

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

ff

9                                   REPORTER'S TRANSCRIPT  
10                                 (Trial to Jury: Volume 45)

11                                   ff

12                                 Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13                   Judge, United States District Court for the District of  
14                   Colorado, commencing at 8:41 a.m., on the 24th day of  
October,  
15                   1997, in Courtroom C-204, United States Courthouse,  
Denver,  
16                   Colorado.

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23  
24 Proceeding Recorded by Mechanical Stenography,  
Transcription Produced via Computer by Paul Zuckerman, 1929 Stout  
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9 MICHAEL TIGAR, and RONALD WOODS, Attorneys at  
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11 appearing for Defendant Nichols.  
12 \* \* \* \* \*

13 PROCEEDINGS

14 (In open court at 8:41 a.m.)

15 THE COURT: Be seated, please.

16 Will counsel approach, please.

17 (At the bench:)

18 (Bench Conference 45B1 is not herein transcribed by  
court

19 order. It is transcribed as a separate sealed  
transcript.)

20

21

22

23

24

25

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1 (In open court:)

2 (Juror No. 775 was recalled to the stand.)

3 THE COURT: Good morning.

4 JUROR: Good morning.

5 THE COURT: Thank you for your cooperation  
again. And

6 as you'll recall, we were ready for some questions from  
defense

7 counsel.

8 Mr. Tigar.

9 VOIR DIRE EXAMINATION

10 BY MR. TIGAR:

11 Q. Good morning, Doctor.

12 A. Good morning.

13 Q. My name is Michael Tigar. I teach school in the  
University

14 of Texas in Austin. This is Ron Woods, a solo  
practitioner in

15 Houston, Texas, and we were appointed by the United  
States

16 district judge in Oklahoma way back in May of 1995 to  
help out

17 Terry Nichols, after the Government filed charges; and  
then of

18 course we followed the case here to Denver when the  
order was

19 entered moving it here. We are court-appointed  
lawyers. And I

20 wonder if the fact that Mr. Nichols doesn't have money  
to hire

21 a lawyer, has appointed lawyers, puts us as a  
disadvantage with

22 you?

23 A. No, it doesn't.

24 Q. Okay. And there's another part of that. Would it  
be fair

25 to say that yesterday at 10 minutes after 5 or so, you  
really

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1 wished that it would be all over and that you didn't  
have to  
2 come back today?  
3 A. Well, that would have been great.  
4 Q. Well, I want to apologize for that. This is --  
nobody in  
5 this process is a volunteer in that sense; and if  
you're  
6 selected as a juror in this case, the way it's going to  
work at  
7 trial is the Government has a theory. They filed  
charges, and  
8 they present evidence in support of their theory. Mr.  
Nichols  
9 is presumed innocent as he sits there, and we cross-  
examine  
10 every witness. But not until the Government is  
finished do we  
11 have the opportunity -- which we will use -- to put on  
12 witnesses of our own, and that may take a while.  
13           Would you feel impatient by the time we got to  
our  
14 case, saying, well, now, when are they going -- when  
are they  
15 going to finish? Do you know what I'm --  
16 A. Yes. No, I think this is a very important trial.  
I think  
17 it needs to be done properly.

18 Q. Okay. And in your work, do you ever find that  
information  
19 you get right at the very end of your investigation is  
what  
20 turns out to be crucial to the differential diagnosis  
that  
21 you're making?

22 A. It depends on sometimes things change and you do  
come up  
23 with different conclusions.

24 Q. Yeah. So -- and I guess what I'm asking is: Is it  
okay  
25 with you -- are you comfortable with a system in which  
the

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1 jurors can't even talk about what they've seen and  
heard in the  
2 case, can't deliberate about it, can't think about  
their  
3 opinions, until after they've heard everything, after  
the judge  
4 has told them about the rule of law and how to look at  
and go  
5 back to deliberate?

6 A. Yes, I am.

7 Q. I do have a few questions, and I'll try to make it  
brief.  
8 You were -- you got your psychology degree, D.Psy.,  
here in

9 Denver; right?

10 A. Yes, I did.

11 Q. Did you ever know someone also getting a doctorate  
named

12 Edward Lang?

13 A. No, I didn't.

14 Q. And you said your sister teaches in Los Angeles.  
At what

15 law school does she teach?

16 A. U.S.C. Just for this year. She's originally from  
Iowa.

17 Q. And if it should turn out that somebody else  
connected with

18 this case also has a connection to that law school,  
would that

19 cause you any problem or --

20 A. No. And I don't know much about the law schools or  
21 anything.

22 Q. You understand why we'd ask these --

23 A. Yes, I do.

24 Q. -- why we'd ask these questions.

25 You said among the radio talk shows that you listen  
to

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1 is -- and you're already smiling -- is another doctor?

2 A. Yeah, I do sometimes. When I'm driving around.

3 Q. Now, that doctor has very definite views about  
4 responsibility.

5 A. Uh-huh.

6 Q. And a lot of things, I guess. In fact, wouldn't it  
be fair  
7 to say that she has no indefinite views? Would that --  
would  
8 her views influence you, as you think, as you looked at  
it --

9 A. No, not at all. I don't agree with half of the  
things that  
10 she says, but it's just sort of fun to listen to it.

11 Q. Now, could you turn, please, to page 22 of your  
12 questionnaire. Question 100. Said -- the criminal  
justice  
13 system, "It's working as well as it can given limited  
14 resources. The courts also have to abide by the laws  
we make."

15 That second sentence: What were you thinking about  
there?

16 A. I'm not sure. Let me look at it a minute here.

17 Q. Of course.

18 A. You know, I can't recall exactly what I was  
thinking. I  
19 can tell you what I think, though. You know, I think  
--

20 Q. Sure.

21 A. -- I'm a government employee. I know that there  
are



the 22 constraints on resources in any type of system; and in  
the 23 government system sometimes we don't have the money or  
we'd like. 24 resources that we'd like to do the kind of job that  
enough 25 Q. Okay. And does that sense, that we don't have

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for jury 1 resources, influence as you say, well, if I'm called  
2 service, well, that's something a citizen should do?  
3 A. Yes, I should do that.  
abide 4 Q. And about the second part, "The courts also have to  
that 5 by the laws we make" -- does that -- looking back at  
6 today --  
thinking at 7 A. That's the part I'm not sure exactly what I was  
8 the time. I'm sorry.  
9 Q. Okay.  
10 A. But -- I don't recall.  
are 11 Q. Okay. Do you have any sense that too many people  
or that 12 getting off because of technicalities, on the one hand,  
13 the judicial system is putting people away that

shouldn't be?

14 And is there a constructive criticism of the system?

15 A. Well, I think the courts are overburdened with  
many, many

16 cases nowadays which makes it probably much harder to  
do their

17 jobs.

18 Q. Could you look, please, at page 30. And I know  
some folks

19 asked you about the things on page 30. Could we --  
let's start

20 with Question 129.

21 A. Sure.

22 Q. That's the do-not-blindly-follow-rules answer.

23 A. Okay.

24 Q. And there you explained that you were thinking  
about cases

25 that you'd read about in history, and I think you  
mentioned the

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1 suffrage movement?

2 A. Yeah, I did.

3 Q. Okay. So is it fair to say that had you been on  
the jury

4 when Susan B. Anthony was tried for the crime of voting  
because

5 she was a woman, you would have been hard-pressed to

convict

6 her for that?

7 A. That's correct.

8 Q. Okay. And maybe there are other examples one can  
think of.

9 In the case in which we are now, I gather you can't  
imagine

10 that there would be any situation in which you'd  
disagree with

11 the legal principles announced by the Court?

12 A. Right now, no.

13 Q. Okay. And then down at Question 132, you talked  
about the

14 incident at Waco. Could you tell me what -- what you  
had in

15 mind with that answer? Could you expand on that a  
little bit?

16 A. Well, I think there was blame to be had on both  
sides. For

17 one, you know, people do have free will and choice,  
though they

18 tend sometimes to be influenced by other more powerful  
people;

19 and that seemed to set up the situation of the  
unfortunate

20 people that were -- were there at the compound.

21 And the government, I felt, probably moved in  
too

22 quickly or did not take some other steps that might  
have

23 avoided an armed conflict like that. It's just  
unfortunate

24 that that many people had to die.

25 Q. Yes, it is, indeed.

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1 Let me talk a little bit about that issue in  
the

2 context of this -- of this case. You -- folks have  
asked you a

3 lot of questions about your views about punishment.

4 A. Uh-huh.

5 Q. And we should start by saying that Terry Nichols is  
6 presumed innocent. Therefore, we presume, the law  
presumes we

7 won't ever get there. And we intend, as I say, to --  
from the

8 very first witness to put forward a case; and at the  
end of the

9 case, the jury will be duty-bound by its oath to say  
not guilty

10 if a reasonable doubt remains, if the Government  
doesn't carry

11 that very heavy burden. But if for some reason Mr.  
Nichols

12 should be convicted of something, we can't get  
everybody back

13 in, all the jurors, and say, well, now, what do you  
think, so

14 that's why this process. Indeed, it's why this  
process, you

15 know, takes a while.

16 Tell me: Can you remember the first time that  
you  
17 thought about the issue of the proper punishment in  
murder  
18 cases, growing up in California?

19 A. No. I remember growing up, though, thinking that  
killing  
20 was wrong.

21 Q. Okay.

22 A. Killing in any circumstance is wrong.

23 Q. Is there any particular case that you -- that came  
to mind  
24 or that was a big issue?

25 A. No, no, there wasn't. I think it was just the  
whole idea

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1 of taking a life is wrong. And that's sort of how I  
grew up  
2 thinking about it.

3 Q. Was that something you talked about at home with  
your  
4 family?

5 A. Not really.

6 Q. Really? As we look at the geography, were your  
parents in

7 the academic world?

8 A. My father was for a period of time.

9 Q. Okay. And that accounts for the move from where  
you were

10 born to where you -- where you went to high school?

11 A. Yeah, he was teaching at both universities.

12 Q. Did you have any -- do you have any impressions  
that remain

13 about the justice system, the criminal justice system  
from the

14 events in Santa Barbara that included the torching of  
the Bank

15 of America?

16 A. You know, I think I was a bit oblivious to some of  
that at

17 the age that I was at the time, but I did go to high  
school --

18 I went to Bishop High School when Reagan made an  
appearance

19 there and was storm troopers in riot gear. It was very

20 dramatic, landed in a helicopter on the football field,  
and

21 there were rioters all over the place, so it was a  
pretty

22 tumultuous time.

23 I And I just -- I think at that point in my life

24 really didn't know what to think. I had grown up in a  
fairly

25 strict household that had probably more conservative  
views, and

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all of  
time I  
attend

1 I was pretty much in the process of rebelling against  
2 those views, I think. So -- but at that particular  
3 didn't really know what to think about all of that.

4 Q. During the time you were living there, did you ever  
5 or get working papers from the Center for the Study of  
6 Democratic Institutions, which was up on the hill in  
Montecito?

7 A. No, I didn't.

8 Q. No. Well, let's then continue along. At some  
9 point you  
10 you  
11 And can  
12 said -- and this is reflected in your questionnaire --  
13 began to think more about this issue of punishment.

14 you describe for me what that process was?

15 A. You mean as I changed my views?

16 Q. Right, yes.

17 sort of  
18 understand  
19 from, but  
20 I also understand the other side.

14 A. I think -- I think as I became older, I began to  
15 understand other points of view a little better and  
16 where people who support the death penalty are coming  
17 I also understand the other side.

18 conflicted on

19 would agree

20 sympathy with

21

And as I said before, I'm still somewhat  
the issue. I think -- I think the part of me that  
with the death penalty comes from -- from having  
victims.

22 and not to

23 described what

24 about this

25 going to

Q. Now, let me talk a little bit about the process,  
repeat what others have said. But the Court has  
happens in a case -- any case -- we're not talking  
cases specifically (a) because we presume we're not

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1 proven.

2 where the

3 of

4 testimony

5 not to

6 impact of

get there and (b) because none of us knows what will be  
But in a case in which this is an issue and  
jury has this role, the prosecution presents evidence  
things, aggravating factors; and that may include  
from victims, victim impact testimony. And to not --  
trigger some instinct for vengeance, but to show the  
the defendant's conduct on the community --



8 A. Uh-huh.

9 Q. -- and on people. Other aggravating evidence may  
be  
10 presented. The defense in turn presents really two  
kinds of  
11 mitigating evidence. One goes to things to do with the  
12 offense. It is, as the Judge pointed out, two  
different people  
13 involved in the same crime may have different roles,  
may have  
14 played different roles. And there are all sorts of  
ways in  
15 which those different roles could influence a jury in  
deciding  
16 what the proper punishment would be, just as it would  
if the  
17 judge were deciding what to do.

18 The second kind of mitigating evidence has to  
do with  
19 the defendant as a human being, all of these individual  
20 characteristics, a process of taking evidence that may  
bear  
21 some similarity to the kind of taking of a history,  
background,  
22 analysis that a professional would do confronting  
someone  
23 who -- you know, had got into the system that you work  
in and  
24 those evidence that -- that evidence about that  
individual  
25 human being, positive things about the defendant. And  
then the

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moral 1 judge gives instructions and jurors make a reasoned  
2 response.

3 Now, what concerns me and what I'd like to  
talk about

4 is that when you describe the change in your views, you  
have

5 focused on crimes that people commit that hurt people  
as being

6 a factor. And then if you look at page 28, answer D,  
talking

7 about cases in Colorado over the last 15 years, and you  
say at

8 the end, "These are cases of particularly brutal  
murders,"

9 again, focusing on the nature of the offense. Because  
it's

10 clear, I think one would agree, looking at the paper,  
these are

11 pretty shocking crimes that have been committed in  
Colorado,

12 the four people on death row now, and you remember  
that.

13 Having given us those views, were you to  
consider

14 punishment, would you also be open to listening to all  
of the

15 evidence about the role of a defendant and also that

defendant

16 as an individual human being?

when I 17 A. Yes, I think I would. I'm talking about -- I think

information 18 was answering that question, I'm talking about the

available 19 that I had available. Again, the information I had

I didn't 20 was pretty much from the newspaper, and I'm aware that

21 have all of the information.

22 Q. And then in the second thing is in considering the

imprisonment 23 punishment, there's this full range from life

the judge 24 without the possibility of parole, sending it back to

to 25 to impose sentence, death penalty -- would you be open

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turned 1 considering all of those no matter how brutal the crime

2 out to be?

Court as to 3 A. I guess I would want some instruction from the

4 how that process would be -- is to be decided.

5 Q. Okay.

6 A. And I would try to go along with that.

7 Q. And if the Court instructed you that there is no  
such thing  
8 as an automatic death penalty -- and in fact that is  
not only  
9 what the law but the federal Constitution says, no  
automatic --  
10 no matter how many people have died, no matter, you  
know, that  
11 it was intentional and deliberate and premeditated, no  
such  
12 thing as an automatic death penalty, would you be able  
to  
13 follow the Court's instructions that that's the case  
and  
14 listen, give effect to all this other evidence?

15 A. Yes, sir.

16 Q. You understand why we're concerned?

17 A. Yes.

18 Q. And I'm putting the question just that bluntly, you  
know,  
19 what the basis of it is.

20 Let me ask you a little about the nature of  
the work

21 that you do. You're a neuropsychologist?

22 A. Well, I'm a child psychologist and a  
neuropsychologist.

23 All-purpose psychologist.

24 Q. All right. Including second childhoods or just  
first

25 childhoods?

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1 A. I work -- right now I work with children up to  
about age

2 12. But I also work with adults and adolescents from  
time to

3 time, covering their functions.

4 Q. Sure. And I assume -- I wasn't making light of it.  
I

5 assume in working with children, you also look at their  
6 families?

7 A. Oh, yes, and we work with the families.

8 Q. From whence this all came, the provenance of the  
things

9 that you're seeing?

10 A. Uh-huh.

11 Q. As a neuropsychologist, does -- what does that  
betoken in

12 terms of psychological approach?

13 A. What does that mean?

14 Q. Yes.

15 A. Okay. Basically that we assess people for brain  
damage.

16 Q. Okay. So you're looking for -- in a therapeutic  
context,

17 transactional context and you're looking at also brain  
--

18 A. Yes, there are specific tests that we use to  
evaluate brain

19 function.

20 Q. Do you also evaluate substance abuse?

21 A. I don't.

22 Q. Okay.

23 A. I do in terms of the impact on maybe organicity or  
24 something, brain damage.

25 Q. Did you ever look at the influence of substances,

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1 conscious-altering substances, whether it be  
methamphetamine,

2 or marijuana, or alcohol, on the cognitive process?

3 A. Yes, I do that.

4 Q. Okay. You do that sort of evaluation. Now, if a  
witness

5 should testify in a case, or witnesses -- and again,  
we're not

6 trying to predict or get commitment -- would you be  
able to

7 consider the evidence of whatever substance there might  
-- that

8 witness might be shown to have ingested and whatever  
evidence

9 would be presented by both sides as to whether there  
was any

10 impact, just based on what you heard from the witness  
stand;

the 11 that is, would the -- bad question -- would you become  
today 12 professor in the jury room, saying, well, what we heard  
13 is not the whole study?  
whatever 14 A. I would use whatever knowledge I have to evaluate  
15 evidence is presented.  
16 Q. Okay.  
certainly 17 A. So if I know something about an issue, I would  
18 share that with the jurors.  
I'd 19 Q. Now, final group of questions. We're almost done.  
say at 20 like you to turn, if you would, to page 33. And you  
about 21 Question 144 -- you give us five sources of information  
22 the Oklahoma City case.  
23 A. Uh-huh.  
24 Q. Who have you -- just generically, who have you had  
25 conversations with about the case?

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with 1 A. I think after the bombing happened, I was talking  
neighbors, 2 people at work about it and with my husband and with

3 I suppose. A source of conversation for many people.

4 Q. For almost everybody, I think. And did you see the  
5 pictures and the -- listen -- hear the stories of  
people about  
6 folks that had been killed and injured?

7 A. Yes, I did.

8 Q. Particularly the children?

9 A. Yes.

10 Q. Looking at your own professional background, you  
can  
11 understand there will be very graphic evidence about  
that in  
12 this case. It's to be expected. Do you think that  
you'd be  
13 able to look at that, see it for what it is, about the  
14 uncontested fact about the devastation, and still look  
at the  
15 question, did the Government prove beyond a reasonable  
doubt  
16 that Terry Nichols had something to do with it? Can  
you --

17 A. I believe so. But I could certainly -- you know, I  
can't  
18 give you a definite answer about that, I guess. It's  
nothing

19 I've experienced before, and it's nothing I  
particularly want  
20 to experience.

21 Q. I understand that you -- I understand that. I  
think nobody  
22 wants to, and I think especially given that situation.



to 23 In your profession, are you sometimes required  
24 separate out highly emotional --  
25 A. Oh, yes. I go through that all the time.

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And you'd 1 Q. You do that. Through a professional situation.  
2 bring that training to bear?

situation; but 3 A. I'd hope that I could. This is a different  
4 in my work, I do that very effectively.

case will 5 Q. Okay. I mean . . . . You read that the Nichols  
I'm 6 be more difficult and complex. That's over on page 37,  
that's at 7 sorry. And then you also write, "I have read" --

What do 8 162 -- "I've read they plotted the bombing together."  
impression? 9 you remember reading about that, to form that

believe 10 A. It's been a while since I've read about this, but I  
Terry 11 what I read was that there was some evidence connecting  
12 Nichols to making the bomb or something like that, to  
13 Mr. McVeigh. I'm not -- I'm not aware of what specific

14 evidence, though, the Government has.

15 Q. Okay. I put it to you this way: You're aware that  
16 sometimes if you get -- you know, if you have a  
preconception,

17 then as you receive new information, your mind might --  
18 people's minds might shun and be more willing to accept  
what

19 fits the preconception than if it doesn't fit the  
20 preconception. Is that --

21 A. I understand what you're saying.

22 Q. I don't know if that's a gestalt theory -- 'cause I  
don't

23 even know what that is much. But do you think that you  
would

24 be less open to evidence that contradicted your -- you  
know,

25 what you had read, heard before, than to evidence that

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1 supported or reinforced it?

2 A. I think it's important for this trial to be very  
fair and

3 for someone to listen to both sides of the case.

4 Q. Okay.

5 A. And go through the process in a systematic kind of  
manner.

6 Q. Okay. So you think in kind of -- again, I'm not  
trying

7 to -- all I'm trying to do is get your views about  
that. You

8 think that's a process that you would participate in?

9 A. I think I could do that.

10 Q. Final question, and I thank you. As you sit there  
today,

11 could you look Terry Nichols in the eye and say you  
could give

12 him a fair trial?

13 A. I believe I could.

14 MR. TIGAR: Thank you very much for being with  
us.

15 JUROR: Thank you.

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Well, the questioning has been completed. Before  
you

19 leave, though -- you'll be excused now for the day -- I  
just

20 want to mention a couple of things that came up in the  
21 questioning. One is that, as Mr. Tigar was asking you  
about

22 your knowledge and awareness of what effects on  
cognitive

23 abilities substances might have, ingested substances,  
24 mind-altering and so forth, don't know whether that  
comes up at

25 the trial; but -- and you said that you would share  
with the

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1 other jurors what you know about it. But you also said  
you'd

2 follow instructions. And the instruction is that  
you're not to

3 do that.

4 A. Okay.

5 Q. Let me just give you the example. We have lawyers  
serving

6 on juries from time to time, and of course what I  
instruct

7 lawyers is you can't instruct the jury on what you  
think the

8 law is because you're going to be like the rest of the  
jurors

9 and follow the law.

10 Now, with respect to any area of expert  
testimony,

11 opinion testimony, about matters that are not commonly  
known

12 and which do involve specialized knowledge and  
training, of

13 course persons with the same knowledge and training as  
some of

14 the witnesses or similar knowledge may be on the jury;  
but as

15 far as the jury is concerned, they have to listen to  
what those

16 experts say. And of course in your own mind evaluating  
it, you

17 can't ignore the things that you know, but you're not  
to become  
18 a leader on that subject in the jury room. Understand?  
19 A. Okay. I could follow that instruction.  
20 Q. All right. I'm sure you can. And I just wanted to  
make  
21 sure you knew that before you left here because you  
might if it  
22 happens and you were on the jury. I might forget to  
tell you  
23 about it.  
24 A. Okay.  
25 Q. And I don't know that that's a subject in this  
case, just

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Juror No. 775 - Voir Dire

1 as I don't know what the evidence is going to be in  
other  
2 respects as well.  
3 And one other thing, just to be clear here on  
the  
4 subject of the penalty: As Mr. Tigar said, the  
instructions  
5 will include how you, you know -- and you remember I  
said  
6 yesterday afternoon, the court at the end of a penalty  
phase  
7 hearing, if there is one, instructs about aggravating  
and

8 mitigating factors and sort of summarizes the  
information  
9 provided and divides it in those categories and then  
asks the  
10 jurors to consider all of that. So that's -- but  
there's no  
11 formulaic instruction that can be given to the  
instruction. It  
12 comes down to the jurors' judgment on the matter.  
13 I just -- I think you understand that, but I  
just  
14 wanted to make it clear.  
15 A. I understand.  
16 THE COURT: Okay. Now, I can't tell you today  
whether  
17 you will serve on this jury, and I can't tell you  
exactly when  
18 I can tell you. But we have yet a ways to go, so I'm  
going to  
19 ask you to live with the uncertainty a while longer.  
But what  
20 you have to do now in terms of your own conduct is much  
the  
21 same as when I excused you before from the  
questionnaire  
22 session, and that is assume that you will be in here  
when this  
23 trial starts, sitting there in the jury box as a member  
of the  
24 jury, and therefore responsible for a fair trial in  
this case;  
25 and that of course means being careful about all of the

things

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that 1 that you read, see, and hear and discuss with others so

2 you can come in here and perform that duty.

3 JUROR: I understand.

changes 4 THE COURT: If anything should occur here that

5 your situation in any respect, please give us a call  
6 immediately.

7 JUROR: Okay.

now. 8 THE COURT: Thank you. You're excused for

9 JUROR: Thank you very much.

10 (Juror out at 9:12 a.m.)

11 THE COURT: We'll proceed with 269.

hand, 12 Good morning. Would you raise your right

13 please, and take the oath from the clerk.

14 (Juror No. 269 affirmed.)

15 THE COURTROOM DEPUTY: Thank you.

microphone. 16 THE COURT: Please be seated there by the

lean over 17 And you can be comfortable there. You don't have to

18 to the microphone or anything like that.

19

VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. And we know that you were here all day yesterday  
waiting to  
22 come in. We're sorry that we didn't get to you  
yesterday and  
23 require that you come back again today; but I hope you  
have  
24 patience with us and understand that we can't be sure  
how long  
25 it may take with particular people, so we can't program  
it on a

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Juror No. 269 – Voir Dire

1 certain timing. But we appreciate your cooperation  
with us;  
2 and of course you know that you're here because you  
received a  
3 summons as -- along with other people as possibly  
serving on  
4 the jury for the trial in the case of the United States  
against  
5 Terry Lynn Nichols. And you got that summons, and you  
returned  
6 to us a short questionnaire asking you some questions  
about  
7 your availability to serve. Do you recall that?  
8 A. Yes. I do.  
9 Q. You have to answer out loud so it goes on the



record.

10 A. Yes, yes, I do.

11 Q. And you wrote a concern on your questionnaire, and  
we'll

12 talk about that. But you then came out pursuant to  
another

13 notice to the Jefferson County Fairgrounds last month  
at which

14 time you and other jurors were assembled to answer a  
lot of

15 questions on a written questionnaire; and before you  
did that,

16 I introduced myself, discussed the background of the  
case, and

17 also introduced other persons who were with me. And  
they're

18 with me again this morning and with us here as a part  
of this

19 process, so I want to reintroduce them.

20 And here at this first table in front of you  
are

21 Mr. Lawrence Mackey and Miss Beth Wilkinson, attorneys  
for the

22 Government. And you met them before. They're now  
joined by

23 Mr. Patrick Ryan and Mr. Geoffrey Mearns, additional  
lawyers

24 for the Government.

25 You also were introduced to Mr. Michael Tigar  
and

## Juror No. 269 – Voir Dire

Nichols 1 Mr. Ronald Woods, attorneys for Terry Nichols; and Mr.  
2 was present.

3 There are a few other people here who are  
4 participating in this process.

5 And after I made the statements about the  
background  
6 of the case and explaining some other aspects of the  
case, you  
7 completed a questionnaire; and we have that, and you  
have it  
8 now in front of you. And as I told you and the others  
we would  
9 do, we have made copies of your answers, given them to  
the  
10 people who are here in this process and to no one else;  
and  
11 they are not using them for any purposes other than  
what we're  
12 doing here.

13 We know that in these questions we've asked  
you some  
14 things that are personal and private, and we respect  
your  
15 privacy and try to balance that off against the public  
interest  
16 in the case. And it is for this reason, our attempts  
to  
17 protect your privacy and all of the other people who  
have been

18 called in, we do not refer to your name here and also  
arrange  
19 for you to go and come to the courthouse without any  
press  
20 photographers taking your picture and so forth.

21 Now we are in open court. This is a public  
22 proceeding, so whatever may be said here is a matter  
that can  
23 be publicly reported. Understand?

24 A. Yes, I do.

25 Q. All right. Now, I want to turn to the matter that  
you

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Juror No. 269 – Voir Dire

1 wrote on your original questionnaire, and you don't  
have that  
2 with you, I know. But you remember, I'm sure, that  
when you  
3 sent this back to us right after you got your  
questionnaire in

4 July, you expressed your concern about the difficulties  
you've  
5 had adjusting to the death of your husband.

6 A. Yes.

7 Q. Husband of many years, which was -- he passed away  
a little  
8 over a year ago, as I understand.

9 A. Yes.

10 Q. And you described in that original questionnaire  
how that  
11 has affected you and how it's been difficult for you.  
And, you  
12 know, we didn't just ignore that when you wrote that  
back to  
13 us. I want to reassure you of that. And we're not  
ignoring it  
14 now. And I've turned to it right now as the first  
matter,  
15 because it is important to us and to you. And you  
mentioned it  
16 again in the long questionnaire as possibly something  
that  
17 would affect your ability to deal with the stress of  
serving on  
18 the jury, and you mentioned it on page 4. I just want  
you  
19 to -- you know a little bit about what it's like, just  
by going  
20 and coming to the courthouse here and waiting and so  
forth, and  
21 of course you have been a jury -- on a jury here  
before.

22 A. Yes.

23 Q. In connection with a much different type of matter.  
As I  
24 understand it, you were a jury -- on a jury here some  
years ago  
25 in connection with a trespass at Rocky Flats.

## Juror No. 269 - Voir Dire

1 A. Yes.

2 Q. And a woman who went out there and did that to  
protest her

3 opposition to nuclear weapons and war generally and did  
it in

4 part, I guess, because of a religious belief of hers?

5 A. Yes.

6 Q. How long ago was that, about, as you recall?

7 A. Oh, my. I don't recall. Ten years. Eight years.

8 Q. Probably at least that long.

9 A. Yes.

10 Q. And I -- you know, I did not try that case. I  
think

11 probably Judge Weinshienk was the judge --

12 A. Yes.

13 Q. -- on the case. But we've had cases like that, you  
know, a

14 lot of them at certain times; and of course that was a  
case in

15 which trial didn't take very long, did it?

16 A. She was her own lawyer.

17 Q. Yeah.

18 A. It was not much time for a trial.

19 Q. And you returned a guilty verdict?

20 A. Yes, sir.

21 Q. The jury did.

22 A. We did.

23 Q. Although, as you indicated in here, you had great  
sympathy

24 for the woman and what she was trying to do?

25 A. There just seemed to need to be some other way to  
take care

5184

Juror No. 269 – Voir Dire

1 of that case.

2 Q. Yes.

3 A. I mean I understand that she was a problem, but she  
was --

4 she was different.

5 Q. I think you described her as sweet.

6 A. She was a lovely, little lady.

7 Q. "Lovely," that's the word you used, yes.

8 Well, I mention that because you've had some  
jury

9 service, but would you just explain to us what you  
think about

10 your own ability to serve as a juror, recognizing some  
of the

11 emotional strain that you've been under since your  
husband

12 passed on.

13 A. I'm not using that as an excuse.

14 Q. We're not suggesting that you are.

that I 15 A. I was saying it just out of fairness to the defense  
I still 16 do have trouble maintaining a level of concentration.  
17 do.

18 Q. Yes.

that. I 19 A. I drift. And I just thought they needed to know  
20 try to concentrate, but I realize I'm not there yet.

or 21 Q. And, you know, I don't want to cause you discomfort  
22 embarrassment or something here, but it's of concern.

And are 23 you -- do you continue to have trouble with sleeping?

about 24 A. Last night I slept three hours. And it seems to be  
for me. 25 normal. Four or five hours a night is a lot of sleep

5185

Juror No. 269 - Voir Dire

1 I'm alone --

2 Q. Makes you tired in the day?

sleep 3 A. No. No. I just -- I just don't seem to need the

and I 4 anymore. Every little noise at night will wake me up,  
5 just don't get back to sleep.

6 Q. Did your wakefulness last night, for example, as

you've

7 experienced it, include some anxiety about being in  
here today?

8 A. No. Honestly, no. I just -- I was more worried  
about

9 whether it was going to snow this morning and I'd have  
to have

10 the sidewalk shoveled before I get the car out of the  
garage.

11 Q. All right.

12 A. No, I didn't -- I didn't think about my part of  
today. Too

13 much.

14 Q. Since you got the summons and since you got the  
15 questionnaire and filled it out, have you had some  
concern

16 about what it would mean to you if you were on the  
jury?

17 A. I think it will be a hardship for anyone who is on  
the

18 jury, just the fact that it will be such a long, you  
know --

19 several weeks probably. In my case, I have -- I have  
no

20 responsibilities like children or a job or -- so that  
wouldn't

21 be a problem with me. Actually, I suppose you'd say  
I'm pretty

22 available. I just -- it's just the fact that it would  
be such

23 a long duration.

24 Q. You also apparently have some views about this



matter --

25 A. Yes.

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Juror No. 269 - Voir Dire

1 Q. -- that you've formed as a result of whatever  
you've read

2 and seen.

3 A. I don't think a person can avoid having some views  
on --

4 it's been a pretty well-publicized case.

5 Q. What are your views about this matter and about  
6 Mr. Nichols?

7 A. I think the probability of his involvement with  
Timothy

8 McVeigh is pretty strong. I see him as a man who just  
doesn't

9 seem to change from the time I first saw him two-and-a-  
half

10 years ago. He's impeccably groomed. He never needs a  
haircut.

11 He never needs a shave. His expression never changes.  
I just

12 get the feeling there's something -- something with  
him.

13 Q. Well, is it a feeling that he's guilty of the crime  
that

14 he's charged with?

15 A. Yes, a feeling that he's very involved, yes.

16 Q. When you say involved, are you --  
17 A. Guilty, yes. I'd say very probably guilty.  
18 Q. And now, understand, you're not on trial.  
19 A. Yes, sir.  
20 Q. And when I ask you these questions, they're not in  
the form  
21 of an accusation. And I'm not suggesting there's  
anything bad  
22 about you. I just want to know how -- you know, as you  
have  
23 already mentioned, people can have preconceived views  
and they  
24 can have opinions as a result of what they may have  
seen and  
25 read in the publicity that they just can't get out of  
their

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Juror No. 269 - Voir Dire

1 minds.  
2 A. Uh-huh.  
3 Q. And of course you know that jurors have to set  
those things  
4 aside.  
5 A. Yes, I do.  
6 Q. And decide strictly according to the evidence in  
the case.  
7 Now, what is your belief about your ability to do that  
and

8 consider the evidence as it comes in in court with  
respect to

9 this case?

10 A. I would certainly try to put it all behind me and  
start

11 fresh from what's presented in court. I'm not sure  
that I

12 would be quite successful. I don't know.

13 Q. You also expressed some views about the death  
penalty in

14 this questionnaire.

15 A. It's been said that if not this case, then what  
case needs

16 the death penalty, and I agree with that. This case

17 certainly . . . more than any other that I can think of  
that

18 has happened in this country is a death-sentence case.

19 Q. And if I were to go over it with you, the legal  
principles

20 that are involved in jury sentencing, which you  
recognize is a

21 possibility because of the charges in this case and in  
which

22 the law requires jurors to consider something other  
than the

23 crime in deciding that issue, is this also something  
where you

24 doubt that you could be open-minded about considering  
any

25 penalty other than death?

Juror No. 269 - Voir Dire

the 1 A. No; I could consider anything else, if that's what  
2 evidence is pointing to.

3 Q. Well, you've just said your view is if --

isn't 4 A. Well, if it comes out in court that his involvement  
5 what I think it is, at the moment --

6 Q. You mean that he's not guilty?

7 A. Right.

8 Q. No, I'm talking about --

9 A. Or as --

10 Q. -- assuming --

11 A. I beg your pardon.

verdict 12 Q. What I'm asking you about: Assuming that there's a  
13 of guilty --

14 A. Oh, I'm sorry.

15 Q. And then we're talking about what should be done.

16 A. Then, no, I would not change my mind.

17 Q. You would be --

18 A. I would be voting for a death penalty.

excuse 19 THE COURT: All right. Well, I think we can  
20 you.

21 JUROR: Okay.

22 THE COURT: And we appreciate your coming in.

23 JUROR: Thank you.

I've  
good  
24 THE COURT: And again, this doesn't mean that  
25 decided that you're a bad person or that you're not a

5189

just  
not --  
that they  
1 citizen. Please accept that. As I said, there are  
2 some -- some people get a fixed view of things and it's  
3 you know, they would be less than honest if they said  
4 could do the job as a juror. So you're excused now.

5 JUROR: Thank you.

not  
6 THE COURT: Thank you. And we'll ask that you  
7 talk about the case --

8 JUROR: No.

that  
people.  
9 THE COURT: -- with anyone because of course  
10 would not be fair to us as we're talking with other

11 Thank you.

12 JUROR: Uh-huh.

13 THE COURT: We'll go to 811.

14 (Juror out at 9:29 a.m.)

15 THE COURT: Good morning, sir.

16 JUROR: Good morning.

17 THE COURT: Would you please raise your right  
hand,  
18 take the oath from the clerk here.

19 (Juror No. 811 affirmed.)

20 THE COURTROOM DEPUTY: Thank you.

21 THE COURT: Would you please take a seat there  
by the  
22 microphone. You don't have to lean into that  
microphone. You

23 can just make yourself comfortable there. It will pick  
your --

24 pick up your voice, and the only reason it's there is  
to help

25 us hear you.

5190

Juror No. 811 - Voir Dire

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. And you know, of course, that when the oath refers  
to the  
4 case now on trial, we're talking about the selection of  
a jury  
5 for the trial of charges by the Government in United  
States  
6 against Terry Lynn Nichols and that you got a jury

summons

7 about this matter back in July advising that your name  
had come

8 up, as it were, on a chance selection process; and we  
asked you

9 to return a short questionnaire about that, and you  
did. Then

10 we gave you a notice to come out to the Jefferson  
County

11 Fairgrounds' auditorium building on September the 17th,  
and you

12 did that, you and others.

13 And when you were there, I introduced myself,  
and I

14 also introduced people who were with me or participants  
in this

15 case. I want to do that again so you're aware of who's  
here

16 with us this morning.

17 You may recall meeting Mr. Lawrence Mackey and  
Miss

18 Beth Wilkinson right here at this first table. They  
are

19 lawyers for the Government. They're joined now this  
morning by

20 Mr. Patrick Ryan and Mr. Geoffrey Mearns.

21 You recall also, Mr. Michael Tigar, Mr. Ronald  
Woods,

22 attorneys for Terry Nichols, who's here with us as he  
was then.

23 And then I explained some things about the  
case, the

24 background and the procedural posture of the case, and  
then  
25 asked you to complete a long questionnaire, lot of  
questions,

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Juror No. 811 - Voir Dire

1 And you did that. And we have, as I said we would,  
made copies  
2 of it, provided it to the people who are here with us  
this  
3 morning for the limited purpose of this process right  
now; and  
4 this hasn't been shared with anybody else. It's not a  
public  
5 document, and it will not be.

6 And we recognize your interest in your own  
privacy,  
7 and we are interested in that, too, and try to protect  
it as  
8 much as we can, balancing it against the public  
interest in  
9 this whole trial process. So we're not going to use  
your name  
10 here. We will attempt to -- in the questioning and in  
your  
11 answers, attempt to avoid anything which would clearly  
identify  
12 you. But -- and also this going and coming to the  
courthouse,  
13 as you've experienced it, is something done so that  
some press



14 people or TV people can't take your picture.  
Understand?

15 And what we are doing now is in open court and  
may be  
16 reported, you understand that?

17 You have to answer out loud so the record is  
clear --

18 A. Yes.

19 Q. -- on your answers. Okay. Would you like some  
water? You

20 seem to have a little --

21 A. No, I just have a little cold.

22 Q. Okay. Now, I'm going to ask you a few more  
questions, some

23 of which will simply be asking you some of the things  
that you

24 put in the questionnaire, but we're not going to go  
through it

25 all with you. And then when I have questioned -- after  
I've

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Juror No. 811 - Voir Dire

1 questioned you, one of the lawyers on each side will  
have a

2 chance to ask some questions. And of course all we're  
doing

3 here is trying to get some information from you,  
factual

4 information about some of the things in your

background; but

5 parts of this of course are matters of opinion and  
attitude.

6 And clearly there's no right or wrong answers to those  
7 questions, and you're not going to, you know, be put to  
a test

8 here. We just need information, and we just need to  
know some

9 of the things that you believe. And so I don't want  
you to be

10 in any way hesitant about telling us what you believe  
just

11 because you think it may not be something we want to  
hear.

12 Okay?

13 A. Right.

14 Q. All right. And I'm not suggesting that you're the  
type who

15 would do that anyway, but I just want to have it clear  
in here

16 in the beginning.

17 And I also want to repeat what I said about  
the

18 background of the case and what's involved in a jury  
trial.

19 And you've been in the trial process in the military  
through

20 court-martial --

21 A. Yes, I have.

22 Q. -- boards and also at one time in Denver on a  
criminal --

23 A. Numerous times in Denver.

24 Q. Numerous?

25 A. Right.

5193

Juror No. 811 - Voir Dire

1 Q. In which you actually heard cases?

2 A. Yes.

3 Q. Well, how many in all?

4 A. Oh, at least four or five.

5 Q. And over what period of time was that?

6 A. Oh, the last 10 years.

7 Q. When was the last time you were on a jury?

8 A. Oh, it's been about four or five -- four years, I believe.

9 Q. You got -- you know, you tell us about this on page 26, and

10 you've got your questionnaire there. I don't mean to tax your

11 memory beyond what's in here, so you're perfectly free to refer

12 to what you said.

13 You mention -- first item there is a case involving a

14 charge of manslaughter?

15 A. That's right.

16 Q. And you said -- "Did the jury reach a verdict?"

17                   You answered "No"?

18    A.   It was a hung jury.

19    Q.   And was that your first jury experience?

20    A.   No, that was about the second or third.

21    Q.   And about how long did the jury deliberate before  
they

22           finally said, "We can't do it"?

23    A.   About three or four days it was.

24    Q.   How long was the trial?

25    A.   About ten days.

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Juror No. 811 – Voir Dire

1    Q.   And can you remember some of the evidence in the  
case, just

2           if you can give us an overview of what it was about?

3    A.   It was a case where an individual was intoxicated  
and ran

4           down another individual.

5    Q.   And the defendant was in a vehicle?

6    A.   Yes.

7    Q.   And the victim was on foot?

8    A.   Yes.

9    A.   So the question you recall was what? Did he intend  
to run

10           over him and kill him or --

11    A.   Well, it was -- boiled down to mostly on whether he

was

12 truly intoxicated or not.

13 Q. Whether he knew what he was doing?

14 A. Right.

15 Q. And I take it there was strong disagreement?

16 A. There was.

view

17 Q. And you came away from that -- well, what was your

18 coming away from that?

19 A. Well, I was one of two that was for the conviction.

20 Q. And you held your ground?

21 A. I did. Yes.

jury

22 Q. And whether -- you know, what a jury does -- how a

keep it

23 deliberates and all that's -- we try to respect that,

like

24 secret, so I'm not asking you who said what or anything

25 that. So what, it was down to ten to two?

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Juror No. 811 - Voir Dire

1 A. Yes.

and go

2 Q. And I assume that there was a lot of let's come on

3 along with us and get this over with?

4 A. It got very bitter at the end.

is trying 5 Q. Okay. Now, again, you know, all we're doing here

6 to find out some of your experiences and --

7 A. Right.

us. So 8 Q. -- and nothing about that case would be judged by

robbery. 9 let's talk about these others. One of them was a

10 A. There were a couple -- yes, a couple robberies and  
11 break-ins, that kind of thing.

12 Q. And what were the verdicts in those cases?

13 A. Oh, they were guilty.

damages? 14 Q. And then there was apparently a civil case for

ended a 15 A. Yes, it was where a large company's truck rear-

16 person driving in their regular car.

17 Q. And with a whiplash-type injury?

18 A. Yes, a long, detailed injury.

19 Q. Okay. What did the jury do in that case?

settled out 20 A. The day before we were to deliberate, why, they

21 of court.

22 Q. All right. How long had you been in the trial?

23 A. It was a week.

that 24 Q. Did that -- did that annoy you that you'd spent all

25 time and then they settled it?

## Juror No. 811 - Voir Dire

1 A. Yes, it did. Because the whole jury felt that  
there wasn't  
2 any, any damages coming to the person who was doing the  
suit.  
3 Q. And was that because there was the thought that the  
person  
4 wasn't injured or that the -- that there wasn't fault?  
5 A. They were injured, but it was all magnified. It  
was a lot  
6 of trumped-up thing, we felt.  
7 Q. Okay. Had the jury talked about that?  
8 A. Pardon me?  
9 Q. Did the jury talk about that before they were told  
that it  
10 was being settled?  
11 A. No, we never had a chance to talk together about  
it, no.  
12 Q. Well, I guess the question I have is: How did you  
know  
13 that was the view of the jurors?  
14 A. Well, we talked about it after the trial was over.  
15 Q. All right. When the judge said, you know, you're  
not going  
16 to have to decide this case and so forth?  
17 A. Right. And in fact, we even got to talk to the  
defense  
18 lawyer, too, about the case.

19 Q. Did you talk to the plaintiff's lawyer?

20 A. Yes.

21 Q. Did you tell him or her what you thought?

22 A. Yes.

23 Q. Okay. Well, I'm glad you did.

24 it now, Now, how many in all, then, as you think about

25 times have you been on a jury in a criminal case?

5197

Juror No. 811 - Voir Dire

1 A. Criminal, probably about three times.

2 Q. And so two were verdicts and one was a hung jury?

3 A. That's right.

4 Q. And were both verdicts guilty?

5 A. Yes.

6 Q. And were you the foreperson on any of these juries?

7 A. No.

8 Q. Now, you know some things, then, about fundamental  
9 principles of the criminal justice system.

10 A. Yes.

11 to Q. And even though you're an experienced juror, I want

12 you heard review those with you in a minute because, you know,

13 the expression "for the record" I'm sure at times in



court, and

14 some of the things we do for the record.

15 A. Right.

16 Q. And for the record, I want to review with you,  
first of

17 all, the background of this case so that it is clear,  
even

18 though I am pretty confident that you know the  
background of

19 the case 'cause I told you about it out there when we  
were

20 together last, and you probably knew these things or  
some of

21 them, anyway, before that.

22 A. Right.

23 Q. But we're talking about a trial that arises out of  
an event

24 in Oklahoma City, Oklahoma, on April the 19th of 1995.  
On that

25 day there was an explosion that destroyed a federal  
office

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1 building and that -- in which a lot of people were  
killed and

2 injured who were occupants of that building; that  
later, at a

3 later time, charges were filed by Government lawyers in  
the

of 4 United States District Court for the Western District  
which 5 Oklahoma in Oklahoma City in the form of an indictment,  
6 is a statement of charges, and which accused in the  
7 indictment -- the Government accused a man named  
Timothy James 8 McVeigh along with Terry Lynn Nichols -- and then the  
9 indictment reads "and other persons not named" -- with  
a 10 conspiracy, a criminal agreement, to bomb that building  
and to 11 kill and injure people in it.

12 The indictment goes on in some 11 counts or  
charges 13 and alleges that not only was this planned by the  
defendants 14 and others, but also that they carried out the plan and  
did, 15 according to the Government's accusations, bomb that  
building 16 and with the intent to kill and injure people in it.  
And the 17 charges include eight charges of first-degree murder  
for the 18 premeditated and intentional killing of eight law  
enforcement 19 officers -- agents of various national law enforcement  
agencies 20 who died in the explosion, and that to these charges,  
the 21 defendants entered their pleas of not guilty, thereby  
creating

22 the issue for trial.

23  
Oklahoma City

And the case then was transferred from

24 here to Denver because of a concern about asking people  
from

25 Oklahoma to sit on the jury because of the impacts  
there of

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1 this event. And when the case was transferred here to  
Denver,

2 I entered an order to separate the defendants for  
trial,

3 ordering that there must be separate trials for Mr.  
McVeigh and

4 Mr. Nichols because it would be in -- fundamentally  
unfair for

5 them to be on trial at the same time because of the  
potential

6 for confusion about the evidence, and the law requires,  
of

7 course, that each person be considered separately, the  
evidence

8 be considered separately as to each of the accused.

9 There has been a trial of the evidence  
concerning

10 Timothy McVeigh, a trial here to a jury selected in  
this very

11 same-type process; and that jury, after hearing the  
evidence

guilty 12 that was presented at that trial, found Timothy McVeigh  
13 of the charges. Then because of the sentencing  
procedures in 14 Federal Court, the jury was asked to hear a second  
trial of the 15 information relating to the question of punishment, and  
the 16 jury returned a recommendation of a sentence to death  
as to 17 Mr. McVeigh.

18 You remember my saying those things --

19 A. Yes.

20 Q. -- and you probably knew them anyway, did you?

21 A. I do.

22 Q. And then we are now, of course, getting ready for  
the trial 23 of Mr. Nichols, and as I explained to everyone when we  
were 24 gathered there at the auditorium building, anything  
that anyone 25 has seen, read, or heard about the trial of Mr. McVeigh  
must be

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1 set aside; that in approaching this case, there can be  
no 2 inference that any of the same evidence would be  
presented

evidence 3 here. We start with a clean slate here, with no  
consider 4 concerning Mr. Nichols, and the jury must be open to  
determining 5 only the evidence that's presented at this trial in  
Understand? 6 whether Mr. Nichols has been proved guilty.

7 A. Yes.

the 8 Q. And of course that includes the verdicts -- I mean  
any way 9 jury's decision, because to do so, to consider that in  
separate 10 in this case would violate the very reason for the  
11 trial orders. And I take it that you're aware of that  
12 principle?

13 A. Yes.

14 Q. Now, I also then reviewed for everybody there these  
15 fundamental things about the criminal justice system  
because 16 most of the people there had not been through jury  
service in a 17 criminal case and didn't know these things, but I'm  
sure that 18 you recall being instructed about the presumption of  
innocence 19 and the burden of proof in all criminal trials in the  
United 20 States, regardless of what the charges are, who the  
defendant

21 is; it's the same because it's under the Constitution  
that any  
22 person who is accused of any crime in the United States  
is  
23 presumed to be innocent of whatever he's accused of  
doing. And  
24 that presumption of innocence carries throughout the  
trial and  
25 entitles that person to an acquittal and a verdict of  
not

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1 guilty unless everybody on that jury determines that  
the  
2 evidence has proved guilt beyond a reasonable doubt.  
That's  
3 not new to you, is it?  
4 A. No.  
5 Q. And the defendant in a criminal case has no burden  
or duty  
6 of proving anything at his trial and therefore --  
excuse me --  
7 the defendant does not have any duty to call witnesses  
or  
8 introduce any evidence or to testify.  
9 Now, the case that you -- this manslaughter  
case may  
10 have had some modification of that because there was  
the  
11 reliance there on the defense of -- that he was too

intoxicated

12 to form the intent, something like that?

13 A. Yes.

14 Q. So that may have been a modification of this  
overall

15 principle. Did the defendant testify in that case, the  
16 manslaughter case, if you recall?

17 A. No, I don't believe he did.

18 Q. But I assume the defense put on some evidence about  
his

19 drinking?

20 A. Yes.

21 Q. And then in the other cases, do you recall if the  
defendant

22 testified?

23 A. No, I don't remember.

24 Q. All right. Well, you know, do you, that a  
defendant is not

25 required to testify, and no person who is accused has  
any duty

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1 to answer any questions at his trial or to explain  
anything to

2 the jury, because it is up to the Government through  
the

3 prosecutors to prove the case against him and to prove  
it

the 4 beyond a reasonable doubt. And I am sure you've heard  
5 phrase "beyond a reasonable doubt" before.

6 A. Yes.

that 7 Q. And just to review with you again for the record,

8 means that the jury must be satisfied that the evidence  
9 establishes the elements of the crime charged. You  
remember

10 that the court instructed the jury about what has to be  
proved  
11 at the end of each of those trials.

12 And that would be true, of course, in this  
case, that

13 at the end of the trial, the court instructs in detail  
what has

14 to be proved on each of these charges. And then if the  
jury

15 determines that the evidence does not satisfy that  
burden of

16 proof and they do have yet a reasonable doubt  
remaining, the

17 clear duty of the jury is to return a verdict of not  
guilty,

18 giving to the defendant the benefit of that doubt.  
These

19 principles you know.

20 A. Right.

21 Q. And do you agree with them?

22 A. Yes.



follow 23 Q. And do you accept them as principles that you would  
24 in this case if you were to serve on this jury?  
25 A. Yes.

5203

Juror No. 811 - Voir Dire

of any 1 Q. And therefore give to Mr. Terry Nichols the benefit

2 doubt that remained after the hearing of the evidence?

3 A. Yes.

on your 4 Q. Now, you were born -- if I can turn to a few things

and 5 questionnaire, please -- you were born in Pennsylvania

6 lived in, what, Wisconsin and Iowa?

7 A. That's correct.

8 Q. Went to a military academy in Illinois?

9 A. Right.

10 Q. For high school?

11 A. Right.

12 Q. Then you came out to the University of Colorado?

13 A. Yes.

a 14 Q. And you then went into the Army and your -- you had

15 career in the Army and retired as a colonel?

16 A. That's right.

17 Q. In 1990?  
18 A. Right.  
19 Q. And you mention in here that your branch of service  
in the  
20 Army was, at least one time, with combat engineers?  
21 A. It always was, yes.  
22 Q. It always was.  
23 A. Yes, sir.  
24 Q. And where -- I'm sure you served in a number of  
stations  
25 and places, but can you -- did you serve overseas?

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Juror No. 811 - Voir Dire

1 A. I was in Korea for 16 months.  
2 Q. And at what time were you in Korea?  
3 A. During the war.  
4 Q. '50 to '53, in that period?  
5 A. Yes, uh-huh.  
6 Q. So I take it you were in combat with the engineers'  
7 responsibilities?  
8 A. Yes.  
9 Q. Like bridges and --  
10 A. Demolition, mines.  
11 Q. So you had a lot to do with explosives in your  
career?

12 A. Yes.

13 Q. And did you develop some expertise in that area?

14 A. Well, I thought I did.

15 Q. All right. Well, would you just summarize a little  
for us  
16 your knowledge of explosives and the kind that you  
used?

17 A. At that time we did a lot of mine removing, which  
was  
18 highly dangerous, of course. And it involved a lot of  
19 different types of mines and explosives that they were  
using.

20 Q. These are land mines out in the --

21 A. Yes.

22 Q. -- fields?

23 A. Correct.

24 Q. And so you, I take it, supervised as an officer the  
people  
25 who were engaged in the removal?

5205

Juror No. 811 - Voir Dire

1 A. That's right.

2 Q. But did you use explosives to remove -- to clear a  
whole  
3 area?

4 A. Sometimes we did, when it was impossible to do  
otherwise.

5 Q. Yeah. And sometimes they had the probing --

6 A. Yes.

7 Q. -- for the mines?

8 A. Just with your hands.

9 Q. Yeah. And with a bayonet or --

10 A. Yes.

11 Q. -- some other instrument?

12 A. Bayonet and a hand-carried mine detectors.

13 Q. Okay. Then were there times when you blew  
structures like

14 bridges and --

15 A. Yes, we used a lot of C-2 and things like that.

16 Q. And you would -- did you design where the charges  
should go

17 and what quantities should be used and that kind of  
thing?

18 A. Most of the time we would, yes.

19 Q. I mean was that within your individual  
responsibility, to

20 talk about the placement of the charges --

21 A. Yes.

22 Q. -- and how much in each one --

23 A. That's right.

24 Q. So I take it you had some training before you were  
in the

25 field --

## Juror No. 811 - Voir Dire

1 A. Right.

2 Q. -- to enable you to do those things?

3 A. That's right.

4 Q. And did that training include such things as the  
chemical  
5 composition of C-2 and that kind of thing?

6 A. As I remember, it did. It's been quite a while.

7 Q. Sure. Sure. And, you know, again, I'm just trying  
to  
8 speculate about this so we can move through it and not  
spend

9 all day on it; but you, I take it, also had some  
training with

10 respect to how to place the charges and the effect --  
like  
11 shaped charges and that kind of thing?

12 A. Yes; right.

13 Q. All right. And some of that has stayed with you,  
I'm sure?

14 A. It has.

15 Q. This case will, obviously, involve evidence about  
16 explosives, and there may well be disagreements here.  
I don't

17 know what the evidence is going to be. But a case  
involving a

18 charge like this could reasonably be expected to  
include

19 disagreements among persons who are explosives experts,

and

could 20 you'd hear testimony about that. Do you think that you

21 be open-minded in listening to what these people, with

22 qualifications as experts, have to say?

23 A. Oh, I believe so.

you've had a 24 Q. Okay. And not become your own expert because

25 lot of experience?

5207

Juror No. 811 - Voir Dire

1 A. Right.

you did, 2 Q. And I guess one of the aspects of that, too, is if

the things 3 you know, in thinking about their testimony, some of

ask 4 that you experienced and learned come to mind, what we

with the 5 under those circumstances is that that not be shared

jurors about 6 other jurors; you don't start lecturing the other

7 what you know.

8 A. Right.

9 Q. Can we have an agreement on that?

10 A. Yes.

water or 11 Q. Okay. Now, you -- let me know if you need some

12 something.

13 A. No, I'm fine.

14 Q. Okay. Well, don't hesitate to ask.

15 You have a daughter?

16 A. I have one daughter, yes.

17 Q. And does she live in this area?

18 A. She lives in Denver, yes.

19 Q. Okay. And since your -- since your retirement from  
the

20 military, have you done some other work?

21 A. Yes. Well, I sort of had a dual career there.

22 Q. You went into retail --

23 A. Yes.

24 Q. -- stores?

25 A. Right.

5208

Juror No. 811 - Voir Dire

1 Q. So I think that's all described on page 9, your  
background

2 there. And you're working -- are you working for this  
employer

3 that you name at page 40 now?

4 A. Yes.

5 Q. And have you discussed with whoever would be  
appropriate to

6 talk about it there the interruption of your work by  
service on

7 the jury?

8 A. Only the personnel.

9 Q. And is that of any concern to you, the effect here  
of

10 serving on this jury for several months, if that's  
required?

11 A. It's very difficult time for me this time of year  
in the

12 retail business.

13 Q. Sure. I know. Do you know if you would lose  
income?

14 A. Yes.

15 Q. Because -- do you get paid on a commission, or is  
there a

16 base --

17 A. Both.

18 Q. Base plus commission?

19 A. Yes.

20 Q. And is it your understanding from the personnel  
department

21 that both of those would stop?

22 A. Well, the company policy: I would get a percentage  
of my

23 average salary.

24 Q. Okay. So I -- and of course you also receive some

25 retirement pay and benefits?



## Juror No. 811 - Voir Dire

1 A. That's correct.

ask you

2 Q. Well, the only reason, you know -- I simply want to

that

3 straight away whether the loss of income is something

or want

4 would be -- have an effect on you and you get impatient

5 to get out of here?

is quite

6 A. Well, the commission from now on is missing, that

7 difficult.

8 Q. Substantial.

9 A. Right.

had a

10 Q. But, you know, you're a person who took an oath and

11 sense of duty for a long time.

12 A. Yes.

sense?

13 Q. And are you willing to approach this with the same

14 A. Yes.

15 Q. Okay. Your wife is teaching?

16 A. That's correct.

17 Q. Elementary grade?

18 A. Yes.

Is that a

19 Q. And on page 10 you tell us where she's teaching.

20 public school?

21 A. Yes.

22 Q. Now, the kinds of things on the court-martial  
boards, the

23 kinds of matters that came before you: What were they?

24 A. Well, at this time it's been so long -- the only  
one I can

25 remember is one where it was an attempted murder.

5210

Juror No. 811 - Voir Dire

1 Q. And what happened in that situation?

2 A. I believe the individual was convicted. I think  
about -- I

3 can't remember now, about 20 years, 25 years. In  
Leavenworth.

4 Q. That was the punishment?

5 A. Yes.

6 Q. And you participated in the decision that he was  
guilty?

7 A. That's right.

8 Q. Let me just ask you, page 15, you have at times  
been active

9 in political campaigns?

10 A. Yes.

11 Q. What kinds of things did you do for those  
candidates?

12 Actually, you're a member of a political party, and you  
were

13 following the party's candidates?  
14 A. Just elementary things like envelope work and  
calling and  
15 canvassing.  
16 Q. Okay. Now, on page 18, we asked you your awareness  
of some  
17 groups or movements. If you'll turn to that, please.  
And I  
18 want to ask you about the Posse Comitatus, the last one  
there.  
19 What do you know about that?  
20 A. Just really the name, and it's been a while since  
I've read  
21 anything about them at all.  
22 Q. Do you remember the context in which you heard of  
it or  
23 read it?  
24 A. I think it was just mostly newspaper articles.  
25 Q. And what is your understanding, if you have one, of  
what

5211

Juror No. 811 - Voir Dire

1 that organization is all about, what it tries to do or  
who  
2 belongs to it?  
3 A. I believe it was on the order of sort of taking --  
they  
4 felt the law wasn't being served, taking care of it,

yourself.

5 Q. All right. Now, we asked you -- this is one of  
those

6 opinion -- open-ended opinion questions, page 22,  
Question 100,

7 and where we asked you about the effectiveness of the  
criminal

8 justice system. And you responded, and you said, as I  
see it,

9 two things about it. "(1) Needs to help victims."

10 What do you suggest in that regard? What is  
the

11 background of that?

12 A. Well, I just feel that there is too much time spent  
with

13 the perpetrators, and people forget the victims in  
different

14 things that are going on.

15 Q. Are you thinking of any particular cases there?

16 A. Well, it always seems like in murder trials, high-  
profile

17 trials, why, everything is talked about the person  
doing that

18 and not -- not too much consideration for the victims

19 themselves. Nothing much said about what was the  
results of

20 the murder or whatever it happened to be.

21 Q. And this is based on your reading and television  
and so

22 forth?

23 A. Yes.

in 24 Q. And are you thinking more about the appeals process  
25 those cases?

5212

Juror No. 811 - Voir Dire

can't 1 A. I think the appeals process is way too long. I  
2 understand why it should be 10, 11 years of appeals for  
people.

case 3 Q. Now, are you thinking particularly like the Davis

4 here --

5 A. Yes.

6 Q. -- in Colorado, where --

7 A. That's one.

8 Q. -- where an execution took place recently?

9 A. That's right.

you come 10 Q. Had you followed -- how long have you lived -- did

11 to Colorado in 1990?

12 A. No.

13 Q. When you retired?

14 A. Back in the 50's. About '49.

Army 15 Q. Well, I mean when you came here to live after your

16 career.

17 A. Uh-huh.

18 Q. Was that --

19 A. No, before that.

20 Q. Well, what I was trying to get to -- let me ask you  
this

21 straight question instead of roundabout: Were you in  
Colorado

22 when there were the reports of the trial of that case  
--

23 A. Oh, yes.

24 Q. -- in Davis?

25 A. Oh, sure.

5213

Juror No. 811 - Voir Dire

1 Q. So you remember that part?

2 A. Certainly.

3 Q. And, of course, you know the recent publicity  
dealing with

4 the execution?

5 A. Right.

6 Q. Now, you also refer to speed up in -- I'm a little  
--

7 having a little trouble here reading your handwriting,  
I'm

8 afraid. "Speed up in cases coming to trial," are you  
saying

9 there?

10 A. Yes.

11 Q. Getting the case to trial?

12 A. I realize it takes a lot of time for preparation,  
but I

13 wonder sometimes why it takes a couple of years for  
some trials

14 to get going.

15 Q. Thinking about this case?

16 A. Not -- I don't think this one particularly, no.

17 Q. Well, you know, if you are, tell us. You don't  
have to

18 worry about offending me.

19 A. I think it overall takes too long.

20 Q. But you understand, of course, that frequently  
before a

21 case comes to trial, there are a lot of motions and  
things that

22 have to be done.

23 A. Uh-huh.

24 Q. And in this case, I explained the background of  
first

25 moving the case and then separate trials and some other  
things

5214

Juror No. 811 - Voir Dire

1 that have had to be done before we got to this time.

2 A. Right.

3 Q. Okay. Now, with respect to the trial itself,  
you've been  
4 through this process several times. Did you think that  
there  
5 were too many -- that it took too long to try the case,  
the  
6 ones that you sat on?

7 A. Not -- no, I don't believe so. They were -- I  
thought the  
8 maximum was about 10 or 12 days.

9 Q. Uh-huh. And, of course, when somebody says, "How  
long is  
10 that trial going to take," we pretty much have to  
answer, "As  
11 long as it takes to hear the evidence fairly and to  
deal with  
12 the issues fairly."

13 But I want to turn to the matter of your  
attitudes or  
14 opinions concerning punishment. This is touched on in  
28, at  
15 page 28 -- your answers are. The preliminary  
explanation for

16 the questions is on 27. And I don't mean to suggest  
that you  
17 shouldn't look at that, but it starts at 124 on 27.

18 That's  
where we explain, of course, the obvious: that we don't  
know  
19 that there will be any issue of punishment in this  
case, we  
20 don't know how the trial will come out with respect to  
the



21 evidence and whether a jury will return a verdict of  
not guilty  
22 or guilty. Our assumption has to be at this time that  
the  
23 verdict will be not guilty because that's the  
presumption of  
24 innocence.  
25 A. Yes.

5215

Juror No. 811 - Voir Dire

1 Q. And you understood that --  
2 A. Yes.  
3 Q. -- when you read these things.  
4 And then on 28, where we asked you questions,  
really,  
5 in the nature of, Well, if you could make the law, how  
would  
6 you do it, what would the law be according to you, did  
you  
7 understand that was the question --  
8 A. Yes.  
9 Q. -- I mean the background?  
10 A. Yes.  
11 Q. And you answered it pretty directly. And if I  
asked you  
12 the same questions today, would your answers be the  
same today?

capital- 13 A. I believe so. I feel very strongly that in  
because of 14 punishment-type trials, particularly in murder, that  
only 15 the way things are going, I feel that that's about the  
unless it's 16 deterrent we have is the death sentence for murder,  
17 something like self-defense or something like that.

cases where 18 Q. Sure. Well, you know, we're only talking about  
19 there is proof of an intentional killing.

20 A. Right.

really 21 Q. I mean the question of the death penalty doesn't  
unless 22 come up in any law that I'm aware of, state or federal,  
23 there's an intentional killing --

24 A. Yes.

killing 25 Q. -- involved. And so these things like justified

5216

Juror No. 811 - Voir Dire

1 don't come up.

2 A. Right.

much 3 Q. And you know, this issue of the death penalty is  
about how 4 debated and much discussed, and we've already talked

state 5 that has been true recently in Colorado because of the

6 sentence.

7 A. Yes.

time ago? 8 Q. And your views have been, I take it, formed some

9 A. I think, yes, they have.

10 Q. So that this isn't a new perspective you have?

11 A. It's not new, no.

your 12 Q. Now, and generally -- I don't want to put words in

putting your 13 mouth, but my understanding of your position here,

ought to fit 14 answers together, is that you think the punishment

then the 15 the crime: If the crime is an intentional killing,

16 punishment should be death.

17 A. That's correct.

18 Q. If you were to do it.

19 A. That's right.

and then 20 Q. And I want to now review with you what the law is

the law 21 ask you some questions about your ability to deal with

22 as it is. All right?

23 A. Right.

obviously, 24 Q. And we're talking about the Federal Court,

under 25 because that's where we are. And we're under -- we're

5217

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statutes, 1 federal statutes; and the federal law, the federal

have the 2 are different somewhat from some of the states that

penalty, I'm 3 death penalty. Some states do not have the death

4 sure you're aware.

5 A. Right.

matter of 6 Q. But here in the federal system -- and again, the

intentional 7 the death penalty doesn't come up unless there's an

which these 8 killing. And that is a -- the only kind of case in

9 questions come up.

course, 10 In cases not involving that possibility, of

you had 11 the sentencing is done by the judge. Those cases that

done by 12 in the state court -- the sentencing would have been

were 13 the judge. And I don't know if you know what sentences

14 imposed, do you?

15 A. On which, now?

16 Q. Well, when you were over there in Denver, and you  
had a --  
17 what was it -- a burglary, the cases where you had a  
guilty  
18 verdict.

19 A. No, I don't know.

20 Q. Do you remember ever hearing --

21 A. I don't know what the -- the only thing I know  
about is  
22 that the manslaughter trial was retried and he was  
convicted.

23 Q. Yeah, but I'm talking about the case where you were  
part of  
24 the jury --

25 A. No, I don't know the verdict.

5218

Juror No. 811 - Voir Dire

1 Q. And, you know, that's not unusual because the jury  
doesn't  
2 have any role to play in those sentence decisions.

3 A. Right.

4 Q. And there's -- this is different from the court-  
martial

5 A. Yes.

6 Q. -- proceedings.

7 A. Yes.

8 Q. There are a lot of differences, of course, as  
you're well

think 9 aware, having participated in both. By the way, do you

10 the court-martial proceedings are a lot better?

more 11 A. They're quite different because they're probably

12 direct and faster.

13 Q. And is that better?

14 A. Not necessarily, no.

do not 15 Q. Okay. In this matter of punishment in cases that

the 16 involve the death penalty as an option, a judge does

happened, 17 sentencing; and that's why you wouldn't know what

cases 18 because after you returned your guilty verdict in those

matter 19 where that was done and you were on the jury, then the

another 20 goes to the judge. The jury goes home. And there's

21 hearing at a later time.

respect 22 And now, there are differences here, too, with

about the 23 to state and federal court systems, but let's talk

24 way in which it's done in Federal Court.

about the 25 There's a lot of information collected then

Juror No. 811 – Voir Dire

1 case after the verdict of guilty is in. And that  
information  
2 includes the things about the crime: the victims, the  
3 circumstances, what happened to people, what the  
consequences  
4 are, even like in a burglary case, you know, what  
effect did  
5 this have on the people whose goods were taken, so  
forth.  
6 Then there's a lot of information collected  
about the  
7 defendant himself; and this really comes down to about  
8 everything that you can find out about a person. That  
includes  
9 sort of life history, the background, where this person  
was  
10 born and raised and how, family relationships,  
marriages,  
11 divorces, job history, military service, personality  
aspects of  
12 the person, illnesses, prior criminal record if there  
is one,  
13 pretty much everything that goes together to say this  
is who  
14 this individual is. And of course, each one of us is  
different  
15 because of things that we've done and have been done to  
us.  
16 That's our life background.  
17 And that's all a part of the sentencing  
process. And

should 18 a judge, then, who's deciding how many years a person  
they 19 serve in prison for a crime like a robbery or whether  
hold a 20 should serve in prison at all or get probation, will  
decide: 21 hearing with all of this information presented and hear  
22 arguments from the prosecution and defense and then  
this person 23 Well, this is the sentence appropriate and just for  
crime 24 who committed this crime. So it's not automatically  
other 25 equals time. It's crime and considering all of these

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Juror No. 811 - Voir Dire

1 things.  
involved, 2 And in cases where more than one person was  
3 two, three persons involved, the sentences may well be  
factors. 4 different because they include these individual  
5 Now, the cases that you heard: Was there more  
than 6 one defendant?  
7 A. In?  
can't 8 Q. Well, the ones where there was a conviction? I



9 remember. One of them was a burglary, was it?

10 A. Just one.

11 Q. Just one?

12 A. Yes.

13 Q. Well, you know, sometimes there's more than one in  
the same  
just by  
14 crime; but the sentencing, since it's not controlled  
15 the crime, may be different for the defendants.  
16 Any question about this explanation?

17 A. No.

18 Q. All right. Now, in a case in Federal Court in  
which there  
19 is the possibility of a sentence to death, we don't  
have judges  
for  
20 do that sentencing. The Congress has said, that's not  
decide.  
21 judges to decide; that's for the people on the jury to  
in  
22 And the choices given under the law in a case of murder  
no  
23 Federal Court are: A sentence to life in prison with  
really life  
24 possibility of ever being released, and that means  
25 in prison, not one of these sentences where after so  
many years

Juror No. 811 – Voir Dire

1 they're eligible for parole. They're never eligible  
for  
2 parole. They die in prison. The second is a death  
penalty;  
3 obvious what that means. And the third is the  
possibility that  
4 the sentence should be something lesser than either of  
those  
5 two, in which event it does go back to the judge to  
decide.  
6 But the life-or-death decision is made by a jury. You  
7 understand?  
8 A. Yes.  
9 Q. But a jury has to approach that question in very  
much the  
10 same manner as a judge does and consider more than just  
what  
11 the crime was, what they heard at the trial. So what  
happens  
12 in such a case is that after a verdict of guilty is  
returned,  
13 the jury returns to the courtroom and hears more; and  
the more  
14 is all of this kind of information that I spoke of in  
judge  
15 sentencing. So that includes more about the crime and  
its  
16 consequences to people, which can include like impact  
on  
17 victims, the things that, you know, you've mentioned in  
here.

18 But then it also would include things about  
the role  
19 in the crime. If there's more than one person involved  
in the  
20 crime, you know, there can be some comparisons of who  
did what  
21 and some consideration of whether there's a minor role  
vs. a  
22 major, principal role, that kind of thing. And then  
all there  
23 is to know about the defendant whose life is at issue,  
because  
24 the jury should know and consider whose life is being  
taken, if  
25 there's a death sentence. So that includes all of  
these things

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1 about that person's history, background, the same kinds  
of  
2 things that I've already reviewed, you know.  
3 And that's all given to the jury in the same  
form as  
4 the evidence at the trial. Witnesses come in and  
testify,  
5 exhibits are received; and when that's all in, then the  
court  
6 gives some instructions at the end of it to guide or  
assist the  
7 jury in making a decision among these three  
possibilities. And

8 those instructions include a kind of summary of what's  
been  
9 heard.

10 And of course, you know, in this case we can't  
talk  
11 about what that might be, because we don't even know  
what the  
12 evidence would be at the trial and certainly we don't  
know what  
13 the outcome of the trial would be. So we have to kind  
of talk  
14 in the dark about this; but I can simply advise you of  
the  
15 kinds of things by talking about, on the one hand,  
aspects of  
16 the crime and circumstances of it, and on the other  
hand, all  
17 of the things about the defendant as a person.

18 And in the summary instructions, the court  
also would  
19 classify the kinds of information presented, putting it  
into  
20 two different categories, one being what might -- what  
the  
21 court would be calling aggravating factors or  
circumstances,  
22 those things that the jury may consider in the minds of  
the  
23 jurors as some things that support the notion that  
death is the  
24 just sentence. And then at the same time the court  
explains

25 the things that from the information might be  
considered as

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1 mitigating circumstances, mitigating against the  
punishment to  
2 death and suggesting that while the crime makes the  
person  
3 eligible for the death sentence, death is not the  
deserved  
4 punishment for this particular person because of all of  
these  
5 other circumstances and recognizing that what the jury  
must  
6 really consider is the value of this human life.

7 And then at the end of it, in these  
instructions, the  
8 Court can suggest some questions that the jury might  
want to  
9 ask of themselves in going through this analysis of  
what they  
10 heard and in their deliberations and discussions about  
it. But  
11 in the end, it can't be a formulaic thing. This is not  
you  
12 approach an engineering problem and, you know, sort of  
13 objectify these factors and say: So many things on one  
side,  
14 so many on another; what's the difference and some kind  
of

15 equation. It doesn't work that way, 'cause it comes  
down to a  
16 very human judgment, a judgment that perhaps can best  
be  
17 thought of as a reasoned moral decision about whether  
another  
18 human being should live or die.

19 Now, do you understand this process?

20 A. Yes.

21 Q. Do you have any question about my explanation?

22 A. No.

23 Q. What we want you to tell us is whether you can  
participate

24 in this process, consider all of the information heard,  
and

25 including mitigating and aggravating factors, and then  
arrive

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Juror No. 811 – Voir Dire

1 at a decision with respect to whether a defendant  
should live

2 or die.

3 A. Yes.

4 Q. And in doing so, give full consideration to the  
question of

5 life in prison without release as one of the possible

6 sentences.

7 A. Yes.

8 THE COURT: Okay. You've been with us a long  
time.  
9 I'd like to take a break. I've completed questions  
that I have  
10 for you, but we need an opportunity for the lawyers to  
question  
11 you a bit more. So bear with us yet a while longer, if  
you  
12 will.  
13 We're going to take a 20-minute break. So  
you're  
14 excused now, and we'll have you back in here and then  
we'll  
15 finish this for you. Thank you.

16 (Juror out at 10:22 a.m.)

17 THE COURT: Okay. 20 minutes.

18 (Recess at 10:22 a.m.)

19 (Reconvened at 10:41 a.m.)

20 THE COURT: Be seated, please.

21 All right. We're ready to resume.

22 And, Mr. Ryan, do you have some questions --

23 MR. RYAN: Yes, your Honor, thank you.

24 THE COURT: -- for the Government?

25 VOIR DIRE EXAMINATION

1 BY MR. RYAN:

2 Q. Good morning.

3 A. Good morning.

4 Q. How are you?

5 A. I'm fine.

6 Q. My name is Pat Ryan, and I'm the United States  
Attorney in

7 Oklahoma City. I'm here with fellow prosecutors to  
present the

8 case against Terry Nichols. I have a few questions for  
you.

9 It sounds like you lead a very busy life. You  
have

10 spent your entire adult life serving the public. Can  
you do it

11 one more time?

12 A. Sure.

13 Q. Okay. Now, I noted in your questionnaire that you  
most

14 recently read the book Undaunted Courage about the  
15 Meriwether --

16 A. Yes.

17 Q. Lewis and Clark Expedition. Did you enjoy that?

18 A. Yes.

19 Q. Have you always been attracted to historical  
novels?

20 A. Yes.

21 Q. I had noted that you had some interest as well in  
the Civil



22 War.  
23 A. Yes.  
24 Q. Are you a reenactor?  
25 A. No. I do a little collecting.

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Juror No. 811 - Voir Dire

1 Q. What type of Civil War memorabilia do you collect?  
2 A. Anything I can find that I can afford.  
3 Q. Are there shops around here in the Colorado area --  
4 A. No. Most of it has to be dealt with in the East  
Coast.  
5 Q. I wanted to talk to you briefly about the fact that  
your  
6 wife was from Oklahoma City.  
7 A. Ponca City.  
8 Q. Excuse me?  
9 A. Ponca City.  
10 Q. Excuse me. I thought it said Putnam City. Ponca  
City. I  
11 won't criticize your handwriting, but it's Ponca City  
which is  
12 about 110 or so miles north of Oklahoma City?  
13 A. Right.  
14 Q. It's closer to the Kansas border than it is to  
Oklahoma  
15 City?

16 A. That's right.  
17 Q. Does she have family back there --  
18 A. Yes.  
19 Q. -- today? Who lives back in Ponca City?  
20 A. Just a few cousins now.  
21 Q. Her parents?  
22 A. Are deceased.  
23 Q. Does she have brothers and sisters?  
24 A. No. Her brother is also deceased.  
25 Q. And do you and she travel back to Oklahoma to visit

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Juror No. 811 - Voir Dire

1 relatives?  
2 A. No, not much anymore. Not since her mother passed  
away.  
3 Q. When was that?  
4 A. '89.  
5 Q. So for the last, say, eight years, have you been  
back to  
6 Oklahoma for purpose of visiting relatives or friends?  
7 A. No.  
8 Q. Is there anything about the fact that your wife is  
from the  
9 state of Oklahoma that would bias your jury service in  
any way  
10 in this case?

11 A. Not that I can think of, no.

12 Q. Now, let me ask you a bit more about these court-  
martial --

13 this court-martial or martials that you served on. I  
know that

14 you could only recall the one in which attempted murder  
was the

15 charge. Were there others but you simply cannot recall  
the

16 details of them?

17 A. I believe there was one other. It was just a minor  
-- it

18 wasn't anything.

19 Q. I take it the one with the attempted murder was a  
general

20 court-martial?

21 A. Yes.

22 Q. And you were appointed by the commander to serve on  
that

23 court-martial?

24 A. Yes.

25 Q. Was the other one a special court-martial?

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Juror No. 811 - Voir Dire

1 A. I believe it was, yes.

2 Q. And do you recall in -- in the court-martials that  
you

3 served that you as a juror -- as a member of the court-  
martial

4 I think is how they refer to it -- were the one who  
decided the

5 verdict of guilt as well as the sentence?

6 A. I believe that was correct, yes.

7 Q. And was that done, you know -- you heard his Honor  
explain

8 the fact that in a capital case in the event there is a  
guilty

9 verdict, there is two stages. There is one trial where  
you

10 have the guilt; and if the finding is guilty, then  
there is

11 another trial where you have the sentence. Did you  
have that

12 kind of procedure in court-martials, if you recall?

13 A. No. It was -- I'm trying to remember. I think it  
was all

14 in a one-package deal, you know, the guilty verdict  
plus the

15 sentence.

16 Q. Okay. But in the course of the trial, then, would  
the

17 defendant have the opportunity to present evidence in  
18 mitigation?

19 A. Yes.

20 Q. To show that the sentence should not be the most  
severe

21 sentence possible?

22 A. Yes.

23 Q. And were you able in those cases in which you  
served as a  
24 court-martial member to keep an open mind until you had  
heard  
25 it all?

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Juror No. 811 - Voir Dire

1 A. Yes.

2 Q. Keeping open the possibilities of the entire range  
of  
3 punishments?

4 A. Yes.

5 Q. Now, I'd like to ask a couple questions about your  
service  
6 in the military. Were you active duty the entire time?

7 A. No. I was six years' active duty and the rest all  
active  
8 reserve.

9 Q. And your reserve duty ended six or so, seven years  
ago?

10 A. Yes.

11 Q. Your retirement from the reserve program?

12 A. Yes. Right. Right.

13 Q. And so in addition to your reserve duty, you've  
been in the  
14 retail business?

15 A. Yes, right.

16 Q. As I understand it pretty much.

17 A. Right.

18 Q. During most of your adult life?

19 A. That's correct.

20 Q. You indicated to his Honor that when you were in  
the

21 military and served in Korea on active duty in combat  
that you

22 dealt with the explosive C-2. Was that a forerunner of  
what we

23 civilians refer to as C-4?

24 A. Yes.

25 Q. Do you have any knowledge of the ingredients of  
that

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Juror No. 811 - Voir Dire

1 explosive?

2 A. I might have forgotten now.

3 Q. I understand. But as you sit here today, do you  
have any

4 recollection of that?

5 A. No, I don't.

6 Q. Do you have any recollection of having any  
involvement with

7 ammonium nitrate as a potential explosive?

8 A. No.

9 Q. Were you one of the ones who were actually out  
there in the  
10 field trying to determine whether or not a mine was --  
was --

11 A. Yes, we did.

12 Q. -- existing on the land?

13 A. Right.

14 Q. Did you get hazard-duty pay?

15 A. Yes.

16 Q. Were men in your -- under your command -- were they  
injured  
17 in this --

18 A. Yes.

19 Q. -- activity? Did people die?

20 A. Yes.

21 Q. Now, in the event that in this case there is a  
guilty  
22 verdict, would you agree that the subject of the death  
penalty  
23 is a serious one?

24 A. Yes.

25 Q. One that you would give careful, deliberate thought  
to?

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Juror No. 811 - Voir Dire

1 A. Yes.

2 Q. Now, in the questionnaire, you express a -- with

respect to

3 this death penalty issue, you express a belief in the  
death 4 penalty.

5 A. Yes, I do.

6 Q. Now, did you have the view before you came in here  
today

7 that if somebody was guilty of murder that they  
automatically 8 should get the death penalty?

9 A. I pretty much have felt that way, yes.

10 Q. Now, can you see that that view of yours is in  
conflict

11 with what Judge Matsch explained to you the law was?

12 A. Yes.

13 Q. So, you know, the question is very simple and I'll  
just put 14 it to you straight: You know, if you're faced with a  
penalty

15 decision in a case in which you found the defendant  
guilty of

16 having committed murder, potentially involving several  
people,

17 are you going to follow your law or your view of what  
the law

18 should be and automatically impose the death penalty,  
or are

19 you going to be open --

20 A. Well, I would be open.

21 Q. -- to either life or death and not make that  
decision until



22 you've heard all the evidence?

the  
23 A. I wouldn't make that decision until I had heard all  
24 evidence, no.

25 Q. Are you open to the potential of life imprisonment

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Juror No. 811 - Voir Dire

1 depending on what the evidence is?

2 A. I suppose so, yes.

out  
3 Q. Well, when you say "I suppose so," we need to find  
4 whether you're going to be open.

5 A. I would if the evidence pointed to that, yes.

6 MR. RYAN: Thank you.

7 THE COURT: Mr. Tigar.

8 VOIR DIRE EXAMINATION

9 BY MR. TIGAR:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. My name is Michael Tigar, and Ron Woods and I were  
13 appointed by the United States District Court in  
Oklahoma in  
14 May of 1995 to help Terry Nichols.

15 Do we start out in your view at a disadvantage  
because

16 Mr. Nichols could not afford counsel and the court had  
to

17 appoint counsel for him?

18 A. I'm sorry. I didn't understand.

19 Q. Do -- Do Mr. Woods and I start out at a  
disadvantage, as

20 you see it, because Mr. Nichols could not afford  
counsel and

21 the court had to appoint counsel for him?

22 A. No, I don't feel that way.

23 Q. I wanted to talk some about some of the things on  
your

24 questionnaire. Does the church you attend have any  
views on

25 capital punishment that you know of?

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Juror No. 811 - Voir Dire

1 A. Not that I can, you know -- not -- not that --  
anything

2 that's pushed or anything like that.

3 Q. You mentioned that one of the things that you're  
interested

4 in is old-time radio.

5 A. That's correct.

6 Q. What sorts of old-time radio things do you --

7 A. I collect tapes.

8 Q. Okay. Any particular kinds of programs?

9 A. No. Just a variety of them.

10 Q. I want to talk a little bit about your service on a  
11 court-martial. You said you had served on one case of  
12 attempted murder.

13 A. Yes.

14 Q. And when was that?

15 A. Well, it's been a long time. I believe it was  
where an  
16 enlisted man tried to kill another one with -- I  
believe it was

17 a .45.

18 Q. Was this in Korea?

19 A. This was after the war.

20 Q. Oh, after the war. So this was an enlisted man on  
trial?

21 A. Yes.

22 Q. Now, did -- did -- I don't remember whether the  
manual for

23 court-martial provided for enlisted men at that time.  
Were

24 there enlisted men as well as officers on the board at  
that

25 time?

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1 A. All officers.

2 Q. All officers. Were there seven of you, nine of

you? How

3 many?

4 A. I believe it was seven.

less

5 Q. And there, of course, the decision could be made by

6 than unanimity?

7 A. That's right.

unanimous?

8 Q. Is that correct? Do you remember if you were

9 A. Yes, I believe it was.

10 Q. Okay. Now, were you the senior-most officer --

11 A. No.

12 Q. -- on the board?

13 A. I was real junior.

14 Q. So you were not the presiding officer?

15 A. No, no.

vote one

16 Q. And of course, in that, I guess the rule was you

17 time; right?

18 A. Right.

had

19 Q. And whereas I guess in your jury deliberations, you

20 instances where you voted more than once.

21 A. Yes.

voted --

22 Q. Indeed, I guess in that hung jury, you probably

23 A. Lots of times.

24 Q. -- lots of times. Okay.

25                    Would you turn, please, to page 18 of your

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Juror No. 811 – Voir Dire

read or            1    questionnaire, sir. You note at Question 83, "Have you  
Grisham.            2    do you own any of these books," and you marked John

3    A. Uh-huh.

perspective        4    Q. The reason that question is on there from our  
5    is that he writes about lawyers.

6    A. Right.

7    Q. Have you read any of his books?

8    A. I've read a couple of them, yes.

9    Q. Do you remember which ones?

titles.             10   A. Sort of flustered now. I can't remember the

tobacco            11   Q. I understand. No, take your time. One was about a

12   industry lawsuit. One was called The Pelican Brief.

13   A. The Pelican Brief.

14   Q. About some law student or other.

15   A. Right.

Client.             16   Q. And another: A Time to Kill. I don't know. The

that give          17                    Do you have any opinions about based on that

18 you any views about the criminal justice system?

19 A. No, I just read it because I enjoyed his writing.

20 Q. And then if you look at the next question down, it  
asked

21 you about a number of organizations. And I assume the  
NRA you

22 know about because you did have some interest in  
firearms -- or

23 heard of.

24 A. Yes.

25 Q. And then the Antidefamation League. What is it  
that you've

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Juror No. 811 - Voir Dire

1 heard or read about that organization?

2 A. Oh, just mostly would be in the papers. That would  
be all.

3 Q. Okay.

4 A. Newspaper articles.

5 Q. Have you read anything or heard anything about  
anything

6 they might have written or said about the Oklahoma City  
7 situation or case?

8 A. No. I can't think of any.

9 Q. Okay. And how about Americans for Democratic  
Action?

10 What --

11 A. No -- I don't remember any comments by them, no.

12 Q. Okay. You mentioned at page 32, if you could turn  
to that,

13 sir, Question 139. You have attended -- it said a gun  
show.

14 A. Yes.

15 Q. How many gun shows have you been to?

16 A. Quite a few. I don't collect guns or go for the  
guns. I

17 go looking for Civil War things, if I can dig up  
anything -- or

18 anything, because they do have other things.

19 Q. Right. Well, that was my question -- is that at  
these gun

20 shows, they have more than guns; right?

21 A. Oh, yes.

22 Q. And have you seen people selling books and  
pamphlets and

23 things like that?

24 A. Oh, yeah, stickers and everything else.

25 Q. All that sort of thing?

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Juror No. 811 - Voir Dire

1 A. T-shirts.

2 Q. T-shirts. Military surplus items?

3 A. Everything like that.

4 Q. Everything?

5 A. Yeah.

6 Q. All right. About how many -- well, maybe that's  
the wrong  
7 question. When is the last time you went to one, do  
you think?

8 A. About a year ago.

9 Q. Okay. So if there were testimony in this case from  
people  
10 that made their living going to gun shows, you wouldn't  
hold  
11 that for or against them?

12 A. No.

13 Q. Okay. Well, now, sir, I'd like you, if you would,  
please,  
14 to turn to page 33. I just want to start with Question  
144  
15 there. You said that in terms of reading or hearing  
about this  
16 case, you had heard radio -- TV news, radio news,  
newspaper,  
17 magazines, books, conversations and heard other people  
18 discussing the case; right?

19 A. Yes.

20 Q. What TV news source do you rely on or do you see  
mostly?

21 A. Do you mean the network?

22 Q. Yeah, just which TV news programs do you watch?

23 A. Oh, usually the 10:00 news in the evening.

24 Q. Okay. And then radio? You just --



driving 25 A. Oh, when I'm driving back and forth to work or just

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Juror No. 811 – Voir Dire

1 around, I'll catch the news broadcasts.

News? 2 Q. And the newspapers, Denver Post, Rocky Mountain

3 A. I usually read both papers every day.

Street 4 Q. Do you read any other papers, dailies like The Wall

5 Journal?

6 A. Normally not.

something 7 Q. How about magazines where you might have seen

8 about the case?

9 A. Time.

10 Q. And books?

11 A. Books, I can't recall really anything, truly.

any of the 12 Q. Did you read any of the -- do you recall reading

13 paperback books that have been out or seeing any of the

14 paperback books?

them. 15 A. No. I've seen titles, but I never read any of

I guess 16 Q. It says "conversations" and "heard other people."

17 that's have you talked about it at home.

18 A. Or, sure.  
19 Q. Sure. And at work with your co-workers?  
20 A. Sure.  
21 Q. Okay. And with friends and other contacts is it  
the  
22 subject of discussion?  
23 A. Usually when that was going on, yes.  
24 Q. At 146 it asks, "Have you closely followed news  
reports  
25 about any criminal trials or criminal cases over the  
past five

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Juror No. 811 - Voir Dire

1 years?"  
2 You put, "Yes."  
3 Which ones have interested you?  
4 A. Well, of course, the one that just finished, with  
the  
5 McVeigh trial.  
6 Q. Right.  
7 A. Couldn't help miss that every day (sic). And, oh,  
there  
8 are just some that you can't -- like the Gary Davis  
case that  
9 just ended here in this state, plastered all over  
everything.  
10 Q. Right. Did you follow that Simpson case while that

trial

11 was going on?

12 A. Oh, I think, yes, like everybody else -- not real  
detailed,

13 not --

14 Q. Right. Did you have an opinion about how that case  
was

15 done or about the result?

16 A. Yes.

17 Q. What was that?

18 A. I think he got off. I think he was guilty.

19 Q. What do you think was wrong about the way the case  
was

20 handled that led to what you saw as an improper result?

21 A. I think the police messed up because they -- they  
bobbled

22 the ball on a lot of their evidence by not being more  
careful

23 about it and more detailed.

24 Q. Did you have any criticism of the way the lawyers  
behaved?

25 A. Yeah. Think they brought too much racism and a lot  
of

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Juror No. 811 - Voir Dire

1 circus atmosphere into the thing where it wasn't  
needed.

2 Q. Okay. And as you look at one -- one of the things

you had

comment, is 3 said about the criminal justice system, another

4 that sometimes it's too slow.

5 A. Right.

it being 6 Q. And where -- where does the responsibility lie for

7 too slow, do you think?

long a 8 A. I think that generally criminals are allowed too

appeals. 9 time and too many appeals. Too long a time for the

how would 10 Q. And how would you -- if you were to make the law,

11 you change it to solve that problem?

appeals, 12 A. Probably try to limit appeal time and number of

13 cut down these things like 10, 12, 15 years.

death 14 Q. And when you say 10, 12, 15 years, are you thinking  
15 particularly of cases in which the jury has decided the

think 16 penalty is appropriate on the length of appeal? Do you

thinking 17 about cases where it takes 10, 12, 15 years? Are you

penalty? 18 particularly about cases where there has been a death

there was 19 A. I think where the evidence was overwhelming that

I can 20 no question, you know, that the individual was guilty.

guilt, 21 think of things sometimes where the individuals admit  
appeals. 22 and so forth, and it still goes on for years on  
should 23 Q. And you think that a sentence of death, if imposed,  
24 be carried out more promptly.  
25 A. Yes.

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Juror No. 811 - Voir Dire

to page 1 Q. Would you turn, then, to -- a couple of pages more  
news 2 36. Question 158, "I know what I have seen from TV  
the 3 reports, newspaper accounts, talk shows, etc., followed  
4 McVeigh trial from these sources." See that?  
5 Which talk shows did you follow the case on?  
help 6 A. I never followed them on a talk show, but you can't  
different 7 missing, you know -- sometime picking things up from  
8 ones, particularly the ones on radio.  
9 Q. Oh, okay.  
10 A. Radio talk shows.  
something about 11 Q. Which ones of those do you remember hearing  
12 the case?

13 A. You mean locally?  
14 Q. Yes. Whichever ones you listen to.  
15 A. Mike Rosen show, Peter Boyles show.  
16 Q. Any of the TV talk shows that you heard something  
or saw  
17 something about the case?  
18 A. Well, just about at that time all had something  
about it,  
19 you know. I don't watch a great deal of those shows.  
20 Q. Which ones do you watch, sir?  
21 A. If I ever have time, it would be, you know,  
something like  
22 Oprah or something like that.  
23 Q. Now, from what you've read or seen or heard about  
the  
24 Oklahoma City situation, do you remember how the bomb  
was  
25 delivered to the courthouse?

5242

Juror No. 811 - Voir Dire

1 A. Yes.  
2 Q. To the federal building, rather? And how was that,  
sir?  
3 A. By truck.  
4 Q. And do you remember how many people were killed?  
5 A. I think it was 186.  
6 Q. Do you remember whether there were any children

that were

7 killed?

8 A. Yes, there were.

9 Q. And do you remember why it was that there would be  
children

10 in a federal building?

11 A. There was a nursery in the building.

12 Q. Do you remember anything about what the bomb was  
made of?

13 A. It was a mixture, they said -- I can't think of the  
name.

14 Q. If you don't remember, then fine, I'll go on.

15 Do you remember reading, seeing, or hearing  
any of the

16 theories that were propounded or put out there by  
different

17 people as to how many bombs there were and what it was  
made of

18 and so on? Do you remember any of that controversy?

19 A. Oh, sure. That was in all of the papers.

20 Q. What impression did you get from that?

21 A. I think it was hard to tell whether there was or  
wasn't.

22 Q. Okay. Did you hear any military or retired  
military people

23 commenting on the components of the bomb, any of these  
call-in

24 talk shows?

25 A. No.

## Juror No. 811 - Voir Dire

1 Q. Anything like that?

2 A. I can't think of anything like that.

3 Q. And do you remember how Timothy McVeigh got into  
the hands  
4 of law enforcement?

5 A. I believe he was stopped for not having a plate on  
his car.

6 Q. Okay. Do you remember how Terry Nichols initiated  
contact  
7 with law enforcement?

8 A. No.

9 Q. Okay. Do you remember from reading, seeing,  
hearing where  
10 he was at the time the bomb went off?

11 A. No, I can't think of it.

12 Q. Okay. And from your reading about what the  
Government has

13 put out -- excuse me -- from your reading about what's  
been in

14 the media, what's your impression as to what Mr. -- the  
charges

15 are as to Mr. Nichols?

16 A. The charges against --

17 Q. Yeah. What's he charged with?

18 A. I believe being an accomplice to the bombing.

19 Q. Okay. Now, if you could turn, please, back to page



31,

20 Question 133, comments about the bombing case by public  
21 officials.

22 What comments do you remember hearing or  
seeing?

23 A. By public officials?

24 Q. Yes, sir. That was that question --

25 A. I think that after the trial was over and the  
verdict was

5244

Juror No. 811 - Voir Dire

1 given, many public officials expressed relief that it  
was over

2 and that they felt it was a just thing, and so forth.

3 Q. Did you see the coverage of the verdict of guilt as  
to

4 Timothy McVeigh on television?

5 A. No.

6 Q. Do you remember any pictures of the people coming  
out of

7 the courthouse?

8 A. Oh, afterwards.

9 Q. Yes, sir. There has not been any televising of the  
trial

10 proceedings for which we all give thanks, but I'm  
talking about

11 afterwards.

12 A. Yeah, I remember seeing.

13 Q. What did you think of what you saw there?

14 A. Oh, I -- like they ran all kinds of different  
clips,  
15 everything from victims' parents to the lawyers and  
everything,  
16 comments from them.

17 Q. And do you remember the coverage of people coming  
out of  
18 the courthouse after the verdict of death?

19 A. Well, about the same thing.

20 Q. Yeah. What did you think of the jury's -- how the  
jury  
21 decided that case?

22 A. I thought it was accurate.

23 Q. And the verdict, the punishment verdict?

24 A. Yes.

25 Q. Did you talk about that with your co-workers?

5245

Juror No. 811 - Voir Dire

1 A. Probably so. Everybody was talking about it.

2 Q. Is there -- I know you work out, you know --

3 A. Right.

4 Q. -- on the floor there.

5 A. Right.

6 Q. Did -- is there a radio that folks listen to in a

break

7 room or something like that?

8 A. No.

9 Q. No. So did you hear about it at the end of your  
workday,

10 or were you at home at the time?

11 A. No, I believe that day I was working and just  
happened to

12 be passing the TV department when they made the  
announcement.

13 Q. Okay. And then was it a subject of discussion in  
the TV

14 department, you know, people standing around and  
watching?

15 A. Yeah, sure.

16 Q. Did anybody disagree with the verdict?

17 A. I can't remember anyone.

18 Q. Okay. I want to spend a couple of minutes about  
your

19 mentioning that you work on commissions. And I just  
want to

20 let you know nobody ignores that fact. What percentage  
of your

21 annual commission income on a yearly basis do you earn  
between,

22 say, November 1 and Christmas?

23 A. Probably 50.

24 Q. 50? That's about -- from your experience, that's  
about

25 standard in the retail industry, isn't it?

Juror No. 811 - Voir Dire

1 A. Yes.

2 Q. If you're going to do it, you're going to do it  
during that

3 time.

4 A. That's correct, yes.

5 Q. And your salary or what -- your take-home is based  
both on

6 a base and on commission?

7 A. Correct.

8 Q. And do you feel it would be a hardship for you to  
be a

9 juror if you were selected and the case were to go into  
or

10 through the Christmas period?

11 A. It would, yes.

12 Q. Now, in that McVeigh case, do you remember reading,  
hearing

13 that Mr. McVeigh did not testify?

14 A. Right.

15 Q. And in that manslaughter case that you sat -- I  
think you

16 said the defendant didn't testify there.

17 A. I believe that's right. It's been quite a while  
ago.

18 Q. I understand. What did you think about that? The

19 defendant didn't take the stand.

20 A. I feel that that's up to his lawyer whether he  
wants him to

21 testify or not.

22 Q. Okay. Can you think of a reason why an innocent  
person

23 would not take the stand and testify?

24 A. He might be a person that couldn't express himself  
very

25 well and might do more harm and damage.

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Juror No. 811 - Voir Dire

1 Q. I'd like to turn to this question on page 28, your  
answers

2 about the issue of penalty.

3 In this case, we don't concede -- Mr. Woods,  
4 Mr. Nichols and I -- that we're ever going to get to a  
5 punishment decision. The Government has filed some  
charges.

6 They have a theory; and from the very first witness, we  
will

7 cross-examine every witness. The Government will  
present some

8 evidence; and even though we don't have to, when  
they're done,

9 we then will present a number of witnesses to  
contradict their

10 theory. And at the end of the case, if there is a  
reasonable

say not 11 doubt, the jury's duty is under their oath to acquit,  
12 guilty; and then the case is over. We never get there.

any one of 13 But that -- if there is a guilty verdict on  
14 these charges, then we can't bring everybody back and  
talk to 15 them about it, and that's why we're doing it now. So  
we 16 certainly don't concede we're ever going to get there.

summons, did 17 As you -- when you first got your jury  
18 you understand that there -- there might be two stages  
of this, 19 you know, in a case like this?

20 A. Sure.

21 Q. And you understood it from the McVeigh case?

22 A. Right.

that you've 23 Q. And other cases that you followed. These views  
for a 24 expressed about capital punishment, you've held those  
25 long time.

5248

Juror No. 811 - Voir Dire

1 A. I have, yes.

is a 2 Q. And it was your view coming in here that if there

is the 3 deliberate, premeditated murder that the death penalty  
4 appropriate sentence.

5 A. Yes.

we can't 6 Q. Okay. In a -- in a case where -- and we're not --  
going to 7 tell about this case because (a) we presume we're not  
case. 8 get there and we don't know what the facts are in this

thought that 9 But in the Gary Davis situation, for example, you  
10 was an appropriate verdict that the jury returned?

11 A. Yes, I did.

that led 12 Q. And what was it that -- as you remember that case  
was 13 you to think that that was an appropriate -- that that  
14 right?

beat 15 A. Well, you don't exactly shoot someone 14 times and  
16 them and, you know, I felt not be guilty.

he was 17 Q. Sure. I understand that. And then that's right,  
appropriate for 18 guilty. And so you thought the sentence was

19 somebody that did that.

20 A. Yes.

thinking 21 Q. And how about the McVeigh case? Can you remember

there? 22 about whether the death sentence was a correct sentence

23 A. I think it was, yes.

that 24 Q. And as you thought about it then, what did you base

25 view on?

5249

Juror No. 811 - Voir Dire

1 A. Well, what I knew about the evidence that was told.

again, 2 Q. Okay. And what was it about the evidence as you --

3 as you saw it from the paper?

4 A. I thought it was pretty clear that he was guilty.

killed. 5 Q. Okay. And there were a number of people that were

6 A. Right.

concluded that 7 Q. Now, in a case in which you as a juror had

blown up 8 someone had intentionally killed a number of people --

to 9 an airplane; all right? Would you think without regard

the 10 anything else that somebody that did that ought to get

11 death penalty?

12 A. Yes.

your 13 Q. And on what -- what's your -- can you share with me



14 reasoning about that?  
15 A. Well, I feel that so many murders and crimes like  
that  
16 anymore that it's not getting any better, and I think  
that's  
17 one of the few deterrents we have left. I think a few  
people  
18 think twice before they'll kill someone if they know  
they're  
19 going to get the death penalty.

20 Q. And so that -- if it were your decision to make in  
that  
21 airplane case, you'd think that your responsibility as  
a  
22 citizen would be to say, well, let's impose it in that  
case.

23 A. Yes, I do.

24 MR. TIGAR: Thank you very much, sir, for  
talking to  
25 me and sharing that with me.

5250

Juror No. 811 - Voir Dire

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. Well, we have to come back to this penalty thing  
one more  
4 time, because you answered Mr. Tigar in connection with  
a  
5 hypothetical crime of blowing up an airplane. And you

heard my

6 explanation about what the process is and what has to  
be

7 considered in imposing that penalty of death in an  
individual

8 case; right?

9 A. Right.

10 Q. In which I told you that the law requires jurors to  
11 consider more than just the crime involved and the fact  
that

12 the defendant has been found guilty of a crime like  
blowing up

13 an airplane. And so in such a case, if you were on the  
jury in

14 such a case and it was a federal trial, there would be  
a

15 penalty hearing at which that would be again presented  
and the

16 victims and the consequences, but also all of these  
things

17 about the defendant as an individual human being would  
be

18 presented because the jury is deciding what to do about  
that

19 individual's life, a specific person. Right?

20 A. Right.

21 Q. So I think you have to tell us -- and whatever is  
your

22 honest answer is: Given the enormity of the type of  
crime,

23 would you also consider everything you heard about the  
person

24 and include that in a decision as to whether that  
particular

25 person should live or die?

5251

Juror No. 811 - Voir Dire

1 A. Yes. Well, I think you have to listen to the  
evidence to

2 be -- you know, it has to be presented --

3 Q. Well, now we're separating two things here. I want  
to be

4 clear that this is not a question of whether the  
defendant did

5 it. I mean, "evidence" in that sense. The jury does  
not start

6 even a penalty phase trial -- the court and jury don't  
start a

7 penalty phase trial unless the jury has decided yes, he  
did it,

8 he's guilty. Understand?

9 A. Yes.

10 Q. So we can't -- this is a very separate question  
from

11 whether the defendant did it. And the jury, now  
addressing the

12 death penalty or life in prison as the option, begins  
with

13 having decided that the defendant did it. I mean, this  
is the

14 same jury that decided guilt.

15 A. Yes.

16 Q. Now, as I explained, that jury hears all of this  
additional

17 information that I described as aggravating and  
mitigating

18 circumstances, things that deal with this particular  
19 individual. And what the law says is that before the  
jury can

20 make a decision about life or death, they must consider  
whose

21 life it is.

22 A. Yes.

23 Q. And not just what crime that person committed.

24 A. Yes.

25 Q. And so what is not clear to me now -- and I want  
you to

5252

Juror No. 811 - Voir Dire

1 clarify it for us -- is, you know, you have strong  
views about

2 what the appropriate penalty should be generally. And  
are you

3 open to considering the sentence of life in prison with  
no

4 possibility of parole or release for a particular  
individual

5 having been found guilty of such a crime?

6 A. I think it would depend upon the second thing where

you're

7 voting on the penalty --

8 Q. Yeah --

9 A. Any additional evidence or whatever is presented at  
that

10 time to the jury.

11 Q. Yes. Now, you see, that's where these things about  
who the

12 defendant is, what his -- remember, I referred to  
before we

13 took the recess -- referred to things like the life  
history of

14 that person.

15 A. Uh-huh.

16 Q. Well, his family background, his, you know -- his  
own life

17 story with the things that had been done by him and to  
him,

18 including things like his role in the offense, if there  
is more

19 than one person involved, what role did he play, things  
20 including marriages, divorces, whether he has  
contributed

21 service to the community or the country into the past  
-- in the

22 past, pretty much who this is; because what the law  
says is

23 that before a jury can decide to take a life with the  
death

24 penalty, a jury has to know whose life is being taken.  
And

in 25 then the jury has to be considering that and weigh that

5253

Juror No. 811 – Voir Dire

1 along with whatever there is about the crime.

because you're 2 So there isn't any set punishment; just

whatever. 3 guilty of the crime, then the penalty should be

4 A. Yes. I understand.

you 5 Q. Okay. Now, I just want to hear from you whether if

death 6 were in that situation and had to make that life-and-

making 7 decision, you would consider all of those things before

8 the decision.

9 A. Oh, sure. It's a very important decision.

the 10 Q. Yeah. Because now you're not talking about whether

whether the 11 death penalty is a deterrent. You're talking about

human being. 12 death penalty should be imposed on this particular

13 A. Yes.

to 14 Q. And looking ahead to that possibility, if it were

as an 15 happen, are you going to be considering life in prison

16 option?

17 A. I would decide after I listened to the rest of the  
18 testimony.

19 Q. Yeah. And you know, I'm not trying to push you  
into one

20 answer or another; but the jury has to be open to  
considering

21 the range of punishment: death, life in prison with no  
release,

22 and even the possibility of a lesser sentence.

23 A. Yes.

24 Q. But you can't prejudge what should be the sentence  
for this

25 particular person. And I think our concern is here  
whether

5254

Juror No. 811 - Voir Dire

1 because of your views about the death penalty and the  
need for

2 it in the law to deter criminal conduct -- whether that  
is so

3 strong in your mind that you would not be open to  
considering

4 the alternative punishment for a particular individual.

5 A. Well, I would be open to it if additional  
information was

6 presented.

7 Q. Sure.

8 A. Showing that, you know --

Is that 9 Q. The information about the individual human being?  
10 what you're referring to?

11 A. Or anything else that was presented.

but I 12 Q. Yeah. So, again, we don't want to prolong this;

presented and 13 explained the kind of information that would be

there is 14 that you could expect to be presented. And that's why

testify 15 another whole trial at which witnesses come on and

then 16 about these things, both with respect to the crime and

17 with respect to whose life it is that's in your hands.

18 A. Right.

if you 19 Q. And again, the question is can we be certain that

question 20 were to serve on a jury to decide that life-and-death

hearing? 21 you would consider all that you hear in that second

strong 22 A. I would consider it. It would have to be real

23 evidence.

evidence 24 Q. And what are you thinking about as to what the

25 would have to show?



## Juror No. 811 - Voir Dire

would  
death

1 A. I don't know. It would have to be something that  
2 convince me in my mind that -- that he wasn't due the  
3 penalty.

important to

4 Q. And can you think of any factors that would be  
5 you?

like that.

6 A. Show something like mental illness or something

for your  
here in

7 THE COURT: Okay. Well, thank you very much  
8 time. We appreciate your time with us not only spent  
9 the courtroom but waiting to come in.

10 JUROR: Thank you.

going to  
you in

11 THE COURT: We can't tell you whether you're  
12 serve in this case or not, but we'll be getting back to  
13 a few days to let you know that.

cautions  
here and

14 In the meantime, please follow all of the  
15 that you were given earlier so that you could come in  
16 decide on the law and the evidence.

17 You're excused.

18 168.

and 19 Good morning. Would you raise your right hand

20 take the oath from the clerk, please.

21 (Juror No. 168 affirmed.)

22 THE COURTROOM DEPUTY: Thank you.

chair by 23 THE COURT: Please be seated there in that

24 the microphone.

25 VOIR DIRE EXAMINATION

5256

Juror No. 168 - Voir Dire

1 BY THE COURT:

summons to 2 Q. And you know that you're here because you got a

trial of 3 call you in for jury service in connection with the

4 the case of United States against Terry Lynn Nichols?

5 A. Yes.

summons, a 6 Q. And you got in addition to that notice, that

back. 7 questionnaire, short form, which you answered and sent

in the 8 And then you got a notice to appear at the auditorium

were 9 Jefferson County Fairgrounds. And at that time you

talked to 10 present with a lot of other jurors; and I was there,

11 you and the others and introduced some people. And  
they're

12 here now, and I want to introduce them again so you  
know who is

13 with us this morning.

14 First at this table immediately in front of  
you,

15 Mr. Lawrence Mackey, Ms. Beth Wilkinson, attorneys for  
the

16 Government. They're now joined by Mr. Patrick Ryan and

17 Mr. James Orenstein. They were not -- they were not  
there

18 before, but they've been added now.

19 Also, met Mr. Michael Tigar and Mr. Ronald  
Woods,

20 attorneys for Terry Nichols; and Mr. Nichols, of  
course, was

21 present as well.

22 And you recall, then, that I gave you some  
background

23 explanation about the background of the case, the  
procedural

24 history and something about what's involved in a jury  
trial.

25 A. Yes.

5257

Juror No. 168 - Voir Dire

1 Q. Okay. And you do have to answer out loud so we can  
record

2 your answers.

3                   And then after I did that, you were asked to  
complete  
4 a long questionnaire, answer a lot of questions. And  
you did  
5 that, turned it in to us. I made copies and gave it to  
these  
6 people -- gave them to these people who are here, and  
we're all  
7 using this only for this limited purpose of jury  
selection.  
8 It's never been made public and won't be, and your name  
is not  
9 made public. And, you know, we have these special  
arrangements  
10 for you to go and come to and from the courthouse so  
that you  
11 can't be photographed by a newspaper, a photographer,  
or  
12 anything like that.

13                   All of that is simply a matter of concern for  
your  
14 privacy because we know you didn't volunteer to come in  
here  
15 but were directed to do so.

16                   And I just want you to know that now we are in  
open  
17 court and this is public so that what is said here now  
can be  
18 reported. You understand that?

19 A. Yes.

20 Q. And then what we're going to do here is ask you a

few

21 questions about some of the things that are in the  
22 questionnaire. We're not going to repeat all of this.  
Don't  
23 worry about that.  
24 A. Okay.  
25 Q. And then a few additional questions. I want to  
review some

5258

Juror No. 168 – Voir Dire

1 things with you so that, you know, I'm sure that you  
understand  
2 what's involved here and then one of the lawyers on  
each side  
3 of the case have a chance to ask you some more  
questions.  
4 A. Okay.  
5 Q. So bear with us a while longer as we go through  
this very  
6 important part of the trial process. I'm sure you  
understand  
7 that the fairness of any trial depends on the fairness  
of the  
8 jury. Yes?  
9 A. Yes, I do.  
10 Q. Okay. You've never been on a jury, though, have  
you?  
11 A. No.

12 Q. And I take it don't know much about the way in  
which the  
13 criminal justice system functions.

14 A. No.

15 Q. So I want to, first of all, review with you the  
things that

16 I explained when we were together before. And it isn't  
because

17 I don't think you can remember it, but it is important  
that we

18 sort of have a foundation here and a clear  
understanding of

19 what we're talking about before we go any further.

20 And you know that as I explained, this case  
arises out

21 of an event that took place in Oklahoma City, Oklahoma,  
on

22 April 19 of 1995. On that day, there was an explosion  
in a

23 federal office building in Oklahoma City; that the  
building was

24 destroyed and people in the building were killed and  
injured;

25 that later, the Department of Justice, U.S. Government,  
filed

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Juror No. 168 - Voir Dire

1 charges in the Federal Court in Oklahoma City in the  
form of an

2 indictment, a statement of accusations, and accused a

man named

3 Timothy James McVeigh along with Terry Lynn Nichols,  
the  
4 defendant here -- and the indictment refers to "other  
persons  
5 not named" -- with conspiring to destroy that building  
with a  
6 bomb and to kill and injure the people in it.

7 And there are some 11 charges in the  
indictment, 11 in  
8 all, and they include this conspiracy or agreement to  
do that,  
9 together with charges accusing the defendants of  
carrying out  
10 that plan, bombing the building, with the intent to  
kill and  
11 injure people. And the charges include eight counts or  
charges  
12 of the first-degree murder of eight persons who were in  
the  
13 building who were law enforcement agents of various  
national  
14 law enforcement agencies and who did die in the  
explosion.

15 To these charges, the defendants entered their  
pleas  
16 of not guilty, thereby contesting the allegations and  
causing a  
17 trial.

18 The case was moved then from Oklahoma City  
here to  
19 Denver because of a concern about getting a fair jury  
in

serve 20 Oklahoma and asking people there where this happened to

21 on a jury.

order 22 And then when it came to Denver, I entered an

fundamentally 23 for separate trials, finding that it would be

before the 24 unfair to both Mr. McVeigh and Mr. Nichols to appear

exist 25 same jury because of differences and conflicts that may

5260

Juror No. 168 - Voir Dire

does that 1 with respect to the evidence, recognizing as the law

person 2 the evidence must separately be considered as to each

required 3 who is charged in a crime. So separate consideration

4 separate trials.

trial 5 And Timothy James McVeigh's case did come to

heard the 6 here earlier this year; and a jury heard that case,

evidence 7 evidence, made a decision by its verdict that the

found him 8 proved his guilt beyond a reasonable doubt, so they

respect 9 guilty. Then the jury was required to hear more with



jury, 10 to what sentence should be imposed as to him. And the  
in with a 11 having heard information relevant to that issue, came  
12 verdict recommending a sentence to death.

13 That case is over. Now we're ready to start  
the trial 14 of Mr. Nichols, and we start all over with no evidence  
at all 15 before us. Nothing that anyone may remember reading  
about, 16 seeing news accounts of, or whatever concerning the  
evidence as 17 it related to Mr. McVeigh can now be considered as it  
may 18 relate to Mr. Nichols. You understand?

19 A. Yes.

20 Q. And of course, the outcome of that case, the jury's  
21 decisions in that case, have nothing to do with this  
case. To 22 do otherwise would -- would be to violate the reason  
for the 23 separate trials, so we start over. And of course  
anything that 24 someone on the jury may remember seeing, reading, or  
hearing 25 about the case, not only with respect to anything about  
the

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1 case beforehand but also about the trial of Timothy  
McVeigh,  
2 has to be left outside the courtroom because what a  
jury has to  
3 do in a criminal case is decide based on the evidence.  
You  
4 understand these points?

5 A. Yes, I do.

6 Q. And I'm not going to go into all of the legal  
instructions,  
7 the instructions about the law that apply or may apply  
to this  
8 case, because in part that depends on the evidence and  
really  
9 comes at the end of a trial; and we don't know what the  
10 evidence is going to be in this case.

11 But there are some things that are really so  
12 fundamental, they're under the United States  
Constitution, so  
13 they apply to all trials of criminal cases in this  
country, no

14 matter who the defendant is or what the charges are.  
And this  
15 includes the most fundamental thing: that each person  
who is  
16 accused of a crime is presumed to be innocent of that  
crime.

17 And that presumption of innocence carries throughout  
the case  
18 and entitles that person to an acquittal; that is, a  
verdict of

the 19 not guilty, unless 12 fair-minded people considering  
20 evidence at the trial decide that the evidence proves a  
21 defendant guilty of whatever he's charged with beyond a  
22 reasonable doubt. Understood?

23 A. Yes.

case -- 24 Q. And it's not up to a person who is accused in the  
the 25 and we call that person the defendant -- it's not up to

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not up to 1 defendant to prove himself not guilty. Indeed, it's  
who has 2 a defendant to prove anything. It is the government  
for the 3 brought the charges; therefore, it's up to the lawyers  
exhibits and 4 government to call the witnesses and bring in the  
charges. 5 whatever evidence is being relied on to support those

taking the 6 And a person who is accused has no duty of  
person 7 stand or answering questions or explaining anything. A  
and 8 accused can simply remain silent throughout the trial  
9 challenge the government's evidence by the cross-

examination of

And 10 the witnesses, objection to admissibility of evidence.

jury 11 then at the end of the trial, the court instructs the

the 12 about exactly what has to be proved for each charge in

the 13 indictment and then asks the jury to decide based on

14 evidence whether those things have been proved beyond a  
15 reasonable doubt.

testify, 16 And in a case in which a defendant does not

the 17 that, of course, is included in the instructions with

I 18 caution that the jury may not in any way consider that.

defendant. You 19 mean, that's not something to be held against a

well, if 20 can't infer or suggest in your own mind, even that,

doesn't have 21 he's innocent, why didn't he tell us? Because he

would not 22 to. And there are many reasons why a person charged

23 testify.

24 And what we say to the jurors under those

can't even 25 circumstances is not only can't you consider it, you

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1 talk about it.

2 You understand these points?

3 A. Yes, I do.

4 Q. Do you agree with them?

5 A. Yes.

6 Q. And if you were to serve on this jury, are you  
ready to

7 accept those principles and apply them in this case?

8 A. Yes.

9 Q. So you understand what it means in real terms here  
this

10 morning is that Terry Nichols is presumed to be  
innocent of

11 these crimes that I've told you have been charged as to  
him and

12 the accusations made as to him; and therefore, if at  
the end of

13 the trial the jury has a reasonable doubt as to whether  
that

14 evidence proves him guilty of these charges, the jury  
must give

15 him the benefit of that doubt and find him not guilty.

16 Are you prepared to do that?

17 A. Yes.

18 Q. Now, I know you may be a bit nervous here, and this  
is an

19 unusual situation for you to be in a courtroom and all  
of these

these 20 people who are here, you know, listening to you and  
that this 21 questions being asked of you; but I want you to know  
asked 22 is not a test. There is no right or wrong answer. We  
you 23 you all these questions to get some information from  
like; 24 factually about your background and experience and the  
ask for 25 and then we asked you a lot of questions that really

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are not 1 your opinions or your attitudes and feelings, and those  
and 2 on trial. So you just tell us what you think, feel,  
3 believe, and we'll be interested in that.  
response 4 And I don't want you to worry about anybody's  
anything here 5 to that. Nobody is going to say on the basis of  
And if 6 that you're a good or bad person or anything like that.  
feel 7 you don't understand what's asked of you, I want you to  
8 very free to ask back and say, "I don't understand your  
9 question."  
10 A. Okay.

11 Q. Okay? Understood?  
12 A. Yes.  
13 Q. Now, I want to turn to the questionnaire that you  
did  
14 complete. And you have it there in front of you. And  
I just  
15 want to ask you a few questions about the things that  
you've  
16 told us here.

17 As I understand it, you were told that you  
were born  
18 in Germany?

19 A. Yeah.  
20 Q. And was one of your parents in military service  
then?

21 A. I believe so.  
22 Q. And then you were in the United States right after  
that. I  
23 mean, you weren't -- during any of your growing-up  
years, it  
24 wasn't in Germany?

25 A. No.

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1 Q. And which one of your parents was in service?

2 A. I believe my father.

3 Q. All right. And then you really have grown up here

in

4 Colorado and lived your life up to now in Colorado.

5 A. Yes.

6 Q. And right here in the Denver area.

7 A. Yes.

8 Q. And you've got a brother and a sister living here?

9 A. Yes.

10 Q. Now, on page 3 of the questionnaire, you were asked  
about

11 whether anyone in your family or close friend died at  
an early

12 age, and you marked yes. What is that situation?

13 A. I just had my little baby girl die on us. My  
sister died

14 on us during high school, and that's it.

15 Q. Your baby sister, did you say?

16 A. She was my twin. She died on me -- she died on us  
when we

17 were freshmen in high school. She shot herself.

18 Q. Okay. Now, is there any other death here that  
you're

19 talking about? Is it --

20 A. I lost my infant girl.

21 Q. Yes. Okay. That's what I thought you said, but I  
wasn't

22 clear. So there are two deaths that come to mind here.

23 A. Yes.

24 Q. One is losing an infant. And how old was that  
baby?



born 25 A. She was five months. She wasn't -- she wasn't even

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1 yet, so we lost her before she was born.

herself: 2 Q. Okay. And then the sister who you said shot Was

3 she your twin?

lived with 4 A. Yeah. Well, she was more or less my twin. She

pretty 5 me. She was the same age with me. And we were born

she 6 much the same day. She was born on the 26th and -- but

7 didn't have my last name. She had my mom's.

8 Q. Well, I'm a little confused. Please forgive me for  
9 pursuing this, but did you have the same father?

10 A. Yes.

11 Q. And different mothers?

12 A. Yeah.

13 Q. Okay. Now I understand. Thanks.

ago that 14 And of course, you were -- that isn't so long

15 you were in high school.

16 A. Yeah.

I'm 17 Q. And so this is something you remember very clearly,

18 sure.

19 A. Yes.

20 Q. And as you think about it now, it -- you have an  
emotional

21 response to it; right?

22 A. (Juror nods head.)

23 Q. You still think about it.

24 A. Yeah.

25 Q. And of course, you know that in this case, as I've  
already

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1 explained, a number of people died, a lot of different  
ages.

2 So the subject matter of the case, of course, is going  
to

3 include death, death in an explosion. And what I want  
you to

4 tell us as honestly as you can is whether your own  
personal

5 experiences with the deaths that you've already  
mentioned, your

6 sister and this baby not yet born, would so influence  
you that

7 you would be emotionally affected by hearing evidence  
about the

8 deaths of others.

9 A. No.

10 Q. You can separate these things, can you?

11 A. Yes.

12 Q. Okay. Now, you have told us about your work  
history here,

13 page 9. And as of the time that you filled out this

14 questionnaire in September, you didn't have a job.  
Right?

15 A. Yeah.

16 Q. Do you have a job now?

17 A. Yes, I do.

18 Q. What -- I don't want to ask you where you're  
working

19 necessarily. What kind of work are you doing?

20 A. Retail.

21 Q. In a store?

22 A. Yes.

23 Q. And when did you get that job?

24 A. About two weeks ago.

25 Q. So -- and did you talk to when you -- I guess you  
were

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1 interviewed for the job, were you?

2 A. Yes.

3 Q. And during that time, did you say anything about  
being the

4 subject of this jury summons?

5 A. Yes.

6 Q. And what was said to you in return? Whoever you  
were  
7 talking to, what did he or she say?

8 A. Nothing. They just said I had to bring proof that  
I was  
9 summonsed, and that was mainly it.

10 Q. Sort of like for today, for example, for getting  
the day  
11 off?

12 A. They didn't say anything. They just needed proof  
that I  
13 was going to be here, and that's all they said.

14 Q. Yeah. Well, did you talk with them about if you  
were to be  
15 on the jury, you'd be away from work for a substantial  
period  
16 of time?

17 A. Yeah.

18 Q. And what response did you get to that?

19 A. They said that I'm still -- I'll still be employed  
when I  
20 get done.

21 Q. Okay. So they knew about it when they hired you?

22 A. Yes.

23 Q. What kind of thing are you selling?

24 A. Home audio stuff. It's like TVs, VCRs and stuff  
like that.

25 Q. Yeah. And is that something where you get paid on

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1 commission?

2 A. No. I work in the back, and I just take the stuff  
out to

3 customers' cars.

4 Q. I see. So it wouldn't be a matter of getting a  
percentage

5 of the sales. You just work on an hourly --

6 A. I work on an hourly wage.

7 Q. All right. And before this job, during the summer  
--

8 excuse me -- you were coaching.

9 A. Yes.

10 Q. What -- and this was at a recreational area, in a  
park or

11 something?

12 A. It's in -- it's in a middle school. It's  
basketball for

13 kids, elementary and middle school.

14 Q. In the summertime?

15 A. Yeah, in the -- yeah, in the summertime.

16 Q. As part of a recreational program?

17 A. Yes.

18 Q. So they'd have something to do in part when they're

not in

19 school.

20 A. Yes.

21 Q. And you've done that a number of summers, have you?

22 A. Yes. Since I was a freshman in high school.

23 Q. And is basketball the sport that you coached?

24 A. Yes. And football.

25 Q. And football. And you said middle-school-aged  
students?

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1 That's like seventh and eighth?

2 A. Sixth, seventh and eighth.

3 Q. Sixth, seventh and eighth.

4 Excuse me. There was -- and I want to be  
careful in

5 asking you the question -- excuse me. There is -- when  
you

6 listed your previous jobs on page 9, one that you  
listed here

7 is the job you had before this coaching job under B.  
You see

8 that?

9 A. Yeah.

10 Q. And you only worked there a little bit, a couple of  
months.

11 A. Yes.

12 Q. Including, I guess, right up shortly before you  
came out to

13 the -- complete this questionnaire.

14 A. Yes.

15 Q. And you marked "personal." Can you tell us what  
happened

16 to that job?

17 A. Due to my grandfather -- there was nobody home to  
watch

18 him. He has spinal cancer, and I had to take a leave  
of

19 absence in order for him to -- I had to go home and  
take care

20 of him because he is unable to walk.

21 Q. So it was a family circumstance and you went to  
help your

22 family rather than to stay on that job.

23 A. Yes.

24 Q. Okay. Now, what is the situation now with respect  
to your

25 grandfather?

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1 A. He's still -- he's still living. They said they're  
not

2 going to expect him through Christmas, so I don't know  
whether

3 he'll have Christmas or not, but he's getting a little

bit

4 better but not a lot.

5 Q. Are you helping with his care now?

6 A. Yes. I help with his care at night and my sister  
does it

7 during the morning.

8 Q. Does he live in the same household with you?

9 A. Yes, he does.

10 Q. And -- and your sister lives there, too, does she?

11 A. No.

12 Q. She comes over to help?

13 A. Yes.

14 Q. All right. And are your parents divorced?

15 A. Yes, they are.

16 Q. And at what time did that happen in your life?

17 A. I don't recall.

18 Q. There was a circumstance here on page 22 at  
Question 101

19 that caused you to call the police.

20 A. Yeah.

21 Q. How old were you then?

22 A. It's been a number of times. It was -- when I was  
between

23 9 and 13 years old is when I called them a couple  
times.

24 Q. Now, is this your own father, your biological  
father?

25 A. This is my stepfather.



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1 Q. Okay. And he -- he is living with your mother now?

2 A. Yes.

3 Q. And is this in the same household where you are?

4 A. No.

5 Q. Okay. This is -- this is a situation that's going  
on now?

6 A. No, not that I know of. It hasn't been happening.

7 Q. Been resolved a few years back?

8 A. Yeah. Yes.

9 Q. And when you called the police on one or more of  
these

10 occasions, was there any arrest?

11 A. No. They just asked him to leave the house. He  
left the

12 house for a couple days and then came back; and they  
tried to

13 work it out, but it never worked out. It just kept on

14 happening.

15 Q. And you were disturbed by that, I'm sure.

16 A. Yeah.

17 Q. And somewhat protective of your mother.

18 A. Yes, I am.

19 Q. Okay. And I want to turn to something else here;  
and

page 23 20 again, with some care in asking you about it. But on  
when 21 at Question 103, you talk about something that happened  
22 you were a youngster.  
23 A. Stealing jewelry out of a store.  
24 Q. Were others with you?  
25 A. Yes. It was my mom and my cousin.

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1 Q. And what happened then? Were you arrested?  
2 A. No. I just -- I was with my mom, so they didn't  
arrest me;  
3 but I did get a ticket, and I had to go to a class and  
I had to  
4 pay a fine.  
5 Q. Were you actually before a court like a juvenile  
judge  
6 or --  
7 A. It was before a judge, but I don't know if he was a  
8 juvenile judge or not.  
9 Q. But it was a judge who you came in -- did your  
mother go to  
10 court with you?  
11 A. Yes.  
12 Q. Did you have a lawyer, too?

13 A. No.

14 Q. And it was explained to you what you had to do, to,  
like,

15 go to a class and --

16 A. Yes.

17 Q. And you did that.

18 A. Yes, I did.

19 Q. Okay. Did you think that you were treated fairly?

20 A. Yes.

21 Q. And you did what they accused you of and you  
admitted it?

22 A. Yes, I did.

23 Q. Okay. Now, we had to ask you some things in this

24 questionnaire about your view concerning punishment for  
a

25 crime. You remember that part?

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1 A. Yeah.

2 Q. And I know you want to turn to it, there. It's on  
page 28.

3 And on page 27, there was an explanation as to why  
these

4 questions are being asked. Do you remember this part  
of the

5 questionnaire?

6 A. Yeah. Somewhat.

7 Q. And did it surprise you when you came to this part  
that you  
8 were -- that we had this explanation and then asked you  
these  
9 questions?

10 A. Yes, I was.

11 Q. And of course, what we asked you here is to think  
about and  
12 tell us what you think about the use of certain kinds  
of  
13 punishment for crime. And it was not addressing this  
case at  
14 all because, as this explanation tells you, we do not  
assume  
15 that in this case any punishment would be required  
because the  
16 assumption is that the defendant is not guilty,  
innocent. So  
17 that's one of the things that we wanted to make clear  
to you;  
18 that because we ask you about your views of punishment  
should  
19 not be considered by you as any kind of suggestion that  
that's  
20 going to happen.

21 And did you understand that?

22 A. Yes.

23 Q. And then we did not instruct you at all about what  
the law  
24 is regarding punishment but simply asked for you to  
tell us

And is 25 what you would do, what you think the law ought to be.

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1 that the way you answered these things?

2 A. No.

3 Q. Well, tell us what you understood we were asking  
you.

4 A. That I thought -- I thought you guys were asking me  
like

5 how -- what I understood what the law was about the  
crimes that

6 would happen.

7 Q. Okay. All right. Well, let's talk about it in  
those

8 terms, because I will explain to you in a few minutes  
what the

9 law is; so we'll read your answers in terms of what you  
think

10 the law is. That's the way you want us to read it?

11 A. Yeah.

12 Q. All right. That's fine. And I want you to read  
your

13 answers to yourself now, just review what you wrote.

14 Okay. You have in mind what you wrote?

15 A. Yes.

16 Q. Now, this matter of punishment for crime and  
particularly

17 the extreme punishments of life in prison with no  
possibility  
18 of ever getting out -- and that's what we're talking  
about  
19 here. When this says life without the possibility of  
release,  
20 what it means is no parole. You get sent to prison,  
you spend  
21 the rest your life there. That's where you die when  
your time  
22 comes. That's the kind of life in prison this is  
talking  
23 about. Understand?

24 A. Yeah.

25 Q. And then the possibility of the death punishment.  
Now,

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You're 1 that's something that people disagree about a lot.  
2 aware of that.

3 A. Yes.

4 Q. And I suppose you're aware generally of some of the  
5 publicity about a recent execution here in Colorado of  
a man  
6 found guilty of murder in Colorado.

7 A. Yes.

8 Q. You -- did you read much about that?

9 A. No.

10 Q. Have you thought much about this matter of what  
kind of  
11 punishment should be imposed for crime before answering  
these  
12 questions?

13 A. No.

14 Q. So would it be fair to say this is pretty much the  
first  
15 time you focused on this and put down on paper what you  
think?

16 A. Yes.

17 Q. Have you thought about it since?

18 A. No.

19 Q. As you read these answers over this morning, having  
just  
20 now read them, would you answer these questions the  
same way  
21 now if I went through them with you?

22 A. No.

23 Q. What changes do you have in mind?

24 A. A lot.

25 Q. Okay. Well, you're free to tell us that, and  
that's what

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1 we want you to tell us. This is one of those areas,  
you know,

wrong 2 where we just want to know what you think. No right or  
you and 3 answer to it; and that's why, you know, we're asking  
answers. 4 giving you an opportunity to completely change your

first-degree 5 A. At A on 28, I put that -- what I put, I think  
too. 6 murder -- first-degree crimes should be under that,

7 Q. Okay. All right.

lawyers of 8 A. Depending on the evidence that the people -- the  
would 9 each side have would decide what I -- what that penalty  
10 be.

11 Q. Okay.

how I 12 A. And I wouldn't change anything on letter B. That's  
13 feel.

14 Q. All right.

15 A. Providing that the evidence is there, too, again.

16 Q. Yeah.

17 A. That's it.

change. 18 Q. All right. Well, thank you for giving us that

you to 19 What have you been thinking about that causes

would 20 suggest -- or not "suggest" -- But to tell us that you



we've  
murder?  
just  
I felt.

21 add the possibility that life in prison of the type  
22 talked about should be a possibility for first-degree  
23 A. I really haven't been thinking about nothing. It's  
24 after what we were talking about, I just -- that's how  
25 Q. All right.

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what you  
actually is,  
here in  
these  
law.  
the law  
murder  
other

1 A. I've never thought about it.  
2 Q. Well, you don't have to defend yourself here on  
3 think, and I just want to explore that with you a bit.  
4 Well, let me tell you how -- what the law  
5 because we don't want you to guess about it. We did  
6 the beginning want to know just what you think about  
7 possible punishments before talking with you about the  
8 But I do now want to make it clear to you exactly what  
9 is and what the jury's role is under federal law in  
10 cases. Okay?  
11 So let me first start by explaining that in

12 kinds of cases, like let's say a bank robbery or a  
burglary or  
13 something like that, cases that don't involve under the  
14 statutes any possibility of punishments like this but  
where the  
15 punishment range would be probation, probation and  
fine, a  
16 period of years in prison, that kind of thing --

17 A. Uh-huh.

18 Q. Now, what a jury does in cases like that is, as it  
does in  
19 all cases, come in, hear the evidence that's presented  
by the  
20 lawyers in the case, listen to the witnesses, hear the  
21 instructions of the court about what has to be proved  
-- and  
22 the instructions include the specific things that have  
to be  
23 proved for the crime charged -- and then decide whether  
that  
24 evidence proves guilt beyond a reasonable doubt. If  
the answer  
25 to that question is that it does not, then the jury  
exercises

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1 the reasonable doubt in favor of the defendant and  
finds him  
2 not guilty.

beyond a 3 If, on the other hand, the jury is persuaded  
guilty. 4 reasonable doubt, all of them agree, the sentence is  
decided the 5 In either event, the jury's job is done. They've  
case. 6 question of guilt or not. And they're done with the

7 But, of course, the case is not over for the  
hearing. And 8 defendant, because it goes on to a penalty phase  
bank 9 in cases of this type that I've just described, like a  
sentence 10 robbery, it's up to the judge to decide what that  
you know, 11 ought to be. And there is no automatic sentence of,  
do, 12 this is the crime, bank robbery, this is the time you  
include the 13 because it depends on so many circumstances, which  
effects, 14 circumstances of the crime, things about what were the  
of the 15 what happened as a result of this crime, and also a lot  
about the 16 circumstances about the defendant, really everything  
defendant as an individual human being. 17

consider 18 So the information that the judge wants to  
life story 19 and must consider under the law is really the whole

20 of the defendant and information about where he was  
born and  
21 raised, what was the family like, what were his  
growing-up  
22 years, what's his education, what's his work record,  
you know,  
23 does he have brothers and sisters, has he got military  
service,  
24 almost everything that there is about a person's life,  
25 including some things about attitudes and beliefs and

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1 relationships with others, has he done good things in  
life, has  
2 he done bad things, have bad things been done to him,  
all of  
3 this.

4 And this can also include, like in cases where  
you say  
5 you got a bank robbery and two or three people were  
involved in  
6 it, were there different roles involved? Because they  
all  
7 might be guilty of the bank robbery, but they did  
different  
8 things. Like you could think of a getaway car or  
somebody with  
9 a gun, and you know what I'm talking about.

10 A. Yes.

judge  
and the  
It's a

11 Q. Well, all of those things then together; and the  
12 hears all about this and arguments from the prosecution  
13 defense. And then the judge decides, Well, this is the  
14 sentence that's right for this person for this crime.  
15 very individual thing. Follow?

16 A. Yes.

17 Q. And that's the sentence that's imposed.

intentional  
kind of  
actually,  
either

18 Now, under federal law, when there is an  
19 killing, then these sentences of life in prison with no  
20 possibility of ever getting out and death become the  
21 sentence that can be considered, must be considered,  
22 together with the possibility of a lesser sentence than  
23 of those two. Follow?

24 A. Yes.

would be

25 Q. Now, if it's a lesser sentence than those two, it

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made by

1 a judge's sentence, but the life-or-death decision is  
2 the jury, because the Congress in passing these  
statutes has

question. 3 said, We don't want judges deciding this kind of a

jury. 4 This is for the people to decide, the people on the

then, is 5 And the way in which it is actually done,

of 6 that having returned a verdict of guilty, which means,

the 7 course, the jury is satisfied that the defendant did

on and 8 killing that he's charged with, then the jury has to go

on and 9 hear more in very much the same way that a judge goes

another 10 hears more after a guilty verdict returned by a jury in

11 kind of case. You hear what I'm saying?

12 A. Yes.

amounts 13 Q. And so there is a sentencing hearing. Really, it

in such 14 to a second trial after the return of a guilty verdict

called in, 15 a case. And it is at that time that witnesses are

with 16 exhibits are offered. It's the very same trial process

the 17 the prosecution and defense counsel participating. And

impact on 18 jury will hear in such a case more about the crime,

the jury 19 victims, what happened as a result of the crime. And

20 will also hear all of these things about the defendant:  
who he  
21 is, what's happened in his life, what has he done in  
his life,  
22 the same kinds of things that I've reviewed with you  
that a  
23 judge would be considering in other kinds of cases.  
24 But now it's up to the jury to hear all of  
that and to  
25 carefully pay attention to it. And that can go on for,  
you

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1 know, as long as the trial, if necessary, whatever time  
is  
2 necessary to get all this information to the jury.  
3 And then at the end, the court gives  
instructions to  
4 the jury about what they've heard and pretty much  
summarizes  
5 it, puts it all together, and in that summary then also  
divides  
6 it up into really two categories: on the one hand,  
things that  
7 the court would call aggravating factors or aggravating  
8 circumstances. These are the things that may be  
included in  
9 that second trial that go to suggest to the jury that  
death is  
10 the deserved punishment. And at the same time, the

court would

11 review for the jury the things that are sort of on the  
other

12 side called mitigating circumstances, mitigating  
against such a

13 sentence for this person. And it is in that side that  
would be

14 included all of these things about who he is, because  
what the

15 jury is being asked is whether this particular  
individual human

16 being should live or die, not just somebody is guilty  
of a

17 crime this should happen, but should this person's life  
be

18 taken because of his crime.

19 And therefore, before you can decide that,  
you've got

20 to know whose life it is and who he is and what he is.

21 Understand?

22 A. Yes.

23 Q. So the court then says, Well, these are the  
aggravating

24 circumstances that may be considered, these are the  
mitigating

25 circumstances that may be considered. Now, members of  
the

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1 jury, here are some questions that you might ask  
yourselves to  
2 sort of follow through this; but what you must do is  
consider  
3 everything that you've heard and on both sides before  
you make  
4 a decision.

5 And then you've got to make a decision about  
life or  
6 death of this particular person. Follow?

7 A. Yes.

8 Q. Now, there is nothing that the court can tell the  
jury to  
9 use as some kind of a formula or equation or anything.

10 not like adding and subtracting. This is at the end  
what  
11 amounts to a real moral judgment about another human  
being and  
12 whether he should die for a crime and whether that's a  
just  
13 sentence for him. You understand?

14 A. Yes.

15 Q. And of course, the jury is expected to talk about  
it,  
16 discuss, and deliberate, talk about what each juror  
thinks.

17 But finally, each juror is going to have to make an  
individual  
18 decision, answering that question: Should the  
defendant,  
19 whoever he is, live or die?

is if 20 Now, the question that you must answer for us  
guilty of a 21 you were placed in that situation, found a person  
can you 22 crime of this type, the intentional killing of others,  
consider 23 make a decision on life or death for that person and  
24 everything that you've heard?  
25 A. Yes.

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a 1 Q. And that means that you could come out, then, with  
this 2 decision that the crime could be a death penalty but  
3 person should get a life sentence for it.  
4 A. Yes.

questions I 5 THE COURT: Okay. Well, these are the  
for each 6 have for you; but we're not done yet, because a lawyer  
But I 7 side -- on each side has a chance to ask you some more.  
and do 8 think we'll take a break now and come back after lunch  
9 that.  
10 JUROR: Okay.

longer, 11 THE COURT: So hang in there a little while  
12 and we'll have you back in here in an hour and a  
quarter and  
13 ask you a few more questions from the lawyers.

14 JUROR: Okay.

out 15 THE COURT: Thank you very much. You can step  
16 now.

17 (Juror out at 12:07 p.m.)

18 MR. WOODS: May we approach the bench?

19 THE COURT: Sure.

20 (At the bench:)

court 21 (Bench Conference 45B2 is not herein transcribed by  
22 order. It is transcribed as a separate sealed  
transcript.)

23

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1 (In open court:)

2 THE COURT: All right. We'll recess.

3 (Recess at 12:08 p.m.)

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16 \* \* \* \* \*  
17 REPORTERS' CERTIFICATE  
18 We certify that the foregoing is a correct  
transcript from  
Dated 19 the record of proceedings in the above-entitled matter.  
20 at Denver, Colorado, this 24th day of October, 1997.

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Paul Zuckerman

Kara Spitler