714 on the grounds of potential

disruption.

24

Your Honor, this is the juror that in his

25

questionnaire responses indicated that he agreed

somewhat to

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1

follow the Court's instructions; and unlike other

jurors who

2

have marked that block, he fully understood his

response.

3

There was no misunderstanding on his part, because he

felt that

4

there was potentially a higher law that he might have

to

5 respond to.

6 He was asked whether any he had any moral or
religious
7 beliefs that might affect his service as a juror. His
response
8 was, "We won't know until we get there."

9 He was asked, "Do you have any political
beliefs that
10 might affect your service as a juror?"

11 His answer was, "Do not know."

12 He was more impressed with courtrooms on TV
than he
13 has been in person. He served twice as a juror.

14 He states the punishment should not fit the
crime, it
15 should reflect the crime. As your Honor pointed out,
it's a
16 catchy phrase; but the Court and counsel on both sides
tried to
17 obtain some explanation of what he meant. At least I
felt I
18 was unable to.

19 He was asked, "Can you think of any reason
preventing
20 you from being able to render a fair and impartial
verdict
21 based on the evidence and the instructions?" His
answer was,
22 "No, but that is not to say that a reason would not
come to
23 me."

the voir 24 Now, in the course of the questioning during
serve as 25 dire in open court, he stated that he was reluctant to

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it would 1 a juror because he's in the throes of a new career and
Honor 2 be difficult for him to focus as a juror. He told his
jury 3 that he could not guarantee that his heart would be in
lawyers are 4 service. He further stated that he believes that
5 manipulative and showed some evidence of that.

he would 6 He stated there would be some instances where
he 7 find it impossible to act within court limitations, and
8 answered that -- "I don't know" to all of the questions
9 concerning whether or not he could make a life-or-death
2477, he 10 decision -- all of my questions. And again, at page
11 stressed his willingness to go above court law, if
necessary.

12 THE COURT: Motion is denied.

13 Next one?

14 MR. TIGAR: If your Honor please, Jurors 45,
657, 942

15 and 347 raise the same issues on which the Court has
previously
16 ruled. Our objection is preserved. We don't see any
reason to
17 take the time with it.

18 THE COURT: All right. It is clear on the
record what

19 the position of the defense is, so I will grant 45,
657, 942
20 and 347.

21 That leaves, I think, 560.

22 Mr. Orenstein?

23 MR. ORENSTEIN: Thank you, your Honor.

24 Your Honor, this juror repeatedly stated an
25 unequivocal and absolute opposition to imposing the
death

4031

1 penalty under any circumstances. He said he would
never impose

2 the death penalty and would always impose life if given
-- if
3 put in the position of having to decide.

4 After defense counsel's questioning, the
record

5 remained that he could listen and consider, and I think
--

6 THE COURT: I understand your position on

this; that

7 he's not -- that he's biased.

8 MR. ORENSTEIN: Yes.

9 THE COURT: Won't consider a death sentence.

10 MR. ORENSTEIN: That's our position.

11 THE COURT: Mr. Tigar?

12 MR. TIGAR: If your Honor please, it's our
view that

13 the juror does have -- wrestled with this problem of
conscience

14 involved in sentencing someone to death and was one of
those

15 folks who may have thought that he was being asked
right now to

16 make some kind of a commitment. Beginning at page
3338, I took

17 him through the steps; and he said that he could follow
the

18 Judge's instructions, considering all of the options.

19 Your Honor then took over the questioning, and
I'll

20 not repeat questions that your Honor remembers having
asked

21 him; but you asked him, "Now, the question I come back
to is

22 can you make a decision about when another person
should be put

23 in prison for life or be put to death?"

24 "Yes." And then he talked about the
circumstances

25 behind it.

1 So in our respectful submission, your Honor,
the juror
2 at the end of all of the questions did make it very,
very clear
3 that he can participate in this process; that he can
listen and
4 that he would give consideration to the full range of
5 punishment.

6 THE COURT: Well, this juror -- and it's going
to come
7 up again with the defense motion as to 618 -- is the
subject of
8 some briefing in the case; and again, I'm being asked
to
9 consider all of these Supreme Court opinions and am
aware of
10 them, of course. But the Supreme Court opinions, of
course,
11 deal with systemic problems principally with respect to
12 statutes and qualifications, not the individual jurors'
ability
13 to render impartial jury service, which in a case like
this
14 involves, of course, not only impartial jury service on
15 determining the evidence in the case and its
sufficiency but
16 also impartial jury service with respect to the

sentence, if

17 necessary.

18 questions. We

So, you know, there are no talismanic

19 have to

can't go -- I can't go on the basis of one answer. I

20 about

make a judgment about the person considering everything

21 questions and

that person, including, of course, the particular

22 ability of the

answers that respective counsel urge to show the

23 course,

juror to serve. But I have in -- that includes, of

24 demeanor and manner in responding to the questions.

25 has a

I'm satisfied with respect to this 560 that he

4033

1 definite bias and cannot -- you know, may not
impartially serve

2 on the jury in that second stage, if it happens. And

3 accordingly, I'm going to grant the motion with respect
to 560.

4 well, but

Now, I think I'm prepared to do it on 618 as

5 motions.

we'll take -- those are all of the Government's

6 MR. MACKEY: Yes, your Honor.

7 THE COURT: We'll take the defense motions.
8 I'll take them in the order you have them so
we don't
9 get confused, so I don't get confused.
10 MR. TIGAR: I appreciate that, your Honor; and
I am
11 easily confused about this.
12 Juror No. 667 -- that's the one we're on now.
13 THE COURT: Yes. Right.
14 MR. TIGAR: I think the key to his answer was
when
15 your Honor, after I had finished talking to him, put it
to him
16 straight. On 2661, the question is, "Are you open to
consider
17 whatever is offered in mitigation to suggest that
despite that
18 crime the person may deserve to live and not die?"
19 "Answer: No."
20 And then there followed on the next page a
colloquy in
21 which the question was did the juror really understand
what was
22 put to him; and your Honor says, "I think he
understood, yes."
23 This is something that -- discussion with the
juror
24 that began back on 2655, when I asked him about his
views on
25 the death penalty irrespective of statutes; and he
said,

1 "Probably about the same as what I wrote in my
questionnaire.

2 I mean, if the crime fits -- I mean it's like what I
wrote in

3 there." Then he puts Tim McVeigh into that category.

4 And he says -- then I asked him, "Can you
think of any

5 circumstances where a person convicted of an
intentional,

6 deliberate murder should receive life in prison?"

7 "Answer: No."

8 And then we went through the hypothetical
about

9 terrorism and bombing an airplane.

10 I think, your Honor, this is one of these in
which if

11 there is any doubt, the juror's demeanor, which I took
to be

12 almost a defiant posture with respect to your Honor on
that

13 last "can you consider" and then a "no," gives us a
clue that

14 he is not open to consider the full range.

15 THE COURT: Ms. Wilkinson, are you going to
address

16 this person?

17 MS. WILKINSON: Just briefly, your Honor.

18 Your Honor, this is one again where you have
to judge
19 all the circumstances. I think if you look on the same
page
20 that Mr. Tigar cited to you, 2661, you asked him,
"Would you be
21 open to considering those before making a decision
about life
22 or death? That's the point of all this."

23 And he said, "Well, yes, I would."

24 And I think here is an example where again
because
25 defense counsel is giving these loaded hypotheticals
where

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1 talking about an airplane bombing or other kinds of
bombings
2 and not putting any of the mitigating circumstances,
there was
3 some confusion on the part of the juror about what he
was being
4 asked. And I think when he got to the end and answered
your
5 question "no" -- which we have no disagreement with Mr.
Tigar
6 that that was his answer -- that he was, I think, being
asked
7 what decision he would make instead of being asked
whether he

what 8 would be open to considering all the options, which was
9 you asked him earlier and he said that he would.

this 10 So regardless of how the Court rules, I think
when 11 points out the difficulty we have with defense counsel
improper 12 they're asking these hypotheticals, which are really
13 questions.

questions; 14 THE COURT: Well, I'm not addressing the
to what 15 but, you know, I paid some attention on this one also
to it. 16 he said about the O. J. Simpson case and his responses
impartial 17 And I think this person is -- has some problems being
18 and open. I'm granting the motion 618.

that's 19 MR. RYAN: Your Honor, this is the matter
Honor. 20 already been briefed. We stand on our papers, your

Tigar. 21 THE COURT: I'm going to grant this one, Mr.

Honor out 22 MR. TIGAR: Then I won't try to argue your
23 of it. Thank you.

24 THE COURT: All right. 959.

also been 25 MR. TIGAR: If your Honor please, this has

1 briefed.

2 THE COURT: Yes.

3 MR. TIGAR: We wanted to bring those matters
to the

4 Court's attention, not in any sniping or carping way.
And our

5 position is clear: We thought that the circumstances
raised a

6 sufficient difficulty in light of the relationship that
the

7 juror, based on the relationship with your Honor, would
be

8 looking for cues about your Honor's views of the case.
And I

9 know the Court instructs the jury, "Don't consider any
opinion

10 you might think I have," and so on. But it was our
view that

11 the relationship was such that in this case, there is
some

12 question whether that would be enough.

13 THE COURT: Well, I think the unusual
circumstance

14 here is so attenuated by time that I can't imagine this
person

15 being influenced by that; so I'm denying the motion.

16 I believe that's it on the motions, so that
we'll be

for the 17 ready to resume at 8:45; and as I recall, we're ready
18 Defense on this --
19 MR. WOODS: Yes, your Honor.
20 THE COURT: -- woman.
21 All right. We'll recess till 8:45.
22 (Recess at 8:12 a.m.)
23 (Reconvened at 8:44 a.m.)
24 THE COURT: Be seated, please.
25 All right. We're ready to resume on 577.

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1 (Juror No. 577 was recalled to the stand.)
2 THE COURT: Good morning.
3 JUROR: Good morning.
4 THE COURT: Thank you for your continued
cooperation,
5 and you will recall after the questions asked by me and
counsel
6 for the Government on Friday afternoon late, we are
ready now
7 for counsel for the defendant, so bear with us for a
little
8 more questioning.
9 Mr. Woods.
10 MR. WOODS: Thank you, your Honor.

VOIR DIRE EXAMINATION

11

12 BY MR. WOODS:

13 Q. Good morning.

14 A. Good morning.

15 Q. The good news is I'm the last one. Since they've
already

16 covered all of the others, I'm only going to have a
couple of

17 questions for you. As the Judge introduced me on
Friday, my

18 name is Ron Woods. Along with Mike Tigar, we were
asked by the

19 Federal District Court over in Oklahoma City to help
out Terry

20 Nichols when he was charged by these Government lawyers
in May

21 of '95 for being responsible for the bombing.

22 How do you feel about him having two lawyers
to

23 represent him in this case?

24 A. Seems appropriate.

25 Q. Okay. I take it you would not hold that against
him, that

4038

Juror No. 577 - Voir Dire

1 he couldn't afford his own attorney?

2 A. Absolutely not.

school 3 Q. Okay. Now, you mentioned on Friday that at the
had been 4 where you work, when you told people, "The fact that I
case, 5 summonsed to serve as a potential juror in the Nichols
that a 6 that there was some fear expressed." Can you explain
nature. 7 little bit to me? I didn't quite follow the fear

either. 8 A. Well, I'm not sure that I was accurate with that,
mean 9 I hadn't really thought about what their reaction did
about it a 10 until that question was asked on Friday. I thought
time 11 little more this weekend. I think it's more it's a
and I 12 commitment. I think this is a very serious situation,
the 13 think that to be involved in it is -- people respect
and 14 seriousness of it. It brings it a lot closer to home,
they know 15 someone -- when either I might be involved in it or
16 somebody that is going to be involved in it.

weren't 17 Q. I take it when you mentioned the word "fear," you
18 expressing any fear from the defense?

19 A. No. No.

20 Q. From your serving on the jury?

21 A. No, I think it's more that that brings it closer to
home.
22 Q. Okay. And you understand the precautions the Court
has
23 taken with your privacy, and that's solely to keep the
media
24 from photographing you and publicizing your name; you
don't
25 take that as fear from the defense in any way?

4039

Juror No. 577 – Voir Dire

1 A. No.
2 Q. Okay.
3 A. Okay. I think it's not a fear for your own safety.
It's
4 more a fear that you're going to do something totally
that
5 you've never, ever done before.
6 Q. Not many people have. And you've obviously given
it a
7 great deal of thought, and we appreciate that. You
mentioned
8 in your questionnaire on the subject of the gun laws
that you
9 felt that they should be stricter. And you also felt
that when
10 a person had a gun, he was taking the law into his own
hands.
11 What did you mean by that response? And I'll direct
you to

12 page 31 and 32. The last question on page 31: "Do you
have
13 any views about individuals' possession or use of
firearms?"

14 You said yes, and then your answer is on the
top of
15 page 32.

16 A. Well, I don't own a firearm, and it seems to me
that the
17 only reason to own a firearm would be to use it. If
you have
18 it, you might use it. If you don't have one, you can't
use it.

19 Q. Okay. And you stated that "That for me means
taking the
20 law in my own hands. I would not want to do this."

21 you mean by that? If you had a gun and the only reason
to have
22 one is to use it; what do you mean by if you used it,
you would
23 be taking the law into your own hands?

24 A. I would hope that the agencies around me could
protect me
25 and take care of me, but I would not want to be
responsible for

4040

Juror No. 577 - Voir Dire

1 having made a mistake or a bad decision.

2 Q. All right. Are you taking into account owning
firearms for
3 sporting purposes and other things, also?
4 A. I think I was thinking more about having a firearm
in my
5 home.
6 Q. Do you have any feelings about people who are in
the
7 firearms business, either selling at retail or
attending gun
8 shows, buying or selling guns through that manner?
9 A. People are different in what they can do for their
own
10 mind-set. I guess it's okay for them. No, I don't
think I
11 have any strong feelings against or for them.
12 Q. Okay. I take it you would not hold it against
anyone if
13 they made their livelihood or their business was
engaging in
14 selling and buying firearms?
15 A. Never thought about it. I guess I wish that they
weren't
16 readily available to people. I think we'd be better
off if
17 they weren't.
18 Q. But if the law allows it, would it affect you in
any way if
19 people made their livelihood in buying and selling
firearms at
20 gun shows or in retail businesses or anywhere else?

21 A. I don't think so.
22 Q. You mentioned in the questionnaire that you take
Time and
23 Newsweek; is that correct?
24 A. I have in the past. I'm not at the moment because
I can
25 get them from school.

4041

Juror No. 577 – Voir Dire

1 Q. Okay. You use the school library?
2 A. Yes.
3 Q. What other media sources do you use at the school
library?
4 For example, do you use the Internet there?
5 A. It's available to us.
6 Q. Have you followed the news at all on the Internet
in the
7 past two-and-a-half years?
8 A. No, I have not.
9 Q. Okay. And the newspapers, I assume, are available?
10 A. The newspapers are available, and I do take the
newspaper.
11 Q. Okay. Do you do current events with your class,
seventh
12 and eighth grade? You have them keep up on any certain
events?
13 A. Not for language arts.

14 Q. Okay. Okay. You mentioned in the questionnaire
that
15 you've followed -- you've read about this case in TV,
news, and
16 newspapers, and you mentioned that you like "Dateline"
as one
17 of the news shows you like; is that correct?

18 A. Yes.

19 Q. Okay. And you gave a fairly detailed recollection
of your
20 memory of what happened the day of the bombing, April
19, '95.

21 Do you recall how many people were killed?

22 A. 168.

23 Q. Okay. Do you recall whether or not there were
children
24 killed in the bombing?

25 A. Yes, there were.

4042

Juror No. 577 - Voir Dire

1 Q. And you recall what the reason why there were
children
2 killed in the bombing of a federal building?

3 A. Could you repeat that question, please.

4 Q. Yes, ma'am. Do you recall from what you've seen,
read, or
5 heard over the past two-and-a-half years why there were
6 children killed at a federal building?

7 A. Yes. There was a day-care center there.

8 Q. Do you remember how many children were killed?

9 A. No, I don't.

10 Q. Do you remember how the explosive was placed at the
federal
11 building, from what you've seen, read, or heard?

12 A. It was in a truck.

13 Q. Okay. Do you remember what kind of explosive it
was?
14 A. No.

15 Q. Do you remember anything about it one way or the
other as
16 to the nature of the explosive from what you've seen or
read or
17 heard over the past two-and-a-half years?

18 A. I remember something about fertilizer.

19 Q. Okay. Do you remember how Mr. McVeigh was
arrested?
20 A. He was stopped outside of town, in a car outside of
town.
21 Q. Do you -- from what you've seen, read, or heard
over the
22 past two-and-a-half years -- and you mentioned in the
23 questionnaire that Mr. Nichols was an accessory to
24 Mr. McVeigh -- do you remember where Mr. Nichols was on
the day
25 of the bombing?

Juror No. 577 - Voir Dire

1 A. No, I don't remember that.

2 Q. Is it your recollection he was with McVeigh?

3 A. No.

4 Q. Do you have any recollection of where he was, in
what state

5 or anything about --

6 A. No, I don't.

7 Q. Do you have any recollection of how he initiated
contact

8 with the law enforcement authorities?

9 A. No. I really didn't pay any attention, and I don't
know

10 when he came into the situation. I don't remember
anything

11 about him.

12 Q. All right. On what basis are you saying -- in the
13 questionnaire when the questionnaire asked you about
your

14 knowledge of Terry Nichols, I believe you stated -- and
that's

15 on page 37 -- please summarize what you've seen, read,
or heard

16 about Terry Nichols. You stated that middle-aged man
with wife

17 and children and accessory to Timothy McVeigh.

18 What do you mean by "accessory to Timothy
McVeigh"?

19 What had you heard that led you to write that down?

20 A. That he was involved with him in some way.

21 Q. Okay.

22 A. But I really had no specific information about him.

23 Q. His involvement is just that, that's the only thing
you

24 know, that he's alleged to be involved?

25 A. That's right.

4044

Juror No. 577 - Voir Dire

1 Q. And any basis at all? Factual basis of what his
alleged

2 involvement was?

3 A. No. Because after the -- after the first couple of
weeks,

4 I think -- and I don't remember the exact time span --
I

5 stopped following the details because it was the same
thing

6 over and over again. And I stopped following, reading
it. I

7 followed the general headlines of what happened, and I
stopped

8 following the details.

9 Q. Okay. By the details and it being over and over
the same

10 thing, are you speaking of just the day of the bombing
or the

11 subsequent investigation and arrest?

12 A. I read it for the first few days. I don't remember
how
13 long, maybe up to a week. And then I stopped because
it just
14 got to be too much.

15 Q. Okay. Now, you at one time had lived in Livonia,
Michigan;
16 is that correct?

17 A. That's correct.

18 Q. Are you familiar with where Decker and Lapeer and
Sandusky
19 is, up in the Thumb area; right above Detroit?

20 A. No.

21 Q. Is Livonia a suburb of Detroit?

22 A. Yes, it is.

23 Q. How long did you live there?

24 A. Three years.

25 Q. Are you familiar with the Thumb area?

4045

Juror No. 577 - Voir Dire

1 A. No. It's been over 30 years since I lived there.

2 Q. Yes, ma'am. Okay. When you were watching
television of
3 the Oklahoma City event that first week -- the bombing
was on
4 Wednesday -- do you recall seeing an execution of a
search

about 5 warrant in Michigan that was televised live on Friday,

6 noon on Friday, a number of people searching a
farmhouse in

7 Michigan?

and I 8 A. I remember something about Michigan. I don't --

9 think -- as you say it, I think I remember something
about a

10 farmhouse.

in any 11 Q. Okay. And did you connect Terry Nichols with that

12 way?

13 A. No.

with wife 14 Q. Okay. When you say that he's a middle-aged man

15 and children, what are you basing that on?

was 16 A. Sometime this summer, I think it was in August, I

fast 17 somewhere where the television couldn't be turned off

young wife. 18 enough, and they showed a picture of his -- of his

read 19 Q. You understand it was okay to watch television and

watch 20 news up until the day the Judge instructed you not to

21 about this case?

22 A. Yes.

somewhat 23 Q. As to the punishment range, did you feel it was

24 odd that there was so much discussion going on here
about the
25 punishment range, the punishment stage of this case?

4046

Juror No. 577 – Voir Dire

1 A. Absolutely not.

2 Q. Okay.

3 A. I think it's very serious, very important.

4 Q. Did you understand that this was the only chance we
get to
5 talk to you about the punishment range?

6 A. Yes.

7 Q. And did you understand from the Judge's explanation
that
8 we're certainly not conceding that we're getting to a
9 punishment stage of the case?

10 A. I hope not.

11 Q. Okay. Well, let me assure you: Mr. Tigar and Mr.
Nichols
12 and I are not conceding that we're going to get to a
punishment
13 stage in this case. The Government here has a theory
about
14 Mr. Nichols being responsible for this bombing. We
disagree
15 with that theory. They're going to call a number of
witnesses

16 to the witness stand, and we're going to cross-examine
them
17 very thoroughly. And the Judge told you that we're not
18 obligated, we don't have to put on our own witnesses;
but when
19 they get through and they rest their case, we're going
to be
20 calling a number of witnesses that will contradict
their
21 theory. And it will then be the jury's job to consider
all the
22 evidence, presuming Mr. Nichols' innocent until and
unless the
23 Government can prove by admissible evidence that he is
guilty
24 beyond a reasonable doubt. And that's why we're here.
We're
25 challenging their theory.

4047

Juror No. 577 - Voir Dire

1 So the fact that we're talking -- a lot of
discussion
2 going on about punishment, we don't want you to feel
that we're
3 just skipping over the guilty stage of this case,
because we
4 don't -- we're not agreeing with the Government that
we're
5 going to get to a punishment stage in this case. If we
got

6 there, then we couldn't stop the trial and have you all
come

7 back in and then talk to you about your views of
punishment.

8 So did you follow the Court's explanation of
this

9 trial process?

10 A. Yes, I did.

11 Q. Okay. Now, on the punishment area, the
questionnaire asked

12 you on page 28.

13 A. Yes.

14 Q. There were four questions here: "What is your view
as to

15 whether the sentence of life in prison without the
possibility

16 of release should ever be imposed as to punishment for
any

17 crime?"

18 And you answered, "It depends on the
circumstances,

19 and it can be appropriate."

20 And you understood from the Court that life in
prison

21 in Federal Court means just that, you never get out;
that if a

22 person gets a life sentence, they die in prison? You

23 understood that?

24 A. Yes.

25 Q. Okay. "And what is your view as to whether the
penalty of

Juror No. 577 - Voir Dire

1 death should ever be imposed as a form of punishment
for any 2 crime?"

I 3 You answered, "It should not be predetermined.
4 believe in some circumstances that this penalty is
5 appropriate."

6 And I take it that you had thought about this
before 7 you filled this questionnaire out?

8 A. I had.

9 Q. You realize that that would be part of the
questioning 10 process when you were called to Jefferson County to be
a 11 potential juror on the Nichols case?

12 A. Yes.

13 Q. And that's because, I assume, that you were aware
of the 14 verdict in this case -- in the McVeigh case that had
led to a 15 death penalty verdict; is that correct?

16 A. Yes.

17 Q. The Court then went on in the questionnaire to ask,
"In

18 what kind of cases is it appropriate, if ever, to
impose a
19 punishment of life in prison without the possibility of
ever
20 being released?"

21 And you mentioned, "Endangerment to the lives
of other
22 people, serious mental illness that cannot be
rehabilitated."

23 And have you thought further about that? Do
you want
24 to expand on that any?

25 A. I think I agree with what I wrote.

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1 Q. Okay. And the last question, "What kind of cases
is it
2 appropriate, if ever, to impose a punishment of death?"

3 And you put three categories here: "The
severity of
4 the crime committed."

5 Can you expand on that a little bit, what you
mean by

6 the severity of crime? Is it the number of people
killed, or

7 is it the circumstances of the crime, or what do you
mean by

8 that?

9 A. I would say both.

10 Q. Okay.

11 A. Potential for doing the same thing again.

12 Q. Okay. And then the second one, "Responsibility for
slash
13 in the crime committed."

14 What do you mean by that?

15 A. Well, I think that if you participate in it --
depends on

16 how you participate in it -- but you can be just as
guilty as
17 someone directly involved in it.

18 Q. Yes, ma'am. And did you follow the Court's
instructions

19 that if you're in a penalty stage of a crime, it means
that the

20 jury have unanimously agreed that the defendant is
guilty of

21 premeditated, deliberate murder of one or more
individuals;

22 that that question has already been answered by the
jury and

23 they're into the penalty stage, trying to determine
what the

24 appropriate penalty is; that that first decision has
already

25 been made, that the defendant is guilty of
premeditated,

1 deliberate murder of one or more individuals?

2 A. Yes.

3 Q. Okay. And so on your -- your response here,
responsibility

4 for or in the crime committed, that's one in your mind,
then,

5 that would have already been answered, or are you --

6 MR. MACKEY: Objection.

7 BY MR. WOODS:

8 Q. -- or are you looking at the responsibility?

9 THE COURT: What's the objection?

10 MR. MACKEY: Objection to the question.

11 THE COURT: It's overruled. It hasn't even
been asked

12 yet.

13 MR. MACKEY: I thought --

14 MR. WOODS: Excuse me, your Honor.

15 BY MR. WOODS:

16 Q. If you get on the jury, you'll see a lot of this:
Lawyers'

17 objections to each others' questions, and the Court
rules on

18 those.

19 When you responded, "Responsibility for slash
in the

20 crime committed," was that what you were thinking,
whether or

21 not they were guilty, or were you looking at the role
of the

22 individual in the crime?

23 A. Say it to me once more.

24 Q. Yes, ma'am, I'm sorry. Your response here -- "In
what kind

25 of cases is it appropriate, if ever, to impose a
punishment of

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1 death?" And your second response was, "Responsibility
for

2 slash in the crime committed." And my question was,
were you

3 thinking more of whether or not the person was
responsible for

4 it -- that is, was he guilty of it -- or were you
thinking of

5 what his role was in the case?

6 A. I think both.

7 Q. Okay. But you did understand that to get to that
penalty

8 stage, the jury has already found --

9 A. Yes, determined that the defendant was guilty.

10 Q. Yes, ma'am. Okay. And then the last one,
"Attitude of the

11 defendant," what do you mean by that?

12 A. I guess it's because so often you hear on the
television --

13 and I'm not quite sure what difference it makes --

whether

14 someone's remorseful for what they did or not, but I
imagine

15 that's where that came from when I wrote it down.

16 Q. Do you recall publicity during the McVeigh trial
concerning

17 remorsefulness or the appearance of the defendant in
the

18 courtroom?

19 A. Just a little.

20 Q. Okay. What did you think about that? How did that
affect

21 you?

22 THE COURT: Well, maybe we ought to find out
what she

23 knows about it first.

24 MR. WOODS: Thank you, your Honor.

25 BY MR. WOODS:

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1 Q. Can you recall what you heard over the television
about the

2 remorsefulness or the appearance of the defendant,
McVeigh, in

3 his trial?

4 A. I hope I'm correct in what I remember, but it seems
as if I

5 remember that he had a haughty attitude and sort of a

tough,

6 unremorseful attitude; and I hope I remember that
correctly.

7 Q. Okay. How did that affect you when you read that?

8 A. I think I felt sad for him.

9 Q. And based on your response, that's something that
you will

10 look at as part of your decision-making process, is
that

11 correct, in arriving at an appropriate punishment
verdict?

12 A. That's probably the teacher in me, and having
worked with

13 youngsters that are struggling with life, is that
I . . . I

14 don't feel sad for them because of what may be the
outcome of

15 their lives, or in this case of a trial, but more sad
that they

16 don't perhaps see the seriousness of what they've done,
what

17 has happened.

18 Q. Okay. Now, let me cover one other since you
mentioned

19 about your work with children. I assume during those
first

20 several days of the bombing on April 19 of '95, and the
day or

21 so after, you saw images on television of rescue
workers, of

22 dead people, and of also children being killed. Would
that be

23 true?

24 A. Yes.

25 Q. Okay. Would you agree that those images have stuck
in your

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1 mind as they have most other people?

2 A. Yes.

3 Q. Now, if you were chosen as a juror on this case,
it's

4 likely that you will see those same images over again
through

5 live testimony, through video, through photographs, and
you may

6 see them repeated, even though it's not a contested
issue in

7 this case.

8 Would you be able, based on all of your years
of

9 experience in working with children -- and it's going
to be

10 very emotional, it's going to be heart-wrenching -- can
you as

11 a juror, if you're chosen, separate that out -- even
though

12 it's terribly emotional -- can you separate that and
use it for

13 what it's worth but at the same time look to the
Government and

14 ask in your own mind, what is the evidence that they
have

15 offered into evidence that Terry Nichols was
responsible for

16 that bombing? Do you see the distinction that will
exist there

17 because of all of the emotion the jury will have, but
at the

18 same time their duty is to look at the evidence?

19 A. Well, let me see if this response fits what you're
asking.

20 I think my ability to work with children that are very

21 difficult to work with, children who have -- people who
have

22 emotional, behavioral problems, when I get in a tight
spot with

23 that, then I separate the personal from the
professional, and

24 that has worked for me. And I think that if I was
chosen to be

25 on the jury, I would have, so to speak, a professional

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1 responsibility to weigh it, not a personal
responsibility.

2 That's been a large part of my ability to work with
children.

3 Q. Okay. Okay. So I take it from that answer, you
definitely

4 could do it?

5 A. I think I could.

would be
6 Q. Okay. You also mentioned Friday that you felt it
little
7 an honor to be on the jury. Can you expand on that a
8 bit?

9 A. Well, we may be dealing with semantics, and maybe I
should
10 have found a better word, I don't know. But, as I told
11 Mr. Ryan, I think, I think you're looking at a lot of
people
12 very, very carefully, and this is very important for
both
13 sides, the people that sit here. And so I guess I feel
that if
14 you thought that I could do this, that in some way --
I'm sure
15 that word sounds funny, but it's the best word I have
at this
16 point.

17 Q. It doesn't sound funny at all.

18 A. I still think that I'm a citizen of the United
States of
19 America, and I enjoy the privileges of living here; and
maybe
20 it's the least I can do, if I can do it well enough.

21 Q. Okay. Now, my mentioning it, it certainly didn't
sound
22 funny. I thought it was a very interesting answer, and
I
23 wanted to follow up on it.

you 24 You also mention, and it appeared to me that
penalty 25 understood fully, the Court's instructions on the

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offered 1 phase; that there would be aggravating circumstances
would 2 into evidence by the Government, and then the defense
of those 3 have an opportunity to offer into evidence mitigating
4 circumstances. And I take it you understood what both
5 meant in your mind?

6 A. I felt that I did.

open 7 Q. And then after hearing that, that you would have an
penalty 8 mind to consider both life imprisonment and the death
9 based on what you heard in this case; is that correct?

10 A. Yes.

11 Q. Okay.

one way 12 A. I have no -- at this point, I don't have enough
evidence 13 information, I don't know enough about the case to feel
14 or the other; would totally have to come out of any
15 that I heard.

16 Q. Okay.

17 A. Or all the evidence that I heard.

18 Q. And your statement back on your questionnaire about
the

19 severity of the crime committed, I take it that's just
one of

20 the factors that you would look at on the aggravation
side, but

21 you would still keep an open mind as to the mitigation
side as

22 to the individual?

23 A. Yes.

24 Q. Okay.

25 A. You speak knowing a lot of information, and I
answer

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1 knowing nothing.

2 Q. Well, I hope I'm not giving you that impression.

3 A. No, you're not, but I feel very humble in answering
a

4 question like that.

5 Q. Well, we appreciate your humbleness and you
truthfulness in

6 answering the question. It's my understanding that you

7 understood the Court's instruction, that you will keep
an open

that 8 mind at the penalty hearing is the way I read it. Is
9 correct?

10 A. Yes.

11 MR. WOODS: Thank you so much. We appreciate
it.

12 THE COURT: Well, we're now excusing you for
the day.

13 And again we regret that you had to come back, but of
course

14 that's not the fault of Mr. Woods or anybody else; it's
just

15 how -- you know, the fact that you came back to answer
those

16 questions by the defense should not be considered
against them.

17 We just didn't have time on Friday.

18 Now, I'm not able to tell you now when the
selection

19 process will be completed. And we regret leaving you
in this

20 uncertainty, particularly since there has to be some
planning

21 done at your school if you come in here as a juror.
But you

22 will have to go forward with the assumption that you
will be

23 serving on this jury and conduct yourself accordingly,

24 particularly, of course, with respect to avoidance
about

25 publicity about the case and in conversation with
others about

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1 the case so that you can come back here on whatever
date it is

2 and be prepared to serve. Will you do that?

3 JUROR: I'll think ahead about it.

4 THE COURT: Thank you very much. You're
excused.

5 625.

6 Good morning.

7 JUROR: Good morning.

8 THE COURT: Would you raise your right hand
and take

9 the oath from the clerk, please.

10 (Juror No. 625 affirmed.)

11 THE COURTROOM DEPUTY: Thank you.

12 THE COURT: Please be seated. You can make
yourself

13 comfortable there in that chair. You don't have to
lean over

14 and talk into the microphone. The microphone will pick
you up

15 all right.

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. You spent all day with us Friday --

19 A. Yes, I did.

all of 20 Q. -- waiting to come in, and we apologize for taking
to -- 21 your day and then you weren't here; but it's difficult
appreciate 22 for us to judge just how much time is needed. So we
23 your cooperation.

jury 24 Now, you recall of course that you received a
had 25 summons a couple months ago now advising that your name

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to serve 1 come up through a chance selection process as a person
against 2 on the jury to decide the case of the United States
3 Terry Lynn Nichols.

4 A. Yes.

respond to 5 Q. And that asked you a few questions, and you did

notice to 6 those questions, sent it back in. Then you got a

7 come out to Jefferson County Fairgrounds on the 17th of
8 September. You did, and you answered a lot more
questions. So

propounded, 9 when the oath says such interrogatories as shall be

10 you've already had a lot of them propounded to you; and

there

11 will be a few more, if you can believe it.

12 But what we want to do is ask you a few things
about

13 what you did answer and a few other things that relate
to

14 service on the jury for this case. Before we begin, I
want to

15 reintroduce some people you met before because they
were with

16 me at the Jefferson County Fairgrounds and they're with
us

17 again today.

18 Let me begin by directing your attention to
the

19 Government's table here where you see Mr. Lawrence
Mackey and

20 Miss Beth Wilkinson, attorneys for the Government, who
were

21 present with us. They're joined this morning by Mr.
Patrick

22 Ryan and Mr. Geoffrey Mearns, additional counsel for
the

23 Government.

24 You recall Mr. Michael Tigar and Mr. Ronald
Woods,

25 attorneys for Terry Nichols, all of whom were present
with us

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1 at that time on September the 17th.

2 In addition to -- and there are a few other
people
3 here in your sight in the courtroom who are here to
assist.

4 Now, you recall that before asking you to
answer all
5 these written questions, I gave you some explanation
regarding
6 the background of the case and something about what is
involved
7 in jury service. So you recall that I said then that
this
8 arises out of an explosion that took place in Oklahoma
City on
9 April the 19th of 1995, at which time a federal office
building
10 was destroyed, people in it were killed and injured;
that
11 thereafter there was an indictment, a statement of
charges,
12 filed in Oklahoma City with counsel for the Government
charging
13 two named persons -- that is, Timothy James McVeigh and
Terry
14 Lynn Nichols -- and then saying "other persons not
named," with
15 conspiring, engaging in a conspiracy, a plan, or
agreement to
16 bomb that building and to kill and injure people in it;
that
17 the indictment included charges that in addition to
planning

18 it, the defendants carried out a bombing of the
building
19 resulting in injury and death and destruction of the
building
20 and including eight counts or charges of murder, first-
degree
21 murder of law enforcement agents who were in the
building at
22 the time, federal agents. You recall -- you knew that
before I
23 explained it to you, I'm sure.
24 A. Yes, I did.
25 Q. And then I talked about the procedural history of
the case,

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1 how after the case was filed in Oklahoma City in the
Federal
2 Court there, it was transferred here to Denver because
of a
3 concern about asking people there in Oklahoma City to
sit on a
4 jury in a case involving an event like this that
happened in
5 that community. And then after the case was moved
here, I
6 entered an order separating the two defendants for
trial on the
7 finding that it would not be fair to have both of these
named

8 persons on trial at the same time with the same jury
because of
9 differences as the evidence may relate to each of them,
and
10 accordingly separate trials were ordered.

11 And there has been a trial of Mr. McVeigh
here, and a
12 jury heard his case, a jury selected in this same way
that
13 we're selecting this jury, and that after trial, that
jury
14 found Mr. McVeigh guilty of the charges against him,
found that
15 the evidence was sufficient as to him. And then the
jury was
16 asked to hear a good deal more in a separate sentencing
phase
17 trial; and as a result of that and the information they
heard
18 there, and under court instructions, that jury
recommended that
19 a death sentence be imposed on Mr. McVeigh.

20 Now, we are preparing for the trial of Mr.
Nichols,
21 and whatever you may have heard, read, or seen
regarding the
22 trial of Mr. McVeigh must be put out of your mind now
because
23 we're starting over, and there is no evidence now
against
24 Mr. Nichols. And so we must consider only the evidence
25 received at this trial as it may relate to Mr. Nichols

in

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1 determining the charges against him. You understand
that?

2 A. Yes, I do.

3 Q. To do otherwise, to consider that a jury has
already

4 reached a result as to Mr. McVeigh, would violate the
very

5 reason for our having separated the cases. You
understand?

6 A. Yes, sir.

7 Q. And then I also went on to explain some things
about what a

8 jury has to do in a criminal case because most of the
people

9 who were there with us had not served on a jury before,
and you

10 haven't served on a jury anywhere before; correct?

11 A. No, sir.

12 Q. So while you may remember these things -- and I
don't mean

13 to insult you by going over them again -- it is
important that

14 we have an understanding of just what the process is
and what

15 is required of jurors. And that is, of course, that

16 fundamentally, under the Constitution of the United

States --

17 and this applies in all courts in the United States
regardless
18 of what the charges are or who the defendant is -- that
person
19 is presumed to be innocent of the charges made against
him or
20 her.

21 And that means that a person who is accused
has no
22 burden or duty of proving anything at trial. In fact,
there's
23 no duty to call any witnesses or offer any exhibits,
and
24 certainly no one who is accused of a crime has any
burden or
25 duty to testify, to take the witness stand and answer
any

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1 questions or to offer any explanations to the jury. A
person
2 who is accused can simply remain silent and require
that the
3 charging government, whatever it is, local, state,
federal,
4 come in here with the evidence and prove it.

5 And the defendant can challenge that evidence,
of
6 course, by objections to the admission of evidence --

there are

7 rules of evidence that restrict what can be heard --
and also

8 to cross-examine the witnesses and the like.

9 And in cases where a defendant does not
testify, the

10 jury is always instructed that they may not consider
that in

11 any way. They can't speculate that, well, if he's
innocent,

12 why didn't he tell us so or he's got something to hide
or he's

13 afraid of questioning or anything like that. What I
say to

14 juries in situations like that is you can't even talk
about it,

15 it's not a part of the case. Understood?

16 A. Yes.

17 Q. And what the presumption of innocence means is that
not

18 only does the Government through its lawyers have the
burden

19 and duty of coming in and producing the evidence, but
also it

20 must be strong enough to persuade the jurors that the
defendant

21 is guilty beyond a reasonable doubt. At the end of a
trial,

22 the Court gives instructions on the law, some details
as to --

23 these are the things that have to be proved in this
case, that

24 you must find from the evidence if you're to find the
defendant
25 guilty. They're all the elements of the offense, and
we go

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1 into detail as to exactly what has to be proved. And
the jury
2 is then asked: All right. Does this evidence prove
these
3 things, these facts beyond a reasonable doubt? And if,
after
4 considering it all, the jurors in talking it over find
that
5 there is a reasonable doubt remaining, they must give
to the
6 defendant the benefit of that doubt, finding him not
guilty.

7 You follow me on these points?

8 A. Yes.

9 Q. Now, that's what the Constitution requires. That's
what
10 the law requires. Do you accept those principles of
law?

11 A. Yes.

12 Q. And are you prepared to follow them, yourself, and
abide by
13 them as instructions about the law if you sit in this
case as a
14 juror?

15 A. Yes.

16 Q. And you're, therefore, willing to accept here that
17 Mr. Nichols sits here with us this morning presumed to
be
18 innocent of these charges and require the Government to
prove
19 the charges beyond a reasonable doubt? You agree to
that?

20 A. Yes.

21 Q. All right. Now, I want to ask you a few questions
about
22 some of your answers. Before I do so, recognize, as
I'm sure
23 you do, that we -- you know, we've asked you some
questions
24 that are quite personal. And we respect your privacy,
and we
25 always try to balance the privacy interests of the jury
and

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1 each juror and the public interest in the case and the
trial
2 proceedings. So we're not referring to you by name.
You
3 answered these questionnaires. I gave copies to the
people in
4 front of you, but they're not -- they have not given
them to

and 5 anybody else or released them to the press or anything,
for this 6 we'll keep it that way. We're using your answers only
the 7 purpose. And we even arrange for you to come and go to
TV 8 courthouse so there can't be any press photographers or
is 9 cameramen or anybody taking your picture. All of this
interests. 10 designed, you know, to protect those personal
careful 11 in the course of this questioning, I'll attempt to be
are in 12 with respect to that. You do have to recognize that we
this being 13 open court now and that what is said here is public,
14 a public trial.

15 You have to answer out loud --

16 A. I'm sorry, yes.

your 17 Q. -- so we can take your answers down. I can see
loud 18 nodding and your agreement, but there has to be an out-
questions 19 answer. And we're not going to go through all these
are just 20 all over again. Don't be concerned about that. There
21 a few things that I want to follow up with you.

born in 22 As I have it from the questionnaire, you were

23 Phoenix but apparently your family moved here shortly
24 thereafter; is that right?
25 A. Yes.

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1 Q. So your memories are all of growing up in Colorado?

2 A. Yes.

3 Q. And you live now in an area of Jefferson County and
went to
4 school in Jefferson County?

5 A. Yes.

6 Q. And you are now married and have a very young
daughter.

7 A. Yes.

8 Q. And the effect of this case on your taking care of
her is
9 something of concern to you, and you've expressed that
in here.

10 Now, since -- and as I understand it, you don't have a
job
11 other than taking care of the home and the daughter,
which is a
12 big job.

13 A. Correct.

14 Q. And your husband is a -- as I understand it, is a
partner
15 and works in a small business that has kind of a
specialty

16 business.

17 A. Yes.

18 Q. And so he's out of the home all day taking care of

19 business.

20 A. Yes.

21 Q. And since you, you know, got the jury summons and
more

22 particularly since you answered the questionnaire, have
you

23 talked over with him about, you know, what the impact
on the

24 three of you will be?

25 A. Yes, we have discussed it.

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1 Q. And what -- what have you -- what can you tell us
about the

2 discussion?

3 A. We've discussed day care, part-time, maybe him

4 working . . . working in the night.

5 Q. Can he do sort of flexible time on that?

6 A. Yes, he can.

7 Q. Now, do you have parents here?

8 A. Yes, I do.

9 Q. And does he, also?

10 A. Yes.

11 Q. Have you talked with them about helping out with
some care

12 for your little one?

13 A. Yes, we have. My mother has some vacation time, a
14 significant amount, that could help out. And his
mother, also.

15 Q. And are they all willing to help out?

16 A. If need be, they will, yes.

17 Q. Well, we appreciate all of their willingness to do
it and

18 also your willingness to work on this; and please
understand,

19 everybody in this case knows the importance of taking
care of

20 children.

21 Now, in talking with your parents and your
husband

22 about the need for some help if you are down here on
the

23 jury -- and let me review with you the hours that would
be

24 involved because I'm not sure I made that clear out
there. The

25 trial days run 9 to 5, Monday through Thursday; and on
Friday,

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1 it goes 9 to 1, so, you know, essentially Friday

afternoons are

2 off for the jury. But of course, you know, the going
and

3 coming takes some time. I recognize that.

4 So is that what you understood about the time
5 commitment involved?

6 A. Yes.

7 Q. And of course we don't know how long, how many
weeks that

8 would be; there's no way to predict that, just as
there's no

9 way to predict how long this process takes; it's all a
human

10 process.

11 A. Yes.

12 Q. Well, going back to these discussions that you had
with

13 your husband and with your parents and his parents, did
they

14 offer any advice to you about how being on this jury --

15 suggesting anything to you about, well, you know, there
are

16 ways to get off of that by how you answer the
questions,

17 anything like that at all?

18 A. No, your Honor.

19 Q. And did any of them express any opinions about the
case in

20 terms of, well, if you do get on that jury, here's what
I think

21 or here's what I think the jury should do, anything
like that?

22 A. There was a discussion of the death penalty.

23 Q. All right. Tell us about that. You don't have to
reveal

24 who it was. I mean we're not here to cause you some
discomfort

25 with one of your relatives, certainly.

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1 A. It was the recent execution.

2 Q. Of this Gary Davis?

3 A. Yes.

4 Q. Well, just tell us in a general way what the
discussion

5 was.

6 A. Just the length of the appeals after he was
sentenced.

7 Q. Yeah. Somebody saying, for example, Well, that's
an awful

8 long time --

9 A. Yes.

10 Q. -- and it should have happened earlier?

11 A. Yes.

12 Q. Was there any statement about the death penalty,
that it

13 shouldn't have been applied in that case?

14 A. No, your Honor.

15 Q. We're going to have to talk with you a little about
your

16 views concerning the possibility of punishment by
death, as I'm

17 sure you can -- you anticipate, because we have these
questions

18 on the questionnaire. So I'll talk about that with you
in a

19 few minutes.

20 A. Okay.

21 Q. Any other -- in these conversations, anything other
than

22 discussing the views about the death penalty?

23 A. No.

24 Q. Now, you -- before you became a mother, you had
worked here

25 in a large store in a personnel --

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1 A. Correct.

2 Q. -- department?

3 And what kind of work did you do there, you
know, day

4 to day?

5 A. Hiring. I basically did payroll.

6 Q. Did you do interviews in hiring, anything like
that?

7 A. Yes, your Honor.

8 Q. And then the payroll function. Did you have
anything to do

9 with the discipline of employees, firing, or any other,
you

10 know, suspension or any other kind of discipline?

11 A. No.

12 Q. So you were on the intake, hiring process --

13 A. Right.

14 Q. -- and also the payroll.

15 What, did you have some computer work to do on
the

16 payroll or what?

17 A. Yes. I punched in their times, stuff like that.

18 Q. All right.

19 A. Sick days.

20 Q. One other job -- I'm looking at page 9. You have
your

21 questionnaire there; right?

22 A. Yes.

23 Q. Well, feel free to look at any of these answers,
because we

24 don't want you to take -- take you at a disadvantage.
It's

25 been a while since you wrote these. I'm on page 9, and
I

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1 wanted to ask you about the almost three years, I
guess, that

2 you worked as a mobile vet tech. Is that veterinarian?

3 A. I was an assistant to a veterinarian, yes.

4 Q. Who went house to house or barn to barn?

5 A. Correct.

6 Q. Was this a large animal veterinarian? What kind of
7 practice --

8 A. Large and small.

9 Q. Both?

10 A. Yes.

11 Q. Including horses?

12 A. Horses.

13 Q. Cattle?

14 A. Correct.

15 Q. And what geographical area did that person's
practice

16 include?

17 A. It went up to -- we've been as far as Conifer,
west.

18 Q. Uh-huh.

19 A. Didn't go too far east, maybe Federal. And then
maybe Fort

20 Collins, north. And then Bear Creek, south.

21 Q. And did her or his practice include livestock
producers,

22 people who were ranchers?

23 A. Correct.

24 Q. And include the thing like pregnancy tests and all
that

25 kind of thing?

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1 A. Correct.

2 Q. And you participated in that type of work?

3 A. I assisted him.

4 Q. And I take it that you liked the job, but you
changed

5 because you needed more money?

6 A. Yes.

7 Q. And that's the only reason?

8 A. Yes.

9 Q. And you're thinking of, in the future, going into
medical

10 technician work but with humans; is that right?

11 A. Yes.

12 Q. I mean, I'm looking at page 7 where you talk about
an

13 intention at some time to go back to school to become

an

14 emergency medical technician.

15 A. Yes.

16 Q. Why does that interest you?

17 A. I just like -- I like to assist people, help
people.

18 Q. Do you know -- have you -- do you know any people
who are
19 engaged in that line of work now?

20 A. Not right now, no. My brother was going to school
to
21 become a fireman, and --

22 Q. Which involves that aspect of it?

23 A. Yes, he had to do an EMT class. And he, you know,
24 enlightened me on what was involved, and it intrigued
me.

25 Q. Now, he did not become a firefighter, I take it?

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1 A. No.

2 Q. For any particular reason, that you know?

3 A. The job that he's currently in is progressing like
he would
4 like, so he is just staying with that.

5 Q. Okay. On page 12, actually beginning on 11, we had
a
6 number of types of work, and then on page 12 you show
job
7 connected with farming or ranching. Was that -- did
you mark
8 that yes because of what we've just been talking about?

9 A. I'm trying to see where you --

10 Q. Well, on page 12. And I mentioned 11 because
that's where

11 we asked you if anybody in the family has ever been
employed in

12 this line of work, and you marked that. Is that
because of the

13 work you did with the veterinarian?

14 A. Yes.

15 Q. All right. We also asked you questions in here
about your

16 attitudes and opinions on a number of subjects, one of
which

17 was the effectiveness of the criminal justice system.
And

18 that's page 22, and it's up at No. 100. You see there
near the

19 top?

20 A. Yes.

21 Q. And you're saying -- well, you said, "Adequately."
And

22 then I'd like you to read your answer there, to
yourself.

23 A. Yes.

24 Q. And I'd just like you to explain what you mean
there.

25 A. The laws cannot . . . the laws are set
specifically, you

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1 know, straightforward. And under different
circumstances

2 the -- I think it is just -- under certain
circumstances for

3 the accused, I don't think it is fair.

4 Q. You think the law is too cut and dried?

5 A. In certain circumstances, yes.

6 Q. Well, what circumstances are you thinking of?
You're not

7 on trial here, you understand. We're not -- and the
fact that

8 you may have opinions about what we do here is
perfectly okay.

9 And any criticism you have of judges or lawyers or the
system,

10 we just want you to tell us without worrying about,
Well, you

11 know, here I am saying I don't think you do a very good
job.

12 That's fine. We just want to know something about what
you

13 think and then something about why you think it, what
it's

14 based on. That's the spirit of these questions.
Understood?

15 A. Yes.

16 Q. Okay.

17 A. I can't think of any, you know, certain example.
It's just

18 the punishment for a certain crime may not apply to

that person

19 in that case.

20 Q. So you think that the law is too inflexible about
21 considering the individual who is the defendant?

22 A. Correct.

23 Q. And particularly with respect to the punishment or
24 sentence; is that what you're saying?

25 A. Correct.

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1 Q. Now, don't let me put words in your mouth just
because I'm

2 asking you. I'm just attempting to help you explain.
And if

3 I'm off base, you don't worry about saying so.

4 A. No. You're right on.

5 Q. All right. That's what you're saying. And again
do I

6 understand you to be saying that not because of some
particular

7 case or circumstance you know of?

8 A. No.

9 Q. You've had -- on page 23 -- you've had some
occasions to

10 get some traffic tickets?

11 A. Yes.

a fine 12 Q. And, what, did you agree to the violations, and pay
13 or something?
14 A. Yes.
15 Q. How many times was that?
16 A. I believe I've had three violations.
17 Q. What kinds of things?
18 A. Speeding.
19 Q. All three?
20 A. Yes.
tickets that 21 Q. Is there anything about what happened on those
22 relates to what you were saying about the punishment?
23 A. No, your Honor.
24 Q. It's completely different?
25 A. Yes. I was guilty.

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attitude 1 Q. Now, we do have to talk about punishment and your
which I'll 2 or opinions now before dealing with the law as such,
in this 3 explain to you in some detail here. But we did ask you
specifically on 4 questionnaire, you know, at page 27, and then
5 28, the following page. But 27 is where we gave an

explanation

6 about why we wanted to know something about your
opinions and

7 beliefs regarding certain types of punishment,
including life

8 in prison and death. You remember this part of the

9 questionnaire?

10 A. Yes.

11 Q. You remember this explanation here that starts on
27 and

12 then goes over to 28?

13 A. Yes.

14 Q. Okay. Then you gave us answers on 28 and over on
29.

15 A. Yes.

16 Q. Now, let me explain that the reason that we have to
talk

17 about punishment, even though here we are, the trial
hasn't

18 started, the presumption of innocence applies; we've
gone over

19 all of that. So it is peculiar that we would be
talking about

20 punishment since it is presumed that Mr. Nichols will
never be

21 in that position. But the jury is involved in the
punishment

22 decision, in the sentencing decision. As I've already

23 mentioned was the case with Mr. McVeigh, there was a
second

24 trial, and a punishment was recommended by a jury in

that case.

25 Now, the reason that we have to ask it is that
we've

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1 got to know the ability of jurors to carry out their
duties in

2 advance. We can't stop in the middle of a trial and
say, Now,

3 do you still agree with these points that we talked
about in

4 the beginning; and in the event of a guilty verdict and
the

5 jury becoming involved in the punishment phase, we
can't stop

6 then and ask about attitudes and opinions again. So we
have to

7 do it all in the beginning. And that's why we asked
you these

8 things.

9 And to help us in considering you as a
possible juror

10 in the case, we wanted to know from you what you
thought about

11 this part of the law, if you could make the law, rather
than

12 the way the law is. So you understood that approach?

13 A. Yes.

14 Q. And that's what this says, in all this language
here, that

15 don't think about what you may hear from the court
about the
16 instructions on the law, just tell us what you think
about
17 these punishments because you are well aware, I'm sure,
of the
18 differences of opinion that there are in the public
about
19 whether there should be punishments like life in prison
with no
20 release and the punishment of death. And of course
you've
21 already told us this was something that came up in the
22 discussion that you had with your families about
helping you
23 out with child care.
24 A. Yes.
25 Q. And that the matter here locally, in Colorado, was
debated

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1 a lot in the last few weeks because of the execution of
a state
2 sentence to death with respect to that person in that
murder
3 case.
4 A. Yes.
5 Q. So, you know, it's been discussed since you gave us
these

because 6 answers, and you've probably thought about it some more

7 of those discussions and for other reasons.

8 A. Yes.

9 Q. I want you to review the answers now and also -- to
you 10 yourself, and also considering again that we just asked

11 what you think the law ought to be. Tell us if you
have any

12 changes in these answers that you would like to make
now. I

13 don't mean to suggest there should be. Just asking you
if

14 there are.

15 A. No changes.

16 Q. All right. So this pretty much expresses your view
as it

17 was and as it is.

18 A. Yes.

19 Q. And have you had this view before you came out to
Jefferson

20 County? I mean is this something you have thought
about before

21 you came out and got asked these questions?

22 A. Yes.

23 Q. And would it be right that this is the view you've
had all

24 along --

25 A. Yes.

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1 Q. -- these are the views?

2 A. Yes.

3 Q. And you have, you know, said depending on the
severity of

4 the crime and if it's premeditated or if there were
lives

5 lost -- I'm seeing the answers -- and then you
recognize on the

6 next page the seriousness of the decision because
you're

7 talking about another person's life.

8 A. Yes.

9 Q. Now, let me go through with you what the process is
and

10 something about what the law is regarding this type of
11 punishment.

12 First of all, let me explain that this is
federal law.

13 There are differences among the states, and there's
some

14 differences between Colorado and the federal law. And
of

15 course there are states where there's no death penalty
provided

16 for in the law. And the law has changed from time to
time in

17 the same states. I mean people differ about this, and

people

18 make the laws through their legislatures. But here we
are

19 operating with the law as it is; and in this regard, we
must

20 accept the law as it is for this purpose as for all
other

21 purposes including that which relates to the
admissibility of

22 the evidence, the presumption of innocence, and so
forth.

23 Now, in cases that do not involve possible
punishment

24 of this type, the court and jury hear the evidence.
And as

25 I've said, at the end of the trial, the jury is
instructed

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1 about what has to be proved and then asked whether it
has been

2 proved beyond a reasonable doubt considering only the
evidence

3 that they heard and saw at trial and the law as given
by the

4 court's instructions. And then if the jury verdict is
not

5 guilty, they find that there is a reasonable doubt,
that's the

6 end of the case, obviously. If, however, in such cases
the

beyond a 7 jury finds that the evidence does establish guilt
the end 8 reasonable doubt, the defendant is guilty. And that's
in that 9 of it, too, as far as the jury is concerned in those --
10 type of case.

11 And then it becomes a matter for the court to
decide 12 what the punishment should be. And before that
decision is 13 made, there has to be a lot of information collected
about the 14 circumstances of the crime, things that go in addition
to -- 15 things that are in addition to the evidence; as for
example, 16 the impact on the people directly affected by it, the
impact on 17 the community, that kind of thing, the things that you
mention 18 here, I think, under severity of the crime.

19 And -- but with respect to that, the -- you
know, that 20 can be challenged by the other side because it's a
hearing that 21 the judge has. And then there's a lot of information
gathered 22 about the defendant as an individual. And this is the
kind of 23 thing that you think maybe there isn't enough of, I
guess, but

24 we do make an attempt at judge-sentence hearings to
find out a
25 lot about the defendant. So it's not only what the
defendant

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1 did in committing the crime of which he has been found
guilty
2 by the jury, but almost everything about him as a
unique and
3 individual human being, the things about his life, from
the
4 beginning, you know, born and raised, family structure,
what
5 his schooling has been, his education, his employment
history,
6 his history with respect to marriages, divorces,
whatever in
7 terms of marriage relationships, his employment
history, the
8 things that really -- really all of the things that
he's done
9 in life and things that have been done to him.

10 And the effort here is to look at this person
found
11 guilty as an individual, unique human being, because we
are all
12 different from each other in large part because of
things that
13 have happened to us. You agree?

14 A. Yes.

15 Q. Our lives. And then there is a hearing and the
judge hears

16 from both sides, the prosecution and defense, and then
makes a

17 sentence that fits with the, you know -- the
punishments

18 provided for by the law, but also within whatever range
that is

19 an individual sentence. And it is individual, too, in
this

20 sense: That in case where more than one person has
been found

21 guilty of the same crime, sometimes the trial involves
multiple

22 defendants who came to trial at the same time or at
different

23 times, but then who are up for sentencing, the judge
looks at

24 each one of them and decides what is the appropriate
punishment

25 for that person.

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1 And so there can be differences in the
sentencing.

2 Follow?

3 A. Yes.

4 Q. Now, it is different under federal law when we're
talking

5 about crimes that involve the possibility of punishment
by life
6 in prison without release -- and now, that means
exactly that
7 in Federal Court: You live the rest of your life in
prison and
8 die in prison when it's your time -- and the
possibility of
9 punishment by a sentence to death.

10 Now, the law provides for such punishments
only for
11 certain kinds of crimes. Basically, without getting
into all
12 of the details, it's crimes like premeditated murder,
the
13 intentional killing of other people. And that's the
only time
14 that this punishment issue comes to a jury. But now
the jury
15 has to decide; and in much the same way as judges have
to
16 decide this question, there has to be a lot more
presented to
17 the jury before it can make an individual decision
about the
18 type of punishment.

19 And the choices for the jury in these cases,
under
20 these statutes, are: life imprisonment, as I've just
described
21 it; death; or there's the possibility that the jury
would

those, 22 decide that it should be something less than either of
back to 23 in which case the jury essentially gives the question
24 the judge.

answered 25 But the life-or-death question is made -- is

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1 by a jury. We don't have judges making life-and-death
understand? 2 decisions on people convicted of murder. You

3 A. Yes.

4 Q. And then as I was about to say, before a jury can
make this

5 kind of a decision, they have to hear a good deal more.
So in

6 such a case, if a jury returns a verdict of guilty on
the

7 evidence -- and this part of it, of course, doesn't
come into

8 play unless there is a guilty verdict and can't be
considered

9 in deciding whether the evidence is sufficient to prove
guilt;

10 it has to be set aside and reserved for a later time.
The jury

11 can't consider punishment during the evidence phase of
the

12 trial. Follow?

13 A. Yes.

14 Q. So now when there's a guilty verdict, the jury
comes back

15 into court and starts really a second trial. And it is
at that

16 second trial or penalty phase hearing that there will
be

17 information provided, and just in the same fashion as
the trial

18 on the evidence: Witnesses are called, exhibits are
offered,

19 and so forth. But it is at that stage that the
prosecution

20 lawyers, the prosecutors, come in with information
about the

21 circumstances of the crime particularly. And it is
information

22 which the prosecutors would then in turn ask the jury
to

23 consider and evaluate in suggesting that the correct
verdict

24 for this person should be death.

25 The defense on the other hand will produce
information

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1 to the contrary. And to the contrary we refer to as
mitigating

2 circumstances. The first are called aggravating,
aggravating

penalty is 3 factors or circumstances suggesting that the death
4 deserved. Mitigating circumstances are those that
5 suggest that even though this person has been guilty of intentional
6 killing of other human beings, he should not be put to death.
7 And that's because of who he is as an individual human
8 being; as well as it can include some aspects of the criminal
9 conduct, too, that while he may be guilty of the crime, his role
10 in the offense, his participation, is quite different from
11 others' and therefore that should be considered as a mitigating
12 factor.

13 Understand?

14 A. Yes.

15 Q. All these other things that I've talked about that
16 a judge considers comes in, all about this person's background,
17 his life story, you know, his history. And it also can
18 include his attitudes, his approach to, you know, the whole thing,
19 having been found guilty. All of these things come into play.

20 And what happens then at the end of that
second trial

is that the judge summarizes it all for the jury in

21 instructions and goes through it and says, Now, this is
what
22 we've heard here as information that you may consider
and
23 should consider as aggravating factors, and these are
the
24 things that you've heard that you should consider as
mitigating
25 factors, and then may give to the jury some questions
for the

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1 jury to ask themselves, sort of suggesting an analysis
of what
2 you've heard.
3 But there's no formula for this. There's no
way to,
4 you know, make this an add-and-subtract thing, no
equation.
5 What it comes down to in the end after giving full
6 consideration to all of these things, the crime and the
person
7 found guilty as an individual human being: Each juror
must
8 make an individual decision. Of course, they talk it
over --
9 the jurors. But then they have to come down to a
decision.
10 And each person has to decide: Should the defendant
live or

11 die? Understand?

12 A. Yes.

I've 13 Q. Now, I know that you've followed me carefully as

I've 14 explained this. Do you have any question about what

15 explained?

16 A. No, I don't.

serve on a 17 Q. Then what I must ask you is that if you were to

guilty 18 jury, the jury -- if the jury did return a verdict of

would you 19 and did therefore have to make a sentencing decision,

consider and 20 be able to make that decision and before making it

as to the 21 include in your decision everything that you've heard

of it 22 information about the crime and then the circumstances

the 23 and also all of the information you would have about

24 defendant as an individual human being?

25 A. Yes.

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1 Q. And you believe that you would be open to the
consideration

2 of all of the sentence possibilities and not make a
decision

3 till you've heard it all?

4 A. Yes.

5 THE COURT: All right.

6 Now, we have some questions, some more
questions.

7 It's only fair that a lawyer on each side have a chance
to ask

8 additional questions.

9 Miss Wilkinson.

10 MS. WILKINSON: Thank you, your Honor.

11 VOIR DIRE EXAMINATION

12 BY MS. WILKINSON:

13 Q. Good morning, ma'am.

14 A. Good morning.

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

16 one of the prosecutors, who, if you're selected as a
juror,

17 will present the evidence to you against Mr. Nichols in
this

18 case.

19 I listened carefully while you were talking to
the

20 Judge about most of these subjects, and there's only a
few that

21 I want to follow up on, if you would just answer a few
more

22 questions.

23 A. Okay.
24 Q. You've told his Honor that you thought in the
criminal
25 justice system that it would be very important to
consider all

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1 the circumstances about a defendant before you
determine a

2 sentence; is that right?

3 A. Correct.

4 Q. Did you understand from listening to his Honor
about what

5 would happen in a case like this if there were a
penalty phase;

6 that is, you know, the second trial, determining what
7 punishment, that that's exactly what you would have to
do?

8 A. Yes.

9 Q. That you would have to consider not just the crime
-- if we

10 have an equation of what you need to get to the
sentence, you

11 need to know about the crime, of course; right?

12 A. Yes.

13 Q. But you also need to know about the defendant?

14 A. Yes.

the 15 Q. And you need both of those before you can get to
16 sentence.

17 A. Yes.

18 Q. Did you understand that?

19 When you come into a penalty phase like this
where you

20 have to determine whether someone should live or die,
you have

21 to listen to all of those circumstances, all those
mitigating

22 circumstances and aggravating circumstances that his
Honor

23 described to you. Can you tell me what you understood
would be

24 the general nature of mitigating circumstances?

25 A. What I understood of the mitigating?

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1 Q. Uh-huh.

2 A. That you just consider everything, every aspect of
the

3 person.

4 Q. And do you understand that that's what the law
demands of

5 any juror that would be here judging a case like this
if there

6 were a penalty phase?

7 A. Yes.

8 Q. When you wrote your answer on your questionnaire,
if you

9 could turn to page 29, the last question that asks you,
you

10 know, if any beliefs would affect your decision on a

11 punishment, you said, of course, it would be a very
serious

12 decision, but if it was proved beyond a reasonable
doubt, you

13 could do it.

14 A. Yes.

15 Q. Right? Do you understand now that it's really two
16 decisions you have to make? You have to start with an
open

17 mind as to whether the defendant is -- and believe the

18 defendant is not guilty -- right -- at the first phase?

19 A. Yeah.

20 Q. And then if we do prove it to you beyond a
reasonable

21 doubt, you have to have an open mind again.

22 A. Yes.

23 Q. So I think in your questionnaire, when you were
talking

24 about beyond a reasonable doubt, were you talking about
once

25 you hear everything; that is, not just your decision on
the

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1 crime, but also about the defendant?

2 A. Correct.

3 Q. The other area I want to ask you about is
publicity. If

4 you could turn to -- I believe it's on page 36,
Question 158.

5 A. Okay.

6 Q. There we just asked you generally what you know
about the

7 case. And you said you focused most of your attention
on the

8 victims -- is that right -- and the families?

9 A. Correct.

10 Q. As I'm sure you would suspect, during this trial,
you're

11 going to hear some of that type of testimony. And
sometimes it

12 evokes an emotional response from people. And do you
think you

13 could consider that testimony --

14 A. Yes.

15 Q. -- but consider it objectively and not let emotion
or

16 sympathy affect your decision you had to make about
whether we

17 had proved to the jury beyond a reasonable doubt that
the

18 defendant was guilty of the crime?

19 A. I think I would. I'm human, but I think I would.
20 Q. Okay. Now, have you had other experiences -- You
were
21 describing to his Honor what you did during your
previous
22 employment, where you had to make decisions about
hiring people
23 and things like that. Could you use that as an analogy
about
24 where sometimes emotional things may come into -- may
affect
25 you but ultimately you have to make your decision based
on

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1 reason and logic?

2 A. Yes.

3 Q. And do you think you could do that in this case?

4 A. Yes.

5 MS. WILKINSON: That's all the questions that
I have.

6 Thank you very much.

7 THE COURT: Mr. Tigar.

8 MR. TIGAR: Thank you, your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. TIGAR:

11 Q. Good morning again.

12 A. Good morning.
13 Q. My name is Michael Tigar. Ron Woods and I were
asked by
14 the United States Court in Oklahoma to help out Terry
Nichols
15 way back when the Government first filed the charges.
And so
16 that's -- that's what we are: We're lawyers appointed
by the
17 court.

18 I don't want to go back to this, but could you
-- too
19 much. Could you turn to page 22. And that's that
Question
20 100. When you spoke of certain circumstances for the
accused,
21 can you think of a recent case or any case at all in
which that
22 sort of a problem you thought had come up?

23 A. No certain case. Just maybe watching something on
the
24 news --
25 Q. Okay.

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1 A. -- you would -- of course you'd only hear what the
news is
2 reporting, but --
3 Q. Yeah.

4 A. -- that's where I would come up with this answer.

5 Q. Do you think in general that people that are
convicted of

6 crimes don't get punished severely enough, or that they
get

7 punished too severely? Do you have any view one way or
another

8 about that?

9 A. No.

10 Q. Let me talk to you, if I could, about that
discussion that

11 you had in your family about the death penalty. And as
the

12 Judge said, there's -- you know, there's nothing wrong
with

13 having a discussion about these issues. It's not some
14 violation about the order. Was that -- without the
names of

15 these folks, was that, what, your parents and your
husband's

16 parents, this discussion, about the time of the Davis
17 execution?

18 A. Correct.

19 Q. And about how many folks were involved in talking
about

20 that?

21 A. Three.

22 Q. Three. Do you remember what you said about the
question?

23 A. I did not say anything.

24 Q. Okay. And what did other folks say?

25 A. What did they say?

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1 Q. Yes.

2 A. About the recent one, or . . .

3 Q. Well, about anything. First just about the Davis
case,
4 yeah. What did they think about that, the other folks
that

5 were talking?

6 A. They thought it was strung out.

7 Q. Okay. Because of all the appeals?

8 A. Right.

9 Q. And did anybody say anything about the McVeigh case
or the
10 Nichols case?

11 A. No.

12 Q. Nobody said, gee, they hoped this one is shorter or
13 anything like that?

14 A. No.

15 Q. Well, thinking about that Davis case, of course,
there was
16 a long time between the trial and the carrying out the
17 execution. What did you think about that decision of
that jury

18 and then eventually of the governor that he should be
executed?

19 A. I couldn't give you an answer. I never -- that's
the first

20 time I ever heard of the case.

21 Q. Oh, I see. Okay. Well, had you, before you
confronted

22 these questions on this questionnaire which had that
long

23 explanation and all of that -- had you thought about
the death

24 penalty before as an issue?

25 A. No. I hadn't. I never thought I would be
confronted with

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1 it.

2 Q. Well, so it made you think about it?

3 A. Yes.

4 Q. And you saw that the questions asked you, you know,
what

5 would you do if you could write the law; right? And do
I

6 understand, if you were writing the law -- if you can
look at

7 page 28 there. Looking at 124B, "Only if it was
premeditated

8 or there were lives lost," and then 124D, "premeditated
murder,

9 rape resulting in murder"; right?

10 A. Correct.

11 Q. So as you looked at it that day, you were thinking

in terms

12 of what crimes would be a right thing to put in the

criminal

13 code that result in the death penalty; correct?

14 A. Correct.

15 Q. Okay. And as you were thinking about it that day,

did you

16 think about the individual -- you know, what kind of

17 differences the law would make between different people

who

18 might have committed the same crime?

19 A. Yes.

20 Q. And what did you think about that?

21 A. Just the circumstances of, you know, what happened

before

22 the crime happened. And . . . that's pretty much.

23 Q. Okay. Mr. Nichols sits there today, and he is

presumed

24 innocent, clean slate; right?

25 A. Right.

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1 Q. And I know that you've read a lot about -- or read

some,

that, 2 rather -- about the case. But you have no problem with

3 correct?

4 A. No.

phase, 5 Q. Now, we have talked about this potential punishment

get 6 but we certainly don't concede that we're ever going to

for 7 there -- right -- we're going to -- our job as lawyers

the 8 Mr. Nichols is to present evidence in his behalf, and

to 9 Government lawyers' job is to try to present evidence

convince 10 sustain that very heavy burden that they have to

-- all 11 beyond a reasonable doubt. Okay. So we're presenters

trying 12 right -- and the jurors are listeners. And what we're

we get 13 to find out is if the jurors will quit listening before

that you 14 done presenting. And I gather from what you're saying

doing 15 have no problem with the presumption of innocence and

16 that job.

17 A. No.

in a case 18 Q. Now, if the jury should find the defendant guilty

hypothetically, 19 like this -- and now you notice I'm talking

and we 20 'cause we don't know what the evidence will be here,
falls 21 certainly don't concede we'll ever get there -- then it
question for 22 to the jury to consider these options. I guess my
serious 23 you is: No matter what the evidence is, no matter how
matter 24 the crime that a person is charged with committing, no
still be 25 how many people are killed or who they are, would you

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1 open in every case to look at the individual
circumstances of
2 the defendant who's on trial?
3 A. Yes.
4 Q. The family background, all the things the Judge
talked
5 about?
6 A. Yes.
7 Q. Okay. And so for you, you don't have any problem
with the
8 fact that under our law and our legal system, there is
no such
9 thing as an automatic death penalty?
10 A. Correct.

question 11 Q. Okay. Now, when you mentioned -- discussed this
of your 12 of publicity -- I wonder if you could turn to page 33
had 13 questionnaire. Then we'll be done. You said that you
conversations, 14 heard or read about this case in TV news,
and 15 heard other people discussing the case; right? Now,
have you 16 talked about it . . . I guess some of the time since
that case, 17 you were working -- were you working at Wal-Mart when
-- the 18 store there when this happened?
19 A. The bombing?
20 Q. Yeah.
21 A. I believe so.
22 Q. Okay.
23 A. Yes.
24 Q. It's hard for me to calculate back, but did you
talk about 25 it with folks at work?

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1 A. No.
2 Q. Did you talk about it with family or friends?
3 A. Yes, family.

4 Q. Did your family or friends express to you any
opinion about

5 what ought to happen to whoever it was that got caught?

6 A. No.

7 Q. Now, if you could turn to page 36, please, Question
158,

8 there at the bottom.

9 You've already talked about the first part,
the

10 children, families in turmoil. Then it said: And when
the

11 verdict for Tim McVeigh was read, you did hear about
that? And

12 you heard that the jury found him guilty.

13 A. Yes.

14 Q. Did you talk about that with folks, friends or
family?

15 A. No. I don't recall discussing it.

16 Q. Okay. And how about when the jury recommended that
he be

17 sentenced to death?

18 A. Did I discuss it?

19 Q. Yeah.

20 A. No.

21 Q. And could you turn the page to page 37. You say,
"Just

22 that he is a suspect, assisted Tim McVeigh." What did
you hear

23 or read or see that led to writing that? I know out
there you

24 had 166 questions and just a few hours. I wonder if
you could
25 expand on this as if you had more time to answer it.

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1 A. Just on what I had heard on the news.

2 Q. Okay. How did you -- what kind of assistance did
you hear

3 on the news about? I mean what did -- from what you've
seen,
4 heard, or read?

5 A. That he assisted in making the bombs.

6 Q. Okay. Well, again, you understand that sometimes
-- you

7 know, the media doesn't get to try people, happens in
court;

8 and the only thing we look at is what the witnesses
say. So

9 this is not a test about that. Do you remember
hearing,

10 seeing, reading about how Mr. Nichols came into contact
first

11 with the law enforcement -- how he made contact with
them?

12 A. No.

13 Q. Okay. Do you remember reading, seeing, hearing
anything

14 about where Mr. Nichols was on April 19, the day of the

15 bombing?

16 A. No.

17 Q. Do you remember reading, seeing, hearing anything
about his

18 family?

19 A. No.

20 Q. Whether he's married, whether he has children,
anything

21 like that?

22 A. No.

23 Q. So sounds to me like you would not have trouble
setting

24 aside whatever it is and just looking at the evidence;
right?

25 A. Correct.

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1 Q. Let me -- but then -- let me go back to this:
Obviously

2 you're, as the mother of a young child -- you said, you
know,

3 "I'm only human," when you see that evidence. There
will be

4 evidence in this case about very emotional things. And
do you

5 think you'd be able to look at that, see it for what
it's

6 worth, but then -- and also look at, as a separate
matter,

Terry 7 what, if any, is the Government's evidence as to what

8 Nichols did or didn't have to do with this?

9 A. Yes.

10 Q. You can do that?

11 A. I would.

12 Q. I mean, in your job as a vet assistant, did you
often have

13 health crises for the animals you were treating?

14 A. Correct.

15 Q. And sometimes, in particular, I bet you're treating
a large

16 animal, like a sick cow that's thrashing around, you
either got

17 to get the head catch or the squeeze shoot or something
like

18 that, and that's separate from the professional
question of

19 what should we do now to doctor this animal; right?

20 A. Correct.

21 Q. And you've had that experience?

22 A. Yes.

23 Q. And I guess in your own life, you've dealt with
issues of

24 right and wrong because you're teaching your child
about right

25 and wrong; right?

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1 A. Yes. I try.

2 Q. Will that purple dinosaur help with that?

3 A. Yeah.

4 Q. And in those situations, do you believe in -- more
in

5 spanking as a punishment, or time-outs, or reasoning,
or how do

6 you approach those decisions?

7 A. As a matter of fact, I'm confronting those
decisions right

8 now.

9 Q. Uh-huh.

10 A. I myself was raised with spankings.

11 Q. Uh-huh.

12 A. I would not like to think that I would spank my
child. I

13 would use other resources before I result to that, but
I think

14 there's a time and a place for that, also.

15 Q. Okay. And a final thing: You mentioned that you'd
three

16 or several speeding tickets.

17 A. Yes.

18 Q. Right? And I don't mean to embarrass you with
this. Were

19 those -- were you by yourself, or with somebody else?

20 A. I was by myself.

21 Q. And is there anything -- anything about those
experiences

22 that you think affects your attitude towards the
justice system

23 or police officers or whatever?

24 A. No.

25 Q. Okay. As you sit there; right now, can you look at
Terry

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1 Nichols and say that you could give him a fair trial?

2 A. Yes.

3 Q. Okay.

4 MR. TIGAR: Thank you very much. I appreciate
your

5 help.

6 JUROR: Thank you.

7 THE COURT: We all appreciate your answering
all of

8 these questions for us and the time that you've spent
waiting

9 to come in and answer the questions.

10 Now, you know, what you want to know from us
is:

11 Well, will you be on the jury and when will the trial
start?

12 Unfortunately, I cannot answer either of those
questions at

that 13 this time. And I hope you understand the reasons why;
14 this is a process that is proceeding with great care,
15 accordingly, recognizing the importance of jury selection; and
16 we're going to have to leave you with some uncertainty
now.

17 Let us know if anything comes up regarding
your 18 ability to serve. You've got the phone number to call
if 19 anything comes up at all affecting your jury service.
And wait 20 until you hear from us, no matter how long a time there
may be 21 between now and when you hear from us; and assume,
then, that 22 when you do hear from us, you're going to be called in
to serve 23 on the jury. So conduct yourself accordingly, please,
being 24 careful to avoid publicity about the case in any form
that it 25 may come to your attention and also be careful about

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we've 1 discussions now to avoid discussing the things that
Will 2 talked about, anything that could affect your fairness.

3 you do that, please.

4 JUROR: Yes.

5 THE COURT: All right. You're now excused,
and we'll
6 keep in touch with you.

7 JUROR: Thank you.

8 (Juror out at 10:16 a.m.)

9 THE COURT: We'll take a 20-minute recess.

10 (Recess at 10:16 a.m.)

11 (Reconvened at 10:35 a.m.)

12 THE COURT: Be seated, please.

13 388.

14 Good morning.

15 JUROR: Good morning.

16 THE COURT: Will you please raise your right
hand and
17 take the oath from the clerk.

18 (Juror No. 388 affirmed.)

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: Be seated, please.

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. First let me apologize for keeping you waiting all
day
24 Friday.

25 A. It was okay. It was all right.

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accuracy 1 Q. As you can appreciate, we can't estimate with much

2 just how much time it takes for each person.

3 A. I understand.

answers 4 Q. And of course, it varies a lot according to the

5 that people give us and have given us.

6 A. Yes, sir.

doing here 7 Q. Now, you recognize, of course, that what we are

States 8 is selecting a jury for the trial of the case of United

9 against Terry Lynn Nichols.

10 A. Yes, sir.

received 11 Q. And that you were advised in a summons that you

name had 12 about two months back, I guess it is now, that your

who may 13 come up through a chance selection system as a person

form 14 serve in this case. And you returned to us a short-

not 15 questionnaire and then were notified to come back at --

auditorium 16 come back but to come to Jefferson Fairgrounds'

17 building on September 17, and you did that.

18 A. Yes.

19 Q. And at that time, I met with you and other persons
from the

20 jury panel and introduced myself and also introduced
some other

21 persons. I want to do that again so you know who is
here with

22 us this morning, because they're the same people who
were with

23 us then plus two.

24 And we have here at the first table Mr.
Lawrence

25 Mackey and Ms. Beth Wilkinson, attorneys for the
Government,

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1 who were there when you did the questionnaire. And
we're

2 adding now Mr. Patrick Ryan next to Ms. Wilkinson and

3 Mr. Geoffrey Mearns, additional lawyers for the
Government.

4 You recall meeting the attorneys for the
defendant,

5 Mr. Michael Tigar and Mr. Ronald Woods. And of course,

6 Mr. Terry Nichols was with us as well and is now.

7 There are a few other persons here in the --
your

8 presence who are assisting in this process.

9 And then I explained a good deal about the
background
10 of the case and so forth and asked you and the others
to answer
11 166 questions on this questionnaire; and you did that,
and we
12 appreciate it.

13 And also, I told you then that we were going
to take
14 these answers and make copies of them, and I did that;
so the
15 people who you see here have seen your answers, but
they
16 haven't shared them with anybody else. We know and
recognize
17 your privacy concerns, and we attempt to accommodate
that as
18 best we can, acknowledging, of course, that this is a
public
19 trial, so we will not be referring to you by name here.
And
20 also, as you know, we arrange for you to come and go to
the
21 courthouse so they can't take your picture and put it
in a
22 paper or on television.

23 Now, of course, we are in open court and the
things
24 that are said here are public. You understand.
25 A. Yes, sir.

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then I
but
page
think.

1 Q. Now, I am going to review a couple of things, and
2 want to repeat some of the things that I said before;
3 before doing that, you said on your long questionnaire,
4 4 -- you have your answers there in front of you now, I
5 We asked you about your hearing and your eyesight.
6 A. Yes.

all
7 Q. And you gave us some answers. Are you able to hear
8 right now?
9 A. Yes. Yes. Real good.

provide
10 Q. Okay. And with respect to your eyesight, glasses
11 adequate correction that you can read?
12 A. It's not 20/20, sir, but it's close.

13 Q. So you can read --
14 A. Oh, yes.

15 Q. -- the paper in front of you?
16 A. No problem.

the
this case
17 Q. Okay. Now, I want to review with you now some of
18 things that I said when we were together last about
19 and the background of it and also about the jury -- the

And I 20 function of the jury in the criminal justice system.
or that 21 want to repeat it not because I think you didn't listen
of a 22 you don't remember but simply because we need something
23 foundation here before asking you some more questions.
24 So you remember that I talked about the fact
that this 25 case arises out of an explosion that happened in
Oklahoma City,

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1 Oklahoma, on April 19 of 1995, resulting in the
destruction of
2 a federal office building and the deaths and injuries
to people
3 in the building; that then there was an indictment
filed in the
4 United States District Court in Oklahoma City by which
or in
5 which Government lawyers charged a man named Timothy
James
6 McVeigh and also Terry Nichols -- and then the
indictment
7 refers to "and other persons not named" -- in the
indictment
8 with a conspiracy or an agreement to bomb that building
and to
9 kill and injure people in it.

10 The indictment included other charges, and an
11 indictment is simply a statement of charges, what it is
that
12 the Government lawyers will attempt to prove; and that
included
13 there were allegations that the named persons carried
out a
14 bombing of that building resulting in its -- in death
and
15 injury and in the destruction of the building and also
eight
16 counts or charges of the first-degree murder of law
enforcement
17 agents, eight of them who were in the building.

18 To these charges, each defendant pleaded not
guilty,
19 thereby creating the issues for trial; that the trial
of the
20 case was moved from Oklahoma City here to Denver
because of a
21 concern about getting fair-minded jurors or asking
people to
22 serve on a jury in Oklahoma City where this happened.

And then
23 after it was moved here, I entered an order for
separate trials
24 on the conclusion that it would not be fair to either
25 Mr. McVeigh or Mr. Nichols to be tried in the same
trial with

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1 the same jury because of differences with respect to
the
2 evidence that there may be against each of them.

3 As a result of that order, there has been a
trial of

4 the evidence relating to Mr. McVeigh. A jury was
selected like

5 this one is being selected, came in, heard that
evidence and

6 decided that it proved him guilty beyond a reasonable
doubt, so

7 they returned guilty verdicts.

8 Then that jury was asked to do more, because
in cases

9 like this, the jury has a responsibility in connection
with the

10 punishment or sentencing phase or decision. So there
was a

11 second trial on the question of what should be done,
and the

12 jury recommended a death sentence.

13 You remember my saying those things?

14 A. Yes, sir.

15 Q. And, of course, I expect you already knew those
things

16 before I said them.

17 A. Yeah.

18 Q. I mean, these are things that you had already heard
and

19 read about.

20 A. Yes.
21 Q. Then I reviewed with you and the other jurors just
what the
22 job of a jury is. Now, you have not been on a jury,
have you?
23 A. No.
24 Q. So I just want to review again what is involved in
a jury
25 trial. First of all, this jury may not in any way
consider

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1 anything that you heard, read, or saw happen in the
McVeigh
2 case and certainly not the outcome of that case. To do
so
3 would violate the order for separate trials because
that's the
4 very reason for separate trials: that each man be
considered
5 individually. Understood?
6 A. Yes, sir.
7 Q. So, you know, these findings made by that jury
cannot be
8 considered here. And just to illustrate, I sat on that
trial
9 as the judge. I heard all that came into evidence
along with
10 the jury. Now I'm going to sit as the judge in the

trial of

11 Terry Nichols. I'm setting aside everything that came
into
12 evidence in the McVeigh trial in ruling on the evidence
in this
13 case. I'm starting over. And so must the jury start
over.

14 Understood?

15 A. Right. Correct.

16 Q. And I reviewed the things that are fundamental in
our
17 criminal justice system, because they are commanded by
our
18 constitution, the Constitution of the United States,
which says
19 that any person charged in a criminal court in this
country, no
20 matter what that charge may be or that person is, is
presumed
21 to be innocent of the crimes charged; and that
presumption
22 carries throughout the trial and entitles that person
to an
23 acquittal, to a verdict of not guilty, unless a fair-
minded
24 jury, hearing the evidence at the case, following the
law,
25 decides the evidence proved guilt beyond a reasonable
doubt.

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1 You've heard these phrases before?

2 A. Yes, sir.

3 Q. And what it means is that a person who is accused
does not

4 have any burden or duty of proving anything. It's not
up to

5 the accused person to prove himself or herself to be
not

6 guilty. The government, whatever government it is,
local,

7 state, or national, bringing the charges have to bring
in

8 through their lawyers, the witnesses, the exhibits, the

9 evidence relied on. And a defendant does not have to
take the

10 stand and answer any questions from lawyers or give any

11 explanation to the jury. A defendant can simply remain
silent

12 and through his lawyers challenge the government's
proof by

13 objection to the evidence, asking the court to rule
evidence to

14 be inadmissible; also to cross-examine the witnesses
and

15 challenge the -- what the witnesses say.

16 And in a trial in which a defendant does not
testify,

17 the jury may not consider that in any way. The jury
may not

18 think that, well, this person has something to hide or,
well,

19 if I were innocent I'd take the stand and tell the
world, or
20 jump to any conclusions or draw any inferences. What
we say to
21 jurors in a case in which a defendant doesn't testify
is, Look,
22 you can't even talk about it. It cannot be a part of
your
23 deliberation. You understand these points?
24 A. Yes, sir.
25 Q. And so at the end of the trial, the court gives

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1 instructions on the law, we call them, which is to set
out in
2 detail what it is that the Government must prove. And
that is
3 what the elements of each offense are, things that have
to be
4 proved before the defendant can be found guilty, and
then ask
5 the jury, now consider all of the evidence and under
these
6 instructions about the law tell us does the evidence
prove the
7 defendant guilty beyond a reasonable doubt. And if at
the end
8 of this process and deliberating fairly and discussing
the case

crime 9 the jury still has a reasonable doubt as to whether the
jury is 10 has been proved by the evidence, the plain duty of the
11 to find the defendant not guilty. Understand?
12 A. Yes, sir.
13 Q. Now, do you agree with these principles?
14 A. Yes.
this jury? 15 Q. Are you willing to follow them if you served on
16 A. Yes.
this room 17 Q. And therefore recognize that Mr. Nichols sits in
18 with us this morning presumed to be innocent of these
charges. 19 You understand that?
20 A. Yes.
have 21 Q. Now, I reviewed that at some length with you, as I
with you 22 with others; but I particularly wanted to go over them
23 because of something that you said on the original
you, I'm 24 questionnaire. And you don't have that in front of
any 25 afraid; but you remember that we asked you if there is

And you 1 reason that would prevent you from serving on a jury.

writing that? 2 wrote, "I'm convinced he's guilty." You remember

3 A. Yes, I do.

4 Q. And why did you write that on there?

5 A. That was my opinion at the time.

any 6 Q. Now, of course, you understand that you have to set

7 such opinion aside.

8 A. I understand that.

9 Q. And what was the opinion based on?

10 A. What I --

and I'm 11 Q. Don't get too defensive. I'm not challenging you,

right? 12 not putting you on trial. I'm just asking you. All

13 A. Yes.

14 Q. Good.

15 A. What was it dependent on?

16 Q. Yes.

17 A. My decision?

And 18 Q. You know, when you said that was your opinion then.

in this 19 the reason that I'm sort of pressing this point is that

I've 20 long questionnaire and after you heard the things that

that you 21 reviewed again and we asked you if there is any reason

the same 22 can't decide this case, and so forth, you didn't say
23 thing. So I'm just asking you the difference.
everyday 24 A. All right. It's because of current events,
25 current events; but this event was spectacular. There
were

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and 1 lives involved, so it naturally draws your attention;

2 that's where my opinion was drawn at the time.

are 3 Q. Sure. Now, you recognize the responsibilities that

4 involved in serving on a jury?

5 A. Yes, I do.

6 Q. And have you set that opinion aside now?

more about 7 A. I can. I can considering -- I may have to know

8 this before I can.

9 Q. Well, in fact, as you sit here now, as a juror, you
10 wouldn't know anything about it.

leave it and 11 A. Well, see, I've got this impression; and I can

12 come to the middle of the road, you know.

can do 13 Q. Well, that's what we're asking you; and some people

14 that and some people cannot.

15 A. I can do that.

16 Q. And if you cannot, you just tell us; and it does
not make

17 you a bad person. It does not mean that you're a
disloyal

18 citizen.

19 A. I agree.

20 Q. It's just, you know, some people in matters of this
type

21 come to a fixed opinion.

22 A. Yes.

23 Q. And there is a great deal that is publicized about
cases in

24 this country. That's the nature of our free society.

25 A. Yeah.

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1 Q. And certainly, there are times when people, you
know,

2 follow that and come to a pretty fixed opinion --

3 A. Yes, you're true. That's right.

4 Q. -- and say, Look, I'm only human, I can't decide
this case;

5 I've already decided. And if that's your frame of
mind, you

6 just tell us, and we don't -- would not hold it against
you.

7 A. No. At this time, I have this impression, but I'm
willing

8 to listen to the facts.

9 Q. Okay. And not only listen to the facts but
understand the

10 points that I've gone over? It isn't up to Mr. Nichols
--

11 A. Yes.

12 Q. -- to remove anything from your mind or to convince
you

13 that he is not guilty.

14 A. Yes, sir.

15 Q. It is indeed the other way around: that he's
presumed to be

16 innocent, and it's up to these people representing the
17 Government to bring in the witnesses and the exhibits
to

18 demonstrate his guilt.

19 A. I see.

20 Q. And if they don't do that beyond a reasonable
doubt, your

21 duty would be to return a not guilty verdict.

22 A. Right.

23 Q. And you're open to that possibility?

24 A. There is a possibility.

25 Q. Okay. And, of course, a lot of the things that you
may

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And, 1 have seen or read may never be in evidence in the case.

trial here 2 you know, I review again the fact that we've had a

because 3 with respect to Mr. McVeigh is meaningless in this case

4 we're starting with a very -- a clean page --

5 A. Yes.

6 Q. -- with nothing on it. Okay.

wrote 7 I want to review a few of the things that you

everything 8 here in your answers. We're not going to go over

repeat it 9 that you said here. We're not going to ask you to

10 all. We've read it, as I told you.

ask you 11 There are a few points that I would like to

read 12 about, beginning a bit with your background. And as I

13 here, you were born in Park, Kansas?

14 A. Yes.

family? 15 Q. And you lived your early life in Kansas with the

16 A. Yes, sir.

17 Q. Where is Park, Kansas? What part of the state?

It's just 18 A. Park is on I-70 between Oakley and Hays, Kansas.

19 a little farm community.

20 Q. And were you -- was your family on a farm?

21 A. Oh, yes. We grew up on a farm.

22 Q. And what was that farm like? What kinds of --

23 A. It's a wheat/cattle farm.

24 Q. Wheat and cattle. And you were on the farm how
long, then,

25 before you left?

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Juror No. 388 - Voir Dire

1 A. Till World War II.

2 Q. Okay. And at that time, you went to the merchant
marine?

3 A. Yes.

4 Q. And in 1943?

5 A. Yes.

6 Q. Now, with the merchant marine, were you on convoys?

7 A. Oh, absolutely.

8 Q. Taking materiel over to England in particular?

9 A. No, down to the South Pacific, the islands.

10 Q. So, you were going the other direction?

11 A. Yeah, I was in the Pacific.

12 Q. The Pacific. When I think of the World War II and
the

13 merchant marine, I think of the U-boats and the
Atlantic.

14 A. Sure.

15 Q. And then after -- after the war was over, you went
into the

16 Army -- well -- tell us about that, rather than me
asking you

17 questions.

18 A. After the merchant marines, I come back and I --
there were

19 a number of us that were in Salina, Kansas. By that
time my

20 folks had moved to Salina, Kansas, and given the farm
to the

21 older boys. There were nine of us in the family, seven
boys.

22 And Kansas Power and Light and Bell Telephone were
hiring vets;

23 so I went with Kansas Power and Light with about 20
others.

24 And they started out an apprenticeship training and
along with

25 an associate-type training in the community college. I
stayed

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1 with them until 1956 approximately, was married in
1955, and

2 decided to come to Denver and pick up some more
schooling. And

3 I attended Hollywood Technical Institute in Lakewood.
And

4 before we graduated, General Dynamics came down and
hired the
5 complete class to go to Cheyenne on the Atlas Missile
program.

6 Q. Okay.

7 A. Want me to continue?

8 Q. No, I want to go back to the time that you were in
the
9 Army.

10 A. Okay.

11 Q. As I understand it, you got drafted into the Army.

12 A. I'm sorry.

13 Q. '49 or so?

14 A. Working for Kansas Power and Light during the
Truman
15 administration, they drafted -- they had a draft going
on.

16 Q. Yes.

17 A. And since I was single and the merchant marine was
not
18 considered a service, I was eligible for the draft; so
in

19 1950 -- no, '49, I was drafted. In 1950, Truman
released the

20 draftees, because it was supposed to be a two-year
hitch. So I

21 went back out in 1950. I took the release, went back
with

22 Kansas Power and Light.

23 Q. And you were released, I guess, before June and the

Korean

24 War?

Day. 25 A. Yeah. Yes, I was. Uh-huh. Well, it was after VJ

4115

Juror No. 388 - Voir Dire

1 Q. But in 1950, another war began.

in 2 A. Oh, you're right. Yeah. As a matter of fact, sir,

out; and 3 1949, when Truman released the draftees, we just got

Korea, so I 4 the following month our company got orders to go to

5 just missed it by a few days.

April or May 6 Q. That's what I was saying, so it must have been

7 that you were --

8 A. Missed it by 30 days.

you got 9 Q. Okay. Well, you've already talked about, then, how

10 to Colorado through Wyoming.

11 A. Yes. I'm sorry --

You 12 Q. No, that's fine. That saves me a lot of questions.

13 covered it nicely for us.

14 You still have family living over in Kansas.

15 A. Oh, yes.

16 Q. And is the farm still in the family?

17 A. Yes. Yeah. We divided it, and we have certain
portions

18 that the parents passed on to the children. And I
bought out

19 my brother, and a sister bought out a sister; so there
are only

20 four owners who is now running the farm. We have it
leased out

21 to a local rancher.

22 Q. Is this still a wheat-and-cattle farm?

23 A. Wheat and cattle.

24 Q. So you have a continuing financial interest?

25 A. Oh, yes.

4116

Juror No. 388 - Voir Dire

1 Q. And do you go back over there from time to time?

2 A. Oh, yeah.

3 Q. Visit with your brothers and sisters?

4 A. Oh, yes. Once or twice a year at least or more.

5 Q. Now, the farm is located where you've already said
with

6 relation to Hays.

7 A. Between Oakley and Hays. Park. Just a little
town. 250

8 people when they're all home.

9 Q. Yeah. And do you have anything to do with buying

feed and

10 supplies?

11 A. No. That's up to the -- the farmer that's farming
it. He

12 does all the farming. We just take a third and go from
there.

13 He puts out the wheat, cattle in the pasture and also
feed and

14 all that; and it simplifies it that way, and that's the
way we

15 operate.

16 Q. All right. Then you come from a pretty good-sized
family,

17 and you also have a pretty good-sized family of your
own?

18 A. Yeah. Yeah.

19 Q. And I want to turn to page 3, where you tell us
what your

20 adult children are doing. And as I understand it, one
of them

21 is a police officer?

22 A. Yes.

23 Q. Where is --

24 A. Luke -- he's the third oldest, and he's in
Loveland. He's

25 a lieutenant up there right now.

4117

Juror No. 388 - Voir Dire

1 Q. In the Loveland Police Department?

2 A. Police department.

3 Q. How long has he been a police officer?

4 A. Sir, he's been in Loveland now -- I'm going to
5 approximate --

6 Q. That's fine.

7 A. -- right at ten years.

8 Q. Has he served on any other police departments?

9 A. No. He got started here at Denver and done
security work

10 while he was still in high school. Then he attended
college.

11 And when this opened up in Loveland, why, he put in for
it and

12 got appointed, of course, as a trainee; and they sent
him to

13 school after that with, I think, three others.

14 Q. You see him, I'm sure, from time to time.

15 A. Oh, yes. We see him occasionally.

16 Q. Discuss his work from time to time, cases he's been
on?

17 A. Oh, yeah. It's interesting to listen to some of
the little

18 stories they have to tell.

19 Q. One of the things that's required of jurors is to
judge

20 witnesses, judge their credibility, as we call it,
which is,

21 you know, are they believable as people and what they
say: Is

trial 22 that believable? And of course, that largely is what a
23 is about.
24 A. Yes.
25 Q. There will be challenges to what witnesses say,

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Juror No. 388 - Voir Dire

this 1 cross-examination and the like. Among the witnesses in
officers of 2 case, undoubtedly there will be law enforcement
other 3 several kinds, Federal Bureau of Investigation agents,
police and 4 agents of federal law enforcement agencies, local
is to, 5 the like. And one of the things that jurors have to do
they tell 6 you know, decide, are these truthful people and did
7 the truth.
8 A. Yes.
police 9 Q. Now, do you have, because of your knowledge of the
a result 10 officers there -- do you know other police officers as
11 of your son's work there, some of his friends and
associates?
12 A. Not really, just on a casual basis.

13 Q. And do you have a view that police officers are
more likely

14 to be truthful than other people?

15 A. Well, that's their function, and you have to
believe that.

16 Q. Well, jurors don't have to believe it.

17 A. Okay. Then that's true.

18 Q. Well, I don't want you to, quick, say yes to
everything I

19 ask you; but, you know, I'm asking you to believe me.
But let

20 me just tell me you what is required, and you tell me
whether

21 you can do it; and that is that jurors have to judge
every

22 witness and use the same standards.

23 A. Yes.

24 Q. How did this witness answer the questions, what
sort of

25 demeanor and manner, what kind of body language, and
also how

4119

Juror No. 388 - Voir Dire

1 does this witness' testimony square with other
testimony or

2 with exhibits or facts known? And we say to jurors,
Look, you

3 judge everybody by these same tests, not holding it
against or

4 for a person that that person has any particular
training or

5 comes from any particular background.

6 Now, can you do that?

7 A. Yes, sir. I think it's an obligation for all of us
to be

8 on a neutral basis; and anytime something comes up, you
can

9 make, you know -- you make a decision at the time. But
you

10 can't really be positive about something before you get
to that

11 point.

12 Q. And police officers are human beings?

13 A. Exactly.

14 Q. You certainly know that.

15 A. Exactly.

16 Q. And all of us as human beings have the frailties
that are

17 human nature.

18 A. Right.

19 Q. Which can include the failure of recollection.

20 A. Yeah.

21 Q. Which can include leaning one way in a case, hoping
for a

22 certain outcome.

23 A. Yeah. Right.

24 Q. You recognize these aspects of human nature?

25 A. I do, sir; and I try to keep as neutral as I can,

so there

4120

Juror No. 388 - Voir Dire

1 is a progress along.

2 Q. Now, you're married?

3 A. Yes.

4 Q. Wife is from Kansas, also?

5 A. Yes, she is.

6 Q. And as I understand it, her father is or was a
judge?

7 A. He was.

8 Q. In Concordia?

9 A. Concordia.

10 Q. What type -- what court did he serve in, if you
know?

11 A. I can't answer that, but just local. It --
Concordia is

12 about a town of 15,000; and he was an attorney there
for years

13 and then become a judge there, local judge. And I -- I
can't

14 quite answer -- the court number you asked for.

15 Q. Well, just what the name of the court was county
court,

16 or --

17 A. County.

18 Q. Okay. And is he retired now?

19 A. Oh, yes. He's dead. He's passed on.

20 Q. Passed on. I would expect that, but --

21 A. Yes.

22 Q. -- have to ask.

23 Now, you then in working for the company that
you

24 already talked about -- you ended up here at Gates?

25 A. Yes.

4121

Juror No. 388 - Voir Dire

1 Q. And you're retired from that.

2 A. Yes, sir.

3 Q. And as I understand it, you do some volunteer work
out at a
4 clinic?

5 A. I do.

6 Q. What do you do?

7 A. At the clinic, there is a head nurse there, Jane
Bowman;

8 and at the time, I was president of the Gates Retirees
Club as

9 soon as I retired. And she used to approach and say,
"I can

10 sure use volunteers," etc., etc. And we didn't get too
many

11 volunteers, and so I said, "I'll do some of that."

12 Q. What kind of things do you do?
13 A. Right in the supply room. When supplies come in
from the
14 outside, I help put them on the shelf --
15 Q. Okay.
16 A. -- mark them and --
17 Q. Do you have anything to do with patients who come
in?
18 A. No. No. None at all.
19 Q. Okay. Now, your wife was an elementary teacher.
20 A. Yes.
21 Q. And she, too, is retired now?
22 A. She's retired.
23 Q. And you've got -- or she has two brothers who
practice law
24 now?
25 A. Yes.

4122

Juror No. 388 - Voir Dire

1 Q. Over in Kansas?
2 A. Well, Elbert, the oldest boy --
3 Q. You don't need to give us names here.
4 A. Excuse me.
5 Q. We're trying to shield that.
6 A. I'm sorry. They both practice --

7 Q. Just tell us where they practice.

8 A. One in Omaha, and one is here in Denver.

9 Q. And what kind of practice do they have, if you
know? Is

10 it -- does it include criminal work?

11 A. Well, the one in Omaha retired as a judge.

12 Q. All right. And what kind -- what court was he on?

13 A. County.

14 Q. Okay. And then the one in Denver here? Do you
know what

15 his practice is like?

16 A. He's an attorney, just out here on Kipling Street,
just

17 general.

18 Q. Do you know if he does criminal cases?

19 A. I've heard him mention a couple minor. They're not
big.

20 Just minor.

21 Q. Do you know if he's ever been a prosecutor in his
career?

22 A. No.

23 Q. You -- one of the reasons that I asked these things
is that

24 on page 22, if you'll turn to that page -- you have a
pretty

25 strong opinion about the criminal justice system.

Juror No. 388 – Voir Dire

1 A. Yes, I do.

2 Q. Take a look at what you told us on Question 100.

3 A. Let me see this. First I have to read this.

4 Q. Okay.

5 A. 22.

6 Okay.

7 Q. Now, again, understand we don't take this
personally, so it

8 isn't a question of asking you to defend your view or
9 challenging you in any way. People have opinions, and
that's

10 what we're all about here, to find out what they are.
But you

11 make a strong statement here; and then you say, as I
understand

12 it, the whole system needs an overhaul.

13 A. Well, let me qualify that. Can I?

14 Q. Well, just explain what your view is, sure.

15 A. When I was younger and growing up in our community
out

16 there, whenever a case -- not of this size but anything
come

17 up, it was always true and swift to make a just account
of what

18 happened and close the case.

19 And as I grow older and spread out, these
cases are

20 getting longer and longer; and you wonder why. You
know, as

21 a -- just a fella out here and not associated with this
22 particular work, I know on a fact that even on small
cases in
23 the City and County of Denver you have to wait in line
in order
24 to be heard four, five months down the line. And this
is what
25 I base my opinion on.

4124

Juror No. 388 - Voir Dire

1 I think why, why, when something could be,
like I
2 said, true and swift and make a quick decision. There
are
3 times you can't. I understand that, but that's what I
based my
4 opinion on, because anything -- and I'm sure we all
agree on
5 this -- can always use improvement. Even in my
engineering
6 field, it's always there.

7 And, you know, you focus on that sometimes
because --
8 I don't know. I might mention something that comes in
here
9 that helps guide me, and that's Christian morals.
Anytime we
10 get away from Christian morals, I think, we tend to
drift like

11 a ship at sea without a rudder, and this type of thing happens.

12 You know, and sitting back and viewing it from a distance --

13 and like you said, if you're not up to the facts, you make this

14 kind of decision. That's why I come up with that kind of an

15 answer, sir.

16 Q. Do you have in mind if you -- you know, I just give you the

17 pen and say overhaul the system -- do you have anything in mind

18 as to how you would change it?

19 A. Goodness no; but I'm sure there are some ways it could be

20 improved. And we can't say there isn't.

21 Q. Nobody questions that.

22 A. No.

23 Q. And those of us who are involved in the system attempt to

24 improve it.

25 A. Yes.

4125

Juror No. 388 - Voir Dire

1 Q. But, you know, you go back to where you grew up and how

2 things used to be. Would you agree that society, our country,

3 has changed a lot in that time?

4 A. Oh, yes. Yes.

5 Q. Now, beginning with just numbers, the numbers of
people and

6 that it is difficult to compare metropolitan areas like
Denver

7 with places where things are not as hectic, a bit
slower,

8 people know each other and a lot of people from the
very same

9 background --

10 A. Yes.

11 Q. -- right? And it's very difficult to compare those
things,

12 isn't it?

13 A. Yes, it is.

14 Sir, but I -- I seem to pick up the element
that not

15 only in this type of thing but there is a lot of other
items

16 that confront society that we have a tendency to kind
of

17 romance the thing; and it runs into a long time
element, where

18 it could be cut, you know, controlled and etc., etc. --

19 Q. Okay.

20 A. -- to a more controlled --

21 Q. Well, you mentioned your religious viewpoint.

22 A. Yes, sir.

23 Q. And it's strongly held. I mean, you've told us
about your
24 religion and that you're very active in your religion
and that
25 you believe its principles --

4126

Juror No. 388 - Voir Dire

1 A. Yes, sir.

2 Q. -- and follow them in your own life. And you do
say
3 something on page 13.

4 A. 13?

5 Q. Yes, 13. At Question 56, right at the top of the
page.

6 A. Okay. Let me see what I said here.

7 Yes.

8 Q. What you say is it is a fundamental principle of
your
9 religion that one should confess wrong and do the
necessary

10 penance.

11 A. That's the way we grew up, sir.

12 Q. And that's the way you live your own life. But you
13 understand that's not the way it is in law courts or
the way it
14 is in the criminal justice system.

15 A. Yes.

16 Q. Indeed, nobody has to admit anything. I mean,
that's what
17 I reviewed with you in terms of no defendant has any
duty --
18 A. Yes.
19 Q. -- of coming in here and whatever it may be between
a
20 person and that person's God or that person's religious
beliefs
21 has -- here, we're neutral with religion.
22 A. Yes.
23 Q. And here, we follow the law.
24 A. I understand that; but, you know, back in the day
of
25 Christ, we had very few rules and laws; and today we
have books

4127

Juror No. 388 - Voir Dire

1 and volumes of law that come from that type of thing.
Anytime
2 some little issue comes up, there is a little law made
to
3 protect that.
4 So there is no way that the ordinary citizen
like
5 myself is going to understand all that, so you just
kind of
6 make a -- you take a -- you have a spectrum of that
7 understanding, and you have to narrow it down to what

we just

8 talked about.

the

9 Q. Well, I just want to make -- see if you can make

10 distinction between your church and the courtroom.

11 A. I can.

views.

12 Q. And that here we respect everyone's religious

13 A. Yes, I agree.

from

14 Q. And there are, of course, on any given jury, people

15 different religions.

16 A. True.

is a

17 Q. And we do want to find out if the person's religion

for

18 problem for that person doing justice in the case. And

that can be

19 some, it is. And it isn't just your religion where

don't

20 an issue. So that's why we, you know, ordinarily -- we

common

21 talk about religion except among people who have the

religions in

22 faith in the same church. And we don't compare

United

23 courts. I mean, as you, I'm sure, appreciate under the

24 States Constitution, there is a separation --

25 A. Church and state.

Juror No. 388 - Voir Dire

1 Q. -- between church and state; and here, this is
state.

2 A. Uh-huh.

3 Q. Now, you have some opinions you've already
mentioned about

4 law and regulations and things; and I think you give us
some of

5 that on page 30.

6 A. 30?

7 Q. Yes. Because we asked you your opinion about
certain laws

8 and certain things in the law.

9 A. Okay. Let's see.

10 Q. Right up there at the top of the page under 128.

11 A. Okay.

12 Q. You say, "Let's don't get started talking about
taxes," but

13 I don't want to get started. I just want you to
summarize what

14 you mean there.

15 A. Well, you know, sir, one could go on and on and
drift off

16 in one direction or drift off in another and still not
say

17 nothing. So I'd just as soon not comment on that
because --

18 Q. And you know this subject gets debated in the
Congress

19 frequently.
20 A. Right.
21 Q. In fact, currently.
22 A. Yes, sir.
23 Q. All we want to know is whether your attitudes about
this
24 area of the law that's mentioned here, tax laws, would
affect
25 your ability to follow the law as a juror in a
completely

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Juror No. 388 - Voir Dire

1 different context.
2 A. Oh, absolutely. I think we have to respect that,
and I
3 would respect that.
4 Q. And then you also have on this same page, if I may
drop
5 down to 131, your view about gold.
6 A. Uh-huh.
7 Q. Now, does this come from some particular reading,
or what
8 is the source of your view about gold?
9 A. It's our basis for medium of exchange. I think
that's what
10 I was referring to.
11 Q. All right. Now, there are some people who believe

that --

12 so strongly that they think that paper money is not
legal

13 tender and should not be considered.

14 A. Well, that's true; but don't you have to have so
much gold

15 to back up that legal tender?

16 Q. Well, I don't know the answer to that.

17 A. That's been my understanding.

18 Q. I'm just -- I think what we asked you here is are
you among

19 those who believe that all these federal reserve notes
and

20 things like that that we exchange for goods and
services every

21 day in this country --

22 A. Oh, no.

23 Q. -- that that's all funny money and shouldn't
happen?

24 A. No, not at all. Not at all.

25 Q. Okay. You're willing to accept a federal reserve
note --

4130

Juror No. 388 - Voir Dire

1 A. Oh, absolutely.

2 Q. -- in exchange for your services?

3 A. You bet. I might have misinterpreted that because
I think

4 they wanted what was your best --

5 Q. That's why we go over these. We asked you a lot of
6 questions in a short time. A lot of these questions,
you know,
7 we didn't say, now, if you don't understand a question,
we'll
8 explain it.

9 A. Yes, sir.

10 Q. So that's why we have to go over them now so that
-- you're
11 not alone in not understanding some of these questions
exactly
12 as they were asked.

13 Now, you also, you know, gave us these
thoughts on
14 page 37 regarding Terry Nichols; and we, I guess,
already
15 talked about the importance of setting aside anything
that
16 you've read, seen, or heard. Just take a look at that.

17 A. Okay.

18 Oh, okay. All right.

19 Q. Okay. Now, again, the question is can you put that
out of
20 your mind?

21 A. I think so, but I -- what I was referring to there,
of
22 course, again were current issues at the time.

23 Q. Yes.

24 A. And you -- you just naturally absorb some of that
25 information; and yes, that could be put on a neutral
basis.

4131

Juror No. 388 - Voir Dire

1 Q. Okay. Now we had to ask you some questions about
the death
2 penalty and the penalty of life in prison.

3 A. Uh-huh.

4 Q. And you have -- given us some -- you gave us some
answers

5 on page 28 and 29. The preliminary to it is on 27.

6 A. 28 and 29?

7 Q. Yeah. I'm not trying to jump around here to
confuse you,

8 but -- 27 is where we start this at 124 and explain why
these

9 questions are in here.

10 A. All right. I got it.

11 Q. And then the questions are on 28. You remember
this part

12 of the questionnaire?

13 A. I do.

14 Q. And were you expecting questions like this,
questions about

15 penalty, when you came out there?

16 A. Yes. I -- I think I was.

17 Q. And why was that? What did you have in mind?
18 A. Because the nature of the thing. I mean, sooner or
later
19 you'd be involved in this type of questioning.
20 Q. Or there is that possibility.
21 A. Yes.
22 Q. And I'll talk with you a minute -- in a minute
about the
23 process; but ordinarily, juries don't have anything to
do with
24 punishment.
25 A. Yes.

4132

Juror No. 388 - Voir Dire

1 Q. That's not up to the jury. And in the ordinary
case -- and
2 by "ordinary," I simply -- every case is important, you
3 recognize. If you want to take a minute to read your
answers,
4 go ahead.
5 A. Yes.
6 Okay.
7 Q. All right. Now, as I was saying, in cases that do
not
8 involve the punishment of life in prison with no
possibility of
9 release -- I mean, that's what we're talking about
here: You

10 die in prison when your time comes -- or the
possibility of
11 punishment by execution, death, we require the jury to
12 participate in that type of decision. I mean, that
type of
13 case is separate from the cases that don't involve that
type of
14 punishment.

15 A. Okay.

16 Q. We're going to sort out two kinds of cases.

17 A. Yes.

18 Q. One, jury is involved. Most cases where we don't
have the
19 possibility of such punishment, the jury is not
involved.

20 Jury is involved, of course, in deciding
whether the

21 evidence proves guilt. That's the jury's function.
And if

22 there is a finding of not guilty because there is a
reasonable

23 doubt, the end of the case. If there is a finding of
guilty,

24 it's still the end of the case as far as the jury is
concerned,

25 because then the question of punishment is for the
court to

1 decide, up to the judge.
2 And judges don't make decisions like that just
on the
3 basis of what happened at the trial. The trial
determines
4 guilt; but now what to do with this question is another
5 question.

6 And before a judge can sentence any
individual, the
7 judge needs a good deal more information, information
--
8 additional information about the crime than that which
came
9 into evidence at the trial, a lot about the
circumstances of
10 the crime before and after. And then the judge needs
to know a
11 lot about this human being standing in front of the
court: Who
12 is this person? What kind of a life has this person
had?
13 Where was he or she born and raised? What kind of a
family was
14 it? What's happened since? What's the education this
person
15 has had? What kind of jobs? Has there been military
service?
16 Has this person done good things in his life? What are
his
17 attitudes now that he's been convicted? In short,
almost
18 everything that the person has done or has had done to

him.

19 And all that's important, because sentencing
is a very
20 individual decision. So it isn't just what the crime
-- it
21 isn't crime equals punishment. It's crime plus more;
and this
22 "more" that gets involved -- and there, a judge holds a
hearing
23 and hears from both sides and makes a decision that is
specific
24 to this person, recognizing all of his unique human
25 characteristics and experiences. You agree each one of
us is

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1 different from all others because of our own life
history?
2 A. Oh, yes. Absolutely.
3 Q. So the law takes that into consideration; and then
even in
4 cases where more than one person has been convicted of
the same
5 crime, it is the responsibility of the judge to
consider
6 differences between them, these unique characteristics,
and
7 also there can be differences with respect to their
particular
8 involvement in the case --

9 A. Yes.

10 Q. -- when there is more than one defendant.

11 You want to ask a question?

12 A. Yes.

13 Q. Please.

14 A. The thing that comes to mind, my rearing, being
grown up or

15 raised in a family, and a lot of us -- we know -- we're
taught

16 right from wrong, wrong from right, and we make that
decision;

17 but in our present-day law, you can easily make a right
out of

18 a wrong, and I have a little problem with that.

19 Q. Well, you understand not everybody came up from the
same

20 type of family as you.

21 A. I know that; but there is where I have a little
problem,

22 because the law deviates from this basic structure that
we grew

23 up.

24 Q. You know what the law recognizes?

25 A. What?

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1 Q. That we're all unique human beings.

2 A. I know that.

3 Q. And that we are human beings.

4 A. I know.

5 Q. And that we don't just go through some kind of
machine --

6 A. That's true.

7 Q. -- and stand in front of a court like some sort of
robot,

8 because there are things that drive us in life.

9 A. I agree.

10 Q. So we can't just apply, you know, the principle
that you

11 know right from wrong and you did wrong; therefore,
this is it.

12 A. Okay. Yes.

13 Q. Well, that's how it is in court.

14 A. Yeah, I realize that.

15 Q. That may not be how it is in your mind.

16 A. Yeah.

17 Q. And we respect that. But the question is can you
turn your

18 mind to what's required under the law?

19 A. As a citizen and to do the duties of a citizen, I
suppose

20 that's required, and I would accept that.

21 Q. Okay. Now, in cases that involve the kinds of
punishment

22 we've talked about now -- and that is we're talking
about

these 23 here -- that is, life or death -- and what happens in
person 24 cases is that the jury is asked to decide whether this
rest of 25 who has been convicted should be put in prison for the

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possibility 1 his life, whether he should be put to death, or the
to the 2 of something less than that, in which event it's back
judges in 3 judge. But life-and-death decisions are not made by
among the 4 the federal system. There are differences in the law
federal law. 5 states, but we're in Federal Court and we follow
for 6 And federal law says, Look, this kind of a question is
decide. 7 jurors, this is for the people in the community to
8 Understand?
9 A. Yes, sir.
how the 10 Q. And I'll explain a bit about how that gets done,
to that, 11 jury is asked to decide the process; but before going
12 the reason that we asked you these questions in the

13 questionnaire is to get some idea of your thinking
before you

14 came in.

15 A. Yes.

16 Q. Without regard to what the law is, just what do you
think

17 about such punishments.

18 A. Right.

19 Q. And it's in that spirit, I take it, that you've
given us

20 these answers.

21 A. Yes, sir.

22 Q. And, you know, you say -- I'll go right to No. D.
In a

23 case such as this, Terry Nichols case, you say that
this is the

24 kind of case, if appropriate, to impose the punishment
of

25 death.

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1 A. Okay. I'll qualify that by saying that I haven't
faced the

2 total facts. This was my previous decision; and until
you face

3 what's presented to you and the total facts, you really
can't

4 make a final decision.

5 Q. Okay. And you understand that very point.

6 A. Yes.

7 Q. And we've been talking about that at some length
here; that

8 you don't know what the evidence may be at the trial
and you

9 certainly don't know --

10 A. That's right, sir.

11 Q. -- what you would hear at a sentence --

12 A. That's right.

13 Q. -- hearing?

14 A. This is what you call a shot from the hip right at
the time

15 when you hear something.

16 Q. Fair enough. That's what we asked you.

17 A. Yes.

18 Q. And then on the next page, it looks like you did
qualify

19 that and say --

20 A. Yes.

21 Q. -- where we asked you about religious, moral, and
personal

22 beliefs and so forth, your decision would be after the
case was

23 presented.

24 A. Exactly.

25 Q. Well, let me advise you how the case would be
presented.

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1 First of all, you know, we're talking about something
that may
2 never happen; that is, punishment only gets involved
when there
3 is a guilty verdict.

4 A. I see.

5 Q. And we sit here today not anticipating a guilty
verdict
6 because, as we've talked at great length here, Mr.
Nichols is

7 presumed to be not guilty.

8 A. Yes.

9 Q. And it isn't until 12 citizens serving as a jury
are
10 satisfied that the evidence shows him guilty that he
could be
11 found guilty. You have no problem with that, do you?

12 A. No, sir.

13 Q. And then in the event of a guilty verdict, the jury
has to
14 go forward with this sentence hearing. And it follows
just
15 like the trial itself. There are two sides, lawyers on
both

16 sides. Information is presented now that was not
presented at

17 the trial, information along the lines that I've
discussed in

18 connection with a judge-sentence hearing, and that is
19 information about the crime and the circumstances of
it, and
20 the Government's lawyers bring those things. It's
witnesses on
21 the witness stand. It's the whole thing just like a
trial:
22 exhibits, rules that govern what can be considered.
And the
23 jury must listen attentively to what is given so that
the
24 Government lawyers would be expected -- and I don't
know what
25 would be expected here because I don't know the
evidence in

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1 this case and I certainly don't know what would happen
at a
2 sentence hearing.

3 But Government lawyers bring in the things
that they
4 suggest to the jury would support a verdict or return
of a
5 recommendation of death. And these would focus largely
on the
6 crimes and the circumstances and the effects.

7 The defense, on the other hand, would be
expected to

8 come in with information about the defendant himself.

Nichols 9 Now, we can't talk about it in terms of Terry

would be 10 because we can't anticipate, first of all, that there

there. So we 11 such a hearing, and secondly, what would be heard

or his 12 can't talk about any of the circumstances of this case

-- and 13 life; but other persons in that position would present

and he 14 if we got there, it would be expected that his lawyers

things 15 would be presenting things about his life history, the

individual human 16 that all go together to make him a unique and

17 being.

course, that 18 And at the end of the hearing -- and of

grew up, 19 includes all of this that I've talked about, where he

has he 20 what his family was like, what's happened to him since,

he a 21 had military service, has he performed good works, has

of that. 22 family of his own, what kind of work has he done, all

well, 23 And then, you know, the jury having found him guilty,

guilty 24 what role did he play in this crime that they found him

25 of? All of that comes in.

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1 And then at the end of it, this second trial,
I would
2 review for the jury all that has been heard and say,
Now, look,
3 this is what you've heard here: You've heard these
things from
4 the Government that could be considered as aggravating
factors,
5 things suggesting that death is the punishment, and
you've
6 heard all of these things on the other side, mitigating
7 factors, mitigating against that punishment and
suggesting that
8 this human being does not deserve to be put to death
for this
9 crime. You understand?
10 A. Yes, sir.
11 Q. Do you have any question about what I've just
reviewed on
12 this process?
13 A. You know, I have to thank you for opening up a new
avenue
14 in my thinking, because as an ordinary citizen sitting
back and
15 not having this experience, you know, sometimes we make
16 decisions and conclusions and blah, blah, blah; but I
like what

learned 17 you said. You've been very easy on that, and I've
I will 18 something. It's definitely opened an avenue to me that
you. 19 keep at a neutral point and learn from that. Thank
your 20 Q. And so what I must ask of you is that considering
required to 21 everything, including your own opinions and beliefs and
didn't 22 background, if you sat on the jury and the jury was
up 23 make a sentencing decision and, you know -- I guess I
24 quite finish, though, what I was talking about, summing
25 these aggravating and mitigating factors.

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1 Now, you're an engineer in background, but
this is not 2 like an engineering decision. You know, you don't
apply some 3 kind of an engineering formula. There is nothing
objective 4 about this.
5 A. Right.
6 Q. This is very subjective.
7 A. Yeah. You're right.

an
down to
considering
should the
your most
to make
decision
information
that
with the
making

8 Q. So I can't give you a formula, and I can't give you
9 equation. There isn't any slide rule. What it comes
10 in the end is we turn to 12 people and say, Now,
11 all of these things that you've heard, you tell us,
12 defendant, as a human being, live or die.

13 And what I must ask of you now and ask for
14 honest and sincere response is if you were called upon
15 a decision like that, would you be able to make that
16 and consider all that you have heard, all of this
17 presented, both aggravating and mitigating, the things
18 deal with the crime and all of the things that deal
19 defendant as a unique and individual human being before
20 that decision?

21 A. Oh, yes. You know, that -- the final thing would
22 the evidence and what would be presented at the trial.
23 yes, the background you have filled -- that's there.

24 Q. Now, I'm going beyond the trial, you know. This
25 up if the -- to put it another way -- the only time
this

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the
1 question arises is if the jury has already found that
2 defendant has some responsibility for killing other
people.

3 A. Yes.

4 Q. And intending to do it.

5 A. Yes.

a
6 Q. It isn't -- so it's not a question of guilt. It's
7 question of live or die, sentence. And that involves
these
8 other things that would never be presented to the jury
unless
9 there is a guilty verdict.

10 A. Okay.

for
11 Q. And the question again, so that it's in clear focus
12 you, is are you willing to make your decision based not
only on
13 the circumstances of the crime and the fact that he's
been
14 found guilty of being responsible for other people's
deaths but
15 also the things about the defendant as a unique and
individual
16 human being and whether he deserves to die for what he
did?

17 A. Yes.

18 THE COURT: Okay. Well, again, we're not
trying to,

19 you know, get you to agree with anything or force you
into any

20 answers that you don't truly believe; so the lawyers --
we have

21 an opportunity for a lawyer on each side to pursue this
a

22 little further and also other questions for you. So
please

23 listen carefully to them and answer them with your
honest and

24 sincere answers.

25 JUROR: Thank you.

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1 THE COURT: Mr. Mearns?

2 MR. MEARNS: Thank you, your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. MEARNS:

5 Q. Good morning, sir.

6 A. Yes, sir.

7 Q. As the Judge told you, my name is Geoff Mearns.

8 A. Geoff.

9 Q. I'm one of the attorneys for the Government who
will be

10 presenting our evidence in this case.

11 You've answered a lot of questions on the
12 questionnaire and shared your opinions with us and also
13 answered a lot of questions from the Court this
morning, so I
14 just have a very few to follow up on.

15 You indicated that you were born and raised in
Kansas.

16 A. Yes, sir.

17 Q. And I believe you told us that you travel back
there still
18 frequently?

19 A. Oh, yes.

20 Q. Did you -- did I understand you right that you go
there at
21 least once or twice a year?

22 A. Yes, at least.

23 Q. And do you go there mostly to check on the farm
that you
24 have your ownership interest?

25 A. That and family reunion, mini reunions.

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1 Q. Do you also go back just to visit family there as
well?

2 A. Yes.

3 Q. Okay. Do you know where Marion, Kansas, is?
4 A. Geoff, right offhand, I don't. It's further east
and
5 southeast.
6 Q. Okay. So you wouldn't happen to know any large
wheat or
7 cattle operators near Marion, Kansas?
8 A. No. No. I know they have them back there, but I
wouldn't
9 know of anybody.
10 Q. Okay. I'd like to, if you would -- if you would
turn to
11 page 27.
12 A. Yes, sir.
13 Q. And up on the top there, Question 121 asks you
about
14 whether or not you had any feelings or opinions about a
case in
15 which a witness has pleaded guilty and is testifying on
behalf
16 of the prosecution. And you didn't put an answer
there, and I
17 was just curious whether you didn't put an answer there
because
18 you didn't have any feelings.
19 A. I didn't. Geoff, I didn't.
20 Q. So if we were to call such a witness in this case,
you
21 would be able to consider his or her testimony with an
open
22 mind.

23 A. Right.

29. There 24 Q. I'd like you, if you would, to turn over to page
25 at the bottom on page 29 --

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1 A. Okay.

the 2 Q. -- and Question 125 asks you what role do you think
you said 3 federal government should play in people's lives; and
believe 4 none. I would just like to ask you whether or not you
enforcement. 5 the federal government should play any role in law

6 A. Yes, they should.

that 7 Q. You understand that we're federal prosecutors and
8 there will be federal agents testifying?

9 A. Yes.

question 10 Q. And at the bottom of the next page, there is a
11 about the incident at Waco.

12 A. At 132?

of the 13 Q. That's right. And you indicated that your opinion
elaborate 14 incident at Waco was in one word "bad." Could you

15 for us a little bit on that?

16 A. As a citizen and reading the current news, the
first thing

17 that strikes you, it wasn't a good situation; and what
happened

18 and the lives lost there, you know, you have to
consider those

19 lives and why it had to happen that way. And so again
through

20 neighbor and home, conversing, you talk about those
things; and

21 naturally you have a feeling. Anytime there is lives
lost, you

22 just don't take that at an easy pace. You want to know
the

23 facts.

24 Q. Do you have an opinion as to who was at fault there
in

25 connection with the lives that were lost?

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--

1 A. I have an opinion, but you want -- am I required to

2 Q. You're not required to. If you would be willing to
share

3 it with us, you could. If you don't want to, you don't
have

4 to.

5 A. My first opinion, why they didn't interact and work

with

because 6 the federal group; and that's what kind of bothered me,

sternness 7 I think that's what brought all that to a head is the

paying 8 and the aggressiveness that was taking place and not

-- to 9 attention to our present-day law and who was there to

10 neutralize the thing and get them out of trouble.

two 11 Q. And finally, I would just like to ask you one or

And you 12 questions about the possible punishment in this case.

that you 13 shared with us some of your views and told the Court

if we 14 would be able to approach the second phase of the trial

phase 15 get there. You understand we don't get to a second

guilty of the 16 unless the jury finds that the defendant has been

17 charges.

18 A. That's right, Geoff.

to keep 19 Q. And you told us this morning that you would be able

20 an open mind about punishment. Is that right?

21 A. Oh, yes. I mean, that's the way it's got to be.

Court's 22 Q. And I believe you said in response to one of the

Could you 23 questions that we have an obligation to be neutral.

What were 24 tell us what you meant by "we have an obligation"?
25 you referring to there?

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raising my 1 A. Well, I think I do. I have to refer back to
be 2 family. Anytime a kid come in screaming, you've got to
facts 3 neutral and ask him what's wrong and find out what the
I was 4 are before you make a decision; and I think that's what
point. 5 referring to. You've got to remain neutral on that

juror, as 6 Q. And you understand here that your obligation as a
keep an 7 a citizen who were selected as a juror, would be to
8 open mind about punishment?

9 A. Oh, absolutely.

10 MR. MEARNS: Thank you, sir.

11 JUROR: Absolutely.

12 THE COURT: Mr. Woods.

13 MR. WOODS: Thank you, your Honor.

14 VOIR DIRE EXAMINATION

15 BY MR. WOODS:

16 Q. Good morning.
17 A. Good morning.
18 Q. As the Judge introduced me, my name is Ron Woods.
19 A. Ron.
20 Q. Along with Mike Tigar.
21 A. Mike.
22 Q. We were asked by the United States District Court
in
23 Oklahoma City to help out Terry Nichols --
24 A. Yes, sir.
25 Q. -- who was charged by the Government for being
responsible

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bombing 1 for this bombing back in May of '95, shortly after the
2 occurred in April of '95.
3 A. Yes, sir.
Nichols 4 Q. What do you feel about or how do you feel about Mr.
5 having two court-appointed lawyers to represent him?
6 A. He's entitled to that, and I think it's the
appropriate
7 thing; but I think the first thing that entered into my
mind
8 were the tragedy and the lives lost. But yes, that's
-- the

9 necessity that has to be supported -- Mr. Nichols.

10 Q. What did you think when you saw Mr. Nichols out
there at

11 Jeffco that day -- that day, September 17 -- when you
came to

12 fill out the questionnaire?

13 A. Well, Terry Nichols is just another citizen, and
he's

14 entitled to -- you know, when we grow up, we have that
option

15 of what we want to do in our life; and I look at
everybody as

16 having that same option. And sometimes things happen
and then

17 we need support. And that's what he's getting right
now from

18 you, Ron, and your people.

19 Q. Okay. And by "things happen," what do you mean by
that?

20 A. Well, for example, the first thing that comes to
mind is

21 the explosion and the deaths and all those lives that
were lost

22 which when you really think about it, it touches your
heart.

23 Q. Sure, it does. Sure, it does. And following up on
that, I

24 assume that you still retain those visions from the day
of the

25 bombing and the day after of the rescue workers, the
dead

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1 children, the dead individuals. Is that correct?

2 A. Yes. It's -- it's an image you just can't, boom,
out.

3 Q. It's probably an image that you'll never forget and
most

4 people will never forget, would you say?

5 A. Yeah. It's there. And if you don't, if you're the
type

6 that it doesn't bother you -- you're a certain
individual then.

7 I mean, if you can just walk away from a killing.

8 Q. And concerning those visions, if you were chosen as
a juror

9 on this case, it's likely you'll see them repeated over
and

10 over again with testimony and videos and photographs;
and it

11 will be very emotional.

12 A. I understand.

13 Q. There will be people crying.

14 A. I understand.

15 Q. It's heart-rendering (sic). If you were a juror,
could you

16 separate that, see that for what that is, but at the
same time

17 look to the Government and say, What proof did you
offer into

18 evidence to show that Terry Nichols was responsible for

that,

19 and have you convinced me beyond a reasonable doubt
that he's

20 guilty of that offense? Could you separate those two,
if you

21 were on the jury?

22 A. Oh, yes. You've got to be able to separate those
two.

23 Q. Okay. Now, as the Court mentioned, what we're
asking here

24 is just your opinions, and it's okay to have an
opinion.

25 You've been very frank with the Court and the
Government in

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1 giving your opinions on various matters; and as the
Court said,

2 there are no right or wrong answers. We're just trying
to get

3 your feelings --

4 A. Uh-huh.

5 Q. And -- so did you understand that was the process
that

6 we're going through here?

7 A. Yes, sir, Ron.

8 Q. Okay. Now, you must be very proud of your --
you've got

9 seven children. It looks like they're all in

professions. Are

10 they all here in Denver?

11 A. They're all in Denver except two. One is a vice
president,

12 college in Bismark, North Dakota; and another one is in
Kansas

13 City. She works with United Airlines. And the others
are all

14 here in Colorado.

15 Q. I take it you get together with them frequently and
the

16 grandchildren.

17 A. Whenever we can. 15 grandchildren.

18 Q. 15. Well, it sounds like since your retirement in
'91

19 you've really kept up with the news and the current
events.

20 Would that be accurate to say?

21 A. Oh, absolutely. I'm sports and, etc., all the
news.

22 That's the nice thing over a cup of coffee in the
morning, to

23 go over the news.

24 Q. Right. And I take it you do that during the day?

25 A. Oh, yes.

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1 Q. With the television, the newspapers?

2 A. Well, not that much, but yes -- I'm kind of a
3 sports-orientated fella. But when something comes up
in regard
4 to -- our civic -- our community, yes, I do take an
interest in
5 it; and I think it's one of those obligations that we
owe the
6 community.

7 Q. Okay. On page 33, the questionnaire asked what
sources of
8 information you've heard about this case, and you
checked off
9 TV news, radio news, newspaper, conversations, and
heard other
10 people discussing the case; and then 145, you described
the
11 amount of media coverage you've seen about Oklahoma
City as
12 being quite a bit. Is that correct?

13 A. Well, Ron, there for a while, like I said, I
watched sports
14 and, etc. And a lot of times, that was blacked out and
they
15 just brought this on screen, and you didn't have a
choice.

16 Q. Couldn't avoid --

17 A. You had your choice of watching it or turning it
off.

18 Q. Right. I assume you left it on.

19 A. I left it on because as a -- again, as a citizen, I
20 thought, hey, maybe there is something here I should

know.

21 Q. And you mentioned that any time lives are lost, you
want to

22 know the facts.

23 A. I'd like to. I'd like to, because I think it's an
24 obligation for all of us.

25 Q. Did you take particular interest right after the
bombing on

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1 Wednesday, the 19th of April, and a few days later,
there

2 started coming out a lot of information concerning
central

3 Kansas, the Junction City area, the Herington area,
Manhattan?

4 Do you remember that publicity at that time?

5 A. Yeah. It drew my attention because that's back --

6 Q. That's home?

7 A. Backyard, home, yeah.

8 Q. How far -- you grew up in Park, which as I
understand is on

9 I-70?

10 A. Yes.

11 Q. Sort of near Salina but not that near? Is that
correct?

12 A. Well, Ron, growing up, I was further away from that
part of

13 town; but after I come back after World War II and
parents were
14 in Salina and I went to school, you know, picked up
further
15 education --

16 Q. Yes, sir.

17 A. -- and worked with Kansas Power and Light in
Salina, then
18 Grand Junction (sic) was just a backyard thing, and we
knew all
19 the towns around there.

20 Q. Did you know where Herington was?

21 A. Just mentally, yes. I knew where it was southwest
but
22 didn't have nothing particularly to do with that area.

23 Q. Okay. And I take it with all your brothers and
sisters
24 still over there in that area, you talked about the
events that
25 were transpiring over there. Would that be fair to
say?

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1 A. Oh, yeah. Yeah. You know, anytime the course of
2 conversation these events are brought up and they say,
yeah,
3 you know, talk a little bit about this and talk a
little bit

4 about that. Yes, to answer your question.

5 Q. Do you recall from what you saw, read, or heard
during that

6 time where Terry Nichols was at the time of the
bombing?

7 A. You know, I didn't put emphasis on it because I
think my

8 main concern was is what happened in and the lives that
were

9 lost, which still touches me very much.

10 Q. Do you remember how many lives were lost?

11 A. Well, a good -- over 100-plus.

12 Q. Okay.

13 A. And, you know, when you seen some of those pictures
and of

14 course heard about the family involved and the
children, it

15 brought something home to me because that could happen
to any

16 one of us anytime.

17 Q. Sure. How many children were lost, to your
recollection?

18 A. A good number of them.

19 Q. And do you know why that was, why there were
children

20 killed in the bombing?

21 A. Because of the day-care center there.

22 Q. Okay. Do you recall from what you read and heard
how the

23 bomb was delivered to the building?

24 A. I didn't put much emphasis on it, but it was in a
truck.

25 Q. Do you remember what kind of bomb that they were
alleging

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1 it was?

2 A. Well, it evidently was from homemade materials and,
etc.,

3 because it was a very potent bomb.

4 Q. What kind of materials, when you say "homemade"?

5 A. I think ammonia was one part just from what I've
read plus

6 others. I didn't -- like I said, that wasn't my prime
interest

7 in knowing what the bomb was made out of other than the

8 destruction that it -- that it caused.

9 Q. Right. Do you recall how Mr. McVeigh was arrested?

10 A. Yes, I do. There was an article on that. He was
on the

11 highway going north there when a patrolman stopped him,
and

12 that's -- that, of course, caught McVeigh. Otherwise,
hadn't

13 the patrolman caught him on a misdemeanor on his car,
why, it

14 could have been, you know -- go along further before
they'd

15 have found him.

16 Q. And then from what you saw, read, or heard during
that
17 period or anytime afterward, do you recall what --
where Terry
18 Nichols was during that day of the bombing?

19 A. No, I don't, other than that the spotlight was on
McVeigh,
20 and Terry Nichols didn't enter into my view at that
time.

21 Q. Do you remember when the spotlight began to focus
on
22 Kansas, on Friday after the Wednesday bombing?

23 A. Yeah, I think when they showed -- I happened to see
the
24 news when she showed a home -- I don't know whether it
was in
25 Herington -- on a farm where Terry McNichols (sic)
lived, or

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1 where they found some of the ingredients where the bomb
was
2 made; and that was my first introduction to Terry
McNichols.

3 Q. You're saying "McNichols," but you --

4 A. Nichols. I'm sorry.

5 Q. -- Terry Nichols.

6 A. I'm sorry.

7 THE COURT: I'll just explain to those not
from here,
8 "McNichols" is a name known well in this community
because of
9 political office.

10 JUROR: Yes.

11 MR. WOODS: Was that a former mayor, I
believe?

12 THE COURT: And a governor, I believe.

13 JUROR: Very good guy.

14 THE COURT: You said it. I have no opinion.

15 BY MR. WOODS:

16 Q. What do you recall about them wanting to shift the
focus to

17 Kansas, Junction City? What do you recall about
Junction City

18 that was mentioned in connection with this case?

19 A. The thing that comes to mind, Ron, is where they
got the

20 U-Haul, because that fellow there said -- and he had
recall

21 about giving out a U-Haul to someone, and that was a
very --

22 well, a lot of information that was detrimental in
solving some

23 of the case.

24 Q. And you mentioned that, where they got the U-Haul.
What

25 information do you recall about Terry Nichols being
associated

Juror No. 388 - Voir Dire

1 with the rental of that truck?

2 A. I don't, other than there was more than McVeigh,
there was

3 more than one, so that's -- beyond that, I can't tell
you.

4 Q. Do you recall whether or not Mr. Nichols was
identified as

5 the other person?

6 A. No, I don't.

7 Q. And you recall -- you mentioned the fact that there
was

8 some information that Mr. Nichols was found with bomb-
making

9 materials. Is that what you said? I might have missed
that.

10 A. Well, on the farm, if -- was it in Herington? I
don't -- I

11 don't have a good picture of that; but where he lived,
they

12 found some ingredients that were instrumental in making
the

13 bomb.

14 Q. Okay. And is that it? And I guess you were
relying on

15 when you stated that Mr. Nichols was guilty?

16 A. Yes. Yes.

17 Q. Can you give me some more information that you
recall

18 reading and hearing concerning Mr. Nichols that led you
to
19 state that he was guilty?
20 A. Well, just that. You know, the home was involved,
those
21 ingredients were found, there was more than one person
on the
22 U-Haul. Then when you hear these things, naturally you
think,
23 well, who is the second person. And when this name
comes up,
24 Terry Nichols, you think, yeah, you know, that might be
a
25 possibility.

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1 Q. Okay. And concerning the second person, you
mentioned the
2 fact that there was -- there were two people at
Junction City
3 at the truck rental. Is that one of them?
4 A. I -- I think there were two mentioned and I think
even a
5 third, but I wouldn't know nothing concise about that.
6 Q. Do you recall other places other than Junction
City, if
7 there were other places?
8 A. No, that's --

people?

9 Q. Where the media mentioned that there were two

didn't

10 A. No, I don't remember other places. Like I said, I

that --

11 make it a point to follow it that closely. It's just

12 what come out at the time.

mentioned

13 Q. Okay. This was one where you didn't -- you

the

14 earlier that anytime lives are lost, you want to know

on your

15 facts, as you did on Waco. Now, I wasn't quite clear

again --

16 opinion on the Waco incident. Would you go over that

17 expand on that just a little bit for me.

in an

18 A. Well, first of all, anytime you have federal agents

case

19 area, there must be something serious; and that Waco

a lot

20 brought that about. And at the time we talked about it

was this

21 at home and even in our -- in our community about why

the

22 hold-out -- holding out like they did and bringing out

point, then

23 federal case into this. And when it gets to that

not

24 you wonder, say, Hey, who is wrong here? Something is

25 right.

1 Q. Did you have any opinion one way or the other about
the
2 initial confrontation between the ATF agents and the
Branch
3 Davidians?

4 A. No, not really, other than they were there to do
their duty
5 and trying to avoid anything big happening.

6 Q. Okay. Now, you mentioned that when there are
federal
7 agents present, something is serious. Is that what you
said?

8 A. Usually there is, because they're there for a
reason; and
9 just my own opinion, anytime federal agents show up,
you know,
10 you take notice.

11 Q. Okay. And is that because of their training or
background,
12 or what?

13 A. Oh, I think so. I think they're trained to protect
the
14 citizens and they're -- they're trained to, you know --
they're
15 there for that duty. That's why they're getting paid,
and
16 they're there to protect the community and the people,
etc.

17 Q. All right. And if they were witnesses in a trial,

what

18 kind of weight would you give to their testimony since
they're

19 trained federal agents?

20 A. Well, that would depend on the evidence, too, you
know, and

21 what they said. You'd have to weigh the facts and the
verbal

22 communication that was involved.

23 Q. All right. Are you saying that you would look at
their

24 testimony just as careful as you would look at someone
else?

25 A. Oh, absolutely. You've got to do that.

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1 Q. So you're not saying that their training gives them
extra

2 credibility, I take it, on the witness stand.

3 A. No. It perhaps gives them an edge. They should
have an

4 edge, but that's not always the case.

5 Q. What kind of edge do you mean?

6 A. Well, an edge, to know right from wrong and what
they're

7 supporting; and if there is a wrong portrayed, they'll
explain

8 it. They're out to protect, again, the people, and
that's

9 their duty; so you give them that edge.

10 Q. Okay. And mentioning the difference between right
and

11 wrong, you stated that when you were growing up you
were taught

12 right from wrong and that most people were, but now
that you

13 disagree that you can make a right from a wrong. What
did you

14 mean by that?

15 A. Well, Ron, again, when you're out and away from
something

16 like this, you shoot from the hip. You know, you make
quick

17 decisions; and now, just the way Judge Matsch explained
and the

18 way he explained that to me and the first -- this is my
first

19 time in a court of this nature. I've learned
something. I

20 really have. And you've got to approach it with an
open mind,

21 Ron, if I can answer that to you in that manner,
because I've

22 got to leave the past behind me now, what I said in my

23 decisions I've made. It opens up a new avenue now to
what is

24 going to happen or could happen and what my decisions
possibly

25 would be.

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1 Q. Okay. How does that phrase that you disagree that
you can
2 make a right from a wrong -- I'm not clear on what that
means.

3 A. I can't make a right from a wrong?

4 Q. Well, it was in the context of knowing. You
mentioned that
5 you grew up and you were taught the difference between
right
6 and wrong, but you disagree that you can make a right
from a
7 wrong. Can you tell me what you were meaning when you
said
8 that?

9 A. Well, it's very clear, a right from a wrong; but in
the
10 past what's happened, just in the last ten years, some
cases
11 that have shown taking a wrong and making a right out
of it to
12 a point where they come out a winner.

13 Q. Are you speaking of defendants coming out a winner
by
14 taking a wrong and making a right out of it?

15 A. Well, you want me to mention a case?

16 THE COURT: Sure.

17 BY MR. WOODS:

18 Q. Sure.

19 A. O. J. Simpson.
20 Q. Okay.
21 A. I thought that was -- now, that absolutely was
taking a
22 wrong and making a right out of it, and that guy is
walking the
23 streets today.
24 Q. Now, did you watch that case on television?
25 A. You couldn't help it. It was all blacked out.
Anytime you

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Juror No. 388 - Voir Dire

1 turn the TV on, that's all you seen.
2 Q. Sort of like this case, but it was a couple years
ago: If
3 you were looking for sports, you saw the O. J. case; is
that
4 correct?
5 A. Right; that's all you seen.
6 Q. What did you think of the way that case was handled
in
7 trial, in the courtroom itself?
8 A. Oh, man. Well, I think the first wrong was having
TV in
9 there. The TV would have been out there, we -- you
know, all
10 of these things wouldn't have come into your mind and
what you

11 seen; but having it in there, oh, the battle of the
lawyers --
12 it just -- it's surprising how you can sit here and
think of
13 something concise, concrete, and truthful, and the next
thing
14 you're over here. You can be led to believe something
else
15 real quick.
16 Q. And do you think that's what the lawyers were
doing, was
17 somehow deceiving the jury on something?
18 A. It's their job, Ron. It's their job. That's what
often
19 baffles me today in the judicial (sic) system. We grew
up to
20 know right from wrong, and all at once you end into
this
21 different rule where, like Judge Matsch said, it's
another
22 world that you have to consider and work with, rather
than back
23 here in this world that you grew up in.
24 Q. And the ability to look at facts and tell right
from wrong,
25 you feel somehow that it's the lawyer's job to somehow
confuse

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Juror No. 388 - Voir Dire

1 that area, make that gray?

2 A. No, not really. I -- it's their job to present the
case as

3 it is and to present facts and, etc. And for someone
-- like I

4 said, just a few days ago I had a different opinion. I
have a

5 different view now because of what is expected of a
juror.

6 Q. What was your view and opinion a few days ago --

7 A. Well --

8 Q. -- that's been changed now?

9 A. I made a quicker decision, you know. I can tell by
the way

10 I filled this out because, you know, you do what you
think of,

11 the first thing; and since I'm not trained in that type
of

12 field -- If this was an engineering matter, I would
have had a

13 different -- complete different approach, but this was
a field

14 that I'm not that well-versed in.

15 Q. Well, what -- what the questionnaire was doing was
asking

16 you your honest --

17 A. Yes.

18 Q. -- truthful opinions and then said that, you know,
we're

19 signing this under pain of perjury. That was the point
of it,

20 is to get your truthful, honest opinions.

21 A. Yeah.

22 Q. And the initial response that you sent in, you
know, you

23 got that real short questionnaire; and on July 24, you
sent it

24 in and the question was, "Is there any other reason
that would

25 prevent you from serving on this jury?"

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Juror No. 388 - Voir Dire

1 And you answered, "Yes, I'm convinced he is
guilty."

2 The next question: "If yes, provide a
detailed

3 explanation. You will receive notification in the mail
as to

4 the decision of the court."

5 You wrote, "I think he is guilty."

6 Were you surprised that you then got a summons
to come

7 to Jeffco?

8 A. No, not really. You know, think back in sports.
Howard

9 Cosell used to say, "Say it like it is."

10 Q. I appreciate that, and that's what you were doing?

11 A. And that's what I was doing until you're versed and
briefed

12 in what this seriousness is about this. Then you have
to open
13 your mind and say, Now, wait a minute, there is --
there is
14 something to consider here.

15 Q. And your opinion that he is guilty: Where are you
going to
16 put that opinion if you were a juror on the case?

17 A. Well, that absolutely would have to be side --
discarded,
18 because the Judge just explained what is involved and
how it
19 should be handled; and that's the approach you have to
take.

20 Q. Where are you going to discard it?

21 A. Well, that's just something that happened, and I
said
22 and -- if I want to be open-minded and make progress,
you've
23 got to do this.

24 Q. Okay. And am I accurate in saying that it appears
that
25 you've read the press for two-and-a-half years about
this case,

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Juror No. 388 - Voir Dire

1 looking at the facts of the case? Is that correct?

2 A. Yes.

3 Q. And did you follow the trial when McVeigh was on

trial?

4 A. Just off and on.

5 Q. Of course, it wasn't on television.

6 A. No. That's right.

7 Q. And you realize we're not on television now and
it's not

8 going to be on television. But did you follow the
daily

9 summaries of the case as the news media reported, both
in the

10 newspaper and on television?

11 A. No. No, I didn't. That was not on my agenda at
the time.

12 But as the news come up, yeah, I wouldn't -- I picked
up some.

13 Q. Okay. You -- I assume that you heard some of the

14 testimony, the recap of the testimony during the trial.
Is

15 that correct?

16 A. Yeah.

17 Q. And you heard the verdict of guilty?

18 A. Yes.

19 Q. That the jury pronounced.

20 A. Yes.

21 Q. Did you discuss that with your family, friends,
neighbors?

22 A. You know, discuss that over a barbecue and --

23 Q. Sure.

24 A. -- a little chatter here and there, yes.

they? 25 Q. Nobody had any disagreement over that verdict, did

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1 A. No.

returned 2 Q. Okay. And then when the death penalty verdict was

friends, 3 by the jury, did you discuss that with your family,

4 neighbors?

5 A. Yeah.

6 Q. Anybody have any disagreement over that verdict?

and the 7 A. No, other than, you know, my religion, Catholic,

8 Church was opposed to the capital punishment.

9 Q. Okay.

your 10 A. But, you know, you still have your own opinions and

should say 11 judgments; but yes, they were opposed. And then I

-- but, 12 that my family, most of them, were opposed to that in

mind 13 again, it's something that you have to make up your own

14 to.

in the 15 Q. What was your position on the death penalty verdict

16 McVeigh case?

17 A. Well, I think it was justified.

18 Q. Okay. And why is that?

19 A. Pardon?

20 Q. Why do you feel that it was justified in that case?

21 A. Well, because he had life sentence; and to give him
a death
22 penalty, I think it's something that as a community we
have to
23 demonstrate that the law and the judicial (sic) system
still
24 have that power to do that. Once you deviate away from
that
25 and you relax rules and regulations, you're not going
to

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Juror No. 388 - Voir Dire

1 improve the situation.

2 Q. Yes, sir. Yes, sir.

3 Now, you've heard the Court give the
explanation of

4 the trial processes here in the two hearings. Do you
feel that

5 this is the type of case -- or are there types of cases
where

6 the death penalty is the appropriate verdict and not

7 considering life imprisonment for those particular type
of

8 crimes?

9 MR. MACKEY: Objection, Judge.

10 THE COURT: Overruled.

11 You may answer that, if you understand it. Do
you?

12 JUROR: Yes, I do. I understand what you're
saying.

13 But you're asking me to give an answer from a distance,
because

14 once this case is spelled out and gets right down to
the

15 nitty-gritty, then I think you're more in a position to
say yes

16 or no to that.

17 BY MR. WOODS:

18 Q. Okay. We're not going to talk about this case
because, as

19 the Judge said, neither side knows what the facts are
in this

20 case --

21 A. Right.

22 Q. -- right now. The Government has got a theory that

23 Mr. Nichols is responsible for the bombing. We
disagree with

24 that theory. They're going to call their witnesses to
the

25 witness stand and testify, and we're going to cross-
examine

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witnesses 1 them. And when they get through putting all their

obligation to 2 on -- as the Judge told you, we don't have any

call a 3 put on evidence ourselves, but we are. We're going to

Government's 4 number of witnesses in that will contradict the

5 theory.

have 6 After all the evidence is in and the lawyers

you 7 summed up that evidence for you, if you were on a jury,

their 8 would be finding the question did the Government prove

guilty. 9 case beyond a reasonable doubt that the person is

none of 10 That's going to be the trial process. So as a result,

11 us know what the evidence is going to be in this case.

number of 12 Let's talk about a hypothetical case where a

you with 13 people are killed, such as an airplane bombing. Are

14 me on that?

15 A. Yes.

defendant guilty 16 Q. If you were on a jury and the jury found a

more 17 of premeditated and deliberate murder of killing one or

18 individuals in an act such as that -- are you with me

so far --

19 it's then and only then do you get to a punishment
stage of a

20 case. Are you following that?

21 A. Yes.

22 Q. That we're not going to get to a punishment stage
in any

23 capital murder cases until the jury has found the
defendant

24 guilty of deliberate and premeditated murder of a
number of

25 individuals.

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1 Now, my question to you in a case such as
that, do you

2 feel that the death penalty would be the appropriate
verdict

3 and not consider life imprisonment after you've
considered

4 everything that the Judge has told you here today?

5 MR. MACKEY: Objection, your Honor.

6 JUROR: Okay, your Honor. Can I answer it
this way?

7 THE COURT: Yes. Go ahead.

8 JUROR: A jury consists of 12 people.

9 BY MR. WOODS:

10 Q. Yes, sir.

taken
this
penalty
work as

11 A. So that's their job to analyze this. Have you ever
12 analytic geometry? You know that you have to analyze
13 thing. So at that time, I would be inspired, the death
14 or life, because you have to work as a team; you can't
15 an individual.

that.

16 Q. The jury as a 12-member group will be deciding

17 A. Yes.

that

18 Q. But each individual juror's vote is important to
19 individual juror. Would you agree?

feeling and of

20 A. That's true, but it would also depend on the
21 the final conclusion of the whole case.

his

22 Q. Right. And each individual juror is going to have
23 feelings one way or another on this.

24 A. Yes.

and

25 Q. And you understand that as the Court instructed you

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to see

1 advised you, that's what we're asking questions about,

and on 2 what your feelings are on the guilt or innocence stage
were on 3 the penalty stage. And so my question to you is if you
deliberate, 4 a jury where the jury had found someone guilty of
would you 5 premeditated murder and you're at the penalty stage,
verdict 6 feel that the death penalty would be the appropriate
7 and not a life sentence on a case such as that?

8 MR. MACKEY: Objection.

9 THE COURT: I'm going to rule out that
question 10 because that doesn't include all of the circumstances.

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

12 BY MR. WOODS:

13 Q. Given the Court's instruction to you about how the
penalty 14 phase would proceed; that aggravating circumstances and
all the 15 mitigating circumstances -- Assume that you've heard
deliberate 16 evidence that's come in. On a case where there is a
feel 17 premeditated murder of a number of individuals, do you
would be 18 that after hearing that evidence, the death penalty
19 the appropriate verdict and not life imprisonment?

20 MR. MACKEY: Same objection.

21 THE COURT: Well, again, it's the same ruling.

You

22 left out all of the circumstances.

23 MR. WOODS: Thank you, your Honor. I'll
repeat, as I

24 did, to the juror that this is --

25 THE COURT: Well, I'll take over that
question.

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1 MR. WOODS: Thank you.

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q. The question that is being asked you -- and please
5 understand I'm not criticizing Mr. Woods in this, but
we've
6 gone over this in some depth about considering all of
the
7 circumstances. Now, I think what Mr. Woods is asking
is
8 whether you're looking at that and thinking that there
are
9 certain kinds of crimes in which you would not be open
to make
10 a decision on the basis of all of the circumstances but
only on
11 the crime.
12 A. Well, your Honor, that would be doing a
premeditated

13 answer, and I -- I can't do that at this point.
Naturally, I
14 face the death penalty in certain cases and life in
prison in
15 certain cases; but to sit here right now and tell you
without
16 hearing the whole thing and having the presentation and
the
17 feeling of the jury or my own feelings at that time
once you
18 get through that case, I cannot tell you at this point.

19 VOIR DIRE EXAMINATION

20 BY MR. WOODS:

21 Q. Okay. We appreciate that answer.

22 You mentioned that you look at the death
penalty in
23 certain cases and life imprisonment in certain cases.

24 A. Yes.

25 Q. I guess the question is: Are there certain cases
that you

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Juror No. 388 - Voir Dire

1 look only at the death penalty?

2 MR. MACKEY: Objection, Judge.

3 THE COURT: Already answered.

4 BY MR. WOODS:

5 Q. If you were selected as a juror -- you know, you've

guilty, 6 indicated to us that you think that Terry Nichols is
Is 7 and you've assured us you were going to set that aside.
8 that correct?

9 A. That he's guilty?

that you 10 Q. Yes, sir. You've indicated in your questionnaire
11 feel he's guilty. You've stated it twice.

know, an 12 A. Oh, yeah. Well, again, that was an answer, you
presented my 13 everyday thing that, yes, at the time when I was

the guy 14 own little thinking, naturally, I said, Well, no doubt
just an 15 is guilty; but the Judge just opened the door to me,

You 16 hour ago. There is lots of things you've got to know.
the 17 just can't close your mind on this. You've got to see

have 18 facts. You've got to see the open case. You've got to
final 19 this information before you can make an intelligent,
20 decision.

you've 21 Q. Okay. And was that opinion based on everything
years? 22 read, seen, and heard over the last two-and-a-half

23 MR. MACKEY: Objection, Judge.

24 THE COURT: Sustained.

you 25 MR. WOODS: Thank you very much. I appreciate

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opinions. 1 answering the questions and giving us your truthful

2 JUROR: Thank you, Ron.

you're 3 THE COURT: Well, we can't tell you whether

decisions one 4 going to serve on this jury. We don't make these

we have 5 at a time as people come in to do this questioning. So

while, not 6 to ask you to live with some uncertainty here for a

able to 7 knowing whether you'll be on the jury; and we won't be

8 tell you when we'll be able to tell you, either.

to you is 9 JUROR: Well, Judge, the way I can answer it

that's 10 I'm ready, willing, and able; but if I don't make it,

on to 11 fine. That's my duty as a citizen. And if I'm called

wife and 12 represent that, I certainly will; if I'm not, why, my

13 I will take another elder hostel trip.

That's 14 THE COURT: Don't go on any trips just yet.

15 what I'm getting around to; that we want you to, you
know, let
16 us go through this process.

17 JUROR: All right.

18 THE COURT: And make a decision here.

19 JUROR: Sure.

20 THE COURT: And I can't tell you when we'll be
able to

21 get in touch with you; but what you have to do is
assume that

22 you are going to be back in here on some day not yet
known to

23 decide this -- I mean, to hear this case.

24 JUROR: That's my duty.

25 THE COURT: And therefore if anything comes up
that

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1 changes your circumstances in any way, let us know,
give us a

2 call. You've got the number.

3 JUROR: That's right.

4 THE COURT: And then be patient and stay away
from

5 any -- we talked a lot about publicity and all that.
Stay away

6 from it now.

7 JUROR: I will.

8 THE COURT: So that you can come back in here
and do
9 what you just said you could do, and that's decide
fairly on
10 the evidence and the law.

11 JUROR: But thank you, Judge, for enlightening
me in
12 that respect.

13 THE COURT: All right. You're excused now,
and we'll
14 be in touch.

15 JUROR: Thank you, your Honor.

16 (Juror out at 12:16 p.m.)

17 THE COURT: I've got a matter I want to
mention to
18 counsel unrelated to this juror. Would you approach
the bench,
19 please.

20 (At the bench:)

21 (Bench Conference 36B1 is not herein transcribed by
court

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

23

24

25

1 (In open court:)

2 THE COURT: 1:35. Recess.

3 (Recess at 12:18 p.m.)

4 * * * * *

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REPORTERS' CERTIFICATE

19 transcript from

We certify that the foregoing is a correct

Dated

20

the record of proceedings in the above-entitled matter.

21

at Denver, Colorado, this 20th day of October, 1997.

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Paul Zuckerman

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Kara Spitler