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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

9

REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 46)

10

11

ff

MATSCH,

October,

Denver,

12 Proceedings before the HONORABLE RICHARD P.
13 Judge, United States District Court for the District of
14 Colorado, commencing at 1:18 p.m., on the 24th day of
15 1997, in Courtroom C-204, United States Courthouse,
16 Colorado.

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23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
P.O. Box 3563, Denver, Colorado, 80294, (303)

5291

1 APPEARANCES

Western
Oklahoma
GEOFFREY
U.S.
Denver,
Law, 1120
appearing

2 PATRICK RYAN, United States Attorney for the
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
6 MEARNS, and JAMIE ORENSTEIN, Special Attorneys to the
7 Attorney General, 1961 Stout Street, Suite 1200,
8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR and RONALD WOODS, Attorneys at
10 Lincoln Street, Suite 1308, Denver, Colorado, 80203,
11 for Defendant Nichols.

12 * * * * *

13

PROCEEDINGS

14

(Reconvened at 1:18 p.m.)

15

THE COURT: All right. We'll resume.

16

(Juror No. 168 was recalled to the stand.)

17

VOIR DIRE EXAMINATION

18

BY THE COURT:

you all

19

Q. And before we recessed, I told you that I'd asked

few more

20

the questions that I have, but I wanted to ask you a

your

21

as I thought about it. Tell us -- and this relates to

a bit.

22

family situation. That's what I wanted to follow up on

23

Who lives in the household where you live now?

24

A. My -- my grandmother and my grandfather.

25

Q. Okay. And this is the grandfather who is ill?

5292

Juror No. 168 - Voir Dire

1

A. Yes.

him?

2

Q. And, you know -- and you're helping to care for

3

A. Yes, I am.

for

4

Q. And I take it that what the doctors say is not good

you've been

5

him? I mean this is going to be terminal is what

6 told?

7 A. Yes.

8 Q. And he's in a wheelchair?

9 A. Yes.

10 Q. Now, please forgive me for having to ask you
questions like

11 this, but if he passes away during the time that you
would be

12 on the jury, would you be able to handle that?

13 A. Yes.

14 Q. Okay. Now, did you grow up with them?

15 A. Yes, I did.

16 Q. So these grandparents really raised you?

17 A. Yeah, from the time I've been 13. I've lived with
them

18 since. I lived with them off and on from the time I
turned 13.

19 They raised me after that.

20 Q. So you're very close to them, obviously?

21 A. Yes, I am.

22 Q. Just like parents to you?

23 A. Yes.

24 Q. How long has your grandfather been ill with this
cancer?

25 A. Since last year.

Juror No. 168 - Voir Dire

1 Q. And has been declining in his health, I take it --

2 A. Yes.

3 Q. -- all this time.

4 And it's your view that you could handle it
and be on

5 the jury even if he passes on while you were in trial?

6 A. Yes.

7 Q. All right. Now, you mentioned that you and your
friend

8 lost a baby before the baby was born?

9 A. Yes.

10 Q. Is she with you now, too?

11 A. My girlfriend?

12 Q. Yes.

13 A. Yes, I still date her.

14 Q. But she doesn't live with you?

15 A. No.

16 Q. Okay. Final thing is I'd like you to write down
where you

17 work now. We're not going to ask you in the open, but
if

18 you'll just write on this pad the name of your employer
now,

19 I'll pass that to the lawyers so we know exactly where
you

20 work. Okay. There's a pad and a pencil.

21 A. You want the location?

22 Q. No, just the name.

23 THE COURT: Okay. Now we're ready for some
questions

24 from the lawyers. Thank you.

25 Miss Wilkinson.

5294

Juror No. 168 - Voir Dire

1 MS. WILKINSON: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 BY MS. WILKINSON:

4 Q. Hi. How are you doing?

5 A. Pretty good. How are you?

6 Q. Were you a little nervous when you first sat down
this
7 morning?

8 A. Yes.

9 Q. Feeling better?

10 A. Yeah.

11 Q. I take it you take your job as a potential juror
pretty
12 seriously; right?

13 A. Yeah.

14 Q. I notice when you came in, you have a number
written on
15 your hand.

16 A. Yes.

17 Q. Did you write down your juror number?

18 A. Yes.

19 Q. Is that to make sure that you could remember it?

20 A. Yes.

21 Q. I take it that that indicates you understand the
22 seriousness of the responsibility you're facing?

23 A. Yes, I do.

24 Q. And you understand if you're selected as a juror,
you come
25 in here with an open mind and listen to all the
evidence and

5295

Juror No. 168 – Voir Dire

1 only make up your mind when the evidence is concluded
and you
2 went back with your fellow jurors to deliberate?

3 A. Yes, I do.

4 Q. You wouldn't have any problem doing that, would
you?

5 A. No.

6 Q. You told his Honor that you coached a lot of these
summers?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. And you coached kids, sixth, seventh, and eighth?

11 A. It starts in the third grade, and I go from third
to eighth

12 grade, and that's what I coach.

13 Q. How did you get involved in doing that?

14 A. When I was a little kid, when I grew up, that's how
I

15 got -- that's what I started all my athletics as; and I
just

16 wanted to give back to the community what I got.

17 Q. And do you feel like sports really helped you?

18 A. Yes.

19 Q. Do you still participate in sports, yourself?

20 A. Yes, year-round.

21 Q. What sports do you participate in?

22 A. Baseball, basketball, and softball.

23 Q. Tell me what you enjoy most with the kids, working
with

24 them in the summer.

25 A. Giving them back what I got, making them realize
what's

5296

Juror No. 168 - Voir Dire

1 more important in life than hanging out in the streets,
and

2 staying out of trouble. That's what I'm trying to get
across.

kids you
3 Q. Have you seen that have an impact on some of the
4 work with?
5 A. On some of them it does and some of them it
doesn't.
6 Q. What do you think makes the difference?
7 A. The way I coach them and they look to me as a role
model
8 and the way I do stuff is going to influence them when
they
9 grow up.
10 Q. Do you talk to them about some of the things you're
doing?
11 A. Yes.
12 Q. Some of the things you did when you were a kid?
13 A. Yes.
14 Q. Do you ever tell them the story about taking the
jewelry?
15 A. No.
16 Q. Do you think after that incident you kind of
changed
17 yourself?
18 A. Yeah. Yes, I do.
19 Q. You never got in any trouble after that?
20 A. No. Speeding tickets and just stuff like that.
21 Q. And after that incident, is that when you started
to live
22 with your grandparents, or was it around that time?
23 A. It was around that time.

24 Q. And have you always helped out with your
grandparents since

25 you've lived with them?

5297

Juror No. 168 - Voir Dire

1 A. Yes.

2 Q. You told us -- and if you could look on your
questionnaire

3 on page 18 -- that you knew about two organizations.
We asked

4 you -- there's a whole list there. You see that long
list?

5 A. Yes.

6 Q. And you checked off that you knew the two
organizations

7 that dealt with handguns. Handgun Control,
Incorporated;

8 right?

9 A. Yes.

10 Q. And the Coalition to Stop Handgun Violence?

11 A. Yes.

12 Q. Tell me how you became aware of those
organizations.

13 A. From when I wanted to go hunting, I had to sign up
for the

14 hunter safety courses and through that; and one of my
sisters

15 shot herself, when I really learned about the handguns.

16 organization?

Q. And have you been active at all in that

17 A. No. I just know of them.

18 Q. Have you received any literature from them?

19 A. No.

20 learned

Q. After that incident with your sister and when you

21 handguns?

about that, did it change your views at all on

22 A. Yes.

23 Q. Can you tell me how?

24 -- I

A. Because I have -- when I grew up, I was growing up

25 crowd,

grew up around the wrong crowd, hung around the wrong

5298

Juror No. 168 - Voir Dire

it: If

1 and they always carried handguns. And the way I seen

if you

2 you carried a handgun, you're going to get in trouble;

got rid

3 hid it or not, somebody's going to find it. And I just

4 of that and all my life after my sister passed away.

use it

5 Q. When you say you get in trouble, even if you didn't

somehow?

6 against somebody, somebody could take it and use it

7 A. And they could use it against you.

Oklahoma
Do you
1995?

8 Q. If we could, let's talk a little bit about the
9 City bombing, not about this case, but about the event.
10 remember hearing about the bombing back in April of
11 A. Yes.

heard about
Excuse
how many
happened.

12 Q. What do you remember about the bombing?
13 A. Hearing what happened. I was in school when we
14 it. I went home, and the next day I read the paper.
15 me. And I just basically the face off of there, and
16 people were dead and what really happened and how it
17 Q. Do you remember watching it on TV?
18 A. No. I don't recall watching it on TV 'cause I
19 of my time after school at practice or after-school
20 Q. When you went back to class either after you heard
21 or the next few days, do you remember any of the
22 teachers
23 talking about the bombing?
24 A. Yes.
25 Q. What did you all talk about?
A. The situation that was going on about the -- how
the

Juror No. 168 - Voir Dire

1 federal building -- we mostly talked about it in social
2 studies, and that's mainly it. We really didn't get
into
3 facts. They just let us know what happened as they
knew, as
4 they came to them.

5 Q. And did people in your class talk about their
feelings
6 about what had happened?

7 A. Not really.

8 Q. After those first few days passed, after the
bombing, did
9 you follow the case in any way?

10 A. No.

11 Q. Do you read the newspaper regularly?

12 A. The sports section, that's it.

13 Q. Okay. And what about TV news -- do you focus on
the
14 weather and sports?

15 A. The weather and sports, and that's it.

16 Q. Do you know anything about Mr. Nichols?

17 A. No. Just that he was with Mr. McVeigh, and that's
all I've
18 heard. That's it.

19 Q. Can you remember what you heard that he was with

20 Mr. Nichols (sic)?

21 A. He was supposedly --

22 Q. Mr. McVeigh.

23 A. He supposedly had something to do with it, that he
was a

24 conspiracy or conspire on it; and so I mean we heard --
I don't

25 know anything else besides that.

5300

Juror No. 168 - Voir Dire

1 Q. Do you remember what you heard about how he
conspired with

2 Mr. McVeigh?

3 A. The weapons, the stuff that Mr. McVeigh got. I
think

4 that's what I heard, that he got it from Mr. Nichols.

5 Q. And when you say weapons, what do you mean weapons?

6 A. As in the bombing, the stuff that he used to create
the

7 bomb.

8 Q. The things they made the bomb out of?

9 A. Yes. Yes.

10 Q. Do you know anything else about Mr. Nichols'
background?

11 A. No.

12 Q. Did you follow the McVeigh trial at all?

13 A. Just when he got -- just when his verdict came out,

that

14 was it.

15 Q. Let's talk about that for a moment. Do you
remember when

16 it was announced that the jury had found him guilty?

17 A. Sometime in the afternoon. I don't know exactly
when, on

18 what day.

19 Q. And how did you find out about it?

20 A. The radio.

21 Q. What was your reaction?

22 A. I really didn't react to it. I didn't really -- I
knew

23 something was going to happen serious, but I didn't
know it was

24 going to be that serious to him.

25 Q. When you say that serious, are you talking about
the

5301

Juror No. 168 - Voir Dire

1 sentence that they recommended?

2 A. Yeah.

3 Q. Do you recall what sentence they recommended?

4 A. Yeah, the death penalty.

5 Q. How did you feel about the death penalty being
given to

6 Mr. McVeigh?

7 A. I guess the evidence that was given showed that
what
8 happened he deserved the death penalty afterward,
everything he
9 did.

10 Q. Well, let's talk about the death penalty for a few
minutes,
11 if we could. Could you turn to your questionnaire to
page 28,
12 where you had written those responses. When his Honor
asked
13 you this morning whether you would keep the same
responses if
14 he asked you today, you were candid and you said, no,
you
15 wanted to change them a little bit; is that right?

16 A. Yes.

17 Q. And you said you wanted to add murder to the first
one,
18 which was one of the crimes that might receive the
penalty of
19 life in prison; is that right?

20 A. Yes.

21 Q. What made you change and add that to the life-in-
prison
22 section?

23 A. Just my view. I mean if -- that's just how I
viewed it --

24 after the Judge explained to me, that's how I viewed
it. I
25 mean I don't have anything against the death penalty.

I'm not

5302

Juror No. 168 - Voir Dire

1 for it, I'm not against it. I mean if it comes up to
it, if
2 the evidence is all there, the right thing should be
given.

3 Q. And that's what you said on page 29, didn't you,
that every
4 crime has a proper punishment?

5 A. Yes.

6 Q. Does that mean that you will wait and listen to all
the
7 evidence before you decide what punishment is right?

8 A. Yes.

9 Q. Did you understand when the Judge told you, though,
that if
10 you're a juror in this case, you can't consider just
the crime;
11 right?

12 A. Yeah.

13 Q. That you're going to make that decision first,
whether the

14 defendant is guilty of the crime? And if you and your
juror --

15 fellow jurors decide that, then you would vote that
he's

16 guilty; correct?

17 A. Correct.

18 Q. But then you have to start again and decide not
just about

19 the crime, but about the defendant and all the facts
and

20 circumstances about him. Would you be willing to
listen to all

21 of that, the facts and circumstances, the background of
the

22 defendant, and about the crime before you decided what
that

23 punishment should be?

24 A. Yes.

25 Q. And do you accept that you can't say, as you sit
there

5303

Juror No. 168 - Voir Dire

1 today, what the proper punishment would be in a murder
case?

2 A. Yes.

3 Q. Because you don't know the facts; right?

4 A. No.

5 Q. Now, let's assume you get to that stage. Let's
assume that

6 you and your fellow jurors are picked for a trial --
and we're

7 not going to talk about these specific facts 'cause we
don't

8 know what they are. Is that okay?

9 A. Yes.

10 Q. So you and your fellow jurors have deliberated and
you've
11 found someone guilty of murder. And then you sit down
and you
12 listen to all the other evidence, the information, more
about
13 the crime and more about the defendant and you go back
and you
14 deliberate with your fellow jurors and you decide
together that
15 the right reasoned moral judgment is the death penalty.
Could
16 you come back into a courtroom and say that, yes, I
decided
17 that a defendant should die?

18 A. Yes.

19 Q. If you were selected and you were in that penalty
phase,
20 the second trial that we're talking about, would you
start with
21 an open mind and say, Look, I don't know what's going
to
22 happen, so it could be a life sentence or it could be a
death
23 penalty, I just don't know?

24 A. Yes.

25 Q. And you'd be totally open to both of those?

Juror No. 168 – Voir Dire

1 A. Yes.

2 MS. WILKINSON: Thank you, I appreciate your
answering
3 my questions.

4 THE COURT: Mr. Woods.

5 MR. WOODS: Thank you, your Honor.

6 VOIR DIRE EXAMINATION

7 BY MR. WOODS:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Just a few more questions. I'm the last one. We
have to
11 go last, and they've covered most of the areas, so it
will only
12 be a couple and you'll be out of here.

13 As the Judge introduced me, my name is Ron
Woods.

14 Along with Mike Tigar, we were appointed by the United
States
15 district judge in Oklahoma City in May of '95 when the
16 Government charged Terry Nichols with being responsible
for the
17 bombing.

18 How do you feel about him having two court-
appointed
19 lawyers to help him here in the courtroom?

20 A. I don't -- what do you mean? I don't understand.

21 Q. Well, Mr. Nichols couldn't -- he didn't have the
money, he
22 couldn't afford to hire his own lawyers, so the court
had to
23 appoint lawyers at taxpayers' expense. How do you feel
about
24 that?
25 A. It don't bother me.

5305

Juror No. 168 - Voir Dire

1 Q. Okay. When you saw Mr. Nichols out at the
fairgrounds,
2 you'd been reading, hearing about him for two-and-a-
half years.
3 Did you have a picture in your mind about what he
looked like?
4 A. No.
5 Q. Okay.
6 A. No.
7 Q. What did you think when you saw Mr. Nichols there?
8 A. I just thought of him as a regular man.
9 Q. Okay.
10 A. As I see anybody else.
11 Q. Okay. You mentioned in your questionnaire that
you'd been
12 to some gun shows; is that correct?
13 A. Yes.

14 Q. How recently?
15 A. The last one was when I was 15 years old and I was
with my
16 grandfather.
17 Q. Did your grandfather go to gun shows periodically?
18 A. Yes, he goes -- he used to go to every one that was
around
19 where we live.
20 Q. And did you go to more than one with him?
21 A. Yes. I did.
22 Q. What did you notice that were for sale at the gun
shows?
23 A. Rifles and handguns and knives.
24 Q. Did you notice books and pamphlets?
25 A. Yes.

5306

Juror No. 168 - Voir Dire

1 Q. Did you notice Army surplus items like canteens and
camping
2 gear and ammunition boxes and things like that?
3 A. I noticed ammunition boxes.
4 Q. Okay. Notice anything else, jewelry or anything
like that?
5 A. Not that I can remember.
6 Q. Were the gun shows just in this area, around
Denver?
7 A. Around Denver.

take 8 Q. You've gotten very interested in handgun control, I

kids? 9 it, right, especially keeping guns out of the hands of

10 A. Yes.

11 Q. And that's what you mentioned in your
questionnaire. You

12 noticed at the gun shows there were a lot of people
that make

13 their living by buying and selling and going to gun
shows;

14 would you agree?

15 A. Yes.

16 Q. Would you hold it against anyone that they made
their

17 living by attending gun shows and buying and selling
items at

18 gun shows?

19 A. No.

20 Q. Have you been active and done anything in
connection with

21 handgun control and keeping the guns out of the hands
of kids?

22 A. No.

23 Q. Just interested in that issue?

24 A. I'm just interested in the issue 'cause I feel like
young

25 kids don't need to have guns on the streets.

Juror No. 168 – Voir Dire

1 Q. When you were younger and you saw this crowd that
you
2 mentioned, did you notice anybody under the influence
of drugs
3 during that time?

4 A. No.

5 Q. Okay. Did you ever become acquainted with the use
of
6 methamphetamine, other people using speed or crystal or
7 methamphetamine?

8 A. No.

9 Q. Now, you mentioned in your questionnaire that you
were
10 watching television more than six hours a day.

11 A. That's sports.

12 Q. Now that you're working, I take it that time has
gone down;
13 is that correct?

14 A. Yeah, I record stuff. I watch it when I'm at home.

15 Q. And you mentioned in your questionnaire on page 33
about
16 the sources from which you have read or heard about
Oklahoma
17 City bombing. It's Question 144. And you checked off
TV news,
18 radio news, newspaper, and conversations. And then you
checked
19 off "quite a bit" to describe the amount you've read

about the

20 case. And then at 146 asked you if you followed any
case, and

21 you said, "No, just the Oklahoma City bombing case."

22 And the prosecutor went over with you about
how you

23 became acquainted with it at school and the teachers
would

24 bring you up to date as to what was happening. Do you
remember

25 how Mr. McVeigh was arrested after the bombing?

5308

Juror No. 168 - Voir Dire

1 A. At his house, I believe.

2 Q. I'm talking about Tim McVeigh.

3 A. Yeah.

4 Q. You got the people straight? Okay. At his house?

5 A. I believe so. That's if I remember.

6 Q. Okay. Do you know where his house was?

7 A. No.

8 Q. Do you know what state it was in?

9 A. Oklahoma.

10 Q. Okay.

11 A. I think.

12 Q. And do you remember how Mr. Nichols initiated
contact with

13 the federal authorities?

14 A. No.

15 Q. Do you remember how he got into custody at all, how
his
16 name came up and how he's gotten here at this time?

17 A. I just remember hearing about photos that people
around the

18 federal building -- people seen people and they came up
with
19 photographs, and that's all I recall.

20 Q. All right. Photographs were shown to people around
the
21 federal building?

22 A. Sketches, and then people like get out a sketch,
and that's
23 all I remember. Not a photo photos, like a --

24 Q. Like a sketch?

25 A. Yeah.

5309

Juror No. 168 - Voir Dire

1 Q. And is it your memory that Mr. Nichols was
identified
2 through the sketches?

3 A. Yes.

4 Q. Okay. And the sketches were identified by people
around
5 the federal building; is that your recollection?

6 A. Yes.

at the
7 Q. All right. Do you remember where Mr. Nichols was
heard or
8 time of the bombing, from what you've seen, read, or
9 had conversations with other people about?

10 A. No.

11 Q. Do you know whether or not he was in Oklahoma at
the time
12 of the bombing?

13 A. No, I don't.

14 Q. Who did you have conversations with other than the
15 teachers? I assume they were keeping you involved
during this
16 period of time, April of '95?

17 A. My friends.

18 Q. And what did you learn from your friends, then, as
to what
19 the allegations were against Mr. Nichols?

20 A. What does -- I don't understand.

21 Q. Okay. The Government is accusing Mr. Nichols of
doing
22 something. What is it -- your understanding that he
did?

23 A. He helped Mr. McVeigh.

24 Q. And how did he help him?

25 A. I believe by providing the stuff to build the bomb.

Juror No. 168 - Voir Dire

1 Q. All right. Anything else?

2 A. No.

3 Q. From what you've seen, read, or heard, what do you
recall

4 the bomb was made of?

5 A. I don't remember.

6 Q. Do you remember how the bomb was placed at the
federal

7 building?

8 A. I believe in a car or a truck. Underneath in the
parking

9 lot of the building.

10 Q. All right. Do you remember how many people were
killed?

11 A. No.

12 Q. Do you remember whether or not there were children
killed?

13 A. Yes.

14 Q. And do you remember why there were children killed?

15 A. 'Cause there was a day-care center in the building,
too.

16 Q. And do you remember how many children were killed?

17 A. No.

18 Q. You understand that if you're chosen as a juror in
the case

19 that there will be a lot of testimony, very sad,
emotional

back at 20 testimony, and photographs of the same thing you saw
21 that time. Do you recall seeing the images on
television of
22 the rescue workers and the dead and the injured people
being
23 brought out of the building?
24 A. Some of the pictures.
25 Q. There will be a lot of people that will come in and
testify

5311

Juror No. 168 - Voir Dire

It will 1 as to that sadness and that emotion and that grieving.
you 2 be very, very emotional, and people will be crying. Do
and 3 think that you can look at that evidence for what it is
saying: 4 keep it separate from looking to the Government and
5 Well, what evidence have you brought us that shows that
that 6 Mr. Nichols is responsible for this? Can you look at
7 evidence objectively?
8 A. Yes.
9 Q. You understand that the Government's got a theory
about
that 10 Mr. Nichols' being responsible. We don't agree with

11 theory. The Government will put on witnesses to try
and prove

12 that up. We're going to cross-examine all those
witnesses; and

13 even though the Judge says we're not obligated, we're
still

14 going to call witnesses, ourselves, that will
contradict the

15 Government's theory. And do you understand that Mr.
Nichols is

16 presumed innocent as he sits here right now?

17 A. Yes.

18 Q. And what is your understanding that the only way he
can be

19 convicted -- what has to happen before he can be
convicted?

20 A. The proper evidence has to be proven that he was

21 responsible for the bombing.

22 Q. All right. And that proven beyond a reasonable
doubt?

23 A. Yes.

24 Q. Okay. And you understand that there's been a lot
of

25 conversation here about the penalty stage of the trial.
You

5312

Juror No. 168 - Voir Dire

1 understand that we don't even get to that stage of the
trial

2 unless and until the Government proves Mr. Nichols
guilty of

3 premeditated and deliberate murder of those
individuals. You

4 understand that?

5 A. Yes, I do.

6 Q. Okay. Now, you advised the Court this morning that
you

7 wanted to add to your answer on the page 28.

8 A. Uh-huh.

9 Q. Let's go to page 28, if you would. In this first
question,

10 "What is your view as to whether the penalty of life in
prison

11 without the possibility of release should ever be
imposed as a

12 punishment for any crime?"

13 And you mentioned, "That should be imposed to
someone

14 who has committed a second- or third-degree type of
crime."

15 And can you tell me what you mean by a second-
or

16 third-degree type of crime?

17 A. I understand a first-, second-, and third-degree of
crimes

18 is the first is the worst that you could do and the
second and

19 the third are not as bad as the first.

20 Q. Okay. Okay. Now, you've mentioned to the Court
that you

believe 21 wanted to change that answer by adding -- let's see. I
should 22 you stated that you wanted to add, "First-degree crimes
change was? 23 be added to that"; is that what you're -- what your
out? 24 A. Yes.
25 Q. Who have you been talking to since you filled this

5313

Juror No. 168 - Voir Dire

1 A. No one.
2 Q. Okay. What prompted you to want to add first-
degree crime 3 to this life imprisonment?
4 A. Just the way I felt after the Judge explained it to
me, 5 just the way I felt.
6 Q. Oh, after he explained it to you today?
7 A. Yeah, after he explained --
8 Q. That's when you wanted to change it. I see. Okay.
9 A. Yes.
10 Q. Prior to his explanation, you were happy with these
answers 11 that you had given?
12 A. Yes, I was.
13 Q. Okay. Okay. And what do you understand the first-
degree

14 crime to be in this case where you're adding to life
15 imprisonment?
16 A. Something very, very bad. I don't know how to
explain it.
17 It's just something really bad that's not acceptable.
18 Q. Let me give you a hypothetical because we can't
talk about
19 the facts of this case. For example, a bombing of an
airplane
20 where a number of people are killed. Was that the type
of
21 crime that you would place in life imprisonment?
22 A. Yes.
23 Q. Okay. And then how would you distinguish that one,
then,
24 from -- "What is your view as to whether the penalty of
death
25 should ever been imposed as a punishment for any
crime?"

5314

Juror No. 168 - Voir Dire

1 That's B.
2 "The death penalty should be imposed when
someone has
3 committed a first-degree murder or assault." What is
the
4 distinction there that you're making in your thinking?
5 A. Something that's already been planned out, that's

already

6 been set up from a long time ago.

7 Q. Okay. Premeditated?

8 A. Yes.

9 Q. Where it's thought out and planned? And is it --
the

10 distinction, then, if it's premeditated and the jury
finds that

11 it's premeditated, thought out and planned, and the
jury finds

12 guilty, then that's a crime that should have the death
penalty?

13 A. It should be considered the death penalty.

14 Q. Okay.

15 A. It shouldn't get the death penalty.

16 Q. Just that it's one of the options?

17 A. Yes.

18 Q. And then pretty much you've said the same thing in
C and D

19 there; is that correct?

20 A. Yes.

21 Q. Did you understand what the Judge was talking about
when he

22 said that there will be evidence concerning aggravating

23 circumstances offered into evidence and mitigating

24 circumstances offered into evidence at a penalty stage?

25 A. What's mitigating?

Juror No. 168 - Voir Dire

1 Q. Pardon me?

2 A. What's mitigating?

3 Q. Yeah, did you understand what the Judge said when
he said

4 there would be aggravating circumstances and mitigating
5 circumstances?

6 A. No.

7 Q. Okay. What kind of evidence do you think --

8 THE COURT: Well, let me explain it then, if
it wasn't
9 understood.

10 MR. WOODS: Thank you, your Honor. Thank you.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. I'll go over it again with you. What I was talking
about

14 here, I was talking about the penalty stage hearing, if
there

15 was one, there would be -- and I referred back to how
judges

16 make sentence and that before a sentence can be decided
about a

17 particular person, you have to know all there is about
that

18 person.

19 A. Like the background, the background of the person.

20 Q. Yeah, the life history of the person, everything
about him;
21 and things within that person's life history can be
mitigating.
22 And by mitigating, we mean to suggest that these things
suggest
23 that death is not a deserved punishment if that person
-- even
24 though for the crime the death penalty is available,
that
25 person does not deserve to die because of these things
that

5316

Juror No. 168 - Voir Dire

1 mitigate against -- go against that decision, and that
can
2 include all of these things in the person's life and
his
3 background. Understand now?

4 A. Yeah, I understand now.

5 THE COURT: Okay.

6 MR. WOODS: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. WOODS:

9 Q. What do you understand your role would be, then, in
a
10 punishment hearing, if you were on the jury?

11 A. What would my understanding be?

12 Q. Uh-huh.

13 A. Just to give -- make sure I'm open-minded, let
14 everything -- make sure I hear everything, hear all the
15 evidence, and that's it.

16 Q. Okay. And I take it, then, from your response,
you're not

17 going into the punishment hearing leaning one way or
the other,

18 what the appropriate punishment should be?

19 A. No, I'm not.

20 Q. Okay. And if you felt the evidence warranted it,
could you

21 come back with a life imprisonment sentence for Mr.
Nichols, if

22 you found him guilty of this crime?

23 MR. MACKEY: Objection, your Honor.

24 THE COURT: Overruled.

25 JUROR: Yes.

5317

Juror No. 168 - Voir Dire

1 BY MR. WOODS:

2 Q. And can you look at Mr. Nichols and tell him that
you will

3 give him a fair trial if you're chosen as a juror in
this case?

4 A. Yes, I can.

5 MR. WOODS: Okay. Thank you, sir.

with us, 6 THE COURT: Well, we do appreciate your time
7 both here today and previously when you filled out the
8 questionnaire and all. We're not going to be able to
tell you 9 today whether you're going to serve on this jury, but I
want 10 you to go, now that you're excused for the day, with
the 11 assumption and the understanding that you will be asked
to 12 serve. So that means you got to be careful, as I told
you 13 before when I excused you from out there in Jefferson
County; 14 that is to say, be careful about the things that you
read, see, 15 and hear to avoid anything that could affect you and
your 16 ability to judge fairly as you've told us you can. And
of 17 course that also includes conversations with other
people. You 18 know, just stay as you are, so to speak.

We 19 And we will get back to you as soon as we can.
20 know that you want to know, but we're not ready to make
those 21 decisions yet, and it will be a while yet. Now, if
anything 22 happens that changes any of your circumstances, you get
on the

okay? 23 phone and tell us about it, call us up and tell us,

24 JUROR: Yes, I will.

Thank you. 25 THE COURT: Okay. You're excused for now.

5318

1 609.

2 Good afternoon, sir. Will you please raise
your right

3 hand and take the oath from the clerk.

4 (Juror No. 609 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

7 And you don't have to worry about the microphone. It
-- you

8 don't have to lean into it or anything. And the only
reason

9 that it's there is to help us hear you. Understand?

10 JUROR: Yes.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. And you also understand that the "such
interrogatories as

14 shall be to you propounded" relates to questions
concerning

15 your possible service as a juror in the trial of the

charges in

16 the United States against Terry Lynn Nichols.

17 A. I do.

those

18 Q. And you got a summons advising that you were among

jury

19 who through a chance selection process were called for

that

20 duty and possible service on the case. You answered

back to

21 summons by responding to a short questionnaire, sent it

County

22 us, then you got a notice to go out to the Jefferson

answered a lot

23 Fairgrounds' auditorium building last month and

24 more, a long questionnaire?

25 A. Yes, I did.

5319

Juror No. 609 – Voir Dire

And as

1 Q. Okay. And you remember that experience, I'm sure.

2 a part of that, of course, I, before giving you the

introduced other

3 questionnaire to answer, introduced myself and

because

4 people who were with me. I want to do that again

process.

5 they're with me again here today and a part of this

6 Beginning here with counsel for the Government

at this

7 first table, there's Mr. Lawrence Mackey, Miss Beth
Wilkinson,

8 and you met them before. They're joined now by Mr.
Patrick

9 Ryan and Mr. James Orenstein. They are additional
lawyers for

10 the Government who were not with us when we were
together last.

11 Also you met the attorneys for Mr. Nichols,
who are

12 Mr. Michael Tigar and Mr. Ronald Woods; and of course
Terry

13 Nichols was there as well.

14 And then I made some statements or
explanations about

15 the background of the case, telling you things that you

16 probably already heard before from some other source.
And I

17 will review those things with you again in a moment.

18 But before doing that, I simply want to
reassure you

19 about some things. You answered the questionnaire as
we asked

20 you to, and we appreciate your cooperation. We know
that some

21 of the answers may be personal in your mind and a
matter of

22 your own personal privacy. We respect that all we can.
We

23 have to balance off the privacy interests of people who
get

the trial 24 called in for jury service and the public interest in
25 proceedings the best we can.

5320

Juror No. 609 – Voir Dire

1 And what we do here is first we took the
answers that 2 you gave, the completed questionnaire, and shared it
with these 3 people who are here but not with anybody else. And
they 4 haven't shared it with anybody else and won't. We're
going to 5 use what you told us only for this purpose.
Additionally, your 6 name is not being used or made public, and we arrange
for you 7 to come and go to the courthouse so you can't be
identified by 8 press people or some press photographer photograph you
or 9 anything like that. And those special arrangements are
just 10 for that purpose, you understand.
11 We are now in open court, of course, and this
is a 12 public trial proceeding, so anything that is said here
is in 13 the open and may freely be published; you understand?
14 And if there's anything that you have that is

15 particularly sensitive to you, you tell us about it.
16 Now, I also want to reassure you that we're
not going
17 to go over all these questions again. That's not what
this
18 process is about. What we want to do this afternoon is
ask you
19 to expand on some of these answers and then ask --
we'll be
20 asking you some other questions. And you may be tired
of
21 answering questions, but I hope you understand the
importance
22 of this process because a fair trial begins with a fair
jury,
23 fair-minded jury. You understand that?
24 You have to answer out loud --
25 A. Yes, I do.

5321

Juror No. 609 - Voir Dire

1 Q. -- so the answers go on the record. And I can see
you when
2 you nod your head, but it doesn't get into the record
that way.
3 Now, there are some things that we always talk
about.
4 We say "for the record," meaning so that the background
is
5 clear and there's a clear understanding, sort of a

foundation

6 for questions that get asked, and so I want to review
some of
7 the things that I told you when we were together last
and
8 before giving you the questionnaire.

9 First of all, to remind you -- and you
probably don't
10 need reminding -- but we're here for a trial as a
result of an
11 event that occurred in Oklahoma City, Oklahoma, on
April the
12 19th of 1995, when a federal office building in that
city was
13 destroyed in an explosion and people who were then
occupants of
14 the building were killed and injured; that thereafter
charges
15 were filed in the United States District Court in
Oklahoma City
16 charging two men named Timothy James McVeigh and Terry
Lynn
17 Nichols -- and then the indictment -- that is, the
charging
18 statement -- also reads "and other persons not named"
-- with
19 forming a conspiracy or a criminal agreement to bomb
that
20 building and to kill and injure the people in it.

21 Then the indictment consists of additional
charges --
22 there are 11 in all -- but the additional charges go to

the 23 accusations that these persons went ahead and committed
charges or 24 bombing and that included in the charges are eight
degree murder 25 counts of first-degree murder, premeditated first-

5322

Juror No. 609 - Voir Dire

law 1 of eight law enforcement agents, persons employed by
died in the 2 enforcement agencies of the national government who
3 explosion. Understand?
4 A. Yes, I do.
of not 5 Q. To these charges the defendants both entered pleas
then 6 guilty, thereby creating the issue for trial. The case
a 7 was moved from Oklahoma City here to Denver because of
Oklahoma to 8 concern about the difficulties in asking people in
entered 9 judge this case. And when the trial was moved here, I
that 10 an order that there be two trials, separate trials, and
to 11 the evidence be considered separately as it may relate
12 Mr. Nichols and Mr. McVeigh, finding that it would be
13 fundamentally unfair to try them at the same time

because of

14 the likelihood of confusion about what evidence was
admissible

15 against what -- which defendant and so forth.

16 And so we did empanel a jury, select a jury,
try the

17 evidence as it related to Mr. McVeigh. That jury found
him

18 guilty of the crimes charged. Then there was an
additional or

19 second trial on the question of punishment. And that
jury then

20 recommended that the death sentence be imposed with
respect to

21 Timothy McVeigh. And you probably knew all these
things.

22 A. Yes, I did.

23 Q. Okay. But I reminded you of it -- of them then and
do now.

24 And then as I pointed out, before giving you the
questionnaires

25 to fill out, you and the others, the outcome of that
case, the

5323

Juror No. 609 - Voir Dire

1 McVeigh case, cannot in any way be considered in this
case.

2 And anything that you may have seen, read, or heard
about the

3 evidence at the Timothy McVeigh trial has to be set

aside and

4 left out of the courtroom because we are here to
determine what

5 is the evidence against Mr. Nichols as a separate
defendant.

6 And if we were in any way to allow any of the McVeigh
case to

7 spill over into this case, it would violate the whole
reason

8 for the separate trial order. You appreciate that.

9 A. I understand that.

10 Q. And then I explained to you and the other members
of the

11 jury some of the fundamental principles of our law, our

12 criminal justice under the Constitution of the United
States,

13 and I did so because most of you had never been in a
criminal

14 trial or on a jury. And that's true of you; right?

15 A. Yes, that's right.

16 Q. Never been on a jury?

17 A. Right.

18 Q. So I went through the fundamentals, and I want to
do that

19 again, now, if you will. And bear with me. Again,
these are

20 things that you probably already are aware of, but I
just want

21 to make sure.

22 First of all, under our constitution, it is,
of

act, a 23 course, the law that any person accused of a criminal
obligated to 24 crime in any court in the United States, is not
is 25 prove himself not guilty in any way; that a person who

5324

Juror No. 609 - Voir Dire

that 1 accused, no matter what the crime is and no matter who
made 2 person is, is presumed to be innocent of the charges
the trial 3 against him; and that presumption carries throughout
not 4 and entitles that person to an acquittal, a verdict of
community 5 guilty, unless 12 fair-minded persons from the
beyond 6 sitting as jurors decide the evidence proves the charge
7 a reasonable doubt. You've heard of this before?
8 A. Yes, I have.
burden is 9 Q. And as I said, that means, first of all, that the
calling the 10 upon the prosecution to come in with the evidence,
that's 11 witnesses and offering the exhibits and so forth. So
12 the responsibility of these lawyers for the Government.

13 There is no responsibility for the defendant
and his
14 lawyers to prove anything at trial. And it is not
required of
15 any person accused of a crime that he take the witness
stand
16 and answer any questions or offer any explanations.
The law
17 presumes the defendant innocent, and he can remain
silent
18 throughout his trial and simply challenge the
government's
19 evidence by cross-examination of the witnesses and
objections
20 to the introduction or admissibility of the evidence;
but at
21 the end of the trial, the court instructs the jury in
detail
22 about the law, just exactly what has to be proved, you
know,
23 what are the elements of each offense, and then says to
the
24 jury: Now, decide; did the evidence show these things
beyond a
25 reasonable doubt? If not, the verdict must be not
guilty. If

5325

Juror No. 609 – Voir Dire

1 yes, the verdict can be guilty.
2 And in doing this, the jury is required to
follow only

3 the evidence at the trial. And when a defendant
doesn't
4 testify in a trial, we always tell the jury: You can't
think
5 about that. That doesn't mean he's admitting anything
or you
6 can't think that, well, if he's truly innocent, why
didn't he
7 tell you. There are a lot of reasons why a person
doesn't
8 testify at a trial, and there's no requirement that he
do so.

9 And what a jury is told under the circumstances is:
You can't
10 think about it, you can't talk about it. Understand?

11 A. Yes, I do.

12 Q. So what it means in real terms, right here, now,
this
13 afternoon, is that Terry Nichols sits in this room with
us this
14 afternoon presumed to be innocent of these charges that
the

15 Government has accused him of. You understand that?

16 A. Yes, I do.

17 Q. You accept all of these principles?

18 A. Yes.

19 Q. And are you willing to follow them in this case?

20 A. Yes, I am.

21 Q. And presume Mr. Nichols to be innocent of these
charges?

22 A. Yes.

23 Q. And in the event you sit in judgment on this trial,
you

24 would give him the benefit of any reasonable doubt
remaining

25 after consideration of the evidence?

5326

Juror No. 609 – Voir Dire

1 A. Yes, I would.

2 Q. Okay. There are some questions that I just want to
ask

3 you, sort of follow up on a few things. You have your
4 questionnaire in front of you now, do you?

5 A. Yes, sir.

6 Q. And you live now in the Denver area.

7 Yes?

8 A. Yes, I do.

9 Q. And you were born in Anchorage, your father was in
the Air

10 Force, and you lived in a lot of places during the
years you

11 were growing up in the family?

12 A. Yes, I did.

13 Q. Were any of those places overseas, outside the
United

14 States?

15 A. I lived in Japan for two years.

16 Q. And how old were you at that time?

17 A. I was six to eight years old.

18 Q. And then where was it that -- I've forgotten here
-- where
19 was it that you lived when you went to high school?

20 A. In Tucson, Arizona.

21 Q. And then you went to the University of Arizona?

22 A. Yes, I did.

23 Q. For college. And got a degree in fine arts.

24 A. It's a bachelor's degree in illustration and
graphic
25 design.

5327

Juror No. 609 - Voir Dire

1 Q. And that's something you did for a while?

2 A. For a number of --

3 Q. Working as a staff artist?

4 A. Right.

5 Q. And then you decided, as I understand it, to go on
to
6 nursing school?

7 A. My mother was a terminal cancer patient, and I took
care of
8 her the last three years of her life and became
interested in
9 what nurses did as opposed to what doctors did.

10 Q. Uh-huh.

11 A. Hadn't been particularly happy in my previous
career; so

12 after she died, I gave it a year or so and decided I
would try

13 that. And for the last 18 years, I've been a
registered nurse.

14 Q. And happy with the decision, it appears, to change
careers?

15 A. Yes, yes. Definitely.

16 Q. And when your mother was going through the stages
of the

17 disease, were you living in the same household?

18 A. I had moved from California back to Arizona to take
care of

19 her.

20 Q. And where was your father at that time?

21 A. He was there, also.

22 Q. And is he living now?

23 A. He died in February of this year.

24 Q. Okay. So the way I understand what you've just
said, one

25 of the prime motivations for you to change careers and
go into

5328

Juror No. 609 - Voir Dire

1 nursing care is this experience with your mother's last

2 illness?

3 A. Certainly provided me with a different perspective
on

4 illness.

5 Q. Okay. And then you came here to Colorado and
you're at a

6 hospital in this area now?

7 A. Yes, I am.

8 Q. And you've been at that hospital now -- let's see,
I've

9 forgotten how long.

10 A. It was eight years.

11 Q. And you have a particular special -- and you did
nursing in

12 Tucson before coming here.

13 A. Yes.

14 Q. And you have a specialty now with respect to
transplant

15 patients?

16 A. I've always worked with postoperative care of open-
heart

17 surgery patients, and the unit that took care of open-
heart

18 surgeries here in Denver, eight years ago started with
liver

19 transplants, so I also now have kidney, pancreas, and

20 transplant patients that I'm responsible for.

21 Q. And that truly is a very intensive-care time, I
take it,

22 immediately after the procedure.

23 A. Yes.

24 Q. And are you part of a team? Is there a team formed
to care
25 for the particular patient?

5329

Juror No. 609 - Voir Dire

1 A. There is a certain level of training and knowledge
that's
2 required to work in the area, so we have transplant
teams and
3 the heart surgery teams that take care of specific
groups.

4 Other nurses from other areas of the hospital do not
float into
5 our area and take care of patients without some prior
training.

6 Q. All right. But, then, with a given patient, you
have
7 different responsibilities for that person on this
team, do
8 you?

9 A. Most of ours is postoperative care, so they have
just come
10 out of ICU; and we basically are fairly interchangeable
on the
11 floor.

12 Q. Then how far into the recovery do you carry the
course of
13 that patient? How long are you with them? For the

rest of the

14 time they're in the hospital?

15 A. For the entire time that they're hospitalized.

16 Q. And so you perform -- I mean you develop some bonds
or

17 connections with these patients as they're going
through the

18 postoperative period, intensive care and recovery?

19 A. Yes, I do.

20 Q. And I assume there are times when the outcome is a
negative

21 one?

22 A. Unfortunately.

23 Q. Just the nature of the procedure involves that
risk,

24 doesn't it?

25 A. And if a liver fails, there is nothing you can do.
There's

5330

Juror No. 609 - Voir Dire

1 no dialysis as if you had a kidney failure; so, yes,
there is

2 times when there is no alternative.

3 Q. And you watch people die?

4 A. Yes.

5 Q. And you're there when they die.

6 Now, of course if you were to serve on this

jury, you

7 would be away from that work.

8 A. Yes.

9 Q. Obviously. And you know that we're talking about a
trial

10 that could take -- we don't know how long it will take,
just as

11 we don't know how long this jury selection process
takes, as

12 you've learned -- come to learn. But we have to
certainly

13 address the potential that it will take several months.
Have

14 you talked to someone there at the hospital about your
having

15 received a summons in this case?

16 A. Yes. I don't believe there would be a problem.

17 Q. Okay. So that there would have to be some
substitutions on

18 the team. And of course I take it that -- is this true
that

19 you don't have patients in this situation all the time?

20 A. We most always have the heart surgery patients.
The

21 transplant patients, it depends on when organs are
available.

22 Q. The kidney, liver, pancreas is still somewhat new
as a

23 procedure, isn't it?

24 A. Yes. Yes.

25 Q. Do you -- with this particular work that you do, do

you

5331

Juror No. 609 - Voir Dire

1 interact with other parts of the hospital, too, and
other

2 hospital staff?

3 A. Yes.

4 Q. I'm going to have the clerk hand you the name of a
person

5 to see if you happen to be -- happen to know this
person who I

6 understand also works at the same institution.

7 A. No, I do not.

8 THE COURT: And show that to the lawyers, too,
so

9 they're

10 BY THE COURT:

11 Q. And we're not using names here, and that's a part
of it.

12 That's why we do this in -- what might seem to you a
bit

13 strange.

14 Now, you know that this case involves the
death and

15 injury -- deaths and injuries to quite a few people who
were

16 occupants of this building when it was destroyed by an

17 explosion. Have you had any -- have you gone to any

18 professional meetings or have had any literature or
anything
19 dealing with the medical care of the survivors of this
20 explosion?
21 A. No. I have not.
22 Q. Are you aware of anything about it other than what
you may
23 have seen and heard on television and newspapers and so
forth?
24 A. No.
25 Q. Did you follow it, you know, what was on the
television

5332

Juror No. 609 – Voir Dire

1 news and the like with particular interest in terms of
what
2 kind of a problem that must have been for the hospitals
and the
3 doctors and nurses involved?
4 A. To a certain degree, because although we have no
idea who
5 the donors are for various organs, the rumor went
around that
6 one of the emergency-medic-type people who was helping
with the
7 rescue was killed when a wall fell on her and one of
the
8 kidneys we transplanted came from this donor. I have
no idea

actually 9 if that is true, because we have no idea who donors

10 are.

11 Q. And that of course is so that --

12 A. A hospital rumor.

is the 13 Q. Yeah. And I take it the reason for this anonymity

14 importance of just looking at this as an organ --

15 A. Right.

of 16 Q. -- rather than having come from a person who has,

discipline of the 17 course, a life -- or did. That's part of the

18 care, is it?

19 A. Yes.

that 20 Q. And then that's true of the organ recipient, too,

21 person doesn't know --

22 A. No, they have no idea.

23 Q. -- where the organs came from.

page 22 24 Now, I want to ask you a couple of things. On

you a 25 of your questionnaire, we asked you -- I've been asking

5333

Juror No. 609 - Voir Dire

1 lot of things about your profession, and now we asked

you some

2 about what you think about ours, the criminal justice
system.

3 And you said at No. 100 -- do you have it? "It's
working

4 adequately."

5 And then we asked you to explain, and you
didn't

6 explain. Tell us: Would you expand on that a little,
why you

7 say that the system is working adequately?

8 A. I feel that the criminal justice system kind of
reflects

9 the society that it is to represent. And it's not
perfect,

10 either. But any changes that come to a system have to
kind of

11 evolve through the society that it represents before
changes

12 happen. I know even in health care is the same way,
that

13 although one person may feel that it would be ideal if
the

14 system functioned this way, that in a democracy, it has
to have

15 more than one person's input and support in order to
function

16 effectively. Does that answer your question?

17 Q. I think I understand what you're saying, yes.

18 And of course a major part of the functioning
of the

19 criminal justice system is the people sitting in place

where

20 you're sitting now, the jury.

21 You understand that, don't you?

22 A. Yes.

23 Q. So that lawyers and judges do what's required of
them in

24 presenting trials to juries, but it really comes down
to juries

25 making the decisions that count. And they're sort of
bedrock

5334

Juror No. 609 - Voir Dire

1 to our whole system is people coming in, being open-
minded,

2 fair-minded, following the requirements of law, and
judging the

3 case. That's what it's about. Would you agree?

4 A. Yes.

5 Q. Are there any cases that you followed in recent
times where

6 you think the system didn't work properly, as far as
you became

7 aware of it?

8 A. Not that I'm aware of.

9 Q. Okay. Now, I want to talk a little more about what
juries

10 do. The first thing, of course, is what we've just
been

11 talking about, the jury comes in, understand that you
can only
12 consider the evidence that's presented at the trial in
deciding
13 the case, hear that evidence, and then return a
verdict, be it
14 guilty or not guilty, depending upon whether the jury
is
15 satisfied beyond a reasonable doubt. Right?
16 A. Yes.
17 Q. And in cases that do not involve such punishments
as life
18 in prison with no possibility of release or death, the
jury
19 having returned its verdict is discharged, has
performed its
20 duty, regardless of whether the verdict is guilty or
not
21 guilty. And in the event of a guilty verdict -- let's
take a
22 case like a bank robbery or the theft of mail from a
post
23 office -- are the kind of things that come into Federal
Court.
24 In those cases of that type, of course, there's no
possibility
25 of a death penalty or a penalty as severe as life
without

5335

Juror No. 609 - Voir Dire

1 parole. There are always -- you know, there are
sentences like
2 probation, fine and probation, certain number of years'
3 sentence, range of sentencing, how much time in prison,
so
4 forth. You understand that?

5 A. Yes.

6 Q. And when a jury decides a case like that and
returns a
7 verdict of guilty, then what happens next is that the
court
8 takes over the responsibility for deciding the sentence
for
9 that person. And before a sentence is imposed in a
case like
10 that, the court has to hold a hearing with respect to
it
11 because it's not just a matter of this is the crime,
this is
12 the sentence. There's no direct formula for it. One
does not
13 control the other.

14 So what does get involved in the sentence
decision?

15 Well, a lot of information about the defendant and
about the

16 crime. Now, information about the crime would be
things that

17 go beyond what the evidence was to prove that the
defendant

18 committed that crime. So it can include things like
what was

19 the consequence or effect on the persons involved as
victims or
20 on the community or whatever. And it also can include,
in
21 cases where more than one person was involved in a
crime, what
22 their relative roles were. You know, there can be a
bank
23 robbery and somebody goes in with a weapon, somebody
has a
24 getaway car, somebody's staking it out or watching; all
those
25 possibilities. And then the judge has to consider,
though, a

5336

Juror No. 609 – Voir Dire

1 sentence for each one, and the role in the offense can
be a
2 factor in that. Follow me?

3 A. Yes.

4 Q. But also a factor in it and a major factor in any
5 sentencing decision is everything there can be found
out about
6 the defendant as a human being.

7 So that includes the life history, the full
story

8 about the defendant's background, where he was born and
raised,

9 what kind of a family he came up through, what has
happened in

10 his life, then, marriages, divorces, military service,
11 employment history, major illnesses, what his health
has been,
12 his outlook on life, a lot of things.

13 And what the law is concerned about, of
course, is
14 what all of us are concerned about somewhat in life,
and that
15 is what's happened to us in our lives, because to some
extent,
16 to a large extent, that determines who we are and what
we are.

17 And of course that's something true in medicine when
you take a
18 history of a patient before there's a diagnosis and a
treatment
19 plan; right?

20 A. Yes.

21 Q. And so, you know, there's a life history here; but
it's a
22 lot more than what the medical history had been,
obviously.

23 And then with a hearing at which the court
listens to
24 the lawyers for the prosecution and the defense, the
court
25 weighs all of these factors and comes up with a
decision that

Juror No. 609 – Voir Dire

1 is particular to the person being sentenced and says,
well, for 2 this crime, this person deserves this sentence.

3 And again, where there is -- where there are
multiple 4 defendants or several persons involved in the same
crime, that 5 decision may be quite different among them. Follow?

6 A. Yes, I do.

7 Q. And it is different, however, when the crime is
such that 8 the punishment under the statute can be what we've just
9 mentioned; that is, life in prison with no chance of
ever being 10 paroled or released, that person spend the rest of his
time in 11 prison, dies there. The other sentence is death
imposed by the 12 punishment of death and execution. And the other is
that there 13 can be a lesser sentence than either of those,
depending on all 14 the circumstances.

15 Now, as to crimes that come within the
category of 16 this type of punishment, which essentially for purposes
of our 17 discussion here is murder, the intentional killing of
another 18 person -- under federal law, and that's where we are --
when it

19 comes to making a decision like that, the Congress who
passed
20 these statutes said: That isn't for judges; that's for
the
21 people, the jury to decide. And accordingly, in this
category
22 of cases, the issue of what the sentence should be is a
matter
23 for the jury to decide.

24 Now, how that decision gets made and so forth,
I'll
25 discuss with you in a minute or two. But what --
because of

5338

Juror No. 609 - Voir Dire

1 the possibility of a jury-punishment decision in this
case,
2 because of the nature of the crimes charged, we wanted
to know
3 something about your attitudes and beliefs on these
types of
4 punishment beforehand, before you learned anything
about the
5 law and the procedure. And it was in that spirit that
we put
6 some questions in this questionnaire, and your answers
are at
7 page 28 and 29. I know you probably remember what you
wrote,
8 but I want you to take a moment and review them. I

mean it

9 starts at 27, but that's sort of the windup that says
pretty

10 much the same sorts of things that I've just said and
includes,

11 of course, the caution that by asking you these
questions, we

12 don't mean in any way to suggest that there's any
expectation

13 that the outcome would be a guilty verdict, because our

14 expectation is exactly to the contrary as the
presumption of

15 innocence requires of us.

16 So you were asked to answer pretty much in
terms of,

17 well, if you had control of the law, how would you
treat these

18 punishments. And I think reading your answers, that
seemed to

19 be the spirit in which you gave us your responses.
True?

20 A. Yes.

21 Q. And it seems to me that, you know -- well, let me
ask you

22 this: Have you thought about these answers since you
wrote

23 them down?

24 A. To some degree.

25 Q. Is there anything you would change in what you
wrote?

Juror No. 609 - Voir Dire

1 A. No.

2 Q. So this -- if I asked you the same questions now,
you'd

3 give me the same answers or substantially the same; is
that

4 true?

5 A. Yes.

6 Q. And what the answers seem to say, to me -- I mean
my

7 interpretation of them, and I think it's pretty clear
-- is

8 you're saying it depends on all the circumstances?

9 A. I think it's difficult to say that you always do
this or

10 you never do that.

11 Q. Yeah.

12 A. Things are seldom black and white.

13 Q. But you know some people take that view of the
death

14 penalty, and that that's an issue that had been much
discussed.

15 And right here in Colorado, it's been much discussed of
late

16 because of a lot of publicity about the execution of
the death

17 sentence in Colorado from a state court. Did you look
at some

18 of that material in the newspapers and --

19 A. No, I didn't --

20 Q. Are you aware of the case?

21 A. Only that there was an execution that took place,
but no
22 details concerning the case.

23 Q. Or anything about the crime that was committed?

24 A. No.

25 Q. Well, and I said there are some people who have
this

5340

Juror No. 609 - Voir Dire

1 opinion that always one way or always the other about
the death

2 penalty. There are those who say, you know, you take a
life,

3 you give your life. That's it. That's the death
penalty and

4 the way it ought to be in the minds of those people,
and others

5 say there should be no death penalty. That's not
something for

6 courts and juries and judges to do. I assume you're
aware of

7 those views?

8 A. Yes.

9 Q. And then there are views all sort of up and down in
the

10 middle. And what I hear from you is that you're open

to the

11 use of the death penalty under all of the circumstances
if it's

12 justified, and you're open to life in prison as a
punishment

13 for the same crimes, depending on all of the other
14 circumstances?

15 A. Depending on the circumstances.

16 Q. Now, I want to explain how it is under the federal
law

17 because that's where we are, in Federal Court. These
are

18 federal statutes, and we follow the process required by
those

19 statutes. And what the law is is that, first of all,
of

20 course, the issue of punishment has no relationship to
the

21 jury's function in deciding whether the evidence proves
the

22 crimes charged. In evaluating the evidence to
determine

23 whether it shows guilt beyond a reasonable doubt, the

24 punishment issue is not included. Understand? That's
a very

25 separate thing.

5341

Juror No. 609 - Voir Dire

1 And obviously if the jury returns a verdict of

not

2 guilty on the evidence, it's over; we don't talk about
3 punishment then. The defendant has been found not
guilty, and
4 the case is over.

5 But in the event of a guilty verdict, then the
jury
6 goes on and has a second responsibility, and that is to
come
7 into the courtroom again and to listen to -- with open
minds --
8 all of the information that would be provided at a
penalty
9 phase hearing. And this is different now from the
evidence at
10 the trial. And -- but it proceeds in the same fashion
as the
11 trial in that there are prosecutors calling witnesses
and
12 introducing exhibits. Defense counsel also would call
13 witnesses and introduce exhibits.

14 And the Government lawyers essentially would
be
15 presenting information that they think would support a
view
16 that a just sentence in the case should be death. And
17 generally speaking -- we can't talk specifically
because we
18 have no idea what it might be in this case, and we
don't -- we
19 can't talk about this case. We have to talk about it
in a

the 20 general way -- that kind of information would relate to
at the 21 crime beyond what has already been produced as evidence
what were 22 trial, but things about impact on victims, community,
also 23 the consequences of this criminal conduct. And it can
roles 24 include this matter of relative participation, relative
who did 25 in the crime when more than one person was involved,

5342

Juror No. 609 - Voir Dire

1 what, and was this a minor part, a major part, so
forth.

2 And then it would include, definitely, all of
the 3 information about the defendant, the same kinds of life
story 4 that I have mentioned that judges consider when they do
5 sentences, and perhaps even more so because what is now
at 6 issue is the life of another human being. And so what
the jury 7 has to hear is whose life is it and what has been
involved in 8 that life.

9 And then at the end of the hearing on this
penalty

10 phase, the court gives a kind of summary instruction,
11 summarizing the information that has been provided,
12 categorizing it, really, into a classification that we
refer to
13 as aggravating factors, meaning, as the term implies,
those
14 things that suggest that death is the proper punishment
for
15 this person, and also classifying mitigating factors,
those
16 things that mitigate that decision and suggest that
while the
17 crime may support a death penalty, this person does not
deserve
18 to be put to death for it so that some other punishment
should
19 be imposed, like life in prison with no release. Or it
is also
20 possible for a jury to say neither one of those, it
should be
21 something lesser, in which event it goes back to the
judge.

22 You've listened very carefully. I watched you
listen
23 carefully. Do you have any question about this?

24 A. No.

25 Q. Do you think you understand the process?

1 A. I think I do.

2 Q. And the kind of decision, then, that has to be
made?

3 A. Yes.

4 Q. And at the end of this summarizing done by the
court in
the court
the
don't come
criteria
all of
this
to make
whether

5 these instructions about aggravating and mitigating,
6 can ask some questions for the jury to use in assisting
7 analysis of what they've heard, but these questions
8 out in the way of some kind of formula or diagnostic
9 or any of those things. It comes down to considering
10 it, discussing it. There are 12 people involved in
11 decision process. And then in the end, each juror has
12 an individual judgment, an individual decision, as to
13 the person before them should live or die.

14 And there is no way to characterize that
decision, I
15 think, for anyone other than to refer to it as a
reasoned or
16 rational moral decision to everything that has been
presented
17 to the jury.

18 Do you understand now what the kind of
decision is?

19 A. Yes, I do.

20 Q. And can you make that decision?

21 A. I believe I can.

22 Q. And be open to all of the options that are
described under

23 the law?

24 A. Yes.

25 THE COURT: Okay. Now, we have some questions
from a

5344

Juror No. 609 - Voir Dire

1 lawyer on each side of the case. It's only fair that
they have

2 a chance to ask from their respective point of view.
So bear

3 with us yet awhile.

4 Mr. Orenstein.

5 MR. ORENSTEIN: Thank you, Judge.

6 VOIR DIRE EXAMINATION

7 BY MR. ORENSTEIN:

8 Q. Good afternoon, sir. How are you? As his Honor
introduced

9 me earlier this afternoon, my name is Jamie Orenstein,
and

10 together with my fellow prosecutors here at Government
counsel

11 table, our job will be in this case to present the

evidence

12 against Mr. Nichols. And your job, if you are selected
to be
13 one of the jurors, would be to listen to all of that
evidence
14 with an open mind and at the end of it to come together
with
15 your fellow jurors and deliberate and reach a fair and
honest
16 result. Do you think you could do that?

17 A. Yes.

18 Q. I'd like to ask you a few questions, if I may; and
I know
19 his Honor has asked you a number and you had a number
on the
20 questionnaire, but if you will bear with me, I have a
few
21 questions.

22 And I'd like to start by asking you about your
career
23 change, back in the 70's. You mentioned to his Honor
that when
24 you were helping your mother, during her illness, that
you were
25 attracted by what the nurses were doing as opposed to
what the

5345

Juror No. 609 – Voir Dire

1 doctors were doing. Or at least the nurses' role
seemed to

as 2 interest you more. What was it about the nurses' role

3 opposed to the doctors'?

4 A. The doctors seemed very concerned with what was
of 5 physiologically happening to the patient, the results

6 radiation or chemotherapy or lab values. The nurses
seemed

7 more concerned to what was psychologically happening
with the

8 patient, how are they dealing with these changes that
were

9 happening to them, with the possibility that they were
going to

10 survive the therapies.

11 Q. So is it fair to say -- I know this is perhaps a
12 stereotype -- the doctors approached it more as a
problem and

13 the nurses more as a person?

14 A. On -- in certain cases. Always not true
completely.

15 Q. Following up on that. In your work as a nurse,
giving

16 postoperative care, and you mentioned to his Honor that

17 sometimes a patient doesn't make it. Do you also as
part of

18 your role as a nurse help the families deal with that
potential

19 loss or sometimes the actual loss?

20 A. That's a major part of our role.

21 Q. I notice from your questionnaire where you were
asked about
22 what you were doing at various times in your life, what
kind of
23 jobs that you've had, that there was a period in the
early 70's
24 that wasn't mentioned. Was that -- and that was the
three
25 years before you started nursing school. Was that when
you

5346

Juror No. 609 - Voir Dire

1 were caring for your mother?
2 A. Right.
3 Q. Let me ask you, if I may, about earlier in your
life. You
4 told us that your father was career Air Force; is that
right?
5 A. Yes.
6 Q. And it looks like you moved around quite a bit. I
noticed
7 that you spent some time in Oklahoma growing up; is
that right?
8 A. Less than two years, a little less.
9 Q. How old were you then?
10 A. Shortly after my eighth birthday, for about, oh, 20
months,
11 18 months.
12 Q. I'm sure you can understand the question. Is there

13 anything about the fact that you spent some time in
Oklahoma as
14 a child that you think would have any bearing on this
case?
15 A. No. Both of my parents were born in Oklahoma, and
-- on
16 small farms, and as a child in the 40's and the 50's, I
would
17 go back and stay on my grandparents' dairy farm in
Oklahoma for
18 a month or two in the summers. But otherwise, I
haven't been
19 to Oklahoma since I was ten years old.
20 Q. So you don't think it would affect your service
here?
21 A. No.
22 Q. What kind of farm was it?
23 A. My grandparents eventually ended up with a dairy
farm.
24 Q. Were there any crops on the farm?
25 A. When my parents were growing up, they grew cotton,
back in

5347

Juror No. 609 - Voir Dire

1 the 20's and 30's, but by the time that I remember it
in the
2 50's, it was just a small section and they just had
dairy
3 cattle.

4 Q. Did you have any experience, yourself, working on
the farm?

5 A. My mother was one of seven kids, and all the
grandkids

6 would get dumped on Grandma and Grandpa, and there
would be 14

7 or 15 of us there for a month or two months. We
thought we

8 were helping, I'm sure, with milking, gathering eggs,
working

9 in the garden, but basically we thought it was fun.

10 Q. But it was more play -- not the serious work of
farming?

11 A. No.

12 Q. So I'm not going to ask you a lot of questions
about your

13 knowledge of farming practices.

14 Just another question about your father and
his Air

15 Force career. Did he -- what rank did he retire at?

16 A. Chief master sergeant.

17 Q. Did he encourage you or your sister -- or
discourage you --

18 on exploring a career in the military?

19 A. Oh, I think by the time we were old enough to
realize that

20 that was a career option, we felt like we had already
spent 20

21 years in the service.

22 Q. So you'd done your bit?

23 A. Yes.

24 Q. I'd like to follow up with one question about the
criminal

25 justice system. His Honor asked you about your view on
it, and

5348

Juror No. 609 - Voir Dire

1 you told us basically it reflects our imperfect
society. You

2 were asked if there was a case or specific example
where you

3 thought it didn't work, and you said there wasn't. Is
there

4 any that stand out in your mind where you thought the
court

5 system worked particularly well, perhaps to correct
some sort

6 of injustice?

7 A. I don't believe there's one, one way or the other.

8 Q. If I might ask you to turn to page 25 in the
questionnaire.

9 On Question 116. I may be misreading or

10 misinterpreting what you intended. It looked to me
that you

11 wrote that when you think you're right, you may listen
to

12 arguments, but you're not persuaded to change your
mind. Did I

13 misread that?

14 argument, if I

A. I'm not always persuaded by someone else's
15 feel like I'm correct.

16 juror in a

Q. Of course; who is always. The question is as a

17 should

18 case, if you go into the jury room at the beginning of
19 deliberations thinking, I think I know what the answer

with

20 be, would you be still be willing to listen and discuss

should

21 your fellow jurors, and if they persuade you that you

you're

22 change your mind, come around and say, yeah, you know,

23 right?

24 environment,

A. I'm used to working in a collegial teamwork

their

25 and I think if I am not persuasive enough to change

they're

26 thinking to my way, that I can go along with what

5349

Juror No. 609 - Voir Dire

1 thinking. To a degree.

2 bottom line

Q. And of course, it's all to a degree. But the

3 come to

4 is you believe that you can deliberate with jurors and

5 a reasonable conclusion with all of them as a group?

5 A. I think I can.

question 6 Q. I'd like to spend a few moments with you on this

7 of punishment that you discussed with his Honor. And
let me

8 begin by saying, of course, we all recognize that
that's not an

9 issue a jury faces ever, unless it first decides that a
10 defendant has been found guilty of a crime which
carries the

11 possible punishment of death. You understand that
part?

12 A. Yes.

13 Q. I noticed that in parts C and D of Question 124, on
page

14 28. You have it there?

15 A. Uh-huh.

16 Q. You didn't use the same words in response to both
17 questions, but I'm wondering if you had in mind
essentially the

18 same thing: It depends?

19 A. I think it does depend.

20 Q. So the minor difference in words, from one answer
to the

21 other, that has no significance?

22 A. I don't -- no. No.

23 Q. What struck me when I saw your answer to those
questions

24 was perhaps your answer was better phrased than the
question

your 25 because the question was just "What kind of case," and

5350

Juror No. 609 – Voir Dire

1 answer that, "Well, it depends on the individual case,"
2 suggested to me perhaps that what you're saying is
there is no 3 kind of case without considering the kind of defendant
or the 4 particular defendant. Is that a fair reading of what
you're 5 saying?

6 A. Yes, I think it is.

7 Q. The reason for the question like that is because
there are 8 some people who would say, If you've committed some
kind of 9 crime, I don't care who you are or what you have in
your 10 background, if you've committed, you know, X crime, I
think you 11 should die. And there are some people who would say,
on the 12 other side, I don't care how bad a crime it is, I will
never 13 sentence you to death.

14 Are you in either of those extremes?

15 A. No.

16 Q. My final question on this subject is: You've spent

the

17 last two decades or so of your life providing care to
others.

18 And I'm sure it's a very important part of who you are.
Given

19 that background, if you, after consideration of all the
facts

20 in a penalty trial of the kind that his Honor
described, if you

21 were to go back to the jury room with your fellow
jurors and

22 come to the reasoned moral decision that the death
penalty was

23 appropriate, could you reach that decision and come
back to

24 court and announce it?

25 A. Yes, I could.

5351

Juror No. 609 - Voir Dire

1 MR. ORENSTEIN: Sir, thank you for answering
my

2 questions.

3 THE COURT: Mr. Tigar.

4 VOIR DIRE EXAMINATION

5 BY MR. TIGAR:

6 Q. Good afternoon again, sir.

7 I'm the last one.

8 My name is Michael Tigar. Ron Woods and I

were

9 appointed by the United States District Court in
Oklahoma in
10 May of 1995 to help out Terry Nichols as his court-
appointed
11 counsel in this case. I have a few questions about
things on
12 your questionnaire. You said that you're used to
working in a
13 collegial environment.

14 A. Uh-huh.

15 Q. Would your colleagues describe you as a leader, a
team
16 player; how would they describe the role you play in
that
17 atmosphere?

18 A. I think they would consider me a team player. One
of the
19 things is that I have been in the same area, in the
same field,
20 for 18 years; and frequently the people I'm working
with
21 weren't born when I started nursing school much less
have the
22 years of experience, so I end up by default being a
leader in a
23 number of instances because I have the most experience.

24 Q. All right. You understand why I ask that. Jury
service is
25 12 people.

Juror No. 609 – Voir Dire

1 A. Uh-huh.

2 Q. And I gather this is your first time out on that?

3 A. Yes, definitely.

4 Q. Was there any particular reason why you decided
that
5 Colorado offered more opportunity than Arizona?

6 A. I -- after living in the desert for 31 years, I
decided it
7 was time for a change.

8 Q. You'd counted all the saguaro cactuses that a
person could
9 count in their life

10 A. My sister at that point was living in Chicago, and
at that

11 point we both had been living alone for a number of
years and

12 decided that we actually got along with each other
better than

13 anybody we had ever lived with or been married to or
whatever,

14 and so we decided Denver was the biggest city between
Chicago

15 and Tucson without going to California, so we decided
we'd try

16 this, and it's been nine years and it's worked out well
for

17 both of us.

18 Q. Agree with you. While you were in Arizona, did you

follow

19 any court cases that were in the media? And I'd just
like to

20 ask specifically about some. Did you follow the
sanctuary

21 cases, the religious leaders that were tried in Judge
Carroll's

22 court?

23 Did you follow the Keating civil case?

24 A. No, I had left Arizona by that.

25 Q. And how about a case involving someone named
Francisco

5353

Juror No. 609 – Voir Dire

1 Martinez in Judge Browning's court?

2 You say in your questionnaire that you work
part-time.

3 A. Yes.

4 Q. Is that to allow time to do your -- to pursue your
art,

5 your artist avocation?

6 A. Right.

7 Q. And what sorts of things do you work on in your
artist

8 avocation?

9 A. Mostly landscapes and still lifes now. No
commercial work

10 any longer.

Denver 11 Q. I understand. And the landscapes are those that
12 offers so many of; right?
13 A. Right.
work on? 14 Q. And then still lifes, what sorts of things do you
15 A. Lots of baskets.
involve 16 Q. All right. Well, in that sort of work, does that
17 you in paying a great deal of attention to detail?
18 A. Yes.
-- 19 Q. That is to say, you're very representational artist
20 A. Yes.
terms of 21 Q. -- in that way? Does that also suggest that in
22 memory and so on, that visual images play an important
role in 23 how you see things?
24 A. I would say to a good degree, yes.
to, you 25 Q. You mentioned on your questionnaire -- if you want

5354

Juror No. 609 - Voir Dire

books you 1 can turn to page 16 -- the names of the last three
historical 2 read, and then you said you liked mysteries and

3 fiction.

4 A. Uh-huh.

5 Q. In the historical fiction area, have you read Burr
or
6 Lincoln or any of those historical novels?

7 A. Yes.

8 Q. And you're aware of -- in the Burr, in The Life of
Aaron
9 Burr, there was of course, I guess -- there was a lot
about
10 that trial, where he was a defendant. Do you remember
forming
11 any opinions about the criminal justice system from
reading
12 about the trial of Aaron Burr?

13 A. That doesn't seem to strike a spark with me.

14 Q. Didn't ring a bell, all right.

15 You also mentioned on page 18 that you've read
books
16 by John Grisham and Scott Turow, and a lot of people
checked
17 that box, and the question that I would have is: Have
you
18 formed any opinions from that about lawyers that are
involved
19 in defending people who are presumed innocent or about
20 prosecutors or even judges?

21 A. I think mostly they're plot devices. You have to
have a
22 good guy and a bad guy. And if you've limited all of

your

23 characters to lawyers or the judicial system, some of
them have

24 to be good and some of them have to be bad. But it
doesn't

25 really necessarily reflect -- I can read medical
novels, and

5355

Juror No. 609 - Voir Dire

1 there's good doctors and bad doctors. It all depends
on what

2 the characters you've limited yourself to.

3 Q. Okay. So in that sense, when you -- if you were to
sit as

4 a juror, you know, the lawyers will make opening
statements,

5 they'll tell you a story of the case; and would you be
willing

6 to listen to every single fact in the case and then
finally get

7 the Judge's instructions and deliberate before you, you
know,

8 started to come to a conclusion about it?

9 A. I would try to.

10 Q. See, in a criminal case, it isn't just that Mr.
Nichols is

11 presumed innocent. Government counsel said their job
is to

12 present evidence and your job as a juror is to listen
to that

13 evidence. Well, the Government does have a theory, and
they
14 will present evidence; and from their first witness, we
will
15 cross-examine every single one of those witnesses, and
that's
16 our evidence. And then even though we don't have to,
when
17 they're done, we will present witnesses, we'll put on
witnesses
18 and exhibits. This could take a while. And because
they get
19 first ups, it might be that some evidence that we would
think
20 is important doesn't come until very late in the
process. And
21 that's why I ask the question, is whether you think
that, you
22 know, you could take all of this in without, you know,
forming
23 a judgment and without rooting for one side or another?
24 A. I would certainly try to.
25 Q. And I suppose -- does that happen to you when you
look at a

5356

Juror No. 609 - Voir Dire

1 patient's situation, that although it might seem at
first blush
2 that X or Y is the thing to do, that only after you've
had as

can you 3 much information as the situation permits you to get,
4 really make an accurate decision?

5 A. That's true.

if 6 Q. A related matter, then. If you're selected for --

lot of 7 you're seated as a juror in this case, there will be a

are dead 8 evidence that's very emotional; that is to say, there

and who 9 people and children who died and people who suffered

will 10 cared for those who suffered. And many of those people

pictures 11 bring their anger and their grief and they will bring

12 and they will bring photos and so on.

look at 13 And in thinking about looking at that, can you

evidence 14 that and see it for what it's worth -- that is, it's

look also 15 about facts that really nobody contests -- and then

any, 16 separately at what evidence did the Government have, if

17 that Terry Nichols was responsible for that?

18 A. Yes.

19 Q. You can do that?

20 A. I think so.

heard of the 21 Q. I notice also at page 18 that you said you had

open to 22 NRA. I'm sorry, I should have asked you to keep it
You said 23 that. I don't mean to make you flip back and forth.
hasn't? 24 you'd heard of the NRA. Is that just -- I mean who
25 A. Right.

5357

Juror No. 609 - Voir Dire

about 1 Q. And the Antidefamation League. What have you heard

2 them, in a general way?

bandwagon 3 A. That frequently it seems that they'll jump on a

want to 4 without having quite all the information that I would

or 5 have before I came out in support of any one position

6 another.

that ADL 7 Q. I wonder, have you read anything or seen anything

for my 8 has issued or said about this case? That was the basis

9 question.

10 A. No.

the same 11 Q. And the AARP -- I guess you've heard about that in

about it. 12 way that all of us in this decade of life have heard

13 A. Yes.

14 Q. Would you then turn, please, to page 32. You
expressed

15 some views about firearms. There are a number of
questions on

16 that page, and I don't want to go over those. I want
to ask in

17 light of that if you've -- when you've taken a moment
to

18 look -- a more general question. Are you ready?

19 A. Okay.

20 Q. If in this case there were evidence that somebody
made

21 their living by going to gun shows, selling firearms,
you know,

22 engaging in that business, would you be able to judge
their

23 believability the same as anybody else's, without
holding it

24 against them that that was their profession?

25 A. Yes.

5358

Juror No. 609 - Voir Dire

1 Q. And if we can, then, turn over the page, a couple
more, to

2 page 34. You mentioned of the folks listed there that
you had

3 heard of Timothy McVeigh and Terry Nichols. I assume
that's

4 from the publicity about the case.

5 A. Uh-huh.

6 Q. And then you also heard of Michael Fortier. What
have you

7 heard about Mr. Fortier?

8 A. That he was a witness in the McVeigh trial.

9 Q. Okay. But you don't remember any details?

10 A. No.

11 Q. Okay. If he shows up here, you'll be able to
evaluate his

12 testimony just as though you had never heard of him?

13 A. I wouldn't know him.

14 Q. Okay. At page 36 begins then a series of questions
about

15 what you'd seen, read, or heard about the Oklahoma City

16 bombing. You mentioned earlier on in the
questionnaire, before

17 that, that you get a lot of information from Time
magazine.

18 A. Time magazine, I do subscribe.

19 Q. And bottom-line question: If it turned out based
on

20 evidence you saw that Time magazine, with respect to
some

21 important fact about the case, was just flat wrong,
would you

22 be able to base your decision on the evidence and not
what

23 you'd read in Henry Luce's magazine?

24 A. Yes.

25 Q. Okay. You said at the bottom here of 36, "The bomb
was

5359

Juror No. 609 - Voir Dire

1 used as a protest against the U.S. Government." What
did you

2 hear about that? What goes into that --

3 A. That was what I remember from the initial coverage
at the

4 time of the bombing.

5 Q. Okay.

6 A. And I did not follow the McVeigh case in any way
avidly,

7 and it was only what information appeared on CNN when I

8 happened to be watching it, or whatever articles were
in Time

9 magazine at the time that I read through it. And

that's

10 basically what I remember.

11 Q. So you won't have any problem with saying Mr.
Nichols

12 starts with a clean slate; let's base it on the
evidence?

13 A. No, I have no problem.

14 Q. Okay. The final area that I'd like to get to --
and others

15 have talked most -- done most of the work here, is if
you would

16 turn to page 28, please.

17 And I do -- I would like to focus a little bit
on the

18 answers in C and D, where in C you said, "individual
case and

19 defendant," and D "on the individual case." And if
you'd think

20 back to what you were thinking, because the Judge had
said --

21 you know, the questionnaire says what would you do if
you could

22 make the law -- could you tell me what you had in mind
there in

23 making that distinction, if there was one, between
cases in

24 which life without the possibility of parole, that
punishment,

25 go to jail, never get out, was appropriate, and cases
in which

5360

Juror No. 609 - Voir Dire

1 the death penalty was appropriate?

2 A. I think -- I think I assumed that it was asking me
to list

3 types of cases where I thought that the death penalty
would

4 automatically be the acceptable solution, and I don't
know that

5 there is any case that I can say, yes, it always should
be the

penalty; 6 death penalty or that it should never be the death
the 7 that it depended on what happened in the incident and
8 people involved; that it had to be based on -- on each
making 9 individual case and defendant. I don't think I was
or the 10 particular distinction between cases and defendant, one
11 other.

12 Q. And as you sit there today, the Judge has talked
about a 13 process; and of course it's a process we presume will
never 14 occur because there is the presumption of innocence.

But 15 there's also the fact that we do not concede the
Government's 16 theory here; but if Mr. Nichols should be found guilty
of one 17 or more of these charges, we can't get everybody back
and, you 18 know, start asking then. And I'll just -- you know,
I'll put 19 it frankly: We can't talk particularly about this
case. We 20 have to talk hypothetically (a) because we presume we
won't get 21 there, and (b) because we are not trying to feed you
facts 22 about this case and get your -- trying to get some
commitment

23 or another.

24 If you were a juror in a case and you had
convicted a

25 defendant beyond a reasonable doubt of a very serious
crime,

5361

Juror No. 609 - Voir Dire

1 intentional, deliberate killing of a lot of people, you
would

2 as a juror be asked then: What do we do? You know,
what's the

3 punishment? Because in the Federal Court, they don't
let

4 judges decide that. They bring 12 people in the
community and

5 do it. That's how important it is.

6 And the jurors would be given more information
about

7 the seriousness of the crime and its impact on victims
and

8 things that would be -- what are called aggravating;
but it's

9 pretty obvious they point towards, gee, the death
penalty is

10 appropriate.

11 The defense would then come to you, and they'd
say,

12 Well, maybe there are more than one person involved in
this,

13 this particular defendant is less involved than

somebody else

14 is, and therefore you've got to have some kind of
proportionate

15 or distributed-justice argument. They would talk about
the

16 circumstances of that individual person. You know,
everybody's

17 got a story, everybody had a life, everybody did -- or
they

18 would say this defendant did positive things in their
life.

19 And then the jurors would be asked: All
right, here

20 are some instructions from the Court about how you
might

21 consider that, questions you might ask; but each
individual

22 juror would face that individual moral response. And
the

23 bottom-line question is: Could you envision yourself
listening

24 to all of that evidence, really giving it effect,
taking it in,

25 and then coming back into court in a case in which you
had

5362

Juror No. 609 - Voir Dire

1 convicted someone of a terrible crime but nonetheless
looking

2 at that person and saying, now, in your case, I believe
that a

parole -- 3 sentence of life in prison without the possibility of
that? 4 that's a just punishment for you? Can you envision

5 A. Yes, I can.

6 MR. TIGAR: All right. Well, sir, I'm sorry
that some 7 of this is intrusive, and I thank you very much for
answering 8 our questions.

9 THE COURT: We're all appreciative of your
time and 10 effort in this matter, and we all know that you have
the 11 question of, well, am I going to be on the jury. And
of 12 course, you know that I can't answer that now. And I
can't 13 answer the other question, too, well, when will we
know, 14 because this process takes a time -- a bit of time and
will 15 take a bit more time. So please bear with us yet
awhile.

16 And you're excused now and can leave, but do
so with 17 the understanding that you may well be back here in
this room 18 and faced with the responsibility of deciding this
case. So do 19 be careful about the things that you read, see, and
hear, and

20 do be careful about your conversation with others so
that you
21 can come back in and do what the law requires and which
you
22 said you'd be able to do.

23 And if there's anything that happens here that
changes
24 any of your circumstances, you get in touch with us
right away
25 with the telephone number we've given you.

5363

1 Thank you again, and you're now excused.

2 All right, we'll take a recess. 20 minutes.

3 (Recess at 3:01 p.m.)

4 (Reconvened at 3:18 p.m.)

5 THE COURT: Please be seated.

6 May I have counsel, please.

7 (At the bench:)

8 (Bench Conference 46B1 is not herein transcribed by
court
9 order. It is transcribed as a separate sealed
transcript.)

10

11

12

13

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21
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23
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25

5367

1 (In open court:)

2 THE COURT: Good afternoon. Would you please
raise
3 your right hand and take the oath from the clerk.

4 (Juror No. 955 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

6 THE COURT: Will you please be seated there in
the
7 chair by the microphone.

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. And you understand that the case being referred to
is the

11 trial of United States vs. Terry Nichols. And you
received a

12 summons back in July advising that you had been -- your
name

13 has come up through a chance selection system as
possibly a

14 juror to hear and decide this case. You responded to
that

15 summons with a questionnaire.

16 A. Yes, sir.

17 Q. And then you were notified to go out to the
Jefferson

18 County Fairgrounds on September 17, and you responded
again.

19 A. Yes, sir.

20 Q. Came there with other jurors. I was there and
introduced

21 people who were there with me. They're with us again
today, so

22 I want to reintroduce them so you know who is with us
this

23 afternoon, beginning with this table immediately in
front of

24 you, where we have counsel for the Government. You've
met

25 before Mr. Lawrence Mackey and Ms. Beth Wilkinson.

Juror No. 955 – Voir Dire

1 You did not meet before the two people who are
with
2 them, Mr. Patrick Ryan and Mr. James Orenstein, also
lawyers
3 for the Government in this case.

4 You were introduced to Mr. Michael Tigar and
5 Mr. Ronald Woods, attorneys for Terry Nichols, who is
also
6 here, of course.

7 Now, we then asked you to answer a lot of
questions on
8 a very large questionnaire, and we appreciate your
cooperation
9 in doing that. And as I told you we would do, the
answers that
10 you gave, the completed questionnaire -- copies have
been
11 provided to those people right here in front of you who
are
12 participating in this process. But we haven't given
your
13 answers to anyone else, and we're not going to. And
we're
14 going to use this information only for the purpose
we're
15 engaged in here, because we know that we've asked you a
lot of
16 things that are personal and private, and we try to
balance
17 out, you know, your privacy interests and the public
interests

18 in this proceeding. And as a part of that, we're not
going to
19 use your name here. We're going to try to in the
course of
20 this questioning that will take place avoid things that
would
21 identify you publicly, and also we bring you in and out
of the
22 courthouse in a way so the press photographers or
people like
23 that can't photograph you.

24 Now, you have to understand, though, that now
what
25 we're doing here is public. This is a public trial and
this is

5369

Juror No. 955 - Voir Dire

1 a courtroom that's open to the public.
2 A. Yes, sir.
3 Q. And I don't mean to suggest that there is anything
in here
4 that would be embarrassing or anything like that. I
just want
5 to, you know, sort of set the foundation for this and
make sure
6 you understand the things that are necessary. And as a
part of
7 that, I explained the background of this case to you
and others

these 8 when we gathered last September and went over some of
9 things, and I want to do it again.

that, we 10 We say in this work "for the record," and by
11 mean, of course, simply some matters on the record and
to make 12 sure that you understand the things that are necessary
before I 13 ask you some questions.

14 So to begin with, do you recall that I
explained that 15 we're selecting a jury for a trial that involves
charges that 16 were filed after there was an explosion in Oklahoma
City on 17 April 19 of 1995, which destroyed a federal office
building 18 there resulting in deaths and injuries to people who
were in 19 it? And then there were charges filed in the court in
Oklahoma 20 City, the Federal Court there, by way of an indictment,
which 21 is simply a statement of charges, accusations, in which
the 22 Government lawyers asserted that a man named Timothy
James 23 McVeigh together with Terry Lynn Nichols and, as the
indictment 24 says, "other persons not named" engaged in or formed a
25 conspiracy, a criminal agreement, to bomb that building
and to

5370

Juror No. 955 - Voir Dire

1 kill and injure the people in it.

the

2 The indictment includes charges in addition to

carrying

3 conspiracy that essentially accuse the defendants of

injuring

4 out that plan and bombing the building and killing and

or

5 the people in it. And the charges include eight counts

agents who

6 charges of first-degree murder of law enforcement

all of

7 were in the building and died in the explosion. And to

And

8 these charges, the defendants entered not guilty pleas.

9 that, of course, creates the issues for a trial.

the

10 Then the trial was moved from Oklahoma City --

then I

11 case was moved from Oklahoma City here to Colorado; and

whatever

12 entered an order that there be separate trials; that

considered

13 the evidence may be with respect to Terry Nichols be

relating to

14 separately from the evidence, whatever it may be,

to what

15 Timothy McVeigh because of the danger of confusion as

16 evidence was admissible against which person, and so
forth.

17 So indeed, separate -- a separate trial has
already

18 been held with respect to the evidence relating to
Timothy

19 McVeigh. A jury was here, decided that case, reached a
verdict

20 that the evidence showed him to be guilty beyond a
reasonable

21 doubt; and the guilty verdict was returned on the
charges as

22 they related to Mr. McVeigh.

23 Then that jury was asked to go on and hear
more in a

24 second trial, a penalty phase hearing, and to come in
with a

25 decision on that. And that jury then came in with a

5371

Juror No. 955 - Voir Dire

1 recommendation for a death sentence for Mr. McVeigh.
That is

2 all in the past now. It happened earlier this year.

3 Now we're getting ready for the trial of the
evidence,

4 whatever it may be, as it relates to Mr. Nichols. And
of

5 course, we start over with the whole process. A new
jury is

6 being selected, and there is no evidence against Mr.
Nichols at

7 this point. You understand?

8 A. Yes, sir.

9 Q. Nothing relating to the McVeigh trial can be
considered in

10 this case; and to whatever extent people coming in to
serve on

11 the jury in this case may have seen, read, or heard
anything

12 about what the evidence was in the Timothy McVeigh
trial, they

13 have to leave it aside, set it aside, and not consider
it now,

14 because to do so or to consider the outcomes in that
case, what

15 the jury decided there, would violate the whole reason
for the

16 separate trial order. I'm sure you understand that.

17 A. Yes, sir.

18 Q. And then I also mentioned some things about the law
that

19 governs us in criminal cases in the United States. I
did so

20 because most of the people called for jury service here
have

21 not ever been on a jury before or know very much about
the

22 criminal justice system, and that includes you. I
mean, you've

23 never been on a jury before, have you?

24 A. No, sir.

it, but 25 Q. And I don't mean that you don't know anything about

5372

Juror No. 955 – Voir Dire

1 I just want to review some of the basics, because the
2 particular details regarding the law as it applies to a
given
3 case are things that are included in instructions from
the
4 court at the end of a trial. And many of those things
are
5 particularly dependent upon what the actual evidence
was that
6 was received at the trial.

7 But there are some things that are in common
to all
8 trials; so we need to talk about them for a moment in
the
9 beginning here. And that is that under the
Constitution of the

10 United States, every person who is accused of a crime
in this
11 country is presumed to be innocent of that crime. And
that
12 presumption of innocence carries throughout the trial
and
13 entitles that person to an acquittal, a verdict of not
guilty,
14 unless a jury of 12 fair-minded persons decides that
evidence

15 presented at the trial shows him to be guilty of
whatever crime
16 is charged and shows it beyond a reasonable doubt.
Anything
17 less than that, the verdict must be an acquittal, a not
guilty
18 verdict.
19 You've heard of these points?
20 A. Yes, sir.
21 Q. And included in the presumption of innocence is the
clear
22 law that no person who is accused has to prove anything
at his
23 trial. No person is called upon to prove himself not
guilty.
24 No person accused has any duty or obligation to call
any
25 witnesses or introduce any evidence; and certainly,
there is no

5373

Juror No. 955 - Voir Dire

1 duty to answer any questions or to give any
explanations at his
2 trial. A person accused can simply remain silent and
require
3 of the government, whose burden it is to prove the
case, to
4 come in with the evidence upon which it relies and then
to

5 challenge that evidence through objections to its
admission

6 under the rules of evidence and through cross-
examination of

7 the witnesses called by government counsel.

8 And then at the end of the trial, the jury is
9 instructed by the court in very specific ways about the
10 evidence but also is instructed in specific ways about
what

11 exactly has to be proved for the particular crimes
charged. We

12 refer to it often as these are the elements of the
offense;

13 this is what has to be proved.

14 Then the jury evaluates all of that, discuss
what they

15 have seen and heard, and then reach a decision. And
before

16 they can reach a decision of a verdict of guilty, they
must all

17 agree that what they heard and saw did prove the case
beyond a

18 reasonable doubt. Understand those points?

19 A. Yes, sir.

20 Q. And, of course, in a case in which a jury -- in
which a

21 witness -- in which a defendant does not testify, the
jury may

22 not consider that in any way. They can't hold it
against him

23 or speculate about why he didn't testify or think about
it in

I'd tell 24 terms of, Gee, if I were on trial and I were innocent,
those 25 you. None of that. In fact, what I tell juries under

5374

Juror No. 955 - Voir Dire

you can't 1 situations in which the defendant does not testify is
2 even talk about that. That should not enter into your
3 deliberations. Do you understand that?

4 A. Yes, sir.

presumption 5 Q. And, you know, what the burden of proof and the

all, 6 of innocence really means is that if at the end of it

reasonable doubt 7 after discussing it all, the jury still has a

to 8 as to whether the evidence shows guilt, then they have

find 9 exercise that doubt to the benefit of the defendant and

10 him not guilty. Do you agree with that?

11 A. Yes, sir.

were to 12 Q. And do you agree to follow that in this case if you

13 serve on this jury?

14 A. Yes, sir.

15 Q. So that you understand that Terry Nichols is with

us here

made 16 this afternoon presumed to be innocent of these charges

17 against him.

18 A. Yes, sir.

and we 19 Q. Now, you answered all of these questions for us,

not 20 appreciate your doing so. Please be assured that we're

all; 21 going to go over everything you said here and repeat it

simply 22 but there are some things that I want to ask you about,

be some 23 asking you to explain a little further. And there may

24 other questions that are different from what's on here.

process 25 And then I want to explain some more about the

5375

Juror No. 955 – Voir Dire

1 and what's involved in the jury service.

I'll 2 After I've finished asking you some questions,

additional 3 ask a lawyer for each side if they wish to ask

4 questions, because that's only fair that they get an

5 opportunity to ask some questions of you now.

6 A. Yes, sir.

7 Q. And please understand that you're not on trial
yourself;
8 that none of the things that you've answered here is
subject
9 to, you know, some kind of a test. All that we want
from you
10 is the factual information. And also, when it comes to
11 opinions and attitudes, feelings, beliefs, we just want
your
12 honest opinions and feelings. And you're not going to
be
13 judged on those; and if those feelings and opinions are
such
14 that you are concerned that we might take offense by it
because
15 they may be critical of courts and so forth, don't
worry about
16 it. We've heard it all; so we won't be -- we won't be
holding
17 it against you or upset about anything you say.

18 A. Yes, sir.

19 Q. All right. Now, from what you've told us here,
you're
20 living now, of course, in the Denver area?

21 A. Yes, sir.

22 Q. And you were born and grew up in Arkansas.

23 A. Yes, sir.

24 Q. Born in one town in Arkansas, and then I guess you
grew up
25 in a town called Foreman?

Juror No. 955 - Voir Dire

1 A. Yes, sir.

but

2 Q. And forgive me for not knowing much about Arkansas,

area?

3 what part of Arkansas? Is that in the mountainous

4 A. No, sir. It's extreme southwest.

high

5 Q. Southwest. Okay. And that's where you went to

6 school?

7 A. Yes, sir.

college?

8 Q. And then you went over to Oklahoma to go to

9 A. Yes, sir.

10 Q. At Norman?

11 A. Yes, sir.

you go

12 Q. And you completed your work there, and where did

13 from there?

14 A. I went into the Air Force.

years?

15 Q. And then you served in the Air Force for about four

16 A. Yes, sir.

Where --

17 Q. And where -- what bases were you stationed in?

18 where did you serve?

19 A. I was in basic training at Lackland. I was at

technical

20 school in Keesler in Biloxi, Mississippi; and then
follow-on

21 technical school at Sheppard Air Force Base, Texas; and
then I

22 went to Lenicon -- excuse me -- in Athens, Greece; and
then I

23 came back stateside to Holloman, and there I ended it.

24 Q. So you were discharged out of Holloman?

25 A. Yes, sir.

5377

Juror No. 955 - Voir Dire

1 Q. And then did you come to Denver?

2 A. No, sir. I did a lot of different things, but I
finally

3 ended up here.

4 Q. All right. Now, when you were in the Air Force,
you

5 received technical training.

6 A. Yes, sir.

7 Q. And does the technical training you received there
relate

8 to what you're doing now?

9 A. Yes, sir, a little bit.

10 Q. And now you work for a firm that you've been with
for some

11 six years?

12 A. Yes, sir.

13 Q. And your work there is of a technical nature, as I
14 understand it.

15 A. Yes, sir.

16 Q. You work on the systems?

17 A. Yes, sir.

18 Q. As opposed to the selling and that sort of thing.

19 A. Yes, sir.

20 Q. Did you talk with whoever you report to there about
this jury summons?

21 A. Yes, sir. I informed him I'd been summoned.

22 Q. And with respect to this case in particular?

23 A. Yes, sir.

24 Q. And we expected you to. I mean, I gave you
cautions about

5378

Juror No. 955 - Voir Dire

1 not talking about it, but I didn't mean you shouldn't
report to

2 your employer about it. And I assume that that person
you

3 talked with, of course, recognized that the case, if
you were

4 to serve on the jury, would involve a substantial time
5 commitment.

6 A. Yes, sir, he does.

7 Q. Taking you away from your work there.

8 A. Yes, sir.

9 Q. What kind of a response did you get?

10 A. Oh, he pretty much rolled his eyes and said, "Oh,
no."

11 Q. Any suggestions to you about, well, here's a way
you can

12 get out of that by the way in which you answer
questions or

13 anything like that?

14 A. Oh, there were a bunch of them, but they were all
made in

15 jest.

16 Q. Okay. And also I suppose some people there
suggested,

17 well, if you get on the jury, you ought to decide it
this way

18 or that way.

19 A. Yes, sir, but it was, once again, in jest.

20 Q. Okay. And that's the way you took it, anyway.

21 A. Yes, sir.

22 Q. Well, tell us what would be involved here as far as
your

23 paycheck is concerned if you come on this jury for
several

24 months.

25 A. They -- I was informed yesterday that they would
take

Juror No. 955 - Voir Dire

1 whatever the court paid me and they would issue my --
me my own

2 check.

3 Q. So you wouldn't lose anything?

4 A. I would not lose anything.

5 Q. All right. Well, we certainly appreciate employers
who

6 cooperate in that way.

7 A. So do I.

8 Q. For the same reason.

9 Now, we asked you some things here about
employment;

10 and I'm going to refer to page 11. You've got your
11 questionnaire there.

12 A. Yes, sir.

13 Q. And we want you to use it as we refer to particular
things.

14 On 11 there at 53, we asked you about
employment in

15 any of the following; and one of them was intelligence
16 agencies. And you marked that.

17 A. I'm sorry. I mismarked that. It was supposed to
be the

18 next one.

19 Q. Security guard?

20 A. Yes, sir.

21 Q. Okay. Well, I wondered about that. So did you
work at one

22 time as a security guard?

23 A. Yes, sir. I worked part-time as one.

24 Q. Part-time?

25 A. Part-time.

5380

Juror No. 955 - Voir Dire

1 Q. How long ago was that?

2 A. Probably two, three years ago. Three years ago.

3 Q. While you were here in Denver?

4 A. Yes, sir.

5 Q. And were you -- was that like a building security?

6 A. Yes, sir.

7 Q. As opposed to personnel security?

8 A. Oh, yes, sir. Definitely.

9 Q. Now, we asked you about -- well, let me just
mention

10 another thing. You're married, wife works for an
insurance

11 company and works as an assistant to underwriters?

12 A. Yes, sir.

13 Q. And she's been with that company now about how
long?

14 A. I think she said she's going on 17 or 18 years.

of 15 Q. And you also have a sister who is at the University
16 Oklahoma now.
17 A. Yes, sir.
18 Q. Working on a graduate program?
19 A. A doctorate.
pursuing? 20 Q. And what is she -- what line of academics is she
21 A. Electrical engineering.
Now, 22 Q. Okay. I want to turn to page 22 and Question 100.
you 23 that's where we asked you very broadly to tell us what
it a 24 think about the criminal justice system. And you gave
then 25 passing grade, I guess, with "Working adequately." And

5381

Juror No. 955 - Voir Dire

forefathers 1 you said you didn't think it's working like the
2 imagined it to work. What did you have in mind there?
turning 3 A. I don't think that they were -- they imagined
4 people out for good time or -- what is it?
5 Q. Parole?
of 6 A. Well, parole, time off for good behavior, that kind

7 thing.

8 Q. Oh.

9 A. And I don't think they really imagined plea
bargaining as a

10 part of it; but other than that --

11 Q. Okay. Those are the two things that you think the
system

12 has changed from original intent.

13 A. Yes, sir.

14 Q. And in thinking of those things as criticisms -- I
15 understand you to be saying you don't want that to
happen. You

16 don't think that should happen.

17 A. No, sir.

18 Q. Are you thinking of any particular circumstances or
19 particular people?

20 A. No, sir, just in general.

21 Q. Okay. So would you be saying that if somebody gets
10
22 years in prison, they ought to serve 10 years in
prison?

23 A. Yes, sir.

24 Q. And if somebody has committed a crime, they
oughtn't to be

25 able to talk to the prosecution and get it down to some

Juror No. 955 – Voir Dire

mean by 1 different crime of lesser punishment. That's what you

2 "plea bargain"?

3 A. Yes, sir.

views 4 Q. Okay. Now, you also were asked here about your

I'm 5 concerning the court's instructions and following them.

please. 6 looking over at page 30. If you want to turn to that,

7 And there, you said, "Agree strongly" to
follow the

8 instructions, and then you said -- well, first, did you

9 understand that "instructions" means all of the
instructions,

10 not just things like before trial being careful about
what you

11 read, see, and hear?

12 A. Yes, sir.

during 13 Q. But you know that instructions are given by a judge

14 the trial and then at the end of the trial.

15 A. Yes, sir.

16 Q. As I've already mentioned in connection with the
17 instructions that are given before the jury is asked to
decide

doubt. 18 whether the evidence proves guilt beyond a reasonable

19 A. Yes, sir.

be at 20 Q. Okay. And then you say here, "A man's life could
make a 21 stake. I'm willing to follow guidelines so as not to
22 mistake."

23 A. Yes, sir.

take 24 Q. And now you're referring to this particular case, I
25 it.

5383

Juror No. 955 - Voir Dire

1 A. Yes, sir.

potential 2 Q. And you recognize that this case does involve the
3 for a death sentence.

4 A. Yes, sir, I do.

here about 5 Q. And you know that we asked you some questions in
6 your attitudes and opinions regarding that type of
sentence,
7 along with a sentence to life in prison without being
released.

8 A. Yes, sir.

when 9 Q. Or any possibility. And I want to make clear that
There 10 this refers to a life sentence, that is what it means.
11 isn't any good time or parole or anything on a federal
sentence

12 to life in prison.

13 A. Yes, sir.

14 Q. That's where you die when your time comes.

15 And page 28 is where these particular
questions were

16 put to you, and you gave answers about what do you
think about

17 punishment like that, life in prison without release
and the

18 punishment of death. And these are the answers you
gave?

19 A. Yes, sir.

20 Q. Okay. I appreciate your looking at them. I wanted
you to

21 have them in mind here, because it's been over a month
since

22 you wrote these down, and things can change in that
time. But,

23 you know, there was a lot of explanation here, starting
over on

24 the preceding page, about the reason for asking these
questions

25 because we, of course, cannot assume that a jury
selected in

5384

Juror No. 955 - Voir Dire

1 this case would ever be involved in such a decision,
because,

2 of course, we start the trial with a presumption of

innocence

3 as we have already reviewed.

4 A. Yes, sir.

Nichols

5 Q. And therefore it has to be assumed now that Terry

6 is innocent and that the jury in this case would return
a not

7 guilty verdict and there will never be a punishment
issue.

8 A. Yes, sir.

9 Q. But what we have to do is cover all the
possibilities; and

10 therefore, since it is possible that the evidence may
satisfy

11 the jury to this burden of proof, we have to inquire
further

12 about each person's ability to then carry on and make
the next

13 decision. And so what we wanted to hear from you and
what

14 you've provided here, as I understand your responses,
is what

15 you think coming in here without knowing anything about
the law

16 and without knowing what is required -- what you think
is the

17 appropriateness of these two punishments and when they
might be

18 used and when not. Is that about the way you thought
when you

19 answered?

20 A. Yes, sir.

about 21 Q. Okay. And is it something that you had thought
22 before you answered these questions?

23 A. Not really.

death 24 Q. Okay. You know that the issue of the use of the
lot of 25 penalty in criminal cases is one upon which there is a

5385

Juror No. 955 - Voir Dire

1 disagreement in our country.

2 A. Yes, sir, I know that.

that 3 Q. A lot of different views about this. And you know

such 4 there are states in the United States where there is no

5 punishment provided for in the law.

6 A. Yes, sir.

penalty for 7 Q. And then there are states that have the death

decide 8 certain kinds of situations and crimes and have ways to

9 that that don't involve the jury.

10 A. Yes, sir.

11 Q. I mean, have you heard of that?

12 A. Yes, sir, I have.

13 Q. And of course, the thing has changed from time to

time in

14 the same states as the composition of the state
legislature
15 changes. I mean, you know, they're supposed to reflect
what
16 the public opinion is, and it changes, can change.

17 And, of course, there are, I guess you could
say,
18 extreme views in the sense that there are people who
believe
19 anytime a life is taken, then the person guilty of that
should
20 have his life taken, sort of an eye for an eye, killing
for a
21 killing. And then there are those who believe there
never
22 should be a death penalty, like in the states where
there are
23 none; and even in states where there are, there is
differences,
24 so that some believe, well, we just should not take a
life;
25 that's not the -- an appropriate thing for courts to
do.

5386

Juror No. 955 - Voir Dire

1 You're acquainted with that view, too.

2 A. Yes, sir.

3 Q. And then there is a lot in between various ways.

And what

4 I gather first of all from you is you're somewhere in
between.

5 A. Yes, sir. Pretty much.

6 Q. Okay. Now, I want to talk with you first of all
about your

7 views without trying to influence you in any way, just
what you

8 honestly think. And then I want to talk about the
process and

9 the way the law actually is. Okay?

10 A. Yes, sir.

11 Q. Because what we want to find out is whether -- and
you just

12 have to answer us as honestly, as forthrightly as you
can

13 whether you are able to participate in the process
involved in

14 the event of a guilty verdict. And we're not going to
be

15 talking about how you would decide this case, because
we can't.

16 We don't know what the verdict in this case will be, we
don't

17 know what the evidence will be, and we don't know what
would

18 happen in a punishment phase hearing.

19 So these questions are not addressed to this
case, you

20 understand.

21 A. Yes, sir.

22 Q. And our discussion of it will have to be not about

this

23 case but your ability to follow the law.

24 So as I --well, you just tell me, first of
all, having

25 read your answers now and recognizing you hadn't given
it a lot

5387

Juror No. 955 - Voir Dire

1 of thought before, do you have any changes in your
opinions

2 now?

3 A. No, sir, none at all.

4 Q. So this is your view today. I mean, if I were to
ask you

5 these same questions today you'd give me the same
answers, I

6 take it.

7 A. Yes, sir, pretty much.

8 Q. And I want to focus on B, then, because you seem --
what

9 you say there. The death penalty is not used as much
as you

10 think it ought to be.

11 A. No, sir, it's not.

12 Q. Tell me what you have in mind there.

13 A. I just -- I believe that if someone does something,
say,

14 rape and murder, that they don't deserve to live, if

they're

15 convicted guilty. There is no black and white for me.

16 Q. There is no black and white, or there is black and
white?

17 A. There is none, not for that. I mean if the guy --
or

18 whoever goes crazy and kills somebody after, you know,
raping

19 them or something like that, he doesn't deserve to
live.

20 Q. Just because of the crime itself.

21 A. Yes, sir.

22 Q. And if you had the law to make, the way you'd make
it is

23 there wouldn't be any further discussion. Return a
guilty

24 verdict, that's the end of it, put the person to death.

25 A. Yes, sir.

5388

Juror No. 955 - Voir Dire

1 Q. Now, that isn't the way the law is.

2 A. No, sir.

3 Q. And you already know that.

4 A. Yes, sir.

5 Q. And, of course, what I'm going to tell you then is

6 something that I take it you knew when you answered
these

7 questions from the way you've answered, and that is
that what
8 happens in a case in which under federal law -- and
that's
9 where we are -- a person is found guilty of murder,
intentional
10 killing -- I mean, we don't get to these questions
unless there
11 is a killing involved and an intent; so we don't use
this kind
12 of punishment for bank robbery or something like that,
you
13 understand.
14 A. Yes, sir.
15 Q. But in cases where there is an intentional killing
and
16 therefore the range of punishment provided for by law
is:
17 Death is one possibility, a sentence to life in prison
with no
18 chance of ever being released is another, and the third
is that
19 there could be something less than those two. But the
decision
20 about life or death is made by the jury, the same jury
that
21 heard the evidence and decided guilty or not guilty.
22 Understand?
23 And then what the law says, though, is that
the jury
24 can't decide it right then and there. They have to
hear more.

at the 25 And there is indeed a penalty phase hearing. And it is

5389

Juror No. 955 - Voir Dire

1 penalty phase hearing that the jury gets more
information and

2 through the same process, exactly as the trial itself:
lawyers

3 on both sides, witnesses called, exhibits received in
evidence,

4 arguments made.

5 But what the law requires is that before a
jury can

6 decide the life-or-death question, they have to hear a
lot more

7 than what they heard as the evidence in the trial,
because the

8 law says there is no automatic penalty for the crime,
no matter

9 what it is.

10 A. Yes, sir.

11 Q. And -- or how bad it is. And therefore, before
making a

12 decision about another person's life, you have to hear
all

13 about that person, including all of the things about
the

14 person's background, what's happened to him in life,
what he's

15 done, good and bad; you know, everything that there is

in a

16 life story for any one of us and consider him as a
unique and

17 individual human being and then decide whether he
should live

18 or die. You understand that?

19 A. Yes, sir.

20 Q. Now, are you able to do that?

21 A. Yes, sir.

22 Q. Well, it seems a little inconsistent --

23 A. Yes, sir, I know.

24 Q. -- with what you just said before.

25 A. I know.

5390

Juror No. 955 - Voir Dire

1 Q. Now, I'm not going to argue with you, you know. I
don't

2 mean it in that sense. I just want you to tell us your
3 thinking on this.

4 A. I can follow the Court's rules. There is no doubt
about

5 that. If they -- whoever can tell me something that
would make

6 me change my mind, I'm more than willing to listen; but
it

7 would have to be pretty strong.

8 Q. Well, what kind of thing do you think about there?

9 A. As far as me changing my mind?

10 Q. Yeah. I mean, what it sounds like is you'd come to
that
11 hearing having just found a person guilty of the
intentional
12 killing of somebody else; that you'd come to that
hearing with
13 a view that, well, you ought to be put to death,
speaking about
14 the defendant.

15 A. Okay. For instance --

16 Q. Is that the way you would start out the hearing?

17 A. No, sir.

18 Q. Okay. Well, just tell me: Am I putting words in
your
19 mouth? You tell me.

20 A. For instance, if this person had committed the
premeditated
21 killing, if you will --

22 Q. Yes?

23 A. -- there can be some circumstances -- I wouldn't
say many,
24 but say this person had -- that was killed was
habitually
25 abusing the person beforehand. I can see that.

1 Q. Okay.

2 A. That's about it, though.

3 Q. Well, let me tell you the kinds of things that are
heard in

4 such a case. Now, that is where there is an
intentional

5 killing and the jury has decided this person did it,
you know.

6 First of all, do you recognize there can be more than
one

7 person involved in the crime?

8 A. Yes, sir.

9 Q. And that those people may have different roles.
They may

10 have played different roles in the crime.

11 A. Yes, sir.

12 Q. And so that's one factor that can come in. And
then there

13 are all of these other things that relate to who this
person

14 is, the defendant, whose life it is that you're
considering

15 taking with the death sentence.

16 So the information provided at this second
stage would

17 include everything there is no know about the defendant
as a

18 human being: born and raised, family circumstances,
marriages,

19 divorces, employment history, education, military
service, just

20 about everything that's happened in that person's life,
what
21 he's done and what's been done to him, because you're
to judge
22 him as a human being, not just for the crime that he
committed
23 but who he is and what he is.

24 And what the law says is that before you can
take a
25 life, you've got to know something about the life
you're taking

5392

Juror No. 955 - Voir Dire

1 by a death sentence. Do you understand?
2 A. Yes, sir.
3 Q. And then what actually happens at these penalty
hearings is
4 that the court, after it's all over, after all the
information
5 has been provided by the lawyers through the witnesses
and
6 exhibits and the like, sort of sums it up in
instructions to
7 the jury and says, Now, these are the things that
you've heard.
8 This is the information you've been provided in a
summary way,
9 and you ought to think about it in two different
categories.
10 One is the things about the crime and the circumstances

of the

That's 11 crime and its effects on the community, and so forth.

things 12 one part of it. And you can -- you can think of those

suggest, yes, 13 as aggravators, aggravating factors, things that

14 death is what should be done here.

these other 15 But at the same time, you've heard all of

in the 16 things about the defendant, about his particular role

as a 17 offense, what's happened here, and also all about him

you've got 18 human being, the good and the bad, I mean. And then

that you 19 to consider that as well; and you've heard things here

suggest 20 can consider as mitigating factors, those things that

death is 21 that even though this is a terrible crime and that

to death 22 available as a punishment, you should not put this man

consider and 23 because there are things about him that you should

24 things about what he's done.

in any 25 And we can't, you know, define what those are

Juror No. 955 – Voir Dire

1 detail because we don't know what they would be. But a
jury
2 then has to be open-minded about considering those
things as
3 well. And then the court would say, Now, considering
both of
4 these types of information, aggravating factors,
mitigating
5 factors, here are some questions you may want to ask
yourself
6 before you make a decision. And the questions would be
put in
7 terms of the specific things that have been presented.
And
8 there isn't any formula here, you know. It's not like
in your
9 field where there are some very objective things. This
is a
10 very subjective thing.
11 And what it comes down to in the end is the
jury then
12 talks it over -- the 12 people who have heard this talk
it
13 over, and then each juror, though, has to make a
decision. And
14 there is no way to describe that kind of a decision
except to
15 say that it is a reasoned, rational, moral decision
based on
16 everything that's been presented and decide whether the
person
17 should live or die. Do you understand these

instructions?

18 A. Yes, sir.

19 Q. Now, the question you have to answer for us is, can
you
20 make such a decision?

21 A. I believe I can, sir.

22 Q. And, of course, you have to make that decision
coming to

23 the hearing with an open mind and be able to consider,
even

24 though the crime warrants death, whether the person
committing

25 the crime should die and not automatically favor death
or life

5394

Juror No. 955 - Voir Dire

1 but weigh it all and incorporate it all in your
decision. Do

2 you understand that?

3 A. Yes, sir.

4 Q. And given your view about the death penalty isn't
used

5 enough and people ought to pay for their crimes, and so
forth,

6 could you actually, hearing it all, make a decision
that a

7 person who committed intentional murders, killed a
number of

8 people, should be sentenced to life imprisonment?

9 A. I'd like to say I could, but I just don't know.

10 Q. And what holds you up?

11 A. Well, I'm pretty much hard-headed, I think. I have
an
12 opinion, and that's usually what I stick with.

13 Q. Yeah. Well, we're not trying to talk you out of
it. There
14 is nobody here trying to push you in any direction on
this.
15 And if it's your view that there is just no way you're
going --
16 that you can think of that you're going to consider
life in
17 prison for that person who has killed a lot of people
and
18 intended to do it, then we understand that point of
view. So
19 you tell me what your view is.

20 A. Pretty much if it was done intentionally, I can't
see any
21 other way.

22 Q. Yeah. So that -- the kind of view you expressed
here in
23 your answers would be how you would decide the case.
Is that
24 what you're telling us?

25 A. Yes, sir.

1 THE COURT: Okay. Well, we appreciate your
candor.

2 We're now going to -- well, let me ask counsel
3 something here about the scheduling, if you'll just
bear with
4 us for a minute.

5 (At the bench:)

6 (Bench Conference 46B2 is not herein transcribed by
court

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

8

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5399

1 (In open court:)

2 THE COURT: Well, you know, I want to on
behalf of all

3 of us tell you that we appreciate your coming in here.
We

4 appreciate your going through this whole process,
answering all

5 these questions, and we appreciate the point of view
that you

6 have expressed here. And we're not judging you and
saying

7 there is anything wrong with you; but it appears to me,
and

8 I've made the decision, that you're -- you know, that
you

9 couldn't serve in this case with an open mind on the
question

10 of punishment. That doesn't mean you couldn't have an
open

11 mind about the evidence.

12 So don't feel condemned by this, but I'm going
to

13 excuse you from service in this case.

14 JUROR: Yes, sir.

will, 15 THE COURT: And what I want you to do, if you
who are 16 please, recognizing that we haven't selected the people
you to 17 going to be the jurors in this case -- I'm going to ask
this very 18 continue to avoid discussion of it and discussion of
until 19 process that you've been through with all other people
because, you 20 you've been advised that a jury has been selected,
fair for 21 know, you can understand that it really wouldn't be
wrong idea 22 you to talk about this and a lot of people get the
23 about it.

24 JUROR: Yes, sir.

25 THE COURT: Will you cooperate with us in that
way?

5400

1 JUROR: Yes.

2 THE COURT: We appreciate it. You're excused
now.

3 You can go on your way.

4 (Juror out at 4:01 p.m.)

5 THE COURT: All right. Well, we're going to
do

6 motions. Take five minutes or so to get ready, and
then we'll

7 hear your motions.

8 Recess.

9 (Recess at 4:02 p.m.)

10 (Reconvened at 4:08 p.m.)

11 THE COURT: Be seated, please.

12 All right. I'm ready to consider motions to
excuse.

13 And I again have the benefit of the listing here of
what you've

14 agreed upon and then the Government's motions and the
defense

15 motions.

16 You've also filed some written arguments or
statements

17 supporting these motions.

18 MR. TIGAR: Yes, your Honor.

19 THE COURT: Mr. Tigar?

20 ARGUMENTS AND RULINGS ON MOTIONS TO EXCLUDE
JURORS

21 MR. TIGAR: Yes, your Honor. With respect to
Jurors

22 331 and 344, we agree with the Government's observation
that

23 our position there is the same as before. The Court
has ruled,

24 and we acknowledge that the Court has ruled.

25 THE COURT: Right. So your record is
preserved with

1 respect to that -- the issues; and 331 and 344 will be
excused.

2 Now, I believe these next two are the subject
of your
3 written submission --

4 MR. MACKEY: Yes, your Honor.

5 THE COURT: -- which I've reviewed. I have
the
6 transcripts. I don't know if you want to make
additional
7 argument on those.

8 MR. MACKEY: Your Honor, we'd be prepared to
rest on
9 our briefs.

10 THE COURT: All right. And, Mr. Tigar, do you
wish to
11 make response?

12 MR. TIGAR: If I may very briefly, your Honor.

13 THE COURT: All right.

14 MR. TIGAR: With respect to No. 8, if the
Court
15 please, we fail to see that there are grounds here to
excuse.

16 The juror said she sometimes sneezes, but that appears
to be
17 controllable. The accusation seems to be made that she

is

18 garrulous. Logorrhea has never been found to be a
ground of

19 disqualification.

20 THE COURT: Or disbarment, either.

21 MR. TIGAR: That's correct, your Honor. And I
can

22 give thanks for that every day, if the Court please.

23 THE COURT: All right.

24 MR. TIGAR: As far as the lack of focus is
concerned,

25 maybe when these Government lawyers get a little older,
your

5402

1 Honor, they wouldn't file motions like that; but we did
not

2 regard that particular incident as being particularly
3 disqualifying.

4 I saw what was happening. I think the juror
was very

5 interested in her answers, looking back at it, as was
natural;

6 and I think that was the situation. So we respectfully
submit

7 that that juror is fully qualified to sit.

8 THE COURT: I'm denying the motion as to her.

9 MR. TIGAR: Juror No. 823 does present a more

take 10 difficult question, your Honor; and I think that I'll
emotion: I 11 those things in order. First with respect to the
in this 12 think it can be -- it is fair to say, your Honor, that
children, 13 case, we will have a number of jurors who have young
occupations 14 who have worked with children, who are in various
in, to 15 that are going to cause them, when that evidence comes
and as 16 react emotionally. And what our job will be as lawyers
that 17 people professionally involved in the process is to let
it, 18 happen, to make appropriate arguments and to deal with
will be 19 because that's the kind of a case it is. And also, it
aisle to 20 our function as lawyers certainly on this side of the
evidence 21 make motions to the Court with respect to how that
situation 22 might be handled. I didn't think that that juror's
23 was any different than anybody else confronting that.

24 Catholicism or

25 her faith. Now, it's true that she took religious
classes and

1 elected to become a Catholic. It looks like, giving
the timing
2 of those, that those are the sorts of things that are
required
3 if she's to be married in the Church; that is to say,
she can't
4 do it unless she's taken those classes. And it does
represent
5 a deliberate choice, but she did tell the Court quite
clearly,
6 "You know, there are things about what the Church
teaches that
7 I don't necessarily go along with," and seemed to be
able to
8 separate out, let us say, the political views of the
Church,
9 which, you know, is a thing the Church has been doing
ever
10 since 313 A.D. with respect to its temporal power and
those
11 things that relate more to her spiritual life.

12 And if the Court please, let me just briefly
review --

13 THE COURT: Well, she went on beyond the
religion, as
14 the Government points out; that it wasn't just a
religious view
15 that concerned her.

16 MR. TIGAR: Yes, I understand that, your
Honor. But

17 then she acknowledged that "I work very hard to have
him have
18 those rights," she said of court-appointed counsel.
She
19 acknowledged at page 4794, "Jury service is a
responsibility of
20 citizenship." She agrees strongly she has to follow
the
21 Court's instructions. She was brought up to do what
the court
22 says; and she volunteered on her questionnaire, your
Honor, and
23 repeated it to the Court that she thinks you need to
follow the
24 law even if you don't agree with it. She's the only
person
25 that went on to write that with respect to this very
question

5404

1 of are we free in this society to exercise our
opinions.
2 We understand -- and here is a juror, by the
way, who
3 then said that people who go into law enforcement --
she might
4 favor their testimony; and yet she came back and said,
"No, I
5 can -- I can follow the law with respect to that."
6 So it isn't as though the juror comes in

leaning all

7 one way out of sympathy. It seemed that that answer,
too, was

8 very carefully considered, as were her answers on the
death

9 penalty.

10 And so recognizing, your Honor, that it is a
-- what,

11 a global decision based on everything, we respectfully
submit

12 that the juror is qualified.

13 THE COURT: Well, I've, you know -- I, of
course,

14 remember this person very well. It's not long ago that
she was

15 here with us. And I recognize all of these things
mentioned in

16 the Government's submission on this and all of the
times that

17 she said, "Not certain." But I think that that just
reflects

18 that this person has reacted to knowing the enormous
responsibility involved in the case. And I am struck

19 with what

20 has just been mentioned here about how she repeatedly
said she

21 understands it her duty to follow the instructions. I
believe

22 she will, if she serves. So I'm denying the motion.

23 Now I think we're ready on the defense
motions.

24 MR. TIGAR: Yes, your Honor.

too. 25 THE COURT: And you submitted a written one,

5405

with 1 MR. TIGAR: Yes, we did, your Honor. That was
them in 2 respect to the second in our list of challenges, taking
3 order.

4 THE COURT: Let's do take them in order.

respect 5 MR. TIGAR: The first one, your Honor, is with
6 to Juror No. 953.

7 THE COURT: Uh-huh.

if the 8 MR. TIGAR: I just have to find my notes here,
9 Court will give me a moment.

10 THE COURT: Okay.

challenge with 11 MR. TIGAR: Here it is. The ground of

Without 12 respect to this juror, your Honor, is multifarious.

that he 13 wishing to invade the juror's privacy, it seemed to us

which 14 has a long-standing connection with an organization in

And 15 "serenity" is a watchword of the organization's work.

reduced" 16 thus, when the juror said, "My sense of serenity was
about how 17 in terms of talking about this case, he was talking
'61, "I 18 hard it hit him; and in the same breath at 3960 and
society," a 19 felt personally injured as a part of the world's
response, but 20 natural response, "American society," a natural
that is 21 then "I felt my personal security had been violated";
events 22 to say, the juror has a personal feeling about the
our 23 rather similar to the sort of personal feeling that in
change of 24 respectful submission was recognized in granting the
the 25 venue motion or had to do with how people responded to

5406

1 media.
2 The second aspect of it, your Honor, is that
this is a 3 juror who is familiar with ANFO. He is familiar with
4 safety/security procedures. He's of the opinion that
to
5 purchase something like Primadet you have to have a
license.

6 Now, he, as a security guard, is not involved
in
7 placing the shots, as it were; but he is involved in
mine
8 safety regulations in a public policy sense but also,
9 apparently for some sorts of licensing or qualification
10 procedures, has to be tested on these matters
periodically and
11 reads up on them and was quite anxious to share with
the Court
12 and with all of us his rather detailed knowledge. So
he's in
13 the position much the same as another juror we had who
also had
14 that kind of experience.

15 Now, I am not going to reargue, if the Court
please,
16 the memorandum that we filed about objections that were
17 sustained to a question that I put to the juror; but
this is a
18 juror who at pages 3978 and 3979 would put in the
category of
19 always carrying the death penalty "treason, massive
acts as
20 epitomized by the Oklahoma City bombing, considered
21 premeditation," and then said that insanity would be
the only
22 kind of excuse or reason not to impose the death
penalty.

23 And in light of that answer, your Honor, we
24 respectfully suggest that although the record is not

who, 25 100 percent there -- that what we have here is a juror

5407

a 1 considering all of these other factors, starts out with
that the 2 predisposition based on this very situation to think
3 death penalty is the preferred punishment if someone is
4 convicted of these offenses.

5 THE COURT: All right. Do you have a
response, 6 Ms. Wilkinson?

7 MS. WILKINSON: Your Honor, I'll just address
8 Mr. Tigar's concerns in turn.

9 He first talked about this juror's, I think,
rather 10 eloquent description of the effect of the bombing on
him; and 11 while he may have discussed his serenity being reduced,
I don't 12 think that's anything that we've ever considered a
reason to 13 disqualify anyone, but especially this man. He told
you from 14 the very beginning that he could follow the rules of
the Court.

15 He even said that when he was asked on his
questionnaire before

16 receiving instructions from you that he would follow
the law.
17 And he seemed to be quite respectful to you and to all
the
18 parties throughout his questioning and repeatedly went
back and
19 said that he would follow the statutes.

20 I believe on pages 3958 and 3960 he said,
"Since that
21 is required by the statutes in this court, I could
listen to
22 it, I feel objectively, and work with other members of
the jury
23 to arrive at what the consensus was that would be the
proper
24 sentencing." And that was the type of responses he
gave to you
25 and to us throughout his questioning.

5408

1 When Mr. Tigar raises the issue of his mining
or
2 explosives knowledge, I believe that Mr. Tigar asked
him a
3 question and he wasn't volunteering that he had any
expertise.
4 In fact, quite the opposite. Mr. Tigar said to him on
page
5 3976, "So if you were a juror in this case and people
were

6 talking about the process, they'd be talking about
something
7 with which you already had some familiarity based on
your
8 work?"

9 And he responded, "The qualifier 'some' is
very
10 fitting. Not on-hands . . ."

11 So he himself minimized or at least explained
that he
12 didn't have any specific expertise, and that was what
he said
13 in response to additional questions: "That some people
are
14 much closer to that portion of the operation than I
ever have
15 in my 12 years in the mine."

16 As to his death penalty views, again he told
us in the
17 questionnaire that he would follow the law; and in
response
18 again to defense counsel questioning, which I think
made his

19 views clear, he was asked, "Would you have a
provision," when
20 talking about the law he would make, "in there that
someone who
21 had committed one of the crimes you just listed,"
referring
22 back to the very serious crimes he had listed for the
death
23 penalty, "could you still get a life sentence based on
facts

24 about their growing up or their family life, things
like that?"

25 And he said, "Yes, I believe I would."

5409

1 And on page 3984, he said, "I'm more clear on
that

2 now. I believe I am open." And he said, "I would
follow the

3 Judge's instructions carefully."

4 I think throughout his questioning, your
Honor, his

5 demeanor showed you that he would follow your
instructions.

6 THE COURT: All right. The motion is denied.

7 MR. TIGAR: On Juror 388, your Honor, we have
filed a

8 memorandum.

9 THE COURT: Yes.

10 MR. TIGAR: And I know the Court has read it,
and that

11 does state our position.

12 THE COURT: I do have it.

13 And you wish to respond to this, Mr. Mearns?

14 MR. MEARNS: Yes. Just very briefly.

15 THE COURT: I take it you have the memorandum.

16 MR. MEARNS: We do have the memorandum, and

we'd just

17 like to respond very briefly.

18 Mr. Nichols' counsel has pointed out that they
have

19 three concerns with respect to this juror. One is that
the

20 potential juror is biased with respect to the
presumption of

21 innocence. They have -- the defense has characterized
the

22 juror's transformation as being simply the product of
the

23 Court's insistent questioning.

24 We don't think that that's a fair
characterization of

25 what occurred with respect to this juror. It was clear
that in

5410

1 response to the Court's questioning the juror realized
that he

2 must have an open mind with respect to both the issue
of guilt

3 and with respect to the issue of possible punishment.
He said

4 specifically that he had a different view now because
he

5 understood clearly what was expected of a juror, and he
said

6 with respect to his prior views that they must

absolutely be

7 discarded.

8 We think that based upon the responses to the
9 questions and the juror's demeanor that it is quite
clear that

10 he can set aside the views that he expressed on his
11 questionnaire.

12 The same is true with respect to the possible
13 emotional reaction that he would have with respect to
what

14 occurred in Oklahoma City. In response to a question
from

15 Mr. -- from Mr. Woods, he said he understood quite
clearly that

16 you've got to be able to separate those two; that is,
your

17 emotional reaction to the testimony and what the
evidence

18 suggests with respect to whether or not Mr. Nichols is
guilty

19 of the charges.

20 THE COURT: Okay. Well, I reviewed what this
person

21 said, and I was taken with his statements that his mind
had

22 been open to things that he hadn't thought about before
he was

23 in here. I think this is one of those situations in
which this

24 process has something of an educational effect to alert
jurors

25 to -- potential jurors to what's involved. And I
believe this

5411

1 man can serve; so the motion is denied.

2 MR. TIGAR: We move to excuse Juror No. 647,
your

3 Honor; and your Honor recalls this is the juror who
started out

4 by saying that he didn't think that people should --
that

5 sentences should be served longer than the current
sentences,

6 and he gave examples. He also talked more about that
at

7 transcript page 4714. He has held an opinion on the
death

8 penalty for a long time, and the one he holds now he
held 10

9 years ago. And that's at pages 4720 and 4721.

10 The juror was then asked at 4735 if he could
be

11 open-minded in the penalty phase, and that was -- he
had

12 difficulty distinguishing between the penalty phase and
the

13 guilt/innocence; but the most significant aspect of his

14 testimony came later on. He said that, of course,
before he

15 came in, he had the feeling that if somebody went out

and

16 intentionally killed someone, well, by golly, they
ought to go
17 out and pay for it with their life. He said he thought
the
18 Davis execution was very just. And then he started
talking
19 about under what circumstances he would feel that he
would
20 choose a life sentence. And at 4751, it begins, "Do
you think
21 that -- if as you now understand the law -- if a person
is
22 convicted of deliberately killing a number of people
that a
23 life sentence is an option for that situation?"

24 "Answer: It depends on the circumstances."
25 And then later on at line 9, "I'm still kind
of hung

5412

1 up. I'd have to weigh that quite a bit, I'm afraid."
2 "Question: Tell me what you're hung up on."
3 "Answer: Well I think that taking that many
lives and
4 stuff, you know, would be a tough decision, sir."
5 And then a couple -- skipping a question:
"Would you
6 start out the process favoring one result over

another?"

7 "Answer: I think I would be just, sir."

8 And then I asked him to assume a case in which
he had
9 found someone guilty of the intentional murder of many
people.

10 "Answer: Uh-huh. Uh-huh."

11 "And now you had to consider -- you know, you
hear
12 evidence and so on -- you were going to consider the
question
13 of punishment. Would you start out favoring one form
of
14 punishment over another?"

15 Objection overruled.

16 "I'm afraid I would."

17 "And what would you favor?"

18 "The death sentence, I think, sir."

19 So this is a juror who is a classic Eddings
juror,
20 your Honor; that is to say, he commits to listen but he
starts
21 out favoring one form of punishment over another. And
this is
22 right at the end of the exchange after your Honor has
spoken to
23 him, the Government has spoken to him, I've started,
your Honor
24 has talked to him, and then we've come back at the end.
25 So we'd have to say there is at least a
substantial

5413

of our 1 doubt there, if the Court please; and that's the basis
2 challenge.

heard on 3 THE COURT: All right. Do you want to be
4 this, Mr. Ryan?

5 MR. RYAN: Yes, your Honor.

of the 6 Your Honor, this gentleman was very respectful
7 Court and very respectful of the rules of court. He
clearly

8 came in here with a view that if you go kill people in
an

9 intentional, planned manner that the death penalty is
10 appropriate. But again, after the Court advised him
what the

11 law was, he clearly stated he would follow the law.
The words

12 that were left out a moment ago were the following,
after that

13 exchange with Mr. Tigar: He says, "If it was, you
know, that

14 many people, lives were involved" -- and let me stop
right

15 there and digress a minute. The question loaded up a
bunch of

16 aggravators: many people died. I don't think the law

states

17 that it's not permissible for somebody to start
developing a

18 view.

19 But what he says here: "I would listen to
what might

20 have caused him to do this and what his life was like
and

21 different things. I would have to hear all of the
evidence in

22 my mind. The man would have to be guilty, you know. I
would

23 weigh all the evidence and circumstances and all this,
you

24 know; but I'm not going to pass judgment until I know
in my own

25 mind I can pass judgment on the man."

5414

1 He states over on 4755 that he's not going to
let the

2 fact that he works with children interfere with his
judgment on

3 this, nor is he going to let the fact his son is in the
Marine

4 Corps interfere.

5 I mean clearly he had a view, but he's willing
to set

6 it aside to follow this court's instruction.

7 I don't think we've had a juror that was more
8 respectful of -- to this court and the rules of this
court than
9 this gentleman.

10 THE COURT: Well, I don't question his
respect, and I

11 don't question his sincerity. I question his
understanding.

12 Without being critical of this man, you know, he's
ready to say

13 yes to most everything he's asked, and he wants to be
14 agreeable. And he was agreeable with almost every
question

15 that was put to him. And I just am not sure about his
ability

16 to serve, so I'm going to grant the motion.

17 MR. TIGAR: Your Honor, this last juror was
here so

18 recently that I don't need to spend a great deal of
time. I

19 think we all remember what happened. This is a juror
whose

20 vengeance-oriented theory of punishment became very
clear. And

21 even with respect to a life imprisonment, his
description of

22 the kind of a cage in which Charles Manson should be
placed

23 indicated that his background appreciation of Eighth
Amendment

24 standards --

25 THE COURT: I don't have to hear any more on

that. I

5415

his 1 think the "put him in a cage" the way he said describes
in a 2 view, and that doesn't describe a juror who should sit
3 case.

4 MR. TIGAR: Thank you, your Honor.

5 THE COURT: I'm going to grant the motion.

6 MR. TIGAR: Thank you, your Honor.

7 THE COURT: I believe that's all of them.

8 MR. TIGAR: It is, your Honor.

9 THE COURT: I want to change the scheduling a
little
these 10 bit for next week. First, I want to start at 8:30 on
hearing on 11 days, and then what I want to do is hold motions --
relating 12 motions at 5, so that Monday we would hear the motions
the 13 to today's people and work it in that way, addressing
14 motions each afternoon at 5 to the preceding day.
Agreeable?

15 MR. TIGAR: Yes, of course, your Honor. And
we will

16 try to do as we have: where we have some concerns, file
papers

17 that point to particular transcript pages, and so on.
18 THE COURT: Fine. So what we'll do, then, is
start
19 our next juror at 8:30 Monday morning, and then at 5
we'll take
20 the motions relating to today's people.
21 Okay. With that, we're excused till 8:30
Monday
22 morning.
23 Recess.
24 (Recess at 4:32 p.m.)
25 * * * * *

5416

Page	Item
	1 INDEX
	2 Item
	3 Jurors
	4 Juror No. 168
5291	5 Voir Dire Examination by The Court
5294	6 Voir Dire Examination by Ms. Wilkinson
5304	7 Voir Dire Examination by Mr. Woods
5315	8 Voir Dire Examination by The Court

5316 9 Voir Dire Examination by Mr. Woods
 10 Juror No. 609
 11 Voir Dire Examination by The Court
5318
 12 Voir Dire Examination by Mr. Orenstein
5344
 13 Voir Dire Examination by Mr. Tigar
5351
 14 Juror No. 955
 15 Voir Dire Examination by The Court
5367
 16 Arguments and Rulings on Motions to Exclude Jurors
5400

17 * * * * *

18 REPORTERS' CERTIFICATE

19 We certify that the foregoing is a correct
transcript from
Dated 20 the record of proceedings in the above-entitled matter.
 21 at Denver, Colorado, this 24th day of October, 1997.

22
23

24
25

Paul Zuckerman

Kara Spitler