

13

PROCEEDINGS

14

(In open court at 8:25 a.m.)

15

THE COURT: Be seated, please.

16

Good morning.

17

We have one motion from yesterday.

18

MR. MACKEY: Yes, your Honor.

19

THE COURT: And I received a written
submission on

20

this 680.

21

MR. MACKEY: Yes, your Honor. We faxed it, as
well,

22

to the defense counsel last night. The Government
would rest

23

on its brief.

24

THE COURT: All right. I assume the defense
opposes

25

the motion.

6034

1

MR. TIGAR: Yes, your Honor.

2

THE COURT: The motion's denied. I've read
the

3

submission the Government made.

4

Also, I noted that for 467, who is on the list
for

5

today, the response beginning with the original one
appears

6 that he does not meet the residency requirements, so --

7 MR. TIGAR: Yes, I -- Mr. Manspeaker brought
that to
8 our attention, your Honor. We would consent to him
being
9 excused.

10 MR. MACKEY: As would we.

11 THE COURT: All right. Then, although a few
minutes
12 early, I think we're ready to return to 202.

13 Good morning.

14 JUROR: Good morning.

15 (Juror No. 202 was recalled to the stand.)

16 VOIR DIRE EXAMINATION CONTINUED

17 BY THE COURT:

18 Q. Not only did I agree yesterday to get you in here
first
19 thing this morning at 8:45, we decided to do it earlier
today.

20 A. That's great.

21 Q. So -- I -- you know, yesterday, when we were
talking about
22 the matter and talking about your business, you were
expressing
23 your concerns about the impact on your business from
the
24 service involved in being on this jury. Have you
thought some
25 more about that?

Juror No. 202 – Voir Dire

1 A. Yes, I have.

2 Q. Could you tell us what your thoughts are.

3 A. Well, you know, I think being on the jury would
have an

4 impact on my business; but, you know, after being here
a day,

5 it's real hard to say that, you know, the impact on my
business

6 is any greater than somebody else that's just got a job
that

7 they started or has small children. Being on the jury
would

8 cause me to have to work in the evenings and work with
some of

9 my employees getting it done, but I can't say it's
easier for

10 me than anybody else. So I think if I had to do it, I
could do

11 the job.

12 Q. Well, we appreciate not only your review of it some
more,

13 but also your understanding of what the obligation
involves.

14 And as we were talking yesterday, most of the people
who get

15 summoned have some impact that they have to
accommodate. So we

16 appreciate your efforts in that regard.

17 Of course, we want you to get some sleep at
night,

18 too. So -- I hope that you would be able to
accommodate that

19 need, as well.

20 Now, you did at one time -- page 12 is where
I'm

21 looking. You did at one time have some difficulty here
on

22 your -- under the item at 54. What was that? How long
ago was

23 that?

24 A. 1991.

25 Q. And did that have a business involvement, too?

6036

Juror No. 202 - Voir Dire

1 A. Yes.

2 Q. Okay. Well, you marked it as personal, but there
was a

3 business indebtedness that was a part of that?

4 A. That was the primary reason.

5 Q. Okay. Now, and I think you mentioned yesterday
when I

6 asked you about normal business litigation that you
didn't have

7 anything pending right now.

8 A. That's correct.

9 Q. Okay. And you are married now?

10 A. Yes, I am.

11 Q. Your wife now is at home. You have a youngster at
home?

12 A. We have two.

13 Q. One of them younger, I think. Fairly young?

14 A. Yeah. I have one daughter that's 18 months.

15 Q. Yeah. Okay. And you were married before?

16 A. Yes, I was.

17 Q. And did your -- during your previous marriage, was
the --

18 was your then wife working outside the home somewhere?

19 A. No, she was not.

20 Q. Okay. In connection with this matter of sort of
open-ended

21 questions about your attitudes and opinions on things,
as we

22 discussed yesterday, that's up to you. We're not
challenging

23 your views on anything. But you did, on page 30, state
your

24 agreement of the importance of following the Court's

25 instructions. Do you see that at 129? Do you see my

6037

Juror No. 202 - Voir Dire

1 reference?

2 A. Yes, I do.

asked 3 Q. And you didn't offer an explanation there where we

4 you for an explanation. And why is that?

5 A. Well, I believe the court has under -- an
understanding of

6 the law that is before the people and that they have
the

7 knowledge to give me the instructions I need to do --
to make

8 the decision in the court case.

9 Q. So to you, it didn't need explanation; the answer
is

10 obvious? Is that --

11 A. Yes.

12 Q. -- the way you interpret it? Now, when that refers
to

13 court instructions, of course, you understand that it
means all

14 of the instructions, not just where to be at what time
and so

15 forth, but all of the instructions about the law; and I
think

16 in the answer that you just gave me, you recognize
that?

17 A. Yes, I do.

18 Q. And one -- and of course, the instructions will
include at

19 trial instructions at the beginning of the case, during
the

20 course of the taking of evidence. Sometimes there's

21 instructions about how the jury must limit certain
evidence and

also at 22 so forth in their consideration of the case. And then
about the 23 the end of the trial, there are detailed instructions
offense 24 law as we've already discussed when the elements of the
beyond a 25 are outlined and those things that must be proved

6038

Juror No. 202 - Voir Dire

1 reasonable doubt and so forth.
2 Now, we asked you in this questionnaire some
questions 3 about your attitudes or opinions concerning certain
types of 4 punishment. And that refers to the -- the questions at
page 5 28. And if you just want to take a moment to review
what you 6 said on the questions on page 28 and then over on 29.
7 A. Okay.
8 Q. Now, there was a -- a preface to this, too, on page
27, a 9 rather long explanation of why these questions were in
the 10 questionnaire. You recall --
11 A. Yes, I do.
12 Q. And as -- as the questionnaire explains at page 27,
the top

13 of 28, the reason is the possibility of the jury in
this case
14 having to participate in a punishment decision. That,
of
15 course, is a possibility only on the possibility that
there is
16 a guilty verdict with respect to the charges.

17 So clearly, the first thing that the jury must
focus
18 on is the evidence at the -- in the trial and determine
whether
19 that evidence proves the charges against Mr. Nichols
beyond a
20 reasonable doubt as we've already discussed. And if
not, of
21 course, the verdict is not guilty.

22 But in the event of a guilty verdict, because
of the
23 nature of the charges and the federal statutes
involved, there
24 is the possibility of having to hear more and consider
these
25 punishments. And what we wanted to know from you in
advance of

6039

Juror No. 202 - Voir Dire

1 any instructions from me about the law that applies and
how
2 this matter is to be decided under the law is we simply
wanted

3 to know something about your attitudes and opinions
concerning
4 the use or the availability of such punishments under
the law,
5 recognizing as we do -- and I'm sure you do -- that
there's a
6 wide divergence of public opinion about the death
penalty in
7 particular. And there are people at really two
extremes there,
8 one being that the death penalty should never be
imposed; that
9 the law should not include the possibility of such
punishment.
10 And at the other extreme, I suppose, are people who say
that it
11 should be an automatic penalty; that if a person takes
12 someone's life intentionally, then they forfeit their
own life
13 and should be executed. Those, I suppose, are the ends
of the
14 spectrum, and there's a lot in between. You understand
that
15 yourself?
16 A. Yes, I do.
17 Q. And of course, you know that there are differences
among
18 the states with respect to the availability of such
punishment.
19 There are states in the United States where there is no
death
20 penalty provided by law, and in some states, it has

changed

21 from time to time depending upon who is in the
legislature and

22 public opinion.

23 Now, given that, you wrote us some answers
here which

24 sets forth as we understand it -- as I understand it,
your

25 opinions about these punishments and when they may be
used. Is

6040

Juror No. 202 - Voir Dire

1 that correct?

2 A. Yes. Based upon the scenario that was given.

3 Q. Yes. And is this a matter to which you've given
much

4 thought before being confronted with these questions?

5 A. You know, I don't think you -- you think about it,
but it's

6 not something you dwell about at all.

7 Q. Yeah. You think about it as you think about a lot
of other

8 things and current events and discussions and so forth;
and of

9 course, these divisions of opinion become more
prominent at

10 times when the death penalty is carried out as recently

11 happened in Colorado with respect to a state sentence.

12 A. Well, that's correct.

13 Q. And that, of course, happened after you completed
the
14 questionnaire. Was -- has there been anything that has
in any
15 way caused you to change these opinions at all?

16 A. No, there has not.

17 Q. So that if I asked you the same questions this
morning,
18 you'd give me the same answers, basically?

19 A. Yes, I would.

20 Q. Okay. Now, I want to review with you what the law
actually
21 is here in the Federal Court and of course, as I've
already
22 mentioned, there's differences among the states, but
you
23 understand clearly that we're in Federal Court on
federal
24 charges and therefore, follow the law as it is given by
the
25 Congress in the federal statutes involved. And
essentially,

6041

Juror No. 202 - Voir Dire

1 what the Congress has provided is that for crimes such
as
2 the -- murder, the intentional killing of other
persons, the

of all, 3 range of punishments available under the law are, first
released. The 4 life in prison with no possibility of ever being
Another 5 person lives out the rest of his days in prison.
punishment. 6 punishment is death. And then there can be lesser

capital 7 Now, normally, in cases that do not involve
judge in 8 punishment, the punishment sentence is decided by a
of a 9 Federal Court. So if a jury finds a defendant guilty
an 10 crime, other types of crime, let's say bank robbery as
has 11 illustration, which is a federal crime, then the jury
not 12 discharged its duty in the case, whether it's guilty or
determining the 13 guilty. The jury has discharged its duty by
then the 14 sufficiency of the evidence to prove the charges, and
the 15 matter is turned over to the court to determine what
16 sentence ought to be.

sentence 17 And before a judge makes a decision about a
hearing 18 for a particular individual, it's necessary to hold a
decision, 19 on that. And as a part of the formulation of that

20 the court wants to know more about the crime than just
what was
21 presented at the trial, including consequences, were
there
22 people injured and, you know, what was the effect on
the bank
23 and so forth, and then at the same time wants to know
all there
24 is to know about the defendant as a human being.
25 And so information is gathered about the
defendant,

6042

Juror No. 202 - Voir Dire

1 including, you know, all of the things that are
personal to him
2 and unique to him, his whole background, where he was
born and
3 raised, what kind of circumstances were there there,
what is
4 his education, what is his history with respect to
employment,
5 marriages, divorces, children, military service.
6 You would agree that all of us have sort of a
life
7 history that's unique to us as individuals?
8 A. I would definitely agree to that.
9 Q. Okay. And so that's what the court wants to know
about the
10 individual defendant. And in cases where there may be
one --

11 more than one person involved -- again, as an
illustration,
12 suppose there are three people involved in a bank
robbery. One
13 has got a gun and holds it on the people in the bank,
another
14 scoops up the money and another drives away the car,
the
15 getaway car. And if the court had convictions of all
those
16 three people, there would be a focus on each one of
them
17 individually.

18 And then after a hearing at which the court
also hears
19 from the lawyers for the prosecution and the defense, a
20 decision is made as to each defendant, and it can be
different
21 even though they all were involved in the same crime.
And the
22 differences can be substantial, depending on the role
in the
23 offense, as well as the matters that are uniquely
individual to
24 each person. Follow?
25 A. I -- I follow that.

6043

Juror No. 202 - Voir Dire

1 Q. Now, in cases that do involve this possibility of a

such 2 life-or-death question, the Congress has provided that
and-death 3 decisions should not be made by judges. For a life-
therefore has 4 decision, we ask the jury to do it, and the jury
which this 5 that responsibility. And what happens is the way in
trial 6 is presented to the jury is that, first of all, at the
of 7 with respect to the sufficiency of the evidence, this,
what 8 course, is not an issue. The jury must not consider
whether 9 punishment there might be when the jury is considering
10 the evidence proves the defendant guilty. Understand?
11 A. I do.
go on and 12 Q. Then, if there is a guilty verdict, the jury must
more before 13 hear more in much the same fashion as a judge hears
guilty of 14 determining an individual sentence for a person found
trial, a 15 some other type crime. Now, that is done by a second
the same 16 penalty phase hearing, and it proceeds procedurally in
sides, 17 manner as the trial itself. There are lawyers on both
testimony, 18 of course. And witnesses are called in, give

to both 19 exhibits are offered, and the testimony and exhibits go
didn't 20 the circumstances of the crime again, the things that
that can 21 come in in evidence at the trial of the evidence, but
and then 22 include the effects on communities, victims, so forth,
manner as 23 all there is to know about the defendant in the same
know who is 24 I've already discussed with you that judges want to
is at 25 being sentenced here. So the jury must know whose life

6044

Juror No. 202 - Voir Dire

jury 1 issue. And to put it in the plainest forms, before the
know a lot 2 decides to take another person's life, the jury must
3 about the life being taken. Understand?
4 A. I understand that.
phase 5 Q. And then at the end of the second trial or penalty
6 hearing, the court sort of gives additional
instructions and
7 pretty much sums up what has been heard, what
information has
8 been provided and in the course of doing that, also
divides it

9 up into two categories: On the one hand, those things
that
10 would be called or may be called aggravating
circumstances or
11 aggravating factors, the things that the jury's been
presented
12 that suggest that death is the deserved punishment, and
also,
13 those things the jury has heard that could be
considered
14 mitigating factors, mitigating against that punishment
and
15 suggesting that a lesser punishment is appropriate for
this
16 particular person committing the crime.

17 Now, again, the role in the offense can be a
factor on
18 one or the other side of that. The life history of the
person
19 is a factor. And at the -- after summarizing
aggravating and
20 mitigating circumstances, then the court would give
some
21 questions for the jury to ask themselves to sort of
help
22 analyze it. But there's no formula for this, you know.
23 There's no arithmetic equation. You can't say two
points here,
24 four points there. It doesn't work that way, because
it's a
25 very human, subjective judgment that is being asked of
the

Juror No. 202 - Voir Dire

1 jurors. And the jurors are then, of course, expected
to
2 deliberate, to exchange their views and discuss the
matter of
3 punishment. And finally, the question that is
presented to the
4 jury is probably best characterized as one involving a
5 reasoned, rational moral judgment based upon all that
has been
6 heard with respect to the case in the punishment trial.
7 Understand?
8 A. Yes, I do.
9 Q. And while the jurors discuss it, deliberate, in the
end,
10 each juror has to make an individual decision as to
whether the
11 particular defendant should live or die. Now, what we
need to
12 know from you is whether, if you were to serve on a
jury -- and
13 of course, we can't talk about it as -- as Mr. Nichols'
case
14 because we have no idea, first, what the evidence would
be, if
15 the trial -- whether he will be found guilty or not,
and then
16 we have no information to tell you now what -- what
would be

blank 17 presented at a punishment hearing. We -- we have a
18 there, you understand.
19 A. I understand that.
and 20 Q. So we have to ask it in -- more in an abstract way;
question of 21 that is, if you served on a jury, had to decide the
and base 22 life or death, would you be able to make the decision
23 it on all that you have heard, including the
aggravating and 24 the mitigating circumstances?
my 25 A. I believe that based upon the -- my knowledge and

6046

Juror No. 202 - Voir Dire

1 opinions now that I could reach that decision.
2 THE COURT: All right. Now, there's an
opportunity 3 for a lawyer on each side to question further.
4 Ms. Wilkinson.
5 MS. WILKINSON: Thank you, your Honor.
6 VOIR DIRE EXAMINATION
7 BY MS. WILKINSON:
8 Q. Good morning, sir. Welcome back.
9 A. Good morning.

10 Q. My name is Beth Wilkinson, as his Honor told you
yesterday.

11 And I'm one of the prosecutors who will be presenting
the
12 evidence in this case against Mr. Nichols.

13 I take it from listening to your first words
to his

14 Honor that you went home and thought about what he
asked of you

15 in terms of jury service and that you're willing to
make that

16 sacrifice if you're called to do so; is that right?

17 A. Yes, I am.

18 Q. And you understand, I'm sure, that if you are
called to do

19 that, all we're asking you to do is come into this
courtroom

20 and have an open mind and listen to the evidence and
make a

21 decision as to whether the Government has proved its
case

22 beyond a reasonable doubt based just on what you hear
in this

23 courtroom?

24 A. Yes, I will.

25 Q. Would you have any trouble doing that?

6047

Juror No. 202 - Voir Dire

1 A. No, I won't.

day in 2 Q. Okay. I take it you make decisions almost every
3 your business?
4 A. I do.
it would 5 Q. And not that I know much about your business, but
6 seem to me that there's sometimes a lot of different
things 7 that you have to consider before you make a business
decision.
8 Is that true?
9 A. That's true.
going 10 Q. Do you understand in this case, there are obviously
evidence, 11 to be lots of things for you to consider, lots of
all 12 witness testimony, exhibits, but there's going to be
have to 13 different types of testimony and exhibits that you'll
14 consider?
15 A. I understand that.
hear 16 Q. Can you do that? One type of evidence that you may
occurred, 17 may be evidence about what occurred, the crime that
responses in 18 and some of that may be -- trigger some emotional
vivid 19 people, you know, about what happened at the scene,
20 pictures about children and victims of the crime.

but in 21 Do you think you could listen to that evidence
its 22 the end, decide your -- whether the Government has met
at all 23 burden of proof based on an objective and reasoned look
24 of the evidence presented in the case?
but I 25 A. I believe I could. I don't think it would be easy,

6048

Juror No. 202 - Voir Dire

1 believe I could do that.
2 Q. Okay. It looks from your questionnaire that you're
pretty 3 busy with the family and a full-time business; is that
right? 4 A. That's very true.
5 Q. If you have any time, do you watch the news on any
kind of 6 regular basis?
7 A. Occasionally in the evening, yes.
8 Q. Have you heard much -- before you received his
Honor's 9 admonitions not to follow the media on this case, had
you heard 10 much about the case or the Oklahoma City bombing
itself? 11 A. Some, yes.

12 Q. Do you recall when the event -- when the bombing
occurred

13 back in April of 1995?

14 A. Do I recall the date or just recall --

15 Q. The time.

16 A. I recall the incident, but I don't recall the
specific date

17 or when it was.

18 Q. Do you remember watching the news or reading the
newspaper

19 about the bombing?

20 A. Yes, I do.

21 Q. And what comes back to mind when you think about
those

22 events?

23 A. I just think probably the biggest thing that comes
to mind

24 is the destruction and the life that was lost and --
and the

25 emotional impact it had on a lot of people.

6049

Juror No. 202 - Voir Dire

1 Q. Was that the part of the coverage that you followed
the

2 most, about the destruction and the victims?

3 A. I would say so, yes.

4 Q. Did you follow much about the investigation and how
that

5 unfolded?

6 A. No, I did not.

7 Q. Do you have a recollection about how Mr. McVeigh
was taken

8 into custody?

9 A. Yes.

10 Q. And what do you recall about that?

11 A. I believe that he was driving in a car and they
stopped

12 him.

13 Q. Do you recall anything about how Mr. Nichols came
into

14 custody?

15 A. No, I do not.

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

17 A. Not specifically, no.

18 Q. Do you recall reading anything about him or --
other than

19 that he's charged in this case?

20 A. No.

21 Q. So I take it you wouldn't have to put too much out
of your

22 mind to come in here and start with a clean slate then
and

23 presume him innocent as you're required to do by the
law?

24 A. Yeah. I don't think it would be that hard.

25 Q. Then I just want to turn to the final subject,
which is the

6050

Juror No. 202 - Voir Dire

1 penalty phase. Obviously, you listened to his Honor's
2 instructions very carefully how this is a bifurcated
process.

3 There would be a trial as to whether the Government had
proved

4 its case; and if you found a defendant guilty, then and
only

5 then you would move on to listening to the evidence
about what

6 the proper punishment would be. Did you understand
that?

7 A. Yes, I did.

8 Q. Now, do you recall in the McVeigh case, the jury
announced

9 its verdict as to guilt?

10 A. I think I heard it through some business people in
my

11 office.

12 Q. And do you recall when it was announced that they
had

13 recommended a sentence of death?

14 A. No.

15 Q. Did you know that there was some time period
between those

16 two pronouncements?

17 A. Yes, I did.

18 Q. Okay. Do you understand now that that's because
there was
19 a second phase where the jury, although they had
decided guilt,
20 had to have an open mind and start again to determine
what the
21 punishment should be?

22 A. Yes, I understand that.

23 Q. Now, do you understand also that the law requires
you in
24 that second stage to be open to considering both
penalties;
25 even though you've convicted someone of a crime of
murder, that

6051

Juror No. 202 - Voir Dire

1 you have to be willing to listen and consider life or
death?

2 A. I understand that.

3 Q. And can you do that even if someone -- you had
already

4 determined that someone was guilty beyond a reasonable
doubt of
5 murder?

6 A. Yes, I could.

7 Q. And could you do that no matter what the crime was,
no

8 matter how horrible the crime was?

9 A. Yes, I could.

10 Q. I ask you that because in your questionnaire, you
said

11 that -- when we asked you those different delineations
of what

12 crimes you thought were appropriate for what
punishments, I

13 believe you said on the death penalty that a violent
murder

14 would be one that might be appropriate for the death
penalty.

15 Do you recall that?

16 A. Yes, I do.

17 Q. And do you understand that that may make it
appropriate --

18 in other words, you could consider it -- but you can't
come in

19 with a preconceived notion that that's the penalty that
20 absolutely applies?

21 A. I agree with that.

22 Q. Okay. So if I asked you could you consider both
penalties

23 even after determining guilt, you would have no problem
doing

24 both of those as you came into that second phase?

25 A. No, I would not.

6052

Juror No. 202 - Voir Dire

1 MS. WILKINSON: I appreciate you answering my
2 questions, sir. Thank you.

3 JUROR: Thank you.

4 THE COURT: Mr. Tigar.

5 VOIR DIRE EXAMINATION

6 BY MR. TIGAR:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. My name is Michael Tigar. And Ron Woods sitting
right

10 there and I were appointed by the United States
district judge

11 in Oklahoma City in May of 1995, shortly after these
Government

12 lawyers filed charges against Mr. Nichols, charging him
with

13 being responsible for the bombing. So we're lawyers
appointed

14 by the court.

15 I gather you've never served on a jury before?

16 A. Never have.

17 Q. Okay. Have you ever had occasion to think about
this

18 question of lawyers being appointed at public expense
for -- to

19 represent people that are accused?

20 A. No. Not really.

21 Q. Okay. Does it bother you?

22 A. No.

the --
23 Q. Okay. I wanted to ask you some of the things about
need to
24 that are on your questionnaire, but I don't think you
-- and
25 look at it. Just the first one, you said you grew up

6053

Juror No. 202 - Voir Dire

1 I'm not from here -- on the Western Slope?
2 A. Yes, I did.
3 Q. And it was sheep and cattle?
4 A. Yes.
5 Q. Now, did you raise a crop there, as well?
6 A. No, we did not.
7 Q. Didn't --
8 A. We raised some alfalfa for the sheep and cattle.
9 Q. Right. For the sheep and cattle. Is that -- and
no corn
10 or anything like that?
11 A. No.
12 Q. Too -- was it too short a season for corn?
13 A. Too short of season. Wrong type of area.
14 Q. Right. Okay. And so you all didn't have anything
to do
15 with fertilizer or anything like that?
16 A. No, we did not.

17 Q. Did you ever use or people in your area ever use
explosives
18 to, you know, blow stumps to clear a field, to ditch,
anything
19 like that?
20 A. Maybe a beaver dam once in a while or something
like that,
21 but not very often.
22 Q. Okay.
23 A. That I can remember.
24 Q. So as you come in here, you don't have a lot of
experience
25 with explosives in life?

6054

Juror No. 202 - Voir Dire

1 A. No.
2 Q. And in your construction work, have you ever used
3 explosives?
4 A. Once in a while, we do for blasting rock; but it's
not
5 something we're involved with on a direct basis.
6 Q. You get a --
7 A. Preferably, there's never any rock in there.
8 Q. I understand. Somebody comes in and does that for
you
9 then?

10 A. Yes.

11 Q. Okay. You understand why I'd be asking the
questions.

12 It's -- you know, there may be some evidence in this
about the

13 ins and the outs and the technicalities and so on of
14 explosives, and you'd be able to listen to that without
15 bringing your own prior experience to bear on it?

16 A. That's true.

17 Q. Okay. Could you turn to page 12 of your
questionnaire,

18 sir. Because I -- it may be that the copying machine
did it.

19 55A, could you -- I can't read what that first word is
there.

20 A. "Covenant."

21 Q. Oh, "covenant." Okay. And in -- in your church,
are there

22 any particular teachings about the issue of capital
punishment?

23 Have you talked about it with folks that you go to
services

24 with?

25 A. No. I don't recall that coming up as an issue in
our

6055

Juror No. 202 - Voir Dire

1 church.

by John
criminal
read of
was
don't
influence
-- the
and turns;
last
killing;

2 Q. Okay. And you mentioned that you have read books
3 Grisham and Scott Turow. Now, they write about the
4 justice system. Can you remember what books you've
5 theirs?
6 A. You know, I don't read very much, but I think it
7 Presumed Innocent, and there was one other book. I
8 remember --
9 Q. Okay.
10 A. -- the names offhand. It's been a while back.
11 Q. I understand. Well, did you form -- did that
12 your opinions about the criminal justice system and the
13 one that you read?
14 A. No. But I thought it was entertaining reading.
15 Q. Yeah. Okay. And did you see the movie?
16 A. Yes, I did.
17 Q. Okay. Now, there was a case with lots of twists
18 right?
19 A. Yes.
20 Q. And I mean -- and as I remember it, it was the very
21 thing that you heard or saw that told you who did the

22 isn't that right?

23 A. That's right.

I ask
24 Q. The wife came in with the hammer? Well, the reason
second.
25 it is that we as a defense -- as the defense, we go

6056

Juror No. 202 - Voir Dire

has a
charges.
examine
in, you
not
witnesses
jurors
and then
like the
10 book.

1 And, you know, this is a case in which the Government
2 theory that Mr. Nichols is involved. They filed these
3 They go first. They present their evidence. We cross-
4 every one of their witnesses, which is a way we can put
5 know, evidence of our own. But then even though we're
6 obliged to, when they are done, we will present
7 and -- and evidence. And at the end of the case, the
8 listen to the judge's instructions on what the law is
9 go back and deliberate. So in -- in one sense, it is

make up
11 Do you think you can hold an open mind and not
12 your mind until you've heard the very last thing and

the

with the 13 instructions and then go back and be talking about it

14 other jurors?

15 A. Yes, I believe I could.

oh, let's 16 Q. Okay. Well, I want to talk a little bit about --

17 see. You had a suit with the SBA; is that right?

18 A. Yes, I did.

19 Q. Was that a long time in the past?

20 A. It was '88.

21 Q. Okay.

22 A. 1988.

has 23 Q. Okay. Is there anything about that experience that

justice 24 affected your views of the federal government, the

25 system or anything like that?

6057

Juror No. 202 - Voir Dire

1 A. No.

2 Q. Okay. Was that in state court?

Court. 3 A. Started out in state and the SBA took it to Federal

4 Q. I see. Was it -- was it in this courthouse then?

5 A. Yes, it was.

6 Q. Okay. Do you remember what judge presided over it?

7 A. Federal Judge Kane.

8 Q. Judge Kane. All right. And if you could turn,
please, to

9 page 31 of your questionnaire. Question 133, it says,
"Not
10 sure. Various news programs."

11 I just want to ask you if you'd thought about
that

12 some more. Do you remember any statements by, you
know, any

13 public officials, the President, governor of Oklahoma,
so on,

14 anything that sticks?

15 A. Probably the only thing I can remember is the
statement

16 with President Clinton after it happened that they were
going

17 to find out who did this and bring swift justice or
something

18 to that effect.

19 Q. Uh-huh. Okay. How do you feel about the fact that
here we

20 are more than two years later and we're picking a jury?
I

21 mean, did -- are you disappointed in how long it's
taken to get

22 this case to trial?

23 A. No. I think with my experience in the past, there
were

24 lawsuits in business that seems like this is how our
courts are

25 and the action it takes and the time it takes.

6058

Juror No. 202 – Voir Dire

You don't 1 Q. Okay. So you don't have any problem with that?

anybody? 2 hold that against us or against the Government or

3 A. No, I do not.

Oklahoma and 4 Q. Okay. And you understand that the case was in

trials 5 then Judge Matsch moved it here and then there were two

6 and it is pretty complicated -- it's a pretty complicated case

7 to get ready for?

8 A. Yes, I understand that.

9 Q. Okay. You mentioned when the prosecutor was talking, you

Do you 10 don't remember anything specifically about Mr. Nichols.

whatever it 11 remember anything generally? Can you just tell me

Lynn 12 is you remember from reading in the media about Terry

13 Nichols.

two 14 A. You know, the only thing I remember was there was

for at 15 individuals and possibly a third that they were looking

that 16 one time and that -- that Mr. Nichols had a brother and
general 17 they were on a farm. And I think that's kind of the
18 overview of what I remember.
media, 19 Q. Okay. Do you remember where -- according to the
20 where Mr. Nichols was on the day of the bombing?
21 A. No, I do not.
penalty. 22 Q. Okay. Well, let me turn then to this question of
going to 23 Now, as the Judge said, we have to presume we're not
He 24 get there because we presume Mr. Nichols is innocent.
process, the 25 starts with a clean page. And there will be this

6059

Juror No. 202 - Voir Dire

If 1 Government presenting evidence, us presenting evidence.
not 2 there's a reasonable doubt at the end, if the jury says
jury 3 guilty, we all -- it's over. But if for some reason a
charges, then 4 finds Mr. Nichols guilty of one or more of these
well, what 5 we can't bring everybody back in and start saying,

6 do you think about this.

7 Have -- before today, before you got -- before
you

8 came out to Jeffco, had you thought about the question
of

9 capital punishment?

10 A. Well, again, I think you think about it as a
society. And

11 I think -- but not specifically just on this particular
case

12 or --

13 Q. I understand. Have you -- did you read any of the
coverage

14 about the Gary Davis execution that took place about a
little

15 more than -- I guess ten days ago in Colorado?

16 A. Yes, I have.

17 Q. And what did you think about that?

18 A. You know, I guess I believe that if somebody
created -- did

19 the crime, that I could have an opinion that the
punishment

20 should be equal, probably.

21 Q. Okay. And how long -- how long do you remember,
you know,

22 having that view? What --

23 A. You know, I think for some time. I think for some
time

24 that the -- and again, there's probably all sorts of

25 circumstances without knowing the particular case or
the

6060

Juror No. 202 - Voir Dire

1 individual, but I think that I felt like that if you
take a
2 life, that that's something pretty serious, and I think
that
3 because of that doesn't necessarily mean you should
always just
4 get life in prison.

5 Q. Okay. And when you say it doesn't always
necessarily mean
6 you should get life in prison, that's where I wanted to
pursue
7 just a little more. In -- under our system, that is
under the
8 federal Constitution, under the federal law, there's no
such
9 thing as an automatic death penalty. Now, that doesn't
-- what
10 that -- what that means is that it doesn't matter what
the
11 crime is. There's always more to consider. Do you --
you got
12 that from the Judge?

13 A. I understood when the Judge told me that.

14 Q. And so could you imagine yourself as a juror -- if
you had
15 convicted somebody of taking -- intentionally killing a
number

16 of people, could you contemplate, consider a life
sentence for

17 that person as being appropriate?

18 A. Possibly. Yes.

19 Q. Okay. And when you say "possibly," what are you
thinking?

20 A. Well, I guess I wouldn't know all the
circumstances. I

21 mean, if -- again, if he was a part of three people,
there was

22 a crime that was committed where there was an act of
murder,

23 but maybe he was sitting in the car, so I mean --

24 Q. Okay.

25 A. I mean, I suppose that's a possibility. But I
believe that

6061

Juror No. 202 - Voir Dire

1 if there was a deliberate act and that individual
created a

2 murderous scene and it caused somebody's death, that I
could

3 convict them of that crime, provide the death penalty,
I guess.

4 Q. Okay. So you've thought about -- you said -- the
situation

5 of different roles is the sort of thing that the Judge
was

6 talking about. And you say "a deliberate act." What
did you

7 have in mind there?

8 A. Well, I would say if somebody, you know, viciously
stabbed

9 somebody or mutilated somebody or, you know, killed
somebody,

10 that that's a vicious act, to me.

11 Q. Okay.

12 A. Intentions were not to go in there for some other
reason,

13 but they went in there for that --

14 Q. Right.

15 A. -- deliberate reason to hurt somebody.

16 Q. And for that person, would you be willing to listen
to

17 evidence that that -- about that person's childhood and
their

18 background and their growing up and so on, all the
things that

19 had happened to them during their life as an -- as an
20 individual?

21 A. Yes, I believe so.

22 Q. Okay. And my question is, if you found that
somebody had

23 deliberately gone to a place to kill somebody and then
carried

24 out that design, could you consider a life sentence for
that

25 person?

Juror No. 202 - Voir Dire

1 MR. MACKEY: Objection, Judge.

2 THE COURT: Overruled.

3 JUROR: Possibly, but I think they would have
to
4 really show me some evidence of something in the past
that was
5 so extreme that would maybe change my decision.

6 BY MR. TIGAR:

7 Q. Okay.

8 A. As I sit here today, I would probably say I'm more
inclined
9 to follow through on a death penalty than I would not
to, but I
10 just -- I think, as I stated in my questionnaire, I can
have my
11 mind changed. And I understand the different things
you need
12 to think about to reach a decision. And I'm not so
13 close-minded that I wouldn't do that.

14 Q. Okay. And when you say "something in their past,"
what
15 were you referring to?

16 MR. MACKEY: Objection, Judge.

17 THE COURT: Overruled. If you -- if you can
think of
18 something there.

19 MR. TIGAR: Yeah.

20 JUROR: I can't think of anything
specifically, but I
21 just think as the Judge's instructions talking about
the
22 different circumstances that either a judge or a juror
would go
23 through in deciding that death penalty, that you need
to look
24 at all aspects. I mean, I can't think that you can
just make a
25 decision before listening to all the evidence and
listening to

6063

Juror No. 202 - Voir Dire

1 everything that was presented to you before you make
your final
2 decision.

3 MR. TIGAR: Thank you very much.

4 JUROR: Okay.

5 THE COURT: We do appreciate -- excuse me --
your time
6 both yesterday and today and indeed, back on the --
September
7 the 17th and all that's involved here.

8 So you're going to be excused now. We'll not
be able
9 to tell you right now whether you're going to serve or
not
10 serve, but it won't be long. And we'll get back to

you. If

11 anything happens here that in any way changes your
12 availability, give us a call.

13 JUROR: Okay. Thank you.

14 THE COURT: And of course, operate under the
15 assumption that you'll be back here on the jury, so
continue to

16 follow the cautions about avoiding discussion and
avoiding
17 publicity relating to the case.

18 JUROR: Okay.

19 THE COURT: Thank you. You're excused for
now, and
20 we'll get in touch with you.

21 MR. TIGAR: Your Honor, may I approach
briefly?

22 (At the bench:)

23 (Bench Conference 52B1 is not herein transcribed by
court

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

25

6067

1 (In open court:)

2 THE COURT: Good morning. Would you please
raise your

3 right hand and take the oath from the clerk.

4 (Juror No. 431 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

8 And you don't have to worry about the
microphone. You

9 don't have to lean into it or something. It will pick
you up.

10 Just be comfortable. And it is not broadcasting, you
know.

11 That microphone is just there for us to help us hear
you.

12 Also, apologize for this little confusion in
the door.

13 I was going to visit with the lawyers in the case
privately

14 here for a minute, and my assistant there didn't
realize it.

15 So it has nothing to do with you that we brought you
in, took

16 you out and brought you back in. Okay?

17 JUROR: Okay.

18 THE COURT: So we apologize for that.

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Now, you know, of course, from a summons that you
received

22 back in July and -- that you are among those who have
been

23 summoned for possible jury duty in connection with the
trial of
24 the case of the United States against Terry Lynn
Nichols.

25 You have to answer out loud --

6068

Juror No. 431 - Voir Dire

1 A. Yes, sir.

2 Q. -- so the answers go into the record. And you
responded to

3 that questionnaire -- I mean to that summons with
answering a

4 short questionnaire?

5 A. Yes.

6 Q. Including a concern about financial impact of jury
service.

7 And, you know, I saw that. I didn't ignore it. And
then,

8 though, directed you to come out to the Jefferson
County

9 Fairgrounds' auditorium building on September the 17th
to

10 answer a much longer questionnaire, and you complied
and did

11 that.

12 And at that time, I was there and introduced
myself

13 and also introduced people who were there with me. And
they

know 14 are here again, so let me introduce them again so you

15 who's here with us this morning.

16 First, lawyers for the Government, Mr.
Lawrence Mackey

17 and Ms. Beth Wilkinson, who are here at the front
table; and

18 Mr. Patrick Ryan, Mr. James Orenstein. They were not
there at

19 Jefferson County but are additional lawyers for the
Government.

20 You also were introduced to Mr. Michael Tigar
and

21 Mr. Ronald Woods, attorneys for Terry Nichols; and of
course,

22 Mr. Nichols, the defendant, was present.

23 And I then gave some explanation about the
background

24 of the case and then asked you to fill out this very
long

25 questionnaire, and you did and turned it in. And we
made

6069

Juror No. 431 - Voir Dire

1 copies for the people who were here participating in
this

2 process, and we copied it for the sole purpose of this
process

3 so that the information that you've provided to us has
not been

concern. 4 made public in any way. We respect your privacy

5 And also, we, you know, will arrange it so
that your

6 name is not public here. And the way in which you go
and come

7 from the courthouse is not public, either, in the sense
that

8 photographers for the press or whatever can't
photograph you.

9 And in the course of the questioning that
we'll do

10 here, we'll also try to avoid things that would
identify you.

11 Again, that's just a -- a matter of trying to balance
out your

12 own personal privacy interests and the public interest
in the

13 proceeding. But what happens here in the courtroom, of
course,

14 is public. This is a public trial, and therefore, what
I say

15 and you say and anybody else says is public. You
understand

16 these points?

17 A. Yes, I do.

18 Q. Okay. And you know that this case is here because
of an

19 event in Oklahoma City, Oklahoma, on April the 19th of
1995

20 when a federal office building there was destroyed by
an

21 explosion that killed and injured people in it.
Charges were
22 then filed in Oklahoma City in the Federal Court there
by
23 counsel for the Government in the form of what's called
an
24 indictment, which is simply a statement of accusations.
And in
25 that indictment, the Government's lawyers have accused
a man

6070

Juror No. 431 - Voir Dire

1 named Timothy James McVeigh and Terry Nichols -- and
then the
2 indictment says "and other persons not named" -- with
entering
3 into a conspiracy or an agreement, a criminal agreement
to bomb
4 that building and to kill and injure the people in it.

5 The indictment then includes other additional
charges
6 in addition to the conspiracy, and these charges are
7 essentially that in addition to conspiring or agreeing
or
8 planning to do that, the defendants actually carried
out the
9 plan, did bomb the building with that intent to injure
and kill
10 people in it. And the indictment includes some eight
charges

of eight 11 of first-degree murder, premeditated murder of the --
explosion and 12 persons who were in the building who died in the
13 who were law enforcement officers of different national
14 government agencies.

of not 15 To these charges, the defendants entered pleas
16 guilty, thereby creating the issues for trial.

here to 17 The case then was moved from Oklahoma City
in 18 Denver because of a concern about having to ask people
came here 19 Oklahoma to sit on the jury. And then after the case
finding that 20 to Denver, I separated the defendants for trial,
may 21 fairness required that one jury hear the evidence as it
different jury 22 relate to Timothy McVeigh and decide that and a
relating to 23 hear whatever the evidence may be respective of --
24 Terry Nichols.

concerning 25 And there has been a trial of the evidence

6071

Juror No. 431 - Voir Dire

heard the 1 Timothy McVeigh. The jury was selected in that case,

2 trial, heard the evidence, and returned a verdict of
guilty as
3 to him. Then, the jury was required to hear more at a
second
4 trial or a penalty phase hearing and returned a
recommendation
5 for the death sentence for Timothy McVeigh. That's
over.

6 Now we're here to select a jury and begin the
trial of
7 whatever the evidence may be as it relates to Terry
Nichols,
8 and nothing that was introduced at the McVeigh trial
can now be
9 considered with respect to Mr. Nichols. We start all
over with
10 a clean slate. And of course, the verdicts in the --
of the
11 jury in the McVeigh case cannot be considered now as
having
12 anything to do with Mr. Nichols. Do you understand
these
13 points?

14 A. Yes, I do.

15 Q. Okay. Now, I want to turn directly to one of the
things
16 here that concerns you and -- and you expressed it and
of
17 course, we're interested in it even though -- even
though you
18 were asked to go forward after initially saying there
would be

19 a financial hardship. And as I understand it,
comparing your

20 original questionnaire with what you gave us on
September the

21 17th, you changed jobs?

22 A. Yes, I did.

23 Q. In between the -- the two questionnaires. And as
of

24 September 17, when you filled out this long
questionnaire --

25 and you have it in front of you, do you?

6072

Juror No. 431 - Voir Dire

1 A. Uh-huh.

2 Q. Okay. You had started with a new employer, and you
show --

3 you tell us who it is on page 9. And we're not asking
you

4 about the name. We can read that. You started that,
what,

5 about the first week of September?

6 A. September 8 was my first day at that job.

7 Q. Okay. Now, when you got that job, did you talk to
whoever

8 supervises you or whoever at the personnel department,
or

9 whoever, about your being subject to the jury summons?

10 A. Yes, I have.

11 Q. And also, again, after Jefferson County or --
12 A. Pardon?
13 Q. Well, did you talk to them again after Jefferson
County?
14 A. Yeah.
15 Q. After --
16 A. I received --
17 Q. -- it got a little closer?
18 A. -- a phone call requesting my presence here at
work.
19 Q. Okay.
20 A. And then I told them that's what the phone call was
for.
21 Q. Right.
22 A. They said, well, you've got to do what you've got
to do.
23 Q. Okay. And I don't know this employer, how big a
shop it is
24 or -- I understand the kind of work you're doing. But
what
25 was -- what is this employer's position as you know it

6073

Juror No. 431 - Voir Dire

1 regarding your pay?
2 A. He won't pay me for this. It's --
3 Q. Is it a small shop?
4 A. It's a small shop. He employs probably 20 people,

office

5 and shop.

jury

6 Q. Okay. So you would be having to rely just on your

7 pay. Is that --

8 A. My jury pay and my wife's income.

9 Q. She is working now?

10 A. Yes.

11 Q. But you have one very young child?

12 A. 19 months.

13 Q. Who takes care of the -- your son?

work.

14 A. He's -- he's at in-home day care when we're both at

15 Q. Yeah. And that costs you; that's expensive --

16 A. Yes.

situation

17 Q. -- type care. So given what you know now and the

on this

18 with your new employer, what is your ability to serve

19 case and survive financially?

could

20 A. Financially, it would be tight, but I think we

21 probably survive.

22 Q. Okay. And you're willing to undergo that?

23 A. If I'm selected, I'm going to have to.

24 Q. Talk it over with your wife?

25 A. Yes, I did.

Juror No. 431 - Voir Dire

1 Q. We would expect you to.

2 A. Yeah.

3 Q. I mean, that doesn't come under the "don't talk
about it."

4 Obviously, we would expect you to talk about it. And
what is

5 her attitude about what would happen to the family and
your

6 serving here? I mean, what I'm -- you know, there are
private

7 conversations here, but has she said -- has she
suggested,

8 well, do what you can to get out of it?

9 A. No, she hasn't suggested that. We just have some
concerns

10 about a lengthy trial would be more of a burden than a
short

11 trial, evidently.

12 Q. Well, sure, yeah. And of course, we can't predict
the

13 length of this trial; but in those terms, it's lengthy.

14 A. Yeah.

15 Q. And you understand that?

16 A. Yes, I understand that.

17 Q. Okay. So it's sort of like being drafted to you?
I mean,

18 you would serve if called upon, but you'd rather not?

19 A. Well, hopefully, it won't be as long as the draft.
20 Q. I don't think it will be, but it's sort of like the
draft;
21 for the duration, however long it takes, you know.
22 A. Yeah.
23 Q. Well, let's talk about a few more of the things
here that
24 relate to you personally. And we're not going to go
over this
25 whole questionnaire again. I mean, don't be concerned
about

6075

Juror No. 431 – Voir Dire

1 that. I'm going to ask you to explain or expand on a
few of
2 these things and review a bit of your history here and
also ask
3 you some other things; and then when I'm completed, a
lawyer
4 for each side will have an opportunity to ask you some
5 questions. So bear with us yet a while for more
questions
6 after answering all these that you did. And I want to
review
7 just a moment what is involved in jury service, because
you
8 haven't been on a jury, have you?
9 A. No, I haven't. I've been called for jury service
three or

10 four times in my life, and I've never been seated.

11 Q. Okay. Have you gone through a process like this?

12 A. No. This is as far as I've got.

13 Q. Okay. Well, I want to just review with you then
for a

14 couple of minutes what the system is, what is required
of

15 jurors. And first of all -- and these are things that
are so

16 fundamental that they apply to every case in the United
States

17 because these are the commands of the Constitution of
the

18 United States. And so it doesn't make any difference
with

19 respect to these points what the crime is, what the
court is,

20 who the defendant is, because it's so basic that it's
true of

21 all criminal trials.

22 First of all, the law says that any person who
is

23 accused of any crime in this country is presumed to be
innocent

24 of it, and it is not up to the person who is accused of
a crime

25 to prove himself to be not guilty of it. The accusing

and in 1 government, whether it's local, state, or national --
things. 2 this case, it's the federal government charging these
against 3 It's up to the Government to prove the accusations made
in the 4 the accused by bringing in the witnesses and bringing
defendant, 5 exhibits and the evidence that's relied on. And the
witnesses or 6 as I said, has no burden or duty of calling any
requirement 7 introducing any evidence, and there is certainly no
question 8 that a defendant take the witness stand and answer any
simply 9 or offer any explanations to the jury. A defendant can
prosecution 10 remain silent throughout his trial and require the
the 11 to prove what it's charged and challenge that proof by
objections to 12 cross-examination of the witnesses called and by
13 admissibility of evidence and so forth.

court 14 At the end of the taking of the evidence, the
the case. 15 then gives the jury some detailed instructions about
jury about 16 And this is at the time when the court instructs the
received at 17 how to consider certain types of evidence that was

18 the trial and also what the particular elements of each
offense
19 charged are, what has to be proved in detail, and then
asks the
20 jury to decide whether the evidence that they've seen
and heard
21 shows the defendant guilty and shows it beyond a
reasonable
22 doubt. Understand?
23 A. I understand.
24 Q. And included in these instructions at the end of a
trial in
25 a case in which a defendant does not testify is the
caution

6077

Juror No. 431 - Voir Dire

1 that the jury must not consider that in any way,
because the
2 Constitution says that nobody who is charged as a
defendant has
3 to offer any explanations or testimony. The jury may
not hold
4 that against them in any way and cannot speculate that,
well,
5 you know, what is he trying to hide or give the thought
that,
6 well, if I were innocent, I'd sure take the stand and
testify.
7 That's out of bounds, can't be considered. And what I
tell

it; 8 juries in those situations is you can't even talk about

9 that is, that a defendant didn't testify. Understand?

10 A. I understand.

11 Q. And then, as I say, the jury is required to decide
does

12 this evidence, disregarding anything that wasn't
presented as

13 evidence at the trial -- does this evidence prove these

14 essential elements of each crime charged beyond a
reasonable

15 doubt. If the answer to that is no, if the jury has a

16 reasonable doubt as to the sufficiency of the evidence
to show

17 the crime, prove it, then the jury has the obligation
to give

18 the defendant the benefit of that doubt and find him
not

19 guilty. Do you understand?

20 A. I understand.

21 Q. Do you agree with these principles?

22 A. I agree with them.

23 Q. Are you ready to follow them in this case if you
serve in

24 this case?

25 A. Yes.

Juror No. 431 - Voir Dire

1 Q. So as you understand, as Terry Nichols sits here
this
2 morning, he's presumed to be innocent of these charges
made
3 against him?

4 A. Yes, I understand that.

5 Q. Now, turning to some of the things you told us
about
6 yourself on the questionnaire, as I understand it, you
were
7 born and raised in Michigan and went to high school
there. And

8 is the town where you went to high school -- is that
near Port
9 Huron?

10 A. Yes. I grew up in a real small farm town, and Port
Huron
11 is where we got our groceries and --

12 Q. Yes. So the town is just kind of a -- a -- well,
how big
13 is the town? A few hundred people?

14 A. Where I grew up, yes.

15 Q. Yeah. So that's why the school was in Port Huron
and --

16 A. I did not go to school in Port Huron.

17 Q. You went to school --

18 A. In Yale.

19 Q. Yeah. You did go to -- okay. I'm wrong about
that.

20 Sorry. That's what you said. And was that like a
consolidated
21 school, serving more than the people in town?
22 A. The one high school served about four or five
different
23 elementary schools, so it was a town -- a school
district.
24 Yeah. It served more than just that one town.
25 Q. It served a rural area as well as in the town.

6079

Juror No. 431 - Voir Dire

1 A. Yes.
2 Q. And did you live on a farm?
3 A. My father was not a farmer, but I lived right next
door to
4 his two brothers that were.
5 Q. I see. And that's what -- on page 6 at 29 there, I
was a
6 little confused about what that said, and now I think
you've
7 explained it.
8 A. I've been raised in town. I tell people I was
raised on a
9 farm because I spent so much time helping my uncles,
but my
10 father was not a farmer.
11 Q. Okay. But his brothers were?
12 A. Yes.

13 Q. And --
14 A. He was raised on a farm.
15 Q. And you were, in terms of working on the farm?
16 A. Yeah.
17 Q. And what kind of farm was it in terms of the size
and the
18 crops grown?
19 A. My one uncle had a small dairy farm. He milked
about 20
20 head. And then my other uncle, he inherited a
farmhouse, and
21 he basically just farmed to keep the brush down; and he
had a
22 full-time job with a car manufacturer.
23 Q. All right. So what kind of jobs did you do over on
these
24 farms?
25 A. I shoveled a lot of manure and baled a lot of hay.

6080

Juror No. 431 - Voir Dire

1 Q. All right. Now, you then -- and you've got
brothers and
2 sisters back in Michigan now; right?
3 A. Yes, I do.
4 Q. And you've got -- I'm looking at page 3, and I'm
having
5 trouble reading -- reading -- there's Port Huron there

where

6 your brothers are, but -- is it Emmett?

7 A. Yes. Emmett.

8 Q. What -- where is that in Michigan?

9 A. North of Port Huron. It's -- that's the real small town

10 that I was raised in, and my five sisters live in Emmett or

11 Emmett Township, and then I have two brothers. One lives here.

12 Q. Yeah.

13 A. The other one lives in the Port Huron area.

14 Q. Okay.

15 A. They are all basically within 20 miles of my parents'

16 house.

17 Q. Are your parents still living?

18 A. Yes.

19 Q. And you are in communication with them one way or another

20 over --

21 A. Oh, we keep contact and send Christmas cards and birthday

22 cards and call to complain about the snow.

23 Q. Okay. The sort of normal things with families?

24 A. Yes.

25 Q. Did you ever have any discussion with any of them regarding

Juror No. 431 - Voir Dire

1 this matter that you're here on?

2 A. They don't know I'm here. But when the bombing
occurred,

3 of course, we touched on it in our phone conversations,
but no

4 lengthy conversations.

5 Q. All right. And so when was the -- was it two years
ago or

6 so when this happened that you had any of these
conversations?

7 A. Yeah. It was two years ago when the bombing first
8 occurred, and then my mom touched on the fact that the
trial

9 was there in your home -- in Denver, and I says yeah.
And

10 basically gossip.

11 Q. Little knowing how close you might be to that trial
--

12 A. Yeah.

13 Q. -- right? Okay. Now, on page 11 and 12, we asked
you some

14 questions about family members engaged in certain kinds
of

15 work. And you marked several of them there. I just
want to

16 review that with you. You've got Department of
Treasury

17 marked.

18 A. My -- my wife is employed by the IRS.
19 Q. Okay. That's who that refers to. And you have
Justice,
20 but you struck that out. That was a mistake; right?
21 A. Yes.
22 Q. And then you've got IRS marked again, and that's
your wife?
23 A. Yes. That's the only government employee in my
family.
24 Q. All right. And the farming, that's what we've
already
25 talked about?

6082

Juror No. 431 - Voir Dire

1 A. Yeah.
2 Q. Your uncles. And newspaper, magazine or journals,
what --
3 who works in that kind of work? Or did?
4 A. Nobody.
5 Q. Well, am I wrong that there's a checkmark there?
6 A. Oh, which -- which page?
7 Q. It's page 12. I'm sorry.
8 A. Page 12.
9 Q. On the next page.
10 A. No. I don't have anybody that works for a
newspaper,

11 magazine or --

12 Q. So was that a mistake?

13 A. Oh, okay. No. That's not a mistake. My brother
is a
and
14 starving artist here in town. He wants to be a writer,
15 he's in Westword -- works for Westword.

16 Q. On a freelance basis?

17 A. Yeah. Kind of entry level, trying to get in there.

18 Q. Okay. Then on page 18, we asked you some more
about
19 whether you had any familiarity at all with certain
20 organizations or groups. And you answered National
Rifle
21 Association, Fraternal Order of Police, but you also
showed New
22 World Order. What, if anything, do you know about --

23 A. I marked that down very little. I know very little
about
24 it. A guy I used to work with was following that New
World
25 Order, and he'd bring a lot of it to work, and I'd
overhear

6083

Juror No. 431 - Voir Dire

1 some of it. I personally didn't seek any of it out,
but I have
2 overheard a little bit about it.

3 Q. Okay. And you also marked patriot movement?
4 A. Same guy.
5 Q. Same guy. Okay. And so same thing as far as how
much you
6 know about it, you've overheard?
7 A. Very little. He'd come in sometimes and talking
about it.
8 Q. Did you ever get any literature from him?
9 A. No. I've never got any literature about it from
him or any
10 other source.
11 Q. Okay. And the audit by the IRS you mention on page
20,
12 that's a background check with -- for when your wife
went to
13 work there?
14 A. Yeah. That's a pre-hire.
15 Q. Okay. Then on page 32, if you will turn to that,
please.
16 And on No. 142, down there at the bottom where we asked
about
17 explosives.
18 A. My friend Ed that I grew up with, probably my
oldest
19 friend, he was in the Army, and he studied explosives
in the
20 Army. But now, he works for a major car manufacturer,
too, and
21 he has nothing to do with it.
22 Q. Is he back in Michigan?

23 A. He's still back in Michigan, yes.

24 Q. And then you've got another friend here?

25 A. That's the friend that came up earlier. He's a --
builds

6084

Juror No. 431 - Voir Dire

1 model rockets, high-powered model rockets.

2 Q. So it's explosive in -- in terms of the propelling
power

3 for the rocket?

4 A. Yes. Yes. And I have gone and spectated that at
some of

5 the bigger launches.

6 Q. Okay. And on page 36, you mention that -- at the
top there

7 under 154 about providing assistance to people in
connection

8 with the rescue of this bombing.

9 A. Yeah. My --

10 Q. You mentioned IRS. Just tell us what that's about.

11 A. My wife sent some money to that lady in Oklahoma
City who

12 lost her two babies. It was all over the news because
they

13 were in the day care. And my wife, being an IRS
employee, felt

14 sympathy for her and sent her some money and sent a
little bit

15 of money to Red Cross.

16 Q. Okay.

17 A. Both checks were less than 100 bucks combined, but

--

18 Q. Okay. And was there kind of a taking of a
collection at

19 the office where your wife works?

20 A. No. She just -- when she saw it on the news, she
just --

21 Q. Did it on her own?

22 A. Yeah.

23 Q. Okay. Now -- and did she get a communication back
from --

24 A. She got a -- a form letter thank-you from the
lady, the

25 IRS lady, and the IRS sent us another form letter, a

6085

Juror No. 431 - Voir Dire

1 thank-you -- not the IRS, but the Red Cross.

2 Q. Yeah. And with respect to the person working for
the IRS

3 there, the woman, it was what you'd characterize as a
form

4 letter rather than a hand --

5 A. Yeah. It was definitely a form letter. She made
6 photocopies of her kids (sic) and said, "Thank you very
much."

7 Q. All right. Now, is there anything from that that

you think

8 would influence you one way or the other as a juror
here?

9 A. No.

10 Q. And of course, you know, the reason that I ask you
that is

11 that you've probably seen, read, and heard a lot going
back to

12 April of 1995 when the event happened and since, as
many people

13 have. What jurors have to do, though, as I've already

14 discussed with you, is to decide on the basis of the
evidence

15 presented at the trial. You understand that?

16 A. I understand that.

17 Q. Now, we also asked you some questions in here about
18 punishment, and I'm going to turn to page 28. And you
see

19 those questions and answers that are there?

20 A. Yes, I do.

21 Q. And again, over on 29, there's a -- an answer. Do
you

22 remember coming to this part of the questionnaire?

23 A. Yes, I do.

24 Q. And you also -- I don't want to ignore what's on
page 27

25 there at 124, which is the part that sort of gives an

Juror No. 431 – Voir Dire

1 explanation about why these questions are on the
questionnaire.

2 Do you remember that part?

3 A. Yes. I remember that part.

4 Q. Okay. And just to make it clear to you, we needed
to ask

5 you some questions about whatever opinions you may have

6 concerning the use of the death penalty and the use of
a

7 penalty of life in prison with no possibility of ever
being

8 released from it as punishment for crimes because of
the

9 statutes that are involved in this case and the
possibility

10 that a jury selected in this case may have to make a
decision

11 about punishment. But of course, as explained in
detail here,

12 that should not be considered as any kind of suggestion
or

13 thought that the case would result -- the trial would
result in

14 a guilty verdict, because of course, the presumption is
just

15 the reverse of that, as you have already recognized.
But it's

16 necessary to find out something about your thinking
here,

17 because what we all know is that the death penalty and
even the

18 penalty of life in prison with no possible release are
things
19 upon which there's a division of opinion, public
opinion. And
20 of course, it goes from one extreme of saying that
anybody who
21 kills another person should be put to death himself,
life for
22 life, and then there are those who say, well, it's
wrong to
23 impose the death penalty, that's not something for a
Court to
24 do, and a lot in between. Right?
25 A. Right.

6087

Juror No. 431 - Voir Dire

1 Q. And just tell us when this -- when on September 17
you came
2 to this point in the questionnaire, was this the first
time you
3 thought seriously about these issues or is it something
you
4 talked -- you had thought about before?
5 A. I've thought about it briefly in the past, but I
gave it
6 more attention because of getting closer to this.
7 Q. Yeah. So now it comes into a much clearer focus
for you?
8 A. Yeah.

9 Q. And have you thought about it since these answers?
10 A. Yes.
11 Q. And in the -- and, you know, we would expect that
you might
12 have. Do you have any change in what you've answered
here?
13 Because if you do, it's perfectly okay to tell us what
you
14 think today.
15 A. I still think the same as what I put on here.
16 Q. All right. So if I ask you these same questions
today,
17 you'd give me the same answers, I take it?
18 A. Yes, I would.
19 Q. And you mention here that, first of all, you agree
that
20 there ought to be such a penalty for certain
situations.
21 A. For severe crimes, yes.
22 Q. All right. And you also have identified in C and D
the
23 possible type crimes you're thinking of with respect to
life
24 imprisonment and the punishment of death. Right?
25 A. Right.

6088

Juror No. 431 - Voir Dire

right? 1 Q. And you mention premeditated murder there under D;

2 A. Yeah.

3 Q. Now, I want to review with you what the law
actually is

4 with respect to this issue, because we didn't tell you
that in

5 the questionnaire, as you know. And first of all, we
are in

6 Federal Court, following federal law. You understand
that?

7 A. Yes, sir, I understand that.

8 Q. And of course, there are differences among the
states about

9 this question of what kind of punishment is involved in
murder

10 and various crimes. There are some states that there
is no

11 death penalty at all. You know that, or do you?

12 A. I don't follow it that close.

13 Q. Okay. Well, again, there's this range of opinion,
of

14 course. And state legislatures follow public opinion
in those

15 states which may differ in the United States. But
we're in

16 Federal Court now, and we're following federal law as
passed by

17 the Congress of the United States and as interpreted in
the

18 courts of the United States. So this is the way in
which the

19 matter comes up in federal cases. In cases that don't
involve
20 capital punishment, crimes that are different from
premeditated
21 murder -- for example, crimes like bank robbery and
post office
22 burglary, whatever that are federal crimes -- the jury
does
23 what juries do in every criminal trial, decide does the
24 evidence prove the crimes charged beyond a reasonable
doubt.
25 If no, the verdict is not guilty, the case is over. If
yes,

6089

Juror No. 431 - Voir Dire

1 the verdict is guilty, the case is still over as far as
the
2 jury is concerned, because now it's done its duty of
making
3 that decision, whichever way it is.
4 But of course, the case is not over for the
defendant
5 or the defendants because there is yet the question of
6 sentencing, what should be done. And in cases that do
not
7 involve capital punishment, that decision about what
should be
8 done is a matter for a judge. But a judge doesn't make
that
9 decision based just on what happened at the trial, what

the

hear a 10 evidence was at the trial, because it is necessary to

And 11 lot more and consider more than the evidence at trial.

information 12 therefore, the court gets information -- additional

and 13 about the crime and its circumstances, its consequences

defendants. And 14 also, more information about the defendant or

about 15 the information about the defendants includes just

the -- 16 everything there is to know about a person, life story,

about 17 you know, some of the things you told us, for example,

and 18 yourself but more than that: where this person was born

his 19 raised, what were his circumstances, what's happened in

go in 20 life, where did he go to school, what -- how far did he

jobs, what 21 school, what was the school experience, what about

22 kind of jobs has he had, marriages, divorces, children,

to make 23 military service, all of those things that go together

different. 24 each individual life and the things that make us all

25 Understand?

Juror No. 431 - Voir Dire

1 A. I understand.

2 Q. And the information about the crime and its
circumstances

3 can also include the role in the offense, cases where
there's

4 more than one defendant involved as in the case, for
example,

5 of a bank robbery which is a federal crime. You could
have a

6 situation where three persons did it: one went in with
a gun,

7 held people up; one went in and scooped up the money;
and the

8 other drove him away. Those -- crimes like that
happen. So

9 you know, you could have -- this judge could have three
people

10 there to be sentenced.

11 And then after all this information is
gathered, the

12 judge hears from both sides, the lawyers on both sides,
and

13 then makes a decision individual to each person being

14 sentenced. So it isn't just crime equals time. It is
crime

15 plus the person being sentenced and what is the just
and

16 appropriate sentence for this person and his
participation in

17 the crime. Do you understand?
18 A. I understand.
19 Q. Now, when it is a case of intentional killing of
other
20 people, murder, in the federal courts, there is the
possibility
21 of punishments of life in prison with no possibility of
ever
22 getting out, the person dies in prison at his time; or
death by
23 execution; or a lesser punishment than those two. And
what the
24 Congress has provided in these statutes is that the
decision
25 about life or death should not be made by a judge.
That should

6091

Juror No. 431 - Voir Dire

1 be done by a jury, the same jury that heard the
evidence and --
2 and found the defendant guilty.
3 But what the law also says is that a jury
can't decide
4 that question just by finding the person guilty because
there's
5 no automatic sentence. It doesn't result, you know --
a
6 verdict of guilty of a person who had some involvement
in the
7 murder of other people does not automatically require

one type

8 of sentence, so the jury has to hear the same kinds of
things

9 that a judge hears for other kinds of sentencing
decisions.

10 And there is, therefore, a second stage trial or
hearing, and

11 it proceeds just like the trial, itself, on the
evidence, with

12 both sides participating through lawyers. Witnesses
are

13 called. Exhibits are received in evidence. And the
evidence

14 that comes in includes these things about -- more about
the

15 crime than the jury heard at the trial of the evidence,
what

16 its effects and consequences were; more about the
relative role

17 of the defendant, if there's more than one involved --
not just

18 at trial, but more than one involved in the -- in the
event,

19 you understand.

20 A. I understand.

21 Q. And then all of this information about the
defendant as an

22 individual and unique human being, because what the law
says is

23 that before you can decide to take a person's life, you
ought

24 to know a lot about the life you're taking.
Understand?

25 A. I understand.

6092

Juror No. 431 – Voir Dire

1 Q. And then at the end of the second stage trial, the
court
2 sums it all up in instructions and says, now, these are
the
3 things that you've heard, and then divides up the
information
4 into really two classifications, two categories: On
the one
5 hand, things that are referred to as aggravating
factors or
6 aggravating circumstances, things that may suggest to
the jury
7 that death is the deserved punishment for this person
and this
8 crime; and then also, mitigating factors, the things
that are
9 presented to the jury that may suggest to the jury that
despite
10 the crime, the defendant as an individual human being
does not
11 deserve to be put to death for the crime, and then may
give the
12 jury some questions to ask themselves to assist in the
analysis
13 of these factors.

14 But there's no formula for it. There's no
equation.

15 You don't say so many points on this side, so many
points on
16 that side, whichever is the greater number of points.
It
17 doesn't lend itself to that kind of a decision. What
it does
18 involve is a decision that amounts to a reasoned moral
judgment
19 about whether another person should live or die based
upon
20 everything that has been heard and presented to the
jury. You
21 understand?
22 A. I understand.
23 Q. And of course, the jury is going to talk about it.
There
24 are 12 people on the jury. They are going to talk
about it,
25 exchange views and their beliefs about the evidence and
what

6093

Juror No. 431 - Voir Dire

1 should be done. But in the end, each juror has to make
a
2 decision as to whether the defendant found guilty
should live
3 or die. And that decision has to be based on
everything that
4 has been presented, the aggravating, the mitigating
factors.

5 You understand that?

6 A. I understand.

7 Q. Can you make such a decision?

8 A. Yeah.

9 THE COURT: All right. Okay. We have
questions here

10 from counsel.

11 Mr. Ryan for the Government.

12 MR. RYAN: Thank you, your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. RYAN:

15 Q. Good morning.

16 A. Good morning.

17 Q. My name is Pat Ryan. I'm the United States
Attorney in

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

19 case involving Terry Nichols. You doing okay?

20 A. Yes.

21 Q. Okay. Let me just ask a few questions about where
you grew

22 up. I'm not exactly as -- I'm not as familiar as Judge
Matsch

23 is with where Port Huron is, so could you tell me a
little bit

24 where it's located in Michigan?

25 A. It's in the lower Thumb area of the lower peninsula
of

Juror No. 431 - Voir Dire

1 Michigan. It's, oh, about an hour north of Detroit.

growing 2 Q. Okay. Did -- you said that you had worked on farms

3 up. Your uncles' farms?

4 A. Yes.

work on 5 Q. Did -- did you ever use explosives as part of your

6 the farm?

7 A. No, I didn't.

8 Q. Did they?

farmland, 9 A. I've heard stories about my uncle clearing

witnessed 10 removing trees with explosives, but I've never even

11 anything.

12 Q. Do you know anything about what kind of explosives?

it was a 13 A. No. I don't. I just know when he got that land,

14 forest, and now it's farmland.

about 15 Q. Can you tell me what you've read, seen, or heard

16 Terry Nichols?

from 17 A. Very little. I know he's from Michigan because I'm

know very 18 Michigan, and that caught my ear right away. But I

19 little about him.

20 Q. Do you know whereabouts he's from in Michigan?

21 A. Yes. Kind of, sort of. I've never visited his
town, but I

22 know where it's at. It's roughly, I'm going to say, 40
miles

23 north.

24 Q. Do you know anyone that knows him or knows his
family?

25 A. No, I don't.

6095

Juror No. 431 - Voir Dire

1 Q. I mean, you know, have you talked to any of your
relatives

2 back in Michigan and somebody say, well, yeah, I know
his uncle

3 or I know his brother?

4 A. No.

5 Q. Now, you indicated that your wife, after hearing of
the

6 bombing in Oklahoma City, made a donation to one of the
7 victims.

8 A. Yes.

9 Q. Do you know the name of that person?

10 A. No, I don't. I just know it was a lady who lost
two

11 children.

12 Q. Do you know the names of the children?
13 A. No, I don't.
14 Q. That was, I take it, her decision alone?
15 A. Yes, it was. The check was in the mail, and I
found out.
16 Q. Okay. All right. Is there anything about that
that would
17 make you lean in favor of the Government in this case,
the fact
18 that your wife had made such a donation?
19 A. No.
20 Q. And I take it there's nothing about the fact that
you're
21 from the same state as the defendant that would make
you lean
22 in his favor?
23 A. No.
24 Q. Now, let's talk about this fellow at work who was
in the
25 rockets and the New World Order and the patriot
movement.

6096

Juror No. 431 - Voir Dire

1 A. I don't work there anymore. But he's really into
firearms
2 is what he's into. And he collects them and -- and
he's
3 more -- real worried about losing his right to own

them, and

4 that's why he follows their newscasts and whatnot. But
he's

5 not a member of any group. He just wants to make sure
he can

6 keep his guns.

7 Q. And do you share -- did you share his concern about
his

8 losing his guns?

9 A. No. I don't --

10 Q. I mean, how would you describe your friendship, if
that's

11 the word I'm going to use, between you and this
individual?

12 A. Just as good as with any other co-worker. And
though I

13 have in off time gone and spectated a couple rocket
launches --

14 but he hasn't been over for dinner and I haven't been
over to

15 his house for dinner or --

16 Q. Did he explain to you what the principles were of
the New

17 World Order?

18 A. No. In fact, that's kind of become a joke there.

19 Everybody picks on him a little bit for following it as
close

20 as he does, but I don't share any opinions with him. I
kind of

21 stray away from it, try not to talk politics at work,
you know.

22 Q. Okay. Let me, if I might, use the remaining time I
have to
23 talk to you about this issue of the death penalty. And
you
24 understand that we only get to this phase in the event
of a
25 conviction.

6097

Juror No. 431 - Voir Dire

1 A. I understand.
2 Q. And did you follow the McVeigh trial at all?
3 A. No. I overheard some things when the TV was
running, but
4 it didn't draw me back into the room and sit me down in
front
5 of the TV.
6 Q. You didn't attend any of the trial?
7 A. No.
8 Q. Or follow it closely in the paper?
9 A. No, I haven't.
10 Q. Do you know -- do you even know what the major
pieces of
11 evidence were in that case involving Mr. McVeigh?
12 A. I know what some of the pieces were. I don't know
if they
13 were major or not.
14 Q. Did you have a view about the verdict in that case
that

15 found Mr. McVeigh guilty?
16 A. No. I don't have an opinion on that. I didn't
follow it.
17 Didn't hear any good evidence, any bad evidence, any
accurate
18 evidence.
19 Q. Okay. And I take it, you know, after that -- after
the
20 finding of guilty, there was this second trial. Judge
Matsch
21 was talking to you about where more witnesses came in
and more
22 exhibits were introduced to talk about these
aggravating and
23 mitigating factors the Judge was talking to you about.
Are you
24 with me?
25 A. Yeah.

6098

Juror No. 431 - Voir Dire

1 Q. You knew there was a second trial?
2 A. Yeah. I knew there was a sentence.
3 Q. Right. And did you follow any of the evidence
closely in
4 terms of what the sentence --
5 A. No, I didn't.
6 Q. In terms of what the sentencing information was the
jury

7 heard?

8 A. No, I didn't.

9 Q. Did you have a view as to whether the sentence was
-- in

10 light of the fact that you didn't hear the evidence,
did you

11 have a -- did you have an opinion as to whether that
was the

12 correct sentence for that individual?

13 A. If they proved it without a reasonable doubt, that
he

14 plotted and carried it out, then, yes, I do.

15 Q. Now, you understand there's a -- the fact that
somebody is

16 guilty of the crime does not mean that they are
automatically

17 given a death sentence.

18 A. I understand that.

19 Q. So even if a jury were to find Mr. McVeigh guilty
beyond a

20 reasonable doubt of those crimes, there's not an
automatic

21 death penalty. You still need to consider the evidence
that

22 Judge Matsch was talking about with respect to the
individual,

23 his role in the offense, and those various things.

24 A. Yeah. I understand that.

25 Q. So what we need to -- you know, what we need to
find out

Juror No. 431 - Voir Dire

1 from you is are you going to be able to -- In the event
that
2 you were to find a defendant guilty in a murder case,
are you
3 going to be able to listen to this information about
the
4 individual, about his life and about his particular
role in the
5 offense with an open mind, considering both life
imprisonment
6 or a death sentence?

7 A. Yes.

8 Q. Or are you just going to automatically say, well,
if he
9 gets convicted of murdering a bunch of people, he gets
the
10 death penalty no matter what? That's the question.

11 A. No. I don't -- no. I don't think -- if he's
convicted
12 guilty, I don't think that's an automatic death
sentence.

13 Q. You'd consider his role in the offense?

14 A. His role in the offense and --

15 Q. And the facts about him as an individual?

16 A. Yeah. If he's a continuous menace to society, or
if he was
17 a Boy Scout, I don't know.

18 MR. RYAN: All right. Thank you very much.

19 THE COURT: Mr. Woods.

20 MR. WOODS: Thank you, your Honor.

21 VOIR DIRE EXAMINATION

22 BY MR. WOODS:

23 Q. Good morning.

24 A. Good morning.

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

6100

Juror No. 431 - Voir Dire

1 already covered just about everything, so there's not
much left

2 for me to talk about and I'll make it brief; and you'll
be back

3 at work.

4 My name is Ron Woods, and this is Mike Tigar.
And we

5 were appointed by the United States district judge over
in

6 Oklahoma City in May of '95. The Government here filed
charges

7 against Terry Nichols on May the 10th, '95; and we were

8 appointed shortly thereafter. They charged Mr. Nichols
with

9 being responsible for the April 19 bombing.

10 How do you feel about Mr. Nichols' having

11 court-appointed lawyers; that is, lawyers paid by the
12 government to represent him here?

13 A. I -- I have no bad feelings. I can't afford
another lawyer

14 myself.

15 Q. Okay. When you say "another lawyer," what do you
mean?

16 A. Any lawyer. If I was on trial, it would be court-
appointed

17 lawyers.

18 Q. Okay. That doesn't affect you one way or the
other? You

19 wouldn't look upon that situation as a disadvantage for
20 Mr. Nichols?

21 A. No.

22 Q. Okay.

23 A. I hope it's not.

24 Q. Okay. What did you think when you saw Mr. Nichols
out

25 there at the fairgrounds in person for the first time?

6101

Juror No. 431 - Voir Dire

1 A. I was surprised he was there, but --

2 Q. You hadn't expected to see him?

3 A. I didn't expect to see him.

4 Q. Okay. What did you think when you saw him?

5 A. I really don't know. There he is. I don't know
what I
6 thought. I was just surprised.
7 Q. Okay. Did you come in the morning, or the
afternoon?
8 A. I was in the morning.
9 Q. Okay. Were you nearer the front, or middle, or
back?
10 A. Toward the back.
11 Q. Okay. Okay. Did you have some picture in mind
from what
12 you'd seen on television for two-and-a-half years
before you
13 got out there?
14 A. No.
15 Q. Okay. Now, you mentioned to the prosecutor that it
caught
16 your ear because he is from just your neighborhood
right there
17 in the Thumb.
18 A. I didn't really realize how close he was to my
19 neighborhood. Just knew it was Michigan. That's what
caught
20 my ear.
21 Q. Right.
22 A. And actually, my wife pinpointed it before I did,
because
23 she called my sister: Where is Decker? You know.
24 Q. Right.

kind of, 25 A. And then one time home since then on vacation, we

6102

Juror No. 431 – Voir Dire

heading 1 looking for a sign where exactly is Decker, when we was
2 out of town that way.

3 Q. Okay. Did you go up to the farm?

4 A. No. We didn't go up to the farm.

Imlay 5 Q. Okay. Did you go over to his father's farm over in
6 City?

7 A. We didn't go that way at all.

8 Q. It's only just a few miles down the road.

9 A. Yeah.

following 10 Q. Okay. Has your wife been pretty interested in

your 11 this case? And she knew where Decker was and called

there, 12 sister. You've got a number of sisters still living up
13 don't you?

14 A. Five sisters.

15 Q. Five that are still up there in that area?

16 A. Yes.

that 17 Q. Were they pretty familiar with what the events were

18 surrounded that -- that episode up in --

19 A. I don't know how familiar they are with it.

20 Q. Okay. When did you go back up there on vacation?

21 A. My -- let me see. I can't remember. I've been
back there

22 like twice since then.

23 Q. Okay.

24 A. See, my father's health is failing, so I spend all
my

25 vacation time there; so while I can, still spend time
with him.

6103

Juror No. 431 - Voir Dire

1 Q. Now, you moved down here when you were 19, here?

2 A. 18.

3 Q. 18?

4 A. Right out of high school.

5 Q. What prompted you to move to Colorado?

6 A. The mountains and a free ride.

7 Q. A free ride here?

8 A. Yeah.

9 Q. Okay. I take it since you've been here 13 --
you've been

10 here 13 years now; is that correct?

11 A. Yes.

12 Q. So you're not thinking of moving back into the

Thumb area?

13 A. No. I'm not.

14 Q. Okay. Are the farms still in the family, the
brothers?

15 A. Yes. But they are kind of stagnant now. My uncle
had --

16 doesn't have any cows. He has a couple cows, but he

17 sell milk anymore. He's -- he's retired. He just kind
of

18 keeps himself busy and fiddles around and --

19 Q. Okay. Now, when you were living there and farming
there,

20 did you know Dale Travis who lived just north of town
there?

21 He's about 70 now.

22 A. No, I didn't.

23 Q. Okay. Did you ever go into the county extension
service or

24 the soil conversation service that was downtown in that

25 building?

6104

Juror No. 431 - Voir Dire

1 A. No.

2 Q. Okay. Are you familiar with the pamphlets they
give to the

3 farmers to help them in various areas, sort of
educational

4 pamphlets on soil conservation and crops and use of
explosives

5 on the farm?

6 A. No.

7 Q. Okay. You've said you're familiar with one of your
uncles

8 having done that to clear the land?

9 A. Yeah. It was way before my time.

10 Q. Because the land was cleared by the time you got
there;

11 right?

12 A. Yeah. The land was clear when I got there. It was
just he

13 inherited some land and he wanted to clear it off for
farming.

14 I guess he inherited like 80 acres, and he had to clear
40 of

15 it.

16 Q. Okay.

17 A. I've heard stories about it, but . . .

18 Q. What did you hear? How did he do that?

19 A. I heard he had to take out the whole forest and he
blew

20 some stumps.

21 Q. Do you know what he blew them with?

22 A. No. I have no idea.

23 Q. Okay. Did you ever use fertilizer there when you
were

24 working on the two farms?

25 A. Yes.

6105

Juror No. 431 - Voir Dire

1 Q. Okay. What kind of fertilizer were you using?

into

2 A. Oh, I don't know the brand. I just -- my uncle was

3 the mixtures, triple 16.

dealer

4 Q. Okay. And he was acquiring that from a commercial

5 there in the Thumb area?

6 A. Yeah.

7 Q. Okay. And they would bring it out and spread it

8 themselves, or did the uncle spread it?

9 A. He'd buy it in sacks, and we'd put the seed and the
10 fertilizer in the planter at the same time.

11 Q. Just--

12 A. Yeah. Yeah.

with at

13 Q. Okay. Okay. Now, on this person that you worked

bring

14 the prior place of employment: You said that he would

15 these pamphlets and newsletters to work?

bring

16 A. No. He didn't. He just was verbal. He didn't

17 anything.

18 Q. Okay. Never had any pamphlets around?

19 A. No. He wasn't looking for recruits or anything.
20 Q. Okay. Okay. But you talked to him; is that
correct?
21 A. Yeah. In the morning in the locker room, getting
dressed;
22 and every now -- it ain't like we talked about that
every day,
23 but he's the only person I've talked about that with.
24 Q. Right. And then you -- you went out to watch some
of his
25 rocket shots; is that correct?

6106

Juror No. 431 - Voir Dire

1 A. Yes.
2 Q. Okay. The fact that he believed that and that you
might
3 have been seen with him like going to the rocket shots
or
4 talking to him at work, would you think that people
would think
5 that you likewise believed the same thing?
6 A. No.
7 Q. Okay. You've heard of the phrase "guilt by
association"?
8 A. Yeah.
9 Q. What does that mean to you?
10 A. A lot of people believe birds of a feather flock
together.

11 Q. Okay. I take it because of your association, it
didn't
12 necessarily mean that you believe everything he did.
13 A. No.
14 Q. All right.
15 A. In fact, we disagreed a few times. He kind of sort
of just
16 picked on me about my wife working for the government
and just
17 poking fun, you know. Just no real hard feelings or no
real
18 good feelings.
19 Q. Okay. Okay. How long has your wife been with the
IRS?
20 A. Eight or nine years.
21 Q. Okay. And I noticed you put on the first form that
she
22 helped you fill that form out; is that correct?
23 A. Yes.
24 Q. Okay. And then she's been looking into the case
some and
25 called up to the sisters about Decker. How familiar is
she

6107

Juror No. 431 – Voir Dire

1 with the case?
2 A. I don't know. That was right after the bombing.
As soon

Michigan 3 as Mr. Nichols had been in the media news. Then when
4 showed up. But I don't know how close she followed it.
5 Q. Now, she's not from there, I take it.
6 A. No. She's from Colorado.
to high 7 Q. She's from here. Okay. And she grew up and went
8 school here?
9 A. Uh-huh.
10 Q. And college here?
11 A. Uh-huh.
on 12 Q. Okay. But she's gone up there with you, I take it,
13 vacations?
times with 14 A. Yeah. I think she's been back there like three
15 me.
area? 16 Q. She's gotten familiar with the area and the Thumb
17 A. I wouldn't let her drive.
18 Q. Pardon me?
know the 19 A. I wouldn't let her drive or anything. She doesn't
20 roads or anything. She could find my hometown on the
map.
21 Q. So do you drive around when you're there with her?
22 A. Yeah.
school? 23 Q. To show her the Thumb area, where you went to high

24 A. Show her my old stomping grounds.

25 Q. And where you farmed and hung out?

6108

Juror No. 431 - Voir Dire

really 1 A. I used to hunt behind my parents' house. Didn't

2 travel much.

3 Q. What would you hunt up there?

basically what 4 A. We had whitetail and pheasant and rabbit is

5 I hunted. Sometimes squirrel.

6 Q. Okay.

parents' 7 A. Squirrel population wasn't too good behind my

8 house.

quite a 9 Q. Okay. Now, has your wife been following the case

at the 10 bit since she's connected with the government, working

11 IRS?

but I 12 A. I think she's paying attention to what she hears,

information. 13 don't think she's going out of her way to get more

that lady 14 Q. Okay. You said that she sent some money over to

15 who tragically lost two children --

16 A. Yes.

17 Q. -- in the day-care center. And did you mention to
the
18 Court -- I might have missed it -- that there was some
note
19 that came back, a photocopy of the kids' photos?
20 A. It was a thank-you note, but it was pretty apparent
that it
21 was a form letter. She evidently received a lot of
help.
22 Q. Okay. And was there a photo of the kids?
23 A. Yeah. The photo -- I think it was a Christmas
photo of the
24 two kids playing or something.
25 Q. Okay. Okay. I take it you've seen those images on

6109

Juror No. 431 - Voir Dire

1 television where there was this horrible damage and the
day of
2 the rescue and people were trying to help and the
rescue
3 efforts, the nurses, the doctors and the dead people
being
4 removed and the injured people being removed; is that
correct?
5 A. Yeah.
6 Q. Okay. Think you'll ever forget that?
7 A. No. It's part of history.
8 Q. All right.

9 A. You know, everything that's part of history, you
remember.

10 You remember when the space shuttle blew up. You --
you know,

11 this is part of history.

12 Q. Exactly. Exactly. If you were chosen on a jury in
this

13 case, it's likely you'll see all of that over again,
over and

14 over. There will be witnesses that will appear on the
witness

15 stand and there'll be a lot of photos and videos of
that

16 terrible injury, terrible death scene. Nobody contests
that.

17 It's -- it's a fact that nobody's disputing. But it's
going to

18 invoke a lot of emotion and heartbreak in people. Most
of the

19 people in the courtroom will be crying.

20 Can you look at that evidence for what it is
-- that

21 is, evidence of the crime that nobody disputes -- and
then at

22 the same time look at the Government objectively and
say:

23 Well, what have you proven that shows Mr. Nichols is
guilty and

24 responsible for that? Can you separate those two?

25 A. Yes, I can.

Juror No. 431 - Voir Dire

1 Q. Okay. You understand how emotional it will be?

2 A. I have some idea.

3 Q. Okay. And how sometimes emotion affects people's
4 decisions?

5 A. Yes.

6 Q. And you can separate that out, keep them separate?

7 A. Yes.

8 Q. Okay. Was your wife pretty concerned about this
fellow IRS

9 agent that's -- that's lost her two children?

10 A. I think -- well, she is concerned. She was
concerned

11 enough to send a check.

12 Q. Sure.

13 A. But I think when we got the form letter back, that
was the

14 end of it.

15 Q. I take it she's followed the case, though, fairly
closely

16 because of that interest?

17 A. Probably. I don't know how close. Like I say, I
haven't

18 noticed her going out of her way to find more
information.

19 Q. Okay. Okay. Have you talked it over with your
wife about

20 your jury service here?

21 A. Briefly.

22 Q. Okay. Now, you mentioned on your form that it
would be a

23 hardship for two or three weeks. I just want to make
clear

24 that you understand it may be two or three months --

25 A. I understand.

6111

Juror No. 431 - Voir Dire

1 Q. -- on this case. How is that going to affect you
2 financially?

3 A. It would put us in a bind, but I don't believe we'd
lose

4 the house.

5 Q. Okay. As the Judge said, nobody's asking people to
go

6 bankrupt on jury service. It is a duty that each
person has;

7 but, you know, we're not asking the ultimate sacrifice.
If --

8 have you looked at the cost of the child-care center
and

9 factored that into two or three months in this case?

10 A. No, I haven't added the numbers up.

11 Q. Okay.

12 A. But when I met her, I had my house and she had her
house;

met 13 so she managed to support her house without me before I

14 her, but now we have the additional child care. So --

15 Q. Did you sell your house?

16 A. No. I didn't sell my house, and my tenant is
moving out

17 today.

18 Q. Okay. So you've had rental income coming from
that, then;

19 is that correct?

20 A. As we speak, no, I don't have another renter.

21 Q. I'm sorry. In the past, you've had rental income
coming

22 from that?

23 A. Yes. The other house paid for itself by a renter.

24 Q. Okay. Okay. As the Judge said, we don't want to
get into

25 your personal conversations with your wife; but did you
factor

6112

Juror No. 431 - Voir Dire

1 this in about the length of the trial? Because I know
you said

2 in your form that two or three weeks would be a
hardship. And

3 as the Judge said, we can't tell you how long this is
going to

4 last, but two or three months is a definite

possibility.

5 A. Like I said, I haven't put the numbers together. I
just --
6 at this job and my prior job, I don't get no jury pay
from the
7 employer.

8 Q. Right. Right. So that income is gone.

9 A. Yes.

10 Q. And you still have the same expenses with the
child-care
11 center --

12 A. Yeah. I --

13 Q. -- and the house notes and then plus, you're not
having any
14 rental income for some period of time. It's unknown
how long.

15 A. Hopefully, I'll -- I didn't look for another renter
because
16 I wanted to paint it. And after I get it painted, I
don't
17 think it's going to be too hard to find somebody. I'm
hoping.

18 Q. Okay. What -- what period of time are you looking
at there
19 for another rental income there?

20 A. I was hoping no more than a month.

21 Q. Okay. When were you going to paint it?

22 A. Probably this weekend, I was going to get started
on it.

23 Like I say, it should be empty today.

about 24 Q. Okay. And you understood from what the Judge said
5:00 and 25 the hours here; that we'd be in trial every day till

6113

Juror No. 431 - Voir Dire

1 then on Fridays, you'd get off at 1:00?

2 A. Yeah.

to talk 3 Q. Okay. Okay. And do you think you're going to have
put the 4 to your wife further then to get into the finances and
5 numbers to it?

6 A. I don't understand the question in full.

the two 7 Q. Okay. You think you're going to have to -- given
going to 8 to three months this may last, do you think you're
at what 9 have to have further discussions with your wife to look
without 10 the numbers are going to be and if you can make it
11 undue financial hardship?

Because -- 12 A. We haven't sized it all together. Yeah. Yeah.

we'll do 13 we haven't added the numbers up. We just kept saying
14 what happens.

15 Q. Okay. Okay. The Judge and the prosecutor talked

to you a

16 lot about the penalty phase of the trial. Do you
understand

17 that there's still going to be a first stage of the
trial?

18 A. First stage where they have to prove him guilty?

19 Q. Right.

20 A. Yes.

21 Q. Okay. The Government's got a theory that Mr.
Nichols was

22 responsible for that bombing. We don't agree with that
theory.

23 The Government's going to have to put on witnesses to
prove to

24 the jury of 12 people beyond a reasonable doubt that

25 Mr. Nichols is guilty of deliberate, premeditated
murder of all

6114

Juror No. 431 – Voir Dire

1 those people. We're going to cross-examine those
witnesses;

2 and even though the Judge said we're under no burden or

3 obligation to present evidence ourselves, we're going
to

4 present a number of witnesses that will contradict that
theory.

5 And then the Judge will tell you what the law is, and
the jury

6 will have to vote on guilt or innocence.

7 Do you think you could participate in that
part of the
8 trial, in looking at the evidence objectively, without
letting
9 all the emotion overcome you, look at it objectively,
and if
10 the Government hasn't removed this presumption of
innocence
11 that Mr. Nichols has and removed it beyond a reasonable
doubt,
12 convinced this jury beyond a reasonable doubt that he's
guilty,
13 could you return a not guilty verdict?

14 A. Yes.

15 Q. Okay. Now, you realize how tough that would be to
go back
16 and tell your wife, the IRS agent, that you found
against the
17 Government.

18 MR. MACKEY: Objection.

19 THE COURT: Sustained.

20 BY MR. WOODS:

21 Q. Do you think that -- that is something that you
would be
22 comfortable in doing if -- not comfortable, but it is
something
23 that you could do, is return a not guilty verdict if
the
24 evidence did not prove him guilty?

25 A. I think so.

Juror No. 431 - Voir Dire

1 Q. Okay. Now, you haven't watched a lot of media over
the
2 last two-and-a-half years, but can you just summarize
what you
3 think it is that the Government says Mr. Nichols did in
4 connection with this bombing?

5 A. In -- I don't really know what they are saying his
part is.
6 I don't know if they are saying he's John Doe 2. I
don't -- I
7 haven't followed it that close.

8 Q. Okay. Do you have any recollection of where the
media says
9 that Mr. Nichols was on the day of the bombing?

10 A. I seem to think they did at one time -- they said
he was in
11 Michigan at the time.

12 Q. Okay. Now, are you referring to -- did you see any
13 television coverage up there in the Thumb area of a
bunch of
14 law enforcement officers dressed in black surrounding a
farm
15 and executing a search warrant at a farm up in
Michigan?

16 A. I think I did see an aerial picture of the farm or
17 something.

18 Q. Okay. What do you recall about that?
19 A. It looked like a Michigan farm.
20 Q. Right. Okay. Had -- had you been in that area at
all in
school?
21 your travels? Did you play sports there in high
22 A. No.
23 Q. And go to other towns?
24 A. No. I'm not an athlete.
25 Q. Okay. Had you ever been through Decker?

6116

Juror No. 431 - Voir Dire

1 A. Well, once since the bombing, my sister was driving
us all
2 around and we went -- stopped at Imlay City for some
gas. And
3 she took a wrong turn, and we did end up in the city
limits and
4 we realized we took a wrong turn. But we didn't seek
out the
5 farm or anything. We just wanted to get home.
6 Q. So you know where it is?
7 A. Yeah. It's north.
8 Q. What do you recall in your mind then about that
search
9 warrant in connection with Mr. Nichols here?
10 A. I don't know nothing about the search warrant.

11 Q. Okay. You just saw an image on television?
12 A. Saw an aerial of a Michigan farm.
13 Q. Okay. Have you seen Mr. Nichols' brother, James
Nichols,
14 on television over the last two years?
15 A. Not and known it.
16 Q. Okay. Okay. Do you recall how many people were
killed in
17 the bombing?
18 A. 164?
19 Q. Okay. Do you recall how many children were killed?
20 A. No.
21 Q. All right. And as I understand, you understand why
there
22 were children killed, because of the day-care center.
Is that
23 your knowledge?
24 A. Yes.
25 Q. Okay. Do you know how the bomb was delivered to
the

6117

Juror No. 431 - Voir Dire

1 building?
2 A. It was in the back of a truck parked on the street.
3 Q. Okay. Do you recall how Mr. McVeigh was arrested
by law
4 enforcement?

5 A. I believe leaving town. Pulled over for some
traffic

6 violation or something.

7 Q. Do you recall whether Mr. Nichols was present in
Oklahoma

8 at that time?

9 A. I don't believe he was.

10 Q. Okay. Do you recall from the media that you did
see how

11 Mr. Nichols initiated contact with law enforcement
authorities?

12 A. No, I don't.

13 Q. Okay. You know, in the event that there is a
punishment

14 hearing -- and we only get there, as the Judge said, in
-- if

15 the Government can prove beyond a reasonable doubt that

16 Mr. Nichols is guilty of killing all those people,

17 premeditation and deliberation of killing those people.
Do you

18 understand that's the only time we get to a punishment
hearing?

19 A. Yes.

20 Q. Okay. Now, on your questionnaire, when you talked
about

21 capital punishment on page 28 -- do you have 28 handy?

22 A. Yes.

23 Q. Okay. Down at C and D, the questionnaire asks you
what --

24 "What kind of cases is it appropriate, if ever, to

impose the

25 punishment of life in prison without the possibility of
ever

6118

Juror No. 431 - Voir Dire

1 being released?" And you put down "repeat offenders."
Is that

2 correct?

3 A. Yes.

4 Q. Okay. And then as to D, "In what kind of cases is
it

5 appropriate, if ever, to impose the punishment of
death?" And

6 you put in "premeditated murder"?

7 A. Yes.

8 Q. Okay. And then you told the Court that you believe
the

9 death penalty should be for -- was it "severe crimes"
--

10 A. Yes.

11 Q. I think was the word you used. Can you give me an
idea of

12 what type of crimes you mean by severe crimes?

13 A. Brutal murder, brutal rape. Repeat offense. Just
total --

14 Q. Okay.

15 A. Continuous menace to society.

16 Q. Okay. Now, the repeat offenders, you feel that

life

17 imprisonment would be appropriate; is that correct?

18 A. Depending upon how brutal it was.

brutal 19 Q. Okay. Okay. Now, as to the brutal crimes, the

imprisonment would 20 murder or brutal rape, do you feel that life

you're 21 ever be appropriate for those kind of crimes that

22 listing as severe?

23 A. Oh, maybe first offense.

24 Q. Okay. Any other circumstance?

circumstance. 25 A. If it was my wife. No. There's no other

6119

Juror No. 431 - Voir Dire

what -- 1 Q. Okay. Okay. By premeditated murder on D there,

about 2 what do you understand -- what are you saying there

3 premeditated murder?

thing. 4 A. That it was thought out. It wasn't a spontaneous

5 Q. Okay. Okay. Planned out?

6 A. Planned out. Plotted.

in 7 Q. Now, you understand, then, in a punishment hearing

8 federal capital cases, the jury will have already found

the

of one 9 defendant guilty of premeditated and deliberate murder

get to a 10 or more individuals. That's the only time you would

penalty; 11 punishment phase and decide life imprisonment or death

12 is that correct?

13 A. Correct.

-- 14 Q. Okay. In those cases where the jury has found, say

15 let's -- as the Judge said, we've got to talk about
16 somebody's hypothetical cases. Take a hypothetical case where

were 17 been found guilty of bombing an airplane and 100 people

18 killed. The jury's found them guilty of deliberate and
19 premeditated murder. Are you with me on that?

20 A. Uh-huh.

and the 21 Q. And you're on the jury assessing the punishment,

and you 22 Judge has said you will hear aggravating circumstances

23 will hear mitigating circumstances. After hearing the

to 24 evidence, do you feel that it would be ever appropriate

found a 25 assess a life imprisonment for a case where a jury has

Juror No. 431 – Voir Dire

100 1 defendant guilty of deliberate, premeditated murder of
2 people?

3 MR. MACKEY: Objection.

4 THE COURT: Overruled. You can answer.

the 5 JUROR: I don't know. I'd have to hear all
6 circumstances. But doubtful.

7 BY MR. WOODS:

8 Q. Okay. And why do you say doubtful?

bully or 9 A. Yeah. Just once again, is the guy a high school
went off? 10 Boy Scout, or were people terrorized before the bomb

11 You need to hear all that.

12 Q. The circumstances of the crime?

13 A. Yes.

the people 14 Q. And then are you saying because of the number of

15 that you'd be leaning one way or the other, or are you
16 saying -- What are you saying?

17 MR. MACKEY: Objection, Judge.

saying" 18 THE COURT: Well, the question "what are you
19 is something that you can answer.

20 MR. WOODS: Thank you, your Honor.

21 JUROR: The number of people would have me

lean to --

22 toward the death penalty --

23 BY MR. WOODS:

24 Q. All right.

25 A. -- over life imprisonment. A severe punishment.

6121

Juror No. 431 - Voir Dire

1 Q. Lean toward the death penalty over life
imprisonment, did

2 you say?

3 A. Yeah.

4 Q. Okay. What would -- what factor would help in
causing you

5 to lean toward the life imprisonment?

6 MR. MACKEY: Objection, Judge.

7 THE COURT: Overruled. You may not have one
in mind.

8 JUROR: I don't have one.

9 THE COURT: I mean, you don't have to have one
in

10 mind.

11 JUROR: I don't have one in mind.

12 THE COURT: The question is whether you're
open to

13 whatever is presented to you and consider life as well
as death

14 in a case like that.

but I 15 JUROR: I consider myself open-minded, yes;

16 don't have any circumstance in mind that would --

17 BY MR. WOODS:

18 Q. Okay. Could -- then the question is could you
consider

19 assessing a life imprisonment sentence for somebody
that killed

20 100 people?

21 MR. MACKEY: Same objection.

22 THE COURT: You may answer that.

23 JUROR: Yes, I would.

24 MR. WOODS: Okay. I appreciate your time.
Thank you.

25 THE COURT: So do we all. And you've been at
it here

6122

1 a while, and we understand that. We can't tell you
right now

2 whether you're going to serve on this jury; so what you
have to

3 do is -- and you're excused for the day now. But we'll
be back

4 to you shortly with respect to whether you're going to
be

5 called in again. But you have to go from here now on
the

6 understanding that you will be and that you'll have the
7 responsibility in the case. And by that I mean that
you have
8 to be careful now and not talk about it with anybody
and not
9 come across anything in any publication or
communication that
10 could change any of your answers here, you know, and
influence
11 you in any way in the case, because we've gone to great
length
12 about what a jury has -- juror has to do. And you
understand
13 that.

14 JUROR: Yes.

15 THE COURT: Okay. You're excused for now.

16 We'll take a recess. 20 minutes.

17 (Recess at 10:23 a.m.)

18 (Reconvened at 10:43 a.m.)

19 THE COURT: Be seated, please.

20 Counsel approach.

21 (At the bench:)

22 (Bench Conference 52B2 is not herein transcribed by
court
23 order. It is transcribed as a separate sealed
transcript.)

24

25

1 (In open court:)

2 THE COURT: 50.

3 Good morning. Would you please raise your
right hand

4 and take the oath from the clerk.

5 (Juror No. 50 affirmed.)

6 THE COURTROOM DEPUTY: Thank you.

7 THE COURT: Please be seated there in the
chair by the

8 microphone. And don't worry about the microphone.
That's just

9 there to help us hear you. It's not being broadcast
anywhere.

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. And you know that the case for which you've been
summoned

13 as a possible juror is the case of United States
against Terry

14 Lynn Nichols.

15 A. Yes.

16 Q. And that you got a summons and a short
questionnaire, and

17 you answered that. And then you were notified to go
out to the

18 Jefferson County Fairgrounds' -- excuse me --
auditorium

19 building last month on the 17th of September, and you
did. And

20 I appeared there with the lawyers and the defendant.

21 And I want to introduce again to you the
people that I

22 introduced at that time plus a couple of others. You
recall

23 being introduced to Mr. Lawrence Mackey and Ms. Beth
Wilkinson,

24 lawyers for the Government.

25 They're joined now by Mr. Patrick Ryan and Mr.
James

6130

Juror No. 50 – Voir Dire

1 Orenstein, additional lawyers.

2 You met Mr. Michael Tigar, Mr. Ronald Woods,
attorneys

3 for Terry Nichols. And Mr. Nichols, of course, was
present as

4 well.

5 And then I explained about the background of
the case

6 and then also some things about jury service and sort
of the

7 fundamentals of what's involved in criminal trials and
then

8 asked you to complete a very long questionnaire, which
you did,

9 and for which we appreciate your cooperation.

10 And we have taken copies of -- made copies of
what you
11 wrote, distributed them to the people who are here
12 participating for the limited purpose of our use in
this
13 process. We're not going to make it public or
anything,
14 because there are privacy concerns that you may have.
And we
15 recognize that, and it is for that reason that we don't
use
16 your name here and that also, you know, we arranged for
you to
17 go and come to the courthouse without press
photographers or
18 anything like that.

19 Now, of course, we are in open court so that
what is
20 said here, you understand, is public.

21 And I wanted to turn right to a matter that we
want to
22 find out about, and that's in connection with your
husband's
23 health, because as I understand it, you were going to
be in
24 yesterday --
25 A. Yes.

there
1 Q. -- and originally scheduled to be in yesterday, but
2 was some care required for your husband, some type of
surgery.

3 We're not asking the details about that.

4 A. Okay.

5 Q. But is that a concern for your service on the jury?

6 A. Not at the present.

7 Q. Okay. Well, I wanted to get right to it to see,
you know,
8 just exactly what the situation was in terms of whether
to come
9 in here and serve on the jury would jeopardize his
care.

10 A. No, it would not.

11 Q. Okay. I understand that he is, from what you've
said in
12 the questionnaire, not working. He has a disability.

13 A. Correct.

14 Q. And that's been true for how long?

15 A. Well, he was just -- he has just reached his MMI,
and he
16 will go on disability.

17 Q. Was it because of an accident?

18 A. No -- well, on-the-job injury, yes. He had total
knee
19 replacement three times. It didn't take.

20 Q. All right. So he's receiving some compensation for
that
21 from the employment?

22 A. We're fighting for it, yes.

it a
23 Q. Well, you're supposed to receive it or -- okay. Is
24 disputed matter with the former employer?

25 A. Yes, it is.

6132

Juror No. 50 - Voir Dire

1 Q. And is that a workers comp. matter?

2 A. It's workers comp., yes.

go right
3 Q. Okay. Well, I want to back up -- and I wanted to
asked about
4 to that to see how much of a problem. That's why I
5 it immediately.

a
6 A. Yesterday's was a different matter, though. He had
7 cancer surgery yesterday, but everything is okay.

8 Q. All right. Well, we're glad to hear that.

people's
9 And you know, we always have concern for
people in
10 lives here, too. It isn't just a matter of hauling
things
11 here. We, of course, are concerned about all of the
that
12 that may influence or affect or -- a juror and also
13 person's ability to focus on the case.

14 And turning to the case, I just want to review
some of
15 the things that I said to you and the others before
when I
16 asked you to fill out the questionnaire. And it isn't
because
17 I think you don't remember; but I think it is important
that we
18 sort of establish a foundation, because what we're
going to do
19 here is I'm going to ask you a few things about
responses that
20 you made here.

21 A. Okay.
22 Q. Not going to go over everything. Don't worry about
that.

23 Also, I want to ask you a few additional
things and
24 cover them with you; and then a lawyer on each side
will have a
25 chance to ask you some more questions. So bear with us
yet a

6133

Juror No. 50 - Voir Dire

1 while if you will.
2 A. Okay.
3 Q. And then, as I say, to sort of set the foundation
for this,
4 you understand that this case arises as a result of
some

5 charges filed in Oklahoma City, Oklahoma, after an
event that
6 occurred there on April 19 of 1995, when a federal
office
7 building was destroyed by an explosion. There were
deaths and
8 injuries of people who were in the building; and then
the
9 government, the federal government, through lawyers
from the
10 Department of Justice, filed charges in the United
States
11 District Court for the Western District of Oklahoma,
which is
12 in Oklahoma City, and filed an indictment there. Now,
you know
13 a little about an indictment because you were on a
grand jury.

14 A. Correct.

15 Q. And you know that an indictment is simply
allegations. And

16 while a grand jury may have approved an indictment, it
is not

17 any evidence and doesn't constitute any kind of finding
but is

18 just a statement of charges.

19 A. Correct.

20 Q. You understand that?

21 A. Yes.

22 Q. So the -- the way in which we treat an indictment
in court

23 is to simply say, well, that's nothing more than the
24 accusations and can't be considered for any purpose and
--
25 because, of course, a grand jury proceeding is not a
trial at

6134

Juror No. 50 - Voir Dire

1 all, as you well know, I take it.
2 Then the accusations, the allegations of this
3 indictment are -- and I summarized them for you before
-- that
4 the Government accuses a man named Timothy James
McVeigh,
5 together with Terry Lynn Nichols -- and then the
indictment
6 says "and other persons not named" -- with a
conspiracy,
7 forming an agreement or plan to bomb and destroy the
building
8 and to kill and injure people in it. And then the
indictment,
9 which consists of some 11 counts, includes in addition
to
10 conspiracy that the defendants carried out that plan,
did
11 indeed, according to the accusation, bomb the building.
12 And then included in the allegations are eight
counts
13 of first-degree murder for the killing of eight law
enforcement

14 agents, people working for differing agencies of
federal
15 government who were in the building and died in the
explosion.

16 And to these charges, each defendant entered a
plea of
17 not guilty, thereby creating the issues for trial.

18 The case was moved from Oklahoma City here to
Denver
19 because of a concern to ask people in Oklahoma to hear
the

20 evidence in this case, since that's where this
happened. And

21 when it came to Colorado, I ordered separate trials be
heard so

22 that the evidence as it may relate to Timothy McVeigh
be

23 considered by a jury in a separate trial and then the
evidence

24 as it may relate to Mr. Nichols be heard by a different
jury

25 and at a different time.

6135

Juror No. 50 - Voir Dire

1 There has been a trial of the evidence
concerning

2 Mr. McVeigh. A jury heard that case, returned a
verdict of

3 guilty as to him and also then was required -- that
same

4 jury -- to hear more concerning the issue of what the
sentence
5 should be. And after a second trial on that point, the
jury
6 came back with a recommendation for the death penalty
for
7 Mr. McVeigh. That's over and done.

8 Now we're starting all over again, very, you
know --
9 with a clean slate and picking a jury to consider the
evidence
10 relating to Mr. Nichols.

11 Nothing concerning the McVeigh trial can now
be
12 considered in connection with this case, and certainly
the
13 outcomes of that case can in no way be considered by
the jury
14 deciding this case. To do so would clearly violate the
order
15 for separate trials and destroy the whole reason for it
and be
16 fundamentally unfair to Mr. Nichols. Do you understand
that?

17 A. I do.

18 Q. And you also understand that the role of a jury, a
trial
19 jury now, is to hear the evidence in the case and
decide
20 whether he (sic) proves the crimes charged. And, of
course,
21 the evidence in the case doesn't include the

indictment, you

22 understand.

23 A. Yes.

24 Q. Now, let's just turn to your experience. As I
understand

25 it, you were on a grand jury here in Denver.

6136

Juror No. 50 – Voir Dire

1 A. Right.

2 Q. And that was how long ago?

3 A. I believe 1976.

4 Q. And you served for 18 months, did you?

5 A. 18 months, yes.

6 Q. Was it here in the Federal Court?

7 A. No. It was the Denver grand jury with the district
8 attorney, Mr. Dale Tooley.

9 Q. All right. And was the grand jury called for a
particular

10 crime or a particular investigation or something, as
you

11 remember it?

12 A. No. They just -- it was in January, I received the
summons

13 and -- or no, December I received a summons, I believe
it was;

14 and then in January, we were seated.

15 And then we were so far into an investigation
by the
16 year's end that -- we were six months into an
investigation the
17 last part of year that they didn't want to give it to
the '77
18 jurors, so they extended our stay for another six
months.
19 Q. I see. Your original term was to be for a year?
20 A. One year, yes.
21 Q. And they extended it for this particular --
22 A. Until we finished the investigation we were
involved in.
23 Q. Okay.
24 A. And it took another six months.
25 Q. Did that -- I'm not going to ask you about the
particular

6137

Juror No. 50 - Voir Dire

1 investigation; but did it result in an indictment, or a
2 report --
3 A. A report to Congress is what it was.
4 Q. Okay. And sometimes grand jurors are asked to just
do a
5 report on an investigation without charging anybody
with a
6 crime.
7 A. That's what was going on, yes.

grand 8 Q. Did you have other matters presented to you in the
9 jury --
10 A. Yes.
11 Q. -- that did result in indictments or charges?
12 A. There were some that we did sign.
kinds of 13 Q. Do you remember any of them in particular, what
14 crimes?
15 A. No, I don't --
16 Q. Like drug matters or --
17 A. No, I can't remember.
while. 18 Q. Okay. Well, that's, you know -- that's been a
19 A. Yes.
aren't 20 Q. And of course, you know that grand juries -- there
21 any rules of evidence, and grand juries often hear some
22 investigator just tell the grand jury what he or she
has found 23 out, and there is no defense lawyer, there is no judge.
It's a 24 very one-sided affair. You agree?
25 A. Yes. We did have a judge present, though.

1 Q. During the deliberations, or during the --

2 A. Whenever the investigators brought any of the
evidence in,

3 there was a judge present, if I recall correctly. I
know we --

4 Q. Well, there probably was a judge when you started
out and

5 gave you some instructions and all that in the process
of

6 selecting the grand jury.

7 A. Correct.

8 Q. Judges do that. But then usually -- and I don't
know how

9 it was in your case -- and it's a different system, the
state

10 court -- but then usually the judge is not involved
every time

11 the grand jury gets together.

12 A. No, there were evenings he wasn't there.

13 Q. Sure. And during those evenings, things would be
brought

14 to you, people who were investigators; and a lawyer or
15 lawyers --

16 A. Yes.

17 Q. -- for the state -- or the district attorney's
office,

18 rather, would be there and -- but there wasn't anybody
there to

19 cross-examine those witnesses or to challenge what they
were

20 telling you --

21 A. That's correct.

22 Q. -- right? And so you were being asked to decide,
well, do
23 you think there is enough here that we ought to go
ahead and
24 file a charge in court.

25 A. Probable cause, yes.

6139

Juror No. 50 - Voir Dire

1 Q. Yeah, probable cause. And then charges get filed
as a
2 result of that.

3 A. Right.

4 Q. Now, of course, here, you're being considered for a
trial
5 jury. And a trial jury is much different, beginning
with the
6 fact that probable cause is a standard used by a grand
jury to
7 approve an indictment. That gets wiped away. There is
no
8 probable cause presumption or any kind of presumption
once an
9 indictment is filed and a jury is empaneled to hear the
case.

10 You understand that?

11 A. Yes.

12 Q. And that's because under the Constitution of the

United

13 States -- and this is so fundamental that it applies in
all

14 trials no matter what the charges are or who the
defendants are

15 or what court it's in, whether it's a state court or
Federal

16 Court. If it's under the United States Constitution,
then the

17 persons accused are presumed to be innocent of whatever
crimes

18 they have been charged with. You understand that
principle?

19 A. Yes, I do.

20 Q. And that presumption of innocence means that no
person who

21 has been accused of a crime can be found guilty of it
unless a

22 trial jury, considering only the evidence that has been

23 received at trial, is convinced and finds that the
charges have

24 been proved by the evidence in the case beyond a
reasonable

25 doubt. And, of course, the trial process does involve
counsel

6140

Juror No. 50 - Voir Dire

1 for the defendant, involves a judge ruling on whether

2 particular things can be heard and considered as
evidence,

process. 3 cross-examination of witnesses and all of this due
4 You understand those points?
5 A. Yes, I do.
United 6 Q. And no person who is accused of any crime in the
guilty. In 7 States is required to prove himself innocent or not
calling 8 fact, persons who are accused have no burden or duty of
charges, 9 any witnesses or introducing any evidence. It is the
doing 10 prosecution, the Government's lawyers, who file the
it's a 11 although they may have the grand jury's assistance in
witnesses 12 that; but once the charge is filed, then, you know,
disprove 13 clean slate and they have to come in and bring in the
And 14 and the exhibits and try to prove it.
15 And a defendant, as I say, doesn't have to
16 anything, and no defendant has to call any witnesses.
answering 17 certainly no defendant has any burden or duty of
who is 18 questions or explaining anything to the jury. A person
evidence 19 accused can simply remain silent and challenge the
to 20 brought in against him or her and do so by objections

21 admissibility of evidence, by the cross-examination of
22 witnesses, and by persuasive argument. You understand?

23 A. I do.

24 Q. And in cases in which a defendant does not testify,
then

25 the jury is instructed they cannot give any
consideration to

6141

Juror No. 50 - Voir Dire

1 that at all. They can't assume that he's hiding
something,

2 afraid to testify. There are reasons why innocent
people don't

3 testify at trials, and what we tell juries in those
situations

4 is you can't even consider that in any way or talk
about it.

5 You understand these points?

6 A. I do understand.

7 Q. So at the end of the trial, the court gives
detailed

8 instructions about these are the elements of the crimes
that

9 have been charged here, these are the things that must
be

10 proved, and then says to the jury: You tell us after
you

11 discuss it whether the crimes charged have been proved
to your

way to 12 satisfaction beyond a reasonable doubt. And another
there is a 13 look at that is if, after the jury considers it all,
proved 14 reasonable doubt as to whether the defendant has been
return a 15 guilty by the evidence, the jury's plain duty is to
of that 16 verdict of not guilty, giving the defendant the benefit
17 doubt. Understand?

18 A. I do.

19 Q. Do you have any disagreement with these principles?

20 A. No, I don't.

21 Q. Prepared to follow them if you served on this case?

22 A. Yes.

here with 23 Q. Therefore, you understand that Mr. Nichols sits
charges that 24 us this morning presumed to be innocent of these
25 have been made against him.

6142

Juror No. 50 – Voir Dire

1 A. Yes.

some of 2 Q. Now, I want to discuss with you just a little bit

3 the things that you mentioned here in your
questionnaire. And

4 one of the things is -- I understand you were born in
5 California.

6 A. Correct.

7 Q. But then came to Colorado -- your family came to
Colorado
8 to live?

9 A. Yes.

10 Q. And you really grew up here in Colorado.

11 A. Yes.

12 Q. You mentioned here -- and what I'm going to do is
ask you
13 to turn to some pages on your questionnaire. You have
it
14 there, I believe. And I'll just point to -- point you
to some
15 of these pages and some of the points and just ask you
a bit
16 about them.

17 Page 3 at Question 11. Can you tell us what
happened
18 there?

19 A. Oh. My sister died of pneumonia when she was 18
months
20 old, but she was before I.

21 Q. Before you were born?

22 A. Yeah, before I was born.

23 Q. So you were -- that's something you were told
about.

24 A. Yes, uh-huh.

25 Q. Okay. And then I noted where we asked you if
you've had

6143

Juror No. 50 - Voir Dire

1 any conditions that might make it difficult for you to
serve,
2 you mentioned that you do have a back situation but you
don't

3 think it's going to --

4 A. Doesn't hurt to sit.

5 Q. Okay. Well, we won't ask you to lift anything.

6 A. Okay.

7 Q. Do those things -- so sitting is what we were
talking

8 about. Then you told us where you work and that you've
been

9 working there 19 years now.

10 A. Yes.

11 Q. And it's page 9. And we're not going to discuss
where you

12 work, but this is a company that has a union and you've
been --

13 and your husband, both -- active in the union.

14 A. Correct.

15 Q. And there was a stoppage of work sometime back; and
you

16 were active in that, too, as line captains.

17 A. Yes.

18 Q. For the picket lines.

19 A. Yes.

20 Q. And that, of course, ultimately got resolved.

21 A. Yes.

22 Q. And there is a new contract?

23 A. A new contract.

24 Q. Okay. Well, I'm not going to ask you whether it
got

25 resolved to your personal satisfaction, but the process
worked?

6144

Juror No. 50 – Voir Dire

1 A. It did, yes.

2 Q. And -- and under your contract that you work under
now, is

3 there a provision in there about jury service? Do you
know?

4 A. Yes, there is.

5 Q. So that you would be paid for your -- the
difference in

6 your wage and what you get paid on the jury?

7 A. Yes.

8 Q. All right. Now, we asked you on page 11 to
identify some

9 organizations and -- that members of your family have
been

10 employed in, and you start out there with the law
enforcement

11 agencies. What is the reason for your yes answer
there?

12 A. I don't know if I checked that and then rechecked
it.

13 Q. Well, you were a little uncertain. Looks like you
checked

14 no and scratched it out and then yes.

15 A. Well, my nephew is on Denver S.W.A.T. team with a
canine.

16 Probably marked it before I realized it.

17 Q. So is he with the Denver Police Department?

18 A. Yes.

19 Q. And how long has he been a police officer?

20 A. Oh, I would guess maybe now about 12 years.

21 Q. Do you see him often?

22 A. Rarely.

23 Q. Rarely?

24 A. Rarely.

25 Q. Have you talked with him about his work at times?

6145

Juror No. 50 – Voir Dire

1 A. No.

2 Q. Are you in any way influenced by his work in terms
of your

3 being able to be open and fair at this trial?

4 A. No, I'm not.

5 Q. Then you marked -- excuse me.

6 A. Then I have two other brothers that were
firefighters.

7 Q. In Denver?

8 A. No.

9 Q. Where?

10 A. One is retired, and he's living in Oregon now; but
he was a

11 firefighter over in Napa, California. My other brother
is

12 retired Aurora firefighter, engineer.

13 Q. In Aurora here?

14 A. Correct.

15 Q. All right. Then you marked probation department.

16 A. My husband's daughter -- she works for the -- the
state.

17 Q. In Denver?

18 A. Yes -- no. She's out in -- off Kipling, I believe
out

19 there.

20 Q. Jefferson County?

21 A. Jefferson County.

22 Q. All right. And does she work as a probation
officer; do

23 you know?

24 A. I know she handles prisoners on probation. She
takes their

25 cases.

6146

Juror No. 50 - Voir Dire

1 Q. Supervises them?

2 A. Oversees, yes.

3 Q. Have you talked to her about her work from time to
time?

4 A. No.

5 Q. And then I think you've got -- security guard is
the other

6 one marked. Yes?

7 A. Yes.

8 Q. What's that about?

9 A. My father was a security guard many, many years ago
in

10 San Francisco.

11 Q. While you were growing up in the family?

12 A. No, that was before I came along.

13 Q. Another one of these things you heard about?

14 A. Yeah, heard about.

15 Q. Now, I want to turn to page 20. At 93 there, you
told us

16 just what you've told us now, the same things; right?
Those

17 are the same people?

18 A. Yes.

friend of 19 Q. And then you mention at 91 that you have a close
20 yours -- in fact, you refer to this person as the "best
21 friend," with a daughter working as a lawyer in a
public 22 defender's office.
23 A. Yes.
24 Q. And where is that?
25 A. Here in Denver.

6147

Juror No. 50 - Voir Dire

1 Q. In the state?
2 A. Yes.
not the 3 Q. And do you -- do you see her? I mean the lawyer,
4 friend.
5 A. No. I don't see her daughter that often.
6 Q. And does your friend talk with you about the cases
--
7 A. No.
8 Q. -- that her daughter has been on?
9 A. No.
10 Q. And is that person the same person you name on --
the one
11 who is the lawyer -- on page 21 at 96?
12 A. Yes.

attorney; and

13 Q. Okay. And then at 98, you have a personal

what

14 what, this -- he or she used to be a defender? Is that

15 you're saying at 98?

practicing

16 A. Yes. She was director of EEOC, and she's now

17 law.

18 Q. Well, it says Denver public defender.

public

19 A. Well, at one time, I believe she was a Denver

20 defender.

connection

21 Q. Okay. And now is this the attorney you have in

22 with your husband's --

23 A. Yes.

24 Q. -- disability?

25 A. Yes.

6148

Juror No. 50 - Voir Dire

1 Q. So that's the representation that she's --

2 A. Yes.

3 Q. -- undertaken for you?

you know,

4 And on 22 -- and this is an area where I'm,

talking

5 asking you to be careful in your responses. We're not

6 about this publicly any more than need be, but at 101
--

7 A. Yes.

8 Q. I think you explained exactly what happened in
here, but

9 how long ago was that?

10 A. About 17 or 18 years ago.

11 Q. And this marriage ended in a divorce?

12 A. Correct.

13 Q. And your son was then about how old?

14 A. About 10 or 11.

15 Q. And did that result in something being filed in
court? I

16 mean, it may have had something to do with your
divorce. I'm

17 not asking about that.

18 A. No. It was just one of those incidents where I
came home

19 and that was it. It was fine, never happened again.

20 Q. Police were called and it got resolved?

21 A. Yes.

22 Q. And then you reported some other situations here
which did

23 not result in prosecution. Yes?

24 A. On the neighbor?

25 Q. Well, I was looking at 102 -- yeah, 102 and then
over on

1 the next page.

two 2 A. Oh, but just to back up to 101, that -- that was

3 different incidents.

4 Q. I'm sorry. Yes?

on the 5 A. That was different incidents. The second incident
neighbor, 6 line on call police on 101 -- that had to do with a

7 not my ex-husband.

I did 8 Q. Thank you. I -- I confused it in my question, but

9 understand. These are two separate things?

10 A. Yes. I should have marked --

11 Q. No, I think you made it plain. I just confused it.

neighbor, 12 Well, with respect to the second one, the

13 did that result in any prosecution or --

that 14 A. No. We just many times had to call the police on

his bully 15 particular neighbor with his attitude and his gun and

16 nature.

17 Q. All right.

wasn't due 18 A. We have been in the courtroom with him, but it

19 to this.

20 Q. What was it due to?

yard
21 A. The city and complaints of odors coming from his

22 because he has so many dogs in the yard that the doggie

23 odors -- all the neighbors complain.

24 Q. Is he still there?

25 A. Yes.

6150

Juror No. 50 - Voir Dire

1 Q. Still your neighbor?

2 A. Much to my dismay.

much to do
3 Q. Okay. So this is a neighbor that you don't have

4 with?

5 A. Not at all.

same
6 Q. Now, you mention here that you think -- I'm on this

working
7 page 22 -- you think the criminal justice system is

8 very well.

9 A. Yes, I do.

with
10 Q. And then we asked you on page 30 about your view

instructions.
11 respect to the importance of following court's

12 You see on 30 at 129?

13 A. That probably mismarked that.

14 Q. Well, you can change it, if you want to.
15 A. Well, I agree strongly that we need to follow
exactly what
16 you instruct us to do.
17 Q. All right. Well, I want you to explain -- I asked
you to
18 explain what you've written here, too, about bending a
bit to
19 make sure things work out for the best. What are you
thinking
20 of there?
21 A. On 128?
22 Q. Yes -- no, 129. I'm sorry.
23 A. Oh.
24 Q. You see what you wrote under "explanation"?
25 A. Well, in our thoughts, we have to give the benefit
of the

6151

Juror No. 50 - Voir Dire

1 doubt, is what I think I'm trying to relay there.
2 Q. Well, here's what I understood, and you straighten
me out
3 if it isn't right.
4 A. Okay.
5 Q. What I thought you were saying is that where a
court would
6 instruct the jury about the principles of law, not just

these

7 basic things that we've talked about, but something
like an

8 instruction concerning how you must consider the
testimony of

9 witnesses; that all witnesses have to be judged by the
same

10 standards to determine whether you believe what they
say, both

11 with respect to the believability of the testimony
given by

12 that person and also whether the person seems to be a
truthful

13 person, whether the testimony is contradicted by what
others

14 say, and so forth -- and what I thought you were saying
is,

15 well, if you agreed with the instruction, you would
follow it;

16 but if you for some reason didn't think it was right
and didn't

17 make the case come out right, you wouldn't follow it.
Now, did

18 you mean anything like that?

19 A. No, no.

20 Q. Okay. Well, you see why it might be understood
that way,

21 because what you're saying is you have to be able to
bend to

22 make sure things can work out for the best.

23 A. Whether it's good or bad.

24 Q. Yeah. So I'm confused about what you're saying.

25 A. Well, we just -- I just feel that we -- I have to
be proved

6152

Juror No. 50 - Voir Dire

1 reasonable doubt from the testimony of a person that I
believe

2 that person and what they're saying.

3 Q. All right. But you also have to believe the
4 instructions --

5 A. Oh, of course.

6 Q. -- about the law.

7 A. Above and beyond, yes. That's first priority.

8 Q. Okay.

9 A. I have to believe in the law, understand it.

10 Q. Yeah. You're explaining it. It just struck me
when I

11 first read it that here's a person who thinks if the
law isn't

12 the way she thinks it ought to be, she's going to
ignore it.

13 A. Oh, no. No.

14 Q. I didn't mean this in terms of an accusation about
you.

15 A. No.

16 Q. Or that you're not a law-abiding person or
anything.

17 A. I don't bend the laws to suit myself.

Court's 18 Q. You agree, then, that the jury has to follow the
19 instructions?
20 A. Of course.
21 Q. In all respects at a trial?
22 A. Right.
on here; 23 Q. Okay. Now, one other thing that I wanted to touch
24 and I'm not sure about this on the last page, 38. It
mentions 25 that there is a point here that you may want to discuss
it

6153

Juror No. 50 - Voir Dire

1 privately.
was. 2 A. Oh, I know. I didn't know what kind of gun that
you? 3 Q. Okay. You don't need to discuss that privately, do
4 A. I didn't know if I needed to or not.
was -- 5 Q. All right. Well, can you just tell us what this
we owned 6 A. Well, I think there was another question about if
7 one.
8 Q. Yeah.
wanted to 9 A. And I didn't know what kind it was, so I just

was. 10 explain to you that I didn't know what kind of gun it

11 Q. There is a gun; it's your husband's?

12 A. It's his daughter's.

13 Q. His daughter's. And so all you're saying is you
don't know

14 what it is.

15 A. I do now.

16 Q. Oh?

17 A. It's a .38 magnum.

18 Q. Handgun?

19 A. Handgun.

20 Q. Okay. And she keeps it there at your house?

21 A. Well, she brought it to the house without me
knowing it,

22 and I didn't appreciate that; so there was some
controversy in

23 my home over the gun.

24 Q. I see. Is it gone now?

25 A. No.

6154

Juror No. 50 – Voir Dire

1 Q. Still there?

2 A. Still there.

3 Q. You still don't like to have it there?

4 A. It was -- it was brought in against my better
judgment. It

5 was brought in without me knowing it was there.

6 Q. And that offended you?

7 A. I felt like my home was violated --

8 Q. Okay.

9 A. -- by her.

10 Q. All right. I think you've explained it. Is there
anything

11 about that that affects your attitude about guns or --

12 A. No.

13 Q. And what is your attitude about guns? You think
that there

14 should be some changes in the gun law? I don't
remember what

15 you wrote here.

16 A. The only thing that sticks in my mind is a gun has
one

17 intent, and that's to kill.

18 Q. All right.

19 A. I'm not saying everyone that has a gun intends to
kill

20 anyone with it, but that's what it was designed for.

21 Q. And -- but it can also be designed to --

22 A. For sport.

23 Q. -- for hunting and also target shooting.

24 A. But for hunting, you're going to kill -- you're
going to

25 kill animals with it.

Juror No. 50 - Voir Dire

1 Q. Right. Are you opposed to hunting of animals?

2 A. I think if -- There was a time it was needed. I
don't
3 think it's necessary now.

4 Q. Well, you know, when we ask you these questions
about

5 opinions and attitudes, there is no right or wrong
answer to

6 it. All we want to know is what you think, so you're
not being

7 asked to defend your opinions or anything like that
here. We

8 just want to know what you think, so feel free to tell
us.

9 A. Okay.

10 Q. As you apparently are. And that's fine. And we
did ask

11 you something about your attitude and opinions in
connection

12 with another matter here, and that is with respect to

13 punishment and particular kind of punishment; that is
to say,

14 the punishment of life in prison with no possibility of
being

15 released and the punishment of death, the death
penalty. And

16 I'm going to be referring to page 28 and page 29 and

your

17 answers there. Just go ahead and take a moment to
refresh

18 yourself about what you wrote.

19 A. Those are probably some of the hardest questions
I've ever

20 been asked.

21 Q. We understand that. Have you -- did you expect
questions

22 like this when you came out there and got this
questionnaire

23 handed to you?

24 A. I did and I didn't.

25 Q. Okay. Well, let's -- have you thought about it and
your

6156

Juror No. 50 - Voir Dire

1 answers since you wrote these answers?

2 A. I really haven't given that too much thought about
it -- I

3 mean --

4 Q. My only reason in asking you that was to see if
your

5 answers have changed at all, whether you would answer
this any

6 differently today than when you did on September 17.

7 A. I don't believe I would. I just --

8 Q. Well, as you say, these are hard questions.

end 9 A. Hate to think about what you're going to do and the

10 result of it.

broad 11 Q. And that, of course, is -- we intended it to be as

case in 12 and open as it is, because we're not talking about this

law 13 these questions, and we're not even talking about the

you 14 itself but just in terms of, well, what do you think if

and the 15 could make the law? And sort of the background of that

that we 16 reason that the questions are phrased as they are is

a death 17 all know that this matter of whether there ought to be

divided 18 penalty in the law is a matter on which there is

the issue 19 opinion and strong views in the public. And whenever

and 20 comes up and is discussed publicly, you get controversy

happening 21 different opinions. And you may be aware of that

out and 22 recently in Colorado, when a death sentence was carried

the 23 a man was put to death. And I suppose you saw some of

24 publicity about that.

25 A. Yes.

Juror No. 50 - Voir Dire

1 Q. And perhaps some of the editorials and opinion
columns --

2 A. I did not read the editorials on it, no.

3 Q. Okay. Well, you know, there are those who have a
view that

4 they seem to freely express that, you know, if you kill
5 somebody, you ought to be killed; that's it, life for
life.

6 And some people have a view that you should not through
the

7 court process take anyone's life; there should be no
death

8 penalty.

9 And then there is a lot in between. You
recognize

10 this range of opinion?

11 A. I do.

12 Q. And, of course, changes from time to time according
to the

13 majority as to what the law is in any given state. We
do have

14 some states in the United States where today there is
no death

15 penalty provided for by the law. And in other states
that have

16 the death penalty, there are ways in which it is
determined

17 that are different from what we're going to talk about.

But we

18 are now in the Federal Court, and we follow federal
statutes.

19 The crimes charged here are federal crimes. You
understand

20 that?

21 A. Yes.

22 Q. And the law that is applied here is what we have to
follow.

23 And, of course, we talk -- we asked these questions;
and as the

24 preface to these questions clearly indicates, that
should not

25 be considered by you as anybody thinking we're going to
have a

6158

Juror No. 50 - Voir Dire

1 conviction in this case.

2 A. Right.

3 Q. Because obviously, the reverse is true: We have to
assume

4 that the ultimate result of the trial will be a not
guilty

5 verdict; otherwise, we're not giving Mr. Nichols the
benefit of

6 the presumption of innocence. Agree?

7 A. I agree.

8 Q. But under federal law, the jury has a role to play
if there

is an 9 is a conviction in a case for which the death penalty
10 option.

bear with 11 Now, I want to just review with you -- and
you what 12 me while I explain this, because I want to review with
13 the law is and how this functions.

Court -- in 14 Ordinarily in cases that do not in Federal
jury 15 cases that do not involve this type of punishment, the
decision, not 16 simply comes in, hears the evidence and makes a
evidence. 17 guilty or guilty, according to the strength of the

end of 18 And if the decision is not guilty, obviously that's the
end of 19 the case. If the decision is guilty, that's still the
the 20 the case as far as the jury is concerned, because then
be 21 matter goes to the judge to decide what sentence should
person. 22 imposed for the particular crime and the particular

23 Follow me?

decision -- 24 A. You're saying it goes to the judge to make the

25 Q. Yes.

Juror No. 50 - Voir Dire

1 A. -- after the jury --

2 Q. After the jury returns a verdict of guilty, in
cases that

3 do not involve a life-or-death decision.

4 A. That do not --

5 Q. Let me give you an example. There is a robbery of
a

6 federally insured bank, so it's a federal crime. And
the

7 jury -- and there may be two or three people involved
in the

8 robbery. And the evidence at the trial may show that
one

9 person went into the bank with a gun and held people up
and

10 another person came by and scooped up the money and
another one

11 drove the car away with them. So there are three
people,

12 they're both -- they're all three convicted of the same
crime,

13 but they did different things.

14 And if those people were found guilty, either
at one

15 trial or three separate trials, depending upon how it
went,

16 then the jury is done with it, having found them guilty
of bank

17 robbery. And it's up to the judge to decide what

sentence

18 should be imposed on each one of them.

19 Now, before a judge makes a sentencing
decision, there

20 is a lot more to be heard and considered than simply
the crime.

21 What the jury heard is whether the evidence showed that
this

22 was done by these people with the required intention,
and so

23 forth.

24 Now, there is then without any jury
involvement a

25 sentencing hearing before the judge. At that hearing,
the

6160

Juror No. 50 - Voir Dire

1 judge will consider all that has been heard about the
crime,

2 not only at the trial but things after the trial that
have been

3 presented to the judge concerning the circumstances of
the

4 offense, what happened, were there people hurt in this,
what

5 happened to the bank's liquidity, you know, what are
the

6 consequences of the crime, and then also, what were the

7 relative roles of the people being sentenced? And then
just

each 8 about everything there is that can be learned about
Where 9 defendant: What's this person's life story, history?
10 was he or she born and raised? What were the family
11 circumstances? What happened then in his education and
12 training, and was there military service? Have there
been
13 know, just marriages and divorces, children, employment? You
14 about everything there is in the life story of each one
of us.

each person 15 Of course, what the law recognizes is that
so the 16 is unique, individual and different from others. And
is the 17 law doesn't say, well, because this is the crime, this
and all of 18 punishment. There is the crime plus the individual,
hears 19 that has to be factored in by the judge; and the judge
then 20 argument from the prosecution and defense lawyers and
whatever. 21 decides: For this crime, this defendant should do
a 22 And it can in those circumstances be probation, a fine,
course, as I 23 sentence to 10 years, 15 years, whatever. And of
crime, 24 mentioned, if more than one person was involved in the

25 the sentences may be different, so that one person
might get X

6161

Juror No. 50 – Voir Dire

1 number of years, another person get a lesser or greater
amount

2 of time, and so forth. You understand?

3 A. So everything that that person is can lead up to
what his

4 sentence may be.

5 Q. Yes. That's right.

6 A. Okay.

7 Q. In addition to the crime itself.

8 A. Right.

9 Q. I mean, all of these things come into
consideration.

10 Now, what the federal law is when there is a
crime

11 that involves the possible punishment of life in prison
with no

12 release, or death -- then we do it differently, because
the

13 Congress says a life-or-death decision should not be
made by

14 one judge. That kind of a decision should be made by
12

15 jurors. And it's a jury question and a jury decision.

16 Understand?

17 A. Yes.

18 Q. Now, first, of course, the jury hears the evidence
at the
19 trial, just like any other jury. And the question of
what may
20 the punishment be ultimately is not a consideration in
deciding
21 whether the evidence proves the crimes charged beyond a
22 reasonable doubt. It's just, you know, is there a
reasonable
23 doubt, or not? Obviously, if there is a reasonable
doubt, a
24 verdict of not guilty, case is over. If, however,
there is a
25 guilty verdict of such a crime, then the jury has
another

6162

Juror No. 50 - Voir Dire

1 function, and that's to decide the sentence.

2 But a jury doesn't decide this question of the
3 punishment of this person just on the basis of what was
heard
4 as evidence at the trial. The jury has to do what a
judge does
5 in other kinds of cases, and that is hear a lot more
about the
6 circumstances of the crime, what happened, who was
hurt, you
7 know, what are the consequences and what are the
relative roles

8 in the crime if more than one person was involved and
then all
9 that there is to know about the person being sentenced,
these
10 same kinds of things: the life story, the full history
of this
11 person, recognizing, as I said in talking about judge
12 sentences, that each of us is unique and individual
because of
13 the things that have happened to us and the things that
we've
14 done in our lives.

15 And that's done in the same way as the trial,
because
16 witnesses come in and testify about these matters.

Exhibits
17 are received, just like evidence is taken at a trial.

18 You know, what it amounts to is a second trial
after a
19 guilty verdict. And the purpose of the second trial is
to
20 decide what the sentence should be.

21 And again now, the only kind of crime that is
involved
22 in this process under federal law is the intentional
killing of
23 another person. I mean, it's a murder case. We don't
have the
24 death penalty for other kinds of cases. Understand?

And by
25 "we" --

Juror No. 50 - Voir Dire

1 A. Federal is only murder cases, death penalty.

2 Q. Yeah.

3 A. Yes.

4 Q. Okay? And that's it. We're limiting this to
federal law

5 because we're in Federal Court under federal law and
these are

6 federal charges.

7 So after this second trial is complete and all
of this

8 information has been provided, then the judge gives new

9 instructions to the jury. Now, these instructions
amount to

10 summarizing all that has been received in the evidence
in the

11 second trial, the information. And then it gets
divided up.

12 On the one side, the court would identify factors or

13 circumstances that could be considered as aggravating,
by which

14 we mean aggravating the punishment to suggest that
death is the

15 deserved punishment for this person on this crime and
then also

16 analyzing and summarizing the things that should be
considered

17 on the other side as mitigating. And by "mitigating,"

we mean

18 mitigating against the severe penalty of death and
suggesting

19 that life in prison is the appropriate sentence for
this

20 person. Understand?

21 A. Yes.

22 Q. And then the court's instructions can include:
Well, these

23 are some questions to ask yourselves about this; but
there is

24 no way to put this down as some kind of mathematical
equation

25 or formula or anything, because what the law asks is
that the

6164

Juror No. 50 - Voir Dire

1 jurors make an individual judgment here, individual to
this

2 defendant, recognizing that other persons -- if there
were

3 other persons involved in the crime -- might be
punished

4 differently, just as a judge does where there is more
than one

5 person involved. Understand that?

6 A. Yes.

7 Q. And that has to include -- and what would be there
under

these 8 mitigating circumstances or factors are really all of
what the 9 things about the defendant as a human being, because
you 10 law says is before you decide to take a person's life,
person and 11 ought to know what life you're taking: Who is this
12 what has this person's life been?

follow. 13 But then, as I say, there is no formula to

here 14 The jury has to talk about it and then make a judgment
a 15 that amounts to -- I guess you could best phrase it as

person 16 reasoned, rational moral judgment about whether another
17 should live or die because of a crime. Understand?

18 A. Yes.

19 Q. Any question about this explanation?

20 A. Not that I can think of at the present.

because the 21 Q. Okay. Well, feel free to ask if you have any,
position -- 22 question for you is that if you were put in that

we don't 23 and we're not talking about Terry Nichols now because
guilty in 24 have any evidence before us. If he were to be found

second 25 the case, we have no idea what this information at a

Juror No. 50 - Voir Dire

1 penalty phase hearing would be, so we can't talk about
any
2 individual circumstances relating to Mr. Nichols. We
have to
3 talk about it sort of in a very general way. But the
question
4 for you is if you sat on a jury, found a person guilty
of
5 murder, can you then hear all that is presented at the
6 sentencing phase trial or hearing and then make a
decision
7 based upon all that has been given to you, both
aggravating and
8 mitigating circumstances, and then decide whether the
person
9 found guilty should live or die for that crime?
10 A. You've asked me what I thought about earlier,
questions,
11 and that's the one that's gone over and over in my
mind, kept
12 me awake. And that's toughest. I don't know.
13 Q. Nobody suggests that it's an easy decision. Nobody
14 suggests that it's a comfortable one, because we know
it's
15 hard; and it is designedly so, because what's at stake?
You
16 know, it's obvious what's at stake.
17 A. I know.

of 18 Q. But it is a matter of having to be open in your --
19 course, there are 11 other people. There are 12 people
discuss it. I 20 involved in the process who can discuss it, will
21 mean, that's what they're expected to do.
22 A. And until I'm there and to find out and know what I
need to 23 know, I don't know that I could even make that decision
and 24 tell you today if I could or I couldn't.
25 Q. Well, I think what you have to tell us, though, is
whether

6166

Juror No. 50 - Voir Dire

and be 1 you're open-minded and be ready to follow instructions
your 2 open to the possibilities of the two options and base
but on 3 decision then not on some prejudgment about the case
4 just exactly what you've heard.
5 A. What I've heard.
6 Q. Yeah.
7 A. I feel that I could do that.
8 Q. Okay.
by your 9 A. But one thing inside says yes and, you know, only

we need 10 instruction or by the law and what we need -- and how

11 to decide it --

12 Q. Right.

in my 13 A. -- with input from others and keeping things clear

someone to 14 own mind -- I just really can't say that I could put

15 their death or not without hearing what happened.

being 16 Q. Yeah. Well, how can anybody really say without

asked is 17 confronted with it? But, you know, what you're being

basis of 18 can you accept the responsibility and decide on the

I say, 19 the law and the evidence presented to you, without, as

what a 20 having prejudged the matter one way or the other as to

21 sentence should be?

22 A. Well, I know I could go without prejudging.

23 Q. Okay.

law. 24 A. And I know I could go with the direction and the

understand the 25 Q. So is the hesitation based on, you know, you

6167

Juror No. 50 - Voir Dire

1 awesome-type decision it is and whether then if you
decided one

2 way or the other, you could live with the decision? Is
that

3 what you're struggling with?

4 A. Yes, I believe that is. To live with a decision of
putting

5 someone to their death.

6 Q. Or putting someone in prison for life and knowing
they'll

7 never get out and that's where they're going to die,
because

8 that's the other side of the decision, which is also --

9 A. Either one is no good.

10 Q. Yeah. I mean, you'd rather not have to make such a
11 decision at all --

12 A. Right.

13 Q. -- right? And we understand that. And in a way,
you know,

14 that's part of the policy of why we have juries do it,
because

15 there are 12 of them involved. But of course, each one
16 ultimately has to make the decision. And then it's a
matter of

17 whether all agreed. Understand?

18 A. Yes.

19 Q. Now, what's your answer to your ability be --

20 A. I don't think I could put someone to their --
either one.

21 Q. You don't think you could do either one?

22 A. I don't think -- well, in prison for life, but I
don't

23 think I could put someone to their death.

24 THE COURT: Okay. Well, do we have questions
here

25 from counsel?

6168

Juror No. 50 - Voir Dire

1 MS. WILKINSON: We don't have any questions,
your

2 Honor.

3 THE COURT: Mr. Tigar, do you?

4 VOIR DIRE EXAMINATION

5 BY MR. TIGAR:

6 Q. Good morning, ma'am.

7 A. Good morning.

8 Q. My name is Michael Tigar; and Ron Woods there and I
were

9 appointed by the United States district judge in
Oklahoma City

10 back in May of 1995 to represent Terry Nichols after
the

11 Government lawyers here charged him with being
responsible for

12 the April 19 bombing. And I know you talked a lot
about this

13 punishment issue, but I want to talk first about some
other

14 things if I could.

15 Would you turn to page 30 of your
questionnaire. And

16 you answered there Question 128 about the tax laws.
Right at

17 the top of the page.

18 A. Yes.

19 Q. You said, "Too much money is sometimes spent on
people not

20 earning it."

21 Could you share with me what -- what you were
thinking

22 there?

23 A. I'm thinking about people that milk the system for
-- for

24 funds --

25 Q. Okay.

6169

Juror No. 50 - Voir Dire

1 A. -- that they're not deserving of.

2 Q. Well, the reason I ask you is that Terry Nichols
didn't

3 have money to hire a lawyer, so the court appointed
lawyers for

4 him. Is that okay with you?

5 A. That's okay with me. There is money that needs to
be in

believe in 6 certain places for certain instances, but I don't

7 all the money that we give away.

Is 8 Q. Now, where you work -- you work the specialty side.

9 that right?

10 A. I work both.

11 Q. Oh, so you do the packages that go out and with --

12 A. I cut, I fillet, I chef.

13 Q. You bone, you roll, you tie, you -- everything.

14 A. I don't necessarily bone, but I tie.

15 Q. Okay. And then you also were active in the union.

16 Correct?

17 A. Correct.

in an 18 Q. And you said you're a union steward. Is that what

19 industrial union would be called a shop steward?

20 A. Yes.

and 21 Q. So you're responsible for listening to grievances

22 trying to get them processed through the system?

23 A. Yes.

a trial 24 Q. And you were on a grand jury but never on a jury in

25 court. Correct?

Juror No. 50 – Voir Dire

1 A. Correct.

2 Q. Okay. Well, trial jury -- the Judge has explained
the
3 role; and I gather you're comfortable with deciding
this
4 question of you could be a juror and listen to all the
evidence
5 and decide the question whether the Government had
proved
6 beyond a reasonable doubt; right?

7 A. Yes.

8 Q. Okay. And then it -- if there was a reasonable
doubt left
9 in your mind after the Government presented its
evidence, you
10 could return a verdict of not guilty, if that happened.

11 A. If that happened.

12 Q. Okay. Because, you see, the Government -- they
have a
13 theory of the case. They've charged Mr. Nichols. And
14 Mr. Nichols and Mr. Woods and I disagree with that
theory. So
15 as soon as they put on a witness, we will cross-examine
their
16 witnesses; and then even though we don't have to, when
they've
17 finished -- because they get first ups -- we will
present
18 witnesses of our own. And when that's all over, the
Judge will

the 19 instruct the jury on the legal principles: how to view
what the 20 evidence, what specific instructions on the witnesses,
jury 21 various elements or parts of the charges are. And the
jury 22 will make a decision. So we don't get to this -- the
and until 23 would never get to this question of punishment unless
guilty. 24 they found beyond a reasonable doubt that somebody was

Judge was 25 And then there is this part that I know the

6171

Juror No. 50 - Voir Dire

hardest 1 talking about with you, and that I guess you said the
2 questions you ever had to answer; right?

3 A. Yes.

federal 4 Q. This process -- it's very interesting that in the
states, the 5 courts, it isn't like that in some states. Some

But the 6 punishment question is always decided by the judge.

all 7 Congress decided that jurors would do it. People from

8 walks of life would come in. And when you say that the
9 questions are difficult, if you convicted someone of a

crime,

10 first degree murder, intentional murder, would you be
11 comfortable with listening to all of the evidence that
the
12 prosecution would present about the crime and that the
defense
13 would present about this individual human being, where
they
14 grew up, what their background was, what the role in
the
15 offense was, all of that?

16 A. Would I be comfortable with that?

17 Q. Yeah, listening to that.

18 A. Yes.

19 Q. Okay. And then the next part is that the lawyers
would
20 make arguments. They would say, well, this evidence,
this
21 information you heard -- that's aggravating. You know,
that
22 pushes -- that should push a person towards saying that
yes, a
23 punishment of death is appropriate here. The defense
lawyers
24 would say, well, look here at this evidence maybe about
the
25 role in the offense is different from the role somebody
else

Juror No. 50 – Voir Dire

1 played, or look at the way this person grew up, look at
the
2 influence on them.

3 And then the judge gives instructions. And I
think --

4 and he described what that process is. The Judge says,
Well,

5 these are some factors to consider -- it's not like,
you know,

6 a 2 on one side, 1 on the other side; it's not like a
7 scoreboard but some factors to consider -- and then
turns to

8 each juror and then says, well, for each individual
person, you

9 should deliberate with the other people, the other 11.
You

10 should talk it over with them, you should discuss with
them.

11 It's not an easy question. And then each person make a
12 rational moral response and choose based on the
evidence and
13 the law what they think the appropriate punishment is.

14 And I guess my question is do you feel that
you could

15 participate in that process and make a decision after
you had

16 heard everything one way or another?

17 A. I feel I could.

18 Q. You can do that? It would not be easy. I
recognize that.

19 But now that I've described the process, is that
something that
20 you feel you could participate in as a citizen called
for jury
21 service?
22 A. I could listen to both sides open-mindedly.
23 Q. And -- go ahead. I'm sorry. I don't want to cut
you off.
24 A. But I'm not sure that I could -- that I'd want to,
then,
25 say that I would want to put anyone in prison or send
them to

6173

Juror No. 50 - Voir Dire

1 their death or life. That -- when it comes down to
that -- in
2 the end, I don't know that I could.
3 Q. Okay. And so as you look at it today -- and I just
need
4 your best -- your feeling about this, because obviously
if
5 there is -- we don't think we're going to get there,
but if a
6 jury does have to make it, we can't call everybody back
in and
7 say, Well, now, can you participate in the second part?
Even
8 with the Judge's instructions and the guidance of the
law and
9 deliberating with your fellow jurors -- well, let me

ask: Do

10 your you think that given all of that that your best guess,

11 best estimate, is that you could participate in that?

12 A. Yes.

13 Q. Thank you very much. Thank you for sharing.

14 A. Whether I wanted to . . .

15 MR. TIGAR: I understand. We understand that
given

16 your choice, even with the union contract provision,
you

17 probably don't even want to be where you are right now.
I

18 mean, you know, we don't get volunteers for jury
service. You

19 know, everybody has got a job that they have to leave
to come

20 in and do this. And I -- as I say, I appreciate your

21 talking -- your talking it over with us. Thank you.

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Well, I'm not too clear as to how we're leaving it
here,

25 because I'm a little confused about your answers just
now. You

6174

Juror No. 50 - Voir Dire

1 know, this is hard.

to it, 2 A. I guess it's just hard -- it's just -- I can listen
3 but I can't say that I could --
4 Q. Decide it?
5 A. It would be -- have to be after I had heard
everything.
6 Q. That's right. That's what the law is. But what
we're
7 concerned about is your statements that you don't think
that
8 you could -- and this is what you said before, and you
can
9 change it, because I know you're struggling with this;
and I'm
10 not trying to push you onto one side or the other. But
the
11 people who serve on the jury, if there were to be a
guilty
12 verdict, are going to have to make a decision; and that
13 decision is going to have be a decision between life in
prison
14 without release and death. And they're going to have
to hear
15 it all, consider it all, discuss it all but finally
come back
16 into the courtroom with a decision. And each person on
that
17 jury has to make this decision for herself. You know,
you talk
18 it over with others, but you have to finally in your
own mind
19 decide: Should this person live or die, live in prison

or die?

20 Now, as hard as it is to answer that without
knowing

21 what's going to be presented, because we can't tell
you, what

22 you have to tell us is: Can you make that decision?

23 A. With proof of far beyond a reasonable doubt?

24 Q. This doesn't have anything to do with the proof of
beyond a

25 reasonable doubt.

6175

Juror No. 50 - Voir Dire

1 A. So I have to search my soul and say if I can put
someone in

2 prison for their life sentence or put them to their
death.

3 Q. That's right.

4 A. And I think I answered that. I thought I said no,
I

5 couldn't do either one.

6 Q. That's what I thought you said, too; but I wanted
to come

7 back to it to just make sure, because the way I
perceived it is

8 you're struggling with that in your mind as you get
these

9 questions, because this isn't something that you have
decided

10 before you came in.

11 A. No, I didn't decide.

12 Q. And, of course, you know, you have to forgive us
for
13 pushing you on this, but --

14 A. Well, now, fine; it's just that sitting here and
trying to
15 say if I could do that, until I would hear everything
beyond a
16 reasonable doubt, I can't say that I could do that.
I've never
17 been put in that position.

18 Q. Yeah. But you're in that position now and in terms
of
19 having to tell us whether you can make a decision to
put
20 another person in prison for the rest of his life or to
--

21 A. If I can't answer that, then what?

22 Q. Well, then I guess you can't serve on the jury.
That's
23 what we're talking about. Understand?

24 A. I understand.

25 Q. And your answer is the same; that you couldn't make
that

6176

Juror No. 50 - Voir Dire

1 decision?
2 A. Not without -- I can't give you that decision

without

3 hearing all the evidence.

4 Q. Well, these are two different things, see. This is
one of

5 those situations where language confuses, maybe.
Nobody wants

6 you to make a decision without hearing it all.

7 A. I understand that.

8 Q. That's what a jury has to do on this. But there
comes the

9 time, then, having heard it all, discussed it all, that
a jury

10 has to decide and each juror has to decide this
question and be

11 responsible for the decision for herself, because
that's what

12 seems to me to be what you're struggling with.

13 A. To be true to myself.

14 Q. Yes.

15 A. To listen and make the decision, I could make the
decision.

16 Q. You can?

17 A. But I may not like the decision. Maybe that's what
I'm

18 trying to say.

19 Q. I understand the difference.

20 A. Based on law and fact -- I may not like the
decision that I

21 have to make, but I could make a decision of guilty or
not

22 guilty --

23 Q. Yes.

24 A. -- death or life imprisonment. I may not like the
decision

25 I have to make. I may not like myself for making the
decision,

6177

Juror No. 50 - Voir Dire

1 but that decision is going to have to be made.

2 Q. And if it came to you to have to make it, you can
make it?

3 Is that what you're saying? As we've said, we don't
ask for

4 volunteers. This is a part of what people are asked to
do as

5 citizens of this country.

6 A. Well, I believe it's a civic duty that has to be
done, and

7 I believe that decision will be made and that the
search will

8 go on until you find the people that will make those
decisions.

9 Q. Don't worry about the search going on.

10 A. What I'm saying is I can do what you instruct me to
do. I

11 may not like the end result of what I may have to do
and I may

12 be pleased with the end result I have to do.

13 Q. And, you know, you're only going to have to make a

decision

14 like that if first there is a guilty verdict and then
secondly
15 if what you hear at the second stage persuades you one
way or
16 the other after talking it over with others.

17 A. Then I could do that.

18 THE COURT: Okay. All right. Thank you very
much.

19 Now, we can't tell you about our decision here
as to
20 whether you're going to serve on the jury. We have a
little
21 process that we go through here, you know; so please
bear with
22 us a while longer -- but it won't be much longer -- and
we'll
23 get back to you. You're excused now for the day.

24 JUROR: Thank you.

25 THE COURT: And we'll call you.

6178

1 JUROR: Okay.

2 THE COURT: Thank you, and please understand
we sort
3 of forced you into answering a lot of questions; and
it's
4 somewhat uncomfortable. And we know that; but, of
course,

5 that's part of what a citizen's duty is.

6 JUROR: I understand.

7 THE COURT: Thank you.

8 JUROR: Thank you.

9 THE COURT: You're excused for now.

10 (Juror out at 12:02 p.m.)

11 THE COURT: Counsel approach.

12 (At the bench:)

13 (Bench Conference 52B3 is not herein transcribed by
court
14 order. It is transcribed as a separate sealed
transcript.)

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1 (In open court:)

2 THE COURT: Counsel and I have been discussing
the
3 procedure here at the bench. That's what this bench
conference
4 has been about. And we have now completed the voir
dire of
5 enough jurors for us to be prepared to do the
peremptory
6 challenges; and we're going to recess till 10:30
tomorrow
7 morning and then hear peremptory challenges -- not hear
--
8 exercise them.

9 So the Court is in recess till 10:30 tomorrow.

10 (Recess at 12:10 p.m.)

11 * * * * *

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6188

Page	Item
	Jurors
	Juror No. 202
6034	Voir Dire Examination Continued by The Court
6046	Voir Dire Examination by Ms. Wilkinson
6052	Voir Dire Examination by Mr. Tigar
	Juror No. 431
6067	Voir Dire Examination by The Court
6093	Voir Dire Examination by Mr. Ryan
6099	Voir Dire Examination by Mr. Woods
	Juror No. 50
6129	Voir Dire Examination by The Court
	Voir Dire Examination by Mr. Tigar

6168

15 Voir Dire Examination by The Court

6173

16 * * * * *

17 REPORTERS' CERTIFICATE

18 We certify that the foregoing is a correct
transcript from

Dated 19 the record of proceedings in the above-entitled matter.

20 at Denver, Colorado, this 29th day of October, 1997.

21

22

23

Paul Zuckerman

24

Carpenter

25

Bonnie