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

consider 18 punishment, it's something that the jury doesn't  
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.  
just as 23 Q. But if we get to that second stage in this case,  
Nichols, 24 you don't know right now what the facts are about Mr.  
25 do you think you could tell anything -- and not in this  
case,

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

4343

Juror No. 119 - Voir Dire

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

4344

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.

4345

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

4347

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 that 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

4348

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

4349

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

4354

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,

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

4 And you have previously been introduced to  
Beth  
5 Mr. Lawrence Mackey here at the first table and Miss  
from the  
6 Wilkinson as attorneys for the Government in this case  
by  
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.

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

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

15 And you answered all these questions that we  
asked of  
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  
given copies  
18 of your answers to the people you see here, but to no  
one else.

19 And we very much respect your privacy, and we will do  
all that  
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

order 21 after the case came to Colorado, I then entered an  
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.

4358

Juror No. 994 - Voir Dire

with 1 And that was done, and then a trial was held  
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.

4359

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.

4361

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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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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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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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

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

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

6 service because I've forced you into it?

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

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

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

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

11 Q. Okay.

12 A. I would be accepting of it.

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

14 important thing for this country. Accept that?

15 A. Yes, I do.

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

do 17 your background that causes me to understand that you

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

19 A. I believe that's true statement.

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

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

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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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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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.

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

16 A. Correct.

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

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

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

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

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

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

23 A. Correct.

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

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.

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

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

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

5 jury to decide whether the evidence proves guilt beyond  
a

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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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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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.

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

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?

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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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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.)

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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

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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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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  
return a 10 that the case has been proved by the evidence, they  
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  
saying? 22 you got picked for the jury? Is that what you're  
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.

question like 8 Q. Okay. And, you know, only you can answer a  
be some 9 that, so are you willing to make what would appear to  
10 sacrifice then financially?

11 A. I am.

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

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

20 A. Yes, sir.

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

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.  
7 Q. Okay. Now, we asked you a broad question about  
what you 8 think about the criminal justice system on page 22, if  
you'll 9 turn to that. And you gave a rather guarded answer  
there that

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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Juror No. 221 - Voir Dire

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

19 think that after you got out of the university you  
attended  
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.  
24 A. Well, I enjoy academics, and I thought that I would  
enroll  
25 in a graduate program; but it didn't take me long to  
get burned

4414

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1 out. I had always been in school, so I decided to  
withdraw  
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  
could. 3 A. In light of unquestionable evidence and the other  
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  
23 throughout history there have been many instances like  
that.

24 Q. And do you feel if you're selected as a juror that  
you 25 could listen to the rules, whatever they are, and  
perform a

4426

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1 public duty?

2 A. Yes, sir, I do.

3 Q. And think -- as you sit there today knowing that  
you've 4 read and heard a lot about this, can you look Terry  
Nichols in

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.

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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

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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.  
3 Q. Okay. So don't worry about causing any offense.  
I'm not 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.  
11 Q. Now, have you followed other trials that have been  
-- you 12 know, there are -- there is a Court TV channel -- well,  
I don't 13 know if there is now or not in Denver -- but where you  
can 14 watch a lot of different trials, highlights in the  
evenings, 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. 20 you don't have any reason to be concerned for your  
If 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.)  
3 \* \* \* \* \*  
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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

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23

Paul Zuckerman

24

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25

Kara Spitler