





13

PROCEEDINGS

14

(Reconvened at 1:39 p.m.)

15

THE COURT: Be seated, please.

proceed.

16

If you'll resume your seat, please, we'll

17

Mr. Orenstein, do you have questions.

18

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

19

VOIR DIRE EXAMINATION

20

BY MR. ORENSTEIN:

21

Q. Good afternoon, ma'am. How are you?

22

A. Good.

break,

23

Q. As his Honor introduced me this morning before the

24

my name is Jamie Orenstein; and together with my fellow

will be to

25

prosecutors here at Government counsel table, my job

5004

Juror No. 869 – Voir Dire

Your

1

present the evidence in this case against Mr. Nichols.

the

2

job, if you're seated as a juror, would be to listen to

the case

3

evidence fairly, with an open mind, and at the end of

and

4

deliberate with your fellow jurors and come to a fair

5

honest decision. Now, are you able to do that job?

6 A. Yes, I am.

7 Q. All right. Let me ask you one question about your  
work.

8 You work in an intensive care unit now?

9 A. Yes, I do.

10 Q. Is there some particular kind of intensive care?

11 A. It's a medical intensive care.

12 Q. What does that mean?

13 A. We deal with medical patients. We have a surgical  
14 intensive care unit as well. We deal with mainly  
people who

15 haven't had surgery, just medical.

16 Q. These are people who are suffering from diseases as  
opposed

17 to recovering from --

18 A. Uh-huh.

19 Q. Now, you mentioned to his Honor this morning that  
you came

20 to Colorado because you wanted a change from Thief  
River Falls.

21 Is it fair to say you didn't want too big a change,  
because it

22 looks from your questionnaire that you married a  
hometown boy?

23 A. Yes, I did.

24 Q. Did he come out to be with you, or did he just  
happen to be

25 in the Colorado area?

Juror No. 869 - Voir Dire

1 A. We happened to be here and started dating.  
2 Q. So you didn't want too much of a change from home;  
is that  
3 right?  
4 A. I did, and I didn't.  
5 Q. Ma'am, I would like to ask you a little more about  
the  
6 issue of punishment that you discussed with his Honor  
this  
7 morning. And you realize of course that we don't even  
get to  
8 address that issue unless and until a jury finds a  
defendant  
9 guilty in a case where that's -- the death penalty is  
an  
10 option.  
11 A. Right.  
12 Q. But of course you can't stop at that point.  
13 A. Uh-huh.  
14 Q. Once a guilt or a not guilt decision has been made,  
you  
15 can't stop and then ask the jurors, Well, how did you  
feel  
16 about it; and that's why we have to ask now and make  
sure that  
17 the jurors who sit in the box when this trial starts  
are those  
18 who can give both sides a fair trial and decide the

issue of

19 punishment as well as guilt with an open mind. So  
that's why

20 we ask these questions now.

21 And I'd like you to turn, if you would, to  
your

22 questionnaire, page 28, so that I could ask you some  
questions

23 about your answers there.

24 A. All right.

25 Q. You wrote in your questionnaire a month ago -- and  
I'm

5006

Juror No. 869 - Voir Dire

1 looking now at part D of the answer --

2 A. Uh-huh.

3 Q. -- that you were asked, "In what types of cases  
would you

4 feel it's appropriate to impose a sentence of death?"

5 And your answer there was, "Any case worthy of  
such a

6 punishment and one that I am not an individual deciding

his

7 fate."

8 A. Uh-huh.

9 Q. And do I read it correctly that you had underlined  
"I am

10 not," and put it in capitals, or is that a copy machine

error?

11 A. I was looking at it and wondering the same, if I  
drug out  
12 my T to the end of the sentence or not. I capitalized  
"I am  
13 not," so it's probably underlined.

14 Q. And then this morning, you told his Honor that  
after --  
15 after he explained the process to you, that you could  
16 participate in that process?

17 A. Correct. After he explained it to me.

18 Q. So my question is: Given that explanation this  
morning,  
19 think back now to that question, "What kinds of cases  
do you  
20 think it would be appropriate" -- recognizing that you  
yourself  
21 would be -- or at least could be part of that process  
-- if you  
22 were part of that process, what kind of cases would you  
think  
23 it's appropriate?

24 A. Like I said there, any case worthy of that kind of  
25 punishment. And what your Honor mentioned about the  
federal

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1 crime and if you're found guilty, then it's up to the  
jury

2 based on the crime and the individual.

kinds of 3 Q. And do you have a sense in your own mind of what  
-- it 4 cases those would be where -- in your own personal view  
5 would be appropriate?

6 A. Murder.

and this 7 Q. Now, you had also written in Part C, "Murder" --  
8 is a question about where you might think it's  
appropriate to 9 impose a life sentence -- "Murder or any crime where a  
great 10 bodily harm was inflicted on another person." Your  
answer now 11 appears to be murder could be appropriate for a life  
sentence 12 or a death sentence.

13 A. Correct.

14 Q. Do you have any thoughts as you sit here today  
about what 15 would be important to you in distinguishing between a  
life 16 sentence or a death sentence, in a murder case?

17 A. I can't tell you until I'm presented with -- with  
facts. 18 Q. Now, going up to Part A where again it was a  
question about 19 the penalty of life in prison, you wrote, "I strongly  
believe 20 in life in prison without the possibility of release.

That's

21 what I would recommend in murder cases."

his

22 Now, again, I understand that you hadn't had

23 Honor's explanation.

24 A. Uh-huh.

to know

25 Q. But, of course, one thing that everyone here needs

5008

Juror No. 869 - Voir Dire

-- it's

1 is: Is it your feeling that you would as sort of not

the

2 not automatically even be leaning towards as sort of

3 default, a life sentence in any murder?

4 MR. TIGAR: Object --

Default?

5 THE COURT: I don't understand the question.

phrased. Let

6 MR. ORENSTEIN: Your Honor, it was badly

7 me try again.

8 BY MR. ORENSTEIN:

case,

9 Q. Do you come into a case thinking, if it's a murder

sentence?

10 that all other things being equal, I will give a life

11 A. Prior to his Honor's explanation, yes.

12 Q. But now you understand that you'd have to be open

to both

13 sentences?

14 A. Yes, I do.

15 Q. And on the next page, 124E, you wrote -- and you  
were asked

16 about general views -- wrote -- you wrote, "I would  
have a huge

17 problem sentencing someone to death."

18 Now, I understand, again, this is before his  
Honor

19 explained the process to you. What I would like to  
know is

20 what was your thinking behind that huge problem. Where  
does

21 that problem arise from?

22 A. Be a personal problem that I'd have to deal with,  
knowing

23 that I was part of a jury that sentenced somebody to  
die. To

24 me two wrongs isn't a right; but like his Honor  
explained, and

25 it made sense to me, you have to look at everything in

5009

Juror No. 869 - Voir Dire

1 perspective. That was my view at the moment, and I  
wrote it

2 down.

3 Q. Do you feel like if you were to impose a sentence  
of

4 death -- not talking about this case, just as a general  
5 proposition -- if you, together with fellow jurors,  
were to  
6 decide that a defendant should die for a particular  
crime,  
7 would you feel that you were doing something wrong?  
8 A. Not doing something wrong, but it would personally  
affect  
9 me.  
10 Q. Of course. And no one could come away from such a  
process  
11 unaffected. The reason I ask is because of that  
phrase, "huge  
12 problem."  
13 A. Uh-huh.  
14 Q. And I think we all recognize that this is not the  
sort of  
15 question or process that would be easy for anyone.  
16 A. Uh-huh.  
17 Q. But there's people who might say, "It would be a  
huge  
18 problem, but I would put that aside and do it," and  
there are  
19 other people who would say, "It's a huge problem  
because that  
20 would be violating who I am, how I think of myself."  
And what  
21 I'd like to know is, you know, on which side of that  
line are  
22 you?

23 A. Before I came in here, I was on the side of life in  
prison.

24 But having been explained the procedure, it would be  
difficult

25 to sentence somebody to death. Like I said, I'd just  
have to

5010

Juror No. 869 - Voir Dire

1 see it all. I'd have to hear it all and see it all  
before I

2 could really tell you that.

3 Q. So if in a case where that was a possibility -- and  
you

4 realize that the question would come up after a  
decision of

5 guilt -- so if a jury had found the defendant guilty of  
crime

6 for which death is a possibility and then after hearing  
all of

7 that evidence that would be presented at the second  
trial that

8 his Honor described to you -- everything about the  
crime and

9 the consequences of it, everything about the defendant  
and his

10 background -- if after hearing all of that evidence you  
and

11 your fellow jurors came to a decision that the correct  
or

12 appropriate moral decision is that a defendant should  
be put to

13 death, could you come back into court and announce that  
14 decision?

15 A. I believe I'd have to, 'cause that would be my  
16 responsibility. It's not just my decision  
individually, it's  
17 all 12 of you.

18 Q. Of course. And that is really --

19 THE COURT: I believe this matter has been  
exhausted.

20 I don't know how many more questions you're going to  
have on  
21 the same subject.

22 MR. ORENSTEIN: I'll move on, your Honor.

23 BY MR. ORENSTEIN:

24 Q. I'd like you to turn, if you would, to page 22. Do  
you see  
25 Question 100 there about the criminal justice system?

5011

Juror No. 869 - Voir Dire

1 A. Uh-huh.

2 Q. You wrote there -- you gave the system, I guess,  
middling  
3 grades, saying it's working adequately; and then you  
wrote that

4 every system has its pros and cons. What did you have  
in mind

5 as the pros and the cons of our system?

6 A. I pretty much answered that because I don't know  
that much  
7 about the system. You know, there's things I've heard,  
people  
8 have been part of the system and said bad things;  
people have  
9 been part of the system and said good things. So, you  
know,  
10 from what I read and stuff in the paper, that's the  
only thing  
11 I meant by that.

12 Q. Is there anything that stands out in your mind as  
being  
13 particularly good or bad that you come into court  
thinking, you  
14 know, that is a real problem with the system or that's  
15 something that I really think is good?

16 A. No.

17 Q. You wrote -- and I'm referring now to page 36 of  
the  
18 questionnaire, if you want to turn to that. At  
Question 158  
19 you were asked about the information that you've seen  
about the  
20 Oklahoma City bombing scene and read and heard, and you  
put  
21 that you watched coverage of the explosion and  
aftermath on TV,  
22 and you've also seen TV news regarding the incidents.  
Do you  
23 have anything specific that you recall seeing or  
reading or

24 hearing that stuck in your mind?  
25 A. About the explosion? Or about this trial? Or  
anything?

5012

Juror No. 869 - Voir Dire

1 Q. Either one, really.  
2 A. Just how devastating it was.  
3 Q. You also wrote -- and I'm referring now to the next  
page --  
4 Question 162 that -- and this was asking you about what  
you may  
5 have heard about Mr. Nichols resulting -- as a result  
of  
6 Mr. McVeigh's trial. You wrote that you've read or  
heard that  
7 it will be hard to prove Mr. Nichols' guilt because  
people have  
8 not seen him at the Murrah Building. What did you have  
in mind  
9 about why that would make it difficult to prove his  
guilt?  
10 A. It was probably something I read in the newspaper.  
11 Q. So that's not an opinion you personally hold, or is  
it?  
12 A. No, I don't.  
13 Q. Do you come into court and approach your possible  
service  
14 as a juror in this case with an open mind, that the  
Government

wait to 15 may be able to prove its case or it may not, and you'll

16 hear the evidence?

17 A. Yes, I do.

for 18 MR. ORENSTEIN: Ma'am, I thank you very much

19 answering my questions.

20 THE COURT: Mr. Woods.

21 MR. WOODS: Thank you, your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. WOODS:

24 Q. Good afternoon.

25 A. Good afternoon.

5013

Juror No. 869 - Voir Dire

with. 1 Q. I'm the last one you're going to have to put up

of 2 They've covered all the areas, and I only have a couple

Judge 3 questions, so we'll be out of here real quick. As the

along 4 introduced me this morning, my name is Ron Woods; and

5 with Mike Tigar, we were appointed by the United States

after 6 District Court over in Oklahoma City, in May of '95,

7 these lawyers filed charges accusing Mr. Nichols of

being

8 responsible for the bombing back in April 19, 1995.  
How do you

9 feel about him having two court-appointed attorneys to  
10 represent him here in court?

11 A. I have no problem with that.

12 Q. Okay. When you saw Mr. Nichols at the fairgrounds  
after

13 having seen video, television, or reading about him for  
14 two-and-a-half years, what were your -- what did you  
think when

15 you saw him for the first time?

16 A. I was just surprised to see him because I didn't  
know he'd

17 be present out there.

18 Q. Any other feelings other than surprise?

19 A. It was kind of like, wow, I can't believe I'm this  
close

20 after hearing everything, you know, and seeing stuff on  
TV.

21 Q. Okay. Okay. Did you have a mental picture in your  
mind

22 after having been bombarded by the press for two-and-a-  
half

23 years about how he would appear or should appear?

24 A. No.

25 Q. Okay. In the original summons that you sent back  
in to the

## Juror No. 869 – Voir Dire

1 Court, you'd asked to be excused because of your new  
job that  
2 you were going to with the federal agency, and you  
didn't want  
3 to interrupt it. Has that been resolved with your  
supervisors  
4 and everybody?

5 A. No. I'm still scheduled to take a critical care  
course  
6 starting November 17, so if I do get picked, then I'll  
have to  
7 catch the course some other time.

8 Q. Is that a course that's given every year or every  
six  
9 months?

10 A. Periodically, uh-huh.

11 Q. Okay. But in talking with your supervisors, did  
they  
12 understand the importance of the jury duty and that  
it's not

13 going to affect your employment there in any way,  
they're not  
14 going to -- of course, they can't remove you for  
serving on a

15 jury, but is it -- you seem to be somewhat concerned  
going in.

16 Is it going to affect your job in any manner?

17 A. No, it won't.

18 Q. Okay. How were you able to resolve that with your

19 supervisors?

20 A. Just for the same reasons you mentioned.

21 Q. Okay. Okay. Now, you mentioned to the Court that  
your

22 father was a policeman --

23 A. Uh-huh.

24 Q. -- back in -- what's the name of that town, Thief  
River?

25 A. Thief River Falls.

5015

Juror No. 869 - Voir Dire

1 Q. How big is Thief River?

2 A. It's about 8,000 people.

3 Q. And was your father a policeman there for a number  
of

4 years?

5 A. Yes, he was.

6 Q. What position did he have there?

7 A. He was a police officer and I think interim chief  
of police

8 for I think maybe one or two years.

9 Q. Did you ever work there in the office, help out or  
10 anything?

11 A. No.

12 Q. How many people did they have employed?

13 A. I have no idea. I was pretty young at the time.

14 Q. Did he stop working there at a particular time  
while you

15 were young?

16 A. When I was real young, yes.

17 Q. Okay. Had you gone down to the office and visited  
with him

18 or talked to him about his cases or gone to court to  
see him

19 testify or anything like that?

20 A. No, I did not.

21 Q. How old were you when he stopped doing that?

22 A. Probably six or seven.

23 Q. Okay. Okay. The fact that he was a police  
officer, I take

24 it, would not affect your deliberations in the case,  
the way

25 you would look at anything in this case; is that  
correct?

5016

Juror No. 869 - Voir Dire

1 A. That's correct.

2 Q. Okay. Now, on page 33, on Question 144. The  
questionnaire

3 asked, "If you've heard or read anything about Oklahoma  
City

4 bombing, please indicate where you heard or read about  
it."

news, 5 And you checked off quite a few here: TV news, radio  
people 6 newspaper, magazines, conversation, and heard other  
145 that 7 discussing the case. And then you also checked off in  
that still 8 you've read quite a bit about it. Would that -- is  
9 accurate?  
10 A. Yes, it is.  
bombing 11 Q. Okay. Now, I take it during that time when the  
time, 12 occurred in April, '95, you were still in school full-  
13 weren't you?  
14 A. Yes, I was.  
get out of 15 Q. Okay. And that went on up until -- when did you  
16 school, full-time schooling?  
17 A. Graduated in May of '97.  
you were 18 Q. Okay. And you weren't working during that time,  
19 just full-time student and a mother?  
employment 20 A. No, I worked as a student nurse at my current  
21 from June of '96 to April of '97.  
it, do 22 Q. Okay. From what you've seen, read, or heard about  
23 you recall how many people were killed in the bombing?  
24 A. 160. I'm not sure.

children 25 Q. Okay. Do you recall whether or not there were

5017

Juror No. 869 – Voir Dire

1 that were killed?

2 A. Yes, I do. That, I do.

3 Q. Do you remember what the reason was that there were  
4 children in a federal building?

5 A. I believe it was day care.

6 Q. Okay.

7 A. Provided for people employed there.

8 Q. Okay. Do you recall those images on television of  
the  
9 rescue workers and the nurses helping and the firemen  
and the  
10 dead bodies?

11 A. Yes, I do.

12 Q. Okay. You realize that if you were chosen as a  
juror in  
13 the case, that it's likely that there will be testimony  
and  
14 video and photographs and very, very emotional, sad  
evidence,  
15 testimony, heart-wrenching, that will -- evidence that  
will  
16 come in over and over, even though it's not contested.  
How do  
17 you think that would affect you as a juror?

18 A. Like you said, I'll be emotional as well.

19 Q. Okay. Our question of course is: Will the jury be  
able to

20 separate that emotion, that feeling, and make that  
separate

21 from looking at the Government's proof? The  
Government's got a

22 theory about Mr. Nichols, and we want the jury to look  
at the

23 Government's proof objectively and say: Did they prove  
that

24 Mr. Nichols was responsible for this beyond a  
reasonable doubt?

25 And it will be hard to separate the emotion and the  
feeling,

5018

Juror No. 869 - Voir Dire

1 and my question is: Do you think you would be able to  
do that?

2 A. I believe so. But like I said, it's going to be  
difficult.

3 Q. Okay. You've -- in your employment, your  
profession right

4 now, I take it that you run into some very emotional

5 situations; is that true?

6 A. Yes, it is.

7 Q. But at the same time, you have to be professional  
and

8 objective to accomplish your job; would that be

accurate?

9 A. That's accurate.

10 Q. Have you been able to separate those two from your  
student-

11 nurse days until your present time?

12 A. Yes, I have.

13 Q. Do you see a comparison there between what you're  
doing now

14 and the possible jury service?

15 A. Yes.

16 Q. Okay. Back on the publicity issue: Do you recall  
how the

17 bomb was delivered to the building?

18 A. Via a rental truck.

19 Q. Okay. And you recall what the Government claims  
the bomb

20 was made of?

21 A. The fertilizer. That's all I recall. And that's  
really

22 all I know, about Mr. Nichols being accused of maybe  
helping

23 with that.

24 Q. Okay. And you mentioned that in the questionnaire.

25 A. Uh-huh.

5019

Juror No. 869 - Voir Dire

1 Q. Do you recall how Mr. McVeigh was arrested after

the

2 bombing?

3 A. No. He was in a vehicle. I don't know -- I'm not  
4 sure . . . no plates, and pulled over?

5 Q. Okay. Do you recall from what you've seen, read,  
or heard

6 as to where Mr. Nichols was at the time of the bombing?

7 A. No. The only thing I can think of is the state  
Michigan.

8 Being from the Midwest, that just stuck in my mind.

9 Q. Okay. Okay. Do you recall how he initiated  
contact with

10 the federal law enforcement authorities after the  
bombing?

11 A. From what I recall, he went in.

12 Q. What do you recall about it?

13 A. That he just heard . . . heard on TV that he might  
have

14 been wanted.

15 Q. Okay. And do you recall where he was at that time?  
Where

16 he went to the federal authorities?

17 A. No, I don't.

18 Q. And then based on what you've seen, read, or heard,  
what is

19 your understanding that the Government's theory is on  
his

20 involvement? And you mentioned that something about  
the

21 fertilizer. But what do you recall reading about what

the

22 Government is accusing him of doing?

23 A. Of helping to build the bomb that was used to blast  
the

24 building.

25 Q. Okay. Anything else?

5020

Juror No. 869 – Voir Dire

1 A. Not other than him and Timothy McVeigh were  
apparently

2 friends.

3 Q. Okay. Anything else?

4 A. No.

5 Q. Okay. Now, did you keep up with the McVeigh trial  
at all

6 while it was going on and the daily news summaries of  
the

7 evidence?

8 A. No. I was really too busy with the end of nursing  
school.

9 I didn't catch much.

10 Q. Were you having tests and final exams and  
everything then?

11 A. Uh-huh.

12 Q. You're aware of what the verdict was, I take it?

13 A. Yes, I am aware of that.

14 Q. Any disagreement with that verdict based on what

you knew

15 about the case --

16 A. No.

17 Q. -- and what you've seen, read, or heard?

18 A. No.

19 Q. Any disagreement with the penalty in it?

20 A. No.

21 Q. Now, the one statement you made on the  
questionnaire about

22 I've read, heard: "It would be hard to prove his guilt  
because

23 people have not seen him at the Murrah Building." What  
exactly

24 did you mean about that, that it was going to be hard  
to prove?

25 Was that -- were you contrasting with that the McVeigh  
trial,

5021

Juror No. 869 - Voir Dire

1 or exactly what -- how were you phrasing that? What  
did you

2 mean?

3 A. I think I was pretty much contrasting it with the  
McVeigh

4 trial, where they had videos of McVeigh at the fast  
food,

5 traced him back to the truck. I'm not aware of  
anything that

6 they can trace Mr. Nich -- Mr. Nichols back to.

7 Q. Concerning the truck?

8 A. Yeah, or any of it.

9 Q. Okay. And is that what you mean by it's going to  
be hard  
10 for the Government to prove his guilt?

11 A. Yeah, and I had just read an article in the  
newspaper  
12 stating that, so that's pretty much where that came,  
off the  
13 top of my head.

14 Q. Okay. Do you recall where you read the article?  
Let's  
15 see, you take both newspapers, right, The Post and the  
Rocky  
16 Mountain News.

17 A. Uh-huh.

18 Q. And you watch a lot of the news shows, "20/20,"  
"Dateline,"  
19 "48 Hours," you watch "60 Minutes" and those?

20 A. No, not "60 Minutes," but I do watch the others. I  
can.

21 Q. Do you recall if you saw anything about an analysis  
of the  
22 upcoming trial on any of those?

23 A. No, I didn't see anything on there.

24 Q. Okay. Did you read it in the paper, then?

25 A. I think so. I don't know which one, though.

## Juror No. 869 – Voir Dire

trial,  
was?

1 Q. Did you read that summary that they had before the  
2 the newspaper laying out what they thought the evidence

3 A. No. I wanted to, but that was after meeting at the  
4 fairgrounds.

that?

5 Q. Oh, okay. Okay. Your husband helped you with

6 A. Yes.

7 Q. To set that aside?

8 A. Uh-huh.

the Judge

9 Q. Okay. Well, let's talk about the punishment. As

guilt in

10 explained to you, you know, we're not conceding the

certainly not

11 this case. Mr. Tigar and Mr. Nichols and I are

stage in

12 conceding that we're going to get to the punishment

about

13 this trial. As I said, the Government's got a theory

the trial

14 Mr. Nichols. We don't agree with that theory. When

stand,

15 starts, they will call their witnesses to the witness

exhibits,

16 and there will be testimony, and there will be

theory every

17 possibly. And we're going to be contesting their

18 step of the way by cross-examining those witnesses.  
19 And the Judge told you that we're not  
obligated to  
20 call witnesses, put on evidence, ourself, but I'll  
assure you  
21 that we are going to call a number of witnesses that  
will  
22 contradict the Government's theory and we'll have a  
number of  
23 exhibits. So it's not something we're conceding that  
we're  
24 going to be getting to a guilty stage.  
25 Mr. Nichols is presumed innocent as he sets  
here; and

5023

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1 unless and until the Government can prove his guilt  
beyond a  
2 reasonable doubt, we're never going to have a  
punishment  
3 hearing. And so the fact we're going to be talking  
about a  
4 punishment stage is basically in a theoretical  
position, that  
5 if we do get there, if for some reason the jury finds  
6 Mr. Nichols guilty of one or more of these charges.  
But I  
7 wanted to make sure you understood what the Court was  
saying

8 and that there was a presumption of innocence and  
there's a big  
9 burden that the Government's got before we even get to  
a  
10 penalty stage.

11 But as I understand your answers, you've  
distinguished  
12 in your mind what feelings and thoughts you had before  
-- when  
13 the Judge just asked you out at Jeffco, just put down  
your  
14 feelings on the death penalty, and then in court today  
15 explained to you what the law was and the  
responsibility of a  
16 jury in a federal criminal trial.

17 A. Uh-huh.

18 Q. And as I understand your answers, you can listen to  
the  
19 evidence at a penalty stage after a defendant has been  
found  
20 guilty of deliberate, premeditated murder, at a penalty  
stage  
21 you can listen to the evidence from both sides, both  
the  
22 aggravation, the aggravating circumstances, if the  
Government  
23 would prove, and the mitigating circumstances that the  
defense  
24 would prove, and that you could give equal weight or  
that you  
25 could look at and consider and weigh that evidence in  
your own

Juror No. 869 - Voir Dire

1 mind and make a proper decision, you personally, and in  
2 consultation with the other jurors. Is that correct?

3 A. That's correct.

4 Q. And that you can consider both ranges, life  
imprisonment

5 without release -- as the Judge told you, that's real  
life, you

6 go to prison and you die there, you never get out --  
and you

7 could also consider the death penalty.

8 A. That's correct.

9 Q. If you're chosen on the jury, can you look Terry  
Nichols in

10 the eye and say that you could give him a fair trial?

11 A. Yes, I can.

12 MR. WOODS: Okay. Thank you so much for your  
time.

13 We appreciate it.

14 THE COURT: We all appreciate your time with  
us. I

15 wish I could tell you now whether you will serve on the  
jury,

16 but I can't. There will be a bit of time yet as we go  
through

17 this same process with other persons, and I hope you  
will bear

And the 18 with us, live with the uncertainty yet a while longer.  
on the 19 way in which I ask you to conduct yourself is to do so  
serving 20 assumption that you will be asked back here and will be  
about, 21 on this jury and making the decisions that we've talked  
22 according to the law and the evidence.

23 JUROR: Okay.

here, any 24 THE COURT: Now, if anything should happen  
25 emergencies or anything that changes at all about your

5025

the 1 availability for service, you let us know. You've got  
2 number to call. We want to be in touch with you.

3 JUROR: Okay.

now. 4 THE COURT: All right. You're excused for

5 JUROR: Thank you.

6 (Juror out at 2:08 p.m.)

7 THE COURT: 701.

the 8 Will you please raise your right hand and take  
9 oath from the clerk.

10 (Juror No. 701 affirmed.)

11 THE COURTROOM DEPUTY: Thank you.

12 THE COURT: Please be seated there by the  
microphone.

13 You can swivel that chair around a bit, if you wish.  
And you

14 don't have to lean over to the microphone. That's  
fine. It

15 will amplify your voice adequately, I'm sure. And  
that's all

16 that it's there for is to help us hear.

17 JUROR: Okay.

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. And you realize that the case now on trial refers  
to the

21 trial of the United States against Terry Lynn Nichols,  
a case

22 for which you received a jury summons last July.

23 A. Right.

24 Q. And you responded to that by answering a short

25 questionnaire and then got a notice to come out to the

5026

Juror No. 701 – Voir Dire

1 Jefferson County Fairgrounds' auditorium building on  
September

2 the 17th.

3 A. Right.

and at 4 Q. You responded to that, came out with other people,  
introduced 5 that time I was there, introduced myself, and I also  
now, and 6 the people who were with me. They're with me again  
them again. 7 they're a part of this process, so let me introduce

in front 8 Mr. Lawrence Mackey here at this table right  
Government who 9 of you, Miss Beth Wilkinson, attorneys for the  
attorneys, 10 were there. They are now joined by additional  
11 Mr. Patrick Ryan and Mr. James Orenstein.

Ronald 12 Also with me were Mr. Michael Tigar and Mr.  
Terry 13 Woods, attorneys for Terry Nichols; and of course,  
14 Nichols was with us then and is now.

your 15 And then there are a few other people here in  
16 sight who are assisting in this process.

step in 17 And you understand this process to be the next  
18 jury selection.

19 A. Yes.

a lot 20 Q. And what we asked you to do out there was to answer  
before 21 of questions on a questionnaire, and you did that. And

22 you did that, I made some explanations about the  
background of  
23 the case and certain principles that are applicable to  
jury  
24 service. You recall?  
25 A. I do.

5027

Juror No. 701 - Voir Dire

1 Q. Okay.  
2 A. I don't remember exactly what you said, but --  
3 Q. Pardon me?  
4 A. I don't remember exactly what you said.  
5 Q. Well, I'll review it for you.  
6 A. Okay.  
7 Q. 'Cause it's important. And I would review it for  
you even  
8 if you did remember because it is something that we  
need to  
9 have as we talk in court about on the record.  
10 And you know that all of this arises out of an  
event  
11 that happened in Oklahoma City, Oklahoma, on April the  
12 19th of  
13 1995. On that day there was an explosion in a federal  
office  
14 building  
and the loss of life and injury to persons who were

occupying

15 the building and that thereafter charges were filed by  
way of  
16 an indictment, a statement of charges, in the United  
States  
17 District Court for the Western District of Oklahoma in  
Oklahoma  
18 City, charging a man named Timothy James McVeigh,  
together with  
19 Terry Lynn Nichols -- and then the indictment says "and  
other  
20 persons not named" -- with a conspiracy, a plan, to  
bomb that  
21 building and to kill and injure people in it.

22 And then there are additional charges or  
counts in the  
23 indictment which I summarized in a general way by  
saying that  
24 in addition to the planning of it, the conspiracy, the  
25 Government lawyers charged the defendants with actually

5028

Juror No. 701 - Voir Dire

1 carrying out such a plan, bombing the building, and  
with eight  
2 counts or charges of the first-degree murder,  
premeditated  
3 murder of eight law enforcement agents; that is,  
employees of  
4 federal law enforcement agencies; who were working in  
the

5 building and who died in the explosion.

pleas of 6 To those charges the defendants entered their

The 7 not guilty which thereby creates the issues for trial.

court in 8 case was moved from the court in Oklahoma City to this

people to 9 Denver because of a concern about getting -- asking

So when 10 serve on a jury in Oklahoma City where this happened.

separated the 11 it came to Denver, then, I entered an order that

that it 12 two defendants for trial, really based on a finding

defendants to be 13 would be fundamentally unfair for both of the

may be 14 in court at the same time because of differences that

and 15 there as far as the evidence against them is concerned;

be held 16 therefore I ordered that a jury be selected and a trial

another 17 as to the evidence relating to Mr. McVeigh and then

the 18 jury be selected and a trial be held with respect to

19 evidence as it may relate to Mr. Nichols.

trial here, 20 And after entering that order, we went to

related to 21 went and picked a jury and tried the evidence as it

with a 22 Mr. McVeigh. The jury selected in that case came back  
more, a 23 verdict of guilty. The jury was then asked to hear  
24 sentencing hearing, and make a decision with respect to  
25 sentencing; and the jury came back with a  
recommendation for

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Juror No. 701 - Voir Dire

1 the death sentence, and that trial is over.  
2 Now, as I explained and will now again repeat  
for you,  
3 that the -- that trial and whatever anybody may know  
about it  
4 from reading, seeing, or hearing anything has to be put  
aside  
5 because it has no relationship to this case. And  
indeed, the  
6 jury verdicts in that case may not in any way be  
considered in  
7 considering the evidence that may be presented in this  
case to  
8 this jury with respect to Mr. Nichols. To do so, to  
cause any  
9 spillover from one trial to the other, would violate  
the very  
10 purpose of the separate trial order. Understand?  
11 A. Yes, sir.  
12 Q. So we are selecting a jury now to begin the trial  
with

evidence 13 Mr. Nichols, and there's a clean slate. There's no  
us is an 14 here in front of us, and all that we have in front of  
cannot 15 indictment; and an indictment is in no way evidence and  
charges. 16 be considered because that's all a statement of

these 17 And I then reviewed with you and the others  
18 really fundamental principles under the United States  
cases 19 Constitution of jury trial that apply in all criminal  
who the 20 regardless of what court it's in, what the charges are,  
accused in 21 defendant is. And that is to say that all persons  
innocent of 22 the United States of any crime are presumed to be  
burden or 23 the crime and that no person who is accused has any  
evidence; that 24 duty of calling any witnesses or introducing any  
bringing in 25 the Government making the charges has the burden of

5030

Juror No. 701 – Voir Dire

upon; 1 the witnesses and the exhibits and the evidence relied  
2 and that burden includes that the prosecutors must

prove the

3 case beyond a reasonable doubt. There's a presumption  
of  
4 innocence, and it can only be overcome if the jury is  
persuaded  
5 by the evidence that the defendant has been proved  
guilty of  
6 the crimes charged beyond a reasonable doubt.

7 These things you've heard of before, I'm sure.

8 A. Yes, sir.

9 Q. And that a defendant is not obligated in any way to  
take

10 the witness stand and answer any questions or to  
explain

11 anything to the jury. A defendant can simply remain  
silent

12 throughout the trial and challenge the Government's  
evidence by

13 objections to admissibility of evidence, by cross-  
examination

14 of the witnesses. And then at the end of the trial,  
the Court

15 outlines for the jury exactly what has to be proved to  
find a

16 defendant guilty; what are the elements of the offense,  
these

17 things have to be proved, and then says to the jury,  
All right,

18 has the evidence proved it or not.

19 And of course if the evidence does satisfy the  
jury

20 beyond a reasonable doubt that the defendant did what

he's

21 charged with, the verdict is guilty. On the contrary,  
if the  
22 jury, after considering it all, has a reasonable doubt,  
they  
23 must exercise that doubt to the benefit of the  
defendant and  
24 find him not guilty.

25 Do you follow?

5031

Juror No. 701 - Voir Dire

1 A. Yes.

2 Q. Do you agree with these points?

3 A. Yes, sir.

4 Q. You also agree to follow them and adhere to them if  
you  
5 were on the jury here in this case?

6 A. Yes, sir.

7 Q. So as you see Mr. Nichols with us this afternoon,  
you  
8 understand he's presumed to be innocent of these things  
the  
9 Government has accused him of?

10 A. Yes, sir.

11 Q. Now, we took the answers -- I mean you went ahead  
after  
12 that explanation and filled out this questionnaire, and  
we

13 appreciate your doing that. And, you know, there are  
things  
14 that are asked here that are somewhat private and  
personal, and  
15 we know that. And we're sorry to have to ask you such  
things,  
16 but I'm sure you understand the importance of this.  
And we're  
17 balancing all the time here your privacy vs. the public  
18 interest in the case and the trial, so we're not using  
your  
19 name here and will not; and also in the course of the  
20 questioning, be careful and guarded to avoid things  
that might  
21 identify you.

22 And also, you know, we even arrange for you to  
go and  
23 come in and out of the courthouse so that you can't be  
24 photographed by the press or something like that so  
that you're  
25 identified. But here we are now in open court. This  
is a

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Juror No. 701 - Voir Dire

1 public proceeding. Press is present. So, you know,  
whatever  
2 is said and done here is public. You understand?  
3 A. Yes, sir.

4 Q. Okay. Now, I'm not going to go through all these  
questions  
5 with you over again. Don't worry about that. We do  
have some  
6 areas in which I want to ask for some explanations and  
some  
7 additional information. Also, there will be a few  
questions  
8 that are new, that are not in here. And all we -- you  
know,  
9 it's not a true/false test, there's no right/wrong  
answers.

10 And all that we want from you is your honest answers.

11 And when there's a question asked of you for  
your  
12 opinions or beliefs, that's what we want you to tell  
us,  
13 without being worried about what we're going to think  
about it.

14 A. Okay.

15 Q. So don't at all feel that you're somehow being  
pressured to

16 answer in a certain way or that you're being  
intimidated in any

17 way. I know that these surroundings are not something  
that

18 you're used to. But on the other hand, what -- all we  
want

19 from you is your true and honest expressions of opinion  
when we

20 ask for them.

21 Now, a few factual things that I want to check  
with

born and 22 you. As I understand from what you told us, you were

23 raised and lived in Salt Lake City?

24 A. Yes, sir.

here to 25 Q. And spent your early years there and then came over

5033

Juror No. 701 – Voir Dire

1 Colorado. When were you first in Colorado?

2 A. September 1982.

3 Q. And you lived here then until September of 1996?

4 A. Yes, sir.

5 Q. You went back to Utah then?

6 A. Right.

before 7 Q. And you were in Utah until July of this year, just

8 you got this summons?

back. 9 A. Yes. The summons was waiting for me when I came

Colorado 10 Q. Okay. And the address that we sent it to was your

11 address.

12 A. Yes.

guess a 13 Q. What were you doing in Utah during this about -- I

14 little less than a year?

15 A. My grandmother got sick, and they needed somebody  
to go and  
16 stay with her and help take care of her until she  
recovered.

17 Q. And so that's why you went over there?

18 A. Yeah.

19 Q. But -- and did you work while you were over there?

20 A. Yes, I did.

21 Q. What kind of a job did you have?

22 A. I worked for an insurance company processing  
medical  
23 claims.

24 Q. And as a temporary matter while you were working --  
or  
25 taking care of your grandmother?

5034

Juror No. 701 - Voir Dire

1 A. Yeah.

2 Q. And all of the time that you were in Salt Lake,  
were you  
3 intending to return to Colorado?

4 A. I wasn't sure if I was going to. My boyfriend and  
I had  
5 had problems, and that was one of the reasons I did go  
back  
6 there. And then he did ask me to come back, and that's  
why I  
7 came back. If he hadn't have asked me to, I would

never have

8 come back.

9 Q. Did you keep your voting registration here?

10 A. No.

11 Q. You changed it to Utah?

12 A. I never did register to vote over there. I was too late by

13 the time I got settled back there, so I didn't ever register to

14 vote.

15 Q. What about your driver's license --

16 A. The driver license I did change because it had expired here

17 and I did have to get a new one in Utah.

18 Q. And what did you have at this address in Colorado, in

19 Aurora, while you were gone?

20 A. That's where I had lived with my boyfriend. And I really

21 had nothing there. I had taken all my stuff back with me.

22 Q. So you were really a resident of Utah during this time?

23 A. Right.

24 Q. Well, I think that means you can't serve on this jury.

25 A. Okay.

Juror No. 701 – Voir Dire

1 Q. And please understand that this isn't anything  
against you.

2 A. No, I understand.

3 Q. It wasn't clear to us whether you were, you know,  
only

4 temporarily over there or whether you were really  
living there

5 for the time.

6 A. Well, I had lived -- yeah, and that's -- when I  
went back

7 there, I wasn't sure if it was going to be temporary or  
8 permanent.

9 Q. I understand. Well, the law says that jurors to  
serve must

10 be resident of the district, which is the District of  
Colorado,

11 for at least one year before serving; and that doesn't  
apply to

12 you, so you're now excused.

13 JUROR: Thank you very much.

14 THE COURT: Thank you for going through all  
this with

15 us. We appreciate it.

16 (Juror out at 2:24 p.m.)

17 THE COURT: 277.

18 Good afternoon.

19 JUROR: Good afternoon.

20 THE COURT: Would you raise your right hand

and take

21 the oath from the clerk, please.

22 (Juror No. 277 affirmed.)

23 THE COURT: Please be seated there by the  
microphone.

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

5036

Juror No. 277 - Voir Dire

1 Q. And you understand that the case now on trial  
refers to the

2 case of United States against Terry Lynn Nichols.

3 A. Yes.

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

5 name had been -- had come up in a chance selection  
process --

6 A. I did.

7 Q. -- calling you in as a juror?

8 A. Yes.

9 Q. And you responded to that by answering some  
questions on a

10 questionnaire, sending it back, and then you got a  
notice to go

11 out to the Jefferson County Fairgrounds' auditorium  
building on

12 September the 17th, and you went out there.

13 A. Yes.

14 Q. And at that time I was there, introduced some  
people who

15 were with me there, and then gave you a lot longer

16 questionnaire. Right?

17 A. That's correct.

18 Q. And you've got your completed questionnaire in  
front of you

19 here now?

20 A. I do.

21 Q. Well, also in front of you now are the same people  
who were

22 there before, and I want to reintroduce them to you so  
you know

23 who's here with us.

24 First attorneys for the Government, Mr.  
Lawrence

25 Mackey here at the table in front of you, Miss Beth  
Wilkinson.

5037

Juror No. 277 - Voir Dire

1 And they're joined now by additional counsel, Mr.  
Patrick Ryan

2 and Mr. Geoffrey Mearns.

3 Also with us then were Mr. Michael Tigar, Mr.  
Ronald

4 Woods, attorneys for Terry Nichols; and Terry Nichols.

5 And then there are a few other people here who

are

6 assisting in this process.

7 And what we did, as I told you we'd do, is  
take your

8 answered questionnaire, the completed questionnaire,  
made some

9 copies, gave it to these people and to me; and then of  
course

10 you understand that it's not going to be used for any  
reason

11 other than what we're doing right now and that your  
answers

12 have not been made public and will not be and that  
we're not

13 using your name here. And we even made these  
arrangements for

14 you to go and come in and out of the courthouse so that  
you

15 can't be photographed by the press or be seen as a  
member of

16 the jury panel.

17 Now, as we go through the questioning, we'll  
also try

18 to be careful in the questions and you in your answers  
to avoid

19 things that would identify you as an individual.

20 A. Okay.

21 Q. Because we're trying to -- the only reason for  
that, of

22 course, is we're trying to balance your privacy  
interests and

23 your personal life against the public interest in this

24 proceeding. And we know we asked you things in here  
that are  
25 quite personal in nature, so we'll try to do that. But  
of

5038

Juror No. 277 - Voir Dire

1 course now we are in open court and this is a public  
2 proceeding; you understand that?  
3 A. I do.  
4 Q. Okay. Also as we go through these answers, I want  
you to  
5 understand you're not on trial and there's no  
particular right  
6 or wrong answers; and especially in the areas where we  
asked  
7 for your opinions or your attitudes about things, you  
don't  
8 need to be defensive about it. We just want you to  
tell us  
9 like you -- just like it is and what you think. And  
you don't  
10 have to worry about our reaction to it. You don't seem  
like  
11 the kind who's going to be intimidated much anyway. I  
just  
12 want to make -- to reassure you.  
13 Now, what I'm going to do is ask you some of  
the --  
14 some questions about what you've said. We're not going

to go

15 through the whole questionnaire. You can be sure about  
that.

16 And then I'm going to ask you about some other things,  
a few

17 other things in these questions; and then when I'm  
done, one of

18 the lawyers on each side will have a chance to ask you  
some

19 more questions, so bear with us, if you will, with this

20 additional questioning. You may be tired of answering

21 questions, but it's an important part of the process,  
as I'm

22 sure you realize.

23 A. I do.

24 Q. Okay. You were born and raised in Texas?

25 A. Yes.

5039

Juror No. 277 - Voir Dire

1 Q. And in Bay City in particular --

2 A. That's it.

3 Q. -- I have it. And you went to school also in  
Texas?

4 A. I did.

5 Q. And then you played football in college?

6 A. Yes.

7 Q. And then you went into professional football?

8 A. That's correct.

9 Q. And you had a career in professional football and  
retired

10 from that; right?

11 A. Yes.

12 Q. And now, as I understand it, you're self-employed  
here in

13 the Denver area and invest in various type of real  
estate,

14 including, what, rehabilitating some properties and  
putting

15 them up for sale, that kind of thing?

16 A. Yes, sir.

17 Q. Now, do you have some employees in that activity?

18 A. Only my brother and myself.

19 Q. Okay. And when you buy a property and then fix it  
up, do

20 you contract with somebody to do that, I assume?

21 A. Fix it up?

22 Q. Yeah.

23 A. No; my brother and I actually fix it up, ourselves.

24 Q. Oh, you do?

25 A. Yes.

5040

Juror No. 277 - Voir Dire

1 Q. Okay. And you've been doing that since you retired

from

2 professional football?

3 A. Yes.

4 Q. And you have six daughters; right?

5 A. That's correct.

6 Q. Of varying ages here. And they're all in school.

7 A. Yes.

8 Q. And let me just check here. Your wife -- is your  
wife --

9 she's not working now, is she?

10 A. No, she's not.

11 Q. I mean she's working, but not outside the home?

12 A. She has a tougher job than outside the home.

13 Q. And maybe more important, too.

14 A. I think so.

15 Q. But she was a nurse?

16 A. Yes.

17 Q. And did she practice nursing while you've been  
married?

18 A. Briefly, just to maintain the experience and to  
keep her

19 edge as far as what's going on in the profession. But  
never

20 more than two or three months at a time.

21 Q. Okay. And at one time you had a restaurant?

22 A. Yes.

23 Q. That you owned and you operated that for a few  
years and

24 then sold it?

25 A. Sold it last year.

5041

Juror No. 277 - Voir Dire

1 Q. Last year. Okay. And when you had the restaurant  
2 business, you had a number of employees?

3 A. I did.

4 Q. With problems with them, as is not uncommon in that  
5 business, I take it.

6 I notice on your questionnaire you marked that  
your

7 wife has worked with volunteer organizations, too.  
Does she

8 continue to do that?

9 A. In a limited capacity. Heart Association,  
Children's

10 Hospital, that type thing.

11 Q. And then does she actually go over to Children's  
Hospital

12 and put in some hours --

13 A. She has spent time visiting and done some modeling,  
also,

14 for fund-raisers.

15 Q. Okay. Now, on page 11, if you'll turn to that.

16 You see we asked you here at 53 to mark any of  
the

17 kinds of organizations in which anybody in your  
family's ever

18 been working or employed.

19 A. Yes.

20 Q. You marked federal law enforcement agencies. What  
-- why

21 did you mark that yes?

22 A. My cousin Anita is a DEA agent.

23 Q. And in what community is --

24 A. She was in San Antonio, Texas, and has moved; and  
I'm not

25 sure, I believe she moved to Virginia.

5042

Juror No. 277 - Voir Dire

1 Q. Okay. Have you been in communication with her  
recently?

2 A. Not in the last three years.

3 Q. Okay. So do you know anything, really, about her  
4 experiences with the DEA?

5 A. I've heard nothing. I knew when she was first  
starting,

6 and that's the last communication I had about her.

7 Q. All right. And then there's the state, county, or  
city law

8 enforcement?

9 A. My cousin Jacquelyn Fletcher is a police officer in  
10 Houston, Texas.

11 Q. And you -- do you communicate with her regularly?  
12 A. Saw her at my grandmother's about a year ago.  
That's about  
13 it.  
14 Q. Has she explained to you or described to you any of  
her  
15 duties or any of her experiences in working there?  
16 A. One. She works primarily as a desk officer.  
17 Q. Oh, she does?  
18 A. She was telling me about a phone call that was a  
little  
19 humorous.  
20 Q. And then there's the security guard marked.  
21 A. Yeah, my mother's boyfriend is a security guard at  
the  
22 South Texas Nuclear Project in Texas.  
23 Q. And any agency using social workers is marked.  
24 A. Let me see who that is. That's actually a real  
close  
25 friend that I consider a family member who is a social  
worker

5043

Juror No. 277 - Voir Dire

1 in Houston, Texas.  
2 Q. And do you know what he or she does in that work?  
3 A. It's a she, but I have no idea what she does  
exactly.

4 Q. Okay. You just know it has something to do --

5 A. That's the job title.

6 Q. And then finally over on the next page, you marked  
farming

7 and ranching.

8 A. Yes. My cousin Michael Fletcher works on a horse  
ranch in

9 Texas.

10 Q. Is that a ranch that is a breeding ranch, raising  
horses?

11 A. It's more for training.

12 Q. Do you go down there from time to time on that?

13 A. Saw him about five, six months ago.

14 Q. Down there?

15 A. Yes.

16 Q. So -- now, is that his business?

17 A. No, he works for someone else.

18 Q. Works for. Okay. Then if you'll turn to 13,  
please. Page

19 13. You've got a brother who's in military service  
now?

20 A. Yes.

21 Q. And what branch of service is he in?

22 A. Army.

23 Q. And he's been there since '82, so he's career?

24 A. Yes.

25 Q. And what rank or grade is he?

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- 1 A. I don't know what it means, but he's E7, whatever  
that is.
- 2 Q. And where is he stationed now; do you know?
- 3 A. He just went to -- reported for a year in Korea.
- 4 Q. So he just started that this year?
- 5 A. Yes.
- 6 Q. You have a matter here that I want to be careful  
about  
you  
7 asking about 'cause I don't know the facts and ask you,  
8 know, be careful about it, too. On page 23.
- 9 A. 23.
- 10 Q. Actually this same subject comes up in a couple of  
places.  
11 Let's just -- let me call your attention to them, and  
then I'll  
12 come back to it. 23 at 103.
- 13 A. Uh-huh.
- 14 Q. And at 104.
- 15 A. Yes.
- 16 Q. Next page, 105.  
17 And 108.
- 18 A. Yes.
- 19 Q. I believe that's all the same thing, isn't it?

20 A. Yes.  
21 Q. Same incident.  
22 A. Uh-huh.  
23 Q. And this goes back several years.  
24 A. Yes, it does.  
25 Q. Now, is this something that went to trial?

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1 A. Yes, it is.  
2 Q. And was it a jury trial?  
3 A. Yes, it was.  
4 Q. And the end result of it was what shows at 108?  
5 A. Yes.  
6 Q. That was the guilty -- the jury verdict?  
7 A. Yes, it was.  
8 Q. And you have some concern about the way all that  
was  
9 handled, as I understand it?  
10 A. I certainly do.  
11 Q. And you started -- I mean a part of that is at 105.  
12 A. 105.  
13 Q. Yeah, that's on 24.  
14 A. Yes.  
15 Q. Meaning this business of rushing a judgment.

16 A. Yes.  
17 Q. So let me just ask you some real leading questions  
here,  
18 and you tell me whether I'm close or not.  
19 A. Lead on.  
20 Q. Okay. Was this something where you think if you  
hadn't  
21 been something of a celebrity and well-known and  
considering  
22 also your profession in football, this never would have  
23 happened?  
24 A. I'm 99 percent sure of it.  
25 Q. And you think that it was just a matter of trying  
to get a

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1 name in court -- or can you expand on that a little  
bit, why  
2 you feel that?  
3 A. I can expand and give you the details.  
4 Q. Well, if you don't mind, it would help us.  
5 A. Okay. Let's go.  
6 Q. All right.  
7 A. It was an in-law whose child I had gone to pick up  
after  
8 work, taken to my house, cleaned up, put on clothes  
where she

9 had just a diaper on, taken her home, and five, six  
hours

10 later, cops show up at my house to arrest me for  
kidnapping

11 this kid that I've taken, fed, she's played with my  
kid, and

12 I've returned her home several hours prior to, to find  
myself

13 arrested for kidnapping this kid who's back in her  
mother's

14 custody and the cops that were originally called to the  
15 residence because two people in the house at the time  
of the

16 call were having a argument. As soon as my name was  
mentioned

17 as a owner of the property, I was arrested for  
kidnapping.

18 Q. And without anybody asking you anything about it  
first?

19 A. Didn't ask me diddly.

20 Q. Okay. Then did they take you into custody?

21 A. Yes, they did.

22 Q. And held you until you made bond?

23 A. Well, they -- I was released on a PR bond the next  
24 afternoon.

25 Q. Okay. And then you hired counsel to represent you?

1 A. Yes.

2 Q. And you've told us who that is in here, and we  
don't need

3 to talk about that.

4 A. Okay.

5 Q. And then the matter, I guess, got referred to the  
district

6 attorney?

7 A. Yes.

8 Q. And they insisted on going on to trial; is that  
what you're

9 saying?

10 A. They did.

11 Q. And you think that -- who you were had to do with  
that

12 decision, too?

13 A. Yes, I do.

14 Q. Now, at the trial, did you testify at that trial?

15 A. Yes, I did.

16 Q. And then the jury returned a verdict of not guilty?

17 A. Yes.

18 Q. Now, do you have any carryover from all that that  
would

19 influence or affect you in your approach as a juror  
here?

20 A. Well, the only thing that I got from it was that if  
ever on

21 a jury, I would be careful to weigh the evidence 'cause  
if they

22 had just gone by the prosecution and -- I suppose they  
23 presented a pretty good case, and those jurors in that  
case  
24 were able to look through it and came up with what I  
know was  
25 the proper decision.

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1 Q. Did the mother of the child testify?  
2 A. She did, but she had attempted to drop the charges  
prior to  
3 trial, and the DA in the county that I was in insisted  
on  
4 pursuing it.  
5 Q. Okay. Well, of course the trial system begins with  
the  
6 jury. You understand that?  
7 A. I do.  
8 Q. And I take it you have a lot of respect for the  
jury system  
9 as a result of what happened in your case?  
10 A. Yes.  
11 Q. Do you? And, you know, when we were together there  
at  
12 Jefferson County, I explained the background of this  
case.  
13 A. You did.  
14 Q. And you already knew that anyway; right?

15 A. Yes.

16 Q. Something. And I explained how this all arises as  
a result  
17 of an explosion in Oklahoma City, April the 19th of  
1995.

18 A. Right.

19 Q. Case was filed down there, charges filed saying  
that --  
20 Government lawyers saying that -- in the charges that a  
man  
21 named Timothy McVeigh, along with Terry Lynn Nichols,  
conspired  
22 to bomb and destroy that federal office building and  
kill and  
23 injure people in it, and then these charges say that  
they  
24 conspired with -- together with persons not named, is  
the way  
25 the indictment reads, to do that. And then there are  
some 11

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1 charges or counts, including that they went ahead and  
carried  
2 out the bombing with the intention to kill and injure  
the  
3 people in it, in the building.

4 A. Yes.

5 Q. And that the charges include eight counts of first-

degree

6 murder of law enforcement agents of various federal law  
7 enforcement agencies who were in the building and died  
in the  
8 explosion. And the defendants entered pleas of not  
guilty in  
9 Oklahoma City.

10 Then the case was moved here to Denver because  
of a

11 concern of asking people in Oklahoma City to sit on the  
jury in  
12 the case. And then when it came to Denver, I entered  
orders to

13 separate the defendants for trial so there would be a  
separate

14 trial for each of them, recognizing that it would be  
15 fundamentally unfair to mix the evidence as it may  
relate to

16 each one of them in the same trial before the same  
jury, so I

17 ordered separate trials; and there has been such a  
trial of the

18 evidence relating to Mr. McVeigh, and he was found  
guilty by a

19 jury. And then the jury was required under the  
procedures that

20 are involved under federal law to hear more, to hear a  
sentence

21 hearing, and return a verdict or a recommendation for  
death for

22 him. Understand?

23 A. Yes.

evidence 24 Q. And now we're getting ready for the trial of the  
McVeigh 25 as it may relate to Mr. Nichols. And nothing about the

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because to do 1 trial can now be considered in Mr. Nichols' case  
separate 2 that would violate the whole reason for the order for  
3 trials. You understand?  
4 A. I understand.  
that case, 5 Q. Okay. So certainly the outcome, the verdicts in  
whether 6 can't be considered now as suggesting anything about  
and find 7 Mr. Nichols is guilty, and we're going to have a trial  
support 8 out what the Government has in the way of evidence to  
9 the charges made against him.

jurors to 10 And of course what we're doing is selecting  
you 11 hear that evidence and make a determination on it. And  
through 12 know, I think, from something that, you know, you went  
crime in 13 in the system that each person who's charged with a

14 the United States under the Constitution is presumed to  
be  
15 innocent, and that presumption carries throughout the  
trial and  
16 entitles that person to an acquittal or a verdict of  
not guilty  
17 unless the charging authorities, the prosecution by  
their  
18 evidence proves the charge beyond a reasonable doubt.  
And  
19 juries are instructed that you may not find the  
defendant  
20 guilty unless you're satisfied the evidence shows it  
beyond a  
21 reasonable doubt. You understand that?  
22 A. I understand.  
23 Q. And no person who is accused of a crime in the  
United  
24 States has any burden or duty of introducing any  
evidence,  
25 doesn't have to prove himself to be not guilty, does  
not have

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1 to take the witness stand and testify or answer any  
questions  
2 or offer any explanation. And if a defendant in a case  
does  
3 not testify, the jury's instructed that they can't  
consider

4 that in any way. Do you understand about that?

5 A. Yes.

6 Q. And then, you know, at the end of the trial, the  
court

7 instructs the jury as to what has to be proved. These  
are the

8 things that constitute the essential elements of the  
crime; and

9 if any one of them is not proved beyond a reasonable  
doubt, the

10 defendant must be found not guilty. And of course what

11 "reasonable doubt" means is that if after considering  
all of

12 the evidence the jury still has a reasonable doubt  
about

13 whether the evidence shows guilt of the defendant, of  
the crime

14 charged, the plain duty of the jury is to give that  
benefit of

15 the doubt to the defendant, finding him not guilty.  
Agreed?

16 A. Agreed.

17 Q. And you not only understand that, I take it, but  
you accept

18 it as the principles of our law?

19 A. Yes, I do.

20 Q. And if you were to be on this jury and judging the  
evidence

21 as it may relate to Terry Nichols, are you ready to  
give him

22 the benefit of that law and the benefit of any  
reasonable

23 doubt?

24 A. Yes.

25 Q. Now, you have heard and read some things about the  
Oklahoma

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1 City bombing, the investigation, and the McVeigh trial,  
have

2 you?

3 A. Very little about the trial itself, but a lot  
during the

4 actual bombing.

5 Q. All right. So that was a subject that you and many  
others

6 paid a lot of attention to back in April, May of 1995.

7 A. Yes.

8 Q. And you, I notice, take a lot of magazines, and I  
don't

9 know if you read them all; but certainly these  
magazines

10 included some things about this matter; right?

11 A. Yes. Small articles. Most of them are business  
12 publications and investment-type magazines, but there  
would be

13 a clip from -- you know, every now and then about the  
case.

14 Q. Yes. And did you watch a lot of television dealing  
with

15 the -- those early days after the explosion?

16 A. I don't think you could miss it.

17 Q. And do you think that you can separate out in your  
mind the

18 things that you saw there about the explosion, the  
aftermath,

19 the rescue efforts, how many people were killed and  
injured and

20 all that from analyzing the evidence as to whether it  
shows

21 that Terry Nichols had any role in that?

22 A. I think I can.

23 Q. Okay. Now, you -- we asked you some questions  
about the

24 criminal justice system. I'm looking at page 22 now.  
Yeah.

25 Hate to jump around like this, but --

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1 A. That's okay. Numbers help.

2 Q. Yeah. 22 at 100.

3 A. Okay.

4 Q. You have -- here we just asked you overall, "What  
do you

5 think about the effectiveness of the criminal justice  
system,"

6 by which we meant the whole system by which people are  
accused,

7 charged, and the evidence is determined.

8 A. Uh-huh.

9 Q. And you kind of gave us -- gave the system a  
passing grade,

10 but then you got in here some -- something I'd like you  
to

11 explain, if you would --

12 A. Okay.

13 Q. -- about recent acquittals based on DNA evidence  
and the

14 Simpson trial race question. First with respect to the  
DNA

15 acquittals.

16 A. There's been some stuff that I've read, some I've  
seen, and

17 others that I've heard in verbal discussion about guys  
that

18 maybe 10, 15, 20 as recently as 5 years ago were  
convicted of

19 certain crimes and now DNA evidence is saying that they  
20 couldn't have been there or they couldn't have done it;  
and

21 then a small percentage of these guys that get  
acquitted, you

22 look up a few days later or a couple years later, and  
they're

23 found guilty, no question, committing the same crime.  
So it

24 just raises questions in my mind.

25 Q. About whether the system can really be relied on to  
get the

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1 right answers; is that it?

2 A. Whether DNA is the tool by which to rely on.

3 Q. Okay. Well, are you questioning the DNA -- the use  
of DNA?

4 A. I don't think it's an exact science.

5 Q. Now, you mention the Simpson trial here, too.

6 A. Uh-huh.

7 Q. And you relate that to this DNA issue?

8 A. Not necessarily the DNA and the Simpson guilt.  
It's more

9 of a racial thing, I think.

10 Q. Well, tell me what you do think about that case.

11 A. Okay. Jury of my peers -- when your peers happen  
to be

12 more -- I mean a greater number of the same race can  
find

13 you -- can find one verdict and then on a similar deal  
in a

14 civil matter, the racial lines change and all of a  
sudden you

15 come up with a totally different verdict, it just  
causes

16 questions. I don't have the answers for those  
questions.

17 Q. Did you watch the -- the Simpson trial is one --  
the

18 criminal trial was one that was televised as it  
happened, live  
19 television. Did you watch much of that?  
20 A. Not much.  
21 Q. Okay. You watched some of the film clips on the  
news, that  
22 kind of thing?  
23 A. It's worse than that. Tabloid TV. "Inside  
Edition."  
24 Q. Well, what did you think about the outcome of that  
case --  
25 well, first what did you think about the way the trial  
got

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1 conducted?  
2 A. I thought that the media was more in control of  
that trial  
3 than anybody else, from what I saw.  
4 Q. Okay.  
5 A. What else did I think? I thought that from what I  
saw on  
6 the nightly news, it could have probably been done in  
half as  
7 much time had someone who knew what was going on been  
in charge  
8 of the actual proceedings. And, I don't know, I kind

9 some feelings that sometimes celebrity can be more of a  
10 hindrance than a benefit.

11 Q. Okay. What did you think about the verdict, if you  
thought  
12 at all about it?

13 A. My comments about the verdict were the jury,  
whoever they  
14 were, saw more evidence than I did, they had access to  
things  
15 that I didn't see on the 10 or 15 minutes that I'd  
watch on TV,  
16 so they obviously knew things that I didn't; so my  
opinion,  
17 frankly, didn't matter.

18 Q. So you're leaving it up to the jury to decide.

19 A. Yes.

20 Q. Based on what happened in the courtroom?

21 What the system says we do. Now, you  
contrasted that  
22 outcome, though, with the civil case.

23 A. Uh-huh.

24 Q. Seeking damages from Mr. Simpson. Did you have a  
similar  
25 view of the verdict there?

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1 A. I agree with the verdict, but I thought justice was

2 color-blind, and the questions raised about the two  
separate  
3 trials were more of a racial thing than the outcome,  
are we as  
4 far along as we like to pretend as we are.

5 Q. Or is race still a factor where it shouldn't be; is  
that  
6 what you're saying?

7 A. Basically.

8 Q. There's another, I guess, incident here where you  
had some  
9 experience with the system as a witness on this same  
page down  
10 there at 102.

11 A. Yes.

12 Q. Can you tell us a little about what happened there?

13 A. Saturday morning, I go to take friends some  
barbecue  
14 because I'm from Texas and we all think we can barbecue  
better  
15 than anybody in the world, so I was anxious to give a  
sample;

16 and on the way home, I noticed a car swerving as I  
entered the  
17 interstate traffic. And my thought process at the time  
was

18 there's no way I can get away from this guy, I won't  
get home

19 to my family, I just left my kids and my wife and I  
won't make

20 it home. Called 911 on cell phone; and while I'm going  
through

21 the identifying me portion of the conversation, this  
car loses  
22 control, runs a motorcycle off the road, and eventually  
23 crashes. And I stayed on the scene until the officers  
arrived.  
24 And when they asked if I'd be willing to come to court  
to  
25 testify, I said, Gladly.

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1 Q. And you did?  
2 A. Yes, I did.  
3 Q. And the outcome of that was that person was found  
guilty  
4 of --  
5 A. Yes.  
6 Q. -- driving under the influence.  
7 Now, I want to talk a bit about your  
availability to  
8 serve on this jury and decide the case fairly. And you  
say  
9 something here on page 38 that I want to ask you about.  
10 A. Okay.  
11 Q. Because we asked you the broad questions there  
about  
12 whether you can sit on this case.  
13 A. Without turning, I know what I wrote.

14 Q. You remember this, probably.  
15 A. Yes, I do.  
16 Q. You might have had in mind earlier today what you  
were  
17 going to get asked.  
18 A. 38. There we go.  
19 Q. So tell me why you wrote these answers.  
20 A. Okay. We want -- let's do 165 first.  
21 Q. All right.  
22 A. Let's see. Okay. Unless something is near and  
dear to my  
23 heart, I can see myself being like one of those people  
with  
24 ADD, like I fade in and out; and I wrote this because I  
don't  
25 see my -- whether I serve or not or the whole outcome  
of the

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1 case, I don't see that as doing anything for the people  
who  
2 were in that building, regardless of who is  
responsible. And I  
3 don't see it changing. I don't see it causing security  
4 measures that would or could prevent it from happening  
again.  
5 So therefore I'd be sitting there saying, I'm here and  
I'm

in my 6 doing this, but it doesn't really benefit anybody. And

7 mind -- and my mind is always open to change.

8 Q. Okay.

not going 9 A. The way that I filled out this form, I said, I'm

pops 10 to spend too much time thinking on my answer. Whatever

11 into my head, that's what I write.

12 Q. Yeah.

he's going 13 A. And I've heard Judge Matsch is pretty tough, but

him the 14 to have to come and get me, because I'm going to tell

15 truth on this form.

16 Q. Okay. Well, here we are.

I 17 I'll tell you what I thought when I read it.

questions. 18 thought you were pretty tired of answering these

19 A. That may have been part of it, also.

here that 20 Q. Yeah. And so you were going to say something on

questions like 21 would end it and you wouldn't be asked any more

22 this?

23 A. And I had a few more. Oh, that was it.

something for 24 Q. Yeah. And, you know, we're not here to do

25 the people who were killed or even the ones who were

injured.

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1 That's not what this is about. And what this is about  
is the  
2 justice system. And whether in a -- where there has  
been an  
3 event that has had this much impact with this many  
people  
4 killed, injured, all of the things about this case --  
and then  
5 all of the publicity.

6 You talked about the publicity that related to  
7 Mr. Simpson's case. The question really is: Can the  
system  
8 respond to that? And can we have a fair trial and  
follow the  
9 same rules that we do in all other cases and fairly  
decide a  
10 case like this? And what we need to be able to do to  
11 accomplish that purpose of having a fair trial and  
getting a  
12 fair result and deciding this case like all other cases  
under  
13 the same rules depends upon our ability to get people  
to come  
14 in and serve as the jury.

15 And, you know, that includes people from all  
walks of

16 life and different backgrounds and different  
perspectives,  
17 'cause that's what jury trial is all about. So are you  
open to  
18 focusing and paying attention to this case?  
19 A. I guess I can sum it by saying I would do anything  
short of  
20 perjuring myself to get out of doing it so I could go  
play or  
21 do whatever I want to do; but if I were put on this  
jury, I  
22 would have no choice; my conscience wouldn't allow me  
not to  
23 pay attention.  
24 Q. And you've got a sense of duty to the system. I  
mean after  
25 all, you relied on fair-minded people to come in and  
take care

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1 of your case, and they did.  
2 A. Yes.  
3 Q. And now both the Government here and Mr. Nichols is  
relying  
4 on this same process and for people to come in and  
decide this  
5 case. People like you.  
6 A. I understand it.  
7 Q. Okay.

8 A. Maybe I was a little tired.

9 Q. All right. Well, we'll give you the benefit of  
that doubt.

10 We do have to talk about another part of this,  
though.

11 And it's a very serious question, and that's the  
question of

12 punishment. And that's why we asked you here questions  
about

13 your opinions and attitudes towards the possible  
punishments --

14 it's 28 is the page you're going to be looking for.

15 A. Okay.

16 Q. And it starts over on 27. That's where we went  
through the

17 windup about the reason for asking you these questions.  
You

18 can take a moment to review that and your answers.

19 Okay. You've reviewed what you wrote?

20 A. On 28.

21 Q. Yeah, 28. You see A, B, C, and D.

22 A. Yes.

23 Q. And then 29, and that's just a follow-up, top of  
the page.

24 Here's the reason that we asked you these  
questions.

25 I think we explained it in the questionnaire, but I  
want to be

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1 clear. Are you with me?

2 A. I'm with you.

3 Q. Okay. In the federal law, when a case is  
involving,

4 charges involve the intentional killing of people,  
murder, we

5 do in the federal system have the death penalty as a  
possible

6 sentence. Actually, the range of sentences under  
federal law

7 for a crime like murder is life in prison with no  
possibility

8 of ever being released, no parole, you do live the rest  
of your

9 days in prison and die there; secondly, the death  
penalty, and

10 then third, there can be a lesser punishment than those  
two.

11 Now, because, as I'll explain in a couple of  
minutes

12 and review the procedure that's actually involved --  
you know,

13 the law -- with you -- before I do that, we knew, you  
know, in

14 putting this questionnaire together that a lot of  
people have

15 differing views about the death penalty and about life  
in

16 prison, the true life sentence like this. And it's no  
secret

17 to you that there's a lot of disagreement about that.  
And from  
18 time to time the law changes in states. We've got  
states where  
19 there is no death penalty, now, in the United States,  
'cause  
20 that's the way the people's representatives and the  
legislature  
21 decide for that state. And we've got other states in  
which  
22 that's a possibility but in which the sentence is  
decided in a  
23 way different from what we're going to be talking  
about.

24 And generally speaking, I would think that  
it's fair  
25 to say that the range of opinion about this is that  
there are

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1 some people who believe that death penalty should never  
be  
2 applied through the courts, it's not up to the court  
and for  
3 this process to decide that somebody should die. And  
then  
4 there are other people who say: Well, life for life;  
if you  
5 kill somebody, that's what should happen to you. Those  
are the  
6 two sort of ends of the spectrum on the views on this.

And

7 then there's a lot in between.

8 And what we wanted you to tell us, first of  
all, here,

9 is where you are on that scale and what you think about  
it and

10 not as to whether you're ready to follow the law on  
this

11 subject, but how you would make the law if you could.  
You

12 understood that was the context in which these  
questions are

13 asked. Yes?

14 A. Yes.

15 Q. And you gave us some answers here, and I just want  
to ask

16 you this question first off, and that is: Have you  
thought

17 about your answers here since you wrote them out?

18 A. What I could remember.

19 Q. Okay. Well, you know, I'll be straight with you:  
As I

20 read these answers, I sort of had the same sort of  
feeling that

21 I had on what you said on page 38; that maybe you were  
a little

22 quick in your response here, thinking I'm going to  
answer this

23 and get out of here. Anything like that involved in  
your

24 answering?

so much 25 A. As I remember that morning in Jefferson County, not

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1 on these as on the page 38.

right now, 2 Q. Okay. Well, if I asked you these same questions

3 just exactly the way they are here, would you give me

4 essentially these same answers?

5 A. I think so.

6 Q. All right.

7 A. Close the book and try it?

way. 8 Q. No, I don't want to. I want to do it a different

9 A. Okay.

exactly 10 Q. Because what I want to do is explain to you just

business of 11 the way it's done and what the law is and drop this

terms of 12 how you would decide. Because I want you to answer in

know, 13 what your responsibility would be as a juror. And, you

when it 14 people can be quick to decide about things like this

process 15 doesn't involve them as being really involved in the

16 and having to focus on it.

17                    Now, here's the way the matter comes up:  
First of  
18                    all, as this explains, we can't assume there would ever  
be a  
19                    punishment decision in this case, because we start out  
with  
20                    this presumption of innocence that we've already talked  
about.  
21                    And of course, it is inconsistent with a presumption of  
guilty  
22                    innocence to be talking about, well, what if you have a  
23                    verdict here. But we have to select a jury now to do  
the whole  
24                    job; and, of course, it's recognized that it may well  
be that  
25                    at the end of the day, after the trial is completed,  
the jury

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1                    will return a verdict of not guilty, and that's the end  
of the  
2                    case; right?  
3                    A. Right.  
4                    Q. And if the jury returns a verdict of guilty,  
though,  
5                    there's more to be done. Now, in an ordinary case that  
6                    doesn't -- well, I shouldn't say "ordinary." In a case  
that  
7                    doesn't involve murder in Federal Court, as in most  
courts, say

the jury 8 a burglary or a bank robbery or something like that,  
for the 9 returns a verdict, guilty or not guilty, and it's over  
the 10 jury; they've done their job, they've decided whether  
evidence proved the crime beyond a reasonable doubt.

But, of 11  
is yet 12 course, it isn't over for the defendant, because there  
be. 13 to go, if he's found guilty, what sentence there should

14 Right?

15 A. Right.

in 16 Q. And in cases not involving the punishments of life  
hearing 17 prison and death, a judge decides that. And there's a  
not just 18 in front of the judge, and there's a lot of information  
the 19 provided to that judge about the crime, what happened,  
crime, if 20 what was shown as the evidence at the trial, but also  
who's 21 circumstances, how many people were involved in the  
happened 22 others were, what was the relative role of this person  
23 before the court and other people, and then also what  
24 in the community, the victims, all of those things.

about 25 And then also presented to the judge is just

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1 everything that can be found out about the defendant as  
a  
2 person: his life story, all about upbringing, family,  
3 marriages, divorces, military service, job history,  
illnesses,  
4 accidents, almost everything that's happened to that  
person in  
5 his life. Because what the law recognizes is that all  
of us in  
6 many ways are formed by the things that happen, that we  
do and  
7 that are done to us. You agree with that observation?  
8 A. Yes.  
9 Q. And so the judge has to be concerned about that.  
It isn't  
10 just an automatic "this is the crime, this is the  
time." It's  
11 a matter of this is the crime, these are the  
circumstances,  
12 this is the defendant, what is the just sentence for  
this  
13 person found guilty of this crime. And there's a  
hearing, and  
14 the judge listens to both sides, the prosecution and  
the  
15 defense, and then says this is the sentence for this  
person.

16                    Now, in Federal Court, when the -- when the  
jury finds  
17                    somebody guilty of murder, the intentional killing of  
other  
18                    people, what the Congress has said is that this  
involves a  
19                    question of choosing a life sentence or a death  
sentence. And  
20                    we don't want judges making life-and-death decisions.  
That's  
21                    something we want the people on the jury to decide.  
And so it  
22                    is that a jury returning a guilty verdict in such a  
case comes  
23                    back into the courtroom and hears more. There's really  
a  
24                    second trial. And it is at that trial that the jury  
gets all  
25                    of the same kinds of information I talked about for  
judge

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1                    sentencing, only now it's the jury that hears, just  
like the  
2                    trial itself: The witnesses come in and testify,  
there's  
3                    exhibits offered, there's both sides involved, and the  
jury  
4                    hears information about the crime and its  
circumstances, and it  
5                    hears all of this information about the defendant as a

unique

6 and individual human being.

7  
arguments from

And then at the end of that, including

8  
summarize

the lawyers, the government -- or the court then will

9  
you

all that, say to the jury in instructions: Here's what

10  
according to

heard, and then also divide it up, classify it

11  
factors,

what a court would call aggravating circumstances or

12  
those

being things that suggest that death is the deserved

13 punishment, and on the other hand, mitigating factors,

14  
consider

things that are in the information that the jury may

15  
person

in deciding that even though because of the crime this

16  
other

could be sentenced to death, considering all of these

17  
death is

factors, that mitigates against that and suggests that

18  
Understand?

not the deserved punishment for this person.

19 A. I understand.

20  
somebody,

20 Q. So again, it isn't just a question of you kill

21  
it's a

the law kills you. It is that having heard it all,

22 question for the jury to decide.

23 Now, in the instructions that are given like

this, the

24 court can suggest some questions for the jury to ask  
25 themselves; but there is no formula or equation or  
anything

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1 that says, you know, two points here or four points  
there

2 equals death or life. It doesn't work that way. It  
comes down

3 to each juror having to discuss it with the 12 -- all  
of the 12

4 people deciding or discussing and exchanging  
viewpoints. And

5 then in the end, each juror has to make a decision.  
And

6 there's no way to describe that decision other than to  
say what

7 it amounts to is it's a moral judgment, a reasoned  
moral

8 judgment about whether a person found guilty should  
live or

9 die. Do you understand the question?

10 A. I understand.

11 Q. So what we need to know from you is: In that  
process, if

12 you were called upon to sit on a jury and having  
decided that a

13 defendant has been found guilty of a murder beyond a  
reasonable

14     doubt, or multiple murders, can you then hear,  
consider, and  
15     decide whether that person should live or die on the  
basis of  
16     all of the information that's provided to you, not only  
the  
17     crime but also all of these things about the defendant  
as a  
18     human being?

19     A. Sure. That's not Question A, is it?

20     Q. Well, it's different, really, because --

21     A. If that's the question, I misunderstood it when I  
read it.

22     Q. No, that really wasn't the question in there.  
That's why

23     I'm changing it. You see, what we did here is kind of  
get a

24     feel from you about what you think what the law ought  
to be and

25     when there should be these punishments of life in  
prison or

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1     death. But now we're not talking about what you think  
the law

2     should be; we're talking about what the law is and what  
the

3     jury's role is and how the jury has to make that kind  
of a

4 decision.

5 A. I understand.

6 Q. And so now it's a -- we're in a different focus;  
and, you

7 know, the questions being put to you are really focused  
on

8 having heard all of this explanation, can you do that  
and be

9 open-minded about doing it?

10 A. Yes.

11 THE COURT: Okay. Well, we have questions  
from

12 lawyers on both sides; but I'd like to take a break  
before we

13 do that, a 20-minute break. Is that all right?

14 JUROR: That's fine.

15 THE COURT: Okay. That's what we'll do.  
We'll take a

16 recess. You can step out now, and we'll be back in 20  
minutes;

17 and then the lawyers have a chance to ask you some  
questions as

18 well. And then you'll be out of here.

19 JUROR: Okay.

20 THE COURT: Okay.

21 (Juror out at 3:15 p.m.)

22 THE COURT: Okay, we'll be in recess.

23 (Recess at 3:15 p.m.)

24 (Reconvened at 3:34 p.m.)

25 THE COURT: Be seated, please.

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1 All right. Let's resume.

2 Okay. If you'll resume your seat there, we'll  
have  
3 questions from counsel.

4 Mr. Mearns, do you have questions for the  
Government?

5 MR. MEARNS: I do, your Honor. Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. MEARNS:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. As the Court told you before we broke, my name is  
Geoff  
11 Mearns, and I'm one of the attorneys who will be  
presenting our

12 evidence in the case.

13 I'd like to ask you a few questions, if that's  
okay

14 with you.

15 A. Go right ahead.

16 Q. Okay. I think there is probably no risk that I'll  
17 intimidate you during the course of the questioning.

18 You told us on the questionnaire that during  
your

spoke 19 career as a professional football player, you also  
high 20 frequently at schools, at elementary schools and junior  
21 schools and the like. Is that right?  
22 A. Yes.  
23 Q. Are you still involved in that now?  
whereas I 24 A. On a limited number. I do about two a year now,  
25 did 40 to 50 a year when I was playing.

5070

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children 1 Q. Okay. What kind of things did you talk to the  
2 about?  
life. I 3 A. Trying to give them ideas to help them succeed in  
religion, 4 broke school tradition sometimes and talked about  
up 5 which I believed played a big part in the success I had  
cared. 6 until that point, just to let them know that somebody  
motivation in 7 Q. And was that your motivation, your primary  
8 participating in those programs?  
you 9 A. Actually, I got a kick out of hanging around them,

and I 10 know. Kids really can be fascinated with celebrity,  
11 think I benefited from it as much as they did.  
12 Q. You told us a little bit on the questionnaire about  
some of 13 the publicity, things that you had read, seen, and  
heard about 14 this case.  
15 A. Yes.  
16 Q. Do you remember where you were when you first heard  
about 17 the explosion in Oklahoma City?  
18 A. I was in Denver at my great-uncle's house.  
19 Q. And do you recall what your first reaction was when  
you saw 20 that news?  
21 A. I think I was somewhat saddened at the numbers that  
were 22 coming out almost immediately after that.  
23 Q. Okay. Do you recall the Court told you -- and you  
probably 24 were aware before you even began this process -- about  
the 25 result of the trial of Timothy McVeigh? Do you recall

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1 receiving the news or hearing about the news of the  
conviction

2 in that case?

3 A. Yes.

4 Q. Okay. What was your reaction to the news that Mr.  
McVeigh  
5 was convicted?

6 A. I don't think I reacted, because I knew it wasn't  
over yet.

7 Q. And that means that you knew they were going into  
the --

8 A. I knew the penalty phase was coming up.

9 Q. And then you at some point heard about the jury's  
10 recommendation in that case; right?

11 A. Yes.

12 Q. What was your reaction when you heard that news?

13 A. As I sit right here, I can't remember what the  
decision  
14 was.

15 Q. You don't remember that the jury had recommended  
that the  
16 death penalty be imposed?

17 A. No.

18 Q. Have you read anything or heard anything in the  
news about  
19 what prompted the explosion or the bombing in Oklahoma  
City?

20 A. You mean what prompted --

21 Q. Or what caused it?

22 A. I think I heard something about a truck bomb and  
somebody

23 being upset with the government.

were 24 Q. On the questionnaire on page 30, Question 132, you  
responded 25 asked a question about the incident at Waco, and you

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your 1 that you had an opinion; and then when asked to explain  
there. 2 opinion, I think you gave us a quote from the Bible

3 A. Yes.

4 Q. Could you explain that a little bit more for us?

5 A. Well, having almost a lifetime of religious  
experience, if 6 somebody walks up to me and they're preaching and they  
want to 7 start a church and I am so inclined to follow them,  
I'll do so; 8 but the minute guys start claiming to be Jesus Christ  
and at 9 the same time engaging in some of the other activities  
as far 10 as the sexual exploits as reported by the media of  
David 11 Koresh, then I think you -- you've got to look at it  
that I 12 open-mindedly but say to yourself: Is this the Jesus  
Jesus 13 read about or is this guy behaving the way I believe

14 would?  
15 Q. Do you recall the end result there, the fire at  
Waco?  
16 A. I recall what I saw of it.  
17 Q. Do you have any opinions about who was responsible  
for the  
18 way that standoff ended?  
19 A. The way the standoff ended? I'm trying to go back  
as  
20 quickly as I can to that particular time; and I think  
my  
21 thoughts were that if I am inside a building and I know  
-- it's  
22 about to be under serious attack, you may be Jesus, but  
I'm out  
23 of here.  
24 Q. Okay. You told us a little bit on the  
questionnaire and  
25 quite a bit more in response to the Court's questions  
about

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1 your own involvement and your own experience,  
unfortunate  
2 experience with the criminal justice system. And I  
think you  
3 told us that you feel in your case that there was a  
rush to  
4 judgment on the part of the police and the prosecutors

in that

5 case.

6 A. Yes.

7 Q. Did I understand you right when you say that you  
thought

8 what -- what caused that rush to judgment was a  
combination of

9 race and celebrity?

10 A. Yes.

11 Q. Do you think there are cases where law enforcement  
rushes

12 to judgment when those factors aren't present?

13 A. I can only go by my own experiences. There may or  
may not

14 be. I mean, I would have to be -- you would have to be  
more

15 specific or give me a case or something to go on.

16 Q. I think you told us -- and correct me if I'm wrong  
-- that

17 the person who had initially reported the child being  
missing

18 decided not to press charges.

19 A. No, they tried not to, and the prosecution and the  
--

20 whoever would not hear it.

21 Q. I want to turn finally to the questions about  
possible

22 punishment. And the Court told you that -- that the  
jury would

23 be involved in punishment if and only if the jury found  
the

24 defendant guilty of the charges. You understood that?

25 A. Uh-huh.

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1 Q. Okay. You also told us a little bit about with  
respect to

2 your experience and your view of the criminal justice  
system

3 about how important it was for jurors to keep an open  
mind.

4 A. Yes.

5 Q. Do you feel the same way with respect to the  
jurors'

6 responsibility or role in possible punishment?

7 A. Yes.

8 Q. You also told us that you agreed strongly with the  
9 proposition that jurors should follow the Court's  
instructions.

10 A. No question.

11 Q. And I take it from your response, then, that you  
feel the

12 same way with respect to the Court's instructions about  
13 punishment, if we get to a penalty phase?

14 A. Of course.

15 Q. You also appreciate that as we sit here today, we  
don't

16 have any evidence or any of the information that could

be

17 introduced in a penalty phase if we get there.

18 A. Right.

19 Q. Is there any way, then, that you could tell us what  
you

20 think might be an appropriate punishment in a case if  
we don't

21 have any evidence or we don't have information?

22 A. I could generalize, but I couldn't say about a  
specific

23 case.

24 Q. And as you sit here today, do you have an open mind  
with

25 respect to punishment in a case of intentional murder?

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1 A. Yes.

2 MR. MEARNS: Thank you, sir.

3 THE COURT: Mr. Woods?

4 MR. WOODS: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. WOODS:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. I'm the last one. All the questions have been  
asked pretty

10 much, and I've only got a couple to go.

11 A. Okay.

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

13 with Mike Tigar, we were appointed by the United States

14 district judge over in Oklahoma City in May, '95,  
shortly after

15 May 10, '95, when these lawyers filed charges accusing  
Terry

16 Nichols of being responsible for the bombing.

17 Now, Mr. Tigar teaches law at the University  
of Texas

18 in Austin, and I practice in Houston. How do you feel  
about

19 Mr. Nichols' having court-appointed lawyers to  
represent him in

20 this case?

21 A. I don't have any feelings on it.

22 Q. When you were accused, you hired your own lawyer --

23 A. Yes.

24 Q. -- I take it; right? The team hire a lawyer, or  
you have

25 to hire a lawyer?

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1 A. I did.

2 Q. Now, Mr. Nichols didn't have any money to hire a  
lawyer,

3 and the court appointed lawyers at taxpayers' expense.  
Do you  
4 have any feelings about that one way or the other?  
5 A. Yes.  
6 Q. Okay. What are they?  
7 A. If it were me, I would prefer to be able to pay for  
the  
8 attorney so I could get the people of my choosing; but  
I'm sure  
9 that he's had the same option to interview you guys and  
decide  
10 whether or not he feels that you're competent. But if  
not, I'd  
11 rather have court-appointed than to have a fool for a  
lawyer,  
12 being myself.  
13 Q. Okay. You had obviously read or seen something  
about  
14 Mr. Nichols for a couple years before you went out to  
Jeffco  
15 that day to fill out the questionnaire last month, or  
16 September 17, a little over a month ago.  
17 A. Yes.  
18 Q. You probably had some picture in mind, just based  
on all  
19 the publicity you read. What did you think when you  
saw Terry  
20 Nichols for the first time there with Mr. Tigar and  
myself?  
21 A. First time I saw him, I thought he looks like the  
guy I saw

22 at the hardware store yesterday.  
23 Q. Okay. Other than that, what did you think about  
him?  
24 A. I thought there is nothing I could imagine that  
would --  
25 that would make me want to be in his shoes at this  
particular

5077

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1 time.  
2 Q. Okay. Now, you mentioned on the questionnaire that  
-- that  
3 he would have a separate trial, which you felt at the  
time and  
4 still today was crucial to his receiving a fair trial.  
And  
5 that was one of the impressions you had about Terry  
Nichols the  
6 questionnaire asked. How did you follow that on the  
separate  
7 trial, and why did you feel that was crucial to him  
getting a  
8 fair trial?  
9 A. Because I think that with so much evidence being  
put before  
10 the jury in the McVeigh trial that it would be more  
likely that  
11 somebody, if not a majority of the jurors, would  
confuse which

12 defendant was being spoken with when they went -- when  
they  
13 retired for deliberation, which defendant -- which -- I  
mean  
14 each piece of evidence was attached to.  
15 Q. Okay. Okay. Is that something you had thought  
about, or  
16 did you read some of the legal arguments about that  
issue, the  
17 separation of --  
18 A. I thought of it just this second.  
19 Q. Pardon?  
20 A. I thought of it just this second.  
21 Q. Okay. But you obviously thought it before you put  
it on  
22 this questionnaire.  
23 A. Well, because it just makes sense.  
24 Q. You thought it was pretty important?  
25 A. It makes sense from any standpoint that with so  
much in a

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1 trial and potentially lasting so long, you get so much  
2 information. After a while, it would run together.  
You run  
3 the risk of it running together.  
4 Q. Okay. And you heard the Judge's explanation about  
why he

5 ordered separate trials.

6 A. Yes.

7 Q. Now, you mentioned in the questionnaire that both  
your

8 parents had grown up on a farm.

9 A. Yes.

10 Q. Was that down in Matagorda County near Bay City?

11 A. Yes, it was. Rice country.

12 Q. When you were growing up, did they still have the  
farm, or

13 were they living in the city?

14 A. We were on the farm until I was about five, and  
then we

15 moved to the city.

16 Q. Did they keep the farm?

17 A. For a few years.

18 Q. Okay. Okay. I would ask you about fertilizer, but  
you

19 don't fertilize rice, do you?

20 A. No.

21 Q. They grow any other crops down there?

22 A. Just a backyard garden with a few vegetables.

23 Q. Okay. Okay. And is your mom still living there in  
Bay

24 City?

25 A. Yes, she is.

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books 1 Q. You also mentioned in the questionnaire among the  
2 that you've read are some Grisham books.

3 A. Yes.

Which 4 Q. In fact, you're reading or had recently read one.  
5 ones have you read?

6 A. Pelican Brief, Time to Kill, and -- I forget the  
other one.

7 That was the first one I read. I've forgotten the  
title of it.

8 It's been a while ago.

9 Q. Okay. From those books written by a lawyer about  
lawyers

10 and oftentimes about the criminal justice system, did  
you come

11 away with any certain impressions about prosecutors or  
defense

12 lawyers, just from those books?

13 A. No. I just came away with opinions about Mr.  
Grisham.

14 Q. Okay. I'm not going to ask you about that because  
that's

15 not relevant to our trial.

16 From your experience that you had with the  
criminal

17 justice system, did you come away with any impressions  
about

18 prosecutors or defense attorneys that might somehow  
play a role

19 in this case if you were chosen as a juror in this  
case?

20 A. No.

21 Q. Okay. All right.

22 Now, you mentioned to the Court's questions  
about --

23 when he asked you about the criminal justice system and  
you

24 checked off it's adequate, and then you talked about  
the DNA

25 and the Simpson trial; and I didn't quite follow about  
how much

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1 you followed of the Simpson trial on television and why  
you

2 didn't follow it.

3 A. Most of the trial was during the day.

4 Q. Right.

5 A. And in my previous profession, that's -- we were  
engaged in

6 work from 8:00 in the morning until about 5:30 in the  
evening,

7 so whatever had happened was done with before I got  
home.

8 Q. There were some channels, I think, that replayed  
it, you

start to 9 know, taped it during the day and then played it from

10 finish at night. I take it you didn't watch those?

11 A. No, sir.

12 Q. Okay.

local 13 A. We don't have cable or anything. I only get the

14 channels.

asked you 15 Q. Okay. Okay. On page 33, when the questionnaire

16 Question 144 --

17 A. 144. Yes.

Oklahoma City 18 Q. -- "If you heard or read anything about the

it," and 19 bombing, please indicate where you heard or read about

conversations, 20 you checked off TV news, newspapers, magazines,

21 and heard other people discussing the case.

22 A. Yes.

when it 23 Q. Who did you have conversations with? I take it

24 happened in April, '95, you were still playing.

25 A. Yes.

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1 Q. Okay.

2 A. There was some conversation among teammates. I  
belonged to  
3 an off-season pool league, so the guys shooting pool  
would talk  
4 about it; and hardly -- you could hardly walk by a  
newsstand or  
5 anything without seeing a photo or something having to  
do with  
6 the case.

7 Q. Right. Right. Did you just casually observe it,  
or would  
8 you follow it sometimes, or did you intentionally sort  
of stay  
9 away from it? What was your feeling about all the  
publicity  
10 there? It's gone on for two-and-a-half years now.

11 A. I think it was -- at first it was a casual  
interest, and as  
12 time wore on, I kind of got bored with it.

13 Q. Okay. Okay. From everything that you've seen,  
read, or  
14 heard during that period of time, do you recall how  
many people  
15 were killed during the bombing?

16 A. Let's see. 160-something.

17 Q. Okay. Do you recall whether or not there were any  
18 children?

19 A. I know there were definitely children.

20 Q. Do you recall what the reason was that there were  
children  
21 killed in the bombing of a federal building?

22 A. They were in a day care.  
23 Q. Okay. Okay. Do you recall how many children there  
were?  
24 A. No.  
25 Q. Do you recall how the bomb was delivered to the  
building?

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1 A. Yes.  
2 Q. How was that?  
3 A. A rental truck.  
4 Q. Okay. Do you recall what the Government claims the  
bomb  
5 was?  
6 A. Yes.  
7 Q. What was that?  
8 A. Part of it was fertilizer.  
9 Q. Okay.  
10 A. I don't know what kind.  
11 Q. Anything further about that, fertilizer mixed with  
anything  
12 or by itself, or what?  
13 A. All I remember is fertilizer.  
14 Q. Okay. Do you recall how Mr. McVeigh was arrested?  
15 A. No.

16 Q. Do you recall where Mr. Nichols was on April 19,  
'95, the  
17 day of the bombing?

18 A. No.

19 Q. Okay. Do you recall from what you've seen, read,  
or heard  
20 how Mr. Nichols initiated contact with the federal  
authorities  
21 and began to talk with them?

22 A. No, I don't.

23 Q. Do you recall anything about how the Government  
came to  
24 believe he was responsible for it and arrested him?

25 A. No.

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1 Q. Based on what you've seen, read, or heard, what is  
it you  
2 think that they're accusing him of doing? What role  
did he  
3 play in it?

4 A. My understanding from my limited knowledge of it is  
that he  
5 played some role; that perhaps he knew prior to the  
bomb being  
6 delivered. That's about my take on it now.

7 Q. Okay. Okay. Concerning the deaths of the  
children, I take

8 it you saw some images on television of the rescue  
shortly  
9 after the bomb went off and the firemen and the nurses  
and  
10 everybody involved in the rescue and carrying out  
bodies, etc.  
11 A. Yes.  
12 Q. If you were chosen as a juror in this case, it's  
likely  
13 that there will be testimony from the witness stand,  
from  
14 family members and from rescue workers, and there will  
be  
15 photographs and videos, all very, very emotional,  
powerful,  
16 sad, heart-wrenching testimony and exhibits. Everybody  
will be  
17 reacting very emotionally to it. It's not contested.  
Nobody  
18 disagrees that this happened. But people will be very  
19 emotional.  
20 And our question to you is if you get chosen  
on the  
21 jury, can you separate that emotion? The evidence will  
come in  
22 for what it relates to, but can you separate that  
emotion and  
23 then look at the Government and say: What evidence did  
you  
24 present that Mr. Nichols was responsible for this?  
Have you  
25 proven beyond a reasonable doubt that Mr. Nichols was

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1 responsible for this?

2 Can you look at that evidence objectively  
without

3 letting emotion enter into it?

4 A. Yes.

5 Q. Okay. Now, there has been a lot of talk here about  
6 punishment, and I want to assure you that you  
understand -- I

7 want to ask if you understand that Mr. Tigar and Mr.  
Nichols

8 and myself are not conceding that we'll ever get to the  
9 punishment stage. The Government has got a theory that  
10 Mr. Nichols was responsible for this, but we don't  
agree with

11 that theory. They'll start the case and they'll call  
their

12 witnesses to the witness stand and they'll have  
exhibits, but

13 we're going to cross-examine very thoroughly every  
witness they

14 put on the witness stand. Even though the Court said  
we

15 don't -- we're not obligated to put on our own evidence  
or call

16 our own witnesses, I want to assure you that we're  
going to

17 call a number of witnesses and have a number of

exhibits that

18 contradict the Government's theory.

19 And Mr. Nichols is presumed innocent as he  
sits there

20 now, and it's the Government's very heavy burden to  
come to

21 this jury and prove beyond a reasonable doubt that he  
is

22 responsible; that he is guilty of premeditated and  
deliberate

23 murder of the individuals there.

24 So I hope you understood when the Court  
explained to

25 you about why we're talking about punishment, but we're  
not

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1 just jumping over the guilt stage of this trial.

2 If you were chosen as a juror in the case, can  
you

3 keep an open mind at that stage of the case? Can you  
consider

4 the evidence and make your decision based solely on the  
5 evidence, look at it objectively?

6 A. Definitely.

7 Q. Okay. Okay. And the trial that you were a  
participant in,

8 were there a number of witnesses put on by the district

9 attorney?

10 A. Yes, there were.

11 Q. Okay. And you had retained counsel?

12 A. Yes.

13 Q. I take it that he had cross-examined those  
witnesses?

14 A. Yes.

15 Q. And you mentioned to the Court that you testified  
in the  
16 trial?

17 A. I did.

18 Q. Were there other witnesses called?

19 A. Yes.

20 Q. Now, the Court also explained to you that the  
defendant is

21 under no obligation to take the witness stand. I  
assume you

22 knew that at the time that you were on trial.

23 A. Yes, I did.

24 Q. Okay. Can you think of reasons why an innocent  
person may

25 not want to take the stand in his own defense?

5086

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1 A. Yes.

2 Q. At this time, we don't know whether or not Mr.  
Nichols will

3 take the stand; but you understand that the Fifth  
Amendment is

4 a very powerful constitutional right in this country.

5 A. I do.

6 Q. Okay. What have you read about Mr. Nichols' being  
7 associated with Mr. McVeigh that you can recall?

8 A. It's been so long ago, the only thing I can  
remember is

9 recent spoken words, where in passing I would overhear  
10 television.

11 Q. Okay.

12 A. Or while I was making an 8-ball shot, I hear  
something in

13 the background.

14 Q. And what was that that you heard?

15 A. Basically that somehow they were associated and  
that both

16 had -- one had as much to do with it as the other.  
Basically

17 what I've heard.

18 Q. Have you ever heard this phrase "guilt by  
association"?

19 A. Yes, I have.

20 Q. What does that mean to you?

21 A. It would mean that if you go and steal something  
and I know

22 you that I'm guilty, and that's wrong.

23 Q. Okay. Was there ever a time in your life where you  
felt

by 24 that you were somehow unfairly treated because of guilt  
25 association?

5087

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1 A. Yes.

think 2 Q. And I -- I'm not going to go into it, but do you  
accuse 3 that's applicable in a situation where it's unjust to  
4 somebody of guilt by association?

5 A. No.

6 Q. Okay. Why?

7 A. Huh?

8 Q. Why?

a game 9 A. When you said it, the first thing I thought of was  
so . . . 10 that we lost and I thought I played pretty well,

11 Q. You were being associated with the whole loss, huh?

12 No, I'm speaking of an incident where --

13 A. Yeah.

service 14 Q. You've been named "Man of the Year" for community  
15 probably on more than one occasion, haven't you?

16 A. Just once.

17 Q. Okay. There was a time when you appeared on a  
speaker's

18 platform with someone?

19 A. Yes.

20 Q. And you felt that you had been unfairly treated  
because of

21 that association.

22 A. Yes.

23 Q. So back to my question: Do you think that that is  
a

24 particular situation, guilt by association, that has to  
be

25 looked at very carefully by a jury when that is raised?

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1 A. I understand it.

2 Q. Okay. And can you look at the situation if you're  
on a

3 jury and by the Government merely saying they were  
associated

4 that they're not necessarily guilty merely because  
there was an

5 association?

6 A. (Juror nods head.)

7 Q. Okay.

8 A. Yes.

9 Q. Now, you had some pretty strong answers here on the  
death

10 penalty issue.

11 A. What page?

12 Q. Page 28.

13 A. Okay.

14 Q. And refer to B on page 28.

15 A. Uh-huh.

16 Q. Now, as the Court explained to you, the  
questionnaire was

17 designed to get your true feelings, the way you  
believed about

18 the situation before you were going to come to court  
and the

19 Court was going to advise you of what the law is. Did  
you ever

20 go to -- down to the courthouse in Texas and watch any  
trials?

21 A. Yes.

22 Q. In Bay City or Houston while you were at school?

23 A. Both.

24 Q. Did you ever get called for jury service in  
Houston?

25 A. Yes, but I had exams and didn't have to go.

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1 Q. Okay. Now, in Texas, you're aware that the jury is  
the one

2 that does the sentencing, not the court.

3 A. Yes.

4 Q. Did you ever watch any death penalty cases?

5 A. No.

6 Q. Okay. Your beliefs on the death penalty: How long  
have  
7 you had those?

8 A. Probably for quite some time because this is what  
came out  
9 of me when I read the question.

10 Q. Right. And I take it they're fairly deep beliefs  
that  
11 you've had over a period of time?

12 A. I would guess.

13 Q. Do you recall ever discussing it in school or even  
debating  
14 it maybe in speech classes or in civics classes?

15 A. I can't remember a time where it's ever come up.

16 Q. Okay. Okay. Would you agree that in Texas it's  
not much  
17 of a question; it's pretty well agreed on about the  
death

18 penalty in Texas?

19 A. Yes.

20 Q. And have you read recently about the number of  
executions  
21 that have been held in Texas?

22 A. As recently as two weeks ago.

23 Q. Okay. Have you read that there have been 31  
executions

24 there out of a total of 59 in the nation?

25 A. Yes.

5090

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from the 1 Q. Okay. Do you feel that your beliefs were formed  
2 environment that you grew up in in Texas?

3 A. They may be.

in the 4 Q. Okay. If you're chosen as a juror in this case and

going to 5 unlikely event we get to a punishment stage, are you

the 6 be able to follow the Judge's instructions and consider

aggravating 7 evidence that's introduced by the Government, the

the 8 evidence, and consider the evidence introduced by us on

weight to 9 defense, the mitigating evidence, look at that, give

following the 10 it, and then make your own independent decision,

11 Court's instruction and looking at the evidence?

the 12 A. If I were a juror on this case, when I walk through

humanly 13 door for the first day of trial, I would do everything

feelings at 14 possible to leave any preconceived notions and/or

15 the door.

16 Q. Okay. And I take it you're -- if you were chosen,  
you'd

17 have a total open mind as to the possible range of  
punishment

18 in the unlikely event we get there.

19 A. Yes.

20 Q. Okay. Can you think of any reason other than the  
fact you

21 don't want to be here -- can you think of any reason  
why you

22 couldn't be a fair juror in this case?

23 A. As much as I hate to admit it, there are none.

24 Q. Can you look Terry Nichols in the eye and tell him  
you'll

25 give him a fair trial?

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1 A. Terry, I would give you a fair trial based upon the  
2 evidence presented before me.

3 MR. WOODS: Thank you very much, sir. We  
appreciate

4 your time today.

5 JUROR: Thank you.

6 THE COURT: We all do, and you're excused now;  
but I

7 can't tell you whether you're going to serve on this

jury now.

8 We still have to go through this process with some more  
people.

9 I hope you understand that. We don't like to leave you  
with

10 this uncertainty, but that's the way it is. It will  
take yet a

11 while before we can get back to you.

12 JUROR: I won't make any long-range plans.

13 THE COURT: And in the event anything happens,  
you

14 know, that does affect your situation, you get back to  
us

15 and -- you got the telephone number to call.

16 JUROR: Yes.

17 THE COURT: And of course, we ask you not to  
talk

18 about this or anything connected with this case with  
anybody.

19 JUROR: I understand.

20 THE COURT: All right. You're excused for  
now, and

21 we'll get back to you.

22 JUROR: Thank you.

23 THE COURT: We've got 775.

24 Good afternoon.

25 JUROR: Good afternoon.

and take 1 THE COURT: Would you raise your right hand  
2 the oath from the clerk, please.

3 (Juror No. 775 affirmed.)

4 THE COURTROOM DEPUTY: Thank you.

5 THE COURT: Please be seated there in that  
chair right  
6 in front of you.

7 And you don't have to worry about positioning  
yourself  
8 relative to the microphone. It will pick you up if  
you're in  
9 the neighborhood of it, so . . .

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. You, of course, know that the case for which we're  
13 selecting a jury now is the trial of the United States  
against  
14 Terry Lynn Nichols.

15 A. Yes, I do.

16 Q. And you got a jury summons advising you of possible  
call  
17 for jury in this case back in July, and you responded  
answering  
18 a short-form questionnaire; and then you were noticed  
to come  
19 out to the Jefferson County Fairgrounds' auditorium  
building on

longer 20 the 17th of September, and you did. And you got a much

21 questionnaire.

22 But before asking you to answer those  
questions, I

23 appeared and identified myself and also other people  
who were

24 with me. And they're here again today, and I want you  
to know

25 who is with us this afternoon.

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1 So let me begin by reintroducing from the  
first table

2 directly in front of you counsel for the Government,

3 Mr. Lawrence Mackey, Ms. Beth Wilkinson. In addition  
to them

4 now, they're joined by Mr. Patrick Ryan and Mr.  
Geoffrey

5 Mearns, who are also counsel for the Government.

6 You recall also being introduced to Mr.  
Michael Tigar

7 and Mr. Ronald Woods, attorneys for Terry Nichols; and

8 Mr. Nichols, of course, the defendant in the case, was  
present

9 and is present now.

10 There are a few other people here directly in  
front of

11 you who are assisting in this process.

12                   And before I asked you to answer all these  
questions  
13                   on the questionnaire, I gave you some explanation about  
the  
14                   background of the case and procedural history; and I  
will just  
15                   want to review that with you briefly again, not because  
I think  
16                   you didn't pay attention or can't remember, but it is  
important  
17                   that we sort of establish a foundation for the  
questioning.

18                   Before doing that, though, I want to reassure  
you  
19                   about a couple of things. One is that, as I told you  
before  
20                   asking you to complete the questionnaire, some of these  
21                   questions are quite personal in nature and we know that  
to some  
22                   extent we've invaded your privacy. And that is, of  
course, an  
23                   important thing to you and to us. And we attempted so  
far as  
24                   possible to balance out here the public interest in the  
trial  
25                   and also the private interest in the persons called up  
for jury

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1    service.

2                   So it is for that reason that we're not using  
your  
3                   name here. As we go through this process, we'll try to  
avoid  
4                   things that would clearly identify you. And it is for  
that  
5                   reason that we arrange for you to come and go to the  
courthouse  
6                   in a way that you can't be, you know -- TV  
photographers and so  
7                   forth can't take your picture.

8                   Now we are in open court, so of course, things  
that  
9                   are said here are public. You understand.

10                  And if at any time in the course of this  
proceeding --

11                 I'm not suggesting there is anything like that, but if  
there is  
12                 something that you particularly feel sensitive about,  
you let  
13                 me know.

14                 Now, just to review again the background, as I  
15                 explained, the case arises out of an event that  
occurred in  
16                 Oklahoma City, Oklahoma, on April 19 of 1995, when  
there was an  
17                 explosion at a federal office building that destroyed  
the  
18                 building and also resulted in deaths and injuries to  
people who  
19                 were inside the building at the time; that later,  
charges were

20 filed in the United States District Court in Oklahoma  
City,  
21 charging a man named Timothy James McVeigh along with  
Terry  
22 Nichols -- and then the indictment reads "and other  
persons not  
23 named" -- with engaging in a conspiracy, a criminal  
agreement,  
24 to bomb that building and to kill and injure people in  
it.  
25 The indictment consists of 11 charges, one  
being this

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1 conspiracy and then additional charges, alleging that  
the  
2 accused persons went ahead and carried out that plan  
and did  
3 bomb the building with the resultant deaths and  
injuries; and  
4 also there are eight charges of first-degree murder,  
planned,  
5 premeditated murder of eight law enforcement agents of  
6 differing agencies of the national government in the  
building  
7 who died in the explosion.  
8 And then as I explained to you and the others,  
the  
9 case was moved from Oklahoma City here to Denver, the  
reason

were 10 being that there was a concern about asking people who  
jury and 11 there in Oklahoma City, you know, to sit as a juror --  
then 12 decide the case. So it was brought here to Denver; and  
trials, 13 after that happened, I entered orders for separate  
McVeigh 14 saying that it would be fundamentally unfair for Mr.  
of the 15 and Mr. Nichols to go to trial at the same time because  
that 16 way in which the evidence might come in and confusion  
with 17 might result. And therefore, I ordered separate trials  
18 separate juries.

19 And indeed, the case and the evidence as  
related to 20 Mr. McVeigh has already been heard by a jury right  
here; and 21 the jury was selected in this same way, and that jury  
then 22 after hearing the trial evidence returned a verdict of  
guilty 23 on all the counts as to Mr. McVeigh. The jury was then  
24 required to hear more and make a sentencing decision;  
so after 25 an additional trial of that issue, the jury returned a

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1 recommendation of a sentence to death.

2 Now, you probably knew those things before I  
told you,

3 but I reviewed that with you. Understand?

4 A. Yes, I understand.

5 Q. And, of course, as I explained at that time also,  
the jury

6 selected in this case cannot, to the extent that they  
may have

7 read, seen or heard things about the trial of Timothy  
McVeigh,

8 translate any of that into this case or consider any of  
it in

9 this case. And certainly the outcome, the jury  
verdicts there,

10 cannot be considered here; otherwise, it would violate  
the

11 whole reason for the separate trial order. You  
understand

12 that?

13 A. Yes, I do.

14 Q. So here we are in this case now starting over,  
clean slate,

15 no evidence at all as against Mr. Nichols; and we don't  
know

16 what the evidence will be in the case. So we start  
with a

17 clean slate, as I say. And that means also that we  
start and

18 apply the fundamental principles of the criminal

justice system

19 in the United States, which is commanded, you know --  
these  
20 points are under the Constitution of the United States  
so that  
21 they apply at all trials in this country, no matter who  
the  
22 defendant is, what the charges are, or even what the  
court is,  
23 whether it's a local court, a state or Federal Court.  
And  
24 these points are that the defendant who is charged is  
presumed  
25 to be innocent of all of the charges. That presumption  
of

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1 innocence carries throughout the trial and entitles  
that person  
2 to an acquittal, a verdict of not guilty, unless all of  
the  
3 persons sitting in judgment on that jury decide that  
the  
4 evidence shows guilt beyond a reasonable doubt. If it  
doesn't,  
5 the jury is obligated to resolve the doubt to the  
benefit of  
6 the defendant and find him not guilty. Understand  
those  
7 points?

8 A. Yes, I do.

9 Q. And each person who is charged with a crime in this  
country  
10 not only is presumed not guilty but has no burden or  
duty or  
11 responsibility to put on any evidence. I mean, they  
don't have  
12 to prove themselves to be not guilty, don't have to  
prove  
13 anything, don't have to call any witnesses, and  
certainly no  
14 person accused has to take the stand and answer  
questions or  
15 give any explanations about the case. He can simply  
remain  
16 silent and require the government to prove the charges  
and to  
17 challenge the government's proof through objections to  
the  
18 admissibility of evidence and also cross-examination of  
19 witnesses.

20 And in a case in which a defendant does not  
testify,  
21 the court in giving the final instructions advising the  
jury of  
22 what has to be proved, you know, and going through the  
23 essential elements of each crime and say all of these  
things  
24 have to be proved beyond a reasonable doubt -- those  
25 instructions include you may not consider the fact that

a

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1 defendant does not testify. It does not constitute any  
2 admission. You can't speculate on the reasons why the  
person  
3 may not have testified. As a matter of fact, the way  
the  
4 instruction reads is, members of the jury, you may not  
even  
5 discuss that issue in deliberating the evidence. You  
6 understand all those points?

7 A. Yes.

8 Q. Do you have any question about any of them?

9 A. No.

10 Q. And not only do you -- do you not only understand  
them but  
11 agree with them?

12 A. Yes, I agree.

13 Q. And accept them as the principles that would be  
applicable

14 to this case if you served on this jury?

15 A. Yes.

16 Q. And so as you see Mr. Nichols here this afternoon,  
you

17 understand that he sits with us presumed to be innocent  
of all  
18 of these charges?

19 A. Yes.

20 Q. Okay. Now, you answered all these questions, and  
we have a  
21 few more for you. And we also -- we're going to be  
asking you  
22 a few things about your answers, but we're not going to  
go  
23 through the whole questionnaire all over again.

24 A. Great.

25 Q. And I'm going to ask you some questions and then  
also

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1 explain some more things and ask you about them. And  
then when  
2 I'm done, the lawyers on each side will have a chance  
-- one  
3 lawyer for each side will have a chance to ask some  
more.

4 Bear with us yet a bit. Will you?

5 A. Sure.

6 Q. Okay. I want to review briefly some things about  
you that  
7 you've told us. And I note that you were born in  
Berkeley.

8 A. Yes.

9 Q. And lived in various communities in California.

10 A. Yes, I did.

11 Q. And then your education has been extensive, of

course; and

12 it comes up to your now having a Ph.D. in clinical  
psychology?

13 A. Yes.

14 Q. And you got the Ph.D. from Denver?

15 A. University of Denver.

16 Q. Yes.

17 A. It's actually a doctorate of psychology degree  
called a

18 Psy.D. About the same thing.

19 Q. And you also have a degree in nursing?

20 A. Yes, I do.

21 Q. And your present assignment is with a state mental  
health

22 facility, and you have as I understand it now  
responsibility

23 for two inpatient units.

24 A. Yes, I do.

25 Q. A heavy responsibility; and of course, you  
understand that

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1 jury service would take you away from that.

2 A. Yes.

3 Q. And for a period of time that I cannot estimate for  
you any

4 more than I can tell you whether you're on the jury or

when the

5 trial will start, because we don't know how long this  
process

6 will take.

7 Now, I know that you feel professionally  
responsible

8 for the persons in your care and for the institution;  
but have

9 you discussed with whoever it is that you should  
discuss it

10 with or may discuss it with how that -- those  
responsibilities

11 can be covered while you're on the jury?

12 A. I've not had an extensive discussion about that  
yet.

13 Q. All right. You're waiting to see what will happen?

14 A. Yeah, I was.

15 Q. Okay.

16 A. I didn't think I'd be here today.

17 Q. All right. Well, of course, we're going to have to  
make

18 the assumption not only that here you are today but you  
will be

19 here for some time as a member of the jury. That's  
what this

20 is about.

21 A. Okay.

22 Q. And, you know, it does not in any way suggest that  
your

23 work is not important. Obviously, it is; but this work  
is also

24 important. Obviously, it is; right?

25 A. Yes.

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1 Q. Okay. Now, a little bit more about your  
background,

2 because you served for a time with the Public Health  
Service.

3 A. Yes, I did. The Indian Health Service.

4 Q. Indian Health Service. And they have, like the  
military,

5 certain ranks.

6 A. Yes.

7 Q. And this was back in the 70's?

8 A. Yes, it was.

9 Q. For a couple years. Where did you work then?

10 A. Gallup Indian Medical Center.

11 Q. On the reservation?

12 A. Yes, on the Navajo reservation.

13 Q. And then you enlisted in the Army reserve as a  
nurse.

14 A. Yes, I did.

15 Q. And had a commission there in the reserves. And  
the way I

16 understand it, one of the motivations for doing that  
was to get

17 some extra money while you were in school.

18 A. That's it.

19 Q. Okay. Were you at any time while you were in the  
reserve

20 activated to active duty?

21 A. No, I wasn't.

22 Q. Now, you have some experience with the court system  
as a

23 witness.

24 A. Yes. It's been a while, but I have testified  
before.

25 Q. About how many times?

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1 A. Oh, gee. Maybe about ten times.

2 Q. And mostly in connection with cases involving young  
people,

3 adolescents and younger?

4 A. Yes. All of the cases.

5 Q. And this was when you were working -- well, the  
people you

6 work with now in the resident units: Are they also  
youngsters?

7 A. Yes, they are.

8 Q. So that's a subspecialty of yours, working with  
teenagers

9 and younger.

10 A. Yes, it is.

11 Q. Well, as you reflect on the times that you've been  
an  
12 expert witness, do you remember any times when you were  
13 particularly annoyed at lawyers or had thought that  
lawyers  
14 went too far in their questioning or anything like  
that?

15 A. No, I don't.

16 Q. But, of course, you went through the process where  
one  
17 lawyer calls you as a witness and asks you questions  
and the  
18 other lawyer for the other side asks you cross-  
examination.

19 A. Yes.

20 Q. And at times suggesting that maybe your  
qualifications  
21 aren't adequate or something like that? Have you had  
that kind  
22 of experience?

23 A. No, I haven't, luckily.

24 Q. Okay. So it went more to what your testimony meant  
to the  
25 particular issue --

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1 A. Yes.

2 Q. -- that was before the court.

3 A. Correct.

4 Q. Yes?

5 Have you ever appeared as a witness in a  
courtroom

6 when there was a jury there?

7 A. No. I don't believe so. No.

8 Q. Now, as I understand it, you have children and the  
-- and

9 your husband, also, is working as a pharmacist.

10 A. Yes, he is.

11 Q. So both of you are outside the home during the  
workday but

12 you have an au pair taking care of the children?

13 A. Yes, we do.

14 Q. And is this person new to your household now? Did  
you

15 change recently?

16 A. Yes, we have another new one.

17 Q. And you've had a little difficulty with some in the  
past,

18 have you?

19 A. Yes, we have, for the last couple of months.

20 Q. Well, I don't want to get into any details, but is  
all that

21 satisfactory now?

22 A. Yes. It's working much better.

23 Q. Okay. So if you're here on the jury, you're not  
going to

mean, 24 be concerned about the care of the children in any -- I  
they're 25 obviously you care about the children; but you think

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1 going to be getting proper care?  
2 A. My concern is I would probably be spending more  
time away 3 from home than I do right now, and I'm -- I'm not quite  
sure 4 how much time.

5 Q. Well, here's the way it will be: The jury is in  
the 6 courtroom from 9 to 5 and with a break -- you know,  
obviously 7 recesses, midmorning, midafternoon, and noon. There is  
no 8 sequestration. You know, you go back after 5. The  
time 9 involved in getting to the courthouse and back, of  
course, 10 extends that day some. But the -- it's 9 to 5 Monday  
through 11 Thursday; and then what we're going to do is on Fridays  
it 12 would be 9 to 1, so the jury would be recessed early on  
Friday.  
with the 13 And then, of course, weekends, evenings, jury is free

case or 14 proper cautions, of course, not to be talking about the  
keeping 15 anything. But we don't expect locking up the jury and  
16 them separate and apart during this trial.

17 A. As long as that doesn't happen, then that would be  
--

18 Q. You mentioned a concern about that in your  
questionnaire,  
wanted to 19 and I'm glad that you brought it up now, because I  
expect 20 make that clear to you, what the hours are and what we  
21 to happen.

22 A. Okay.

23 Q. Does that sound doable?

24 A. Yeah, I think so.

25 Q. Okay. I'm not suggesting it's something that you  
want to

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1 do. As I've said to others in here, we don't ask for  
2 volunteers here. We're -- this is a part of being a  
citizen of  
3 the United States and performing duties as citizens.  
And what  
4 we're doing -- this isn't a job interview, either.  
We're

5 looking at whether people can come in and serve and do  
what the  
6 Constitution and the law require.

7 A. I understand.

8 Q. Okay. Now, you have a sister who is a professor of  
law.

9 A. Yes, I do.

10 Q. In California. What -- do you know what she  
teaches?

11 A. Constitutional law.

12 Q. And have you mentioned to her that you've been  
summoned in

13 as a juror in this case?

14 A. I did mention that to her when she visited.

15 Q. Recently, was she --

16 A. She visited recently, yes.

17 Q. And did she have any suggestions to make to you?

18 A. No. I told her I couldn't talk about the case.

19 Q. Which is something I'm sure she understood.

20 A. Yes.

21 Q. Now, you were on a vacation trip recently and came  
through

22 Oklahoma.

23 A. Yes, we did.

24 Q. Was she with you then?

25 A. No, she wasn't.

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1 Q. Was that your immediate family?

2 A. It was --

3 Q. Your husband and child?

4 A. Yes, and our au pair that was traveling with us at  
the  
5 time.

6 Q. Okay. And you mentioned in your questionnaire --  
and you  
7 have it in front of you.

8 A. Yes.

9 Q. I don't mean to take advantage of you. Please look  
at --  
10 you know, I'm looking at page 36, but I'm sure this is  
11 something you remember saying.

12 At 157 on 36, do you have it?

13 A. Yes.

14 Q. And what you told us is when you were coming  
through

15 Oklahoma in June of this year, the -- this is the au  
pair  
16 suggested that you stop and visit the site.

17 A. Yes. She had heard about it on the news, and she  
wanted to  
18 see the site; and so we did stop.

19 Q. And the whole family got out and walked around?

20 A. Yes, we did.

21 Q. And looked at what was there.

22 A. Yes.

23 Q. And what did you see?

24 A. I saw a lot of people walking around. It was very sad.

25 Q. Now, as you sit here now, do you have in mind the image of

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1 what you saw there?

2 A. Yes, I do.

3 Q. Did you talk with any of the people who were there, other

4 people?

5 A. No, I didn't. It was interesting because everyone was very

6 quiet. Not that many people were talking.

7 Q. About how long did you spend at the site, if you can

8 recall?

9 A. Probably about 20 -- 20 to 30 minutes.

10 Q. And is there anything about that experience and the that  
11 emotional response and, you know, the thought processes

12 you had that you see as affecting your ability to judge fairly

13 in this case?

14 A. I don't believe so, at least in my opinion.  
15 Q. Okay. Well, your own opinion is what counts. And  
let me  
16 just say that as I asked you for these, you know, there  
is no  
17 right or wrong answer to any of this. You have given  
us  
18 factual information, and we rely on that; but when we  
ask you  
19 on opinions, beliefs, attitudes, you know, the only  
right  
20 answer is whatever your beliefs, opinions and attitudes  
are.  
21 And you should feel free to express them without  
concern for  
22 what reaction you might get here.

23 We expect people to be open and to tell us  
what they  
24 truly feel, recognizing the importance of this process  
and the  
25 importance of having a jury that can do the job in the  
case and

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1 decide on these principles that we've already  
mentioned. All

2 right?

3 A. Okay.

4 Q. So I don't want to be in any way understood by you  
as

a right 5 pressing you on an answer, causing you to come up with  
Okay? 6 answer, something like that. Don't worry about it.  
7 A. Okay.  
of the 8 Q. All right. Now, you recognize the responsibility  
9 jury to follow instructions of the court about the law.  
10 A. Yes.  
an 11 Q. But I want to turn to page 30, if you will, and to  
30. 12 answer that you gave about that up there at No. 129 on  
13 A. Yes.  
of 14 Q. And you said you agree somewhat with the importance  
here that 15 doing that. And then you seem to have a reservation  
rules 16 I would like you to explain. You do not blindly follow  
17 "if I feel that rules are not just and fair."  
18 A. That's correct.  
you 19 Q. Now, does that mean that -- and I'm putting this to  
but if 20 very bluntly because I don't know how else to put it;  
the 21 you get an instruction about the law that applies in  
the law 22 case -- and there will be a lot of instructions about  
23 at the end of the case. I mean, there will be

instructions

24 before the case, as there already have been about being  
careful

25 about the publicity and so forth. There will be  
instructions

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1 during the trial, things like, for example, on a ruling  
on

2 evidence that the jury must follow the rulings on the  
evidence;

3 if certain evidence is received for a limited purpose,  
the jury

4 must limit it to that purpose. These things happen in  
the

5 course of the trial.

6 And of course, there will be exchanges between  
7 counsel, where there will be disagreement about what  
the jury

8 can hear; and that's part of the whole process, as I'm  
sure

9 you're already aware. The court rules on those points  
and

10 instructs the jury accordingly.

11 And then there are all of the instructions at  
the end

12 of the case, how to judge the credibility of the  
witnesses,

13 what has to be proved for the crime charged, what are  
the

14 intent elements involved, all of these things. And,  
you know,  
15 the jury can't question the law. I have to interpret  
and apply  
16 the law and instruct the jury accordingly.

17 Now, are you ready to accept those  
instructions?

18 A. Yes. I can accept them.

19 Q. So if there were to be something that you disagreed  
with --  
20 let's say there was a ruling about this evidence can  
only be  
21 considered for a limited purpose and then you thought  
to  
22 yourself, Well, that seems silly to me, it ought to be  
23 considered for what I think it's worth, are you going  
to be  
24 able to follow the restraint that I ask the jury to  
follow?

25 A. Yes, I think I can.

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1 Q. Okay. And did you have something particular in  
mind when  
2 you -- I mean I understand you to be a fairly cautious  
person  
3 and you're being cautious about your response here and  
making  
4 sure that it fits your thinking; but did you have

something

5 special in mind where you would be concerned about  
having to

6 follow an instruction?

7 A. Not in this situation. I think I was talking in

8 generalities that -- I mean through history, every once  
in a

9 while there are some laws and things that have come  
across that

10 have not always been fair and just, and people have  
protested.

11 Q. Sure. Civil disobedience?

12 A. Yes.

13 Q. And the civil rights movement, for example.

14 A. And, you know, I think if we blindly followed rules  
all the

15 time, we wouldn't be human beings.

16 Q. Okay. But now, you know, in a courtroom, we're  
under some

17 definite restrictions about what we do. I'm restricted  
by the

18 law as to what I can do in a case; and the lawyers are,  
and so

19 the jury. And, of course, these restrictions are  
something

20 that have been in many ways evolved over several  
centuries, as

21 to, for example, the whole -- the rules of evidence,  
what a

22 jury can really take into consideration, what they can  
hear and

are 23 decide on. So you're ready to follow those principles,  
24 you?  
25 A. Yes, I am.

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here -- 1 Q. Okay. Now, there was something that you mentioned  
just 2 I believe it to be on page 20 -- that I frankly -- I  
and this 3 didn't understand what you said. Under 90, you had --  
4 is about a serious dispute with a government agency.

5 A. Uh-huh.

"no," then 6 Q. And you had a question mark. I mean you marked  
dispute 7 you had a question mark. Then you said, "I did have a  
8 with Colorado state -- student"?

9 A. "Student loan."

10 Q. Oh, "bond"?

11 A. "Bond."

12 Q. I thought that said "band."

13 A. Oh, no.

14 Q. I really didn't know what you were talking about.

15 A. I've never been in a band.

16 Q. With a bond; and then it all got worked out, I

guess.

17 A. Yeah. They wanted me to start paying back my  
student loan

18 when I was still in training.

19 Q. Okay.

20 A. And it took a long time to resolve that issue.

21 Q. What agency did that involve?

22 A. Well, I think the state contracted that out to some

--

23 whatever service they were -- it was called Colorado  
Student

24 Bond Authority; and I'd get a different person every  
single

25 time I'd call, and they'd say -- they'd resolve the  
problem and

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1 the problem just went on and on.

2 Q. Well, at least you got a person instead of a  
computer.

3 A. Yeah. Now I get a machine.

4 Q. Yeah. Well, anything from that that carries over  
here in

5 any respect --

6 A. No, I don't believe so.

7 Q. -- to your views about government or your ability  
to serve

8 in a jury?

9 A. I don't believe so.

10 Q. Okay. Well, we asked you a lot of things that you  
probably  
11 wonder why we asked you and how could it possibly be  
relevant;  
12 but, you know, I guess the breadth of these questions  
and the  
13 reason there are so many of them is that it is very  
difficult  
14 to think about in advance just everything that might  
come up in  
15 the evidence, because we don't know anything about the  
evidence  
16 now and don't know what will come up. So I think  
that's why  
17 there are so many questions here about so many  
possibilities,  
18 so that we could have some information about -- from  
you about  
19 all of these things to see whether any of them might  
influence  
20 or affect your judgment.

21 Now, you mentioned something about your  
information or  
22 publicity that you had seen about Mr. Nichols and about  
the  
23 case. And I'm, you know -- I'm not trying to hide that  
from  
24 you, either; but I think you kind of summed it up on 37  
at 163,  
25 where you say, "I do think that Nichols' case will be a  
more

1 complicated case."

2 A. Yes.

3 Q. More complicated than Mr. McVeigh's case? Is that  
what you  
4 mean?

5 A. That's what I was referring to.

6 Q. And what do you have in mind there as to why you  
said that?

7 A. Well, it seems -- again, I did not follow the  
McVeigh case

8 very closely, but it seems that there are a number of  
different

9 kinds of issues that are a little more complex in this  
case.

10 You also don't have a person placed in a certain place  
of the

11 bombing at the time and other factors like that.

12 Q. Okay. Now, we had to ask you some questions about  
your

13 views of punishment and the particular punishments of  
life in

14 prison with no possibility of being released ever and  
death,

15 and you wrote some answers for us. They're going to be  
on

16 pages -- they are on pages 28 and 29.

17 Just go ahead and take a moment to read what

you

18 wrote.

19 Okay?

20 A. Yeah.

21 Q. And, of course, we explained -- starts over on page  
27 and

22 goes over the reason these questions were phrased in  
the ways

23 they are. What we wanted to know from you are what  
your

24 thoughts are about these possible punishments before  
explaining

25 to you the procedure and the law that actually applies  
here in

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1 Federal Court, because as you obviously recognize from  
the

2 answers that you've made here, this is an area on which  
people

3 have a lot of viewpoints.

4 A. I understand.

5 Q. And there is obviously a lot of disagreement with  
extreme

6 views of those who believe eye for an eye; life for a  
life; you

7 take a life, you forfeit your life. And then there are  
those

8 who believe earnestly and honestly that the death

penalty

9 should not be imposed through a court process; that  
it's  
10 inappropriate to take a life through the court process,  
and  
11 then a lot in between.

12 And so what we wanted to hear from you was  
what your  
13 thoughts are in the beginning before hearing anything  
relating  
14 to how it's actually done in court, in this court.

15 And I -- I interpret your answers -- and if  
I'm wrong,  
16 you tell me. But you've thought about this  
considerably before  
17 you even answered the questionnaire.

18 A. Yes.

19 Q. And you've been conflicted on the issue over time,  
as you  
20 said.

21 A. And I still am.

22 Q. And you still are. Okay. And in the course of  
your  
23 academic pursuits and also clinically, have you read  
studies or  
24 any professional approach, you know, in your profession  
or  
25 others about the death penalty?

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1 A. I haven't read studies, but I do like to read the  
2 newspaper; and I've read what the newspaper has  
reported on.

3 Q. Sure. And of course, what the newspapers report is  
range  
4 of opinion.

5 A. Yes.

6 Q. You mention on D down here that cases in Colorado  
over the  
7 last 15 years where the penalty has been applied you  
think were  
8 just verdicts. At least the ones you know about?

9 A. The ones I know about that have been in the paper.

10 Q. Do any come to mind right now?

11 A. The most recent one and I think some of the people  
that are  
12 on death row right now in Colorado.

13 Q. As far as you know.

14 A. Yes.

15 Q. And then what you say on the next page is, you  
know, you  
16 don't want to have to be in this position.

17 A. I don't think I'm smart enough to figure this out.

18 Q. Well, let me just review with you what is actually  
involved  
19 in a jury participating in a sentence decision under  
federal  
20 law. And of course, the law is different among states.

There

21 are states where there is no death penalty, as I'm sure  
you're

22 aware.

23 A. Yes, I'm aware of that.

24 Q. And then in states that have the death penalty,  
there are

25 different ways in which it's decided whether a person  
should be

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1 put to death.

2 But we're in Federal Court now, and we follow  
federal

3 law; and this is the way the federal law is. In cases  
that do

4 not involve punishment of life in prison without  
release or

5 death, the jury participates at the trial and makes the  
6 decision as to whether the evidence proves guilt beyond  
a

7 reasonable doubt, the kind of thing we've already  
talked about.

8 Right?

9 A. Okay.

10 Q. And let's assume that the crime was a bank robbery  
or

11 something like that or a fraud case or, you know,  
something

12 that involved punishments different from this, like the  
range  
13 of punishment being so many years in prison, probation,  
fines,  
14 that kind of thing. Now, in those cases, when a jury  
returns a  
15 guilty verdict, the jury is done with the case. I  
mean, we ask  
16 the jury: Guilty or not guilty? If it's not guilty,  
obviously  
17 they're done. If it's guilty, they're still done.  
They have  
18 no role to play in what happens next, and that is the  
19 sentencing of the person found guilty. That's done by  
the  
20 court, a judge.

21 But a judge doesn't make a decision like that  
just on  
22 the basis of what happened at the trial, just the  
evidence at  
23 the trial; and there is no automatic sentence based on  
the  
24 crime. We don't have a formula that says crime equals  
time.  
25 There has to be an individual judgment made.

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1 And before that is done, there has to be  
information

2 gathered. And this information includes more about the  
crime  
3 than was just given in the evidence at the trial  
because it  
4 includes aftermath; follow-up; what happened; if there  
are  
5 victims, what happened to them; what impact did this  
have on  
6 the bank, if there were a bank robbery, that kind of  
thing.  
7 And then there is a lot of information about the  
defendant,  
8 essentially all about him that is known.

9 Now, you've been involved in preparation of  
evaluation  
10 reports on people in your profession. And of course,  
that  
11 includes some clinical things and all that but usually  
starts  
12 with a life history. Right?

13 A. Correct.

14 Q. And when you are responsible for evaluating a  
patient, you  
15 take a history; and indeed I take it that in addition  
to  
16 getting the information just from that person, you also  
talk to  
17 the family and you get as much information as you can  
about  
18 what happened to the person before you began your  
evaluation.

19 True?

20 A. True.  
21 Q. Well, it's much the same. I mean, we don't have a  
22 psychological test done on everybody. We don't go  
through some  
23 of that process that you probably do. But what we do  
want is a  
24 complete life story, because every one of us is  
different as a  
25 result of the things that have happened to us and the  
things

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1 that we've done. Right?  
2 A. Correct.  
3 Q. And that's part of just defining who a person is.  
And  
4 that's important to the sentencing decision. So the  
judge  
5 collects all of that, too, and there is a hearing at  
which the  
6 prosecutors speak and the defendants speak and defense  
counsel  
7 speaks and the judge decides: This is the sentence for  
this  
8 person for this crime. So it's crime plus person and  
all about  
9 that person factored into a final decision.  
10 And the decision is very individual to that  
person.

of the 11 And in cases where more than one person was convicted  
crime, the 12 same crime and different involvements in the same  
individual 13 sentences may well be different because of these  
14 characteristics and factors.

Court, an 15 Now, in the event of a murder in Federal  
possible 16 intentional killing of another person, then the  
comes in 17 sentences in such a case include life in prison with no  
in which 18 possibility of release, the person dies when his time  
19 prison; or death, or there can be a lesser punishment,  
20 case it goes back to the judge to decide. But what the  
21 Congress has said in passing these statutes is that the  
22 decision for life or death is not made by judges.  
That's made 23 by jurors, because that involves the community and the  
jury.  
refer to 24 The 12 people on the jury represent what we sometimes  
25 as the conscience of the community.

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three 1 But in arriving at this choice among these

was 2 options, the jury has to consider a lot more than what  
the 3 presented to them as evidence at the trial. So much in  
information, 4 same way as judges gather all of this additional  
through the 5 so is it provided to the jury. And that is done  
penalty 6 trial process that is extended into a second trial or  
brought 7 phase hearing. And so during that time, witnesses are  
evidence. 8 in, testify, as witnesses testify at the trial on the

provided then 9 Exhibits are received, and the information that's  
consequences. 10 is more about the crime and its circumstances and

the 11 And then certainly all of this that's available as to

And it 12 defendant: Who is this person, what's he all about?

involved: 13 includes in cases where more than one person was

did the 14 What are their relative roles? What did one do? What

difference 15 other do? What's the significance, if any, or the

16 in roles?

court gives 17 Now, at the end of that second trial, the

is kind 18 instructions again. And in these instructions, there

19 of a summing up of all that has been provided at this  
second  
20 trial to the jury in the way of information. And that  
summing  
21 up reviews it for the jury and then divides it up into  
two  
22 separate categories, really: On the one hand, those  
things  
23 that could be called and are called under the law  
aggravating  
24 factors or aggravating circumstances, usually the  
things about  
25 the crime and the circumstances of the crime that would  
suggest

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1 to the jury that death is a deserved punishment in this  
case,  
2 the case on trial; and on the other hand, the court  
explains  
3 the things that the jury may consider as mitigating  
factors,  
4 mitigating the aggravating factors, and suggesting to  
the jury  
5 that while the crime is such that death could be  
imposed, death  
6 is not deserved -- a deserved punishment for this  
particular  
7 person. Understand?  
8 A. Understand.

9 Q. And then these instructions can include some  
questions for  
10 the jury to ask of itself and of themselves in  
reviewing this  
11 material; but there is no formula for it, no equation  
to be  
12 followed, no arithmetic involved. It comes down to a  
very  
13 subjective judgment about the life of another person.  
14 And the jurors are expected to debate that and  
15 consider it and deliberate based on all they've heard,  
not just  
16 the crime but all of the things about the defendant as  
an  
17 individual.  
18 And then in the end, the decision that has to  
be made  
19 comes down to each individual juror making a decision  
about  
20 whether a person lives or dies. Understand that?  
21 A. Yes, I do.  
22 Q. And it is -- I suppose the best way to characterize  
the  
23 decision is to call it a moral decision, a reasoned  
moral  
24 decision based on all that you have heard.  
25 And what we must hear from you is whether, if  
you were

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like  
you've  
the  
1 put in a situation where you had to make a decision  
2 that -- can you make the decision based on all that  
3 heard, the aggravating, the mitigating, the crime and  
4 individual?

someone's  
5 A. Yes, I could. If I were absolutely convinced of  
6 guilt.

because the  
over,  
all. It's  
information  
should  
same  
13 jurors that the defendant is guilty. Understand?  
14 A. Yes, I understand.  
15 Q. So now, you know, characterizing it a different way  
16 putting it a different way is: Now that the defendant  
17 found guilty, what do we do about it? What should be  
18 done to  
him? You understand the point?

19 A. Yes, I do.  
20 Q. And now, what should be done to him: The jury must  
21 consider these things that I've reviewed with you at  
some  
22 length. And the issue -- not the issue. The question  
is: Can  
23 you approach that kind of a decision and make a  
decision on the  
24 basis of all that you hear?  
25 A. Yes.

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1 THE COURT: Okay. We have some questions from  
counsel  
2 as well.

3 Ms. Wilkinson, do you have some questions?

4 MS. WILKINSON: I'd like to start, your Honor,  
if  
5 that's okay.

6 THE COURT: Go ahead.

7 VOIR DIRE EXAMINATION

8 BY MS. WILKINSON:

9 Q. Hi. My name is Beth Wilkinson, as the Judge told  
you; and  
10 I'm one of the prosecutors who will be presenting the  
evidence  
11 in this case. His Honor is pretty strict about the

time, so

5:00. 12 I'm trying to get in as many questions as I can before

asked 13 I read over your questionnaire and I saw -- we

and I 14 you a lot of questions about a lot of different things,

15 saw that you told us that you had changed your name.

16 A. Yes.

17 Q. But only after you had your fourth child.

18 A. Yes.

change? 19 Q. Can you tell me what caused you to make that

married, I 20 A. Sort of a change in my life. When I first got

identity and 21 was pretty adamant about keeping my own -- my own

kept having 22 not taking my husband's identity. And then after I

the point? 23 all of these kids, it was sort of like, well, what's

24 We're a family. It was just a lot easier.

also 25 Q. I ask you that obviously because I'm curious, but

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death 1 because you said in your answers responding to the

2 penalty that as you've grown older, you've changed your

views.

3 A. Yes.

4 Q. And you told us that you had grown up in Berkeley.  
Is that

5 right?

6 A. No. No.

7 Q. Or you just were born in Berkeley?

8 A. I was born in Berkeley.

9 Q. Where did you grow up?

10 A. Santa Barbara, California.

11 Q. Would it be fair to say that early in your life you  
had

12 some pretty strong political views that were in line  
with

13 keeping your own identity and keeping your name and  
your views

14 that you shared with his Honor about certain laws not  
being

15 just and being -- I guess things that you might  
protest?

16 A. I'd say that's correct.

17 Q. And have your views evolved a bit?

18 A. California views.

19 Q. Have your views evolved a bit since you've had  
these

20 children and just your life experience?

21 A. I think just with time, yes.

22 Q. When you told his Honor that there were certain  
rules that

23 you wouldn't follow blindly, he asked you to give some  
general  
24 examples. And I would like to know if you have any  
specific  
25 examples, anything you've seen in the past or anything  
that you

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Juror No. 775 - Voir Dire

1 felt wasn't just or fair that you wouldn't have wanted  
to  
2 follow.

3 A. I'm thinking more in terms of historical kinds of  
things.

4 Women not having the right to vote, things like that.  
Slavery,  
5 things like that.

6 Q. Nothing involving the judicial system, I take it.

7 A. No.

8 Q. So you wouldn't have any problem listening to the  
rules  
9 here and following them as his Honor instructed you?

10 A. No, I think our system of justice, you know, is  
something

11 that we have to -- to respect and go along with. We  
have to  
12 have rules to govern our society.

13 Q. I take it you've had no problem following his  
Honor's

14 instructions to avoid any publicity surrounding this

case since

15 you got your summons.

16 A. That's correct. I do -- I do like to read the newspaper,

17 and every once in a while I'll -- I've seen a glimpse of a

18 headline when I couldn't avoid it; but I've not been listening

19 to the news.

20 Q. Does your husband or your children -- have they helped you

21 try and avoid any of the television or newspaper coverage?

22 A. I told my daughter to help me out because she gets up

23 before me to go to middle school; and the very first day that

24 she did that, she took a black marker -- and apparently there

25 was a lot of stuff in The Denver Post, and she just went

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1 through it all with a black marker. My husband said the CIA

2 had gotten to the newspaper.

3 Q. Is The Denver Post the newspaper that you read regularly?

4 A. Yes, it is.

5 Q. Are there any other newspapers that you read on a  
6 regular --

7 A. Just community newspapers.

8 Q. Because of your interest in reading the newspaper  
and

9 keeping abreast of current events, it sounds from your  
10 questionnaire that you followed somewhat the events  
surrounding

11 the bombing and the McVeigh case. Is that true?

12 A. I did initially after it happened. I didn't follow  
the --

13 I haven't been able to keep up with the news much in  
the last

14 two years as much as I used to. After my last baby was  
born,

15 it's just been really pretty crazy at home.

16 Q. So you're busy with your five children?

17 A. Yes.

18 Q. Which I saw were, what, from 1 1/2 to 15?

19 A. Don't have a lot of time to read these days.

20 Q. How much time do you spend working?

21 A. I spend, let's see, about 36 hours a week.

22 Q. In work? I mean, your other work, not raising your  
kids?

23 A. Correct. I work 32 hours at my place of  
employment, and I

24 spend 4 hours at home working. Well, it's supposed to  
be 4

25 hours. It's usually a lot more.

Juror No. 775 - Voir Dire

1 Q. Can you tell us a little bit more about what you  
actually  
2 do at work?  
3 A. What I actually do? I'm both a child psychologist  
and a  
4 neuropsychologist; and what I do is I cover two  
children's  
5 teams. I -- I evaluate children that come in on 72-  
hour  
6 mental-health holds and do those evaluations. I do  
lots of  
7 psychological testing. I do lots of teaching and  
training of  
8 psychology interns that are about ready to graduate,  
and I also  
9 provide neuropsychological services throughout the  
hospital.  
10 Q. So do you spend a lot of your time or at least a  
11 substantial part of your time evaluating information?  
12 A. That's primarily what I do.  
13 Q. Do you sometimes have to make pretty hard decisions  
about  
14 what that information shows you?  
15 A. I make lots of treatment recommendations and  
16 recommendations about what should happen to children.  
17 Q. If you have someone who is in on a 72-hour hold, is  
your

decides 18 job to make the evaluation but someone else actually

some kind 19 whether that child stays in the hospital or receives

20 of alternative treatment?

21 A. No, I make that decision.

difficult 22 Q. So I would imagine that sometimes that's a

23 decision to make -- to determine?

is with 24 A. Yes. It's usually not as difficult as I think it

25 adults.

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Juror No. 775 - Voir Dire

1 Q. And why is that?

to us, 2 A. Because most of the time when children are referred

are all 3 there are many guardians, parents, whatever, agencies,

4 in agreement that that should happen.

have to 5 Q. So there is not as much of a controversy that you

6 decide?

rare. 7 A. No. That comes up occasionally, but it's fairly

though, 8 Q. Okay. Do you think you could use those skills,

9 that you use in your job every day if you were a juror

here and

10 you had to determine whether the Government had proved  
its case

11 beyond a reasonable doubt?

12 A. Yes, I do.

13 Q. Could you use those same skills if you had to  
determine

14 whether someone should live or die?

15 A. I would follow the guidelines set out by the Court  
and go

16 through that in a systematic manner.

17 Q. If we could, let's go back to the publicity on the  
McVeigh

18 case and the bombing. Do you remember where you were  
when you

19 heard about the bombing of the Murrah Building?

20 A. I'm trying to think.

21 No, I don't.

22 Q. Do you remember what your impressions were at that  
time?

23 A. Oh, yes. I was very -- you know, upset to hear the  
news.

24 Q. Did you -- or do you know now whether there were  
children

25 in that building that were killed?

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Juror No. 775 - Voir Dire

1 A. Yes, I know there were.

2 Q. And do you know why those children were in the  
building?

3 A. Yes, I do.

4 Q. And what do you recall is the reason they were  
there?

5 A. They were in a day-care center.

6 Q. Did you have any reaction to that, being the mother  
of five

7 children yourself?

8 A. I thought that was pretty awful.

9 Q. And what stories did you follow in the paper those  
couple

10 weeks after the bombing?

11 A. Mostly about what had happened to the people in the  
12 building.

13 Q. Did you follow the investigation and the arrest of  
14 Mr. McVeigh?

15 A. Less so and more right after the incident happened.

16 Q. Okay. Do you remember how he was arrested?

17 A. Yes. He was driving in a car. He was stopped.

18 Q. And do you recall anything that you heard about Mr.  
Nichols

19 at that time?

20 A. I remember reading that he was connected in some  
way; that

21 he was a friend and that they had plotted this  
together.

22 Q. You told us in your answers to the publicity -- I  
think

this 23 it's on page 37, Question 160 -- that you thought that  
24 was -- I'll wait till you get there.  
25 A. Okay.

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Juror No. 775 - Voir Dire

1 Q. Sorry about that.  
2 A. Thanks.  
3 Q. That you thought that there has been a substantial  
4 amount -- I forget the exact word you used -- evidence  
in the 5 McVeigh case and that this case would be more  
complicated and  
6 that we would have to prove -- clearly prove to you  
that  
7 Mr. Nichols had participated. Is that what you said or  
in  
8 substance what you said?  
9 A. Yes.  
10 Q. If we can start with the first part of that: What  
was it  
11 that led you to the impression that there was a large  
amount of  
12 evidence in the McVeigh case?  
13 A. I don't know -- did I say that here?  
14 Q. It's either there or in one of the earlier  
publicity

15 questions.

16 A. What I had read in the papers was that he was -- he  
was

17 there, he was picked up going away from Oklahoma City.  
I did

18 read about the truck; that he was tied to renting the  
truck and

19 all of that. This was before the trial happened. This  
was

20 what the newspapers were saying.

21 Q. And what information or what -- in contrast, what  
22 information have you heard about Mr. Nichols and his  
23 involvement? What have you seen, read, or heard about  
that?

24 A. I've heard that he lives in the Midwest and that --  
let's

25 see. Again -- oh, they were in the Army together. I  
believe I

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Juror No. 775 - Voir Dire

1 read that. And -- those are most of the things. I've  
read

2 that he has a family and that he's connected in some  
way by

3 plotting this with Mr. McVeigh.

4 Q. You told his Honor that you have a sister who is a  
law

5 professor who teaches constitutional law?

6 A. Yes.

7 Q. How long has she been doing that for?

8 A. Oh, gee. Maybe about eight years or something like  
that.

9 Q. And obviously one part of constitutional law is the  
Eighth

10 Amendment and the idea of punishment and whether it's  
justified

11 under our constitution. Have you ever had any general  
12 discussions with her about your views on the death  
penalty or

13 her views on the death penalty?

14 A. I never talk with my sister about the law or about  
any

15 politics or anything.

16 Q. Can I ask you why?

17 A. Well, she can talk much better than I can.

18 Q. So do you know what her views are even if you  
haven't

19 discussed your views -- do you know what her views are  
on the

20 death penalty?

21 A. We haven't really talked about it. I would assume  
that

22 she's against the death penalty.

23 Q. And have you discussed the death penalty with your  
husband?

24 A. Not really. We must have talked about it at some  
point in

25 time. I don't recall recently, but -- are you asking  
what his

## Juror No. 775 - Voir Dire

1 views are?

2 Q. Or if you've -- maybe if you know what his views  
are and

3 also if you've had discussions, because you've told us  
that

4 you've changed your views; so that's what I'm really  
interested

5 in talking to you about.

6 A. And I'm not exactly clear what he would say. I  
know he's

7 not against the death penalty, but I don't believe he's

8 strongly for it, either.

9 Q. Well, let's focus on your views, since those are  
really

10 what's important here if you serve as a juror. You  
told us

11 that your views had changed.

12 A. Yes.

13 Q. Can you tell me what your views were earlier in  
your life?

14 A. That the death penalty was wrong; that killing was  
wrong.

15 Q. And what was that based on?

16 A. I guess sort of maybe more of a naive view of human  
nature.

17 I don't know. Just feeling that that was just simply  
morally

18 not an acceptable punishment.

19 Q. And when did your views evolve where you thought  
that the

20 death penalty could be justified in certain  
circumstances?

21 A. I think -- I think taking victims into  
consideration and

22 what some of their rights are.

23 Q. Have you ever in your dealings at work had to deal  
with

24 children who are the victims of crimes or -- either  
directly or

25 indirectly?

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Juror No. 775 - Voir Dire

1 A. Yes.

2 Q. And has that affected your opinion as to the death  
penalty,

3 or at least as to crime-and-punishment issues?

4 A. No, it hasn't really.

5 Q. Well, then, tell me a little bit more about what  
you mean

6 about victims' rights or victims' issues that you're  
familiar

7 with.

8 A. Well, I think being a parent and having children  
and

9 thinking that victims are someone's child.

in -- 10 Q. You said that in the questionnaire. You said that  
11 you would want the death penalty if your child were a  
victim, I 12 think you said to one of the questions.

13 A. I don't know that I would, but I would want to have  
that as 14 an option.

15 Q. Okay. If you were selected to be a juror and you  
had 16 determined that a defendant was guilty beyond a  
reasonable 17 doubt, would you require a different standard of proof  
to 18 sentence him to death? And I ask you that because you  
told his 19 Honor you know you would have to be absolutely  
convinced. So 20 would you have a different standard of proof if you  
were faced 21 with the decision of life or death?

22 MR. TIGAR: Object to the question, your  
Honor.

23 THE COURT: Well, I'm not clear what you're  
saying.

24 Proof about whether this person did the crime?

25 MS. WILKINSON: Yes.

1 THE COURT: Do you understand?

2 JUROR: I believe --

I'll

3 THE COURT: With that modification, Mr. Tigar,  
4 permit it.

5 MR. TIGAR: Thank you, your Honor.

6 BY MS. WILKINSON:

7 Q. Would you like me to try it again?

8 A. Sure. Go ahead.

jury

9 Q. What I'm asking is if you know you're selected to a

to

10 where the death penalty could be an option and you had

you

11 determine whether someone did the crime or not and then

should live

12 knew you were going to make the decision whether he

Would

13 or die, would you have a different standard of proof?

on the

14 you want more evidence to make sure before you decided

15 punishment?

didn't

16 A. Well, I would -- you know, in the first part of the

17 process, I would not go along with a verdict that I

could

18 think was correct; so I guess what I'm saying is yes, I

guilty.

19 do that if I agreed in the first round that someone was

20 Q. Okay. Could you accept that the standard of proof

in a

21 criminal case is that you have to be convinced beyond a  
22 reasonable doubt?

23 A. Depends what a reasonable doubt means.

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

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Juror No. 775 - Voir Dire

1 Q. Well, I'll tell you what it means, and it's what we  
say to  
2 jurors when we explain that standard at trial. It's  
the kind  
3 of doubt that would make a reasonable person hesitate  
to act in  
4 the most important of his or her own affairs, you know,  
when  
5 you have to make a decision, a personal decision in an  
6 important matter in your life. Before you make that  
decision,  
7 you want to weigh and evaluate it carefully. But then  
when  
8 you -- normally, people decide things in life and  
decide, well,  
9 I've decided now and it's beyond a reasonable doubt, I  
don't  
10 have any reason to doubt my decision; therefore, this  
is what  
11 I'm going to do. I suppose one of the kinds of  
decisions that

an 12 is involved is the decision to marry someone, just as

13 example. Understand that?

14 A. Yeah, I understand.

15 THE COURT: Okay.

16 VOIR DIRE EXAMINATION

17 BY MS. WILKINSON:

18 Q. Now, based on that instruction on the law, could  
you accept

19 that as the standard, or would you want to make sure  
there was

20 no possible doubt?

21 A. No, I could accept that as the standard.

22 Q. Now, once -- let's assume for this discussion that  
you've

23 made that decision that someone is guilty beyond a  
reasonable

24 doubt of murder, and then you were in the next phase  
where you

25 heard all the information about the mitigating and  
aggravating

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Juror No. 775 - Voir Dire

1 circumstances and you went back with your fellow jurors  
and you

2 determined that the death sentence was warranted.  
Could you

3 come out into a courtroom and look a defendant in the

eye with

4 your fellow jurors and say that you had sentenced him  
to die?

5 A. Yes, I could.

6 MS. WILKINSON: Thank you very much.

7 THE COURT: Well, I'm not going to -- would it  
be a

8 great inconvenience for you to come back in the  
morning? Yes,

9 but will you?

10 JUROR: Yes, I will.

11 THE COURT: I don't want, you know -- the hour  
is

12 getting late. I don't want to put any restraints or

13 constraints on counsel for Mr. Nichols. They should  
have a

14 fair opportunity to ask you some questions as well; so

15 that's  
16 why if you'll bear with us -- and it isn't their fault  
that

17 we're going to ask you back in the morning. It's just  
how it's

18 worked out. And we don't know how long it takes us to  
talk

19 with people, as I'm sure you understand. But we'll get  
you on

20 first thing in the morning and get you out of here in  
good time

21 tomorrow morning.

22 JUROR: Okay. Great.

THE COURT: Okay. So bear with us yet a while

longer

23 if you will; and, of course, please don't talk about  
the case

24 or anything about it during this time.

25 JUROR: Okay.

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1 THE COURT: We'll see you in here at 8:45  
tomorrow

2 morning. You're excused.

3 JUROR: Okay. Thanks.

4 (Juror out at 5:09 p.m.)

5 THE COURT: Okay. We'll be in recess.

6 (Recess at 5:09 p.m.)

7 \* \* \* \* \*

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct  
transcript from

3 the record of proceedings in the above-entitled matter.  
Dated

4 at Denver, Colorado, this 23d day of October, 1997.

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Paul Zuckerman

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Kara Spitler