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4 City, Oklahoma, 73102, appearing for the plaintiff.
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8 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, and ADAM
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10 Attorneys at Law, 1120 Lincoln Street, Suite 1308,
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11 Colorado, 80203, appearing for Defendant Nichols.
12 * * * * *

13 PROCEEDINGS

14 (Reconvened at 1:35 p.m.)

15 THE COURT: Be seated, please.

16 Counsel may approach the bench, please.

17 (At the bench:)

18 (Bench Conference 37B1 is not herein transcribed by
court

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

20

21

22

23

24

25

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1 (In open court:)

2 THE COURT: Well, we're ready on 488.

3 Afternoon.

4 JUROR: Good afternoon.

5 THE COURT: Would you please raise your right
hand and

6 take the oath from the clerk.

7 (Juror No. 488 affirmed.)

8 THE COURTROOM DEPUTY: Thank you.

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

10 microphone. And you don't have to position yourself
according

11 to the microphone. Anywhere near is fine, and the
chair

12 swivels a bit.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. First, I want to apologize for keeping you waiting
so long.

16 You were here all day Friday and half a day today
waiting, so

17 please forgive us that. It is hard to estimate --

18 A. I understand.

19 Q. -- how long it takes. And of course the time
varies

20 according to each person and, you know, the answers
that person

21 has. Now it's your turn, you're here.

22 And as you are aware, of course, both from the
23 original jury summons and what has happened since then,
you

24 have been called in for possible jury service for the
trial of

25 United States against Terry Lynn Nichols. And you've
got a

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1 summons that asked you to send us some information
about you.

2 You did that, and then you got a notice to appear at
the

3 Jefferson County Fairgrounds' auditorium building a
little over

4 a month ago, and you did that. And when you were
there, I

5 appeared and people who are with me now were with me
then. And

6 I want to reintroduce these people to you so that you
are aware

7 of who's here with us today.

8 You may recall my introducing as attorneys for
the

9 Government Mr. Lawrence Mackey, Miss Beth Wilkinson.
They're

10 joined now by Mr. Patrick Ryan and Mr. James Orenstein,
who

11 were not there at Jefferson County, but are here now as
12 participants in the case.

13 You recall also meeting Mr. Michael Tigar and
14 Mr. Ronald Woods, attorneys for Terry Nichols, and of
course

15 Terry Nichols who was there then and is here now.

16 And then we asked you to fill out a very long
17 questionnaire asking a lot of questions that to some
extent

18 invade your privacy and are personal in nature, and we

19 appreciate that. I hope you appreciate the need for us
to ask
20 some of these things. And of course we attempt to
balance off
21 your privacy interests vs. the public interest in the
trial and
22 do so by withholding your name from this process and
also, you
23 know, arranging so you go and come to the courthouse in
a way
24 that we can't have press -- we don't have press
photographers
25 taking your picture and the like.

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1 And in the course of this questioning that we
will go
2 through here -- and we're not going to ask you all
these
3 questions over again -- but in the course of this
questioning,
4 we'll also attempt to do it in a manner that also
protects your
5 privacy.
6 Now -- excuse me -- at the time that you were
out
7 there and we gave you this questionnaire, I gave you
also some
8 explanations about the case and the background of it,
the

9 things that you probably didn't need to be told because
you
10 already knew; that -- and I want to go over them again
just to
11 make sure that we're all on the same foundation here --
that
12 the case arises as a result of a explosion in Oklahoma
City on
13 April the 19th of 1995, when a federal office building
was
14 destroyed, people in it were injured and killed;
thereafter the
15 Government through its lawyers filed charges against
two named
16 persons in the form of an indictment, which is simply a
17 statement of charges, in which they allege that a man
named
18 Timothy James McVeigh and also Terry Lynn Nichols --
and then
19 the indictment refers to "other persons not named" --
conspired
20 or developed a plan to bomb that building and to kill
and
21 injure people in it. The indictment then includes a
total of
22 11 charges including that in addition to forming this
plan,
23 they went ahead and carried it out and did bomb that
building
24 and also eight charges or counts of first-degree murder
of law
25 enforcement agents who were in the building and died in
the

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1 explosion.

2
entered pleas

To all of these charges, the defendants

3
that the

of not guilty, thereby creating the issues for trial;

4
because

case was then moved from Oklahoma City here to Denver

5
people in

of the concern that it would be too much to ask for

6
jurors.

Oklahoma City where this happened to come in and sit as

7
I

And then when the case came here to Colorado,

8
fair to

ordered separate trials and found that it would not be

9
together,

either Mr. McVeigh or Mr. Nichols to be on trial

10
evidence as it

recognizing that there may be differences in the

11
a

relates to each of them. And accordingly, we have had

12
13
process

separate trial of the evidence as it relates to Timothy

McVeigh. A jury came in, was selected in this same

14
verdict

that you're in, and heard the evidence and returned a

15
evidence

of guilty and also then came in and heard a lot more

should 16 about what the punishment should be, what the sentence
the 17 be and after that second trial or hearing, recommended
course 18 sentence to death. And that's already happened, and of
19 you were aware of those things, I assume.
20 A. Yes.
told 21 Q. And you're aware of them now. And of course what I
what 22 you and the other prospective jurors there was that
trial -- 23 happened in that case -- that is, Timothy McVeigh's
that case 24 and whatever you may have seen, read, or heard about
over with 25 cannot be considered now in this case. We start all

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outcome of the 1 a fresh case with no evidence, and certainly the
case. To 2 McVeigh trial cannot in any way be considered in this
separate 3 do so would violate the very reason that we have
4 trials. Understood?
5 A. Yes.
jury 6 Q. And then I talked a bit about what is involved in

gathered 7 service, recognizing that most of the people who were

your case, 8 there had never been on a jury. And that's true in

9 you've never been on a jury?

10 A. Correct.

and the 11 Q. So I explained just the basics of criminal trials

case in 12 constitutional requirements that apply to a criminal

the 13 the United States regardless of who's on trial and what

case, 14 charges are, because these rules are the same for every

persons 15 beginning with the presumption of innocence, that all

the 16 accused in this country are presumed to be innocent of

the trial 17 crime charged, a presumption that carries throughout

not 18 and entitles that person to an acquittal, a verdict of

that was 19 guilty, unless all of the jurors consider the evidence

decides that 20 actually presented at trial and following the law

proved 21 they have been proved; that is, the defendant has been

heard of 22 guilty beyond a reasonable doubt. I'm sure you've

23 that concept somewhere before.

24 A. Yes.

25 Q. And I'm repeating it now not because I think that
you don't

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1 remember it from before, but it is of vital importance
that we
2 have a common understanding here. And that I also
explained
3 that defendants in criminal cases have no duty or
burden of
4 proving anything. They don't have to come in and prove
5 themselves not guilty. In fact, they don't have to
call any
6 witnesses, they don't have to produce any exhibits, and
they
7 don't have to take the witness stand and answer any
questions
8 or explain anything to a jury or anyone else because a
9 defendant can simply remain silent and require the
Government
10 to come in with the proof. And it is the Government
through
11 counsel who have presented these charges, and it's up
to them
12 now to try to prove them by bringing in the witnesses
and the
13 exhibits upon which they rely.

14 And then there are certain rules of evidence
that

And a 15 govern what a jury can hear and consider at a trial.
16 defendant can simply then remain silent, challenge that
17 evidence by objections to particular items on the
grounds that
18 it's not admissible evidence and by the cross-
examination of
19 all of the witnesses called by the prosecution.
Understood?
20 A. Yes.
21 Q. And at the end of a trial, the court gives
instructions,
22 you know, what has to be proved for each of the
particular
23 crimes charged, listing the elements, the things that
have to
24 be proved. And then we'll say to the jury: All right.
Does
25 this evidence prove it beyond a reasonable doubt, or do
you

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1 have a reasonable doubt? And one of the things that's
said in
2 those instructions always in a case in which a
defendant does
3 not testify is: Now, that's not anything that you can
4 consider. The fact that a defendant does not testify
cannot be
5 in any way interpreted as some kind of an admission

that the

6 person has something to hide or, you know, given such
thought

7 that, well, if I were innocent, I would tell the jury
that.

8 You can't do that. In fact, what we routinely say in
such

9 cases is: You can't even talk about it. Understood?

10 A. Yes, sir.

11 Q. And so, then, what it comes down to is if the jury,
after

12 hearing it all, has a reasonable doubt as to whether
the

13 evidence establishes guilt, then they must give to the

14 defendant the benefit of that doubt and find him not
guilty.

15 Do you understand that?

16 A. Yes, I do.

17 Q. Now, we've reviewed these things. Do you agree
with them?

18 A. Yes.

19 Q. And do you accept the responsibility of following
them as

20 fundamental principles if you were to sit in a jury on
this

21 case?

22 A. Yes, I do.

23 Q. So you see Mr. Nichols sitting here with us here
this

24 afternoon and presume that he's innocent of the crimes
charged

25 against him?

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1 A. I would feel that way.

the

2 Q. All right. Now, turning to the questionnaire and

that I

3 answers that you have given, there's just a few things

4 would like you to review with us.

5 A. Okay.

things

6 Q. And perhaps expand on a little bit. And one of the

completed

7 is -- you have your answers there; you have the

8 questionnaire there.

9 A. Uh-huh.

10 Q. Yes?

11 A. Yes, I do.

12 Q. And one of the things, going back to your original

--

13 questionnaire, is that you had just taken on a new job

14 A. Correct.

you were

15 Q. -- at the time you got the summons. And of course

you

16 concerned then about it interrupting this new job where

17 were sort of in the learning --

18 A. Right.

19 Q. -- part of it and being pulled in here for
courtroom duty.

20 And I take it that you have probably talked about this
with

21 whoever's in charge of your work there.

22 A. Yes, I have.

23 Q. And we expected you to do that. I mean I asked you
not to

24 talk about the case with anybody, but of course we
expected

25 that you would be talking to those directly affected by
your

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1 coming in on jury service. What was that conversation?
What

2 was the reaction when you told them?

3 A. Well, they understood that, you know, it's the
4 responsibility that I may have to take; and I work
part-time.

5 And, you know, I understood that someone would take
some of my

6 cases while I was on jury duty if that happened.

7 Q. All right. So you no longer have the concern that
you had

8 when you answered the original question; am I right
about that?

9 A. Correct. Uh-huh.

10 Q. And just to review with you what's involved time --
in
11 terms of time. First of all, we don't know when the
trial will
12 start because we don't know how long this process of
selecting
13 jurors will take.

14 A. Uh-huh.

15 Q. Secondly, the trial schedule will be: Monday
through
16 Thursday, 9 to 5 in the courtroom; Fridays, 9 to 1 in
the
17 courtroom. And of course there's some time going and
coming,
18 but that's the commitment. We're not talking about
keeping
19 people separated overnight, nothing like that in the
course of
20 the trial; but several months could be required in this
21 process. You appreciate that?

22 A. Right.

23 Q. Now -- and did there -- you know, this would be a
human
24 reaction that we would understand. Did anybody suggest
to you
25 that you don't want to do that, you ought to answer
questions

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1 that will get you out of such service?

2 A. I heard those things.

3 Q. Yeah.

4 A. Uh-huh.

5 Q. Well, we're not surprised that you may have heard
that.

6 And how did you respond to that?

7 A. Well, I basically feel like I needed to come in and
be very

8 honest and be myself and just see what happened.

9 Q. Okay. Well, that's all we can ask of you is to be
honest,

10 and certainly there are no right or wrong answers to
these

11 questions. It's not a test. It's simply asking you to
tell us

12 some things, some of which are factual and others of
which are

13 opinions --

14 A. Right.

15 Q. -- and attitudes. So your approach is exactly what
we

16 want. You just tell us what you think, in some cases
perhaps

17 what you feel.

18 Now, you were born in Pennsylvania?

19 A. Right.

20 Q. And let's see. Is that -- is that where you went
to --

21 yeah, you went to high school in Pennsylvania?

22 A. Yes.

23 Q. What part of Pennsylvania is that?

24 A. That was a suburb of Philadelphia.

25 Q. Okay. And you had some college there?

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1 A. Yes. Outside of Erie, Pennsylvania.

Utah

2 Q. All right. And then you went to the University of

3 after that?

4 A. Yes.

pursued?

5 Q. And social work is of course the study that you

6 A. Yes.

7 Q. And you have a master's?

8 A. Right.

9 Q. From Utah?

10 A. From the University of Utah, yes.

11 Q. And then you lived for a time in Dallas?

12 A. Yes.

13 Q. What were you doing when you were living in Dallas?

14 A. I was raising my two daughters.

15 Q. Okay. A full-time job?

16 A. Yes.

17 Q. Then you came to Colorado.

18 A. Right.

19 Q. And you're married --

20 A. Yes.

21 Q. -- and you -- let's see -- before taking the job
that you

22 just now started recently, you did some work as a -- in
the

23 elementary school?

24 A. Elementary school, my daughter's elementary school,
I

25 worked as a teacher's aide and a reading tutor.

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1 Q. For pay? I mean you were paid?

2 A. Yes, I was paid.

3 Q. All right. And the work that you do now, as I
understand

4 it, is working with families dealing with the emotional
and

5 financial and all of the problems attendant upon
someone who's

6 dying?

7 A. Correct.

8 Q. And did you seek out that work for any particular
reason?

9 I mean what motivated you to seek that type of work?
10 A. You know, basically, I've always pursued social
work
11 positions, and I had been volunteering as a bereavement
12 counselor for the hospice where I'm working now. And I
just
13 found that I enjoyed that kind of work; and when they
had a
14 part-time position opened, I was very interested in it.

15 Q. So, you know, I would gather from that that you
have an
16 intense interest in other people and the problems of
living and
17 dying?

18 A. Yes.

19 Q. And I guess that's what motivated you to go into
social
20 work even academically?

21 A. Yes.

22 Q. And your husband is in a, what, marketing and
23 advertising-type business?

24 A. Yes, uh-huh.

25 Q. And is that in connection with particular products
and

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1 services? I don't mean to name them because we don't
want to

2 do something that might be identifiable.

3 A. Okay. Yeah. He does marketing and promotions for
4 different companies.

5 Q. Products and services?

6 A. Products, yes, and services.

7 Q. Okay.

8 A. Mostly products, I would say.

9 Q. And he's been in that type of work for --

10 A. He started in advertising when we moved to Dallas.

11 Q. And followed it here, then?

12 A. Yes, uh-huh.

13 Q. What caused you to come to Colorado?

14 A. His position.

15 Q. Now, we asked you some, I guess, attitudinal
questions.

16 A. Uh-huh.

17 Q. And opinions. Page 22 is an example. If you would
please

18 turn to that.

19 A. All right.

20 Q. And here at Question 100 we just asked you a broad
opinion

21 about what you think about the criminal justice system
and how

22 well it's working. And you said, "It works well
sometimes,"

23 which I guess means it doesn't work well at some times.
Tell

24 us if you can expand on that a bit as to what your
opinion is.

25 A. Well, I think that in general it's a -- it's a good
system

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1 that I believe in. I think that we've all heard cases
in the

2 media where we start to wonder if it's working.

3 Q. And can you give us illustrations for that?

4 A. Well, O. J. Simpson.

5 Q. What about that --

6 A. Started to wonder about it then. Just in terms of,
oh, how

7 the case is presented and the feeling that maybe we
just hear

8 just certain facts and maybe what the attorneys maybe
want us

9 to hear and just, you know, feeling that . . . I don't
know,

10 that maybe it wasn't maybe as natural as it, you know,
could be

11 in terms of just presenting a case and then getting the
facts

12 and getting a verdict.

13 Q. Now, that case was one that was televised as it was
going

14 on.

15 A. Uh-huh.

16 Q. And telecast nationally. Did you watch any of the
trial as

17 it was shown live on television?

18 A. You know, some. I didn't feel obsessed with it. I
was

19 interested in it because it was something that was
happening in

20 our country. I watched some.

21 Q. And then also some news clips where pieces of the
case --

22 pieces of what happened -- in the trial --

23 A. Uh-huh.

24 Q. -- were retelecast.

25 A. Right.

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1 Q. And then the jury reached a verdict -- in the
criminal case

2 we're talking about -- of not guilty. Did you have a
reaction

3 to that?

4 A. Yes. I felt like he was probably guilty, from what
I had

5 heard.

6 Q. All right. But there's a difference between, you
know,

7 somebody's observation on the basis of what I gather

from you

8 is bits and pieces --

9 A. Uh-huh.

10 Q. -- and the people who sat there day after day and
heard it

11 all. Do you think that the jury decided wrong under
the

12 evidence or that the outcome was affected by the very
things

13 that you're talking about?

14 A. Well, I think that, you know, they were the ones
who heard

15 the testimony; and I think that there was probably
reasonable

16 doubt in that case. But my -- you know, you asked me
my

17 reaction --

18 Q. Yes.

19 A. -- my reaction was that I wondered about it.

20 Q. Well, and sometimes things like that cause somebody
to

21 question about whether the jury system is something you
can

22 rely on.

23 A. Uh-huh.

24 Q. What's your view about that? Do you trust juries
overall?

25 A. Yeah, general -- overall I would say that I trust
juries.

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1 Q. Okay. And, you know, that that's really the core
of the
2 criminal justice system in this country, is the jury;
and we
3 rely heavily upon people to come in, serve, and decide.
And
4 without fair-minded jurors coming in and doing that
very thing,
5 the system wouldn't work at all.

6 A. Right.

7 Q. Do you agree?

8 A. I do agree.

9 Q. Now, obviously cases differ according to how much
publicity
10 is given to the case.

11 A. Uh-huh.

12 Q. And how much there has been in the press by which I
-- you
13 know, I'm including television, radio, newspapers,
magazines,
14 the whole thing.

15 A. Uh-huh.

16 Q. Some cases get a lot of press before the trial, and
some
17 don't. And of course in those cases where there is a
lot
18 written and said about the case -- and of course those
things

19 are not evidence, may never come into evidence at all
-- but

20 people get impressions from that.

21 A. Uh-huh.

22 Q. And you seem to have some impressions from that in
what

23 you've seen and read or heard about with respect to

24 Mr. Nichols.

25 A. Uh-huh.

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1 Q. And you express some of that in your questionnaire.
And I

2 want to turn to, I guess, page 37 in particular. And
the

3 question -- the answer that I particularly want you to
address

4 is 160, near the top.

5 Now, can you tell us any particulars that may
have led

6 you to that impression?

7 A. No. I just -- you know, I -- I paid attention to
just what

8 was on TV at the time after the bombing; and, you know,
I can't

9 think of anything specific. But my impression was that
he was

10 guilty.

11 Q. And what is your opinion with respect to him now?
12 A. Well, I mean I don't -- I haven't, you know, paid
any
13 attention to anything for a while now since I was
called for
14 the jury. I just -- you know, I don't -- I don't know.
I
15 don't really know.
16 Q. All right. And now you know, sitting in the jury
box, if
17 you were to serve on the jury, all that you may recall
seeing,
18 reading, and hearing on the outside has to be kept on
the
19 outside.
20 A. Right.
21 Q. Now we're on the inside, now we're in a courtroom.
And
22 it's what happens in a courtroom that a jury must base
the
23 decision with respect to the guilt or not of the
defendant.
24 A. Right.
25 Q. And some people can do that better than others.

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1 A. Uh-huh.
2 Q. And it's sort of a matter of self-discipline in

large part

3 where, you know, you can say: Well, I remember -- and
4 sometimes things in the course of the trial come up
that you

5 don't even remember beforehand -- but in the course of
the

6 trial something triggers a recollection, Well, I saw or
read

7 something about that. Those things have to be put out
of mind,

8 and you have to focus on the evidence. And do you see
yourself

9 as having the ability to do that?

10 A. I think I could do that.

11 Q. And I guess one of the ways to test that is to sort
of

12 remember in your life itself and the things that have
happened

13 to you and the things that you've been called upon to
do both

14 professionally and also in raising a family and dealing
with

15 other people where you've had times where you've had
some kind

16 of preconception or preformed opinion and then had to
change

17 your mind?

18 A. Right.

19 Q. And that's the sort of thing here: You have to
leave

20 everything else outside the door and work with what
you're

21 given here. Understood?
22 A. Yes.
23 Q. Okay. Now I want to talk with you a bit about this
matter
24 of punishment. And you remember that we asked you
questions
25 about -- penalty in connection with this questionnaire.
And we

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1 particularly asked you questions about the types of
punishment,
2 of life in prison with no possibility of ever getting
out, and
3 death, and the reason for that is the possibility that
if a
4 jury in a case that involves -- we're under federal law
here,
5 you understand, so we're talking about federal law --
that
6 involves these type of punishments as possibilities,
the jury
7 has a role to play in that?
8 A. Uh-huh.
9 Q. And before discussing with you just exactly what
that role
10 is and how it comes up, I want to turn to the questions
that we
11 asked of you and your answers; and the reference is at

page 27

12 where there's a -- several paragraphs of introduction
or

13 preface, as it were, 124 on 27. Do you have it?

14 A. Yes, uh-huh.

15 Q. And you may remember these points, and then the
questions

16 asked of you on the next page.

17 A. Right.

18 Q. And just to refresh you, you're welcome to read it
all over

19 again, and certainly we want you to read your answers.

20 A. Okay.

21 Q. But just before reviewing your answers, you
understand that

22 we were asking your opinions coming in, as it were,
without

23 being acquainted with the law as it is.

24 A. Right.

25 Q. And therefore we put it in terms of: Well, if you
could

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1 make the law, how would you make it?

2 A. Uh-huh.

3 Q. And I take it your answers are addressed in those
terms?

4 A. Right.

there
5 Q. Now, is the question of, in particular, whether

you've
6 should be a death penalty in the law, something that

7 given thought to before this questionnaire?

8 A. Yes.

9 Q. And in what sort of context have you considered
that issue?

what --
10 A. Well, in terms of -- you know, in terms of just

discussions about
11 when there have been political elections and

past I
12 it, I've thought about what my thoughts are; and in the

something that
13 felt like I believed that the death penalty was

14 our society should have.

public
15 Q. And of course this is a subject that's had a lot of

16 attention since you answered the questionnaire.

17 A. Right.

about the
18 Q. And I'm referring of course, to public debates

19 execution of a man last week in Colorado.

20 A. Right.

21 Q. Carrying out a death sentence from the state court.

look at
22 And I guess what I want you to do first is to

23 your answers --

24 A. Okay.

or if 25 Q. -- and tell us if your answers are the same today

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1 there's any change in your viewpoint.

2 A. No, they're the same.

is and 3 Q. Okay. Now, I want to review with you what the law

or out 4 what the process is. And I'm not trying to talk you in

5 of anything, so --

6 A. I understand.

7 Q. -- don't let me change your opinions or --

8 A. Okay.

going to 9 Q. I'm sure you're not the kind of person who is just

going to 10 say yes just because you think you ought to. You're

11 give us your honest approach.

12 A. Right.

what the 13 Q. So what happens in criminal trials is of course

already 14 jury judges the evidence, these things that we've

15 talked about. And in cases not involving this kind of

evidence; 16 punishment under federal law, the jury decides the

doubt 17 that is, does the evidence prove it beyond a reasonable
over. If 18 or not. And if not, the verdict is not guilty, it's
it's over 19 the answer is yes, then there's a guilty verdict and
do not 20 as far as the jury is concerned. Because in cases that
we have 21 involve the punishment of life or death, in this sense,
22 judges do sentences.
23 A. I didn't know that.
and now 24 Q. And the way in which judges approach sentencing --
25 again, we're talking about the federal courts --

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1 A. Uh-huh.
returned, 2 Q. -- is that before -- after a guilty verdict is
information is 3 before a sentence is imposed, there's a delay;
as the 4 collected during that time about the defendant as well
substantially 5 crime. And there is a hearing at a later time,
And by 6 later than the guilty verdicts returned by the jury.
7 that time, then, the court has presented to it the

additional

8 information about the crime itself, the circumstances
of it,
9 what the defendant's role in it was. If there's more
than one
10 defendant, they may have had different roles, different
degrees
11 of participation, minor, major, whatever.

12 And then effects on people, the effects on
victims and
13 others; those are all parts of the circumstances of the
events.

14 But then there's also collected and presented to the
court a
15 lot of information about the defendant, essentially who
he is
16 and what he's all about and what his life history has
been.

17 And that does go through this person from the
beginning, where
18 he was born and raised, what kind of a family structure
was
19 there, what happened in that family, then what happened
after
20 that, what was the educational experience, was there
military
21 service, what was that all about, what's the employment
22 history, have there been marriages and children; and,
you know,
23 each one of us has an individual story.

24 A. Uh-huh.

25 Q. And that is indeed what makes each one of us unique

as a

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1 human being. So the court has to consider not just the
crime
2 but the person found convict -- found guilty. And it's
a
3 combination of these things that is involved in the
sentencing
4 decision because under our legal system, the individual
is of
5 paramount importance. And then a sentence is arrived
at by a
6 hearing at which both sides are heard and the range of
sentence
7 is considered, and then the court comes down with a
particular
8 sentence for that person. And as I said, there could
be two or
9 three people involved in the same crime, and the
sentences may
10 well be different with respect to them because of these
11 individualities, these individual characteristics as
well as
12 things like role in the offense. Follow?
13 A. Uh-huh.
14 Q. Now, when the issue becomes life or death, then we
don't
15 have judges make that decision. For that kind of a
decision,

the jury 16 we in the federal courts call in the people who are on
sentence 17 and ask them to decide. But in approaching that
described 18 decision, the jury has to do much like what I've just
sentence 19 that judges do in sentencing because, once again, the
particular 20 is a very individual decision. It applies to a
21 person, a human being.

and 22 And, you know, this sentencing decision is --
23 these sentencing issues are not a part of the trial for
24 determining guilt. In fact, the jury may not consider
charge. 25 punishment in deciding whether the evidence proves the

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1 Follow?
2 A. Right. Yes.
types of 3 Q. So in the event of a guilty verdict for certain
of 4 crimes, then this punishment decision becomes a matter
that are 5 importance and a necessity. Now, the kinds of crimes
which kind 6 involved -- and we asked you what you thought about

7 of crime which may deserve which type of punishment.

8 But, essentially for our purposes now, you can
take it

9 as the law that the only time that a death penalty can
be

10 considered is where there has been an intentional
killing of

11 other people. So we're talking about murder cases.

12 A. Okay.

13 Q. And in such a case, then, if there is a finding of
guilt,

14 then the jury has more to do, and that is, make this
choice --

15 and the choices are life in prison with no possibility
of ever

16 getting out -- I mean to put it plainly, that person
will die

17 in prison when his time comes. Secondly is death, to
be put to

18 death by the government, in the end, through a court
order.

19 And the third is that neither of those two sentences
should be

20 imposed and the matter go back to the court to decide.

21 A. I see.

22 Q. So those are the choices to be made. But before
that

23 choice can be made, the jury has to hear all of this
additional

24 information of the same type as a judge would consider
for a

25 sentencing where it wasn't life or death, just as I've

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1 described.

2 Now, that's done with what is really a second
trial,

3 and it is at that time that the lawyers on both sides,
just as

4 at the trial, will present conflicting information to
the jury

5 so that -- and we can't talk about specifics here
because we

6 don't know what the evidence is going to be in this
trial, and

7 we certainly don't know whether there will ever be a
sentence

8 hearing; and if there is one, we don't know what will
be

9 presented. But kinds of things that get presented in
such

10 cases where a jury is asked to decide include: Again,
the

11 circumstances of the crime, what happened, who was
affected by

12 it, how were they affected and so forth.

13 And we would expect the Government lawyers to
bring

14 that in. And again, this is witnesses, exhibits, the
very same

15 process as the trial itself. And the Government could

be

-- that 16 expected to come forward with things that they believe
by the 17 Government counsel believe -- would support a decision
18 jury that death is a deserved punishment.

19 The defense, on the other hand, will present
these 20 things of the same type that I've talked about in judge
who he 21 sentencing: All there is to know about the defendant,
what 22 is, what he is, what's happened to him in his life and
23 he's done to others in his life, the story about the
defendant.

24 And then at the end of it, the judge reviews
with the 25 jury all that they have heard and attempts to assist in
the

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1 analysis by saying: Now, these are the things that
you've 2 heard that you can consider as aggravating factors,
things that 3 support the view that death is the deserved punishment.
These 4 are the things that you've heard that you should
consider as 5 mitigating factors -- that is to say, mitigate against

the
though
people,
including
the
those
6 decision of death and that support the view that even
7 this person has been found guilty of killing other
8 because of all of these factors and circumstances,
9 his individual life and his characteristics, including
10 something about his present attitudes and opinions and
11 like -- and then you have to weigh those and consider
12 aggravating and mitigating factors.

13 But there's no formula for that. This is not
a matter
14 that you can put on a scale or do a mathematical
computation.
15 It's a matter of judgment. And it's a matter of
sitting in
16 judgment on the life of another human being. And in
the end --
17 and, you know, this is why it really comes to the jury
-- we
18 ask people to come in here representing the community
in a way
19 and reflecting that to make a decision which is moral
in
20 nature, subjective, should this person live or die.
That's the
21 question.

22 Do you have any question about this
explanation of the

23 process and what is involved?

24 A. No.

25 Q. Then with all of that in mind, I must ask you this

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will be 1 question, and that is: Whether you believe that you

the 2 able, if called upon, to consider all of these things,

characteristics and 3 circumstances of the crime, the individual

being 4 circumstances of the defendant, himself, as a human

live or 5 before arriving at a decision as to whether he should

6 die?

all the 7 A. Yes. You know, I've found myself thinking about it

8 time --

9 Q. Sure.

honest, 10 A. -- since I've been called for jury duty. And to be

really 11 I think that it's easy for us to say that we believe in
12 something; and then when it becomes time for us to

13 impose it, it is much different.

14 Q. Yes.

15 A. And I've just struggled with that personally. I

think that

16 I could do that; but to be honest, I struggle with
that.

17 Q. We understand that, and who can say, you know,
recognizing

18 the awesome responsibility that is involved in such a
decision

19 about another person's life.

20 A. Right.

21 Q. Nobody here minimizes how difficult such a question
is.

22 A. Uh-huh.

23 Q. And yet what we have to find out is whether you and
other

24 persons coming in to serve will do what the law
requires you to

25 do and consider all of these things before you make a
judgment

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1 like that.

2 And of course you would be one of 12 in terms
of the

3 ability to talk it over and consider and weigh and all
that;

4 but in the end, each person has to make this decision.

5 A. Right.

6 Q. Now, can you do that?

7 A. I think I could.

8 Q. Okay.

9 THE COURT: Well, thank you for exploring all
of these
10 things with us. And a lawyer for each side will have
an
11 opportunity to ask you some more, so please bear with
us just a
12 bit longer.

13 JUROR: Okay.

14 THE COURT: Mr. Ryan.

15 MR. RYAN: Thank you, your Honor.

16 VOIR DIRE EXAMINATION

17 BY MR. RYAN:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. My name is Pat Ryan. I'm the United States
Attorney in
21 Oklahoma City. I'm here with my fellow prosecutors to
present
22 the case against Terry Nichols. I have just a few
questions.
23 And if I could ask you to, would you turn to page 9 of
your
24 questionnaire. I wanted to go over your employments.
And I'd
25 ask you to help me not use any more revealing
information than

1 is necessary.

2 A. Okay.

3 Q. I'd just like to get a sense of your actual duties
in each
4 of your jobs. So if you'd go back to Question 42
there,

5 subparagraph D.

6 A. Right.

7 Q. Tell me what you did, what your actual duties were.

8 A. I'm sorry, what letter?

9 Q. D, the first --

10 A. B.

11 Q. Your first job that was listed there.

12 A. I was a social worker in a hospital. I was a
medical

13 social worker, and I was responsible for discharge
planning for

14 patients that were going home and continue to need care
after

15 they returned home. I was involved in providing
emotional

16 support to families and patients with difficult
diagnoses. I

17 was responsible for -- we had -- we were in an area of
18 Philadelphia where there were housing problems. I was
also --

19 often involved in helping people find appropriate
housing for

20 themselves.

up, or 21 Q. All right. Thank you. And then the next paragraph

22 subparagraph up, the -- from 1982 to '85.

23 A. Right.

24 Q. What was your -- what did your job there entail?

basically 25 A. I was a school social worker at that time. And I

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1 provided individual counseling for kids who were
dealing with

2 family problems, peer problems. I did some group
therapy. We

3 dealt with, oh, a huge range of -- any kind of problem
that the

4 child was dealing with that was affecting their
schoolwork:

5 Divorce, abuse, just, you know, in general, just things
that

6 were going on in the child's life; worked with
families,

7 provided referrals to outside resources.

8 Q. So both these jobs involved social work, but they
were

9 really quite different, as you've explained them?

10 A. Yes.

11 Q. All right. The subparagraph B looks fairly

12 self-explanatory. You were a schoolteacher?

13 A. Yeah, I was a preschool teacher for a year.

14 Q. For what age groups?

15 A. They were two and three.

16 Q. Now. One of the facts that -- are you aware of the
fact

17 that children were killed in the Oklahoma City bombing?

18 A. Yes.

19 Q. And some of those children were quite young --

20 A. Right.

21 Q. -- would be described as preschool-age children.
Have you

22 thought about the fact whether that -- your having
worked with

23 those children in the past, that age group, would have
any

24 impact on your jury service?

25 A. Well, you know, I just think personally, I felt
very, very

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1 sad and very sorry for those families. You know, I
know as a

2 juror you would do everything that you could to put
some of

3 those feelings aside, but I have felt very sad and very
sorry

4 for those families.

feel 5 Q. Can you recognize the distinction from how you may

decide 6 sorry about them, on the one hand, to how you have to

unemotional 7 the guilt of the defendant on the facts in an

8 manner?

9 A. Yes.

appears to be 10 Q. Again, go up to subparagraph A. Again, that

for a 11 fairly self-explanatory, but if you would speak to us

12 moment about that?

worked as a 13 A. Sure. My children were in that school, and I

going into 14 teacher's aide with a special education department,

individual 15 the classroom and helping kids that just needed

tutoring. 16 attention. And then also did some individual reading

earlier. 17 Q. And you've explained your current job to his Honor

18 A. Yes.

bachelor's 19 Q. In the course of your studies, either in your

courses in 20 program or in the master's study, have you taken any

21 the criminal law area?

22 A. Yes, I have, in the past.

23 Q. Could you generally describe what those entailed?

24 A. You know, from what I remember, just pretty general

25 information about the law.

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1 Q. Okay.

2 A. I don't recollect a lot from them.

3 Q. Either through your coursework or through your work
as a

4 social worker, have you developed any views about

5 rehabilitation of criminal offenders?

6 A. You know, I would say just in general -- I don't
know that

7 I have any strong views about that.

8 Q. Have you developed any views as to whether a
society has an

9 obligation to rehabilitate a criminal offender?

10 A. I think that I would say that ideally, I think that
that

11 would be a good thing, to provide rehabilitation. I
think in

12 some cases, it's probably very possible and very
realistic. I

13 think in others maybe it's not.

14 Q. All right. Now, you indicated to us that you had
followed

15 the Simpson case and the McVeigh case somewhat closely?

16 A. Uh-huh.

17 Q. Is that correct?

18 A. Just in fact that I watched the news and read the newspaper

19 and that kind of thing.

20 Q. And, you know, his Honor described this two-step process or

21 two-trial process where you have the guilt phase and the

22 sentencing phase. Do you remember that occurring in the

23 McVeigh case?

24 A. Slightly.

25 Q. You remember there were two different verdicts and a couple

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1 of weeks in between?

2 A. Yeah; right.

3 Q. And that couple-of-week period was that time frame that his

4 Honor was speaking to you about when this additional evidence

5 of mitigation from the defense and aggravation from the

6 Government.

7 A. Right.

8 Q. Did -- you indicated that you had read quite a bit of media

9 about that case but that you hadn't read much about
10 Mr. Nichols.

11 A. Right.

12 Q. Do you know any facts at all that are alleged by
the
13 Government against Mr. Nichols?

14 A. I --

15 Q. When I say "know," I mean have you read or seen or
heard
16 any of the allegations particular to Mr. Nichols?

17 A. I just -- in general, I think that I know, you
know, that

18 the charges were that he was involved in making the
bomb. I

19 think that's what I remember. That's what I think that
I know.

20 Q. Very broadly?

21 A. Right.

22 Q. But in terms of specific acts or specific
allegations --

23 A. No.

24 Q. -- you've read nothing?

25 A. No, I haven't read much.

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1 Q. So as you sit here today, you could presume that he
was

2 innocent?

3 A. Uh-huh.

4 Q. Is that correct?

5 A. I think I could.

6 Q. If you would, please turn to page 28 of your
questionnaire.

7 Under subparagraph B there you state, "I would
agree

8 with the death penalty for many cases of murder." What
did you

9 mean by that?

10 A. Well, I think in cases of where it appeared to be
very

11 planned, very intentional, I would agree with the death
penalty

12 for that.

13 Q. Again, we're talking about the way the law as you
would

14 write --

15 A. Right.

16 Q. -- we're talking about what you've written there.
And in

17 the questionnaire, under subparagraph D, you put in
"most," and

18 it seemed like there might be a word missing there.

19 A. Hmm.

20 Q. In most murders; is that what you were meaning?

21 A. I think, yeah, in most cases, probably. Well, in
most

22 cases of murder.
23 Q. Okay. And then you list a couple of reasons there
why you
24 might distinguish among different kinds of murder cases
in
25 addition to some of the factors you mentioned earlier
about

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1 premeditation, the planning, and the like?
2 A. Right.
3 Q. Am I reading you correctly?
4 A. Yes, uh-huh.
5 Q. Now, as you sit here today, are you open, if you
were to
6 find the defendant -- or any defendant guilty of murder
-- are
7 you open to considering all three punishments --
8 A. I think so.
9 Q. -- of life, death, or some other sentence by the
court?
10 A. I think I could.
11 Q. And will you wait to decide on what that sentence
should be
12 until you've heard all of the evidence in mitigation
and in
13 aggravation?
14 A. Yes.

15 MR. RYAN: Thank you for answering my
questions.

16 THE COURT: Mr. Tigar.

17 MR. TIGAR: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. TIGAR:

20 Q. Good afternoon again.

21 A. Good afternoon.

22 Q. My name is Michael Tigar. And Ron Woods and I were
23 appointed by the United States district judge in
Oklahoma in

24 May of 1995, which is when the Government filed charges
with

25 respect to Mr. Nichols about the April 19, 1995,
bombing in

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1 Oklahoma City.

2 I, too, have a few questions. Are you
nervous?

3 A. Slightly.

4 Q. Why, any particular reason?

5 A. I just think the whole setting.

6 Q. A little intimidating?

7 A. Pardon me?

8 Q. A little intimidating?

9 A. A little intimidating, yes.

10 Q. Now, in your questionnaire, you mention that you
had done

11 some political volunteering in Utah --

12 A. Uh-huh.

13 Q. -- in 1988. And I just wondered at that time, did
you read

14 or hear anything about a controversy involving campaign

15 financing involving a Democratic candidate for governor
of

16 Utah?

17 A. Not that I remember.

18 Q. So nothing like -- about that sticks in your mind?

19 A. No.

20 Q. All right. Now, at page 32 of your questionnaire,
if you

21 could take a look. You talk about the need for gun
control

22 laws?

23 A. Right.

24 Q. And could you tell me a little more about that,
what your

25 thinking is there.

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1 A. Yeah. I think that -- I think guns are very, very
scary

2 thing. I think that -- I feel like it's too easy for
people to
3 own guns, and I think it's -- it scares me when I think
about
4 our cities and communities where guns are available and
in the
5 hands of lots of people.

6 Q. Okay. Now, if there was testimony in this case
from people
7 who make their living selling guns, going to these gun
shows
8 that you see advertised on billboards and all that,
would you
9 be able to judge the believability of those people just
based
10 on what you heard without, you know, loading it one way
or
11 another based on your feeling that, gee, that's not a
very good
12 profession to be in?

13 A. Uh-huh. You know, I can only say that I would try.
I do
14 feel strongly about guns. I don't think I would be
prejudiced
15 against somebody for being in that business.

16 Q. Okay. And then I'd like to ask a little more about
page
17 22, when you talked about the criminal justice system.
Now, I
18 think in talking to his Honor, you said that one
example of a
19 case where you didn't think it worked too well was the

case of

20 O. J. Simpson?

21 A. Right.

probably 22 Q. And you said, as I remember it, you thought he was

23 guilty.

24 A. Uh-huh.

37, at 25 Q. And what interested me about that is that at page

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formed any 1 Question 160, you say about Mr. Nichols -- "Have you

2 opinion?"

was 3 "Yes." And then you write, "I think that he

4 probably involved in the bombing."

5 A. Uh-huh.

what do 6 Q. And you can understand my concern. On what -- on

probably 7 you base the view that you expressed here that he was

8 involved in the bombing?

9 A. Well, you know, I think what I was doing was I was

what my 10 answering very honestly. If you, you know, asked me

on what I 11 impression was at the time, I -- you know, I based it

12 had read and what I had seen on television.
13 Q. Sure. And can you remember any particular things
that --
14 A. I really can't.
15 Q. Okay. Let me just -- if I could probe that a
little
16 deeper --
17 A. Uh-huh.
18 Q. -- 'cause we appreciate your leveling with us and
reaching
19 in and answering these questions because it's obviously
very
20 important to everybody.
21 A. Uh-huh.
22 Q. Do you remember hearing about how Mr. Nichols made
contact
23 with law enforcement people, for example?
24 A. No.
25 Q. Do you remember reading anything about whether he
was

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1 married or not married or had kids or didn't have kids?
2 A. I think I remember something about him being
married, but
3 I'm not sure.
4 Q. Do you remember where he was, according to the

media, on

5 the day of the bombing?

the

6 A. I think that I remember that he was at his home in

7 Midwest.

8 Q. But not in Oklahoma City?

Oklahoma

9 A. That's what I think I remember, that he wasn't in

10 City.

make the

11 Q. And you mentioned something earlier about helping

12 bomb, something like that.

13 A. Uh-huh.

about

14 Q. What was it that you remember reading or hearing

15 that?

That's -- if

16 A. Just that. In, you know, fairly vague terms.

would --

17 someone were to ask me what his involvement was, I

18 that's what I remember.

different

19 Q. Okay. And -- well, then, to turn to a slightly

you've

20 and related subject -- all of your professional life,

with

21 been involved with -- most of your professional life,

22 children, with families and children.

23 A. Uh-huh.

24 Q. And I notice that -- I think this was at page 36.

You said

25 that -- 158, the question -- mostly stories about the
victims

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1 and their families, that's what you focused on. And
then at

2 page 33, you had talked about having followed the
Oklahoma City

3 case, TV, radio, newspaper, magazines, conversation,
heard

4 other people, and you checked when asked how much
coverage,

5 "Very much."

6 A. Uh-huh.

7 Q. What was it about the victims and their families
that got

8 to you? What sticks in your mind about that?

9 A. Well, I think that I -- I felt that it could have
been any

10 of us.

11 Q. Uh-huh.

12 A. I think I felt like it was something that we should
all be

13 very concerned about and very interested in. I think
that --

14 personally I always wonder how people cope with that
kind of

15 thing. And I remember watching a -- I think it was a

year

16 anniversary show about how the families were doing. I
just

17 felt very interested in that.

18 Q. Do you remember seeing or reading or hearing of the
19 reaction of people to the verdict of guilty in the
McVeigh

20 case?

21 A. Yes, I do remember that.

22 Q. Do you remember seeing or hearing reactions of the
victims

23 and their families?

24 A. Yes.

25 Q. What can you remember about that?

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1 A. I remember watching on the news as the people left
the

2 courtroom and just seeing some of the family members
leaving

3 the courtroom. I mean I can sort of picture some of
them in my

4 mind.

5 Q. Can you -- do you have any picture of any of them
being

6 jubilant?

7 A. I think I remember someone being jubilant.

their
jury?

8 Q. Now, do you remember the coverage of victims and
9 families when the death verdict was rendered by the

10 A. I think I do, yeah.

11 Q. And what do you remember about that?

the two
basically,

12 A. Sort of the same thing. And I think I might have
13 sort of mixed up. But I remember -- I just remember
14 you know, watching as they left the courtroom.

or your

15 Q. Did you talk about that at home with your husband
16 children?

17 A. Uh-huh.

18 Q. What did you talk about?

with my
reaction

19 A. You know, I think that one thing I talked about
20 children was just the idea it was a very -- you know, I
21 remember my one daughter had a -- sort of a strong

McVeigh had
she felt

22 that she was glad the person that -- that Timothy
23 received the death penalty. And I just felt bad that

that's, you

24 that way in terms of I just still -- I don't think

an

25 know, a -- it doesn't really make it better or provide

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our 1 answer or I think it's just a very sort of sad part of
2 country's history.

you 3 Q. I'm sorry to be asking you about these issues, but
4 understand why we'd be concerned.

5 A. Yes, I do.

talking 6 Q. Okay. Do you remember talking about it at work,
7 about the reaction of people at work?

summertime, 8 A. No, I don't think I did. I think it was in the
9 and at the time I wasn't working.

this 10 Q. Okay. The . . . if there is -- at the trial of

that's going 11 case -- at the trial of this case, the first thing

will 12 to happen is that, after the lawyers make these opening
13 statements, the Government will put on evidence; and we

14 cross-examine every one of their witnesses.

15 A. Uh-huh.

present 16 Q. And even though we're not required to, we will

know, 17 evidence. Terry Nichols and the team will present, you

Nichols 18 the witnesses to contradict their theory. And as Mr.

The 19 sits there, as the Judge said, he's presumed innocent.
prove 20 question then for the jury will be: Did the Government
first 21 this case beyond a reasonable doubt. That will be the
to a 22 part. Now, we don't concede that there will ever get
that we 23 punishment phase. In fact, we presume -- all presume
can't call 24 won't. But should there be a verdict of guilty, we
have to 25 everybody back in and start asking about this, so we

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1 ask now.
2 A. Uh-huh.
3 Q. So I want to first ask: If you were to hear
testimony from 4 people who were victims of this bombing, this horrible
thing, 5 how do you think, based on your experience, what you've
seen on 6 television, that you would react to that?
7 A. Well, I think that -- you mean in terms of how I
would 8 react in terms of my emotional reaction or --
9 Q. Yeah, sure.

would be 10 A. I think it would be very -- I anticipate that it
11 very difficult to hear the testimony, for me.
question 12 Q. Now, I notice that -- I think in answer to the
you'd 13 from the Court as to whether you could put aside what
think 14 read and heard and seen before coming in, you said, "I
15 so."
16 A. Uh-huh.
jumped in a 17 Q. And I want to probe that a little more. If I
driver, 18 cab with an hour to go for my airplane and said to the
said, "I 19 "Do you know the way to the Denver airport," and he
might 20 think so," I might want to ask more questions because I
21 want to get out of that cab and get in another one.
22 A. Right.
do you 23 Q. Can you help me with that? How do you feel -- what
24 see yourself doing to approach this case?
is I 25 A. What I mean -- what I mean when I say "I think so"

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Juror No. 488 - Voir Dire

1 think it's difficult to come up here and say that you

can

2 absolutely do something before you've heard any
testimony.

3 Q. Okay.

4 A. And I think that's where my -- my "probablies" and
my

5 "thinks" and things like that are coming in because I
think

6 until you've heard the testimony, I don't know that I
think

7 that anybody could say that they could absolutely feel
one way

8 or the other.

9 Q. And I appreciate your candor about that. At this
part

10 where the Government tries to, you know, prove beyond a

11 reasonable doubt, there really are two issues. I mean
one way

12 you could say one is: Well, what happened? And, boy,
that

13 evidence has a lot of power to it, as we talked about
it.

14 And then another question is: Well, what
evidence

15 does the Government actually have that says beyond a
reasonable

16 doubt that Terry Nichols here had something criminally
to do

17 with it.

18 A. Uh-huh.

19 Q. And do you think as you sit there that you could
keep

20 those, you know, separate enough?

21 A. I think I could.

I'm

22 Q. Okay. But -- in your work -- you understand what

of, you

23 asking -- you see a lot of folks that are in the grip

sometimes

24 know, terrible things that are happening to them and

25 emotion just pushes aside the other things.

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Juror No. 488 - Voir Dire

1 A. Uh-huh.

2 Q. But you think you could do that?

3 A. Yes.

this

4 Q. Okay. Now let's talk about this other question,

it, I'm

5 hypothetical question; and necessarily in talking about

say

6 not going to talk about this case (a) because we don't

facts of

7 we're going to get there, and (b) none of us knows the

full of

8 this case. We're not supposed to be trying to pump you

9 things or influence you.

10 A. Right.

multiple

11 Q. In a case in which a defendant was convicted of

beyond a 12 premeditated murders, okay, and the jury had decided
13 reasonable doubt guilty of that, many murders, then the
14 evidence would move on; there would be another trial.

15 A. Right.

very well 16 Q. And one question about that trial, as there might

this 17 be testimony from victims and their families, saying,

left 18 happened to us and a great big hole in our life that's

19 there. And then there might also be testimony from the
20 defendant's mom, dad, wife, children. Would you look
at the

you -- 21 testimony of those people any differently, or how would

yourself 22 if you've thought about it -- how would you see

23 looking at that?

asking in 24 A. I think I could look at it objectively. Are you

other? 25 terms of being too sympathetic for one side or the

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1 Q. I guess that's the bottom-line question.

2 A. Yeah, yeah, yeah.

3 Q. Because, you know, there are going to be tugs both

ways.

4 A. Both sides.

5 Q. How do you think --

6 A. All I can say is I think I could look at it
objectively

7 and I think I could.

8 Q. Okay. All right. Well, let's back up a little
ways. Your

9 views on the death penalty generally, without regard
for the

10 moment about the Judge's explanation of the law, are
these

11 views that you've held a long time?

12 A. Yes.

13 Q. When is the first time you can remember thinking
about this

14 issue?

15 A. Oh, gosh. I don't know. Probably my adult life.

16 Q. Okay. Can you remember thinking about it in any
particular

17 case you can think about from college or graduate work?

18 A. I can't think of anything specific like decide a
case, but

19 I think as I've heard things on the news, it's made me
think

20 about it.

21 Q. Have you talked to your husband, your kids about
it?

22 A. Yes.

23 Q. And do you think that the views you have now are

pretty

24 deeply rooted or strongly held?

25 A. Yes.

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Juror No. 488 - Voir Dire

look at 1 Q. Without regard to what the law is, if you could

this 2 page 28 of your questionnaire. You say that you'd --

most 3 question sub D, in most cases or murders or whatever --

4 except for self-defense or mental illness?

5 A. Right.

exceptions on 6 Q. So if you were writing a law, those would be

7 the death penalty; right?

8 A. Right.

that except 9 Q. As -- when you wrote this, did you have a sense

commit a 10 for self-defense and mental illness, if somebody did

appropriate 11 premeditated murder, that the death penalty was

family 12 without regard to, you know, their growing up and their

13 background and so on?

be able 14 A. Well, yeah, I would think that, you know, I would

defense 15 to look at it on an individual basis, except for self-
16 and mental illness.

17 Q. I'm sorry; I didn't understand.

-- like 18 A. I thought you were asking me if someone was -- did
I think 19 premeditatedly murder someone, would I be able -- would
penalty 20 that across the board they should all receive the death
21 or --

22 Q. Yes; right.

that 23 A. And my answer is I think I would be able to look at
24 time on an individual basis with everything included.

you or 25 Q. Okay. And because you said when the Judge asked

4232

Juror No. 488 - Voir Dire

that, but 1 somebody -- my note here says, "I think I could do
2 who could say?" Do you remember that?

3 A. Sort of, yeah.

that"? 4 Q. Well, what did you mean by "I think I could do

5 A. In regard to --

6 Q. In regard to punishment.

7 A. To punishment. I think that I meant that I think

that I

8 could impose the death penalty.

different

9 Q. Okay. And then I'd like to come at this from a

directed

10 direction. Did you understand that the questions were

or not?

11 at asking you whether you could impose a death penalty

12 A. Yeah.

minute

13 Q. Well, let me now back up and talk about this for a

14 in a context.

15 A. Okay.

present

16 Q. If the case -- if a case gets to the question of

17 punishment, the Government presents evidence, they

mostly;

18 evidence of these aggravating factors, about the crime,

defendant

19 the defense presents evidence about the role of this

have also

20 as distinguished perhaps from the role of others that

family

21 been shown to be involved, they present evidence about

history,

22 background and about the defendant's life, employment

so on,

23 sense of regret about whatever the involvement was, and

24 all of these individual factors --

25 A. Uh-huh.

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Well, 1 Q. -- and then the judge gives instructions saying:
2 these are the aggravating things about which you heard
3 something, these are the mitigating things, you -- each
and 4 individual juror has to look inside himself or herself
say, in 5 think about what's appropriate. And the judge will
penalty, the 6 essence, you get three choices: One is the death
third is 7 other is life without possibility of parole, and the
determine some 8 that under certain circumstances, the judge will
options. 9 sentence that is less than those two. Those are the
found guilty 10 Now, in a case in which the defendant was
open to 11 of multiple premeditated murders, would you, first, be
12 consider all the evidence at a second phase of a trial?
13 A. Yes.
choice 14 Q. And would you go into the decisional process, your
15 leaning one way or another?
know. 16 A. I don't think so. I don't think I would -- I don't
17 I mean it's hard to say without the information.

18 Q. Okay. I understand.

19 A. Yeah.

20 Q. And it's necessarily hypothetical.

21 A. Right.

22 Q. And when you say "I don't think so," I just want to
follow

23 up just one time.

24 A. Uh-huh.

25 Q. You don't ever get to a punishment phase without a

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Juror No. 488 - Voir Dire

1 defendant having been convicted of premeditated murder.

2 A. Okay.

3 Q. So I just want to know: If you start out with a
completely

4 open mind about the choices, or if you feel yourself,
you know,

5 starting out with some preconception --

6 A. -- about the choices of the sentencing?

7 Q. Right, the sentencing choices.

8 A. I believe I would have an open mind about the
choices.

9 Q. Okay. Do you have some reservation about it as you
talk to

10 me?

11 A. You know, I just -- I just feel like it's a -- my

12 reservation is that I believe that I would need more
13 information or -- you know, before I could say. But I
feel

14 like I can be open-minded and I can look at facts
without being

15 prejudiced in either way, in a lot of cases.

16 Q. Okay.

17 A. A lot of situations.

18 Q. And you've listened to the Judge today talk about
what the

19 law is and what the framework is.

20 A. Right.

21 Q. Do you think that you'd be able to follow the
Judge's

22 guidance to the extent the Court was giving it about
how to

23 make this decision?

24 A. Yes.

25 Q. In that context, you recognize that a verdict in
this case

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Juror No. 488 - Voir Dire

1 is something that people are going to talk about?

2 A. Right.

3 Q. Just as people talk about the O. J. Simpson
verdict.

4 A. Right.

5 Q. And today we've talked about your perception,
shared by

6 many people, gee, those jurors didn't come to a
decision with

7 which people agree.

8 A. Uh-huh.

9 Q. Right?

10 A. Right.

11 Q. Do you believe that those jurors thought that they
did a

12 good job?

13 A. Yes, I believe they thought they did a good job.

14 Q. And if you were to look at the evidence in this
case and

15 call it just the way you saw it, keeping in mind the
Court's

16 instructions, they didn't prove it, by golly, it's a
not

17 guilty, would you be able to go back home and say,
Well, I saw

18 it and that's my verdict?

19 A. Yes, I could.

20 Q. So that as you sit there today with all of your
experience

21 and so on, can you look Terry Nichols in the eye and
say, I'll

22 follow the law and I'll give you a good, fair trial?

23 A. I could.

24 MR. TIGAR: Thank you.

and your 25

THE COURT: Well, we do appreciate your time

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going to be 1

answering all of these questions for us. We're not

jury 2

able to tell you whether you're going to serve on this

You 3

today, and we can't even tell you when we can tell you.

very 4

know, we've got to go through this process, and it's a

while 5

important part of a trial. So please bear with us a

there. We 6

longer and live with the uncertainty that will be

7 will let you know as soon as we can.

in any 8

And if anything happens that changes your life

an 9

way -- I mean, you know, you get called out of town on

know 10

emergency or something like that could occur -- let us

11 immediately. We want to stay in touch with you.

12 JUROR: Okay.

conduct 13

THE COURT: And we ask you now that you

serve on 14

yourself as a member of the jury, assume that you will

15 this jury and make the decisions that we've been

talking about

16 here and be able to do it, as you say you can, fairly
and under

17 the law and the evidence. So be careful --

18 JUROR: Okay.

19 THE COURT: -- about your conversations, about
the

20 things that you read, see, and hear so that you can
come back

21 and do the job.

22 You're excused for now with our appreciation.

23 JUROR: Thank you.

24 THE COURT: We have 281.

25 You have the copies of the extension.

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1 MR. WOODS: Yes, your Honor.

2 THE COURT: Good afternoon. Would you first
stand,

3 raise your right hand, and take the oath from the
clerk,

4 please.

5 (Juror No. 281 affirmed.)

6 THE COURTROOM DEPUTY: Thank you.

7 THE COURT: Please be seated there by the
microphone.

8 And you don't have to lean over and talk into it. It

will pick

9 you up --

10 JUROR: Okay.

11 THE COURT: -- just where you are now.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. And you know that we're here to discuss the possibility of

15 your serving on the jury for the trial of the United States

16 against Terry Lynn Nichols?

17 A. Yes.

18 Q. And you got a summons notifying you that you were among

19 those who came out of a chance selection system to be called on

20 for jury service. You wrote a response to some questions, sent

21 them back in, then you got a notice to appear on September the

22 17th at the Jefferson County Fairgrounds to answer a long

23 questionnaire.

24 A. Yes.

25 Q. And you came out there, met with us at that time. And I

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mean 1 want to renew your acquaintance with the people here, I
afternoon. 2 identify them again so you know who's with us this

Lawrence 3 And you may remember my introducing Mr.
Government. 4 Mackey and Miss Beth Wilkinson, attorneys for the

James 5 They are also joined now by Mr. Patrick Ryan and Mr.
when we 6 Orenstein, additional attorneys who were not with us
7 met before.

8 Also with us then were Mr. Michael Tigar and
course 9 Mr. Ronald Woods, attorneys for Terry Nichols; and of
defendant in 10 Terry Nichols was there, Terry Nichols being the
11 the case.

background of 12 And I then explained something about the
13 the case, and then you were asked to complete a long
14 questionnaire, and you did. Well, actually, you didn't
15 complete it that day, but you gave us a lot of
information and

back to 16 then signed off on it; and just today we gave the form
17 you and you finished it up; correct?

18 A. Yes.

19 Q. And why was it that you didn't finish it all out
there?

20 Did you run out of time?

21 A. That's correct. I didn't have enough time.

22 Q. Okay. Some others did, too, so we didn't -- you
know, that

23 doesn't say anything against you, that you ran out of
time,

24 because I told you that we would complete it later, and
you did

25 that, I guess, during the noon hour.

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1 A. Yes.

2 Q. And we now have or you should have your
questionnaire both

3 as you wrote it on the 17th of September and then as
you

4 completed it today.

5 A. Yes.

6 Q. And we're going to ask you a few questions about
your

7 answers, but I want to renew what I said then about
respecting

8 your privacy, and that we are perfectly aware that in
answering

9 a lot of these questions, you gave us some information
which

10 you don't want to share with the world, and so we try
to

11 balance off your personal interests and the public
interests

12 here; and that's why we're proceeding without
identifying you

13 by name and also bringing you in and out of the
courthouse so

14 people can't take your pictures and put them on
television or

15 whatever.

16 And you recognize that as we ask you some
questions,

17 we'll be guarded so as not to reveal your identity.
But you

18 should know that what we do here in open court is just
that

19 now, it is open and public. Understand?

20 A. Uh-huh.

21 Q. And I did go over a number of points with you first
with

22 respect to the background of the case. And I'd like
just to

23 repeat that now so that on the record here we have a
clear

24 understanding of the background for the questions that
follow.

25 So you know that I -- and you probably knew
most of

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1 those things before you heard it from me -- but I did

review

2 that this case arises out of an explosion that happened
in
3 Oklahoma City, Oklahoma, on April the 19th of 1995,
resulting
4 in the destruction of a federal office building there
and the
5 deaths and injuries of a lot of people who were in the
6 building; that after that, the Government, through its
counsel,
7 filed charges in Oklahoma City, in the Federal Court
there
8 charging a man named Timothy James McVeigh, together
with Terry
9 Lynn Nichols, and then the indictment -- that is, the
statement
10 of charges -- reads "and other persons not named"
entered into
11 a conspiracy or an agreement to bomb that building and
to kill
12 and injure people in it.

13 And then the indictment alleges in a total of
11
14 counts or specific charges that in addition to the
conspiracy
15 or agreement to do so, they carried out such a bombing
and that
16 among the charges there are eight murder charges
accusing the
17 defendants of the premeditated murder of eight law
enforcement
18 agents of different agencies of the national government
who

these 19 were in the building and died in the explosion. And to
thereby 20 charges the defendants entered their not guilty pleas,
21 creating the issues for trial. You remember that?
22 A. Yes.
history of 23 Q. And then, as I explained, that in the procedural
here to 24 the case, the case was moved from Oklahoma City over
there in 25 Denver because of a concern about asking people over

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on a 1 Oklahoma City where this happened to come in and serve
Denver, 2 jury and to do so impartially. So the case did come to
that 3 and then I entered orders for separate trials requiring
4 the evidence be considered separately with respect to
and that 5 Mr. McVeigh and separately with respect to Mr. Nichols
of the 6 there be different juries to hear that evidence because
indeed 7 differences that there may be in that evidence. And so
related to 8 separate trials were ordered, and the case as it

You 9 Mr. McVeigh was submitted to a jury earlier this year.
10 recall that?
11 A. Yes.
relates 12 Q. And that jury, after hearing the evidence as it
on 13 to -- or related to Mr. McVeigh, found him to be guilty
hearing on 14 those charges. And there was a second trial or a
couple more 15 the question of the sentence. And after hearing a
was asked 16 weeks of testimony and considering exhibits, the jury
death 17 for its recommendation on sentence and recommended a
jury to 18 sentence. And then we now start and are selecting the
relate to 19 start the trial of the evidence as it relates or may
no 20 Mr. Nichols. And the outcome of the McVeigh case has
21 relevance now to this case. You understand that?
22 A. Yes.
about 23 Q. And whatever anybody may have seen, read, or heard
trial 24 the evidence that was submitted in the Timothy McVeigh
the 25 must set it aside and not consider it because we start

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1 trial of Mr. Nichols with a clean page. You understand
the
2 importance --

3 A. Yes, I do.

4 Q. -- of that?

5 To do otherwise would violate the very reason
for the
6 separate trials order because that would be allowing
one case
7 to spill over into the other, and we must not permit
that.

8 And then I explained about what a jury has to
do, what
9 is the role of the jury in our criminal justice system,
and
10 reviewed with you briefly. And I want to do that
again, too,
11 so again we have a basic foundation for what we're
doing here.

12 So you recall that I explained -- and I don't
mean to
13 suggest that you didn't know these things before I
explained
14 them to you, but again I simply want to repeat this for
the
15 record -- that under the Constitution of the United
States, all
16 persons charged with crimes in the courts of this
country,
17 regardless of who that person is or what the charges

are, the

18 rule applies across the board, all persons are presumed
to be
19 innocent of those charges; and that presumption carries
20 throughout the trial and entitles that person to an
acquittal,
21 a not guilty verdict, unless 12 people serving on a
jury,
22 considering only the evidence at the trial and
following the
23 law, decide that the evidence shows him guilty beyond a
24 reasonable doubt. You've heard of these points before?
25 A. Yes, sir.

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1 Q. And no person -- as I said then and repeat now, no
person
2 who is accused of any crime has any burden or duty of
proving
3 himself not guilty. In fact, no person who's accused
has any
4 burden or duty of proving anything or of calling any
witnesses,
5 offering any evidence or indeed taking the stand and
asking --
6 answering any questions or explaining anything because
a person
7 has a right under our constitution to remain silent and
to

8 simply challenge the Government's evidence brought in
against

9 him. Do you understand that?

10 A. Yes, sir.

11 Q. So it is up to the Government through the lawyers
appearing

12 for the Government to bring in the witnesses and the
exhibits

13 on which the Government relies to support the charges
made.

14 And at the end of trial, the court gives instructions
about the

15 law and says, Now, these are the particular things that
you

16 must find if you were to find the defendant guilty,
outlining

17 the elements of the offense, and then also outlines how
the

18 jury may consider the evidence, including an
instruction that

19 they cannot consider the fact a defendant does not
testify as

20 any evidence in the case. In fact, they can't consider
it at

21 all. They can't infer anything from that like he's got

22 something to hide.

23 But after considering all that they have heard
and

24 seen, the question then becomes: Has the Government
proved the

25 charges beyond a reasonable doubt? If the answer to
that is

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1 no -- that is, after considering it all, the jury does
have a
2 reasonable doubt that the evidence shows the defendant
3 guilty -- the plain duty of the jury is to return a
verdict of
4 not guilty. Do you understand those points?

5 A. Yes.

6 Q. Do you agree with them?

7 A. Yes.

8 Q. And you also accept that you would be bound by them
and
9 must follow them if you were to serve in this case on
the jury?

10 A. Yes.

11 Q. So as Mr. Nichols sits with us here this afternoon,
he's
12 presumed to be innocent of the charges made against
him. Do

13 you accept that?

14 A. Yes, sir.

15 Q. Now, you gave us these answers, as I have already
said, and

16 we made copies for the people who are working here with
us.

17 And they're not going to give this information out to
anybody

engaged 18 else. We're using it only for the purpose that we're
answer that 19 in. And we're not going to have you repeat every
you. 20 you gave, but I want to just review a few things with

were 21 First a few things about your background. You
22 born here in Denver.

23 A. Yes.

you 24 Q. Yes? And went to school here in Colorado, and then
25 went to the School of Mines in Golden?

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1 A. That's correct.

2 Q. Graduated from the School of Mines with a area of
3 concentration in geophysics?

4 A. That's correct.

understand it, 5 Q. And you have followed that as a career, as I

and gas. 6 and you've been with crews who are searching for oil

7 A. Yes, sir.

for seven 8 Q. And that took you into the Middle East and Africa

9 or eight years.

10 A. Yes, sir.

seismic 11 Q. And in the course of that, were you working with

12 crews?

13 A. Yes, that's what I do.

little 14 Q. Okay. And so I -- and we'll get down to this in a

there are 15 bit. The way that works, as I understand it, is that

16 some controlled explosions --

17 A. That's correct.

of the 18 Q. -- under the surface, and then there is a tracking

person gives 19 waves made by the explosion, and that to a trained

20 some indication of the existence of anticlines or other

there's a 21 formations that may give rise to an inference that

22 valuable deposit of oil or gas there.

23 A. Yes.

24 Q. Oversimplified --

25 A. That's a very good explanation.

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crews 1 Q. -- but that's it. So you work with explosives and

2 handling them and then measuring the waves?

3 A. Yes, sir.

we do 4 Q. Well, we'll come back to that in a moment because
explosives, 5 want to know something about your experience with
more about. 6 as I'm sure you can appreciate we need to know some

with a 7 And you're now, as I understand it, working
8 consulting firm.

9 A. Yes, sir.

directly? 10 Q. Rather than with one of the energy companies

11 A. Yes, sir.

process, 12 Q. And the area of consultation is in this very
13 designing and managing such seismic explorations?

14 A. Yes, sir.

jury 15 Q. And with respect to that, you know, of course, that
16 duty in this case would interrupt that work --

17 A. Yes, sir.

we're 18 Q. -- for a considerable amount of time -- that is,
can't say 19 talking about whenever this trial starts -- and we

don't 20 when because we don't know this afternoon, because we
21 know how long this process is going to take to select a
jury.

except on 22 But once it's under way, the trial days are 9 to 5

And then 23 Friday -- Monday through Thursday, and Friday 9 to 1.
free to 24 we're not sequestering the jurors -- I mean jurors are
can't be 25 go home at night and weekends and so forth. But you

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1 there and here at the same time.
2 Have you talked with whoever you need to talk
to at 3 the firm where you work about this interruption of your
work?

4 A. No, not yet. I guess it would basically be me
because for 5 all intents and purposes, I'm self-employed. I work
with two 6 other gentlemen. We share an office. But when I
consult, I 7 work and they don't.

8 Q. Yeah.

9 A. Self-employed.

10 Q. And now, do you travel in the work that you do? Do
you

11 travel around --

12 A. Yes, I do.

13 Q. -- to the various companies and work over their
data?

the 14 A. Yes, I do. I almost do all my work exclusively in
and 15 field on site, so I travel all over the United States
16 occasionally around the world.

is not 17 Q. And so you work -- you're actually on site. This
do it on 18 one of the those virtual reality things where you can
19 a computer?

20 A. No, I'm pretty much the field-level consultant.

to this 21 Q. Well, let's talk about that a little more and get
Does your 22 matter of your knowledge of explosives and so forth.

the type 23 consulting work include things about the placement and
24 of charges to be used?

expert to 25 A. Yes, sir, it does. I kind of sell myself as an

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parameters 1 the oil companies, as somebody who can optimize the

include 2 they would use in this exploration, and so that would

depths; and 3 doing testing of various charge sizes and various

seismic 4 then I analyze the results or the -- actually the

depths 5 records that different charge sizes and different

6 produce.

of 7 Q. Now, is there a variation with respect to the type

8 explosive material used for this purpose?

formulations of 9 A. I have done a few tests between different

think what 10 explosives, but I haven't seen any difference. So I

of 11 we use in the industry almost exclusively is one type

just 12 formulation. And I'm not really sure what it is. They

much more 13 call it 60 percent water gel, and I really don't know

14 about it than that.

15 Q. It's a commercial product that you buy?

16 A. Yes.

17 Q. And it's intact, ready to go?

tubes 18 A. Yeah. It's put in a form which is basically small

don't 19 that we lower down drill holes. And beyond that, I

20 really know what goes into it.

the amount 21 Q. And do you then design the depth of the hole and

what 22 of the charge that goes in for particular purposes like

23 kind of formations do you think are down there?

24 A. Yeah. What I would usually do is run a test with
-- where
25 we drill several holes at different depths and then
load them

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1 with different charge sizes, say 1 pound, 5 pounds, 10
pounds;
2 and the idea is to use the minimum amount of explosives
to get
3 good data.

4 Q. Uh-huh.

5 A. So what I try and do is analyze the data and say,
Well, we
6 can get by with 1 pound rather than 10 pounds, because
that
7 will save us in cost of the overall project.

8 Q. Do you first do some preliminary tests of what's
9 underground like core drilling or something like that
so that
10 you can get some idea of what formations are there?

11 A. No, we generally don't, because the explosive
charges are
12 usually somewhere between, say, 20 and 200 feet deep.

13 Q. Yeah.

14 A. And that's just too shallow to have any interest to
us in
15 the oil business.

decide 16 Q. 'Cause the very purpose of what you're doing is to
go 17 whether you're going to go -- the company is going to
18 further to do drilling --

19 A. Exactly.

20 Q. -- of things down there.

getting 21 A. So basically the only thing I'm concerned with is

which is 22 it below low-velocity layer or the weathered layer

get the 23 usually the top 10 or 50 feet of thickness. And once I

that we 24 charge below that, then I can reduce the bad effects

which 25 get when the charge goes off in the low-velocity layer,

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waves that 1 technically they're called ground roll and other ill

reflections. 2 we don't want to see. We want to see nice, clean

look at 3 Q. And the skill that's involved in your work is to

4 the result as it comes out on these machines --

5 A. Uh-huh.

6 Q. -- which measure waves of various kinds through the
7 underlying material?

8 A. Yeah; we put out an array of sensors, somewhere
between 200
9 and a thousand of them along the ground, and we record
that all
10 into computers. And then I would read that off of a
data tape
11 into my machine, and then I would look very closely at
the
12 waves that were produced and just decide, you know, the
13 characteristics of those waves, decide if they were
good or
14 bad.
15 Q. And that's what takes training, to determine that?
16 A. Yeah. Yeah.
17 Q. And then also an interpretation as to whether that
has
18 significance geologically for -- or geophysically, if
that's
19 the word -- for the possible presence of what you're
looking
20 for?
21 A. Yeah. And that's actually another discipline,
which I know
22 nothing about. I'm very much on the field end of it,
designing
23 the program, and making sure that the acquisition of it
-- that
24 we are acquiring the data. And then it goes to
somebody else
25 who actually processes the data.

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1 Q. I see.

2 A. And then another person who has a lot of geologic

3 background, of the area he's working, he will interpret
and

4 decide which formations we're looking at. But it's
just my job

5 to make sure that the instruments are correct, that the
arrays

6 are laid out so that we can capture certain frequencies
that

7 we're looking for and, you know, that we have the
correct

8 signal of noise in the field; but I don't interpret or
decide

9 where we're going to drill.

10 Q. Well, tell us I guess the -- you know, everybody
who gets

11 called in for jury service, it involves an interruption
of

12 their life and work. I mean there's no doubt that each
person

13 serving on a jury makes some sacrifices. And I -- the
question

14 for you is: Would this have an impact on your business
that is

15 still survivable, that you could do it?

16 A. It probably would, because I work so erratically --
I mean

17 I can go for a couple of months without any work at
all. Then
18 the summer was very busy for me. I worked almost every
single
19 day of the summer without a break. But, you know, I
never can
20 tell. I mean I would hope that this doesn't take more
than a
21 month's time.

22 Q. Well, it will take more than a month's time. We
can't tell
23 you how much time.

24 A. Yeah.

25 Q. But you can assume more than a month's time. And I

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1 understand what you're saying is companies call you in
2 according to what they're doing and what their needs
are.

3 A. Uh-huh.

4 Q. But it does slow down when the ground freezes and
the
5 weather's colder, doesn't it?

6 A. Where I usually work is -- my area is -- North
Dakota,

7 Montana, Wyoming. So the winter is actually a good
month to

8 work up there because the ground gets frozen and then
our

9 vehicles don't damage the ground.

10 Q. Oh, it's a good time?

11 A. Well, last winter wasn't a good winter up in North
Dakota;
12 but with El Nino, it might be a good winter.

13 Q. Who knows?

14 A. And again, I never know.

15 Q. I don't mean -- you know, I don't mean to diminish
the
16 significance of what I'm asking you to do, to come in
and serve
17 on the jury; but -- and I don't mean to pass off the
fact that
18 this could have a significant impact on you. It's
something I
19 just have to ask you: Can you do it?

20 A. Yeah, I think I can do it.

21 Q. And you talked with your wife about it, what it
would mean?

22 A. Yes.

23 Q. Now, she works at this time; right?

24 A. Right now she's temporarily unemployed.

25 Q. Her job has been or the kind of work she's done is
store

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1 management?

2 A. That's correct.

3 Q. Retail businesses. And so, what, she's in between
jobs?

4 A. That's correct. She just quit one and she hasn't
found a

5 new one. She's kind of waiting for a better
opportunity to

6 come along.

7 Q. Okay. Interviewing, is she, for --

8 A. No. She's just sending out resumes to selected
places, I

9 think.

10 Q. Now, I want to ask you about some other answers
that you've

11 made on here; and one is on page 12 where -- well,
actually,

12 the question's on page 11, asks you whether any of the
members

13 of your family have been employed in any of the
following type

14 of work. And on 12, you marked "Any job connected with
farming

15 and ranching." Why did you mark yes for that?

16 A. My father-in-law and mother-in-law own some
property in

17 Nebraska, and I think they lease it out, and it's
farmland.

18 Q. Was there a time that they farmed it?

19 A. They're both originally farmers when they were
younger, but

20 they have not farmed it, to the best of my knowledge.

21 Q. Have you ever been out there on that property?

22 A. No, I haven't.

23 Q. Okay. So do you know any of the details, what kind
of

24 farming it is and how big --

25 A. No, I really don't.

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1 Q. Okay. We also asked you some very broad questions
about

2 your opinions; and when we get to these questions, you
know,

3 we're not asking you for facts; we're asking you what-
do-you-

4 think-type questions. And I want you to understand
there's no

5 right or wrong to this. It isn't a test like did you
give us

6 the right answer. We just want to know some attitudes
and

7 opinions that you might have. So I don't mean by these

8 questions to cause you to be defensive or to be
anything other

9 than candid and forthcoming about your opinion. So the
fact

10 that you're in this courtroom and we're all looking at
you and

11 asking these questions of you, please don't be taken
aback by

really 12 that. We just want you to tell us, you know, what you

13 think. And if you think things that you suspect we
don't want

14 to hear, don't worry about that. Okay?

15 A. Okay.

16 Q. Now, we asked you in a question about the
effectiveness of

17 the criminal justice system, and this is on page 22.
If you

18 turn to that. And you think it's working very well, is
what

19 you said. You see?

20 A. Yes.

21 Q. I -- Question 100.

22 And then you say, "Some guilty persons are
acquitted,

23 but I think few innocent are convicted. In general, I
think

24 our police make a fine balance between the protection
of

25 society and the protection of freedom."

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1 You attribute that to the police?

2 A. I guess that comes from several years of working
overseas

3 and in places where I believe it was a police state.

And while

4 they were very safe places, you didn't need to lock
your car or

5 worry about burglary or anything, you were not free at
all to

6 do anything. So I do think that with some freedoms, we
do

7 accept some dangers in our society.

8 Q. And you're not so safe if you get arrested, right,
in those

9 other countries?

10 A. No, you definitely aren't. In fact, very often
innocent

11 people are convicted of crimes.

12 Q. Yeah. And that's because there's quite a different
court

13 system.

14 A. Precisely. I had a friend who reported that his
briefcase

15 was stolen out of his truck, as it was, with his camera
and

16 some money in it. And the police couldn't find
anybody. But

17 in this country, they -- they've long maintained that
there has

18 never been an unsolved crime. So without a
perpetrator, they

19 took his assistant, who was a Pakistani, and they were

20 basically going to beat a confession out of him. And
once that

21 confession came out, they were going to cut off his
hand.

22 So my friend wrote many letters to the justice
system
23 explaining to them that he was wrong, he had made a
mistake,
24 his briefcase had not been stolen and he was just very
stupid.
25 And then the case of course was dropped, and his
assistant was

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1 let go.
2 And so I guess I think that the United States
-- while
3 not perfect, I think it's -- it would be a tragedy to
have a
4 system where, you know, innocent people are convicted.
5 Q. Now, you recognize that in our system, we don't
rely on the
6 police to make the judgments about whether the evidence
is
7 sufficient in a case?
8 A. Yes, sir.
9 Q. That's what this is all about.
10 A. Yes, sir.
11 Q. So I just wanted to, you know, pursue with you the
reason
12 that you say here that you think that police make a
fine

13 balance between protection of society and protection of
14 freedom.

entire 15 A. I guess I mean police in a generic sense. "The
16 judicial process" I should put there in place of that.

the 17 Q. Okay. So you could recognize the possibility that
18 police may be wrong in their accusation?

19 A. Yes, sir.

friend 20 Q. And going back to the example, I take it that your
get his 21 knew, from whatever source, that the only way he could
just 22 assistant back out of the custody of the police was to
23 withdraw his complaint entirely?

24 A. Yeah. They basically told him that.

25 Q. Oh, they did?

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1 A. Uh-huh.

him for 2 Q. And then that was the end of it; they didn't pursue
3 a false statement or something?

he -- 4 A. No. That was the way I think they recommended that
want to 5 that he process it, because they -- they don't exactly

books 6 go through with that, either. They want to have their

7 clean, so to speak.

crime gets 8 Q. They want to still have a perfect score on every

9 the criminal convicted?

10 A. Yes, sir.

explain 11 Q. Now, we want to be somewhat careful and guarded in
12 responding to this, but I'm -- I would like you to

And 13 something about your answer on page 23 to Question 104.

14 this relates to relatives of yours, as I understand it.

15 A. Yeah.

which? 16 Q. And how -- this is in 1975 or '76; you're not sure

17 A. Yes. Somewhere in that general area, I guess.

making 18 Q. And were they in the same house there? Were they

19 the same house their residence?

other 20 A. I think one of them was living in the house and the

21 was just visiting him.

think you 22 Q. Now, do you know anything about this directly? I

23 said you don't know much more.

a fight, 24 A. I don't know specifically about what the police
25 interrogation. I came over after they had gotten into

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1 basically -- my two brothers had. And one of my
brothers
2 grabbed a kitchen knife in hand and stabbed the other
brother,
3 so it was quite a scene; and the police came. And the
one
4 brother who had been stabbed declined to press charges
against
5 his brother, so the police left it at that. And I
don't think
6 there was -- but there was a lot of -- the police were
asking
7 them both quite a few questions.
8 Q. Did they ask you some questions, too?
9 A. Well, I came after the incident, and I think I just
-- I
10 don't remember. I think I just tried to smooth
everything out.
11 Q. And about how old were they at that time?
12 A. Well, they would have been about 35 and 30 years
old.
13 Q. Pretty serious dispute.
14 A. Yeah. It's kind of a long-term thing with them.
15 Q. Still going on? I don't mean the same dispute.
16 A. No. No anymore, I don't think. I kind of lost
track of
17 that one brother, so

18 Q. Okay.

19 A. I don't know where he is.

20 Q. All right. Anything of -- you know, we don't need
to

21 pursue this further, I think, unless it's something
that

22 affects your view of police work or the court system or

23 something like that. Does it have any effect on that?

24 A. No, I don't think so.

25 Q. Okay. Now, you have said here in a couple of
different

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1 places in the questionnaire that you believe strongly
that

2 jurors must obey the law and follow court instructions.
I

3 think one place is at page 30 at Question 129. And you
say --

4 I think you say: I don't think juries should interpret
the

5 law; they're to determine if the evidence meets certain
tests.

6 I guess the question I wanted to ask you is:
Is there

7 some case or is there something that has come to your
attention

8 at some time that some people think differently and
that jurors

9 should interpret the law or are free to do so?

I think 10 A. Maybe it's more of a perception from pop culture.

11 if you watch enough law drama or read any fiction about

the 12 court, you seem to get the impression that that's what

occurs 13 in movies or TV. And I guess I would hope that that's

not the 14 case.

15 Q. Well, that's not the case with you, anyway; is that

what 16 you're telling us?

17 A. Yes, that's not the case.

18 Q. Now, we asked you some questions about the law with

respect 19 to punishment and the particular punishments of life in

prison 20 with no release and death and what you thought about it

in 21 terms of if you could write your own law. You recall

these 22 questions?

23 A. Yes, sir.

24 Q. And they start at 27, page 27, with the explanation

that 25 essentially that is what we're asking you; and then the

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review 1 questions are on 28 and 29. Just take a moment to

2 those.

3 A. Okay.

4 Q. Now, then on -- did you go on over to E on 29?

5 A. Oh.

6 Yes. Okay.

E, I saw 7 Q. Now, you know, I read these; and then when I read

and D; 8 you kind of struggling with these questions on A, B, C,

seemed 9 and then E sort of brought the engineer in you out, it

that 10 to me, that what you're saying is that you would hope

this, if 11 there is some kind of a legal formula to help you with

about what 12 you had to make a decision about this. Isn't that

13 you were saying?

there's some 14 A. That's very true. I would like to think that

15 sort of mathematical equivalent.

analysis; that 16 Q. Yeah. Because you're used to that kind of

like in 17 there are certain objective standards and these things

according to 18 your seismic data interpretation and work, you go

19 what you see.

20 A. That's correct. I mean, often as a consultant, I
like to
21 tell people: Well, here is a number, it's not right or
wrong,
22 there's not really an answer there. It can't help you;
here's
23 just a number.
24 Q. Well, let's talk about what it is, the law as it
is. This
25 is sort of, you know, what you think the law ought to
be. Now

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1 I want to spend a few minutes with you about the way
the law is
2 and the way the process is.
3 First of all, in most cases, cases not
involving this
4 life-or-death issue, the question of sentence or
punishment is
5 not a matter for the jury to decide. So what happens
in cases
6 that don't involve this type of punishment as a
penalty, the
7 jury comes in, hears the evidence, and makes the
decision about
8 does the evidence prove guilt beyond a reasonable
doubt. If
9 the answer is no, reasonable doubt remains; verdict,
not

10 guilty, it's over. Right?

11 A. Yes, sir.

12 Q. If, on the other hand, after hearing it all the
jury's
the
those
because
facts,
13 convinced beyond a reasonable doubt the evidence shows
14 defendant guilty, the verdict is guilty; and then in
15 cases, it's still over as far as the jury is concerned,
16 the jury has now performed its function of deciding the
17 deciding the evidence.

18 And the case then is not over for the
defendant and
19 it's not over for the judge, because there's a sentence
to be
20 decided. And here the process is a very individual
process;
21 and the judge does not make a sentencing decision,
number of
22 years in prison or whatever it is, just on the basis of
what
23 was presented at the trial. It's not just a matter of
the
24 evidence, but there's more to be considered. And these
things
25 include the circumstances of the crime, not just what
happened

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1 but who got affected by it, what effects those were,
you know,
2 what happened after the crime was committed to the
people who
3 are victims of it, to the community, and the like.

4 And then the judge also gets a lot of
information
5 about the defendant, the things that are individual to
him, his
6 life story, really, so that the judge gets information
about
7 where he was born and raised; what the family
circumstances
8 were; relationships within the family; the person's
work
9 history; marital history; military record, if there is
one; the
10 kind of work he's done; what he's done that contributes
to the
11 community or to the society; good things he's done;
whether
12 there's a prior record of criminal activity. You know,
each
13 one of us has our own story, the true facts of our
lives; and
14 that's what makes us different from all other people,
that's
15 why we're unique individuals. And that story is the
things
16 that we've done and have been done to us.

17 And then this additional information includes

things

18 about the role in the offense. If there's more than
one person

19 involved in the same crime, there may well be
differences among

20 them in the role they play: principle role, minor role,
so

21 forth. But they could still all be guilty, you
understand,

22 under the law.

23 And then after all of that is collected,
there's a

24 hearing; and the judge hears it all, and both sides,

25 prosecution and the defense, suggesting what the
sentence for

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1 this person ought to be. And then the Judge makes a
sentence

2 decision: Well, for this crime, this person deserves
this

3 particular punishment. And it may be that at the same
time the

4 judge would say: And for this crime, this other person
5 deserves this punishment, and is specific to him
because it has

6 to regard -- take into regard and regard -- have regard
for

7 these individual things. And that's the sentence
decision.

8
federal law --

9
federal law,

10
with no

11
Sometimes

12
out in 15

13
what

14
life in

15
being put

16
can be a

17
to

18
lesser

19
judge.

20
of

21
given

Now, when it comes to crimes that under

and that's where we are, in federal court -- under

where the sentence possibilities are life in prison

release, ever -- and that means just what it says.

people talk about, well, life in prison means you get

years if you conduct yourself accordingly. That isn't

we're talking about here; we're talking about truly

prison. You die in prison. And the other is death,

to death as an execution. And the other is that there

sentence lesser -- lesser sentence. And we ask jurors

decide the life-and-death issue; and if there's a

sentence, according to the jury, it goes back to the

But the jury plays the significant role in these cases

deciding whether the person should be put to death or

life imprisonment or a lesser sentence. Understand?

23 A. Yes, sir.

24 Q. So what I'm saying is that a life-and-death
decision is not

And 25 made by a judge under federal law. That's for a jury.

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1 there are differences here between federal and state
laws and
2 laws among the states, so we're focusing just on
federal law.

3 Now, what happens in federal court when
there's a

4 crime that involves these possibilities -- and
essentially,

5 we're talking about intentional killing, murder.
That's the

6 type of crime that is involved in this type of decision
-- so

7 the jury first decides: Does the evidence show guilt
beyond a

8 reasonable doubt? Again, obvious: If not, not guilty,
end of

9 case.

10 If it's guilty, now the jury has to do more;
and there

11 is, really, a second trial, a punishment trial, a
sentencing

12 hearing. And like the judge in other types of cases,
the jury

13 has to approach that and decide it on a very individual
basis.

14 And therefore, the jury must hear information beyond
that which

15 was given at the trial. So it proceeds like the trial.
The
16 lawyers on both sides -- the government and the defense
-- and
17 more witnesses are called, more exhibits are offered.
And now
18 the Government would be expected to come forward with
things
19 that Government counsel believes supports a sentence to
death,
20 focusing on the circumstances of the crime, what
happened to
21 people, and the like. The defense is expected to -- at
such a
22 hearing -- to come forward with evidence that suggests
that
23 even though the crime involves intentional killing of
others,
24 to put the defendant to death is not a justified
sentence. And
25 these are the things that I've discussed like a judge
considers

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1 on lesser-type punishment. And that has to do with who
the
2 defendant is, what he is, what he believes or doesn't
believe,
3 his whole life's story, and all of these individual
things that

4 I've already mentioned. You follow me?

5 A. Yes, sir.

6 Q. And then at the end of that second trial, the judge
gives

7 instructions about how the jury should approach the
sentence

8 decision and will outline what the jury has heard and
talk

9 about those things that are in that information that
the jury

10 might consider as aggravating factors, things
suggesting that

11 death is the punishment that's deserved, and also
mitigating

12 factors, those things that suggest that death is not
deserved

13 for this defendant for the crime and then may give to
the jury

14 some questions to be asked to sort of help in that
review of

15 aggravating and mitigating factors, all of the
circumstances

16 that have been presented.

17 But in the end, the question to be decided by
the

18 jury, life or death, does not lend itself to the kind
of

19 formula that you would hope the law has here. We don't
have A

20 plus B plus C or any kind of formula, because what
we're

21 talking about is a judgment call, really a moral
judgment call.

and then 22 And what the jurors have to do is considering it all
this 23 talking it over among themselves, the 12 people making
person 24 decision, come to a final decision as to whether a
You 25 should live or die, the defendant should live or die.

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1 understand that?
2 A. Yes, sir.
3 Q. And as I said, you know, there's no way to describe
that 4 except to say that what it amounts to is a moral
judgment about 5 the life of another human being under the circumstances
of 6 having been convicted of the offense and all the other
things 7 that have been presented about that person.
8 Now, the question that we have to ask you is
that if 9 you -- and we can't talk about what any of those
circumstances 10 might be as to Mr. Nichols, first of all because Mr.
Nichols is 11 presumed innocent, you understand. We don't know what
the

a guilty 12 evidence will be; and then secondly, if there is to be
you now 13 verdict because of the evidence, we have no way to tell
So we 14 what these aggravating and mitigating factors might be.
15 have to give you this question sort of in the dark.

whether you 16 But what we have to have you tell us is
to make 17 can, if you were to serve on the jury and the jury had
consider and 18 this decision, make a decision about every -- and
all of 19 involve in your decision everything that you've heard,
you do 20 the aggravating and the mitigating circumstances. Can
21 that?

22 A. Yes, I think so.

keep 23 THE COURT: Okay. Now, we're going to have to
questioning 24 you yet a little while longer. I've completed the
chance 25 that I'm going to do, but a lawyer for each side has a

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recess 1 to ask you some additional things. I'd like to take a
2 before we do that, though, and then come back and have

you

3 listen to them and answer their questions. All right?

4 JUROR: Okay.

If you'll

5 THE COURT: So we're going to take a break.

and then

6 step out now, we're going to be in recess for a while,

your help

7 we'll come back in about 20 minutes. Thank you for

8 here.

9 JUROR: Thank you.

10 (Juror out at 3:40 p.m.)

It's

11 THE COURT: Okay. I can figure this one.

12 4 o'clock.

13 (Recess at 3:40 p.m.)

14 (Reconvened at 3:58 p.m.)

15 THE COURT: Be seated, please.

16 All right. We're ready to resume.

17 Ms. Wilkinson?

18 MS. WILKINSON: Thank you, your Honor.

19 VOIR DIRE EXAMINATION

20 BY MS. WILKINSON:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

and I'm

23 Q. As the Judge told you, my name is Beth Wilkinson,

24 one of the prosecutors responsible for presenting the

evidence

25 in this case against Mr. Nichols. I just have a few
areas that

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1 I'd like to cover with you.

2 I read your questionnaire carefully; and I
don't want

3 to waste your time, but there was one thing that you
said that

4 I was kind of interested in. You said you were in your
Charles

5 Bukowsky phase. Are you still in that phase?

6 A. Yes, I'm still reading a book by him.

7 Q. Have you ever read a biography of him that was
printed

8 several years ago?

9 A. I think most of his work is basically
autobiographical, is

10 it not?

11 Q. Well --

12 A. No --

13 Q. -- I think you're right. I'm asking about a
biography

14 about him that was written by someone else.

15 A. No, I have not.

16 Q. Can you tell me when you got interested in reading
his

17 works?

18 A. Yes. When I was about 16 years old, I kind of
hopped

19 freight trains out to the West Coast and then back; and
I guess

20 I got involved with a lot of hobos, bums, winos; and I
think he

21 just writes about that lower class of people which
people

22 really don't understand. And he does it so eloquently
--

23 eloquently.

24 Q. Did you do that in the summers, or did you do that
when you

25 were supposed to be in school when you were 16?

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1 A. It was during the summer; and it was not a very
long

2 period, just about two weeks. And then I did again
once in

3 college.

4 Q. You told his Honor that you're a geophysicist, and
you said

5 on your questionnaire that you belong to the Society of
6 Exploration Geophysicists. Is that right?

7 A. That's true.

8 Q. Do you receive mailings from that society?

9 A. Yes, I do.

10 Q. Do you also attend conferences that they sponsor?

11 A. Yes, I do.

12 Q. And have you ever seen any presentation about
seismic data

13 that relates to the Oklahoma City bombing?

14 A. No, I never have.

15 Q. Are you familiar with any articles or commentary on
seismic

16 data as it relates to the Oklahoma City bombing?

17 A. No.

18 Q. Turning to your area of expertise, can I talk to
you a

19 little bit about your knowledge explosives? It sounded
like

20 from your conversations with his Honor that you use
small

21 quantities of explosives but you don't know a lot about
the

22 chemistry or the makeup of the explosives. Would that
be fair

23 to say?

24 A. Yeah, that would generally be fair to say. About
the only

25 thing that we've ever concerned ourselves with is the
velocity,

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1 which is the speed of combustion; so I've tested
various makes

2 like some -- a few years ago a manufacturer came out
with a

3 dynamite called Pentalite, and it was a little bit
higher

4 velocity; and we wanted to compare it to what we've

5 traditionally used over the years.

6 Q. What is the range of velocity of detonation in the
7 explosives that you use?

8 A. In seismic, we're generally 16,000 to 18,000 feet
per

9 second.

10 Q. All right. Have you ever used the higher
explosives that

11 are in the 20-plus range?

12 A. Sometimes you use a material called detonation
cord, which

13 is to tie different charges together; but that's only
like for

14 a utility cord, or you might use it to start the charge
down

15 the hole. And det cord, I think, is about 30,000 feet
per

16 second.

17 Q. Do you know what the chemical makeup is or the
chemical

18 composition is that makes a certain explosive a higher

19 explosive; that is, something that detonates in the
20,000 or

20 plus range and then something that falls in that
midrange that

21 you're talking about?

22 A. No.

23 Q. Do you, yourself, place the shots and put in the
det cord

24 that you're talking about, or do you have other people
who do

25 that for you?

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1 A. Other people generally do that. I occasionally put
one in

2 if I'm on the hole.

3 Q. Have you ever used ammonium nitrate and fuel oil,
or ANFO,

4 as it's referred to?

5 A. No.

6 Q. Are you familiar with the chemical properties of
ANFO?

7 A. Yes, but only from college and courses about it.

8 Q. If you heard testimony in this case about the
chemistry of

9 explosives, could you listen to that testimony and
judge its

10 believability based on what you hear in the courtroom
and not

11 bring in your personal expertise?

12 A. I think so, yes.

13 Q. And would you make sure you did that when you were
talking
14 to your fellow jurors? And you wouldn't take over, I
guess, as
15 the explosives expert for the jury, would you?

16 A. My range of expertise is, you know, strictly with
the
17 acoustical part, so I really don't know much about the
18 chemistry or, you know, demolitions or excavation uses.

19 Q. Okay. If we could turn finally to the death
penalty, I
20 think you understood his Honor when he told you that
there are
21 two phases in a case like this, one where you, as a
juror,
22 would have to come in and determine whether we, the
Government,
23 had proved beyond a reasonable doubt to you that the
defendant
24 was guilty. You understood that; right?

25 A. Yes.

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1 Q. And you would have to start presuming that the
defendant
2 was not guilty or that he was innocent; and you have no
problem
3 doing that, do you?

4 A. Yes.

5 Q. If you and your fellow jurors found that a
defendant were

6 guilty beyond a reasonable doubt, you'd move on to the
next

7 phase, where again you'd have to have an open mind and
listen

8 to all the facts and circumstances, all the information
about

9 the crime and the defendant before you could make any
10 determination as to punishment.

11 A. Uh-huh.

12 Q. Can you do that?

13 A. Yes.

14 Q. You told his Honor that you would have liked to
know that

15 there was a formula for this decision, I take it
because of the

16 magnitude and importance of the decision. Is that
right?

17 A. That's correct.

18 Q. And he told you there isn't a formula, which is
true. When

19 I was listening to you, there might be something that I
think I

20 learned in calculus class, more like a theorem, that
you

21 described: A plus B equals C; and the problem is we
can tell

22 you that A is what you need to know about the crime and
B is

never 23 what you need to know about the defendant, but we can
and your 24 tell you what C will be, the penalty, because only you
other 25 fellow jurors can decide that when you hear both those

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1 elements. Do you understand that?
2 A. Yes.
3 Q. And also, we can't tell you what A is going to be
right now 4 because we don't know what the evidence will be about
the 5 crime. Follow me?
6 A. Yes. Yes, ma'am.
7 Q. And B, we can't tell you about what facts and
circumstances 8 are going to be presented.
9 A. Yes.
10 Q. About what his role was, his family life and all
those 11 things that his Honor told you you'd have to consider
under the 12 law if you were a juror.
13 A. Yes.
14 Q. So can you understand that you're going to get a
framework,

one is 15 which is really what I think your equation is, but no
factors 16 ever going to be able to tell you ultimately what those
17 are going to be and what your decision should be?
18 A. Yes.
19 Q. Can you accept that?
20 A. Yes.
can 21 Q. Now, it's one thing to tell us, of course, that you
life-in- 22 consider all these things and you can be open to a
that's 23 prison sentence and a death sentence, which I assume
24 what you're telling us. Right?
25 A. Yes.

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now as you 1 Q. You can be open and consider both of those right
2 sit here today?
3 A. That's correct.
4 Q. It's another thing to think about actually making a
fellow 5 judgment of another person. And could you with your
evidence, the 6 jurors, if you believed that all the facts, the

with your 7 information warranted a death sentence -- could you
8 fellow jurors deliver that sentence?

9 MR. TIGAR: Objection.

10 THE COURT: Overruled.

11 JUROR: Yes.

my 12 MS. WILKINSON: Thank you, sir, for answering
13 questions.

14 THE COURT: Mr. Woods, you have questions?

15 MR. WOODS: Yes, your Honor, thank you.

16 THE COURT: Please.

17 VOIR DIRE EXAMINATION

18 BY MR. WOODS:

19 Q. Good afternoon.

20 A. Good afternoon.

Along 21 Q. As the Judge introduced me, my name is Ron Woods.

22 with Mike Tigar, we were appointed by the United States
23 District Court over in Oklahoma City back in May of '95
after

24 the Government decided to charge Mr. Nichols with being
25 responsible for this bombing. What do you think --
what do you

1 feel about Mr. Nichols having two court-appointed
lawyers?

2 A. I don't think much of it. I think it's okay if he
gets a

3 fair trial.

4 Q. Okay. Would you hold it against him in any way
that he

5 didn't have the money to pay for his own attorney?

6 A. No, sir.

7 Q. What did you think of Mr. Nichols when you saw him
for the

8 first time out at Jeffco after you had been reading in
the

9 newspaper for two-and-a-half years about him?

10 A. I don't think I really formed an opinion about him
11 honestly.

12 Q. Any impressions at all from your presence there and
seeing

13 him appear?

14 A. I guess in appearance he looks very ordinary, not
really

15 very distinguishing.

16 Q. Okay. Now, you mentioned that -- and you told the
17 prosecutor that you were reading the Bukowsky books.
Was

18 Barfly one of his books?

19 A. Yes, it is.

20 Q. And you mentioned that they are all
autobiographical, more

21 or less?

22 A. Yes.

23 Q. What is it exactly other than your experience of
having
do you
24 hopped freight trains during the summers -- what else
25 like about him and his writings?

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1 A. That sometimes there can be genius in the most --
well,
2 genius can manifest itself in the most obscure, strange
3 personalities. And I think he's one of them.

4 Q. Okay. Have you read all of his books?

5 A. No.

6 Q. Okay.

7 A. I haven't read any of his poetry. Just maybe one
book of
8 his poetry. That's all.

9 Q. Okay. You also checked off that you've read some
John
10 Grisham books. Is that correct?

11 A. That's correct.

12 Q. Do you recall which ones you've read?

13 A. It was The Firm.

14 Q. All right.

15 A. And I started another one. The Trial, I think it

was. I

but I 16 didn't finish it. It was made into a movie recently,

17 didn't see the movie and I didn't finish the book.

18 Q. Did you lose interest?

19 A. Yes.

of 20 Q. Okay. Let me ask you in reading the limited number

21 Grisham books that you have, did you come away with any
22 impressions of the criminal justice system, the lawyers
that

23 are participants in that, both on the prosecution side
and the

24 defense side?

when I 25 A. I don't think any one that stayed with me. Perhaps

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Juror No. 281 - Voir Dire

crime than 1 read it. I think The Firm was more about organized

2 the legal system, to be honest with you.

about 3 Q. Right. So no impressions through the books? What

some 4 any television shows? You mentioned a while ago about

you have 5 television shows on the criminal justice system. Do

functions and 6 any particular impressions of the way the system

7 the roles of the opposing lawyers?

conceive

8 A. I think it's probably as fair a system as I

again, using

9 happening. I think it's a very good system -- and

knowing

10 my experience in other countries and just hearsay but

that we

11 how their justice systems work typically; and I'm glad

12 have the one we have.

sometimes

13 Q. Okay. You mentioned that some guilty individuals

mind?

14 get acquitted. Did you have any particular cases in

going to

15 A. I would just say in the aggregate, there is always

nobody

16 be some people who are guilty who get acquitted. And

crime, I

17 ever really knows except the party who committed the

aggregate.

18 guess; but there is always going to be some in the

innocent are

19 Q. And then you mentioned that very few who are

20 convicted. Is that your view?

maybe.

21 A. Yeah. And in that, I do have kind of an example

Line,"

22 There was a movie a few years ago called "The Thin Blue

23 and that was a case of a man who was convicted who was

24 innocent.

25 Q. That was the case in Dallas; right?

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1 A. Yes.

2 Q. Okay. And you realize that a jury convicted him,
and he
3 spent a number of years on death row actually, didn't
he?

4 A. That's correct.

5 Q. From your answers to the Court's questioning, the
way I see
6 it -- You understand that it's the jurors' role to
weigh all
7 the evidence and make the decision in the case. Would
that be
8 your understanding?

9 A. Yes.

10 Q. Do you understand there has been a lot of
conversation here

11 and talk about the penalty phase of the trial?

12 A. Yes.

13 Q. Do you find that unusual that we're talking about
that

14 before the trial has even started?

15 A. I've never been involved with a case, so I have
nothing to

16 base it on.

17 Q. Okay. No standard to work from, either "usual" or

18 "unusual"?

19 A. Yeah.

20 Q. As the Court explained to you, we're not going to
get to a
21 penalty stage unless and until the Government proves
22 Mr. Nichols guilty beyond a reasonable doubt.

23 A. Uh-huh.

24 Q. The Government has got a theory that Mr. Nichols
was
25 responsible for that bombing. Mr. Tigar and Mr.
Nichols and I

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1 disagree with that theory; and when they call all of
their
2 witnesses to the witness stand, we're going to cross-
examine
3 those witnesses very thoroughly. And then, as the
Court
4 explained to you, when they rest, we don't have to put
on
5 evidence; but let me assure you that we are. We're
going to
6 call a number of witnesses that will also contradict
the
7 Government's theory. And then at the end when we rest
and the
8 lawyers sum up the evidence, it will be the jurors'

9 responsibility to weigh that evidence and to determine
whether
10 or not the Government has presented enough evidence to
convince
11 12 people beyond a reasonable doubt that Mr. Nichols
was
12 responsible for the bombing. So did you understand
that
13 process that the Court explained that we're going to be
going
14 through?
15 A. Yes, sir.
16 Q. And that's why we say that we're not conceding that
we're
17 going to get to a punishment stage, because we don't
agree with
18 the Government's theory on this.
19 A. Yes.
20 Q. Now, you've checked off on page 33 a number of
sources from
21 which you've read and heard about this case: "If
you've heard
22 or read anything about the Oklahoma City bombing,
please
23 indicate where you've heard or read about it." And you
checked
24 off TV news, radio news, newspaper, magazines and
25 conversations.

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1 And then there was a question on page 36,
"Summarize
2 what you've seen, read, or heard about the Oklahoma
City
3 bombing," at the bottom of page 158.
4 A. Oh, yes.
5 Q. And you indicate, "A large bomb loaded in a rental
truck
6 detonated in front of a federal government office
building.
7 More than 150 people were killed, and many hundreds
more were
8 injured."
9 Do you recall from what you've seen, read, or
heard
10 how that bomb was delivered to the -- well, you say the
rental
11 truck. Do you recall what kind of bomb they alleged it
was?
12 A. Yeah. I remember hearing that it was an ammonia
(sic)
13 nitrate based.
14 Q. And do you recall how Mr. McVeigh was arrested?
15 A. He was arrested in a traffic stop, I believe.
16 Q. Okay. And from what you've seen, read, or heard
over this
17 past two-and-a-half years, do you have any recollection
of how
18 Mr. Nichols initiated contact with the federal
authorities

19 after the bombing?

20 A. No, sir, I don't.

21 Q. Okay. Do you have any recollection of where he was
on the
22 day of the bombing, according to the media accounts
you've
23 read?

24 A. No, I can't recall.

25 Q. Okay. On the next page, 37, Question 159, "Please

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1 summarize what you've seen, read, or heard about Terry
2 Nichols"; and you state, "He was a conspirator and an
3 accomplice to the bombing."

4 Can you tell me what that's based on from what
you've
5 seen, read, or heard over that two-and-a-half-year
period?

6 A. Yeah. I guess the fact that he was arrested and
that's
7 what he was charged with, conspiracy and the bombing.

8 Q. Do you know how he was arrested or when he was
arrested or
9 where he was arrested?

10 A. I'm sure I heard, but I can't recall right now.

11 Q. And then further down on page -- same page,
Question 162,

12 "What have you heard or read about Terry Nichols as a
result of 13 the trial of Timothy McVeigh?"

14 "They were long-term friends and held similar
15 political beliefs."

16 Can you tell me what you read, saw, or heard
that led 17 you to make that statement?

18 A. I believe it was right after they were arrested,
seeing TV

19 programs or hearing radio programs talking about how
they had

20 met in the Army -- I believe that they knew each other
well.

21 And I -- I can't be very specific because I just can't
recall.

22 Q. Okay. As to the similar political beliefs, what do
you

23 recall about that?

24 A. I just remember that again they were on the radical

25 antigovernment end of the spectrum, and I -- I knew
that there

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1 was a book that they read or Mr. McVeigh had read that
he was

2 really keen on, but I can't recall much more than that.
I

3 can't recall specifics.

4 Q. Okay. Other than the book that Mr. McVeigh was
kept on, do
5 you recall Mr. Nichols -- anything about Mr. Nichols'
political
6 beliefs?

7 A. No, I really don't. I can't remember.

8 Q. Okay. In your seismic work, have you ever done
seismic
9 tests and got certain readings from the tests and then
when you
10 actually drilled or made the exploration, it turned out
that
11 those were wrong?

12 A. Yes. All the time.

13 Q. You think that's possible in real life with the
media
14 reporting on certain events that turn out not to be
accurate?

15 A. Yes, sir.

16 Q. And you state in your questionnaire that you
haven't formed
17 any opinion about Mr. Nichols' guilt. Is that correct?

18 A. Yes, sir.

19 Q. And then you also state -- "How have your views or
opinions
20 of Mr. Nichols changed after the McVeigh verdict?"

21 And you state, "They haven't changed."

22 A. That's correct.

23 Q. And did you mean -- well, you tell me what did you
mean by

24 that.

25 A. Well, I guess I would like to think I'm pretty
open-minded

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1 on anybody accused of any crime. I mean, they really
are

2 innocent until proven guilty; and I don't think it's
fair for

3 anybody to form a sort of a vigilante mentality on
anybody.

4 Q. Okay. Do you think, then, from everything you've
seen,

5 read, or heard, that what you have taken in, that you
can still

6 weigh the evidence and look at what the Government
presents and

7 make a decision based solely on what the evidence is in
this

8 case rather than what the media has reported?

9 A. Yes, sir.

10 Q. Okay. You were also asked a question on the
questionnaire

11 about "What are your opinions about the Waco incident"
on page

12 30, Question 132.

13 A. Yes.

14 Q. And you stated, "The Branch Davidians appeared to
be a

15 radical religious sect similar to the Jonestown group."

16 Did you have any opinion as to the initial
17 confrontation between the ATF agents and the Branch
Davidians
18 that started that whole mess?

19 A. Yes. I guess I find it shocking when anybody would
want to
20 shoot -- shoot anybody else for any reason, and that
includes
21 government agents coming into your house.

22 Q. Okay.

23 A. I think you should call your lawyer.

24 Q. Okay. Do you recall whether or not there were
people
25 killed on both sides in that initial confrontation?

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1 A. I know that I think four ATF agents were killed on
the
2 initial confrontation. I don't think any Branch
Davidians were
3 killed on the initial one, but I -- I can't recall
specifically
4 actually.

5 Q. Okay. And then your statement comparing them with
the
6 Jonestown: Is that referring to the ultimate
conclusion, 51

7 days later?

8 A. Yeah. I mean, it appears to me that they committed
suicide
9 in the same sort of fashion and taking everybody, even
people
10 who probably didn't want to go, with them.

11 Q. Okay. And your feelings and beliefs on that
situation, I
12 take it, would not interfere with your looking at the
evidence
13 in this case in any manner.

14 A. No.

15 Q. Okay. Now, you had heard about the verdict in the
McVeigh
16 case before you came out to Jefferson County
Fairgrounds, had
17 you not?

18 A. Yes, sir.

19 Q. And you were aware that the verdict was the death
penalty?

20 A. Yes, sir.

21 Q. Had you had any discussions with your wife or your
friends
22 at work concerning that verdict?

23 A. Not really. I don't think -- I read several
editorials on
24 it, I think, at the time.

25 Q. Before you got to Jefferson County?

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1 A. Yes. Before I received a jury summons for this, I
read
2 several editorials about it.

3 Q. Did you read the editorials recently about three
weeks in a
4 row, three weekends in a row, that led up to the Gary
Davis
5 execution? They had guest editorials that would write
on pro
6 death penalty and guest editorials that were anti death
7 penalty.

8 A. No, not in the local papers, because I spent the
last two
9 weeks in North Dakota and Montana.

10 Q. Okay. Were you aware of the publicity before you
left?
11 The execution was a week ago today. Do you recall
reading any
12 publicity about it before you left?

13 A. I can't. There was some reporting of it, you know,
of
14 course in the national news; and I do recall that he
was the
15 first person executed in Colorado since '67. And I
remember
16 recalling that last execution when I was a boy.

17 Q. I'm sorry. You recall the execution?

18 A. Yeah. I recall the execution in '67 when I was a

child.

19 Q. Okay. What do you recall about that? Did you
listen to it

20 on the radio?

21 A. No. I remember -- you know, I was quite young at
the time.

22 I must have been nine or ten. And I do remember that
they said

23 he was praying as they released the cyanide into the
chamber.

24 And he admitted his guilt, as I recall, but he was very
-- very

25 remorseful.

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1 Q. And from that point on, you have had occasion to
where

2 you've thought about the death penalty as an issue in
society?

3 A. Yes.

4 Q. There in school -- have you debated in school or
anything?

5 A. Well, I think, yeah, probably, when I was living
overseas

6 in some Moslem countries. The death penalty is applied
much

7 more readily than it is here; and so yeah, you would
discuss it

8 frequently. We had an employee in -- on the company I
worked

9 for. He was from Pakistan; and he had gotten into a
little
10 love triangle with -- they were all male out on one of
our
11 camps, and he had murdered somebody. And this had
happened,
12 oh, long before I ever got there; and so he was -- he
was
13 sentenced to die. But according to the Moslem law, you
can
14 sometimes pay off the family of the victim, a term
called
15 "blood money." And if they accept the blood money,
that --
16 then they can say, okay, he doesn't have to be
executed, he can
17 spend his life in prison.

18 And this family didn't have -- the man who
died had no
19 father, and the father has to make that decision. And
the
20 mother wanted to have him executed. This family was,
of
21 course, back in Pakistan; and they were Moslem as well.

22 And so the court decided even though a
tremendous
23 amount of blood money had been offered, the accused,
who
24 actually admitted what he had done -- it was fairly
obvious he
25 had done it, but the accused's village raised a bunch
of money

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1 for blood money to give to the victim's family. And so
the
2 court decided that this woman couldn't make that
decision
3 because she was a woman, so they were going to put the
decision
4 in the hands of his brother. And his brother was quite
young,
5 12 or something at the time; and he couldn't make it
until he
6 was of legal age, which I guess is somewhere, say, 21.
And
7 when he became of legal age while I was working there,
he
8 decided he wanted him executed; so they were going to
execute
9 him.
10 Q. Okay. Well, you've certainly had direct exposure
with the
11 death penalty issue. Looks like you've looked at it on
both
12 sides. What's your overall feeling about the death
penalty,
13 not in this case but just as a society issue?
14 A. I think it's probably justified in the case of
protecting
15 society, but I don't think it's justified in terms of
either

16 retribution or a deterrent.

17 Q. Okay. And the questionnaire asked you on page 28
about
18 your views on the death penalty. And as the Court
explained to
19 you, this was worded such that if you had the power to
write
20 the statutes where the death penalty would be one of
the
21 options, what kind of cases would you write it for?
And that
22 last -- well, let's look at C and D. "What kind of
cases is it
23 appropriate, if ever, to impose a punishment of life in
prison
24 without the possibility of ever being released?"
25 You stated, "Murder of a police officer,
prison guard,

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1 prison inmate, child, or more than one person."
2 Is that the type of offense you feel that a
person
3 should be put in prison for life? And as the Judge
explained,
4 in the federal system, there is no getting out, there
is no
5 parole. If you get sentenced to prison for life, you
die
6 there. Did you follow his --

7 A. Yes.

8 Q. -- explanation on that?

9 A. Yes.

10 Q. Are these the type of offenses you would write that
the
11 appropriate penalty would be life in prison?

12 A. Yeah. I think basically again in the aggregate, I
would
13 want to protect society from a homicidal maniac,
somebody who
14 has shown a willingness to kill again and again. You
don't
15 ever want to release him.

16 Q. Then you mentioned in D -- "What kind of cases is
it
17 appropriate, if ever, to impose a punishment of death?"

18 And you gave one example there: "Organized
crime head
19 who murders several people on several occasions."

20 Are there other types of murder cases where
you feel
21 the death penalty would be appropriate?

22 A. No. Just personally somebody who is a danger to
society
23 even behind bars, I guess; and I think a person who is
an
24 organized crime head is dangerous to society even
behind bars.

25 Q. Okay. Okay. Now, the Court explained to you the
process

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1 on the penalty stage, if we get there. And again,
we're not
2 conceding that we're going to get there. But in the
event that
3 the jury finds Mr. Nichols guilty of premeditated
murder of a
4 number of individuals, then we'll get to a penalty
stage.

5 And did you follow what the Court was saying
that at
6 that stage -- of course, then we couldn't ask you to
come back
7 in here and talk to us about the penalty, and that's
why we
8 have to talk to you now. But if the jury finds the
defendant
9 guilty of premeditated murder on a number of
individuals, then
10 the jury will hear another -- basically another trial
where
11 there will be aggravating circumstances offered into
evidence
12 by the Government and there will be mitigating
circumstances
13 offered into evidence by Mr. Tigar and myself. And at
that
14 time, the requirement is that the jury keep an open
mind,
15 listen to all this evidence, listen to the aggravation

as to

16 why it should be a death penalty, listen to the
mitigation

17 evidence why it should be a life imprisonment, and then
make a

18 decision based on the evidence that the jury hears.
And you

19 told the Court that you could do that. Is that
correct?

20 A. Yes, sir.

21 Q. And you're still assuring us that you can do that
if chosen

22 on the jury?

23 A. Yes, sir.

24 Q. Okay. Can you look Mr. Nichols in the eye and say,
"I will

25 give you a fair trial"?

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Juror No. 281 - Voir Dire

1 A. I will give you a fair trial.

2 MR. WOODS: Thank you for your time in
answering our

3 questions, sir.

4 THE COURT: Yes, and we all appreciate that,
of

5 course, and the time spent waiting to answer the
questions. So

6 we're not going to be able to tell you now whether
you're going

7 to serve on this jury; and we're not even able to tell
you when
8 we'll be able to tell you. So you have to live, as we
all do,
9 with some uncertainty for a time, recognizing the care
with
10 which this process is proceeding and the importance of
it, as I
11 hope you do.

12 So what I'm asking you to do now is to go from
here
13 with the understanding that you may very well be back
here at
14 sometime in the future and have the responsibility to
decide
15 the case; so please be careful about the things that
you read,
16 see, and hear and discuss with others so that you'll be
able to
17 come back and do what you've just said you could do,
decide on
18 the law and the evidence.

19 Now, if something happens in your business or
20 otherwise that affects your availability, you get in
touch with
21 us right away, will you?

22 JUROR: Yes, sir.

23 THE COURT: You have this number for us; and
you call
24 if anything at all occurs that affects your
availability.

25 JUROR: Yes, sir.

4291

1 THE COURT: And you'll hear from us, but I
can't tell
2 you when.

3 JUROR: Okay.

4 THE COURT: So for now, you're excused.

5 JUROR: Thank you.

6 THE COURT: 119.

7 Good afternoon. Will you please raise your
right hand
8 and take the oath from the clerk.

9 (Juror No. 119 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: Please be seated there in the
chair by the
12 microphone.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. We've kept you waiting all day. Of course, it's
hard for
16 us to estimate how much time we'll need with respect to
people,
17 and I apologize for keeping you waiting. We're going
to get
18 started. We may not get done with you this afternoon,

and

far as 19 you'll have to be back in the morning; but we'll go as

20 we can. All right?

21 A. Okay.

selection of 22 Q. And you know that what you're here for is the

Lynn 23 a jury to try the case of United States against Terry

advising that 24 Nichols. And you got a jury summons awhile back

through 25 your name has come up as a possible juror in this case

4292

Juror No. 119 – Voir Dire

questionnaire 1 a chance process, and you filled out a short

out to 2 about you, sent it back, and you got a notice to come

you 3 the Jefferson County Fairgrounds. You did, and there

you 4 confronted a much longer questionnaire. And of course,

about your 5 answered that, and we're going to talk a little bit

6 answers, but not repeating it all over again.

again 7 I want to, before we go any farther with this,

8 introduce you to the people who are here with us this

9 afternoon, some of whom you met before when we were
together at

10 the auditorium building.

11 At that time I introduced Mr. Lawrence Mackey
here at

12 the first table and Ms. Beth Wilkinson, attorneys for
the

13 Government. They're joined now by Mr. Patrick Ryan and

14 Mr. James Orenstein, additional attorneys for the
Government.

15 You also were introduced to Mr. Michael Tigar
and

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

17 And then after these introductions, I talked
to you

18 some and the other members of the panel about the
background of

19 the case, how it arises as a result of an explosion of
a

20 federal office building -- at a federal office building
in

21 Oklahoma City, Oklahoma, on April 19 of 1995. An
office

22 building was destroyed. People who were in it -- many
of them

23 were killed and injured; that thereafter, charges were
filed in

24 Oklahoma City in the United States District Court there
in the

25 form of an indictment, which is just a statement of
charges,

Juror No. 119 - Voir Dire

1 and filed by Government counsel. And in those charges,
a man
2 named Timothy James McVeigh was accused along with
Terry Lynn
3 Nichols -- and the indictment says "and other persons
not
4 named" -- with entering into a conspiracy or an
agreement to
5 bomb that building and to kill and injure people in it
and
6 destroy the building; that the charges -- and there are
11
7 charges in all, but in summary, in addition to the
conspiracy,
8 the defendants were charged with carrying out that
plan,
9 bombing the building, and also that this -- these
charges
10 included the first-degree murder charges as to the
deaths of
11 eight law enforcement agents who were in the building
and
12 worked for agencies of the national government.
13 To these charges, the defendants entered pleas
of not
14 guilty, thereby disputing them and creating the issues
for
15 trial.
16 The case was then moved from Oklahoma here to

Denver

17 because of a concern about asking people over there
where this
18 happened in that community to serve on a jury; and so
when the
19 case came here, I entered an order for separate trials;
that
20 the evidence as it related to Mr. McVeigh had to be
considered
21 in one trial at which he was the defendant represented
by his
22 lawyers and that regardless of the outcome of that
case, the
23 evidence with respect to Mr. Nichols had to be heard at
a
24 separate trial with a separate jury and his lawyers.
25 Understood?

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Juror No. 119 – Voir Dire

1 A. Yeah.
2 Q. And indeed, after that order was entered, there was
a trial
3 of the evidence as it related to Mr. McVeigh and that a
jury
4 who was selected at that -- for that trial in this very
same
5 kind of process heard the evidence and decided that the
6 evidence proved him guilty beyond a reasonable doubt,
came in

7 with a guilty verdict.

8 The jury then was asked -- that same jury --
to hear

9 more, a second trial, on the issue of punishment. And
after

10 hearing a lot more in the case, the jury came back with
a

11 recommendation for a sentence to death. And now --
that was

12 that case. Now we're starting a new case, and it's
fresh; and

13 nothing that happened in the McVeigh trial can be
considered in

14 this case. And certainly, the outcomes of that case,
the

15 jury's -- that jury's decisions, cannot have any
influence or

16 be considered in any way by the jury to decide this
case. You

17 follow that?

18 A. Yes, sir.

19 Q. And if, you know -- if in this case, the jury were
to

20 consider what that jury did, that would violate the
very point

21 of the separate trials, because each case should be
judged with

22 respect to its own evidence and its own issues. Do you

23 understand that?

24 A. Yes, I do.

25 Q. And I then went ahead and discussed and explained
some of

Juror No. 119 - Voir Dire

1 the basic things about jury service because most of the
people
2 there had never served on a jury. And that's true of
you.

3 You've never been on a jury, have you?

4 A. No, I haven't.

5 Q. So I wanted to go over these fundamental principles
of law
6 that apply in all criminal cases in the United States,
because

7 these are things that are required under the
Constitution of

8 the United States. And I suspect that you remember
what I

9 said, but I want to just review it again so we'll have
some

10 understanding about where we go next in these questions
and the

11 like, so you know exactly what a jury is called on to
do.

12 And the first thing is that under our
constitution,

13 every person who is charged in any court in the United
States

14 is presumed to be innocent of whatever charge that is.
It

15 doesn't make any difference who the person is or what
the

16 charges are, the presumption is innocence. And what
that means
17 is that he, that person, does not have to prove
anything at his
18 trial. He doesn't have to come in with any witnesses
or any
19 exhibits or any evidence at all to prove himself not
guilty.
20 It's up to the Government who has brought the charge to
come in
21 with the evidence to prove him guilty, and so no person
who is
22 accused has any obligation to offer any evidence, and
certainly
23 no person who is accused has any duty to take the
witness stand
24 and answer questions or to give any explanation about
the case
25 to the jury. He can simply remain silent and require
the

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Juror No. 119 - Voir Dire

1 Government to come in with its evidence. And the
defendant can
2 challenge that evidence, because there are rules of
evidence
3 that govern what can be heard and considered. A
defendant can
4 challenge the admissibility of the Government's
evidence. It's

the 5 up to these prosecutors to bring in the witnesses and
course, 6 exhibits. And in addition to those challenges, of
testimony. 7 these witnesses would be cross-examined about their

this 8 And at the end of the trial, at the end of all
jury 9 evidence having been received, the court instructs the
conviction 10 about what has to be proved before there can be a
offense and 11 and refers to things called the elements of each
be a 12 defines exactly what has to be proved before there can
13 finding of guilt.

14 And of course, the burden of proof is beyond a
the 15 reasonable doubt, which means simply that at the end of
this 16 trial, the jury is asked: Now, does this satisfy you,
guilty beyond 17 evidence, that the defendant has been shown to be
then you 18 a reasonable doubt? If there is a reasonable doubt,
find him 19 must give the defendant the benefit of that doubt and
20 not guilty. You understand that?

21 A. Yeah.

22 Q. Any question about that?

23 A. No. It's pretty clear.

24 Q. Okay. And, you know, on this matter of not
testifying,
25 too, remaining silent, what we tell jurors in that kind
of case

4297

Juror No. 119 - Voir Dire

1 where a defendant does not testify is you may not
consider that

2 in any way. You can't say to yourself or to other
jurors,

3 Well, why didn't he testify? Is he afraid to answer
questions?

4 You know, what's he hiding? You can't even talk about
the fact

5 that a defendant does not testify if that be the case.
You

6 understand that now?

7 A. Uh-huh.

8 Q. Now, in addition to understanding what I've said,
do you

9 agree with these principles?

10 A. Yeah, I do. That's a right that we have.

11 Q. Every one of us. And Mr. Nichols shares that right
under

12 the Constitution; you understand that?

13 A. Yes, I do.

14 Q. So as he sits here this afternoon, he's presumed to
be

15 innocent of all of these charges. Do you accept that?

16 A. Yes, I do.

17 Q. And you're willing to abide by that as the law, if
you

18 served on this jury?

19 A. Yes, I do.

20 Q. Now, you answered all these questions, and we
recognize

21 that some things in here may be thought to be personal
and

22 private; and of course, we're going to do all that we
can to

23 protect your privacy in all respects here. That's why
we're

24 not using your name here. That's why we arrange for
you to

25 come and go to the courthouse, so the photographers for
the

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Juror No. 119 - Voir Dire

1 press, and so forth, can't take your picture. And in
the

2 course of the questioning, we'll attempt to avoid
things that

3 readily identify you. And we do have to recognize --
and I

4 hope you understand -- that we're now in open court, so
the

5 things that are said and done here are public, this
being a

6 public proceeding.

7 I gave copies of your questionnaire to the
people who
8 are here to participate in this process, but they won't
use
9 them for any other purposes. Okay.

10 I want to -- we're not going to go over all
these
11 questions that you've answered for us already all over
again,
12 but there are a few things that I want to simply ask
you to
13 explain or expand on.

14 As I understand it from what you've told us,
you grew
15 up in Minnesota.

16 A. Yes, sir.

17 Q. A town called Silver Bay is where you were.

18 A. That's correct.

19 Q. What part of the state of Minnesota is that? I'm
not that
20 familiar with Minnesota.

21 A. It's right on the shore of Lake Superior, about
halfway up
22 from Duluth to the Canadian border.

23 Q. Okay. And then you came out to Colorado, what, you
were
24 about 19 or 20?

25 A. Yeah. That's about right. Yeah.

Juror No. 119 - Voir Dire

1 Q. Okay. And was it when you came out here that you
went up

2 to Idaho Springs?

3 A. Yeah. Just kind of came out looking for jobs,
looking for

4 work, and ended up finding a job up in Henderson Mine
up there.

5 Q. And that's the mine on the way up to Berthoud Pass?

6 A. Yeah. Right at Empire, there.

7 Q. Yeah. And you worked in there for about ten years?

8 A. Yeah. About ten years there.

9 Q. And in the course of that, you were, as I
understand it --

10 you did work as an electrician?

11 A. Yes.

12 Q. And you worked with the -- Of course, the operation
of the

13 mine involves explosives to loosen the material that
you're

14 looking for and to get the ore?

15 A. Yeah, it does. Yeah.

16 Q. What role -- taking you back to that time, what was
your

17 job more specifically than talking about it as an
electrician?

18 What did you do?

trolley 19 A. Mostly they had electric trains under there with
rectifiers to 20 systems and keep the trolleys running and the
fans 21 keep the electricity going to the trains, keeping the
22 going for ventilation, that type of thing.

explosives 23 Q. And did you have anything to do with setting the
24 or wiring up charges, anything like that?

load ore 25 A. No, I observed it several times. When they would

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Juror No. 119 – Voir Dire

1 cars, they would sometimes overload them; and as an
2 electrician, we would have to go turn off the
electricity and

trains 3 watch them blast rocks out there so they could get the
4 out.

material 5 Q. Do you know anything about what kind of explosive
6 they used to set charges?

had primer 7 A. Well, I wasn't real trained in it, but I know we
8 cord, which is a detonating cord.

9 Q. Uh-huh.

10 A. And it's called "black wicks," which is a

detonator; and we

11 used regular -- let's see, prill was an explosive they
used.

12 That's about all I understood how it worked.

13 Q. Mostly from talking to crews?

14 A. Yeah. I would watch them put the prill on the
rocks and

15 wrap it with primer cord and detonate the rocks.
Sometimes on

16 off shifts, you'd be low man where somebody would have
to guard

17 for them and watch things.

18 Q. Was there ever a time when you observed that an
explosion

19 was bigger than they expected it to be or, you know,
where they

20 didn't have full control over it?

21 A. Nothing I observed, no.

22 Q. From your standpoint, it looked like they knew what
they

23 were doing and they controlled the use of these
explosives to

24 get the job done. Is that a good summary?

25 A. Yeah, that and probably a little luck involved,
too, the

4301

Juror No. 119 - Voir Dire

1 way some of the operations went.

over to 2 Q. Okay. Then you -- there came a time when you moved

3 Fort Collins?

4 A. Yes.

5 Q. I guess you were in Arvada, too, for a while.

while. 6 A. Yeah, I commuted from Arvada up to the mine for a

Were you 7 Q. Okay. And excuse me -- you were married then?

8 married when you came out?

we 9 A. Not when I came out, no. And my wife came out --

actually; 10 weren't married. We were high school sweethearts,

years and 11 and she came out after I was out here for a couple

12 then we got married.

you did, 13 Q. I did notice that she went to the same school as

14 so --

15 A. Yeah.

16 Q. -- you knew her from before.

ten 17 In Fort Collins, you have for, what, the last

guess 18 years been working for a major company up there? And I

19 you do a lot of different kinds of maintenance work.

computer 20 A. Yeah. It's mostly electrical. I do a lot of

21 work, instrumentation work.

22 Q. And electrical as it relates to the computers?
23 A. Both. Both. A lot of it -- we have -- use
electrical
24 switches to give inputs to computers, and the computers
pretty
25 much control the process.

4302

Juror No. 119 - Voir Dire

1 Q. Sort of assembly line, part of the process?
2 A. Yeah -- well, not the assembly line process. I'm
in the
3 part that makes the product, and then there is another
part of
4 the plant that actually assembles it, puts it -- the
containers
5 and stuff.

6 Q. Okay. And you keep these computers doing what
they're
7 supposed to do; is that --

8 A. Try to, yeah.

9 Q. Okay. Now, your wife has been working part-time
with the
10 school there in Fort Collins?

11 A. Yeah.

12 Q. And as I understand it, her work is in -- is
accounting in
13 nature.

14 A. Yeah.

kind of 15 Q. And what, things like inventory control and that
16 thing?
17 A. Yeah. I think she pretty much keeps track of the
18 warehoused food and the bills that are associated with
that.
19 Q. Getting them verified and paid?
20 A. Yeah.
21 Q. That kind of thing?
22 A. Maintain stock, I guess, make sure they got enough
of
23 everything.
24 Q. All right. And you've got four children, all of
whom are
25 in school and living at home?

4303

Juror No. 119 - Voir Dire

1 A. Yeah.
2 Q. Correct?
3 A. That's correct.
4 Q. I wanted to ask you -- you got your questionnaire
there. I
5 wanted to ask you about a few things that you've marked
here.
6 If you'll turn to your questionnaire and the answers
given.
7 And I note that on page 11, you marked -- we asked you

about

8 members of your family being in different kinds of
work. And I

9 noticed you marked law enforcement of some kind.

10 A. Yeah. I have a brother-in-law who was a sheriff in

11 Minneapolis. He's actually 911 dispatcher, I guess.
He's a

12 sheriff.

13 Q. Has he done other kinds of work with the sheriff's
office

14 there besides the dispatch?

15 A. No. He pretty much got in on the ground floor of
the 911

16 stuff when it all started many years ago, and that's
where he's

17 been.

18 Q. So is he a supervisor of some kind there now?

19 A. Yeah, I believe so.

20 Q. Okay. And you marked at page 21 that you know a
person in

21 the U.S. Attorney's office or a federal prosecutor.
Page 21,

22 No. 96.

23 A. Oh, yeah. I wasn't sure on that one. I'm not sure
what --

24 should I say his name?

25 Q. Well, no, you don't need to say his name. You
wrote it.

Juror No. 119 - Voir Dire

1 A. I'm not sure exactly what he does, but I think -- I
have an
2 acquaintance with him from years ago, as our kids were
the same
3 age and we coached hockey together.

4 Q. All right. And that's the context in which you
know him?

5 A. Yes.

6 Q. And you got some impression that (1) he's a lawyer,
and (2)
7 he's some kind of a prosecutor. Is that about what you
know?

8 A. I think he's the DA in Golden or something.

9 Q. Okay. And then there is a matter that I want to be
guarded
10 about in asking you, but page 22 on Question 102. Now,
this is
11 an area of some sensitivity, so I want to be careful in
asking
12 you about it. How long ago was this event?

13 A. About a year ago.

14 Q. And how did -- did you know these people or this
person?

15 A. Yeah. It was a -- it was a --

16 Q. You said a neighbor?

17 A. Yeah. It was a neighbor. She was playing at a
neighbor's
18 house; and another young boy was messing around, I
guess.

19 Q. About the same age?
20 A. No. He was -- I think he was 14.
21 Q. And the victim was how old?
22 A. She was 8.
23 Q. And did you find out about it because of what she
said?
24 A. No. The people that she was down there visiting
saw
25 something funny and came up and told us, and then it
went from

4305

Juror No. 119 - Voir Dire

1 there.
2 Q. Okay. And then it was reported.
3 A. Yes.
4 Q. And a prosecution followed?
5 A. Yes.
6 Q. And was that something that went to a trial?
7 A. The -- yes, it was.
8 Q. There was a trial?
9 A. Yes.
10 Q. With testimony?
11 A. There was -- you know, he admitted what he did, and
there
12 was no problem. It was -- I actually wasn't there. My
wife

he was 13 went to the -- to that session of the court there, and

14 found guilty.

15 Q. But was he found guilty by a jury, or there was an
16 admission of the conduct? Do you know?

17 A. I'm not sure.

all 18 Q. Well, is there -- your summary of it was "It was
19 handled very well."

it was 20 A. Yeah. It was pretty quick. It wasn't -- I mean,
could 21 pretty terrible, but it was -- it wasn't as bad as it
22 have been, I guess.

23 Q. Sure. Was there a physical injury involved?

24 A. No.

family? 25 Q. But, of course, some people were very upset in your

4306

Juror No. 119 - Voir Dire

1 A. Yeah.

same 2 Q. Did your -- if you know -- does your wife have the
3 view as you that it was handled very well?

4 A. Yes. Yes.

you were 5 Q. All right. Then there was a time apparently when

6 a witness at a case. I'm looking at the next page and
Question
7 103. Excuse me. And you were -- you were pretty young
at that
8 time yourself. You see where I'm looking?
9 A. Yes, I do.
10 Q. This was back in Minnesota?
11 A. Yes, it was.
12 Q. And did that end up in a court hearing?
13 A. Yeah, it did.
14 Q. And you testified?
15 A. Uh-huh.
16 Q. Well, tell me a little about that. That's not so
17 sensitive, I take it.
18 A. Yeah. I was a witness to a man buying beer for
underaged
19 kids, and I was one of the underage kids that he
bought beer
20 for.
21 Q. I suspected that might be the case, but it happens.
So
22 what happened? Did somebody come along and blow the
whistle on
23 all of you, or --
24 A. Yeah. It was -- we were out at his place, and it
was just
25 sitting around his trailer and the sheriff showed up
and they

Juror No. 119 - Voir Dire

1 charged him, so . . .

2 Q. Then you had to go and testify?

3 A. Uh-huh.

4 Q. And this person was a friend of yours?

5 A. Not really.

6 Q. How many of you were there?

7 A. Oh, it was probably half a dozen of us there.

8 Q. It was kind of a party?

9 A. Yeah. Not really. The party was actually the day
before,

10 I think, but --

11 Q. All right.

12 A. We were a day late.

13 Q. Well, let me ask you this question -- and I don't
mean to

14 suggest anything about it, but did anybody say to you
-- well,

15 did you have any hesitation or reluctance about going
in and

16 testifying against this fellow?

17 A. Yeah. I was pretty nervous.

18 Q. And did anybody put any sort of pressure on you,
like, "If

19 you don't do that, we'll charge you, too"?

20 A. No. No.

crime? 21 Q. Did anybody suggest that you could be charged for a

22 A. No. Not that I remember.

didn't 23 Q. All right. So you didn't look at it as if you

24 cooperate, they'd do something to you --

25 A. No.

4308

Juror No. 119 - Voir Dire

1 Q. -- did you?

2 A. No. It was --

3 Q. Okay.

4 A. Pretty small-town stuff there.

5 Q. Was there a jury?

6 A. I don't even remember now. I think there was.

7 Q. Lawyers on both sides asked you questions?

8 A. Uh-huh.

relates at all 9 Q. Anything from that experience that you think

juror -- 10 to your present situation where you're asked to be a

11 juror?

a long 12 A. No, not really. It's just something that happened

13 time ago.

14 Q. Sure. And you wonder why we ask you so much about

it

15 because it's in the past; but, you know, what we're
probing for

16 and asking questions about is anything that could
possibly

17 affect you in your role as a juror, what you're being
asked to

18 do. So that's why we ask all these things. And
forgive us if

19 we seem to be too much full of questions, but . . .

20 You have a general impression on page 22 about
the

21 criminal justice system. And you say it works
adequately for

22 the most part; and then you say you hear of a case --
you

23 always hear of a case where the innocent man pays and
the

24 guilty man walks. Do you have such a case in mind now
as an

25 illustration of that point?

4309

Juror No. 119 - Voir Dire

J. 1 A. I think when I wrote that, I was thinking of the O.

2 Simpson trial. Of course, that was my opinion.

3 Q. Okay. And so was that a case where you're saying
the

4 guilty man walks?

5 A. In my opinion, it was; but -- yeah.

6 Q. How much did you follow that case as it was
happening?

7 A. Oh, not a lot.

8 Q. You know, that one was televised live. I mean, you
could
--

9 watch it on certain channels, I guess, as it happened

10 A. Right.

11 Q. -- just as if you were in the courtroom.

12 Did you do any of that? Did you watch any of
it live?

13 A. I watched a little bit of it.

14 Q. And then it was a case where there were -- they
took pieces
and that

15 of that tape and showed it at night on news summaries

16 sort of thing. So you saw that kind of thing?

17 A. Yeah. Yes.

18 Q. And I take it, then, that what you think is that
the jury

19 didn't decide the case right, or what do you think?

20 A. I think that according to the law that it went the
way it

21 was supposed to go. I think there was -- the jury
probably had

22 reasonable doubt, and that's the way it had to go.

23 Q. So the jury did its job?

24 A. I think so.

25 Q. But why do you think -- you also think that the

defendant

4310

Juror No. 119 - Voir Dire

1 was actually guilty, apparently. Now, why do you think
it came

2 out that way and the jury did its job?

3 A. I don't know. That's a good question. It's just
-- the

4 evidence that maybe the jury didn't hear and it was
hearsay.

5 On TV, you know, everything is sensationalized, and I
think the

6 general public probably --

7 Q. So you're relying on things that you heard and read
apart

8 from what actually happened at the trial? Is that what
you're

9 saying?

10 A. I'm sorry?

11 Q. Well, I'm wondering if what you're saying is that
you're

12 also influenced by things that was said -- were said
about it,

13 things that may never have gotten into evidence in the
case.

14 A. Yeah. There was probably a lot of public hearsay
and --

15 Q. Well, what did you think about the job done by the
lawyers

16 and the judge in that case?

17 A. I didn't think they should have televised it. I
think that

18 kind of blew it up.

19 Q. Do you have any other impressions about the kind of
work

20 that the lawyers and judges did -- or judge did?

21 A. I don't know. It seems like, you know, they did
what they

22 had to do. They did --

23 Q. Well, are there other cases that you think -- you
were

24 thinking of here including one going the other way,
that an

25 innocent man -- you say, "the innocent man pays." I
assume you

4311

Juror No. 119 - Voir Dire

1 mean an innocent person found guilty?

2 A. No specifics. You know, you always -- maybe on
"20/20" or

3 something like that, you see where somebody is found to
be

4 innocent after they spent --

5 Q. Years later, for example?

6 A. -- years in jail or something.

7 Q. Well, you know, the real heart of the whole system
is the

8 jury. You accept that? You understand that?

9 A. They're the ones that have to decide, I guess.

10 Q. Pardon me?

11 A. They're the ones that have to decide.

12 Q. That's right. And that's what we rely on. That's
what the
here who
That's
13 whole system is about, having some people coming in
14 haven't any experience with the system at all, hear the
15 evidence, decide according to the law and the evidence.
16 what jury service is about.

17 And in cases where there has been a lot of
talk about
itself,
and
part of
about.
21 the jury selection process. That's what this is all
22 You understand?

23 A. Yes, sir.

24 Q. And I take it that your assessment of this case is
pretty
turn to
25 much expressed at page 37 on Question 163, if you'll

Juror No. 119 – Voir Dire

1 that.

thinking 2 Does that about sum up where you are in your
3 about this case?

4 A. Yeah.

the day 5 THE COURT: Okay. Well, we're to the end of
-- with 6 for this; and even if I went a little farther to this
time to 7 this with you now, we wouldn't be able to finish in
ask you 8 give a fair opportunity for a lawyer on each side to
morning at 9 some questions, so we'll ask you to be back tomorrow
10 8:45 and we'll complete this. Will you do that?

11 JUROR: Yeah, I can.

ask that 12 THE COURT: And in between now and then, we
auditorium 13 you be careful again, just as when you left the
read, 14 building, asking you to be careful about all that you
anything that 15 see, and hear and discuss with others, to avoid
juror. 16 could influence your ability to try this case as a

first thing 17 So you're excused for now. We'll see you

18 in the morning -- that is to us 8:45 -- and continue

this.

excused 19 Thanks very much for your patience. You're

20 for now.

21 Yeah, you can leave.

22 (Juror out at 5:04 p.m.)

I'd 23 THE COURT: Well, we'll resume in the morning.

on 24 like just before we resume again to ask your positions

you today 25 several of the things that Mr. Manspeaker brought to

4313

minutes 1 at my request, so we'll hope that we can start about 5

I think 2 earlier and discuss those things. And I'm -- you know,

because of 3 appropriately they have to be discussed at the bench

4 the nature of it; so we'll recess till 8:40.

5 (Recess at 5:05 p.m.)

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15 REPORTERS' CERTIFICATE

16 We certify that the foregoing is a correct
transcript from

Dated 17 the record of proceedings in the above-entitled matter.

18 at Denver, Colorado, this 20th day of October, 1997.

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21

Paul Zuckerman

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23

Kara Spitler

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