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4 City, Oklahoma, 73102, appearing for the plaintiff.
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and
6 JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney
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9 MICHAEL TIGAR, and RONALD WOODS, Attorneys at
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10 1120 Lincoln Street, Suite 1308, Denver, Colorado,
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11 appearing for Defendant Nichols.

12 * * * * *

13 PROCEEDINGS

14 (In open court at 8:40 a.m.)

15 THE COURT: Be seated, please.

16 We suggested consideration of agreement with
respect

17 to four of them. I don't know if there is any
agreement on any

18 of them. Let me just ask you if there is; and if there
is,

19 fine. If there's not, we'll talk about it.

20 MR. TIGAR: May we come to the bench, your
Honor?

21 THE COURT: All right.

22 (At the bench:)

23 (Bench Conference N38B1 is not herein transcribed
by court

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

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1 (In open court:)

2 THE COURT: All right. We're ready to
continue with

3 119.

4 (Juror No. 119 was recalled to the stand.)

5 THE COURT: Good morning, sir.

6 JUROR: Good morning.

7 VOIR DIRE EXAMINATION CONTINUED

8 BY THE COURT:

9 Q. I want to continue. When we talked yesterday
afternoon, we

10 reviewed the background of the case and also your
background

11 and some things that you said in the questionnaire. I
want to

12 turn now to the -- and we've already talked about the
jury's

13 role, what a jury does in a criminal trial. I want to
turn now

14 to the additional jury role that can be involved in a
case of

15 this type, and that is the jury's role in the
punishment. And

16 because of the possibility of a guilty verdict and then
the

17 jury being involved in a sentencing decision, we asked
you some

18 questions on the questionnaire regarding your attitudes
or

19 opinions or beliefs with respect to the possible
punishments of

20 life in prison with no possibility of getting out ever,
no

21 release, and the punishment of death. You recall that
part of

22 the questionnaire?

23 A. Yeah, I do.

24 Q. And I'm referring to page 27 where it starts, by

way of an

25 explanation as to why we're asking questions, and then
your

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1 answers on page 28 and 29.

2 Do you have them in mind now? Go ahead and
read

3 through that so that you do have it in mind. It's been
some

4 time since you answered the question.

5 A. I recall now.

6 Q. Okay. And you understand that normally in a
criminal case

7 that does not involve possible punishments of this type
that

8 the jury has no role to play with respect to sentencing
so that

9 in cases, again, where there's no capital punishment as
a

10 possibility under the statutes involved, jury comes in,
hears

11 the evidence, decides whether the evidence proves guilt
beyond

12 a reasonable doubt and, if not, returns a verdict of
not

13 guilty, case is over; if so, returns a verdict of
guilty and

14 the case is over as far as the jury is concerned
because then

the 15 the question of punishment is a question for the judge,

16 court, to decide.

sentencing 17 And in such cases, before the judge makes a

collected to 18 decision, there is a lot of additional information

circumstances 19 present to the court, things that deal with the

forth 20 of the crime itself, its consequences on people, and so

individual human 21 and then also a lot about the defendant as an

concerning that 22 being, and this includes all of the information

upbringing, 23 person's life, his life story, early years, family

divorces, work 24 relationships with family and others, marriages,

happened 25 history, military history, almost everything that has

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about that 1 in the person's life because the court is concerned

2 defendant as an individual human being.

courts, we 3 And under our sentencing system in federal

that, you 4 do not have any kind of automatic sentence. It isn't

number of 5 know, you commit this crime, this is your sentence, X
then 6 years. There has to be individual consideration. And
hearing 7 when all this information is collected, there's a
the 8 before the court with the prosecution presenting the
the 9 prosecutors' view of what the sentence should be and
this 10 reasons and the defense presenting a defense view; and
person. 11 court considers all of these points and considers that
12 particular sentence is appropriate for this particular

been 13 And in cases where more than one person has
different, 14 involved in the same crime, the sentences may be
and 15 depending upon all of these individual circumstances
unique human 16 characteristics, recognizing that each person is a
story. 17 being and in part unique because of that person's life

18 Understand?

19 A. Understand.

there 20 Q. So it is different, however, under federal law when
present the 21 are crimes which by federal statute prevent -- or
22 possibility of this type of sentence that we're talking

about

23 now. And the sentence to life means just that: You
serve the
24 rest of your natural life in prison, never getting out.
The
25 sentence to death is obvious. And then there can be
yet

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1 another sentence, a decision that, well, neither life
nor death
2 is appropriate, something less than that; and then that
can be
3 a matter for the court. But the life-or-death decision
is up
4 to a jury. In our federal system, we do not have
judges make
5 that kind of a decision. We want juries to make that
kind of a
6 decision, the 12 people on the jury.

7 So we of course in approaching this case must
begin as
8 we talked yesterday with the presumption of innocence;
that
9 Mr. Nichols is presumed innocent and that there be a
not guilty
10 verdict. But we have to talk about this possibility in
the
11 event that there is a guilty verdict because we select
our jury

12 now before the trial begins and that same jury would be
13 involved in punishment if the case got there.
Understood?

14 A. I understand.

15 Q. So what we wanted from you in this questionnaire is
to get
16 some of your views and opinions about what you would do
with
17 these possible sentences if you were one making the law
without
18 regard for what the law is, which I will explain to you
in a
19 few minutes. But the purpose here was to give us some
idea of
20 your thoughts coming in here without that information.
And did

21 you understand that that was the context in which these
22 questions were put to you?

23 A. Yeah.

24 Q. I mean, we tried to explain that here. Let me ask
you:
25 When you came to this part of the questionnaire, were
you

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1 surprised that these -- that this was in here?

2 A. No.

3 Q. 'Cause you anticipated maybe some questions about
the death

4 penalty?

5 A. Yeah.

6 Q. And had you given much thought to the use of the
death

7 penalty in the criminal justice system before you
filled out

8 this questionnaire?

9 A. Not particularly with filling out this
questionnaire, but

10 it's --

11 Q. No, I mean before you came out to do it. Let me
just

12 explain why I ask you that. You well know, I'm sure,
that the

13 issue of whether there ought to be a death sentence in
the law

14 is something that people disagree about and that we
have states

15 in the United States where there is no such penalty in
the law

16 and other states where there is such a penalty, but the
process

17 by which it is decided is different from the federal
law. And

18 then, you know, every time that a death sentence is
carried

19 out, obviously public debate takes place, as it has
recently in

20 the state of Colorado. You're aware of that debate
like last

21 week and the week before --

22 A. Yeah.
23 Q. -- in connection with the execution of a man
sentenced in
24 state court in Colorado.
25 So I just wanted to ask you whether -- and
sometimes a

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1 book or a play or a movie generates discussion about
the death
2 penalty. So I wanted to ask you whether in your own
life this
3 is something that you debated with others or thought a
good bit
4 about?

5 A. Yeah, I believe that there is a place for the death
6 penalty.

7 Q. All right. And you attempted to set out what you
think
8 that place should be in these answers, as I understand
you?

9 A. Yeah.

10 Q. All right. And one of the things that you say here
is that
11 you think it is a great deterrent.

12 A. Yeah.

13 Q. Now, would you explain what you mean by that?

14 A. Well, just the death penalty being out there. I

mean it

15 should be a deterrent that anybody that knowingly
commits a

16 crime that could have the death penalty, that they know
what

17 they're up against; it's a deterrent.

18 Q. All right. And you -- as I understand it, you say
here --

19 and I'm just repeating this because I want to be sure I
read it

20 correctly: For maybe killing someone out of range --
out of

21 rage or temporary insanity?

22 A. For the life-in-prison thing, that's what I wrote
on there?

23 Q. Yeah.

24 A. You know, it would be each circumstance -- or each
thing

25 would be different, you know, each case would be
different, I

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1 guess.

2 Q. All right.

3 A. Like I said on here, you know, if premeditated --
4 premeditated, knowing exactly what you're going to do,

that

5 type of thing, I mean that person would know the
consequences.

6 Q. Which fits into your notion about it is a
deterrent, so it

7 ought to deter somebody from making a planned killing;
is that

8 about what you're saying?

9 A. Yes.

10 Q. Okay. Now, let me explain to you what the law is
and

11 discuss it a little more with you. And of course we're
dealing

12 with the federal statutes here and the federal system,
you

13 understand. What happens in the event of a guilty
verdict in

14 such a case in Federal Court is that the jury that
heard the

15 trial and decided the evidence, that the evidence was

16 sufficient to prove guilt beyond a reasonable doubt,
then comes

17 back after returning that verdict to the courtroom
again and

18 essentially hears a second trial.

19 Now, the issue at that trial is the question
of

20 punishment: What should the sentence be. And that
trial

21 proceeds very much as the trial in the evidence
proceeds in

22 that both sides are here and witnesses are called in,
exhibits

23 are offered. It's the same sort of presentation to the
jury

24 here.

all, 25 And now what is being presented is, first of

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in 1 information -- additional information about the crime
the 2 addition to what has already been heard by the jury as
the 3 evidence at the trial. And these would be things about
also the 4 effects on people, the consequences of the crime, and
person 5 things about the roles of -- if there's more than one
of those 6 involved in it -- the relative roles and participation
there's a 7 persons in the crime, that kind of thing. And then
human 8 lot of information provided about the defendant as a
talked about 9 being, and it is somewhat analogous to what I just
10 to what judges hear and consider in deciding individual
11 sentences for punishments less than death or life in
prison.

12 Follow me?

13 A. Uh-huh.

14 Q. So the jury -- and, you know, we can't talk about

this case

15 in terms of what the evidence will be at trial, so we
can't

16 talk about this case in terms of what the information
at a

17 sentencing hearing might be because we don't know.
Therefore,

18 we have to talk pretty much in the dark about it and
deal with

19 it in terms of the general nature of this information.
But

20 certainly the jury would hear all there is to know
about the

21 defendant as an individual person, what has happened in
his

22 life, what's been done to him, what he's done to
others,

23 whether he has made contributions to society, military
service,

24 all those things, and something about his psychological
and

25 personal makeup, what kind of a person is he. And at
the end

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1 of the trial, that second trial, the court has some

2 instructions to the jury to give, just as there are

3 instructions about the law at the end of the trial on
the

4 evidence.

5 Now, this time in the instructions the court
attempts
6 to summarize all that the jury has been heard -- has
heard and
7 sort of divide it into two categories: On the one
hand, things
8 that the Government may be urging through its lawyers
to
9 support the view that death is the deserved punishment.
And we
10 refer in those summing-up instructions to that kind of
11 information as aggravating factors or circumstances,
things
12 that support the notion that death is deserved, then
also
13 listing and itemizing the things that could be
considered to
14 the contrary as mitigating circumstances or mitigating
factors,
15 mitigating against the death penalty for this
particular person
16 and suggesting that while the crime itself is of a type
that
17 the death sentence is appropriate under the law for it,
that
18 this particular defendant does not deserve to die
because of
19 all of these other circumstances about that
individual's life;
20 and it really is valuing a person's life as an
individual human
21 being. Understand?

22 A. I understand.

23 Q. All right. And then the court in these summarizing
24 instructions would say, you know, here are some
questions that
25 you can ask yourself about these factors, you the jury;
but in

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1 the end, there's no formula that can be given to the
jury,

2 there's no equation or anything; it is down to a
judgment of

3 valuing the -- assessing the crime and valuing the
human life

4 that is in the jury's hands and then determining
whether that

5 person should live or die. And that is really -- and
this is

6 why it's a jury question -- really a moral judgment to
be made

7 by the jury considering all that the jury has heard.
You

8 follow me on this?

9 A. Yeah.

10 Q. Do you have any question about what I've asked you
about --

11 I mean instructed you about?

12 A. No, no questions about it.

13 Q. Okay. So what I want you to tell us is whether if

you were

14 to serve on a jury, the jury returned a verdict of
guilty,
15 finding a defendant guilty of a premeditated, planned
murder of
16 other people, you would be open to consideration of and
17 decision on the basis of all that you had heard about
the case
18 and about the defendant as an individual human being
before
19 making a final decision?

20 A. Yeah, it would be a very tough decision to make.

21 Q. Of course. You're talking about another person's
life, not
22 just in the abstract, about whether there ought to be a
death
23 penalty, but whether this particular person before you
should
24 die. That's the question. And what we -- and, you
know, how
25 could anybody say in advance exactly how one would
approach

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1 that question? That's understandable, understandably
2 difficult. But what the juror has to do -- what each
juror has
3 to do is to be open to considering not just the crime
but the

for that 4 person before the jury, whether that person should die
5 crime. Do you understand?

6 A. I understand.

that? 7 Q. And what is your assessment of your ability to do

8 A. It would be hard, but, you know, you have to weigh
9 everything that you'd hear, I guess, and go from there.
My

10 opinion, you know, the possibility of life in prison
could be 11 worse than the death penalty in some situations.

12 Q. Yes. You know, all we can ask is for you to assess
13 yourself to see if you would be open to making a
decision on

14 the basis, as I mentioned, of everything that you get;
and of

15 course you talk it over with the other jurors, but in
the end

16 each person has to decide this, each juror has to
decide this.

17 And, you know, you have to be open to all of the
possible

18 sentence and decide it then on the basis of what you've
heard.

19 Do you think you can do that?

20 A. I think I could be objective to it, yes.

21 THE COURT: Okay. Now, there's an opportunity
for a

22 lawyer on each side to ask you a few more questions.
So if

23 you'll bear with us a while longer.

24 Mr. Orenstein.

25 MR. ORENSTEIN: Thank you, your Honor.

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1 VOIR DIRE EXAMINATION

2 BY MR. ORENSTEIN:

3 Q. Good morning, sir. How are you?

4 A. Fine, thank you.

Jamie 5 Q. As his Honor introduced me yesterday, my name is

And 6 Orenstein. I'm one of the prosecutors in this case.

7 together with my fellow prosecutors, our job is to
present the

8 evidence in this case against Mr. Nichols. If you were
9 selected as a juror in this case, you also would have a
job and

10 that would be to listen to all of the evidence with an
open

11 mind, deliberate with your fellow jurors, and come to a
fair

12 decision. You think you could do that job?

13 A. I think I could.

14 Q. All right. I'd like to ask you just a few
questions in

15 addition to those his Honor asked, so if you'll bear
with me

16 for just a few minutes. The first question I had,
though, is I
17 noticed on page 16, you told us about a bumper sticker
that
18 you've got.

19 A. Okay.

20 Q. Now, I know your team went past the Western
Conference
21 champions one year. Is there some reason you didn't
get the
22 Stanley Cup bumper sticker?

23 A. I was just a little anxious in buying a bumper
sticker.

24 Q. This was the year they didn't make it?

25 A. Yeah, this was the year they went all the way.

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1 Q. A little more seriously, sir, I would like to ask
you a
2 question or two about any opinions that you may have or
3 anything that you've heard about this case, and I
notice that
4 as a starting point, when you were asked about your
opinion of
5 the media on page 17, you said you think that most news
stories
6 are opinionated and exaggerated to sell stories. Have
you

7 caught up?

8 A. That's what I think. You know, you get a flashy
headline

9 and make people buy papers.

10 Q. So if you want to know the real story, yourself, if
you

11 have an opportunity, you want to know the facts for
yourself;

12 is that right?

13 A. Yeah.

14 Q. And the reason I ask of course is because as a
juror, you'd

15 have to set aside anything that you saw in the media
and decide

16 only from -- on the basis of what you saw and heard in
this

17 courtroom. Given your opinion of how the media treats
stories,

18 to sell stories, you think you'd have any trouble doing
that?

19 A. Anything I read, I take with a grain of salt. I've
seen

20 and been involved to where I've seen things written
where I've

21 been there, and it hasn't been the same thing, you
know.

22 Everybody sees things differently, too.

23 Q. So you want to see for yourself and decide and
based on

24 what you yourself have seen; is that right?

25 A. Yeah.

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1 Q. Okay. And there is also a question on page 37,
actually
2 several questions, about what you've heard about this
case,
3 about the defendant, and if you have any opinions.
Now, I
4 understand that you've heard some things, and that's at
the top
5 of the page; is that right?

6 A. Yeah.

7 Q. But that's not any opinion that you formed; is that
right?

8 A. No.

9 Q. Okay. And at the bottom of the page, you wrote
that your
10 opinion of Mr. McVeigh is that he's guilty. Is that
based on
11 just the fact that he was found guilty by a jury?

12 A. Yeah.

13 Q. Okay. But now you'll see what the facts are about
14 Mr. Nichols; is that right?

15 A. Yeah.

16 Q. Let me turn from there -- let me ask you first:
You

17 understand what his Honor told you about the question
of

18 punishment, it's something that the jury doesn't
consider
19 unless and until it decides that a defendant is guilty.
20 A. Uh-huh.
21 Q. It's a two-step process?
22 A. Okay.
23 Q. But if we get to that second stage in this case,
just as
24 you don't know right now what the facts are about Mr.
Nichols,
25 do you think you could tell anything -- and not in this
case,

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1 we don't know what the evidence is in this case. But
in any
2 case, do you think you could decide sentencing without
knowing
3 the facts about the defendant on trial?
4 A. No.
5 Q. I'd like to discuss that question of punishment a
little
6 bit more with you. If you'd turn to page 28 where you
have
7 your answers about that written. I noticed that in
both A and
8 B, which asks you about life in prison and also the
death
9 penalty, you mentioned various cases of killing. And

you said

10 you would consider the life sentence, among other
reasons, for

11 a killing that was done out of rage; is that right?

12 A. Yeah.

13 Q. So is the defendant's reason for committing a
crime, even a

14 murder, something that you would want to take into
account

15 before deciding what the appropriate sentence should
be?

16 A. I'm sorry?

17 Q. Well, you said "rage," and that's the reason I
asked the

18 question. Does that -- does that suggest that the
reason the

19 defendant had for committing his crime is something
that you

20 want to know about?

21 A. Yeah.

22 Q. And let me just ask you this. His Honor explained
what the

23 process is, this two-step process. What is your
understanding

24 of what happens in that second stage?

25 A. Like what he said, I guess there's going to be
basically

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his 1 another trial to explain things about the defendant and

2 life and everything else, I guess.

would say, 3 Q. Right. And, you know, there are some people who

committed this 4 Well, I don't want to hear any of that. If he's

case -- 5 particular crime -- and again not talking about this

6 just there are some people who would say, Any case of
7 premeditated murder, if he's committed that crime, I
don't want

8 to know about the defendant, I think he should receive
the

9 death penalty. Are you that kind of person that would
make

10 that kind of moral choice about whether that person
should live

11 or die, without knowing about the defendant, his
background,

12 what choices he made in the crime, those sorts of
facts?

13 A. Oh, absolutely not.

14 Q. And of course you said earlier that the decision
about

15 whether someone should live or die, that moral choice
is for

16 you a very tough decision to make; is that right?

17 A. Yeah.

18 Q. So I take it that you wouldn't be jumping to make
that

19 decision before you heard everything; is that right?
20 A. It's easy to say, you know, when you're with a
group of
21 friends, a few years back or something, you might say,
yes, I
22 believe in the death penalty; but, you know, after you
actually
23 have to think about making that decision, there's a lot
of
24 things you got to think about here.
25 Q. Right. And so I guess the bottom-line question is
-- and,

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1 you know, we're all looking for fair jurors here, and
so if you
2 can't do this, you just have to tell us. But the
bottom-line
3 question is: Would you go into a sentencing penalty
hearing
4 with an open mind as to all of the options, life or
death?

5 A. Yeah.

6 MR. ORENSTEIN: Okay. That's all we can ask
of you.

7 Thank you very much, sir.

8 THE COURT: Mr. Tigar.

9 VOIR DIRE EXAMINATION

10 BY MR. TIGAR:

11 Q. Good morning.
12 A. Good morning.
13 Q. I'm Michael Tigar. You heard that yesterday and at
Jeffco.
14 This is Ron Woods. Ron Woods and I were appointed by
the
15 United States district judge in Oklahoma back in May of
1995 to
16 help out Terry Nichols. That was after the Government
had
17 filed some charges against Mr. Nichols based on that
April
18 bombing. And I have a few questions, but I think
that's it and
19 then we're done.
20 What does this process make you feel like, a
bunch of
21 people firing questions at you?
22 A. This isn't what I'm normally used to.
23 Q. Okay. Well, clearly with -- given all of the
publicity and
24 given the controversy around this, is it okay with you
if we
25 ask these things?

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1 A. Yeah, go ahead.
2 Q. Okay. I want to ask you, first, you moved up to

Idaho

3 Springs in 1976; is that right?

4 A. That's right.

5 Q. Okay. Did you ever see any publicity about a case
6 involving dynamite that had started up in Idaho Springs
around
7 that time?

8 A. I don't recall.

9 Q. Okay. Well, if you don't, then that's one less
thing to
10 ask about.

11 Could you turn to page 6 of your
questionnaire.

12 Question 29, you said your father had grown up on a
farm.

13 A. Okay.

14 Q. Now, did you ever work on a farm?

15 A. No, just a little summer help with the grandfather.

16 Q. I see. Do you know if on that farm they ever used
dynamite
17 to do ditching or to clear trees or stumps or rocks?

18 A. Not on that farm, I don't recall.

19 Q. Okay. And could you look, please, at page 25,
Question

20 114. Eyewitness identification. In your -- have you
ever had

21 any experience in your life with co-workers, employment
22 situation, seeing people who were using drugs?

23 A. Yeah.

24 Q. And would you -- from -- based on your experience,
does the
25 use of some kinds of drugs like speed or whatever
affect

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1 people's ability to think clearly and see clearly?

2 A. Yeah.

3 Q. And if there were evidence about that, would you be
able to
4 consider it fairly and not based on what you heard
before, but

5 just whatever you heard from the witness stand?

6 A. As an excuse, you mean?

7 Q. No, not as an excuse. I'm talking about a witness
came in
8 and said they saw something and there was evidence that
that

9 witness might have used some substance, speed, alcohol,
10 whatever; would you be able to consider that evidence?

11 A. Definitely would have to be thrown into the
formula, I
12 guess.

13 Q. Okay. And could you look at page 32, please. Lot
of
14 questions on there about guns. And you start out by
saying, at
15 the top of the page, "I think it's our constitutional

right to

16 own and bear." And then at 140, "Some of those armor-
piercing

17 weapons should be registered." Do you see that?

18 A. Yeah.

19 Q. What kind of weapons were you thinking of as armor-
piercing

20 weapons, armor-piercing shells or bazookas?

21 A. Well, the whole thing here, you know, the gun-
control issue

22 is a big issue, and I --

23 Q. Sure is.

24 A. -- don't know the right answers to it. I think I'm
afraid

25 that we lose a little more rights with our right to
keep guns.

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1 Q. Yeah; right.

2 A. But yet on the same hand, I believe that somewhere
there

3 has to be a limit as to what's out there.

4 Q. Well, again, there are no right or wrong answers
here, and

5 let me tell you the reason. There may be some evidence
in this

6 case about people who make their living going to gun
shows and

7 selling guns and trading in them and dealing in
military
8 surplus, all the different things that are sold there.
And my
9 question is: Would you hold it against somebody that
they made
10 their living by buying and selling weapons at these gun
shows?
11 A. Oh, no.
12 Q. Okay. And do you -- when you think that -- when
you look
13 back at -- on page 29, you -- sorry to keep skipping
around
14 here. You said that -- Question 126 -- "I think more
today the
15 government has its fingers in too many of my personal
choices."
16 Was gun control one of the things that you were
thinking about
17 there?
18 A. Yeah. Probably.
19 Q. Okay. Anything else that comes to mind?
20 A. Not really. There's, you know -- it seems like
every year
21 there's new laws that slowly whittle away at some of
our
22 personal freedoms, and that concerns me.
23 Q. Let me ask you about -- you know, jury service in
this case
24 could involve, you know, more than a month. Nobody
knows
25 exactly how long a trial this will be. Are you covered

at work

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Juror No. 119 - Voir Dire

1 in terms of your contract that you can --

2 A. Yes.

3 Q. -- you don't lose pay?

4 A. Yes, I'm covered at work.

5 Q. Okay. Understand that there's been a lot of talk
about

6 punishment and penalty, and I do want to talk about
that; but

7 this is our only chance to talk to you about that. You
know,

8 we don't ever think we're going to get there, right,
'cause

9 we've got a first stage here. And the Government has a
theory

10 of the case. We're going to cross-examine every
witness.

11 We're going to put on evidence of our own when they get
done,

12 because they get first ups. It's not like a hockey
match where

13 whoever gets the puck does it; it's one side and then
the

14 other. And then we're going to put on evidence, even
though we

15 don't have to. And at the end we're going to argue to
the

16 jury, Look, they didn't prove beyond a reasonable
doubt. So

17 you okay starting out that Terry Nichols is presumed
innocent?

18 A. Yes, I am.

19 Q. No matter what you've seen. And you'll hold them
to that

20 burden; right?

21 A. Yeah.

22 Q. 'Cause, you know, in your experience do you find
sometimes

23 that it's easy for people to throw allegations at each
other,

24 charging each other with being crooks?

25 A. Sure.

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Juror No. 119 - Voir Dire

1 Q. I mean, I don't know -- have you been following the
2 election in your labor organization for international
3 president?

4 A. Oh, yeah.

5 Q. Yeah. Well, those two guys are calling each other
crooks,

6 I guess, aren't they?

7 And I don't want to know your opinions about
that.

8 That's your private business. But that's a situation
in which

9 you've had to evaluate those charges and
countercharges; right?

10 A. Yeah.

11 Q. Yeah. Figure out how to cast your vote. And so in
this

12 case it's -- the process may be the same, except that
here

13 whatever you may have heard in the media, whatever
somebody

14 said in a speech -- I guess in a labor election, a lot
of

15 things are said in speeches -- all that has to be put
aside.

16 It's just what comes in in court. Are you comfortable
with

17 that?

18 A. Yeah.

19 Q. You can be fair and start with an open mind; right?

20 A. Hope so.

21 Q. Okay. Well, you understand why I'm asking the
question;

22 right?

23 Have you ever had people say bad things about
your

24 labor organization just because they had some --
something

25 they'd read in the media about the leadership?

Juror No. 119 – Voir Dire

1 MR. MACKEY: Judge, objection.

2 THE COURT: Overruled.

3 You may answer. This goes on in trials,
objections

4 and rulings, so you don't need to pay any attention to
that

5 part of it.

6 JUROR: Okay.

7 Yes.

8 BY MR. TIGAR:

9 Q. Yes, it's happened. I don't want to probe into
this, but

10 you've had experience in putting things out of your
mind and,

11 you know, just 'cause somebody said them and actually
looking

12 at what the real evidence is; right?

13 A. Yeah.

14 Q. Okay. So that's all that we could ask you to do
here.

15 Could you turn to page 30 of your
questionnaire. At

16 the bottom of the page, I think that qualifies for the
most

17 concise answer that -- that we've had. Could you
expand a

18 little bit on that, what you think?

19 A. No. 132.

20 Q. Yeah, No. 132.

blame 21 A. Well, as much as I know about it, I think there was

22 on both sides.

23 Q. Uh-huh.

24 A. I thought the government was maybe -- you know,
they had an

25 awful show of force there, they were kind of pushing
their hand

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Juror No. 119 - Voir Dire

1 there a lot. And then from why those people started
the place

2 on fire, if in fact they did, I don't know. I don't
know why

3 they couldn't have mediated, met, talked, something
like that.

4 It was a pretty unfortunate thing that happened there.

5 Q. Right. Well, let me turn, then, to a little bit
about this

6 case. You said in your media question that you saw a
lot of

7 horrible pictures on TV. You remember that?

8 A. Yeah.

9 Q. They were horrible, weren't they?

10 A. Oh, yeah.

11 Q. And, you know, in this case, in the trial there's
going to

12 be evidence about those events, and there will be

pictures, and

13 there will be people that lost an awful lot there. And
that

14 evidence will be very powerful, no question about it.

15 Do you think that you'd be able to look at
that

16 evidence and see it for what it is, very powerful
evidence

17 about that destruction, terrible thing that happened,
and then

18 in the next part of your thinking look also,
separately, at the

19 evidence, whatever it was, if the Government brought
it, what

20 did -- if anything -- what, if anything, did Terry
Nichols have

21 to do with that? Could you separate those out?

22 A. Oh, yeah. You know, that's fact. That's in the
books of

23 what happened.

24 Q. Okay.

25 A. Okay. Now the question is to find out, you know,
if

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Juror No. 119 - Voir Dire

1 Mr. Nichols had anything to do with it.

2 Q. Do you remember from what you've read, saw, heard,
you

3 know, in the media where he was on the day that the

bombing

4 happened?

5 A. No, I don't know that.

6 Q. Okay. Do you remember reading anything, seeing
anything

7 about how he first made contact with the law
enforcement

8 people?

9 A. No, I don't.

10 Q. Okay. Well, now, then, let me turn to this
question of --

11 some questions that others have asked you also about
this issue

12 of a penalty, punishment. If a jury in a federal case
finds

13 someone guilty of a crime for which there could be a
possible

14 life sentence without possibility of parole or a
possible death

15 penalty, we don't let judges decide; that is, we put
that to

16 juries. No federal judge has got the power to make
that kind

17 of decision. It's always got to be 12 people in the
box. Are

18 you comfortable with that idea?

19 A. I wouldn't say I'm real comfortable with that idea.

20 Q. Okay. But you accept that that's -- you know,
that's the

21 American system?

22 A. Right.

23 Q. Now, in that second part, of course the Judge
explained it.
24 Other people have talked to you. I don't want to talk
about
25 details. Based on your view, your view is the death
penalty is

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Juror No. 119 - Voir Dire

1 a deterrent; correct?
2 A. Yes.
3 Q. Yeah, okay. And of course there's some people that
say it
4 should never been imposed; right?
5 A. Right.
6 Q. And I guess there's some people that say that
whenever
7 somebody commits a whole bunch of premeditated murders,
they
8 should we executed.
9 A. Right.
10 Q. Now, do you hold either of those two opinions?
11 A. Oh, kind of both of them maybe, you know. It would
depend
12 on the facts.
13 Q. Okay. So with -- if you were -- let's take -- and
again
14 the reason I'm talking hypothetically here is that we
don't

15 know what's going to happen in this case. We don't
know even

16 what the evidence is going to be. And we're not
supposed to be

17 trying to put facts in you to, you know, try to get you

18 committed one way or the other.

19 In the O. J. Simpson case, if he had been
convicted of

20 the premeditated murder of those two people, do you
think that

21 that would be a case where you'd think, gee, he ought
to -- we

22 ought to think about the death penalty?

23 A. Yeah, I'd think about it there.

24 Q. Okay. And had you thought about it before today
as, you

25 know, gee, why didn't they ask for it?

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Juror No. 119 - Voir Dire

1 A. I'm recalling that they didn't ask for it --

2 Q. Right.

3 A. -- 'cause they thought they could get a conviction
better

4 without it.

5 Q. Right. And in your thinking about that case, what
makes

6 you think that that would be a case where the death
penalty

7 might be something to think about?

8 A. You know, I don't know if that was a premeditated
thing or
9 if it just kind of happened.

10 Q. Okay. Well, but I guess the question then, is: In
a case
11 in which you as a juror were to find someone guilty of
12 multiple, premeditated murders -- all right -- could
you
13 deliberate with your fellow jurors and come back into
court and
14 look the defendant in the eye and say: I sentence you
to life
15 in prison without possibility of parole?

16 MR. MACKEY: Judge, objection.

17 THE COURT: Overruled.

18 JUROR: Yeah. Yes, I could.

19 BY MR. TIGAR:

20 Q. Okay. And you understand -- no, that's the wrong
question.

21 Any question that starts out "you understand" is really
me not
22 asking you anything; it's me trying to tell you
something. And
23 that's not what I'm supposed to be doing here.

24 In this case, when the Judge talked about
these
25 mitigating factors -- and let's look at this O. J.
Simpson case

Juror No. 119 - Voir Dire

1 again. You know, there's somebody -- you know what he
did
2 before, right, what he did in sports, what he did in
life, the
3 obstacles that he overcame and so on. If you were the
juror in
4 a case and the jury said, okay, he's guilty of
premeditated
5 murder, would you be open to considering those facts
about his
6 growing up and his life and so on in determining
whether
7 punishment, putting him away for the rest of his life
without
8 any possibility of release, was a good enough
punishment for
9 him as opposed to or as distinct from a death sentence?
planned
10 A. Well, in that situation there, let's say he had
11 this for a while and he knew exactly --
12 THE COURT: I don't think we should be doing
this in
13 terms of a particular case.
14 MR. TIGAR: All right, Your Honor.
15 THE COURT: Mr. Simpson, you know, is not in
court to
16 defend himself.
17 MR. TIGAR: All right, your Honor. I

apologize.

18 BY MR. TIGAR:

19 Q. Let me pull, okay, just a hypothetical case,
completely

20 hypothetical, 'cause I recognize the Court's right, I
shouldn't

21 have done that.

22 Somebody's convicted of killing two people,
planned it

23 out and so on, and their background is all these other
-- these

24 factors, the problems they had growing up and so on.
Go ahead

25 with your answer. 'Cause I know you'd started to
answer how

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Juror No. 119 - Voir Dire

1 you would look at that.

2 A. Well, I believe that the death penalty could be
used there.

3 People change because what you did in the past doesn't
4 necessarily mean the way you are now.

5 Q. Okay. And when you say could be used there, the
only

6 question I'm asking you is would you be open, you know,
to

7 saying, look, life is enough, the life sentence is
okay, death

8 sentence is okay? Would you be open to considering

both of

9 those options?

10 A. Yes.

11 Q. You would. Regardless of how bad the crime was;
right?

12 A. Yes.

13 MR. TIGAR: Okay. And -- well, then, I thank
you very

14 much for talking to me. Thank you.

15 THE COURT: You're done now with answering
questions.

16 And you can go from here now, and we do appreciate all
the time

17 that you've spent with us, including the time that you
came out

18 and answered the questionnaire and your openness with
us in

19 freely answering all those questions.

20 But I can't answer your questions about, you
know,

21 will you serve, when will you know. I regret that.
I'd like

22 to be able to tell you, but I can't. The process goes
on and

23 will go on for some time yet. Therefore, you will have
to live

24 with the uncertainty, and I can't -- you know, I can't
tell you

25 on a certain date we'll let you know.

1 So what you have to do is to bear with us on
that, be
2 patient with us, and also conduct yourself with the
3 understanding that you will be on the jury, being
careful about
4 reading, seeing, and hearing things or discussing
things that
5 could relate to all of the things we've been talking
about here
6 and be able to come back here, then, at a later time
and serve
7 on this jury and make the decisions required of the
jury. And
8 if there should be anything happen that you got called
out of
9 town or a family emergency or something like that, you
let us
10 know immediately, because we want to be able to stay in
touch
11 with you, all right?

12 JUROR: Okay.

13 THE COURT: Thanks again. You're excused for
now.

14 JUROR: Thank you.

15 THE COURT: 994.

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

18 (Juror No. 994 affirmed.)

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: Please be seated there, in the
chair near

21 the microphone. You can swivel that around in whatever
way you

22 want. You don't have to lean over into the microphone
to be

23 heard.

24 JUROR: Thank you.

25 VOIR DIRE EXAMINATION

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Juror No. 994 - Voir Dire

1 BY THE COURT:

2 Q. And first I want to express our appreciation for
all the

3 time you've spent waiting.

4 A. Okay.

5 Q. And I'm sorry that it is -- you were here all day
6 yesterday. We just can't anticipate, you know, with
any degree

7 of certainty how long it will take to talk with
individuals,

8 and therefore we sometimes badly misjudge the time. So
I'm

9 sorry about that.

10 A. Thank you. I appreciate that.

11 Q. But now you recall of course that you received a

jury

12 summons advising that you were among those who by a
chance

13 selection process were called for service, possible
service as

14 jurors in the case of United States against Terry Lynn
Nichols.

15 A. Yes.

16 Q. You sent back a response in the form of a short

17 questionnaire and gave us answers including -- and you
don't

18 have this one in front of you, but you included an
answer about

19 concern with respect to the impact on your current
position.

20 A. Yes, sir.

21 Q. And we did see that, but in -- went ahead and
notified you

22 to come out to Jefferson County with others on the 17th
of

23 September and then gave you a much longer
questionnaire.

24 And you were among the persons who assembled
on that

25 day and at that place, and I introduced myself to you
and the

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Juror No. 994 - Voir Dire

1 others, and I also introduced other people who are here
now,

people 2 and I want to make sure that you know the names of the
3 who sit here with us this morning.

Beth 4 And you have previously been introduced to
5 Mr. Lawrence Mackey here at the first table and Miss
6 Wilkinson as attorneys for the Government in this case
7 Department of Justice. They're joined now this morning
8 Mr. Patrick Ryan, Mr. James Orenstein. Mr. Ryan and
9 Mr. Orenstein were not with us at Jefferson County.

Tigar and 10 We did have with us, of course, Mr. Michael
11 Mr. Ronald Woods, attorneys for Terry Nichols; and
12 Terry Nichols, the defendant in this case.

in this 13 There are a few others here who are assisting
14 process.

asked of 15 And you answered all these questions that we
16 you, and we appreciate your cooperation in doing that.

I want 17 to emphasize that I -- as I told you I would, I've
18 given copies of your answers to the people you see here, but to no
19 one else.

all that 19 And we very much respect your privacy, and we will do
20 we can to assure that privacy and balance it out

against the

21 public interest in this proceeding. And as a part of
that, you
22 know, your name is not used here and we make these
arrangements
23 for you to go and come to the courthouse without a
press
24 photographer being able to photograph you and all of
those
25 other things.

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Juror No. 994 - Voir Dire

1 Also there are some of the things that you
answered in
2 the questionnaire that are very personal and private.
We
3 respect that, and I don't think that you need to have
concern
4 about that because a number of these things are not
really
5 important to us here. But we, as I said, appreciate
your
6 telling us everything that we asked you to.

7 And I want to turn first to -- well, you know,
we're
8 not going to go over all these questions and answers,
9 obviously.

10 A. Okay.

11 Q. But we do have some things that we'd like to have

you

process 12 explain, and also I will explain some things about the

13 because you've never been on a jury, have you?

14 A. No.

the 15 Q. And I want to start, then, with reviewing some of

the 16 things that I said to you and the others in explaining

sure 17 background of the case. Now, these are things that I'm

18 were already known to you, but we have to lay kind of a
19 foundation for the questioning that follows.

explosion 20 So you know that this case arises out of an

which 21 at Oklahoma City, Oklahoma, on April the 19th of 1995,

building and 22 resulted in the destruction of a federal office

building; 23 the loss of life and injury to a lot of people in the

Federal 24 that then charges were filed in Oklahoma City in the

a 25 Court there by way of an indictment, which simply means

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Juror No. 994 – Voir Dire

accusing 1 statement of charges, by attorneys for the Government

2 a man named Timothy James McVeigh along with Terry Lynn
3 Nichols -- and then the indictment says "and other
persons not
4 named" -- with conspiring, agreeing to bomb that
building and
5 to kill and injure people in it. And the indictment
goes on in
6 other charges to allege that in addition to planning
such a
7 bombing, the defendants carried it out and the charges
then
8 include eight charges of first-degree murder of law
enforcement
9 agents who were in the building and died in the
explosion.

10 These things you already knew, I'm sure.

11 A. I'm aware of them, yes.

12 Q. Yeah. I mean before I told you, you had general
awareness
13 of them, I suppose?

14 A. Correct. That is correct.

15 Q. And then I explained the procedural background of
this
16 case; and that is that the named defendants pleaded not
guilty
17 to the charges made against them in Oklahoma. Then
there was
18 an order entered transferring the case from Oklahoma to
19 Colorado for trial because of a concern about the
difficulty in
20 asking people in Oklahoma to sit as jurors in the case.

And

21 after the case came to Colorado, I then entered an
order
22 dividing the case into two parts, separating the
defendants for
23 trial so that the evidence as it may relate to Timothy
McVeigh
24 would be considered separately from the evidence as it
may
25 relate to Terry Nichols.

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Juror No. 994 - Voir Dire

1 And that was done, and then a trial was held
with
2 respect to the evidence as it related to Timothy
McVeigh. A
3 jury selected in this same process came in, heard that
4 evidence, found him guilty. And then that jury was
asked to go
5 on beyond that and make a sentencing recommendation
after a
6 second trial on the question of punishment or
sentencing. The
7 jury did that and recommended the death sentence as to
8 Mr. McVeigh.

9 And then, as I explained to all of you who
were
10 assembled as potential jurors here, the -- whatever you
may
11 have read, seen, or heard about the evidence in the

McVeigh

12 trial and certainly the outcomes of the jury's
deliberations in
13 that case cannot in any way be considered in this case.
It has
14 to be set aside. We're starting here with no evidence
and with
15 a clean slate. And to do otherwise, to consider
anything about
16 the Timothy McVeigh case, would violate the very reason
for the
17 order for separate trial. You understand that?
18 A. That is also my understanding.
19 Q. All right. And then I explained a bit about what
jury
20 service involves, what is required of the jury. And of
course
21 there are fundamental principles of law that apply in
every
22 case under the Constitution of the United States. And
these
23 principles apply regardless of who the defendant is,
what the
24 crime is, or even what court it is as long as it's in
the
25 United States and governed by the Constitution of this
country.

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Juror No. 994 – Voir Dire

1 And among those principles is that each person is

presumed to

2 be innocent of the charges made against him or her
regardless

3 of what those charges are or who that person is. That

4 presumption of innocence carries throughout the trial
and

5 entitles that person to an acquittal, a finding of not
guilty,

6 unless 12 fair-minded persons, considering only the
evidence

7 heard at trial and following the law, determines that
the

8 evidence shows guilt beyond a reasonable doubt. You've
heard

9 of these points before, I trust?

10 A. Yes, I have.

11 Q. And it is important to recognize, too, that as a
part of

12 this, what we call the due process of law, no person
who is

13 accused of crime has any burden or duty of proving
anything.

14 Certainly they don't have to prove themselves to be not
guilty.

15 In fact, they need not prove anything. They need not
call any

16 witnesses or offer any exhibits and need not testify.
So one

17 of the fundamental rights of an accused is to remain
silent

18 throughout the trial, not answering any questions from
the

19 lawyers, not explaining anything to the jury, and
simply 20 challenging the evidence offered against him by the
21 prosecution.

22 So in this case, it is up to these lawyers for
the 23 Government to bring in the witnesses and the exhibits
to 24 attempt to prove what has been alleged about Terry
Nichols.
25 You understand that?

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Juror No. 994 - Voir Dire

1 A. Yes, I do.
2 Q. And at the end of the trial, the court gives the
jury 3 instructions about the law and outlines in specific
order the 4 elements of each offense, what has to be proved by the
evidence 5 before a jury can find the defendant guilty of a
particular 6 charge, like the conspiracy charge, like murder charge.
And 7 then the question goes to the jury to decide based on
all of 8 the evidence whether that proves the crime beyond a
reasonable 9 doubt, which means, of course, that if after
considering it all

jury must 10 the jury has a reasonable doubt about proof, then the

find him 11 give to the defendant the benefit of that doubt and

12 not guilty. You follow?

13 A. Yes, I do.

these 14 Q. And do you have any disagreement or dispute with

15 principles?

16 A. No.

this case 17 Q. So are you willing to accept and follow them in

18 if you were to serve on this jury?

19 A. Yes.

plainest terms, 20 Q. And that means, of course, to put it in the

presumed 21 Terry Nichols sits in this room with us this morning

22 to be innocent of these charges made against him and is

evidence 23 entitled to any reasonable doubt remaining after the

24 is complete. Agreed?

25 A. Agreed.

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Juror No. 994 – Voir Dire

without 1 Q. Now, I want to turn to the matter of your work and

2 asking you where you're employed or, you know, things
that
3 identify you. You said in the original questionnaire
that
4 there was a current project that could be adversely
affected by
5 the interruption of your work and service on the jury.
And as
6 I've explained, we cannot tell you -- well, first of
all, we
7 can't tell you when the trial starts specifically
because we
8 don't know how long this process will take, and it does
take
9 several weeks to do this. And then secondly, we don't
know how
10 long the trial will take, but we have to assume here
for
11 purposes of what we're doing now that it may take
several
12 months. So there is a substantial interruption of
everybody's
13 life and work routine to serve.

14 Without identifying what it is, can you tell
us now
15 whether -- what the situation is regarding the project
and the
16 interruption that would be affected by your jury
service?

17 A. I work in a division known as new products, and
we're
18 developing a rapidly moving technology that's meeting
the needs

19 of the market that are current out there today. And we
are

20 very small, start-up, subsidiary of a large
corporation, so our

21 funding isn't large, so we're very small team, very
focused.

22 And I'm an integral part of that team bringing the
product to

23 fruition and meeting the needs of the market to make it
24 successful.

25 Q. Which is also in a very competitive environment?

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Juror No. 994 - Voir Dire

1 A. Yes, very competitive.

2 Q. Well, have you talked to the people involved in
your

3 workplace about jury service?

4 A. Yes, I have.

5 Q. And what has their reaction been?

6 A. Their reaction is that I'm a crucial part of the
team and

7 that it would be difficult for the business to meet the
needs

8 of the market.

9 Q. But has there been anyone suggest to you, then,
that

10 because of the importance of that to the company, you
ought to

11 get off of this jury?
12 A. No.
13 Q. Or any suggestion of ways that you can get off of
the jury
14 without asking to be excused like just say he's guilty
or
15 something like that?
16 A. Human resources -- since we are such a large
corporation,
17 we have large human resources department, and their
stance on
18 this is that it's paid for and it's considered civic
duty. So
19 no one has ever -- no one has made that suggestion or
given me
20 that strategy.
21 Q. And of course you haven't adopted that on your own,
either,
22 because we know what your answers are here, so you
haven't
23 taken that approach with us.
24 A. No, I haven't.
25 Q. And I guess what it comes down to on balance is
that you

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Juror No. 994 - Voir Dire

1 recognize the importance of this obligation as a
citizen as
2 well as your company's position and your

responsibilities

3 there?

4 A. And then with that, I'd like to add as part of
this, as I

5 recognize is my civic duty, I also recognize my
corporate

6 social obligations, and I lead a highly diverse,
qualified team

7 where I'm providing other opportunities to society by
placing

8 qualified candidates that normally don't have the
opportunity

9 to work on projects such as these. So with that, I
also have

10 the other balance of that.

11 Q. Yeah. So -- you know, I guess I have to put it in
direct

12 terms. Are you accepting that while it may be
disadvantageous

13 to your company, you're willing to serve in this case?

14 A. I don't know how to answer that.

15 Q. Well, how can I put it any plainer?

16 A. How do I feel about this, or do I recognize it's my
civic

17 duty? That's what --

18 Q. Let me put it in these terms. You know, what's
involved

19 here is essentially a 9-to-5 day --

20 A. Correct.

21 Q. -- of course a little more on the getting here and
getting

22 back, Mondays through Thursdays; Fridays, 9 to 1.
There's no

23 sequestration of the jury. The jury is free at other
hours,

24 including weekends, and I'm not here to suggest that
you spend

25 all those other hours working for your employer,
either; that's

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Juror No. 994 - Voir Dire

1 not my purpose in reviewing this.

2 A. Correct.

3 Q. But I think the question that we have is are you
going

4 to -- if you're here and on this jury and committed to
the

5 service in the case, you're going to focus on this case
and not

6 on thinking about what's happening to the company in
your

7 absence?

8 A. That would be difficult for me.

9 Q. Why?

10 A. Because I would also have to -- after I performed
my duties

11 down here, I would be obligated to go in and work in
the

12 evenings to keep abreast of the work and the
functionality of

13 my team. I'm very highly involved in my team
situation.

14 Q. Well, suppose I ordered that you not do that?

15 A. Then I would have to go with the order of the
Court.

16 Q. Okay. We can't have people, you know, exhausting
17 themselves on that. Jury service itself has a physical
18 component to it.

19 A. Correct.

20 Q. Focusing and paying attention during the day. And
I can't
21 have -- none of us here can have jurors working day and
night.

22 A. Correct. And my normal work hours are around 70
hours a

23 week. So I would have to go back to -- I would have to
obey
24 the wishes of the Court, but that is the amount of work
hours

25 that I do put in for this project.

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Juror No. 994 - Voir Dire

1 Q. Well, let's assume that I entered an order for you
and
2 anybody else who was in a similar situation that this
is your
3 priority and this is your work and until the jury is
done and

4 the trial is done and that's it. Are you going to come
to the

5 courtroom, then, resentful or angry or unable to
perform your

6 service because I've forced you into it?

7 A. I don't feel I would be angry or resentful. I
would

8 just -- since work is such an important part of what I
do, I

9 would feel like that was a portion of me that was
disengaged.

10 But I don't feel like I would be angry about it.

11 Q. Okay.

12 A. I would be accepting of it.

13 Q. Well, you know, the criminal justice system is a
pretty

14 important thing for this country. Accept that?

15 A. Yes, I do.

16 Q. Okay. Well, that -- and of course there's some
things in

17 your background that causes me to understand that you
do

18 realize the importance of justice and fairness in the
system.

19 A. I believe that's true statement.

20 Q. Well, let me turn to a few of the things that I
wanted to

21 ask you about. In some sense, there's sort of two
phases in

22 your life as I understand it from what you've told us.

23 A. That is correct.

24 Q. And they sort of are divided at a particular time
or close
25 to a particular time. And now of course you've been
working

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Juror No. 994 - Voir Dire

1 for this company now for, what, eight years or so?

2 A. Nine years; correct.

3 Q. Nine years. And the marriage now is of about equal
4 duration?

5 A. Correct.

6 Q. Your husband now is in a similar type of business,
7 communications?

8 A. No. He's a different -- completely different
occupation.

9 Q. Well -- yes, he is. Let me turn to that. Where is
that

10 here? It's page --

11 A. It's Question No. 49.

12 Q. Thank you. He is indeed. I apologize for
misreading this.

13 Does he travel in this work?

14 A. Yes, he does.

15 Q. A good bit?

16 A. Pardon me? A good bit of the time, yes.
Especially this

17 time of the year.
18 Q. So that he may be gone for a week or two weeks at a
time?
19 A. He can be out as long as a month and then just home
on a
20 Sunday and then back out in the field again.
21 Q. All right. You mentioned that at one time you
worked on a
22 powder crew?
23 A. Yes, sir.
24 Q. And in that connection worked with explosives?
25 A. That is correct.

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Juror No. 994 - Voir Dire

1 Q. Now, was that -- and that was in connection with
2 construction. Was that like road construction?
3 A. Yes, it was. We were working in mountainous
regions, and
4 we had to blow part of a mountain down to get the road
in
5 there.
6 Q. And what particular work did you do on --
7 A. I was drilling and putting actually -- drilling and
pumping
8 it with the powder. So I was drilling the core and
then
9 actually putting the powder into the drills, into the
holes.

10 Q. Did you do that according to somebody else's
11 instructions --

12 A. Yes, we had a lead powder man.

13 Q. Who would tell you what to put in there, what
amounts --

14 A. Correct.

15 Q. -- and so forth?

16 Now, did you know what type of explosive you
were

17 using?

18 A. It was dynamite.

19 Q. And in amounts? Would this be several holes
drilled?

20 A. Several charges would be loaded appropriately to
how he

21 wanted the mountain to fall.

22 Q. Yeah. And then how were they connected up?

23 A. Fuses. We ran fuses between all the charges,
loaded in the

24 holes.

25 Q. All right. And how long were you doing that kind
of work?

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Juror No. 994 - Voir Dire

1 A. I was in that construction field for approximately
five

2 years.

3 Q. With this particular type of work?

4 A. That was one of my functions in that position.

5 Q. So --

6 A. I actually loaded -- I loaded powder charges for
7 approximately three months.

8 Q. Being putting in dynamite in --

9 A. Correct.

10 Q. -- putting it in whatever conformation --
conformation was

11 necessary?

12 A. Correct.

13 Q. Were there accidents related to the explosives?

14 A. Accidents not causing injuries, but accidents
causing

15 like -- one time the powder was too heavy, and we hit
some cars

16 without causing damage to people, but we did damage
vehicles.

17 Q. So you got more explosion than expected --

18 A. Correct. Yes, sir.

19 Q. -- at least one time?

20 A. Uh-huh.

21 Q. All right. Now, I want to turn to page 18, please.
And we

22 asked you about some books.

23 A. Yes.

24 Q. And the very first one there you marked yes.

25 A. Yes.

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Juror No. 994 - Voir Dire

1 Q. When did you read that book?

2 A. That would have to be several years ago. I barely
remember

3 even what it's about.

4 Q. How did you come to read it? Do you recall the
5 circumstances?

6 A. To be honest with you, no, I don't.

7 Q. I mean somebody recommended it to you or you --

8 A. I probably -- I read the Sunday reviews quite a bit
and get

9 a lot of my reading information like from The Post
reviews, et

10 cetera. That's usually how I kind of look for reading
11 materials.

12 Q. In your recollection of what you read, do you see
any --

13 including also what you may have read and heard or seen
about

14 this case -- and by this case, I'm speaking about the
Oklahoma

15 bombing, not just Terry Nichols -- do you see any
association

16 or connection with that book and this case?

17 A. Because I'm so -- it's been so many years since
I've read

really 18 it, I would have to say I can't make a connection. I

19 can't remember anything in detail.

condition 20 Q. All right. You also have mentioned on page 4 a

21 for which you take medication.

22 A. Correct.

not 23 Q. And again, this is one of these things where we're

controlled by 24 pressing you for details; but is that condition

25 the medication that you take?

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Juror No. 994 - Voir Dire

1 A. To an extent, yes.

an 2 Q. Is there anything about that that you see as having

which 3 effect or influence on your ability to serve as a juror

most of 4 includes, you know, sitting in a chair like you're in

lunch? 5 the day with breaks midmorning, midafternoon, and

sit for 6 A. Yesterday brought back loud and clear that I can't

affected by 7 long time period. I'm -- my fibromyalgia has been

8 yesterday's sitting.

9 Q. And that, without -- I don't know a great deal
about it;

10 but as I understand it, that affects you in terms of
the

11 overall body.

12 A. Correct. I have to have --

13 Q. Kind of flu-like symptoms?

14 A. Correct. I have to temper my day with a lot of
walking and

15 moving, and not just sitting. So, yes, its an
arthritic-type

16 condition to where I start -- I don't know how to
describe it.

17 It's like an arthritis. It's a pain associated --

18 Q. And a fatigue, too?

19 A. Correct.

20 Q. Okay. So tell me: In addition to the medication,
then,

21 you work with this by exercising?

22 A. Exercise, stretching, tempering my day with not
long

23 periods of sitting.

24 Q. And then in your workplace, you're able to do that?

25 A. Correct. I am a -- because of the nature of my
business, I

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Juror No. 994 - Voir Dire

1 am not at a desk. I'm actually out on the floor

working with

2 the product.

3 Q. And moving about?

4 A. Moving about.

5 Q. If you want to take a walk, you can --

6 A. Correct.

7 Q. -- because you're not punching a clock?

8 A. That is correct.

9 Q. Well, you have to -- you know, like a lot of other
things,

10 you kind of have to tell us whether this is something
you can

11 do. There is an area, but small, that you can walk in
in the

12 building; but obviously for reasons that I'm sure are
clear to

13 you, it would not be a feasible thing for you to be
walking

14 around the block --

15 A. Yes, I understand that.

16 Q. -- just in terms of the publicity that would be
involved.

17 A. Correct.

18 Q. What's your estimate of your ability to manage
this?

19 A. I probably can -- just by yesterday, I would have
to manage

20 it by taking -- have the ability to stand during the
day.

21 Q. But I told you, you know, we take breaks.

22 A. Correct.

23 Q. You don't just sit here from nine to five.

24 A. Correct.

25 Q. There's 20-minute intervals when you could get out
and walk

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Juror No. 994 - Voir Dire

1 in the hall, for example.

2 A. Correct.

3 Q. Do you think that will work? No way to know in
advance, is

4 there?

5 A. I don't know. I don't know. Yesterday, I sat for
most of

6 the day, and I'm having difficulty today. That's the
best

7 estimate I can give right now.

8 Q. And are you uncomfortable now as you sit here?

9 A. Well, from yesterday.

10 Q. Physically uncomfortable?

11 A. Physically, yes, I am having pain -- not pain, but
I'm

12 uncomfortable. I would say that if I was on the jury,
if I

13 would have the ability to be in a back row and be able
to stand

14 up as need be, that would be one way to manage it.

move? 15 Q. But in addition to standing, you really need to

16 A. Correct.

is that 17 Q. Okay. One other thing that I wanted to ask of you

justice 18 we asked you for a general opinion about the criminal

question could 19 system. That's about as broad a question as any

Question 100. 20 be. And you answered us here on -- I guess it's

-- I 21 "It is working very well, best available in our global"

22 guess you were going to add global society, or --

23 A. Correct.

the core 24 Q. -- something. And you recognize, of course, that

25 of the whole system is the jury.

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Juror No. 994 - Voir Dire

1 A. Yes. It's a portion of that, yes.

the jury 2 Q. Yeah. And a very vital one, because the role of

-- we 3 is central and key to what we do. It's up to the jury

the 4 rely very much on the judgment of the jury. It's up to

a 5 jury to decide whether the evidence proves guilt beyond

6 reasonable doubt.

7 A. I believe that's key to our system.

8 Q. And there is also another role for the jury to play

in

9 certain type of cases. And those are cases where the

death

10 penalty is a possibility. And we asked you about that

in the

11 questionnaire, too, recognizing that the type of crime

12 charged -- the statutes that are alleged to have been

violated

13 here provide for the possibility of punishment by

really three

14 types of punishment: One is life in prison with no

possibility

15 of ever getting out, no release, you die in prison when

your

16 time comes; secondly is the possibility of a sentence

to death,

17 being put to death by execution; the third is some

lesser

18 sentence.

19 Now, in criminal trials, generally speaking,

that do

20 not involve the punishments like life in prison and

death,

21 under our system the jury judges the evidence; and if

the

22 evidence proves the defendant guilty beyond a

reasonable doubt,

23 it goes to the judge to make a sentence decision.

That's not

24 the jury's role. The jury's completed its task by
finding the
25 defendant either guilty or not guilty.

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Juror No. 994 - Voir Dire

1 And when a judge then makes a sentencing
decision for
2 an individual who has been convicted of crime, the
judge takes
3 into consideration a good deal more than that which was
4 submitted as evidence at the trial.
5 So there is a separate sentencing hearing
before the
6 judge, and information is gathered and presented to the
judge
7 concerning additional facts about the crime,
circumstances
8 about the crime, impact on victims, that kind of thing,
and
9 then also a good deal of information about the
defendant as a
10 unique and individual human being, essentially
everything about
11 the defendant, sort of the kinds of things that we've
asked you
12 to share with us, only even more so, so that the judge
has
13 information all about the defendant's background, early
14 history, relationships with others, family, marriages

and

15 divorces, military service, work history -- you know,
all of
16 the things that go together to make each of us
different from
17 all others.

18 And then the judge hears from both sides, the
19 prosecution and defense, and makes a decision, a
judgment about
20 this person as an individual human being. And the
judgment
21 then, the sentence, is not dictated simply by the crime
for
22 which he was convicted. So it's the crime plus who is
this
23 person and what is the significance, you know, with
respect to
24 the crime and also the person of the sentence; does
this person
25 deserve a particular sentence.

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Juror No. 994 - Voir Dire

1 And even in cases where there's more than one
2 defendant who has been convicted, multiple defendants,
of the
3 same crime, the judge will consider all these
individual
4 factors and make individual decisions which may be
different

5 among the persons convicted. Understand?

6 A. Yes.

7 Q. Now, under these federal statutes that are involved
here,

8 the life-and-death decision is not made by a judge. We
don't,

9 in our country, give that -- and of course it differs
among the

10 states; but we're talking federal here, federal law.
Congress

11 has said that's not a decision to be made by a judge;
that's a

12 decision to be made by the people on the jury. So the
same

13 jury who heard the evidence at the trial is then
involved in

14 deciding what the sentence should be for this person.

15 Now, that is not a factor to be considered in
weighing

16 the evidence at the trial. The punishment doesn't come
into

17 the trial of the evidence to determine whether the
charges have

18 been proved. Follow?

19 A. That makes sense.

20 Q. Okay. So because of the possibility that a jury
selected

21 in this case might have to consider sentencing because
of the

22 possibility of a conviction, a guilty verdict,
recognizing, of

23 course, that the presumption of innocence says that

isn't going

24 to happen because the presumption of innocence
anticipates a

25 not guilty verdict; but if there is a guilty verdict,
the jury

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Juror No. 994 - Voir Dire

1 must then be involved in the sentencing decision. And
that's

2 why we asked you some questions about your attitudes,
opinions,

3 and beliefs; and these are the ones that -- the
questions that

4 you've answered on page 28.

5 A. Okay.

6 Q. And there is a preliminary, a preface to all of
this

7 beginning over on page 27 that you probably remember,
but I

8 don't want to ignore that.

9 A. I'm glad to review that really quickly.

10 Q. All right. Please do.

11 A. Okay.

12 Q. And you read your answers?

13 A. Correct.

14 Q. So you understand that the premise of these
questions was:

15 How would you define the law as to when these

punishments would

And you 16 be appropriate if you had the power to decide the law?

17 answered in that spirit, as I understand it.

18 A. That's true.

ask you 19 Q. And I guess the way I understand -- well, let me

upon 20 this: Is the question of the death penalty something

21 which you have been given -- have you thought about the

criminal 22 question of death as an appropriate sentence in the

23 justice system before answering this question?

24 A. Yes, I have, before.

25 Q. It's a matter much discussed in our society.

4377

Juror No. 994 - Voir Dire

1 A. That's correct.

say 2 Q. And have you had views about it similar to what you

3 here?

would be 4 A. Yes. In some situations, I would feel that it

actually 5 appropriate; in other situations, not. However,

asked to 6 discussing it in theory is much different from being

7 participate in this decision.

were 8 Q. Sure. And so as you answered these questions, you
this? 9 starting to focus down on, Well, what if I have to do
10 A. That is correct.
about it 11 Q. And it may well be that you've thought some more
answers. 12 since September the 17th when you gave us these
And 13 if there's anything that you would change in these
answers, 14 feel free to tell us. Or, you know, may we assume that
if we 15 asked you the same questions today, you'd give the same
16 answers?
I've 17 A. I would be more than likely to go with the answers
18 given.
emphasize the 19 Q. Okay. Now, let me explain the process and
20 way the law is. As I have already said, the law
requires the 21 jury to make this decision about life or death. And
really, 22 the choices that a jury has in cases involving the
possibility 23 of such punishments is, you know, the jury can decide
life in 24 prison with no release possible, death, or that some
lesser 25 punishment is deserved and turn it back to the court to
decide

Juror No. 994 - Voir Dire

1 that particular punishment. But the life-or-death
decision is
2 strictly for the jury.

3 Now, I described a process by which judges
impose
4 sentences in criminal cases and how there's another
hearing,
5 and all of these other things have to be considered.
So the
6 process is somewhat similar for a jury sentencing a
defendant,
7 the person the jury has found guilty.

8 And there is a second complete trial or
penalty phase
9 hearing that works procedurally like the trial itself:
Both
10 sides have lawyers, both sides present witnesses and
11 information relevant to the sentencing decision. And
that can
12 include more about the crime, the circumstances, the
13 consequences than was heard at the evidentiary trial.
And
14 certainly it includes a lot more about the defendant,
these
15 very things that I've talked about what judges want to
know:
16 who the defendant is, what -- you know, how do you

value his

comes
17 life as a human being. Because that's really what it
18 down to, is determining whether to take the life of a
19 particular human being that has been found guilty of a
crime.

federal
20 Now, the crimes that are involved here under
21 law, of course, are crimes that involve the killing of
other
22 people intentionally, so it isn't now a question of
what kind
23 of crime; it's specifically related to murder or the
24 intentional taking of life. And that's the crime that
a person
25 has been convicted of before this sentence issue ever
comes up,

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Juror No. 994 - Voir Dire

1 so you have to start with that.

want to
2 And, of course, by talking about it here, I
3 emphasize again, as I've done repeatedly, that that
does not
4 mean anything concerning -- a presumption concerning
5 Mr. Nichols, you understand.

6 A. Yes, I do.

7 Q. And we can't talk about any specific circumstances
here

8 with respect to Mr. Nichols, just as we can't talk
about any
9 particular evidence in the case, because we don't know
what
10 it's going to be. All that's ahead. So we can't talk,
then,
11 about him as an individual, simply about the process.
And that
12 is, as I say, that with witnesses and exhibits,
everything that
13 is known about a defendant is presented.
14 And then at the end of the hearing, the court
does
15 kind of a summing up and instructions, saying, well,
now, this
16 is what you've heard in summary and these are things
that the
17 jury may consider as aggravating factors or aggravating
18 circumstances, things that may suggest to the jury that
death
19 is the deserved punishment, and these are the things
that the
20 jury may consider now as mitigating factors, mitigating
against
21 that punishment and suggesting that some lesser
punishment,
22 life in prison with no release, is the punishment that
this
23 defendant deserves. Even though other persons, for the
same
24 crime, you know, death may be the appropriate sentence.
25 Understand?

Juror No. 994 - Voir Dire

1 A. Yes.

2 Q. So it has not just the crime but the crime plus the
3 individual and all of the characteristics and
circumstances
4 about the individual. And then the court can give some
5 questions for the jury to consider in analyzing the
6 information, but the court can't give the jury any kind
of a
7 formula. There is no equation that can be applied.
It's not
8 like, you know, adding and subtracting numbers. And
though you
9 have these aggravating factors and mitigating factors
sort of
10 on each side, you don't say, well, there's two here and
three
11 here, something like that, because it comes down to a
very
12 individual, moral judgment. And the jury must then
talk --
13 talk it over. 12 people talk it over. But in the end,
14 finally, each person has to make a moral decision as to
whether
15 the defendant should live or die. Understand?

16 A. That's my understanding.

17 Q. And the question that I have of you is: If you

were to be

18 on a jury that confronted the sentencing question,
having found

19 a defendant guilty of murder, before making your
decision

20 regarding life or death, would you consider all that
you heard,

21 aggravating, mitigating, not only the crime, but the
22 circumstances and individual factors of the defendant,
consider

23 all of that and then make a decision based on all that
you have

24 heard?

25 A. That would be the only way I could logically make a

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Juror No. 994 - Voir Dire

1 decision, is to consider everything.

2 THE COURT: Okay. Now, what I'd like to do is
take a

3 break now and then come back in 20 minutes and give
lawyers on

4 each side an opportunity to ask a few questions.

5 JUROR: Okay. Thanks.

6 THE COURT: So you're excused now for 20
minutes.

7 (Juror out at 10:17 a.m.)

8 MR. WOODS: Your Honor, may we approach the
bench?

9 THE COURT: Sure.

10 (At the bench:)

11 (Bench Conference 38B2 is not herein transcribed by
court

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

13

14

15

16

17

18

19

20

21

22

23

24

25

4387

1 (In open court:)

2 THE COURT: All right, 20-minute recess.

3 (Recess at 10:20 a.m.)

4 (Reconvened at 10:39 a.m.)

5 THE COURT: Be seated, please.

6 We have agreed to excuse the person who was
last here

7 being questioned in what -- recognizing her health
problems,

8 which we didn't go into detail with in the questioning,
but we

9 are excusing her in what might be called a
compassionate

10 excuse, recognizing that particular people coming in
here have

11 particular problems.

12 And it causes me to comment, I think, upon
reflection

13 that, you know, those of you who are here reporting on
this

14 process for the public ought to at times have a little
15 compassion yourselves with respect to what you report.
We ask

16 these people some things which may not be important, I
think,

17 to the public generally in understanding this
proceeding but

18 which can have serious consequences for them where what
they

19 say here becomes known to relatives or family members
or

20 friends or co-workers and can have serious consequences
for

21 these people. And if it doesn't have anything to do
with the

22 public's interest in the process -- and I don't know

how it

23 could -- I would think that there would be some
discretion

24 exercised in what's reported as to what these people
are

25 required to say here in responding to their jury
summons, so I

4388

1 ask for your consideration of that and a little
compassion for

2 these people.

3 We'll proceed with 221.

4 Good morning.

5 JUROR: Good morning.

6 THE COURT: Would you raise your right hand,
please,

7 and take the oath from the clerk.

8 (Juror No. 221 affirmed.)

9 THE COURTROOM DEPUTY: Thank you.

10 THE COURT: Please be seated there in the
chair near

11 the microphone. And you don't have to worry about that

12 microphone. It will pick you up. You don't have to
lean over

13 and talk into it or anything; so you can be comfortable
where

14 you are.

VOIR DIRE EXAMINATION

15

16 BY THE COURT:

long

17 Q. First of all, we recognize we've kept you waiting a

that we

18 time, and we are sorry for that. I hope you recognize

be sure

19 can't program this in any way so that we can, you know,

cooperation

20 just how much time it takes; so thank you for your

21 with us here.

22 A. You're welcome.

summons

23 Q. And you know, of course, that you received a jury

in the

24 for service as a juror -- possible service as a juror

you got

25 case of United States against Terry Lynn Nichols. And

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Juror No. 221 - Voir Dire

you to

1 a summons. You responded with a questionnaire we asked

Fairgrounds

2 fill out and then came to the Jefferson County

a month

3 pursuant to another notice to ask you to be there about

about

4 ago, at which time I was there and explained something

5 the case, gave you a lot longer questionnaire to fill

out, and

6 also introduced to you people who are participants in
this
7 trial.

8 I want to do that again so that you know who
is here,
9 reacquainting you with persons you've already met and
some
10 additional ones.

11 You recall my introduction of Mr. Lawrence
Mackey and
12 Ms. Beth Wilkinson. They're at this first table here,
13 attorneys for the Government. They're joined now by
14 Mr. Patrick Ryan and Mr. Geoffrey Mearns, who also are
15 attorneys for the Government.

16 You previously were introduced to Mr. Michael
Tigar
17 and Mr. Ronald Woods, attorneys for Terry Nichols; and
of
18 course, Mr. Nichols has been with us.

19 And what we have done is, as I told you we
would do --

20 we took the copies of the questionnaire that you
completed,
21 made copies of the questionnaire you completed, gave it
to
22 these people who are here with us with the
understanding, of
23 course, that none of us will use this information for
any
24 purpose other than that in which we are now involved

and that

25 is jury selection.

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1 And we attempt to protect your privacy as much
as we
2 possibly can, not using your name here, being somewhat
guarded
3 in the questions that we'll ask you here, and indeed in
how you
4 get in and out of the courthouse so there can't be
press
5 photographers taking your picture and that sort of
thing. But
6 you should recognize that what we do here now is
public. This
7 is a public proceeding and so, you know, that's part of
8 attempting to balance privacy interests and the public
interest
9 in this trial. Okay?

10 A. Okay.

11 Q. Now, I want to simply go back for a few minutes to
review
12 the things that I said earlier before you completed
this
13 questionnaire because most of the people who have been
summoned
14 in here have never been on a jury and don't really know
much

15 about the process, so I've attempted to explain it.
And that's
16 true with you -- correct? -- that you've never been on
a jury?
17 A. That's right.
18 Q. And, of course, I also explained something about
the
19 background of this case to make sure everybody had an
20 understanding of some of the basic things, including
that this
21 case was filed as a result of an explosion in Oklahoma
City,
22 Oklahoma, on April 19 of 1995, destroying a federal
office
23 building and resulting in death and injury to people
who were
24 in the building; that thereafter, the Government
through its
25 lawyers filed charges in the U.S. District Court in
Oklahoma

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1 City, charging in what is called an indictment, which
is simply
2 a statement of the charges, the accusations, charging
that a
3 man named Timothy James McVeigh and Terry Lynn Nichols
-- and
4 then the indictment says "and other persons not named"
-- were

5 in a conspiracy, a criminal agreement, to bomb that
building
6 and to kill and injure people in it. And the charges
-- 11
7 total charges go on to allege that the named defendants
carried
8 out such a plan, did bomb the building and did kill and
injure
9 the people in it as a result of the bombing. And the
charges
10 also include eight first-degree murder charges that
charge the
11 defendants with the premeditated, intentional killing
of eight
12 law enforcement agents in the building, various
agencies of the
13 federal government, who died in the explosion.
14 To these charges both defendants entered not
guilty
15 pleas, thereby creating the dispute that creates the
reason for
16 trial. And then after that, the case was moved from
Oklahoma
17 City to Denver because of the concern of asking people
in
18 Oklahoma to sit on a jury in a case where this event
happened
19 in their midst. And then after the case was moved here
to this
20 court, I entered an order that separated the two
defendants for
21 trial so that the evidence as it may relate to Terry
Lynn

22 Nichols would be considered separately from the
evidence as it
23 related to Timothy James McVeigh; that Mr. McVeigh's
case came
24 on for trial first and a jury was selected in this very
same
25 manner; that the jury hearing his case, after hearing
all of

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1 the evidence that was presented as it related to him,
found him
2 guilty of these charges. There was then a second trial
or
3 hearing on the question of punishment, and the jury,
after
4 hearing that information, came in with a recommendation
for a
5 sentence of death for Mr. McVeigh.

6 These things you recall me explaining?

7 A. I do.

8 Q. And you probably knew them anyway before I told you
that --
9 at least some of them.

10 A. Some of them.

11 Q. Okay. And then as I explained to you and the
others,
12 the -- anything that you may and the others may have
read,

13 seen, or heard about the trial of Mr. McVeigh cannot be
14 considered now. And certainly the outcomes, the jury
verdicts
15 there, cannot be considered now in any way in the trial
of
16 Mr. Nichols, because we start over with no evidence in
the case
17 affecting Mr. Nichols.

18 And for anyone to think about what happened in
19 Mr. McVeigh's trial in this case would violate the very
reason
20 for the separate trial order. You understand that?

21 A. Yes.

22 Q. And then I explained the fundamentals of jury trial
in
23 our -- under our constitution. These are the things
that are
24 applicable to all trials in the United States, no
matter
25 whether it's a local court or state court or Federal
Court,

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1 because the Constitution applies to all, and that is
that each
2 person who is accused of any crime in this country is
presumed
3 to be innocent of that charge, and that presumption of
4 innocence, as we call it, carries throughout the trial,

5 entitles that person to an acquittal, a verdict of not
guilty,
6 unless 12 fair-minded jurors considering only the
evidence at
7 the trial determines that he's been proved guilty and
proved
8 beyond a reasonable doubt.

9 No defendant in a criminal case has any burden
or duty
10 of proving anything. Certainly, he doesn't have to
prove
11 himself not guilty. He doesn't have to offer any
witnesses or
12 exhibits. It's the Government who has made the charge,
and
13 it's therefore up to the Government to try to prove it.
So

14 counsel for the Government must come in, the
prosecutors, call
15 witnesses and introduce exhibits. And then there are
rules of
16 evidence that limit what can be heard. Follow?

17 A. I do.

18 Q. And a part of that is, you know, stressed in
criminal
19 trials that no defendant has to take the witness stand
and
20 answer any questions or offer any explanations. A
defendant
21 can simply remain silent throughout his trial and
challenge the
22 evidence that's offered against him by the Government,

the 23 objecting to admissibility and also cross-examining all
24 witnesses.

that 25 And then at the end of the case, the end of

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1 trial, the court gives instructions to the jury
outlining in 2 detail what has to be proved as well as some of the
ways in 3 which particular types of evidence can be considered,
and so 4 forth.

5 But outlining the elements of the offense,
then, a 6 court says, you know, to -- before you can find the
defendant 7 guilty, you have to find these things proved beyond a
evidence, 8 reasonable doubt. The jury then considers all of the
determines 9 deliberates, discusses the case; and if the jury
10 that the case has been proved by the evidence, they
return a 11 verdict of guilty.

12 If, on the other hand, the jury has a
reasonable doubt 13 after considering all of the evidence, they must

exercise that

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

15 Understand these things?

16 A. Yes, I do.

17 Q. Now, to put it directly in terms of this case, you
18 understand Terry Nichols sits here in this room today
presumed

19 to be innocent of the charges that the Government
lawyers have

20 made against him.

21 A. Yes, I do.

22 Q. Now, do you accept these -- in addition to
understanding

23 these points that I've explained, do you accept them?

24 A. I do.

25 Q. And agree to follow them under your oath if you
were to

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1 serve as a juror in this case?

2 A. Absolutely.

3 Q. You, as I've already said -- you answered a lot of
4 questions here, and we're not going to go over all of
them.

5 But there are a few things that I want to ask you
about, and

ask you 6 then a lawyer for each side will have an opportunity to
do have 7 some more questions, so bear with us a bit longer. We
8 more things to ask about.

9 A. Okay.

us, you 10 Q. Excuse me. As I understand it from what you told
11 were born in California.

12 A. That's true.

13 Q. And then how long did you live in California?

14 A. Until I was 10.

15 Q. And did you then come to Colorado?

16 A. Then we moved to Arkansas.

17 Q. Oh, yes. Mountain Home, Arkansas?

18 A. Yes.

implies, 19 Q. I'm not that familiar with Arkansas. As the name
20 is that in the mountains?

the 21 A. It's in the Ozark Mountains in the northern part of
22 state.

23 Q. And that's where you went to high school?

24 A. Yes, sir.

25 Q. Then you went to college in Texas?

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1 A. Yes, sir.

2 Q. And your -- at that time were pursuing studies in
theology?

3 A. Yes, sir.

4 Q. And you then -- were you at that time thinking of
following

5 a ministry or priesthood?

6 A. I did give that consideration.

7 Q. While you were engaged in these studies?

8 A. Yes.

9 Q. And the school you went to, though, was not -- or
was it --

10 a religious school?

11 A. It's a private Catholic school.

12 Q. Okay. And so the theology is consistent with
Catholic

13 teaching and that faith?

14 A. Yes.

15 Q. And then, of course, you had related subjects of
philosophy

16 and history.

17 A. Yes.

18 Q. And you came to -- did you come to Colorado right
after

19 school?

20 A. No. I worked in Texas for a year and a half before
moving

21 to Colorado.

22 Q. What kind of work did you do there?
23 A. I worked as a junior high teacher, and following
that I
24 worked as a file clerk.
25 Q. Oh, yes. All right. On page 9, you're telling us
of that

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1 background.
2 And then there came a time that you took a
position
3 with the archdiocese that was -- was that a newly
created
4 position?
5 A. Yes.
6 Q. And it didn't work out in terms of what that was
designed
7 for? Is that what happened?
8 A. Basically two positions were merged, and that
didn't work
9 out for me.
10 Q. Oh. Well, it wasn't clear to me whether it was for
you or
11 whether the administration decided that they didn't
want to
12 continue with that position.
13 A. No, I think -- I think the position was filled
following

14 my --

15 Q. Someone else took the job.

16 A. Yes.

17 Q. Now, you were at the time of completing this
questionnaire

18 working just part-time and looking for work.

19 A. That's right.

20 Q. Has that situation changed any?

21 A. Yes, sir.

22 Q. You now have a position somewhere?

23 A. Yes, sir, a full-time position.

24 Q. Can you tell us the type of work you're doing?

25 A. It's in a book store.

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1 Q. A retail store?

2 A. Yes, sir.

3 Q. And when did you start there?

4 A. Three weeks ago.

5 Q. And it's full-time?

6 A. Yes, it is.

7 Q. Are you also doing part-time at this same place
where you

8 worked before?

occasional 9 A. Only on an as-needed basis, like holidays,
10 weekends.
normally 11 Q. Sort of taking the shift that somebody else would
12 have?
13 A. Right.
14 Q. Substitute type.
15 A. Uh-huh.
whoever 16 Q. And when you took this new job, did you talk with
being on 17 it was who hired you about the possibility of your
18 this jury?
full-time 19 A. I was actually reluctant to do so. I needed a
20 job, so I did not bring it up.
your job if 21 Q. So you don't have any idea what would happen to
22 you got picked for the jury? Is that what you're
saying? 23 A. No, I'm not certain.
24 Q. Does that concern you?
25 A. Not a great deal.

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and that 1 Q. Well, I guess, you know, we have to ask you this;

were 2 is, can you survive financially if it happened that you
here for 3 selected for this jury and you were serving with us
4 several months?

5 A. Yes, sir, I could.

6 Q. And you may lose that new job?

7 A. Yeah, I think so.

8 Q. Okay. And, you know, only you can answer a
question like

9 that, so are you willing to make what would appear to
be some 10 sacrifice then financially?

11 A. I am.

12 Q. When you were teaching in Texas, you said at a
middle 13 school?

14 A. A junior high school.

15 Q. What subject were you teaching?

16 A. I taught the religion courses.

17 Q. And that was a religious school?

18 A. Yes, sir, a parochial school.

19 Q. So, what, you were teaching basic Catholic
theology?

20 A. Yes, sir.

21 Q. And I have the impression here that at one time you
were 22 thinking seriously of vocations and then you changed
your mind,

23 or are you still thinking in that direction?

24 A. No, I'm married now, so --

25 Q. That takes you out of -- takes you out of one
possibility

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1 in vocations anyway. And you know you're not here to
defend

2 your religious opinions or anything, and that's a very
private

3 thing; but we simply want to know a little bit about
how it

4 might relate to your service on the jury. And it's my

5 understanding that there are -- that the Church in its

6 organizational hierarchy takes positions on public
issues from

7 time to time. Correct?

8 A. Correct.

9 Q. And are you one of those who feel obliged to follow
the

10 Church's position, the organizational position on
certain

11 issues?

12 A. I feel obliged to understand the Church's teaching
and to

13 do my best to live my life accordingly. But I am, or
hope I

14 am, an independent thinker.

15 Q. And -- well, we're going to come to one of those
matters

16 when we talk about the death penalty, which will be
coming up.

17 And I'll reserve that for the moment.

18 You said you married recently, very recently.
Right?

19 A. Yes, sir.

20 Q. And as I understand it, your wife works for some
reporting

21 service?

22 A. Yes. At the time I completed the questionnaire,
she was

23 working for a credit reporting company, but only last
week she

24 started a new job.

25 Q. And again without revealing the employer, what kind
of work

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1 is she now doing?

2 A. It's a mortgage company.

3 Q. And she works doing some of the paperwork for the
4 completion of mortgage loans?

5 A. Yes, sir.

6 Q. So it's somewhat related to the kind of work she
was doing

7 earlier, I take it.

8 A. Yes. Yes, it is.

9 Q. And again, you know, these are personal things; but
does

10 she share your same religious faith?

11 A. Yes, she does.

12 Q. And have you talked with her about having been
summoned as

13 a juror, possible juror in this case?

14 A. Yes.

15 Q. And, of course, we asked you to be careful about
talking

16 with people and to be careful about avoiding publicity
and the

17 like; but we certainly expected that you'd be talking
to --

18 everybody would be talking to family and, you know,
those

19 directly involved whose lives would be affected by your
20 participation on the jury. Can you tell us what
reaction she

21 had to the news that you might be a juror in this case?

22 A. I think she was surprised, as I was; but she's been
23 supportive, encouraging me to -- to do what I can.

24 Q. And with respect to your duty as a citizen, is that
the

25 context you're talking about?

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1 A. Yes.

2 Q. And have you talked to others about -- like friends
or
3 other relatives concerning the possibility of your
serving on
4 this jury?

5 A. Well, I've been very tight-lipped about it. I
haven't
6 mentioned it to anyone other than my wife and my
sister.

7 Q. And what -- does your sister live here?

8 A. No, sir. She lives in California.

9 Q. So you, what, on the phone talked with her?

10 A. Actually, she got married recently herself, and she
and her
11 husband came to town for a visit.

12 Q. Okay. So you talked with both of them?

13 A. Yes, both of them.

14 Q. And what type of reaction did you get from your
sister and

15 her new husband?

16 A. Again, they were -- they were supportive. They
understood

17 that I couldn't really discuss the issues at length but
just
18 encouraged me to be myself.

19 Q. Now, you know, it may seem to you strange that I'd
ask you

that 20 questions like that, but the reason that I'm asking is
to a 21 certainly it's not uncommon for somebody who mentions
already knows 22 friend or relative or who the friend or relative
jury 23 from some other source that you've been summoned for
that some 24 service in a case receiving a lot of public attention
stay out of 25 reaction might be, Well, you don't want to do that,

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certain 1 that, and you can do so by answering questions in a
great, you 2 way; or to the contrary, some say, Well, that sounds
like 3 ought to get on the jury and write a book, or something
these 4 that. Any conversation along those lines involved in
5 discussions?
6 A. None.
what you 7 Q. Okay. Now, we asked you a broad question about
you'll 8 think about the criminal justice system on page 22, if
there that 9 turn to that. And you gave a rather guarded answer

10 we understand. You said it's working adequately; and
then you

11 say, you know, you're reluctant to express even that
opinion

12 because you don't have any personal experience. Is
that -- am

13 I reading what you're intending there?

14 A. Yes, sir.

15 Q. But certainly you've seen and read things about the
16 operation of the criminal justice system in newspapers,
17 magazines and the like, at least with respect to
certain cases.

18 Have you?

19 A. I've definitely heard and read people's opinions.

20 Q. And have you followed any cases that have been
reported

21 extensively in the press?

22 A. No, I haven't followed any particular case.

23 Q. So this is still your opinion. Is that fair to
say?

24 A. Yes. Although I would add that I trust that the
criminal

25 justice system is serving the citizens of the United
States.

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1 Q. And you hope it is.

2 A. Yes, sir.

3 Q. All right. Well, you know, sort of key to the
system is
4 the jury, because our system relies very heavily on the
5 judgment of people called in for jury service. You
recognize
6 that?

7 A. Yes.

8 Q. And a part of that trust is, of course, to set
aside things
9 that a person may see, read, and hear about a case
before it
10 ever starts and then to focus carefully on what
actually is
11 presented as the evidence in the case and also focus
carefully
12 on what the law is as it is explained by the court in
the
13 course of the trial. And these instructions that we
talk about
14 here when we ask, do you agree that you should follow
the
15 court's instructions, include everything, including
what I've
16 already said about the final instructions at the end of
the
17 trial. You understand all of that?

18 A. I do.

19 Q. And as I understand it, you're willing to be a
participant
20 in a jury and in this jury.

21 A. Yes, sir, I am.

22 Q. Now, I need to go to this question of the death
penalty and
23 discuss that with you. And we asked you something
about it in
24 the questionnaire. You recognize that.
25 A. Yes.

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1 Q. When you came out to Jefferson County knowing that
you were
2 coming out to -- as possibly a juror in this case, did
you
3 think about that you -- well, did you have in mind that
you
4 would be asked -- answering questions about the death
penalty?
5 A. I anticipated it, yes.
6 Q. And thought about it some, I assume?
7 A. Yes.
8 Q. And then on page 27, we gave you the explanation of
sort of
9 the predicate of the questions we asked you, simply
asking you:
10 Without knowing anything about what is actually
involved here
11 in the law, what do you think about the appropriateness
of the
12 law providing for penalties such as death and life in
prison?

13 You understood that was the premise of these questions?
14 A. Yes, I did.
15 Q. And you gave us answers. And I suppose you've
thought
16 about it some since writing these answers.
17 A. Yes.
18 Q. And if I were to ask you these same questions now
today, a
19 month later, after you've answered these questions,
would your
20 answers be about the same?
21 A. I think they would.
22 Q. All right. So these were your considered opinions
before
23 you wrote them down.
24 A. Yes.
25 Q. And you gave us that you had distinguished, I
guess,

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1 between the punishments of life in prison and death,
saying
2 that they both should be for serious crimes but the
punishment
3 of death for the gravest of crimes.
4 A. Yes.
5 Q. And then we essentially asked you, I guess, for

examples,

serial 6 which you gave; and with respect to the death penalty,
7 killings and war crimes.

page, 8 And then you gave us an answer on the next

person." 9 "Every effort made to uphold the dignity of a human

more about 10 Would you expand on that for us, please, and tell us
11 what this answer means.

no room 12 A. I think with regard to the death penalty, there is

us, it, 13 for mistakes. And as we can see in the world around

it's of the 14 like many other things, can be abused. And I think

dignity of 15 utmost importance that we remind ourselves of the

16 every human person.

as well 17 Q. Now, you include in that the victims of the crime

18 as the person being judged?

19 A. Absolutely.

we can 20 Q. Let me review with you what the process is so that

reviewed with 21 explore this just a little further. As I already

decide on 22 you, the jury's function in all criminal trials is to

crime 23 the evidence: Does the evidence prove the particular

not 24 charged beyond a reasonable doubt, yes or no, guilty or
guilty, 25 guilty. And in the case in which the verdict is not

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1 obviously, end of trial. And in a case not involving
the 2 punishments of life in prison or death, if the jury
returns a 3 guilty verdict, the jury has performed its function and
that's 4 the end of it from the jury's standpoint. But, of
course, 5 that's not the end of it for the court or the defendant
who has 6 just been found guilty. There is another stage, a
sentencing 7 decision to be made. And in these other types of
cases, that 8 decision is made by a judge. And the judge does not
decide 9 that just on the basis of the evidence at the trial and
the 10 fact that a jury convicted this person, because our
system of 11 justice does not involve any kind of automatic
sentence: For 12 this crime, this is the punishment.

13 Rather, our system of justice is based on the

14 consideration of the individual, and the judgment is
made on a
15 very individualized basis. So before a judge sentences
a
16 person for a crime, there is more information submitted
to the
17 court both with respect to the circumstances of the
crime in
18 addition to what is in evidence at the trial, things
about the
19 consequences to the community or the family of the
victim and
20 all of those things, and then also a lot of information
about
21 the defendant, essentially everything that can be known
about
22 the defendant: his life history, all about his early
years, the
23 family environment, his marriages or divorces, work
history,
24 military service, any health effects of, you know --
the
25 effects of any health infirmities, diseases and the
like,

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1 attitudes, opinions, personality makeup, really
everything
2 there is to know about a person as a unique and
individual

3 human being. Understand?

4 A. Yes, sir, I do.

5 Q. And then the judge, having all that information,
hears

6 argument from the prosecution and the defense at a
sentencing

7 hearing and then makes a decision as to what is the
just

8 punishment for this particular person who has been
convicted of

9 the crime. And in cases where more than one person has
been

10 convicted of the same crime, participating in the same
crime,

11 the judge still has to decide individually what
sentences to

12 impose, and they may be different. So one person may
receive a

13 sentence different from another, and that's because of
all of

14 the factors that go into making the decision.

15 Now, when the -- in Federal Court -- and
that's where

16 we are, of course, so we're following federal law. In
federal

17 law, for certain kinds of crimes, including the
intentional

18 killing of other people -- really, that's the kind of
crime

19 that's involved in this, murders. And there, the
Congress has

20 provided for the sentences of the types that I
mentioned, and

21 that is life in prison with no possibility of ever
getting out,
22 the person dies in prison when his time comes, or death
by
23 execution, or there can be the matter returned to the
court to
24 decide, but the life-and-death issues are not decided
by
25 judges. The Congress has said that's for a jury.

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1 And so it is that in a case in which a
defendant is
2 found guilty of such a crime by the jury, the jury has
to
3 proceed further. And its job is not done by the return
of a
4 guilty verdict. And "proceeding further" means there
is a
5 second hearing or trial which goes forward in the very
same way
6 as the trial: Lawyers on each side bring in witnesses,
7 exhibits, offering information that relate to again the
8 circumstances of the crime and its effects and also all
of
9 these things that are individual and unique to the
defendant,
10 the kind of things that I've already discussed that
judges can

11 consider. Understand?

12 A. Yes, sir.

13 Q. And at the end of that hearing when all of that is

14 presented -- and of course, this can take days to do
because

15 it's an in-depth examination of this additional
information --

16 then the judge summarizes what the jury has heard and
divides

17 it really into two categories: On the one hand, things
that

18 may be considered as aggravating factors or aggravating
19 circumstances, those things that might suggest to a
jury that

20 death is the deserved punishment, and those things that
are

21 mitigating factors, those things that are involved in
the

22 information and may suggest to the jury that despite
the crime,

23 this particular person does not deserve to be put to
death.

24 Understand?

25 A. Yes, sir.

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1 Q. And then the court can give the jury some questions
to ask

2 itself in analyzing this information but cannot offer

to the

anything 3 jury any kind of structured formula or syllogism or

their 4 like that. It has to be left to the jury to exercise

5 judgment as human beings.

6 And I guess you could say that the final
decision that

7 is the jury -- and of course, the jurors talk about it.
But

8 each juror has to really make a rational, informed,
moral

9 decision about whether a person should live or die. Do
you

10 understand that?

11 A. I do.

12 Q. Now, first let me ask you whether -- because of
your

13 religious affiliation, your own religious beliefs and
the

14 teachings of the Church, are you capable of making a
decision

15 like that?

16 A. I believe so.

17 Q. All right. So you're somewhat setting aside what
the

18 Church has said about the morality of the death
sentence and

19 considering it as a part of the law.

20 A. Yes.

21 Q. Okay. Don't -- you know, I'm not trying to cause

you to be

22 defensive here. I have to ask you these questions so
we

23 understand, as they say these days, where you're coming
from on

24 this.

25 Then can you tell us that if you were put in
this

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1 position that you would make a decision based on all
that you

2 have heard, all of the information that has been
submitted to

3 the jury and consider the circumstances of the crime
and all of

4 the things that you've learned about the defendant as a
human

5 being, weighing aggravating and mitigating
circumstances and

6 then coming to a decision that recognizes the -- that
-- all of

7 the information that's been presented?

8 A. Yes, sir.

9 Q. And using it in making your decision?

10 A. (Juror nods head.)

11 Q. And are you open to the possibility of both types
of

12 sentence?

13 A. Yes, I am.

14 THE COURT: Okay. Well, we have a few more
questions

15 to be asked of you by attorneys in the case.

16 So, Mr. Ryan, do you have some questions?

17 MR. RYAN: Yes, your Honor. Thank you.

18 VOIR DIRE EXAMINATION

19 BY MR. RYAN:

20 Q. Good morning.

21 A. Good morning.

22 Q. My name is Pat Ryan. I'm the United States
Attorney in

23 Oklahoma City. I'm here with fellow prosecutors to
present the

24 case involving Terry Nichols.

25 I have some questions for you and if you'll
indulge

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1 me.

2 I'd like to go over some of the matters
touched on by

3 Judge Matsch. And if I could, I'd like to begin with
your

4 upbringing. Were you raised in the Catholic Church?

5 A. Yes, sir.

6 Q. Were your parents both Catholic?

7 A. No, sir. Only my mother.

8 Q. Was she involved in church work when you were
growing up?

9 A. We attended regularly, but she was not involved in,
you

10 know, parish committees and things of that sort.

11 Q. Were you as a youngster? For example, were you an
altar

12 boy?

13 A. For a brief time.

14 Q. Excuse me?

15 A. For a brief time I was an altar boy, yes.

16 Q. What caused you to select the university you went
to?

17 A. As high school graduation approached, I was
beginning to

18 think of it, a religious vocation; and the associate
pastor

19 basically started telling me about this school, which
also has

20 a seminary nearby. And I attended that seminary for a
year.

21 And then following my departure from the seminary, I
wanted to

22 complete my studies at the university.

23 Q. Was your first year of post high school education
at the

24 seminary?

25 A. Yes, sir.

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1 Q. And was it a live-in situation at the seminary --

2 A. Yes, it was.

3 Q. -- where you actually live within the seminary
grounds?

4 A. Yes, it was.

5 Q. And what was it that caused you to leave after one
year? I
6 apologize for being so personal about some of these
things.

7 A. Basically I wanted to experience college life like
everyone
8 else.

9 Q. Had you decided at that point that you no longer
were
10 interested in a religious vocation?

11 A. I had decided I wanted to explore other options.

12 Q. So you hadn't excluded it, but you hadn't decided
upon it,
13 either.

14 A. Right. At that time, I had not excluded it.

15 Q. When you were talking about a religious vocation,
were you
16 talking about priesthood?

17 A. Yes, sir.

18 Q. Now, I noticed something in your questionnaire that
made me

attended 19 think that after you got out of the university you
20 that you thought about going back to school for further
21 education.
22 A. That's right.
23 Q. Could you tell us about that, please.
enroll 24 A. Well, I enjoy academics, and I thought that I would
get burned 25 in a graduate program; but it didn't take me long to

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withdraw 1 out. I had always been in school, so I decided to
2 from graduate studies.
3 Q. How did you meet your wife?
4 A. We met in college.
5 Q. And she's also Catholic?
6 A. Yes, sir.
7 Q. Was she a theology -- did she take any theology
courses 8 with you?
9 A. Not with me, no.
10 Q. Did she -- did she take theology courses?
11 A. There are, I think, two required in the curriculum
courses,

12 but she was not a theology major.

13 Q. What is the size of the student body of this
university?

14 A. I think about 2500.

15 Q. Are you and your wife active in the Church today?

16 A. We do attend.

17 Q. Are you involved in any lay ministries or any of
the --

18 A. No, sir.

19 Q. Just tell me, if you would, in your own words what
you are

20 involved with.

21 A. Basically just attending. We're not involved in
anything

22 beyond -- beyond that.

23 Q. All right. Now, if I could, I'd like to go back to
his

24 Honor's question concerning your work with the
archdiocese. I

25 believe you indicated in your questionnaire that you
were

4415

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1 working there from about June of '96 to March of '97.

2 A. Yes, sir.

3 Q. Tell us more, if you would, about what your actual
duties

4 were, what you did.

5 A. Okay. I worked in an office called the tribunal,
which
6 handles annulment cases. And my duties were
administrative,
7 but also I would help the respondent in an annulment
case
8 throughout the process so that he or she would
understand the
9 process itself, what their rights are in connection
with the
10 process and basically to present their account of the
marriage
11 in question.

12 Q. The respondent would be the person -- the spouse
who is not
13 asking for the annulment?

14 A. Right.

15 Q. Did you have any views beyond that?

16 Excuse me. Did you have any job beyond that,
this
17 advocate position in annulment cases?

18 A. I also doubled as an administrative assistant.

19 Q. To whom?

20 A. To the executive director and the judicial vicar.
Those
21 were the titles.

22 Q. Now, do you recall there being any announcement by
the
23 archdiocese in Denver in connection with the case of
Timothy

24 McVeigh?

25 A. No, I don't.

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1 Q. Do you recall any announcement in 1997 with respect
to the
2 death penalty by the archdiocese of Denver?

3 A. I don't recall any particular announcement, no.

4 Q. Did you read the paper this last -- just in the
past week
5 with respect to the Church's position with respect to
the death
6 penalty in Texas?

7 A. I have not read that article.

8 Q. What is your understanding of what the Catholic
Church's
9 position is on the death penalty?

10 A. I understand that it is opposed in most cases, if
not --

11 Q. Excuse me --

12 A. -- almost every one.

13 Q. Are there any exceptions, to your knowledge?

14 A. On the part of the Church?

15 Q. Yes, sir.

16 A. There may be, although I'm not familiar with what
the
17 exceptions are.

18 Q. And I believe in your questionnaire, you talked
about the
19 gravest of crimes as being your litmus test, if you
will, for
20 the death penalty. Could you -- and I know you gave a
couple
21 of examples in your -- in the answers to the
questionnaire, but
22 can you expand on what you mean by "gravest of crimes"?
23 Gravest in what sense?
24 A. I suppose in a -- a wanton disregard for life.
25 Q. Have you ever, prior to filling out the
questionnaire in

4417

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1 Jeffco -- have you ever debated the issue of the death
penalty,
2 for example, while you were in -- you were a theology
major in
3 college?
4 A. I'm sure I did in college, yes.
5 Q. Did you have a view of the death penalty in
college?
6 A. I think in college I was more inclined to -- to err
on the
7 side of caution. In other words, I think at that time
I
8 opposed it categorically.

9 Q. And has that view changed?

10 A. I think in the time since then I'm not fully
convinced that

11 there is no situation in which that sentence would be a
just

12 one.

13 Q. You indicated earlier that -- something about how
would we

14 feel if we made a mistake or something about making a
mistake

15 with respect to the death penalty. You recall that?

16 A. Yes, sir.

17 Q. What were you -- what kind of mistake are you
referring to?

18 A. The mistake -- mistake in identity, sentencing the
wrong

19 man to death.

20 Q. As to the defendant not being guilty? That's what
you were

21 talking about, that kind of mistake?

22 A. Yes.

23 Q. Have you spoken to your wife about the death
penalty?

24 A. I have tried to limit those discussions since the
Judge's

25 directions.

but at any 1 Q. I'm not referring necessarily to the last month;
have 2 time in the course of your relationship with your wife,
3 you talked about her views on the death penalty?

4 A. Yes, we have.

you? 5 Q. Can you tell us what her views are as expressed to

6 A. I don't think she's articulated them to me in
detail; but I

7 think that she, too, would oppose it in most cases.

8 Q. With respect to the -- if you have in mind an
adjective or

9 a thought with respect to what defines your view of
what is

10 appropriate for the death penalty -- in other words,
that's

11 what I'm looking to understand. Are you thinking about
the

12 amount of devastation, the number of people who died,
the

13 mental thought of the defendant -- or put it in your
own words.

14 That's what I'm searching for.

15 A. I think all those things would be relevant. Intent
and the

16 magnitude.

17 Q. Thank you.

18 A. Okay.

19 Q. Do you have a feeling that it would be a sin on
your part

the 20 if you sat as a juror and you were to vote in favor of
21 death penalty?
22 A. No, I don't.
to have 23 Q. Can you -- this is my last question. I'd just like
system 24 you think about who you are and think about your belief
murder 25 and tell me whether you believe that you could in a

4419

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were 1 case, considering all the facts and circumstances that
penalty. 2 presented, ever be able to vote in favor of the death
3 A. In light of unquestionable evidence and the other
could. 4 circumstances surrounding the incident, I think I

5 MR. RYAN: Thank you, your Honor.

6 THE COURT: Mr. Tigar?

7 VOIR DIRE EXAMINATION

8 BY MR. TIGAR:

9 Q. Well, hello.

10 A. Hi.

-- right 11 Q. I'm Michael Tigar. We met. This is Ron Woods and
12 there. Ron Woods and I were appointed by the United

States

13 district judge in Oklahoma in May of 1995 when the
Government

14 brought charges against Terry Nichols here in
connection with

15 the April, 1995 -- April 19, 1995 explosion. And our
job is to

16 help Terry Nichols.

17 I wanted to ask some about these questions on
the

18 questionnaire, and I wanted to follow up a little bit.
You

19 work at a book store now; right?

20 A. Yes, sir.

21 Q. You enjoy that work?

22 A. So far.

23 Q. Okay. And I'm not sure about this, because it's
not my

24 field; but I think that the federal law says they can't
fire

25 you if you're on a jury. It doesn't mean they have to
pay you,

4420

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1 but I don't think you can be fired.

2 THE COURT: That's right. You're right on the
law in

3 that respect.

4 MR. TIGAR: Thank you, your Honor.

5 BY MR. TIGAR:

6 Q. Well, there it is. Now we've defined our roles
here. I am

7 the lawyer who will sometimes make assertions, and
these other

8 lawyers will. And the rules are set by the person
sitting on

9 the bench. That's how it works.

10 And I gather from everything that you've heard
that

11 you don't have any reservations about following the

12 instructions on the law or the legal principles as set
by the

13 Judge. Right?

14 A. That's right.

15 Q. And now as far as deciding what the facts are, you
know,

16 the verdict, the jury is sovereign. That's it. You
don't have

17 any problem with that, I guess, do you?

18 A. No, sir.

19 Q. Okay. Now, in college, you said that you didn't
like

20 economics -- is that right? -- did not at the time.
Have you

21 come to like it since?

22 A. Well, I don't know about that, but I've come to
understand

23 it better.

24 questionnaire

25 you find

4421

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1 NPR accurate. Is that a fair statement?

2 A. I do listen to both of those.

3 you have

4 on it.

5 the

6 decision

7 exhibits are in

8 the case --

9 A. Yes, I do.

10 Q. -- look at that?

11 of your

12 heard

11 I wonder if you would turn, please, to page 18

12 questionnaire. And you mention in Question 84 that you

13 or are familiar with the Anti-Defamation League.

14 A. Yes.

15 Q. Could you tell me a little bit about that?

16 A. Only I understand that this organization is
involved in

17 civil rights issues, as I understand it.

18 Q. Have you read anything that the ADL has published
about the

19 Oklahoma City bombing or issues connected with that?

20 A. Absolutely nothing.

21 Q. Okay. That was the reason -- reason I was asking
about

22 that.

23 And if you would turn over then to page 25,
Question

24 113. You say that you would tend to believe the
testimony of a

25 state or federal law enforcement officer, and you
checked "more

4422

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1 than most witnesses." Could you -- could you talk to
me about

2 that?

3 A. I suppose I answered that in that -- unless I had
some

4 reason to doubt an officer's integrity that I would
accept his

5 or her word.

6 Q. Okay. Well, if the Judge were to say to you the

7 believability of law enforcement has got to be judged
by the

that? 8 same standards as everybody else, could you follow

9 A. Yes, sir.

10 Q. Okay. In other words, if you had a situation where
--

11 we're speaking hypothetically because we're not
supposed to be

12 trying to feed you our theory of the case here, and we
don't

13 know what the evidence is going to be, and we're going
to wait

14 till we hear it. But if you had a situation in which
an FBI

15 agent said, Well, I saw it this way, I was standing
there and

16 this is what I saw and this is what happened, and a
civilian --

17 that is, somebody not law enforcement -- said, No, it
didn't

18 happen that way, would you be able to judge, you know,
which of

19 those two versions to take or some combination without
giving a

20 little edge to the person that had the badge?

21 A. Yes, sir.

22 Q. Okay. Have you thought about, you know, working in
the

23 book store now -- do you have any goals for the future,

24 thoughts about where your profession might take you?

25 A. I have dreams. I don't know if they've
materialized into

4423

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1 concrete goals yet, but I don't have a defined career
path.

2 Q. Okay. And would you take a look, please, at --
let's see

3 here. I had question -- I think it's Question 121.
Yes.

4 Question 121 on page 27. You said you have no feelings
or

5 opinions. Have you given that more thought since then?
Can

6 you think of a case in which that's happened?
Complicated

7 question.

8 A. Okay.

9 Q. I mean some folks would say, Well, you know, it's
good that

10 people come clean; and others would say, Well, you
know,

11 they're trying to save their skin, and others have some
12 combination of views. Have you ever thought about that
issue?

13 A. I haven't, you know, considered this question
extensively;

14 but I certainly understand the dilemma there.

15 Q. Okay. And could you turn, please, to Question --
there

16 were some questions on gun control; and you said that
you do

17 support the right to bear arms.

18 You know, I just lost my note here so we'll
just talk

19 about it. You think the registration requirements are
okay?

20 A. They make sense.

21 Q. Okay. What really the bottom-line question is: If
there

22 were testimony in this case from somebody that says,
Well, I

23 make my living going to gun shows selling firearms,
would you

24 have any feeling one way or another about such a person
or

25 could you just judge him by what they were?

4424

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1 A. Yes, I could.

2 Q. Well, I'd like now to turn to this question of a
potential

3 penalty, and I want to introduce it by saying that this
is --

4 this is hard for us to talk about and we have to
presume we're

5 not going to get there. Terry Nichols is presumed
innocent as

6 he sits there, and the Government will present its
case. We

7 will cross-examine every one of their witnesses. When

our turn

will have 8 comes, we will present our evidence and then the jury

says 9 a decision. And if the jury has a reasonable doubt, it

10 not guilty, case is over.

call 11 If there is a conviction, however, we can't

this is 12 everybody back in and start talking about it then, so

13 our chance.

views as 14 In your questionnaire, you talked about your

committed. 15 relating to the kind of crime of which a person has

heard 16 You said serial killers and war crimes. And then as I

individual 17 you talk about it, you were also talking about the

18 defendant who is on trial. Did I hear that right?

19 A. I'm not sure I understand.

federal 20 Q. Okay. Well, there is in our law today under the

death 21 constitution -- there is no such thing as an automatic

convicted of 22 penalty; that is to say, even if a person were

death of 23 killing or being responsible premeditatedly for the

still be 24 100,000 people, some kind of a genocide, there would

25 an issue left as to whether or not the death penalty is

4425

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1 appropriate; that is, a jury who had convicted him of
that
2 thing or her of that would have to hear evidence about
that
3 person's background and their upbringing and what --
whether
4 they had remorse, whether if somebody else was also
involved in
5 it, what their different roles might have been and so
on, all
6 these things that as the Judge said go to make each of
us an
7 individual human being. And do you feel that you'd be
-- that
8 you'd be open to hearing evidence about not only the
crime but
9 about the individual human being who is -- about whom
you were
10 thinking?
11 A. Definitely. I think it's necessary.
12 Q. All right. And I know there has been a lot of talk
here
13 about your religious views and so on, and I don't want
to be
14 intrusive about that. I mean, I think there are many
people
15 who were raised good Catholics that are in the police
force and

in 16 carry guns; that is, are involved in enforcing the laws
the 17 different ways. And have you studied in philosophy or
even 18 history of religion situations in which people who --
responsibilities in 19 quite devout -- took on substantial public
apply the 20 which it was their job to steer within the law and
21 law?
22 A. I can't recall anyone in particular, but I'm sure
that. 23 throughout history there have been many instances like
you 24 Q. And do you feel if you're selected as a juror that
perform a 25 could listen to the rules, whatever they are, and

4426

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1 public duty?
2 A. Yes, sir, I do.
you've 3 Q. And think -- as you sit there today knowing that
Nichols in 4 read and heard a lot about this, can you look Terry
5 the eye and say you can give him a fair trial?
6 A. Yes, I can.

7 MR. TIGAR: Thank you very much.

8 THE COURT: Well, we all thank you for your
time and

9 your cooperation in answering all of these questions.
I can't

10 now tell you whether you will serve as a juror in this
case,

11 and I can't tell you when I can tell you.
Unfortunately, we

12 have to leave you with a considerable uncertainty
because, as

13 I'm sure you appreciate with the time that you
personally have

14 been involved in this process, we just can't judge how
much

15 time it will take. So bear with us for a while longer,
please.

16 Conduct yourself as you have been, avoiding
anything

17 in the way of conversation or publicity that could
influence or

18 affect your judgment in this case, recognizing that you
may

19 very well come in here, sit where you're sitting now
and be a

20 juror in this case. And if there should be anything
happen

21 that would affect your availability, please let us know

22 immediately. You have the number to call. And we'll
get back

23 to you just as soon as we can. All right?

24 JUROR: Okay.

25
excused for

THE COURT: Again, thank you, and you're

4427

1 now.

2 And we'll start 331.

3 If you'll please raise your right hand and
take the

4 oath from the clerk.

5 (Juror No. 331 affirmed.)

6 THE COURTROOM DEPUTY: Thank you.

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

8 microphone. And you don't have to lean over and talk
into the

9 microphone. It will pick you up in whatever way you
want to

10 adjust the chair to be comfortable.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. And let me begin by telling you that we know we've
kept you

14 waiting a long time. You were here yesterday and
waited this

15 morning, and we probably won't finish before we take a
noon

16 recess; so bear with us, will you?

17 A. Yes, sir.

18 Q. Okay. And you know that you are among many who
received a
19 jury summons for possible jury service in the trial of
United
20 States against Terry Lynn Nichols. And you got the
summons and
21 returned a short questionnaire, answering some
questions for
22 us, and then got a notice to go out to the Jefferson
County
23 Fairgrounds and fill out a much longer questionnaire.
24 A. Yes.
25 Q. Okay. Now, we have to ask you to answer these
questions so

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1 that they go into the record.
2 A. I understand.
3 Q. And at the time that you came out to the
fairgrounds'
4 auditorium building, I introduced myself and I
introduced some
5 other participants in the case, and I want to do that
again
6 because they're here again in front of you now and you
should
7 know who is with us this morning.
8 So let me again introduce to you attorneys for
the

Ms. Beth 9 Government, Mr. Lawrence Mackey at this first table,
10 Wilkinson. They're now joined by Mr. Patrick Ryan and
11 Mr. Geoffrey Mearns. Mr. Ryan and Mr. Mearns were not
there
12 when we met before.

13 You did meet Mr. Michael Tigar, Mr. Ronald
Woods,
14 attorneys for Terry Lynn Nichols; and Mr. Nichols was,
of
15 course, with us then and is now.

16 And then you recall that I gave you and the
other
17 members of the jury panel some information about the
background
18 of this case, explaining, of course, some things that
you
19 probably already knew; that this trial arises as a
result after
20 an explosion that happened in Oklahoma City, Oklahoma,
on
21 April 19 of 1995 when a federal office building there
was
22 destroyed and people in it were injured and killed.
And then
23 charges were filed in the Federal Court in Oklahoma
City by way
24 of an indictment, a statement of charges submitted by
25 Government counsel that accused a man named Timothy
James

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1 McVeigh along with Terry Nichols -- and then the
indictment
2 says "and other persons not named" -- with a
conspiracy, a
3 criminal agreement, to bomb that building and to kill
and
4 injure the people in it.

5 And then the indictment, which consists of a
total of
6 11 counts, includes charges that the plan was carried
out and
7 that the building was bombed and that the defendants
are
8 accused of the murder of eight law enforcement agents
of
9 various agencies of the federal government who were in
the
10 building and died in the explosion and that to these
charges,
11 the defendants entered pleas of not guilty, thereby
creating
12 the issues to be tried.

13 The case was then moved from Oklahoma City
here to
14 Denver because of a concern about asking people in
Oklahoma to
15 sit on a jury; and when it came to Denver, I entered an
order
16 that separated the two defendants for trial on the
finding that

would 17 to try both of them at the same time with the same jury
to 18 be fundamentally unfair and therefore that the case as
evidence 19 Timothy James McVeigh would be heard by one jury, the
Nichols 20 that relates to him, evidence as it may relate to Terry
21 be heard by a separate jury at a different time.
the 22 Pursuant to that order, a trial was held as to
jury 23 evidence relating to Timothy McVeigh. Trial was here,
evidence 24 selected in this same process. That jury heard the
25 and returned a verdict of guilty.

4430

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1 The jury was then asked to consider a lot of
the 2 additional information at a second trial or hearing on
a 3 question of sentence and returned a recommendation for
facts? 4 sentence to death. You understand these background
5 A. Yes.
the jury 6 Q. And as I explained to you and the other people on
7 panel, whatever you may have seen, read, or heard about

8 evidence at the Timothy McVeigh trial cannot be
considered.

9 And certainly the outcomes, the jury verdicts with
respect to

10 him cannot be considered now in connection with Mr.
Nichols.

11 To do so would violate the very reason for the separate
trial

12 orders.

13 You understand that?

14 A. Yes.

15 Q. And so we are now selecting a jury to begin the
trial of

16 whatever evidence there may be with respect to Mr.
Nichols, and

17 we start over with a clean slate. You understand that?

18 A. No.

19 Q. What don't you understand about it?

20 A. Well, when you say we start over with a clean
slate, I

21 don't know what you mean by "we."

22 Q. All of us. I as the judge --

23 A. Okay.

24 Q. -- who heard all of the evidence in the Timothy
McVeigh

25 trial. I presided at the trial. That's washed away
from my

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1 mind in my role as now the judge of the evidence in
this case;

2 and by judging the evidence, I talk about the
admissibility of

3 the evidence.

4 The members of the jury: The jury has to
consider

5 this case as if the McVeigh trial never happened and to
listen

6 to the evidence that comes in in this case and consider
it

7 only -- consider only the evidence that's presented at
this

8 case. That's what the "we" is. And of course, the
lawyers in

9 their participation can't assume anybody knows anything
about

10 the case. We start from scratch. That's the "we."

11 Understood?

12 A. Yes.

13 Q. Does that answer your question?

14 A. Well, I'm just thinking in terms of what I know
about the

15 case.

16 Q. Yes.

17 A. You know -- to be honest about it. And so mentally
I could

18 say, you know, I'm starting off with a clean slate --

19 Q. Right.

20 A. -- I don't know if I'm being honest to make that
statement.

21 Q. Well, we'll explore that with you.

22 A. Excuse me?

23 Q. We will explore that with you. That's exactly why
this

24 questioning takes place and exactly why we can't judge
the

25 time, because different people come in here and they've
heard

4432

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1 and read different things, and the ability of one
person to do

2 this is different from other persons. So it all
depends on the

3 individual, and that's why, you know, frustrating as it
may be

4 to those involved, it does take time and we have to ask
these

5 questions of each person one at a time.

6 A. I see.

7 Q. Okay?

8 A. Yes.

9 Q. Now, I also explained just what is involved in a
jury

10 trial, because you've never participated as a juror in
any

11 trial, have you?

12 A. No.

13 Q. And, you know, everybody reads, sees, and hears
things
14 about the trial process, but until you're actually in
it, you
15 may have some misconceptions. And there are certain
16 fundamental principles of law that apply; and they
apply
17 because they're commanded by the Constitution of the
United
18 States in provisions requiring the due process of law
before
19 any person can be deprived of his life or liberty. You
heard
20 such a phrase before, I'm sure.

21 A. Yes, sir.

22 Q. And what it means as a part of that due process of
law is
23 that any person charged with a crime in this country,
no matter
24 what the charge is or what the court is or who the
person is,
25 is presumed to be innocent of those charges. And the

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1 presumption of innocence means that it isn't up to a
defendant
2 to defend himself by proving himself not guilty. No

defendant

3 has any burden or duty of calling any witnesses or
introducing
4 any evidence or taking the witness stand and answering
any
5 questions or explaining anything to the court and jury.

A

6 defendant can simply remain silent and require the
Government
7 through its prosecutors to come in and prove the case
against
8 him. And that means to call the witnesses and produce
the

9 exhibits and produce whatever they have as evidence.

And the

10 defendant can simply challenge that evidence by
objections to

11 admissibility -- there are rules that govern what a
jury can

12 hear and consider -- by cross-examining the witnesses
and

13 challenging the credibility of their testimony, and by
urging

14 the presumption of innocence, which means simply that
the

15 government has the burden of proving the case beyond a

16 reasonable doubt, satisfying the jury that the evidence
that

17 they have seen and heard shows guilt beyond a
reasonable doubt.

18 And so at the end of a case, at the end of a
trial,

19 the court gives the jury instructions on specifically

what has

20 to be found for each charge, what are the elements of
the
21 offense, and then asks the jury: Has the evidence that
you've
22 heard and seen here -- does it show the defendant
guilty of
23 these things beyond a reasonable doubt? If there is a
24 reasonable doubt after full consideration of the
evidence and
25 following the law, the jury has the duty to return a
verdict of

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1 not guilty and giving the defendant the benefit of that
doubt.

2 Do you understand that?

3 A. Yes, sir.

4 Q. Now, in addition to understanding it, do you agree
with it?

5 A. I don't know.

6 Q. Why do you answer that way?

7 A. I just don't know. I mean, you know, I feel like
I'm put

8 on the spot to answer it honestly. I don't -- I don't
know.

9 Q. Well, is this the first time --

10 A. I mean, I respect, you know -- I respect, you know,
the

11 principles involved. I don't know if I -- you know,
watching
12 Court TV and the O. J. trial --
13 Q. Okay.
14 A. -- you know, and putting that into context, you
know,
15 raises questions, you know, for a person, myself.
16 Q. Sure. Well, let's talk about it now, then, and
questions
17 that you have. You said watching the TV in the trial
of O. J.
18 Simpson, the criminal trial?
19 A. Right.
20 Q. That case was televised as it happened. And how
much of
21 that did you watch?
22 A. My wife and I would watch it, you know, on a
regular basis
23 in the evenings.
24 Q. When it was rebroadcast?
25 A. Yes.

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1 Q. Or retelecast?
2 A. Yes, sir.
3 Q. And more than just in newscasts? I don't actually
know the

could 4 answer to this myself. Was it rebroadcast so that you
5 watch it minute by minute?
6 A. Portions. Yeah. Portions of it.
7 Q. Highlights?
8 A. Yeah, highlights. Yes, sir.
straight 9 Q. Now, let me -- you know, I want to get something
10 with you right here. You're not on trial.
11 A. I understand, sir.
wrong to 12 Q. Your views are not on trial. There is no right or
13 into any of these questions, and I'm not trying to push you
14 anything certain answers, and I'm not trying to force you into
a 15 because I sit here in a robe and you sit over there as
16 honest citizen. We simply want to hear from you what your
17 opinions and beliefs are. Okay?
18 A. Yes, sir.
you're not 19 Q. And you seem to already understand that, because
20 you? going to hesitate about telling us what you think, are
21 A. I hesitate but --
22 Q. Well, don't.
23 A. Okay.

going to 24 Q. I mean, you don't have to be concerned that you're
anything 25 say something that insults me or the lawyers here or

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1 about it.

2 A. I appreciate that.

I'm not 3 Q. Okay. So don't worry about causing any offense.
4 going to jump at you.

5 A. I've heard you're a tough guy, so . . .

6 Q. Well, that just shows how information can be false.
7 This is a matter that is of great importance
to all of 8 us, obviously, and to you as well; so please be assured
that 9 your open and honest answers will be accepted with
respect.

10 A. Thank you.

-- you 11 Q. Now, have you followed other trials that have been
I don't 12 know, there are -- there is a Court TV channel -- well,
can 13 know if there is now or not in Denver -- but where you
evenings, 14 watch a lot of different trials, highlights in the
15 and so forth. Have you followed Court TV?

of a -- 16 A. Court TV and the talk shows, you know, that's kind
scanning 17 you know, how my wife and I kill some evening time,
18 channels.

because 19 Q. And with respect to going back to the Simpson case,
20 you watched that a lot --

21 A. Right.

to the 22 Q. -- what was your reaction to the -- first of all,
the way 23 trial process that you saw? What was your reaction to
24 in which the attorneys and court conducted the trial?

too 25 A. I was going to say incompetence, but I think that's

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certain 1 harsh a word. Sensationalized, sensationalism on
2 issues.

had an 3 Q. Do you think the presence of the television cameras
4 influence on the way in which the trial was done?

5 A. Yes.

case, the 6 Q. And what did you think about the outcome of the
7 jury verdict?

agree 8 A. Based on the evidence that I saw on TV, I did not

9 with it.

for the 10 Q. So do you have any, in your own mind, explanation

11 outcome?

the 12 A. Because it played on emotions of individuals, on

13 jurors.

14 Q. So --

15 A. On, you know, racial considerations.

you saw, 16 Q. All right. And you think that if -- based on what

guilty, 17 if you had been on that jury, you would have found him

18 or did you go that far in your thinking?

19 A. I would have -- yes, to your question.

20 Q. All right. Did you discuss it with your wife?

21 A. Sure.

22 Q. You watched it together, I heard you say.

23 A. Sure.

24 Q. Did she have the same, or a different view?

25 A. The same opinion.

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1 Q. Now, are there other cases that come to mind when

you

2 answered here that you're a little doubtful or dubious
about

3 these legal principles?

4 A. Nothing that comes immediately, you know, to mind,
you

5 know, that was obviously -- went beyond just, you know,
trial,

6 law, you know, interest in that area. It was like
watching a

7 soap opera.

8 Q. Yeah. So what I understand you to be saying -- and
correct

9 me if I misunderstand -- that the outcome there was
flawed by

10 the process but that you, you know -- does that case
cause you

11 to disagree with these principles of the presumption of

12 innocence and the need for admissible evidence?

13 A. No. I have no disagreement, you know, with the
principles.

14 Q. Okay. Now I turn to this case. Is there anything
about

15 this case that causes you to say that you would not be
able to

16 follow those principles on this jury and presume Mr.
Nichols,

17 who is sitting here with us -- presume him to be
innocent of

18 these charges?

19 A. Well, I think I addressed -- and this is not to
evade it,

20 you know, but I addressed some of those issues in that
21 questionnaire. I thought I answered some of those
questions.

22 Q. I know, and we're going to talk about some of your
answers,
23 not going over all of them again.

24 A. Okay.

25 Q. And in all of this, we're also attempting to
respect your

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1 privacy.

2 A. And that's a concern of mine.

3 Q. You didn't volunteer to come in here. You got
ordered in

4 here as a citizen. And, you know, we're not using your
name.

5 We're going to try to avoid questions that would
identify you.

6 We bring you in and out of the courthouse in a way that
no

7 press people can look at you or take your picture. We
try to

8 balance the public interest in the proceeding and the
privacy

9 interests of the people called in.

10 Now that we're in open court, of course, what
is said

11 is public. You understand that?

12 A. Yes.

13 Q. Yeah. So that's why, in asking some of the
questions,

14 we'll be somewhat guarded; and in your answers, you
answer with

15 the knowledge that what you say is public. All right?

16 A. Public to whom?

17 Q. To the world.

18 A. Okay. I understand.

19 Q. We have seated in the courtroom, not looking at
you, people

20 who are reporting for all kinds of media organizations
and who,

21 under our First Amendment and Sixth Amendment, are free
to

22 publish what they hear and see in the courtroom,
including such

23 weird things like the judge is a tough guy, you know.

24 So I just want you to understand that as we
get into

25 these things. All right?

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1 A. It is understood.

2 Q. And if there is any particular answer that you feel

3 particularly sensitive about, you let me know.

4 A. I will.

5 Q. Okay. You come from New York.

6 A. That is correct.

7 Q. Went to school there -- or high school in a part of
that

8 area, went to college and then came to Colorado. Where
were

9 you after you graduated from college?

10 A. Excuse me?

11 Q. Where were you right after graduating from college?
Where

12 did you --

13 A. I lived in upstate New York.

14 Q. And then you came to Colorado about 26, 27 years
ago?

15 A. That is correct.

16 Q. What brought you to Colorado?

17 A. Tongue in cheek, John Denver, with all due respect,
but a

18 lifestyle decision.

19 Q. Okay. And were you then living in upper New York?

20 A. That is correct.

21 Q. And the work that you do now, as I understand it,
is a

22 brokerage activity.

23 A. That is correct.

24 Q. And are you self-employed now?

25 A. Yes, sir.

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mean as a 1 Q. You did similar work with other organizations, I
2 part of an organization?

3 A. Yes, sir.

of 4 Q. Since you've been here. And apparently changed one
5 those jobs recently?

6 A. Yes, sir.

here, but 7 Q. Now, again, you know, we're not prying too much
8 you indicate that this was an involuntary separation.

know, 9 A. It was a disagreement. It was a disagreement, you
you 10 with the broker -- okay -- in terms of my personality,
11 know, what they wanted to see.

12 Q. Okay. So it's a mutual --

13 A. It was mutual, exactly.

the -- 14 Q. Understand. And we want to talk a little bit about

and we 15 something that I am sure is of great concern to you,

the 16 haven't overlooked it, and that is your concern about

living. 17 impact of jury service on your ability to make a

18 Right?
19 A. That is correct.
20 Q. Because you recognize that here, as you have been
for the
21 last day and a half cooped up in the courthouse -- and
in the
22 trial of the case, you recognize that we'd be here for
several
23 months possibly. Can't judge the length of trial.
Can't even
24 tell you when it starts, because we don't know how long
this
25 process will take. But obviously, the time in court
for jurors

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1 is 9 to 5 with appropriate rest stops. And then on
Friday, an
2 early recess at 1:00. No sequestration overnight or
weekends.
3 Understood?
4 A. Yes, sir.
5 Q. Now, evaluating that -- and please, again, I'm just
asking
6 you for an honest evaluation -- what would that do to
your
7 business?
8 A. Well, it would impact my income. You know, it's
not going

9 to be a hardship.

10 Q. Okay. You can survive it without -- without
bankruptcy?

11 A. No, there is no concern.

12 My concern -- I don't want to get on a
pedestal, but

13 my fiduciary responsibility to clients I have is
fractured.

14 Q. Yes.

15 A. And I'll lose that business; and more important
than the

16 income, I'll lose those clients.

17 Q. On pending arrangements?

18 A. There are no arrangements -- what do you mean by --

19 Q. Well, I mean, you have certain properties to buy or
sell?

20 A. I'm hired to sell their properties. You know. I'm
not

21 going to, you know, BS them and tell them I'm going to
be able

22 to do that --

23 Q. Right.

24 A. -- out of a courtroom.

25 Q. Because obviously, you can't.

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1 A. Well, I don't know. With voice mail, there are
ways. But

2 seriously, no, I can't. But at the same time, I, you
know -- I
3 respect, you know, the responsibility, the civic
4 responsibility.

5 Q. Yeah. All right. So there would have to be
adjustments;
6 but in the kinds of terms that get used in these times,
it's
7 "doable"?

8 A. It's doable.

9 Q. Okay. Now, there are a couple of things that I
want to ask
10 you about. You've got your questionnaire in front of
you; and
11 we're not going to go over the whole thing, but if you
will
12 turn, please, to -- let me get it myself -- page 15 and
No. 65
13 at the top. You expressed some concern about what you
refer to
14 as "neofascist activities." Tell us what you have in
mind
15 there. And you can use the names of organizations, if
there
16 are such in your mind.

17 A. They're checked off in the questionnaire. I'm not
-- I
18 just make a connection, you know, in terms of the
militia
19 movement in this country, you know, with exactly that,
you

read 20 know, neofascist activities. And as someone who has

21 history, you know, I see parallels.

22 Q. What causes you to make that connection or
association with

23 this case? What have you seen or read or heard or
think --

24 A. Well, a book that influenced me that I read before
this

25 case was written by a criminologist, a guy named Hann,
I think.

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1 Q. That's what you say at 69 here, bottom of the page?

2 A. Apocalypse in Oklahoma is the title of that book.

3 Q. You've read that?

4 A. Yes, sir.

5 Q. In essence, what did that book tell you? I'm not
trying --

6 A. That there was a group -- you know, that there was
a group

7 activity within the context of the militia movement in
this

8 country that had a grudge against, you know, the
federal

9 government; that the individuals involved, you know,
with this

10 group activity --

11 Q. Was Mr. Nichols named in the book?

12 A. Yes, sir.

13 Q. And Mr. McVeigh?

14 A. Yes, sir.

15 Q. And others?

16 A. Yes, sir.

effect
17 Q. And what effect does that book have on you and what

we're
18 does it have on you now in considering the role that

19 suggesting that you play here?

you
20 A. Well, it painted a picture that, you know -- that,

social
21 know, made sense within a political context and a

22 context.

you?
23 Q. So, what, it was a kind of a rational hypothesis to

24 Would that be a phrase that you would apply to it?

25 A. I think that's fair.

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1 Q. But you don't accept it as fact. Is that true?

2 A. No, sir.

phrased
3 Q. That is, you don't accept it as fact. A poorly

4 question?

5 A. No, I wouldn't.

6 Q. Yeah. Well, you have a very deep concern about
neo-Nazi

7 activities in particular, as I think you expressed on
page 19

8 at Question 85, because there was a time in '80 or '81
when

9 there were such activities in Denver and you
participated in

10 patrolling.

11 A. Yes, sir.

12 Q. Is that what you're saying? And was that a time
when some

13 buildings were defaced with swastikas and that type of
thing?

14 A. That is correct.

15 Q. And did you work then -- what was there, a
citizen's patrol

16 coordinated with the police department?

17 A. With the police department. Denver police would
visit with

18 us.

19 Q. And so in the pertinent neighborhoods, you would be
out

20 with others to be alert to whatever was going on and
report any

21 unusual activity. Would that be a fair summation?

22 A. That is correct.

23 Q. Did there ever come a time when as a result of
these

24 activities a particular person was arrested?

25 A. Not to my knowledge.

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1 Q. So for how long did you engage in that patrolling
work?

2 A. Six months approximately.

3 Q. Then if I can turn to page 22 where we asked you
about a

4 general opinion of the criminal justice system, court
system, I

5 think maybe you got confused on this question by
saying, as you

6 said, "Adequately, but it's too easy to be sued." Were
you

7 referring on that to the civil side?

8 A. Yeah. I mean, I just felt that there was
overlitigation,

9 you know, in the judicial system. I mean, this doesn't
apply,

10 obviously.

11 Q. Yeah. We're talking here about --

12 A. This is a serious matter.

13 Q. And there was a time that you had some connection
with it,

14 I guess -- and I'm being cautious about it, page 24,
Question

15 108. Is that something that happened in Denver?

16 A. Yes, sir.

17 Q. And are you the person being talked about here?
18 A. Yes, sir.
19 Q. And as I get it -- well, did this involve some
dispute with
20 another person?
21 A. A dispute, a tussle. It was not -- it was pushing
and --
22 Q. A little argument?
23 A. It was a -- there was a few-hundred-dollar fine,
which was
24 suspended, of that magnitude.
25 Q. Any reaction on your part? Any carryover from that
that

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1 affects your ability to serve as a juror?
2 A. No, sir.
3 Q. And there is a matter up there at the top of the
page on
4 the same page, 105, where you or somebody encountered
what you
5 thought was a speed trap. You see where I am?
6 A. Question 105?
7 Q. Yeah. 24, page 24.
8 A. That is correct.
9 Q. One of those things where some community was
building up

10 its fine income?

11 A. It only applies to Cheyenne.

12 Q. All right. I want to just ask you sort of in open-
ended

13 way -- well, I do want to turn to another thing.
Excuse me for

14 jumping around, but page 30 at 129, you see that and
what you

15 wrote?

16 A. Yes, sir.

17 Q. Which suggests to me that you -- and is perhaps as
a result

18 of the answers you've already given and this book that
you

19 read -- that you think that there could be some concern
for

20 your safety. Is that --

21 A. Well, yes.

22 Q. Well, you know --

23 A. And let me elaborate on that. I mean, the reason
why I'm

24 confused --you know, this is hard to answer your
questions, on

25 the one hand, to start with a blank piece of paper in
terms of

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1 your judgment and, on the other hand, to be shuttled

around in

2 screened vans. Up here you can, you know -- you can
make --

3 you can equate with that instruction and that
understanding;

4 but in actuality, you know, we're being shuttled around
in

5 screened vans. So there is a potential danger out
there.

6 Q. Well, that isn't why you're being shuttled around,
and I

7 want to make it clear to you.

8 A. Well, okay.

9 Q. Because that is simply a matter of again protecting
the

10 privacy of the people involved. And you know -- and I
say this

11 with all respect to the press people who are here. It
12 certainly has happened in cases that they follow jurors
away

13 from the courthouse and try to interview them or take
pictures

14 of them going and coming in and publicize that and talk
about

15 who is on the jury and how they might vote or not vote,
how

16 they might be influenced by this or that evidence. So
it is

17 strictly a matter of avoiding that kind of a potential
18 interference.

19 I will tell you -- I'm looking right at you
and tell

safety. If 20 you don't have any reason to be concerned for your
21 I knew of any reason about that, I would let you know.
22 Understood?
23 A. I understand.
24 Q. Okay. And I -- you know, I can appreciate how
these things
25 come into mind, particularly with the things that
you've read;

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1 but I don't think there is anything like that involved
here.
2 And, of course, you know, there has already been a
trial of the
3 other named defendant with no problems. Okay?
4 A. I understand.
5 Q. All right. And you don't have -- I mean, one of
the
6 responsibilities of the court is to avoid any
interference with
7 the process and provide for the welfare of all of us
who are
8 involved, including the lawyers, including Mr. Nichols,
and the
9 public; and certainly that's a responsibility the court
10 recognizes and will meet in this and any other trial.
So I

11 want you to be assured of that.

12 A. Thank you.

13 Q. Now, finally, we talked about this one book. What
other

14 kinds of things or what other things have you seen,
read, and

15 heard about this case that you think might affect your
ability

16 to follow this presumption of innocence and the
principles of

17 being open-minded and considering only the evidence to
be heard

18 at the trial?

19 A. Only the Rocky Mountain News, you know, has been
doing some

20 stories and summary displays. Having read that book,
my

21 interest was piqued to understand, you know -- it
almost became

22 like a flowchart.

23 Q. Now, have you talked -- excuse me.

24 A. Then I listen to, driving to work, the Peter Boyles

25 program; and, you know, they deal with -- he's had, you
know,

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1 militia people on, you know, addressing the, you know -- the

2 movement of the United States and its affiliation with

other --

3 inferences that, you know, could be drawn from that.

4 Q. Since you got your jury summons, have you been
reading the

5 News or The Post about this case?

6 A. I haven't read -- I haven't read anything -- and
this is

7 where some confusion lies for me. I haven't read
anything, and

8 I avoided news broadcasts from the time I got your
instructions

9 in Jefferson County --

10 Q. Okay.

11 A. -- until the 29th of September. And this is where
the

12 confusion lies, because I was under the impression that
on or

13 around the 29th, I would be notified whether I was
going to be

14 considered further as a juror.

15 Q. Oh?

16 A. Okay, rather than being, you know -- I figured
there was a

17 cut or something to be made. That was my impression.
But

18 practically speaking, you know, beyond the -- you know,
beyond

19 the 29th, I really didn't pay much attention to other
than news

20 reports that, you know, the process has been going
slower and

21 that you could be tough.

29th 22 Q. Is it something I said that caused you to think the

23 was a cutoff?

24 A. No. I'm just talking about the newspapers, you know.

25 Q. So you got the idea somewhere that not having heard from us

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involved, 1 by the 29th, you were home free and you just weren't

2 it didn't involve you?

3 A. Yeah. That was my understanding. I misunderstood.

called 4 I spoke on that subject to the gentleman that

raised 5 me to notify me that I was to appear last week, and I

6 the same question. And apparently, I misunderstood.

relates to 7 Q. Well, did you come across something, then, that

8 this trial?

9 A. Not between that period of time. It was, you know

--

10 Q. Okay.

11 A. -- if anything, nothing of any merit.

then 12 Q. I'm just going to ask you a few more questions and

13 we'll break for lunch; and then the lawyers will be
asking you
14 some more questions, if you can believe more questions.
15 A. Sure.
16 Q. But bear with us.
17 A. Okay.
18 Q. I want to talk a bit about this matter of
punishment.
19 A. Of?
20 Q. Punishment. Death sentence.
21 A. Okay.
22 Q. And we address that in the questionnaire; and you
did, too.
23 And page 28, page 29 is where your answers are. And in
24 connection with it, there was a -- something of an
explanation,
25 a preface on page 27, about the context in which these

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Without
the
punishment of
understood
1 questions are being asked of you, which is, you know,
2 knowing anything about the law, what do you think about
3 punishment of death? What do you think about the
4 life in prison with no opportunity for release? You
5 it in those terms, did you?

6 A. Right.

7 Q. So that we weren't talking about this case. We
weren't
8 even talking about the way the law is.

9 A. Right.

10 Q. But what you would do and what you think about
those
11 possible punishments.

12 A. Uh-huh.

13 Q. And, you know, you said in essence certainly it
shouldn't
14 be automatic for any crime, either one, either life in
prison

15 or death; that you're not sure when the death
punishment is
16 appropriate and that crimes relating to death or severe
17 hardship to victims would be a time for life. I'm just
trying
18 to run through these, and I don't mean to misrepresent
your
19 views.

20 Let me just ask you this question: This was
answered
21 a month ago. Are your answers any different today?

22 A. Yes.

23 Q. Tell me about that. Tell us about that.

24 A. I'm not trying to sound philosophical --

25 Q. Go ahead.

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1 A. But approaching 50 years -- being 50 years old,
approaching
2 that, I start appreciating the sanctity of life and how
little
3 I know in terms of my wisdom. And I had this
discussion with
4 my wife. And at one time I viewed, you know, the death
5 sentence as appropriate in terms of some type of social
6 engineering.

7 Q. Uh-huh.

8 A. You know -- and yet, you know, now I realize having
just
9 spent this last day, day and a half here, you know, in
a jury
10 room setting that I don't want to be the one to pull
the
11 trigger. I'm not smart enough to, you know -- to pass
12 judgment, especially in a case that I'm of the opinion
now
13 that's going to involve a lot of circumstantial
evidence -- to
14 be wise enough to pull the trigger to impose the death
sentence
15 on anyone.

16 Q. Okay.

17 A. I'm just -- I just -- who -- excuse my French, but
who the

18 hell am I to, you know -- to do that, to impose that on
19 someone? I mean, if someone else wants to do it . . .
I'm not
20 prepared to do it; and at the same time, I mentioned
being 50
21 years old. I mean, in the way that I can, have become
more
22 religious, or, you know -- and trying to be in touch
with my
23 maker, I'm just not -- I'm not prepared to do that.
24 Q. Well, let me talk --
25 A. I could do it out of anger, you know, I mean -- but
in

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1 terms of making a, you know -- a calculated decision.
2 Q. Well, I'd like to explain to you what the process
really
3 is.
4 A. Okay.
5 Q. Because, you know, we asked you this in the very
abstract.
6 Here's what happens in federal courts for certain kinds
of
7 crime for which these punishments are available under
the law.
8 Now, I want to first review what happens in
other
9 kinds of crimes, where the jury is not involved. I

mean, of

evidence 10 course, the jury is involved in deciding whether the

already 11 shows guilt or not. That's a jury trial, and we've

this type 12 talked about that. And in cases that do not involve

verdict, 13 of capital punishment, when the jury returns a guilty

discharged their 14 that's it from the jury's standpoint. They've

whatever the 15 duty, and of course they've discharged their duty

jury is 16 verdict is. But in the event of a guilty verdict, the

17 done and it's up to the judge, the court, to decide the

18 sentence.

the basis 19 And judges don't make that decision just on

That's 20 of what they heard along with the jury at the trial.

hearing, 21 the subject of a separate hearing, a sentencing

just your 22 something that's probably already known to you from

23 general awareness of the system. Right?

24 A. (Juror nods head.)

information 25 Q. So what happens is that a judge gets a lot more

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1 about the circumstances of the crime, not only, you
know, what
2 happened in terms of what the evidence was at the trial
but
3 also additional things: What effects of this -- has
this crime
4 had on others, victims, families, communities and the
like, and
5 then also, a lot of information about the defendant as
an
6 individual and unique human being, his life history,
all about,
7 you know, the things that we asked you about your life,
but a
8 lot more, so that the judge is fully informed as to who
this
9 person is as an individual and unique human being. And
we're
10 all formed by our experiences and what happens to us
and what
11 we've done in life. So it goes through his, you know,
12 upbringing, family relationships, marriages, divorces,
military
13 history, job history, things that he has done for his
14 community, things that have been done to him, physical
15 condition can be a factor, everything that goes to say
who this
16 person is. Understood?
17 A. Yes.
18 Q. I mean, you're following me.

19 A. Yes.

20 Q. And I know that you are, but I have to keep
recording it

21 for the record.

22 A. I understand.

23 Q. We always have to consider that.

24 And then the judge hears at a sentencing
hearing from

25 both sides, the prosecution and the defense, and then
makes a

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1 judgment, a sentence, that is unique to this person.

2 So in cases, for example, where there are
several

3 defendants involved in the very same crime, the judge
hears

4 this separately with each -- with respect to each and
makes a

5 decision that is believed to be just for that person,
including

6 the crime and the person. And the sentences can be
different

7 for the same crime.

8 Now, when the law provides for a sentence
possibility

9 of life in prison without ever getting out -- I mean,
that's

when 10 what federal life means, no release, you die in prison
execution, 11 your time comes -- or death, being put to death by
in 12 or it's possible that a lesser sentence can be imposed,
death 13 which case it's done by a judge; but this life-and-
what 14 decision is made by a jury. And this is because that's
decisions about 15 the Congress has said: Judges should not make
same 16 life and death of people. Juries should. And it's the
the 17 jury that heard the trial, the same jury that decided
before that 18 evidence; but, of course, this issue doesn't come
shows the 19 jury unless all of those persons on the jury have been
20 satisfied beyond a reasonable doubt that the evidence
of 21 defendant guilty of the crime that involves this type
22 punishment. Understood?
23 A. Yes.
jury's 24 Q. These two questions don't overlap. I mean, the
beyond a 25 focus at the trial is does the evidence show guilt

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1 reasonable doubt; if not, the verdict is not guilty,
the case

2 is over. If yes, guilty, case is not over for the
jury. The

3 jury now has to hear all of this same type of
information that

4 a judge hears in other kinds of cases, and that's done
at

5 really a second trial or sentence hearing.

6 And it is at that time that witnesses come in
who were

7 not witnesses at the trial and they come in and provide

8 information, again, and exhibits are introduced, just
as in the

9 trial. And both sides participate, and the information

10 includes the additional circumstances about the crime
and its

11 effects and then all of these things about the
defendant, the

12 individual characteristics and personality and the
things that

13 separate him from everybody else, which is what our
lives are

14 like. Agreed? I mean you understand what I'm saying
when I

15 talk about --

16 A. Yeah.

17 Q. -- the uniqueness of each life?

18 A. Sure.

19 Q. And then at the end of it, the judge sums it up and

says:

20 Now, here's what you heard at this penalty phase
hearing, and
21 these are the things, based on what you've heard, that
you, the
22 jury, could consider as aggravating factors or
circumstances,
23 things that suggest that death is a deserved punishment
for
24 this person and this crime and these are the things
that you
25 heard that you can consider as mitigating factors or

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1 circumstances, by which we mean things that suggest
that
2 despite the crime and the possibility that death is an
3 appropriate punishment, this individual human being
does not
4 deserve to be put to death and then provides a kind of
set of
5 questions that a jury can ask itself in evaluating
these
6 aggravating circumstances and mitigating circumstances.
But in
7 the end, there is nothing to be said of this that there
is some
8 kind of an equation or formula that can be followed.
The jury
9 has to make a judgment about whether the particular

person

10 found guilty should live or die for that crime.
Understand?

11 A. Yes.

12 Q. And so the only way that I could characterize the
nature of

13 that decision for you is to say that, you know, the
jury hears

14 it all as a group of 12. They talk it over as a group
of 12

15 and exchange their views and perspectives on the
information

16 and the evidence; but in the end, each person has to
make a

17 decision which is truly a rational, moral decision
about

18 whether another human being lives or dies for a crime.
Any

19 question about this explanation?

20 A. So what comes out of that jury isn't just a
majority

21 decision?

22 Q. No. No. We're talking about unanimous decision;
and each

23 person participates and each person decides, obviously
after

24 communicating with the others. I mean, that's why
there are 12

25 people, both in terms of what you remember about what
was said

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1 and what your opinions are concerning what you heard --
2 A. How can you -- you said it's on moral grounds,
also.
3 What's the point of discussing it with other jurors?
4 Q. Because they have perspectives to exchange, just as
they
5 would have perspectives on the believability of
witnesses and
6 the quality of the evidence that's presented at the
trial. I
7 mean, that's discussed, too. You know, it isn't --
going back
8 to the trial process, we don't just submit it to the
jury and
9 take a ballot. The jury deliberates, discusses and
evaluates
10 what they heard as evidence. Follow me?
11 A. Yes.
12 Q. So the same is true with sentence. The jury
discusses,
13 deliberates and evaluates and exchanges their views
about what
14 they heard and then considers these aggravating and
mitigating
15 circumstances and then comes down -- it comes down to
saying --
16 and it's a moral decision in terms of -- by that I mean
it's
17 not a test of your morality. It's a test of your
applying your

18 conscience and your role as a citizen in the United
States and
19 of the community to make a judgment about what the
appropriate
20 sentence is for this person for this crime. And it's
not a --
21 it's a judgment that is subjective in nature. There is
no
22 objective formulation for it.

23 Any other question about what I've explained?

24 A. No, sir.

25 Q. Now, the question for you to answer here, hard as
it is, is

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1 to tell us whether you can participate in that process
and make
2 a judgment about another human being, considering all
that you
3 may hear with respect to the crime and the
circumstances unique
4 to the defendant.

5 A. You know -- can I give you a winded response?

6 Q. Of course. Whatever is your honest --

7 A. I have watched these war movies, these war movies
where
8 these guys talk about killing and, you know, with
mechanized

9 warfare, whether it's from planes or, you know, from
ships. In
10 fact, I was watching one of those documentaries; and in
that
11 type of killing, you know, I could view myself as being
able to
12 do that. But what you're describing, you know, here
and
13 seeing, you know, a defendant, you know, who I will be,
you
14 know, looking at, you know, on a daily basis --

15 Q. That's right.

16 A. You know, raising questions to myself based on
17 circumstantial evidence -- okay -- you know, I view
that more
18 analogous to like hand-to-hand combat with knives, if
you will.

19 And in answer to your question, I don't think
I can do
20 that. I don't think I trust my judgment enough -- okay
-- to
21 take another person's life. You know, in that -- I
just don't
22 trust -- I don't trust my judgment enough to take
another
23 person's life. I mean, who the hell am I, you know, to
-- you
24 know, to be involved with that? I just -- I don't --
you know,
25 to defend myself, I could see that -- I'm not a
pacifist --

1 defend my family. But where you're making a judgment
call --

2 Q. That's right.

3 A. -- it's hard -- it's hard for me to -- it's hard
for me to

4 come to grips, you know, with capital punishment.
Before I

5 even got involved with this, it was very easy to for me
to say,

6 you know, capital punishment is appropriate. But until
I

7 started having to, you know, think about -- well, not
even

8 think. I'm just experiencing it now, you know, what's
9 involved, you know -- and what if you screw it up? So
--

10 Q. Well, I'm not going to argue with you, please.

11 A. It's all right.

12 Q. Don't --

13 A. That's my opinion. That's my honest --

14 Q. I just want to explore it a little more, but I'm
not trying

15 to talk you out of anything.

16 A. Okay.

17 Q. Or engage in any argument. I -- just a little more
18 explanation. There is a separation here between two
things

who did 19 that you have to recognize. One is is this the person

20 it.

21 A. Yes.

22 Q. I mean, does the evidence prove guilt?

23 A. Right.

about a 24 Q. That's been decided, or we wouldn't be talking

doubt 25 sentence hearing. So it's not a question of is there a

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because 1 about who did what. The question is what to do to him

2 of it and recognizing who he is.

there is 3 Now, with respect to your analogy, of course,

sit in 4 a personal aspect to it. You've already recognize you

trial and in 5 the same room with the person day after day in the

and come 6 the sentence hearing and then when the verdict is read

7 back in the courtroom, there he is. So it is personal.

8 Now, I don't think the hand-to-hand combat is
9 analogous, because there is nobody trying to kill you.

10 A. I meant just the interpersonal reaction.

11 Q. Yeah. Well, you see the person who is going to

bear the

12 consequences of your decision. There is no hiding from
that.

13 That's true, and you recognized it. And again, you
know, I

14 don't think it's quite like pulling the trigger,
another phrase

15 you used; but it is saying, "For this crime, you should
die,"

16 if that were to be the decision, death and not life in
prison.

17 So that would be required of you that you -- after
discussing

18 it with the jury, if that is your decision, you would
have to

19 come to the courtroom and say that. I mean, it would
be said

20 for you, it would be read, but there it is.

21 And is your -- with this little additional

22 explanation, is your answer the same that you simply
could not

23 do that?

24 A. Well, you know, when you uttered those words, I
still have

25 an upset stomach, you know; and the point being, I
mean, it

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1 would be very difficult. I don't know if I couldn't do
it.

2 Q. Well, there is no question in anybody's mind here
that it's
3 difficult. It's an awesome responsibility, not just
difficult.

4 A. Then in answer to your question, honestly, I can't
answer
5 it.

6 Q. Well --

7 A. Well, I don't know. How -- I don't know.

8 Q. Okay.

9 A. You know, right now, I'm upset about even thinking
about
10 it. So, you know, with your instructions, you know,
I'm not
11 going to be intimidated by anybody or any jurors.

12 Q. I can tell that.

13 A. But at the same time, you know, I want to be
responsible.

14 And I also know myself enough, you know, just -- people
make

15 mistakes in the judicial system in terms of judgment;
and I

16 have, you know, respect, you know, for the people here,
you

17 know, especially yourself in making those decisions.
But I

18 don't have that much respect in terms of my judgment in
terms

19 of, you know, taking someone's life.

20 THE COURT: Well, if you'll bear with us a
little

21 while longer, I'd like to take the recess now, the
luncheon
22 recess, and then see if the lawyers have some questions
to ask
23 you. Okay?
24 All right. You can step out now, and we'll
come back
25 at 2:00, I guess it is.

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1 Okay. We'll recess.
2 (Recess at 12:45 p.m.)
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16 * * * * *

17 REPORTERS' CERTIFICATE

18 We certify that the foregoing is a correct
transcript from

Dated 19 the record of proceedings in the above-entitled matter.

20 at Denver, Colorado, this 21st day of October, 1997.

21

22

23

Paul Zuckerman

24

25

Kara Spitler