

13

PROCEEDINGS

14

(In open court at 8:30 a.m.)

15

THE COURT: Please be seated. Good morning.

16

We have 372 as our first.

17

Good morning.

18

JUROR: Good morning.

19

hand and

THE COURT: Will you please raise your right

20

take the oath from the clerk here.

21

(Juror No. 372 affirmed.)

22

THE COURTROOM DEPUTY: Thank you.

23

there by

THE COURT: Please be seated in that chair

24

chair

the microphone. You can put your coat over the other

25

there, if you'd like.

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1

VOIR DIRE EXAMINATION

2

BY THE COURT:

3

referred to

Q. Now, you know that the case now on trial being

4

Nichols. And

is the case of United States against Terry Lynn

5

your

you received a summons back in July notifying you that

6

name had come up through a chance selection process as

a

7 possible juror in this case. You sent back a short
8 questionnaire, and you got a notice to appear at the
auditorium
9 building in Jefferson County on September the 17th to
answer a
10 lot longer questionnaire. And you did that. And when
you and
11 other jurors appeared out there, I was there and
introduced
12 people who were with me. They are with me again this
morning,
13 so let me reintroduce them so that you know who's here
with us
14 this morning.

15 Attorneys for the Government in the case:
16 Mr. Lawrence Mackey at this first table, Ms. Beth
Wilkinson;
17 and then with them now are Mr. Patrick Ryan and Mr.
Geoffrey
18 Mearns. They were not there before.

19 You also were introduced to counsel for the
defendant,
20 Mr. Michael Tigar, Mr. Ronald Woods; and of course,
21 Mr. Nichols, Terry Lynn Nichols, was present.

22 And then I explained something about the
background of
23 this case. And let me just review that with you again
so that
24 it is clear. And I am sure you remember and you
probably heard

lot of 25 these things before I said it anyway; but there are a

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to 1 things we say in the courtroom sort of for the record,
2 establish a foundation.

an event 3 And I explained that this case arises out of

On that 4 in Oklahoma City, Oklahoma, on April the 19th, 1995.

office 5 day, there was an explosion that destroyed a federal

building; 6 building, killing and injuring people who were in the

indictment, 7 that later, charges were filed in the form of an

for the 8 which is simply a statement of accusations by attorneys

McVeigh 9 Government, alleging that a man named Timothy James

indictment refers 10 along with Terry Lynn Nichols -- and then the

or a 11 to "other persons not named" -- engaged in a conspiracy

to kill 12 criminal plan to blow up that building with a bomb and

13 and injure the people in it.

to 14 Now, the accusation in the indictment goes on

15 assert that not only did the defendants enter into such
a plan
16 and agreement but also carried it out and did,
according to the
17 accusations, blow up that building with a bomb. And
then there
18 are included in the charges of the indictment some
eight counts
19 of premeditated first-degree murder of agents of law
20 enforcement agencies of the federal government who were
in the
21 building and died in the explosion. To these charges,
the
22 defendants entered their pleas of not guilty, thereby
creating
23 the issues to be tried.

24 The case was then moved from Oklahoma City
here to
25 Denver because of a concern about people in Oklahoma
having to

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1 serve on the jury. And then when the case was here, I
divided
2 it up, ordered separate trials for Mr. McVeigh and Mr.
Nichols,
3 upon a finding that because of possible differences in
the
4 evidence and confusion that could result, there should
be

5 separate trials and a separate jury consider the
evidence as it
6 may relate to Mr. McVeigh and a separate jury as to
7 Mr. Nichols.

8 With respect to Timothy McVeigh, there has
been a
9 trial. The jury was empaneled just as this one is
being. And
10 the result was a trial at which the evidence relating
to him
11 was considered by that jury, and they returned a guilty
12 verdict. And also that jury was then required to
consider more
13 at a second trial or hearing on the question of
punishment and
14 returned a recommendation for a death sentence.

15 Now, that was what happened earlier this year.
We're
16 starting over now with Mr. Nichols; and of course,
nothing that
17 anyone may have seen, read, or heard about the evidence
in
18 Mr. McVeigh's trial can in any way be considered in
this case.

19 And of course, the outcomes of that case cannot be
considered
20 in this case. To do so would violate the very reason
for the
21 court order for separate trials. You understand that
point?

22 A. Uh-huh.

23 Q. And you knew these things then that I've discussed,

and

24 now, we're -- we're asking questions of people
regarding their

25 ability to serve in connection with this case and to
hear the

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1 evidence as it may relate to Mr. Nichols.

2 Now, we asked you to answer a lot of questions
on this
3 questionnaire, and we appreciate your cooperation in
doing so.

4 I made copies of it, gave them to the people
who are
5 here with us for the limited purpose of our use in this
6 proceeding; but these copies haven't gone anywhere
else.

7 Obviously, there is information in here that is
personal to
8 you; and we recognize your privacy concerns and try to
balance
9 out your privacy and the public's interest in this
trial
10 proceeding. And as a part of doing that, of course, we
will

11 avoid using your name; and also, we make these
arrangements for
12 you to go and come to and from the courthouse in ways
that --
13 so you can't be photographed by the press and all that

sort of

14 thing.

15 And you were here Friday, too --

16 A. Yes, I was.

17 Q. -- right? And you know, that's another part of
this. We

18 don't know how long these things will take. So we're
sorry to

19 bring you back again. But I hope you understand the
need for

20 doing that, not knowing how long it'll take with
respect to

21 each person. And what we're going to do here is I'm
going to

22 ask you a few questions, some of which will be based on
what

23 you've already answered. We're not going over
everything all

24 over again. And then on some additional matters, I'll
ask you

25 some questions and then one of the lawyers on each side
will

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1 have some additional questions for you.

2 Now, let me assure you that there's no right
or wrong

3 answer to anything here. It's not a test in the school
sense.

asked, 4 And if you don't understand anything that you're being
questions of 5 please tell us that; and we're -- we'll be asking
any 6 a leading nature, but we're not trying to lead you into
is, 7 particular answers. And you know, all we want from you
then when 8 first of all, the factual information about you. And
them with 9 we're asking for opinions and beliefs, you just share
about 10 us, whatever it is that you honestly believe or feel
reaction 11 things. And you should not worry about anybody's
you to 12 here. This is not something where we're trying to get
what you 13 tell us what we want to know. All we want to know is
14 think on these questions. Okay?

15 A. Okay.

your 16 Q. Now, as I have it from what you've told us here in
17 responses, you were born in St. Paul, Minnesota?

18 A. That's correct.

old? 19 Q. Came to Colorado when you were seven or eight years

20 A. Seven.

to 21 Q. Seven. Okay. And went to high school in Longmont;
22 college at Boulder, University of Colorado.

23 A. Uh-huh.
24 Q. And then you earned a master's at the University of
Denver?
25 A. That's correct.

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1 Q. And sociology is the area of your studies --
2 A. That's correct.
3 Q. -- concentration. And as I understand it, you
learned a
4 good bit about statistical surveys, that kind of thing?
5 A. That's correct.
6 Q. And as I understand it, you do some of that work
now on a
7 part-time basis --
8 A. Uh-huh.
9 Q. -- for the organization mentioned at page 9. And
if
10 you'll -- you have your questionnaire there, I think,
so that
11 you can turn to your answers and we can just refer to
some of
12 these things without having to go over them.
13 You've been working with this group for, what,
eight
14 months now?
15 A. Just about, yes. I believe I started in February.

16 Q. Do you have a contract with them, or is this on an
17 as-needed basis?
18 A. It's pretty much as-needed.
19 Q. And what -- you do surveys?
20 A. I help create surveys, yes, that are used in
different
21 projects that they're working on.
22 Q. Including public-opinion-type surveys?
23 A. I wouldn't necessarily call them public opinion.
They are
24 more targeted questionnaires at different populations.
For
25 example, some citizens, people with HIV, AIDS, that
kind of

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1 thing.
2 Q. But in terms of what do they think about issues?
3 A. Yeah. What -- what they think about issues.
4 Q. So it's a -- there's a way in which a -- people are
5 identified?
6 A. Uh-huh.
7 Q. Through some computer --
8 A. Yeah.
9 Q. -- data, I assume. And then are these people
contacted by

10 telephone, or what manner are they sought out?

11 A. Usually telephone. Or mail. Mailed surveys.

12 Q. Okay. And now, do you -- does your work involve
anything

13 concerning the design of those surveys?

14 A. Yeah. I help formulate questions and actual typing
up of

15 the survey. I help design the questions and the
format.

16 Q. Okay. You work with others in doing that?

17 A. A few.

18 Q. Now, do you also have anything to do with the
19 interpretation of the results?

20 A. A little bit. I do some data analysis, as well.

21 Q. Okay. So these are public -- public issues that
involve

22 particular population groups?

23 A. Yeah. That's correct.

24 Q. And you had various jobs before that that were not
so

25 closely related to your academic career as this one?

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1 A. Yeah. It's quite different.

2 Q. And as I understand it, you're looking for
something like

3 this as a full-time job?

4 A. That's correct.

5 Q. Well, you know, jury service here would -- if you
were to

6 be on this jury, the trial would begin at a time not
yet set,

7 but in the near future; and then we cannot predict how
long the

8 trial may last, how much jury service time is involved.
And we

9 wish we could be more certain about that. But, you
know,

10 trials are human events, and it's difficult to predict
the

11 exact length of them, but it could, for purposes of our

12 planning here, involve several months. Now, have you
talked

13 about this with the people you work -- work for?

14 A. They know that I'm under possible selection, yes.

15 Q. And for this particular case?

16 A. Yes.

17 Q. When you -- did you talk with them after the
summons, or

18 did you wait --

19 A. No.

20 Q. -- until after the Jefferson County questionnaire
time?

21 A. I told them I was up for jury selection. I didn't
know

22 exactly what it was for; and then after the Lakewood, I
believe

be that 23 I told them that I still didn't know and that it could
24 I would need to go to have jury duty.
25 Q. And did they give you any reaction to that?

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1 A. Not really.
2 Q. Anything like well, you know -- I mean, I'm just
suggesting
3 possibilities, because it happens to some people --
something
4 like well, you don't want to do that and you just tell
them
5 he's guilty and you'll get off, or something like that?
6 A. Not really, no.
7 Q. Okay. Or any reaction the other way: Well, if you
get on
8 this jury, this is how you ought to decide that case?
9 A. No. No opinions were given to me.
10 Q. Well, what does this mean to you in terms of your
own
11 financial condition if you were to be serving here,
working for
12 jury fees instead of whatever you were getting paid
with this
13 company?
14 A. Yeah. I work about 10 to 15 hours a week right
now, so I'd

15 probably be making more money in the long run --

16 Q. Okay.

17 A. -- serving in jury than I would be working on a
part-time

18 basis, but --

19 Q. Well, from a financial standpoint, this service
would be

20 something you can deal with?

21 A. Yeah.

22 Q. Now, let me just ask you a few -- for a little
additional

23 information about some of the things that you answered.
On

24 page 11, we asked about various organizations with
family

25 members perhaps having been employed there. If you
will turn

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1 to that. And you see you marked two of them.

2 A. Uh-huh.

3 Q. And what does that refer to?

4 A. My brother-in-law and sister-in-law both work for
the

5 Boulder County Sheriff's Department as sheriff's
deputies.

6 Q. Okay.

7 A. And my brother-in-law used to work for a halfway
house in
8 Longmont, Colorado. The same brother-in-law.
9 Q. Same brother-in-law?
10 A. Yes.
11 Q. And you mentioned on page 20 at Question 93 the
work of
12 your in-laws?
13 A. Yes.
14 Q. Brother-in-law and sister-in-law. And are they at
the jail
15 in --
16 A. Yes.
17 Q. Work at the jail?
18 A. They are in the Boulder County Jail.
19 Q. And do you know what they do there?
20 A. Pretty much maintain inmates from what I know.
Booking.
21 That kind of thing.
22 Q. So they're essentially doing guard service?
23 A. Yes.
24 Q. Okay. And the probation refers to the brother-in-
law's
25 work in Longmont?

1 A. Uh-huh.

2 Q. Then you mention on -- let's see the page here --
page 18,
3 we asked you about any familiarity at all with certain
4 organizations and you marked several, one of which was
the New
5 World Order. What, if anything, do you know about
that, other
6 than having heard the name?

7 A. I've just heard the name. That's -- that was the
extent of
8 my familiarity with it.

9 Q. And how about Patriot Movement?

10 A. Just the same thing. Just I've heard the name used
in the
11 media before. I don't have any affiliation with it by
any
12 means.

13 Q. Do you remember the context in which you came
across that
14 title?

15 A. The Patriot Movement?

16 Q. Yes.

17 A. I believe I heard that in reference to the Ruby
Ridge
18 incidences, things like that, where people were saying
what
19 kind of groups they may have belonged with; that I
think I
20 heard it just referred to as an antigovernment group.

father 21 Q. All right. Now, on page 22, you mention that your
22 is in a business-type lawsuit -- well, a lawsuit in
connection 23 with his business.

24 A. Uh-huh.

of 25 Q. And the manner in which storm drainage -- what kind

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1 business is your father in?

2 A. It's a meat-packing business.

3 Q. And where is it?

4 A. In Longmont.

5 Q. And is this case still going on?

6 A. Yes.

7 Q. In the state court there in -- in Boulder or --

8 A. It's in Boulder County, I believe.

9 Q. Yeah. Do you know anything about it?

10 A. Just --

your 11 Q. I mean, have you talked to the lawyers, talked to

12 father about the case?

13 A. I've talked to my father about it just because I'm

talked 14 concerned because he's involved in it, so -- I haven't

15 to lawyers or anything about it, no.

16 Q. Could have an impact on his business, so it's of
concern to

17 you?

18 A. Yes.

19 Q. Well, do you have any -- you know, is there
anything about

20 that dispute and the fact that lawyers are there and
it's in

21 court that you believe would influence you in
connection with

22 jury service in this case?

23 A. No. I don't see how the two are related.

24 Q. All right. And you also had a situation where
someone

25 stole something from you and it resulted in a
prosecution,

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1 apparently?

2 A. Yes.

3 Q. And what -- what was it that was stolen?

4 A. Parts were stripped from my motorcycle.

5 Q. So were they on the motorcycle?

6 A. Yes.

7 Q. Stripped it down?

8 A. Yeah.

9 Q. And then that person was apprehended?

10 A. Yes.

11 Q. And prosecuted. And you got restitution back?

12 A. Yeah. He paid about 75 percent of what it -- of
what it

13 was -- what I had to pay to put the parts back on my
bike, to

14 buy new parts.

15 Q. How long ago was that?

16 A. It was '93 or '94.

17 Q. Oh, yeah. You said that up above. And then
somebody took

18 the license plate off your car once?

19 A. Yeah.

20 Q. But you've never heard back on that?

21 A. That was just a couple weeks ago.

22 Q. Now, you expressed an opinion up here on this same
page 22,

23 100, that you believe the criminal justice system is
working

24 adequately and then say really, it works as well as the
people

25 in it.

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1 A. Uh-huh.

lawyers, 2 Q. Which I take it means to you the jury as well as

3 judges and everybody involved; is that true?

4 A. Exactly.

5 Q. And so you're recognizing the importance of jury
service.

6 But you've never been on a jury; correct?

7 A. No, I haven't.

8 Q. And you say pretty much the same thing on page 30
at 129,

9 agreeing regarding the importance of following
instructions.

10 Now, you'll recall that when you were there in
Jefferson

11 County, in addition to explaining the background of
this case,

12 I talked also about what is involved in jury service,
what is

13 the job of the jury. And I want to review that with
you again

14 just to be clear so that that you're clear on it.

15 What a jury does, of course, is come in and
hear the

16 evidence in the case. And there are some fundamental,
you

17 know -- you mentioned instructions here, and of course,

18 detailed instructions are given at the close of the
trial.

19 It's the last thing. But before that happens, there
are some

20 preliminaries that are also reviewed, and these are the
things

States 21 that are applicable to all criminal cases in the United
are or 22 regardless of who the defendant is, what the charges
under 23 even what the court is, because these are fundamentals
important 24 our constitution, and of course, one of the most
innocence. 25 aspects is what we refer to as the presumption of

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or who 1 Any person accused of any crime, no matter what it is
charges. 2 that person is, is presumed to be innocent of those
entitles 3 And that presumption carries throughout the trial and
unless all 4 that person to an acquittal, a verdict of not guilty
the 5 of the people serving on the jury considering now only
law as 6 evidence that was presented at trial and following the
evidence 7 given in the instructions determines -- finds that the
8 shows guilt beyond a reasonable doubt.

no 9 And a defendant charged in a criminal case has
10 burden or duty of producing any witnesses, calling any

is 11 witnesses or producing any exhibits, and no person who
by the 12 charged has any responsibility to answer questions put
who is 13 lawyers or to explain anything to the jury. A person
you know, 14 accused can simply remain silent and require of the
15 prosecution -- whatever level of government that is,
16 local, state, or federal -- to bring in the evidence to
prove 17 what it's charged. And the defendant then can simply
remain 18 silent and challenge the evidence that's brought in by
19 objection to admissibility of evidence and also by the
20 cross-examination of the witnesses and so forth.

instructs 21 And then at the end of the trial, the court
-- these 22 the jury in detail as to what exactly has to be proved
and 23 are the elements of the offense -- and outlines them --
jury, 24 it's different for each charge -- and then says to the
that 25 Now, tell us after discussing it whether this evidence

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1 you've heard proves these charges beyond a reasonable

doubt.

2 And in giving that instruction, the court always in the
case in

3 which the defendant does not testify includes the
caution that

4 jurors may not consider that fact at all. That's not
something

5 that's an admission or, you know, it can't really be
discussed,

6 even, that a defendant does not testify because that's
his

7 clear right. You understand these points?

8 A. Yes.

9 Q. And what it means in practical terms, of course, is
that

10 after hearing it all and then discussing it all, that
if the

11 jury has a reasonable doubt about the defendant's
guilt, the

12 jury must give the defendant the benefit of that doubt
and find

13 him not guilty. That's their duty. Understand?

14 A. Yes.

15 Q. So what that means here, of course, in this room
this

16 morning is that Terry Nichols is with us, presumed to
be

17 innocent of these charges made against him and is
entitled to

18 the benefit of any doubt remaining after the trial is

19 completed. Do you understand that?

20 A. Yes.

21 Q. Do you have any disagreement with these points?

22 A. No.

23 Q. And so are you prepared, if you served on this
jury, to

24 follow them and apply them in this case?

25 A. Yes, I am.

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1 Q. Now, we also asked you some questions in this case
about

2 your views concerning the punishments of -- the extreme
3 punishments of life in prison with no possibility of
ever being

4 released -- the person lives the rest of his life in
prison --

5 and the punishment of death. And the reason that we
asked you

6 these questions is because the nature of the charges in
this

7 case includes the possibility of such punishment if the
8 defendant is found guilty.

9 And of course, we explained that in some
detail in

10 here. I'm referring to page 27 where there is a rather
lengthy

11 explanation in the manner that I've just talked about
that we

of a 12 presume Mr. Nichols to be not guilty. But in the event
we 13 conviction, the jury has a role to play, and therefore,
course, we 14 wanted to know something about your views. And of
beforehand, 15 didn't explain the law here, but simply asked you
you 16 before talking about the law, what you thought and what
punishments 17 thought about the appropriateness of the type of
28. If 18 that I've just mentioned. And your answers are on page
19 you would take a moment to review them.
20 A. Okay.
very 21 Q. All right. Now, is this a subject that you thought
22 much about before you ran into these questions?
23 A. I've thought about things like this before, yes.
was this 24 Q. And under what circumstances or contexts? I mean,
25 something in your studies in sociology and so forth you

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1 encountered any materials about punishment for crime?
2 A. Very little. I didn't do criminology as my
emphasis so --
3 Q. Okay.

4 A. -- just whatever I came across in my other areas of
5 interest.

6 Q. And sometimes, things like books or movies or
something
7 like that, you know, evoke responses and cause people
to think
8 about these things.

9 A. Yes.

10 Q. Has that happened in your case?

11 A. Yeah.

12 Q. And can you recall particular ones?

13 A. Not that I've felt greatly strongly about, no.

14 Q. Okay.

15 A. Just the issue in general, I've given thought to.

16 Q. Well, and you gave us answers here indicating your
thought.

17 Now, if I were to ask you the same questions this
morning,

18 would you give me the same answers?

19 A. Yeah.

20 Q. Okay. So this is, what, about -- about your point
of view

21 since you've had a point of view? Would that be --

22 A. Pretty much. Yeah. I've always -- I don't waiver
a whole

23 lot on my opinions as far as these questions go.

24 Q. Okay. So what you said here is it depends on a lot
of

25 other things; right?

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1 A. Situational, yes.

2 Q. Yeah. And you made some distinctions about the
nature of

3 the crime and particularly the innocence of the lives
lost and

4 the premeditation. Planning, I take it, is what you
mean by

5 premeditation --

6 A. Yes.

7 Q. -- in connection with that?

8 Well, let me discuss with you for a few
minutes what

9 the law is now in actuality and then ask you about it.
In

10 cases that do not involve punishments of this type, the
jury is

11 not involved at all in the sentencing decision. What
the jury

12 does is come in and hear the evidence and decide guilty
or not

13 guilty, according to the rules that we've just
mentioned. In

14 the event of a not guilty verdict, of course, the case
is over

15 for everybody. In the event of a guilty verdict, it's
still

involve 16 over for the jury in cases not like -- that do not
sentence 17 capital punishment. And in those cases, the matter of
to play. 18 goes to the judge, and the jury doesn't have any role
possible 19 And indeed, in such cases, the jury is cautioned that
-- 20 punishment is not something for them to consider. They
21 that's outside the scope of their duties.

it's in 22 But where the death penalty is involved and
among the 23 Federal Court -- and of course, there are differences
penalty. 24 states. Some cases -- some states don't have a death
law now 25 And it's varied over time, from time to time. But the

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are 1 in Federal Court where we are on federal charges which
will say 2 involved here says that if certain types of crimes are
of 3 committed -- and for purposes of this discussion, we
say that 4 that the crimes involve murder, the intentional killing
5 other people -- for such crimes, the federal statutes

6 a person found guilty beyond a reasonable doubt could
be
7 punished by imprisonment for life as we've already
mentioned --
8 you don't ever get out, there's no parole release -- or
9 secondly, by death; or thirdly, there can be a lesser
10 punishment than those two, in which case the decision
is made
11 by a judge. But the life-or-death decision is made by
a jury
12 because what the Congress has said in these statutes is
that's
13 not a question for a judge. We want the people
representing
14 the community to come in and make a decision like that.
15 Now, in the cases where judges do sentencing,
though,
16 there's no sentence passed immediately after the jury's
guilty
17 verdict because judges need to know a lot more about
the case
18 than what they heard at trial. So there is a -- an
19 information-gathering process that includes more things
about
20 the crime, circumstances of the crime, the impacts on
the
21 victim and so forth. And then there's a lot more about
the
22 defendant, and that includes just about everything
there is to
23 know about the defendant. So it includes his early
years, what

24 happens -- where he was born and raised, what kind of a
family
25 was involved, his own family, marriages, divorces,
children,

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1 military service, past criminal record if there is one,
2 employment history. And there certainly are cases
where more
3 than one person was involved in the same crime, and so
included
4 in this information can be the respective roles that
people
5 played in the crime, what was this person's role, what
was that
6 person's role. And there can be differences there, of
course.

7 And then there's a hearing and the judge
considers all
8 of these things and hears from both sides, the
prosecution and
9 the defense, and then makes the decision that is very
10 particular and individual to the person being
sentenced, and
11 that includes the crime, the circumstances of the
crime, and
12 also everything about the defendant as an individual
person.
13 And the sentences in cases involving more than
one

14 person may be quite different so that you could have a
15 probationary sentence for one person and the other one
go to
16 prison, or one person go to prison for X amount of time
and the
17 other Y amount of time. I mean, it can be different in
these
18 ways.

19 Now, so, too, with jury sentencing, there is
more to
20 be considered than just the crime. And so in the event
of a
21 guilty verdict in such a case, there is really a second
trial,
22 a full hearing of further information. And it's done
just like
23 the trial. Witnesses come in and testify, exhibits are
24 offered, the lawyers participate, and what it comes
down to is
25 submitting to the jury all of this same kind of
information

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1 that a judge uses in making a sentence. So it includes
more
2 about the crime and the circumstances of it and so does
it
3 include all of these individual things about a
defendant
4 because here, we look to the individual. You know, in

-- in

5 your academic work, you sort of look to groups and --
group
6 characteristics, but of course, in this work, we look
7 particularly to the individual, who is this person
who's being
8 sentenced and what's happened in his life, what's he
done,
9 what's been done to them. These are factors that must
be
10 included in this information.

11 Now, when it's over, however long that takes
to
12 present the second trial, the court again instructs the
jury;
13 and this time, instead of going through these legal
rules and
14 evidence and everything, summarizes what has been heard
at this
15 second hearing and says, Now, these are the things that
you've
16 heard about, and then gives to the jury a kind of
17 classification of them, dividing the information
between things
18 that we refer to as aggravating factors or
circumstances, being
19 those things that suggest that the deserved punishment
here is
20 death and at the same time outlining those things that
should
21 be considered and may be considered as mitigating
factors,

22 which is, as the term implies, mitigating against the
death
23 sentence and suggests that while the crime would
support a
24 death sentence, this person does not deserve to die for
it.
25 And included in those things, of course, would be --
role in

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1 the offense is one of them, and also included would be
all of
2 these individual characteristics. Follow me on this?
3 A. Yes.
4 Q. But then in that summing-up and outlining the
aggravating
5 and mitigating factors, the court says, Well, here are
some
6 questions you might want to consider in the debate or
7 discussion or deliberation that people on the jury may
have
8 when they're talking it over. But you can't put it
down as
9 some sort of formula. It's not a matter of if you
answer two
10 of these questions yes and four no, this is the result.
It's
11 not that kind of thing at all. Because what the jury
is being
12 asked to do is to judge a human being under all of

these

13 circumstances and whether that human being should live
or die.

14 Understand?

15 A. Uh-huh.

16 Q. And then the jury has to consider all of that, and
there's

17 really no way to characterize the final decision here
other

18 than to say perhaps that what it comes down to is a
reasoned,

19 moral judgment based upon all that you heard. And in
the end,

20 each juror must make a decision on this question of
life or

21 death. Now, do you have any question about the
process?

22 A. No.

23 Q. Given what you've been given in this explanation,
do you

24 believe that you can participate in such a process and
make

25 such a decision and include in your decision all of the

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1 information you have been given?

2 A. Yes, I do.

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

4 the lawyers, so bear with us just a bit longer, please.

5 Mr. Mearns, do you have some questions?

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

7 VOIR DIRE EXAMINATION

8 BY MR. MEARNS:

9 Q. Good morning, ma'am.

10 A. Hi.

11 Q. As the Court told you a few minutes ago, my name is
Geoff

12 Mearns, and I'm one of the lawyers for the Government
that will

13 be presenting our evidence in this case. I have just a
few

14 more questions that I'd like to follow up on with you
if that's

15 okay.

16 You told us a little bit about your education
in the

17 questionnaire and again this morning and a little bit
about --

18 about your work. Have you, in your either -- either in
your

19 education studies or where you're now working part-
time, have

20 you ever participated in any research projects relating
to the

21 criminal justice system?

22 A. No.

23 Q. Have you participated in any research projects
relating to

24 capital punishment, the issue of the death penalty?

25 A. No.

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thinking 1 Q. You told us that one of the things that you're

in 2 about doing is going back to school and getting a Ph.D.

3 sociology. Is that --

option. 4 A. Yeah. It's a -- the back burner. That's my last

is the 5 Q. Okay. Okay. Well, what's the front burner? What

6 first option? What would you like to be doing?

the right 7 A. Getting some work experience, to make sure that's

four more 8 path I want to do before I sit in school for another

9 years.

teaching? 10 Q. If you go back to school, are you thinking about

11 A. That would be one option, yes.

was 12 Q. You told us on the questionnaire that your sister

campaign 13 involved recently in a -- in a campaign, a political

14 here in Colorado.

15 A. Yes.

16 Q. Have you ever participated in any way in political
17 campaigns?

18 A. No.

19 Q. Is that something that you would want to do with
your
20 education and your experience?

21 A. May -- not as a career, no.

22 Q. You -- you told us a little bit about your view of
the
23 criminal justice system and about the -- your attitude
towards
24 the Court's instructions. Would you turn to page 25 of
your
25 questionnaire and Question 116, which is down there on
the

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1 bottom.

2 A. Uh-huh.

3 Q. Would you do me a favor and just read those two
questions
4 again, and then I would just like to ask you whether
your
5 second answer there --

6 A. Okay.

7 Q. Is that second answer that no, you wouldn't be
persuaded to

8 change your position? Is that -- is that your answer?
9 A. Depending on the argument. If I feel that they
have a
10 valid argument and I might have misunderstood
something, I
11 could be persuaded. But in general, when -- and that's
what I
12 felt this question was addressing was a more general
situation.
13 I tend to believe what I have heard as being correct,
and if
14 someone else has another opinion, of course, I'll
listen to
15 them.
16 Q. Okay. Okay. With respect to the question about
your view
17 of the Court's instructions -- that is, that you said
you
18 agreed strongly with the proposition that jurors should
follow
19 court's instructions -- do you feel the same way with
respect
20 to the Court's instructions regarding punishment,
capital
21 punishment?
22 A. Yes.
23 Q. Finally, with respect to the possibility of -- of
jurors
24 having to decide on punishment in this issue, you
understand
25 that we won't get to that -- to that second phase
unless the

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one or 1 jury has already found that Mr. Nichols is guilty of
2 more of the charges?

3 A. Yes.

capital 4 Q. Okay. You told us a little bit about your views of

instructions -- or 5 punishment. You understand from the Court's

there's no 6 do you understand from the Court's instructions that

7 automatic death penalty for these charges?

8 A. I understand that.

if we 9 Q. Okay. And so do you feel that you would be able --

to keep 10 got to a second phase in this trial, would you be able

11 an open mind about the possibility of punishment?

12 A. Yes.

evidence, both 13 Q. And you would be able to consider all of the

information 14 the evidence relating to the crime as well as the

15 about the individual defendant?

16 A. Yes.

the 17 Q. And you would do that before you decided what was

18 appropriate punishment?

19 A. Yes.

20 MR. MEARNS: Thank you, ma'am.

21 THE COURT: Mr. Woods.

22 MR. WOODS: Thank you, your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. WOODS:

25 Q. Good morning.

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1 A. Good morning.

2 Q. I'm the last one. The Judge and the prosecutor
have

3 already covered just about everything. I've only got a
couple

4 more questions, and then you'll be out of here.

5 As the Judge introduced me, my name is Ron
Woods; and

6 along with Mike Tigar, we were appointed by the federal
judge

7 in Oklahoma City in May of '95 right after the
Government

8 charged Terry Nichols on May the 10th of '95 with being

9 responsible for the bombing that occurred in Oklahoma
City.

10 How do you feel about Mr. Nichols having

11 court-appointed lawyers to represent him, to stand

trial with

12 all these lawyers?

13 A. I see -- that seems to be fair legal
representation.

14 Q. All right. No disadvantage because Mr. Nichols
didn't have

15 the money to hire his own lawyers to handle this case?

16 A. No.

17 Q. Okay. You had been reading and seeing information
about

18 the case for two-and-a-half years before you came to
Jeffco

19 Fairgrounds. You probably had a picture of Terry
Nichols in

20 your mind. What did you think when you saw Mr. Nichols
there

21 at the fairgrounds for the first time in person?

22 A. Looked pretty much what I had seen in the media.
He looks

23 just like any other person on the street.

24 Q. Have any change in your mental picture of what you
thought

25 somebody accused of this horrible crime would look
like?

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Juror No. 372 - Voir Dire

1 A. Not really. Just the same as I had seen before.

2 Q. Okay. So you -- you had seen some videos, I take
it, of

3 Mr. Nichols?

4 A. Yes.

5 Q. Were those -- what was -- what was the video? What
did you

6 see of Mr. Nichols?

7 A. I believe it's the one that has been shown over and
over

8 again of him being led out of a courthouse into a --
some kind

9 of vehicle to be led away.

10 Q. Okay.

11 A. He had an orange outfit on, I believe. Probably
some kind

12 of jail uniform.

13 Q. Do you recall how he was handcuffed, if he was?

14 A. Yes. I remember seeing him in an orange outfit
with a -- a

15 bulletproof vest and handcuffs, yes.

16 Q. Okay. And that's the one you're referring to that
you've

17 seen over and over?

18 A. Yeah. That's the --

19 Q. Okay. What kind of picture did that put in your
mind about

20 seeing somebody shackled like that with -- surrounded
by

21 guards?

22 A. It just looked like protective custody to me, which
didn't

23 seem out of the ordinary for the situation, so --

24 Q. Okay.

25 A. I mean, obviously, it's not -- it shows no
preferential or

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Juror No. 372 - Voir Dire

1 nonpreferential treatment. It's just that's -- that's
the way

2 it goes.

3 Q. Did it influence your opinion in any way as to his
guilt?

4 A. No.

5 Q. Somebody that was that shackled?

6 A. No.

7 Q. And restrained?

8 A. No.

9 Q. I take it from your work and your -- your
undergrad. degree

10 and then your master's in the work you're doing,
objectivity is

11 a very important part of being able to analyze the
data; is

12 that correct?

13 A. Yes.

14 Q. But then I take it when you're wording the surveys,
do you

15 do it from a total objective viewpoint or do you try
and find

your 16 out what people's opinions are and -- how do you word

17 surveys when you're doing them?

a 18 A. Depending on the survey, we usually work at around

19 sixth-grade reading level.

20 Q. Okay.

your 21 A. Depending on the issues. You have to kind of tone

language, not a 22 language down. You have to speak in very basic

23 lot of jargon or anything.

to -- 24 Q. And are you being objective or are you trying to --

being 25 when you get hired by people to do the survey, are you

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what type 1 hired by groups that want a survey result, or exactly

2 of surveys are you doing?

regarding the 3 A. You're usually trying to glean information

program 4 way something is being done, like whether that certain

usually 5 is being effective or not. They just want to know --

programs, the 6 by the people that are receiving the treatment or

7 recipients -- what they think about it.

8 Q. So it's totally objective, I take it?

9 A. Yes.

10 Q. Is it more or less public organizations that are
requesting

11 your company's service or is it commercial operations
more or

12 less on a marketing basis?

13 A. I'd say it's more the -- the public kind of
organizations.

14 I wouldn't really call them private. I wouldn't say
they are

15 marketing at all.

16 Q. Okay.

17 A. They are more internal information type of things.

18 Q. And you help compile the surveys and then you help
analyze

19 the data?

20 A. Yes.

21 Q. Okay. So would you agree that there is a
comparison here

22 in the criminal justice system of being objective and
looking

23 at the facts?

24 A. Yeah. I'd say there's a -- a highly correlated
method

25 about it.

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1 Q. Okay. Now, you had mentioned over on page 27 in
your

2 questionnaire --

3 A. Uh-huh.

4 Q. -- in answer to Question 123 --

5 A. Uh-huh.

6 Q. Without reading the question, you make a statement
here,

7 "Ignorance fuels a lot of opinion, but knowledge can
influence

8 opinions, as well." Where do you -- can you expand on
that a

9 little bit?

10 A. Well, I think the more people learn about
something, the

11 more solid their opinions become. And I mean,
sometimes I can

12 hear people say something and I'm just like, well, I
don't

13 necessarily agree with their opinion, but then I think
they

14 might not know something that I know. And that's
something

15 that school has definitely taught me; that something I
went

16 into -- I might not have enjoyed a certain subject, but
the

17 more I learned about something, the more I enjoyed it;
or the

18 more I learned I didn't like it. It's to have
knowledge of
19 whatever you're having -- whatever you're discussing.
That
20 just helps with your opinions.
21 Q. Okay. And the more information you get, the more
you can
22 form an opinion?
23 A. Exactly.
24 Q. One way or the other?
25 A. One way or the other. Not that it's a good or bad
opinion.

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1 Just that your opinion is solidified in what you know
-- what
2 you know.
3 Q. And you're aware in this case, there's been an
incredible
4 amount of publicity for the last two-and-a-half years;
would
5 you agree?
6 A. Yeah. I didn't pay a whole lot of attention. I
was trying
7 to finish school.
8 Q. Right.
9 A. I just kind of had more important things to do.
10 Q. When did you get your master's? This past summer?

11 A. Yes. I graduated in June.

12 Q. June of '97. Okay. Did you follow the trial of --
McVeigh
13 trial during the summer? I believe the verdict came in
in
14 June.

15 A. I remember hearing the verdict, but I didn't --
there was
16 just not -- didn't hol -- hold my attention with
everything I
17 had going on in my own life.

18 Q. Of course, it's all right to follow the press up
until the
19 judge instructed you at Jeffco, you know, Don't read
any more
20 about this so it won't influence your opinion. It's
all right
21 to have followed it from back in April 19 of '95 up
until you
22 went to Jeffco.

23 From what -- and you've checked off here on
page 33
24 the number of sources that you've had from which you
have heard
25 and read about Oklahoma City: TV news, radio news,
newspapers,

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1 conversations and heard other people discussing the

case. Do

2 you recall how many people were killed in the bombing?

3 A. I believe it's like 128 or '9.

4 Q. Okay. Do you remember whether or not there were
children

5 killed in the bombing?

6 A. Yes. There were children killed.

7 Q. And do you remember -- do you recall from what
you've seen,

8 read, or heard what the reason was that children would
be

9 killed in a bombing of a federal building?

10 A. They were in the lower-level day-care center.

11 Q. Okay. Do you remember how many children there were
out of

12 that large number of people?

13 A. I want to say 22, but --

14 Q. Okay.

15 A. Somewhere around there.

16 Q. Okay. It's not a test.

17 A. Okay.

18 Q. We're just -- we're just asking you what you
recall.

19 A. Okay.

20 Q. Do you remember how the bomb was delivered to the
building

21 from what you've seen, read, or heard?

22 A. From a Ryder truck.

23 Q. Okay. And do you remember what the Government
claims the

24 bomb was?

25 A. I want to say like sulfur -- some kind of
fertilizer

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1 components and chemicals.

2 Q. Okay. And do you remember how Mr. McVeigh was
arrested by

3 law enforcement authorities?

4 A. I think they went to his home, but I --

5 Q. I'm speaking of Mr. McVeigh. I don't want to get
you

6 confused here because we represent Mr. Nichols, but I'm
7 speaking of first Mr. McVeigh.

8 A. Mr. McVeigh.

9 Q. How he was arrested.

10 A. Not off the top of my head, I don't --

11 Q. Okay.

12 A. I don't remember.

13 Q. Do you recall from what you've seen, read, or heard
how

14 Mr. Nichols initiated contact with the law enforcement
15 authorities?

16 A. I believe they asked him some questions, but --

17 Q. Do you know how the meeting was first came about --
how the
18 meeting first came about where they were asking him
questions,
19 who initiated that meeting?
20 A. I don't think I could make a good guess at this
point.
21 Q. Okay.
22 A. Sorry.
23 Q. Okay. Okay. From what you've seen, read, or heard
-- and
24 I think you mentioned in your questionnaire that
basically,
25 your understanding is Mr. Nichols is a co-conspirator.
Is that

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Juror No. 372 - Voir Dire

1 what you recall?
2 A. That's correct.
3 Q. What do you recall from what you've seen, read, or
heard,
4 in the media as to what the Government claims Mr.
Nichols did?
5 A. I believe the Government claims he has helped
Timothy
6 McVeigh obtain the fertilizers and perhaps the renting
of the
7 truck and the organization of the plan.
8 Q. Okay. Do you recall whether or not he, Mr.

Nichols, was in

9 Oklahoma at the time of the bombing?

10 A. That, I don't recall.

11 Q. Okay. But you recall something about Mr. Nichols
helping

12 with the rental of the truck?

13 A. They were thinking about -- I remember the whole
John Doe

14 No. 2 thing going on. And from what I remember, the
media had

15 said that they didn't know if it was Mr. Nichols or
not.

16 Q. Whether or not Mr. Nichols was John Doe No. 2?

17 A. Exactly.

18 Q. Okay. So that, in your mind -- from what you've
seen,

19 read, or heard, that's still an open question as to
whether or

20 not Mr. Nichols was the John Doe No. 2?

21 A. That's correct.

22 Q. Okay. And again, we're talking about the media.
And in

23 the event you're on the jury, you'll hear what the
evidence is.

24 Now, it may seem a little strange here that we're
spending so

25 much time talking about penalty. The Judge went over
the

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1 penalty aspect of the case, as did the prosecutor. Do
you
2 understand that we're not just jumping over the guilt
or
3 innocence stage of the trial?

4 A. I understand that.

5 Q. Okay. Mr. Tigar and Mr. Nichols and myself
certainly do
6 not concede there ever will be a punishment phase of
the trial.
7 The Government's got a theory about Mr. Nichols' being
8 responsible for the bombing. We disagree with that
theory.
9 The Government goes first. They'll be calling a number
of
10 witnesses to the witness stand right here. They will
be
11 introducing documents. And we're going to be cross-
examining
12 those witnesses to a great extent. And when they rest,
even
13 though the Judge said we have no obligation to come
forward
14 with evidence, it's the Government's burden to prove to
you
15 beyond a reasonable doubt, we're going to be putting on
a
16 number of witnesses that contradict the Government's
theory.
17 So by no means are we conceding that we're going to be
in a

sits 18 penalty phase. Mr. Nichols is presumed innocent as he
burden to 19 here right now, and the Government has a very heavy
beyond a 20 prove to 12 members of the jury that he is guilty
of a 21 reasonable doubt of deliberate and premeditated murder
22 number of individuals.

in the 23 But as the Judge said, you know, we can't --
more of 24 event a jury does find Mr. Nichols guilty of one or
back in and 25 those counts, we can't then stop and bring the jury

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to do 1 question them about their views on punishment. We have
be 2 this now. It gets a little -- it's sort of awkward to
guilt, 3 talking about penalty before the jury has even decided
-- 4 but I think you understand what the process is. Am I

5 A. Yes, I do.

stage, 6 Q. -- correct? Okay. As to the guilt-or-innocence
day of 7 you've seen the horrible images on television from the

8 the bombing and afterward, the rescue efforts and the
dead
9 bodies and the children being carried out, I take it?
10 A. Yes.
11 Q. And those are images you'll probably never forget,
I would
12 surmise?
13 A. Probably not.
14 Q. In this trial, if you're on the jury, there will be
a
15 number of witnesses that will come in and tell very
emotional,
16 heart-breaking, sad stories. You'll see videos.
You'll see
17 photographs. You'll see a lot of it. Even though it's
not a
18 contested issue, nobody disagrees that the bomb
happened and
19 over 100 people were killed. But that will be very
emotional.
20 Heart-wrenching. People will be crying.
21 My question to you is can you look at that
evidence
22 for what it is, evidence of the crime which will be
very
23 emotional, and can you keep that separate when you look
at what
24 it is the Government really proved that says Terry
Nichols was
25 responsible for that? Can you keep that objective,
just look

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1 at the Government's evidence without letting your
emotion pour

2 over and influence your thinking that, oh, my God, this
is such

3 a horrible, horrible crime that we've got to find
somebody

4 responsible for it?

5 A. I believe so.

6 Q. Okay. Okay. Now, as to the penalty stage, did you
7 understand what the Judge was saying about the
mitigating and

8 the aggravating circumstances that would be offered
into

9 evidence if we get there?

10 A. Yes.

11 Q. Okay. And I take it from your answers that you
have a

12 total open mind and will be objective, listen to the

13 aggravating circumstances that the Government will say,
This is

14 a horrible crime, this person should die, and at the
same time,

15 listen to and give consideration to the mitigation
evidence of

16 the individual?

17 A. Yes.

18 Q. And you're not going into it with a -- a thought
that
19 because this is a horrible crime, that somebody should
die for
20 it?
21 A. No.
22 Q. Okay. If you're chosen on the jury, can you look
Terry
23 Nichols in the eye and tell him that you'll give him a
fair
24 trial?
25 A. Yes, I can.

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1 MR. WOODS: Okay. Thank you so much for your
time.
2 We appreciate it.
3 THE COURT: We all appreciate your time not
only
4 today, but spending Friday waiting to come in for this.
And
5 once again, we're sorry that we had to keep you waiting
all
6 day.
7 JUROR: That's quite all right.
8 THE COURT: We're going to have to keep you
waiting a
9 little while longer, too, though, on the question of
whether

before 10 you will serve in the case. It will be yet a few days
serve, so 11 we can make a final decision with respect to who will
12 we will be in touch with you and advise you and in the
that you 13 meantime, of course, continue to follow the cautions
that 14 have followed and the instructions that were given in
related to 15 regard to avoid discussion of the case or anything
read, see, 16 it and be careful about all of the things that you
a 17 and hear to avoid anything which could influence you as
18 juror, recognizing that you may very well have the
the case 19 responsibility of returning to this room and hearing
decision 20 and doing what we've talked about and making a fair
21 for both sides. Will you do that?

22 JUROR: Yes.

changes 23 THE COURT: And if anything should happen that
the 24 any of your circumstances, give us a call. You've got
25 number to call.

1 JUROR: All right.

2 THE COURT: You're excused for now.

3 JUROR: Okay. Thank you.

4 THE COURT: We'll go to 866.

5 Good morning.

6 JUROR: Good morning.

7 THE COURT: If you'll just stand for a moment
and

8 raise your right hand and take the oath from the clerk.

9 (Juror No. 866 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Please be seated there in the chair by the
microphone. And

14 you can swing that around. You don't have to talk into
the

15 microphone.

16 A. I don't?

17 Q. No. It'll pick you up where -- where you are, so
--

18 A. All right.

19 Q. -- you can forget about the microphone.

20 A. Okay.

21 Q. And of course, the only reason it's there is to
help us

22 hear you.

23 A. Okay.

24 Q. This isn't being broadcast or something like that,
you
25 understand. And you know that you've been summoned
here along

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1 with others as potentially a juror for the trial of the
case of
2 the United States against Terry Lynn Nichols. You got
a
3 summons back in July advising you of that fact. You
responded
4 to that with a short questionnaire. Then you got a
notice to
5 have you -- to ask you -- well, I guess we did more
than ask
6 you. We directed you to come out to the Jefferson
County
7 Fairgrounds' auditorium on September the 17th. And
there, I
8 met with you and other potential jurors and explained
something
9 about the case and introduced people who were there
with me,
10 and they're here again. I want to introduce them again
so you
11 know who's present this morning.

12 We have here at this first table lawyers for
the

13 Government, Mr. Lawrence Mackey, Ms. Beth Wilkinson.
They were
14 with us before. They are joined now by Mr. Patrick
Ryan and
15 Mr. Geoffrey Mearns, additional lawyers for the
Government.

16 You also met Mr. Michael Tigar, Mr. Ronald
Woods,
17 attorneys for Terry Nichols. Mr. Nichols is present,
of
18 course, and was also when we were together last.

19 Then after making these introductions, I gave
you and
20 the others present some explanations about the
background of
21 the case and what the trial was going to be about. Do
you

22 recall?

23 A. (Juror nods head.)

24 Q. You have to answer out loud so that --

25 A. Uh-huh.

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1 Q. -- the answer can be taken down by the court
reporter.

2 And then we gave you a lot of questions in
writing to

3 answer, and you did that, turned those -- that
questionnaire

4 in; and we made copies of what you answered, gave it to
these
5 people who are here in this process and participating
in it but
6 not to anybody else. And nobody else will see these
answers.
7 They're being given to us for the limited purpose of
what we're
8 doing here in jury selection. So also, we know that,
you know,
9 you've got some privacy interests to protect, and we
try to do
10 that, along with the public interest in the proceeding
here,
11 sort of balancing it. And we're not using your name
here and
12 won't be. And also, you know, you're brought back and
forth
13 here to the courthouse and from it in ways that press
14 photographers can't take your picture and that sort of
thing.

15 Now, you were here Friday, too?

16 A. Yes.

17 Q. And waited all day Friday?

18 A. Yes.

19 Q. And I'm sorry that we didn't get to you earlier,
but it is
20 very difficult to evaluate how much time it will take
with each
21 person. It varies so much according to the person, and
I hope
22 you understand that. And we are sorry to bring you

back a

23 second day. But you're here now, and let's talk about
the

24 things that we need to talk about.

25 First, I want to review again the background
of this

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1 case to make sure you understand it. We're here as a
result of

2 charges filed as a result of an explosion that took
place in

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

4 day, a federal office building over there was destroyed
by an

5 explosion. People were killed and injured. And then
charges

6 were filed in Oklahoma City in the Federal Court there
in an

7 indictment, which is a statement, a written statement
of

8 accusations made by counsel for the Government, the
lawyers for

9 the Government. And in that indictment, a man named
Timothy

10 James McVeigh, together with Terry Lynn Nichols -- and
the

11 indictment says "other persons not named" -- are
accused of a

12 conspiracy, plotting or planning, to destroy that
building with
13 a bomb and to kill and injure people in it. The
charges go on
14 to include not only the planning of it, but also
carrying it
15 out. And included also are charges of -- eight charges
of
16 first-degree murder, a -- intentional killing of eight
law
17 enforcement agents of various agencies of the national
18 government who were in the building and died in the
explosion;
19 that to these charges each defendant pleaded not
guilty,
20 thereby creating the issues for trial.

21 The case then was moved from Oklahoma City to
Denver
22 because of a concern about the people in Oklahoma
having to sit
23 on the jury. And then when the case came here, I
divided it up
24 to make two trials so that the evidence as it relates
to
25 Timothy McVeigh would be considered separately from
that that

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1 may relate to Terry Nichols and that we use two
separate

2 juries, two completely separate trials. And there has
been a
3 trial with a jury selected like this through this same
process.
4 That jury heard the evidence as it was introduced
concerning
5 Timothy McVeigh only and reached the verdict of guilty
as to
6 him. Then the jury was required to do more, to hear
more, at a
7 second trial, a penalty phase hearing, and make a
decision on
8 sentencing, and the jury returned a recommendation of a
9 sentence to death. Now, that's all over. That was
earlier
10 this year.

11 Now we're getting ready for the trial of Terry
12 Nichols. Nothing that anyone may have seen, read, or
heard
13 about the case concerning Mr. McVeigh can now be
considered
14 with respect to Mr. Nichols. We're starting entirely
over.

15 Understand?

16 A. Yes.

17 Q. And of course, those jury verdicts returned as to
18 Mr. McVeigh have no consideration here. They can't be
19 considered here. To do so would violate the whole
reason for
20 separate trials. I'm sure you understand that.

21 A. Yes.

involved 22 Q. And then we also referred to -- I did -- what is
guess 23 in jury service, just exactly what a jury does. And I
before in 24 there was a time when you were called for jury duty
25 Denver in the City and County Building, was it?

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1 A. Yes.
you. If 2 Q. And you've got your questionnaire here in front of
questions 3 you will turn to it. We're going to ask you a few
over 4 about it. We're not going to go over everything all
asking you 5 again. Don't worry about doing that. And I'll be
each side 6 some questions. And then when I'm done, a lawyer on
Okay? 7 will have a chance to ask you some additional things.
8 A. Okay.
page 26 9 Q. Now, we did ask you about former jury duty, and on
I guess, 10 is where you tell us that you had jury duty in Denver,
11 quite a while ago, was it?
12 A. Yes. It was.

13 Q. And these were both civil cases?

14 A. Yes. Uh-huh.

15 Q. One of them involved someone suing the hospital
because of

16 an outcome from a procedure that she had in the
hospital?

17 A. Right. Uh-huh.

18 Q. And do you remember that case and what the jury
decided?

19 A. Well, we didn't get to decide. We went in and they
had

20 made a -- they got together and --

21 Q. Settled it?

22 A. Settled it. Uh-huh.

23 Q. After the trial started?

24 A. After the trial had started.

25 Q. About how much had you heard? How many days were
you in

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1 court?

2 A. Just that one day.

3 Q. Okay. And then the other one, you don't remember
what that

4 was about?

5 A. It was a civil case, too. I don't remember exactly
what it

6 was, though.

7 Q. Did the jury go ahead and make a decision in that?

8 A. No, we didn't.

9 Q. Was it the same kind of thing, settled out or --

10 A. Yes, it was.

11 Q. Okay. Well, this is different in a number of
respects

12 because civil cases are handled a bit differently from
criminal

13 cases, and that is, of course, that because civil cases
are

14 essentially private disputes and usually, as in the
case you

15 mention here, something happened to a person. They
think

16 somebody is at fault and they sue for damages.

17 Now, it's quite different when we're talking
about

18 life and liberty where a person is accused of a crime.
And let

19 me just review with you quickly what is involved in our
know,

20 criminal justice system. These are things you probably
know,

21 but I want to make sure that you do so that we have a
basis of

22 understanding for the other questions. Okay?

23 Now, in -- under the Constitution of the
United

24 States, it's true in any case in which a person is
accused of

what 25 any crime, no matter where the court is or, you know,

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state, 1 level of government is proceeding, whether it's local,

of any 2 or national, or what the crime is, each person accused

presumption 3 crime is presumed to be innocent of that crime, a

person to 4 which carries throughout the trial and entitles that

minded 5 an acquittal, a verdict of not guilty unless 12 fair-

and 6 people serving on the jury listening to the evidence

to be 7 following the law decides that the evidence proves them

heard 8 guilty and proves it beyond a reasonable doubt. You've

9 of this principle before, have you?

10 A. Yes.

no duty 11 Q. And the law also says that the accused person has

burden 12 to prove himself to be not guilty. In fact, he has no

required to 13 or duty of proving anything. No person accused is

guilty 14 bring in any witnesses or exhibits or prove himself not

15 or anything else. And no person accused is required to
take
16 the witness stand and answer to any questions put to
him by the
17 lawyers in the case or to explain anything to a jury.
You can
18 just remain silent and require the prosecution to prove
the
19 case by its evidence and then challenge that evidence
through
20 objections to admissibility under rules of evidence
that we use
21 and also to cross-examine all of the witnesses.

22 And then at the end of the trial, the court
instructs
23 the jury about the particular principles of law that
are
24 applicable and then -- and says, you know, to prove
this crime,
25 you have to prove these things, the elements of the
offense.

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1 And then says to the jury, now, have these things been
proved
2 to your satisfaction beyond a reasonable doubt. And in
cases
3 where a defendant doesn't testify, the jury is told
that's not
4 something that can be considered in any way. That's
not some

5 kind of an admission or the person is afraid to answer
6 questions. You know, there are many reasons why an
innocent
7 person may not testify at a trial and simply remain
silent.

8 You understand that?

9 A. Yes.

10 Q. And then the jury, having heard the case now and
having

11 heard the instructions, talks it over, the 12 jurors.
And then

12 if there is a reasonable doubt as to whether that
evidence

13 proves the crime charged, then the jury has a duty to
return a

14 not guilty verdict. You understand that?

15 A. Yes.

16 Q. Now, that, of course, means that Terry Nichols is
in this

17 courtroom today to be -- presumed to be innocent of the
charges

18 made against him just like anybody else. You
understand that?

19 A. Yes.

20 Q. Do you accept these principles of law?

21 A. Yes.

22 Q. Do you agree with them?

23 A. Yes, I do.

24 Q. And agree to follow them if you were to serve on
this jury?

25 A. Yes. I will.

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Juror No. 866 – Voir Dire

1 Q. Now, I have some questions that I want to ask you,
some
2 additional questions about the things that you told us
in the
3 questionnaire. And understand now that while I've
talked about
4 this privacy in that we're not using your answers for
anything
5 other than this, we are public now. This is a
courtroom and a
6 public proceeding. You understand that?

7 A. Yes.

8 Q. So what is said here can be reported by anybody
present,
9 and there are some people present who are from the news
10 organizations. Understand that?

11 A. Yes.

12 Q. Now, when you got your first questionnaire, you
13 mentioned -- if there's any reason that would prevent
you --
14 you don't have that one in front of you, I understand.
But you
15 may recall we asked if there's any reason at all that
might
16 prevent you from serving on a jury, and you mention

that you

17 have a -- your grandson --

18 A. Yes.

19 Q. -- is at home.

20 A. With me. Yes.

21 Q. And living with you?

22 A. Yes. He's living with me.

23 Q. Yeah. And is he in school?

24 A. Yes.

25 Q. So is that still a concern?

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Juror No. 866 - Voir Dire

1 A. Yes. It is.

2 Q. In what way?

usually

3 A. Well, by him getting back and forth to school. I

4 take him in every morning to school.

5 Q. Isn't there a bus or something?

downtown and

6 A. Yes. But it's got -- he has to go all the way

Manual.

7 all the way back because he goes to school over to

8 Q. So, what? It's a long ride to get there?

9 A. Yes. It's a long ride. Uh-huh.

taking

10 Q. Okay. Well, have you talked to him about him maybe

11 that long ride?

12 A. No.

13 Q. Well, he can, can't he?

14 A. Well, yes -- I guess he can if he has to. I guess
he
15 would.

16 Q. Okay. Well, you know, you're doing him a good
service by

17 doing that, but we're talking now about the service of
people

18 on the jury, and that's a responsibility that people
have to

19 meet. You understand that?

20 A. Yes, I understand that.

21 Q. Okay. You didn't mention it again in your long
22 questionnaire here, so I thought maybe it was something
that

23 you'd believed you could work out.

24 A. Yes. I think I could work it out.

25 Q. Okay. Now, you are now retired?

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Juror No. 866 - Voir Dire

1 A. Yes.

2 Q. Right? And you had a career of public service
through the

3 city and you've told us about that on here?

4 A. Yes.

5 Q. And you retired about how long ago was it?

6 A. August --

7 Q. '95?

8 A. Yes.

9 Q. Okay. And you'd worked there some 20, 22 years?

10 A. 38 years.

11 Q. Oh, 38.

12 A. Uh-huh.

13 Q. Yeah. You're right. I wrote it down wrong. And
did you

14 sort of rise through the ranks, start out as -- at one
job and

15 then you worked your way up?

16 A. Yes.

17 Q. And then you had supervisory responsibilities --

18 A. Yes.

19 Q. -- during these years just before retirement?

20 A. Yes.

21 Q. Now, at this time -- you've got -- you're divorced,
as I

22 understand it?

23 A. Yes.

24 Q. And you have two grandchildren?

25 A. Yes.

Juror No. 866 - Voir Dire

1 Q. One of them is the young man we just talked about?

2 A. Yes.

3 Q. And the other is much younger?

4 A. Yes.

5 Q. Are you taking care of that grandchild, too?

6 A. No.

7 Q. Just the older one?

8 A. Just the older one.

9 Q. Okay. And these are your daughter's children?

10 A. Yes.

11 Q. On page 6, you told us your first years growing up
in the

12 family were on a farm and that was near Wiggins?

13 A. Yes.

14 Q. Is that right? And then what -- tell us a little
bit about

15 the farm. What kind of a farm was it?

16 A. Well, I was born in Wiggins. And then we had --
well, my

17 dad worked on the railroad, and we did a lot of -- we
did a lot

18 of farming. Like during the summer months, we had
cabbage,

19 green beans and things like that, tomatoes, that we
sold.

20 Q. Okay. So it was kind of a truck-garden-type thing?

21 A. Yes.
22 Q. Is that what it was?
23 A. Uh-huh.
24 Q. Right there where you lived?
25 A. Right where we lived, uh-huh.

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Juror No. 866 - Voir Dire

1 Q. Okay. Then you went to high school at -- where?
2 A. Weldona, Colorado.
3 Q. Weldona here?
4 A. Uh-huh.
5 Q. And then you had some business school here in
Denver?
6 A. Yes. I went to Barnes Business School.
7 Q. Okay. And went to work for the city not long
thereafter, I
8 take it?
9 A. Well, I worked -- first, I worked in a grocery
store as a
10 cashier, and then I went to the city.
11 Q. Okay. Now, in connection with your work with the
city, you
12 had sort of a variety of duties, I take it.
13 A. Yes, I did. Uh-huh.
14 Q. And a lot of interaction with a lot of different
15 departments in the city?

16 A. Correct. Uh-huh.

17 Q. And on page 11, we asked you about family members
employed
18 by any of the following or -- and you marked a number
of them.
19 If we can go down that list, please, where you've
marked yeses.
20 The law enforcement agencies, who's that? Why did you
mark yes
21 there?
22 A. Oh, I have a brother that's a guard out at
University
23 Hospital. I may have marked it in the wrong place, but
he's a
24 guard out at the University Hospital.
25 Q. Now, is he out there to guard prisoners who are in
the

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Juror No. 866 - Voir Dire

1 hospital?
2 A. Well, no. Just anyone, you know.
3 Q. Okay. He's not working for the Denver Sheriff's
4 Department?
5 A. No. Huh-uh.
6 Q. Working for the hospital, itself?
7 A. Right.
8 Q. Got it. So that's a security guard, but is that

the same

9 as where you marked state, county, or city law
enforcement?

10 A. Yeah. That's probably the same. Well, it's -- I
guess you

11 would call it security officer. I don't exactly, you
know --

12 Q. Okay. We understand. And you marked Department of
13 Justice.

14 A. Well, that's where my son-in-law was working in
Washington,

15 D.C. He was working over at the White House for a
while. He's

16 with the -- a attorney with the Agriculture, and he was
working

17 over at the White House doing speeches for someone over
there

18 in the White House.

19 Q. Okay. But he's actually with the Department of
20 Agriculture?

21 A. Yes. Uh-huh.

22 Q. And now is, too?

23 A. Yes. Uh-huh.

24 Q. In Washington?

25 A. Uh-huh.

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Juror No. 866 - Voir Dire

1 Q. How long has he been with the Department of
Agriculture?

2 A. About three years. Well, a little longer. He was
in

3 Jackson Hole, Wyoming, and he transferred out to
Washington,

4 D.C. About five or six years.

5 Q. Okay. Formerly in Wyoming?

6 A. Uh-huh.

7 Q. So -- and he's a lawyer?

8 A. Yes. Uh-huh.

9 Q. And has his career as a lawyer all been with the
10 government?

11 A. Yes. Uh-huh.

12 Q. And then you've got agencies using social workers.
What's
13 that about?

14 A. Well, I have a niece that -- well, she's not really
a

15 social worker, but she takes -- she works around
prisoners and

16 things in -- I don't know what you call it. But she
takes

17 blood, and she's around with -- in that department.

18 Q. Where does she work? I mean, what location?

19 A. Out in -- off of Quebec. I don't know exactly, but
she

20 goes around for Social Services and -- in different

21 departments.

22 Q. And she takes blood samples from people?

23 A. Yes. Uh-huh.

24 Q. Do you know what for? Like --

25 A. Well, for -- well, probably for like pregnancy or
-- and

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Juror No. 866 - Voir Dire

1 then, you know --

2 Q. For their health conditions?

3 A. Right. Uh-huh.

4 Q. Okay. Well, I was asking in terms of whether it
has to do

5 with people who are going into jail or something like
that.

6 A. Well, if they were in jail, she takes it so they
find out

7 if he's a father of this child.

8 Q. Oh, I see. So it's sort of Social Services where
they work

9 with children in the Social Security -- social office
--

10 A. Yes.

11 Q. -- like the welfare?

12 A. Yes. Uh-huh.

13 Q. Okay. And then on page 20, where you marked
lawyer,

14 son-in-law, that's the -- that's the man we've already
talked

15 about who is at Agriculture.
16 A. Right. Uh-huh.
17 Q. And you mention on page 22, if you will turn to
that page,
18 please, at Question 99, something about a lawsuit with
respect
19 to your daughter. Do you see that up at this top of
the page?
20 A. 99, yes.
21 Q. All right. In a general way, would you tell us
what that
22 was about.
23 A. Well, she had hurt her knee at school -- her knee
in the
24 school. And I just -- I sued the hospital and the --
and the
25 school for that -- for her knee because the school
didn't want

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Juror No. 866 - Voir Dire

1 to pay for it.
2 Q. How long ago was this?
3 A. It was in 1976.
4 Q. It's all over?
5 A. Pardon?
6 Q. It's all over?
7 A. It's all over.

8 Q. A long time ago. Did you have a lawyer --
9 A. Yes.
10 Q. -- helping her?
11 A. Uh-huh.
12 Q. Did that come out all right as far as you were
concerned?
13 A. Yes, it did.
14 Q. And on page 23, take a moment and read what you
said on
15 Question 103 and 104 and then the next page 105.
16 A. 103 --
17 Q. Yeah. Start -- I just want you to read to yourself
103,
18 104, and 105 on the next page. Now, do all of these
answers
19 refer to the same thing?
20 A. No.
21 Q. These are different things?
22 A. Different. Uh-huh.
23 Q. Would you just tell us what went on there, starting
with
24 103, where you were a witness.
25 A. Well, I was driving in my car going down the
street, and

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1 there was a gentleman that came out of a bar and he
jumped in
2 his car. He was speeding down the street; and there
was
3 several boys that were running to try to get across the
street,
4 and he hit one of them and killed him. And that was --

5 Q. Oh.

6 A. I was a witness to that.

7 Q. With a car.

8 A. Uh-huh.

9 Q. And about what would you say are the ages of the
children
10 and particularly the one who was struck?

11 A. He was seven. He was the littlest one. The others
were
12 older.

13 Q. Was this near a school?

14 A. No. It was just going down the street.

15 Q. Did the man then stop?

16 A. Yeah. He stopped and he picked up the kid and then
he
17 drove a little ways and then he turned around and then
he
18 dropped the kid back out on the grass.

19 Q. When was this?

20 A. Oh, I don't know what year it was. It's been quite
some
21 time ago.

and so 22 Q. And -- and then what happened as far as the police
23 forth?
24 A. Well, when the police came and then I did -- I just
told 25 them what I saw.

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Juror No. 866 - Voir Dire

1 Q. The man had gone?
2 A. Oh, yeah. He had -- he had left.
3 Q. Do you know if they ever caught him?
4 A. Yes, they did.
5 Q. Was there then a trial?
6 A. Yeah. There was a trial.
7 Q. Did you go to the trial?
8 A. Uh-huh.
9 Q. Did you -- were you a witness?
10 A. Yes. Uh-huh.
11 Q. And what are we talking about? More than ten years
ago? 12 More than --
13 A. Yeah. It was more than ten years ago.
14 Q. More than 15 or --
15 A. Probably about 20.
16 Q. 20. And do you remember now being at the trial,
being a

17 witness and answering questions from lawyers?

18 A. Yes. I do.

19 Q. And there was a jury?

20 A. Yes. Uh-huh.

21 Q. And this was a criminal trial, was it?

22 A. Yeah. I guess it would be.

then 23 Q. I mean, he was accused of hitting this child and

24 running away?

25 A. He was. Uh-huh.

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Juror No. 866 – Voir Dire

1 Q. And how did that case come out?

how many 2 A. Well, he got quite a few years. I can't remember

3 years, but he got quite a few years on that.

4 Q. And so the jury found him guilty?

5 A. Yes.

6 Q. And there was a sentencing?

7 A. Yes.

8 Q. Did you go to the sentencing hearing?

9 A. Yes. I was there. Uh-huh.

about a 10 Q. Now, I'm not talking about the trial. I'm talking

11 later hearing when the judge decided the sentence. Did

you go

12 to that?

13 A. I don't know if I was there or not. I can't
remember that.

14 Q. But --

15 A. But I do remember how many years he got. I don't
know

16 exactly how many years now; but I mean at that time, I
17 remember.

18 Q. Sure. Do you know how you found out what his
sentence was?

19 A. I don't know.

20 Q. Okay.

21 A. I can't remember. It's been a long time.

22 Q. Sure. We understand that. Now, the next question
then,

23 104, is a separate thing entirely?

24 A. Yes. That's a different thing. Uh-huh.

25 Q. And what happened on that one, as you now remember
it?

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Juror No. 866 - Voir Dire

1 A. I can't remember exactly.

2 Q. Was it a fight between two men, or a man and a
woman or --

3 A. It was two men. It was a fight between two men.

4 Q. Well, let me ask you if 105, the next page, has

anything to

5 do with that fight.

6 A. Pardon?

7 Q. 105 on the next page: Does that refer to this
fight?

8 A. No. This was different.

9 Q. Still a different thing?

10 A. This is different. Uh-huh.

11 Q. Okay. So with respect to the fight, was there any
12 follow-up to that? Were you ever a witness in court or
13 anything of that --

14 A. No, I wasn't.

15 Q. Were you interviewed by police?

16 A. Yes.

17 Q. And that's what this is asking, if you were
interviewed.

18 A. Oh, okay. Yes.

19 Q. And about how long ago was this?

20 A. It's been quite a while ago, too.

21 Q. Do you remember much about it?

22 A. No, I don't.

23 Q. Okay. And then on 105, now, this refers to a close
friend

24 or a relative.

25 A. Yes.

Juror No. 866 - Voir Dire

1 Q. Which is it?

2 A. Nephew. It's a relative.

3 Q. And is this the one then that you've mentioned here
4 arrested,

5 so down on -- I'm on page 24.

6 A. Uh-huh.

7 Q. And page -- and Question 109.

8 A. Uh-huh.

9 Q. Now, that's related to the 105. Is that right?

10 A. Yes. Yes.

11 Q. And that's a nephew?

12 A. Yes.

13 Q. Tell us -- your conclusion there is that the police
14 didn't

15 treat him very well. Tell us --

16 A. Well, when they -- when they picked him up, they
17 weren't --

18 they weren't nice. They weren't very nice. They just
19 weren't

20 nice to him.

21 Q. How old was this --

22 A. About 19.

23 Q. What did they pick him up for, if you know?

24 A. I can't remember exactly what they picked him up
25 for.

22 Q. Were you there?
23 A. When they picked him up?
24 Q. Yeah.
25 A. No. I wasn't there. Huh-uh.

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Juror No. 866 - Voir Dire

or from 1 Q. Well, did they pick him up from his parents' place,
2 the street, or what do you know?
3 A. From the street.
weren't 4 Q. And when you say they weren't nice to him and you
5 there, what are you relying on?
wasn't 6 A. They just -- they didn't treat him very well. He
7 treated well.
8 Q. Well, what were you told about it?
9 A. Well, they kind of knocked him around.
10 Q. Hurt him?
11 A. Well, not real bad. But they kind of knocked him
around.
12 Not real bad. Not where he had to go to the hospital
or
13 anything like that, no.
14 Q. How long ago was that incident?
15 A. That might have been about ten years ago. Yeah.

was he 16 Q. And was he then, in addition to being arrested --
17 prosecuted for something?
18 A. Yes. He was. I can't -- yes. He was.
19 Q. Was he convicted?
20 A. Yes. Uh-huh.
21 Q. Did he go to jail?
22 A. Uh-huh.
23 Q. And do you know how much time he served?
24 A. I think three years.
he 25 Q. And you -- from the information you had, you think

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the rest 1 wasn't treated well when he was arrested. How about
worked 2 of it -- the rest of the process -- do you think that
3 the way it was supposed to?
4 A. Oh, yeah. It did.
5 Q. So it's just the manner of the arrest?
6 A. Correct. Correct.
7 Q. Understand.
8 Now, we had to ask you some questions in this
9 questionnaire about your religion.

10 A. Uh-huh.

11 Q. And also your views with respect to punishment.

12 A. Uh-huh.

13 Q. Do you remember that?

14 A. Yes.

15 Q. And you told us what your religion is here. And
your -- on

16 page 12. You're very active in your church is what you
say.

17 A. Yes.

18 Q. And were you raised in this faith? Is this what
your

19 family was?

20 A. My mother was. But where we lived -- where we
lived in the

21 small town, there was not a church there. We had to
travel to

22 Fort Morgan if we wanted to go to church, yes.

23 Q. And then you go to services every week now?

24 A. Yes. Uh-huh.

25 Q. And you make mention on page 56, there is a concern
about

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1 the effect of being on a jury on the Sabbath. Now, you
know,

2 what we're talking about here on jury service is Monday
through

would be 9
3 Friday. Monday through Thursday, the time in court
4 to 5. Friday would be 9 to 1. And then Saturday and
Sunday,
5 there's no court. And we're not keeping people
overnight or on
6 weekends. So you would freely be able to go to church.

7 A. Yes.

8 Q. But then, in answering questions about punishment
-- and
9 here we now go to page 28, we had to ask you about your
views
10 concerning certain types of punishment. Normally, as
I've
11 already mentioned to you, the jury doesn't have
anything to do
12 with the question of punishment. The trial, like the
one in
13 which you were a witness, goes on before a judge, the
jury
14 returns a verdict, then there's a sentence hearing in
front of
15 the judge. And the jury isn't involved in that, you
16 understand?

17 A. Okay. Yes.

18 Q. Well, maybe you didn't understand.

19 A. I know that.

20 Q. I'm explaining it now.

21 A. Yes. I do now.

22 Q. Okay. And in those cases, the jury returns a

verdict, and

23 obviously,

24 more to

25 jury is not

then they're done. If the verdict's not guilty,

it's done for everybody. If it's guilty, then there's

be done, and that is the question of sentence. The

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can go

1 involved, and so they have discharged their duty and

2 home.

crime,

3 But the judge then has the responsibility of

4 determining the number of years, if it's that type of a

make

5 or probation or fine or whatever. And before judges

the

6 decisions like that, there's more to it than just what

Because

7 evidence was that judge and jury heard at trial.

information

8 what -- what happens next is there's a lot of

isn't just,

9 collected about the crime and the defendant. So it

case that

10 you know, the crime itself; again, referring to the

hit and

11 you were a witness on, just the fact that this boy was

12 killed and apparently the man drove on -- but what all

of the

13 consequences were to the family and all of those
things.

14 And then there's also a lot about the
defendant; who

15 is this person? How was this person born and raised?
What's

16 been involved in his life? And let's take the simple
case here

17 of a bank robbery where there was a bank robbery and
two or

18 three people were in on it, you know. One may have run
into

19 the bank and one out in front with a getaway car, and
one

20 grabbed the money and another held the gun or something
like

21 that, just by way of an example.

22 Now, in cases like that, the judge hears all
about

23 each one of these people and exactly what his role was
and what

24 the consequences were but then all about each person

25 individually, that person's background -- life history,
really,

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1 everything, you know, starting with where was he born
and

2 raised, what was the family like, what was his

employment,

3 what's been his marriages, divorces, children,
employment

4 history, military history, significant illnesses and
role in

5 the offense. All of these things. And there's a
hearing and

6 the judge hears all of that, hears from the lawyers for
the

7 prosecution and the defendant and then says: This is
the

8 sentence for this person.

9 And, you know, taking the little case that
I've

10 illustrated -- and of course, every case is big to the
people

11 in it -- but the judge may sentence these three
different

12 people in three different ways. Understand?

13 A. Yes.

14 Q. Now, under federal law, when the crime involved is
the

15 intentional killing of one or more people, then there
is the

16 possibility of other punishments besides just years in
prison.

17 And those other punishments may include -- or do
include (1) a

18 sentence to life with no possibility of ever getting
out, no

19 release on parole. You die in prison when your time
comes.

lesser 20 No. 2 is death, execution. No. 3 is there can be a
decision 21 punishment than either of those. And if there is the
what it 22 for a lesser punishment, it's up to the judge to decide
jury under 23 is. But the decision of life or death is made by a
24 federal law. You understand that?
25 A. Yes.

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the 1 Q. Did you have that understanding when you answered
2 questions on the questionnaire?

3 A. Yes, I did.

some 4 Q. So you knew, perhaps, that we would be asking you
about 5 questions about your attitudes and opinions and beliefs
6 the death penalty?

7 A. Yes.

page 27. 8 Q. And the reason that we did is explained here on

you is, 9 You may remember that explanation, but what is said to

questions, first 10 just to summarize it, before you answer these

11 of all, remember there's a presumption of innocence in

the case

12 and the fact we asked you about punishment should not
be taken

13 as any indication that there's any expectation that Mr.
Nichols

14 would be found guilty. But we have to ask you
questions

15 because in the event of a guilty verdict, then the jury
has a

16 role to play in making this life-or-death decision.
And before

17 explaining to you exactly what that role is and how it
is done,

18 we wanted to hear from you your attitudes, opinions,
beliefs,

19 religious or otherwise, about the punishment of life in
prison

20 and no release and the punishment of death. And you
answered

21 these questions.

22 A. Yes.

23 Q. Now, if you want to take a minute to review your
answers,

24 please do. But you probably know what you wrote.

25 And you've got another answer on the next
page. Page

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1 29 at number E. Item E. Okay?

2 A. Uh-huh.

3 Q. Now, is there in your church a -- some church
doctrine or

4 church teaching about the death sentence?

5 A. No. There isn't.

6 Q. All right. So this is not a matter of your
religious

7 training. This is a matter of your own opinion?

8 A. Yes.

9 Q. And have you had -- well, let me ask you this: You
know,

10 we asked you this over a month ago, these questions.
Have you

11 thought about these questions since then?

12 A. No. Not much.

13 Q. Well, if I were to ask you the same questions
today, would

14 you give me the same answers?

15 A. Yes.

16 Q. Sometimes people change, you know, after they think
about

17 it a little more; and that's why I put the question to
you. So

18 what I understand your answers to be here is on page B
--

19 excuse me -- on page 28, at No. B, you say you don't
know --

20 you don't see what it solves, putting someone to death.

21 A. Uh-huh.

22 Q. And then you say on the next one, "Certain cases,

people

23 should not be released, but it depends on the person."

24 And then D, you didn't answer because,
apparently, you

25 thought your answer at B was the same as D. Is that --
is that

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1 right?

2 A. Yeah. Uh-huh. I didn't really understand it.

3 Q. Okay. Well, let me explain that what we were
saying there

4 is -- asking you what kinds of cases would you say
would be the

5 kind of crime for which death may be an appropriate
punishment.

6 So we asked you a little beyond what's up there at B
and just

7 ask you, give us illustrations of such cases. But
that's fine.

8 You don't have to answer it.

9 A. Okay.

10 Q. And then on the next page, you say, "I could not
sentence a

11 person to death."

12 A. Right.

13 Q. Okay. Now, just explain your view on that, please.
And

views are 14 listen: Please understand you're not on trial. Your
in any 15 not on trial. When I ask you these questions, I'm not
All we 16 way trying to get you to answer one way or another.
this 17 want to know is your honest opinions and feelings about
a 18 subject, because we all know that to ask people to make
very 19 decision about the life or death of another person is a
So I 20 heavy responsibility, an awesome type of thing to do.
the 21 don't want you to think that I'm pushing you one way or
22 other. Okay?
23 A. Okay.
what 24 Q. And just -- I want you to just feel free to tell us
25 your views are and what your feelings are.

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something like 1 A. Well, I'd probably have nightmares if I did
2 that.
3 Q. Yeah.
to 4 A. I really don't see any purpose in putting a person

5 death. It doesn't bring that person back. That
person's dead.

6 It doesn't bring them back. And I don't see any
purpose -- the

7 purpose in doing that, killing someone else for another
person.

8 Q. Well, there's some who believe that by putting
someone to

9 death, that is to -- what we refer to in the law as a
general

10 deterrent, the fact that that's the kind of punishment
that

11 will keep other people from committing such a crime.
That's

12 the -- one of the thoughts behind the death sentence.
Is that

13 persuasive to you at all?

14 A. No. Because I think there's always going to be
crime.

15 That's kind of the world we live in. We live in a
world of

16 crime. And that's a way of life, so I don't think that

17 would -- I don't think that's going to hurt anybody
else.

18 Somebody else is possibly going to do the same thing.

19 Q. So where -- if you were to be on a case that
involved the

20 killing of a -- a number of people so it isn't just one
to one,

21 you know, if a person did something maybe together with
other

22 persons or alone and what he did resulted in the deaths
of many

23 people, do you see any purpose in the use of the death
sentence
24 in such a case?
25 A. No, I don't.

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1 Q. Are you unwilling to consider that when the law
provides

2 for it, that whatever the purpose may be -- the
Congress of the

3 United States, for example, has decided that there's a
purpose?

4 A. Repeat that again.

5 Q. Yeah. That was a bad way to express it. Let me
turn

6 around and tell you something about what the law is.
Okay?

7 A. Okay.

8 Q. Because we were asking you here about what you
think the

9 law ought to be and whether there ought to be
punishments like

10 this in the law. And what you've told us is you don't
think

11 so -- that is, the death sentence because you don't see
what

12 purpose it serves.

13 A. Right.

14 Q. Now, what I want to tell you is that -- and of
course,
15 there are people with your point of views, and there
are states
16 where there is no death penalty in the law. You
probably know
17 that.

18 A. Yes.

19 Q. And this is an issue that changes from time to time
in some
20 states, and they have changed their laws. But we're
here under
21 federal statutes. This is a Federal Court. We follow
the law
22 as the Congress passes it. And Congress has provided
that for
23 some crimes, a sentence to death is one of the
penalties to be
24 considered. Understand?
25 A. Yes. I understand.

5492

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1 Q. So Congress has taken the view that the death
sentence
2 serves some purpose in some kinds of cases. And the
kinds of
3 cases, generally speaking, are cases of the
intentional,
4 planned killing of other people. Murder. Premeditated
murder.

5 Understand?

6 A. Yes.

7 Q. Now, in cases of that type, where the sentence can
be
8 death, we don't have sentencing done by judges, because
the
9 Congress has also said it's not the kind of a decision
that a
10 judge should make. It's the kind of a decision that
juries
11 should make, that the 12 people serving on the jury --
and it
12 should be the same 12 people who heard the case and
came in
13 with a guilty verdict.

14 You know, there's no punishment at all,
obviously, if
15 the verdict is not guilty; so we're only talking about
a guilty
16 case -- guilty verdict. And what the Congress has
said, then,
17 is now those 12 people who heard that evidence and
returned
18 that verdict need to go through another trial and hear
a lot of
19 information about the crime, the circumstances of the
crime,
20 what happened, what the impact or effect was on victims
and
21 their families, and so forth.

22 And then also, the jury should hear all that
there is

on trial. 23 to know about the defendant, the person whose life is

judges 24 And that includes everything about him. As I told you,

So, too, 25 get information about a person before sentencing him.

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hear all 1 does the jury in making this life-or-death decision

charged and 2 there is to know about the defendant, the person

3 found guilty. And that includes all of these factors

employment 4 concerning his life, his family, you know, his

illnesses 5 history, military history, any previous crimes, major

in to 6 and divorces, children, just about everything that goes

before you 7 making up one's life, because what the law says is

8 decide about a person's life, you ought to know what is
9 involved in that life. You understand?

10 A. Yes.

phase 11 Q. And then at the end of that second trial or penalty

jury: Well, 12 hearing, the court sums it all up and says for the

13 these are the things that you've heard now. These are

the

14 things that you could consider as aggravating the crime
and

15 suggesting that death is the punishment that is
deserved; these

16 are the things that suggest that death is not a
deserved

17 punishment for this person, this individual person.
And it can

18 include things like the relative role in the offense if
other

19 persons are involved in the crime, as well. And the
court can

20 divide that up and say, you know, on this side is
aggravating,

21 suggesting death; on this side mitigating, suggesting
that

22 while the crime is one that could deserve the death
sentence,

23 this person doesn't deserve to be put to death, given
all these

24 circumstances, and then suggest to the jury some
questions that

25 they may ask of themselves. And then at the end, you
know, you

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1 can't give a formula here. It's not adding and
subtracting.

2 It's making a moral judgment about the life of another
person

talk it 3 and the crime. And then the jury has to decide. They
prison, 4 over and decide what should the punishment be: life in
5 death, or some lesser punishment.

explained 6 Do you understand the process as I have now
7 it?

8 A. Yes. Yes, I do.

jury has 9 Q. And what the jury has to do -- and you know, the
all 10 to -- there are 12 people on the jury, and they have to
end, 11 talk it over and see -- share their views. But in the
moral 12 each juror has to make a decision of life or death as a
about 13 judgment, a reasoned moral judgment about the crime and
14 the person.

15 Can you do that?

16 A. Yes.

that if 17 Q. Okay. And can you then with respect to your view
sentence, 18 you could make the law, you wouldn't have a death
in 19 understand there is one under the law as it is and that
include all 20 making the decision about the penalty, you have to
21 these things?

22 A. Yes.

23 Q. And you really have to set aside your own view
about what

24 you think the law should be. You're prepared to do
that?

25 A. Yes.

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1 THE COURT: Okay. Thank you. We have
questions from

2 Mr. Ryan.

3 MR. RYAN: Yes, your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. RYAN:

6 Q. Good morning.

7 A. Good morning.

8 Q. How are you?

9 A. Okay.

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

11 Oklahoma City, here with my fellow prosecutors to
present the

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

13 follow up on some of his Honor's.

14 You indicated in the questionnaire that you
had a

15 daughter.

16 A. Yes.

17 Q. And that she was involved in research?

18 A. Yes. Uh-huh. It was with liver transplants and
things

19 like that. Research. Uh-huh.

20 Q. Where does she work?

21 A. Washington, D.C.

22 Q. Is she --

23 A. I don't know the hospital so I can't remember the
hospital.

24 Q. All right. She doesn't work for the federal
government?

25 A. No. Huh-uh.

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1 Q. She works for a hospital there?

2 A. Yes. Uh-huh.

3 Q. And what type of research is -- you say it had to
do with

4 transplants, but what -- exactly what does she do?

5 A. Well, it's kind of -- well, the blood, too -- I
don't know

6 exactly what she does. She tells me all the time, but
I can't

7 remember exactly what she does. But --

8 Q. Has she been doing that for a while?

9 A. Yes. About three years.

10 Q. Now, you indicated that -- is it her son, I gather,
that is
11 living with you at this time?

12 A. Yes.

13 Q. Did he not want to go to Washington, D.C.?

14 A. Well, he left -- left. But he didn't like it
there. They

I
15 live in Virginia, but he didn't like it there; so after
16 retired, he came back out this year to stay with me.

17 Q. So this is his first year with you?

18 A. Yes. Uh-huh.

19 Q. Are you all getting along okay?

20 A. Yes.

21 Q. Good.

22 You also have a brother, I believe, who's in
the
23 military or was in the military at one time?

24 A. Was in the military, uh-huh.

25 Q. Is this a younger brother or older brother?

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1 A. My younger brother.

2 Q. What branch was he in?

3 A. He was with the Army.

4 Q. And how long was he in the Army; do you know?

5 A. Probably four years. It's been a long time. It's
been a

6 long time since he was in the service.

7 Q. Now, you indicated that you have witnessed a very

8 unfortunate event involving the death of a young boy.

9 A. Yes.

10 Q. And you indicated that you had testified in that
case and

11 that at one point, you knew what the sentence was.

12 A. Yes. Uh-huh.

13 Q. I realize that you can't recall it today, but as
you look

14 back on it, did you think the sentence was appropriate
or too

15 harsh or too lenient, or what were your feelings?

16 A. Well, I thought it was a little lenient.

17 Q. You felt this man should have gotten more than what
the

18 court gave him?

19 A. Yeah. Uh-huh.

20 Q. You also indicated that -- was it a nephew that had

21 committed some crime --

22 A. Yes.

23 Q. -- and the police had been rough with him when they

24 arrested him?

25 A. Uh-huh.

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1 Q. Have you, yourself, ever felt that you were the
victim of

2 misconduct --

3 A. Oh, no.

4 Q. -- by the police?

5 A. No.

6 Q. Have you had any other relatives that this has
happened to?

7 A. No.

8 Q. Or friends of yours?

9 A. Well -- well, I have friends, yeah. Friends it's
happened

10 to.

11 Q. Could you tell us about that, please.

12 A. Well, it's just been a case that hasn't been too
long ago,

13 about this last month that -- well, I don't know. I
don't know

14 if I should say or not.

15 Q. Don't tell me anyone's name.

16 A. Okay.

17 Q. I'm not asking for that. We don't want to say
anything

18 that would embarrass anyone or identify anyone.

19 A. I wasn't there, though. I mean, I wasn't there.

20 Q. What do you understand occurred?

21 A. Pardon?

22 Q. What -- what is your understanding of what
happened?

23 A. Well, just that he was kind of roughed up.

24 Q. Did he have to go to the hospital?

25 A. Well, yes.

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1 Q. And what were the nature of his injuries?

2 A. Well, he had a -- he had a broken neck. But that
wasn't --

3 but that's happened in the accident.

4 Q. That wasn't from what the police did?

5 A. No.

6 Q. What did the police do to him?

7 A. Well, just what I was seeing, that I thought they
kind of

8 roughed him; they were being a little rough to a person
that

9 had been hurt.

10 Q. How old is this friend of yours?

11 A. He was 17.

12 Q. This is a friend of your grandson's?

13 A. Yes. Uh-huh.

14 Q. All right. And you indicated your son-in-law works
for the
15 Department of Agriculture?

16 A. Yes.

17 Q. What does he do there?

18 A. I really don't know. I know he's an attorney there
for
19 them, but I don't know what it entails.

20 Q. You don't know what type of matters he works on?

21 A. Well, probably -- I think it's more corporate,
though, that
22 he's in; that he does. He's with the Forest so, you
know -- I
23 don't know exactly what he does.

24 Q. All right. Now, I'd like to return to this issue
involving
25 the death penalty and ask you why it is that you put in
the

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1 questionnaire on page 29 that "I could not sentence a
person to
2 death."
3 A. I just don't think I could, you know.
4 Q. Is that something you'd thought about before?
5 A. Yeah. I thought about it before.

6 Q. Before filling out this questionnaire?

7 A. Oh, yes. Uh-huh. Definitely.

8 Q. And why did you come to the belief about yourself
that you

9 could not do that?

10 A. Well, just the way they talk about it. The way
people talk

11 about what happens at that time.

12 Q. About what happens to the person when they are
dying?

13 A. Yes. To the person. Uh-huh.

14 Q. And what -- what have you been told, or what have
you

15 heard?

16 A. Well, just how -- how they do it and everything. I
just --

17 to me, it seemed kind of sad.

18 Q. And you didn't want to be involved with a process
that

19 involved --

20 A. Yes.

21 Q. -- that kind of sadness?

22 A. Uh-huh.

23 Q. Have you seen any books or read any books about the
subject

24 of the death penalty?

25 A. No. Huh-uh.

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1 Q. Have you seen any movies about it?

2 A. Oh, years ago.

3 Q. Nothing in the last few years?

4 A. Oh, no. Huh-uh.

5 Q. Well, as you sit there today, do you think that you
could
6 sentence someone to die?

7 A. I don't know.

8 Q. Excuse me?

9 A. I just don't know.

10 Q. Well, Judge Matsch explained to you that there was
a --
11 before I go into that, let me ask you this: Do you
think it's

12 wrong for the government or society to sentence someone
to die?

13 A. No. I don't think it's wrong. I don't think it's
-- no.

14 I don't think it's wrong.

15 Q. So it's just a question of your own personal
involvement?

16 A. Yes. My personal. Uh-huh.

17 Q. I mean, when you hear about someone who has -- did
you read

18 about this Gary Davis execution here in Colorado?

19 A. Well, I heard about it.

20 Q. A week or two ago?

21 A. I heard about it, but I didn't read about it.
22 Q. Do you know what he did?
23 A. What he did?
24 Q. Or what he allegedly did?
25 A. Yes. Uh-huh.

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case?
1 Q. What do you think about the death penalty in that
2 A. Well, he did it -- it was a horrible crime.
3 Q. Yes.
4 A. What he did. But I still felt bad for him at that
time --
5 at the last time. I did feel sorry for him.
6 Q. Do you think if you'd have been a juror in that
case and
7 heard everything and concluded that the death penalty
was
8 appropriate-- do you think you could -- you could have
been
9 part of the process that sentenced him to die?
10 MR. TIGAR: Objection.
11 THE COURT: Sustained.
12 BY MR. RYAN:
13 Q. The -- you indicated that you were concerned about
having

14 nightmares. Would you tell us more about that.
15 A. Well, I was -- I think it would bother me. I think
I would
16 think about it a lot. You know, I would think I would
think
17 about it.
18 Q. Would you be concerned about what might happen to
you?
19 A. No. I wouldn't be concerned about what happened --
what
20 happened to me, no.
21 Q. Or how you might be judged by God?
22 A. Oh, no. Huh-uh. Huh-uh.
23 Q. The question that I have for you and finally -- I'm
about
24 through with questions -- is, you know, if you were to
sit on a
25 jury in a case in which capital punishment was a
possible

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1 punishment and you listened to all of the evidence and
you came
2 to the conclusion that capital punishment was deserved,
death
3 penalty was deserved, do you think you as a juror would
be able
4 to reach that conclusion, that moral decision, to
sentence

5 someone to die?

6 A. I don't know. I -- maybe I could. I don't know.

7 Q. What are you thinking in your --

8 A. Well, I'd have -- I'd have to -- well, I'd probably

just

9 have to hear a lot and -- I'd have to think about it.

I'd

10 really have to think about it.

11 Q. As you sit here today, can you tell us whether you
could do

12 that or not?

13 A. Well, I might could.

14 MR. RYAN: Thank you.

15 THE COURT: Mr. Tigar.

16 VOIR DIRE EXAMINATION

17 BY MR. TIGAR:

18 Q. Good morning, ma'am.

19 A. Good morning.

20 Q. I'm the last one. My name is Michael Tigar. And
together

21 with Ron Woods, we -- we were appointed by the United
States

22 District Judge down in Oklahoma City way back in April
of 1995

23 to help out Terry Nichols. And I guess -- did you work
over in

24 the county building there all those years?

25 A. Yes.

Juror No. 866 - Voir Dire

there, 1 Q. Okay. Now, when you worked in the clerk's office
2 did you -- did you ever work in the -- in the -- in the
3 criminal side of the court system?

office, 4 A. No. I mostly worked in the clerk and recorder's
5 which was real estate.

saw a lot 6 Q. Oh, I see. But working around there, I guess you
7 of lawyers?

8 A. Yes, I did.

9 Q. More than you wanted, maybe?

10 A. Yes.

these 11 Q. But did you -- and you were aware that in a lot of
12 criminal cases, there is either a public defender
service which

that are 13 they have in Colorado or sometimes there are lawyers
14 just appointed to represent people.

15 A. Yes.

in a case 16 Q. Okay. So that's no problem for you that somebody
17 like this would have appointed counsel?

18 A. No.

19 Q. Okay. I wanted to ask a little bit about some of

the

20 things that you had told us, and could you please turn
to page

21 15 of your questionnaire. I wanted to ask about that.

22 Question 66.

23 A. Oh, yes.

24 Q. Yes. You had said volunteer help for mayor. Was
that on

25 a -- in connection with a political campaign or with
community

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Juror No. 866 - Voir Dire

1 service?

2 A. Well, no. That's -- he was running for mayor.

3 Q. I see. And which -- which mayoral candidate was
that?

4 A. Mayor Webb.

5 Q. Mayor Webb. And then if you would turn over to
page 16,

6 Question 73. I'm not from here, so I understood
baseball

7 Rockies, but I didn't understand the third one there,
Crosby

8 (sic).

9 A. Oh, "The Crosby (sic) Show." You wanted to know
what I

10 usually watch on TV. "The Crosby Show."

11 Q. Oh, I see. All right. You said that you like

books by

12 Mary Higgins Clark?

13 A. Right. Uh-huh.

14 Q. And those are detective novels; is that right?

15 A. No, they are not.

16 Q. They are not? Then I --

17 A. No, they are not.

18 Q. All right. Well, then that's my mistake. I
thought it

19 might have had something to do with the justice system.

20 Now, you mentioned your son-in-law works for
the

21 Department of Agriculture. Where did he go to law
school; do

22 you remember?

23 A. I think Drake College. But -- he went to Drake,
and I

24 don't know where else he went.

25 Q. Okay. And has he ever lived here in Denver?

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1 A. Yes. Uh-huh.

2 Q. Okay. Did he -- did he have a -- was he in
practice here

3 in Denver before he went with the federal government?
I mean

4 in private practice, or has he always been with the --

5 A. No. He was -- he was out at the hospital,
University
6 Hospital at first.
7 Q. I see. What did he do out there?
8 A. Well, same thing that -- well, it's a little
different, but
9 when they had cases, I guess, then he handled those --
10 Q. Okay.
11 A. -- at the hospital.
12 Q. Now, you mentioned -- if you'd look please at page
21,
13 Question 97. You said your nephew was an employee of
the
14 public defender's office. Question 97.
15 A. Oh, yes. Uh-huh.
16 Q. What kind of work did he do with them?
17 A. Well, he's an attorney. He was an attorney.
18 Q. Oh, I see.
19 A. But this is not -- this is not a blood nephew.
It's a
20 nephew by marriage.
21 Q. Oh, I see. And so is this some time ago that --
22 A. Yes. He's not there anymore.
23 Q. All right. And did you ever talk to him about the
cases he
24 was working on or --
25 A. No.

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1 Q. Okay. And then the next question, No. 98, "Do you
know any

2 district attorneys, assistant district attorneys?"

3 And it says, "Within the city where I work."

4 Those were folks that you met when you were
working at
5 the county building?

6 A. Right. Uh-huh.

7 Q. And is there anything about your contact with any
of these

8 lawyers that are involved in the -- in the justice
system that

9 would make you -- that would influence you as a juror?

10 A. Oh, no.

11 Q. Okay. From what you've said about that case that
you saw,

12 it's clear that you care about children.

13 A. Yes, I do.

14 Q. And from TV and -- and newspapers, you know there
were

15 children that were killed in Oklahoma City.

16 A. Yes.

17 Q. There was that day-care center in the federal
building.

18 A. Yes.

19 Q. There will be a lot of evidence in this case.

There will

20 be witnesses who -- whose families suffered losses.
There will

21 be pictures. There will be a lot of very emotional
evidence

22 about the destruction and about the lives that were
lost. And

23 in addition to that, I just wonder if -- would you be
able to

24 see that for what it is, as evidence of that terrible
loss that

25 nobody really disputes, and then separately look at the

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1 question what evidence, if any, does the Government
have to

2 prove, if anything, that Terry Nichols allegedly had to
do with

3 this? Could you be able to keep those separate?

4 A. Yes, I could.

5 Q. Do you remember from what you read in the paper how
6 Mr. Nichols first came into contact with law
enforcement

7 people?

8 A. Well, I didn't read too much on him at all.

9 Q. Okay.

10 A. In fact, I didn't know what it was all about. And
I did

11 ask someone, but I didn't know.

12 Q. So do you know whether he was even in Oklahoma City
on the

13 day from what you read -- on the day of the bombing?

14 A. No, I don't.

15 Q. Okay. Well, then we'll just -- we'll just leave it
like

16 that. Now, you've been asked a lot of questions. This
is the

17 last area that I want to talk a little bit about.
You've been

18 asked a lot of questions about punishment. And I want
to be

19 clear that we don't concede, Ron Woods and Terry
Nichols and I,

20 that there will ever be a punishment hearing here
because

21 Mr. Nichols is presumed innocent. He starts with a
clean

22 slate. And unless and until the Government can prove
beyond a

23 reasonable doubt that he did something wrong, there is
no

24 question of punishment. And they are -- the Government
is

25 going to present evidence in support of their theory.
We'll

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1 cross-examine all of their witnesses, and we will

present

2 witnesses of our own. And if there's a reasonable
doubt, the
3 jurors by their oath have to say not guilty. But if
4 Mr. Nichols should be convicted of one or more of these
5 charges, we can't get everybody back in here and ask
them all
6 over again, so that's why we're doing it.

7 And were you clear that if a jury in a
criminal case
8 gets to the question of punishment, that they have to
hear a
9 whole lot of information about -- in addition to what
they
10 heard at the trial on innocence or guilt?

11 A. Yes.

12 Q. Okay. And -- and at that hearing, you know, the
Government
13 presents evidence about impact on the victims. They
present
14 evidence about the seriousness of the offense, things
that
15 suggest that they -- that there should be a capital
punishment,
16 a death penalty. The defense then presents evidence --
because
17 life imprisonment is an option and they present
evidence about
18 this individual human being, the defendant, and they
present
19 evidence about the different roles that different
people might

20 have played in these events. You know, if there's two
21 different people, as the Judge said, you get a
different
22 sentence. And then and only then does the jury
consider things
23 and the jurors have an opportunity to talk amongst
themselves.
24 They hear instructions from the Court. And so let me
take it
25 one at a time. You have no problem listening to
evidence

5510

Juror No. 866 - Voir Dire

1 presented by both sides, do you?
2 A. No.
3 Q. And have an open mind about that?
4 A. Yes.
5 Q. And I gather you don't think that it's wrong for
society,
6 that the Congress was wrong to pass a death penalty?
7 A. No.
8 Q. You don't think it was wrong for them to pass a
life
9 sentence without possibility of parole as an option, do
you?
10 A. No.
11 Q. Okay. And just -- my question then is could you
listen to

evidence 12 everything, all the evidence about the impact, all the

instructions 13 about the individual, and listen to Judge Matsch's

open to 14 and then follow the law as Judge Matsch says and be

15 considering --

16 A. Yes.

17 Q. -- all the options? You could?

much 18 MR. TIGAR: All right. Well, I thank you very

19 for talking to us.

Friday 20 THE COURT: We thank you for spending all of

21 here, too, as well as today and answering all of these

is, 22 questions today. And we know the question in your mind

answer that 23 well, am I going to be on the jury. But we can't

tell you. 24 just yet. There'll be a few days yet before we can

recognize that 25 So please bear with us. Be patient with us and

5511

this same 1 there are some other people who will be going through

2 process before we make final decisions.

forward 3 So -- and the way in which I want you to go
be on the 4 from here now is with the understanding that you will
we've 5 jury and therefore have the responsibilities to do what
case. 6 been talking about, to make fair decisions in this

7 So please be careful about anything that you
may read, 8 see, or hear in any publications of any kind,
newspapers, 9 television, radio, whatever. Stay away from anything
that 10 could influence you in any way in the case. And if
anything 11 happens here that affects your availability as a juror,
let us 12 know right away. Call us. We've given you a number.
And 13 we'll be calling you when we're ready to have a
decision as to 14 who's going to be on the jury. All right?

15 JUROR: All right.

16 THE COURT: You're excused for now.

17 JUROR: Thank you.

18 THE COURT: All right. We'll take a recess.
20 19 minutes.

20 (Recess at 10:35 a.m.)

21 (Reconvened at 10:53 a.m.)

22 THE COURT: Please be seated.
23 Okay. No. 357.
24 Good morning.
25 JUROR: Good morning.

5512

hand, 1 THE COURT: Will you please raise your right
2 take an oath from the clerk, here.
3 (Juror No. 357 affirmed.)

4 THE COURTROOM DEPUTY: Thank you.

there by 5 THE COURT: Please be seated in that chair
6 the microphone, and you don't have to pay any attention
to the 7 microphone. That's just there to help us hear you.

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

refers to 10 Q. And you know that the oath that you have taken

got 11 "the matter now on trial." The jury summons that you

service in 12 identified this as being a jury summons for possible

13 the trial of United States against Terry Lynn Nichols.

14 A. I do.

15 Q. You responded to a questionnaire that we sent with

that

in 16 summons and told us of the difficulties you would have
like. 17 service on this jury because of your business and the

come out to 18 And in spite of all that, you still got a notice to

you did. 19 the Jefferson County Fairgrounds on September 17, and

case and 20 And I was there and explained some things about the

Nichols. 21 also introduced the lawyers who were with me and Mr.

this 22 I want to do that again so you know who is here with us

23 morning.

24 You were introduced to Mr. Lawrence Mackey and

for the 25 Ms. Beth Wilkinson here at this first table, lawyers

5513

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Ryan and 1 Government. And now they are joined by Mr. Patrick

Government. 2 Mr. Geoffrey Mearns as additional lawyers for the

and 3 You also were introduced to Mr. Michael Tigar

Nichols. 4 Mr. Ronald Woods, attorneys for Terry Nichols, and Mr.

5 And then I explained about the background of

the case

19 of 6 and that after an explosion in Oklahoma City on April
building 7 1995, resulting in the destruction of a federal office
building 8 with people in the building, some of the people in the
United 9 being killed and injured, charges were filed in the
Terry 10 States District Court in Oklahoma City by an indictment
persons not 11 charging a man named Timothy James McVeigh, along with
bomb that 12 Nichols -- and then the indictment refers to "other
the 13 named" -- with a conspiracy, a plan or agreement to
carried 14 building and to kill and injure people in it. And also
include, 15 charges included that they, in addition to planning it,
law 16 it out and did bomb the building. And the charges
were in 17 then, eight counts or charges of first-degree murder of
18 enforcement agents of different government agencies who
19 the building and died in the explosion.

thereby 20 The defendants entered pleas of not guilty,
21 creating the issues for trial. The case was moved from
difficulties in 22 Oklahoma City to Denver because of expected

23 asking people in Oklahoma to serve on a jury; and then
when the
24 trial came here, I ordered separate trials for Mr.
McVeigh and
25 Mr. Nichols with separate juries because of differences
with

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1 respect to the evidence as it may be as against each of
them
2 and finding that it would not be fair to either of them
to be
3 on trial at the same time because of confusion and the
like; so
4 we did order separate trials.

5 A trial has been held with respect to the
evidence
6 relating to Mr. McVeigh. A jury returned a guilty
verdict and
7 then, after an additional trial on punishment, returned
a
8 recommendation for the death sentence.

9 These are things that you already knew, I
think, when
10 you got the summons; correct?

11 A. Correct.

12 Q. And I think you knew when you got the summons that
the
13 trial of this case could well take us several months.
Nobody

14 can say in advance how long a trial is going to be.
Obviously,
15 trials, like all other human events, are subject to
things that
16 we can't plan ahead on; so nobody can say, first of
all, what
17 day the trial is going to start for sure because we
don't know
18 how long this process will be and then, of course, once
the
19 trial starts, how long it will take. But the trial
days for
20 jurors are 9 to 5 Monday through Thursday and 9 to 1 on
Friday.
21 And of course, the jury is not held overnight or on
weekends.
22 They're free at that time.
23 And I want to get right to the thing that is
-- you
24 referred to in your questionnaire, the first one and
then again
25 in the long one that you filled out -- and you did fill
out a

5515

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1 long questionnaire and we appreciate your cooperation
with us.
2 And what I understand is you and your wife
have a gun
3 shop.

4 A. Correct.

5 Q. And it is just the two of you.

6 A. Correct, and some part-time help.

7 Q. Part-time. And you've had this shop now about how
long?

8 A. Well, the gun shop I've had for a year and a half;
and

9 we've been in business, self-employed, for 12 years.

10 Q. What other kind of business were you in?

11 A. We sell gun safes.

12 Q. Sell what?

13 A. Gun safes.

14 Q. Sights (sic). Now you sell a range of firearms, I
take it,

15 long guns and handguns?

16 A. Right.

17 Q. Now, tell us, just, you know, obviously you must
have

18 thought about this, discussed it with your wife and
thought

19 about what alternatives there might be, recognizing
that

20 everybody who comes in for jury service has some degree
of a

21 problem with this impact on their lives and their
income.

22 A. It would be a real sacrifice; but, you know, I am
willing

23 to serve. We'll find a way.

those 24 Q. Okay. And the part-time help that you have: Are
25 people you could call on?

5516

Juror No. 357 - Voir Dire

1 A. Yeah, I could.

business, like 2 Q. I guess -- is there a seasonal aspect to the

3 just before big-game seasons?

4 A. Well, yeah.

5 Q. More busy than others?

6 A. Right now is a busy time, but --

and 7 Q. People come in and buy hunting rifles and scopes

8 things?

9 A. Right.

10 Q. Just before the elk season and the early deer?

11 A. Right.

come in 12 Q. And then, of course, I guess there are people who

13 for gifts?

14 A. Right.

15 Q. Come in in the holiday period.

16 A. Right.

17 Q. What are the hours of the shop?

18 A. We run it 9 to 5 Monday through Friday and 10 to 6

on

19 Saturdays.

20 Q. Okay. Well --

21 A. In the evenings -- I do all my deliveries in the
evenings.

22 Q. Okay. And you live up north a ways?

23 A. Correct.

24 Q. And, you know, if we have weather problems like we
had, you

25 can stay down here, if need be.

5517

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1 A. Right.

2 Q. In fact, you can have an option of staying in town
and not

3 having to make a commute every day.

4 So, you know, bottom line is, it's doable?

5 A. I believe I could make a way.

6 Q. Well, we appreciate your willingness to serve,
recognizing,

7 you know, we don't put out a call for volunteers to
come in and

8 see who has got a lot of time on their hands. We do
work all

9 the time with people who it will have an impact on. So
we

10 appreciate your willingness to consider this.

of the 11 Well, let me ask you a few things about some
want you 12 answers you gave to us on the questionnaire. Now, I
private. 13 to recognize that we know that your answers here are
to 14 I mean, we asked you some personal things. And we try
a case 15 balance off privacy against publicity. I mean, this is
And we 16 in which there is public interest, as you are aware.
you see 17 have taken the answers that you gave us on this long
this 18 questionnaire, made copies, provided them to the people
anybody 19 here for their limited use or limited to their use in
going to 20 process we're in. We're not going to give them to
that 21 else, and we're not going to use your name. We're not
22 use the name of your shop; and in the course of the
23 questioning, we'll try to ask these questions in ways
24 won't publicize you or identify you.

and go 25 And, you know, we also arrange for you to come

5518

Juror No. 357 - Voir Dire

1 so that press photographers and others can't take your

picture.

public, 2 But we are in open court now, and what is said here is

3 you understand. Do you?

4 A. Yeah.

you a few 5 Q. Okay. Now, after you got -- and I'm going to ask

of 6 questions about some of your answers and cover a couple

will have 7 other things with you, and then a lawyer on each side

8 a chance to ask you some more.

9 A. Right.

10 Q. So bear with us.

11 A. All right.

right or 12 Q. And recognize you're not on trial, and there is no

factual 13 wrong answer to questions here. We just want some

here, as we 14 information about you; and then when we've asked in

about some 15 certainly have, your opinions, beliefs, and feelings

what you 16 things, we don't want you to hold back. Just tell us

going to 17 do think. And it's not a question of whether it's

what 18 please us or not, you know. You know, you just tell us

guess the 19 you think about some of these things; so they're -- I

the
you one
process
questions.
If you don't understand anything, tell me about it.
A. All right.

5519

Juror No. 357 - Voir Dire

in
early in
the

1 Q. Now, a little about your background. You were born
2 Arizona?
3 A. Correct.
4 Q. And you've -- came to Colorado, I guess, pretty
5 life.
6 A. Right.
7 Q. Because your family moved up here?
8 A. Yeah.
9 Q. And, let's see, I've missed here -- Did you come to
10 town where you live now?
11 A. Yes.
12 Q. That's where you grew up?

13 A. Yes.

14 Q. And you've lived there continuously in Colorado?

15 A. Yes, I have.

16 Q. And you're married.

17 A. Correct.

18 Q. And wife works with you in the -- in the business
that

19 you're in and also did before?

20 A. Yes.

21 Q. And you're raising three children?

22 A. Correct.

23 Q. They're all school-age and in school, I take it.

24 A. Yes.

25 Q. You've got a brother there in the same community?

5520

Juror No. 357 - Voir Dire

1 A. Correct.

2 Q. And the auctions that he does: Are those farm
auctions?

3 A. Car auctions.

4 Q. Car auctions. And is he limited to that?

5 A. Yeah.

6 Q. All right. You on your work, page 9 -- you also
have

7 police supplies?

8 A. Correct.

use? 9 Q. Now, does that include the accessories that police

10 A. Yes.

11 Q. Like gun belts?

12 A. Right.

13 Q. And pepper spray and all those things?

14 A. Correct.

to what 15 Q. So it's things that police officers get in addition

work 16 they're issued by whatever law enforcement agency they

17 for.

18 A. Right.

of your 19 Q. Are a good many -- you know, in terms of percentage

of them 20 regular trade, your regular customers, about how many

21 are in police work percentagewise?

22 A. Probably 10 percent.

even if 23 Q. And you run the kind of shop, I would guess, where

24 they're not buying, they drop by and visit.

25 A. Correct.

5521

Juror No. 357 - Voir Dire

1 Q. Talk about things.

2 A. Yeah.

3 Q. Including some of their work on the street.

4 A. Correct.

5 Q. Tell you of particular incidents that might be
interesting.

6 A. Correct. My part-time help are usually law
enforcement.

7 Q. Okay. So they're moonlighting some --

8 A. Right.

9 Q. -- working for you. And it says that you worked
for your

10 father before this. Did he have a shop?

11 A. No. He was a contractor, building contractor.

12 Q. Building houses?

13 A. Yeah.

14 Q. Spec houses?

15 A. Custom homes.

16 Q. Okay. In that area where you live?

17 A. Yeah.

18 Q. Is he still living?

19 A. Yeah.

20 Q. And is he still doing that?

21 A. Part-time. He's semi-retired.

22 Q. Okay. And so you left that line of work and went
into what

23 you're doing now, going through the sights first?

24 A. I left that and I got into the safe business and

was a rep.

25 for a gun safe company and traveled for about nine
years,

5522

Juror No. 357 – Voir Dire

1 traveling the gun-show circuit.

2 Q. And selling information -- I suppose you had
display

3 materials?

4 A. Yeah. We displayed safes.

5 Q. And what geographical area did you cover with gun
shows?

6 A. We really did the whole United States, from coast
to coast.

7 Q. So you were on the road almost continuously, were
you?

8 A. About 150 nights in hotels a year.

9 Q. Were you married then?

10 A. Yeah.

11 Q. How long ago were you last on the gun-show circuit?

12 A. About three years, two years ago, before we built
our shop.

13 Q. Two years ago. So I thought you told me you were
selling

14 sights.

15 A. Safes. Gun safes.

16 Q. My mistake. I was wondering. I've got a different
picture

mind you 17 now. Thank you for straightening me out. I had in
pretty 18 had a shop just for sights, and I thought that's a
19 specialized shop. Okay.

who were 20 And of course, you got to know other people

21 on the circuit with you doing the same thing?

22 A. Right.

23 Q. For different manufacturers and distributors.

24 A. Correct.

25 Q. And when was the last gun show you worked?

5523

Juror No. 357 - Voir Dire

1 A. Let's see. Probably last fall.

2 Q. Where was that?

3 A. Denver, here.

it -- 4 Q. How -- in a typical gun show, how many days would

5 A. Just two to three days, mostly two.

your 6 Q. Yeah. And would you in addition to demonstrating

I 7 product and putting -- giving out literature about it,

8 assume -- do you circulate on the floor?

9 A. Yeah.

10 Q. See what else is there?

11 A. Yeah.

12 Q. Some -- you'd have some competitors there, I
assume,

13 selling the same kind of equipment.

14 A. Correct.

15 Q. And also some of the other things going on at the
gun show?

16 A. Yeah.

17 Q. A lot of people selling firearms of their own?

18 A. Correct.

19 Q. And some people selling -- not selling -- maybe
selling,

20 but also giving away publications?

21 A. Yes.

22 Q. And you mention on page 18 at Question 84, when we
speak of

23 organizations, one, of course, is the National Rifle

24 Association; and we understand what that organization
does.

25 And you, I assume, participate in it?

5524

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1 A. Yes.

2 Q. Have you ever been an official of the NRA?

3 A. No.

4 Q. Belong to it?

5 A. Yes.

6 Q. And then another one marked "patriot movement."

7 A. Yes.

8 Q. What do you know about that?

9 A. There is a patriot channel up around Fort Collins
area that

10 I've advertised over and been -- did some advertising,
listened

11 to.

12 Q. A channel, did you say?

13 A. Yeah.

14 Q. On what?

15 A. It's a patriot channel, radio channel.

16 Q. Oh, radio.

17 A. Yeah. I do some advertising over it.

18 Q. Now, does this organization own the station?

19 A. Yeah. I believe they own the station. I believe
it's

20 owned by a gentleman out of Greeley.

21 Q. And where does the call signal go? Do you know how
far?

22 A. It just covers probably about a 30-mile radius up
there.

23 Q. And you put paid advertising in it?

24 A. Correct.

25 Q. Do you have any way of knowing when you advertise
like that

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1 whether particular customers come in -- they've
responded --

2 they've come into your shop because of that
advertising?

3 A. We try to screen them, uh-huh.

4 Q. Do you do one of these things, like sometimes in
shops

5 they'll have a little card to fill out, "How did you
hear about

6 us?"

7 A. No, we just ask them.

8 Q. "Where did you hear about us?"

9 A. Right.

10 Q. And have there been --is that advertising that's
paid off

11 in terms of getting customers in?

12 A. It's been effective in certain markets, certain
sales that

13 we do.

14 Q. What do you understand the patriot movement to be
about?

15 A. You know, it's difficult, because there are several
16 different people and several different views of
patriot.

17 Q. Well --

18 A. In my view, I believe that it's a citizen of the

United

19 States that is a patriot, that is proud of their
country.

20 Q. Now, do you identify personally with the patriot
movement?

21 A. Not -- no, not necessarily. I don't -- you know, I
don't

22 listen to it very much; but I do, you know -- being in
the gun

23 business, there is a lot of views that I do see and
like to

24 listen to everybody's side.

25 Q. Sure. Now, you know, here again, this is an area
--

5526

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1 A. Sure.

2 Q. -- where we're not asking you to defend yourself or
your

3 views. We just want to know --

4 A. I just believe that they've got a viewpoint, and a
lot of

5 their views are what you don't normally hear on the
mainstream.

6 Q. Any of these other organizations, now that you've
thought

7 about it here, on this same page that you know anything
about?

8 You just marked those two.

9 A. No.

10 Q. Okay. At the gun shows, do you see publications
11 identifiable with the patriot movement?

12 A. Yeah, there has been some. There is always
different
13 viewpoints circulating at gun shows.

14 Q. And, you know, in your experience in going to all
these gun
15 shows, you talk with some of those people about their
views?

16 A. Yeah. Sure have.

17 Q. And I take it some of them you agree with and some
of them
18 you don't?

19 A. That's right.

20 Q. Some of them have -- of course there is a lot of
Second
21 Amendment, same kinds of things that the National Rifle
22 Association stands for --

23 A. Right.

24 Q. -- with some of them. Some of them, I understand,
though,
25 go into other areas and criticize the national
government for a

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1 number of things. And just in -- let's see. We asked
you some

your 2 things about that. And have you basically told us what

3 views are here?

4 A. What page would that be?

5 Q. I'm fumbling for it here.

of the 6 THE COURT: Can counsel help me on the "role

7 federal government" questions?

8 MR. RYAN: 126, your Honor.

9 THE COURT: 126?

10 MR. TIGAR: Page 29.

11 THE COURT: Thank you.

12 BY THE COURT:

real 13 Q. Page 29 is what I was looking for. You gave us a

to do; 14 short answer about what you think the government ought

think "Not 15 and your answer is "As little as possible" and you

intrusive." 16 good" and you think "The government is extremely

17 Right?

18 A. Yes, I do.

little 19 Q. Can you give us a little more, expand those views a

20 more for us?

lives, daily 21 A. I just believe the government intrudes on our

22 living, entirely too much.

23 Q. Including the things about like the Brady Bill --

24 A. Exactly.

25 Q. -- on getting information before a buyer -- buying

a

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1 firearm?

2 A. Yes. I can't see any benefit whatsoever to that.

3 Q. You comply with it though, do you?

4 A. Yes. Have to.

5 Q. Yeah. And with a -- in your shop, do you sell, in
addition

6 to the normal things, firearms, long guns, handguns,
sights,

7 police equipment, accessories and the like -- do you
also have

8 anything to do with explosives?

9 A. No, not at all.

10 Q. Okay. And on page -- excuse me -- page 30 at
Question 132,

11 you also talk about the Waco/Branch Davidians incident.
And

12 you say it should not have happened.

13 A. Exactly.

14 Q. Could you expand on that a little as to what you
think

15 should have happened?

like it 16 A. I just believe that it shouldn't have went down
-- I 17 went down. I think that they were wanting to get him
18 think David Koresh -- I think they had plenty of
opportunity to
I just 19 do that. He was out in the community all the time, and
20 don't believe that they -- I believe it was a blunder.
is 21 Q. And do you see that as then one that the government
22 responsible for those deaths?
the 23 A. No, I don't. I don't say they're responsible for
24 deaths. I say that they're responsible for
overreacting.
25 Q. Creating the situation?

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1 A. Exactly. But I do not feel that the government is
2 responsible for deaths there.
on both 3 Q. Okay. So, what, are you saying there is some fault
4 sides as to the outcome?
5 A. Yeah. I believe that.
6 Q. Okay. Well, again, I'm not trying to --
7 A. Sure. You know, I just believe if they would have
took the

the way 8 man, they could have took him in town a lot easier than

9 they intruded on him.

jury 10 Q. All right. Now, I want to talk a little about what

jury, have 11 service is all about, because you haven't been on a

12 you?

13 A. No.

that? 14 Q. Or ever observed a criminal trial, anything like

15 A. No.

haven't, and 16 Q. Well, most people getting jury summons here

things out 17 that's why I did -- you remember when I explained

18 there at Jefferson County Fairgrounds, I included some
19 explanation about what is the -- what are the
fundamental

20 principles applicable to criminal cases.

21 A. Uh-huh.

again so 22 Q. And I explained -- and I want to just go over it

with 23 it's clear to you and we've got some foundation to work

the United 24 here -- that every person who is accused of crime in

that an 25 States is presumed to be innocent of that crime and

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1 accusation is only that. And no person who is charged
with any
2 kind of a crime has any burden or duty of proving
himself not
3 guilty or indeed proving anything. It is up to the
prosecutors
4 representing whatever level of government is involved
to come
5 in with the evidence to prove it. And these are things
that
6 are under the Constitution of the United States, so
they apply
7 across the board no matter what the -- where the court
is in
8 this country, whether it's a local, state or Federal
Court or
9 who the defendant is or what the crime is.

10 So in all cases, the defendant begins the
trial with
11 no evidence against him, and he's presumed to be
innocent; and
12 that presumption carries throughout the trial and
entitles that
13 person to an acquittal, a verdict of not guilty, unless
12
14 fair-minded people sitting on the jury decide that the
evidence
15 presented at the trial shows him to be guilty and shows
beyond
16 a reasonable doubt. Understood?

17 A. Uh-huh.
18 Q. So a defendant doesn't have to call any witnesses
or
19 produce any evidence, and no person who is accused has
to take
20 the witness stand and answer any questions by the
lawyers or
21 offer any explanations to the jury. The accused person
can
22 simply remain silent and require the prosecute -- the
lawyers
23 for the prosecution to prove the case against him. And
of
24 course, he can challenge that case by objections to the
the
25 admissibility of evidence and by cross-examination of

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1 witnesses.
2 And then at the end of the trial when all of
the
3 evidence is in, the court gives the jury instructions
about
4 what has to be proved. These are the charges, this is
what has
5 to be proved under each charge, the elements of the
offense,
6 and also tells the jury in a case in which a defendant
does not

7 testify that that's not something they can consider.
They
8 can't hold that against him, make any assumption that
he's
9 trying to hide something, or even think about it in
terms of,
10 well, if I were innocent, I would take the stand and
tell the
11 jury that, because that's not required. And there are
many
12 reasons why a person who can be innocent does not
testify at a
13 trial. Do you accept that?
14 A. I do.
15 Q. And the jury is then asked: Well, does this
evidence prove
16 guilt beyond a reasonable doubt, or doesn't it? And if
the
17 jury, after talking it over, has a reasonable doubt,
they must
18 give the defendant the benefit of that doubt and find
him not
19 guilty. Understood?
20 A. I do.
21 Q. Do you have any disagreement with these principles?
22 A. No, not at all.
23 Q. And you're willing to follow them in this case and
presume
24 Mr. Nichols as he sits here now to be innocent of these
25 charges?

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1 A. Yes, I am.

2 Q. And the case then, you know, proceeds to trial.

And in
3 cases that do not involve punishments like imprisonment
for the
4 rest of your life without any parole -- you don't get
out, you
5 die there -- or death, the jury simply makes its
decision and
6 it's done with its job, whether that's a not guilty
verdict or
7 a guilty verdict, because in other cases involving
other
8 punishments, then it's up to the judge to decide the
9 punishment. There is a sentencing hearing after the
trial and
10 does not involve the jury. And the judge gets a lot of
11 other -- additional information about the case beyond
what was
12 presented to him at the trial, you know, because now
it's a
13 different question. The defendant has been found
guilty. Now
14 it's a question of what to do about it.

15 And before a judge makes a decision like that,
the
16 information that is given to the court includes more
things

do it. 17 about the offense conduct, you know, than just did he
something to 18 So let's take the case, for example, just to have
let's 19 talk about it, of a bank robbery and one that involved,
know; 20 say, three or four people. One went in with a gun, you
outside. That 21 one grabbed the money, one was waiting in a car
court 22 kind of thing happens. And in such a situation, the
should 23 would consider, if all of them had been convicted, what
different, 24 be done about each one of them. And it can be
court 25 because roles in the offense can be different; but the

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the bank 1 also has to consider the victims and what happened to
2 and how much money was lost and all that kind of thing.
court 3 But then as to each individual defendant, the
about a 4 wants to know just about everything there is to know
raised, 5 person: all about this person's background, born and
6 early life, family relationships, marriages, divorces,

7 children, employment history, attitudes and opinions
about some
8 things, other crimes, if any. You know, each one of us
has our
9 own story to tell, and each one of us is different from
10 everybody else because of what's happened to us, what
we've
11 done in life, and what's been done to us.

12 You agree with that?

13 A. I do.

14 Q. Okay. And so all of those individual things come
into
15 consideration, and the court hears all this at a
sentencing
16 hearing and hears from the prosecution and the defense
and then
17 says this is the sentence appropriate for each person
who has
18 been found guilty. And they can be different. I mean,
one
19 could be sentenced to ten years, one get probation, one
a fine.

20 There are all kinds of differences that can be
considered by
21 the court.

22 Now, in cases of certain types where the
punishment
23 can be death or life in prison as we've described,
under
24 federal law there is no judge to decide that. The
Congress has
25 said judges aren't going to make life-and-death

decisions.

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1 Juries do that. Understand?

2 A. I do.

3 Q. And before talking about how the jury does it, what
we

4 wanted to know from you -- and we put these questions
in the

5 questionnaire -- is what do you think about these
punishments

6 without regard for the way the law actually handles
this

7 question. But if you could make the law, what would
you say

8 about what kind of crimes would deserve this punishment
to

9 life; what kind, death? And you got those questions on
page

10 28.

11 And of course, there is a preliminary
statement on

12 page 27 that said just because we're talking about
punishments

13 here should not be misunderstood that anybody expects
to get

14 there, because we're not eliminating the presumption of

15 innocence, you know. Mr. Nichols is presumed to be
innocent

16 and therefore it's presumed there would be no
punishment stage.

17 But in the event that that should happen, we wanted to
know

18 something about your views.

19 And I take it that you understood that when
you gave

20 these answers.

21 A. Sure.

22 Q. And you gave us some views here, and I just want
you to

23 review what you said here first, so you know what you
said.

24 Do you have -- excuse me. The next page, too
-- go

25 over to the next page.

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1 A. 29?

2 Q. Yes. All right?

3 A. All right.

4 Q. Have you thought about this a little more since you
5 answered the questionnaire?

6 A. Yeah. I believe that anybody would if they were in
this

7 situation.

8 Q. Sure.

9 A. I think you always think about that, you know.

10 Q. Yeah.

11 A. It's not something easy that I take lightly.

12 Q. Exactly. And you know, you thought about, too,
whether you

13 could do this; and at the time you came out to
Jefferson

14 County, you were still hoping that I'd say, well, it's
big a

15 burden on you and your shop, we'll let you go. But we
didn't,

16 so we went ahead with this. And now the way I
understand your

17 answers today, you've thought about that, too, and you
and your

18 wife decided you could do it. Right?

19 A. If I --

20 Q. I'm talking about the impact on the shop.

21 A. Yeah, you know, where the case is, it's not that if
I want

22 to; it's just a matter that I feel it's my civil duty
to.

23 Q. Okay. Yeah.

24 A. It is going to be a big burden, and I don't -- you
know --

25 but I feel that it's my civil duty to do it.

1 Q. And making a life-and-death decision is a big
burden, too.

2 A. That's right.

3 Q. And you've thought about that some more?

4 A. Yes, I have.

5 Q. Now, do you have any changes in the answers made
here or --

6 A. No, I don't.

7 Q. Let me discuss with you just exactly what the
process is,

8 then, so that you understand it, because we didn't do
that in

9 the questionnaire. We just sort of in a broad way said
what do

10 you think.

11 We've already discussed what happens in cases
that

12 don't involve this kind of punishment. But -- and, of
course,

13 this matter of whether there ought to be a death
penalty you're

14 well aware is something that gets discussed and debated
a lot

15 and there are many different views about it, all the
way on one

16 extreme from "anybody who kills somebody else should be
killed"

17 that the death penalty should apply, to "no, there
shouldn't be

18 any death penalty at all, no crime is that bad," and
then a lot

19 in between.

20 And at times in different places, the law
changes on
21 this. We have some states in the United States that do
not
22 have the death penalty. But we're now in Federal Court
under
23 federal law, and the federal law does provide for it in
certain
24 kinds of cases. For our purposes here in talking about
it this
25 morning, let me just say that the kinds of cases are
those that

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1 involve the intentional killing of other people,
premeditated
2 murder, if you will, without getting into all the
definitions
3 of that, but planned, thought-out, and executed murder.
4 Now, the Congress has provided that a person
found
5 guilty of such a crime could (1) be put in prison for
life with
6 no chance to get out; (2) be executed through the death
7 penalty, or (3) there could be a lesser sentence, in
which case
8 a judge decides it. But the first two, life and death,
that's
9 up to the jury.

10 And the way the jury makes that decision is,
first of
11 all, there is the trial, what we've talked about: Does
the
12 evidence show guilt beyond a reasonable doubt? If the
answer
13 is no, obviously that's the end of it. If the answer
is yes,
14 however, then we go into another whole phase or trial.
And,
15 you know, this can take -- this could take as long as
the trial
16 itself because it depends on what's presented.
17 And what gets presented at this second stage
is much
18 like what I've talked about that a judge has to hear
before
19 making his sentencing decision of other kinds of
punishment.
20 So there is more to be heard about the crime and the
21 circumstances and the effects on the victims and the
like. And
22 then there is a lot more to be heard about the
defendant: Who
23 is this person whose life is in the hands of the jury?
And so
24 the information -- and this comes by way of witnesses,
just
25 like at the trial. Witnesses are called in and testify
about

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made to 1 these things, exhibits are offered, and the effort is
that is 2 let the jury know all they can consider about this, all
law says 3 involved in this human being's life, because what the
life, you 4 is that before you decide whether to take a person's
that 5 ought to know whose life you're taking and exactly who
done, 6 person is and what's happened to him in life, what he's
7 what's been done to him. Understood?
8 A. Understood.
instructions as 9 Q. And when all that is in and the court gives
10 to this part of the case, too -- and here now it's not
What is 11 outlining, you know, what exactly has to be proved.
has been 12 now discussed in the instructions is a summary of what
in this 13 heard, everything that's in that information provided
14 penalty phase. And the court divides it up into two
15 categories. And we say, on the one hand, these are the
that in 16 aggravating factors or circumstances, these are things
about in 17 your consideration of this question you want to think
18 terms of whether the death penalty is the deserved

punishment;

19 and on the other hand, these are the mitigating
circumstances,
20 mitigating factors, mitigating against a death sentence
and
21 therefore things that you can think about in deciding
that even
22 though the crime is one for which the death penalty is
23 available, this defendant does not deserve to be put to
death.

24 Then the court says, you know, here are some
questions
25 you might want to think about in discussing this among

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1 yourselves, the 12 people. These are the same 12
people who
2 decided the evidence, you understand. And -- but I
can't give
3 anybody a formula here. I can't say: This is the
equation,
4 add up 2 here and take off 4 there. It's not that kind
of a
5 decision. What it comes down to is a decision made
after these
6 12 people who heard it discuss it and then decide
whether this
7 person should live or die and in doing so consider all
that you
8 have heard, the aggravating, the mitigating, who this

is, and

of the 9 coming into the hearing with an open mind, open to all
10 possibilities of punishment. Understand?

11 A. Uh-huh.

that this 12 Q. And there is no way to say it, other than to say

or die 13 decision about whether another human being should live

moral 14 is one that comes down to a moral judgment, a reasoned

been 15 judgment based upon reasoning from everything that's

that 16 presented. And each juror is going to have to make

a 17 decision in a punishment phase in a case where there is

18 person found guilty of such a crime. Follow?

19 A. I follow you.

20 Q. Any question?

21 A. No.

you do 22 Q. And the question that we want to ask you is: Can

decision 23 that? Can you participate in that process and reach a

and 24 based upon all that you may hear with both aggravating

25 mitigating circumstances?

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1 A. I believe I could.

2 THE COURT: Now, a lawyer on each side has a
chance to

3 ask you some more on this, so bear with us yet a while
longer.

4 Will you?

5 Mr. Ryan?

6 MR. RYAN: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. RYAN:

9 Q. Good morning.

10 A. Good morning.

11 Q. My name is Pat Ryan, as the Court introduced me.
I'm here

12 with my fellow prosecutors to present the case against
Terry

13 Nichols. I have some questions for you.

14 A. All right.

15 Q. You indicated that you had been in the gun-show
business

16 for --

17 A. About ten years, I traveled.

18 Q. And about how many gun shows did you go to each
year?

19 A. As high as 40.

20 Q. And when was the last time that you were in the
gun-show

21 circuit, if you will?

22 A. Oh, two years ago.

23 Q. Approximately when?

24 A. Let's see. It would have been -- yeah, a year ago
-- two
25 years ago, about September.

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1 Q. September of '95?

2 A. Yeah. It kind of trickled out as I built my shop.
I still
3 do some gun shows, but I was just supposed to be in
Oklahoma
4 City -- or Tulsa, and I had to cancel that because of
this.

5 Q. And are you still involved with gun safes?

6 A. Yes, I am.

7 Q. Do you do that out of your shop?

8 A. Yeah. That's our main business, is the gun safes.

9 Q. When you do gun shows, do you do more than gun
safes?

10 A. Normally I just take the gun safes to the gun
shows.

11 Q. Now, let me ask you just a little bit more about
your

12 business. What type of firearms do you sell?

13 A. We sell all types. Handguns. We furnish the
police

we do 14 department with handguns up there in our area, and then
15 rifles and shotguns.
16 Q. Any semiautomatic weapons?
17 A. Yes. We do semiautos, too.
you 18 Q. And what is like the highest caliber of weapon that
19 sell?
20 A. Oh, hunting guns. .300; .300 H & H, I guess. Just
hunting 21 rifles.
22 Q. Right. Now, you indicated that you advertise on
this 23 channel called the patriot channel? Is that the name
of it? 24 A. Yes. I have advertised on it.
25 Q. That's --

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1 A. Yeah.
2 Q. And do you also listen to that channel?
3 A. I have in the past.
viewpoints 4 Q. Could you give me some sense about the kinds of
5 that are expressed?
6 A. Well, they're conservative viewpoints.

7 Q. For example? I mean, give me --

8 A. Well, you know, there are several different talk
show
9 hosts. There is, you know -- it goes from very extreme
to not
10 so extreme, you know. It just varies to whoever is
talking on
11 it. It's just like listening to any other talk show.

12 Q. Have they talked about the Oklahoma City bombing?

13 A. I'm sure they have.

14 Q. I mean, when you were listening?

15 A. I'm sure they have, yeah; but, you know, it's been
a while
16 since I've listened to it.

17 Q. Do you recall anything that was said about the
Oklahoma
18 City bombing on this channel?

19 A. I don't recall. No, I don't.

20 Q. When do you listen to this channel?

21 A. Used to be when I traveled, you know, and whenever
I'm out
22 on the road, I listen to it, travel up and down the
highway
23 there delivering safes.

24 Q. The -- do you take any of the publications --

25 A. No.

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1 Q. -- of the -- involving the patriot movement?

2 A. No.

3 Q. Have you ever heard of the magazine Media Bypass?

4 A. No.

5 Q. Have you heard of the Patriot Report?

6 A. No.

7 Q. Do you --

8 A. I'm not really into it, you know, so I don't . . .

9 Q. Is there another channel that you listen to more
10 frequently?

11 A. Yeah. I listen to music.

12 Q. Now, you indicated when you filled out the initial
13 questionnaire that service on this jury would be
devastating to
14 your business.

15 A. Uh-huh.

16 Q. Do you recall those words?

17 A. Yes, I do.

18 Q. Do you still feel that way?

19 A. It would be a real hardship, you know, I mean; but
like I
20 said, I'm willing to do if I have to do it.

21 Q. Is there something that's occurred in the last
month or so

22 that's made you feel that it would be less difficult on
your

23 business?

24 A. No. It's going to be difficult. I do most of my
25 deliveries at night, so a lot of times we work 16 hours
a day.

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1 Q. What do you deliver at night?

2 A. Safes.

3 Q. And these are safes where people would store their
firearms
4 in their home?

5 A. Correct.

6 Q. Have you been involved with customers that have had
their
7 firearms stolen?

8 A. Yes.

9 Q. Is that a common occurrence?

10 A. Yeah. I would say it's common. Yes.

11 Q. Now, I think at one point in the questionnaire you
12 indicated that -- that you either had a gun stolen from
you or
13 had been involved somehow --

14 A. Yeah. I had a gun stolen.

15 Q. Tell me about that, if you would.

16 A. I had it on consignment at a gun shop, and it got
stolen.

17 Q. Was your store robbed?

18 A. No. I just had the gun. It was before I had my
shop open.

19 I took it in to a friend of mine's shop, and he had it
in there

20 and it got stolen in there.

21 Q. Did you report it?

22 A. Yes.

113 in 23 Q. Now, you indicated -- if you would turn to Question

24 the questionnaire. If you would. It's on page 25.

25 A. All right.

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1 Q. Could you tell me why you feel that way?

2 A. I just don't believe that dealing with the past --
what I

3 directed this mostly towards is what -- with the BATF.
I put

4 down there "less than most" because I believe that what
had

5 happened in the past has not been -- I just don't
believe all

6 the things that they say.

7 Q. And are you specifically referring to an event?

8 A. Ruby Ridge was one of them.

9 Q. Can you think of anything else?

10 A. No. Mostly Ruby Ridge.

11 Q. So you wouldn't believe law enforcement officers
because of

12 what happened at Ruby Ridge?

13 A. Well it's not all law enforcement officers.

14 Q. Well, the question is general to -- no. It does
say state

15 or federal --

16 A. Uh-huh.

17 Q. -- law enforcement officers.

18 A. I'm just not -- I'm just not a -- I'm not -- how
would I

19 put it? I just don't believe a lot of times what comes
down

20 because of like Ruby Ridge and what happened in Waco,
too. I

21 believe it's not only them but it's both sides. I just
22 don't -- I don't believe what they come down onto --
and what's

23 happened in the past is what caused me to come to that

24 conclusion.

25 Q. What is it that happened at the events at Mt.
Carmel, at

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1 Waco, that would make you not believe a federal law
enforcement

2 officer?

lot of 3 A. I just believe there was a lot of cover-up there, a
4 things that didn't come out in the open.

5 Q. For example?

of stuff 6 A. For example, how the BATF came in. There is a lot
7 that I just don't believe how they came onto Waco, how
the fire 8 began; and there is a lot of stuff at Waco I just
really -- by 9 what I've observed myself I don't believe in.

10 Q. When you say "they came in," what are you --

believe 11 A. How they came in and how the fire began. I don't
12 that the fire began that-a-way.

-- when 13 Q. When you say "came in," are you talking about the
14 the tanks were used?

15 A. Yes.

16 Q. What is it you don't believe about that?

was a 17 A. I just -- I don't believe that they had to do it
18 that-a-way, and I don't believe that -- I believe there
there 19 lot of other shooting going on than what they said that
20 was going on.

officers shot 21 Q. Do you believe that federal law enforcement
22 the Davidians?

23 A. I think that that's not even debatable. I think
that they

24 did shoot some of the Davidians.

25 Q. Do you think they shot some of them in the back as
they

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1 were running from the compound?

2 A. I couldn't say.

3 Q. That is a thought you've had?

4 A. I don't know. Just couldn't say whether I think
they did

5 or didn't.

6 Q. Have you seen any of the videotapes that have been
7 prepared --

8 A. Yes, I have.

9 Q. -- concerning Waco?

10 A. Yes, I have.

11 Q. Do you recall the names of any of them?

12 A. I don't recall. I just seen one tape is all I
seen.

13 Q. Where did you see it?

14 A. At home.

15 Q. On television?

16 A. No. I bought the tape.

17 Q. What was it called?

It's

18 A. I -- you know, it's been, you know, a long time.
19 right after it happened, so I really don't recall.
20 Q. Was it called, "The Big Lie," "Waco, the Big Lie"?
21 A. You know, I couldn't tell you.
22 Q. Or "The Waco Incident"?
23 A. Some gal made it. I don't know who it was.
24 Q. A lawyer from Indianapolis?
25 A. You know, it's been so long, I don't recall.

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Juror No. 357 - Voir Dire

1 Q. Where did you obtain the tape?
2 A. Soldier of Fortune convention.
3 Q. Excuse me?
4 A. Soldier of Fortune convention.
5 Q. Did you purchase it at a table?
6 A. Yes.
7 Q. Do you remember which convention that was?
8 A. Vegas.
9 Q. Was that in 1995, 1994?
10 A. Well, probably be '95.
11 Q. Where they held a convention there, Soldier of
Fortune did,
12 at one of the hotels there in Las Vegas?

13 A. Correct.
14 Q. What else did you obtain --
15 A. That's all.
16 Q. -- other than this Waco tape?
17 A. That's all.
18 Q. Did you obtain some materials --
19 A. I was set up there as an exhibiter.
20 Q. Excuse me?
21 A. I was set up there as an exhibiter.
22 Q. And what were you selling?
23 A. Safes.
24 Q. Did you share the tape with anyone else?
25 A. No.

5549

Juror No. 357 - Voir Dire

1 Q. Do you still have it?
2 A. I imagine it's around somewhere. I haven't seen
it.
3 Q. All right. What is it about the events at Ruby
Ridge that
4 would cause you not to believe what a federal law
enforcement
5 officer had to say?
6 A. Well, just like the other day with the -- it's come
out now
7 that -- or came out in the past -- I don't keep up on

it like I

Randy 8 should. I work too much. I don't, you know -- but how

know 9 Weaver's wife got shot. I know what guns can do, and I

10 what scopes can do.

you. 11 Q. Well, explain it to me, because I'm not following

scope. 12 A. The gentleman that shot her, he shot her with that

ant on 13 That scope -- I know; I sell scopes. You could see an

head, and 14 her from the distance he was when he shot her in the

15 that's just uncalled for.

this 16 Q. Do you think that -- I mean, I would anticipate in

would 17 case that a number of federal law enforcement officers

18 testify about the events in Oklahoma City.

19 A. Uh-huh.

things 20 Q. Examinations they performed, tests they performed,

them? 21 they observed. Would you have a difficulty believing

22 A. No.

23 Q. Why is that?

24 A. I just -- I'd weigh it out.

25 Q. When you --

Juror No. 357 - Voir Dire

1 A. Just like anybody else would.

2 Q. So you are willing, I take it, then, from what
you're

3 saying, to set aside this view --

4 A. Yes.

5 Q. -- that you expressed?

6 A. I sell to a lot of police officers, you know, and a
lot of

7 them is my friends, so I'm not -- I don't want you to
feel that

8 I'm saying that they're all liars and crooks, because I
don't

9 believe that-a-way at all.

10 Q. You indicated that on Question 126 -- his Honor
covered

11 this some with you, page 29 --

12 A. Uh-huh.

13 Q. -- 127, that the government was extremely intrusive
--

14 A. Yes.

15 Q. -- in your life?

16 A. Yes.

17 Q. In what ways is the government extremely intrusive
in your

18 life?

19 A. As a small businessman, they overregulate us.

20 Q. In what way?

21 A. In every way. Taxes, on down to filling out forms.

22 Q. And taxes: You mean just the fact that you have to
pay

23 taxes?

24 A. No. Overtaxed.

25 Q. Could you explain to me what you mean?

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Juror No. 357 - Voir Dire

I'm 1 A. What I explain is I'm out trying to make a living.

2 having to work 16 hours a day, and my business is way
3 overtaxed. I pay 15 percent. I don't want to get into
taxes.

4 I pay over 15 percent just in self-employment tax,
stuff like

5 that.

6 Q. Have you ever had a dispute with the taxing agency,
state

7 or federal taxing agency?

8 A. No, I haven't.

9 Q. Do you have any tax liens?

10 A. No.

11 Q. State or federal?

12 A. No.

13 Q. The -- you also said that you had a problem with
the way

14 that you were regulated there at the shop.

15 A. Yes.

16 Q. And could you tell me more about what you mean?

17 A. I just feel we're way overregulated with gung --
gun laws.

18 Q. By -- talking about the ATF?

19 A. By ATF; correct.

20 Q. Have you had any difficulties yourself with an ATF
agent?

21 A. No, I haven't. No, I get along with BATF great.
It's not

22 the BATF enforcers, but it's our government.

23 Q. It's the law that you're having trouble with; it's
not the

24 agents?

25 A. Correct.

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Juror No. 357 - Voir Dire

I'd 1 Q. I'm going to give you a list of some gun shows, and

2 like for you to tell me whether you attended any of
these gun

3 shows. I know it may be difficult for you to remember
exactly

4 all the gun shows you attended.

5 Did you attend one in Tulsa, Oklahoma, in
either '94

6 or '95?

7 A. Yes.

8 Q. How about Kingman, Arizona, the same, '94 or '95?

9 A. No.

10 Q. How about Colorado Springs?

11 A. When?

12 Q. Either '94 or '95.

13 A. Yes.

14 Q. Niles, Ohio?

15 A. No.

16 Q. Near Akron?

17 A. No.

18 Q. Knob Creek, Kentucky?

19 A. No.

20 Q. Las Vegas, you've already told me that you did
attend that

21 one -- well, Soldier of Fortune. Did you attend any
gun shows

22 in the state of Kansas?

23 A. I used to do Wichita, but I can't tell you when my
last

24 time I was there.

25 Q. How about Salina, Kansas?

1 A. No.

2 Q. Manhattan, Kansas?

3 A. No.

4 Q. Has anyone ever -- strike that.

5 Do you -- did you have any knowledge prior to
coming

6 here today as to whether or not either Tim McVeigh or
Terry

7 Nichols had attended gun shows?

8 A. Can you repeat that?

9 Q. Yes. Prior to coming here today, did you have any
10 knowledge as to whether or not Tim McVeigh or Terry
Nichols had

11 ever attended a gun show?

12 A. Where I was at?

13 Q. No, just --

14 A. No.

15 Q. Did you know --

16 A. Oh, no.

17 Q. Did you know that they attended gun shows?

18 A. Oh, yeah.

19 Q. How did you know that?

20 A. News.

21 Q. Any other source?

22 A. No.

23 Q. Do you know -- have -- do you know whether they
attended

24 any of the gun shows that you were at?

25 A. No.

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Juror No. 357 – Voir Dire

went to 1 Q. Has anyone ever told you that, you know -- that you
that one 2 a certain gun show and that there was some indication
3 or both of them attended that gun show?

4 A. Where I was at?

5 Q. Yes.

6 A. No.

vision of 7 Q. As you search back in your memory, do you have a
8 seeing Tim McVeigh or Terry Nichols at a gun show?

9 A. No.

nitrate 10 Q. Have you ever been to a gun show in which ammonium
11 was sold, to your knowledge?

12 A. I don't get into that, so I wouldn't know. No.

13 Q. I mean, have you ever seen it being sold?

14 A. I don't know what it looks like.

Arkansas? 15 Q. Have you ever heard of a Roger Moore from Royal,

16 A. No.

17 Q. Or a Karen Anderson?

18 A. No.

19 Q. Do you recall the events in Oklahoma City?

20 A. Yes.

21 Q. As you heard them on the news?

22 A. Yes.

23 Q. Tell me what generally you've heard about that.

24 A. I just, you know -- what everybody else has, just
an
25 explosion and that they were involved in it.

5555

Juror No. 357 - Voir Dire

1 Q. Have you ever heard any other theories as to what
happened
2 other than the fact that Mr. McVeigh or Mr. Nichols is
alleged
3 to be involved?

4 A. Just by passing. Nothing -- just people talking,
but you
5 always get that.

6 Q. What have you heard from people talking?

7 A. Just heard that it couldn't be that -- a bomb that
size and
8 just, you know, theories, but nothing -- nothing ever
put
9 together.

10 Q. Couldn't be a bomb that size?

11 A. Yeah.

12 Q. What did you understand that to mean?
13 A. People talking saying that it couldn't have fit in
that
14 truck, just, you know, loosely -- loosely talking.
15 Q. A bomb that caused the kind of damage?
16 A. Exactly.
17 Q. You saw on television couldn't have fit in a truck
that
18 size?
19 A. Exactly, exactly.
20 Q. Do you have any knowledge as to what the size of
the truck
21 was?
22 A. I don't, no.
23 Q. Where did you hear this?
24 A. I don't know. I've just heard in passing at shows.
25 Q. At gun shows?

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Juror No. 357 - Voir Dire

1 A. Yes.
2 Q. What did you think when you heard it?
3 A. I don't know. I don't know if it could or it
couldn't. I
4 don't know.
5 Q. Do you consider yourself a patriot?

6 A. No.

7 MR. TIGAR: Objection, your Honor. That's
been

8 covered.

9 THE COURT: He answered it no.

10 I take it you were asking about in this
movement.

11 MR. RYAN: Yes, your Honor.

12 THE COURT: As opposed to his loyalty to the
United

13 States.

14 MR. RYAN: Yes, your Honor, of course.

15 BY MR. RYAN:

16 Q. Did you understand that's what I meant?

17 A. I understood you as meaning am I affiliated with
the

18 patriot movement.

19 Q. Yes.

20 A. I am not.

21 Q. If you would -- turn to page 28 on your
questionnaire, if

22 you would, sir.

23 A. All right.

24 Q. Would you read me what your answer is under A
there?

25 A. "Yes on some, if it's not a violent crime."

Juror No. 357 - Voir Dire

1 Q. I'm sorry. One more time for me?

2 A. "Yes, on some, nonviolent crimes."

3 Q. You believe in life imprisonment on some nonviolent
crimes?

4 A. Exactly.

5 Q. What did you have in mind?

6 A. Oh, robbery, you know, and blowing up stuff, if
somebody is

7 not hurt.

8 Q. Anything else?

9 A. No.

10 Q. All right. And then subparagraph B, would you read
me your

11 answer there.

12 A. Yes: "Where there is death."

13 Q. So your view, at least when you filled this out, on
what

14 the law should be if there is a death involved should
be the

15 death penalty.

16 A. Correct. I guess I put down death. Murder could
be -- he

17 explained what murder was. I believe murder or death,

18 murder -- either way.

19 Q. All right. Under -- I think I understand what
you've said

20 there on C.

21 A. Uh-huh.
22 Q. Would you read your answer on D, please.
23 A. "If somebody has died."
24 Q. And then on subparagraph E on the following page,
you
25 say -- does that say, "If he is guilty"?

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Juror No. 357 - Voir Dire

1 A. Right.
2 Q. What do you mean by your answer there, "If he is
guilty"?
3 A. Let me read.
4 I mean if a court of law has found him guilty.
5 Q. Of what?
6 A. A murder.
7 Q. Then what?
8 A. I believe in the death penalty.
9 Q. Now, you heard his Honor's instruction to you today
about
10 what the law is --
11 A. Uh-huh.
12 Q. -- as contrasted to what you have here on the
13 questionnaire. The question I have for you: In a case
in
14 which someone had been convicted of murdering people,
would you

15 be willing to listen to all of the evidence with
respect to the
16 person and to the crime itself?
17 A. Yes.
18 Q. Before reaching a verdict on the sentence?
19 A. Yes.
20 Q. Do you have a view as to what the sentence should
be after
21 you've considered all of the evidence?
22 A. Explain yourself more.
23 Q. Yes. If you've convicted someone of murdering
people, are
24 you open to giving that person who had murdered people
a life
25 sentence?

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Juror No. 357 - Voir Dire

Judge,
1 A. It just depends, I guess. If we're told by the
given in
2 Here's what we have -- I don't understand what we're
something
3 the regulations we're given by law to go by. If it's
if
4 in it would say that we shouldn't, then I wouldn't; but
murder,
5 you're asking me if somebody has been found guilty of
6 do I feel that they should get the death penalty?

7 Q. Yes.

8 A. Correct.

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Well, it gets confusing. I went over with you what
the

12 process is.

13 A. Right.

14 Q. And how there are aggravating factors and
mitigating

15 factors and how, before you can decide a punishment,
you have

16 to decide whether it is a just punishment for a
particular

17 human being.

18 A. Yes, sir. I could listen to the evidence.

19 VOIR DIRE EXAMINATION

20 BY MR. RYAN:

21 Q. And after you listened to all of the evidence, are
you open

22 to giving a person who had murdered people a life
sentence, as

23 opposed to the death penalty?

24 A. I would have to see it, yes. If I would see it.

25 Q. Excuse me?

1 A. Yes, I could.

2 MR. RYAN: Thank you, your Honor.

3 THE COURT: Mr. Woods?

4 MR. WOODS: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. WOODS:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. I'm the last one. The Judge has covered most of
this. The

10 prosecutor has covered some. I've just got a few
questions. I

11 don't want you to feel like you're being cross-examined
on your

12 views. I've just got a few questions to go over with
you.

13 Along with As the Judge said, my name is Ron Woods.

14 Mike Tigar, we were appointed by the judge -- district
judge in

15 Oklahoma City shortly after May 10, '95, when the
Government

16 here accused Mr. Nichols of being responsible for that
bombing

17 that occurred on April 19, '95.

18 How do you feel about Mr. Nichols' having
19 court-appointed lawyers, which means taxpayer-funded
lawyers,

20 to represent him here in this trial against all these

21 Government lawyers?

22 A. I feel that's fine.

23 Q. It's wrong?

24 A. It's right.

25 Q. I'm sorry. I just didn't hear you. Okay. So we
don't

5561

Juror No. 357 - Voir Dire

1 start off with any disadvantage --

2 A. No.

3 Q. -- by being court-appointed lawyers. Mr. Nichols
didn't

4 have the money to pay for a lawyer.

5 A. No.

6 Q. You checked off that you had followed this case
quite a bit

7 and listed all the sources. You probably had some
vision in

8 mind, some thought in mind as to what Mr. Nichols
looked like

9 from having seen the publicity over two-and-a-half
years. What

10 did you think when you saw Mr. Nichols out there at the

11 fairgrounds last month when you came and saw him in
person for

12 the first time?

13 A. Looked just like me and you.

in your 14 Q. Did it have any impact on what you had -- pictured
15 mind as to Mr. Nichols?
16 A. Not necessarily.
17 Q. Okay. And what about today, seeing him closer?
18 A. No.
prior to 19 Q. Okay. I assume you had seen him on television
20 seeing him on coming out at Jeffco. What visions do you recall
21 television? What images do you recall?
22 A. The orange jumpsuit or the bulletproof vest.
23 Q. Okay. Did you see that more than once?
24 A. Yeah.
mind, 25 Q. Did that cause any presumption of guilt in your

5562

Juror No. 357 - Voir Dire

1 seeing him shackled like that?
2 A. No.
3 Q. All right. I want to turn over in your
questionnaire to
4 page 129. Excuse me. I'm sorry.
5 Page 30, Question 129.
6 And the question is: "Do you agree or
disagree that
7 it is important to follow this court's instructions?"

And you

8 checked off "agree strongly."

9 A. Yes, sir.

10 Q. Can you expand on that a little bit?

11 A. If I didn't agree with it, I wouldn't be here
today.

12 Q. That's a good point. Any further expansion?

13 A. No.

14 Q. Okay. You realize our country is one based on
laws?

15 A. Yes.

16 Q. Everybody is equal under the law.

17 giving You realize that the Court is going to be

18 instructions, as he already has; but throughout the
course of

19 this trial, if you're picked to serve on a jury, that
you would

20 be required to follow the Court's instructions if you
were on

21 the jury?

22 A. Yes.

23 Q. And can you do that?

24 A. Yes.

25 covered on Q. I want to go over one aspect that the Government

Juror No. 357 - Voir Dire

law
1 Question 113. You checked off that you would believe
2 enforcement officers less than others.

3 A. Uh-huh.

4 Q. If the Court were to instruct you that the jury is
to have
5 no preconceived ideas about which witnesses will be
more

6 credible than others -- that is, the jury is to listen
to all
7 witnesses and then make their own decisions based on
their
8 testimony and all the evidence as to which witnesses
were

9 credible -- could you follow that instruction?

10 A. Yes.

11 Q. You mentioned --

12 THE COURT: If I may just interject.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. That is the instruction -- I mean, that is the law.
You
16 have to judge --

17 A. Exactly.

18 Q. -- you have to judge witnesses for what they say
and
19 whether it contradicts or doesn't contradict what
somebody else

20 said without regard to who they are. That's what Mr.

Woods is

21 asking.

22 A. Just because I don't -- just because there has been
some of

23 them that hasn't been truthful in the past is no reason
why I

24 can't decipher what is true and what isn't. Everybody
that

25 speaks in here isn't going to tell the truth.

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Juror No. 357 - Voir Dire

1 MR. WOODS: Thank you. Thank you for
clarifying.

2 VOIR DIRE EXAMINATION

3 BY MR. WOODS:

4 Q. You mentioned that you have a lot of friends
working in law

5 enforcement. In fact, you have some working for you, I
take

6 it.

7 A. Correct.

8 Q. In fact, they're in law enforcement?

9 A. Correct.

10 Q. You don't disbelieve them because they're in law
11 enforcement.

12 A. Correct.

13 Q. You mentioned that you do have some disputes on

some

14 untruths being told in the Ruby Ridge incident and in
the Waco
15 incidents.

16 A. Correct.

17 Q. Were you referring to the Ruby Ridge incident where
the FBI
18 supervisor in Washington, Mr. Kehoe, was convicted and
19 imprisoned for destroying a report that analyzed that
Ruby
20 Ridge incident?

21 MR. MACKEY: Judge, objection.

22 THE COURT: Overruled.

23 JUROR: I was speaking about the shooting
itself.

24 BY MR. WOODS:

25 Q. Had you heard or read or seen anything about the
FBI's

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Juror No. 357 - Voir Dire

1 follow-up investigation into that and the report that
was to be
2 provided to the court?

3 A. I just briefly heard about it over the news.

4 Q. Had you heard anything about the FBI agent being
convicted?

5 A. No.

6 Q. Okay.

7 A. I know that it was in court.

8 Q. Okay. So I take it that's just one episode that
you had
9 seen and heard a little bit about and you felt somebody
wasn't
10 telling the truth on that one episode; is that correct?

11 A. Where I come from on this here, too, is working
with local
12 law enforcement. Local law enforcement, the majority
of the
13 ones I deal with, do not trust the federal law
enforcement.

14 Q. Okay. But you say your dealings with the ATF, you
have no
15 problem?

16 A. I have no problem with.

17 Q. With them personally?

18 A. I've had no problems at all with BATF.

19 Q. And I take it you've been dealing with BATF for a
number of
20 years?

21 A. Yeah.

22 Q. That's part of the regulations --

23 A. Exactly.

24 Q. -- in the gun business. Is that correct?

25 A. That's correct.

Juror No. 357 - Voir Dire

1 Q. You don't have any problem believing their --
whatever they

2 tell you, I take it.

3 A. No.

4 Q. Okay. Now, as to the Waco incident, you mentioned
that you

5 have some problems with the facts that have been
propounded by

6 the government's version of that. Did you have a view
as to

7 the original raid by ATF on the Branch Davidians,
February 28

8 of '93?

9 A. I just believe it was totally uncalled for. I
believe they

10 could have took him. He was in town. He wasn't a
fugitive.

11 They could have took him.

12 Q. Okay. And then as to the final confrontation on
April 19,

13 '93, did you have a view as to that, as to what the
government

14 put out were the facts?

15 A. Yeah. I believe that it was unfactual; that it
wasn't

16 right.

17 Q. Now, I take it those are two isolated events. It's
not

18 going to affect how you view witnesses that come in

here and

19 testify about this case?

20 A. Correct.

Is that 21 Q. You've been to 40 gun shows a year for ten years.

22 a rough estimate?

did 40 23 A. -- the last year that I traveled, I traveled and I

24 of them.

probably did 25 Q. Was that a pattern that you mentioned that you

5567

Juror No. 357 - Voir Dire

1 over ten years?

2 A. Yeah.

3 Q. Okay.

4 A. I did that before I opened up my gun shop.

at gun 5 Q. Would you agree that there are many items on sale

6 shows other than guns?

7 A. Yes.

8 Q. In fact, I believe you picked up a Waco tape --

9 A. Right.

10 Q. -- at a gun show. Is that correct?

11 A. Right.

12 Q. Have you seen other literature for sale at gun

shows --

13 A. Pertaining to?

14 Q. -- other than Waco literature?

15 A. Pertaining to Waco?

16 Q. Well, on a wide spectrum.

17 A. Oh, yeah.

18 Q. From political beliefs from left to right --

19 A. Yeah.

20 Q. -- have you seen that for sale at gun shows?

21 I'm sorry. I was talking over your answer.

22 A. It's just like any show. There is literature, all

23 different types of literature.

24 Q. Okay .

25 A. And all different types of viewpoints. No
different than

5568

Juror No. 357 - Voir Dire

1 any other show.

2 Q. Have you seen military surplus?

3 A. Oh, yeah.

4 Q. Have you ever seen these rocket tubes, L-A-W rocket
tube

5 for sale at gun shows?

6 A. Not that I'm aware of.

7 Q. Just the tube, not the rocket in it; but just the

tube

8 that's cast away after it's fired?

9 A. Not that I'm aware of.

10 Q. Okay. Seen any other military surplus?

11 A. I'm not into military at all.

12 Q. The Judge has gone into the fact of your
willingness to

13 serve and how you feel that's part of your civic duty.
He gave

14 you the hours that you'd be off on Friday afternoon and
all

15 weekend plus on the evenings and that you live in --
out of

16 town; right?

17 A. Correct.

18 Q. And if need be, you could stay here in a hotel, but
you

19 mentioned that you do deliveries at night?

20 A. Correct.

21 Q. Could -- with your wife operating the business and
the

22 part-time help, can you maintain that business given
those

23 hours with Friday afternoon off and all weekend off to
make the

24 deliveries you need to?

25 A. I'd have to find somebody to do it, because they
weigh up

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1 to 1500 pounds; so my wife is not going to be handling
them.

2 Q. Right. She can't do that, I assume.

3 A. Right.

4 Q. But I take it when you do it, you and another
person do it?

5 A. Correct.

6 Q. Is that correct?

7 A. Correct.

8 Q. And you think you'll be able to keep the business
going

9 through those hours?

10 A. We'd have to.

11 Q. Okay.

12 A. It would be hard.

13 Q. Sure. And as the Judge explained, everybody has
got to

14 make some sacrifice in this to fulfill their civic
duty. But

15 as I understand it, you feel that you can do that?

16 A. Yeah. Would be difficult, but I can find a way.

17 Q. Now, you mentioned again in your questionnaire
about the

18 amount of publicity you had seen. You checked off
"quite a

19 bit," and you checked a number of sources. Do you
recall how

20 many people were killed in this bombing?
21 A. No, I don't.
22 Q. Okay. Do you recall whether or not there were any
children
23 killed?
24 A. Yes, I do.
25 Q. Do you recall the reason why there were children
killed in

5570

Juror No. 357 – Voir Dire

1 a federal building?
2 A. Yes, I do.
3 Q. What was that?
4 A. They had day care.
5 Q. Okay. Do you remember how many children were
killed?
6 A. I don't.
7 Q. You probably saw on television the images the day
of the
8 bombing and the day after of all the rescue workers and
the
9 victims coming out and the dead bodies being carried
out. Do
10 you recall those?
11 A. Yes, I do.
12 Q. Think you'll ever forget those visions?
13 A. No.

likely 14 Q. If you were picked as a juror in this case, it is
to this 15 that there will be a number of witnesses who will come
that will 16 witness stand. There will be videos and photographs
They'll be 17 relive those scenes, those images, those visions.
outrageous. 18 very, very emotional. It will be sad. It will be
19 It will be heart-wrenching.
evidence 20 My question to you is can you look at that
And nobody 21 for what it is; that is, the evidence of the crime?
that 22 disputes what happened at the scene. Everybody agrees
But can 23 there is a bomb there, a number of people were killed.
that when 24 you separate that emotion that will be generated from
proves 25 you're looking at the evidence that the Government says

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Juror No. 357 – Voir Dire

he was 1 Mr. Nichols was responsible beyond a reasonable doubt;
that 2 responsible for that bombing? Can you separate out
3 emotion and then look at the Government's evidence

objectively?

4 A. I believe I could.

5 Q. Okay. There was a lot of talk here about the
penalty

6 phase. We want to make sure you understand that we're
not --

7 Mr. Tigar and Mr. Nichols and I are not conceding that
we're

8 even get to a penalty phase. We seem to be just
jumping over

9 that in talking about penalty, but the Government here
has a

10 theory about Mr. Nichols' being responsible. We don't
agree

11 with that theory. The Government will put their
witnesses on

12 the witness stand. We're going to cross-examine all of
them.

13 And even though the Judge told you we don't have to put
on

14 evidence, we're going to call a number of witnesses
that will

15 also contradict the Government's theory.

16 So Mr. Nichols is presumed innocent as he sits
here

17 today, and the Government has got a very high burden to
prove

18 to the jury beyond a reasonable doubt that he is guilty
of

19 deliberate and premeditated murder of all those
individuals.

20 That will be your job, if you're on the jury of 12, to
decide

21 that question: Is he guilty beyond a reasonable doubt?
22 And in the event the jury does and only in
that event
23 would we then get into a punishment stage; but because
at that
24 stage we wouldn't be able to bring the jurors out and
question
25 them about their views on the death penalty or life

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1 imprisonment, we have to do it now. So do you
understand it's
2 sort of awkward we're talking about punishment, but we
really
3 haven't even decided guilt or innocence? Do you
understand
4 that process, why we're talking to you about that now?
5 A. Yes, I understand that.
6 Q. As I understood your answers to the Judge, when you
7 answered the questionnaire, you were saying what the
law ought
8 to be, because the questionnaire was giving you your
choice of
9 how you would write the law. But then the Judge
explained to
10 you what the law is in the federal courts on the death
penalty
11 issue; that the jury after the verdict of guilty and
only

12 then -- then the jury gets additional evidence from the
13 Government as to the aggravating circumstances.
They'll be
14 asking for the death penalty, and here are the
aggravating
15 circumstances.

16 The defense will be presenting mitigating
17 circumstances of it. We'll be asking for life in
prison. And

18 I take it from your answers to the Court that you will
-- if
19 you're on the jury, you would have an open mind, you
could
20 listen to and consider both views and make your
decision based
21 on the evidence you heard.

22 A. Yes.

23 Q. Okay. If you were chosen on the jury, can you look
24 Mr. Nichols in the eye and tell him you'll give him a
fair
25 trial?

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Juror No. 357 - Voir Dire

1 A. Yes, I could.

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

3 We appreciate it.

4 THE COURT: We do appreciate all that you've
done here
5 and your cooperation with us and answering all these
questions,
6 both here and in the questionnaire. I can't tell you
now
7 whether you will be serving on this jury. We have a
ways to go
8 yet. Some more people will be in here and going
through this
9 same process, but we should know in a few days.

10 And we want you to, knowing that this is an
uncertain
11 yet -- to follow the cautions that I gave you before
when you
12 were excused out there in Jefferson County. Be careful
about
13 reading, seeing, or hearing anything in any publication
or
14 television, radio, or whatever, avoiding anything that
may
15 relate to this case so that -- and in discussion with
others so
16 that you can come back in here and decide this case
fairly.
17 And we know that it's import to you to know whether
you're
18 going to be serving because of the arrangements you
have to
19 make for your business, so we'll let you know as soon
as we
20 can.

21 All right. You're excused for now. You can

go home.

22 JUROR: Thank you.

23 (Juror out at 12:13 p.m.)

24 THE COURT: Well, we'll recess till 1:45
(sic).

25 (Recess at 12:14 p.m.)

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct
transcript from

3 the record of proceedings in the above-entitled matter.
Dated

4 at Denver, Colorado, this 27th day of October, 1997.

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Carpenter

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Paul Zuckerman

Bonnie