

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.

ffffffffff  
9

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

11  
ffffffffff  
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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24 Proceeding Recorded by Mechanical Stenography,  
Transcription  
Street, Produced via Computer by Paul Zuckerman, 1929 Stout  
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4584

# 1 APPEARANCES

2 PATRICK RYAN, United States Attorney for the  
Western

3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
Oklahoma

4 City, Oklahoma, 73102, appearing for the plaintiff.

5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNS,  
and

<sup>6</sup> JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney

7 General, 1961 Stout Street, Suite 1200, Denver,  
Colorado,

8 80294, appearing for the plaintiff.

9 MICHAEL TIGAR, RONALD WOODS, and ADAM  
THURSCHWELL,

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 hand and THE COURT: Would you please raise your right  
22 take the oath from the clerk.  
23 (Juror No. 510 affirmed.)  
24 THE COURTROOM DEPUTY: Thank you.  
25 microphone THE COURT: Please be seated there by the

4585

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

take to 11 understand: Hard to estimate just how much time it may

you 12 go through this process. And the process of course,

the case 13 recognize, is the selection of a jury for the trial of

14 of United States against Terry Lynn Nichols.

15 A. Yes.

that your 16 Q. And you got a summons notifying you back in July

then 17 name had come up as a potential juror in this case, and

on 18 you got a notice -- you sent back a short questionnaire

19 that, got a notice to appear out at Jefferson County

more 20 Fairgrounds' auditorium building in September, a little

me and 21 than a month ago, and you did that, and there you met

here with 22 others. I want to reintroduce the others. They're

23 us again this morning, of course.

24 And for the Government -- the lawyers for the

Wilkinson whom 25 Government are Mr. Lawrence Mackey and Miss Beth

Juror No. 510 - Voir Dire

also as           1 you met at Jefferson County. With them this morning,

Ryan and       2 additional counsel for the Government, are Mr. Patrick

                  3 Mr. James Orenstein.

Ronald           4 For the defense, Mr. Michael Tigar and Mr.

of               5 Woods, attorneys for Terry Nichols; and Mr. Nichols was

                  6 course present as well.

a                7 And at that time before asking you to complete

who             8 rather lengthy questionnaire, I gave you and the others

matter.         9 were there some background information about this

                 10 A. Yes.

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

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

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

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

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

                 16 destroyed a federal office building killing and  
injuring people

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

4587

Juror No. 510 - Voir Dire

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

7 of not guilty, which of course create the issue for  
trial; but

Denver 8 the trial was then moved from Oklahoma City here to

sit as 9 because of a concern about asking people in Oklahoma to

Excuse 10 jurors in a case that affected the community as it did.

11 me.

entered 12 So after the case was moved here to Denver, I

as it 13 an order for separate trials ordering that the evidence

the 14 may relate to Mr. McVeigh be considered separately from

separate 15 evidence as it may relate to Mr. Nichols and that

on the 16 juries hear and consider that evidence. And that was

17 basis of a finding that fairness required separation.

there 18 And as a result of that order -- excuse me --

relates to 19 has been a trial of the case of the evidence as it

heard the 20 Mr. McVeigh. And a jury was selected for that case,

And then 21 evidence, and returned a verdict of guilty as to him.

22 the jury was required to hear more and make a  
recommendation on

McVeigh. 23 sentence and came in with the death sentence as to Mr.

24 All of these things you probably knew before I

told

25 you; right?

4588

Juror No. 510 - Voir Dire

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.

the

17 Q. Now also, since most of you who came out there to

of law

18 auditorium building had never been on a jury before, I

19 explained some of the fundamental rules or principles

And

20 that apply in all criminal cases in the United States.

is or

21 they apply to all cases regardless of who the defendant

since

22 what the crime charged is or indeed what the court is

States

23 these things are under the Constitution of the United

deprived of

24 which guarantees to all of us that we cannot be

process

25 life or liberty without due process of law, and the due

4589

Juror No. 510 - Voir Dire

accused is

1 includes these principles that each person who is

him or

2 presumed to be innocent of the crime charged against

3 her. You understand that point?

4 A. Yes.

throughout a

5 Q. And the presumption of innocence carries over

a 6 trial and entitles the accused person to an acquittal,

and not 7 judgment or a verdict of not guilty, unless 12 jurors

8 considering only the evidence received at the trial --

that 9 everything is admissible as evidence; there are rules

law and 10 govern what can be considered -- and then following the

evidence 11 the instructions of the court, determines that the

case has 12 proves the accused guilty beyond a reasonable doubt.

13 No person who is a defendant in a criminal

introducing any 14 any burden or duty of calling any witnesses or

stand and 15 evidence and has no obligation to take the witness

to 16 respond to questions from the lawyers or the court or

remain 17 explain anything to the jury. A defendant can simply

18 silent at trial and challenge the proof brought in by

19 government counsel. Understand?

20 A. Yes.

the 21 Q. And those challenges take the form of objections to

the 22 admissibility of certain kinds of evidence as well as

the 23 cross-examination of all of the witnesses; and it is

government to 24 responsibility of the attorneys representing the

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

4590

Juror No. 510 - Voir Dire

been 1 evidence and to attempt to prove the charges that have

trial of 2 made in the indictment. And then at the end of the

to what 3 the evidence, the court gives the jury instructions as

the counts 4 has to be proved, you know, the detail as to each of

proved 5 of the indictment, each crime charged, what has to be

6 for it, and then tells the jury in these instructions:

tell us 7 Consider this evidence, consider this law, and then

8 whether the evidence proves the crimes charged.

in cases 9 And in doing so, there's also an instruction

be 10 in which a defendant does not testify that that cannot

you know, 11 considered in any way. That's not an admission, or,

what 12 you can't think about that in terms of, well, you know,

get on 13 has he got to hide or if I am an innocent person, I'd

that can 14 the stand and tell the world about it. Nothing like

You 15 be considered. In fact, what the instruction says is:  
16 can't even discuss it in deliberations.  
  
together as a 17 And then the jury, after considering it  
18 group of 12, makes the decision. And the only way the  
jury can  
satisfied 19 return a guilty verdict is if all 12 jurors are  
20 beyond a reasonable doubt that the evidence proves the  
charges.  
  
defendant is 21 And if not, if there is a reasonable doubt, the  
22 entitled, under the Constitution, to the benefit of  
that doubt.  
  
understand 23 You've listened carefully, I know, and you  
24 these principles of law?  
  
25 A. Yes.

4591

Juror No. 510 - Voir Dire

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

4592

Juror No. 510 - Voir Dire

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 additional of the case will have an opportunity to ask you some

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.

4593

Juror No. 510 - Voir Dire

now.

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

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

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

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

like? 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.

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

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

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.

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

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

25 A. Yeah.

4594

Juror No. 510 - Voir Dire

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

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

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.

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

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 --

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

4595

Juror No. 510 - Voir Dire

1 March or so.

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

3 understand why we wanted to ask that --

4 A. Yeah.

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

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.

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

11 work?

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

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

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

some 18 assistance from police -- as I understand it, there was  
          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.  
excuse 24 Q. Okay. You indicated here, if I can get the page --  
          25 me for a moment.

4596

Juror No. 510 - Voir Dire

12? 1 On 12. You changed religions -- you have page  
          2 A. I do now, yeah.  
and 3 Q. You were brought up, as I take it, in one church  
          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.

4597

Juror No. 510 - Voir Dire

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.

I mean,  
20 Q. What we want to know here is something about your

21 viewpoint, so there's no right or wrong test to this.

to see,

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

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

24 your answers.

25 A. Okay.

4598

Juror No. 510 - Voir Dire

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

charge, 17 in the case; that is, does the evidence prove the

guilty or 18 whatever it is, beyond a reasonable doubt, yes or no,

is not 19 not guilty. And then punishment's another matter and

bit here 20 considered by the jury at all. And I'll describe in a

of 21 how sentences are done in federal courts in other kinds

22 cases.

in 23 But in certain kinds of cases, including cases

this 24 which the charges are of the nature of the charges in

why we 25 case, the jury has a role to play in it. And that's

4599

Juror No. 510 - Voir Dire

even 1 need to discuss your views concerning punishment now,

in this 2 though there's of course the presumption of innocence

verdict 3 case and the expectation there never would be a guilty

4 so there never would be a punishment. Understand?

5 A. Yeah.

your 6 Q. So let me just ask you this before talking about

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,

4600

Juror No. 510 - Voir Dire

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 anything you know, you can not only add to it, you can change

21 today you said in here because you may have a different view

22 do, from what you had when you answered this. And if you

23 that's what we want you to tell us.

24 expected A. Well, like the death penalty . . . I really never

25 much . . . me to -- still haven't really thought about it too

4601

Juror No. 510 - Voir Dire

1 at, but, you know, it's just a whole lot of options to look

2 too, to get to that verdict, I guess you'd call it.

3 29. Q. Well, let me ask in particular. Let's turn to page

4 there And you were a little uncertain about what you wrote

5 and all 'cause you -- you know, you had some strike-throughs

6 that.

7 A. Yeah.

8 easy-type Q. And don't worry about it. I mean, this is not an

9      thing to consider.

10     A. No.

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

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

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

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

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

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

17     option.

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

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

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

21     here --

22     A. Okay.

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

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

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

## Juror No. 510 - Voir Dire

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

guilty, 7 reasonable doubt. And again, if the verdict is not

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.

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

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

on the 18 ahead and make a sentencing decision for somebody just

verdict. 19 basis of the evidence of the trial and the jury's

information is 20 More is done. And the more is that a lot more

evidence 21 submitted to the court, and it is of two types, really:

things 22 Information concerning the crime itself -- beyond the

involved as 23 at trial, the circumstances of the crime -- including

24 like its effects on the community and on the people

25 victims and so forth. And then the court gets a lot of

4603

Juror No. 510 - Voir Dire

guilty, and 1 information about the defendant who has been found

that 2 that information really goes to the whole life story of

family, 3 person: His -- you know, how he was raised, the

all of 4 education, marriages, divorces, jobs, military service,

from 5 illnesses, essentially everything about his life. And

who we 6 us have our own unique life history that separate us

7 everybody else. I mean we are in large part who . . .

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 information And that can also include, of course,

11 because about the participation of that person in the crime

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

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

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

15 And a judge holds a hearing with all of that

16 defense information and hears from both the prosecution and the

17 and then decides what is the sentence that is just and

18 crime. And considered fair for that particular person on that

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

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

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

22 gets the same sentence. It depends on these individual

23 also circumstances as well, the individual life history and

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

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

## Juror No. 510 - Voir Dire

killing            1         Now, when we're dealing with the intentional  
are for            2         of other people and the possibilities under federal law  
already            3         a sentence to life in prison without release, as I've  
can be a            4         defined it for you, or a sentence of death, or there  
decides it.        5         sent -- a lesser sentence in which case the judge  
In                6         But the life-or-death question is not up to the judge.  
said                7         providing for this type of punishment, the Congress has  
death. And        8         that juries should make the decision about life or  
the                9         this is the same jury, the same 12 people, who heard  
guilty.            10       evidence at the trial and came in with a verdict of  
come into          11       Obviously if there's no guilty verdict, this doesn't  
verdict.            12       play, you know. Case is over if there's a not guilty  
must                13       But in the event of a guilty verdict, the jury  
lot more            14       come into the courtroom and hear a lot more. And that  
hear:              15       is the same thing that I've just talked about as judges

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

4605

Juror No. 510 - Voir Dire

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

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

4606

Juror No. 510 - Voir Dire

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

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

15 the defendant as a human being?

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

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

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

19 with a conclusion.

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

21 A. Yeah.

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

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

24 A. Yeah.

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

4607

Juror No. 510 - Voir Dire

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

2 would consider all that you've heard?

3 A. Yeah.

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

## 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

15 counsel table my job will be to present evidence

at the

against

Wore

17

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

Honor

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

24 already covered

25 A Okay

Juror No. 510 - Voir Dire

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

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

3 doing that?

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

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.

4609

Juror No. 510 - Voir Dire

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

Juror No. 510 - Voir Dire

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

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

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

your  
16 additional explanation for your answers. What have

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

18 general?

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

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

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

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

Juror No. 510 - Voir Dire

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.  
process, the 8 Q. -- someone's guilty. And you come into that  
an open 9 decision of finding someone guilty or not guilty, with  
10 mind; is that right?  
11 A. Yes.  
you if you 12 Q. You also said this morning, when the Judge asked  
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

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

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

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

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

20 A. Right. Right.

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

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

23 A. Right.

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

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

4612

Juror No. 510 - Voir Dire

1 You've probably heard about that.

2 A. Yes.

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

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

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

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

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

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

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

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

23 sentence?

24 A. Yes, it is.

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

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

Terry 9 Oklahoma appointed Ron Woods and myself to help out

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

17 counsel and the court appointed counsel for him?

18 A. Repeat that.

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

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

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

22 wrong for the system to appoint lawyers for people?

23 A. No.

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

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

4615

Juror No. 510 - Voir Dire

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

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?

I'll go  
11 A. Pretty much the ones people talk about at work; and

12 see, you know -- fulfill my curiosity about it.

When  
13 Q. Sure. Now, out there at work, I wanted to ask you:

about with  
14 you had that -- the incident that you were talking

resources  
15 the judge and with the prosecutor, did the human

that?  
16 department get involved in that? Is that how they do

17 A. Yes.

18 Q. Okay.

19 MR. TIGAR: Your Honor, I'd like the Court's  
person on a  
20 permission to write the name of a human resources

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

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  
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,  
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

Juror No. 510 - Voir Dire

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

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

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

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

10 A. Oh, yeah.

11 Q. And they're okay with that?

12 A. Yes, they are.

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

14 about the fact that you got the summons?

15 A. Yes.

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

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

18 whatever?

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

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

21 situation?

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

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

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

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

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

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

20 decision or a correct decision?

American

21 A. Mostly as far as the -- you know, the -- how the

felt,

22 people felt, I guess, of the situation and I guess they

know, it

23 or every -- you know, people at work felt that, you

on.

24 went along with the verdict -- or with what was going

big

25 Q. Right. There's a lot of times there's, you know --

4619

Juror No. 510 - Voir Dire

in

1 court cases seem to be -- it's like another sports team

trial?

2 town. For instance, did you follow that O. J. Simpson

couldn't get

3 A. Up to the point it got boring.

4 Q. Yeah. But there's a lot of people that just

5 enough of it; right?

6 A. Right.

have an

7 Q. And they followed it every day and so on. Did you

act.

8 opinion about how that one came out?

9 A. The only opinion I had was pretty much a circus

at work

10 Q. Uh-huh. And did your friends -- you have friends

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

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

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,

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

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

25 McVeigh found guilty and sentenced to death."

4620

Juror No. 510 - Voir Dire

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

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

Juror No. 510 - Voir Dire

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

Juror No. 510 - Voir Dire

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.

Juror No. 510 - Voir Dire

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,

severe

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

But at

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

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

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

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

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

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

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

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

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

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

9 JUROR: Yeah.

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

11 you tell them and all of that.

12 JUROR: Yeah.

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

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

if you 15 situation because of something unforeseen happening or

16 get called out of town or something like that, you let  
us know

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.

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

18 you're comfortable, that's fine.

19 JUROR: Okay.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

in here 22 Q. And of course you're aware that you've been called

trial of 23 in connection with the selection of the jury for the

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.

killing,     2       charges include, then, the charges of intentional

3       murder, of eight law enforcement agents, different

agencies of

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

entered            5 in the explosion. To those charges the defendants

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

Denver            7 The case was moved from Oklahoma City here to

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

by the            9 may have been directly affected or indirectly affected

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

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

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

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

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

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

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

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

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

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

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

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

2 stolen in a robbery or burglary?

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

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

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

6 Q. Right.

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

8 robbery.

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

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.

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

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?

And I

21 A. No. They had two lawyers -- he and someone else.

of

22 can't recall who the other person was that were accused

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.

now,

6 Q. And is that the only time you've been on a jury

7 this -- that case?

deal.

8 A. Yes. That was a locked jury. That was a rough

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 know there's some publicity about this case, as you already

19 before --

20 A. Yeah.

21 Q. -- you got your jury summons. So we have to rely  
on people

22 Understand? to use the self-discipline to avoid those things.

23 A. I understand, yes.

24 case Q. And do you remember how long the jury discussed the

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 was a trying to say? Where something didn't come out; that

4 they person maybe had come forward and said, "I did it," and

5 because won't even allow this later. The guy can't get out

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

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

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

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

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

19     testimony.

20     A. Yeah.

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

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

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

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

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

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.

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

8 on the rules that exclude evidence --

9 A. Yes.

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

11 somebody finds out --

12 A. Yeah.

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

14 that you mentioned, the incidents --

15 A. Yeah.

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

17 say these things the jury can hear and these things  
they can't.

18 Now, do you have any disagreement with that?

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

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

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 have an  
in the case, the Government and the defendant, will

11 with us,  
opportunity to ask you a few more questions. So bear

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,

2 and I misread it. Page 3; that's where I was; and  
you've

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.

7 Q. Your career was with a government agency that  
you've

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.

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

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 0. And so you had --

well let 14 A. I figured they're not going to take me; I might as  
them know it.

15 Q. Okay.

16 A. That was my idea.

these 18 Q. What we do in this process, and the reason for  
questions, you know --

19 A. Uh-huh.

these 21 Q. -- it's not like a job interview. The reason for  
questions is to find out what you think, what your  
attitudes are, what your experiences are.

22 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

in some 8 who worked for the government now or in the past might

or 9 way identify with the people who ended up being killed

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

case. 15 that they couldn't give fair consideration to this

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

21 that they were after a certain group that they figured  
-- I

22 people -- I think it was Firearms and -- Tobacco and Firearms

23 lot of 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 a something you read or heard somewhere about being after

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 talking about jury service here so we know clearly what we're

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

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

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

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

4649

Juror No. 8 - Voir Dire

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

the 13 in criminal cases, the jury does not get involved with

verdict 14 question of punishment. If the jury returns a guilty

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.

and the 22 Q. -- a robbery or a burglary or something like that,

years 23 sentence that is available under the statute is so many

of things 24 in prison or a fine or probation or all of the ranges

determined 25 that are sentencing possibilities, the jury, having

4650

Juror No. 8 - Voir Dire

1 the defendant to be guilty, is discharged; the jury has  
2 completed its work.

to do 3 And then it goes to the judge to decide what

judges 4 with this person, what the sentence should be. And

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

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

4651

Juror No. 8 - Voir Dire

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

4652

Juror No. 8 - Voir Dire

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

4 reasonable doubt about whether the defendant has been  
proved

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,

4653

Juror No. 8 - Voir Dire

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

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

3 think the law ought to be.

4 A. Yeah.

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

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

7 A. Yeah.

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

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.

to  
15 Q. And when I ask you these questions, I'm not trying

in any  
16 suggest anything to you or cause you to agree with me

17 way.

18 A. All righty.

your  
19 Q. I just want to explore a little bit with you what

know  
20 opinions and beliefs are in this area, because you well

there ought  
21 that this question of the death penalty and whether

there are  
22 to be a death penalty in court is something on which

23 strong differences of opinion in our country.

24 A. I know.

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

4654

Juror No. 8 - Voir Dire

has  
1 in Colorado over time in the state courts; and the law

other  
2 changed from time to time in Colorado, as it has in

say: You  
3 states. And so there are people who on the one hand

others say:  
4 know, you kill somebody, you should be killed. And

death  
5 You kill somebody, but the court should never impose a

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

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

20 different views about that from time to time?

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

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

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

24 life, or don't do it.

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

4655

Juror No. 8 - Voir Dire

1 today?

2 A. That's my view today.

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

4 what the law is.

5 A. All righty.

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

7 federal law.

8 A. All right.

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

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

11 A. Okay.

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

13 ability to follow the law.

14 So, as I said, in cases that don't involve a

15 life-or-death sentence, judges make a decision about  
sentencing

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

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

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

the 20 And would you agree that all of us, because of

that 21 things that have happened in our lives and the things

different 22 we've done in our lives -- all of us are unique and

23 from each other?

24 A. Yeah, I guess we are.

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

4656

Juror No. 8 – Voir Dire

hear a 1 in sentencing, after a guilty verdict, the jury has to

and 2 lot more than what they heard as evidence at the trial;

like 3 that's why there is a second hearing that proceeds just

process. 4 the trial: Lawyers on both sides, witnesses called in,

5 exhibits offered; and it's exactly the same kind of

it 6 But what goes on at that second trial is that it is --

the jury 7 starts with the defendant being guilty, because unless

reasonable 8 has decided that the evidence proves guilt beyond a

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

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

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

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

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

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

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

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

20 and not be reading. All right?

21 A. All righty.

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

23 trying to explain.

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

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

## Juror No. 8 - Voir Dire

the                   1 circumstances of the crime itself and the effects on  
is                   2 community and on the people affected by it. The other  
unique and         3 everything that we can know about the defendant as a  
talked              4 individual human being, this life history that I've  
that                5 about, just as is the case with judges having to get  
that                6 information to decide the punishment for a crime. And  
person             7 includes, then, things about if there was more than one  
being              8 involved in the crime, what role did this person now  
                    9 sentenced play, is it different from others, why was he  
                    10 involved at all?  
I've said          11                   And then it includes all of the things that  
                    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.  
witnesses have     15                   And then in the end, after all of these  
                    16 been heard and exhibits received in evidence, the court  
                    17 instructs the jury about what they have heard and sums  
it up,

18 really, and says, in effect, well, this is what you've  
heard,

19 and now think about it in two different ways: Some of  
these

20 things that you've heard can be thought of as  
aggravating

21 factors, suggesting the punishment of death is the  
punishment

22 that should be imposed. This other information that  
you've

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

4658

Juror No. 8 - Voir Dire

1 defendant does not deserve to be put to death. And on  
this

2 side include all of those things about the defendant as  
a human

3 being. Because what the members of the jury are being  
asked to

4 do is to decide whether to take another person's life.  
So they

5 have to consider the value of that life and what it  
means. Do

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.

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

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:

Juror No. 8 - Voir Dire

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.

4660

Juror No. 8 - Voir Dire

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 "God of course naturally, when I do that, everybody says,

22 becomes a bless," and you know, after about the 20th time, it

23 little embarrassing.

24 Q. Okay. When you've been in the jury room area here,  
have

25 you had any --

4661

Juror No. 8 - Voir Dire

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?

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

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

7 it to our attention.

8 A. Yes.

9 Q. If you'll step out, now, we'll have you back in  
about 20

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

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.

21 And Mr. Mearns for the Government has some  
questions

22 for you.

23 MR. MEARNS: Thank you, your Honor.

24 VOIR DIRE EXAMINATION

25 BY MR. MEARNS:

Juror No. 8 - Voir Dire

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

4663

Juror No. 8 - Voir Dire

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

graphic            10     killed in the explosion and that there may be some  
                      11     evidence about that?

                      12     A. I would expect that, yes.

respect to        13     Q. Will you do -- be able to do the same thing with  
                      14     that evidence; that is, set it aside and focus on the  
issue of            15     who was responsible for the explosion?

who did            16     A. We already know about the explosion. We don't know  
                      17     it.

some                18     Q. On page 12 of the questionnaire, you were asked  
                      19     questions about your religious beliefs.

in the              20     A. Right.

                      21     Q. And I think you told us there that you were raised  
                      22     Christian Science Church.

to a                23     A. That's right.

                      24     Q. But that at some point in your life you've moved on  
                      25     different either spiritual or philosophical belief?

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

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

4665

Juror No. 8 - Voir Dire

for  
1 A. Well, I think sending someone to prison and paying  
there,  
2 something they didn't do really is very bad.  
guilty  
3 Q. On page 27 -- at the top of page 27, the question  
told us  
4 121, asks you a question about witnesses who have pled  
your  
5 and agreed to testify for the prosecution. And you  
6 there on the questionnaire a little bit about -- about  
7 view of those witnesses.  
trial, would  
8 If such a witness were to testify in this  
open mind?  
9 you be able to consider his or her testimony with an  
Buckles  
10 A. I'm not sure.  
11 Q. What causes you to have some doubt?  
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 --

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

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

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

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

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.

4666

Juror No. 8 - Voir Dire

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

about 16 government should play, and you've told us a little bit

second -- 17 your views. I'd like, if you would, to look at the

underdogs." 18 what you wrote on the second line: "To help the

19 Could you tell us a little bit more about that?

they 20 A. Well, I think they do pretty fair. I don't think

this is a 21 knock themselves out in any way. I think they're --

somebody, 22 very political world. And I think if you're Gates or

on the 23 you're going to come out better off than the guy that's

24 street.

25 Q. And by "underdogs," you're referring to common  
folks?

4667

Juror No. 8 - Voir Dire

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 A. 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

4668

Juror No. 8 - Voir Dire

That's all 1 or were supposed to be aware of what was going on.

2 I know about them.

newspapers? 3 Q. Have you read anything about them in the

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?

many ins  
8 A. Well, that was an interesting case. They had so

him  
9 and outs, and I thought surely they were going to find

10 guilty. And he got off so easy.

11 Q. Were you surprised by that verdict?

it was  
12 A. I was shocked. I really was shocked, because it --

to  
13 a matter of, what, three hours? They didn't have time

14 debate.

the  
15 Q. Do you have any concerns or opinions about the way

themselves?  
16 people who participated in that trial conducted

really.  
17 A. No. I think everybody did a pretty good job,

list  
18 Q. Returning back to the list, the last name that you

19 there is James Nichols?

20 A. Right.

21 Q. What have you heard about James Nichols?

his  
22 A. Well, he's written a book, they said. I think it's

23 brother.

24 Q. That is, Terry Nichols' brother?

But I  
25 A. I believe so. I put James Nichols. I didn't know.

## 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.

close 11 Q. -- you wrote that Terry Nichols supposedly was a

12 friend of Mr. McVeigh.

13 A. Right.

Could 14 Q. And then the next words are "knew his intentions."

15 you tell us what you meant by that?

read that 16 A. Well, my -- what I'm saying there is where I have

I 17 supposedly he helped him in making a bomb or something.

18 don't know.

19 Q. And what did you mean by intentions?

and

20 A. That he knew -- that he was upset with the firearms  
group

21 whatever because of -- I can't think of the name of the  
trying

22 that we went in and they were killed. I think what I'm  
was very

23 to say is that he was a friend of McVeigh and McVeigh  
decided

24 bitter over this, over what happened to those people,  
better.

25 to make himself some kind of a person to make it all

4670

Juror No. 8 - Voir Dire

are the

1 Q. Were those people -- the people you're referring to  
people at Waco?

3 A. Yeah.

4 Q. The incident at Waco?

5 A. Uh-huh.

the

6 Q. On Question 162, just a little down there towards  
bottom of the page --

8 A. Yes.

you say

9 Q. -- you indicate that you heard on TV that -- and  
wife?

10 "his wife." Is that Mr. Nichols' wife, Terry Nichols'

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.

4671

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

4 it -- it was a gory thing in the first place, and it  
was sort

5 of a cut-and-dried type of deal. I think he -- what  
came out

6 was inevitable in my mind.

7 Q. Finally, I'd just like to ask you one or two  
questions

8 about possible punishment. Those are the questions  
that the

9 Court went over with you at some length.

10 A. That's right.

11 Q. On page 28. And the Court explained that it would  
be a

12 trial about two-stage process; that is, that we'll first have a

13 with whether or not the Government can prove the charges

14 respect to Mr. Nichols.

15 A. Right. Yes.

16 Q. And that only if the Government -- only if the jury  
is

17 reasonable satisfied that the Government has proven beyond a

18 doubt do we get to this second stage.

19 A. Uh-huh.

20 Q. You told us in the questionnaire that you agreed  
strongly

21 Court's 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

25 instructions regarding the penalty stage, the  
punishment?

4672

Juror No. 8 - Voir Dire

1 A. It has to be. That's our law.

have to 2 Q. And you understand that in the same way that jurors

that the 3 come into the trial with the presumption of innocence

there, 4 jurors have to approach that second trial, if we get

5 with an open mind.

6 A. Right.

about the 7 Q. And can you do that? Can you keep an open mind

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.

17 Q. I'm the last one. It's only going to be a few  
minutes.

18 A. Okay.

19 Q. They covered most of the areas.

20 A. All right.

21 Q. Mike Tigar and I, Ron Woods, were appointed by the  
United

22 States District Court over in Oklahoma City to  
represent Terry

23 Nichols in May of '95 after the Government here accused  
him of

24 being responsible for the bombing that occurred on  
April 19,

25 '95. He's not Bill Gates, as you mentioned, and he's  
got two

4673

Juror No. 8 - Voir Dire

1 him court-appointed lawyers. How do you feel about that,

2 having two lawyers?

3 good A. Well, I think he needs them. I think it's a very

4 idea.

5 Q. Okay. When you saw Mr. Nichols at Jeffco  
Fairgrounds after

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.

since

at night?

A. Well, you're talking about the trial I was --

Q. Yes, the one that you were a juror on.

A. Yeah.

Q. A number of years ago.

known, or

going to

be. I

mean, it was a -- Dave Cook robbery is --

the

time?

A. I thought maybe they actually stole something.

publicity?

A. Oh, yeah.

Q. -- that --

A. Yes, uh-huh.

before they

got to jury service?

A. No. No.

Q. Was the news coverage more or less factual?

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.

4675

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 15 it carefully but that it is admissible testimony and  
type of 16 allowed to look at it. Can you follow the law on that  
one on 17 testimony --  
more 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  
it -- 21 trial, the guy that did the robbery. I would have been  
impressed if there had been something of value stolen.  
22 Q. Okay.  
23 A. I mean, the whole thing just didn't ring true.  
24 Q. Okay. But you considered the testimony, looked at  
it --

4676

Juror No. 8 - Voir Dire

admissible 1 A. Oh, yeah.  
had been 2 Q. You followed the court's instruction that it's  
show? 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.

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.

4678

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

4679

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.

this 11 Q. And it's not going to affect your deliberations in

12 case, I take it from your answer.

13 A. Well, no. No.

on your 14 Q. Okay. Now, since your retirement in '90, you list

a day. 15 questionnaire that you watch television over six hours

16 What other activities are you involved in?

know. 17 A. Keep house and I cook and I've got family, you

18 Q. Your daughter is here --

and I 19 A. Yeah. And my grandson and my great-granddaughter,

20 really am not into anything.

21 Q. Okay.

22 A. I'm just retired.

events 23 Q. All right. Sounds like you keep up with current

24 pretty well. Is that correct?

Hours" 25 A. Yeah, yeah. I'm interested in "Dateline" and "48

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

were            22 there were children killed. Do you remember why there  
                  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

to the            1 A. Not how many but that they were killed.  
                  2 Q. Okay. Do you remember how the bomb was delivered  
                  3 building?  
                  4 A. Yeah. I still am scared of a Ryder truck.  
government        5 Q. Okay. Do you remember what type of bomb the  
                  6 claimed it was?  
near as I        7 A. Well, it was kind of a fertilizer-type thing, as  
                  8 can tell.  
                  9 Q. Okay. Then after the bombing, do you recall how  
                  10 Mr. McVeigh was arrested?  
license            11 A. Yeah. He -- something about not having the proper  
                  12 on his car, which seems strange.  
read, or          13 Q. Okay. And do you recall from what you've seen,  
                  14 heard how Mr. Nichols initiated contact with the

federal

15 authorities?

he  
16 A. I think he got in contact with them because I think

they  
17 said -- I guess McVeigh mentioned him or somebody said

18 were looking for him, so he turned himself in.

bombing,  
19 Q. Do you remember where he was at the time of the

20 according to the press accounts?

21 A. No. No.

City at  
22 Q. Do you remember whether or not he was in Oklahoma

23 the time of the bombing?

24 A. I don't think he was, but I don't remember, no.

have any  
25 Q. Do you know if it was in another state, or do you

4682

Juror No. 8 - Voir Dire

1 recollection?

2 A. No recollection.

had turned  
3 Q. Okay. What did you think when you heard that he

4 himself in? What went through your mind on that?

him go,  
5 A. Well, I thought more than likely that they'd let

initial  
6 not knowing anything about it. I mean, that was my

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 too much, 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.

4684

Juror No. 8 - Voir Dire

last you 1 Q. Now, you mentioned in the questionnaire that the  
Terry 2 had heard was his wife, who said she read a letter from  
that you 3 to McVeigh saying, "I'm out of it, go for it" -- and  
think maybe it was his ex-wife?  
son is 5 A. Yeah, because she's going to go against him and his  
-- that 6 going to go for him. I do know that. And I think it  
in? 7 it's his ex-wife that said that.  
8 Q. And do you know where she resides, what state she's  
read, or 9 A. Don't have the slightest idea.  
10 Q. Okay. Now, are you aware from what you've seen,  
situation? 11 heard in the media of Mr. Nichols' current family  
kind of 12 A. Yeah. He married a little, young gal; and I feel

13 sorry for her because I don't think she knows what's  
going on.

14 And I think he was buying a house or something. He  
seemed to

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.

19 A. I know he had a son by a prior marriage, but he may  
or 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?

23 A. Yeah. One of the Latin countries, I think; but I'm  
not

24 sure.

25 Q. On page 2 of your questionnaire, if you would just  
look at

4685

Juror No. 8 - Voir Dire

1 that.

2 A. Yeah.

3 Q. The last questionnaire, No. 8. And I'm not going  
to read

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

9 deliberations in this case if there were a mixed  
marriage?

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

16 in the McVeigh trial because it was more or less cut-  
and-dried

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

21 done what he did. Whether he did it alone or not,  
that's

22 something we'll never know. But I think they pretty  
well had

23 it figured out what he did; and what he did was so  
horrible, I

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

4688

Juror No. 8 - Voir Dire

1 license called off a computer that went through driver's

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 And why You know, Denver is a pretty good-sized city.  
And why

7 name is 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 order), 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 Nichols? 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

Juror No. 647 - Voir Dire

they're 1 there and introduced people who were there with me, and

2 with me here again.

here at 3 So let me again introduce Mr. Lawrence Mackey

attorneys for 4 the first table and Ms. Beth Wilkinson. They're

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 Tigard and

8 Mr. Ronald Woods, attorneys for Terry Nichols.

9 A. Yes, I do, sir.

Ryan and 10 Q. And all of them were there except, as I said, Mr.

11 Mr. Mearns have joined us since then.

background of 12 And then I explained something about the

you before 13 the case, things that were probably already known to

And it is 14 I explained them, but I want to go over them again.

for the 15 important that we sort of establish a foundation here

16 questions that we're going to be asking you. Okay?

there was on 17 So let me just review with you again that

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

4696

Juror No. 647 - Voir Dire

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

from 9 eight law enforcement agents who were in the building

10 several law enforcement agencies of the national  
government.

pleas 11 To these charges, the defendants entered their

12 of not guilty, thereby creating the issues for trial.

here to 13 The case got moved from Oklahoma City over

people from 14 Denver because of a concern about getting a jury of

got moved 15 Oklahoma City to sit on the jury. And after the case

for 16 here, I entered an order that separated the defendants

both the 17 trial and said it would be fundamentally unfair for

because of 18 defendants to come on for trial before the same jury

19 expected differences as to what the evidence may be.

was held 20 And so after that order was entered, a trial

was 21 as to the evidence relating to Timothy McVeigh. A jury

evidence 22 selected and a trial was held; and after hearing the

23 relating to Mr. McVeigh, a jury found him guilty of the  
24 charges.

what 25 And then the jury was required to consider

## Juror No. 647 - Voir Dire

they 1 punishment should be imposed as to Mr. McVeigh for what

hearing, 2 found him guilty of. So there was a second trial or

death for 3 and that same jury then recommended the sentence of

4 Mr. McVeigh.

start the 5 Now, that's all over, and now we're ready to

evidence 6 trial and are selecting the jury to try and hear the

7 as it may relate to Mr. Nichols.

about 8 Nothing that anyone has seen, read, or heard

this 9 evidence from the McVeigh case can now be considered in

with no 10 case, and that's because we're starting all over again

anyone that 11 evidence at all. And it should not be expected by

the 12 this trial would in any way reflect what happened at

-- and 13 previous trial. And certainly -- Mr. McVeigh, I mean

verdict and 14 certainly not the outcome of that case. The jury's

15 recommendation in that case must be disregarded. You

16 understand these points?

17 A. Yes, sir.

18 Q. And so, you know, we start with a clean page here,  
with

19 nothing here as far as evidence relating to Mr.  
Nichols.

20 A. Yes, sir.

21 Q. And then I explained some of the principles of the  
criminal

22 law to the jury panel who was there, including you; and  
I went

23 through this because most of the people had not been on  
a jury

24 before. And that's true of you; right?

25 A. Yes, sir.

4698

Juror No. 647 - Voir Dire

1 Q. You haven't been on a jury. So now the  
instructions that

2 will be given to the jury at the end of the trial, I  
can't go

3 into now because they depend a lot upon what the  
evidence may

4 be. But, of course, we don't have any evidence now, so  
I can't

5 deal with those instructions; but there are some  
instructions

6 that just are so fundamental they apply in every case  
no matter

7 who the defendant is or what the charges are or indeed  
what

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

4699

Juror No. 647 - Voir Dire

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

Juror No. 647 – Voir Dire

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

morning            8     in every case; so Mr. Nichols sits here with us this

made                9     presumed to be innocent of these charges that have been

                      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.

you were            14    Q. And you're willing to follow that and in the event

                      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

guilty?            17    Mr. Nichols the benefit of that doubt and find him not

                      18    A. Yes, sir; I would, sir.

these                19    Q. Okay. Now, you answered a long questionnaire after

would do,            20    explanations were given; and we did, as I told you we

them to the        21    make copies of it for the limited purpose of giving

process and        22    people you're with here and for them to use in this

This is              23    for me. We're not sharing that with anybody else.

protect              24    confidential, and we're not using your name to try to

arranged            25    your privacy as far as we can; and that's why we also

Juror No. 647 - Voir Dire

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

Juror No. 647 - Voir Dire

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?  
over 6 A. Yes, sir, I do.  
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?

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.

14 Q. And as I said, worked her way up. So she's very

and civil

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.

24 it you had some discussion with her then that you got a  
jury

25 summons and here it is, the case of United States  
against Terry

4704

Juror No. 647 - Voir Dire

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  
discuss, 18 talked about some of those cases with you.  
and 19 A. Maybe once or twice, sir, but very seldom she does  
We're not 20 you know, her work with me.  
times 21 Q. And she may have opinions about particular lawyers  
lawyer or 22 that, and I'm not asking you any of those opinions.  
court, 23 putting her on trial here, either; but have there been  
24 when she has expressed to you some opinion about some  
25 lawyers or what they did? And sometimes the clerks of

4705

Juror No. 647 - Voir Dire

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  
--

5 Q. Has she ever expressed any opinion about what, you  
know, as

6 a group, prosecutors are good or bad or defense lawyers  
are

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

I only 22 gentleman I worked for 16 years; and, you know, I think

23 through all 24 worked about probably four construction companies  
them years.

25 Q. Okay.

4706

Juror No. 647 - Voir Dire

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 -- had  
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.

18 Q. Because of the breakdown in the union's negotiation  
with

19 the contractors. Is that it?

20 A. Yes.

21 Q. And that was about how long that you changed?

22 A. Let's see. I've been working for the school system  
10 1/2

I'm going

23 years now. Well, it was 10 years in August, sir, so  
I'm going

24 on my 11th year.

25 Q. And you supervise some other people now?

4707

Juror No. 647 - Voir Dire

1 A. Yes.

2 Q. And you -- how many buildings are involved in the  
-- this

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.

7 Q. And you're in that building every day -- I mean,  
every

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

Juror No. 647 - Voir Dire

1 A. He's a -- a staff sergeant, I think, sir. He's a  
-- I

2 don't keep up on the --

3 Q. I understand.

4 A. -- you know, the ranks; but he's a sergeant of some kind.

5 I think he might be a staff sergeant or something.  
He's moved

6 up pretty good in rank and --

7 Q. And as far as you know, he is satisfied and going to stay

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.

15 Q. Now, you've got your questionnaire there with you,  
and I

16 about. One want to just turn to a couple of things to ask you

17 have is on page 22. Will you please turn to that page. You

18 it?

19 A. Yes, sir.

20 system, the Q. Question 100. We asked you to grade the whole

21 you whole criminal justice system, what do you think; and

22 cases, it answered, "Adequately," and then you said, "In some

23 could be improved."

24                   Would you just explain -- I mean, expand on

25 answer and tell us what you were thinking?

4709

Juror No. 647 - Voir Dire

1 A. Well, I think some people don't serve as long as  
they

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

15 they should get -- sometimes I don't think the  
sentences are

16 quite adequate, you know, for the type of crime it is  
or

17 something.

18 Q. Yeah. Now, have you discussed sentences with your  
wife,

19 for example?

20 A. No, I have not, sir.

21 Q. Okay. So this is your perception without her  
involvement

22 in it?

23 A. Yes, sir.

24 Q. Is that right?

25 A. Yes, sir.

4710

Juror No. 647 - Voir Dire

1 Q. You understand I'm trying to get the picture here  
as to

2 whether you're talking about things she's come home and  
3 mentioned, or whether you're just talking about what  
you read

4 in the paper and see on television news and that sort  
of thing.

5 Is that what you're saying, it's from what you've seen?

6 A. Yes, what I've seen myself, sir.

7 Q. And mentioned certain kinds of crimes, including  
child

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 being innocent and stuff, you know, and -- and I just like

22 whatever, around them and try to guide them in any way I can or

23 you know.

24 Q. Yeah. All right. Now, you on some other of the  
answers

25 view, we here on page 30, on Question 129, in asking about your

Juror No. 647 - Voir Dire

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 all of instructions about where to appear and all of that, but

13 understand the court's instructions about the law. Do you

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 burden of just gone over about the general principles of the

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

Juror No. 647 - Voir Dire

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.

12 Q. Well, I wanted to ask you about the word "yet" and  
whether

13 you had in your mind as you wrote that -- you expect  
him to be

14 proved guilty.

15 A. No, I don't, sir. I do not. That was --

16 Q. Well, you understand why I didn't -- you know, I  
didn't

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 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

Juror No. 647 - Voir Dire

1 already knew 2 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

that

12 view of the innocence of children and your concern with

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

guilty,

16 Mr. Nichols had anything to do with the bombing?

I can't

17 A. I think -- well, you would have to show that he was

until

18 guilty. I know there is children involved and stuff, but

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

Juror No. 647 - Voir Dire

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

Juror No. 647 - Voir Dire

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

4716

Juror No. 647 - Voir Dire

1 should be.

2 what the And, of course, there are statutes that give

3 the range of sentences should be, the maximum limited by

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  
basis of decision, though, is he doesn't just decide it on the

here's 9 the evidence that came in in the trial. It's not like

to it 10 the guilty verdict, here's the sentence. There is more

the 11 than that, and there is a time between the verdict and

information 12 sentence hearing; and in that time, there is more

of the 13 given to the judge about the crime, the circumstances

or 14 crime, you know, impact on the community or the victims

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  
job

18 relationships, goes on through to marriages, divorces,  
and

19 history, military service, illnesses, major illnesses  
what's been

20 things, essentially everything about that person,  
what he's done to him and what he's done, whether he's  
contributed to the  
help in

21 community, whether he's worked with the people needing  
case

22 a volunteer program, all of these things; and also in a  
crime,

23 where more than one person may be involved in the same  
he do

24 what were the relative roles of these people, what did

4717

Juror No. 647 – Voir Dire

1 compared to what another person did.  
this  
2 And then the judge holds a hearing with all of  
and the  
3 information presented and hears from the prosecution  
that this  
4 defense lawyers and then decides this is the sentence

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.

10 Q. And a lot of time this publicity that gets out  
emphasizes

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.

4718

Juror No. 647 - Voir Dire

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  
                18 should not provide for that punishment. And there are  
penalty,      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

4719

Juror No. 647 – Voir Dire

the case.     1 deciding that. That's not for an individual judge in  
heard the     2 That's for the jury. And we want the 12 people who  
                3 case to decide about the punishment. Understand?  
                4 A. Yes, sir.

arising

5 Q. Now, because of the possibility of such a situation

your

6 in this case, we had to ask you some questions about

extreme

7 opinions and attitudes concerning punishment and the

getting

8 punishments of life in prison with no chance of ever

no way

9 out. When we talk about life in prison here, there is

dies

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,

15 Q. And then under these statutes, there can be either

back to

16 death, or a lesser punishment, in which case it does go

a jury.

17 the judge. But the life-and-death decision is made by

18 And so what we wanted you to tell us in this

questionnaire is

of life

19 something about your views concerning the punishments

might be

20 in prison as I've described it, death, and when they

to what

21 used, if you could make the law yourself, not according

and page

22 the law now is. And so on page 27, we explain that;

23 28, we asked you to answer some questions. So please  
turn to

24 27.

25 And there at the bottom on 124 is sort of the

4720

Juror No. 647 - Voir Dire

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.

25 Q. And you've thought about it in connection with  
particular

4721

Juror No. 647 - Voir Dire

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 just Now, what I want to do with you now is explain

19 death exactly what is involved in a jury making a life-or-

20 bit, a few decision in Federal Court. So bear with me a little

21 minutes, while I explain this.

22 said, In the Federal Court system, as I've already

23 murder, the when the -- when a person has been found guilty of

24 death or jury must decide whether that person should be put to

25 kind of put in prison for the rest of his life. That's the

## Juror No. 647 - Voir Dire

doesn't 1 decision that only the jury can make. But the jury  
and what 2 decide that simply on the basis of the guilty verdict  
says that 3 they heard as evidence at the trial, because the law  
Follow me? 4 there is no automatic sentence based on the crime.

verdict 5 A. Uh-huh.  
people 6 Q. So what the law says is that a jury returning a  
recommendation, 7 finding that the defendant intentionally killed other  
course, 8 has to hear more before deciding this sentence  
recommendation,

course, 9 the sentence decision, and that means that -- and of  
to 10 this issue doesn't come up at all during the trial as  
reasonable 11 whether the evidence proves the crimes beyond a  
doubt, 12 shouldn't be considered there by the jury. You  
understand?

13 14 A. (Juror nods head.)  
of 15 Q. And when there is -- if the verdict is not guilty,  
verdict is 16 course, the case is over, obviously. But if the  
17 guilty and the jury finds beyond a reasonable doubt

that the

of 18 defendant committed a crime that resulted in the deaths  
of

of 19 intentionally -- intentionally resulted in the deaths  
of

there is, 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

to 23 not to decide whether the evidence shows him guilty but  
to

very 24 decide what punishment should be imposed, and that's a  
very

person who 25 individual decision. That has to be made as to the  
person who

4723

Juror No. 647 - Voir Dire

1 has been found guilty. You understand that?

2 A. (Juror nods head.)

much the 3 Q. And it really has to be approached by the jury in  
much the

sentencing, 4 same way that I have told you a judge approaches  
sentencing,

the jury 5 where a sentencing doesn't involve life or death. So  
the jury

the crime 6 has to get a lot of information: again, things about  
the crime

would, 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 of us is And so, you know, the law says that each one

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 also has in our lives; and that can affect our conduct, and it

15 life, to be considered as anybody considers the value of our

16 the life of any one of us. Understand?

17 A. Yes, sir.

18 live or Q. So before a jury can decide whether a person should

19 die, the jury has to know who that person is and what

20 because influences there have been on the life of that person,

21 involved the jury has to consider not just the crime that was

22 fate that but the human being who is in front of them and whose

23 jury will decide.

24 make a And that's a very awesome responsibility to

25 decision like that. You agree?

## Juror No. 647 - Voir Dire

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.

the 18 So we don't know what the evidence will be at

second 19 trial and we don't know what would be presented at the

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.

4725

Juror No. 647 - Voir Dire

has been 1 Q. And these instructions sort of summarize all that

kind of 2 heard, all the information provided to the jury, and

all of 3 divides it up saying: On the one hand, you've heard

suggest that 4 these things about the crime and these things that

heard 5 death is the just punishment; on the other hand, you've

whatever role 6 all of these things about the defendant and about

from some 7 he may have had in the crime which may be different

things            8 other person. And we ask the jury to consider these

that            9 both as aggravating circumstances or factors, then,

same time      10 suggest death is the just punishment and also at the

that            11 consider all that you've heard that may be mitigating

the            12 circumstances or mitigating factors, by which we mean

deserve        13 mitigate the punishment in the case and suggest that

defendant, although found guilty of the crime, does not

15 to be put to death.

16                You follow me now?

17 A. Yes, sir; I do, sir.

of this        18 Q. Now, do you have any question about my explanation

19 process?

20 A. No, I do not, sir. I fully understand it.

with an        21 Q. So a jury, you know -- each juror has to come in

22 open mind and listen to all that is presented,  
aggravating and

the            23 mitigating. And then at the end in these instructions,

themselves to 24 court can give some questions for the jury to ask

court            25 sort of help sort it out; but there is no way that the

## Juror No. 647 - Voir Dire

a 1 can help by instructions to give the jury some kind of

substracting 2 formula to use. You know, it's not like adding and

people 3 numbers. It is in the end a judgment to be made by 12

work on 4 coming out of the community and putting their minds to

juror has 5 this and the jury discusses it. But in the end, each

make a 6 to make an individual decision, and that decision is to

or die. 7 decision as to whether another human being should live

8 Understand?

9 A. Yes, sir; I do, sir.

10 Q. And, you know, the only way I suppose we could characterize

11 objective, what kind of a decision that is -- because it's not

12 proven or it does not depend on, you know, particular things

13 moral not proven. It's very subjective, and it's really a

14 judgment as to the -- another person's life.

15 be to do Now, what you have to tell us, hard as it may

16 on such a so, is whether if you were in that situation, serving

that 17 jury, before making a decision you would consider all  
and 18 you've heard, both mitigating and aggravating factors  
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  
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

4727

Juror No. 647 – Voir Dire

1 you've heard about the person found guilty.  
2 A. Yes, sir, I would. Every bit.  
lunch 3 THE COURT: Okay. Well, we're going to take a  
on each 4 break, and then we'll give an opportunity for a lawyer  
longer, and 5 side to ask you questions. So bear with us a bit  
6 we'll be back in here in an hour and a quarter.  
7 JUROR: Okay, sir.

4728

1	INDEX
2	Item
Page	

4                   4         Juror No. 510

4585              5         Voir Dire Examination by The Court

4607              6         Voir Dire Examination by Mr. Orenstein

4614              7         Voir Dire Examination by Mr. Tigar

4629              8         Juror No. 8

4661              9         Voir Dire Examination by The Court

4672              10        Voir Dire Examination by Mr. Mearns

4694              11        Voir Dire Examination by Mr. Woods

                    12        Juror No. 647

                    13        Voir Dire Examination by The Court

                    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

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                    21                          Paul Zuckerman

                    22

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                    Kara Spitler

23

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