

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 TERRY LYNN NICHOLS,
8 Defendant.

ff

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10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 40)

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ff

12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 8:43 a.m., on the 22d day of
October,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

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23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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9 MICHAEL TIGAR, RONALD WOODS, and ADAM
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10 Attorneys at Law, 1120 Lincoln Street, Suite 1308,
Denver,
11 Colorado, 80203, appearing for Defendant Nichols.
12 * * * * *

13 PROCEEDINGS

14 (In open court at 8:43 a.m.)

15 THE COURT: Be seated, please.

16 Good morning.

17 ALL: Good morning, your Honor.

18 THE COURT: We're ready with 510.

19 Good morning.

20 JUROR: Good morning.

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

22 take the oath from the clerk.

23 (Juror No. 510 affirmed.)

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: Please be seated there by the
microphone

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1 in that chair. You don't have to pay any attention to
the

2 microphone. You don't have to lean into it or
anything. It

3 will pick you up just from where you are.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. Now, you were here yesterday?

7 A. Yes.

8 Q. So we're sorry we didn't get to you yesterday --

9 A. That's okay.

10 Q. -- and that we caused you to come in a second day,
but you
11 understand: Hard to estimate just how much time it may
take to
12 go through this process. And the process of course,
you
13 recognize, is the selection of a jury for the trial of
the case
14 of United States against Terry Lynn Nichols.

15 A. Yes.

16 Q. And you got a summons notifying you back in July
that your
17 name had come up as a potential juror in this case, and
then
18 you got a notice -- you sent back a short questionnaire
on
19 that, got a notice to appear out at Jefferson County
20 Fairgrounds' auditorium building in September, a little
more
21 than a month ago, and you did that, and there you met
me and
22 others. I want to reintroduce the others. They're
here with
23 us again this morning, of course.

24 And for the Government -- the lawyers for the
25 Government are Mr. Lawrence Mackey and Miss Beth
Wilkinson whom

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also as
Ryan and
Ronald
of
a
who
matter.

1 you met at Jefferson County. With them this morning,
2 additional counsel for the Government, are Mr. Patrick
3 Mr. James Orenstein.

4 For the defense, Mr. Michael Tigar and Mr.
5 Woods, attorneys for Terry Nichols; and Mr. Nichols was
6 course present as well.

7 And at that time before asking you to complete
8 rather lengthy questionnaire, I gave you and the others
9 were there some background information about this

10 A. Yes.

11 Q. And I'm sure you remember that, but I want to just
review

12 it with you again briefly so that we have kind of a
foundation

13 for our questioning this morning. I told you of course
that

14 the case arises out of an event in Oklahoma City,
Oklahoma, on

15 April the 19th of 1995, when a -- there was an
explosion that

16 destroyed a federal office building killing and
injuring people

17 in it and that later the Government through Government
lawyers
18 filed charges in the form of an indictment, a written
statement
19 of charges, accusing a man named Timothy James McVeigh
along
20 with Terry Lynn Nichols -- and then the indictment
refers to
21 "and other persons not named" -- with a conspiracy, a
criminal
22 agreement to bomb that building and to kill and injure
people
23 in it. The indictment consists of 11 counts or
charges, the
24 conspiracy being one. And then the indictment alleges
that the
25 defendants carried out the plan and did indeed bomb the

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1 building. And the indictment then includes eight
counts or
2 charges of first-degree murder charging the defendants
with the
3 murder, intentional killing of eight law enforcement
agents,
4 officers of law enforcement agencies of the government
who died
5 in the explosion.
6 To these charges, the defendants entered their
pleas

7 of not guilty, which of course create the issue for
trial; but
8 the trial was then moved from Oklahoma City here to
Denver
9 because of a concern about asking people in Oklahoma to
sit as
10 jurors in a case that affected the community as it did.
Excuse
11 me.

12 So after the case was moved here to Denver, I
entered
13 an order for separate trials ordering that the evidence
as it
14 may relate to Mr. McVeigh be considered separately from
the
15 evidence as it may relate to Mr. Nichols and that
separate
16 juries hear and consider that evidence. And that was
on the
17 basis of a finding that fairness required separation.

18 And as a result of that order -- excuse me --
there
19 has been a trial of the case of the evidence as it
relates to
20 Mr. McVeigh. And a jury was selected for that case,
heard the
21 evidence, and returned a verdict of guilty as to him.
And then
22 the jury was required to hear more and make a
recommendation on
23 sentence and came in with the death sentence as to Mr.
McVeigh.

24 All of these things you probably knew before I

told

25 you; right?

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1 A. Yes.

2 Q. And then I explained that we are now engaged in
selecting a

3 jury for the trial of whatever the evidence may be as
it may

4 relate to Mr. Nichols and that nothing that happened in
the

5 Timothy McVeigh trial can now be considered in Mr.
Nichols'

6 trial. And certainly the outcome of the McVeigh case
and the

7 sentencing hearing can't be considered now. To do that
would

8 violate the whole purpose of the separation order, you

9 understand.

10 So in talking with persons who may become
jurors in

11 this case, one of the things we will be talking about
is

12 whatever you may have read, seen, or heard about that
other

13 trial and of course the importance of disregarding
that, and we

14 start with a clean page here with no evidence in this
case.

15 You understand the point?
16 A. Yes, I do.
17 Q. Now also, since most of you who came out there to
the
18 auditorium building had never been on a jury before, I
19 explained some of the fundamental rules or principles
of law
20 that apply in all criminal cases in the United States.
And
21 they apply to all cases regardless of who the defendant
is or
22 what the crime charged is or indeed what the court is
since
23 these things are under the Constitution of the United
States
24 which guarantees to all of us that we cannot be
deprived of
25 life or liberty without due process of law, and the due
process

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1 includes these principles that each person who is
accused is
2 presumed to be innocent of the crime charged against
him or
3 her. You understand that point?
4 A. Yes.
5 Q. And the presumption of innocence carries over
throughout a

a 6 trial and entitles the accused person to an acquittal,
7 judgment or a verdict of not guilty, unless 12 jurors
and not 8 considering only the evidence received at the trial --
that 9 everything is admissible as evidence; there are rules
10 govern what can be considered -- and then following the
law and 11 the instructions of the court, determines that the
evidence 12 proves the accused guilty beyond a reasonable doubt.

13 No person who is a defendant in a criminal
case has 14 any burden or duty of calling any witnesses or
introducing any 15 evidence and has no obligation to take the witness
stand and 16 respond to questions from the lawyers or the court or
to 17 explain anything to the jury. A defendant can simply
remain 18 silent at trial and challenge the proof brought in by
19 government counsel. Understand?

20 A. Yes.
21 Q. And those challenges take the form of objections to
the 22 admissibility of certain kinds of evidence as well as
23 cross-examination of all of the witnesses; and it is
the 24 responsibility of the attorneys representing the
government to

25 bring the witnesses in and the exhibits in that
constitute the

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1 evidence and to attempt to prove the charges that have
been
2 made in the indictment. And then at the end of the
trial of
3 the evidence, the court gives the jury instructions as
to what
4 has to be proved, you know, the detail as to each of
the counts
5 of the indictment, each crime charged, what has to be
proved
6 for it, and then tells the jury in these instructions:
7 Consider this evidence, consider this law, and then
tell us
8 whether the evidence proves the crimes charged.

9 And in doing so, there's also an instruction
in cases
10 in which a defendant does not testify that that cannot
be
11 considered in any way. That's not an admission, or,
you know,
12 you can't think about that in terms of, well, you know,
what
13 has he got to hide or if I am an innocent person, I'd
get on
14 the stand and tell the world about it. Nothing like
that can

You 15 be considered. In fact, what the instruction says is:

16 can't even discuss it in deliberations.

17 And then the jury, after considering it
together as a

18 group of 12, makes the decision. And the only way the
jury can

19 return a guilty verdict is if all 12 jurors are
satisfied

20 beyond a reasonable doubt that the evidence proves the
charges.

21 And if not, if there is a reasonable doubt, the
defendant is

22 entitled, under the Constitution, to the benefit of
that doubt.

23 You've listened carefully, I know, and you
understand

24 these principles of law?

25 A. Yes.

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1 Q. And do you accept them and agree with them?

2 A. Yes.

3 Q. And that means of course that as you sit here now
and

4 Mr. Nichols sits with us, he is presumed to be innocent
of all

5 of these charges that have been made against him. You

6 understand that?

7 A. Yes.

8 Q. Excuse me. Now, you answered this questionnaire in
detail
9 as we asked you to. There are some things in here that
are
10 somewhat personal. We recognize that. And we do all
that we
11 can here to protect your privacy and that of the other
persons
12 participating in this process. So while I have given
copies of
13 your answers to the people who are here with us for the
purpose
14 of what we're doing now, they and I haven't given them
to
15 anybody else and will not. And we do not use your name
here to
16 identify you; and in the course of the proceeding here,
we'll
17 try to avoid identifying you as a person. And of
course this
18 extends to the way in which we bring you in and out of
the
19 courthouse so there can't be press photographers taking
your
20 picture or that kind of thing because we know you
didn't
21 volunteer to come in here and you're -- you have your
own life.
22 But you should recognize that what we do here now is in
open
23 court and this is a public trial. All right?

24 A. Yes.

25 Q. And if there should be anything -- I'm not suggesting that

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1 there is -- but if there should be anything here that
you
2 believe is particularly sensitive, you just tell me
about it.

3 A. Okay.

4 Q. Now, I'm going to ask you some questions about some
of your
5 answers here. Certainly we're not going to go through
the
6 whole thing.

7 A. Okay.

8 Q. And there are just a few things that I would ask
you
9 perhaps to expand on. And then one of the lawyers on
each side
10 of the case will have an opportunity to ask you some
additional
11 questions. So although you've answered a lot of them,
there
12 are still some more.

13 A. Okay.

14 Q. Bear with us, if you will.

15 You are a Colorado native?

16 A. Yes.

17 Q. Born and raised here and have lived here
continuously;

18 right?

19 A. Yes.

20 Q. Excuse me. And you're married?

21 A. Yes.

22 Q. And your wife works at an elementary school?

23 A. Yeah. Teacher assistant.

24 Q. Okay. Does she work with a particular grade?

25 A. Kindergarten.

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1 Q. Kindergarten. And you have two children in school
now.

2 A. Yes.

3 Q. Do you have children in the same school?

4 A. One's in --

5 Q. Well, one's a lot older than that.

6 A. Yeah.

7 Q. One is in elementary school. And is she in the
same school

8 where your wife works?

9 A. Yes.

10 Q. Now, you have worked -- your employment is set out

at page

11 9 the -- you got your questionnaire there and can refer
to it.

12 Excuse me. And you've worked at this same company, I
guess

13 since you yourself were right out of high school, looks
like?

14 A. Yeah. '79.

15 Q. First job out of high school was there?

16 A. About the third.

17 Q. Third. And the type of work that you do there is
shown on

18 page 9, and is that the kind of work you've done ever
since

19 you've started?

20 A. No, I worked in construction out there.

21 Q. Okay.

22 A. And then went to this for more job security.

23 Q. And yes, I see you said construction specialist at
one

24 time. And that was through the same employer, then?

25 A. Yeah.

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1 Q. Okay. Now, I notice something on page 5 that I'd
just like

2 to ask you something about without, I think, getting
into too

were you 3 many details. But on page 5 at Question 20 -- how old

4 at that time?

5 A. 37.

6 Q. And is that something that's ongoing?

it. I 7 A. Yeah, right now. It's -- I'm in the last part of

8 had a contract I had to sign.

9 Q. And is that because of a court order?

10 A. No. Part of the discipline.

11 Q. From the company?

12 A. Yeah.

workers? 13 Q. So this involved, did it, a co-worker or some co-

done, to 14 A. No. I just made a threat trying to get something

15 the supervisor.

16 Q. Oh, I see.

care of 17 A. 'Cause there was a problem, and he wasn't taking

18 it.

19 Q. And the supervisor wrote you up for it.

something done. 20 A. Yeah. The wrong thing to say to try to get

what 21 Q. Yeah. So they put you in this program as a part of

22 their ordinary process is for dealing --

23 A. Yeah.

24 Q. -- with a --

about 25 A. Yeah, it was six classes, and then that was done in

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1 March or so.

you 2 Q. Okay. Well, that's what we wanted to, you know --

3 understand why we wanted to ask that --

4 A. Yeah.

I think 5 Q. -- to see whether that was a more general problem.

6 I understand what you've explained.

7 On page 21 you refer to knowing some lawyers
8 through -- or one lawyer anyway through your church?

9 A. Yes.

defense 10 Q. Does that person practice in this area of criminal
11 work?

he's 12 A. I don't think so. Never really asked him. I know

know what 13 downtown where I'm at, is where he works, but I don't

14 he does.

15 Q. All you know is he's a lawyer?

16 A. Yeah.

17 Q. Okay. Then on page 22 where you were asked about

seeking

18 assistance from police -- as I understand it, there was
some

19 kind of a car accident. Was this a serious accident?

20 Injuries?

21 A. No. Just fender bender.

22 Q. Fender bender, as they say?

23 A. Yeah.

24 Q. Okay. You indicated here, if I can get the page --
excuse

25 me for a moment.

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1 On 12. You changed religions -- you have page
12?

2 A. I do now, yeah.

3 Q. You were brought up, as I take it, in one church
and

4 changed to another when you married?

5 A. Yeah. Well, I was baptized that religion, and then
--

6 Q. Did you ever --

7 A. I never went to church after that.

8 Q. You didn't?

9 A. And then when I met my wife, I started up with her
10 religion.

11 Q. When you say "baptized," are you talking as a baby?

12 A. Yes.

13 Q. Okay. But you never really were a -- went through
the --

14 A. No.

15 Q. -- the confirmation and all that?

16 A. No, I never.

17 Q. Okay. So it didn't amount to a major change?

18 A. No. No.

19 Q. You really just adopted your wife's faith?

20 A. Yeah.

21 Q. Okay. I understand.

22 Among the questions we asked of you here was
your

23 attitudes or opinions concerning possible punishments
in

24 criminal cases.

25 A. Yes.

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1 Q. And at page 27 there was an explanation provided to
you as

2 to why the questions that are appearing on 28 were
included.

3 Do you remember reading this explanation on page 27 at
124?

4 A. Yeah, I do.

5 Q. You remember that?

6 A. Yeah. Not completely, but I remember.

7 Q. Well, turn to 28. These are where your answers
are. And

8 go ahead and take the time to read those questions and
answers.

9 And there's another answer on the next page, 29.

10 All right. You have in mind what you wrote?

11 A. Yeah.

12 Q. Now, I want to talk with you a little about this.
And

13 before I do so, though, I want to reassure you of
something.

14 You're not on trial for your views.

15 A. Okay.

16 Q. And in the -- in talking with you and asking you
some

17 questions about this subject, I'm not trying in any way
to

18 suggest your answers.

19 A. Okay.

20 Q. What we want to know here is something about your
21 viewpoint, so there's no right or wrong test to this.
I mean,

22 this is not -- right or wrong answer. It's not a test
to see,

23 you know, if you give us the right answers. What we
want are

24 your answers.

25 A. Okay.

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1 Q. And this is a subject on which people have
considerably

2 different views, as you undoubtedly recognize.

3 A. Yeah.

4 Q. And in a few minutes I will explain the procedure
that is

5 followed here in Federal Court with respect to the
jury's

6 participation in sentencing, but what we wanted to ask
of you

7 here is, you know, what your views are about possible
8 punishments without any previous instruction on the
law. So

9 it's more in terms of, well, what do you think the law
ought to

10 be, if you could make the law, yourself, as the
preliminary

11 paragraphs recite here. So that's the -- that's the
context in

12 which I want to ask you some of these questions. All
right;

13 understand?

14 A. Yeah.

15 Q. Now, ordinarily in criminal cases the jury is not
involved

16 in the question of punishment. The jury decides the

evidence

17 in the case; that is, does the evidence prove the
charge,
18 whatever it is, beyond a reasonable doubt, yes or no,
guilty or
19 not guilty. And then punishment's another matter and
is not
20 considered by the jury at all. And I'll describe in a
bit here
21 how sentences are done in federal courts in other kinds
of
22 cases.

23 But in certain kinds of cases, including cases
in
24 which the charges are of the nature of the charges in
this
25 case, the jury has a role to play in it. And that's
why we

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1 need to discuss your views concerning punishment now,
even
2 though there's of course the presumption of innocence
in this
3 case and the expectation there never would be a guilty
verdict
4 so there never would be a punishment. Understand?
5 A. Yeah.
6 Q. So let me just ask you this before talking about
your

7 answers. And I don't mean to put you on the defense
with your 8 answers, you know. Again, you're not going to be
9 cross-examined on your views.

10 A. Okay.

11 Q. But this subject of the death penalty is, as I've
already 12 referred to, something much discussed; and there are
states in 13 the United States where there is no such penalty as
death for a 14 crime. And of course over time the law has changed
from time 15 to time as legislatures reflecting what they believe to
be the 16 views of the majority of the people change.

17 Now, is the matter of what kind of punishment
there 18 should be and whether it should be death or life in
prison -- 19 and let me just make clear to you that when we are
speaking 20 about life in prison here, it should be understood to
mean 21 actually all of the rest of your life in prison, no
release, no 22 parole. So when your time comes, you die in prison.
That's 23 the type of life sentence we're talking about.

24 And, you know, have you -- before answering
these

has this 25 questions on this questionnaire on September the 17th,

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thought 1 been something that you've discussed with others and

2 about or read about?

3 A. No, not really.

first 4 Q. So would it be accurate to say this is really the

5 time you've had to focus on that?

6 A. Yeah.

a 7 Q. And it may well be that you have since, you know --

thought 8 little over a month ago you wrote these answers --

9 about it some more.

10 A. Yeah, I did.

that. And 11 Q. And that's a natural -- I mean we would expect

of 12 having thought about it some more, would you change any

to. 13 these answers? 'Cause you're free to do so if you want

14 A. Got to read them again.

15 Q. Sure.

16 A. Yeah, I'd change a few of them.

17 Q. Tell us in what way.

18 A. Like in which letter?
19 Q. Yeah. Well, just anything that you want to add to
this or,
20 you know, you can not only add to it, you can change
anything
21 you said in here because you may have a different view
today
22 from what you had when you answered this. And if you
do,
23 that's what we want you to tell us.
24 A. Well, like the death penalty . . . I really never
expected
25 me to -- still haven't really thought about it too
much . . .

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1 but, you know, it's just a whole lot of options to look
at,
2 too, to get to that verdict, I guess you'd call it.
3 Q. Well, let me ask in particular. Let's turn to page
29.
4 And you were a little uncertain about what you wrote
there
5 'cause you -- you know, you had some strike-throughs
and all
6 that.
7 A. Yeah.
8 Q. And don't worry about it. I mean, this is not an
easy-type

9 thing to consider.

10 A. No.

11 Q. You're talking about the life of another human
being. And

12 you say here you like to look at all the options, but
then you

13 also say: The decision should fit the crime; if it's
severe,

14 make it severe. Now, that suggests -- and I don't want
to jump

15 to any conclusions -- that suggests that you were
thinking

16 about, well, for certain kinds of crimes, death is the
correct

17 option.

18 A. Yeah, at that time. I've changed that, too. You
know,

19 like life sentence, too, I think would be pretty
severe, too.

20 Q. Well, let me tell you a little about how it
actually goes

21 here --

22 A. Okay.

23 Q. -- to put this into better context for you. As I
said, in

24 most criminal cases, cases that don't involve the
murder -- and

25 the only time that we get to questions like this is if
the

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form of 1 charges involve the intentional killing of others, some
2 murder, or, you know, a killing.

3 A. Yeah.

Now, in 4 Q. And not an accidental killing, an intentional one.

discussed, 5 other kinds of cases, the jury, as we've already

6 decides whether the evidence proves the charge beyond a
7 reasonable doubt. And again, if the verdict is not
guilty,

hand, the 8 that's the end of the whole case. If, on the other

jury is 9 verdict is guilty, that's the end of it as far as the

deciding 10 concerned because the jury has performed its role of

defendant, 11 on the evidence. But it isn't the end of it for the

to 12 of course, because there's more to be done; and that is

that 13 decide what the punishment should be for the crime that

is done 14 person has been found guilty of committing. And that

15 by a judge.

because that's 16 Now, we're speaking about Federal Court

doesn't go 17 where we are and under federal law. But a judge

18 ahead and make a sentencing decision for somebody just
on the
19 basis of the evidence of the trial and the jury's
verdict.
20 More is done. And the more is that a lot more
information is
21 submitted to the court, and it is of two types, really:
22 Information concerning the crime itself -- beyond the
evidence
23 at trial, the circumstances of the crime -- including
things
24 like its effects on the community and on the people
involved as
25 victims and so forth. And then the court gets a lot of

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1 information about the defendant who has been found
guilty, and
2 that information really goes to the whole life story of
that
3 person: His -- you know, how he was raised, the
family,
4 education, marriages, divorces, jobs, military service,
5 illnesses, essentially everything about his life. And
all of
6 us have our own unique life history that separate us
from
7 everybody else. I mean we are in large part who . . .
who we

8 are in large part is determined by a lot of things that
have

9 happened to us or that we have done in our lives.

10 And that can also include, of course,
information

11 about the participation of that person in the crime
because

12 there can be crimes where more than one person
participated,

13 and there can be significant differences in their roles
in the

14 criminal conduct. You follow what I'm saying?

15 And a judge holds a hearing with all of that
16 information and hears from both the prosecution and the
defense

17 and then decides what is the sentence that is just and
18 considered fair for that particular person on that
crime. And

19 as I've just said, if there were two or more persons
involved

20 in the same crime, the judge may very well make
sentences that

21 are different so that not everybody convicted of the
same crime

22 gets the same sentence. It depends on these individual
23 circumstances as well, the individual life history and
also

24 some things about the defendant's attitude towards the
crime,

25 all of those things. And then that sentence is
decided.

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1 Now, when we're dealing with the intentional
killing 2 of other people and the possibilities under federal law
are for 3 a sentence to life in prison without release, as I've
already 4 defined it for you, or a sentence of death, or there
can be a 5 sent -- a lesser sentence in which case the judge
decides it.

6 But the life-or-death question is not up to the judge.
In 7 providing for this type of punishment, the Congress has
said 8 that juries should make the decision about life or
death. And 9 this is the same jury, the same 12 people, who heard
the 10 evidence at the trial and came in with a verdict of
guilty. 11 Obviously if there's no guilty verdict, this doesn't
come into 12 play, you know. Case is over if there's a not guilty
verdict.

13 But in the event of a guilty verdict, the jury
must 14 come into the courtroom and hear a lot more. And that
lot more 15 is the same thing that I've just talked about as judges
hear:

16 All of the information that's available about the
defendant as
17 well as the information that may be given about the
18 circumstances of the crime again. And that's presented
to the
19 jury in the very same way as the trial was; that is to
say,
20 witnesses are called in, exhibits are introduced, both
sides
21 participate, lawyers on both sides, and in the end
after all of
22 this is submitted -- and it can take, you know, several
days or
23 weeks to present this information because it is
important that
24 it be complete. And then when that second trial or
penalty
25 phase hearing is completed, the court gives some
additional

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1 instructions about how the jury approaches the
sentencing
2 question.
3 And the jury has to approach that question
with an
4 open mind, considering these three possibilities of
life in
5 prison without release, death, or something lesser in
which

6 case it would go back to the judge to decide. But the
court
7 then in these instructions will outline the things that
have
8 been presented to the jury in the penalty hearing and
divide
9 them up, really, for assistance to the jury into what
the jury
10 may think of as aggravating factors or circumstances
which
11 really are the things that would tend to suggest that
death is
12 the appropriate punishment and, on the other hand,
mitigating
13 circumstances. And by mitigating, we're talking about
things
14 that the jury may see as mitigating the punishment and
15 suggesting that while the crime may itself be one for
which the
16 death penalty can be imposed, the death penalty should
not be
17 imposed on this particular human being for whatever
reasons the
18 jury finds in the information provided, including all
of these
19 things about that person's background because the jury
is
20 really deciding the life of another human being.

21 You follow me on this?

22 A. Yeah.

23 Q. Now, the judge can then give the jury some
questions that

24 the jurors may use to assist in analyzing this
information, but

25 there isn't any kind of formula or equation or anything
like

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1 that. It's not mathematical. It's a matter of human
judgment

2 about another human being. And a jury of course
discusses all

3 this, just as the jury deliberates about the evidence
in a

4 case. But in the final analysis, what the jury has to
do is

5 make a decision that I guess can best be thought of as
a

6 reasoned or rational, moral judgment about another
human being,

7 whether he should live or die.

8 So that's the question that has to be put to a
jury

9 under those circumstances. And what I must ask of you
now is:

10 Considering all that I have explained about this
process and

11 what goes into it, do you believe that you can sit as a
juror

12 and hear all of that and then come to a decision about
life or

13 death and include in that decision all of the things

that

14 you've heard, not just the crime, but all of the things
about

15 the defendant as a human being?

16 A. Yes. That's the way I do meetings at work, you
know, get

17 people together. And, you know, it's not one person
going,

18 yes, this, this, this, you know. I like to involve it,
come up

19 with a conclusion.

20 Q. All right. And, you know, the jurors talk it over
--

21 A. Yeah.

22 Q. -- that's the thing you're talking about. But each
juror

23 has to make a decision on this, you understand?

24 A. Yeah.

25 Q. Okay. And what I hear you saying, just to be clear
here,

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1 is that before you make that decision and in making it,
you

2 would consider all that you've heard?

3 A. Yeah.

4 THE COURT: Okay. Thank you. Well, we have
some

5 questions from our attorneys.

6 Mr. Orenstein, you have some questions for the
7 Government?

8 MR. ORENSTEIN: I do, Judge. Thank you.

9 VOIR DIRE EXAMINATION

10 BY MR. ORENSTEIN:

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

12 A. Good.

13 Q. As his Honor introduced me before, my name is Jamie
14 Orenstein; and together with my fellow prosecutors here
at the

15 counsel table, my job will be to present evidence
against

16 Mr. Nichols at this trial. Your job, obviously, if you
were

17 selected as a juror, would be to listen to that
evidence with

18 an open mind, come together with your fellow jurors at
the end

19 of the case, and discuss that evidence and come to a
fair

20 decision. Do you think you could do that job?

21 A. Yes.

22 Q. Okay. His Honor told you that the lawyers have a
few

23 questions. I'll try not to go over things that his
Honor

24 already covered.

25 A. Okay.

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ask you. 1 Q. But I do have a few questions that I would like to

you been 2 I notice that you coach a soccer team. How long have

3 doing that?

graduation. 4 A. Since I graduated. I've been coaching since

5 But this summer I started another team.

6 Q. You started one on your own?

7 A. It's my son's team.

8 Q. So you coach your son?

9 A. Yeah. They went competitive, so I took that on.

10 Q. How did the team do?

11 A. Well, we won our first game, so one to nine.

lot of 12 Q. Keep it up. You know, the questionnaire asks you a

your 13 questions about what you do for a living and members of

what they 14 family, but not about your parents. I was wondering

15 did or do for a living.

the same 16 A. My mom was a -- stayed at home. My dad worked at

17 place where I'm at.

18 Q. That's what I was going to ask. Did he help you or

19 encourage you to work where you're working now?
20 A. He helped me get on, but he didn't encourage it. I
just
21 went up to him and said, Can you help me get on. He
directed
22 me where to go.
23 Q. So he helped you get that job?
24 A. Yeah, he did, give a phone call saying, My son's
applying,
25 can you see what you can do.

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1 Q. I hope you'll forgive me if I ask one more question
about
2 the incident that his Honor asked you about at work.
Do you
3 have any feelings one way or the other about how you
were
4 treated with respect to that incident?
5 A. I was treated the way the policy is written. Fair.
They
6 did it fair. I was in the wrong.
7 Q. So they followed the rules and --
8 A. Yeah. And I accepted it. I went up and told them,
I
9 accept responsibility for my actions. This is what I'm
going
10 to do.

11 Q. And that incident is behind you now?
12 A. Yes.
13 Q. Okay. There's another question, if I could ask you
to turn
14 to page 3 of your questionnaire. And without going
into
15 details, I would like to ask you, sir, on Question 11,
was that
16 an incident involving yourself, or is it a friend or
family
17 member?
18 A. It was my wife and I. We had a stillborn.
19 Q. And is that incident something that you think would
in any
20 way affect --
21 A. No.
22 Q. The reason I ask is because, as you may know, there
may be
23 evidence in this trial about a number of people being
killed in
24 a criminal incident, and including a number of
children. First
25 of all, let me ask you: Were you aware that there were

4610

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1 children killed in this?
2 A. Yes.
3 Q. Given the experience that you and your wife have

had, which

4 is obviously a very hard incident for anyone, do you
think that

5 would affect your ability to be objective and to look
--

6 A. No.

7 Q. -- at the evidence fairly?

8 A. No.

9 Q. I'd like to spend a few moments talking with you,
if I may,

10 about the question of punishment, which his Honor
discussed

11 before.

12 A. Okay.

13 Q. You said that in the month or so since you went to
the

14 auditorium and filled out the questionnaire, you've
been

15 thinking about this issue; and this morning you gave
some

16 additional explanation for your answers. What have
your

17 thoughts been about this, about this question of
punishment in

18 general?

19 A. Well, my thoughts, if I could do it, you know, or
what it

20 meant. And I still -- I really didn't talk to anybody
about

21 it. I think that was the hardest part, 'cause I
couldn't

don't 22 express feelings on it. But it would be hard. But I
23 think I'd regret it a lot.
you 24 Q. When you talk about the decision being hard, are
in the 25 referring to the fact that obviously a human life hangs

4611

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1 balance?
2 A. Yeah, that's the part of it, yeah.
issue 3 Q. You realize, of course, that we don't get to this
4 unless a jury first --
5 A. Yeah.
6 Q. -- decides --
7 A. Yeah.
8 Q. -- someone's guilty. And you come into that
process, the
9 decision of finding someone guilty or not guilty, with
an open
10 mind; is that right?
11 A. Yes.
12 Q. You also said this morning, when the Judge asked
you if you
13 have any, you know, changes or additions to your
answers -- and
14 I wrote this down -- you said that there are a whole

lot of

15 options to think about to get to that final decision,
that

16 verdict. You understand -- I think this is -- I'm
picking this

17 up from your answer -- that no matter what crime is
involved in

18 a case, you don't -- first of all, there's no automatic
19 decision.

20 A. Right. Right.

21 Q. And that there are always a number of options that
you have

22 to consider, again, no matter what the crime is.

23 A. Right.

24 Q. You know there are some people who would say -- and
there's

25 a wide range of opinions on this issue of capital
punishment.

4612

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1 You've probably heard about that.

2 A. Yes.

3 Q. And there are some people who think: If somebody
has

4 killed another person, I don't want to hear anything
about the

5 person who did it; I just think that person should die.

6 There are some other people who think: The

state

7 should never put someone to death. And those are the
extremes.

8 And then there are a whole range of people in the
middle.

9 I guess my question for you is: Are you the
kind of

10 person who's at that extreme who would say, I don't
want to

11 know about the person before making the decision?

12 A. No. I would like to know a little bit about it.

13 Q. And, you know, a lot of -- a lot of different
things can be

14 presented to a jury in making that decision --

15 A. Yeah.

16 Q. -- both about the crime and about the person who's
been

17 found -- how much he participated in the crime, what
he's done

18 good and bad in his life, what's been done to him, good
and

19 bad. Would you be open to considering all of that, and

20 whatever else might be presented about the defendant?

21 A. Yeah, and that was -- when I left the
questionnaire, the

22 last few weeks, that's what I was thinking, you know,
the

23 what-ifs and what he did or she.

24 Q. And, you know, one of the reasons I ask that
question is

25 because the questionnaire itself asks you about crimes,

what

4613

Juror No. 510 – Voir Dire

1 kinds of crimes would you be considering a life
sentence or a

2 death sentence; but it doesn't ask you, you know, what
would

3 you consider about the person. So is that what
prompted you to

4 have those additional thoughts?

5 A. Yeah.

6 Q. Finally, you said that in your own life, you have
to do

7 that process, yourself, at work --

8 A. Yeah.

9 Q. -- go to meetings and listen to everybody.

10 A. Yes.

11 Q. Do you ever just go into a meeting thinking, I know
what

12 I'm going to do and I'm not going to listen to anybody
else?

13 A. No. I just didn't think it's fair.

14 Q. So even if you think you know what the decision
should be,

15 you're going to wait to hear what everybody else has to
say?

16 A. Yeah.

17 Q. Well, that leaves me with the bottom-line question.

It's

18 my last one. Coming into this process, is your mind
open to

19 life or death as a possible penalty -- you know,
assuming of

20 course -- and I'm not talking about this case
specifically. In

21 any capital case, if you find the defendant guilty, is
your

22 mind open to the possibility of a life sentence or a
death

23 sentence?

24 A. Yes, it is.

25 MR. ORENSTEIN: Thank you very much for
answering my

4614

Juror No. 510 - Voir Dire

1 questions.

2 THE COURT: Mr. Tigar.

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

5 Q. Hello again.

6 A. Hi.

7 Q. Hi. My name is Michael Tigar. And this is Ron
Woods and

8 Terry Nichols. Back in May of 1995, a federal judge in

9 Oklahoma appointed Ron Woods and myself to help out
Terry

10 Nichols.

11 A. Okay.

12 Q. And I guess you saw some of the publicity back at
that time

13 on television and so on.

14 A. Yes.

15 Q. Well, we're appointed by the court. Do we start
out with a

16 disadvantage because Mr. Nichols didn't have the funds
to hire

17 counsel and the court appointed counsel for him?

18 A. Repeat that.

19 Q. Oh, I'm sorry. Do you have any sense that we're --
that we

20 start out at a disadvantage because we're court -- Mr.
Nichols

21 didn't have the money to hire a lawyer? Do you think
it's

22 wrong for the system to appoint lawyers for people?

23 A. No.

24 Q. Well, I'd like to talk a little bit about some of
the

25 things on the -- on the questionnaire. You didn't
check off

4615

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1 any books that you're reading lately, but you say you
go to

2 movies a lot?

3 A. Yes.

4 Q. What kind of movies do you like to see -- you see
them with
5 your family, take the family?

6 A. Yeah, hit all the Disney ones.

7 Q. Okay. You bet. At least once; right?

8 A. Yeah.

9 Q. And when you're not doing Disney ones, what ones do
you
10 like?

11 A. Pretty much the ones people talk about at work; and
I'll go
12 see, you know -- fulfill my curiosity about it.

13 Q. Sure. Now, out there at work, I wanted to ask you:
When
14 you had that -- the incident that you were talking
about with

15 the judge and with the prosecutor, did the human
resources
16 department get involved in that? Is that how they do
that?

17 A. Yes.

18 Q. Okay.

19 MR. TIGAR: Your Honor, I'd like the Court's
20 permission to write the name of a human resources
person on a
21 pieces of paper and hand it to the juror.

22 THE COURT: Sure. Yes.

23 BY MR. TIGAR:
24 Q. Obviously trying to protect everybody's privacy
here. Just
25 want to know if this is one of the people that you
dealt with

4616

Juror No. 510 - Voir Dire

1 in that situation.

2 A. Okay.

3 No. I never heard of her.

4 Q. Great. Okay. Thank you. Thank you very much.
You

5 understand --

6 THE COURT: Show it to Government counsel.

7 MR. TIGAR: Oh, yes. I'm sorry.

8 THE COURT: Thank you.

9 MR. TIGAR: Thank you, your Honor.

10 BY MR. TIGAR:

11 Q. You said at page 30 of your questionnaire, if you
could

12 take a look at that, that you had -- Question 132.
Could you

13 tell me a little more about that, what you thought
about that

14 incident? You say it's sad that communicating has
stopped

15 working.

with if 16 A. I just think -- I think most things can be dealt
varied 17 you keep going with it, communicating. Opinions get
18 more and more, but I think things can be worked out.

situation, who 19 Q. Yeah. And do you -- when you look at that
you know, 20 do you see as having responsibility who should have,
one side 21 done more communicating or maybe some on both sides,
22 or the other? What did you think about that?

follow the 23 A. I think it was both sides. But I didn't really
keep 24 case too much. But I think both sides are -- need to
25 going with that.

4617

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is what 1 Q. I understand. I mean all we know from these things
2 we -- what we read in the paper.

know, what 3 Ask you: Since you got your summons, you
4 was that, back in -- July that you got it in the mail?

5 A. Yes, sir.

work about 6 Q. Since you got that, have you talked to folks at

okay. 7 what might be in store for you? And believe me, that's

to them 8 It's not like talking about the case. But did you talk

whatever? 9 about the fact that you might need time off or

10 A. Oh, yeah.

11 Q. And they're okay with that?

12 A. Yes, they are.

workers 13 Q. And did you talk about the fact that -- to your co-

14 about the fact that you got the summons?

15 A. Yes.

about 16 Q. Is this the same sort of thing that you're talking

or 17 movies they saw or what happened to their sports team

18 whatever?

about it. 19 A. Yeah, I told them I'm not supposed to talk a lot

about the 20 Q. Right. Did they offer you any advice or thoughts

21 situation?

22 A. Yeah, they said their opinions on it.

23 Q. Well, could you share those with me.

told them, 24 A. They told me, "Hang him. Hang the sucker." And

them, 25 "Why, we don't know what's the story." And then I tell

Juror No. 510 - Voir Dire

1 "I can't talk anymore about it."

2 Q. Did you all talk about it out there, talk about the
McVeigh

3 verdict at work?

4 A. Yeah, that was a pretty hot subject.

5 Q. It was? What did folks say about that?

6 A. They said they agreed with what happened or the
verdict.

7 Q. Yeah. And with the death sentence recommended by
the jury

8 as well as the guilty verdict?

9 A. Yeah.

10 Q. What did you feel about that situation?

11 A. It was . . . I had the same opinions, you know, I
agreed

12 with what came out of it.

13 Q. Yeah, understand --

14 A. It . . . I didn't have emotional feeling.

15 Q. You understand there's no right or wrong answers --

16 A. Yeah.

17 Q. -- as the Judge said. We're just trying to talk
about this

18 thing. What was it about the -- that situation that
made you

19 think, gee, that jury's decision about punishment was a
good

20 decision or a correct decision?
21 A. Mostly as far as the -- you know, the -- how the
American
22 people felt, I guess, of the situation and I guess they
felt,
23 or every -- you know, people at work felt that, you
know, it
24 went along with the verdict -- or with what was going
on.
25 Q. Right. There's a lot of times there's, you know --
big

4619

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1 court cases seem to be -- it's like another sports team
in
2 town. For instance, did you follow that O. J. Simpson
trial?
3 A. Up to the point it got boring.
4 Q. Yeah. But there's a lot of people that just
couldn't get
5 enough of it; right?
6 A. Right.
7 Q. And they followed it every day and so on. Did you
have an
8 opinion about how that one came out?
9 A. The only opinion I had was pretty much a circus
act.
10 Q. Uh-huh. And did your friends -- you have friends
at work

11 that thought, gee, that was a wrong decision or right
decision,

12 talking about the criminal case?

13 A. Yeah, they said it was wrong on the -- as far as
the way it

14 was presented and it was the wrong verdict.

15 Q. Yeah. And -- well, let's talk a little bit about
some of

16 the publicity about this case. If you could turn to
page 33 of

17 your questionnaire. You started out at Question 144 --
I'm

18 sorry -- and you checked TV news, radio news, and

19 conversations. Is there any particular TV station that
you get

20 most of your news from?

21 A. I don't know the call letters, but Channel 4 here.

22 Q. Channel 4. And then if you could turn over to page
36,

23 Question 158 at the bottom there. You say that "People
were

24 killed or injured, bomb, a few people planned it,
Timothy

25 McVeigh found guilty and sentenced to death."

4620

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1 Could you -- I know in a questionnaire where
you have

2 166 questions, there's not always time to say

everything. But

3 your summary, "A few people planned it," what did you
read or

4 hear that, you know, that brought that thought to you?

5 A. That there was more than one person involved, is
what I

6 heard. And they were in other states, but not in that
area.

7 Q. Okay. And did you remember any details about the
other

8 people and where they were?

9 A. I just remember a farm. Fertilizer.

10 Q. Okay.

11 A. And a truck.

12 Q. All right. Now, so you remember how the bomb was
delivered

13 to the building?

14 A. Yeah.

15 Q. How was it that you read?

16 A. Kind of moving truck or truck that hauls something.

17 Q. Okay. Now, do you remember where Terry Nichols
was,

18 according to what you read and saw or heard?

19 A. I don't remember.

20 Q. Do you remember whether he was said to be in
Oklahoma or

21 someplace else --

22 A. Yeah. Kansas comes to mind.

23 Q. Okay. And do you remember from what you read or

heard how

24 Tim McVeigh got into contact with the law enforcement?

25 A. I don't remember.

4621

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1 Q. Okay. How about how Terry Nichols initiated
contact or how

2 he went and talked to the law enforcement; do you
remember

3 anything about that?

4 A. No. Really don't.

5 Q. Okay. Well, could you turn over to page 37,
Question 159,

6 "The thing that I have seen was Terry Nichols in
handcuffs and

7 bulletproof equipment being escorted from a van to a
building."

8 When you saw that, what did that make you think, if you
can

9 remember what you thought about that?

10 A. Thought the bulletproof vest -- sounds like people
want him

11 protected for -- I don't know what reason. For the
first

12 trial, I guess. And the handcuffs, just so -- I guess
so he

13 doesn't run away.

14 Q. Well, did you think that because he was in
handcuffs, that

15 he must be -- must have done something?

16 A. Yeah. I don't know if he was -- I guess part of
something.

17 I didn't really pay any attention to the whole thing.

18 Q. Didn't pay a lot of attention to it?

19 A. No.

20 Q. Well, in this case people have asked you a lot of
questions

21 about punishment, and I know you've spent a lot of time

22 thinking about it. Let me be clear that our job, Ron
Woods and

23 my job, with Terry Nichols is to do several things.
First,

24 when the Government calls their witnesses, they're
going to

25 present evidence, as the prosecutor said --

4622

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1 A. Yeah.

2 Q. Well, we're going to cross-examine every witness.
And they

3 get first ups; that is, they present all of theirs
first. It's

4 not like, you know -- not like some games where the
ball or the

5 puck can be passed from team to team. They get first
ups.

6 They do it. We're going to cross-examine every

witness; and

7 then when they're done, even though we're not required
to, 8 we're going to present evidence, we're going to present
9 witnesses. So the jurors will have an opportunity to
hear 10 from, you know, dozens of people, perhaps more, and see
a lot 11 of exhibits and so on. And we certainly do not concede
that 12 we're ever going to get to a punishment phase.

13 A. Okay.

14 Q. In fact, there's a presumption of innocence. And
let me 15 just stop and ask that. Even though you saw him in
handcuffs 16 in the pictures, even though you read some things, can
you look 17 inside yourself and say, okay, Terry Nichols starts
with a 18 clean slate right now?

19 A. Yeah.

20 Q. And that's despite what your friends at work might
have 21 said?

22 A. Yeah. We'll talk about it and say, you know, it's
innocent 23 till proven guilty.

24 Q. Right, they weren't there.

25 A. Yeah.

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1 Q. And at the end of that process when the evidence is
in, if
2 there's a reasonable doubt, the jurors have -- under
the oath
3 that they took, the promise that they made, the jury's
duty,
4 their job is to say not guilty. So that's the
presumption of
5 innocence; our fighting about this all through it, our
6 continuing to confront the Government, we don't concede
there
7 will ever be a penalty phase. But if there is a guilty
verdict
8 on any part of this case, we can't bring everybody back
and
9 say, well, have you thought about it. We can't ask
them. We
10 got to ask the questions now. So that's the reason
we're
11 talking -- I want to talk about it.

12 You said that since you were at Jefferson
County, you
13 had -- and I made a note of this -- you thought about
-- more
14 about the sort of what-if, you know?

15 A. Yeah.

16 Q. Tell me about that, what the "if" that you were
thinking

17 about.

18 A. I just drew a blank.

19 Q. It's okay. Take your time.

20 A. Like the death, you know it comes to an end at a
point.

21 You know, a date set, I guess.

22 Q. Uh-huh.

23 A. But a life, it means you keep going and, you know,

24 it's . . . I don't know if it's more suffering or more
severe

25 than death. You don't know there's an end with a life.
But at

4624

Juror No. 510 - Voir Dire

1 least you're still living, I guess.

2 Q. So you thought about those punishments?

3 A. Right.

4 Q. And thought about what they would mean to the
person who

5 had been punished in that way?

6 A. Yeah.

7 Q. Well, as you thought about this, I know you wrote
on your

8 questionnaire: "If it's severe, make it severe." That
was at

9 page 29, if you wanted to look at it.

10 If you --

11 A. That's where I changed at that point.

12 Q. Okay. Talk to me about that.

13 A. I didn't really know what severe was -- you know, I
know

14 what severe was, but I didn't know --

15 Q. Right.

16 A. -- add to it. Like I say, you know, if life is
without

17 parole, I guess, it could be more severe 'cause you
don't know

18 the ending.

19 Q. In that -- let's look at that situation because
life

20 without parole, as the Judge said, that means without
parole,

21 there's no revolving-door idea in that.

22 A. Right.

23 Q. If you were a juror and you -- and we talk
hypothetically

24 here. We don't talk about this case particularly
because we

25 don't know what the evidence is. If you were a juror
in a case

4625

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1 and you had found somebody guilty of killing many
people, say

fellow 2 blowing up an airplane, could you deliberate with your
without 3 jurors and come back into court and say a life sentence
that 4 possibility of parole is a severe enough punishment for
5 person?

6 A. Yeah, I could.

7 Q. And the reason that we look at this is that if in a
federal 8 case we get to this question of punishment, there's two
kind of 9 evidence that a jury hears, and we can use different
words, but 10 the Government presents evidence that it says means
that 11 because of the nature of this crime and who did it,
that there 12 should be a death sentence. But then it's up to the
defense to 13 put on evidence, and that evidence deals with things
like, hey, 14 maybe there was more than one person involved here and
this 15 person didn't have as much involvement as somebody
else. All 16 right? Or maybe it's evidence about the positive
things that 17 that person has done, who they really are. And that's
18 suggesting that a life sentence is a very severe
punishment and 19 that -- but nonetheless that's the one that ought to
happen.

life, 20 In that -- just want -- when you . . . in your
decide 21 have you ever faced a situation where somebody had to
they 22 what should happen to somebody who did something that
23 weren't -- you know, that was supposed to be wrong?
24 A. Not really, no.
25 Q. Well, I'm just thinking about --

4626

Juror No. 510 - Voir Dire

1 A. Or just like maybe my kids, you know.
2 Q. Well, like with your kids or that situation you had
at
3 work, was that kind of a -- you said that was a
discipline
4 situation or whatever?
5 A. Yeah.
6 Q. Okay. And just in that, did whoever it was that
made that
7 decision -- and I'm not trying to embarrass you with
this --
8 but did they look at what happened but also what your,
you
9 know, work record was --
10 A. Yeah, they did.
11 Q. -- and all of the rest it. Yeah. So they looked
at the

12 whole thing; right?

13 A. Yes.

14 Q. And if your kids -- if your kid does something and,
you
15 know, everybody's kids do something wrong -- right?

16 A. Yeah.

17 Q. -- you look at what they did, but also, you know,
all those
18 factors about them; right?

19 A. Yes, I do.

20 Q. Okay. And do you think that as a juror you would
bring
21 those skills -- you know, that life experience into the
22 process?

23 A. Yes.

24 Q. And that's really the question. And it comes down
to this:
25 Of course you don't do this without guidance, you know.

4627

Juror No. 510 - Voir Dire

1 A. Right.

2 Q. A lot of people at work say, he's guilty, fry him
--

3 A. Yeah.

4 Q. -- stuff like that. But the Judge says, the law
says,

doubt and 5 presumed innocent. The law says beyond a reasonable
they talk 6 all of that. And, you know, in church all the time,
the law's 7 about -- or I guess they do -- maybe they talk about
where you 8 requirements, and, you know, maybe there's sometimes
9 just can't -- you can't fulfill them.

10 A. Right.

stand, so 11 Q. Didn't the founder of your church say, "Here I
But in 12 help me God; I can do no other," something like that?

13 this case, do you feel that you could follow the law's
14 requirements and participate in the process as a juror?

15 A. Yes.

that 16 Q. And could you look Terry Nichols in the eye and say
17 you can give him a fair trial?

18 A. Yes, I can.

time to 19 MR. TIGAR: Thank you very much for taking the
20 talk to us.

effort 21 THE COURT: We all appreciate the time and
today 22 involved in this. I'm not going to be able to tell you
able to 23 if you're going to serve on this jury, and I'm not even
24 tell you when I can tell you, because this process, as

you know

25 from your participation in it, takes time, and we can't

4628

1 estimate exactly how much time.

2 JUROR: Okay.

3 THE COURT: So you have to go from here now,
though,

4 assuming that you will be on this jury and that you
will have

5 the responsibility to make the decisions in the case
and be

6 open-minded and fair. So we want you to be very
careful now in

7 the things that you read, see, and hear; and of course
in

8 conversations, you know, I'm sure co-workers will ask
you --

9 JUROR: Yeah.

10 THE COURT: -- what happened down there and
what did

11 you tell them and all of that.

12 JUROR: Yeah.

13 THE COURT: Back off. You can't talk about it
with

14 them. And then if there has been any change, you know,
in your

15 situation because of something unforeseen happening or
if you

us know 16 get called out of town or something like that, you let
17 right away, because we want to know -- we want to be
able to 18 reach you --

19 JUROR: Okay.

20 THE COURT: -- as soon as we have the
information 21 necessary for this. And as I say, I can't tell you
when, but 22 go forth thinking that you'll be back in here on some
day that 23 we can't predict when it is, but that you will be on
this 24 trial.

25 JUROR: Okay.

4629

1 THE COURT: Thank you very much. You're
excused for 2 now.

3 JUROR: Go out this way?

4 THE COURT: It pulls in. Yeah.

5 8.

6 Good morning.

7 JUROR: Good morning.

8 THE COURT: If you'll raise your right hand

and take

9 the oath from the clerk here, please.

10 JUROR: Yeah.

11 (Juror No. 8 affirmed.)

12 THE COURTROOM DEPUTY: Thank you.

13 THE COURT: Please take a seat there by the
14 microphone. You don't have to think about that
microphone.

15 You don't have to talk in it or anything. It will --

16 JUROR: It will pick up on its own.

17 THE COURT: Sure, just as you sit there now.
If

18 you're comfortable, that's fine.

19 JUROR: Okay.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. And of course you're aware that you've been called
in here
23 in connection with the selection of the jury for the
trial of

24 the case of United States against Terry Lynn Nichols.

25 A. Yes.

4630

Juror No. 8 - Voir Dire

1 Q. For which you got a summons last July --

2 A. Right.

chance 3 Q. -- advising that you were among those who through a

4 process have been summoned for jury service.

5 A. Yes.

few 6 Q. And you sent back a short questionnaire answering a

7 questions that we had for you.

8 A. Right.

County 9 Q. Then last month you came out to the Jefferson

10 Fairgrounds at which time you were given a
questionnaire and

11 answered a lot -- many more questions.

12 A. Right.

some 13 Q. Now, at that time I appeared there and explained

process 14 things about the case and what we were doing, what the

also 15 was to you and the other people who were there, and I

16 introduced the people who were with me.

17 A. Right.

remember 18 Q. And I want to do that again because I want you to

19 or know who's here with us this morning.

here at 20 And you'll recall Mr. Lawrence Mackey, who is

introduced to 21 this first table, and Miss Beth Wilkinson were

22 you as lawyers for the Government.

23 A. Right.

24 Q. They're joined now by Mr. Patrick Ryan and Mr.
Geoffrey

25 Mearns as additional lawyers for the Government.

4631

Juror No. 8 - Voir Dire

1 I also introduced to you Mr. Michael Tigar and
2 Mr. Ronald Woods, attorneys for Terry Nichols; and of
course
3 Mr. Nichols, the defendant in the case, was present.

4 And then I reviewed for you and the others
something
5 about the background here -- excuse me -- and explained
things
6 that I'm sure you were already aware of when you came
out
7 there; and I don't mean to suggest that you've
forgotten these

8 things now, but it is one of these situations where I
have to
9 repeat some things to put them on the record, to sort
of
10 establish the background to the questioning that we're
going to
11 in a few minutes.

12 A. I understand.

13 Q. So I explained that the case arises out of an event
in

14 Oklahoma City, Oklahoma, when on April the 19th in
1995, there
15 was an explosion that destroyed a federal office
building and
16 also resulted in death and injury to people in the
building;
17 that after that, lawyers for the government came to
Oklahoma
18 City and filed charges in the form of an indictment
accusing a
19 man named Timothy James McVeigh and Terry Lynn Nichols
-- and
20 then the indictment refers to "other persons not named"
-- with
21 a conspiracy, forming an agreement to bomb the
building,
22 destroy, and kill and injure people in it. The
indictment
23 consisted of some 11 charges in addition to the
conspiracy,
24 allegations that the defendants carried out that plan,
did
25 indeed bomb the building and resulting in the
destruction of it

4632

Juror No. 8 - Voir Dire

And the
1 and killing people in it and injuring people in it.
2 charges include, then, the charges of intentional
killing,
3 murder, of eight law enforcement agents, different

agencies of

4 the national government, who were in the building and
who died

5 in the explosion. To those charges the defendants
entered

6 pleas of not guilty, thereby creating the issue for
trial.

7 The case was moved from Oklahoma City here to
Denver

8 because of a concern about getting a jury there of
people who

9 may have been directly affected or indirectly affected
by the

10 event. So the case came to Denver, and then I entered
an order

11 for separate trials saying that Mr. Nichols and Mr.
McVeigh

12 should not be tried together; that it would not be fair
to

13 either one of them; and that, therefore, the evidence
as it

14 relates to Mr. McVeigh should be heard by one jury and
the

15 evidence as it may relate to Mr. Nichols be heard by
another

16 jury at a different time, and so we did that.

17 And there has been a trial on the evidence
relating to

18 Mr. McVeigh. A jury was selected there just in this
very same

19 process as we're doing here, and that jury heard the
evidence

20 at a trial and came in with a verdict of guilty; that

the jury

21 was then required to hear more in that case to make a
decision

22 regarding sentencing; and then after a second trial,
the

23 jury -- on the question of sentence, the jury
recommended a

24 death sentence for Mr. McVeigh.

25 These things you probably already knew before
I told

4633

Juror No. 8 - Voir Dire

1 you.

2 A. I was aware of it, yes.

3 Q. All right. And then, as I explained to you and the
others

4 who were present, the -- whatever you may have read,
seen, or

5 heard about the trial of Mr. McVeigh cannot now be
considered

6 in the case as it relates to Mr. Nichols. And
certainly the

7 outcome, the jury's decisions in the case involving
Timothy

8 McVeigh have no bearing and cannot be considered by the
jury in

9 this case because we start over with a clean slate.

10 Otherwise -- to do otherwise would violate the whole
reason for

11 the separate trial order. Understand?

12 A. Yes. I do.

13 Q. Okay. And then I talked about some of the
principles of

14 law that govern in jury trials in our courts under the

15 Constitution of the United States. And you've been on
a jury

16 before in a criminal trial.

17 A. Yes.

18 Q. Now, that was years ago.

19 A. Many years ago.

20 Q. In Denver.

21 A. Right.

22 Q. And you've got your questionnaire there; right?

23 A. Right.

24 Q. And before turning to this, I just want to remind
you that

25 we are going to do all we can and are doing all we can
to

4634

Juror No. 8 - Voir Dire

1 protect your privacy here.

2 A. Okay.

3 Q. And that we know that we asked you questions that
are quite

4 personal in their nature, and I hope you realize the
importance

5 of it. I've given copies of what you wrote to the
people who
6 are here with us; but they haven't given it to anybody
else,
7 and they're not going to use this information for any
purpose
8 other than what we're doing right now.

9 A. All righty.

10 Q. And we're not using your name here in court, and of
course
11 we even have you come and go in a way that you can't
have
12 newspaper people or television people take your picture
or
13 anything like that. But now we are in court so that
what
14 happens here is public. You understand that?

15 A. Right.

16 Q. Okay. Now, going to this matter of your previous
jury
17 duty -- and it's on page 26 that you're mentioning it
--

18 A. Uh-huh.

19 Q. And this was over in Denver, in the City and County
20 Building.

21 A. Right.

22 Q. And you name here who the defendant was --

23 A. Yes.

24 Q. -- in that case.

25 A. Uh-huh.

4635

Juror No. 8 - Voir Dire

1 Q. And did that involve receiving property that had
been

2 stolen in a robbery or burglary?

3 A. No, not actually. Raymond Buckles was a bail
bondsman, and

4 he was accused of encouraging these people to do the
robbery so

5 that they could pay him. That was the main deal.

6 Q. Right.

7 A. No, Raymond himself was not accused of doing the
actual

8 robbery.

9 Q. Okay. And did it come out at the trial that he
also had

10 been a lawyer?

11 A. Oh, yes. He was a disbarred lawyer.

12 Q. And what are we talking about, about 20 years ago?

13 A. Oh, gosh, at least.

14 Q. Or maybe more?

15 A. It's been a while.

16 Q. And the jury reached a verdict in this -- that
case?

17 A. Yes, we did.

18 Q. And it was what? What was your verdict?

19 A. We found him innocent.
20 Q. And did Mr. Buckles represent himself in that
trial?
21 A. No. They had two lawyers -- he and someone else.
And I
22 can't recall who the other person was that were accused
of
23 this. And they had two lawyers that represented him.
24 Q. So there was another defendant on trial with him?
25 A. Yes.

4636

Juror No. 8 - Voir Dire

1 Q. And what -- did the jury reach a verdict with
respect to
2 the other person?
3 A. Yes. We found them both innocent.
4 Q. And did they testify at the trial; do you remember?
5 A. I don't think they did, no.
6 Q. And is that the only time you've been on a jury
now,
7 this -- that case?
8 A. Yes. That was a locked jury. That was a rough
deal.
9 Q. Case lasted a while?
10 A. Oh, ten days and ten nights. It went on and on.
11 Q. What do you mean ten nights?

one. But 12 A. Well, nine nights, I guess. We got off the last
ago it 13 we were -- we were locked up. And to show you how long
14 was, we stayed at the Park Lane, which has long been --
15 Q. -- torn down?
16 A. Yes. Long gone.
17 Q. Was a nice hotel to stay, though.
18 A. Oh, yeah.
the 19 Q. And there was at that time a lot of publicity about
20 case?
21 A. Oh, yes.
you got 22 Q. And you were aware of some of that publicity when
23 on the jury?
24 A. Yes.
I'm not 25 Q. And you were instructed about a lot of things, and

4637

Juror No. 8 - Voir Dire

you in 1 going to ask you all the instructions the court gave
2 that trial because that's a long time to remember --
3 A. Yeah, but it was no discussion at all, no
newspapers, no
4 TV, no radio, no nothing.

5 Q. And that was your understanding of why you were
kept
6 separate and apart from other people, on the jury?
7 A. Right. Right.
8 Q. And that isn't going to happen in this case.
9 A. That's good.
10 Q. We're not talking about keeping people overnight.
11 A. Yeah.
12 Q. Or weekends --
13 A. Uh-huh.
14 Q. And, you know, the other side of that is, of
course, we
15 have to trust people --
16 A. That's true.
17 Q. -- serving on the jury not to look at things
because
18 there's some publicity about this case, as you already
know
19 before --
20 A. Yeah.
21 Q. -- you got your jury summons. So we have to rely
on people
22 to use the self-discipline to avoid those things.
Understand?
23 A. I understand, yes.
24 Q. And do you remember how long the jury discussed the
case
25 before returning the verdict of not guilty?

Juror No. 8 - Voir Dire

1 A. Well, we were given the case that day, and we
returned a

2 verdict that night. It was unanimous. He did later --
he was

3 up for several different ones. And one jury did find
him

4 guilty of something, but we didn't.

5 Q. Yeah. Now, I want you to turn to page 22 of your
6 questionnaire because of an answer you gave us there at
7 Question 100. Just read it, yourself, first.

8 A. Yeah.

9 Q. And we were -- we asked you this very general
question

10 about "What do you think about the effectiveness of the
11 criminal justice system as a whole?"

12 And you wrote, "Adequately."

13 And then you make this reference to "Some
things are

14 not allowed that could either incriminate or find them
not

15 guilty, and a jury doesn't know about it until
afterward."

16 Are you thinking about something in connection
with

17 the case you've just talked about?

18 A. No. No.

19 Q. All right.

20 A. No. I'm talking about some of the -- of course,
you see, I
21 do watch television, and I do watch a lot of various
things
22 where I find out that this wasn't allowed in court or
that
23 wasn't, which might have made a difference. And I
don't -- I
24 don't go along with it. I mean if it were me, I
wouldn't like
25 it.

4639

Juror No. 8 - Voir Dire

1 Q. Explain that a little. I'm not understanding.

2 A. Well, let's say, for instance, a person . . . what
am I
3 trying to say? Where something didn't come out; that
was a
4 person maybe had come forward and said, "I did it," and
they
5 won't even allow this later. The guy can't get out
because
6 they won't redo it.

7 Q. Okay.

8 A. I don't understand that in our justice system.

9 Q. Well, you know, it depends upon a lot of things
whether
10 that is the case. And what -- you understand from your

own

11 experience that there are rules of evidence, rules of
12 admissibility of evidence --

13 A. Yeah.

14 Q. -- that determine what a jury can consider and
what's out

15 of bounds and can't be considered. Now, are you saying
here

16 that you have any disagreement with that? One of the
rules,

17 for example, just to give you an example that I'm sure
you've

18 heard of, whether it was at that trial or since, is the
hearsay

19 testimony.

20 A. Yeah.

21 Q. We say that we can't have somebody get on the
witness stand

22 and relate what somebody else saw and heard and told to
them

23 because that may well be inaccurate; and then the other
side of

24 the case -- lawyers on the other side and the party in
interest

25 in the other side doesn't have any chance to question
this

4640

Juror No. 8 - Voir Dire

1 story that is being repeated through hearsay. You

understand

2 that's one of the rules of exclusion.

lately,

3 A. I understand that. But, now, in so many cases

out and

4 particularly in rape cases and so forth, they've come

and yet

5 found out that the guy couldn't possibly have done it,

6 he's locked up. These are the things I object to.

talk about

7 Q. Okay. But with respect to what I was trying to

8 on the rules that exclude evidence --

9 A. Yes.

over,

10 Q. -- not the kind of thing where after the trial is

11 somebody finds out --

12 A. Yeah.

the cases

13 Q. -- you know, that there's something wrong -- now,

14 that you mentioned, the incidents --

15 A. Yeah.

that

16 Q. -- but the trial itself where we have certain rules

they can't.

17 say these things the jury can hear and these things

18 Now, do you have any disagreement with that?

applies

19 A. No. No. And I don't think it probably necessarily

where

20 in this case at all. I'm talking about so many of them

21 you find out some guy's done 10 years for raping
somebody and
22 then they find out that this -- somebody else did it
and the
23 gal knew all along this wasn't the guy. It makes me
mad.

24 Q. I can tell it does.

25 A. Huh?

4641

Juror No. 8 - Voir Dire

1 Q. I can tell it does make you mad.

2 A. Yes. It irritates me.

3 Q. Okay. Well, thank you for explaining that answer.
It
4 helps us, and that's what we want to do on several of
these
5 questions, is just -- I'm not going to repeat
everything that

6 you've already written here --

7 A. Right.

8 Q. -- but I'm just going to ask you to explain a few
things
9 and then a few other questions; and then a lawyer for
each side
10 in the case, the Government and the defendant, will
have an
11 opportunity to ask you a few more questions. So bear
with us,
12 if you will, through yet some more questions, even

though

13 you've answered a lot of them in writing.

14 A. Right.

15 Q. Now, just a little about your background. As I understand,

16 you were born right here in Denver?

17 A. Right.

18 Q. And your life has been lived in Colorado except for a year

19 or two in California?

20 A. Right.

21 Q. And what took you out to California?

22 A. Well, one of my marriages.

23 Q. All right.

24 A. Went out there to find work.

25 Q. Where were you in California, and when was it?

4642

Juror No. 8 - Voir Dire

1 A. Well, actually, I was in -- well, I was in Riverside once.

2 That was with the military. And the second time I was in Palm

3 Springs.

4 Q. Okay. So there were two different times?

5 A. Yeah.

6 Q. And you've been married several times?

7 A. Yes.

8 Q. And did these earlier marriages end with divorces?

9 A. Yes. Uh-huh.

10 Q. Okay. And you have a daughter.

11 A. I have a daughter.

12 Q. Who lives here?

13 A. Arvada, uh-huh.

14 Q. And a couple of grandchildren, one of whom is a
youngster

15 with some disability?

16 A. Well, my grandson who is 33 -- or will be 33, he
has

17 epilepsy. But the other is a great-granddaughter.

18 Q. Oh, great-granddaughter?

19 A. Right.

20 Q. And what is the type of disability that she has?

21 A. She has none.

22 Q. Oh.

23 A. He's the one with the disability.

24 Q. I'm sorry, I misread your -- misread your answer.

25 A. I probably wrote it wrong.

4643

Juror No. 8 - Voir Dire

1 Q. Well, no, I think you wrote it the way you just
said it,

you've 2 and I misread it. Page 3; that's where I was; and
3 corrected me, and it's written the way you said.
4 A. Okay.
5 Q. Your career -- you're now retired?
6 A. Right.
you've 7 Q. Your career was with a government agency that
8 identified here on page 9.
9 A. Yeah.
10 Q. And you mention that having worked for a government
11 office -- excuse me -- and being a government employee
for all 12 the years you served, and you get a retirement benefit
from 13 government service; right?
14 A. Right.
15 Q. And then you mention on 38 where we asked you if
there's 16 any reason that might prevent you from being fair in
the 17 case -- you mention you're not sure if that would have
any 18 effect on you.
19 A. Yeah. I was a little concerned over that, mainly
because a 20 neighbor of mine -- however, it probably doesn't apply
here -- 21 her husband was with the IRS; and she was called on one
of the

22 federal juries. And as soon as they found out that her
husband
23 was an IRS man, they dismissed her. And she said,
(juror's
24 name expunged by court order), they won't take you
because you
25 were a government employee.

4644

Juror No. 8 - Voir Dire

1 Q. Well, she shouldn't be making predictions like
that.

2 A. I'll tell her that.

3 Q. Well, don't tell her I said it, or she'll write me
a

4 letter.

5 A. Okay.

6 Q. People sometimes have that view, and, you know,
there's

7 nothing automatic about selection here.

8 A. Yeah.

9 Q. And certainly having been a government employee
doesn't

10 disqualify you from service. But was it in that
context that

11 you wrote this?

12 A. Yeah.

13 Q. And so you had --

well let 14 A. I figured they're not going to take me; I might as
15 them know it.
16 Q. Okay.
17 A. That was my idea.
these 18 Q. What we do in this process, and the reason for
19 questions, you know --
20 A. Uh-huh.
these 21 Q. -- it's not like a job interview. The reason for
22 questions is to find out what you think, what your
attitudes 23 are, what your experiences are.
24 A. Yeah.
be fair 25 Q. And it is up to you more to judge your ability to

4645

Juror No. 8 - Voir Dire

look at 1 in this case than it is us. And so when you, you know,
receive 2 that, you were a career government employee, retired,
question -- the 3 retirement benefits from the government, it's a
that as 4 question we have is: Do you in your own mind consider
this 5 something that would affect your ability to be fair in

6 case?

7 A. No. And actually, I didn't put down all the
various things

8 I had done, because I was a housewife for many years.

9 Q. Okay.

10 A. And original -- I worked for Rand out in
California. But

11 that's been many years ago. I couldn't go back and
remember

12 all this stuff, you know.

13 Q. Yeah.

14 A. And I worked for the Air Force Finance Center.
Then I got

15 married and I didn't do anything for many years. I
didn't go

16 to work for the Bureau of Land Management till I was
55.

17 Q. And you retired about six, seven years ago?

18 A. I retired in '90.

19 Q. All right. Now, let me just add this to it and ask
you the

20 same question.

21 A. Uh-huh.

22 Q. You understand that the building that was destroyed
by an

23 explosion in Oklahoma City was a federal office
building.

24 A. I'm aware of that.

25 Q. That within that building there were employees, you
know;

Juror No. 8 - Voir Dire

government 1 essentially almost everybody in the building was a
2 employee of one agency or another.
3 A. Yes.
center? 4 Q. And like office -- did you work out at the federal
5 Was that where your office was?
6 A. Yes.
people 7 Q. Well, you know, it's like that in terms that some
8 who worked for the government now or in the past might
in some 9 way identify with the people who ended up being killed
or 10 injured in this explosion --
11 A. That's true.
12 Q. -- they were government employees.
13 A. Yes.
point 14 Q. Some people would perhaps identify with them to the
15 that they couldn't give fair consideration to this
case.
16 A. Right.
the fact 17 Q. And I just want to ask you that question: whether

18 that government employees were killed and injured in
this case
19 influences you in any way.
20 A. No. I -- as near as I can tell -- my personal
opinion is
-- I 21 that they were after a certain group that they figured
22 think it was Firearms and -- Tobacco and Firearms
people -- I
23 think that's who they were after. However, they hurt a
lot of
24 people, that bomb did.
25 Q. Nobody disputes that.

4647

Juror No. 8 - Voir Dire

1 A. Right.
2 Q. But what's involved here is who they were.
3 A. Who they were. That's right. We don't know.
4 Q. All right. So what you just related to this comes
from
5 something you read or heard somewhere about being after
a
6 certain government agency?
7 A. Yeah, that was in the paper.
8 Q. Okay. Well, let me review with you some of the
things
9 about jury service here so we know clearly what we're
talking

10 about. And these are things that you probably remember
hearing
11 from the trial that you've already talked about where
you were
12 on a jury years ago.

13 A. Uh-huh.

14 Q. But the principles are the same. They haven't
changed,
15 because they're under the Constitution of the United
States:

16 that any person charged with a crime in any of the
courts in

17 the United States -- state court, Federal Court -- it's
all the

18 same in this respect. These persons accused are
presumed to be

19 innocent of the charges made against them. You've
heard that

20 before, undoubtedly.

21 A. Absolutely.

22 Q. And this presumption of innocence carries through
the

23 trial, entitles the accused person to a verdict of not
guilty

24 and acquittal, unless the jury finds from the evidence
that's

25 been admitted at trial that the charge has been proved
beyond a

1 reasonable doubt. You heard that before?

2 A. I've heard that before.

3 Q. And indeed, you followed it in the case you've
described,

4 where I understood you to say that the jury found the
defendant

5 not guilty because the jury at least had a reasonable
doubt

6 about the sufficiency of the evidence; is that right?

7 A. That's right.

8 Q. And then you mentioned that you don't remember that
the

9 defendant or defendants testified. And, of course, the
10 Constitution says they're not required to: No person

accused

11 of a crime has any burden or duty of proving himself to
be not

12 guilty or proving anything. It's up to the prosecution
to

13 bring in the exhibits and the witnesses to attempt to
prove the

14 crime.

15 A. Right.

16 Q. And if a defendant does not testify, remains silent
at

17 trial and just challenges the government's evidence,
the jury

18 must understand that they cannot assume or infer
anything from

19 the defendant's silence. Do you accept all these
points --

20 A. Yes, I do.

21 Q. -- as you did before serving on a jury?

22 A. Right.

23 Q. So that you understand that right now, in this
courtroom,

24 today, Terry Lynn Nichols sits here with us presumed to
be

25 innocent of these charges that have been made against
him by

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1 the Government?

2 A. Right.

3 Q. And are you prepared to follow these rules in this
case if

4 you served on this jury?

5 A. Oh, yes.

6 Q. And to give Mr. Nichols the benefit of any
reasonable doubt

7 that remains after the hearing of the evidence?

8 A. Absolutely. I don't believe in anybody paying for
9 something they did not do.

10 Q. All right. Now, one of the things that I must talk
with

11 you about here is the possibility that the jury would
have to

12 make a sentencing decision, a punishment decision.

Ordinarily

13 in criminal cases, the jury does not get involved with
the
14 question of punishment. If the jury returns a guilty
verdict
15 in a case, then it's up to the judge to decide what the
16 sentence should be. Do you understand that?
17 A. Yeah. I didn't know that.
18 Q. Okay. Well, let me just talk about it a little.
19 A. Yeah.
20 Q. Where the crime is something like what you heard --
21 A. Uh-huh.
22 Q. -- a robbery or a burglary or something like that,
and the
23 sentence that is available under the statute is so many
years
24 in prison or a fine or probation or all of the ranges
of things
25 that are sentencing possibilities, the jury, having
determined

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1 the defendant to be guilty, is discharged; the jury has
2 completed its work.
3 And then it goes to the judge to decide what
to do
4 with this person, what the sentence should be. And
judges

5 don't make that kind of a decision just on the basis of
what
6 happened at the trial. There has to be more considered
than
7 simply the guilty verdict. So before a judge makes a
8 sentencing decision about a person, there is a lot of
9 information presented to the court with respect to,
first of
10 all, additional facts or circumstances about the crime
itself,
11 what impact did it have on victims, what -- to the
community,
12 what was the importance of the crime, in many respects.
13 And then the judge hears a lot about the
defendant
14 himself, as an individual human being. And it amounts
to
15 getting all of the information that's available about
that
16 person, his life history, everything that has happened,
where
17 he was born and raised, what the family was like, what
the
18 brothers and sisters are, that person's life history,
then
19 going through his employment experience, marriages,
divorces,
20 any other crimes committed, military service, any major
21 illnesses or things like that, almost everything that's
22 happened to that person and the things that he has done
and

about 23 things that have been done to him, including something
24 outlooks and the person's character and personality.
25 And then in a case where there's more than one

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the jury 1 person -- like you had two defendants on trial -- if
looking at 2 had found both of them guilty, the court would be
person 3 each one of them. And it would not sentence each
the 4 exactly the same, even though they were found guilty of
5 same crime, you understand.

6 A. Yeah.

things 7 Q. So that differences not only with respect to the
in the 8 that I've mentioned here, but also possibly differences
presented 9 role, the participation in the crime -- all that gets
from both 10 to the sentencing judge. And then arguments are made
then 11 sides, the prosecution and the defense; and the judge
One 12 makes a decision that is particularized to the person:
or 13 person serves 10 years in prison; or another one, three

14 probation, or whatever.

15 Now, that's how it is in cases that do not
involve the

16 possible sentences of life in prison without release,
or death.

17 And in Federal Court because the law does provide --
federal

18 law -- for the penalty of death for certain types of
crimes --

19 and that includes intentional killing of other people.
And

20 then the law says that a decision about life or death
should

21 not be made by a judge. Now, the law is different here
in

22 different states and in the federal courts. But we're
in

23 Federal Court, you understand, so we're operating under
federal

24 statutes. And what the Congress has said in the
statutes is

25 that we don't want judges making decisions about
whether a

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1 person should live or die. That's something for a jury
to

2 decide. And it is the same jury that heard the trial.

3 Now, if the jury at the end of the trial has a

proved 4 reasonable doubt about whether the defendant has been
5 guilty by the evidence, the jury returns a not guilty
verdict;
6 and obviously, that's the end of it. But if the jury
decides
7 that the evidence shows guilt beyond a reasonable
doubt, then
8 the jury has more to do than just return the guilty
verdict.

9 And the "more to do" is to hear a lot more information
about
10 the crime and about the defendant who has been found
guilty.

11 You follow me on this?

12 A. Yeah.

13 Q. And before talking about what that information is
like and

14 just what that process is, I want to visit with you
about your

15 attitudes and opinions about the range of sentences
under the

16 law. And we asked you on this questionnaire at page --
well,

17 first on page 27, there was an explanation about the
reason for

18 the questions that are on page 28. If you'll turn
first to 27.

19 A. Yeah.

20 Q. You see there at the bottom, 124, where there's
this

21 explanation that goes on over to the next page --

22 A. Uh-huh.

23 Q. -- about why we're asking you these questions. And
that

24 starts with saying, of course, the defendant is
presumed to be

25 innocent and it's not expected we'd get to a punishment
stage,

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1 but because of that possibility, we need to ask you
some

2 questions. And then the questions are in terms of what
you

3 think the law ought to be.

4 A. Yeah.

5 Q. All right. And then you wrote your -- wrote us
some

6 answers. Take a moment to review what you wrote.

7 A. Yeah.

8 Q. Okay. Now, I want to ask you a few things about
what you

9 wrote --

10 A. All right.

11 Q. -- but please understand: This is not a test.

12 A. Yeah.

13 Q. There's no right or wrong answer for us on this.

14 A. Right.

15 Q. And when I ask you these questions, I'm not trying
to
16 suggest anything to you or cause you to agree with me
in any
17 way.

18 A. All righty.

19 Q. I just want to explore a little bit with you what
your
20 opinions and beliefs are in this area, because you well
know
21 that this question of the death penalty and whether
there ought
22 to be a death penalty in court is something on which
there are
23 strong differences of opinion in our country.

24 A. I know.

25 Q. And, of course, there have been differences of
opinion here

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1 in Colorado over time in the state courts; and the law
has
2 changed from time to time in Colorado, as it has in
other
3 states. And so there are people who on the one hand
say: You
4 know, you kill somebody, you should be killed. And
others say:
5 You kill somebody, but the court should never impose a
death

6 penalty; it's wrong. And then there's a lot in
between. And

7 all we're trying to find out now is some of --
something about

8 your views coming into the jury service without regard
for what

9 the law actually is --

10 A. Uh-huh.

11 Q. -- 'cause I'm going to talk to you about what the
law is in

12 a few minutes.

13 A. Okay.

14 Q. All right? Now, you've lived through changes in
public

15 opinion about the law in this respect.

16 A. Right.

17 Q. And tell me whether you have at different times in
your own

18 life had different views about whether courts should --
a trial

19 of a case should result in a death sentence. Have you
had

20 different views about that from time to time?

21 A. I may have when I was younger. My feeling is now
that if

22 you take a life for gain or . . . just ornery, just for
no

23 reason, I think you should be prepared to pay for it
with your

24 life, or don't do it.

view 25 Q. All right. That's clear enough. And that's your

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1 today?

2 A. That's my view today.

here, 3 Q. Now, let me explain, if I can have your attention

4 what the law is.

5 A. All righty.

under 6 Q. And how this question of life or death gets decided

7 federal law.

8 A. All right.

law 9 Q. Because regardless of, you know, what we think the

10 ought to be, this is what the law is.

11 A. Okay.

your 12 Q. And then we want to ask you some questions about

13 ability to follow the law.

sentencing 14 So, as I said, in cases that don't involve a
15 life-or-death sentence, judges make a decision about

crime but 16 on a very individual basis and based not just on the

crime 17 all of these circumstances that are in addition to the

18 itself, all of these things about the defendant as an
19 individual human being.

20 And would you agree that all of us, because of
the
21 things that have happened in our lives and the things
that
22 we've done in our lives -- all of us are unique and
different
23 from each other?

24 A. Yeah, I guess we are.

25 Q. All right. And so when it comes to the jury being
involved

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1 in sentencing, after a guilty verdict, the jury has to
hear a
2 lot more than what they heard as evidence at the trial;
and
3 that's why there is a second hearing that proceeds just
like
4 the trial: Lawyers on both sides, witnesses called in,
5 exhibits offered; and it's exactly the same kind of
process.

6 But what goes on at that second trial is that it is --
it
7 starts with the defendant being guilty, because unless
the jury
8 has decided that the evidence proves guilt beyond a
reasonable

9 doubt, there is no such hearing. You understand?

10 A. Uh-huh.

11 Q. So it starts with the defendant having been found
guilty.

12 Now the issue is what should be done. And as I said,
the

13 choices that are available under the law is (1) life in
prison

14 without ever getting out. There is no parole. So the
person

15 serves the rest of his time that he's alive in prison.
The

16 second is a punishment of death. The defendant's put
to death.

17 The third is the possibility that neither one of those
should

18 be imposed and therefore the matter goes back to the
judge.

19 I'd like you to pay attention to what I'm
saying here

20 and not be reading. All right?

21 A. All righty.

22 Q. Because it's very important for you to understand
what I'm

23 trying to explain.

24 So in this regard, the evidence that gets
presented is

25 really of two types: One relates -- one type relates
to the

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1 circumstances of the crime itself and the effects on
the
2 community and on the people affected by it. The other
is
3 everything that we can know about the defendant as a
unique and
4 individual human being, this life history that I've
talked
5 about, just as is the case with judges having to get
that
6 information to decide the punishment for a crime. And
that
7 includes, then, things about if there was more than one
person
8 involved in the crime, what role did this person now
being
9 sentenced play, is it different from others, why was he
10 involved at all?

11 And then it includes all of the things that
I've said
12 that have gone on in his life, things including
military
13 service, things that he's done, good things that he's
done, any
14 bad things that he's done or been done to him.

15 And then in the end, after all of these
witnesses have
16 been heard and exhibits received in evidence, the court
17 instructs the jury about what they have heard and sums
it up,

heard, 18 really, and says, in effect, well, this is what you've
these 19 and now think about it in two different ways: Some of
aggravating 20 things that you've heard can be thought of as
punishment 21 factors, suggesting the punishment of death is the
you've 22 that should be imposed. This other information that
23 heard should be considered as mitigating factors or
24 circumstances, and these are the things that you should
25 consider to suggest in your minds that despite this
crime, the

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this 1 defendant does not deserve to be put to death. And on
a human 2 side include all of those things about the defendant as
asked to 3 being. Because what the members of the jury are being
So they 4 do is to decide whether to take another person's life.
means. Do 5 have to consider the value of that life and what it
6 you understand?
7 A. Yes. Uh-huh.
8 Q. Now, then, the jury is asked, you know, to consider

certain

jury in 9 questions that the court would put that might help the

there is 10 thinking about these things. But there is no formula,

Nothing 11 no, you know, add these up and subtract these from it.

decision under 12 like that. The reason that the jury makes this

views and 13 the law is that they come in and represent differing

reasoned, 14 then represent the community in making what is a

And of 15 moral judgment about this person, as well as the crime.

talk 16 course the jury talks about it, the members of the jury

to make 17 about it, deliberate. But in the end, each person has

individual 18 an individual decision, each juror has to make an

being who 19 decision, and decide whether this particular human

you 20 has been tried, found guilty, should live or die. Do

21 understand what I've explained to you?

22 A. Yes. I do.

to you? 23 Q. Do you have any question about what I've explained

24 A. No.

Considering 25 Q. The question that you must answer for us is:

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1 this explanation, can you in a case -- and we can't
talk about
2 this case because we don't know what the evidence in
this case
3 may be, and we certainly don't know whether there would
be a
4 punishment hearing and we don't know what would be the
5 information there, so we have to talk about it in
general
6 terms.

7 The question is: Can you in a case in which
you
8 served on a jury, found a defendant guilty of the
intentional
9 killing of another person or persons, decide the
question of
10 life or death based on everything that you hear and has
been
11 presented to the jury in the courtroom?

12 A. Yes, based on the evidence.

13 Q. All right.

14 A. I would have to --

15 Q. Including not only the circumstances of the crime,
but
16 everything --

17 A. Yeah, the circumstances all the way around.

18 Q. Including the defendant.
19 A. Right.
20 Q. Okay. Well, we're going to take a break here for
about 20
21 minutes, and then a lawyer on each side will have a
chance to
22 ask you some additional questions.
23 A. Okay. Well, I better tell you before we go any
further, I
24 have some kind of an allergy.
25 Q. Okay.

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1 A. And I might get started sneezing and sneeze 20
times, which
2 would be very disruptive.
3 Q. Do you know what you're allergic to?
4 A. No, and nobody does. I think like newspaper and
stuff. It
5 always hits when I'm trying to read the newspaper. I
think
6 they put something in these papers that I'm allergic
to. And
7 it's just very -- I wouldn't want to disrupt anything.
8 Q. I understand. But do you take any medicine for it?
9 A. No.
10 Q. You just -- because you don't know what it is that
you're

11 allergic to?
12 A. Don't have any idea what it is.
13 Q. Well, you haven't seemed to have had any problem
while you
14 were in here this morning.
15 A. I did earlier when we were at the restaurant.
16 Q. Don't say where you were.
17 A. They all laughed at me. They thought it was pretty
funny.
18 I didn't.
19 Q. Were you looking at a newspaper?
20 A. No. We were sitting there and we were having
coffee; and
21 of course naturally, when I do that, everybody says,
"God
22 bless," and you know, after about the 20th time, it
becomes a
23 little embarrassing.
24 Q. Okay. When you've been in the jury room area here,
have
25 you had any --

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1 A. No. No.
2 Q. -- trouble?
3 A. But I can't guarantee anything, see. There's my
problem.

4 How do you get somebody out of the jury box?

let me

5 Q. Well, if that happens, and you're on the jury, you

bringing

6 deal with it. We'll handle it. But I appreciate your

7 it to our attention.

8 A. Yes.

about 20

9 Q. If you'll step out, now, we'll have you back in

the

10 minutes, and then we'll be done with the questioning by

11 lawyers.

12 A. Okeydokey.

13 Q. So not much longer.

14 A. All right.

15 (Juror out at 10:43 a.m.)

16 THE COURT: Okay, 20 minutes.

17 (Recess at 10:44 a.m.)

18 (Reconvened at 11:02 a.m.)

19 THE COURT: Please be seated.

20 Okay. Please be seated again.

questions

21 And Mr. Mearns for the Government has some

22 for you.

23 MR. MEARNS: Thank you, your Honor.

24 VOIR DIRE EXAMINATION

25 BY MR. MEARNS:

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1 Q. Good morning, ma'am.

2 A. Good morning.

3 Q. As the Court told you before we broke, my name is
Geoff
4 Mearns, and I'm one of the lawyers for the Government
who will
5 be presenting our evidence in this case.

6 We understand that you've answered a lot of
questions
7 for us on the questionnaire and several more questions
this
8 morning; and we all recognize that some of those
questions are
9 personal. I hope you don't mind if I ask you a few
more. Is
10 that okay?

11 A. That's fine.

12 Q. In response to some of the Judge's questions about
your
13 prior work with the Bureau of Land Management, you told
us that
14 you would be able to set aside that prior work and
render a
15 fair verdict. Is that correct?

16 A. Oh, yes. Yes.

17 Q. And I think you said in response to one of the
Court's

18 questions that you understand that the issue is going
to be not
19 whether or not there was an explosion in Oklahoma City
but who
20 was responsible for it.

21 A. Right.

22 Q. And I think you said "who they are"; that is, the
issue is
23 who they are.

24 A. Whoever.

25 Q. You've also told us that you have a daughter and
two

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1 grandchildren and one great-granddaughter; is that
right?

2 A. I have a daughter, one great-grandchild, and one
3 grandchild.

4 Q. Okay. From what you've seen or heard about the
publicity
5 about Oklahoma City, do you know whether or not there
were any
6 children that were killed in the explosion?

7 A. Oh, yes.

8 Q. You understand that there is the possibility that
there
9 will be some emotional testimony about the people who
were

10 killed in the explosion and that there may be some
graphic
11 evidence about that?
12 A. I would expect that, yes.
13 Q. Will you do -- be able to do the same thing with
respect to
14 that evidence; that is, set it aside and focus on the
issue of
15 who was responsible for the explosion?
16 A. We already know about the explosion. We don't know
who did
17 it.
18 Q. On page 12 of the questionnaire, you were asked
some
19 questions about your religious beliefs.
20 A. Right.
21 Q. And I think you told us there that you were raised
in the
22 Christian Science Church.
23 A. That's right.
24 Q. But that at some point in your life you've moved on
to a
25 different either spiritual or philosophical belief?

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1 A. Well, it's -- I believe in mind science,
metaphysical,

2 unity -- what is it? Any of the mind sciences are what
3 interest me.

4 Q. Can you tell us when it was in your life that you
made the
5 transition from the Christian Science faith to --

6 A. Yes. Actually now, I went along with Christian
Science for
7 a while; but Mary Baker Eddy was a little bit grabby
with what
8 she knew. In other words, anyone who takes anything
that I've
9 said and uses it is a thief.

10 I say truth belongs to everybody. It doesn't
belong
11 to one person who happened to see the light. And that
really
12 turned me off.

13 Q. Okay. You've told us some of your views this
morning about
14 the criminal justice system.

15 A. Right.

16 Q. On the questionnaire and again this morning. If
you would
17 turn over to page 22 for me.

18 A. 22. Yeah.

19 Q. You told us there that you're concerned both with
-- that
20 certain types of evidence is not allowed in court; that
is,
21 evidence that may show that somebody is not guilty or
possibly

22 evidence that may show somebody is in fact guilty.

23 A. Right.

two
24 Q. Do you have a personal opinion as to which of those
25 possibilities is worse than the other?

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for
1 A. Well, I think sending someone to prison and paying
2 something they didn't do really is very bad.

there,
3 Q. On page 27 -- at the top of page 27, the question
guilty
4 121, asks you a question about witnesses who have pled
5 and agreed to testify for the prosecution. And you
told us
6 there on the questionnaire a little bit about -- about
your
7 view of those witnesses.

8 If such a witness were to testify in this
trial, would
9 you be able to consider his or her testimony with an
open mind?

10 A. I'm not sure.

11 Q. What causes you to have some doubt?

Buckles
12 A. Well, we had that same situation in the Raymond
13 case. The guy who actually committed the burglary --

he was

14 given immunity to testify against Raymond Buckles,
saying he

15 told him to do it.

16 That was very doubtful to me. I didn't like
that.

17 Q. What didn't you like about it? What prompted --

18 A. Well, I mean -- he commits a burglary. He's not
even

19 charged because he said Raymond Buckles told him to do
it.

20 Well, now -- it did not -- it soured me.

21 Q. It soured you. Did you think it was inappropriate
for the

22 government to call that kind of a witness?

23 A. Well, it wasn't the government, but --

24 Q. Or the prosecution?

25 A. Yes, uh-huh.

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1 No. The whole thing was based on his
testimony. The

2 whole thing was based on his testimony of getting
Buckles. I

3 just thought it was wrong.

4 Q. Did you consider that testimony at all; that is,
did you

5 just categorically reject it, or did you consider it --

6 A. No, it proved to be pretty ridiculous, the whole
thing.

7 What was stolen was a bunch of junk jewelry in the
first place,

8 a bunch of old moth-eaten fur coats and some junk
jewelry, and

9 they're trying to hang this guy on somebody else's --
it just

10 didn't ring true.

11 Q. Okay. Could I ask you to turn to page 29.

12 A. Okay. All right.

13 Q. And the question there in the middle, 125.

14 A. Uh-huh.

15 Q. Which asks you about what role you think the
federal

16 government should play, and you've told us a little bit
about

17 your views. I'd like, if you would, to look at the
second --

18 what you wrote on the second line: "To help the
underdogs."

19 Could you tell us a little bit more about that?

20 A. Well, I think they do pretty fair. I don't think
they

21 knock themselves out in any way. I think they're --
this is a

22 very political world. And I think if you're Gates or
somebody,

23 you're going to come out better off than the guy that's
on the

24 street.

folks? 25 Q. And by "underdogs," you're referring to common

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1 A. Yeah. I'm talking about the little guy that's --
they have 2 not been unfair to me; but I see a lot of unfairness.

3 Q. What kinds of things do you think is unfair -- is
unfair?

4 Were you speaking about unfairness created by the
government?

5 A. No, by people. The government is the people. And
they get 6 up there, a lot of them; and in order to further their
own

7 careers or whatever, they don't care who they step on.

8 Q. Switching topics just slightly a little bit, do you
have

9 any views with respect to court-appointed attorneys;
that is,

10 that certain people who aren't able to afford attorneys
are

11 appointed an attorney by the court and taxpayers pay
that?

12 A. I think they should be, yes.

13 Q. I'd like you to turn to page 34, if you could. And
there

14 is a whole list of people there; and you were asked
whether or

about 15 not you recognized any of those names or heard anything
16 any of those people.
17 A. Yes.
of 18 Q. Okay. And you list at the bottom that you've heard
19 Terry Nichols, the defendant. Is that right?
20 A. I've heard of him.
Fortier. 21 Q. The next two people are Michael Fortier and Lori
22 A. Right.
not 23 Q. Could you tell us what you've heard and whether or
24 you've formed any opinions about those two people?
were aware 25 A. I really haven't heard a lot. But I think they

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That's all 1 or were supposed to be aware of what was going on.
2 I know about them.
3 Q. Have you read anything about them in the
newspapers?
interesting 4 A. No, I really haven't. This case hasn't been as
read a 5 to me as the O. J. Simpson, you know. I really haven't
6 lot about this case.

7 Q. What was interesting about the O. J. Simpson case?

8 A. Well, that was an interesting case. They had so
many ins
9 and outs, and I thought surely they were going to find
him
10 guilty. And he got off so easy.

11 Q. Were you surprised by that verdict?

12 A. I was shocked. I really was shocked, because it --
it was
13 a matter of, what, three hours? They didn't have time
to
14 debate.

15 Q. Do you have any concerns or opinions about the way
the
16 people who participated in that trial conducted
themselves?

17 A. No. I think everybody did a pretty good job,
really.

18 Q. Returning back to the list, the last name that you
list
19 there is James Nichols?

20 A. Right.

21 Q. What have you heard about James Nichols?

22 A. Well, he's written a book, they said. I think it's
his
23 brother.

24 Q. That is, Terry Nichols' brother?

25 A. I believe so. I put James Nichols. I didn't know.
But I

Juror No. 8 - Voir Dire

1 do know that his brother has written a book.

2 Q. And I take it you've not read that book.

3 A. Oh, no. No, but I admire him for trying.

4 Q. Trying --

5 A. Trying to help his brother. That's just family
thing.

6 Q. There are some specific questions on page 37 about
what

7 you've seen, read, or heard about Terry Nichols.

8 A. Yeah.

9 Q. And on the top there on page 159, the Question 159
--

10 A. Yes, uh-huh.

11 Q. -- you wrote that Terry Nichols supposedly was a
close

12 friend of Mr. McVeigh.

13 A. Right.

14 Q. And then the next words are "knew his intentions."
Could

15 you tell us what you meant by that?

16 A. Well, my -- what I'm saying there is where I have
read that

17 supposedly he helped him in making a bomb or something.
I

18 don't know.

19 Q. And what did you mean by intentions?

and
group
trying
was very
decided
better.

20 A. That he knew -- that he was upset with the firearms
21 whatever because of -- I can't think of the name of the
22 that we went in and they were killed. I think what I'm
23 to say is that he was a friend of McVeigh and McVeigh
24 bitter over this, over what happened to those people,
25 to make himself some kind of a person to make it all

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Juror No. 8 - Voir Dire

are the

1 Q. Were those people -- the people you're referring to
2 people at Waco?
3 A. Yeah.
4 Q. The incident at Waco?
5 A. Uh-huh.
6 Q. On Question 162, just a little down there towards
the
7 bottom of the page --
8 A. Yes.
9 Q. -- you indicate that you heard on TV that -- and
you say
10 "his wife." Is that Mr. Nichols' wife, Terry Nichols'
wife?
11 A. I think it's his ex-wife.

12 Q. Okay. And that she read a letter from Terry to Mr.
13 McVeigh?
14 A. Right.
15 Q. Terry Nichols?
16 A. Right.
17 Q. What did you think the letter meant: "I'm out of
it now,
18 go for it"?
19 A. I'm not just sure. Because he says, "I'm out of it
now."
20 In other words, it's on you. But the remark "Go for
it" -- I
21 don't know what is meant by that or if she is even
telling the
22 truth. I have no way of knowing any of that. But that
is the
23 last thing I heard on it.
24 Q. Did you follow the trial of Timothy McVeigh
closely?
25 A. No, I didn't.

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Juror No. 8 - Voir Dire

1 Q. Did you follow the result; that is, did you hear
about the
2 result in the news --
3 A. I heard about the result, yes. I didn't follow it
because

was sort 4 it -- it was a gory thing in the first place, and it
came out 5 of a cut-and-dried type of deal. I think he -- what
6 was inevitable in my mind.

questions 7 Q. Finally, I'd just like to ask you one or two
that the 8 about possible punishment. Those are the questions
9 Court went over with you at some length.

10 A. That's right.

be a 11 Q. On page 28. And the Court explained that it would
trial about 12 two-stage process; that is, that we'll first have a
with 13 whether or not the Government can prove the charges
14 respect to Mr. Nichols.

15 A. Right. Yes.

is 16 Q. And that only if the Government -- only if the jury
reasonable 17 satisfied that the Government has proven beyond a
18 doubt do we get to this second stage.

19 A. Uh-huh.

strongly 20 Q. You told us in the questionnaire that you agreed
Court's 21 with the proposition that jurors should follow the
22 instructions. Do you remember that?

23 A. Oh, yes.

Court's 24 Q. Do you feel the same way with respect to the
punishment? 25 instructions regarding the penalty stage, the

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Juror No. 8 - Voir Dire

1 A. It has to be. That's our law.
2 Q. And you understand that in the same way that jurors
have to 3 come into the trial with the presumption of innocence
that the 4 jurors have to approach that second trial, if we get
there, 5 with an open mind.

6 A. Right.
7 Q. And can you do that? Can you keep an open mind
about the 8 possible punishment in this case?

9 A. Well, yes.

10 MR. MEARNS: Thank you.

11 THE COURT: Mr. Woods?

12 MR. WOODS: Thank you, your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. WOODS:

15 Q. Good morning.

16 A. Good morning.

minutes. 17 Q. I'm the last one. It's only going to be a few

18 A. Okay.

19 Q. They covered most of the areas.

20 A. All right.

United 21 Q. Mike Tigar and I, Ron Woods, were appointed by the

represent 22 States District Court over in Oklahoma City to
Terry

him of 23 Nichols in May of '95 after the Government here accused

April 19, 24 being responsible for the bombing that occurred on

got two 25 '95. He's not Bill Gates, as you mentioned, and he's

4673

Juror No. 8 - Voir Dire

him 1 court-appointed lawyers. How do you feel about that,

2 having two lawyers?

good 3 A. Well, I think he needs them. I think it's a very

4 idea.

Fairgrounds after 5 Q. Okay. When you saw Mr. Nichols at Jeffco

-- 6 you had been reading about him for two-and-a-half years

7 A. Right.

8 Q. -- what did you think at that time?

9 A. I was surprised that he was such a nice-looking
young man.

10 Q. What kind of picture did you have in your mind just
from
11 reading the news about him?

12 A. Well, I didn't have any picture in mind. I had
seen him in

13 that yellow thing with his hands like this all -- and
he

14 doesn't strike me as being that type. He looks more
like just

15 anybody else.

16 Q. Had you seen that picture with the manacles and the
17 chains --

18 A. Yeah.

19 Q. -- a number of times over and over --

20 A. Over and over and over and over.

21 Q. -- television?

22 On that trial that you sat in on 20 years ago
-- and

23 I'm not from here -- was there a lot of publicity
before that

24 trial?

25 A. I don't think so.

4674

Juror No. 8 - Voir Dire

1 Q. Was it highly publicized at the time of the trial,

since

at night? 2 you were sequestered; that the jury was kept together

3 A. Well, you're talking about the trial I was --

4 Q. Yes, the one that you were a juror on.

5 A. Yeah.

6 Q. A number of years ago.

known, or 7 A. Yeah. Well, of course, Dave Cook is very well

going to 8 was at that time, sporting goods; and I thought it was

be. I 9 be something much bigger than it actually turned out to

10 mean, it was a -- Dave Cook robbery is --

the 11 Q. There had been some publicity about the robbery at

12 time?

13 A. I thought maybe they actually stole something.

publicity? 14 Q. Okay. So I take it, then, there was some

15 A. Oh, yeah.

16 Q. -- that --

17 A. Yes, uh-huh.

before they 18 Q. And that a number of people had some opinions

19 got to jury service?

20 A. No. No.

21 Q. Was the news coverage more or less factual?

22 A. It was coverage after the fact, really.

23 Q. Okay. And then you were able to sit as a juror,
then, then

24 and set aside what you had read before --

25 A. Right.

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Juror No. 8 - Voir Dire

1 Q. -- about that case and look at the evidence and
render a

2 verdict?

3 A. Right.

4 Q. And the evidence, I take it, was a little
disappointing

5 from all the buildup that you thought was going to
occur. Is

6 that right?

7 A. Right.

8 Q. Now, you mentioned in that case that there was some
9 immunized testimony, one of the prosecution witnesses
had been

10 immunized.

11 A. Right.

12 Q. You understand that under the law that that's
allowable

13 testimony; that the jury is allowed to look at it and
consider

14 it. The Court will give an instruction that you're to
look at

you're
type of
one on
more
it --

15 it carefully but that it is admissible testimony and
16 allowed to look at it. Can you follow the law on that
17 testimony --
18 A. Yes.
19 Q. -- if it's offered into evidence in any case?
20 A. I looked at that and I realized that he was not the
21 trial, the guy that did the robbery. I would have been
22 impressed if there had been something of value stolen.
23 Q. Okay.
24 A. I mean, the whole thing just didn't ring true.
25 Q. Okay. But you considered the testimony, looked at

4676

Juror No. 8 - Voir Dire

admissible
had been
show?

1 A. Oh, yeah.
2 Q. You followed the court's instruction that it's
3 but to look at it with due care; is that right?
4 A. Right.
5 Q. Now, you mentioned in your questionnaire that you
6 to a gun show. How many times have you been to a gun
7 A. I think twice.

8 Q. What was the reason why you went to a gun show?

9 A. Indian jewelry.

10 Q. All right.

11 A. They have beautiful stuff.

12 Q. So you're aware that at gun shows there are many
different

13 things for sale, I take it.

14 A. Oh, yeah.

15 Q. Other than guns?

16 A. They've got all kinds of stuff.

17 Q. How recent have you been to a gun show?

18 A. About 15 years.

19 Q. Okay. What other type of articles did you notice
for sale

20 other than guns and jewelry?

21 A. Well, they had guns and jewelry and, oh -- I think
they had

22 some used electrical equipment like radios and stuff
like that,

23 telephones, things of that nature.

24 Q. Sort of like a pawnshop almost?

25 A. Yes, uh-huh.

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Juror No. 8 - Voir Dire

1 Q. A flea market, rather?

2 A. Uh-huh.

3 Q. Did you notice any written material, books or
pamphlets

4 being available for sale?

5 A. No.

6 Q. Okay. Did you --

7 A. Probably was, but I didn't notice.

8 Q. Did you notice any army surplus?

9 A. No.

10 Q. Now, you mentioned on the questionnaire about guns,
and

11 that's on -- let's see -- page 31 and 32.

12 Top of 32: "A small gun for protection is all
right.

13 These guns that are used to outgun the police and to
use for

14 drive-by shootings and robberies is wrong."

15 A. Right.

16 Q. I'm sorry?

17 A. That's the way I feel.

18 Q. Yes, ma'am. Now, if there were people that engaged
in

19 buying and selling guns at gun shows, which is legal
under the

20 law, would that affect your thinking of them if they
were

21 witnesses in the case? Would that affect how you would
weigh

22 their credibility in any way?

23 A. No. My son-in-law is a gun collector.

24 Q. Okay.

25 A. And to my knowledge, he only shoots it to go
hunting.

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Juror No. 8 - Voir Dire

1 Q. Okay.

2 A. But no -- but I just don't think people should be
running
3 around with those things.

4 Q. Okay. A little tighter registration, perhaps?

5 A. Yeah. Something.

6 Q. Okay. Now, you mentioned on your questionnaire at
the very
7 end about being a prior government employee and that
you might

8 not be able to keep it out of your mind that it could
have been

9 you at the building; and I take it you mentioned that
just so

10 we'd be aware of it, so that both sides would know that
that's

11 something that would be in your mind at the time.

12 A. Yeah. I'd hate to have somebody come charging in
where I

13 was working and put a bomb there.

14 Q. Right. Right. Now, your friend, your neighbor --
is that

15 correct -- who has the IRS husband?

16 A. Yeah.

17 Q. She advised you that because you used to be a
government

18 employee, you wouldn't be on the jury?

19 A. She said I would automatically be disqualified.

20 Q. And the Judge told you that's incorrect; that
you'll be

21 considered like anyone else.

22 A. Yeah. I'm going to give her the word on that.

23 Q. Can you help me, then, on in the event you're on
the jury,

24 how deep is that feeling going to be with you about you
were in

25 a federal building at one time? Is that going to
affect the

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Juror No. 8 - Voir Dire

1 way you look at this evidence that comes in and -- and
the way

2 you deliberate on the case because you were at one time
a

3 federal employee?

4 A. I don't think it has anything to do with whether he
did it

5 or not.

6 Q. Okay.

7 A. It has to do with I don't want to get -- be there

when that

8 happens.

9 Q. Sure.

10 A. And it doesn't say who did it.

11 Q. And it's not going to affect your deliberations in
this

12 case, I take it from your answer.

13 A. Well, no. No.

14 Q. Okay. Now, since your retirement in '90, you list
on your
a day.

15 questionnaire that you watch television over six hours
16 What other activities are you involved in?

17 A. Keep house and I cook and I've got family, you
know.

18 Q. Your daughter is here --

19 A. Yeah. And my grandson and my great-granddaughter,
and I
20 really am not into anything.

21 Q. Okay.

22 A. I'm just retired.

23 Q. All right. Sounds like you keep up with current
events

24 pretty well. Is that correct?

25 A. Yeah, yeah. I'm interested in "Dateline" and "48
Hours"

Juror No. 8 – Voir Dire

1 and that kind of thing, yeah.

2 Q. "60 Minutes"?

3 A. Yeah.

4 Q. "20/20", those shows?

5 A. Yeah.

6 Q. Have you seen shows about this case on those news
shows?

7 Seems like there is one on every day.

8 A. Yeah, but I don't think that they're that
interested in

9 this case.

10 Q. Well, we hope not. But do you recall seeing --
seeing any

11 of those shows that related to this case, the McVeigh
verdict

12 or the McVeigh trial?

13 A. No, I don't think they did.

14 Q. Okay. From what you've seen, read, or heard over
the last

15 two-and-a-half years, do you recall how many people
were killed

16 in this bombing?

17 A. Now, my memory says 268. Am I correct?

18 Q. Well, I can't give you the exact number. I can
only ask

19 you questions.

20 A. That's in my head somewhere.

21 Q. Okay. And you mentioned to the prosecutor that you

recall

22 there were children killed. Do you remember why there
were
23 children killed in a bombing of a federal building?
24 A. They had a day-care center there.
25 Q. Do you remember how many children were killed?

4681

Juror No. 8 - Voir Dire

1 A. Not how many but that they were killed.
2 Q. Okay. Do you remember how the bomb was delivered
to the
3 building?
4 A. Yeah. I still am scared of a Ryder truck.
5 Q. Okay. Do you remember what type of bomb the
government
6 claimed it was?
7 A. Well, it was kind of a fertilizer-type thing, as
near as I
8 can tell.
9 Q. Okay. Then after the bombing, do you recall how
10 Mr. McVeigh was arrested?
11 A. Yeah. He -- something about not having the proper
license
12 on his car, which seems strange.
13 Q. Okay. And do you recall from what you've seen,
read, or
14 heard how Mr. Nichols initiated contact with the

federal

15 authorities?

16 A. I think he got in contact with them because I think
he

17 said -- I guess McVeigh mentioned him or somebody said
they

18 were looking for him, so he turned himself in.

19 Q. Do you remember where he was at the time of the
bombing,

20 according to the press accounts?

21 A. No. No.

22 Q. Do you remember whether or not he was in Oklahoma
City at

23 the time of the bombing?

24 A. I don't think he was, but I don't remember, no.

25 Q. Do you know if it was in another state, or do you
have any

4682

Juror No. 8 - Voir Dire

1 recollection?

2 A. No recollection.

3 Q. Okay. What did you think when you heard that he
had turned

4 himself in? What went through your mind on that?

5 A. Well, I thought more than likely that they'd let
him go,

6 not knowing anything about it. I mean, that was my
initial

7 thought was, Well, he's turned himself in, they'll let
him go.

8 Q. Do you recall when they actually charged him with
being

9 responsible for this case after he turned himself in?

10 A. Yeah. I think I was surprised.

11 Q. Do you remember how many days it was before he was
12 charged --

13 A. No.

14 Q. -- after he talked with law enforcement?

15 A. No, I don't remember.

16 Q. Why were you surprised that he was charged?

17 A. Well, I kind of had the idea from the way that
things were

18 transpiring that he probably didn't do it.

19 Q. Okay. And then after he was charged, you were
surprised

20 with that. Do you recall what you next read about Mr.
Nichols

21 after he was charged?

22 A. Not toomuch, no.

23 Q. Okay.

24 A. I just kept seeing him with his --

25 Q. The manacles and chains?

1 A. Yeah, uh-huh.

2 Q. Okay. You mentioned in the questionnaire that Mr.
Nichols
3 supposedly was a close friend of McVeigh and knew his
4 intentions. What do you recall reading about that led
you to
5 make that statement?

6 A. Now, I don't know if somebody said it or if McVeigh
said it
7 or what, that he was involved in some way. I think --
my
8 personal opinion was that McVeigh was a very strong-
minded type
9 of individual, and I think -- and you see, I may be a
little
10 bit too much to draw conclusion here already, because
when I
11 think about it, I think maybe he had a strong enough
12 personality that people were afraid not to go along
with what
13 he said.

14 Q. And "he" being McVeigh?

15 A. Well, doing what he wanted or at least trying to.

16 Q. Okay. Okay. And that's what you got from the
media;
17 right?

18 A. Yeah.

19 Q. And you realize it may turn out to be either
accurate or
20 inaccurate once the evidence comes in?

21 A. I'm aware of that, yeah.
22 Q. And you've had experience with that before.
23 A. Oh, yeah.
24 Q. On your prior jury experience.
25 A. Yeah.

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Juror No. 8 - Voir Dire

last you
Terry
that you
son is
-- that
in?
read, or
situation?
kind of

1 Q. Now, you mentioned in the questionnaire that the
2 had heard was his wife, who said she read a letter from
3 to McVeigh saying, "I'm out of it, go for it" -- and
4 think maybe it was his ex-wife?
5 A. Yeah, because she's going to go against him and his
6 going to go for him. I do know that. And I think it
7 it's his ex-wife that said that.
8 Q. And do you know where she resides, what state she's
9 A. Don't have the slightest idea.
10 Q. Okay. Now, are you aware from what you've seen,
11 heard in the media of Mr. Nichols' current family
12 A. Yeah. He married a little, young gal; and I feel

going on. 13 sorry for her because I don't think she knows what's

seemed to 14 And I think he was buying a house or something. He

15 be settling down, yeah.

16 Q. Do you recall whether or not they had children?

17 A. No, I don't.

18 Q. Okay.

or may 19 A. I know he had a son by a prior marriage, but he may

20 not have had children in this marriage.

21 Q. Okay. Do you remember where the young girl, as you

22 referred to her -- do you remember where she's from?

not 23 A. Yeah. One of the Latin countries, I think; but I'm

24 sure.

look at 25 Q. On page 2 of your questionnaire, if you would just

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Juror No. 8 - Voir Dire

1 that.

2 A. Yeah.

to read 3 Q. The last questionnaire, No. 8. And I'm not going

4 it out loud.

5 A. Yeah.

6 Q. It's Question No. 8 on page 2.

7 A. Uh-huh.

8 Q. Given your feelings, would that affect you in any
way in
marriage?

9 deliberations in this case if there were a mixed

10 A. No.

11 Q. Okay.

12 A. No.

13 Q. Would have no bearing one way or the other with
you?

14 A. No.

15 Q. Now, you mentioned that you weren't really that
interested
and-dried

16 in the McVeigh trial because it was more or less cut-

17 and inevitable?

18 A. Yeah.

19 Q. What do you mean by that? Can you expand a little?

20 A. I mean, I think that they knew from the get go that
he had
that's
well had
horrible, I

21 done what he did. Whether he did it alone or not,

22 something we'll never know. But I think they pretty

23 it figured out what he did; and what he did was so

24 didn't really want to follow it.

25 Q. Okay.

Juror No. 8 - Voir Dire

1 A. It was an awful thing.

2 Q. Well, the natural question I have is do you feel
that this

3 one is cut-and-dried and inevitable; that is, the trial
against

4 Terry Nichols?

5 A. Well, not really. We don't know whether he was
part of

6 this or not. We have no way of knowing. And I don't
think the

7 press has tried to indicate that they know any more
about him.

8 Q. Okay. So I take it you could sit on the jury and
listen to

9 the evidence that comes in and make up your own mind as
to

10 that.

11 A. Yeah. Oh, yeah.

12 Q. Nothing you've read about it is going to influence
your

13 deliberations in the case.

14 A. No.

15 Q. Okay. Now, you mentioned in the questionnaire that
in

16 addition to watching television you list a radio talk
show --

17 Question No. 77.

18 A. Uh-huh.

19 Q. And that's on page 17.

20 A. 17. Yeah.

21 Q. And I'm not familiar with that program. "Only"
dash

22 "Lisa." Is that a talk show?

23 A. Yeah, that's in the morning. Lisa Gibbons. And
she has

24 all kinds of stuff she talks about.

25 Q. Ever talk about this case on there?

4687

Juror No. 8 - Voir Dire

1 A. No. No, they haven't talked about this case.

2 They do all kinds of stuff, even makeovers,
you know,

3 doll people up. And it's a nice, quiet morning show,
comes on

4 right after -- what is it -- the game show where you
bet.

5 Q. Okay. Okay.

6 A. I like that. See, I'm retired. I like that kind
of stuff.

7 Q. Sure.

8 A. Well, I do. And I really miss "Days of Our Lives."

9 Q. Now, you realize if you get on the jury that you'll
be here

10 from 9 to 5?

11 A. Oh, I know it. Really, I'm not trying to get on
this jury.

12 I'll be frank with you. I'm 73 years old.

13 Q. Yes, ma'am.

14 A. And I could go into a sneezing fit for you. I do
have a

15 good memory at this point.

16 Q. Sounds like it.

17 A. Well, I don't have all the problems yet. And I
would do it

18 only if you can't find someone else.

19 Q. You know, we haven't gotten any volunteers yet that
come

20 in.

21 A. I know exactly what you mean. This could be a
real

22 corkaroo, I mean for time; and it's going into the
holidays and

23 all that sort of thing. So I'm really not trying to
get on

24 this jury.

25 Q. I believe you. And as the Judge explained to you,
you got

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Juror No. 8 – Voir Dire

1 called off a computer that went through driver's
license

2 numbers and voter registration numbers.

3 A. You know, I've wondered about that. Do you know I
get a
4 jury summons at least once a year? Now, that's rare.
I think
5 that's very rare.

6 You know, Denver is a pretty good-sized city.
And why
7 they always pick me. And it doesn't matter whether my
name is
8 (juror's name expunged by court order) --

9 THE COURT: Please don't talk about --

10 JUROR: -- or (juror's name expunged by court
order),
11 they'll get me every time.

12 THE COURT: Don't talk about names.

13 BY MR. WOODS:

14 Q. We're trying to keep your privacy here.

15 A. Well, what I'm trying to say is I can't understand
with the
16 amount of names I have why they always get me.

17 Q. Well, if you end up being chosen on the jury, can
you keep
18 an open mind as to the guilt or innocence of Mr.
Nichols?

19 A. Oh, absolutely. That is -- that's a given.

20 Q. Do you understand that Mr. Tigar and Mr. Nichols
and I are
21 not conceding that we'll even get to a penalty phase?

22 A. Right.

23 Q. Because we disagree with the Government's theory

about

24 Mr. Nichols' being responsible for this bombing.

25 A. Right.

4689

Juror No. 8 – Voir Dire

you hear 1 Q. But in the event we do get to a penalty phase and

there and 2 the Judge's instructions, can you keep an open mind

3 consider both life imprisonment and the death penalty?

wouldn't I? 4 A. I would have to put my faith in Judge Matsch,

5 And I understand he's a very fair judge.

6 Q. And you can follow his instructions?

7 A. I would have to and I would. Yes.

We 8 MR. WOODS: Thank you so much for your time.

9 appreciate it.

but 10 THE COURT: We all do, and you're now excused;

to be 11 please, you know, I can't tell you whether you're going

decision 12 on this jury. We won't be able to tell you when the

13 will be made.

this 14 So it may be some time yet as we go through

15 process; so please now understand that we're expecting

you to

16 accept responsibility for the case as a juror and
accordingly

17 be careful about the things that you read, see, and
hear and

18 talk with others about so that you can come in and do a
fair

19 job in the case. Will you do that, please?

20 JUROR: Yes.

21 THE COURT: All right. You're excused for
now.

22 JUROR: All right.

23 MR. TIGAR: May we approach briefly, your
Honor?

24 (Bench Conference 40B1 is not herein transcribed by
court

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

4694

Juror No. 647 – Voir Dire

1 (In open court:)

2 THE COURT: Excuse me. Would you please raise
your

3 right hand and take the oath from the clerk.

4 (Juror No. 647 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

7 And you don't have to pay any attention to that
microphone,
8 adjusting it or anything. It will pick you up where
you are,
9 and you don't have to lean into it.

10 JUROR: Okay.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. All right. And of course, having taken this oath,
which

14 refers to the case on trial, you know that the case
you've been

15 called in on for possible jury service is United States
against

16 Terry Lynn Nichols.

17 A. Yes, I do.

18 Q. And you got a summons advising that your name had
come up

19 through the chance selection process as a person called
in for

20 jury service in connection with this case.

21 A. Yes, sir.

22 Q. And you answered a questionnaire, sent it in, and
then you

23 got a notice to report to the auditorium building at
the

24 Jefferson County Fairgrounds; and you did that a little
over a

25 month ago. And on that day when you came out there, I
was

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1 there and introduced people who were there with me, and
they're
2 with me here again.

3 So let me again introduce Mr. Lawrence Mackey
here at
4 the first table and Ms. Beth Wilkinson. They're
attorneys for
5 the Government in this case, and they're joined now by
6 Mr. Patrick Ryan and Mr. Geoffrey Mearns.

7 And you recall meeting Mr. Michael Tigar and
8 Mr. Ronald Woods, attorneys for Terry Nichols.

9 A. Yes, I do, sir.

10 Q. And all of them were there except, as I said, Mr.
Ryan and
11 Mr. Mearns have joined us since then.

12 And then I explained something about the
background of
13 the case, things that were probably already known to
you before
14 I explained them, but I want to go over them again.

15 important that we sort of establish a foundation here
for the
16 questions that we're going to be asking you. Okay?

17 So let me just review with you again that
there was on

18 April 19 of 1995 an explosion that destroyed a federal

building

-- there 19 in Oklahoma City, Oklahoma, and people in the building
that 20 were deaths and injuries to the people in the building;
District 21 later, there were charges filed in the United States
which 22 Court in Oklahoma City in the form of an indictment,
lawyers 23 simply means a statement of allegations, in which the
McVeigh, 24 for the Government accused a man named Timothy James
says 25 together with Terry Nichols -- and then the indictment

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that is, a 1 "and other persons not named" -- with conspiracy --
and 2 criminal agreement -- to bomb the building and to kill
3 injure people in it.
number of 4 The indictment included -- and includes a
this 5 charges, 11 in all, but basically the charges all go to
it out 6 conspiracy and then the allegations that they carried
7 and did, indeed, bomb the building, according to the
8 allegations, and also accuses the defendants with the

murder of

9 eight law enforcement agents who were in the building
from

10 several law enforcement agencies of the national
government.

11 To these charges, the defendants entered their
pleas

12 of not guilty, thereby creating the issues for trial.

13 The case got moved from Oklahoma City over
here to

14 Denver because of a concern about getting a jury of
people from

15 Oklahoma City to sit on the jury. And after the case
got moved

16 here, I entered an order that separated the defendants
for

17 trial and said it would be fundamentally unfair for
both the

18 defendants to come on for trial before the same jury
because of

19 expected differences as to what the evidence may be.

20 And so after that order was entered, a trial
was held

21 as to the evidence relating to Timothy McVeigh. A jury
was

22 selected and a trial was held; and after hearing the
evidence

23 relating to Mr. McVeigh, a jury found him guilty of the

24 charges.

25 And then the jury was required to consider
what

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1 punishment should be imposed as to Mr. McVeigh for what
they
2 found him guilty of. So there was a second trial or
hearing,
3 and that same jury then recommended the sentence of
death for
4 Mr. McVeigh.

5 Now, that's all over, and now we're ready to
start the
6 trial and are selecting the jury to try and hear the
evidence
7 as it may relate to Mr. Nichols.

8 Nothing that anyone has seen, read, or heard
about
9 evidence from the McVeigh case can now be considered in
this
10 case, and that's because we're starting all over again
with no
11 evidence at all. And it should not be expected by
anyone that
12 this trial would in any way reflect what happened at
the
13 previous trial. And certainly -- Mr. McVeigh, I mean
-- and
14 certainly not the outcome of that case. The jury's
verdict and
15 recommendation in that case must be disregarded. You
16 understand these points?

17 A. Yes, sir.

with 18 Q. And so, you know, we start with a clean page here,
Nichols. 19 nothing here as far as evidence relating to Mr.

20 A. Yes, sir.

criminal 21 Q. And then I explained some of the principles of the
I went 22 law to the jury panel who was there, including you; and
a jury 23 through this because most of the people had not been on
24 before. And that's true of you; right?
25 A. Yes, sir.

4698

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1 Q. You haven't been on a jury. So now the
instructions that
can't go 2 will be given to the jury at the end of the trial, I
evidence may 3 into now because they depend a lot upon what the
I can't 4 be. But, of course, we don't have any evidence now, so
instructions 5 deal with those instructions; but there are some
no matter 6 that just are so fundamental they apply in every case
what 7 who the defendant is or what the charges are or indeed

8 court it is as long as it's in the United States,
because these
9 are the things that our constitution commands of us.
And that
10 is, first of all, a jury trial; that every person
charged with
11 a crime is entitled to have the evidence judged by a
jury. And
12 that's a jury of people who represent really a cross
section of
13 the community and who have open minds and who are
ready,
14 willing, and able to consider only the evidence in the
case and
15 follow the law.
16 A. Yes, sir.
17 Q. And so that's what we're doing now, is selecting
such a
18 jury.
19 And then the law says that every person who is
accused
20 is presumed to be innocent of whatever he's accused of.
And
21 that presumption of innocence carries throughout the
trial and
22 entitles that person to an acquittal, a finding of not
guilty,
23 unless 12 fair-minded persons, considering only the
evidence at
24 the trial, following the law, decides the evidence
proves him
25 guilty and proves it beyond a reasonable doubt. You've

heard

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1 of this before, I'm sure.

2 A. Yes, sir, I have.

3 Q. And then no person who is charged with any crime
has any

4 burden or duty of proving anything at his trial. He
doesn't

5 have to prove him not guilty -- himself not guilty.
The

6 government has to prove him guilty. And therefore no
person

7 has any burden or duty of calling any witnesses,
introducing

8 any evidence, or taking the stand and answer any
questions or

9 explain anything, because a person who is accused may
simply

10 remain silent and require whoever is prosecuting the
case to

11 come in with the evidence and prove it and, of course,
also

12 gives him the right to challenge that evidence, cross-
examining

13 the witnesses, objecting to testimony and exhibits and
so

14 forth.

15 And when a case is done, when the evidence is
all in,

16 that's when the court gives the detailed instructions,
17 including: These are the things that have to be proved
for any
18 particular crime charged, these are the elements of the
19 offense, and then ask the jury to determine whether the
20 evidence shows guilt of those things beyond a
reasonable doubt.

21 Follow?

22 A. Yes, sir.

23 Q. And in a case in which a defendant does not
testify, the
24 jury is instructed that's something that you cannot
consider.

25 You can't jump to some conclusion that, well, you know,
he

4700

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1 admits it because he didn't deny it, or that if he's
innocent,

2 why doesn't he tell us that? Because he doesn't have
to say

3 anything. The test at a trial is of the evidence
brought into

4 the court and does it prove beyond a reasonable doubt
the crime

5 charged or not. You understand all those points?

6 A. Yes, sir, I do.

7 Q. And, of course, they apply here in this case as

they apply

8 in every case; so Mr. Nichols sits here with us this
morning

9 presumed to be innocent of these charges that have been
made

10 against him. You understand that?

11 A. Yes, sir, I do, sir.

12 Q. And do you accept that?

13 A. Yes, sir, I do.

14 Q. And you're willing to follow that and in the event
you were

15 on this jury and at the end of the trial had a
reasonable doubt

16 about whether the evidence proves guilt, you would give

17 Mr. Nichols the benefit of that doubt and find him not
guilty?

18 A. Yes, sir; I would, sir.

19 Q. Okay. Now, you answered a long questionnaire after
these

20 explanations were given; and we did, as I told you we
would do,

21 make copies of it for the limited purpose of giving
them to the

22 people you're with here and for them to use in this
process and

23 for me. We're not sharing that with anybody else.
This is

24 confidential, and we're not using your name to try to
protect

25 your privacy as far as we can; and that's why we also
arranged

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1 for you to come and go to the courthouse so people from
the

2 press can't photograph you and publicize your
appearance here.

3 Understood?

4 A. Yes, sir.

5 Q. And in the course of this questioning, we will try
as much

6 as possible to be careful in the questions so that we
don't

7 cause you to identify yourself. And you consider that
in your

8 answers, because now you're in open court and what is
said and

9 done here obviously is being reported. We have various

10 journalists and reporters in the room with us here.

And so,

11 you know, this is a public -- public trial.

12 A. Yes, sir.

13 Q. Okay. Now, you did, as I recognize, answer a lot
of

14 questions; and some of them are quite personal and
private, and

15 that's why we try to be careful; but there are a few
things

16 that I want to ask you some questions about, and then I
want to

service 17 review a few other things that are involved in jury
lawyer 18 with you. And then there will be an opportunity for a
sort of 19 on each side to ask you some more questions. So we're
yourself. 20 following up with what you have already told us about
think, 21 And a lot of these questions are sort of what do you
22 what do you feel, attitudes and opinions.
23 A. Uh-huh.
answer to 24 Q. And of course, there can be no right or wrong
This is 25 questions like that; there can only be your answer.

4702

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or 1 not a test. There is no -- you know, there is no right
us 2 wrong answer to it. All we want you to do is to tell
you 3 honestly when we ask you what do you think or what did
and 4 think, you know, just what your opinion and beliefs are
5 have been. We understand each other here?
6 A. Yes, sir, I do.
over 7 Q. Okay. And, you know, there is no -- You may feel

8 there with all these people looking at you and here I
am firing
9 questions at you -- You're not on trial. And you don't
have to
10 apologize for anything that you have said in here or
that you
11 may say. We just want you to tell us what you think.

12 A. Yes, sir.

13 Q. All right. Now, you're native-born to Colorado?

14 A. Yes, I am, sir.

15 Q. Born right here in Denver?

16 A. Yes, sir.

17 Q. And you've lived in Colorado continuously?

18 A. Yes, sir.

19 Q. And you now live down south of Denver?

20 A. I live in Castle Rock, sir.

21 Q. Okay. And you -- you are married?

22 A. Yes, sir.

23 Q. And you've told us of your wife's employment here.
And

24 I -- you know, we're not asking you to identify exactly
where
25 she works. Okay? But she works in a court system?

4703

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1 A. Yes, she does, sir.

lot of 2 Q. And in a courthouse where she's in contact with a
3 lawyers and the court system as a whole?

4 A. Yes, sir.

and 5 Q. And she's worked there for quite a number of years
6 worked her way up to --

7 A. She's clerk of the courts, sir.

8 Q. Pardon me?

9 A. Clerk of the courts, combined courts.

there? 10 Q. Which include county courts and the district court

11 A. Yes, sir.

12 Q. And she's been there over 20 years?

13 A. Yes, sir.

and civil 14 Q. And as I said, worked her way up. So she's very
15 well-acquainted with prosecutors and defense lawyers

16 cases and criminal cases and all that.

17 A. Yes, sir.

when 18 Q. And it looks like maybe she did some typing for you
19 you sent your questionnaire back.

20 A. Yes, she did.

21 Q. Because I notice it was very neatly typed.

22 A. Yes, she did, sir.

And I take 23 Q. So she helped you fill that out and send it in.

jury 24 it you had some discussion with her then that you got a
against Terry 25 summons and here it is, the case of United States

4704

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1 Nichols.
2 A. Yes, I did, sir.
3 Q. And did she have some reaction to that? I mean,
did she
4 tell you what her reaction to that was?
5 A. No, she did not, sir. I just had her help me fill
out the
6 thing and she told me, you know, my duty; and I said
yes, I
7 know it is, and then, you know -- but as far as work
goes, I
8 don't discuss her work and, you know, we're not around
each
9 other that much. She puts in a lot of time, I put in a
lot of
10 time.
11 Q. Sure.
12 A. And we don't discuss our work when we're together,
you
13 know, so -- we've got too many other things to catch up
on.
14 Q. You've got other things. Yeah. Well, I would
expect that

has been 15 at times she's been there in the courthouse when there
of 16 particularly interesting cases or cases that get a lot
have 17 publicity in the newspapers or something. She might
18 talked about some of those cases with you.

discuss, 19 A. Maybe once or twice, sir, but very seldom she does
20 you know, her work with me.

and 21 Q. And she may have opinions about particular lawyers
22 that, and I'm not asking you any of those opinions.

We're not 23 putting her on trial here, either; but have there been
times 24 when she has expressed to you some opinion about some
lawyer or 25 lawyers or what they did? And sometimes the clerks of
court,

4705

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there 1 you know, have reason to be annoyed with lawyers. Do

situations like 2 come -- does there come to mind any particular

3 that that she's talked with you about?

-- 4 A. She has maybe a time or two, sir, but not, you know

know, as 5 Q. Has she ever expressed any opinion about what, you
are 6 a group, prosecutors are good or bad or defense lawyers
7 good or bad or anything like that?

8 A. No, sir. No, sir.

9 Q. So it would be individual --

10 A. Yes.

11 Q. -- to any particular situation.

12 I don't mean, again, to be accusing her of
anything.

13 I'm just talking about the possibilities that always
exist when

14 people work with lawyers for 20-some years. And
judges, too.

15 I -- I'm not going to ask you her opinion of any of the
judges.

16 And you, yourself, are busy at work. At one
time, you

17 worked as a hod carrier?

18 A. Yes, sir.

19 Q. And you worked for various masonry companies in
20 construction.

21 A. I haven't -- I never worked for that many, sir.
One

22 gentleman I worked for 16 years; and, you know, I think
I only

23 worked about probably four construction companies
through all

24 them years.

25 Q. Okay.

4706

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1 A. So --

2 Q. And then you moved over now and you work for the
school
3 system?

4 A. Yes, sir, I do.

5 Q. And were you hurt or did you have a lot of -- hod
carriers
6 have bad backs by a number of years in that work
because it's
7 heavy work.

8 A. No. The reason I got out of it, I was getting
older and
9 they broke -- kind of broke the union, you know. We
lost all
10 of our benefits and this and that and the other, and I
had a
11 chance -- I had a friend that was working for the
school
12 district; and he, you know, got me on with the school
district.

13 Q. Better for you.

14 A. Yes.

15 Q. Not as heavy a work, and then you got more benefits
than
16 you would have had.

17 A. Yes, sir.

with 18 Q. Because of the breakdown in the union's negotiation

19 the contractors. Is that it?

20 A. Yes.

21 Q. And that was about how long that you changed?

10 1/2 22 A. Let's see. I've been working for the school system

I'm going 23 years now. Well, it was 10 years in August, sir, so

24 on my 11th year.

25 Q. And you supervise some other people now?

4707

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1 A. Yes.

-- this 2 Q. And you -- how many buildings are involved in the

3 work that you do?

-- 4 A. Well, actually I've just got one school that I am

5 Q. Is it elementary?

6 A. Yes, it is, sir.

every 7 Q. And you're in that building every day -- I mean,

8 workday.

9 A. Yes, sir.

10 Q. And around all of the kids at that time?

11 A. Yes, sir; I have, sir. I worked at the middle
school for
12 eight years. I worked at a high school for about a
year and a
13 half. I just been with the elementary children since
July 7 of
14 this year.

15 Q. This year.

16 A. Yes, sir.

17 Q. Well, that's a little different, I suppose, in the
18 environment and age of the kids; but you also -- you
have a son
19 who is serving in the Marine Corps?

20 A. Yes, sir.

21 Q. And he has been for a good 11 years. He's going --
where
22 is he stationed?

23 A. He's stationed at Camp Pendleton right now. He's
going on
24 his 12th year in the service.

25 Q. Okay. And what -- what rank or grade is he?

4708

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-- I 1 A. He's a -- a staff sergeant, I think, sir. He's a
2 don't keep up on the --

3 Q. I understand.

kind. 4 A. -- you know, the ranks; but he's a sergeant of some

He's moved 5 I think he might be a staff sergeant or something.

6 up pretty good in rank and --

to stay 7 Q. And as far as you know, he is satisfied and going

8 with that as a career?

9 A. Yes, sir. He loves the Marines.

10 Q. And I take it that you're also proud of him and his
11 service.

12 A. Yes, I am.

13 Q. Okay. And then you also have a daughter.

14 A. Yes, sir.

and I 15 Q. Now, you've got your questionnaire there with you,

about. One 16 want to just turn to a couple of things to ask you

have 17 is on page 22. Will you please turn to that page. You

18 it?

19 A. Yes, sir.

system, the 20 Q. Question 100. We asked you to grade the whole

you 21 whole criminal justice system, what do you think; and

cases, it 22 answered, "Adequately," and then you said, "In some

23 could be improved."

that 24 Would you just explain -- I mean, expand on
25 answer and tell us what you were thinking?

4709

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they 1 A. Well, I think some people don't serve as long as
2 should serve, sir, you know, especially with
molestation of 3 children or something like this, you know --

4 Q. Sentences should be more severe for them than they
are?

5 A. Yes, sir.

6 Q. Anything else about it?

7 Now, this is the kind of thing that we don't
want you

8 to hold back. I mean, just because I'm a judge and
these

9 people are lawyers, we just want to know what you think
about

10 the whole system and the processes as far as you're
aware of 11 them.

12 A. Well, that's my main thing is, you know -- and then
the

13 violent crime like, you know, robbery or something like
this,

14 where somebody is seriously injured or something -- I
think

sentences are

15 they should get -- sometimes I don't think the

or

16 quite adequate, you know, for the type of crime it is

17 something.

wife,

18 Q. Yeah. Now, have you discussed sentences with your

19 for example?

20 A. No, I have not, sir.

involvement

21 Q. Okay. So this is your perception without her

22 in it?

23 A. Yes, sir.

24 Q. Is that right?

25 A. Yes, sir.

4710

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as to

1 Q. You understand I'm trying to get the picture here

2 whether you're talking about things she's come home and

you read

3 mentioned, or whether you're just talking about what

of thing.

4 in the paper and see on television news and that sort

5 Is that what you're saying, it's from what you've seen?

6 A. Yes, what I've seen myself, sir.

child

7 Q. And mentioned certain kinds of crimes, including

8 molestation. Is that --

9 A. Yes, sir.

10 Q. That's what I heard you say. And crimes against
children
11 generally?

12 A. Well, I've got a strong feeling about children, you
know,
13 that I love kids and this and that and the other and --

14 Q. You're around them all the time --

15 A. Yes, sir.

16 Q. -- where you work. And I take it maybe that's part
of what
17 you like about your job; that you're around the
youngsters.

18 A. It is, sir.

19 Q. Kind of help stay young yourself in a way, does it?

20 A. They're just cute and I like, you know, just --
they're so
21 innocent and stuff, you know, and -- and I just like
being

22 around them and try to guide them in any way I can or
whatever,
23 you know.

24 Q. Yeah. All right. Now, you on some other of the
answers

25 here on page 30, on Question 129, in asking about your
view, we

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1 asked you do you agree or disagree that you -- it's
important
2 you follow instructions. And you say, "Agree
strongly."

3 A. On what page, sir?

4 Q. I'm sorry. Page 30.

5 A. Page 30 on what question?

6 Q. Page 30, Question 129.

7 A. 129?

8 Q. You see where it says, "Do you agree, or disagree?"

9 A. It is -- yes, I strongly agree that you should
follow
10 instructions of the court. Yes, sir.

11 Q. And you understand that means in all respects, not
just
12 instructions about where to appear and all of that, but
all of
13 the court's instructions about the law. Do you
understand
14 that's what the question was asking you?

15 A. Yes, sir.

16 Q. And that, of course, includes the instructions that
we've
17 just gone over about the general principles of the
burden of
18 proof, the presumption of innocence. You understand
that to be
19 included in the instructions?

20 A. Yes, sir.

21 Q. And then we asked you broad questions about
opinions on

22 page 37. Turn to that. I'm sorry to be jumping around
here

23 from one to the other. We don't want to go through all
of

24 them, just selected ones.

25 A. Okay.

4712

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1 Q. And if you'll take a look at -- this is after we
asked you

2 to summarize what you've seen, read, or heard in
publicity and

3 then on No. 160, "Have you formed any opinions about

4 Mr. Nichols?

5 And you wrote, "He should get a fair trial.
He's not

6 been proven guilty yet."

7 And then down at the bottom, 163, essentially
the same

8 thing, "He's not been proved to be guilty yet."

9 A. I feel that way, sir. He has not been proved
guilty; it's

10 just hearsay and this and that and the other, all the
evidence

11 I've heard or whatever, you know.

whether 12 Q. Well, I wanted to ask you about the word "yet" and
him to be 13 you had in your mind as you wrote that -- you expect
14 proved guilty.

15 A. No, I don't, sir. I do not. That was --

didn't 16 Q. Well, you understand why I didn't -- you know, I
I 17 interpret this question the way you have, which is, as
whether 18 understand what you're saying now, you'll wait to see
19 he's proven guilty or not.

20 A. Yes, sir. I won't draw any conclusion till all the
the 21 evidence is in and, you know -- and it will be up to
bring 22 evidence that, you know, the Government is able to
23 against him and this and that and the other.

this 24 Q. Yeah. And you -- as I said, when I explained that
Oklahoma 25 case is about an explosion in an office building in

4713

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already knew 1 City with death and injury, that's something you
2 about.

3 A. Yes.

you saw 4 Q. I mean, I assume you -- when that happened in 1995,

5 some television.

6 A. Yes, I did.

there 7 Q. News accounts and read about it. And you know that

8 were children who were killed and injured --

9 A. Yes, sir.

10 Q. -- do you?

about your 11 And you know, given what you've said here

12 view of the innocence of children and your concern with

that 13 children and working with children -- would the fact

deciding 14 children were killed in this bombing affect you in

that 15 whether the evidence in the case shows or doesn't show

16 Mr. Nichols had anything to do with the bombing?

guilty, 17 A. I think -- well, you would have to show that he was

I can't 18 sir. I know there is children involved and stuff, but

until 19 come to a conclusion that he was the one that caused it

20 I --

21 Q. Yeah.

22 A. -- I --

react to 23 Q. You know, the reason I ask you is some people can

24 that by saying, this is so terrible, these children
were killed

25 and these other folks were killed that somebody ought
to pay

4714

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1 for it and, you know, I want to get whoever is on trial
for it.

2 And I just -- that's the reason for these
questions,

3 to see if you have anything like that in your mind.

4 A. No, I don't, sir. Like I say, in my own mind, he
would

5 have to be proven guilty, you know. I can't -- you
can't come

6 to a conclusion that somebody done this or hearsay or
whatever.

7 You know, they've got rights to, you know, a fair
trial, and I

8 think the man deserves a fair trial.

9 Q. And, you know, the -- when you say the system works
10 adequately and there can be improvements, which is
something we

11 just talked about --

12 A. Uh-huh. Uh-huh.

13 Q. The real heart of the system, the core of the
system is

14 right there in the jury box, the people who sit on the
jury.

15 You understand that to be the case?

16 A. Yes, sir.

17 Q. And the system works or doesn't work -- pretty much
whether

18 it does or doesn't pretty much depends on whether there
is a

19 fair jury in the jury box.

20 A. Well --

21 Q. Do you agree with that?

22 A. Sometimes I don't think the sentence justifies what
the

23 case is or whatever. I think --

24 Q. Well, we want to talk about the sentence aspect of
it, but

25 I'm just focusing now on the trial.

4715

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1 A. Uh-huh.

2 Q. And the determination of whether the evidence shows
that

3 the defendant is guilty of whatever crime is charged.
And, you

4 know, lawyers and judges don't decide those things;
jurors do.

5 And you understand that's the responsibility of the
jury?

6 A. Yes, I do, sir.

7 Q. Whatever the crime, to set aside any emotions that
there
8 might be and anything they've read, seen, or heard
about the
9 case and determine whether the evidence proves the
crime. And
10 that's why we're asking you all these questions, to see
whether
11 you can be one of those people who can do that. And
you
12 believe you can?

13 A. Yes, I do, sir.

14 Q. Now, I want to turn to the question of punishment,
because
15 here, because of the nature of the charges in this
case, the
16 jury may have a role to play there. And in the cases
that
17 you're talking about, whether the case is in state or
Federal
18 Court, cases that don't involve the killing of other
people,
19 murder, punishment is a matter to be decided by judges.
And so
20 after a jury returns a verdict of guilty in like a
burglary or
21 a robbery case, something like that, the judge has to
decide
22 what the punishment is. The jury has returned a
verdict and
23 they go home. Their job is done in that case. So they
go home
24 whether the verdict is not guilty or guilty. That's

their job.

25 And then it's the judge's job to decide what the
sentence

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1 should be.

2 And, of course, there are statutes that give
what the

3 range of sentences should be, the maximum limited by
the

4 statute. And you may disagree with some of those
statutes, as

5 I understand it.

6 A. Yes, I do.

7 Q. Okay. And then the way the judge makes a sentence
8 decision, though, is he doesn't just decide it on the
basis of

9 the evidence that came in in the trial. It's not like
here's

10 the guilty verdict, here's the sentence. There is more
to it

11 than that, and there is a time between the verdict and
the

12 sentence hearing; and in that time, there is more
information

13 given to the judge about the crime, the circumstances
of the

14 crime, you know, impact on the community or the victims
or

15 whatever, and then also, all of the information that
can be
16 gathered about the defendant as a person. And that
really goes
17 to that person's life history, the early years, family
18 relationships, goes on through to marriages, divorces,
job
19 history, military service, illnesses, major illnesses
and
20 things, essentially everything about that person,
what's been
21 done to him and what he's done, whether he's
contributed to the
22 community, whether he's worked with the people needing
help in
23 a volunteer program, all of these things; and also in a
case
24 where more than one person may be involved in the same
crime,
25 what were the relative roles of these people, what did
he do

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1 compared to what another person did.
2 And then the judge holds a hearing with all of
this
3 information presented and hears from the prosecution
and the
4 defense lawyers and then decides this is the sentence
that this

of that 5 person deserves. And, of course, you can be critical
right; but 6 judge's decision and say, well, he didn't sentence
to 7 the judge can't just go according to the crime. He has
Follow me? 8 consider the individual who committed the crime.

9 A. Yes, sir, I do.

emphasizes 10 Q. And a lot of time this publicity that gets out
other 11 the crime but doesn't emphasize anything about this
it can 12 information the judge used in making his decision. So
judge 13 be easy to criticize when you don't know all that the
possibility? 14 took into consideration. You agree with that

and -- 15 A. Yes, sir, I do now since you explained it all to me

16 Q. And this is why we're going through this.

17 A. Uh-huh.

don't -- 18 Q. Because people who have not been in the process
And that's 19 aren't expected to understand all of these details.

you're 20 why we're taking the time to explain it now, so that
21 fully informed as to what goes on.

three, 22 And as I said, even though there may be two,

judge 23 four persons in the same crime, the sentences that the
because 24 comes down with may be different for each one of them
25 all of these individual factors come into the decision.

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people, 1 Now, when the crime involves killing of other
the 2 murder -- and here the question of punishment gets into
3 issue of the death penalty. Understand?

4 A. Yes, sir.

which 5 Q. And, of course, the death penalty is something on
who say 6 there is strong views of people. And there are people
he 7 anytime somebody takes a life, he forfeits his life and
well, this 8 should be put to death. There are others who say,
horrible 9 person took a life, did it intentionally, committed a
him the 10 crime, but it would be a crime to execute him, to give
death 11 death penalty because the law should never give the
12 sentence.

is a 13 And, of course, these views -- you know, there

over 14 lot in between those two extremes. And the law changes
states in 15 time and as legislatures consider this. And we have
because the 16 the United States where there is no death sentence
the law 17 people in that state or those states have decided that
penalty, 18 should not provide for that punishment. And there are
19 different ways in which, in states that have the death
20 it is decided.

21 We're now in Federal Court under federal law.

22 A. Uh-huh.

passed 23 Q. And what the Congress of the United States, who
a 24 these statutes, has said is that when it comes down to
judges 25 question of life or death as a sentence, we don't want

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1 deciding that. That's not for an individual judge in
the case.

2 That's for the jury. And we want the 12 people who
heard the

3 case to decide about the punishment. Understand?

4 A. Yes, sir.

arising
your
extreme
getting
no way
dies

5 Q. Now, because of the possibility of such a situation
6 in this case, we had to ask you some questions about
7 opinions and attitudes concerning punishment and the
8 punishments of life in prison with no chance of ever
9 out. When we talk about life in prison here, there is
10 the defendant ever gets out of prison. That's where he
11 when his time comes. Understand?

12 A. Yes, sir.

13 Q. And of course, death penalty is obvious.

14 A. Yes, sir.

life,
back to
a jury.

15 Q. And then under these statutes, there can be either
16 death, or a lesser punishment, in which case it does go
17 the judge. But the life-and-death decision is made by

questionnaire is

18 And so what we wanted you to tell us in this

of life
might be
to what
and page

19 something about your views concerning the punishments
20 in prison as I've described it, death, and when they
21 used, if you could make the law yourself, not according
22 the law now is. And so on page 27, we explain that;

turn to 23 28, we asked you to answer some questions. So please
24 27.
25 And there at the bottom on 124 is sort of the

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Of 1 explanation of why we're asking you these questions.
guilty, 2 course, what this says is Mr. Nichols is presumed not
would 3 and therefore we can't expect or anticipate that there
But we 4 ever be a sentencing hearing or a sentence decision.
the 5 have to select our jury in advance; and just because of
know some 6 possible role of the jury in sentencing, we needed to
7 information from you. And you see on page 28 are the
8 questions.

9 Now, I want you to read your answers to
yourself.

10 A. Out loud, sir?

11 Q. No, to yourself.

12 A. Okay.

13 Q. Okay. You have in mind what you wrote?

14 A. Yes. Yes, sir.

15 Q. And of course, these are difficult things to talk

about.

there 16 And as I said, the matter of what kind of sentences
17 should be for particular kinds of crimes gets a lot of
18 discussion. And have you ever talked with your wife
about this 19 matter of the death penalty and whether the law should
provide 20 for it?

21 A. No, I haven't, sir.

you this 22 Q. Have you thought about it very much before we gave
23 questionnaire to answer?

24 A. Yes, I have.

particular 25 Q. And you've thought about it in connection with

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read 1 cases that have come up over -- you know, that you've

2 about or got news about?

3 A. Yes, I have, sir. A few cases.

4 Q. Pardon me?

5 A. Yes, I have, sir.

at all 6 Q. All right. And has your thinking about it changed

7 from time to time, or has it been pretty much the same?

8 A. No, it's been pretty much the same all the time,
sir.

9 Q. And is now -- so let me ask you this: If I were to
ask you
10 these same questions that are on this questionnaire
today,
11 would you give me the same answers?

12 A. Yes, I would, sir.

13 Q. And if I'd asked you these questions like 10 years
ago,
14 would you have given me these same answers?

15 A. Yes, I would, sir.

16 Q. All right. So these are pretty strong views that
you hold,
17 and that's why I put it that way.

18 Now, what I want to do with you now is explain
just
19 exactly what is involved in a jury making a life-or-
death
20 decision in Federal Court. So bear with me a little
bit, a few
21 minutes, while I explain this.

22 In the Federal Court system, as I've already
said,
23 when the -- when a person has been found guilty of
murder, the
24 jury must decide whether that person should be put to
death or
25 put in prison for the rest of his life. That's the
kind of

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1 decision that only the jury can make. But the jury
doesn't
2 decide that simply on the basis of the guilty verdict
and what
3 they heard as evidence at the trial, because the law
says that
4 there is no automatic sentence based on the crime.
Follow me?
5 A. Uh-huh.
6 Q. So what the law says is that a jury returning a
verdict
7 finding that the defendant intentionally killed other
people
8 has to hear more before deciding this sentence
recommendation,
9 the sentence decision, and that means that -- and of
course,
10 this issue doesn't come up at all during the trial as
to
11 whether the evidence proves the crimes beyond a
reasonable
12 doubt, shouldn't be considered there by the jury. You
13 understand?
14 A. (Juror nods head.)
15 Q. And when there is -- if the verdict is not guilty,
of
16 course, the case is over, obviously. But if the
verdict is
17 guilty and the jury finds beyond a reasonable doubt

that the

18 defendant committed a crime that resulted in the deaths
of
19 intentionally -- intentionally resulted in the deaths
of
20 people, then the jury has to hear a lot more. And
there is,
21 indeed, a second trial.

22 Now, the purpose of this trial, this second
trial, is
23 not to decide whether the evidence shows him guilty but
to
24 decide what punishment should be imposed, and that's a
very
25 individual decision. That has to be made as to the
person who

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1 has been found guilty. You understand that?
2 A. (Juror nods head.)
3 Q. And it really has to be approached by the jury in
much the
4 same way that I have told you a judge approaches
sentencing,
5 where a sentencing doesn't involve life or death. So
the jury
6 has to get a lot of information: again, things about
the crime
7 and the circumstances of the crime, just as the judge
would,

8 and all the information that's available about the
defendant.

9 And that goes through this whole life history again as
a judge
10 would hear and consider.

11 And so, you know, the law says that each one
of us is
12 unique as a human being. And, of course, all of us are
13 affected by the things that we've done and have been
done to us
14 in our lives; and that can affect our conduct, and it
also has
15 to be considered as anybody considers the value of our
life,
16 the life of any one of us. Understand?

17 A. Yes, sir.

18 Q. So before a jury can decide whether a person should
live or
19 die, the jury has to know who that person is and what
20 influences there have been on the life of that person,
because
21 the jury has to consider not just the crime that was
involved
22 but the human being who is in front of them and whose
fate that
23 jury will decide.

24 And that's a very awesome responsibility to
make a
25 decision like that. You agree?

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1 A. Yes, sir; it would be, sir.

2 Q. And so what happens is in the second trial, it
proceeds

3 just like the trial itself on the evidence. The
prosecutors

4 bring in witnesses, offer exhibits mostly focused on
the crime

5 and what happened to people and what the consequences
of the

6 crime are, the seriousness of it, and so forth. And
the

7 defense can be expected at that time to bring in a lot
of

8 information about the defendant, again through
witnesses and

9 exhibits, and tell you everything there is to know
about the

10 defendant.

11 Now, we can't know what that would be in this
case.

12 First of all, in this case, we don't assume that there
will

13 ever be such a hearing because we're operating with a

14 presumption of innocence, as we've discussed
thoroughly.

15 But as I said, we have to talk about it now
because of

16 the possibility that it could come up. And the same
jury that

17 hears the trial would have to decide the punishment.
18 So we don't know what the evidence will be at
the
19 trial and we don't know what would be presented at the
second
20 trial on punishment, so we can't talk about anything
21 specifically. We have to talk in these generalities.
But when
22 it's over, when all of the information has been
presented, then
23 it is up to the judge to give the jury some
instructions about
24 how to go about making a sentence decision.
25 A. Uh-huh.

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1 Q. And these instructions sort of summarize all that
has been
2 heard, all the information provided to the jury, and
kind of
3 divides it up saying: On the one hand, you've heard
all of
4 these things about the crime and these things that
suggest that
5 death is the just punishment; on the other hand, you've
heard
6 all of these things about the defendant and about
whatever role
7 he may have had in the crime which may be different
from some

8 other person. And we ask the jury to consider these
things
9 both as aggravating circumstances or factors, then,
that
10 suggest death is the just punishment and also at the
same time
11 consider all that you've heard that may be mitigating
12 circumstances or mitigating factors, by which we mean
that
13 mitigate the punishment in the case and suggest that
the
14 defendant, although found guilty of the crime, does not
deserve
15 to be put to death.

16 You follow me now?

17 A. Yes, sir; I do, sir.

18 Q. Now, do you have any question about my explanation
of this
19 process?

20 A. No, I do not, sir. I fully understand it.

21 Q. So a jury, you know -- each juror has to come in
with an
22 open mind and listen to all that is presented,
aggravating and
23 mitigating. And then at the end in these instructions,
the
24 court can give some questions for the jury to ask
themselves to
25 sort of help sort it out; but there is no way that the
court

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1 can help by instructions to give the jury some kind of
a
2 formula to use. You know, it's not like adding and
subtracting
3 numbers. It is in the end a judgment to be made by 12
people
4 coming out of the community and putting their minds to
work on
5 this and the jury discusses it. But in the end, each
juror has
6 to make an individual decision, and that decision is to
make a
7 decision as to whether another human being should live
or die.

8 Understand?

9 A. Yes, sir; I do, sir.

10 Q. And, you know, the only way I suppose we could
characterize

11 what kind of a decision that is -- because it's not
objective,

12 it does not depend on, you know, particular things
proven or

13 not proven. It's very subjective, and it's really a
moral

14 judgment as to the -- another person's life.

15 Now, what you have to tell us, hard as it may
be to do

16 so, is whether if you were in that situation, serving
on such a

that 17 jury, before making a decision you would consider all
and 18 you've heard, both mitigating and aggravating factors
19 circumstances.

but I 20 A. I would, sir. It would be a hard judgment to make,
possible 21 could make that judgment, and I would weigh everything
person or 22 before I would, you know, make that judgment on the
23 whatever.

in your 24 Q. And then in making the decision, you would include
that 25 decision all that you've heard about the crime and all

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1 you've heard about the person found guilty.

2 A. Yes, sir, I would. Every bit.

3 THE COURT: Okay. Well, we're going to take a
lunch 4 break, and then we'll give an opportunity for a lawyer
on each 5 side to ask you questions. So bear with us a bit
longer, and 6 we'll be back in here in an hour and a quarter.

7 JUROR: Okay, sir.

8 THE COURT: You can step out now.

9 JUROR: Take this with me, sir?

10 THE COURT: Yes, go ahead and take it with
you.

11 (Juror out at 12:34 p.m.)

12 THE COURT: 1:50, I think it is.

13 (Recess at 12:34 p.m.)

14 * * * * *

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14 * * * * *
15 REPORTERS' CERTIFICATE
16 We certify that the foregoing is a correct
transcript from
Dated 17 the record of proceedings in the above-entitled matter.
18 at Denver, Colorado, this 22d day of October, 1997.
19
20

Paul Zuckerman

21

22

Kara Spitler

23

24

25