

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

ff

9
10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 42)

11
ff

12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 8:43 a.m., on the 23d day of
October,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

17
18
19
20

13

PROCEEDINGS

14

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

15

THE COURT: Please be seated.

16

I'd like to see counsel at the bench.

17

(At the bench:)

18

court

(Bench Conference 42B1 is not herein transcribed by

19
transcript.)

order. It is transcribed as a separate sealed

20

21

22

23

24

25

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1

(In open court:)

2

raise your

THE COURT: Good morning. Would you please

3

right hand and take the oath from the clerk.

4

(Juror No. 344 affirmed.)

5

chair by

THE COURT: Please be seated there, in the

6

the microphone.

7

VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. And you know of course that the summons you got
identified

10 that you were called in through a chance selection
process as

11 potentially a juror in the trial -- for the trial of
United

12 States against Terry Lynn Nichols?

13 A. Yes.

14 Q. And you responded to that summons by answering a
short-

15 form questionnaire for us and then got a notice to
appear at

16 the auditorium building, Jefferson County Fairgrounds,
on

17 September the 17th, and you did appear there?

18 A. Yes.

19 Q. And so did I, and so did some of these other people
who are

20 with us this morning. I just want to reintroduce them
to you

21 so you know who's with us this morning.

22 A. Okay.

23 Q. Here at this first table, we have Mr. Lawrence
Mackey and

24 Miss Beth Wilkinson, lawyers for the Government who
were with

25 us when we were out there at the fairgrounds building
and now

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Orenstein, 1 here joined by Mr. Patrick Ryan and Mr. James
2 additional lawyers for the Government.

Woods, 3 You recall Mr. Michael Tigar and Mr. Ronald
4 attorneys for Mr. Terry Nichols; and Mr. Nichols was
with us 5 there of course, and he is again.

6 And then I explained about the background of
the case 7 and saying some things that I'm sure were already known
to you, 8 but I just want to repeat them again so there's a clear
record 9 here of what we're talking about.

10 A. Okay.

11 Q. And that is that on April the 19th of 1995, there
was an 12 explosion in Oklahoma City, Oklahoma, that destroyed a
federal 13 office building and killed and injured people who were
in the 14 building; that after that, the Government through
Department of 15 Justice lawyers filed an indictment, a statement of
charges 16 alleging -- in Oklahoma City, in the Federal Court --
alleging 17 that a man named Timothy James McVeigh, along with

Terry Lynn

18 Nichols -- and the indictment then refers to "other
persons not
19 named" -- conspired or entered into an agreement to
bomb that
20 building and that there are some 11 charges in the
indictment,
21 which include that in addition to agreeing and planning
the
22 bombing of the building, the persons carried it out,
did
23 indeed, according to the allegations, bomb the building
to kill
24 and injure people in it; and the charges include, then,
eight
25 charges, eight counts of first-degree murder of law
enforcement

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1 agents who were in the building and died in the
explosion,
2 agents of various law enforcement agencies of the
national
3 government.
4 The defendants entered their pleas of not
guilty
5 thereby creating the issues for trial. The trial was
then
6 moved from Oklahoma City here to Denver because of a
concern of

7 asking people in Oklahoma to sit on a jury, and then I
entered

8 an order for separate trials, requiring that the
evidence be

9 considered first as to Timothy James McVeigh
individually and

10 then separately as to Terry Nichols. And I did that
because of

11 a concern that it would be fundamentally unfair for
both men to

12 be on trial at the same time because of differences
with

13 respect to what the evidence may be as to them.

14 The trial of the evidence as it relates to Mr.
McVeigh

15 was heard here. A jury was selected like this. The
jury sat

16 and considered the evidence; and after the conclusion
of that

17 trial, the jury found Mr. McVeigh guilty of the
charges.

18 There was then a second trial or penalty phase
hearing

19 where the jury heard matters relating to the sentence
for

20 Mr. McVeigh and recommended that the sentence in his
case be

21 death. Now, that case is over. We're ready now to
start the

22 trial of whatever the evidence may be as it relates to
Terry

23 Lynn Nichols.

24 Nothing that happened in the trial of Timothy

McVeigh

25 transfers over to this case. We start over. And to
whatever

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1 extent anybody coming in here as a juror may have read,
seen,
2 or heard things about the evidence in the McVeigh case,
that
3 has to be set aside; and certainly the outcomes, the
jury
4 verdict and recommendation, in that case cannot now be
5 considered in any respect in the trial of Mr. Nichols.

You

6 understand those things?

7 A. Yes, I do.

8 Q. And if -- you know, to do otherwise would violate
the very
9 reason that separate trials were ordered because the
evidence

10 has to be considered as it may relate to each man
separately.

11 And then I, in addition to talking about those points,
reviewed

12 with you and the other potential jurors certain
fundamental

13 principles of law that apply in all cases because they
are

14 commanded by the Constitution of the United States so
that in

15 all courts in the United States, whoever the defendant
is,
16 whatever the charges are, it is the same: that the
defendant is
17 presumed to be innocent of those charges, and that
presumption
18 carries throughout the trial and entitles that person
to an
19 acquittal, a not guilty verdict, unless 12 persons
sitting on a
20 jury, considering only the evidence presented at the
trial and
21 following the laws as given in the instructions of the
court,
22 determines that the evidence proves guilt beyond a
reasonable
23 doubt. You've heard of this principle before, but you
also
24 remember my reviewing it with you when we were together
last.
25 A. Yes, sir.

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1 Q. And I'm really repeating it not because I think you
don't
2 remember it or didn't pay attention, but it is
important; and
3 we want to sort of establish a foundation here for what
we're
4 going to talk about. Okay?

5 A. Understood.

6 Q. And then I said that, you know, at the end of a
trial, the
7 court instructs the jury exactly what has to be proved,
what
8 are the elements of the particular offenses charged in
that
9 case.

10 A. Uh-huh.

11 Q. And I mentioned that no person who is accused has
any
12 burden or duty of proving himself not guilty or indeed
of
13 proving anything at his trial. A defendant may simply
remain
14 silent and challenge the government's evidence that's
brought
15 in by cross-examining the witnesses and making
objections to
16 admissibility of evidence and so forth, and no
defendant has to
17 take the witness stand and answer any questions or
offer any
18 explanations about himself to the jury. And in cases
where the
19 defendant does not testify, among these instructions
given to
20 the jury at the close of the trial, I always include:
Look,
21 you can't think about that because that's not any kind
of
22 admission or, you know, you can't think, well, if I

were

innocent. 23 innocent, I'd take the stand and tell the jury I was

about 24 You can't even talk about -- the jurors can't even talk

what 25 the fact that a defendant doesn't testify if that's

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1 happens at the trial. You recall these points as well?

2 A. Yes.

-- the 3 Q. And then at the end of the instructions, the jury

consider 4 court just says to the jury, you know, essentially,

evidence 5 all that you have heard and then tell us whether the

6 has established these elements of the offense beyond a

If not, 7 reasonable doubt. If so, then the verdict is guilty.

proof 8 the verdict must be not guilty. So what this burden of

the end 9 and presumption of innocence come down to is that if at

the 10 of a trial and after giving full consideration to all

that 11 evidence the jury has a reasonable doubt as to whether

offense, 12 evidence proves what's necessary to show guilt of the

doubt, 13 the jury must give the defendant the benefit of that

14 finding him not guilty. You follow?

15 A. Yes, I do.

16 Q. Now, do you have any disagreement with these
principles?

17 A. No.

18 Q. And you're willing to apply them in this case and
give to
19 Mr. Nichols the benefit of any reasonable doubt after
hearing

20 all of the evidence?

21 A. Yeah.

22 Q. Now, you answered a lot of questions for us, and we
23 appreciate that. And as I told you we would do, I have
made
24 copies of your answers and given them to the people who
are
25 with us now in the -- the people you see here. And we
have

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1 read them for the limited purpose of what we're doing
here.

2 They haven't been made public and won't be. We respect
your

3 privacy and try to protect it all we can by not using
your name

4 here; by, you know, arranging for you to go and come to
the
5 courthouse so press photographers can't take your
picture and
6 all that. We are now in open court, and what happens
here is
7 public, you understand?

8 A. Yes.

9 Q. Okay. And you came yesterday and waited all day, I
know,
10 and lost a day's work. But, you know, you have to bear
with us
11 a bit because it's difficult to estimate just exactly
how much
12 time it takes.

13 A. I understand.

14 Q. But anyway, we're sorry to take you away from work
and then
15 do it two days in a row.

16 As I have it, you live here in the Denver area
--

17 A. Yes.

18 Q. -- now, and were born here and lived in this area
except
19 for some time in Sterling?

20 A. Yes.

21 Q. And you went to high school and junior college in
Sterling?

22 A. Correct.

23 Q. So the family was living up there at one time?

24 A. Yeah, they're still there.

25 Q. Your family is still up there?

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1 A. Yeah.

old

2 Q. Okay. And as I gather, too, you have a three-year-
3 daughter?

4 A. Yes.

--

5 Q. Living with you. You're the single parent of that
6 taking care of her?

7 A. Correct.

with

8 Q. And you also have a friend and her daughter living
9 you?

10 A. Yes.

11 Q. That's the household in which you live now?

been for

12 And you're working as an electrician and have
13 some several years?

14 A. Almost two years.

here -- and

15 Q. And you've told us the contractor you work with

what size

16 I'm not asking you about that name -- but that's a --
17 business is that? I mean how many people working

there?

18 A. Well, it's construction. It varies, seasonal.

19 Q. According to the job?

20 A. According to the job. 15 in the winter and then up
to 66

21 in the summer.

22 Q. And have you talked to the owner or owners or
whoever you

23 report to in the company about your being called in
here for

24 jury service?

25 A. Yes, I talked to them about it.

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1 Q. And that's a concern that you had from the
beginning here,

2 what it would mean to you financially to lose that time
and

3 come in to work -- here; and of course, you know that
we're

4 talking about something that we can't give you a good
estimate

5 on the time necessary for the trial itself any more
than we

6 could give you a good estimate about how much time it
takes for

7 this process that we're engaged in now. It could well
be

8 several months. And that our trial days here are 9 to

5, four

9 days a week, and 9 to 1 on Friday.

10 What reaction did you get when you told --
well, let

11 me ask you: Is the business owned by one or two
persons, a

12 partnership-type thing?

13 A. One.

14 Q. One person?

15 A. Yes.

16 Q. And did you talk to him or her?

17 A. I talked to him. And he said I wouldn't get chose
because

18 I got long hair.

19 Q. Well, he's wrong about that. What else did he say?

20 A. That was about it.

21 Q. Well, did you talk about, you know, your job --

22 A. He'll hold my job for me, but I won't be able to
work

23 evenings or anything like that.

24 Q. Well, we wouldn't really expect you to work day and
night,

25 jury during the day and wiring buildings during the
night.

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1 A. If I do get selected, I'll have to pick up a part-

time job

2 in the evening to make my mortgage payment.

3 Q. Yeah. The contractor didn't --

4 A. He didn't -- won't pay.

5 Q. Won't pay. And the law -- you know, the law says
he can't

6 fire you --

7 A. No.

8 Q. -- so he has to hold the job, but it doesn't
require him to

9 pay you. And I take it there's no union contract or
anything;

10 this is a nonunion?

11 A. Nonunion.

12 Q. And are you also going to school?

13 A. Yeah. I go on Monday nights.

14 Q. And what school do you go to?

15 A. It's IEC. It's a trade school for electricians.

16 Q. So you're improving your knowledge and skills in
your

17 trade?

18 A. Yes.

19 Q. With respect to the other person in your household
who's

20 working, have you talked to her as well about the
financial

21 impact on your household?

22 A. Yeah.

23 Q. I mean does she contribute to the --

24 A. Yeah, she contributes.

25 Q. -- to the mortgage payment --

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1 A. Yeah.

2 Q. -- and the food and utilities?

3 A. Yeah. We decided, you know, if I get picked, we
could make

4 it.

5 Q. You could?

6 A. Yeah.

7 Q. You know, we're not asking you to do the
impossible.

8 A. Yeah.

9 Q. And I'm not trying to dwell on this, but I can't --
none of

10 us wants to have somebody on the jury who is sitting
there

11 worrying about his bills and thinking about filing
bankruptcy

12 instead of focusing on the evidence in this case. What
type of

13 a part-time job were you thinking about?

14 A. The postal department hires in the -- for
Christmas. I was

15 thinking about that maybe.

16 Q. Okay. And, you know, here again, we don't want
somebody
17 who's working all night --
18 A. And sleeping --
19 Q. Yeah, and sleeping in the jury box. You got the
picture.
20 So you just tell me whether this is something you think
you
21 could work through.
22 A. I think it's something I could work through.
23 Q. Okay. Well, we appreciate your willingness to do
that. We
24 know it would take an extra effort on your part.
25 Now, I have some questions that I'd like to
ask you

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1 about some of your answers on the questionnaire. We're
not
2 going to go through everything here. I mean you've
already
3 given us a lot of information, and there are just a few
things
4 that I want you to explain or expand on, and then I
have a few
5 other things to ask you about.
6 As I understand it here from page 19, I think
it is --
7 you've got your questionnaire there, have you?

8 A. Uh-huh.

You 9 Q. Page 19 at No. -- well, I said No. 85 and No. 87.

10 refer to a stepfather?

11 A. Yes.

all, did 12 Q. Working with the Denver reserve police. First of

13 you grow up with a stepfather in the household?

14 A. Yes, I did. Since I was four years old.

15 Q. Was that because there was a divorce?

16 A. Yes.

17 Q. Between your biological father and your mother?

18 A. Uh-huh.

too, now? 19 Q. And do you -- do you see your biological father,

20 A. Yeah.

21 Q. Know where he is?

22 A. Yes, we formed a relationship.

since, 23 Q. Okay. But the stepfather was the father you knew

24 you said, four years old?

25 A. Uh-huh.

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1 Q. Is that right?

2 A. Yes.

Does he 3 Q. And what did he do or is he doing -- excuse me.

4 live in Sterling now --

5 A. Yes, he lives in Sterling.

6 Q. -- with your mother?

7 And when was he a Denver reserve officer?

No, I'm 8 A. It was for about -- it was about ten years ago.

9 sorry. 16 years ago.

but just 10 Q. Take your time. I know you're a little nervous,

11 take your time.

12 A. It was for about five years. He was on the Denver

reserve.

13 Q. So it was during the time you were living in the

family?

14 A. Yes.

15 Q. Now, I'm a little confused, then. Was that before

16 everybody moved up to Sterling?

17 A. Yes.

18 Q. Okay. And do you know what he did in this work?

19 A. He did a lot -- he did like the Bronco games.

20 Q. The traffic control?

he 21 A. Yeah. And I think he -- it's hard to remember, but

22 worked one or two nights a week.

23 Q. So you were about how old at that time?

24 A. Oh, I was six or seven, somewhere in there, eight.

25 Q. Okay. Maybe kind of impressed with his uniform --

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1 A. Yeah.

2 Q. -- and that sort of thing. Did he take you to meet
other
3 police officers, anything like that?

4 A. No.

5 Q. Is there anything from this in any way you think
influences
6 you with respect to law enforcement people?

7 A. Yeah, I respect the law enforcement. If you're
asking me
8 if I'm going to favor?

9 Q. Well, let's say with respect to witnesses. At
trials
10 usually there are people -- and I'm sure there would be
in this

11 case -- who are, you know, FBI agents or police
officers of
12 various departments coming in and testifying; and what
they

13 have to say may well be challenged, contradicted by
other

14 witnesses; and one of the things that a jury has to do
is to

15 consider what we talk about as the credibility of each
witness,

that 16 which is a combination of what you believe about what
whether 17 person says or has said and also what you believe about
18 that is a truthful person.

are 19 And what the law says is that all witnesses
same 20 treated equally in that respect. I mean, you apply the
believability. 21 standards in judging what they say and their

enforcement 22 And is it your view that police officers or law
23 people should be more believable or less believable?

little more 24 A. I guess I'd have to believe a police officer a
25 when he says something, I imagine.

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1 Q. Why do you say that?
his job. 2 A. 'Cause he's part of the law enforcement and it's

3 I mean . . . I don't know . . .

test with 4 Q. We're just asking you for -- I mean this isn't a
coming in. 5 right and wrong. We're just asking your opinions

jurors to 6 And I'll just tell you that that is not what we ask

7 do.

8 A. Uh-huh, I understand.

9 Q. What we say to jurors is: Look, just because
they're a

10 police officer, they're no more believable than any
other

11 person because they're human beings and all human
beings have

12 frailties. Biases is one of them. And sometimes
people in law

13 enforcement have a bias in favor of law enforcement, so
-- and

14 there are other people who can come in as prospective
jurors

15 who for what -- whatever reason dislike and do not
consider

16 police officers or law enforcement people to be
credible at

17 all. Neither one of those things works.

18 What the law says is treat all witnesses
equally and

19 judge them by the same standards which means: Is their

20 testimony contradicted by the testimony of others; what

21 opportunity did this person really have to see what he
or she

22 is talking about; is there some kind of bias affecting
their

23 testimony; have they said something different from what
they're

24 now saying at an earlier time? You know, all of those
things

this 25 come into the picture in judging do you believe what

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1 person says.

2 Now, are you going to be able to do that?

3 A. I think so.

you a 4 Q. Okay. And you said here on page 22 where we asked

you 5 very general question about the system -- you say that

and I 6 think that criminal justice system is working very well

of 7 feel jurors are an excellent way for a fair trial. And

the jurors 8 course you recognize the root of all of that is that

come in 9 individually be fair-minded and open-minded when they

10 to hear the evidence.

11 A. Yes.

to 12 Q. Okay. And that's what we're talking about here as

13 whether you can do that in this case.

14 A. I feel I can be open-minded and fair.

situation 15 Q. Now, I noticed, too, on page 22, that you had a

16 at one time where you were the victim of a robbery.

17 A. Uh-huh.

18 Q. Tell us when that was and what happened in brief --
in a
19 brief form.

20 A. I was working at a Texaco convenience store on the
21 graveyard shift. It was -- I don't remember the exact
date.
22 It was about two-and-a-half years ago. And I was just
working,
23 and a gentleman came in and he had a partner; and his
partner
24 walked around the store, kind of checked it out, and
then
25 pulled a rusty, old gun out. And it, you know, looked
huge,

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1 looking at it. And he just told me to give him all his
2 money -- or all my money; and I just opened the drawer
and gave
3 it to them and then they left.

4 Q. And then you called the police, did you?

5 A. Yeah.

6 Q. Were you alone --

7 A. Yes.

8 Q. -- except for these two fellows?

9 A. Yes.

me all 10 Q. Was -- did they say anything to you other than give

11 your money or something like that?

12 A. They asked me to open the safe. And I was like, "I
can't.

13 I can, you know, get you a little bit at a time."

14 And he says, "Well, do that."

15 And I pushed the button to give me the 20's,
and he

16 said, "You pushed the wrong button, didn't you?"

17 And I was like, "No, I didn't. It's right
there."

18 And then they ran out the door. I think they thought I
hit a

19 alarm or something.

20 Q. Was the gun pointed at you?

21 A. Uh-huh.

22 Q. Was it just one of them that had a gun?

23 A. Yeah.

24 Q. Were there -- did either of them wear masks or any
kind of

25 obvious disguise?

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and then 1 A. The first one that came in didn't have a mask on;

2 the second one, he come running in with a mask on.

3 Q. And did you describe these people for the police?
4 A. Yes.
5 Q. Was this in Denver?
6 A. Yeah. Thornton area.
7 Q. Pardon me?
8 A. Thornton area.
9 Q. So what police -- was it the Thornton Police
Department
10 then?
11 A. Uh-huh.
12 Q. And as far as you know, no one was ever charged
with that
13 crime?
14 A. The police told me that they had about ten
incidents with
15 a -- he had a red hooded sweat jacket and, you know,
that came
16 up about ten times. And I don't know if they caught
the guy or
17 not.
18 Q. Did the store you worked in have any kind of a
surveillance
19 camera --
20 A. Yes.
21 Q. And was it working?
22 A. No.
23 Q. Okay. So you didn't have a film?
24 A. No. And then there was a little slot where a \$1
bill sat,

batteries 25 and it pulled that out, to set off an alarm, but the

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1 were dead; and then the little push button didn't work,
either.

2 Q. Okay. Well -- did there come a time when the
police gave

3 you pictures to look at or something like that or call
you in

4 to look at a lineup of suspects?

5 A. No. It was just that -- after the incident, they
took me

6 down to the police station. I tried to give them the
best

7 picture I could, which wasn't --

8 Q. A verbal picture?

9 A. Yeah. They had the little films.

10 Q. Oh, they did have --

11 A. The poses, and I made up a face.

12 Q. Oh, excuse me.

13 A. And that was it.

14 Q. So you described these persons as best you could,
height,

15 weight --

16 A. Uh-huh.

17 Q. -- what race they were, and all that?

18 A. Yes.

19 Q. And then they wanted you to come down and do -- I
guess
20 they call it a composite --

21 A. Yes.

22 Q. -- where you put things together. And is that the
extent
23 of what -- what you did there?

24 A. Yeah. That was the last I heard about it.

25 Q. And this was about two, two-and-a-half years ago?

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1 A. Yes.

2 Q. Could you describe these people now?

3 A. No.

4 Q. I'm not asking you to --

5 A. No. My composite looked like Eddie Murphy, but
it's not

6 what he looked like.

7 Q. Okay. All right. But you still remember the
incident very

8 well and what it looked like --

9 A. Yeah.

10 Q. -- to look down the barrel of that firearm, I
assume?

11 A. Yeah.

12 Q. Now -- excuse me. You've had contact with the
police in

13 another respect, too. And I'm over on page 24 at
Question 108.

14 In connection with some traffic matters.

15 A. Yes.

16 Q. What's that about? What happened?

17 A. Oh, gosh. My driving record is pretty long.

18 Q. And you have -- let's see. You have a motorcycle,
too?

19 A. I sold it, the motorcycle. I did have one.

20 Q. Well, tell us something about your driving --
driver

21 record. I don't mean every time you got a ticket. But
have

22 you had a suspended license?

23 A. Yes, it was suspended for some time.

24 Q. For your driving record?

25 A. For my driving record.

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1 Q. Why is that? What was -- how old -- how long ago
did you

2 have these problems?

3 A. Well, when I was 16, 17, I lost it to points. And
then I

4 only lost it for three months, and I should have just

went down

5 and reinstated it, but I didn't. And then I got my
first

6 driving under suspension, and then there's a few to
follow

7 that.

8 Q. And are these mostly speeding violations?

9 A. I had -- yeah, speeding, no insurance. I had a
ticket

10 where I rolled my truck, and I got a ticket for leaving
the

11 lane, and -- let's see. There are various.

12 Q. Did any of these involve accidents except this time
that

13 you rolled your vehicle?

14 A. I had an improper left turn.

15 Q. With an accident?

16 A. With an accident.

17 Q. Collision with another vehicle?

18 Any injuries?

19 A. No.

20 Q. Did you have insurance at that time?

21 A. Uh-huh.

22 Q. What's your status now as a driver?

23 A. I have a license.

24 Q. Well, did this period of time when you were getting
so many

25 violations -- what do you think was the reason for
that?

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1 A. I was a bad driver.

2 Q. And, you know, was this a time in your life when
you were
3 kind of irresponsible about a lot of things, or what?

4 A. Yeah. Or, no, just the driving. I've always been
a
5 responsible person. Always go to work.

6 Q. Well, one could say that somebody with a driving
record
7 like that's not very responsible and not very caring
about
8 complying with the law.

9 A. They could; but, you know, that's -- you know, I
haven't
10 broken any other laws.

11 Q. And when's the last time you've had a driving
violation,
12 traffic violation?

13 A. Well, I have a ticket pending now. It was for
weaving, and
14 I wasn't weaving, so I'm going to --

15 Q. You're going to contest that one?

16 A. Uh-huh.

17 Q. And you think that -- have these been in various
parts of

18 the metropolitan area?

19 A. I'm sorry, what's that?

20 Q. Are these in various places here, like Denver and

--

21 A. Yes, this happened in -- up by Burlington, up on
I-70.

22 Q. Out on the highway?

23 A. Out on the highway.

24 Q. So that was a Colorado highway patrol?

25 A. Yes.

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1 Q. How many of these others have been the highway
patrol?

2 A. Maybe one other one by highway patrol.

3 Q. Well, let me just ask you this. You're not on
trial here

4 for your traffic record.

5 A. Uh-huh.

6 Q. And the only reason that we may have some concern
about it

7 is what does it say about you as a person who obeys the
law,

8 you know. That's why I use the word "irresponsible."
And I'm

9 being very frank with you. That's the concern that I
have.

10 And do you have -- as you reflect on this in answering

these

11 questions, are you here admitting that you have done
these

12 things, or do you have an attitude that highway patrol
and

13 these other traffic police have had it in for you?

14 A. No. They didn't have it in for me. I probably
deserved

15 most of the tickets I got, except for the last one.

16 Q. Yeah, that one you're going to contest?

17 A. I'm going to contest.

18 Q. We won't ask you any questions about it so you can
contest

19 it freely.

20 A. Okay.

21 Q. Do you think your long hair has something to do
with these

22 tickets?

23 A. No.

24 Q. All right. So, what, you're telling us you -- you
know,

25 don't hold the tickets against me, I'm still a law-
abiding

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1 person? Is that what you're asking us to say or think?

2 A. Probably back then I was more irresponsible; but
now I've

better
my
for

3 learned the value of my license, so I've been a much
4 driver. And I don't think my driving should reflect on
5 responsibility.

6 Q. Okay. Now, you're -- you've taken responsibility
7 raising this youngster.

8 A. Yes, she's . . . she's everything I live for now.

9 Q. And where is her mother?

10 A. She's in Sterling.

11 Q. And is she still in communication with you and her
12 daughter?

13 A. Only when I track her down. She doesn't ever call
or . . .

14 Q. Or contribute anything to the support?

15 A. Or contribute anything.

16 Q. Okay.

17 A. I want her very much to be a part of her life,
though.

18 Q. But you're having trouble getting that goal
accomplished?

19 A. Uh-huh.

20 Q. You know, this is an awkward area to talk about.
It is for

21 me, anyway. But this was a relationship that you had
with this

22 woman earlier on and now you're the one who's going to
see to

23 it that this daughter's raised right; is that a fair
summary?

24 A. Yes. Yes.

25 Q. Okay. And you have given us some views about
punishment,

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1 penalty. I want to turn to that subject. And it's
going to be

2 at page 28 and 29 where these questions and answers
were

3 provided; but -- I know you want to read what you said
there

4 'cause it's been a month since you wrote these things,
so I'll

5 give you an opportunity to do that before asking you
some

6 questions. But let me just ask you first of all: Did
you

7 understand -- and on page 27 we went through this
explanation

8 that the reason that these questions are on the
questionnaire

9 is because of the possibility of a guilty verdict in a
case

10 like this, the jury has a role to play in deciding
sentencing.

11 But of course we cannot at this time assume that there
will be

12 any such role for the jury to play here.

13 A. Uh-huh.

14 Q. Because obviously that runs directly contrary to
what we
15 talked about a few minutes ago on the presumption of
innocence.

16 So we cannot by asking these questions have you
understand that

17 we're in some way suggesting, well, there's going to be
a
18 guilty verdict. The point is that we have to ask about
19 attitudes and opinions before the jury is selected and
accept
20 all of the possibilities in the case. You understand
that's
21 the way in which we address these questions?

22 A. Uh-huh. I understand that.

23 Q. And also we don't know, you know, exactly what the
evidence
24 will be or what will be involved in a sentencing
decision if
25 there were to be one. So that's why we didn't ask you
anything

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1 about the existing law. We know, too, that people have
widely
2 differing views about -- and opinions about whether
there ought
3 to be a death penalty. So we simply wanted to hear
from you

4 first what attitudes or opinions you have on these
questions of
5 the use of a punishment of death and the use of a
punishment of
6 life in prison with no possibility of release at any
time. I
7 mean it's truly life in prison that we're talking about
here so
8 that the person in prison, that's where he dies his
natural
9 death. Did you understand those points when you wrote
these
10 answers?

11 A. Yes, I did.

12 Q. Okay. And let me just ask you one other
preliminary
13 question, and that is: Has the subject of the death
penalty
14 been something that you've given much attention to
before we
15 asked you these questions?

16 A. No. I didn't pay hardly any attention to it.

17 Q. Okay. Would it be fair to say that this is the
first time
18 you've really focused on what you think about that,
these
19 possible punishments?

20 A. Yes.

21 Q. Now, you may well have thought about it some since.

22 A. Uh-huh.

and if 23 Q. And we would understand that. Tell me if you have
questions 24 now today you have any different answers for these
25 from the ones that you wrote down when you answered the

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1 questionnaire.
2 A. Okay.
3 Q. Go ahead and read it, and then answer that
question.
4 Now, it goes on 29, too, did you notice --
5 A. Yeah.
6 Q. Okay. You know, if I ask you the same questions
now, would
7 you give us the same answers?
8 A. Yeah.
9 Q. Okay. And the way I understand your answers,
putting them
10 all together -- and please now understand that I'm not
trying
11 to get you to agree with any particular point of view
or get
12 you to agree with me 'cause I'm not expressing any
opinion
13 here. And I will talk to you in a few minutes about
the law as
14 it is, but here we're talking now in your views
regardless of

you is 15 what the law is, okay? And so all we want to hear from
in this 16 what do you think, what are your opinions and beliefs
like the 17 area. And you start out here on B saying you don't
18 idea of the death penalty.
19 A. No, I don't.
in 20 Q. And then you've -- where we've pressed you a little
cases this 21 these following questions about when, what kinds of
of 22 form of punishment of life in prison and the punishment
the 23 death might be appropriate, and you've told us: Taking
prison with 24 lives of innocent people is appropriate for life in
you've 25 no chance of getting out. And then as to the death,

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enough to 1 said you've never really followed any case closely
2 consider that.
3 A. Uh-huh.
question 4 Q. And then on the next page we have this very broad
5 about do you have any religious or moral views

affecting your

6 views about punishment. And I am not sure I understand
what

7 you wrote there. First I do understand that you don't
have a

8 particular religious view on the point.

9 A. Correct.

10 Q. But I'd like you to just expand on the rest of your
11 statement there.

12 A. I feel I could make a fair judgment on someone that
-- I

13 don't think I can put someone to death, though.

14 Q. Well, I'm particularly asking you about that
"There's a

15 god" -- "A god would allow an appropriate punishment."
Are you

16 saying that if the death penalty is an appropriate
punishment,

17 it would not transgress or violate some religious view?

18 A. No. It maybe -- I don't know.

19 Q. And you can back off from the statement entirely if
you

20 want to. I'm not trying to get you to defend this. I
just

21 want to get from you what you're thinking here.

22 A. My religion is I don't go to church, but I believe
in God.

23 And I've never encountered anything that's . . . that
-- I feel

24 it's wrong to take someone's life. You know, that's
the way I

keep me 25 feel. And I guess that would be my religion that would

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1 from sentencing someone to the death penalty.

sanctity 2 Q. So you have a concern for -- would you call it the
3 of human life?

4 A. Yeah.

throwing 5 Q. Maybe that's not a word you would use. I'm just
you know, 6 that out for your consideration. Is it a view like,
7 every human being is in the image of a god and it is
not up to 8 man to destroy that, something like that?

such 9 A. Yeah. I don't feel it's my place to -- I mean if
going to 10 punishment should occur, it should -- I mean God's
11 make it happen.

12 Q. In some -- in some way that we don't know?

13 A. Some way.

14 Q. Is that what you're saying?

15 A. Uh-huh.

opinion 16 Q. Well, there are, of course, great differences of

17 publicly about this --
18 A. I know.
19 Q. -- and it's a matter that gets debated frequently;
and
20 there are places in the United States, there are states
that do
21 not have the death penalty for any crimes in the state,
and
22 it's changed from time to time in various states. And
in
23 Colorado recently there's been with lot of public
debate and
24 discussion because of a recent execution of a person
sentenced
25 to death in the Colorado court. Did you follow that in
the

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1 papers or on the radio or television?
2 A. No. I only knew his name because it was the same
name as
3 my brother's girlfriend's father. That's the only
reason it
4 caught my attention.
5 Q. Uh-huh. But you didn't -- did you pay any
attention to
6 these columns and editorials and things where people
expressed
7 varying views about the death sentence?

8 A. No. No. I sure didn't.

9 Q. All right. So you're talking about your own
instinctive

10 view --

11 A. Yeah.

12 Q. -- is that what you're saying?

13 A. Yes. You know, I've never discussed it with anyone
or read

14 anything about a debate on the death penalty
that

15 Q. Have you thought about what your position would be
if you

16 were to be drafted in with the armed services and
required to

17 take up arms as a part of the national policy?

18 A. Yeah, I thought about that when they had the Desert
Storm,

19 and I was just hoping that there was not going to be a
draft.

20 You know, I would go, but I wouldn't like it.

21 Q. Well, we're distinguishing here now between, you
know,

22 liking it or being comfortable or wanting to do it; and
in a

23 sense there's a -- in a very loose sense -- there's
something

24 of an analogy here because this deals with a citizen's
25 responsibility to follow the law.

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1 A. Uh-huh.

2 Q. And that's what we're talking about in much -- I
suppose to

3 respond to the draft and take up arms and in the end
perhaps in

4 an actual combat situation, kill somebody in combat.
That's

5 part of also what the government, our system, asks
citizens to

6 do under certain circumstances.

7 A. Uh-huh.

8 Q. Now, I want to explain what is really involved here
in the

9 sentencing decision and then ask you some more, because
we've

10 been dealing here in very general terms without my
explaining

11 to you just what's involved, so let me do that.

12 A. Okay.

13 Q. The role of the jury of course in all criminal
trials, as

14 we've discussed here in the beginning a while back, is
to hear

15 the evidence, make a decision whether the evidence
proves the

16 essential elements of the crime charged beyond a
reasonable

17 doubt; right?

18 A. Correct.

19 Q. And in cases that don't involve punishment of this
type, so
20 what we're talking about is how many years in prison or
21 probation or fines, you know, that -- type of
punishment other
22 than life in prison or death. When a jury arrives at a
guilty
23 verdict in such case, the jury has no more
responsibility in
24 the case. It's made a decision. But the case isn't
over yet,
25 of course, for the defendant because sentencing still
must be

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1 done. And in these other types of cases, that sentence
2 decision is made by a judge.
3 And before a judge makes such a decision, the
judge
4 will get a lot more information than what was submitted
at the
5 trial itself as evidence. And that information really
is of
6 two kinds: One is more about the crime, the
circumstances of
7 it, you know, what was the effect on victims. If it
were to be
8 a case like this robbery of you, it could include, you
know,
9 what happened to you as a result of it; if you were to

have

10 nightmares and things, that kind of thing, the effect
on you;

11 if you got injured, those kinds of things.

12 And then it also includes all there is to know
about

13 the defendant as an individual human being, all about
his life

14 history, his family, you know, where he was born and
raised and

15 how -- his relationships with others, marriages,
divorces,

16 children, employment history, military history, major

17 illnesses, things like that, attitudes and beliefs, and
also in

18 a case where there were more than one person involved
like the

19 two guys that came into the station there and held you
up, what

20 were their relative roles, should there be a difference
between

21 the two, the one who held the gun and the other one.

22 And the judge hears from both sides with
respect to

23 all of these things and then makes a decision about
what is the

24 appropriate sentence for this person. There's nothing

25 automatic about it. It's not, you know, robbery equals
so much

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1 time. So the defendant himself has to be considered as
a
2 unique and individual human being.

3 Now, in Federal Court -- and I've talked about
the

4 differences among the states, but here we are in
Federal Court

5 and we're following federal statutes enacted by the
Congress.

6 In Federal Court where the crime involves the
intentional

7 killing of other people, then these punishments of life
in

8 prison with no release and death must be considered.
And

9 really a person convicted of such crimes in the Federal
Court

10 may be either sentenced to life in prison with no
possibility

11 of release, death, or a lesser sentence, in which case
it is

12 imposed by the court. But the life-or-death decision
is not

13 made by a judge. The Congress has said: That's the
kind of

14 decision we want juries to make, the same jury that
heard the

15 evidence at the trial.

16 So in the event of a conviction of a person of
such a

17 crime, there is really a second trial or hearing; and

the jury,

18 same jury that returned the guilty verdict, then has a
19 responsibility to make a decision after a second trial
that
20 proceeds just as the first trial in terms of calling of
21 witnesses, introducing of exhibits and the like. And
we can't
22 talk about what that might be in this case of course
because,
23 first of all, there's no expectation there would be
such a
24 hearing; and secondly, we have no idea what even the
evidence
25 will be at the trial let alone what would come up in a

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1 punishment hearing.
2 But the types of information that is provided
-- that
3 will be provided to a jury under those circumstances is
pretty
4 much what I've talked about that judges hear and
consider when
5 judges make sentences. So that includes more about the
crime,
6 circumstances of the crime, effects on victims, and the
like,
7 also includes the roles in the offense, if more than
one person

8 was involved. And then it does definitely include
everything
9 there is to know about the defendant, these same things
that,
10 you know, I'm sure you would agree that all of us are
unique
11 and individual and different from others in large part
because
12 of what's happened to us, what we've done, and what's
been done
13 to us in our lives. Agree with that?
14 A. Uh-huh.
15 Q. So all of this gets provided, then, to the jury;
and at the
16 end of that second trial, the court again gives the
jury
17 instructions. And this time the instructions summarize
the
18 things that have been presented during that information
--
19 sentencing information hearing. And in addition to
summarizing
20 it, saying, you know, these are the things that you've
heard
21 now, the court also puts it into categories, really,
two
22 classifications: On the one hand, what may be called
23 aggravating factors or circumstances, things that
suggest that
24 the penalty for this defendant in this case that's
being heard
25 by the jury should be death; and at the same time the
court

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1 would outline those things sort of on the other side
that we
2 call mitigating circumstances or factors, things that
suggest
3 that while death is a possible punishment, these
factors
4 mitigate against it and suggest that the appropriate
penalty
5 for this person, considering not only the crime but the
person
6 as a unique and individual human being, is something
other than
7 death, life in prison with no release, perhaps.
Understand?
8 A. Yes, I do.
9 Q. And then what the jury has to do is, of course, 12
jurors
10 talk it over just as they would have talked over the
evidence
11 at the end of the guilt phase of the trial and then
make a
12 decision about whether this person should live or die.
Now,
13 that decision -- a court can give the jury some
questions to
14 ask themselves to sort of help analyze it; but there's
no
15 formula, there's no weighing here of two things on one

side and

16 three on another or anything like that. It comes down
to

17 making a judgment about another person about
considering the

18 crime. So it's both crime plus person, what is the
punishment.

19 And that's a very -- a decision that is very individual
as to

20 each person being judged. And in the end, it's also
individual

21 as to each juror because each juror must make a
decision after

22 full discussion with other jurors. You understand this
process

23 now?

24 A. Yes, I do.

25 Q. And of course what -- the jurors making that
decision have

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1 to be open-minded about making that decision and
consider both

2 possible punishments: life or death. Do you
understand?

3 A. Yes, I do.

4 Q. And then ultimately make a decision which I suppose
can

5 best be described as a reasoned, responsible, moral
decision

6 with respect to this person considering all of the
things that

7 have been presented. Now, the question is: Can you
make that

8 decision if called upon as a juror?

9 A. I don't think so.

10 Q. And why not?

11 A. 'Cause I still don't believe that death penalty is
right,

12 whether it's the law in this state. I mean I think
given the

13 choice of life or death, it's a big responsibility.

14 Q. So there's no doubt that it's a heavy
responsibility. But

15 the question is whether you -- you know, and please
understand,

16 there are people who can't follow the law in this
respect.

17 A. Yeah.

18 Q. And I'm just trying to find out whether that is
your

19 position, that with this clear explanation -- this is a
clear

20 explanation of the law, is it, I mean you have any
questions

21 about it?

22 A. Yes, I understand that.

23 Q. Then given that -- are you really telling us -- and
again,

24 we're not judging you --

25 A. Uh-huh.

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1 Q. Just give me the honest answer. Are you telling us
that
2 you simply could not follow the law in this punishment
3 decision?

4 A. I don't think I could.

5 THE COURT: Okay. Well, do we have any
questions from
6 the Government?

7 MR. RYAN: Just a couple, your Honor.

8 THE COURT: All right. Mr. Ryan.

9 VOIR DIRE EXAMINATION

10 BY MR. RYAN:

11 Q. Good morning. My name is Pat Ryan.

12 A. How are you doing, Pat?

13 Q. I'm the United States Attorney in Oklahoma City,
and I'm
14 here with other prosecutors to present the case against
Terry
15 Nichols. I just want to start off by telling you that
not only
16 is long hair not disqualifying, the lawyers here are
just
17 jealous that we don't have it.

18 I wanted to ask you a couple questions about

your

19 daughter and then about school. Then we'll talk about
the

20 death penalty.

21 A. Okay.

22 Q. Who takes care of your daughter when you're at
work?

23 A. My aunt does.

24 Q. Does she live there with you?

25 A. No.

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1 Q. You take her there in the morning?

2 A. In the morning I take her there, and I pick her up
in the

3 evening.

4 Q. You said in the questionnaire that you enjoy
spending time

5 with her?

6 A. Yes.

7 Q. What sort of things do you all enjoy to do?

8 A. She loves to go swimming. She loves to play house.
She

9 loves games, and she also just likes to sit and talk.
She's

10 very good talking. She can talk and talk.

11 Q. In your questionnaire, you were asked some

questions about

12 your education. I don't know if you remember that or
not. On

13 page 7. And one of the questions was, "Are you
attending

14 school now?" And you marked yes.

15 A. Uh-huh.

16 Q. Are you attending school?

17 A. Yes.

18 Q. Where do you attend school?

19 A. The IEC. It's a electrical trade school.

20 Q. And when do you attend?

21 A. Monday nights.

22 Q. It's a one night a week?

23 A. One night a week for four hours, 6 to 10.

24 Q. Now, you indicated in the questionnaire that your
father

25 was retired Navy?

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1 A. Yes. My biological father.

2 Q. Does he live here in Colorado?

3 A. Yes, he lives past Sterling in Paoli.

4 Q. What was his position, if you know, in the Navy?

5 A. I'm not sure exactly what his position was. He
served 25

6 years in the Navy.

7 Q. All right. Now, you indicated to -- you frankly
told his

8 Honor a number of problems you'd had are traffic, and
I'm not

9 going to go over that again.

10 A. Thanks.

11 Q. Has there been any other time that you've been
arrested or

12 had any difficulty with the law?

13 A. No.

14 Q. Other than traffic offense?

15 A. No.

16 Q. That's it?

17 A. That's it, traffic.

18 Q. Okay. Now, his Honor's already gone over the death
19 penalty, but I just have a couple of follow-up
questions on it.

20 You've made your position, I think, clear.

21 A. Uh-huh.

22 Q. The law never requires anybody to return a death
penalty.

23 I mean that's a moral decision that each juror must
make.

24 A. Uh-huh.

25 Q. The Court will give you instructions as has already
been

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the
would
sentence?

1 told to you. But if you were given the choice between
2 death penalty and a life sentence, do you think you
3 always choose the death penalty -- I mean the life

4 A. I believe so.

5 Q. No matter what the crime?

mean, I

6 A. Well, I mean if you put any personal things -- I

happened to my

7 guess you could go somewhere, like if something

but I

8 daughter, then the feelings would be a lot stronger;

9 would still go for the life in jail.

10 Q. Even if it involved your own daughter?

11 A. I think so.

felt it

12 Q. Okay. Do you believe -- you were talking about you

you

13 was God's job to deal out punishment of this sort. Do

14 think that's something that happens on earth?

15 A. No.

16 Q. Or do you think that God's punishment comes in an
17 afterlife?

-- the

18 A. I guess it would happen on earth, but it probably

19 majority of it comes after life.

20 Q. So, you know, there's several stages to being a
juror.

21 There's the listening to the evidence. You've
indicated that

22 you could do that?

23 A. Yeah.

24 Q. And you could consider the evidence and deliberate
with

25 your jurors.

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1 A. Uh-huh.

2 Q. But when it came right down to a decision of voting
for the

3 death penalty --

4 A. That's where I have a problem.

5 Q. -- you going to be able to do it or not?

6 A. I don't think so.

7 Q. I mean I don't want to beat this to death. If I
ask you in

8 different ways or different scenarios, the answer is
always

9 going to be the same?

10 A. Yeah.

11 MR. RYAN: Thank you, your Honor.

12 THE COURT: Mr. Woods.

13 MR. WOODS: Thank you, your Honor.

14 VOIR DIRE EXAMINATION

15 BY MR. WOODS:

16 Q. Good morning.

17 A. Good morning.

18 Q. As the Judge introduced me, my name is Ron Woods.
Along

19 with Mike Tigar, we were appointed by the United States
20 District Court over in Oklahoma City in May of '95
after the

21 Government here accused Mr. Nichols of being
responsible for

22 the bombing in Oklahoma. How do you feel about Mr.
Nichols

23 having two court-appointed lawyers to represent him?

24 A. How do I feel about appointed lawyers? Can you
reask the

25 question again one more time?

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1 Q. Right. He has two lawyers that represented him
here in

2 court, that have been appointed by the court. He
couldn't

3 afford to hire his own lawyers. How do you feel about
that?

4 A. I feel that's very fair. That's the way it should
be.

5 Q. Okay. When you saw Mr. Nichols out at the
fairgrounds,

6 what did you think when you saw him?

7 A. I don't have an opinion, I guess.

8 Q. Had you been reading just casually about the case
for the

9 last two-and-a-half years --

10 A. No.

11 Q. Seen a little bit on television or headlines in the
12 newspaper?

13 A. I remember seeing the actual -- the wreckage on TV,
and

14 that's the extent I followed it. You know, I heard the
verdict

15 on McVeigh, but I didn't follow any of that.

16 Q. What do you recall about Terry Nichols, if
anything, from

17 what you've seen or heard on television over the past
18 two-and-a-half years?

19 A. That he's a part of this case. I don't know.

20 Q. No -- any details that the press has related about
why the

21 Government thinks he's part of it?

22 A. Haven't heard anything about it.

23 Q. Okay.

24 A. I don't watch TV. I spend most of my time with my
25 daughter.

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1 Q. Right. And she's three.

2 A. Uh-huh.

3 Q. Was she born about the time -- well, this was
4 the two-and-a-half years ago. Was she born right before
5 bombing in April '95?

6 A. Her birthday is in January.

7 Q. '95.

8 A. Okay. '94.

9 Q. '94?

10 A. Yeah, she'll be four in January.

11 Q. So during that period you were a full-time father
12 and lay? taking care of her, and that was where your interests

13 A. Uh-huh.

14 Q. Okay. And you're working and going to school also;
15 is that correct?

16 A. Yes.

17 Q. When you -- we've already covered what you're
18 studying in your school, but you indicated that you intend to keep up
19 in schooling as time permits. Are you going to specialize

also? 20 electrician, or are you going to study other areas,

21 A. I'm going to keep in the electrical field --

22 Q. Okay.

any 23 A. -- for now until I see a change, but I don't see

24 change.

are a 25 Q. Now, you mentioned in your traffic tickets that you

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were 1 responsible person and that most of the traffic stops

2 legitimate and rightful; is that correct?

3 A. Uh-huh.

right. 4 Q. But you got one here that you don't think was

5 A. Uh-huh.

6 Q. And you're going to contest it?

7 A. Uh-huh.

if 8 Q. And you think that's your right as a citizen, that

and get 9 you're erroneously accused, that you can go to court

10 that straightened out?

11 A. Yes.

12 Q. Are you going to represent yourself in that?

13 A. Uh-huh.

14 Q. All right. When the robbery occurred at Texaco and
because
15 everything was down, the video was down, the alarm was
off, and
16 the spring thing under the cash register, did anybody
mention
17 any suspicion at all that maybe the robbery hadn't
occurred?

18 A. No.

19 Q. Okay. That never arose during that time?

20 A. No. I think the reason probably why that didn't
happen is
21 because of the red hooded sweat jacket had occurred in
other
22 places.

23 Q. All right. It was a pattern that somebody was
engaged in?

24 A. Uh-huh.

25 Q. Okay. As to the punishment, you understood the
explanation

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1 of the Court that we're not just skipping over guilt or
2 innocence and assuming that it's going to happen?

3 A. Uh-huh.

4 Q. You understand that Mr. Tigar and I don't agree
with the

for
5 Government's theory about Mr. Nichols being responsible
6 this, and we're going to challenge that?
7 A. Uh-huh.

then we
8 Q. But theoretically, if we get to a punishment stage,
9 need to talk to the jurors before we get there because
we can't
10 stop the trial and then bring the jurors out and ask
them what
11 they feel about the punishment ranges.
12 A. Uh-huh.

understood
13 Q. So that's the reason it's being done now. You
14 the Court's explanation?
15 A. Uh-huh.

penalty,
16 Q. And the Court explained to you that in the death
17 there are views of some people who say: If you kill
one
18 person, you ought to lose your life; and there are
those who,
19 on the other extreme, say: No matter how many people
are
20 killed, no matter how horrible the crime, I would never
vote
21 for the death penalty. The Court advised you of those
two
22 extreme views; is that correct?
23 A. Uh-huh.

24 Q. And he advised you that many people are in between?

25 A. Uh-huh.

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1 Q. You told the Court that you had considered your
obligation

2 as a citizen in the event that the draft had come up
during the

3 Gulf War and that you said that even though you didn't
like it,

4 you would have gone; is that correct?

5 A. Uh-huh.

6 Q. Okay.

7 A. 'Cause that would . . . I couldn't raise my
daughter in

8 jail for not going.

9 Q. And that was the only reason that you would have
fulfilled

10 that duty as a citizen?

11 A. Yeah. Well, no. If I didn't have a daughter, I'd
probably

12 still go.

13 Q. Well, that was my next question. How would you
have

14 handled -- why are you making this distinction, then,
there,

15 that you would serve in the Army to protect your
country as one

16 of your citizen duties?

17 A. I'd only do it if I was drafted, and I'd do it
'cause I

18 wouldn't have a choice, I guess. I mean I'd have a
choice, but

19 actually you don't.

20 Q. If the choice were if you could sign up as a
conscientious

21 objector and not have to serve at all or be drafted and
serve,

22 how would you have made that choice?

23 A. Ask the question one more time.

24 Q. Sure. If you were drafted but there was a choice
there

25 that you could sign up as a conscientious objector and
not

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1 serve, what would your choice be there?

2 A. I'd go as a conscientious.

3 Q. All right. And why would you do that?

4 A. So I wouldn't have to go on the line, I guess.

5 Q. And is that based on your belief that no one should
be

6 killed for any reason --

7 A. Yeah.

8 Q. -- the defense of country?

9 A. Yeah.

10 Q. Defense of your family?

11 A. Well, if I'm defending my family, that's -- I
wouldn't kill

12 a person, but it would be a lot more effort.

13 Q. Okay. So is it, then, your belief -- as the Court
phrased

14 it, the sanctity of life. You believe in that to the
extent

15 that you're just not going to take a life in any
circumstance,

16 regardless of how horrible --

17 A. Uh-huh.

18 Q. -- the circumstance becomes?

19 A. Yes.

20 Q. Okay.

21 MR. WOODS: Well, rather than me go through
the

22 routine on the jury service, I take it that you're
fairly

23 certain, and I'm not going to take the time, so I
appreciate

24 your answering these questions. Thank you.

25 JUROR: All right.

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1 THE COURT: We all appreciate your time in
answering

2 the questions and also the time in waiting to answer
that we've
3 taken with you here, but we're not deciding who serves
and who
4 doesn't serve as we go along. We'll be getting back to
you on
5 that, so wait to hear from us.

6 JUROR: Okay.

7 THE COURT: And in the meantime, continue to
follow
8 the caution that I gave you when we excused you before
from the
9 fairgrounds building out there to continue to avoid
discussion
10 of the case and be careful about the things that you
read,
11 hear, and see, to stay away from anything that could
influence
12 you as a juror. All right.

13 JUROR: Okay.

14 THE COURT: Thank you. You're excused for
now.
15 968.

16 Good morning. Would you raise your right hand
and
17 take the oath from the clerk, please.

18 (Juror No. 968 affirmed.)

19 THE COURTROOM DEPUTY: Thank you.

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

21 microphone.

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. And we know you waited all day yesterday to come
in, and we

25 apologize for keeping you waiting and taking an extra
day, but

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1 it's pretty hard to judge how long it will take with
each

2 person, and it varies a great deal, as I hope you
understand.

3 A. Okay.

4 Q. And you know that the case now on trial referred to
in the

5 oath is United States against Terry Lynn Nichols and
that you

6 got a summons back in July notifying you that your name
came up

7 through a chance selection process as a person who may
be asked

8 to serve in this case, and you responded to the summons
and

9 sent back a short questionnaire. You answered some
questions.

10 Then you got a notice to appear last September the 17th
at the

11 Jefferson County Fairgrounds' auditorium building, and
you did,

as well 12 along with a number of other people. And I was there
want to 13 and some of the people you see here now were there. I
and also 14 introduce them, reintroduce those you have met before
15 introduce two more so you know who's here with us.

for 16 Here at the front table, which is the table
Miss Beth 17 Government counsel, we have Mr. Lawrence Mackey and
County. 18 Wilkinson. Both of them were there in Jefferson

Orenstein, 19 They're joined now by Mr. Patrick Ryan and Mr. James
20 who were not there before.

course 21 But we did have with us Mr. Michael Tigar and
22 Mr. Ronald Woods, attorneys for Terry Nichols; and of
23 Mr. Nichols.

others, 24 And I gave you some explanations, you and the
pretty 25 about the background of the case and the like; and I'm

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briefly 1 sure you remember all that, but I want to go over it

2 with you again just to sort of lay the background for

the

do have 3 questions we're going to be asking of you now. And we
them on a 4 a few more questions, even though you answered 166 of
5 questionnaire. So bear with us a bit longer.

this 6 But you remember I explained, of course, that

Oklahoma, 7 case arises as a result of an event in Oklahoma City,

building was 8 on April the 19th of 1995, when a federal office

people 9 destroyed by an explosion that also killed and injured

in the 10 in it; that thereafter lawyers for the Government filed

form of an 11 U.S. District Court in Oklahoma City charges in the

Government 12 indictment, a statement of charges in which the

Terry Lynn 13 alleged that a man named Timothy James McVeigh and

persons 14 Nichols -- and then the indictment refers to "and other

to bomb 15 not named" -- formed a conspiracy or criminal agreement

people in 16 that building and to destroy it and kill and injure

17 it.

charges that 18 The indictment includes some 11 counts or

they 19 include this conspiracy charge and then charges that

destroy 20 carried out such a bombing and did indeed, as alleged,
counts 21 that building and kill and injure people in it; and the
the 22 include eight first-degree murder charges alleging that
engaged 23 defendants intentionally killed eight people who were
24 in law enforcement activities with various federal law
25 enforcement agencies.

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pleas 1 To these charges, the defendants entered their
The 2 of not guilty, thereby creating the issues to be tried.
of a 3 case then got moved here to Denver, Colorado, because
Oklahoma City 4 concern that it would be difficult for juniors in
order 5 to try this case, so it came here. I then entered an
upon a 6 that separated Mr. McVeigh and Mr. Nichols for trial
of them 7 finding that it would be fundamentally unfair to both
8 to be in trial at the same time before the same jury,
the 9 recognizing differences that may exist with respect to

10 evidence.
11 And so after ordering separate trials with
separate
12 juries, the case as to Mr. McVeigh did come to trial
here. A
13 jury was selected in this same sort of process, and
that jury
14 heard the evidence as it relates to Mr. McVeigh and
found that
15 evidence sufficient to find beyond a reasonable doubt
that he
16 was guilty and return a guilty verdict. Then that same
jury
17 was asked to consider punishment in its role -- and
we'll talk
18 about this later as to just what that role is -- but
the jury
19 heard a second trial, really, and on the issue of
punishment
20 and made a recommendation that Mr. McVeigh be sentenced
to
21 death.

22 Now, these things you already knew, I suppose,
before
23 I told them to you.

24 A. Right.

25 Q. And as I explained then and do reemphasize now,
anything

of the 1 that you may have seen, read, or heard about the trial
the 2 evidence as to Mr. McVeigh must be set aside and that
start 3 outcomes in that case have no bearing on this case. We
would be, 4 all over here with a clean slate, and to do otherwise
separated the 5 of course, a violation of the court order that
purpose of 6 two defendants for trial. It would defeat the whole
7 it. Understand?

8 A. Yes.

in a 9 Q. Okay. Now, then, I also reviewed what is involved
10 jury trial and certain fundamental principles of our
And I note 11 constitutional law and the criminal justice system.
12 that you served on a jury before?

13 A. Yes, sir.

too, that, 14 Q. And we'll turn to that. But I want you to know,
took the 15 you know, what we did, as I told you we would do, we
answers, made 16 answers, your completed questionnaire with your
would have 17 copies for the people that you see here so that they
them 18 this for what we're doing right now. We've not made

19 public and won't, and nobody's going to use this
information
20 for any purpose other than jury selection.
21 We're trying to balance out the public
interest in the
22 trial proceedings and your privacy interests that we
know are
23 of concern to you, and they are to us as well. So
that's why
24 we're not using your name here and we're trying to
avoid
25 questions that would clearly identify you, and that's
why we

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1 make all these special arrangements so that you can get
in and
2 out of the building without TV cameras and all of those
things
3 to show you being on this jury pool. Okay?
4 A. All right.
5 Q. Now, turning to -- you got the questionnaire in
front of
6 you there, I take it. So I want you to turn to page
26, which
7 is where you told us that you were on a jury in Aurora,
what,
8 about two years ago?
9 A. Yes, sir.

10 Q. And that involved, as you recall it, assault on a
police
11 officer 'cause, what, the officers came to a domestic
dispute?

12 A. Yes, sir.

13 Q. And then one or both of them turned on the
officers, I take

14 it?

15 A. One did.

16 Q. And so there was one defendant?

17 A. Yes, sir.

18 Q. And the jury reached a verdict. What was it?

19 A. It was guilty.

20 Q. And were you the -- yes, you were the foreman of
the jury,

21 the foreperson.

22 A. Yes.

23 Q. Selected by the other juries -- jurors. Do you
remember

24 how long the trial took?

25 A. Oh, it was just half a day. I'd say three hours at
the

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1 most.

2 Q. And including the selection of the jury?

3 A. I would say five hours total, from the selection

through.

4 Q. You went through something like this.

5 A. Right.

6 Q. Probably with the other jurors -- jury panel people
seated

7 in the box with you at the time, not one at a time?

8 A. Yes, sir.

9 Q. And then about how long did the jury take in
deciding the

10 case, as you remember it?

11 A. I would say about 40 minutes.

12 Q. Right after you got the --

13 A. Right.

14 Q. -- instruction?

15 A. It was fairly quick. I mean it was a quick trial.
It was

16 a quick process. You know, it was

17 Q. Essentially police officer testified to what
happened or

18 officers testified --

19 A. Right.

20 Q. And did the defendant, the person accused -- was it
a man

21 or woman?

22 A. It was a man.

23 Q. Did he testify?

24 A. Yes, sir. He also represented himself in the case,
so --

25 rather poorly.

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1 Q. Yeah, well, it's his constitutional right to do
that, if he

2 wanted to. And, what, did he take the stand and deny
that it

3 happened or try to explain it or what?

4 A. He tried to explain what happened. And there had
been

5 drinking involved and all, domestic dispute, you know,
police

6 showing up. It was kind of ugly.

7 Q. Okay. Well, some aspects of that, then, you would
8 recognize here. But I just want to review the
fundamental

9 principles, and you may remember some of these things
in the

10 court's instructions at the end of the trial.

11 But you know that under our constitution, no
matter

12 who you are, what you're charged with, in any court in
the

13 United States, you're presumed to be innocent of it;
and that

14 presumption of innocence carries throughout the trial
and

15 entitles you, the defendant, to an acquittal, a verdict
of not

we're 16 guilty, unless jurors -- and here in Federal Court
doubt 17 talking 12 jurors -- are convinced beyond a reasonable
every 18 from the evidence that it proves you to be guilty. So
call any 19 person, including Mr. Nichols here, starts with that
20 presumption of innocence and has no duty or burden to
21 witnesses or introduce any evidence.

defendant 22 And the reason I asked you about did the
any 23 testify, no defendant is required to testify, to answer
where the 24 questions or to offer any explanation. And in cases
instruct 25 defense -- defendant does not testify, we routinely

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can't 1 the jury: That's not anything you can consider. You
assumptions 2 even talk about it. Certainly you can't make any
something or, 3 or draw any inferences that he's trying to hide
trial and I 4 you know, think like, well, you know, if I were on
5 was innocent, I'd tell the jury. None of that can be
6 discussed, even; you understand?

7 A. Yes, sir.

8 Q. Okay. And so at the end of the trial, what happens
is the
9 court instructs the jury, as I'm sure happened in your
case,
10 gave instructions about that the -- these are the
things that
11 have to be proved, the elements of the crime, and then
the jury
12 has to evaluate the evidence and decide whether these
points
13 have been proved by that evidence and consider only the
14 evidence that's received at trial and then say, does
this prove
15 it beyond a reasonable doubt or to the contrary.

16 And in the end, what it means, of course, is
after
17 full consideration of the evidence, the jury has a
reasonable
18 doubt about whether that evidence proves the crime
charged, the
19 plain duty of the jury is to give the benefit of that
doubt to
20 the defendant and find him not guilty. You understand
those
21 points?

22 A. Yes, I do.

23 Q. Do you agree with them?

24 A. Yes, I do.

25 Q. And agree with them not only in principle, but
actually

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1 would follow those principles if you were to serve on
this case
2 and give Mr. Nichols the benefit of a reasonable doubt?
3 A. Yes, sir, I do.
4 Q. Okay. Now, I want to go over with you some of the
things
5 that you've told us in the questionnaire. Certainly
we're not
6 going to go through everything, but just I want you to
give us
7 a little more information about some of these things,
and then
8 I'll have another -- several other questions, also talk
with
9 you about this punishment matter; and then after I'm
completed
10 questioning you, a lawyer for each side will have a
chance to
11 ask you some more questions. So that's what we're
doing.
12 And I want you to understand in advance, this
is not a
13 test. There's no right or wrong answers to this. We
just want
14 you to tell us openly and candidly first of all some of
these
15 facts, as you have; and then when you're being asked
for your

16 attitudes or opinions about things, you know, you're
not being
17 judged. You're not on trial. And you just tell us
openly and
18 honestly your opinion. And you don't have to be, you
know,
19 concerned that anything you say here would be something
that
20 we'd react to. Okay? If you have criticisms about the
system,
21 you're free to express them. We're not going to take
offense
22 at it. Okay?
23 A. All right.
24 Q. Now, you were, as I understand it -- excuse me --
born in
25 Ohio?

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1 A. Yes, sir.
2 Q. In Cincinnati?
3 A. Yes, sir.
4 Q. And you got family still back there; is that right?
5 A. Yes, I do, sir.
6 Q. And then you came out here, what, when you were
about 22,
7 23 years old?

never 8 A. About 23, I guess. I came out on vacation, and I

9 went back.

brought you 10 Q. All right. Well, I was going to ask you what

family 11 to Colorado. You haven't persuaded any of the other

12 members to come, though?

their own 13 A. Well, I've asked them, invited them, but they got

14 lives and businesses and things like that, so

your 15 Q. Okay. And I take it you're still in touch with

16 brothers and sisters?

17 A. Constantly.

18 Q. Are your parents living?

19 A. My mother is still alive, yes.

20 Q. Is there some family business back there?

started 21 A. Yes. My brother has a laminating company that he

22 three years ago. He's doing pretty good.

23 Q. Is it like laminating cards and things?

nice 24 A. Laminating like menus. He has several different,

25 contracts, Krogers.

1 Q. It's paper lamination?

2 A. Right, paper lamination, posters, things like that.

3 Q. Now, are other family members in the business with
him?

4 A. All of them are.

5 Q. All of them?

6 A. Yeah.

7 Q. Okay. And as far as you know, it's doing -- it's
going

8 along okay?

9 A. Yeah, they're doing all right now. Finally got it
off the

10 ground.

11 Q. Do you have any financial interest in it at all?

12 A. I did at one point, but I can't see it happening
because

13 I've got -- I'm really busy here. I've got too much
going

14 here.

15 Q. And I see that you not only have children of your
own, but

16 you have foster children in the home.

17 A. Yes, sir. Three of them.

18 Q. Yeah. And I want to talk about that for a minute,
in a

19 minute; but I notice on page 3 -- and I want to be
cautious in

20 asking you this -- but we asked you at Question 11
about the

21 death of any youngsters, and you answered a yes there.

22 A. Uh-huh.
23 Q. What happened?
24 A. A little girl died of asthma attack, you know, and
she was
25 a really close friend of my kids at the time. And it
kind

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1 of -- you know, when you see them every day and then
one day
2 you don't see them, that kind of hurts. I really felt
for the
3 family because that was their youngest daughter.

4 Q. How old was she?

5 A. She was four, I believe, at the time.

6 Q. And this was a close friend?

7 A. Yeah. To my kids. Not to -- not to me and my wife
8 personally, you know, as far as --

9 Q. And it certainly had an impact, I take it, on your
10 children?

11 A. Oh, definitely.

12 Q. The ones that were close to --

13 A. Definitely.

14 Q. And it's one of those situations that you were
called upon

15 to try to help them through explanations of death --

16 A. Oh, definitely.

17 Q. -- and what it all means.

18 foster Now, how long have you and your wife taken in
19 children?

20 A. This will be our second year.

21 Q. And so are the -- and you have three now?

22 medically A. We have three foster children, yes. They're all
23 fragile.

24 Q. Now, does that mean things like having asthma?

25 A. Yes, sir. They're on oxygen, they have to have

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lot 1 medications. They're all in wheelchairs. So there's a
a 2 involved in taking care of these three children. It's
But 3 24-hour-a-day job, seven days a week. It does not end.
it. 4 it's pretty rewarding for my wife. She enjoys doing

in 5 Q. Do you take them in through the -- do you take them
this 6 through the county welfare or social services, or is
7 something you do through a church, or what?

state, I 8 A. This is through an agency who goes through the
9 believe. We have state social workers and therapists,
10 schoolteachers, doctors. I mean we deal with a lot of
people.

11 Q. Yeah.

12 A. We've opened the door to the state. I mean, the
state can
13 walk in anytime they like, which is, you know, the way
it ought
14 to be.

15 Q. Because they have to make sure those kids get taken
care
16 of.

17 A. Absolutely.

18 Q. And I take it you get paid for taking care of them.

19 A. Yes, sir. We get reimbursed, actually, what they
call it.

20 Q. But that isn't why you're doing it.

21 A. No. I tell you: It's like -- it's the family now.
Once
22 you take these kids in, they're yours. I mean, it's
kind of
23 special.

24 Q. Sure.

25 A. Because no one really wanted them to begin with.
And you

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1 can see through the public's eyes: I mean when you
take them
2 places, some people say you got a good heart and other
people
3 are so scared to death to even look at them.
It's . . . it
4 requires a special heart. My wife has that; there's no
doubt
5 in my mind.
6 Q. You seem to do it as well. You seem to work with
these
7 children, too.
8 A. Oh, yeah, I work with them.
9 Q. And then they -- your own children are all okay
10 health-wise?
11 A. Yes, sir.
12 Q. And are the foster children about the same age as
yours?
13 A. Yes, they are. Which kind of helps out.
14 Q. They work together?
15 A. Yeah. It's amazing how well my kids accepted these
other
16 children.
17 Q. Okay. Now, as I understand it, you're -- we're not
talking
18 about identifying particular employers, and so forth.
But you
19 have for years been a truck driver.
20 A. Yes, sir.

21 Q. And now do you work locally in a yard?
22 A. Yes, sir. I still work at the dock and in the yard
23 locally. I don't go out over the road, I never have.
24 Q. You're not. But you used to?
25 A. No. I went out on the road one time when I was on

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for
1 vacation; but I've been a local driver, dock worker,
2 seven-and-a-half years, locally here in town.
3 Q. So you move the trucks in the yard?
4 A. Right.
5 Q. Positioning them for loading and unloading?
6 A. Right.
7 Q. And then do you also do the loading and unloading?
8 A. Sometimes. If that's what they need me to do.
9 Q. Are you union?
10 A. Yes, sir.
11 Q. And your pay, and so forth: Is it protected by
your union
12 agreement if you serve on the jury?
13 A. For the first three days, it will be; and after
that, no.
14 I mean then -- according to the contract, you get paid
for the

the 15 first three days; and after that, you receive whatever
is. 16 court system gives you, so it's not a -- that's what it

17 Q. Have you talked --

18 A. As far as I understand it, that's the way it's
going to be.

19 Q. Well, you know, there's a variation here among
contracts --

20 A. Right.

21 Q. -- and employers. Did you talk with anyone where
you work,
22 any supervisor, about the company's position on the
matter?

23 A. I asked --

24 Q. I mean, here we're all -- we're talking about a
trial

25 that's going to take more than three days.

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1 A. Right. I understand that. I know that. I did
talk to one

2 guy, and I think he pretty much told me it was going to
be

3 three days. You know, so I -- and this -- today is my
third

4 day. When you go back -- I don't know how that works,
because

5 from the time we started this, that first day out there
at

6 Jeffco, we got that one and then yesterday and today.
So that

7 would be my third day, as far as I know.

8 Now, whether or not if -- let's say the court
case, if

9 I was selected, would take another month to get going
or

10 whatever, they would do that again, you know, three
days, I

11 have no idea how that's going to work. I have to talk
to the

12 union on that.

13 Q. So as you sit here now, you're assuming that you
don't --

14 you're not going to get paid anything but your jury
fee?

15 A. That's what I'm believing, yes.

16 Q. What will that do to you and the family?

17 A. Well, we make a pretty decent amount of money
through the

18 foster. So actually, I don't think it will cripple me.
We've

19 got money tucked away from where my wife worked through
another

20 company, her retirement. They went ahead and gave her
that.

21 It won't cripple me totally.

22 Q. You talked to your wife about it?

23 A. Oh, yes.

24 Q. And what I hear from you is you're willing to
absorb the

25 financial impact of it if you're called to serve. Is
that what

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1 you're telling us?

2 A. Yes, sir.

3 Q. Now, when you talked to your supervisor, whoever,
where you

4 worked, did you identify the case? I mean, did you
talk about

5 this being the Terry Nichols case?

6 A. Well, I had to show them the actual letter --

7 Q. Sure.

8 A. -- for when we first started.

9 Q. Okay.

10 A. So they got a copy of that on the file.

11 Q. Listen: There's nothing wrong with your telling
them that

12 this is the case. We would expect you to do that.

13 A. Right, I know.

14 Q. But did you get some reaction from that person
about seeing

15 what case it was, share any opinions with you about it
or

16 suggest to you how you might answer questions to get
off of the

17 jury or anything like that?

18 A. No. It was kind of more like being a celebrity:
Hey, wow,
19 you're going to get a shot at a really, you know -- a
national
20 thing. They thought it was pretty neat, you know. And
I --
21 you get some reaction: Well, you don't want to be on
that
22 case; it will last forever. Well, that's not -- that's
not
23 what it's all about, you know.
24 Q. There was a time here, way back, I guess, 20 years
ago --
25 I'm looking at page 24, if you'll turn to that. I
think you

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1 know what I'm about to ask you about -- at Question
108. There
2 was an incident there that involved the police. Right?
3 A. Yes, sir.
4 Q. And was that -- let's see. Was that here in
Denver?
5 A. No, sir. That was in Cincinnati, Ohio.
6 Q. In Cincinnati. Did you have brothers or anybody
with you?
7 A. No, sir. I was by myself at the time.
8 Q. Okay. And was it out at a public place?

9 A. Yes, sir. Actually, I was in a hallway waiting on
someone
10 to open a door to the apartment; and we lived -- shared
an
11 apartment with this girl, and we lived upstairs from a
bar --
12 all right -- and around back is a set of steps. Since
I got
13 locked out, I just kind of laid down on the steps, and
a police
14 car pulled into the alley right there by the steps.
And they
15 asked me what I was doing; and I said, Well, I'm
waiting for my
16 girlfriend to come unlock the door so I can go. And
then words
17 got exchanged; and the next thing I know, somebody
grabbed me
18 and I -- well, being young and dumb, I -- we went for
it.

19 Q. Okay. With the police.

20 A. Oh, yes, sir.

21 Q. Yeah. All right. Now, did that end up going to
court?

22 A. Yes, it did.

23 Q. And you mentioned "charges, released"?

24 A. Yes, sir.

25 Q. What happened?

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1 A. Nothing. I mean, they released me into the custody
of my
2 brother, and they just wanted it to go away. And
evidently,
3 the town made a hero out of me, because I evidently
kind of hit
4 the right guy, you know. So I don't know. It was just
a weird
5 situation. I hope that never happens again.

6 Q. Okay. Well, you, then, didn't actually have a
trial, as I
7 hear what you're saying.

8 A. No, sir. It was kind of like a hearing kind of
thing.

9 Granted, there was a judge. The judge was there. I
mean he
10 was the -- not only the judge but the mayor. It was
quick. It
11 was so fast, in and out, boom, done.

12 Q. Did you have a lawyer?

13 A. No.

14 Q. Anyway, they said you can go, and you went?

15 A. Right. They talked to me before we even did it;
and they
16 said, We're going to turn you over to your brother,
release you
17 through him, and it's over. No probation, no jail
time.

18 Nothing. It was kind of really a strange situation, I
tell

19 you.

Question 20 Q. Okay. That then there was -- let me -- page 23,

confused 21 104. I'm not sure what you're saying there. I'm

ago are 22 about this and your brother. First of all, how long

23 you talking about here?

was in 24 A. Yes. My brother was arrested. He was with -- he

the guy 25 the military, and he was with a guy. And evidently,

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1 had a gun with him; and he decided he wanted to take
\$11 out of

2 a 7-Eleven. So my brother was driving the car, and
they got

3 caught on the highway; and my brother ended up doing a
year in

4 jail, and I don't even know whether he was part of
that. I

5 have no idea -- I don't believe it was my brother's
idea to go

6 into a 7-Eleven with a gun and take 11 bucks out of the
cash

7 register, because my brother did not leave that car.
And I

8 don't know what really went on because I wasn't there.

9 Q. How long ago was that?

10 A. I don't remember. It had to be --

11 Q. Well, he was in the service, you said?

12 A. 20 years ago?

13 Q. Was that --

14 A. He was in active military. He was in the Air Force
at the

15 time. And he was just in the wrong place at the wrong
time

16 with the wrong guy.

17 Q. Where was that?

18 A. It was in Cincinnati, Ohio.

19 Q. Okay. Now, then, you've got -- is there a second
part to

20 this answer, then, that deals with you?

21 A. Oh, when I was a kid, I guess I, you know -- I got
caught

22 being with a couple of guys for -- they decided they
wanted to

23 vandalize this guy's garden; and I just happened to be
with

24 them guys that night and, you know --

25 Q. Tore up a garden?

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And I 1 A. Yeah. That's what they decided they wanted to do.

2 really didn't want to be part of that, let me tell you.

I

3 tried everything I could do to talk them out of. I
even walked

4 out in the middle of the street. I said, "What are you
guys

5 doing? This is your neighbor, you're doing this."
That's just

6 cold-blooded. I didn't like that at all.

7 Q. Did they take you all in?

8 A. Oh, yeah.

9 Q. You too?

10 A. I was there, too. I spent the night over in their
like 14 backyard. We were supposed to be sleeping out. I was

12 years old, something like that.

13 Q. Okay. One more thing I wanted to ask you a little
bit more

14 about, and I want to be cautious about it. On page 5,
at

15 question 20.

16 A. Okay.

17 Q. Top, there, of the page.

18 A. Okay.

19 Q. How long ago was that?

20 A. Eight years ago. Eight-and-a-half years ago.

21 Q. Were you having a problem at that time?

22 A. Well, I was a cement finisher at the time; and it
just

23 seemed like all you would do is pour concrete and go to

a bar

24 and have a few drinks. And then one day, I decided I
was going
25 to try to get rid of that problem of drinking, and so I
started

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1 going to AA meetings; and that's the way I -- you know,
it's
2 psychological therapy. Well, actually, I volunteered
myself
3 into a rehabilitation program, and I didn't have any
DUIs or
4 any court problems or anything like that. It was just
time to
5 quit drinking, and you can't quit drinking by yourself.
6 There's no way.

7 And then the insurance covered the therapy
part, so I
8 thought, Hey, you know -- my wife and I talked about it
because
9 it was going to be a problem at home if I didn't do
something
10 about it; so I did something about it. It was the
hardest
11 thing I ever did in my life. Now I wish I could quit
smoking.

12 Whew.

13 Q. So, did it work for you?

years. 14 A. Yes. I haven't had a drink in eight-and-a-half

asking 15 Q. Okay. Well, you know, you have to excuse us for

16 some of these things.

17 A. That's fine.

18 Q. But we need to know some things about you.

19 A. Fine.

20 Q. Appreciate your being forthcoming in these answers.

talk to 21 Now, one of the other things that I wanted to

role of a 22 you about was this matter of juries -- the possible

23 jury in sentencing. And we asked you questions in this

opinions, 24 questionnaire on pages 28 and 29 about your views,

put a 25 attitudes, about two types of punishment, one being to

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in 1 person in prison for the rest of his natural life, life

being the 2 prison without any possibility of release; the other

3 death sentence.

4 A. Yes, sir.

that 5 Q. And the reason that we asked you these questions is

innocent, 6 even though we are here and presume Mr. Nichols to be
of the 7 just as any other defendant in any other case, because
federal 8 nature of the crimes charged and the potential under
there is 9 law for the jury to have a role in the sentencing, if
time, 10 a guilty verdict, we need to talk about it ahead of
11 'cause we can't do it at any later time. So as this
12 questionnaire explained to you -- I hope you understood
--
outcome 13 asking these things does not suggest anything about the
14 of the trial.

the law 15 And also, we did not tell you anything about
based on. 16 and how the decision is actually made and what it's
17 We just wanted to know some views of yours without any
you 18 connection to the case. And you understood that when
19 answered these questions, did you?

20 A. Yeah. Yes, sir.

21 Q. Now, I want you to turn to page 28.

read them 22 And we've read your answers. I want you to
23 to refresh yourself about them.

wrong here. 24 And, you know, again, there's no right or

we all 25 We just wanted to know what you had in mind. And what

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is that 1 recognize here is -- and I'm sure you recognize it --

imposed 2 the question of whether there should be a death penalty

had 3 by any court for any crime is a matter on which we've

who 4 disagreement among the public and disagreement in those

forth. And 5 represent the public in state legislatures, and so

states. 6 the law has changed from time to time in some of the

7 You understand that.

8 A. Yes, sir.

there is no 9 Q. And there are states in the United States where

10 such punishment --

11 A. Right.

times when 12 Q. -- provided by law. And, of course, there are

as it 13 this issue becomes intensely a matter of public debate,

a man 14 was in Colorado last week and just before that because

-- from 15 was executed on a death sentence -- it was carried out

16 the state court. You're aware of all that?

17 A. Yes, sir. I heard about it.

18 Q. And there are those who believe very sincerely that
there
just
people
it for
21 believe that for religious reasons; some people believe
22 other reasons.

23 And then there are those who have a view that
death
you kill
24 should be an automatic punishment for any killing. If
25 somebody, you get killed, that kind of a view. And
there's a

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1 lot in between.

2 So we just want to explore this with you on
that
3 without -- before you hear from me about what the law
actually
4 is. Okay?

5 A. Okay.

6 Q. Now, is this matter of the -- whether there ought
to be a

7 death penalty under the law something that you've
thought much

8 about in your life before you were given these
questions to

9 answer?

10 A. Yeah, I've heard -- I've talked about death penalty
for

11 years with friends --

12 Q. Sure.

13 A. -- you know, try to end crime. You know, ruthless
killing,

14 I mean, how do you end it. You have to take care of
the

15 problem.

16 Q. Okay.

17 A. That's what I believe. Cold-blooded murder
deserves death

18 penalty. That's the way I believe.

19 Q. And you believed that way, apparently, all along?
I mean

20 you haven't changed --

21 A. Oh, yes. Oh, no, I haven't changed. I haven't
deviated

22 from that at all. A ruthless killer deserves to be
killed, in

23 my mind.

24 Q. And your answers that you gave us here would be the
same

25 today if I asked you the same questions; is that --

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1 A. Yes, sir.

2 Q. -- true?

3 Now, I want to talk about what would be
involved in a

4 case in Federal Court -- and now we're not talking
about any of

5 these differences under the state law. We're under
federal

6 law. And under federal law, for certain types of
crimes -- and

7 we can just talk about it as the intentional killing of
other

8 human beings, murders --

9 A. Right.

10 Q. -- the law provides for three possible sentences.
One

11 is -- for any person convicted of such a crime in
Federal

12 Court. One is that person goes to prison for the rest
of his

13 natural life, dies in prison. Another is that he be
put to

14 death -- you know, the death sentence. And a third is
that

15 it's something less than that, and a sentence decision
in those

16 terms is made by a judge. But the life-or-death type
of

17 decision in federal law is made by a jury.

18 Now, the process, though, is about the same as
the
19 judges follow when they make sentences for lesser
matters like
20 burglaries and, you know -- well, like the case that
you had
21 there with the fight with the -- domestic dispute and
the fight
22 with the police, where you sat as a juror. Now, you
returned a
23 guilty verdict there.
24 A. Yes, sir.
25 Q. And then it was up to the judge to decide what to
do about

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1 it.
2 A. Yes.
3 Q. Do you know what was done in that case?
4 A. They had several options that the judge and the
defendant
5 talked about. And after -- that was between the judge
and the
6 defendant after we left.
7 Q. Yes.
8 A. So, I mean, we didn't have anything to do with it.
9 Q. That is the way it goes, you see; the jury doesn't
play any

10 role in that.

11 A. Right.

12 Q. Judges make those sentence decisions; and in
Federal Court,

13 what happens in case like that is there's a hearing at
a later

14 time, and the judge gets a lot of information for that
hearing

15 about the crime itself, what consequences there may
have been,

16 victims, and so forth. But the judge also gets a lot
of

17 information about the defendant as a person. And that
includes

18 really the whole life story of that person: the family

19 background, where he was born and raised, what went on
in the

20 family, what happened after that, education, jobs he's
had,

21 military service, any illnesses, whether he's been in
trouble

22 with the law in other respects, whether he's done good
things.

23 And in cases where there's more than one
person

24 involved in the same crime, it also includes, well,
what role

25 did this person play and what role did that person
play, if

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1 there's a difference.
2 And then there's a hearing at which the judge
hears
3 from defense counsel and the prosecution and then makes
a
4 decision that is specific to the person being
sentenced. So
5 it's not in any way an automatic sentence: This is the
crime,
6 this is the sentence. It is the crime plus, then,
7 consideration of all of the these things about the
individual
8 who has been found guilty. And as I say, if you have a
crime
9 where more than one person was involved, the sentences
may well
10 be different, because it depends so much on the
individual
11 factors.
12 Now, when a -- under federal law, when a jury
finds a
13 defendant guilty of the intentional killing of others,
just
14 like judges making sentences, the jury has to hear a
lot more
15 than just what they heard at the trial from which they
found
16 the defendant guilty. And so there is a second trial
or a
17 penalty phase hearing. And it is at that time that the
jury --

called, 18 and it proceeds just like the trial: Witnesses are
19 exhibits are offered, and so forth.
20 And the prosecution can be expected under
those 21 circumstances to offer information that suggests that
death is 22 what is the appropriate punishment for the crime. And
that 23 would be further information about the crime and the
effect on 24 the community and all of those things. And at the same
trial 25 or hearing, the defense can be expected to offer all of
this

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1 information about the defendant and who he is, what's
been done 2 to him in life, what he's done to others, good and bad,
because 3 what the law recognizes is that we're all different;
and in 4 large part, we're all different, unique human beings,
as a 5 result of what's happened to us in life and what our
life's 6 experience has been.

7 You accept that as a true point; that each one
of us

8 is different in large part because of our life's
experience?

9 A. Oh, yes, sir, I do.

10 Q. Okay. And then, of course, there can be
differences, too,

11 according to whether there's more persons involved than
just

12 this one person, with how the crime happened and what

13 person did in connection with it. You understand that?

14 A. Yes, sir, I do.

15 Q. And then what happens at the end of all of that
hearing

16 and -- you know, that can be as long as the trial
sometimes.

17 It all depends. But a full hearing is held. And then
the

18 court sums it up for the jury, really, in instructions
there

19 that are a little different from the instructions about
the

20 evidence of the crime. Here the instructions of the
court

21 would sum up the information and say: Now, this really
falls

22 into two categories, classifying certain information as
23 aggravating factors or circumstances. And by
aggravating, as

24 the word implies -- it suggests that the extreme
punishment of

25 death is appropriate -- and then also summarize the
things that

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1 are on the other side, mitigating circumstances, things
that
2 the jury should consider because they suggest that
despite the
3 crime, the -- this individual does not deserve to be
put to
4 death for this crime, although that's a -- you know,
death is a
5 choice for the jury to make. But these mitigating
6 circumstances are things that could well result in the
decision
7 that death is not the just punishment for this
particular
8 person. Do you understand that?
9 A. Yes, sir, I do.
10 Q. So after doing this summarizing of what's been
presented,
11 the court then would give the jury some suggestions,
some
12 questions about things they can ask themselves in
analyzing
13 this. But they don't amount to any kind of a formula.
You
14 can't say, Well, two points here and four points there,
and the
15 difference -- you know, it's not that kind of a
judgment that

16 can be made, because what it really is is a judgment
that the
17 jury has to make exercising their own views and the
conscience
18 of the community and making what we call a rational,
reasoned,
19 moral judgment as to whether another person should live
or die.
20 You understand?
21 A. Yes, sir, I do.
22 Q. And the jury, of course, talks about it, just as
they would
23 talk about the evidence at the case and determine
whether it's
24 been proven, you know. But now, of course, that's all
in the
25 past; it's a question of what the sentence should be.
And

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1 although the jurors talk about it and share their views
and
2 express their opinions and all of that, in the end,
each person
3 on the jury has to make this decision: Should the
defendant
4 live, or die?
5 And the question that you must answer for us
is: If
6 you were in that position and had to judge whether

another

7 human being lives or dies, would you make that decision
on the

8 basis not only of the crime and the circumstances of
the crime

9 but also all of the things that you've heard about the
10 defendant and his individual characteristics?

11 A. Yes, I would.

12 THE COURT: All right. We have the
opportunity for

13 lawyers to ask you some questions here, too; but I'd
like to

14 take a break before we do that. We've been at this a
while,

15 and you'd like to get on with it; but bear with us yet
a little

16 while longer, will you?

17 JUROR: I will.

18 THE COURT: Okay. If you'll step out now,
we'll have

19 you back in about 20 minutes.

20 (Juror out at 10:44 a.m.)

21 THE COURT: Okay. 11:05.

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

23 (Reconvened at 11:04 a.m.)

24 THE COURT: Be seated, please.

25 All right. If you'll resume your seat, we
have

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1 questions from counsel for the Government.

2 Mr. Ryan?

3 MR. RYAN: Thank you, your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. RYAN:

6 Q. Good morning.

7 A. Good morning.

8 Q. My name is Pat Ryan. I'm the United States
Attorney in

9 Oklahoma City, and I'm here with my fellow prosecutors
to

10 present the case against Terry Nichols.

11 I have a few questions for you. I noticed in
your

12 questionnaire that one of your hobbies was dog racing.

13 A. Yes.

14 Q. Do you own dogs?

15 A. No.

16 Q. You just attend dog racing?

17 A. Occasionally, yes.

18 Q. Is that something they do here in Colorado?

19 A. Yes.

20 Q. Pari-mutuel betting?

21 A. Uh-huh.

22 Q. You indicated in the questionnaire you had five
children,
23 all girls. Did I read that correctly?
24 A. Yes, sir. An army of women.
25 Q. And so you have these five girls. And then you
have these

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1 three foster children that you and your wife care for?
2 A. Right.
3 Q. Are they girls as well?
4 A. Yes, sir.
5 Q. All of them?
6 A. All of them.
7 Q. So it's you, eight girls and your wife in the
house?
8 A. No. Me, five girls with my wife, you know, so it's
-- it's
9 a women's world, let me tell you.
10 Q. I'd like to ask you just a couple more questions
about
11 these children. You indicated that they were in
wheelchairs,
12 appear to be severely disabled --
13 A. Uh-huh.
14 Q. -- from what you told his Honor. But it was
unclear to me

15 how they came to be foster children.
16 A. Well, they -- two of them were taken out of a house
that I
17 would say within a matter of days they would have been
dead.
18 And I really didn't believe when we first got the two
that one
19 of them was going to live within the next 48 hours.
But it's
20 amazing that we've totally changed their lives. I
mean,
21 they're healthy; and one of them is in school now,
where she
22 never would have been in her whole life if they
wouldn't have
23 pulled her out of that house.
24 We've got their doctors' upgrade. Four years
went
25 by -- no doctor visits anything like that, no medical.
I mean

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1 it's amazing the turnaround in these kids' lives from
where
2 they were to where they are now. I mean, it was like a
miracle
3 for the kids. And it's just something that only the
doctors
4 and the social workers and the people that are all
involved in

5 this can really see what, you know -- the drastic
change. I

6 mean, it's amazing.

7 Q. If you would, turn to Question 110 in the
questionnaire.

8 That is on page 24, the bottom of page 24.

9 A. Okay. All right.

10 Q. Can you tell me what you have reference to there?

11 A. At the bottom? Oh, let's see. Which one?

12 Yes, I worked with a guy who -- I would say he
was a

13 three-time loser. He was a cement-finisher friend of
mine, and

14 he told me about his past and how he was in and out of
trouble

15 all the time; and he got in a fight with a guy and hit
him in

16 the head with a hammer. And the guy that he hit was a
huge

17 man. I mean, I didn't -- I wasn't there, but he's in
Caşon

18 City now. I don't know a whole lot about the case. I
didn't

19 follow it; and I don't really care to be part of his
life,

20 because people like him, when you're on certain jobs in
construction, they all seem to cling to me for some

21 reason, I

22 guess through what kind of life I had, because I had
stability,

23 where they didn't, you know, so -- I could say he was a
friend.

and I 24 Sure, he helped me with a few jobs and things like that
25 did work with him; but that's about the extent of that.

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1 Q. And you're not on trial here --

2 A. I know that.

3 Q. -- for your friends --

4 A. You just know somebody.

5 Q. I'm trying to get information about the
questionnaire. Do

6 you know what his sentence was?

7 A. I don't think they're going to parole the guy. I
don't

8 know exactly what it is. Three-time loser, I guess
you're

9 done. I don't know if it's a life sentence or -- I
don't know.

10 I don't have any contact with the guy whatsoever.

11 Q. I understand. Did the victim die?

12 A. As far as I know, no, he did not.

13 Q. Okay. And then on page 111 -- excuse me --
Question 111 on

14 the next page, would you reread that question.

15 A. What page?

16 Q. The very next page.

17 A. Oh.

18 Q. Page 25, next question, 111. Would you reread that
19 question to yourself and tell me if you gave the answer
you
20 intended.

21 A. I guess I should have marked yes on that one
instead of no.

22 Q. All right. That's what it seemed after your
answers.

23 A. You know, when you're filling out these
questionnaires, you

24 know, 100 miles an hour, that's basically what I was
going. I

25 did not answer that correctly.

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1 Q. We understand there is a lot of questions, and we
2 appreciate that.

3 Now, if you turn to Question 136. Do you have
that,

4 on page 31?

5 A. Yeah, here we go.

6 Yes.

7 Q. Do you use this weapon?

8 A. No. It was given to me as a gift. It was a black-
powder

9 rifle that my father-in-law bought for me because he
took up

died four 10 the hobby. I went shooting with him one time, and he

11 days later. It's still sitting in the closet.

12 Q. How long ago was this?

13 A. Two-and-a-half years.

14 Q. Now, if I could, let me turn to the issue of
punishment.

15 As his Honor told you, there is a presumption of
innocence, so

16 these questions are only asked of you in the event,
17 possibility, that the jury returns a verdict of guilty
on the

18 charges. Then we'd reach this penalty stage or trial
that his

19 Honor spoke to you about. Are you with me?

20 A. Yes, sir.

21 Q. Now, would you regard the decision to take a human
life as

22 a serious decision?

23 A. Oh, yes, I would.

24 Q. Can you think of any decision or many decisions
more

25 serious that would deserve more careful thought than
that

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1 decision?

2 A. Not offhand.

3 Q. The law states that for jurors to properly serve,
they must

4 consider certain things. And you've heard about
mitigating

5 circumstances, all about the life of the defendant.
And you've

6 told his Honor that you'd consider that; is that right?

7 A. Yes, sir.

8 Q. The law also talks about considering the role of
the

9 offender in the offense. Did you appreciate that?

10 A. Yes, I did.

11 Q. Now, you told us about an incident, as I recall, in
which

12 your brother was in the car and somebody else went into
a

13 7-Eleven and robbed the store with a weapon. Is that
true?

14 A. That is true.

15 Q. So you can see how a role plays a huge difference,
perhaps,

16 on what the penalty should be.

17 A. Yes, sir.

18 Q. And do you think that the role of a person in a
crime is

19 something that should be and would be considered by you
in

20 deciding what the appropriate penalty would be --

21 A. Oh, yes.

22 Q. -- in a case involving murder?

23 A. Yes, I do.

24 Q. Now, if you could, if you would turn to page 28, I
wanted

25 to review your answers with you. This is the portion
of the

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1 questionnaire dealing with your views on life
imprisonment and

2 the death penalty.

3 On subparagraph A, you've kind of got a couple
of

4 marking-outs, and it's a little hard to tell what
you've said.

5 You say there towards the end, "Very good deterrent" --
is the

6 word "for"? -- "for not committing a very serious
crime"?

7 A. Right.

8 Q. In other words, give life imprisonment to keep
people from

9 committing serious crimes?

10 A. I agree with that, yes.

11 Q. Is that what you're saying?

12 A. I mean, there has to be a deterrent for murder, you
know.

13 Q. All right. And then under subparagraph C and
subparagraph

would 14 D, you put, you know, if you were making the law, you
would also 15 have life imprisonment for some -- or murder and you
16 have death for murder.
17 A. Uh-huh.
18 Q. In your mind, does it depend on the circumstances?
19 A. Yes, it does.
-- Now I 20 Q. Now, earlier you told his Honor that if there was
okay? -- 21 want to get away from how you would write the law --
instructions. 22 to your job as a juror following the Court's
You
committed 23 told his Honor that if somebody was committed -- had
death 24 a cold-blooded or ruthless murder, they should get the
25 penalty. That's your personal view?

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1 A. Yes, it is my personal view.
2 Q. Now, the question is that's not the law. The law
is that
and have 3 you must as a juror be willing to listen to, consider,
No 4 an open mind on what the sentence in a case should be.

5 matter how horrible the crime, no matter how many
people died,
6 you have to listen to the mitigation evidence, the
aggravation
7 evidence, the role of the offender and all the things
his Honor
8 talked to you about. Some people can do that; some
people
9 can't. Are you going to be able to have an open mind
on either
10 life or death in a penalty phase of a trial involving
murder?

11 A. I believe so, yes.

12 Q. Cold-blooded murder?

13 A. Yes, sir.

14 Q. Ruthless murder?

15 A. Yes, sir.

16 MR. RYAN: Thank you, your Honor.

17 THE COURT: Mr. Tigar?

18 VOIR DIRE EXAMINATION

19 BY MR. TIGAR:

20 Q. Good morning again.

21 A. Good morning.

22 Q. My name is Michael Tigar. And Ron Woods here and I
were
23 appointed by the United States District Court, the
judge in
24 Oklahoma City, in May of 1995, to help out Terry
Nichols. Now,
25 do we start out with a disadvantage with you that Mr.

Nichols

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1 couldn't afford to retain counsel and the court
appointed a

2 lawyer for him?

3 A. I don't think so.

4 Q. Okay. I want to ask you about some of the things
that you

5 had on the questionnaire. Could you look at page 5 of
your

6 questionnaire. I don't want to dwell on that. At
Question 20

7 that the Court asked you about, do you still go to
meetings?

8 A. Occasionally. I have to refresh my -- my mind
about what

9 it's like, because you don't ever recover from being an
10 alcoholic. And to listen to the stories of the so-
called

11 newcomers into it kind of refreshes me that I don't
want to be

12 part of that.

13 Q. Right. I understand. It's the story?

14 A. Occasionally -- I do drop in occasionally. That's
kind of

15 a little bit of therapy for me.

16 Q. And you listen to the newcomers?

17 A. Oh, yes.

18 Q. People getting their desire chip?

19 A. Sure.

20 Q. You had mentioned that now you've got these five --
five

21 kids. Right? That's two of your own and the three
foster

22 children?

23 A. Yes, sir.

24 Q. Have you followed at all the bombing in Oklahoma
City back

25 in April, '95?

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I'm 1 A. Not really. I haven't had much time for anything.

calls 2 lucky I could handicap a dog race in between telephone

3 and going to -- covering for my wife or going to the
4 hospitals --

5 Q. Sure.

6 A. I mean it's a pretty hectic life that I have; but,
you

7 know, we do have volunteers and we have people that
help cover.

8 But as far as TV, I don't think I've got to sit and
watch more

9 than a couple hours in any one weekend. I do like to

watch the

10 History Channel, but I don't get a chance to do that
very

11 often, either.

and

12 As far as news goes, you catch a headline here
13 there as you walk by a television set.

McVeigh

14 Yeah, I did hear about the verdict on the

-- I

15 case, and that's about all, you know. I don't really
16 don't have time.

killed

17 Q. Do you remember hearing about how many people were
18 in the explosion?

19 A. Grand total, no, sir. I don't remember at all.

20 Q. Do you remember if any children were killed?

21 A. Yes, I do.

in a

22 Q. And do you know why there would have been children
23 federal building?

area or

24 A. The way I understand, I guess it was a day-care
25 something like that. That's all I remember.

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rescue

1 Q. Did you see the pictures of the children and the

this 2 workers and the -- what happened in the aftermath of

3 bombing?

4 A. No, I did not.

lot of 5 Q. At the trial of this case, there is going to be a

there 6 pictures of injured children and the rescue efforts and

evidence will 7 will be people that lost family, and some of that

sadness. 8 be pretty strong. There will be anger. There will be

9 How do you think you'll react to that?

because 10 A. I don't know. I -- I don't think I'll be shocked

11 that's probably what, you know -- an explosion of that
12 magnitude is going to be dead bodies. To lose children
is, you

13 know -- that's a heartbreaker. There is no doubt in my
mind.

14 I guess because they -- I don't know any of
them, you

15 know; but I know what it would be like, I guess, to
lose your

16 loved one. I mean, I've been to funerals before, and
it tears

17 people up. I understand that. You know, I've lost a
lot of

18 relatives over the years and from when I was a little
kid. I

19 don't think it will bother me too much. I mean, I'm a
pretty

20 stable person. I've kind of got a -- found a happy
medium.

21 Q. I understand there are -- no one in this case
doubts what

22 happened in Oklahoma City. That's not disputed. The
question

23 for the jury in addition to seeing that evidence will
be to

24 focus on did the Government prove beyond a reasonable
doubt

25 that Terry Nichols had something to do with it. And as
you sit

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1 there today, are you prepared to say he starts with a
clean

2 slate?

3 A. Yes, sir, I am. Because you are innocent until
you're

4 proven guilty.

5 Q. All right. And if the Government -- here's what
happens.

6 The Government has a theory. Right -- They make these
charges.

7 Right from the start, we cross-examine every witness --
Ron

8 Woods and I do -- that they bring up. We start
presenting some

9 evidence of our own maybe during that time; but then
when the

it; but 10 Government finishes, we don't have the obligation to do

theory. 11 we will bring witnesses to contradict the Government's

jurors 12 And at the end of it, after all the evidence is in, the

13 will sit and deliberate and decide.

reasonable 14 And if the jury says, Well, gee, I got a

point, 15 doubt, there is only one verdict -- right? -- at that

And 16 which is not guilty. If they have a reasonable doubt.

17 that's okay with you?

18 A. Yes, sir, it is.

that you 19 Q. Okay. The -- it also said on your questionnaire

and again, 20 had thought a lot about this question of punishment;

if 21 we have to presume we're not going to get there. But

we can't 22 Mr. Nichols is convicted of any of these things, then

point, so we 23 bring everybody back in and talk about it at that

24 get one chance and this is it. And that's why we speak

we 25 hypothetically, not about, you know, this case, because

Juror No. 968 – Voir Dire

1 don't know what the evidence will be, but, you know, in
2 general.

3 When is the first time you can remember giving
a
4 thought to the question of punishment, what ought to
happen to
5 people that do crimes?

6 A. I don't know. I -- as you grow up and you hear
about bad
7 people who do bad things and they say they'll put you
in
8 jail -- I don't know. "Jail" was always a bad word
when I was
9 a little kid, you know.

10 Q. Uh-huh.

11 A. It's like that's where they put all the bad people,
you
12 know.

13 Q. Okay. Now, could you turn to page 28 of your
14 questionnaire? Maybe we could get a context here for
it. You

15 said that talking about the sentence of life in prison
without
16 any possibility of release -- you said, "This is a good
17 punishment, provided you don't make their stay too
pleasant and
18 easy." All right?

19 A. Yes, sir.

20 Q. What were you thinking about there?

I mean, 21 A. Oh, I was thinking about guys like Charles Manson.
his 22 if you're going to give him the death penalty -- or in
but 23 case, I believe he should have got the death penalty,
he 24 that's my opinion. And people like him -- I see him --
like that, 25 should have been put in the cage and just left there

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the kind 1 no free time at all. That's exactly what I -- that's
him. 2 of punishment I would have administered to a guy like

like a 3 Q. Okay. And when you say a "cage," you mean some --
4 solitary thing?

give him an 5 A. No windows. He could have a light. I wouldn't
wouldn't 6 education. I wouldn't give him a television set. I
7 give him a book or a magazine.

you were 8 Q. And then you mentioned very good deterrent for not
9 committing a serious crime. So when you think -- if
kinds 10 making the law and this is what the assumption is, what

11 of things would you say somebody should have life
without any

12 possibility of release?

13 A. Well, it has -- it definitely depends on the
circumstances.

14 If you are -- if you plan to murder someone and you
carry that

15 out, that, to me, is a -- that's just something that
you should

16 pay for.

17 Q. Okay. And how should you pay for it, then?

18 A. Well, I believe if you flat-out plan and complete
your

19 task, you should pay for it with your life.

20 Q. Okay.

21 A. I mean, that's just the way it ought to be. I
mean, I look

22 at it this way: Cold-blooded murder, society doesn't
need

23 that. I mean, I just -- I would like to have my kids
walk down

24 the street without worrying about them getting
kidnapped or

25 anything like that. I just -- there has got to be a
way to

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1 stop murder, and I don't know any other way.

2 Q. And as you -- you listed down further on the

questionnaire

3 on C and D there -- if you could just take a look
because I

4 want to make sure I understand. If you're writing the
law, it

5 said, "In what kinds of cases is it appropriate to
impose

6 life," and you said -- "without possibility of being
released?"

7 And you said, "Murder."

8 And then, "In what kind of cases is it
appropriate, if

9 ever, to impose the punishment of death?"

10 "Murder without regard to human life."

11 As you were thinking about what you thought
the law

12 would be, what distinction, what difference were you
making

13 between those two kind of situations, murder and murder
without

14 regard for human life?

15 A. Well, cold-blooded murder -- without regard for
human life.

16 I mean if you -- take serial killers that do it for
fun,

17 pleasure, whatever, blowing up a building or an
airplane or

18 whatever, multiple death. I just can't see somebody
walking up

19 and just putting a hole in somebody's head just for
doing it.

20 Q. All right.

penalty. 21 A. People like that I believe deserve the death

mean, you 22 And then there is other kinds of murder. I

get in an 23 take into consideration two people have been -- they

hits 24 argument, they get in a fight, you know, and somebody

dies, you 25 somebody in the head with something and that the guy

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when 1 should suffer the consequences; but in a case like that

happens to 2 both parties are battling it out and one of them

I 3 die, I don't think that's cold-blooded murder that way.

4 don't think that deserves the death penalty.

-- 5 Q. Okay. Would you say somebody blowing up a building

law that 6 that's a case where you think if you were writing the

7 would be a death penalty situation?

lot of 8 A. I would say yes, due to the fact that there is a

you're 9 people in that building. It's not just a building that

10 attacking. There is people in there.

were
that in
what
considered, if
is it
That,
got to
this?
There is
to
should
considering

11 Q. And if in the law that you were writing -- if you
12 thinking of what's the right punishment for somebody
13 cold blood blows up a building, killed a lot of people,
14 other circumstances would you think should be
15 there are any other circumstances beyond that, or just
16 the fact that, boy, they just did that in cold blood?
17 for you, makes the big difference?
18 A. Well, I think -- a lot of it has to do is there the
19 evidence, or was it planned? How long, you know -- you
20 prove: Was it planned? How long did it take to plan
21 And then they actually performed the act, you know.
22 so much to take into consideration. You know, I -- but
23 actually do it -- if you planned it and you do it, you
24 pay for it. That's the bottom line.
25 Q. And as a bottom line, if you were to start out

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1 what punishment should be given -- now let's move on to

the

2 situation: You're summoned as a juror in a case;
right?

3 A. Uh-huh.

4 Q. And you've convicted somebody beyond a reasonable
doubt of

5 agreeing, planning to kill a whole bunch of people with
intent

6 to kill them.

7 A. Right.

8 Q. Would you start out, even after you had heard all
the

9 evidence about who this defendant was and what the
background

10 was and so -- would you start out leaning in the
direction of a

11 death sentence, as opposed to a life sentence?

12 MR. MACKEY: Objection, Judge.

13 THE COURT: Overruled.

14 JUROR: I don't think so. I think you have to
-- you

15 do have to look at all the -- you'd have to look at the
big

16 picture. I mean, you -- if you prove that that guy did
that --

17 BY MR. TIGAR:

18 Q. Yes, sir.

19 A. -- he will pay.

20 Q. And by "pay," what do you mean, sir?

21 A. With his life.

22 Q. And that for you -- that's most important
consideration?

23 A. That you have to prove it. That is the most
important

24 consideration.

25 Q. And if --

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1 A. I am not going to -- I can't play God. I mean, I
can only
2 be a juror. I'm just looking at it this way: If you
prove
3 that he did it, he will pay.

4 Q. And again, by "pay," you mean --

5 A. With his life, in my eyes. I mean it's not up to
me to
6 make the final decision what happens to anybody. It's
up to
7 the judge as far as I, you know -- by the law. I'm not
8 really --

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Well, you're a little confused there; and, you
know, we've

12 talked about it in a lot of different ways, but let me
make it

13 clear to you here. I don't want to have you confused
about the

the law 14 difference, if there is, between your understanding of

15 and the law if you could write it.

16 A. Okay.

questionnaire 17 Q. Both counsel and I have asked you and the

18 asked you the law if you could write it.

19 A. Oh, okay. I'm sorry.

20 Q. And you made it clear.

me that 21 A. Okay. If I wrote the law, if you could prove it to

and they 22 that person committed that crime, planned that crime,

23 were caught, yes --

24 Q. Yeah, you made that clear.

his life. 25 A. -- by law, I would say that person will pay with

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Juror No. 968 - Voir Dire

1 Q. Listen a minute, will you?

2 A. Yes, sir.

the 3 Q. You made that clear that that's how you would write

4 law.

5 A. Uh-huh.

the law 6 Q. But that isn't the way the law is. Now, the way

7 is, as I explained a little while ago, the judge
doesn't decide

8 the question of life or death.

9 A. Right.

10 Q. The jury does.

11 A. Yes.

12 Q. And the law says that regardless of the crime, the
jury

13 can't make that decision about the penalty without
hearing all

14 about the individual defendant.

15 A. Right.

16 Q. And you don't under our law -- there is no
automatic

17 sentence: This crime equals death.

18 A. Right.

19 Q. But people have differing views here, and this is
one area

20 in which some people just don't agree with the law and
wouldn't

21 be able to follow it, just like people -- some people
would say

22 there can be no death penalty; I cannot impose that.
That's a

23 point of view that some people have. Others, you know,
would

24 have the view of the law that you've expressed, if you
could

25 write it. And the question really is: Is that a view
that you

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1 feel so strongly about that you would be unable to
follow the
2 law as it is and consider the defendant as a human
being and
3 recognize that perhaps because of the things that you
hear at
4 the penalty stage, his life should not be taken, even
though
5 he's guilty of an offense that you think deserves the
death
6 penalty?

7 Now, you just tell us whether you can do that.

8 A. I believe I can.

9 Q. Well, we're struggling with it because you seem to
be a bit
10 inconsistent here.

11 A. I know. I'm a little nervous, here, too.

12 Q. I understand that, and we're firing questions at
you here;
13 and there is no trick question involved in this,
please.

14 A. I know. This is very serious.

15 Q. You bet it is. And what we're trying to find out
is if you
16 would -- you know, you've made it clear here three or
four
17 times to Mr. Tigar, me, that if it were up to you,

somebody

18 blows up a building, kills a lot of people, they ought
to die.

19 That's what you said.

20 A. Right.

21 Q. Now, what we're asking now is -- That isn't the way
the law

22 is. You would still have to consider the life that is
being

23 taken by the death sentence and all of the things that
are

24 involved in that person's life, just like I went over
with you

25 in some detail. Follow me?

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1 A. Yes, sir.

2 Q. Now, if you were to serve on the jury and have to
decide

3 the question of punishment, which law are you going to
follow,

4 the law as you think it ought to be or the law as it
is?

5 A. I find that question hard to answer.

6 Q. Well, that's the one we need you to answer.

7 A. I know. All I can say is that in fairness, I guess
I

8 should follow what the law says. I mean, the law is
the law.

a 9 Q. And, you know, it isn't a question of should. It's
10 question of would you really do it.
11 A. Honestly, yes, I would.
you would 12 Q. And approach this with more of an open mind than
13 have if it were your law being applied.
guess 14 A. I'm really kind of dumbfounded at this point. I
15 looking at the way the law is, I -- if you take into
you, 16 consideration there all the information that's given to
-- I 17 you know, and granted, there is a life and death -- I
18 don't know.
law 19 Q. Let me just ask one more thing, you know. What the
sentence 20 says is that you have to recognize that before you
the 21 anybody to death, there is a particular life involved,
22 person you're judging.
23 A. That's true.
kind of 24 Q. Now, you know, I'm not trying to push you into some
25 an answer.

1 A. I understand.

2 Q. Because there are a lot of differences in people's
ability
3 to do this. So all we want you to tell us, as frankly
as you
4 can, is whether you're going to be able fairly to
decide
5 between life and death and consider the things that
I've talked
6 about here and that all of us have talked about.

7 A. Honestly, I think I can decide. I -- I would
definitely
8 have an open mind in it because I realize that the end
result
9 is someone's life.

10 Q. And --

11 A. And I am a fair person. That's one thing about me.
All my
12 life I've been fair myself, so I definitely could live
with --
13 go to the law on this matter. There is no doubt
because this
14 is so serious that, you know --

15 Q. And if you decided after talking with the other
jurors and
16 decided that death is not the deserved punishment, you
know,
17 can you go to your other workers and your family and
anybody
18 else and stand up for that verdict and say, That's what
I

19 decided?
20 A. Yes, sir, I think I could, because it's all of us
together
21 as a jury that have to come to the decision. You're
putting 12
22 brains together, and you have to come up with an end
result.
23 Q. That's right.
24 A. And whether you're right or you're wrong, it's
something
25 you have to live with.

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1 Q. And you understand it's not in the end a majority
vote.
2 You understand? In the end, each person has to make
this
3 decision and live with it.
4 A. That's right. It definitely will have an effect on
you for
5 the rest of your life.
6 THE COURT: Okay. Mr. Tigar, do you have
anything
7 further?
8 MR. TIGAR: Yes, your Honor.
9 VOIR DIRE EXAMINATION
10 BY MR. TIGAR:
11 Q. As I've listened very carefully to what you and the

Judge

I just 12 have talked about -- and I don't want to repeat that.

very -- 13 want to ask the question: Given -- you've got these

14 you've got views that go back a long ways.

15 A. Uh-huh.

16 Q. If you had to make a decision in a case, do you think that

would 17 the views that you've had before for all this time

you had 18 influence you as you valued the different things that

19 to look at?

window, 20 A. I think you've got to throw those views out the

I've 21 because that's not what -- I mean, granted, all my life

opinions and 22 built up to these views, you know, my own personal

is not a 23 things like that. This is not an opinion thing. This

the law 24 game. This is serious, and you've got to go with what

know 25 says. You've got to drop everything, you know -- you

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1 nothing. You start over. You absorb all the information from

2 the trial and you make a decision. And granted, you're
3 innocent until you're proven guilty, and that's the way
it
4 works. That's how I believe, so I think I could -- I
could be
5 fair about this. There is no doubt in my mind. I'm a
fair
6 person.

7 Q. You could be fair about the process of deciding
whether
8 there is guilt -- whether guilt had been proved beyond
a
9 reasonable doubt?

10 A. Yes, sir.

11 Q. And in a case in which you found somebody beyond a
12 reasonable doubt guilty of planning and carrying out
the
13 murders of a large number of people, could you come
back and
14 look that person in the eye that you had convicted of
that and
15 say, Well, I'm going to send you to prison for life?

16 MR. MACKEY: Objection.

17 THE COURT: Overruled. You can answer.

18 JUROR: Yes, I could. I could honestly walk
up to
19 that person and look them right in the eye and tell
them, Hey,
20 you're paying for your sins.

21 BY MR. TIGAR:

22 Q. And when you say "pay," what do you mean?

23 A. You do the crime, you do the time. You know, I --

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

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1 Q. What we're asking you is whether you can say to
that person

2 based on all of it, you know, you live or die -- and
you could

3 say death, obviously, with what you're saying. Can you
also

4 say life?

5 A. Yes, I honestly believe I could.

6 Q. That's what we've been pushing here.

7 A. Okay. I know.

8 Q. Whether you're open to both possibilities.

9 A. I am. I'm open to both, because you have to prove
beyond

10 the reasonable doubt --

11 Q. No, it isn't a question of proving beyond a
reasonable

12 doubt. This sentencing question is totally separate
from

13 proving beyond a reasonable doubt. It's a given that
you and

14 the other jurors would have decided beyond a reasonable

doubt

15 that this person planned, carried out -- carried out a
plan and

16 killed people. That's done.

17 A. Right.

18 Q. And that all happens at the trial before you ever
get to

19 this question of punishment.

20 A. Right.

21 Q. Then there is the trial on the question of
punishment. And

22 it is at that time that the jurors must consider not
only that

23 crime and whatever is heard to, you know, aggravate
that crime

24 under these aggravating circumstances but also the
mitigating

25 circumstances and all of the things about the
defendant's life,

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1 because what you're doing here is also valuing the
human life

2 that is in the courtroom and that is in the hands of
the jury

3 to decide, that life.

4 A. Okay.

5 Q. And the jury must be open to the view that despite
this

6 crime, this person does not deserve to die for it.
That's what

7 we mean about being open to both types of sentence.

8 Now, tell us whether you can do that.

9 A. I believe I can, your Honor.

10 THE COURT: Okay.

11 MR. TIGAR: I want to thank you very much.
Usually,

12 you get to tell your story without being interrupted
all this

13 time. Thank you for sharing your story with us today.

14 JUROR: Thank you.

15 THE COURT: Well, wait just a minute.

16 MR. TIGAR: If you're selected as a juror,
when the

17 lawyer is done that, doesn't mean that we're done.

18 JUROR: Sorry. I thought we were done.

19 MR. TIGAR: All right.

20 THE COURT: No, I just want to impress on you
the

21 importance now of going forward from here,
understanding that

22 we can't tell you today whether you're going to be on
this jury

23 and serve; so you have to live with some uncertainty
here a

24 while. And that, I know, affects your family planning
and the

25 job and a lot of other things; but bear with us yet a
while as

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is a
we
want you
or
about
called upon
that?

1 we go through this process with some more people. That
2 very important process, as I'm sure you recognize; and
3 cannot judge the time necessary to do it. But what I
4 to do is continue to be careful about reading, seeing,
5 hearing anything relating to the case and be careful
6 talking about it so that you can come back here if
7 at some future day and hear this case. Can you do

8 JUROR: Yes, sir, I can.

happens here
give us a

9 THE COURT: And if there is anything that
10 that changes your situation in any way, let us know,
11 call, because we want to stay in touch with you.

12 JUROR: Okay.

13 THE COURT: Okay. You're excused for now.

14 JUROR: Thank you.

15 THE COURT: We'll start 869.

right hand

16 Good morning. Would you please raise your

17 and take the oath from the clerk.

18 (Juror No. 869 affirmed.)

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: If you'll please be seated there

in that

21 chair by the microphone. And the don't worry about the

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

23 will pick you up where you are there. That's fine.

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

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United 1 Q. And you know that "the case now on trial" refers to

2 States against Terry Lynn Nichols.

3 A. Yes, I do.

you -- 4 Q. You got a summons back in July, notifying you that

5 your name had been selected through a chance selection

6 as a person who may serve as a juror in this case, and
you

7 responded to that summons by answering a short
questionnaire.

8 Then you got a notice to go out to Jefferson County

9 Fairgrounds' auditorium building; and when you came out
there

10 with others, I was there with some other people, and I
11 introduced me and them to you. And I want to do that
again
12 because the same people are here again plus some more.

13 A. Okay.

14 Q. And they are here: Mr. Lawrence Mackey and Ms.
Beth

15 Wilkinson. They were there with us, and they're
attorneys for

16 the Government. They're joined now by Mr. Patrick Ryan
and

17 Mr. James Orenstein, additional lawyers for the
Government.

18 You met, too, Mr. Michael Tigar and Mr. Ronald
Woods,

19 attorneys for Terry Nichols; and of course, Mr. Nichols
was

20 there as well and is here now.

21 There are a few people -- other people here
who are

22 assisting in this process.

23 And I want to first assure you that we respect
your

24 privacy in this matter; that we asked you a lot of
questions on

25 the questionnaire that are personal in nature, and
we're not

are
1 sharing your answers with anybody except the people who
2 here. And our use of your answers is limited to this
purpose.

3 A. Okay.

4 Q. And your name has not been given out publicly, you
know,
5 and also we arrange for you to go and come to the
courthouse in
6 a way that there can't be any TV people photographing
you or
7 any of that.

8 We are now in open court, though; and what is
said and
9 done here is public, you understand. And what we'll
try to do
10 in asking questions, and so forth, is to avoid
identifying you;

11 but the only reason for all this is to, you know, avoid
12 embarrassment or having the world know about you any
more than
13 need be for a public trial. All right?

14 Now, I'm going to go over a few of the answers
that
15 you gave us and ask you a few additional questions, and
a
16 lawyer on each side will have a chance to ask you some
17 questions, too. So that's the process that we're going
to go
18 through. But before we begin that, I want to make sure
that

basics. 19 there is an understanding here about some of the
20 A. Okay.
21 Q. And that's why I'm going to repeat some of the
things that
22 I told you and the other members of the panel when we
gathered
23 last on September 17. I don't mean to suggest to you
that I
24 don't think you listened or remember, but I just want
to have a
25 little foundation here of clearly established
understanding.

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1 And this case, you understand, arises out of
the
2 explosion at a federal building, federal office
building in
3 Oklahoma City, Oklahoma, in April of 1995, on April 19
of that
4 year; that people were killed and injured, people who
were
5 occupants of the building; that thereafter, charges
were filed
6 in the United States District Court in Oklahoma City by
way of
7 an indictment, which is a formal statement of what is
alleged
8 and filed by attorneys for the Government, accusing a
man named

of 9 Timothy James McVeigh, along with Terry Lynn Nichols,
named in 10 plotting or conspiring together with other persons not
"other 11 the indictment -- and that's what the indictment says,
to do 12 persons not named" -- to bomb that building and to plan
13 so and to kill and injure people in it.

charges, 14 And, now, the indictment contains 11 numbered
allegations 15 which include this conspiracy charge and then also
bomb the 16 that they went ahead and carried out that plan, did
17 building. And it's alleged as well in eight charges of
intentional and 18 first-degree murder that they're accused of the
19 premeditated murder of eight law enforcement agents.

By that I 20 mean people working for national law enforcement
agencies who 21 were occupying the building at the time and died in the
22 explosion.

pleas of 23 And to these charges, each defendant entered
24 not guilty, thereby creating the issues for trial.

here to 25 And then the case was moved from Oklahoma City

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1 Denver for trial because of a concern about asking
people in
2 Oklahoma to serve on the jury, given the impact of this
event
3 on the community there. And so when it came to
Colorado, there
4 was then an order entered for separate trials; and I
entered
5 that order because it would be fundamentally unfair to
both
6 Mr. McVeigh and Mr. Nichols to come to trial at the
same time
7 and have the same jury decide the evidence as it may
relate to
8 either of them because of the differences among them --
9 expected to be.

10 And there has been a trial of the evidence as
it
11 relates to Mr. McVeigh, and a jury heard that case and
found
12 him guilty with a verdict. And then there was a
further trial
13 as to Mr. McVeigh, because the jury had a decision to
make
14 concerning punishment. So there was a whole separate
trial on
15 that issue, and the jury recommended a sentence of
death.

16 Now, that was then, this is now. And anything
that

17 anyone may have seen, read, or heard about the McVeigh
trial
18 cannot now be considered in Mr. Nichols' case. And
certainly,
19 the outcome of that, the jury's verdict, cannot be
considered
20 as having any influence in this case. You understand
that
21 point?

22 A. Yes.

23 Q. Because to do otherwise, to say, well, you know,
24 Mr. McVeigh was found guilty and Mr. Nichols is charged
with
25 the same thing, he must be guilty, too -- anything like
that

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1 would do two things: (1) It would violate the whole
reason for
2 the order for separate trials; and second, it would
violate
3 Mr. Nichols' constitutional rights.

4 And I reviewed those rights with the people at
the
5 jury panel -- with the jury panel there because, you
know,
6 under the Constitution of the United States, there are
some
7 fundamental principles in the criminal law that any
person

innocent 8 charged in any court in this country is presumed to be
person 9 of those charges. Doesn't make any difference who that
and 10 is or what those charges are, and that presumption of
guilty, 11 innocence, as we call it, carries throughout the trial
evidence 12 entitles that person to an acquittal, a verdict of not
evidence 13 unless 12 fair-minded jurors considering only the
14 heard at the trial following the law decides that the
15 proves guilt beyond a reasonable doubt.

that? 16 You understand and remember my talking about

17 A. Yes, I do.

in the 18 Q. And I also mentioned that no person who is accused

anything at his 19 United States has any burden or duty of proving

himself not 20 trial. There is no burden on a defendant to prove

certainly 21 guilty or even to offer any evidence in the case and

22 no obligation to take the witness stand and answer the
23 questions from the lawyers or to explain anything.

24 And the law says -- this is constitutional law
25 again -- that in the event of a trial in which a
defendant does

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1 not say anything, remains silent, the jury is not
permitted in
2 any way to draw any inferences or suggestions of guilt
from
3 that. It's not the kind of thing where you can say,
well, you
4 know, if -- if I had been charged with these crimes and
being
5 innocent of it, I would have got on the stand and said
so. You
6 can't look at it that way. And there are a lot of
reasons why
7 a person may not testify at a trial and doesn't have
to,
8 because the test is whether the Government's evidence
proves
9 guilt.

10 Follow me on all these points?

11 A. Yes, I do.

12 Q. And then at the end of a trial, the court does give
13 instructions about each charge in the indictment and
reviews
14 the elements of the offense: This is what has to be
proved, 1,
15 2, 3, 4, before you can find a defendant guilty on this
charge,
16 and then asks the jury: Well, now, does the evidence
show

17 guilt beyond a reasonable doubt? If not, then
obviously the
18 jury has the obligation and the duty to give to the
defendant
19 the benefit of that doubt and find him not guilty.

20 Now, I'm sure you've heard these things before
because
21 I told them to you before, and you probably heard them
22 somewhere before I mentioned them. True?

23 A. True.

24 Q. And what I -- what we all want to know from you is,
first
25 of all, you understand these points?

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1 A. Yes, I do.

2 Q. Secondly, do you agree with them?

3 A. Yes, I do.

4 Q. And not only agree with them but agree to follow
them in
5 this particular case if you served on this jury?

6 A. Yes, I do.

7 Q. So as you see Mr. Nichols sitting here now, you're
8 presuming him to be innocent of these charges, are you?

9 A. Yes, I am.

10 Q. Now, I want to review a few of the things, as I
said, on

of you 11 the questionnaire. And you've got yours there in front
12 now, I take it.
13 A. Yes.
Falls 14 Q. As I understand it, you were born in Thief River
15 Minnesota?
16 A. Correct.
on a 17 Q. And you were born and spent your early family years
18 farm?
19 A. Uh-huh.
20 Q. So it was near Thief River Falls?
21 A. Yeah. It was 13 miles out in the country.
22 Q. What kind of a farm was it that your family had?
23 A. It was just a hobby farm.
24 Q. So your parents did other kind of work?
25 A. Yes, they did.

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1 Q. And were both parents working?
2 A. Yes, they were.
3 Q. What kind of jobs did they have?
4 A. My father used to be a police officer for Thief
River

5 Falls, and my mother did various jobs. They've owned
6 restaurants as well.

7 Q. They owned restaurants in Thief River Falls?

8 A. Yes.

9 Q. While you were growing up in the home?

10 A. Yes.

11 Q. And did you work in the restaurants and --

12 A. Yes, I did.

13 Q. -- and on the farm?

14 A. I never worked on the farm, because we didn't --
well,
15 besides mowing the lawn and raking leaves. That was
it.

16 Q. How big a --

17 A. We didn't farm.

18 Q. How many acres?

19 A. It was just a small farm, hobby farm. I'd say
maybe 4 or

20 5 acres.

21 Q. Okay. And you then came out here to Denver?

22 A. Yes.

23 Q. About what, 10, 12 years ago?

24 A. 1983.

25 Q. What brought you to Denver?

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1 A. My cousin was living out here, and just decided I'd
like a
2 change and moved out here.

3 Q. And then you went back to Minnesota?

4 A. Yes. My husband and I -- we got married in 1987;
and then
5 in 1988, we moved to Minneapolis for two years. But we
were

6 brought back here because my husband does construction
and he
7 was missing Denver. And the employment and the wages
--

8 Q. And more construction going on out here than back
there.

9 A. Yes. He had connections here, where he didn't
there,
10 so . . .

11 Q. Okay. And you -- you're a registered nurse?

12 A. Yes, I am.

13 Q. And have practiced nursing in several different
places.

14 A. No. I was -- I'm a new graduate as of May.

15 Q. Oh, I see. Well, you were working up to it --

16 A. Yep.

17 Q. -- by working in some medical facilities?

18 A. Uh-huh.

19 Q. I'm looking at page 9. You're telling us that
background.

20 So you got your nursing degree or license just this

year.

21 A. Yes, in May.

22 Q. Okay. And then you're with your -- the present
medical

23 center that you've identified here on page 9. And are
you now

24 in the intensive care unit?

25 A. Yes, I am.

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1 Q. Is that -- I realize this has only been a matter of
a

2 couple of weeks when you filled out the questionnaire.
You're

3 still working in the same assignment?

4 A. Yes, I am.

5 Q. Excuse me. And when you got your jury summons and
saw what

6 the case was about, did you talk to your -- well,
actually, I

7 guess maybe you got the job after the summons but
before you

8 filled out the questionnaire.

9 A. Yes.

10 Q. Well, after filling out the questionnaire, knowing
more

11 about the case and what may be involved, did you talk
to your

12 supervisor?

13 A. I only talked to my supervisor when I had to let
him know

14 about September 17.

15 Q. Sure. And did you also talk about what the case
was?

16 A. I told him who was involved, yes, I did.

17 Q. What kind of a reaction did you get to that?

18 A. That it was virtually: You'll never get on the
jury,

19 you're a federal employee.

20 Q. All right. Any other comments to you from that
person or

21 any co-workers or anybody else?

22 A. No.

23 Q. Did you talk about it with your husband, too?

24 A. Yes, I did.

25 Q. Sure. We would expect you to.

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1 A. Uh-huh.

2 Q. And what reaction did he have?

3 A. "You're kidding." That was about it. I actually
had to

4 read the letter about three times just to make sure I
was

5 reading it right.

6 Q. Because you were surprised yourself?

7 A. Yeah.

8 Q. Well, you know a lot more about it now because
you've gone

9 through the process up to now; and of course, you're
learning

10 about it here, too.

11 A. Uh-huh.

12 Q. But since this initial reaction, you know, has
there been

13 anybody who has suggested to you, now that it looks
like it's a

14 real possibility, that there are ways you can use to
get out of

15 it by the way you answer questions or anything like
that?

16 A. No, sir.

17 Q. And has there been anybody suggest to you, well, if
you get

18 on this jury, this is what you ought to do, this is how
you

19 ought to decide the case?

20 A. No.

21 Q. Now, you understand I'm just asking that in terms
of

22 possibility. I'm not accusing anybody or anything like
that.

23 And please understand in all of these questions, you're
not on

24 trial. We simply want some information about you.
There is no

answers. 25 right or wrong answers here. There are only your
And

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1 when we ask you about opinions and attitudes on that,
you're

2 free to express anything that you believe or feel; and
you

3 don't have to worry about our reaction to it.

4 A. Okay.

5 Q. You know, this is not a thing where I don't want to
say

6 anything to get the judge mad or cause disappointment
or

7 anything like it. We just -- this is a very important
process.

8 I'm sure you realize that.

9 A. Yes.

10 Q. And, you know, it's not like interviewing for a
job,

11 either. This is a matter of getting the information
that is

12 absolutely necessary to select a jury. Okay?

13 A. Okay.

14 Q. You have that -- have that understanding in mind
here so

15 when we press you for this or that view, please don't
be

hidden 16 offended by it; and don't think there is some kind of
17 meaning in these questions.

18 A. Okay.

when I 19 Q. All right. Just, you know, I said the same thing
we asked 20 gave you the questionnaire. Don't speculate about why
some 21 you something or whether -- you know, whether there is
22 hidden purpose in it.

job, of 23 Now, you are working in a building and in a

Government. 24 course, that is an agency of the United States
And

workers. 25 you have -- you're a federal worker, and you have co-

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it when 1 And you made a statement -- of course, you were new to
three 2 you answered the questionnaire, just had arrived two or
let me 3 weeks before. But you mentioned something in here --
4 just get to it -- at page 38, if you'll turn to that.

extended the 5 And you gave an answer here, and then you
6 answer on the -- page 40.

7 A. Which one are you talking about?

8 Q. I'm talking about on page 38.

9 A. Okay. I'm sorry.

10 Q. At Question 164.

11 A. Okay.

12 Q. And you started an answer and then you continued
it, as we

13 asked you to --

14 A. Uh-huh.

15 Q. -- over on page 40.

16 A. Yeah. That was the first time it ever really hit
home that

17 someone I knew could have possibly been in the bombing.

18 Q. Now, is this someone who works with you?

19 A. I work under her. She's in the nursing
administration, and

20 I had met her in 1996 when I was hired to work there as
a

21 student nurse technician. So she's someone I really
admire;

22 but that -- like I said on page 40, that wouldn't have
anything

23 to do with me being able to be fair.

24 Q. Well, the way it -- the way I read this -- and you
tell me

25 if I incorrectly interpreted it. You started out
thinking as

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and then 1 you started writing, well, maybe this would affect me;

view, no, it 2 as you continued to write, you sort of came to the

3 won't affect me.

4 A. Uh-huh.

5 Q. Is that about the way it went?

6 A. Yes, it is.

working 7 Q. And had she been in Oklahoma City and she had been

8 there before coming to Denver?

all I 9 A. Yes, she had, as a social worker. And that's about

the blue, 10 know, because she just made a comment one day out of

11 not knowing that I was a potential juror or anything.

12 Q. Sure. Yeah. And what did she say?

had I 13 A. She said, "Whew, I could have been in that building

14 not moved to Denver."

1995. 15 Q. And how long before -- this happened on April 19 of

transferred 16 To your awareness, how long before that day had she

17 here to Colorado?

18 A. That, I don't know.

-- 19 Q. Do you know whether it was one year, two years, or

20 A. Uh-uh. I never discussed it with her.

21 Q. Do you know whether she had worked in the
particular

22 building involved?

23 A. That's what she said, yes.

24 Q. And she knew what the building was?

25 A. Uh-huh.

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1 Q. Did she say any more to you about that?

2 A. No. That was it.

3 Q. Has she said any more to you since?

4 A. No. It was just a comment out of the blue. I
don't even

5 know what we were discussing.

6 Q. Okay. So now, the way I understand how you've come
out on

7 this is you're setting that aside. That's not a
consideration.

8 A. That's correct.

9 Q. And, of course, the -- among the people who did die
and

10 were injured in -- as a result of this explosion are
many

11 federal workers of various different agencies of
government.

12 And the fact that you're working in an agency of
government:

13 Do you see that as affecting you at all?

14 A. No.

15 Q. Okay. Now, on page 24, there is a question that I
want to

16 be careful in how I ask you. 108.

17 A. Yes.

18 Q. This was in -- back in 1986?

19 A. Yes, it was.

20 Q. Now, is that about the time that -- well, it was
after this

21 that you were back in Minnesota again?

22 A. Yeah. I moved to Minnesota in '88.

23 Q. In '88. And then came back.

24 A. Yes.

25 Q. And were you alone in this vehicle?

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1 A. Yes, I was.

2 Q. And as I understand it, you didn't dispute this.
This was

3 exactly what happened.

4 A. Yes, it is.

5 Q. And you told us what the consequences were and --
I'm not

6 sure what that last -- oh, community service.

7 A. Uh-huh.

8 Q. You did all that?

9 A. Yes, I did.

10 Q. Any -- does that whole experience as you see it
have any
11 influence or effect on you now?

12 A. It had a big change in my life.

13 Q. Tell us about that a little bit, if you will.

14 A. I went from a rebel without a cause to upstanding,
abiding
15 citizen, trying to be responsible.

16 Q. So let's see: How old were you in this -- at this
time?

17 A. I was about 24.

18 Q. Were you married then?

19 A. No, I wasn't.

20 Q. So your life has changed a lot, including the
marriage, and
21 now you've got two young children as well.

22 A. Correct.

23 Q. So again, it's sort of a "that was then, this is
now"?

24 A. Yes.

25 Q. And you look back on that maybe as a turning point
in your

1 life, this particular matter?

2 A. Definitely.

3 Q. Kind of a wake-up call, as we sometimes say?

4 A. Uh-huh.

5 Q. Yes?

6 A. Yes.

7 Q. And as of that time, did you have in mind that you
would

8 become a nurse?

9 A. No, I didn't.

10 Q. So that's part of a change, too, then --

11 A. Uh-huh.

12 Q. -- that you went into this career of service?

13 A. Yeah. After that, I got married in '87. Then I
went to

14 school for medical assistant, knew that I wanted to
stay in the

15 medical field, and then eventually got into nursing
school.

16 Q. Okay. Now, we also asked you some questions in
here

17 regarding your views of certain types of punishment,
being --

18 and I'm going to go to page 28. You remember -- you
know what

19 I'm talking about here.

20 A. Uh-huh.

21 Q. That we asked you some questions about your
opinions of the

And 22 punishment of life in prison with no release and death.
why we 23 there was an explanation given to you on page 27 as to
24 were going to ask you those questions.
25 A. Uh-huh.

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answers, 1 Q. Do you remember reading this part of it and your
2 and so forth?
3 A. Yes, I do.
of the 4 Q. And I want to ask you before you got to this part
a 5 questionnaire -- and we know that the death penalty is
it and 6 much-debated issue and people have strong views about
debated in 7 disagreements about it. It's a matter that gets
no 8 state legislatures. There are states in which there is
in effect 9 death penalty, and there are states where it has been
are a 10 for one time and then changed, and so forth. And there
know, we 11 lot of views that run from the one end that says, you
12 don't care who you are, what you are, eye for an eye

sort of

13 thing, life for a life.

14 A. Uh-huh.

15 Q. And then there is a view that says no matter what
you've

16 done, we shouldn't put people to death through the
court

17 system.

18 Extreme views. A lot in between. Some people
come to

19 one or the others of those views because of religion
and a

20 religious faith. Some have other reasons. All of
these are

21 legitimate viewpoints.

22 And of course, there is a law that is involved
here.

23 In the federal courts there is the sentences of, for
certain

24 types of crime, life in prison with no release ever;
the person

25 lives out the rest of his days in prison. And then
there is

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1 the penalty of death. And then it can be something
less than

2 that.

3 Now, before talking with you about the way the

law

it, to 4 actually is, we want -- and your ability, if you have
is, we 5 participate in the law as it is and the process as it
you 6 wanted to know your views generally and in terms of if
that's 7 could make the law, what would it be. You understand
8 the way we put these questions to you and that's why.

9 A. Yes.

death 10 Q. And is the matter of whether there should be a
before this 11 penalty something that you've thought a lot about
12 questionnaire?

13 A. Not so much before but a lot after.

forced to 14 Q. Okay. And we recognize that a lot of people were
concern and 15 answer some questions here that caused them some
thought 16 caused them to think about things they may never have
17 about.

since you 18 Now, you know, we want you to tell us in --

thoughts about 19 wrote these answers, if you've got any different

here or 20 it, want to expand on the answers that you have given

person's 21 want to change any of them, the kind of thing where a

answer -- 22 view can easily change from the time you wrote this
23 these answers.
24 A. I still feel the same way.
we 25 Q. So if I asked you the same questions right now that

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Juror No. 869 - Voir Dire

to be 1 asked you on the questionnaire, are your answers going
2 the same?
3 A. Yes, they are.
at any 4 Q. And have you read them? I don't mean to take you
answers 5 disadvantage. I want to make sure you -- you have your
6 in mind.
7 A. Okay.
8 Q. Same?
9 A. Same.
again, 10 Q. Now, without reviewing each answer with you -- and
to draw 11 I'm not challenging you on these answers. I just want
say that 12 you out a little. Would it be a fair summary here to
in the 13 it's all right with you that there be a death penalty

of 14 law; that you can see a role for it for certain kinds
decision 15 crimes, but you don't want to participate in making a
16 about life and death?

17 A. Right.

shared by 18 Q. Okay. Now, of course, that's a view that can be
for 19 many. There are -- you know, we don't go out and ask
20 volunteers to come in and serve on the jury.

21 A. Right.

it is 22 Q. So this is an issue that we have to talk about, and
23 difficult to talk about it because it is a very heavy
24 responsibility for anyone to undertake, and nobody here
25 suggests to the contrary.

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process 1 So I just want to now explain to you what the
that's 2 is and what the law is. And under federal law -- and
with 3 where we are. This is Federal Court, so we're dealing
death 4 statutes from the Congress. Under federal law, the
5 penalty and this life in prison, true life in prison,

is

6 provided for and available in a case in which a person
is found
7 guilty of the intentional killing of other people,
murder; but
8 in cases that do not involve that kind of punishment as
a
9 possibility, what a jury does in those cases, of
course, is
10 hear the evidence and decides whether the evidence
proves the
11 crime charged beyond a reasonable doubt.

12 Let's take bank robbery, for example, or
burglary of a
13 post office or things that can be federal crimes. In
those
14 cases, the jury comes in, hears the evidence, decides
whether
15 the evidence proves the crime beyond a reasonable
doubt,
16 overcoming the presumption of innocence; and then if
the jury
17 says yes, it does, and there is a guilty verdict, the
jury has
18 performed all that is asked of it and the jury leaves.
It's
19 over for them.

20 But, of course, it isn't over for the
defendant.
21 There is a sentence to be decided. And that's done by
a judge
22 and not the jury. And before the judge makes a
sentence

found 23 decision, which has to be individual to the person just
the 24 guilty, there is a lot more to be considered, not just
25 crime.

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1 Sure, there is more to be considered about the
crime,
2 too, and the court wants to know about additional
circumstances
3 concerning the crime than just what came out at the
trial. So
4 that could include things like the consequences of it,
you
5 know, what happened to victims or what happened to
whoever was
6 involved, that kind of thing.

7 And then the court also needs to know
everything that
8 can be learned about the defendant as a person. So
these
9 sentencing hearings go into the whole background of
that
10 person, all about where he was born, what kind of
family he was
11 raised in, what education there has been, what
employment
12 history, what marriage history, are there children, has
the

13 person been in military service, has the person
suffered
14 through injuries and accidents. You know, each one of
us
15 carries our own story, and certainly there can be
phases in a
16 person's life, too. You recognize that from your
experience.

17 So the judge needs to know who this is in
front of him
18 and not just what crime he committed. And then the
sentence is
19 decided on, taking all of that into consideration. So
it's not
20 you do this crime, you do this time. That's not the
kind of
21 sentences we impose.

22 So the -- at the sentence hearing, with all of
this
23 information before the court, each side also is heard,
the
24 government -- the prosecution -- and the defense; and
then the
25 judge says for this person, this is the sentence. And
in cases

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1 where there may be two or more persons committing the
same
2 crime, guilty of the same conduct, those sentences may

be

3 different. One person's sentence -- you know, one
person can

4 be sentenced to prison, one given probation; a lot of
5 possibilities.

6 So our justice system says that it's the crime
plus

7 the person being sentenced that has to be factored in.

8 Now, when it comes to a crime like murder,
where there

9 is the life-and-death possibility, the Congress in
passing

10 these statutes says, Now, that's not for judges, that's
for

11 juries. And the reason is we want not just one
person's view

12 here, the judge, but we want the view of 12 people who
come out

13 of the community and represent a whole range of views
and who

14 bring to the decision a lot of background and their own
lives.

15 But before the jury can make a decision about
life or

16 death of a person, that jury has to hear everything
just like a

17 judge would on an individual sentencing. And that
means,

18 again, circumstances regarding the crime, its effects
and

19 influence on the community and such, but also all these
things

20 that I mentioned about the defendant, the things that
go
21 together to make each one of us unique and different
from
22 anybody else. Understand?
23 A. Yes, I do.
24 Q. And that's done just like the trial. I mean,
witnesses
25 come in, evidence is introduced in exhibits and so
forth. So

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1 it's a second trial, after a jury has found a person
guilty of
2 a crime, that involves these sentence possibilities.
3 And then after all of that information has
been
4 provided, all the witnesses called and the exhibits
received
5 and arguments made by the lawyers on both sides, the
court sums
6 it up for the jury and really puts it into two
categories and
7 says: Now, look, this is what you've heard. These are
the
8 things that you should think about as aggravating
circumstances
9 or factors; these are the things that you should think
about in
10 thinking about whether the just punishment deserved in

this

things 11 case is death. And on the other hand, these are the

should 12 that you've heard and these are the things that you

crime makes 13 think about in suggesting the view that while this

does not 14 the death sentence a possible punishment, this person

is. 15 deserve to die for it because of who he is and what he

16 Understand?

17 A. Yes, I do.

to ask, 18 Q. And then the court can give the jury some questions

it and 19 you know, of themselves, to sort of help sort through

20 evaluate these things that we talk about, aggravating
21 circumstances, on the one hand, and mitigating on the
other.

22 And that word "mitigating" simply means even though
death is a

23 possible punishment, it mitigates against that
punishment and

24 supports the view that life is the appropriate sentence
for

25 this person.

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judge
the

1 Again, here, too, in such cases, just as in
2 sentencing, if there is more than one person involved,
3 sentences can be different. Understand?
4 A. Yes, I do.

5 Q. Because the sentence so much depends on individual
6 characteristics.

us,
would
you
to
talking it
about

7 Now, the question that you have to answer for
8 knowing that this is the kind of decision that a person
9 rather not have to face, if you did have to face it, if
10 were on a jury and the jury had the sentencing decision
11 make, can you make that decision and consider after
12 over with the other jurors -- you know, 12 people talk
13 it -- but in the end, each person has to decide it.

And I
The best
an

14 guess the best way, you know -- it's not a formula.
15 way to say what kind of a decision it is is that it's
16 individual moral decision about another person's life.

So the
participate in

17 question you have to answer for us is can you
18 that process and make a decision.
19 A. Yes, I can.

20 difficulty of

21 one of the

Q. And given what you've said here about the

22 making a decision for death, are you open to that as

23 sentences that -- one of the sentencing options?

24 A. Yes.

look at

Q. Okay. So you can set aside this type of view and

heard.

25 it and decide it on the basis of everything that you've

5000

Juror No. 869 - Voir Dire

1 Is that what you're telling us?

2 A. Yes, I am.

while

3 THE COURT: Okay. Now, we've gone on for a

you to be

4 here. I'd like to take the lunch recess and then ask

5 back, because I'm sure that lawyers here will have some

while

6 additional questions for you; so bear with us yet a

7 longer, if you will.

8 JUROR: Okay.

have you

9 THE COURT: You're excused for now, and we'll

10 back in about an hour and a quarter.

11 (Juror out at 12:24 p.m.)

12 THE COURT: Which I think is 1:40. So we'll
be back

13 at 1:40.

14 (Recess at 12:24 p.m.)

15 * * * * *

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18 REPORTERS' CERTIFICATE

19 We certify that the foregoing is a correct
transcript from

Dated 20 the record of proceedings in the above-entitled matter.

21 at Denver, Colorado, this 23d day of October, 1997.

22

23

24

Paul Zuckerman

25

Kara Spitler