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PROCEEDINGS

(Reconvened at 1:32 p.m.)

THE COURT: Be seated, please.

399. Is that next?

MR. TIGAR: 399.

THE COURT: 399.

hear.
MR. TIGAR: I'm sorry, your Honor. I didn't

next one,
THE COURT: I'm a little confused about the

but I think that's right.

399. Okay.

right
Good afternoon. Would you please raise your

hand and take the oath from the clerk.

(Juror No. 399 affirmed.)

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1 THE COURTROOM DEPUTY: Thank you.

chair by
2 THE COURT: Would you please be seated in the

3 the microphone. And you don't need to worry about the

4 microphone --

5 JUROR: Okay.

6 THE COURT: -- in terms of leaning into it or

7 whatever. It'll pick you up where you are, and we're

only

8 using it to help us hear you, you understand. It's not
9 something being broadcast.

10 JUROR: Okay.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. And you know that as the oath refers to the
defendant now
14 on trial, we're talking about selecting a jury for the
trial of
15 the case of the United States against Terry Lynn
Nichols. You
16 received a summons back in July, notifying you that you
have
17 been called in through a random selection process. You
18 returned a short-form questionnaire to us giving us
some
19 information about you, then got a notice to appear at
the
20 Jefferson County Fairgrounds' auditorium building on
September
21 the 17th, and you did that. And I was there and
introduced
22 myself and explained the background of the case and
also
23 introduced the people participating in the case, and I
want to
24 do that again so you know who's here with us this
afternoon.

25 Beginning with the attorneys for the
Government who

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1 are at this first table, you met previously Mr. Mackey,
2 Lawrence Mackey, and Beth Wilkinson. And now they are
joined
3 by Mr. Patrick Ryan and Mr. Geoffrey Mearns, additional
4 lawyers. They were not there, Mr. Ryan and Mr. Mearns,
when we
5 gathered before.

6 But you did meet Mr. Michael Tigar and Mr.
Ronald
7 Woods, attorneys for Terry Nichols; and Terry Nichols,
of
8 course, being the defendant, was present.

9 And then I explained about -- something about
the
10 background of the case and then asked you to complete a
very
11 long questionnaire, and you did that. And we have made
copies,
12 as I told you we would make copies, of what you wrote,
provided
13 it to these people who are participating in this, but
not to
14 anybody else. And of course, we're only using what you
told us
15 for purposes of this process and won't distribute it
anywhere
16 else. So we know that there's a privacy interest in
some of

17 these things.

18 We've asked you a lot of things about your
personal
19 life, and I hope you understand the reason for doing
that and
20 the need for doing that; but we try to balance your
privacy and
21 the public interest in the proceeding, and that's why
we're not
22 using your name here. And in the course of the
questioning --
23 and there will be some more questions yet -- we'll try
to avoid
24 things that might identify you. And it's also for this
reason
25 of your privacy that we arranged this way for you to
come and

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1 go so you can't be put on television and your identity
2 revealed. And that's the only reason for that, you
understand.

3 Now, you should know that we are in open
court. This
4 is public now and so what is said here may be reported,
and
5 there are people here who will probably be doing that.
Okay.
6 A. Uh-huh.

7 Q. I want to just go back and repeat some of the
things
8 already said and which I'm pretty confident you already
know,
9 but, you know, in court proceedings, we do a lot of
things that
10 are almost obvious but we do them for the record and
establish
11 sort of a foundation for what we're going to do. And
what we
12 are going to do is I'm going to ask you a few more
questions,
13 some of which will be based on answers that you gave
us. We're
14 not going to go through everything here. And some of
these
15 things, we'll just be asking you to give us a little
more
16 information about some of the things you've already
told us.
17 And then I'm going to also talk with you some about the
law.
18 I said And before we begin, you should understand, as
19 not when these questionnaires were passed out, you should
20 assume anything with respect to the significance of any
21 particular question asked of you. And also, there's no
right
22 or wrong answer. I mean, we've asked you factual
things, and
23 where we rely on what you've told us about that; but in areas

there's 24 we are asking you about opinions, beliefs, attitudes,
and you 25 no right or wrong answer. There's just your answer,

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or 1 don't have to be defensive about anything you tell us
2 worried about how we're going to react to it.

3 A. Okay.

4 Q. Okay?

5 A. Uh-huh.

arises from 6 Q. Now, to review then the background, this case

Oklahoma, on 7 an explosion that took place in Oklahoma City,

building 8 April the 19th of 1995. On that day, a federal office

were 9 was destroyed, people in it -- some of the people in it

filed by 10 killed and some injured. Thereafter, charges were

in 11 lawyers for the Government in the U.S. District Court

of 12 Oklahoma City in the form of an indictment, a statement

are 11 in 13 accusation; and the charges that were filed -- there

the 14 number -- but they all concern this same thing; that

15 Government has accused a man named Timothy James
McVeigh, along
16 with Terry Lynn Nichols -- and then the indictment
refers to
17 "other persons not named" -- with joining into a
conspiracy, a
18 criminal agreement or plan, to bomb the building and to
kill
19 and injure people in it.
20 Then the charges include that, in addition to
a
21 conspiracy or forming an agreement to do that, they
did. And
22 then the allegations include eight charges or counts of
23 first-degree murder, planned, premeditated murder of
eight
24 people working for law enforcement agencies of the
national
25 government who died in the explosion.

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1 To these charges, the defendants entered their
pleas
2 of not guilty, thereby creating the issues for trial.
3 The case was moved then for trial from
Oklahoma to
4 here in Denver for the reason that there was a concern
about
5 asking people in Oklahoma where this happened to sit on

a jury.

6 And then after the trial was moved here, I entered an
order for
7 separate trials, and that was based on the belief and
the
8 finding that it would be unfair to both defendants for
them to
9 be on -- at trial at the same time before the same
jury,
10 recognizing that there may well be substantial
differences in
11 the evidence as it pertains to each of them.

12 And so as a result of that ruling, there has
been a
13 trial held with the defendant -- Timothy James McVeigh
as the
14 defendant and his lawyers and Government counsel. And
a jury
15 selected like what we're doing here heard that trial,
heard
16 that evidence, and returned a verdict of guilty as to
17 Mr. McVeigh. Then that jury was required to also hear
a second
18 trial on the question of punishment and came back with
a
19 recommendation for a sentence to death as to Timothy
McVeigh.
20 These things, you probably were aware of before I ever
told
21 you.

22 A. Yes.

23 Q. Right?

24 A. Yes.

25 Q. Okay. And then I went on to explain something
about jury

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1 service, the principles of law that apply in jury
trials and so

2 forth because most of the people there had never been
in a --

3 in a trial. Now, you had served on a jury at one time
in the

4 Denver municipal court?

5 A. Yes.

6 Q. And that was about how long ago?

7 A. Boy, it was -- it was a long time ago. I can't
even

8 remember specifically when. It was probably -- let's
see. I

9 was probably 22, maybe, something like that. So
probably --

10 Q. Okay.

11 A. -- a good 12 to 13 years ago.

12 Q. And I'm -- you have your questionnaire there.

13 A. Yes.

14 Q. I don't mean to take you at a disadvantage. You're
15 certainly free to look at what you wrote.

16 A. Sure.

previous 17 Q. And it's on page 26 that you told us about this

18 jury trial.

19 A. Uh-huh.

jury? 20 Q. Do you recall now how many persons were on the

21 A. I believe it was a six-person jury.

the date, 22 Q. Okay. And this was for -- I guess you do give us

23 1981 there.

24 A. Oh, okay.

described the 25 Q. Yeah. This was a domestic disturbance as you

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1 case. Can you just tell us briefly what it -- what you
2 remember the evidence being?

3 A. I believe it was a dispute between a boyfriend and
4 girlfriend or it was a husband and wife in which he had
pushed

5 or punched her during the fight or whatever, it was --
that was

6 going on, and then he left the residence or whatever.
The

7 police picked him up later, and he was then charged
with that.

8 Q. But do you remember what the jury did?

9 A. Yes. We found him guilty.

10 Q. And were you the person selected as the foreperson?

11 A. No. I wasn't.

12 Q. Okay. Now -- and you told us that, I see. Do you
remember

13 what -- were there lawyers on both sides?

14 A. I believe there were -- for the defense was a
public

15 defender. But yes, there were.

16 Q. All right. Okay. And do you remember whether the
17 defendant testified -- the person accused, whether he
18 testified?

19 A. Yes, he did.

20 Q. All right. And, what, essentially denied that he
intended

21 to hurt her or something like that?

22 A. He said that he might have pushed or attempted to
stop her

23 from leaving or, you know, had not intended to do what
he was

24 charged with, so . . .

25 Q. So I take it, essentially, the jury didn't believe
his

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1 testimony?

2 A. There was quite a bit of evidence towards the

contrary.

of 3 Similar to -- I believe there was pictures or some kind

4 bruising or something similar to that so . . .

verdict 5 Q. Yeah. Well, we're not cross-examining you on that

what the 6 or the outcome. We just want to get a general idea of

7 experience was for you.

towards 8 A. Yeah. There was quite a bit of evidence that was

case, if I 9 the contrary to what he was saying and supported her

10 remember correctly.

result. 11 Q. The jury talked about it for a while and reached a

12 Do you have a recollection how long that trial was?

part of a 13 A. It was a -- I think it took probably the better

14 week. Three to four days, probably.

how long? 15 Q. And the jury deliberated -- do you remember about

five hours. 16 A. An afternoon. I believe we deliberated four or

17 Q. Pretty thorough discussion, as you recall?

18 A. Uh-huh.

verdict; 19 Q. Well, again, you're not here to answer for that

answer 20 and of course, as you recognize, jurors don't have to

21 for their verdict and how they deliberate about a case,

and

22 what each other -- what is said there is a matter that
stays in
23 confidence with the jury. That's part of the system.
And I
24 just want to review a couple of fundamentals here,
things that
25 you probably remember hearing at that trial as well,
but --

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1 because I assume the court gave some instructions to
the jury.
2 And, you know, there are certain instructions that
apply across
3 the board to all cases because -- in the United States
because
4 they are required by the Constitution of the United
States and
5 are matters of fundamental fairness, beginning with the
right
6 to jury trial, to have a case decided by a jury. And
in -- in
7 a municipal court situation, that can be a jury of six.
Here,
8 we're talking about a jury of 12. And of course, the
process
9 we're engaged in is to find jurors who can perform the
service
10 that is required under the law of listening to the
evidence and

11 deciding on the evidence and following the law.
12 And basic to the process, too, in addition to
the
13 jury's participation, is the presumption of innocence
and the
14 burden of proof so that each person who is accused in
the
15 United States in any of our courts is presumed to be
innocent
16 of whatever charge has been brought against him, and
that
17 person then is entitled to that presumption of
innocence
18 carrying throughout the trial and entitled to a verdict
of
19 acquittal or not guilty unless the jury listening and
20 considering the evidence can -- believes that the crime
has
21 been proved beyond a reasonable doubt. Understood?
22 A. Uh-huh.
23 Q. And in the case that you mentioned, the reason that
I asked
24 you if the defendant testified is that the law is that
no
25 person who is accused is required to testify or to
offer any

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1 evidence. Certainly, he doesn't have to prove himself

not

is, 2 guilty. It is the government, whatever government it
lawyers 3 local, state, federal, bringing the charge -- those
in the 4 have the burden of proving it. And that means bringing
prove 5 witnesses and the exhibits and whatever is relied on to
6 the offense charged.

7 A defendant not only does not have to
introduce any 8 evidence, but, of course, a defendant need not answer
any 9 questions and need not explain anything. The defendant
can 10 simply remain silent throughout the trial and simply
challenge 11 the government's proof by way of cross-examining the
witnesses, 12 objecting to testimony and exhibits and the like.
You're aware 13 of these points?

14 A. Yes.

15 Q. And in addition to being aware of them, do you
agree with 16 them?

17 A. Yes, I do.

18 Q. And so you heard also, I'm sure, that the proof
that is 19 required for conviction is proof beyond a reasonable
doubt.

gives 20 And therefore, if at the end of a trial, when the court
for the 21 the jury instructions on exactly what has to be proved
offense. 22 offense -- we refer to these as elements of the
If 23 after considering what they heard and saw as evidence
and 24 discussing it, the jurors have a reasonable doubt about
whether 25 the case is proved, the duty of the jury is to return a
verdict

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1 of not guilty. Understood?
2 A. Yes.
3 Q. And as a part of that, too, we caution the jury in
a case 4 in which a defendant does not testify that they may not
5 consider that fact. They can't assume a person's
hiding 6 something or that if he's innocent, why doesn't he tell
us 7 that. You cannot consider or even discuss the fact
that a 8 defendant doesn't testify if that be the case.
Understood?
9 A. I do.
10 Q. Now, are you ready to follow these points and these

11 principles if you serve on this jury?

12 A. Yes, I could do that.

13 Q. So you understand that Mr. Nichols sits with us

this

14 afternoon presumed to be innocent of these charges and

that he,

15 as any other defendant, is entitled to the benefit of

any

16 reasonable doubt if there be any remain after the

evidence is

17 considered?

18 A. Right.

19 Q. Now, we asked you some things about your
background. As I

20 understand it, you were born and raised right here.

21 A. Uh-huh. That's correct.

22 Q. And have lived continuously in this area.

23 A. Uh-huh.

24 Q. Correct?

25 A. Yes.

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9. You 1 Q. And you work for the firm that you identify on page

turn to 2 have your questionnaire there, again; and if you'll

3 that.

4 A. Okay.

5 Q. Now, we're not talking about the name of that firm
right

6 now. But you've worked there, steady employment for,
what, 14

7 years or more?

8 A. Yeah. That's correct.

9 Q. And then you show the other jobs that you've had
before

10 that, also on page 9.

11 A. Uh-huh.

12 Q. Now, as I understand it from your description of
your job

13 duties, it is, as you say, supportive of marketing
efforts for

14 the product made by this company.

15 A. Right. Sales and marketing support.

16 Q. Do you travel in that work?

17 A. No. No. We handle -- the Denver metro area is our
18 restricted area.

19 Q. All right. But do you go out from the office where
you

20 work --

21 A. Yeah. Within the Denver metro area, I do.

22 Q. Yeah. And you do some promotions within the
establishments

23 that sell the product?

24 A. Right. That's included special events in the
summertime,

25 different promotional things.

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and 1 Q. All right. But it also includes in-store displays
2 things like that, does it?

there's 3 A. Yeah. My part of it is mainly the support of --
and my 4 two main facets of the company as far as salespeople,
5 part of it is support of both sides of that.

6 Q. Okay.

7 A. So . . .

game or 8 Q. So now, if there's a special event like a baseball
in that? 9 something where there's a promotion, you are involved

10 A. Right.

11 Q. Okay. In setting it up and --

that we 12 A. Yeah. Different advertising elements that we have
whatever 13 use at different areas or whatever is appropriate for
14 type of event it is.

company 15 Q. Okay. And have you done other work for the same
16 before you got this job?

17 A. Yeah. I did.

18 Q. Like production-line work?

19 A. More the -- ours is a distribution element, and so
ours is

20 mainly different elements of sales.

21 Q. I see.

22 A. And I've worked in different areas in that.

23 Q. So it's all been sales and marketing?

24 A. Right.

25 Q. Here in the Denver office, which is different from
the

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1 places where the product is made.

2 A. Right.

3 Q. Okay. Now, you also -- on page 11, we asked you
about

4 types of employment in the family, and you marked
security

5 guard.

6 A. Right.

7 Q. Why? Who is that referring to?

8 A. What would happen is as a part-time job back in the
earlier

9 years in the other jobs, sometimes I worked two jobs.
In the

10 years that I worked at May D&F and certain other, you

know,

11 part-time lesser-paying jobs, I had a second job doing
that.

12 Q. Yeah. And was it like a security guard for a
building

13 or --

14 A. No. It was concert-related.

15 Q. Pardon?

16 A. Concert-related.

17 Q. Okay.

18 A. Mainly in the field of working for the local
concert

19 promoter, just doing different responsibilities during
20 concerts.

21 Q. Like up at Red Rocks?

22 A. Yeah. Are you familiar with the T-shirts? The
people that

23 wear the T-shirts, not necessarily the police, but they
wear

24 the T-shirts that say "security" on the back.
Something like

25 that. That's what I did.

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1 Q. Then we asked you about your awareness of a number
of

2 different organizations. And page 18 is this reference
at

3 Question 84. And you've marked a number of them and
then said,

4 "I have heard of these."

5 A. Yes.

6 Q. I take it what you're telling us is you've heard of
them,

7 you don't know beyond that? Well, I guess it varies
with

8 respect to some of them, does it?

9 A. Yeah. I mean, I would just -- the reason I wrote
that was

10 just that I don't necessarily or haven't subscribed to
11 literature or, you know --

12 Q. Okay.

13 A. -- or active members or participants in any of
them, but I

14 have heard of different -- the different organizations.

15 Q. Are there any of them where it is true that you are
a

16 member or receive publications or something from any of
them or

17 have been a-- contributed to them?

18 A. I have contributed to the Fraternal Order of Police
through

19 mailings and stuff like that --

20 Q. Uh-huh.

21 A. -- I have done through that. That, I think, is the
only

22 one that has any type of either contribution or any,
you know,

23 real exchange of literature or anything like that.

24 Q. Do you remember the context in which you heard of
the

25 American agriculture movement?

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1 A. Boy, I don't. It just sounded familiar. I don't.

2 Q. Or the New World Order?

3 A. I have heard of that in -- boy, I don't remember --
it's

4 just the name that sounded familiar.

5 Q. Sure. That's what we asked you, if you had any --

6 A. I really don't recall.

7 Q. How about this last one, the Posse Comitatus?

8 A. No. I've heard of that one, too, possibly in
relation to

9 the McVeigh trial or something possibly like that. But
just in

10 the covering of the different elements of the -- of the
trial

11 and stuff, probably.

12 Q. Well, do you remember anything connected with the
charges

13 against Mr. McVeigh that you associate that with?

14 A. I don't, really. Nothing specifically.

15 Q. So you're speculating that may be where you heard
about it?

news
different
really

16 A. Possibly. I mean, just talking about the brunt of
17 coverage during the McVeigh trial and stuff, just
18 organizations and groups sounded familiar, but nothing
19 tied into it that I remember specifically.

have a
in

20 Q. Okay. Now, you also told us on page 20 that you
21 friend who is a sheriff's deputy in a particular place
22 Colorado.

23 A. Yes.

24 Q. How close are you to that person?

we were

25 A. I grew up with him and -- I grew up with him when

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me, and

1 much younger. Just basically kids. I just see him
2 occasionally now. His mother still lives next door to
3 he comes to visit occasionally, so . . .

4 Q. And your mother lives with you now?

5 A. Right.

6 Q. Is that right?

7 A. Yes.

8 Q. Do you live in the home where you grew up?

9 A. Uh-huh.

10 Q. And is -- is your mother well? Does she need your
care

11 or --

12 A. She -- she does well on her own. She's 75, but she
does

13 very well for that age. There's no real specific care
that I

14 give to her.

15 Q. All right. We then asked you about some other
aspects of

16 your own experience and your attitudes about the
criminal

17 justice system. I want to turn to page 24 for a moment
at No.

18 108.

19 A. Uh-huh.

20 Q. Is this something that happened four years ago,
almost four

21 years ago?

22 A. Yes.

23 Q. And it was in Denver?

24 A. Yes.

25 Q. And this is one where you were stopped. This is
what you

1 did, you entered a plea of guilty and took the
consequences, is

2 that it?

3 A. Yeah. That's correct.

4 Q. All right. And then you said on page 22 where we
asked you

5 the very broad question, "Is the criminal justice
system" --

6 well, how do you think it's working, and you gave it a
medium

7 grade here of adequately and then explain your
position, which,

8 as I understand it, is you say it's as good as the
people in

9 it.

10 A. Yes.

11 Q. And you see differences. Sometimes it works better
than

12 others depending on the people?

13 A. Just in the -- the work ethic or the -- the efforts
put out

14 by the people within it.

15 Q. Including the jury?

16 A. That's correct. That's part of what I meant, too,
is the

17 people that take the job seriously, put their best
effort

18 forward to do it, an understanding of the law, the
people that

19 interpret it correctly and understand it.

20 Q. Now, do you -- as you think about -- thought about

this and

21 marked this the way you did, did you have in mind any
22 particular trials or things that you -- circumstances
you read
23 about where you thought it did not work out the way it
should?
24 A. I didn't really have anything specific to that.
You do
25 hear some people talk sometimes that they don't think
they had

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1 a good lawyer or they don't think they got a fair shake
in
2 court or something like that. Just general talk among
people
3 you either work with or whatever. No specific stories
to rely
4 on.
5 Q. And some cases get highly publicized and, of
course, are
6 things that are covered on news, television and --
7 A. Different viewpoints that people -- basically
different
8 people's opinions, probably. Not necessarily
specifically
9 saying that that -- the person or their lawyer wasn't
good or
10 didn't do a good job. You hear different people's
opinions,

11 you know, and that's basically where that came from.
12 Nothing -- no specific story.
13 Q. So what you seem to be saying, in my understanding
of it,
14 is that the system relies heavily on the people
involved,
15 lawyers, jurors, judges, the investigators, everybody
involved?
16 A. Right. Yeah. That's what I believe, people that
do, you
17 know, take the job seriously and understand what
they're doing.
18 Q. And then you did -- on page 30, when we asked of
you about
19 your view of the importance of following instructions,
you
20 agreed strongly that it is important. And you explain
this and
21 you said, "This is a new experience." What did you
mean? The
22 jury service?
23 A. Of being involved in just the overall aspects of
all the
24 things that go on at this level of trial and just in
general,
25 because I couldn't really -- you know, I remember my
jury

1 service, but it has been quite a long time ago.

2 Q. Okay.

3 A. And so that's why I do agree from that experience
that you
4 have to follow the court's instructions; and also since
it has
5 been so long since I was able to serve or to do it that
you
6 need the guidance and just basically the instructions
to be
7 able to follow and do things correctly, the parameters
of law
8 or whatever.

9 Q. You work with other people in the job you do?

10 A. Yes.

11 Q. Kind of a team approach to a given event?

12 A. Uh-huh.

13 Q. And when you got the jury summons, did you mention
to these
14 other people you work with that you've been summoned on
this
15 case?

16 A. To the selected ones that I either worked with
closely or
17 the ones that I had to tell, supervisors, management,
people
18 like that.

19 Q. Well, I'm not suggesting you shouldn't have told
them.

20 A. Right.

and all 21 Q. Because that's different from discussing the case

22 that.

23 A. Right.

of the 24 Q. What kind of a reaction did you get? What are some

to you? 25 things that the people you work with told you or said

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astounded, 1 A. Their reaction was basically just surprised,

the point 2 looked at me like I won the lottery, basically. Just

group of 3 of view that it's such a large-reaching, you know,

4 people and how did I end up being one of the ones.

5 Q. You thought about that yourself?

6 A. Yeah. That was kind of my reaction, also.

County, I 7 Q. And of course, when you came out to Jefferson

8 offered some explanation. It's a chance --

9 A. Right.

10 Q. -- system and we use a database and take names out.

my one 11 A. The one jury service that I did perform, that was

12 and sole, you know, jury selection prior to that.

13 Q. Yeah.

just a 14 A. And it's been that many years since. So it was
15 surprise, it had been so long.
involved in 16 Q. Okay. Now, we've reviewed the things that are
17 jury service and of course, in connection with this
case; and 18 I've mentioned that anything that you may have read,
seen, or 19 heard outside the evidence here relating to Mr. Nichols
or 20 relating to anything concerning this whole matter has
to be set 21 aside, has to stay out of the courtroom.
22 A. Right.
and see as 23 Q. You have to decide on the basis of what you hear
24 the evidence. You agree with that?
25 A. (Juror nods head.)

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Juror No. 399 - Voir Dire

1 Q. And do you believe you can do that?
2 A. I believe so.
questions 3 Q. Now, we had to include in this questionnaire some
and 4 about your opinions and beliefs concerning punishment,
5 particularly the punishments of life in prison with no

6 opportunity to get out, no parole, and the punishment
of death.

7 And you responded to that, and the questions, the
particular

8 questions are on page 28. And there is a -- on 27,
there was

9 an explanation about why we were asking you. Do you
remember

10 this part of the questionnaire?

11 A. Not specifically without looking at it.

12 Q. Well, we want you to look at it. Go ahead.

13 Now, you remember this?

14 A. Yes.

15 Q. As I say, in the preceding page 27, there's the
explanation

16 that one should certainly not read into these questions
any

17 inference that there's anybody's expectation that there
would

18 be a guilty verdict in the case. And of course, the
law

19 presumes to the contrary; that there would be a not
guilty

20 verdict in the case.

21 But because of what the law is and what the
jury's

22 role is in sentencing in a case involving capital
punishment in

23 the Federal Court, we wanted to know something about
your views

24 without hearing the instructions on the law, just what

are your

as I'm 25 views coming in, so to speak, recognizing as we do and

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on this 1 sure you do, that there are a wide variety of opinions

people who 2 subject of the death penalty and there are a lot of

in 3 feel very strongly at extremes and then there's a lot

somebody, 4 between the extremes being people who say if you kill

should not be 5 you should die regardless and those who say there

then a 6 a death penalty, that's not for courts to decide, and

7 lot in between. You're aware of that?

8 A. Yes.

publicly. 9 Q. And you're aware that the issue is often debated

10 A. Right.

There are 11 Q. And that there are differences among the states.

12 states that do not have the death penalty because the

opposed to 13 representatives of the people in those states are

penalty but 14 it, and then there are states that have the death

15 there are differences in the way in which it's decided.
Now,
16 here, we're under federal law, and federal law does
provide
17 that punishments of this type are decided by a jury.
So that's
18 why we needed to know something about your view. And
is this a
19 matter that you've thought about somewhat since you
wrote your
20 answers?
21 A. I haven't thought about it deeply. I mean, I just
-- since
22 I wrote the answers and stuff, it has crossed my mind,
but --
23 but not really having --
24 Q. Well, you just read now what you wrote; right?
Would you
25 give me the same answers now if I asked you the same
questions?

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Juror No. 399 - Voir Dire

1 A. Yes.
2 Q. Okay. Now, I want to -- and, you know, what I
interpret
3 from what you say, it depends a lot about -- on a lot
of
4 things; is that right?
5 A. Yeah. Not cut and dried, you know, black and
white, but

6 different factors, circumstances, things that are
involved in

7 it.

8 Q. Well, I want to review with you what the law is now
so that

9 you have a clear understanding of what would be
involved if you

10 served on the jury and if the jury reached this
question. And

11 that is that the -- well, take the municipal court case
you

12 were on. You -- you -- the jury returned a verdict of
guilty.

13 Do you know what happened after that?

14 A. No. We weren't privy to the sentencing part of it.

15 Q. Okay. And normally, that's the case. The jury has
no role

16 to play in sentencing. And it's true in Federal Court,
too, so

17 that if the crime is such that it doesn't involve this
issue,

18 then after a jury verdict of guilty, it's up to the
judge to

19 decide upon a punishment. And before a judge can make
such a

20 decision, there has to be another hearing and a lot of
21 information gathered, both with respect to the
circumstances of

22 the crime and its consequences and its effects on
people in the

23 community and the like, then also, a lot of information
about

judge 24 the defendant as an individual human being because the
25 wants to know who he's sentencing, and therefore,
pretty much

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1 the life history of that person comes into play. Now,
it may
2 not have for the municipal court violation; but, you
know, if
3 we were talking about a bank robbery or something like
this and
4 a jury had returned a guilty verdict, then the judge
would have
5 to know all about the people found guilty.

6 And there can be cases, of course, where more
than one
7 person is found guilty of the same crime as two or
three
8 persons joining in on a bank robbery, and there can be
9 differences in their conduct, their role in the
offense. But
10 then in addition to that, there are going to be
differences
11 among them as to who they are, what their life story
has been.
12 We're talking about things all the way from what family
they
13 were born into, what were the circumstances under which
they

14 were raised, what has their education been, what is
their
15 employment history, has there been military service,
how about
16 marriages, divorces, children, you know, everything
that goes
17 into making up a -- one person's life. And all of us
have
18 differences. And the law says look at the individual,
not just
19 the crime. And it's not a matter of this is the crime,
this is
20 the time. This is the crime, this is the person,
what's the
21 just sentence. And the judge tries to do that, hears
from
22 lawyers for both sides, and says for this crime, this
person
23 deserves this punishment. And as I said, if there are
two or
24 more persons, it may be different.

25 Now, under federal law, where the -- depending
on the

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1 crime, certain kinds of crimes do involve this question
of
2 possibility of a sentence to life without ever being
3 released -- you -- all of your days are spent in prison
-- and

4 a sentence to death, or there can be a lesser sentence.
The
5 life-and-death part of that sentence is not decided by
a judge
6 because the Congress has said that kind of a decision
should be
7 made by the jury, the same jury that heard the trial
and -- and
8 decided on the guilty verdict. But the law also says
that
9 before the jury can arrive at that decision with
respect to a
10 particular person, the individual being sentenced, then
the
11 jury has to hear a lot more in pretty much the same
manner that
12 I've talked about the individualized sentencing done by
judges.
13 So there is a whole second trial or hearing at
which
14 information about the crime and its circumstances is
put on and
15 also about the defendant. And that's done just like
the trial
16 itself in that witnesses are called, exhibits are
offered, goes
17 through the very same type of process. At the end of
it, the
18 judge re -- instructs the jury by summing up or
summarizing
19 what has been heard and then also dividing it into two
separate
20 categories, saying on the one hand, these are things

that you

21 could consider, you, the jury, as aggravating factors,
things

22 that may suggest to you that death is the deserved
punishment,

23 ordinarily things about the crime and its
circumstances; and at

24 the same time, these are the things that you've heard
that you

25 could consider as mitigating factors and should
consider. And

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1 this can include things about the crime, relative roles
in the

2 offense, but also, much about the defendant. All of
these

3 things, again, are individual to the defendant, his
life, his

4 characteristics; because what the law is saying is
before you

5 decide to take a person's life, you need to know all
you can

6 know about the life you're taking. Understand?

7 A. I agree.

8 Q. And then the court may in these instructions
include some

9 questions that may assist the jury in sifting through
and

10 analyzing and discussing that, but there's no formula

for it,

11 there's no, you know -- it's not subject to calculation
or

12 computation. It comes down to a very subjective
judgment. And

13 the jury, the 12 people on the jury, of course, must
discuss

14 it, exchange their views and ideas. But in the end,
each juror

15 has to make a decision as to whether the particular
defendant

16 whose life is in their hands should live or die. And
of

17 course, before making that decision, the jury -- each
juror

18 must consider all that has been submitted.

19 Now, do you think you can do that?

20 A. Yes, I believe so. That's what my answers --
basically

21 where I was going with my answers, too. It was just
basically

22 the -- taking the facts of the case and the
circumstances and

23 things like that into account rather than just a black
and

24 white yes/no-type answer.

25 Q. Yeah. And you know there have been various efforts
to

the best 1 describe what kind of a decision is this, and perhaps
judgment 2 one is to refer to it as a reasoned, rational moral
including 3 after considering all of the facts and circumstances,
trial. 4 everything that has been submitted about the person on

5 Do you agree with that?

6 A. I agree.

7 Q. And you could make that decision?

8 A. Yes.

now. They 9 THE COURT: We have questions from lawyers
10 have a fair opportunity to ask you some, too.

11 So, Mr. Mearns, do you have some questions?

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

13 VOIR DIRE EXAMINATION

14 BY MR. MEARNS:

15 Q. Good afternoon, sir.

16 A. How are you?

Geoff 17 Q. As the Judge told you a little earlier, my name is

that will 18 Mearns, and I'm one of the lawyers for the Government

covered most 19 be presenting our evidence in this case. You've

bit more 20 of the information in the questionnaire and a little

you if 21 this afternoon, so I just have very few questions for

22 that's okay.

that you 23 You told us, I think, on the questionnaire

the 24 initially heard about the explosion in Oklahoma City on

25 radio. Did I read the questionnaire right?

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Juror No. 399 - Voir Dire

1 A. I believe that's correct.

2 Q. Okay.

3 A. I believe that's correct. I don't recall exactly.

of the 4 Q. Okay. I -- did you continue to follow the coverage

5 explosion after that initial --

much of it 6 A. I didn't aggressively seek it, but there was so

every news 7 that it was everywhere, but -- you know, as far as

into 8 report you would listen to. I didn't aggressively look

9 it, but there was quite a bit of it, yes.

10 Q. Did you follow any of the coverage on television?

just 11 A. Of -- just local newscasts that I would watch or

12 whenever you would run into it, yes.

13 Q. Was there any -- you've told us that you didn't

seek it

14 out, but was there any aspect of the reporting about
that event

15 that you followed with any greater interest than other
aspects

16 of that story?

17 A. No. Not really. Just the overall case, itself,
what was

18 going on, how extensive damage was. Just the general
reports

19 of different items that went on.

20 Q. Okay. If you would, if you'd turn to page 34 on
the

21 questionnaire. On that page, Question 148 lists --
gives a

22 long list of people.

23 A. Uh-huh.

24 Q. And you've put checkmarks next to the names of some
of

25 those people, as -- as I understand your response, to
people

5914

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1 that you've heard of.

2 A. Right.

3 Q. Okay. And one of the people that you've listed
there is

4 Timothy McVeigh.

5 A. Right.

6 Q. Do you recall where you were when you heard about
the
7 verdict in Mr. McVeigh's trial?

8 A. Yes, I do, actually. I was out of town visiting
relatives
9 in another state. Just caught it on the news at their
house.

10 Q. Was that a trial -- or was the coverage of that
trial
11 something that you followed closely or was this --

12 A. Same -- similar pattern. I enjoy current events
and -- and
13 enjoy watching the news and things like that, so I
usually do
14 catch a regular newscast once a day or something like
that.

15 And it was within that.

16 Q. Do you recall having a reaction one way or another
when you
17 heard that -- that news?

18 A. Not specifically. I don't know. Not really. Not
that I
19 can think of.

20 Q. One of the other names that you've checked there is
Terry
21 Nichols; and by that, I assume you mean the defendant
in this
22 trial.

23 A. Yes.

24 Q. Okay. And you told us later -- there are several

more

25 questions specifically about Mr. Nichols later in the

5915

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think you 1 questionnaire. Am I correct in understanding -- I

about 2 wrote in one response that you don't know nothing much

3 him at all?

4 A. Right.

about 5 Q. Do you have any opinion one way or another, then,

6 coming into this trial?

7 A. As far as guilt or innocence?

8 Q. That's right.

9 A. No. Not really.

following the 10 Q. So then I take it that you'll have no problem

have to 11 Court's instructions that whatever you've heard, you

12 leave behind before you can serve?

13 A. That's correct. I understood that.

James 14 Q. You also checked there that you've heard about

15 Nichols.

16 A. Right.

17 Q. Could you share with us what you may recall about

what

18 you've heard about James Nichols.

19 A. Probably through television reports, through the
news. I

20 believe that he's Terry's brother. That's about it.
Just that

21 I heard his name in the media.

22 Q. And then you also checked Michael and Lori -- well,
yes,

23 Michael and Lori Fortier?

24 A. Right.

25 Q. Can you recall for us what you may have heard or
read about

5916

Juror No. 399 - Voir Dire

1 the Fortiers?

2 A. Through news reports, their attendance at the -- at
the

3 last trial, their names being mentioned as witnesses or
for one

4 side or the other, they were there.

5 Q. So you don't recall anything about the reporting of
the

6 substance of their testimony?

7 A. Not really. Not specifically what they were about.

8 Q. Okay. And finally, I -- I had planned to ask you a
couple

9 of questions about punishment, the issues that were

covered on

10 the questionnaire and -- and what the Court has gone
over with

11 you, but you anticipated my question in one of your
responses

12 in which I think you said that your view of what the
law should

13 be is essentially what you understand the law to be as
the

14 Judge just explained it to you.

15 A. Right.

16 Q. And that is that you understand that you have to
keep an

17 open mind about punishment in the case?

18 A. Right.

19 Q. Okay. And are you willing to consider all of the
evidence,

20 all of the evidence about the crime and all of the --
of I

21 think what you referred to as the mitigating factors
before you

22 decided what the appropriate punishment is?

23 A. That's correct.

24 MR. MEARNS: Thank you, sir.

25 THE COURT: Mr. Woods.

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Juror No. 399 - Voir Dire

1 MR. WOODS: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 BY MR. WOODS:

4 Q. Good afternoon.

5 A. Hi.

6 Q. I'm the last one. The Judge and the Government
lawyer have

7 already covered just about everything. We have to go
last, so

8 most things have been covered.

9 My name is Ron Woods. Along with Mike Tigar,
we were

10 appointed by the district judge in Oklahoma City
shortly after

11 May the 10th of '95. May the 10th was the date that
these

12 lawyers filed charges against Terry Nichols, accusing
him of

13 being responsible for the bombing that occurred in
(sic) April

14 the 19th, '95.

15 How do you feel about him having court-
appointed

16 lawyers to help him out here in court against all these

17 lawyers?

18 A. Whatever makes it fair.

19 Q. Okay. You mentioned in the trial that you
participated in

20 as a juror that you thought the lawyer was a public
defender.

21 A. (Juror nods head.)

22 Q. What -- did he identify himself as a public
defender or did

23 you get that impression, draw that conclusion, or what

24 happened?

25 A. I believe there was some mention of that in the --
in the

5918

Juror No. 399 - Voir Dire

1 trial process at some point in time.

2 Q. Okay. Did the defendant suffer by having a court-
appointed

3 lawyer?

4 A. I don't believe so.

5 Q. Okay. Do we start off at a disadvantage with you
because

6 Mr. Nichols couldn't afford to hire his own lawyers?

7 A. No. Not at all.

8 Q. When you went to Jeffco Fairgrounds last month on
the 17th,

9 what did you think when you saw Terry Nichols in person
for the

10 first time?

11 A. Surprised that -- that he was there. Looked like
who I'd

12 recognized on television at different reports and
stuff, but

13 that was basically about it.

14 Q. Okay. What had you seen on television? What
images do you
15 recall of having seen Terry Nichols?
16 A. Well, basically, the only thing I've ever seen is
the -- in
17 the orange outfit, whenever that was taken, wherever
that film
18 was taken, in handcuffs, I believe either walking to or
from
19 court or going somewhere.
20 Q. Could you tell what shackles he had on?
21 A. No. Not really. Wrists, I know. Handcuffs.
22 Q. Okay. What did you think when you saw that?
23 A. Looked like a prisoner.
24 Q. Okay. How many times have you seen that over and
over on
25 television?

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1 A. That's pretty much the only picture of Terry that
I've seen
2 in any case or just whenever -- you -- that's the one
you see.
3 Q. Okay.
4 A. So . . .
5 Q. Okay. Now, before I leave that subject on the list
of the
6 names that you said you recognized that the Government

lawyer

7 was going over with you, you checked off Mike Tigar.

8 A. Right.

Mike

9 Q. What do you recall reading, seeing, hearing about

10 Tigar?

lawyers

11 A. A reference to -- I think it was in the newspaper

12 somewhere, actually, where they were naming who his

together.

13 were going to be and a reference to Tigar and Woods

14 Q. Okay.

15 A. Kind of tying in the golfer, basically.

16 Q. Okay.

17 A. And that's why I remembered it.

Tigar, I take

18 Q. Okay. No lasting impressions there about Mr.

19 it; right?

20 A. I haven't seen him golf, so I don't know.

that you

21 Q. Okay. Now, you mentioned in your questionnaire

you have

22 enjoy reading -- not that you enjoy reading, but that

23 read books by John Grisham and Scott Turow.

24 A. Uh-huh.

25 Q. And they are both lawyers, as you are aware of.

Juror No. 399 – Voir Dire

1 A. (Juror nods head.)

2 Q. Do you recall which books you've read of theirs?

3 A. My job is very busy, and I don't get as much time
to read

4 as I would like. So I remember, I think, the John
Grisham of A

5 Time to Kill. I think I referenced that. Scott Turow,
I read

6 a book by him, but I honestly can't tell you what it
was.

7 Q. Okay. Okay. From those books, did you get any
impression

8 about the criminal justice system?

9 A. Not really. Not one way or another, no.

10 Q. Okay. What about any impression of prosecutors?

11 A. Just lawyers doing their job.

12 Q. Okay. And then lastly, defense lawyers? Any
impressions

13 about those?

14 A. No. In fact, on A Time to Kill, I don't think I
even

15 actually finished that book. So no, no real bias one
way or

16 the other as far as how they -- lawyers do their job
for the

17 defendant -- or for their client the best they can.

18 Q. Okay. And you realize that they are representing
their

19 client, which is the government?

20 A. Right.

21 Q. And we're appointed to represent Mr. Nichols?

22 A. Right.

23 Q. Okay. Now, you mentioned to the Government lawyer
that you

24 enjoy current events and you try to follow the news.

25 A. Uh-huh.

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1 Q. In your work -- and we're not going to name the
company --

2 do you have like regular hours from like 8 to 5 or do
you

3 have -- of course, with the special events, I assume
that you

4 work after hours?

5 A. Right.

6 Q. Do you work a lot of nights?

7 A. I work a lot of hours overall. I mean, it does
vary. It

8 can usually start early in the morning and work till,
you know,

9 the afternoon or either midafternoon until the normal
time to

10 get off work. There's a lot of weekend work. Very
flexible

11 hours and usually a lot of hours.

12 Q. Okay. Are there any news programs that you watch
like "60

13 Minutes," "48 Hours," "Dateline," all those?

14 A. I usually try to -- I don't religiously watch each
one

15 every week, but if there's one on and I'm available,
yeah, I

16 tend to watch those.

17 Q. Okay. Do you recall seeing any shows that they put
on

18 about the Oklahoma City bombing or the McVeigh or the
-- the

19 McVeigh trial or the upcoming Nichols trial?

20 A. I haven't seen anything about the Nichols trial at
all,

21 upcoming at all. Obviously stayed away from all that.
During

22 the course of the -- the McVeigh trial and stuff, there
were

23 some -- segments they would do or something like that
that I

24 probably did watch those.

25 Q. Okay.

5922

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1 A. No real one stands out, but I probably did see
something

2 like that.

3 Q. Okay. Okay. Now, on page 33, if you'd look at

your

4 questionnaire. Question 144 asks the sources that you
may have

5 heard about the Oklahoma City bombing case, the media
sources,

6 and you checked TV news, radio news, newspaper and

7 conversations.

8 A. Right.

9 Q. Have you discussed the case at work with your co-
workers?

10 A. Not a great deal at all previous to the summons for
jury

11 service.

12 Q. I'm not talking about any time after you got your
13 instructions from the Court.

14 A. No.

15 Q. We realize you followed the instructions. I'm
talking

16 about up until that date. It's been going on -- since
17 two-and-a-half years now.

18 A. Yeah. No. No real specific conversations, not
really a

19 big topic of conversation at work.

20 Q. Okay. Who did you have conversations with then or
why did

21 you check that blank?

22 A. More than likely, it's just overhearing people talk
about

23 it or, you know, somebody will say they came in with a
verdict.

or
24 You know, when there were big developments in the case
it or
25 something like that, you'd overhear people speaking of

5923

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basic
1 possibly say did you hear or a new development, but
2 passing conversations.

you've been
3 Q. Okay. Okay. Well, from all the sources that

recall
4 exposed to over the last two-and-a-half years, do you

were
5 from what you've seen, read, or heard how many people

6 killed in the bombing?

7 A. I believe that the number is 160-something.

8 Q. Okay.

9 A. I believe.

that were
10 Q. Do you recall whether or not there were children

11 killed?

12 A. Yes. I did hear about that.

federal
13 Q. And the reason why there were children killed in a

14 building?

there was
15 A. Let me think about that. I don't -- oh, because

or 16 a -- some kind of facility in there that they were at

17 attending or something.

killed? 18 Q. Okay. Do you remember how many children were

19 A. No. I can't tell you that.

television 20 Q. Okay. Now, assume that you saw the images on

rescue 21 the day of the bombing and the day afterwards of the

the 22 efforts and the medical care that was being rendered to

being 23 victims on the scene and then the dead bodies that were

at the 24 taken out of there. Is it correct that you saw those

25 time?

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1 A. Yes, I did.

2 Q. All right. Think you'll ever forget those images?

like 3 A. I don't have any real specific images, you know,

obviously, it 4 blueprinted on my mind or something; so I mean,

view, I 5 was a big event that went on. And from that point of

with it, 6 probably would not forget the event or what went on

know, 7 but I don't think -- I don't have any real lasting, you
8 individuals or anything that I have blueprinted.

9 Q. The reason I ask the question, if you were chosen
to be on 10 the jury, it's likely that the Government will call a
number of 11 witnesses to the witness stand to relive that and there
will be 12 videos and there will be movies and film and -- and
photographs 13 and some very emotional testimony and exhibits. It'll
be very 14 sad, heart-wrenching. And there will be a number of
people 15 crying within the courtroom. It'll be very, very
emotional.

16 And my question to you is if you were on the jury, can
you look 17 at that testimony for what it is; that is, the evidence
of the 18 crime, which nobody disputes? It's undisputed about
what 19 happened in Oklahoma City on April the 19th --

20 A. Right.

21 Q. -- and the number of people killed, the identity of
who was 22 killed and their cause of death. But that will be very
23 emotional. And our question to you is can you separate
that 24 and then look at the Government's evidence of what they
claim

that 25 shows Terry Nichols was responsible for it and look at

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a 1 objectively and say, well, did they prove to us beyond

you 2 reasonable doubt that he was responsible for that. And

3 see, the question is because the emotion will just be
4 overflowing everybody during that time.

5 A. Right.

6 Q. Can you separate it out and look at their evidence
7 objectively?

8 A. I believe I could do that.

you 9 Q. Okay. Now, continuing on the publicity aspect, do

10 recall how the bomb was delivered to the building?

11 A. Yes. It was in a truck.

12 Q. Okay.

13 A. I believe they say it was in a truck.

test. 14 Q. Okay. And again, as the Judge said, this isn't a

see what 15 We're not grading your papers. We're just trying to

16 you recall and what your opinions are.

17 A. Okay.

was made 18 Q. Do you recall what the Government claims the bomb
19 of?
20 A. Something to do with farming stuff, farm materials
of some 21 sort.
22 Q. Okay.
23 A. Farming.
your 24 Q. And I noticed you put on your questionnaire that
25 mother grew up on a farm.

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1 A. Right.
a farm 2 Q. Did you ever go back and visit the farm or work on
3 during summers or anything?
4 A. No. We did drive by the area that they used to --
5 Q. Okay.
6 A. -- have the land and stuff, but no, never --
7 Q. You never worked on a farm at all then?
8 A. No.
or heard 9 Q. Okay. Do you recall from what you've seen, read,
10 arrested 10 over the last two-and-a-half years how Mr. McVeigh was
11 by the law enforcement authorities?

12 A. I think he was picked up somewhere. Some -- I
don't know.

13 He was arrested somehow, either driving -- I believe
driving or

14 something.

15 Q. Okay.

16 A. Something similar. Either -- a traffic stop maybe
--

17 Q. Okay.

18 A. -- is what I remember -- recall.

19 Q. All right. From what you've seen, read, and heard,
do you

20 recall how Mr. Nichols initiated contact with the law
21 enforcement authorities?

22 A. That, I don't know.

23 Q. All right. Do you recall whether or not he was in
Oklahoma

24 City at the time of the bombing?

25 A. I don't know. I don't think so. I don't know. I
don't

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1 really know.

2 Q. Do you have any impression in your mind about where
he was

3 on the day of the bombing?

4 A. I don't really know, actually.

5 Q. Okay.

6 A. Part of the thing is that during the McVeigh trial
is the
7 focus was on, you know, doing that trial. And at that
point, I
8 had forgotten that there was another trial even to come
or
9 another person involved. There was no mention that I
even
10 had -- had caught onto of anyone else involved.

11 Q. Okay. From the publicity from that trial and plus
all the
12 publicity for two years before that trial back to April
'95,
13 what do you recall it is that the Government claims
that
14 Mr. Nichols did to be involved in this?

15 A. I don't know. Somehow, he helped -- he was accused
or is
16 accused of helping or -- somehow helping. I'm not
really sure
17 exactly how.

18 Q. Okay. And you're just not familiar with what they
are
19 claiming?

20 A. No. Not really. Helped in some manner. I don't
know
21 exactly if it involved a truck or whatever. I don't
know.

22 Q. Do you have any image in your mind about him being
23 associated with the rental of the truck or driving the

truck or

24 anything?

25 A. Boy, I don't recall that. I don't recall that.

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here

1 Q. Okay. Okay. You know, there's been a lot of talk

penalty

2 from the Judge and from the Government lawyer about the

3 stage of the trial.

4 A. Uh-huh.

back to

5 Q. I wanted to concentrate just a minute to bring you

little odd

6 why we're here in the first place. It may seem a

there

7 that we're already talking about the penalty phase and

Nichols

8 hasn't been a verdict of guilty yet. Mr. Tigar and Mr.

a

9 and I are not conceding that we're ever going to get to

about

10 penalty phase. The Government's got a theory here

don't

11 Mr. Nichols' being responsible for this bombing. We

12 agree with that theory. The Government's got to put on

to

13 evidence through the witness stand and through exhibits

14 prove beyond a reasonable doubt that Mr. Nichols is

responsible

15 for this bombing.

16 When they put on their witnesses, we're going
to

17 cross-examine them very thoroughly; and when they rest,
when

18 they stop putting on witnesses, even though the Judge
told you

19 that we have no burden to come forward with anything
because

20 it's their burden of proof, we are going to call a
number of

21 witnesses who will also contradict the Government's
theory.

22 So at the end of all the evidence and the
summation by

23 the lawyers, then it will be the jury's decision to
look at the

24 evidence, presuming Mr. Nichols innocent as he sets
(sic) here,

25 look at the evidence and say has the Government proven
to us

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1 beyond a reasonable doubt that Mr. Nichols is guilty of

2 premeditated, deliberate murder of all those
individuals. So

3 do you feel that if you were on the jury, that you
could

4 participate in a process such as that?

5 A. I believe I could.

6 Q. Okay. And do you understand that we certainly are
not
7 anticipating and we don't concede that we'll get to a
8 punishment stage?

9 A. I understand that.

10 Q. Okay. It's a little awkward here that you come
into court
11 and the first thing we start talking about is the
punishment,
12 but you understand we couldn't bring you back after the
verdict
13 and then ask you your views about the penalty stage,
and that's
14 why it has to be done now.

15 A. I understand.

16 Q. Okay. And from my understanding from your answers
to the
17 Court, you are totally open to following the law the
way the
18 federal law is on the punishment hearing. You can
listen to
19 their evidence, their aggravating evidence where they
will seek
20 the death penalty, and you can listen to our evidence
in the
21 event we get to a penalty stage, which we don't
anticipate;
22 that you can listen to the mitigating evidence, weigh
that, and
23 then base a decision either way based on what you think

the

24 evidence shows?

25 A. Right.

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-- that
and out
And
1 Q. Life in prison without release, as the Judge said
2 is, real life, you don't get out, it's not in one day
3 the other, it's you die there -- or the death penalty.
4 you're open to both of those; is that correct?

5 A. That's correct.

look
fair
6 Q. Okay. Now, if you're chosen on the jury, can you
7 Terry Nichols in the eye and tell him you'll give him a
8 trial?

9 A. Yes. I could do that.

time.
10 MR. WOODS: Okay. Thank you so much for your
11 We appreciate it.

tell you
have
what I
12 THE COURT: We all do, and we're not able to
13 right now whether you will be serving on the jury. We
14 some more people to go through this same process, so

15 want you to do is leave here now with the assumption
that you
16 will be on the jury and that you will be obligated then
to do
17 the things that we've been talking about, to decide
fairly on
18 the law and the evidence.

19 And to assist in that, of course, I must again
repeat
20 the caution do not discuss the case with anybody. Be
very
21 careful -- excuse me -- about all things that you read,
see,
22 and hear to avoid anything that could influence you and
affect
23 your judgment in the case if called upon to serve. If
there's
24 anything that comes up that is an emergency or
something that
25 would affect your ability to serve with us, give us a
call

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1 immediately. We'll be in touch with you soon and give
you some
2 additional information at that time.

3 JUROR: Okay.

4 THE COURT: You're excused for now, and thank
you
5 again.

6 JUROR: Thanks.

7 THE COURT: 392.

8 Good afternoon. Would you just raise your
right hand

9 and take the oath from the clerk.

10 (Juror No. 392 affirmed.)

11 THE COURTROOM DEPUTY: Thank you.

12 THE COURT: Please be seated in that chair
there right

13 by the microphone. And we don't want you to be
concerned about

14 the microphone. That's just there to amplify your
voice and

15 help us hear you; and of course, it's not being
broadcast

16 somewhere, you understand.

17 JUROR: Right.

18 THE COURT: And you don't have to lean into it
or

19 anything. It'll pick you up from where you're seated.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. And, you know, of course, that when the oath refers
to the

23 trial, the trial we're talking about is United States
against

24 Terry Lynn Nichols. You received a summons advising
that

25 you're among those who, through a chance selection
process,

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1 received a summons for possible service in this case.

2 A. Yes.

3 Q. You returned a questionnaire that we sent with the
summons.

4 Then you got a second notice to come out to the
Jefferson

5 County Fairgrounds last September the 17th. You did
that, and

6 you met with me there and other people who are here
now; and I

7 want to reintroduce them so you know who's present with
us this

8 afternoon.

9 You recall meeting the lawyers for the
Government who

10 were there, Mr. Lawrence Mackey and Ms. Beth Wilkinson,
who are

11 here at this first table. They are joined now by Mr.
Patrick

12 Ryan and Mr. Geoffrey Mearns, additional lawyers for
the

13 Government.

14 You recall meeting Mr. Michael Tigar and Mr.
Ronald

15 Woods, attorneys for Terry Nichols, all of whom were
also

16 present at that time.

17 A. Yes, sir.

18 Q. And then after the introductions, I reviewed with
you and
19 the others the background of the case, explaining that
this
20 case arises out of an event in Oklahoma City, Oklahoma,
on
21 April the 19th of 1995. On that day, a federal office
building
22 was destroyed by an explosion. People in the building
were
23 killed and injured. There was then a -- later an
indictment,
24 an accusation filed in the Federal Court in Oklahoma
City by
25 attorneys for the Government. And in that indictment,
a man

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1 named Timothy James McVeigh, along with Terry Nichols,
were
2 accused of conspiring with other persons -- and the
indictment
3 says "not named in the indictment" -- conspiring or
entering
4 into a criminal agreement to bomb that building and to
kill and
5 injure people in it; that in addition to that charge,
the
6 indictment also accuses the defendants of not just

planning it,

7 but carrying it out. And among the charges are eight
counts of

8 first-degree murder, premeditated murder of law
enforcement

9 agents who died in the explosion.

10 To these charges, the defendants entered pleas
of not

11 guilty, thereby creating the issues for trial. The
case was

12 then transferred from Oklahoma here to Colorado to this
court.

13 And the reason for that is because of a concern about
having

14 people in Oklahoma sit as jurors in the case.

15 So when the case was moved here, I entered an
order

16 for separate trials on the finding that fundamental
fairness

17 requires that the evidence as it relates or may relate
to

18 Timothy McVeigh be considered separately from that that
may

19 relate to Terry Nichols to avoid confusion between the

20 defendants and to provide both of them with a fair
opportunity

21 for the evidence to be evaluated by separate juries.

22 And there has been a trial with respect to the
charges

23 and the evidence concerning Timothy McVeigh. A jury
heard that

24 case earlier this year right here in this court and

returned a

25 verdict of guilty. And then as the law requires, the
jury went

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1 on to hear more information concerning punishment and
returned

2 a recommendation for the death sentence for Timothy
McVeigh.

3 That case is over.

4 Now, we're getting ready to try the evidence,
whatever

5 it may be, as it relates to Terry Nichols. Nothing
that anyone

6 has seen, read, or heard about the McVeigh case can now
be

7 considered with respect to Mr. Nichols. We start with
a clean

8 slate. No evidence is before the Court. And of
course, to

9 illustrate that, I presided at the trial with the case
as it

10 related to Timothy McVeigh. I heard all of that
evidence. I

11 must set it aside now and not consider it in any way in
any of

12 the rulings that I make in connection with this case
because we

13 start over. You understand?

14 A. Yes, sir.

in that 15 Q. And certainly, the outcomes, the jury's decisions
be 16 case can have no influence on this case. If it were to
for the 17 otherwise, clearly, that would violate the whole reason
18 separate trials. You understand that?

19 A. Yes, I do.

including you, 20 Q. And then I also discussed with the persons,
criminal 21 who appeared some of the fundamental principles of the
Constitution 22 justice system, things that are commanded by the
the United 23 and are therefore required in all criminal trials in
the 24 States. No matter what court it's in or, you know, who
federal, 25 prosecution is, what level of government, local,

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because this 1 state, or what the crime charged is, it's the same
all 2 is basic to our constitutional system, and that is that
they're 3 persons accused are presumed to be innocent of whatever
throughout the 4 accused of and that such a presumption carries

not
jury,
case and
that

5 trial and entitles them to an acquittal, a verdict of
6 guilty unless 12 fair-minded people sitting on the
7 hearing the evidence that's presented, limiting their
8 consideration to what is the evidence actually in the
9 following instructions from the court on the law decide
10 the crime is proved beyond a reasonable doubt.

all of
remaining as
give to
and find
points

11 And what it means then is that after hearing
12 the evidence, if the jury has a reasonable doubt
13 to whether that evidence proves the charge, they must
14 the ben -- the benefit of that doubt to the defendant
15 him not guilty. And I'm sure you've heard of these
16 before.

17 A. Sure.

it is
proving
of
have to

18 Q. And one additional thing that I mentioned, because
19 also fundamental and applicable to all cases, is that a
20 defendant who is accused has no burden or duty of
21 anything at his trial, certainly doesn't have a burden
22 proving himself not guilty; but beyond that, he doesn't

23 offer any witnesses, and certainly, he doesn't have to
answer
24 any questions from the lawyers or explain anything to
the jury.
25 An accused person can simply remain silent and
challenge the

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1 Government's case against him by objections to the
2 admissibility of evidence, by the cross-examination of
3 witnesses and so forth.
4 At the end of the trial, the court gives
detailed
5 instructions with respect to the law, including what
exactly
6 has to be proved for the crimes charged, what are the
elements
7 of the offense, the facts that must be proved. And in
those
8 instructions, the court also always includes, in a case
in
9 which a defendant does not testify, a caution that that
fact
10 may not be considered in the case by the jury. They
may not
11 draw any inferences or raise any suggestion that the
defendant
12 is hiding something or that if he's innocent, why
doesn't he
13 testify. There are many reasons why an innocent person

may not

14 testify at trial.

15 And then, as I say, in the end, the jury is
asked,

16 Have these things that must be proved been proved to
your

17 satisfaction beyond a reasonable doubt? If yes, the
verdict is

18 guilty. If no, the verdict is not guilty. Understand?

19 A. Yes, sir.

20 Q. Do you agree with these principles?

21 A. Yes, I do.

22 Q. Are you prepared to follow them in this case if you
were to

23 be selected on this jury?

24 A. Yes, I would.

25 Q. So as you see Terry Nichols sitting here this
afternoon,

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1 you presume him to be innocent of these charges?

2 A. Yes, I do.

3 Q. Okay. Now, after all of that -- and I repeat it
not

4 because I thought you didn't listen or didn't
understand, but

5 simply so we've got a foundation for what we're going
to do

6 here -- we asked you to complete a questionnaire, 166
7 questions, and you did it. And you and others turned
it in to
8 me. I made copies, gave them to these people who are
in front
9 of you with the understanding that we all have that
none of the
10 information that you've given us here will be used for
any
11 purpose other than this that we're now engaged in and
none of
12 these things would be made public and that your name
would not
13 be used here, but -- because we understand a privacy
interest
14 that you may have. Some of these things are quite
personal to
15 you.

16 And also, you know, we go to arrangements to
bring you
17 in and out of the courthouse so you can't appear on
television
18 or press photographers see who you are and so forth.
And
19 that's the only reason for these arrangements, you
understand.

20 Also, you should understand that now, we are in open
court; and
21 in trying to balance privacy and public interest in the
22 proceeding, now the public interest predominates so
that what
23 is said and done here in open court is public. I hope

you

24 understand that.

25 A. Yes, sir, I do.

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1 Q. And we'll be careful -- I'm going to ask you some
questions
2 based on some of the answers that you gave us.
Certainly,
3 we're not going to repeat everything. And also, I will
cover
4 some other things with you by way of instructions and
then some
5 questions. Now, please understand this is not a test.
Your
6 background is in teaching, I know, so this is not like
a test.
7 There are no right or wrong answers. Of course, we
rely on the
8 factual information that you provide us. But in those
areas
9 where we're asking you for opinions, attitudes,
beliefs,
10 feelings, all we're looking for is what you honestly
believe,
11 feel, and have opinions about. And you should not
worry about
12 our reaction to any of them, because the whole purpose
of this
13 activity here is to find out what you think about so

many of

14 these points. So don't be hesitant about telling us
what you
15 think.

16 Now, just a few things about your background.
As I

17 understand it, you were born and raised in Ohio?

18 A. That's true.

19 Q. And went to high school there and then went to
Michigan

20 State University for, what, one year?

21 A. No. I -- I first attended a school in Flint,
Michigan,

22 General Motors Institute.

23 Q. Oh, yes. Yes, you told us that.

24 A. And then I worked as an engineer for a while, and
then I

25 went back to Michigan State when I decided I wanted to
teach

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1 and coach.

2 Q. Yes.

3 A. And got a second --

4 Q. And you were going to follow a different career
from

5 engineering?

6 A. That's right. That's correct.

7 Q. And then decided to teach. And then did you get a
degree

8 from Michigan State?

9 A. Yes.

10 Q. And then you did teach at several different school
11 districts in Michigan?

12 A. That's correct.

13 Q. And as I understand it, then -- well, let's see.
You went

14 to the University of Missouri for a master's?

15 A. Yes. I have a master's from the University of
Missouri.

16 Q. In education?

17 A. No. In chemistry.

18 Q. And were you teaching chemistry?

19 A. Yes. I taught chemistry in the public schools, and
I also

20 was a football coach.

21 Q. All right. And you came out to Colorado, then,
what, about

22 '77 or so?

23 A. Yes.

24 Q. And then you continued your teaching and coaching
career

25 here at a school district in Colorado?

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1 A. Right.

2 Q. And you also became an athletic director?

3 A. Yeah. I -- I was the district athletic director in
4 Brighton High School -- or Brighton school district for
about a
5 year and a half when I first came here, and then I left
there
6 and went to Longmont where I left that position because
I
7 wanted to get back in the classroom. So I became a
teacher

8 back in --

9 Q. And then also resumed coaching?

10 A. Yes.

11 Q. Football?

12 A. Yes.

13 Q. Did you coach other sports?

14 A. I coached track.

15 Q. And then you retired several years ago.

16 A. Yes.

17 Q. And now you volunteer in a number of ways.

18 A. Yes, I try to.

19 Q. Your wife is also from -- from Ohio?

20 A. Yes. We're high school --

21 Q. Did you know each other there?

22 A. Yeah. We were high school classmates and actually

dated in

23 high school.

24 Q. Okay. And she's also a teacher -- has been a
teacher?

25 A. Yes. She's a teacher.

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1 Q. And is retired. She taught at the elementary
level?

2 A. Yes. Yes, she did. And I have one daughter that's
now a

3 teacher.

4 Q. A teacher now.

5 A. Uh-huh.

6 Q. With respect to your volunteer activities, tell us
a little

7 about what you're doing there. I -- one is -- I'm on
page 9.

8 You have your --

9 A. Yes, I do.

10 Q. -- questionnaire. And you know, I want to be
careful about

11 some of these things, too, because we're not -- we're
trying

12 not to identify you by your answers here, as well. But
one of

13 these activities is a church matter. And what do you
do there?

is -- 14 A. I am the financial secretary of our church, which
15 it's a high-sounding job, but all I really do is --
16 Q. Count the collections?
17 A. -- enter contributions of givers into the computer
weekly.
18 And it's sort of interesting because I -- all the years
I
19 taught, I tried to stay as complete -- as computer
illiterate
20 as I could. And the minute I retired, I was asked to
do two
21 volunteer jobs, both of which I had to use a computer.
This is
22 one of them.
23 The other thing I do is there's an
organization in
24 Boulder County called the OUR Center, which is -- the
OUR
25 stands for Outreach United Resources; and what it is,
it's an

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1 organization supported by churches but also by public
funds and
2 private donations to help needy people in the community
with
3 food, clothing, housing, child care. And both my wife
and I
4 went there to volunteer, and I got talked into being a

-- an

there 5 intake counselor. So I -- one day a week, I spend

them in 6 talking to people that need help, and then I can direct

7 some cases to get food and that kind of thing.

needs? 8 Q. I see. So you interview them with respect to their

enter 9 A. Interview them. That's correct. And I have to

school job I 10 information. And the other one, the Hudson -- the

elementary 11 do, my -- I mentioned my oldest daughter is an

first grade. 12 teacher, so I go over one day a week. She teaches

at an 13 And even though I taught for 33 years, I never taught

I've been 14 elementary level. And so for the last three years,

the little 15 going over and helping her. And that's sort of fun,

16 first-graders there.

17 Q. Do you read to them and things like that?

But 18 A. Whatever she tells me to do. I'm sort of a gofer.

math 19 yeah, she usually -- Because I'm a science teacher and

It's really 20 teacher, she usually has a lesson for me to teach.

21 a lot of fun. I enjoy it.

22 Q. Your wife does some of that, as well, I take it?

in the 23 A. Yes, she does. She taught in another school; and
another 24 last couple years she taught, she team taught with
25 young lady that got to be real close and sort of like a

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there the 1 mother-daughter relationship, so my wife goes over
can. She 2 same day that I do and she helps this lady where she
grandson. And 3 has a young baby, too, my daughter. I have one
time we 4 so we figure all the time we can help them, the more
5 can spend with our grandchildren.

6 Q. Now, there was a time when you were in the Army?

7 A. Yes, sir.

8 Q. What, two years?

9 A. Yes. I was drafted and was in for two years.

10 Q. So were you in infantry? What branch of the Army?

11 A. In the Army. United States infantry.

12 Q. Yes, but I mean in the infantry?

13 A. Yes, sir. Yes.

Force, went 14 Q. Okay. And now, your son has gone into the Air

15 to the Academy?

16 A. Yes, he did.
17 Q. And is he now -- and he's in active duty in the Air
Force
18 now?
19 A. He's currently in reserve status. He's flying
20 commercially, but he's also flying Air Force Reserve.
21 Q. Did he graduate from the Academy?
22 A. Yes. He graduated from the Academy in '87.
23 Q. And then spent some time on active duty as a result
of
24 that?
25 A. Yes, sir.

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1 Q. As a pilot?
2 A. Yes.
3 Q. You mentioned that you taught chemistry.
4 A. Uh-huh.
5 Q. And I take it several different courses in
chemistry, like
6 principles or basic or whatever?
7 A. The curriculum and the course that I taught was
primarily
8 what we call college preparatory chemistry, which was a
pretty
9 rigorous treatment of chemistry for high school for

those kids

10 that were going on to college. Now, at different
times, I did

11 teach mathematics and usually when I did that, I would

12 volunteer to teach to teach the lower grade of
mathematics.

13 Q. Yeah.

14 A. Just because it was different.

15 Q. And the work in chemistry included laboratory work?

16 A. Yes.

17 Q. Qualitative, quantitative analysis and --

18 A. Yes.

19 Q. -- that sort of thing. What kind of a -- equipment
did you

20 have in the labs in which you taught these courses? I
mean, in

21 terms of the machinery.

22 A. Most of the equipment that -- the philosophy of the
23 curriculum that I used for many years and I -- I grew
to agree

24 with it. The equipment we used was rather simple. I
think

25 it's -- it's very easy for a student to get carried
away with

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1 black boxes and not learn scientific principles, and
you have

2 to use a certain amount of instrumentation. But we
tried to
3 limit it as much as we could with simple instruments,
so not an
4 awful lot of equipment but -- other than sometimes,
students
5 worked on projects. And we did have things like
infrared
6 spectrometers available, but most of the students
didn't use it
7 in normal course work. It was -- anyone who knows any
8 chemistry would look at it and say it was rather crude;
but in
9 the long run, it served its purpose because the
students who
10 came out of it did well in college.

11 Q. Like teaching kids math without starting with a
calculator?

12 A. Yeah. I would recommend it.

13 Q. Yeah. And in -- you yourself, though, have the
skills

14 because I take it you took chemistry courses in --

15 A. Yes.

16 Q. -- college. And in fact, at the graduate -- post-
graduate

17 level. You have a familiarity with laboratory
equipment.

18 A. Oh, yes.

19 Q. And computer-aided laboratory equipment?

20 A. Yes.

21 Q. Have you kept up with that since retirement?
22 A. Not really. I read journals occasionally, but not
really.
23 And as I said, computer -- when I worked on my master's
degree,
24 we were still -- our computer work was still punch
cards and
25 that kind of stuff. I remember carrying around a shoe
box full

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1 of cards.
2 Q. Well, you may be wondering why I'm asking you
questions
3 like this, but the reason is that there could be
testimony in
4 this case from chemists --
5 A. Yes.
6 Q. -- regarding the analysis of samples and so forth
and the
7 expression of opinions about it. And there can, of
course, be
8 contradictory testimony like that and differences of
opinion.
9 And you with your own special knowledge and skills
there would
10 be different in your background from what you might
expect
11 other jurors to know. And one of the things that we
ask of

12 jurors in situations like that is that they don't
become their
13 own expert and that they do, indeed, listen to the
testimony
14 and then, when it is expert testimony in an area that a
person
15 has some expertise and background in, they don't start
16 instructing the other jurors about it. You understand
what I'm
17 talking about?
18 A. Yes, sir, I do. I know that. That could certainly
be a
19 problem. And to be -- to be very honest with you, when
I
20 received the request to appear, this is not a job that
I want.
21 However, I look at -- look at it sort of like the
situation
22 that I had when I was drafted in the service. It's --
someone
23 has to do it; and I guess if I were to be selected, I
would do
24 it. But I really don't want to.
25 Q. Yeah.

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a
1 A. But I certainly wouldn't -- I don't think would be
2 problem listening to evidence from chemists and trying

to

3 influence the jury or something.

4 Q. Okay.

5 A. I mean, I don't think that would be a problem.
That's just

6 not my personality, I don't think.

7 Q. You would exercise some self-discipline in that
regard?

8 A. Pardon me?

9 Q. You would exercise some self-discipline in that
regard to

10 avoid --

11 A. I would certainly try to, yes, sir.

12 Q. -- that.

13 And you know, your analogy about the draft
here is

14 pretty much apt, because we do not put out a call for

15 volunteers to come in and hear this case. And of
course, what

16 the law says is that the court should arrange for a
jury

17 selection plan based on an effort to get a cross
section of the

18 community, people from different walks of life and
different

19 experiences and backgrounds and, of course, busy
people,

20 because we don't want all -- you know, we don't want
just one

21 kind of person sitting on a jury, because the jury
exercises

22 the judgment of the community. And therefore, jury
service is

23 kind of a compelled citizen's response to the
obligations of

24 citizenship. And I take it that's what you've just
said.

25 That's the approach you're taking. You'd rather not be
here,

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1 but if called upon, you will serve. Yes?

2 A. That's right.

3 Q. Now, you mentioned in here -- and this is one of
those

4 areas that's somewhat private and sensitive -- that
you're a

5 religious person; correct?

6 A. Yes, I'm a Christian.

7 Q. And you do daily Bible readings?

8 A. Yes, sir.

9 Q. And do you do that through some -- something
provided by

10 your church suggesting that you read different passages
on

11 different days or something, or is this a matter of
your own

12 selection?

13 A. Well, several years ago, I started a program that

was a

14 daily thing that was structured that way; but since
that time,

15 I pretty much do it on my own choice. I try to read at
least a

16 chapter or so every day and try to finish a book before
I

17 choose something else; but it's pretty much now on what
I --

18 Q. Your own selections?

19 A. Yes.

20 Q. And you also mentioned that you have, among your
friends, a

21 number who are lawyers.

22 A. Yes, I do.

23 Q. Do any of them practice in the criminal law, either
as

24 prosecutors or defense lawyers, to your knowledge?

25 A. To my knowledge, no, sir. I don't think they do.

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1 Q. Have you discussed with any of your lawyer friends
the fact

2 that you got a jury summons?

3 A. No.

4 Q. And that you're being called in here?

5 A. No.

6 Q. Okay. Now, I want to address -- have you address
for us a
7 couple of specific things on the questionnaire,
beginning at
8 page 31. If you'll turn -- and I'm sorry to bounce
back and
9 forth here, but --

10 A. That's fine.

11 Q. On page 31, we asked you at the top of the page
with
12 Question 133, statements by public officials. And you
13 responded there by talking about the president and what
you say
14 the "secretary of justice." It may be the Attorney
General
15 that you meant there. Did you?

16 A. Yes. I guess that's right.

17 Q. All right. Well, don't be embarrassed about that.
And
18 then you mentioned that you agree -- I guess you agree
with the
19 statement that it was a terrible tragedy.

20 A. Yes, I do.

21 Q. All right. And then "pray that those responsible
will be
22 punished."

23 A. Yes.

24 Q. Tell us what you meant by that or mean by that.

25 A. Well, first of all, I think that my religious
belief --

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1 I'm -- I know I'm convinced that whomever is
responsible will

2 have to answer to a higher court than that.

3 Q. Right.

4 A. But I think in our society, we need to protect
those that

5 are here and those that are innocent; and I think it's
a

6 responsibility of our democratic society. That's why
we have a

7 court system, a judicial system to do this. So if --
if the

8 person or persons who are responsible can be proven
that they

9 are responsible for it, then I think they should be
punished.

10 I think that it was a terrible tragedy, as has
been

11 said many times. And I think a lot of -- to me, it was
not

12 just a tragedy. It was sort of a cowardly act. There
were a

13 lot of innocent people that were -- that were killed
and

14 injured that had nothing to do with -- to my knowledge,
nothing

15 to do with any -- anything in the case. I mean, if
someone is

16 angry or people were angry at the government, I guess
you
17 could -- you could make a case for the government
officers that
18 were in the building; but there were a lot of other
people, I
19 guess, that were there that had nothing to do with it.
20 Q. Yeah.
21 A. That's just a tragedy to me.
22 Q. All right. Well, you know, you've said several
things
23 there; and we need to have you sort of sort them out
for us,
24 because what may happen, as you say, in a higher court
than
25 this or any other judgment area is not for us to be
concerned

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1 about here.
2 A. That's right.
3 Q. This is --
4 A. I understand.
5 Q. -- a human activity. We're talking about a human
system
6 and a system that has cardinal principles that we've
already
7 talked about. And because it's a human system, it is
also

8 always subject to human frailty. And all of the
principles
9 that are involved in our structure of the law seek to
protect
10 against the influence of the human frailties of anger,
of
11 emotional response; and we try as best we can in the
criminal
12 justice system to use rationality, reason, and
demonstrated
13 facts.

14 In a sense, you know, it's like the scientific
method
15 in a way, in that you seek empirically to prove
something. And
16 of course, so in court, there is an effort to prove
something
17 through witnesses and exhibits. And if not proved,
then, of
18 course, the system comes out with a result of not
guilty, even
19 though there is the natural human tendency to say
somebody
20 ought to be found guilty for it because it's a terrible
21 tragedy.

22 Are you able to make these distinctions that
I'm
23 suggesting?

24 A. Yes, sir. I am. I think earlier, when you talked
about
25 the -- I think one of the strongest -- I'm going to say
for

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1 lack of another word -- tradition that we have in this
country
2 is the statement that one is innocent until proven
guilty. And
3 I think that's -- that's very critical. I think I have
4 never -- I have never served as a juror in any other
case and
5 I've never been in a court as -- as a defendant. But I
know if
6 I were ever to be, I would certainly hope that anyone,
the
7 judge or anyone else that would be hearing my case,
whatever it
8 might be, would certainly give me that -- that right,
because I
9 deserve that right under the Constitution. I think
it's --
10 it's critical.
11 Q. And we had to ask you about punishments, too, in
this
12 questionnaire; and you know that on pages 28 and 29,
you told
13 us something about your views there. And the reason,
of
14 course, that we had you address that question is
because of the
15 possibilities.

16 We started here, of course, with the
presumption of
17 innocence; that there is no guilt here and that there
will
18 never be a guilty verdict in the case. But because of
the
19 possibility of a guilty verdict, we have to also ask
people
20 their attitudes, beliefs, and so forth, with respect to
their
21 ability to participate in a punishment decision. And
there was
22 rather a long explanation on page 27 before these
questions on
23 28, reminding you and all others answering the
questionnaire
24 that the fact that we're talking about punishment and
asking
25 your opinions about two types of punishment should not
be

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1 considered as any kind of suggestion that we -- we have
2 expectation of that decision. You recall that?
3 A. Yes, I do.
4 Q. And then you did give us answers here about your
view of
5 essentially what the law ought to be if you made it
with
6 respect to when the punishment of imprisonment for life

with no

7 possibility of release may be imposed and when the
punishment

8 of death may be imposed. And of course, we asked about

9 opinions on this, because all of us here, you included,

10 recognize this is a subject on which there is
considerable

11 disagreement and that from time to time, the law is
changed.

12 And in some states, there is no death punishment, no
death

13 penalty, because the legislatures in those states,
reflecting

14 the will of the people in those states, have decided
there

15 should be no such punishment. And then in -- in states
where

16 there is the death penalty, there are different ways to
decide

17 it.

18 We are, of course, now in Federal Court under
federal

19 law; and the federal law does provide for a punishment
of life

20 in prison which is, again, really life in prison --
there's no

21 parole, no early release; that's where you die when
your time

22 comes -- and the penalty of death.

23 But before talking with you about what the law

24 actually is, we, as I said, wanted to know from you
what you

25 think it ought to be with respect to these extreme
punishments.

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1 And that's what you've told us; right?

2 A. Yes.

3 Q. Now, this is an area in which sometimes the persons
4 answering the questions can have second thoughts about
it or

5 think about it some more and as a result may have
different

6 answers from the ones first recorded in -- in
responding to the

7 questions. So I guess my first question for you in
this area

8 is have you changed your opinions in any respect from
what you

9 wrote here?

10 A. No. I don't think so.

11 Q. All right.

12 A. I think I -- in all honesty, the questionnaire was
lengthy,

13 and so I guess maybe you get a little tired or
something of

14 writing. So other than to elaborate a little more than
what

15 I've said, I don't think there's any big change in my
beliefs

16 from what I've written there.

17 Q. Right. And one of the things that you've said here
is that

18 under B -- and it's repeated, really, under E on the
next

19 page -- that the death penalty should only be used if
"there's

20 a person admits --" I take it you mean a confession?

21 A. Yes.

22 Q. "-- or at least two credible eyewitnesses saw."
Now, it's

23 interesting; that used to be the law in Colorado many
years

24 ago, as a matter of fact. Were you aware of that?

25 A. No, sir, I wasn't.

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1 Q. There was a time in Colorado under state law when
that

2 exactly was the law. And it's been changed since in
the

3 Colorado legislature, and Colorado has changed it. And
of

4 course, the change is as a result of public opinion
changing.

5 But I want to review with you what the law is.
And

6 now we're talking about federal law, which is, of
course,

7 separate from what the states do, because now we're
talking
8 about the law as made by the Congress and to some
extent as
9 interpreted by the Supreme Court. But the Congress has
10 provided that for certain kinds of crimes, this type of
11 punishment may be considered and used.

12 And to make it simple, without going into any
other
13 details, the law provides that when a person has been
convicted
14 of a crime involving the intentional killing of other
people,
15 then that person may be subject to the death penalty
and to the
16 alternative of life in prison without release and
actually to a
17 question -- a punishment of something lesser than that,
some
18 number of years. And in cases not involving capital
punishment
19 in the Federal Court system, when a person has been
found
20 guilty of a crime, it's up to a judge to impose a
sentence.
21 You're probably aware of that.

22 So what a jury does is come in in those cases
and hear
23 the evidence and then make a decision as to whether the
24 defendant has been proved guilty or not by the
evidence.
25 Whatever that decision is, the jury's done with its

duties upon

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1 a return of the verdict. And it goes over to the judge
to make
2 a decision about what to do about it, what should the
sentence
3 be.

4 And in such a situation, before a judge can
make a
5 sentence for the individual being sentenced who has
been found
6 guilty, the judge has to consider much more than just
that
7 which was received in evidence at the trial. Because
now
8 you're making a judgment about an individual human
being. And
9 we do not have a system where this crime automatically
results
10 in this sentence. So the sentence has to be based on
not just
11 the crime but who the defendant is.

12 And so a judge making a sentence, for example,
for a
13 bank robbery or a burglary of a post office or a fraud
or
14 some -- something involving federal jurisdiction will
hear more
15 about the crime and its circumstances and its

consequences and

16 also more about the defendant; indeed, all that can be
17 discovered about the defendant: that person's life
story, where
18 he was born and raised, what the family circumstances
were,
19 what his own marital history has been, marriages,
divorces,
20 children, employment history, educational development,
military
21 service, really all that has happened to that person in
his
22 life, because all of these things get factored in. You
have to
23 know who is this person. And then a judge hears all of
that
24 and listens to the arguments from the prosecution and
the
25 defense and then says: For this crime, this particular
person

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1 deserves this particular punishment.
2 And in cases where more than one has been --
more than
3 one person is involved, the sentences may be different
among
4 them because of the differences in their life
histories; and
5 also, they may have played different roles in the

offense, one

6 being more active than another. And what I have been
7 suggesting here that people think about is like a bank
robbery,
8 where somebody goes in with a gun, somebody goes in and
picks
9 up the money, somebody else has got the car running.
You know,
10 they are all guilty of bank robbery, but they did
different
11 things. And a judge considers all that and then
decides the
12 punishment.

13 Now, for these crimes that involve the issue
of life
14 and death, the Congress has said judges don't make that
15 decision. That's one for the jury, because we want the
people
16 to respond to that as the conscience of the community,
as it is
17 sometimes expressed. So the jury, having found a
person guilty
18 of such a crime, then must do more than return a
verdict. They
19 must hear more. They must hear in a second-stage trial
that
20 proceeds just like the trial itself, in that lawyers
for both
21 sides bring in the witnesses and the exhibits upon
which they
22 rely; but at that trial, that second-stage hearing,
again, the

23 jury is presented with more about the crime and the
24 circumstances than that which they heard in the
evidence at the
25 trial and also, all that is known about the defendant.
These

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1 various things that I've discussed that a judge wants
to know,
2 so should a jury hear that and give consideration to
it.

3 Now, at the end of that second stage or second
trial,

4 if you will, the court gives instructions to the jury
5 summarizing and outlining what has been presented in
the

6 information and also dividing it into the categories
that are
7 applicable here; on the one hand, what are called in
the law

8 aggravating circumstances or aggravating factors,
things about

9 the case that suggest that death is the deserved
punishment,

10 and also will outline those things on the other side
that

11 should be considered in mitigation and that the jury's
free to

12 consider as factors that suggest that the crime may
deserve

13 death as a punishment but not the defendant. And so
that for
14 this particular defendant, considering all that you've
been
15 given about him -- does not deserve to die for this
crime.

16 Understand?

17 A. Yes, sir, I think so.

18 Q. Now, the law isn't as you suggested here, that
before the

19 death penalty can be imposed, there have to be
eyewitnesses or

20 a confession. The issue of whether the defendant is
guilty has

21 already been decided, and it's been decided in the
guilt phase

22 of the trial. And it simply meets the standard that
the jury

23 is satisfied beyond a reasonable doubt the defendant is
guilty

24 of the intentional killing of other people and now,
consider

25 these factors and decide what is the just punishment.

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1 And the court, you know, in summarizing all of
this

2 and saying these are the factors that you may consider
in

3 aggravation, these are the factors that you may

consider in

jury may 4 mitigation, and may suggest some questions that the

formula 5 use to analyze what they've heard. But there's no

the 6 here. It comes down to a very subjective decision, and

7 jury then must talk it over. There are 12 people to

8 participate. And finally, each juror, though, has the

best 9 responsibility for making an individual judgment, which

about 10 may be described as a reasoned, rational moral judgment

Understand? 11 whether another human being should live or die.

12 A. Yes, sir, I think so.

13 Q. Are you prepared -- can you make such a judgment?

the key 14 A. I think so. The way you've explained it, I think

where the 15 to me making the decision would be in the first phase

16 jury would decide that the person was guilty without a
17 reasonable doubt -- without a reasonable doubt.

18 Q. Yes.

decision, 19 A. It would seem to me that if you can make that

I'd 20 then the other one would seem to fall in place, I guess

21 say.

22 Q. Now, that decision, you know -- you've heard about

23 circumstantial evidence and direct evidence?

24 A. Yes, sir.

25 Q. That's something that is not unfamiliar.

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1 A. No, I'm not.

2 Q. Okay. Well, a -- a decision about a case can be
made on
3 circumstantial evidence. You understand?

4 A. Yes, I do.

5 Q. But of course, it has to be of such persuasive
power and
6 weight that it meets the standard of beyond a
reasonable doubt.

7 A. Yes. And I think that's -- that would be the place
it
8 would be difficult for me. For circumstantial
evidence, per
9 se, it would -- it would be difficult for me on that
alone, I
10 think. And I think that's sort of what I was referring
to in
11 my answer.

12 Q. You would rather have a confession?

13 A. Absolutely.

14 Q. Or you would rather have eyewitnesses who say, I
saw him
15 shoot the other person, or whatever.

16 A. That's correct.

17 Q. The law doesn't require it, though.

18 A. I understand.

19 Q. And, you know, difficult as it may be, that's the
job of

20 the jury under the law as it is. And the doubt that is
a

21 reasonable doubt is not beyond all possible doubt.
What we say

22 in defining "reasonable doubt" in these detailed
instructions

23 at the end of the trial is the kind of a doubt that
would make

24 a reasonable person hesitate to act in the most
important of

25 his or her own affairs in making your own decisions.
So you

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1 have to be convinced in your own mind before you make
an

2 important decision in your own life, and that's really
the

3 standard that is applicable to determining whether the
evidence

4 satisfies the burden. Understand?

5 A. Yes, sir.

6 Q. Now, is that -- you know, what we need you to tell
us is

7 whether you can serve on a jury and make such
decisions.

8 A. I think I could, yes.

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

10 the lawyers in the case.

11 Ms. Wilkinson, do you have some questions?

12 MS. WILKINSON: I do. Thank you, your Honor.

13 THE COURT: All right.

14 VOIR DIRE EXAMINATION

15 BY MS. WILKINSON:

16 Q. Good afternoon, sir.

17 A. Hi.

18 Q. As the Judge told you, my name is Beth Wilkinson.
I'm one

19 of the prosecutors who will be presenting the evidence
in this

20 case against Mr. Nichols.

21 And you told us a lot in your questionnaire,
and you

22 told his Honor a lot; but I have a few more questions,
if you

23 wouldn't mind following up on --

24 A. That's all right.

25 Q. You told us about your education, but you didn't
say

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1 whether you played football while you were in college.

2 A. No, I didn't, because I -- I had an opportunity to
play,

3 but I went to a school that didn't have football and at
the

4 time I thought that was wise; and then later, when I
decided I

5 wanted to coach, I sort of wished that I had, but I
didn't.

6 Q. You said you also coached track as a teacher; is
that

7 right?

8 A. Yes.

9 Q. Did you coach any other sports?

10 A. No. Not -- not interscholastic. I operated some
11 intramural programs and things like that, primarily
basketball

12 but never at an interscholastic level.

13 Q. Now, over your many years of teaching, did you
focus

14 primarily on chemistry?

15 A. Yes, I did.

16 Q. And you said you taught a pre-college course.

17 A. Yeah.

18 Q. A rather tough course for kids who wanted to go on
to

19 school. Was that to juniors and seniors, or did you
teach --

20 A. Primarily juniors. I would have a few seniors,
21 occasionally, a sophomore; but most of the time our
curriculum
22 in the schools where I was, sophomores didn't have the
23 prerequisites so they would normally take it as
juniors.
24 Q. And from what I understand, you went back later on
to get
25 your master's in chemistry to teach; is that right?

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1 A. Yes.
2 Q. When you took your master's, did you become
familiar with
3 different techniques like spectrometry that you've
already
4 mentioned and chromatography, like gas or electron
5 chromatography?
6 A. Yes.
7 Q. Are you familiar with an analysis called SEM, which
does an
8 elemental analysis and, you know, looks for elements
and does
9 it by judging the atomic weight?
10 A. Yes. Somewhat.
11 Q. Okay. Have you ever heard of a machine or an
analysis
12 called FTIR?

13 A. SCIR.

14 Q. FTIR. Fourier transformed infrared?

15 A. Oh, yes. Yes. Okay. I've heard of it.

16 Q. Okay. And as part of your study, were these
techniques
used,
17 considered acceptable chemical analyses that you -- you
18 or at least you became familiar with?

19 A. Yes. I -- I think so. I -- I spent one summer at
Cal
20 Berkeley about, oh, ten years ago; and that's what it
was on,
21 chemical instrumentation. So even though it wasn't
extremely
22 detailed, we tried to touch on some of those kinds of
ins --
23 the methods, laboratory methods. So I guess my answer
to your
24 question would be yes, within -- within certain
parameters,
25 certainly, they are accurate.

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1 Q. So would it be fair to say you're familiar with
these
2 techniques? You may not know all the details?

3 A. Yes.

4 Q. Are you familiar with a concept called orthogonal

chemical 5 techniques, where you look at -- to discover whether

6 analysis is accurate, use different scientific
techniques to

7 determine a result? Have you ever heard that term
before?

8 A. Yes, I have. I'm trying to -- trying to put it in

9 perspective; but yes, the term is -- I've heard the
term. I

10 don't know where.

11 Q. For example, if you used --

12 A. Hair is gray.

13 Q. If you use an analysis where you want to determine
whether

14 some substance was on this podium, and you might use

15 chromatography as one technique -- right -- and you
might use

16 something that's based on a different scientific
principle to

17 make sure you --

18 A. Yeah. Okay. Right. If you arrive at the same
result.

19 Q. Right. The reason I ask you that is because you
told his

20 Honor that one of the difficulties you might have as a
juror

21 would be what proved something beyond a reasonable
doubt. Is

22 that right? The guilt? And that's what you've
expressed in

23 your questionnaire. You expressed it more as your

views on the

24 death penalty, but it sounds to me as you're really
talking

25 about what's actually proved in court; is that right?

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1 A. Yes. I think that's honest; and I think to be
honest, it

2 would -- it would seem to me like that would be
difficult for

3 anybody. And it's sort of an individual thing; but
beyond a

4 reasonable doubt, to me, means that one has -- has seen
or

5 heard enough that they are truly convicted -- or
convinced

6 that -- that it's the truth, whatever it may be.

7 Q. Okay.

8 A. And I think probably, that's why you asked that
question

9 about the orthogonal thing. I think the more -- the
more

10 different methods, the more different information that
would

11 point to the same conclusion, the less one would have

12 reasonable doubt.

13 Q. Right. I asked you that because you mentioned this

14 reluctance to accept circumstantial evidence.

15 A. Yeah.

16 Q. And I guess what I'm trying to get at is what if
you heard

17 different types of evidence about the same fact; that
you might

18 consider one circumstance or two, even, but if you
heard three

19 different types of evidence that's not direct, but all

20 different. Would that make you more confident in
determining a

21 result?

22 A. Yes. I think it would. I think that logically
would make

23 it more --

24 Q. And do you do that in chemistry?

25 A. Absolutely.

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1 Q. I mean, do you -- I take it, from my limited
knowledge of

2 chemistry, that nothing there is proved 100 percent
beyond any

3 possible doubt. Is that true?

4 A. That's correct.

5 Q. And you have to -- I mean, people think sometimes

6 scientists just do a little formula and they come up
with a

7 result. And I understand that's not exactly how it

works; is

8 that right?

9 A. That's exactly right.

10 Q. There is some judgment involved?

11 A. And -- and -- and all of the sciences are
constantly

12 changing as more information comes up, so we have to
throw some

13 things out and add. So yes, that's true.

14 Q. Well, do you think you could use those skills that
you've

15 developed over many years in chemistry as well as
skills that

16 you've probably used probably in coaching where you
have to

17 determine whether certain --

18 THE COURT: There's going to be an objection
to this,

19 and I'm sustaining it.

20 MR. TIGAR: I'm objecting to the analogy, your
Honor.

21 MS. WILKINSON: Sure, your Honor. That's
fine.

22 MR. TIGAR: The law on that should come from
the

23 Court.

24 THE COURT: We have these disagreements from
time to

25 time with lawyers, and I make rulings about that. So
please

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the 1 ignore the fact that we had a little disagreement in
2 phraseology of the question.

3 BY MS. WILKINSON:

in and 4 Q. All I'm really trying to ask you is could you come
juror and 5 make a judgment in a case where you're called to be a
6 consider all kinds of evidence and come to a decision?

honest in 7 A. I would certainly try to, and I would try to be
8 that.

other 9 Q. Is there anything else that you're reluctant about
Types 10 than what you've already told us in your questionnaire?
difficult 11 of evidence you wouldn't want to consider or would be
12 for you?

13 A. No. I don't think so.

penalty 14 Q. Let me then ask you one or two questions about the
You've said 15 phase and one background question, if you would.

views 16 that you're a religious man. And I take it those are
17 that you've held for some time.

18 A. Well, yes and no. I've professed to be a Christian
for a
19 long time, most of my married life; but in many cases,
I was
20 sort of a pseudo-Christian. I would say I'm sort of a
baby.
21 Maybe the last ten years or so, I really become -- I
solidified
22 my beliefs much stronger.
23 Q. Now, I've heard of this organization, the Promise
Keepers
24 which was founded by this famous football coach here in
25 Colorado. Are you affiliated at all with that group?

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1 A. Yes, I do. I've been to several of their
conventions. I
2 didn't go to the latest one in Washington, but yes.
3 Q. And do they have any views, do you know, about the
death
4 penalty and whether it's appropriate as a -- a part of
our
5 judicial system?
6 A. Not to my knowledge.
7 Q. Have you heard any discussion about that?
8 A. No.
9 Q. Have you heard any discussion in your church about
your

10 church's view, either in sermons by your pastor or
maybe in
11 Bible study class about views on the death penalty?
12 A. No.
13 Q. Do I take it, then, you don't have any moral or
religious
14 opposition in theory to the death penalty?
15 A. No. The statement that I made about the witnesses
and the
16 two or more witnesses or -- is somewhat biblical. But
no.
17 Other than that. That's just what I have interpreted
from my
18 own reading.
19 Q. Okay. When -- when you said that, that for the
death
20 penalty, you would want to have two eyewitnesses, I
guess I
21 wondered what you meant. Two eyewitnesses to what?
22 A. Well, I guess to the crime or whatever you were
trying
23 to -- to -- in the case of the death penalty, it would
-- you
24 know, that's -- that was sort of what I was saying.
That would
25 eliminate, I guess -- it would eliminate the chance for

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1 reasonable doubt; but of course, I said credible

witnesses. I

2 know that that can happen, too. You can have witnesses
that

3 maybe aren't credible, so --

4 Q. Now, you said in your questionnaire that you would
only

5 think that the death penalty is appropriate in
premeditated

6 murder; is that right?

7 A. Yes. I think so.

8 Q. And from that, I take it you mean planned murder,
where

9 someone didn't just wake up, they got angry one day,
and got

10 into a dispute?

11 A. Yeah. See, I -- again, I'm -- I know I'm talking
to an

12 attorney and your definitions may be different than
mine; but

13 yes, that's exactly what I would mean. To take
someone's life,

14 planning to do that, not necessarily in a -- a fit of
anger at

15 that time or something. But something would have to be
planned

16 or thought about ahead of time, rather than in anger
action, or

17 something of that nature.

18 Q. Well, my definitions, as you understand, don't
matter.

19 A. No.

20 Q. We're really interested in finding out what you
think, of
21 course so -- and again, the reason I ask you that is if
you
22 think the death penalty is only appropriate to be
considered --
23 again, we're not saying ultimately what the result
should be --
24 in a premeditated crime; therefore, it's going to go on
for
25 longer than a moment; is that right? You'd agree
someone would

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1 have to plan it out, take certain steps?
2 A. I would think so, yes.
3 Q. Then where would you want the eyewitness to be, I
guess is
4 what I'm asking.
5 A. Boy. I guess I would go back to my original
statement that
6 the eyewitness to the actual event -- I guess I'm
assuming that
7 the person who is being accused has said they are
innocent.
8 And if they are indeed innocent or if we subscribe, as
we do in
9 this country, to the fact that they are innocent until
we prove
10 them guilty, then it would -- it would seem to me like

I would

11 want to -- to have some kind of strong evidence that
someone
12 saw the crime or -- or saw the person do something that
was
13 related definitely to the crime.

14 Q. Okay. So it sounds to me now that you've come to
believe
15 that you could follow his Honor's instructions, which
are that
16 you can't have certain requirements, there aren't
certain
17 requirements under federal law of absolutely what you
have to
18 prove; you just -- the government has to prove it
beyond a
19 reasonable doubt? You could accept that law?

20 A. I do.

21 Q. And you could follow his instructions as to that?

22 A. I certainly would try, yes.

23 Q. And could you accept that obviously in any case
that goes

24 to trial, the defendant is presumed innocent and is
contesting

25 all the charges, so there's not going to be an issue of
a

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1 confession? Do you understand that?

2 A. I understand that.

3 Q. And you can accept that you'd still have to make a
4 decision, even though you wouldn't have any evidence on
that
5 issue?

6 A. Oh, yes. Yes. That's -- that's why the court is
convened.

7 I mean -- so Mr. Nichols is certainly entitled to that.
I
8 think that's his right.

9 Q. Okay. Well, I have one final question for you.
It's one

10 thing for us to sit here and talk about the death
penalty as an

11 option after you've con -- or when we sit here and
think about

12 it in a theoretical sense; but what if you were called
to jury

13 service in a case and you had decided with your fellow
jurors

14 that there was -- the Government had proved beyond a
reasonable

15 doubt that the defendant had committed a murder: Could
you go

16 back and deliberate with your fellow jurors and if you

17 determine that it was appropriate that the death
penalty were

18 the proper punishment, could you come out to a
courtroom and

19 announce that death sentence?

20 A. Yeah. I think so. I think I harken back to what I

said

21 earlier: My country called me to spend some time
serving it;

22 and fortunately, it wasn't during wartime, although it
was

23 close. And I certainly wouldn't want to have taken
someone's

24 life then, but I might have had to. And I don't think
that's

25 too unlike this situation. It seems to me like the
people who

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1 are going to set (sic) in this spot, whomever they are,
are

2 going to have an awful tough decision. But I -- in all
3 honesty, I think that I can answer your question
positively and

4 say I would try very hard to do that. But again, with
the --

5 with the restrictions I made earlier that I would have
to be

6 convinced.

7 Q. And that's what the law demands before you can make
any

8 decision; that you would have to be convinced beyond a
9 reasonable doubt.

10 A. Right.

11 MS. WILKINSON: Thank you very much for

answering my

12 questions, sir.

13 THE COURT: Mr. Tigar.

14 MR. TIGAR: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. TIGAR:

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. My name is Michael Tigar. Ron Woods and I were
appointed

20 by the United States district judge down in Oklahoma
City

21 shortly after May the 10th, 1995, when these Government
lawyers

22 filed charges against Terry Nichols.

23 I just want to follow up with a few questions.
Most

24 of them have been asked, as I'm sure you're aware.

25 If you would turn, please, to page 30 of your

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1 questionnaire, sir.

2 A. Page 30?

3 Q. Yes, sir. Please.

4 A. Okay.

5 Q. Question 132, you were asked an opinion about the

incident

6 at Waco, Texas, and you say, "I think it is just a
tragedy that

7 all involved wished had never happened."

8 Could you expand on that, what your thinking
was, sir?

9 A. Well, and I'll have to be honest with you, I'm
rather

10 ignorant about what happened. But it seems to me like
in the

11 heat of -- of the situation and the length of the
duration of

12 the situation, it -- people made mistakes; and as a
result,

13 lives were lost on both sides, if that's a correct
term. And I

14 think that one can't -- you can't say what David Koresh
or

15 those would like to have had happen because you don't
know, but

16 it would seem to me that they would not -- if they had
had

17 their druthers, they wish it hadn't have happened the
way it

18 did. And I'm sure the officers that were involved and
so forth

19 would have wished that it could have been resolved
without the

20 death and the problems and the -- and certainly, it's
created a

21 lot of turmoil or some discontent (sic) or whatever
within our

22 country, I think. People looked at that and have been

I'm in -- 23 disappointed, possibly, in the results. And I guess
24 sort of in the same boat. I -- it seemed like a
terrible thing
25 to happen, and I wish it hadn't.

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emotion 1 Q. Well, it -- do you think it was a case in which
2 overcame the rational faculties or powers, reasoning
powers of 3 the people that were involved?
4 A. Well, "emotion" is an awful big term. It covers a
lot.
5 Q. Indeed.
6 A. But I think probably. I think there was an
expediency 7 thing, too. I think it had gone on so long that there
was 8 pressure from a lot of sides to get this thing
resolved. And 9 so, yeah, emotionally, I think maybe they got wrapped
up and 10 made a mistake or made some decisions they would rather
have 11 not made if they could make them again.
12 Q. Interesting. Well, putting that in -- in the
context of 13 this case, if you're selected as a juror here, you're

going to

14 see a lot of evidence of highly emotional events, the
deaths of

15 children. Some of those images you probably have
already seen

16 on the television.

17 A. It's pretty hard not to.

18 Q. And I don't think anybody that's ever seen them
will forget

19 them.

20 A. That's true.

21 Q. Thinking about that, that, of course, will be
evidence.

22 There will be people who will testify. There will be
images in

23 evidence of what happened, things that nobody disputes.
And so

24 in thinking as a juror about, gee, did the Government
prove

25 beyond a reasonable doubt that Terry Nichols was
involved in

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1 this in the -- in the way they allege, would you be
able to

2 separate out those two issues, to see that highly
emotional

3 evidence for what it is and not be overwhelmed in the
other

4 part by emotion or expediency?

5 A. Well, sir, I would like to think I could. I think
--

6 Q. I don't mean to accuse you. You understand why I'm
asking
7 the question?

8 A. No. I understand. I think that would be
paramount,
9 whether -- whether I'm selected or not. And as I said,
I'm not
10 advertising for the job.

11 Q. Right.

12 A. But the people who are here need to be able to do
that. In
13 fact, it troubles me somewhat that that kind of thing
is shown
14 other than evidence that a crime had occurred. But
that
15 certainly has nothing to do with who or whomever did
it.

16 Q. Right.

17 A. And it certainly needs to be separated.

18 Q. Okay.

19 A. Emotionally, you -- you would need to be able to do
that, I
20 think, to answer the question fairly as to whether Mr.
Nichols
21 would be guilty or not.

22 Q. And there was a -- a number -- you had an exchange
with the

23 Judge about this question of standards of proof and

then with

of 24 the prosecutor and with me objecting and all that sort

is 25 thing. It comes down to this: I think everybody's --

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indeed as he 1 interested -- the Judge at the end of the case and

can be 2 has at the beginning will define what kinds of evidence

trial. If 3 considered by the jury. And indeed all through the

at the 4 there's an objection, the Judge may say disregard and

rules, you 5 end will define "reasonable doubt." Some of these

things fair, 6 know, once upon a time in the interests of making

that 7 there were very rigid rules. The two-witness rule or

be 8 thing in Exodus, "If a thief be found breaking in and

or the 9 smitten that he die, no blood should be shed for him,"

10 old Colorado rule or whatever.

everybody else 11 And the bottom-line question is, like

about the 12 in the process, can you accept what the Judge says

13 standard to be applied and what evidence is to be
considered?

14 A. I guess so. Yes.

15 Q. Okay. Now, I want to turn to this question of --
of

16 punishment and talk just a little bit about it. And if
you

17 want to open your questionnaire to page 28, fine. But
I

18 think -- I don't want to read out your answers again.
We, of

19 course, don't concede that we'll ever get there.
Indeed, it's

20 presumed that we won't. And the Government has a
theory --

21 yes, they do. They will present evidence. We will

22 cross-examine those witnesses when our turn comes.
Even though

23 it's not our obligation to do it, we'll present
witnesses. The

24 jury will decide. And therefore, we certainly don't
say we're

25 going to get to a punishment phase, but if we do, then
we

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1 couldn't call everybody back out here again and have
this

2 conversation, because we'd be in it. This is the only
one and

3 only chance, and we do it hypothetically. You said as
-- and I
4 made a note that if you had decided someone was guilty
of
5 premeditated murder beyond a reasonable doubt, the
other one
6 would fall into place or words to that effect. Could
you tell
7 me what you meant by that, sir?

8 A. Well, it -- the Judge was talking about the two
phases of
9 the trial.

10 Q. Right.

11 A. And when I said the other would fall into place, I
guess I
12 was talking about the punishment phase.

13 Q. Uh-huh.

14 A. And by that, I mean that if -- if -- if the person
were
15 convicted -- or the jury convicted that the person was
guilty
16 of the premeditated murder, then if the death penalty
were
17 suggested or was a possibility, then I guess I could --
I could
18 vote for that.

19 Q. Well, and that's when I asked that it -- if someone
is
20 being convicted in Federal Court of premeditated
murder, the
21 death penalty is a possibility.

22 A. Yes.

23 Q. And indeed, that's the only time it is.

24 A. Right.

25 Q. We assume before any juror gets to consider the possibility

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1 of a death penalty that a defendant has been convicted of

2 premeditated murder, and I want to go beyond that because the

3 second part of it is that in Federal Court and under our

4 constitution, it -- even if you committed many, many

5 premeditated murders, you do not automatically receive the

6 death penalty. Did you understand that from what the Judge

7 said?

8 A. I guess I did. The other -- the other alternative would

9 be, what, life imprisonment?

10 Q. Life imprisonment, that's right.

11 A. Yes. I understand that.

12 Q. Okay. And this is that second part. Again, you know,

13 the -- the Old Testament said if there were certain offenses

or
Federal
high
phase
that a
other
could call

14 you committed, you would be killed by stoning, hanging
15 whatever. That was the rule. Well, we're -- we're in
16 Court now. And the centuries of the world piled very
17 since then, and the rules are that there's this second
18 and that a jury is asked to consider not only the crime
19 person has been shown to have committed but a bunch of
20 things, these things called mitigating factors; you
21 them positive factors.

in doing
sentences. Two
would get
could

22 For instance, if there's two people involved
23 the very same crime, they might get different
24 different juries looking at that could say, well, one
25 one and one would get another; and the others are there

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or even
involved in

1 be a death penalty, life without possibility of parole,
2 some lesser sentence. Two different people who are
3 the same crime could be shown to have different family

4 backgrounds. They come into court influenced by
different
5 things. We're not talking about mental illness,
insanity --
6 that would be a separate thing -- but just, you know,
maybe
7 they had done a lot of good in their life, maybe this
was
8 exceptional, aberrational, maybe they had helped a lot
of other
9 people, all those positive things. And you as a
teacher
10 have -- you know, a kid does something bad -- not
talking about
11 killing somebody, but a kid does something bad. You
look into
12 the whole person; right?

13 A. That's correct.

14 Q. When he has a teacher. So what I'm asking you is
are you
15 open -- even if you have convicted somebody of killing
many
16 people, would you be open to listen, to open your mind
and
17 heart to evidence about that individual and
realistically
18 consider a life sentence for that person as being
enough
19 punishment for them in this lifetime?

20 A. Absolutely.

21 MR. TIGAR: Okay. Thank you very much for
talking to

22 us, sir.

23 THE COURT: We're all appreciative of your
answering

24 all of these questions; not just what has been done
here in the

25 courtroom, but back to the questionnaire and so forth.
I can't

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1 answer your question now, though, as to whether you're
going to
2 serve on this jury. And we know that --

3 JUROR: I was afraid of that.

4 THE COURT: Yeah. I know that's a question in
your
5 mind, but we have more to do in this jury selection
process.

6 And I can't give you an estimate about when we will be
able to
7 tell you or when the trial will start. So bear with us
yet a
8 while.

9 And going from here now -- you're excused now,
of
10 course, for the day, but do so with the understanding
and
11 expectation that you will be on the jury and will have
the
12 responsibilities that we've talked about.

caution 13 And in that regard, of course, I must again
continue 14 you to avoid discussion of the case with all others,
the like 15 to avoid things in radio, television, newspapers and
on the 16 so that you can come in and decide as the law requires
17 law and the evidence.

18 If anything happens, any emergencies or
whatever that 19 would affect your availability, let us know
immediately, will 20 you?

21 JUROR: I will.

22 THE COURT: And we'll be getting back to you.
Thank 23 you very much. You're now excused.

24 JUROR: Thank you, your Honor.

25 THE COURT: We'll take 20 minutes.

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1 (Recess at 3:47 p.m.)

2 (Reconvened at 4:07 p.m.)

3 THE COURT: Be seated, please.

4 65.

5 Good afternoon. Would you raise your right
hand, take

6 the oath from the clerk, please.

7 (Juror No. 65 affirmed.)

8 THE COURTROOM DEPUTY: Thank you.

9 THE COURT: Please be seated there in the
chair by the

10 microphone. And understand the microphone is there
only to

11 help us hear you, so you don't have to lean into it, or
you're

12 not being broadcast.

13 JUROR: Okay.

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Also, we've kept you waiting all day long; and
we're sorry

17 to keep you waiting, but I'm sure you can appreciate
that it's

18 difficult to estimate the amount of time that's
involved. It

19 varies according to each person and what they have to
say in

20 here.

21 Now, you know that from the -- that the oath
that you

22 just took refers to -- that the trial referred to there
is the

23 trial of United States against Terry Lynn Nichols. You
got a

24 summons a while back in July, advising that you,
through a

in this 25 chance selection process, had been summoned as a juror

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you, and 1 case. And we asked you for a little information about

you 2 you gave it to us in a short questionnaire. And then

I was 3 received a notice to come out to the Jefferson County
4 Fairgrounds, and you did on September 17, with others.

principles 5 there, explained the background of the case and some

a much 6 applicable to the case, and then asked you to fill out

that. 7 longer questionnaire, which you did. And we appreciate

them 8 And I have taken the answers to that and made

to you 9 available to the people who we're going to reintroduce

participating in 10 in a minute here, for the limited purpose of

won't make 11 this process without making any of it public, and we

12 any of it public.

in 13 And of course, we asked you questions personal

answers; 14 nature, and you gave us personal information in your

15 and we respect your privacy, and we try to balance
privacy
16 interests of jurors with the public interest in the
17 proceedings. And it is in -- pursuant to that that we
do not
18 use your name, try to avoid identifying things in this
19 questioning process, also arrange for you to go and
come to the
20 courthouse in a way that you can't be put on television
or in
21 the newspapers, your picture, and so forth.

22 Understand, too, that now we are in open court
and the
23 things that are said here are public. Understand?

24 A. Yes, I do.

25 Q. Now, I want you to know -- and I'm going to
reintroduce the

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1 people you've already met out at Jefferson County who
are here
2 again with us.

3 Here at this first table, you previously were
4 introduced to Mr. Lawrence Mackey and Ms. Beth
Wilkinson,
5 attorneys for the Government. With them now are Mr.
Patrick
6 Ryan and Mr. Geoffrey Mearns. They're additional
attorneys for

7 the Government. They were not there with us at
Jefferson
8 County.

9 But you did meet Mr. Michael Tigar, Mr. Ronald
Woods,
10 attorneys for Terry Nichols, and of course, Mr.
Nichols, the
11 defendant in the case.

12 And there are a few other people here in
eyesight of
13 you, and they're just here to assist in this process.

14 A. Okay.

15 Q. Okay. And we are going to ask you some more
questions in
16 spite of the fact that you answered 166 of them; but
some of
17 the things we'll simply be asking you to explain or
expand on
18 some of the things that you've already written here and
a few
19 additional ones.

20 And we want you to know, of course, as I hope
you
21 understand, this is not a test. There is no right or
wrong

22 answer to anything. We asked you for some factual
information.

23 You gave us that. And then we asked you a lot of
things about

24 opinions, attitudes, beliefs and the like; and of
course, those

not on 25 are your opinions, attitudes and beliefs. And you're

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1 trial for them. We're not going to challenge you on
them. We

2 simply want to know about them, because these are
things that

3 could conceivably affect your service on the jury.

4 And of course, you know, you should not, as I
told you

5 I think when this questionnaire was handed to you --
you should

6 not assume anything or ascribe any particular
significance to

7 any question. Okay?

8 A. Okay.

9 Q. And I did explain the background of the case, and
I'm going

10 to do it again, not because I think you don't remember
it but

11 because we need to establish a sort of foundation for
this

12 process, beginning with repeating what I told you
before: that

13 this case is here as a result of an explosion that
destroyed a

14 federal office building in Oklahoma City, Oklahoma, on
April 19

15 of 1995, resulting in the loss of life and injuries to

persons

16 who were in the building; that after that, there were
charges

17 filed, an indictment, which is a statement of
accusations,

18 filed in the United States District Court in Oklahoma
City,

19 accusing -- and by lawyers for the Government --
accusing a man

20 named Timothy James McVeigh, along with Terry Lynn
Nichols --

21 and then the indictment refers to "other persons not
named" --

22 with forming a conspiracy, a criminal agreement to bomb
that

23 building and to kill and injure people in it.

24 The indictment alleges really 11 different
crimes or

25 charges, including the conspiracy, and then makes
accusations

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1 that in addition to planning it, they carried it out
and did

2 indeed bomb the building, resulting in death and
injury. And

3 included in the charges are eight charges or counts of

4 first-degree premeditated murder of eight law
enforcement

5 agents of various agencies of the national government

who died

6 in the explosion.

7 To these charges, defendants entered pleas of
not

8 guilty, thereby creating the issues for trial.

9 Then the case was moved from Oklahoma City
here to

10 Colorado because of a concern about asking people in
Oklahoma,

11 where this happened, to sit on a jury. And when the
case got

12 here to Denver, I entered an order that there be
separate

13 trials; that the evidence as it may relate to Timothy
McVeigh

14 be considered by one jury at one trial and then
separately

15 whatever evidence there may be as to Terry Nichols be

16 considered at a separate trial with a separate jury.

17 And there was a trial held here earlier this
year with

18 a jury selected through this type of process. That
jury heard

19 the evidence relating to Mr. McVeigh, returned a
verdict of

20 guilty. And then the jury heard more in connection
with

21 Mr. McVeigh as to what his punishment should be; and
the jury,

22 after hearing more, returned a recommendation for a
sentence to

23 death as to him.

going 24 Now we're ready to start the trial -- as we're
trial of 25 through the jury selection process and then start the

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and the 1 whatever the evidence may be relating to Terry Nichols
2 accusations made as to him.

of 3 All of those things that happened in the trial

considered now 4 Timothy McVeigh now are over with and may not be

any 5 in connection with Mr. Nichols' case. So anything that

the 6 member of the jury may have seen, read, or heard about

just to 7 evidence in Mr. McVeigh's case must be set aside. And

case of 8 illustrate the point, I presided at the trial of the

I'm ready 9 Timothy McVeigh. I heard all of that evidence. Now

things that I 10 to preside at the trial of Terry Nichols, and the

I don't, 11 heard at that trial of Timothy McVeigh are set aside.

the 12 you know, rely on any of the rulings made there or what

13 evidence was there in presiding at this case, and so

must the

14 jury start with a clean slate, you understand.

15 A. Yes, I do.

16 Q. To do otherwise, of course, would violate the rule

--

17 ruling that I made that there be separate trials, you

18 understand.

other

19 And then I also reviewed with you and the

criminal

20 jurors, because most of you have never served on a

21 jury -- and that's true in your case?

22 A. Yes, it is.

fundamentals

23 Q. You've never been in a trial. I reviewed the

jury.

24 about the criminal justice system and the role of the

Constitution of

25 And these are things that are founded in the

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trials in

1 the United States and are therefore applicable in all

2 the United States, whatever the charge is, whoever the

counsel

3 defendant is, and whoever the prosecutors and defense

4 are. And that includes, of course, the presumption of

5 innocence; that all persons accused in this country are

6 presumed innocent of whatever crime they're accused of.
And
7 that presumption carries throughout the trial and
entitles that
8 person to an acquittal, a verdict of not guilty, unless
12
9 fair-minded jurors listening to the evidence and
following the
10 instructions on the law determine that the charge is
proved
11 beyond a reasonable doubt. That's the burden of the
12 prosecution.

13 No person who is accused has any burden or
duty of
14 proving himself not guilty or indeed proving anything.
No
15 person accused is required to call witnesses or to
respond to
16 any questions put to them or to explain anything. An
accused
17 person can simply remain silent and challenge the
evidence
18 against him both by objections to its admissibility and
by
19 cross-examining all of the witnesses. But it's up to
the
20 prosecutors in the case to call the witnesses, produce
the
21 evidence.

22 At the end of the trial, then, the jury is
instructed
23 on the law by the court, detailed instructions relating

to the

24 evidence but also including in those instructions that
you may

25 not find a defendant guilty unless all of the things
that are

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Juror No. 65 - Voir Dire

1 listed as elements of the crime charged have been
proved beyond

2 a reasonable doubt. Understand?

3 A. Yes, I do.

4 Q. In a trial in which a defendant does not testify,
the jury

5 is also instructed that may not be considered, so that
a juror

6 may -- jury may not speculate on why a person didn't
testify or

7 assume that's some kind of an admission or think, Well,
if he's

8 innocent, why didn't he tell us that? He's not
required, and

9 there are good and sufficient reasons why innocent
persons may

10 not testify. And what I say to juries under those

11 circumstances when a defendant doesn't testify is you
can't

12 consider that in any way. You can't even talk about it
in

13 deliberation.

14 You follow me on those points?

15 A. Yes, I do.

16 Q. And do you agree with them?

17 A. Yes, I do.

18 Q. And agree to follow them as fundamental principles
in this
19 case if you were to serve on the jury?

20 A. Yes.

21 Q. Looking at Terry Nichols, then, you're prepared to
give him
22 the benefit of any reasonable doubt that might remain
after the
23 consideration of all of the evidence and find him not
guilty if
24 there is such doubt?

25 A. Yes, I am.

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1 Q. Now, I want to turn to a few of the things
mentioned in
2 your questionnaire. You have a copy with you, I
believe. I
3 mean, the original, I guess you have. One of the
things was
4 that when you got your original notice you explained
that you
5 were going to be on vacation, and you took that
vacation.

6 A. Yes.

7 Q. Did you?

8 A. Yes, I did. And it was wonderful.

9 Q. All right. And you traveled to Europe?

10 A. Yes. I was in Europe for two weeks.

11 Q. And this was not a business trip but a vacation,
pleasure

12 trip?

13 A. Purely pleasure.

14 Q. Okay. And now, of course, I want to review with
you just a

15 few things concerning your background. As I understand
it, you

16 were born here in this area.

17 A. Yes, I was.

18 Q. And have lived here continually except for, what, a
year

19 that you spent in San Francisco?

20 A. Yes. I had one year I accepted a position for a
company in

21 California and then came back.

22 Q. Were you doing work similar to the work that you do
now?

23 A. Very similar.

24 Q. And you told us of your work now on page 9. And
we're not

25 identifying the firm there, because this is another
thing where

Juror No. 65 - Voir Dire

computer

1 we're not seeking to identify you; but this is a
2 company.

3 A. Yes, it is.

is one

4 Q. And in the computer information business, I guess
5 way to look at it.

6 A. Yes.

company

7 Q. And so you've been for many years working with this
8 except for the year out when you were with another --

9 A. Originally since 1979.

hardware

10 Q. All right. And as I understand it, you work both
11 and software problems?

analyses

12 A. Yes. What I do is we -- are first-level problem
13 for both hardware and software problems.

did you

14 Q. And your -- before you went to work for this firm,
15 have computer -- of course, things change -- technology

changes

16 so rapidly. But you had an interest in computers in
17 academic studies, too?

your

18 A. Somewhat. Most of it was the opportunities that

were

19 presented along the way.

20 Q. Okay. And you told us of your attendance at
college on

21 page 7.

22 A. I guess the pages are out of order, here.

23 Q. Oh, well. I'm sorry about that.

24 A. Okay. Here we are.

25 Yes, I did -- I attended one semester at
Western State

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Juror No. 65 - Voir Dire

1 College in Gunnison, Colorado; and then I've taken a
couple of

2 specific courses at community colleges around Denver.

3 Q. Okay. One of the things that we asked you about,
of

4 course, is whether you had any health condition that
might

5 affect your participation on the jury, recognizing that
jury

6 service is, you know -- time, the hours are 9 to 5 for
trial --

7 9 to 5 Monday through Thursday, 9 to 1 on Fridays. And
of

8 course, it means sitting here where you are now with
breaks

9 midmorning, midafternoon, and a noon recess. And you
told us

10 about a condition on page 4 for which you are taking

11 medication. And has that been successful in keeping
your

12 health stable?

13 A. Yes. The experimental process that I've been
involved in

14 has been very successful. Not seen any, really,
deterioration.

15 Q. Yeah. Do you go -- are these self-administered, or
do you

16 have to go somewhere to do this?

17 A. The only time I have to go in is I have my blood
drawn once

18 a month.

19 Q. And they measure for side effects and that sort of
thing;

20 is that true?

21 A. Yes.

22 Q. And for what period of time have you been on these
23 medications?

24 A. I started in the program -- I can't give you a
specific

25 date, but I believe it was in 1995.

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Juror No. 65 - Voir Dire

1 Q. All right. And so far any -- there have been no
side

2 effects, as I understand it.

3 A. No, no side effects.

4 Q. And the same medication throughout this time?

5 A. Yes. The same medication.

6 Q. So you see no problem with respect to your service
here as
7 far as that condition is concerned?

8 A. No, I do not.

9 Q. You also, I guess, use the Internet, you say on
page 18.

10 That's consistent, I guess, with your skills and the
work that

11 you do. You mention that you use it for information on
certain

12 subjects.

13 Now, does that include news programs?

14 A. No, not necessarily. More on just -- information
on

15 factual -- information on anything I want to look at.

16 Q. Like a reference library?

17 A. Reference library, you know; anything that I need
18 information on at the time.

19 Q. Okay. And has any of it included anything about
the

20 bombing in Oklahoma City and the trials, and so forth?

21 A. No, it has not.

22 Q. All right. You -- we asked you on one of these
broad

23 opinion questions what do you think about the criminal
justice

24 system. And you answered on page 22. Let's turn to
that. If
25 you take a moment to review what you said.

5993

Juror No. 65 - Voir Dire

1 Looks like you started out with one answer,
struck it

2 through, and then gave us the answer that you have.
And what

3 you say essentially is: So-so, but it needs to be
streamlined.

4 A. In my opinion that -- it seems like a lot of the --
a lot

5 of the court cases and things seem to drag on for long
periods

6 of time. That was basically what I was saying there.

7 Q. I understand.

8 A. Seems like there is a lot of time -- the process
takes a

9 long time.

10 Q. And keeping you waiting to come in here is a part
of that

11 slow process?

12 A. This is the first time, so . . .

13 Q. Okay. Well, you know, I understand you come from
an

14 industry where things move quickly in many ways.
Information

15 is dispensed and distributed and the like; but, you

know, this

16 is a very human process here and involves human
judgment. And

17 we don't yet use computers to decide cases. We use
people to

18 decide cases. And the process, of course, varies
according to

19 the human dynamics of it. Do you accept that?

20 A. Yes, I do.

21 Q. And when you talk about its being streamlined, do
you have

22 any particular thoughts in mind as to how that might be
done?

23 A. Since I don't know the system that well, I -- it
just seems

24 that it could be faster in certain areas.

25 Q. Okay. But you do on page 30 -- you have told us at
page --

5994

Juror No. 65 - Voir Dire

1 on page 30 at Question 129 -- forgive me for jumping
around

2 like this, but you do there at 129 agree that it is
important

3 to follow the court's instructions.

4 A. Yes, I do.

5 Q. And you understand the instructions to mean not
just go out

6 to the Jefferson County Fairgrounds at a certain time

but also

7 all of the instructions about the things that I've
already

8 mentioned on the fundamental principles of law. And
there

9 would be a lot of instructions at trial, too; sort of
10 beginning, during, and at the end of trial, all about
how the

11 jury may consider evidence. And there are rules of
evidence

12 that govern what can be heard and considered, and so
forth. Do

13 you understand that's what this refers to?

14 A. Yes.

15 Q. Now, have you advised anyone at your place of
employment

16 that you've received this jury summons?

17 A. Yes, I did.

18 Q. We would expect you to.

19 A. Yes.

20 Q. And, of course, recognize that if you served on the
jury,

21 you would be with us for whatever time it took to
complete the

22 trial, the whole process, which could be several
months. Did

23 you have a discussion like that with your supervisor?

24 A. Not that direct, but they are aware of -- that
there is a

25 possibility that it could be, you know, a long time.

Juror No. 65 - Voir Dire

1 Q. And you could be away from your regular work
routine?

2 A. I haven't -- we didn't have that discussion. I
would think

3 that I could be. I don't think it would cause an undue
4 hardship on the -- on the company.

5 Q. And how about with respect to you? Do you know
whether you
6 would be paid?

7 A. I think the policy is that you would get -- get
your
8 regular salary.

9 Q. The difference, at least, between jury pay?

10 A. Right.

11 Q. And the regular salary. So you wouldn't be losing
money
12 being here.

13 And I take it all in all, you're in a position
where,
14 if called upon to serve, you would be able to devote
your time

15 and attention to this case?

16 A. Yes, I would.

17 Q. Okay. Now, we asked you some questions about your
--
18 again, opinions and attitudes concerning punishments.

And I'm

19 going to be directing your attention to page 28.

getting 20 And you may remember -- well, do you remember

21 these questions when you came to this part of the

22 questionnaire?

23 A. Yes, I do.

24 Q. Did it surprise you?

25 A. No.

5996

Juror No. 65 - Voir Dire

1 Q. You expected something like these questions?

2 A. Yes, I did.

27, where 3 Q. And of course, there was a preface to it on page

about 4 the explanation was given that because we're asking you

anybody is 5 punishment, don't misunderstand it and think that

explanation 6 assuming the outcome of the case. But as this

going to 7 informs, there is no assumption that Terry Nichols is

is to 8 be found guilty of anything. In fact, the presumption

discussed. 9 the reverse, to the contrary, as we've already

10 But because under federal law there is the

possibility

11 that the jury may have to play a role in making a
sentencing

12 decision, what we wanted to hear from you is what you
thought

13 coming in, whether you had any thoughts about the
alternative

14 punishments of life in prison with no possibility of
ever being

15 released, you'd spend the rest of your life in prison;
the

16 punishment of death, and what kinds of crimes, if you
could

17 make the law, those punishments might be used for. And
I take

18 it that's the spirit in which you've answered.

19 A. Yes.

20 Q. And have you given more thought to it since you
wrote these

21 answers?

22 A. Yes, I have.

23 Q. Is there anything different? I mean, if I asked
you the

24 same questions now -- again, this very broad-type
questioning:

25 If you can make the law, what would you have it say?
Do you

5997

Juror No. 65 - Voir Dire

1 have any changes in the answers?
2 A. Well, I thought that these questions were very
difficult to
3 answer, especially the one -- I think B, "What is your
view as
4 to whether the penalty of death should ever be imposed
as a
5 form of punishment for any crime or specific crimes?"
I've
6 thought about it more, and I think it would -- like I
said, it
7 was very difficult to answer; and I think a lot would
depend on
8 circumstances and information that would be contained
in a
9 court of law.

10 Q. All right. Well, that, you know -- these are
difficult
11 questions. And the reason they're phrased so broadly
is that
12 there is a broad spectrum of opinion among the public
about
13 this, disagreeing opinion about when the law should
provide for
14 such extreme punishment.

15 And of course, legislatures have struggled
with it
16 from time to time. The law changes from time to time
in
17 different states, and so forth. But I understand what
you've
18 just said here; and I think that we should talk about
what the

19 law really is.
20 And I want to explain that to you, because
while there
21 are these disagreements and while there are states that
have no
22 death penalty in them because the legislature in those
states
23 has decided that the punishment should never be applied
in the
24 courts of the state, here we're in Federal Court.
We're
25 following federal law as made by the United States
Congress.

5998

Juror No. 65 - Voir Dire

1 And the Congress has provided that for certain
kinds
2 of crimes, there may be a punishment of life in prison
with no
3 possibility of ever being released, death, or a lesser
4 punishment than those two. And the -- there is no
automatic
5 penalty, but it simply says in part, you know -- this
is also
6 interpretations from the courts -- but to simplify, in
a case
7 in which a person is found guilty of the intentional
killing of
8 other people, murder, then these penalties are
available under

9 the law.

10 Now, ordinarily in cases that don't involve
11 intentional killing, like other kinds of crimes -- to
give you
12 an example, a bank robbery, which is also a federal
crime, the

13 jury decides: Does the evidence prove the crime
charged beyond

14 a reasonable doubt? If yes, guilty; if no, not guilty.
In

15 either event, the jury has done its job and they go
home.

16 But in the event of a guilty verdict, that's
not the

17 end of the case, obviously. More has to be done.
There has to

18 be a sentence. And sentences of that type, of a number
of

19 years or probation or fine, the other kinds of
penalties that

20 are provided for by law -- that kind of decision is
made by a

21 judge.

22 And no judge makes a decision about a penalty,
a

23 sentence, without hearing more than what was provided
at the

24 trial; so there is a sentencing hearing. And before
making the

25 decision, they -- the court hears more about the
circumstances

Juror No. 65 – Voir Dire

1 of the crime, what happened, what were the
consequences, were

2 there victims, were they injured, all kinds of things
of that

3 nature, and also gets as much information as is
possible about

4 the defendant as a human being: What's the life
history of

5 this person? Where was he born and raised? What
influences

6 were there in his life? Marriages, divorces,
employment

7 history, educational history, military service, health

8 conditions. You know, each one of us has our own
experiences

9 in life, and that in part is what makes us unique and
different

10 from all others. And that uniqueness and that
individuality of

11 a person factors into a sentencing decision.

12 So the court hears, then, arguments from the

13 prosecution and the defense and makes a judgment as to
the

14 sentence for that individual being, that person,
concerning the

15 crime as well.

16 And in cases where more than one person was
involved

persons 17 in a crime, the sentences may be different as to those
18 because of these different characteristics and also
-- that 19 differences, perhaps, in the role in which they played
may have 20 they played in the crime. In a bank robbery, somebody
another 21 driven a getaway car, somebody may have had a gun,
22 person may have just scooped up the money.
23 A. Right.
is very 24 Q. There are all these possibilities. So the sentence
25 individual.

6000

Juror No. 65 - Voir Dire

involves 1 Now, when it comes to the kind of crime that
decision is 2 the intentional taking of life, murder, then the
make 3 life or death. And the Congress has said judges don't
the 12 4 that decision; juries do. We want to rely on the jury,
5 people on the jury, to make the decision.
decision, just 6 But before those people can make that
heard at 7 as a judge must do, they must hear more than what they

there is 8 the trial. And of course, this doesn't come up until
the 9 a guilty verdict, so the jury has already decided that
10 defendant committed an intentional killing.

phase 11 And now, though, at a second trial or penalty
as at 12 hearing, there is evidence offered in the same fashion
introduced, 13 the trial: Witnesses are called, exhibits are
counsel, and 14 there are two sides of it, prosecutors and defense
and its 15 the evidence will include more things about the crime
about the 16 consequences, and then all of these individual things
17 defendant, who he is.

hearing is 18 What the court does then at the end of that
and in 19 summarize it all and say, This is what you've heard,
and 20 addition to summarizing it, dividing it into categories
may 21 saying, on the one hand, you've heard things that you
22 consider in aggravation of the offense and that you may
punishment; 23 consider in suggesting that death is the deserved
heard 24 on the other hand, these are the things that you have
25 that you may consider as mitigating the offense and
suggesting

6001

Juror No. 65 - Voir Dire

could be 1 that while the crime may provide -- you know, a person
not 2 put to death for the crime, this particular person does
human 3 deserve to die for this crime. And it's essentially
I 4 summarizing that before you make a decision to take a
5 life, you ought to know whose life it is, to put it in,
6 think, the plainest way I can.

not 7 But in that summary, then, sort of analyze --
8 analyzing but summarizing aggravating and mitigating
says: Now, 9 circumstances, the court then turns to the jury and
this 10 here are some questions that might help you in sorting
This 11 out. But there is no formula, there is no equation.
informed, 12 comes down to the people on the jury making an
being 13 rational moral judgment as to whether another human
make 14 should live or die. But in the end, each juror has to
15 that decision and decide life or death or the
possibility of a

judge. 16 lesser punishment, in which case it comes back to the

17 Do you understand this explanation of the law?

18 A. Yes.

jury, 19 Q. And what I must ask of you is that if you sat on a

murder, would 20 found a person guilty of an intentional killing,

person 21 you make an informed, moral judgment about whether that

circumstances 22 should live or die based on all of the facts and

23 presented to you at the sentencing hearing?

24 A. Yes, I would.

lawyer on 25 THE COURT: All right. Opportunity for a

6002

Juror No. 65 – Voir Dire

with us 1 each side to ask you still some more questions. Bear

2 yet a whileso that we can hear from them as well.

3 Mr. Ryan?

4 MR. RYAN: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. RYAN:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. My name is Pat Ryan. I'm the United States
Attorney in
10 Oklahoma City. I'm here with my fellow prosecutors to
present
11 the case against Terry Nichols. I don't have a lot of
12 questions, and I don't have any long explanations of
the
13 process. Judge Matsch has given you the law and the
14 instructions that you need for now.
15 I have but two questions: Can you give a fair
trial
16 to both the Government and Terry Nichols in this case
on the
17 question of whether Mr. Nichols is guilty of the crimes
18 charged?
19 A. I believe I can. I really do.
20 Q. In the event that Mr. Nichols were to be found
guilty of
21 the crimes charged and you heard all of the information
that
22 Judge Matsch spoke to you about, both in mitigation and
in
23 aggravation, if you determined that the death penalty
was the
24 appropriate moral response, would you have any
hesitation in
25 returning a verdict of a sentence to death?

6003

Juror No. 65 - Voir Dire

1 MR. TIGAR: Objection, your Honor.

2 THE COURT: Well, I believe the "hesitation"
is
3 objectionable.

4 MR. RYAN: Thank you, your Honor.

5 THE COURT: Let me just interfere if I may --
or
6 intervene. These differences among the lawyers about,
you
7 know -- I mentioned there would be difference about
8 admissibility in evidence, and so there can be
differences
9 about the phraseology here. Don't be concerned about
that.

10 I'll take care of those problems --

11 JUROR: Okay.

12 THE COURT: -- as we go.

13 Go ahead, Mr. Ryan.

14 MR. RYAN: Thank you, your Honor.

15 THE COURT: Rephrase it.

16 BY MR. RYAN:

17 Q. Would you be able to deliberate with your fellow
jurors and

18 if you determined that the death penalty was the
punishment for

19 the crimes charged, would you be able to arrive at a
verdict of

20 death and return that sentence in court?

21 A. Along with my fellow jurors, I could.

22 MR. RYAN: Thank you.
23 THE COURT: Mr. Woods?
24 MR. WOODS: Thank you, your Honor.
25 VOIR DIRE EXAMINATION

6004

Juror No. 65 - Voir Dire

1 BY MR. WOODS:
2 Q. Good afternoon.
3 A. Good afternoon.
4 Q. We're at the end of the day. They've already
covered most
5 of the areas. I've only got a couple of questions.
6 A. Okay.
7 Q. My name is Ron Woods. Along with Mike Tigar, we
were
8 appointed by the federal district judge over in
Oklahoma City
9 right after May 10 of '95, when these lawyers charged
Terry
10 Nichols with being responsible for the bombing on April
19,
11 '95.
12 How do you feel about him having court-
appointed
13 lawyers to help him here in court against all these
Government
14 lawyers?

15 A. I really don't know how to respond to that.

16 Q. Okay.

17 A. I think he should have the best representation he
can get.

18 Q. All right. He didn't have the money to go out and
hire his

19 choice of lawyers. Do we start at a disadvantage with
you

20 because we were appointed by the court?

21 A. No. Go ahead. I'm sorry.

22 Q. No, that was my question. Do we start off at a
23 disadvantage with you because we are appointed by the
court?

24 A. I don't believe so. Mr. Nichols is innocent until
proven

25 guilty.

6005

Juror No. 65 - Voir Dire

1 Q. Okay. Now, you've never served on a jury before;
is that

2 correct?

3 A. That is correct.

4 Q. And you read some books by Grisham, as I
understand, who

5 you understand is a lawyer; and he writes about the
criminal

6 justice system. Do you have any impressions about the
criminal

7 justice system and the lawyers for the prosecution or
the
8 defense through reading those books?
9 A. Not really. Like I said, I've never been in this
10 situation, real-life situation.
11 Q. Okay. Okay. The Judge talked about the penalty
phase, and
12 the prosecutor talked about the penalty phase. I
wanted to
13 clarify with you that we -- Mr. Tigar and Mr. Nichols
and
14 myself -- certainly aren't conceding that we're going
to get to
15 a penalty phase. It may seem a little unusual to you:
You
16 come into court and we haven't even had a trial, but
what we're
17 talking about is the penalty phase; can you give the
death
18 penalty, or can you give life.
19 The Government has got a theory here that Mr.
Nichols
20 is responsible for the bombing. We disagree with that
theory.
21 We've got to present evidence through witnesses and
exhibits to
22 prove to the jury beyond a reasonable doubt that Mr.
Nichols is
23 not guilty of deliberate, premeditated murder of all
those
24 individuals.

And as 25 We will be cross-examining those witnesses.

6006

Juror No. 65 - Voir Dire

no 1 the Judge told you, we are under no obligation, we have
proof. 2 burden ourselves to prove, because it's their burden of
number of 3 But we are going to call witnesses. We'll call a
4 witnesses that will contradict their theory.

and sum up 5 And after both sides present their evidence
Government 6 the evidence, then it's the jury's job to see if the
Nichols has 7 has overcome the presumption of innocence that Mr.
of 8 beyond a reasonable doubt and proven that he's guilty
individuals. 9 deliberate, premeditated murder of all those

Nichols 10 And then in the event the jury does find Mr.
into a 11 guilty of one of those charges -- then we would enter
about 12 penalty phase. But you understand why we have to talk
time 13 this now, because we couldn't bring you back in at that
14 and start talking about your views on punishment.

15 A. I understand.
16 Q. So this -- we have to talk to you now, but we are
not
17 conceding we're going to get to that phase. So the
mere fact
18 that we're asking you questions, please don't take that
as an
19 inference that we agree we're going to be there. Are
you with
20 me? You understand what I'm saying?
21 A. Yes, I do.
22 Q. Okay. Okay. If you were on the jury -- do you
recall the
23 publicity at the time of the bombing, the scenes on
television
24 of the rescue efforts and the dead and injured being
removed
25 from the scene?

6007

Juror No. 65 - Voir Dire

1 A. Yes, I do.
2 Q. Do you think you'll ever forget those images?
3 A. No.
4 Q. If you were on the jury, it's likely that the
Government
5 will bring a number of witnesses that will talk about
that day
6 and that there will be photos and videos and there will
be

7 testimony that will break your heart. It's going to be
very
8 emotional. It's going to be heart-wrenching. Most of
the
9 people in the courtroom will be crying.

10 But my question to you is can you look at that
11 evidence for what it is? It's going to be very, very
12 emotional, but it's not disputed. Nobody disputes the
fact

13 there was a bomb there and a number of people killed
and who it

14 was that was killed, names and identities and the
reason, their

15 cause of death. But the Government will play that over
and

16 over, and it will be very emotional. My question to
you is

17 will you be able to keep that separate; that is, look
at it for

18 what it is, evidence of the crime that nobody disputes,
and

19 then at the same time look to the Government and say

20 objectively, Well, what did you prove to us that Mr.
Nichols

21 was guilty beyond a reasonable doubt, which will take
an

22 objective look? Can you separate those two without
letting the

23 emotion just overcome you?

24 A. I think to make this a fair trial and to do my job,
you'd

25 have to try and separate the emotional issues from the
facts.

6008

Juror No. 65 - Voir Dire

1 Q. Okay. Okay. And it's -- everybody will try, but
-- and

2 I'm sure you haven't been in a situation like that; but
do you
3 think you can do it?

4 A. Oh, yes.

5 Q. Okay. Okay. And then as I understand from your
answers to

6 the Court, you can look at all the evidence in a
punishment

7 stage, if we get there -- and you understand that there
is in

8 our country from the very first day we were formed --
our

9 constitution says and our statutes and the Supreme
Court says

10 there is no automatic death penalty, regardless of the
crime

11 committed. There is no automatic death penalty. The
jury

12 still has to weigh and consider other evidence and look
at the

13 possibility of life imprisonment or the death penalty.
And you

14 understood the Judge when he said life imprisonment in
the

15 federal system means exactly that: You don't leave,
you die in

16 prison.

17 A. Yes.

18 Q. Can you look at both options?

19 A. Yes, I can.

20 Q. As Mr. Ryan, the prosecutor, asked you on one side,
I'll

21 ask you the other side: Based on the evidence you hear
at the

22 punishment hearing, could you come back and deliver a
verdict

23 of life imprisonment?

24 A. If I felt that that's what the evidence presented

25 indicated, yes, I could.

6009

Juror No. 65 - Voir Dire

1 Q. And if you're chosen on the jury, can you look
Terry

2 Nichols in the eye and tell him that you could give him
a fair

3 trial?

4 A. Yes, I could.

5 MR. WOODS: Thank you so much for your time.

6 THE COURT: We do all appreciate the time
spent not

7 only today but in the previous time that you appeared
and

8 answered the questionnaire and so forth.

9 Now, I can't tell you now, this afternoon,
whether you

10 will be on the jury. We have some people yet to go
through

11 this same process, and I'm sure, you know, you would
like to

12 know. But I ask you to be patient yet a while longer.
But as

13 you leave here now -- and of course, you're excused for
the day

14 now -- as you leave here, please go with the
understanding and

15 on the assumption that you will indeed be serving on
this jury

16 and that you will therefore have the responsibility to
make

17 just those decisions that we've been talking about.
And

18 accordingly, please be careful about all that you may
read,

19 see, and hear to avoid things that could affect your
judgment

20 in the case and influence your fairness, and be careful
with

21 respect to talking with others to avoid that.

22 And we will get back to you as soon as we can.
I

23 can't give you a definite time for that; but in the
event that

24 anything happens that would change your availability,
let us

25 know immediately.

6010

1 JUROR: I will do that.

2 THE COURT: Call in.

3 Thank you very much. You're excused for now.

4 JUROR: Thank you.

5 THE COURT: We'll start with 202.

6 Good afternoon, sir.

7 JUROR: Hi.

8 THE COURT: Please raise your right hand and
take the
9 oath from the clerk.

10 (Juror No. 202 affirmed.)

11 THE COURTROOM DEPUTY: Thank you.

12 THE COURT: Please be seated there in that
chair by

13 the microphone. And you don't have to be concerned
about the

14 microphone or lean into it or anything. It will pick
you up

15 where you are seated comfortably.

16 Of course, that microphone is there only to
help us

17 hear you, understand. It's not a broadcast.

18 JUROR: Okay.

VOIR DIRE EXAMINATION

19

20 BY THE COURT:

21 case now

Q. Also, you know that "the matter now on trial," the

22 States

on trial, speaks to the trial of the case of United

23 for

against Terry Lynn Nichols. And you received a summons

24 it with

jury service in connection with this case, responded to

25 the

a short questionnaire. Then you were notified to go to

6011

Juror No. 202 – Voir Dire

1 questions in

Jefferson County Fairgrounds and answer a lot of

2 introduced

writing. And I was there, introduced myself and

3 today.

people who were with me; and they're with me again

4

So let me reintroduce to you lawyers for the

5 And they

Government: Mr. Lawrence Mackey, Ms. Beth Wilkinson.

6 Ryan and

were there with us before. Now we have Mr. Patrick

7 Government.

Mr. Geoffrey Mearns, additional lawyers for the

8 Tigar

Over here at this other table are Mr. Michael

9

and Mr. Ronald Woods, attorneys for Terry Nichols, and

10 Mr. Nichols, the defendant in the case.

11 And then after making those introductions, I
explained

12 what I suppose didn't need explanation to you; but let
me just

13 repeat that.

14 Of course, this case arises out of an event in
15 Oklahoma City, Oklahoma, on April 19 of 1995, when
there was an

16 explosion that destroyed a federal office building
resulting in

17 deaths and injuries of people in it; that then charges
were

18 filed in the form of an indictment, a statement of
charges or

19 accusations in the U.S. District Court in Oklahoma
City, in

20 which the Government through its lawyers accused a man
named

21 Timothy James McVeigh, along with Terry Nichols -- and
then the

22 indictment says "and other persons not named" -- with a

23 conspiracy, a plan, a criminal plan, to bomb that
building and

24 destroy it and people in it and that in addition to
that

25 particular charge, there are other charges in the
indictment,

Juror No. 202 – Voir Dire

1 11 in all, which include that not only was the matter
planned
2 but carried out and that the defendants were accused of
bombing
3 the building and also with the murders of eight law
enforcement
4 agents, officers of law enforcement agencies of the
national
5 government who died in the explosion.

6 To those charges, the defendants pleaded not
guilty,
7 thereby creating the issues for trial. The case was
8 transferred here to Denver from Oklahoma City because
of a
9 concern about asking people over there to sit on a
jury. And
10 when the case came to Denver, I ordered separate
trials; that
11 the evidence as it may relate to Terry Nichols be
considered
12 separately from that which may relate to Timothy
McVeigh and
13 that different juries hear that evidence to provide
fundamental
14 fairness so that the matters can be considered
separately as to
15 each of the accused.

16 Understand?

17 A. Yes, I do.

18 Q. And we've had a trial here of the evidence relating
to

19 Mr. McVeigh. A jury was selected, heard that evidence,
20 returned a verdict of guilty. Then the jury was
required to
21 hear more in what we call a sentencing phase or
separate trial
22 on punishment, and the jury returned a recommendation
of the
23 death sentence after hearing that information.
24 You were probably aware of that before I told
you that
25 on September 17.

6013

Juror No. 202 - Voir Dire

1 A. Yes, I was.
2 Q. And as I explained then, the outcome of that case,
what the
3 jury decided there, and anything that anybody may have
seen,
4 read, or heard about the evidence in that case cannot
now be
5 considered in this case. Terry Nichols is here now
with a
6 clean slate. We start over. And it may well be that
some of
7 the -- or all of the evidence in connection with Mr.
McVeigh's
8 case may not be heard here. And to at all allow what
happened
9 in Mr. McVeigh's case to spill over to this case would

be a

10 violation of the whole reason for the separate trial
order.

11 Understood?

12 A. I understand that.

13 Q. And then I reviewed with you and the others some
principles

14 of the criminal justice system because these things are
under

15 the Constitution of the United States. They're
fundamental and

16 applicable to all cases. And again, these are things
that you

17 may very well know. And I don't mean to suggest you
didn't

18 listen and pay attention when I explained them before;
but, you

19 know, we want to have an understanding here in the
beginning.

20 And the understanding is that Mr. Nichols, just as any
other

21 person accused of any crime in any court in the United
States,

22 is presumed innocent of the charges against him. And
that

23 presumption carries throughout his trial and entitles
him to a

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

25 jurors considering the evidence at the trial only,
following

Juror No. 202 - Voir Dire

and 1 the law, determines that that evidence proves his guilt
2 proves it beyond a reasonable doubt.

has no 3 Mr. Nichols, along with any other defendant,
4 burden or duty of proving anything at his trial. It is
a 5 fundamental right to remain silent at trial and simply
require 6 the prosecution to prove by its evidence what it has
charged, 7 bringing in the witnesses and exhibits.

witnesses 8 No defendant need offer any testimony from
9 or introduce any evidence -- any evidence, exhibits, or
to take 10 the witness stand and offer any testimony or any
explanations.

11 Understand?

12 A. I understand that.

13 Q. And then at the end of the trial, the court
instructs the 14 jury about exactly what has to be proved for each of
the crimes 15 charged: These are the elements of the offense, these
are the 16 things that must be proved -- and then ask the jury,
Well, does 17 the evidence prove this beyond a reasonable doubt? And

it

18 means simply that if, after considering it all, the
jury has a

19 reasonable doubt about the sufficiency of the evidence,
they

20 must give that doubt -- give the defendant the benefit
of that

21 doubt. Understood?

22 A. I understand that.

23 Q. Part of the instructions, too, is that if a
defendant does

24 not testify, the jury may not consider that in any way.
It's

25 not a suggestion or an admission of guilt. There are
many

6015

Juror No. 202 - Voir Dire

1 reasons why innocent persons may not testify at their
trial;

2 and what I tell juries under those circumstances is,
you know,

3 you can't think about it, you can't talk about it.
It's not a

4 relevant factor.

5 And you understand that?

6 A. Yes, I understand that.

7 Q. Now, do you disagree with any of these points?

8 A. No, I do not.

9 Q. Are you prepared to follow them if you were to
serve on
10 this jury?

11 A. Yes, I am.

12 Q. And therefore you would now be presuming that Terry
Nichols
13 is innocent of these charges and he is entitled to any
14 reasonable doubt that remains after consideration of
all of the
15 evidence and then a verdict of not guilty?

16 A. Yes.

17 Q. Would that be the decision of the jury?

18 A. Yes.

19 Q. Now, I want to review with you some of the things
that you
20 have written on the questionnaire. We're not going to
go
21 through it all over again. Don't be alarmed at that.

22 Also, we're careful here -- attempt to be
careful in

23 recognizing your privacy interests in some of this
information,

24 because we ask things that are quite personal.

25 And accordingly, your name is not used here.
We did

6016

Juror No. 202 - Voir Dire

1 take your answers and made copies and provided it to

those who

2 are participating in this process so that they would
have the

3 information, but recognize that we use it only for this
4 purpose, have not provided it to anybody else, and
won't.

5 In the course of the questioning, we'll try to
be

6 careful not to identify you. And we, of course, as you
well

7 know, provide ways for you to get in and out of the
courthouse

8 without press photographers or TV cameras.

9 We are, of course, at this time in open court,
so what

10 is said here is public. You understand that?

11 A. Yes, I do.

12 Q. And there just -- you know, we're sort of toward
the end of

13 the day. I'm afraid we're going to have to ask you to
come

14 back tomorrow again. Can you do that?

15 A. Yes, I can.

16 Q. Well, I want to go a little farther here, because
you live

17 a ways out of town. But I just want to for a few
minutes

18 review something about your background.

19 You come from over on the Western Slope
originally?

20 A. Yes, I do.

-- you 21 Q. And you were raised on a ranch. And you had both
22 and your family, I guess -- sheep and cattle?
23 A. Yes.
24 Q. And then you went up to Rock Springs, Wyoming.
25 A. Yes, I did.

6017

Juror No. 202 - Voir Dire

1 Q. What were you doing up there?
2 A. I worked for a grocery store chain.
3 Q. And was that a time -- you've given us here the
years that
4 you were in Rock Springs. Was that a time when there
was a lot
5 of construction going on in that area, there was a dam
being
6 built or something, and a lot of people there on a
temporary
7 basis?
8 A. A lot of construction, a lot of activity. I think
it was
9 '75 to '78.
10 Q. Yeah. And is that one of the things that took you
up
11 there, the additional activity going on, a lot of
people in
12 town?

store 13 A. No. I had a brother that worked for the grocery

company. 14 chain and offered me to get a position with the
And

15 they located me up there.

a while. 16 Q. Okay. And it got you away from the ranch work for

17 A. Yes.

Grand 18 Q. Did your family still have this place over there by

19 Junction?

20 A. No, they do not.

21 Q. What happened to it?

22 A. They sold the ranch.

23 Q. And are your parents still living?

24 A. Yes, they are.

25 Q. And they're retired from that work now?

6018

Juror No. 202 - Voir Dire

1 A. Yes, they are.

family 2 Q. And so, what, in your -- all of your years in the

3 were working on the ranch?

4 A. The time I was with my family? Yes.

5 Q. Yeah.

6 A. Yes.

7 Q. I mean, you know, I'm trying to do the arithmetic
here; but
8 you went to high school over there.
9 A. I did.
10 Q. So I guess your formative years in the family when
you were
11 living with the family were on the ranch.
12 A. Yes, it was.
13 Q. And now you're in a completely different line of
work and
14 have your own company.
15 A. That's correct.
16 Q. And as I understand it, you started out working for
this
17 company and then bought it -- bought into it.
18 A. That's correct.
19 Q. And the business that you carry on with that
company: Is
20 that around the area where you live?
21 A. Yes, it is.
22 Q. Now, do you function in addition to this ownership
interest
23 as a general contractor?
24 A. Um --
25 Q. Well, let me ask it this way: Do you, to do the
work, hire

Juror No. 202 – Voir Dire

1 a number of subcontractors?

2 A. I do.

3 Q. All right. And that's what I meant by a general
4 contractor. You oversee the design and the
construction and

5 have, of course, investment?

6 A. That's correct. I have employees, and then mostly
we
7 subcontract everything out.

8 Q. Yeah. You have a few employees that you have as
full-time
9 employees?

10 A. A little over 20.

11 Q. And then a lot of the different kinds of work is
done by
12 trades who subcontract?

13 A. Yes. Almost all that work is done by trades.

14 Q. Now, of course, one of the things that I have to
ask you
15 about is the availability that you have to serve here.
And of

16 course, as I've said many times here to other people,
we're not

17 asking for volunteers. This is a summons; and so it's
not a

18 question of do you want to be on the jury or don't you
want to

19 be on the jury. But we know that we've called in
people from

part of 20 all kinds of work activities; and, you know, that's
from all 21 what the jury system is all about; that we get people
we're 22 walks of life. And, of course, the jury service that
months. 23 talking about for this particular case may take several
24 You understand that?
25 A. Yes, I do.

6020

Juror No. 202 - Voir Dire

clock, as 1 Q. And the time of jury service in terms of on the
Thursday, 2 it were, is 9 to 5 in the courtroom Monday through
Jurors 3 to 1 on Friday -- is the schedule that I've set out.
free to 4 are not here overnight or, you know, weekends. They're
course, 5 go then. This is not a sequestered jury. And, of
that we 6 there is time going and coming with the arrangements
would be 7 have in place. And that takes you away from what you
assume. 8 doing otherwise, which is running your business, I
9 A. That's correct.
10 Q. And have you thought about what would be involved

and the

11 impact on your business from this as far as if you were
to

12 serve on the jury?

13 A. Yes, I have.

14 Q. Is it manageable?

15 A. I think it would be very difficult but probably
manageable.

16 But I don't think it would be very easy at all with the
type of

17 business I do and what I do.

18 Q. Well, I guess one of the things that I'd -- I guess
it

19 seems as a possibility here is that you rely on some of
these

20 people who are your employees to do some of the things
that you

21 normally do.

22 A. I do.

23 Q. And, you know, we know that -- and I'm sure you're
aware --

24 that there are hardships on a number of people to come
in and

25 serve. And we don't ask people to file bankruptcy as a
result

6021

Juror No. 202 - Voir Dire

1 of jury service; but when I say manageable, I don't
mean to

2 suggest that it would be easy. But is it doable and
still keep

3 your business going?

4 A. I think it would be very difficult, primarily
because we're

5 not a large business but not a small business, so I
have other

6 employees; but I also don't have a lot of vice
presidents and

7 people that sign notes and do transactions on a daily
basis.

8 So if I was called to serve, I'd do my best; but I
think it

9 would be very hard on my business.

10 Q. Now, you know, that's one of the reasons that we do
the

11 Friday afternoon. That always isn't feasible if you've
got

12 banking and things to do; but that's one of the reasons
that we

13 have the Friday afternoons available, so that people
can use --

14 have a little time during the normal business hours
that other

15 people are doing business to try to take care of some
of the

16 things like that. You understand that --

17 A. I do.

18 Q. -- part of the planning here?

19 Have you talked to the people you work with in
the

20 business and sort of discussed with them the
feasibility of

21 their running it day to day while you're in here?

22 A. No. Not completely, no.

23 Q. Well, you've thought about it yourself --

24 A. Yes, I have.

25 Q. -- I trust.

6022

Juror No. 202 - Voir Dire

and then 1 And let me just turn to one other thing here,

turn to 2 I'm going to have you back tomorrow. But I wanted to

3 page 22 and the matter of litigation at Question 99.

kind of 4 The kind of business you're in -- almost any

time to 5 business any more -- there are lawsuits about it from

that 6 time. Is there anything pending in any lawsuit now

7 affects your business or you?

8 A. No, there is not.

referred 9 Q. Okay. So would it be fair to say that what you

the 10 to -- and I think you use the word "normal" here -- are

come up 11 kinds of things that are almost unavoidable: Disputes

12 and sometimes they go to court?

13 A. That's correct.

14 THE COURT: Well, may I ask you to come back
and we'll
15 take you first thing tomorrow morning.

16 JUROR: Sure. I'd be happy to.

17 THE COURT: We appreciate your cooperation.
I'm sorry
18 to keep you waiting all day before we got you in and
then say,

19 well, we can't finish you; but I hope you understand.

20 JUROR: That's fine. At least I know I'm
first
21 tomorrow.

22 THE COURT: You are. I guarantee it. So
we'll see
23 you at 8:45 in the morning. You're excused until then.

24 (Juror out at 5:08 p.m.)

25 THE COURT: You want five minutes? I guess I
need

6023

1 five minutes to get the files.

2 MR. TIGAR: We'd appreciate five minutes, your
Honor.

3 THE COURT: Okay. Then we'll hear motions.

4 Five minutes. Recess.

5 (Recess at 5:08 p.m.)

6 (Reconvened at 5:15 p.m.)

7 THE COURT: Be seated, please.

8 All right, Government.

9 ARGUMENTS AND RULINGS ON MOTIONS TO EXCLUDE
JURORS

10 MR. MACKEY: Your Honor, we've made a motion
which we
11 briefed as to Juror No. 357.

12 THE COURT: Yes, and you filed a written
submission on
13 it.

14 MR. MACKEY: We rest on that brief, your
Honor.

15 THE COURT: All right. Mr. Tigar, I assume
you've
16 seen that. Have you?

17 MR. TIGAR: Yes. Yes, your Honor, we have
reviewed
18 that; and basically, we think it's like saying that
someone

19 with the same occupation and who might share some of
20 Mr. Nichols' political views is ineligible to serve.

21 The juror said that he could make the
sacrifice. The

22 first part was the finances.

23 THE COURT: Yes.

24 MR. TIGAR: He said, "We'll find a way," in
almost

25 those words three times: 5515, 5517, and 5543.

1 Looking at the Government's memorandum, it's
not even 2 clear that he was at any of these gun shows the same
years that 3 are involved here. The man is in a business --

4 THE COURT: I'm going to deny the motion.

5 MR. TIGAR: Thank you, your Honor.

6 THE COURT: I don't think we need to go on
with it.

7 I've reviewed what the Government has said, and I
believe the 8 person can serve.

9 Now, that's it from the Government.

10 MR. MACKEY: Yes, your Honor.

11 THE COURT: You have one, is it, Mr. Tigar?

12 MR. TIGAR: Yes. We have one, your Honor.

13 I should say that at the recess, the
Government and

14 defense have conferred. And if it's all right with
your Honor,

15 with respect to challenges addressed to or motions to
excuse

16 addressed to today's jurors, we would be prepared to
deal with

17 those tomorrow morning first thing.

18 THE COURT: All right.

19 MR. TIGAR: And we have one agreed motion with
respect
20 to today.

21 THE COURT: Okay.

22 MR. TIGAR: Shall I argue this one now and
then go on
23 to that?

24 THE COURT: Yes.

25 MR. TIGAR: All right.

6025

1 THE COURT: Let's do -- I'm focusing on
yesterday
2 right now.

3 MR. TIGAR: I'm sorry, your Honor.

4 With respect --

5 THE COURT: I can only focus on one thing at a
time,
6 you know.

7 Go ahead. 531.

8 MR. TIGAR: With respect to Juror 531, your
Honor,
9 there are three sets of concerns we have. The first is
I think
10 the obvious one, and that is with respect to her
statements

11 about guilt.

12 The Court's questioning of the juror towards
the end
13 of the session seemed to assume that she had been
confused by
14 defense counsel's questions. And yet at page 5587 of
the
15 transcript, the Court had instructed her that the
McVeigh case
16 could not have any role in her deliberations; and she
said she
17 understood.

18 At 5589, the Court had instructed her that the
defense
19 has no burden; and she again a little later said that
she
20 understood.

21 At 5605, the Court had instructed her that the
media
22 reports might be inaccurate and that she should
disregard
23 those. And she said that she was prepared to do that.

24 And then at 5617, she said that she would be
able to
25 put aside anything that she had heard and read.

6026

1 And yet, your Honor, finally at 5633, after
all of

2 these, she said she thinks he's guilty; that he
participated:

3 "Yes, that was my opinion," her opinion hasn't changed,
and she
4 would have to vote for guilt if she voted now.

5 So it seemed to us that that was a well-
considered
6 response on her part and that the Court's questioning
at the
7 end, "Do you understand?" is insufficient to provide
the level
8 of assurance required under the Court's prior rulings.

9 Similarly with respect to law enforcement,
your Honor,
10 she went on at great length about the law enforcement
people on
11 the federal side having their code of ethics, and so
on.

12 And finally, if the Court please, she did have
that
13 meeting, although there were no Oklahoma County medical
14 examiners there, talking about the triage at the scene.

And I
15 can tell the Court that there will be evidence about
that and
16 directed to that. So we have someone who is a
professional in

17 triage in disaster cases, not only by virtue of her
military
18 service but with respect to this specific situation.

19 THE COURT: All right.

20 I'm going to deny that motion. I've

considered these

21 things; and of course, this is very recent, so I don't
have to
22 read all of the transcript. I believe the person can
-- does
23 meet the statutory criteria for qualifying.

24 Now, you're agreeing on one from today?

25 MR. TIGAR: Yes, your Honor, No. 472.

6027

1 THE COURT: Yes. You won't get any argument
from me
2 about that.

3 MR. TIGAR: I had sensed that that was so,
your Honor.

4 The Government wanted overnight, I believe, to
think
5 about or at least later on to think about if they had
other
6 challenges, and we certainly have no objection to that.

7 MR. MACKEY: Judge, I think we can complete
the record
8 by reporting we anticipate no challenges by either
party for
9 Jurors 399, 392, or 65.

10 THE COURT: Okay.

11 MR. MACKEY: With the Court's permission, we'd
like to

12 review the transcript for Juror 680 overnight and
decide in the
13 morning.

14 MR. TIGAR: I assume by "overnight" that by
sometime
15 this evening, if the Government wishes to challenge --
same
16 practice as in the past -- the Government will file a
report
17 with the Court.

18 THE COURT: Now, did Mr. Manspeaker give you a
fax
19 from this one person who has been summoned for
tomorrow?

20 MR. MACKEY: Yes, your Honor. We've seen
that. This
21 has come up before. Our position is the same. We'd
have no
22 objection to him being released.

23 THE COURT: You also have to consider this one
with
24 what was said on the questionnaire.

25 MR. TIGAR: Yes, your Honor. We have reviewed
the

6028

1 questionnaire and reviewed the sheet. It may be that
when he

2 comes, we wouldn't have any objection to putting him at
the

3 beginning of the day, if that's a convenience factor.

4 THE COURT: I've committed myself to the
beginning of

5 the day to the man now here.

6 MR. TIGAR: I understand that, your Honor. In
7 whatever order.

8 I do not find -- we do not find the
explanation given

9 in the fax a rational basis upon which to consent to an
excuse.

10 THE COURT: All right. Well, I'm not going to
call

11 him in tomorrow, so that's my ruling. I don't say that
he is

12 not able to serve; but where we are in the process, I'm
not

13 going to bother with him, to be frank about it.

14 MR. TIGAR: I understand that, and I will say
that I

15 thought that that might be the Court's ruling. The
Court

16 understands that we are not in a position to make
concessions

17 with respect to these matters because of the position
we've

18 taken.

19 THE COURT: I understand that; so nothing, you
know,

20 here goes against your position taken or my
understanding of

21 it.

22 MR. TIGAR: Thank you, your Honor.

23 THE COURT: Okay. So we can, let's say, at --
let's

24 see. We're starting at 8:30. Did I --

25 MS. WILKINSON: You said 8:45.

6029

1 MR. TIGAR: Your Honor had said 8:45 to the
juror.

2 THE COURT: Well, he'll be here by 8:30. So
will you.

3 So let's say 8:25, we'll hear your position on today's
people.

4 All right?

5 MR. MACKEY: Your Honor, by my count, I show
some 67

6 jurors passed for cause.

7 THE COURT: I haven't counted.

8 MR. MACKEY: Do you want to change the
procedure

9 tomorrow and review challenges for cause at the close
of each

10 person?

11 THE COURT: No.

12 MR. MACKEY: How do you want to handle that?

13 THE COURT: No, I want to go through some more
and see

the day 14 where we are; and certainly we'll hear motions before
15 is over.

your 16 MR. TIGAR: We'll be prepared to handle that,
17 Honor.

with 18 Mr. Zuckerman, I must say, has been superb
19 respect to providing transcripts in a timely way.

assessment. 20 THE COURT: All right. I agree with that

21 MR. MACKEY: So agreed.

here? 22 THE COURT: It's on the record, but -- is he

23 Okay. 8:25. Recess.

24 (Recess at 5:27 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 28th day of October, 1997.

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Paul Zuckerman

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Bonnie

Carpenter

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