

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

court

(Bench Conference 45B1 is not herein transcribed by

19 transcript.)

order. It is transcribed as a separate sealed

20

21

22

23

24

25

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1

(In open court:)

2

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

3

THE COURT: Good morning.

4

JUROR: Good morning.

5

again. And

THE COURT: Thank you for your cooperation

defense

6

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

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 said -- and this is reflected in your questionnaire --
10 began to think more about this issue of punishment.

And can

11 you describe for me what that process was?

12 A. You mean as I changed my views?

13 Q. Right, yes.

14 A. I think -- I think as I became older, I began to
sort of
understand
from, but

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.

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

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

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

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

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

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

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

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

Colorado, 11 pretty shocking crimes that have been committed in

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

consider 13 Having given us those views, were you to

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

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;

11 that is, would the -- bad question -- would you become
the
12 professor in the jury room, saying, well, what we heard
today
13 is not the whole study?
14 A. I would use whatever knowledge I have to evaluate
whatever
15 evidence is presented.
16 Q. Okay.
17 A. So if I know something about an issue, I would
certainly
18 share that with the jurors.
19 Q. Now, final group of questions. We're almost done.
I'd
20 like you to turn, if you would, to page 33. And you
say at
21 Question 144 -- you give us five sources of information
about
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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1 A. I think after the bombing happened, I was talking
with
2 people at work about it and with my husband and with
neighbors,

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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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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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

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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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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.

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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

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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
And are 22 embarrassment or something here, but it's of concern.

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

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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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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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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?

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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

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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.

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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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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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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.

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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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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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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?

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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 Now, how many in all, then, as you think about
it now,
25 times have you been on a jury in a criminal case?

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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 Q. And even though you're an experienced juror, I want
to
12 review those with you in a minute because, you know,
you heard
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

5202

Juror No. 811 - Voir Dire

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?

5204

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

Juror No. 811 - Voir Dire

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

5220

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
than 5 Now, the cases that you heard: Was there more
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

5222

Juror No. 811 - Voir Dire

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

5223

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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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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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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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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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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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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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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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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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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

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

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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Juror No. 811 - Voir Dire

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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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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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?

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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.

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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

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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?

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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?

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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.

13 But that -- if there is a guilty verdict on
any one of 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.

17 As you -- when you first got your jury
summons, did 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.

23 Q. And other cases that you followed. These views
that you've 24 expressed about capital punishment, you've held those
for a 25 long time.

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Juror No. 811 - Voir Dire

1 A. I have, yes.

2 Q. And it was your view coming in here that if there
is a

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?

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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
8 someone had intentionally killed a number of people --
blown up 9 an airplane; all right? Would you think without regard
to 10 anything else that somebody that did that ought to get
the 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.

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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?

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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

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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

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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

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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

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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.

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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

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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

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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
11 having heard information relevant to that issue, came
in with a 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

Juror No. 168 – Voir Dire

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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Juror No. 168 - Voir Dire

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

Juror No. 168 – Voir Dire

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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Juror No. 168 - Voir Dire

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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Juror No. 168 - Voir Dire

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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Juror No. 168 - Voir Dire

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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Juror No. 168 - Voir Dire

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

24

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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.

21

22

23

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25

Paul Zuckerman

Kara Spitler