

# Jury Selection Day 1

November 11, 1997

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 11, 1997, 9:00 A.M.

—oOo—

THE CLERK: Calling criminal case S-96-259, United States vs. Theodore Kaczynski.

**THE COURT:** Please state your appearances for the record.

**MR. CLEARY:** Robert Cleary, R. Steven Lapham, and Stephen Freccero for the Government. And Your Honor, today at counsel table we also have also FBI Special Agents Terry Turchie and Robert Rolfsen. **MS. CLARKE:** Judy Clarke, Quin Denvir, and Gary Sowards on behalf of Mr. Kaczynski. Mr. Kaczynski is present. We are joined by Denise De la Rue, who will be assisting us with the case.

**THE COURT:** Okay. Thank you.

I believe it was the day before yesterday we had a chambers conference on this matter. I directed my court reporter to file a portion of that chambers conference on the public document tomorrow. She's in court with me, so it's very difficult for her to do that with me today, and yesterday was a holiday. Although I'm not sure that a filing is absolutely required, I think that, since we know there's an interest in certain aspects of chambers conferences, that aspect that I think the public would be interested in, I'm going to file.

During the conference we covered some matters concerning my approach in communicating with the prospective jurors. As you know, I revisited the matters we covered, and I've indicated to you that my tentative approach – have you had an opportunity to consider that?

**MR. LAPHAM:** We have, Your Honor.

**MR. DENVIR:** We have, Your Honor.

**THE COURT:** Your response?

**MR. DENVIR:** It's fine with us, Your Honor.

**MR. LAPHAM:** For the Government also, Your Honor.

**THE COURT:** One decision I made at the chambers conference indicated that we would do any "for cause" challenge immediately after a prospective juror communicates to us in response to questions. But I have decided that that could interfere with the voir dire process. So I'm going to conduct such hearings on Fridays. I think that my deputy clerk communicated with you about that too, and I believe that you are in agreement, or if you're not in agreement, you know that's what I'm going to do.

**MR. DENVIR:** We are in agreement, Your Honor. Were those going to be at 1:00 o'clock? Was there a particular time?

**THE COURT:** It's going to be at 1:00 o'clock this Friday. We will give you a time for the following Friday later.

Are we ready to call in the prospective jurors?

**MR. CLEARY:** Yes, Your Honor.

**MR. DENVIR:** Yes, Your Honor.

**THE COURT:** Okay. I'd like my deputy clerk to please bring in the prospective jurors.

(Pause in the proceeding.)

(The prospective jurors entered the courtroom.)

**THE COURT:** You can – well, actually maybe you shouldn't be seated. Everyone else can be seated except the jurors. I'm going to have my deputy clerk to administer the oath to you.

(The prospective jurors were sworn.)

**THE COURT:** Good morning, and welcome to my courtroom. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is Shani Furstenau. She's my courtroom deputy clerk. Next to Ms. Furstenau on the platform below me is my certified shorthand reporter. Her name is Susan Vaughan.

I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you for your presence and for your anticipated cooperation. You are performing a function that is important to our legal system.

Under the principles of our justice system, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as yourselves making yourselves available for service in this case.

The voir dire is an essential process of making sure that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will first involve questioning prospective jurors individually, although initially I'm going to ask you some questions as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group. Those required to participate in the group questioning will receive notice of when that will occur. Our objective is to obtain a fair and impartial jury that will decide this case on the evidence that is presented to them in this courtroom and the law given to them by the Court.

I have decided to do individual voir dire in part because the parties have requested it and because there has been some publicity about this case. During the individual voir dire we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of case.

The defendant has been charged with transporting and mailing explosives with the intent to kill or injure others. The law provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of that offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence. This determination is made at the second phase of the trial referenced as the sentencing phase. If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please tell us.

I will give you an opportunity later to respond to that, because we do want to know whether there's anything about this case that would cause you to prefer to be a juror on another case.

The first part of this trial, which will be referred to as the guilt or not guilty phase, will occur like any other criminal trial in federal court. The Government will present its case first. The Government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict.

The charges are not evidence. They are simply accusations, nothing more. Mr. Kaczynski is presumed innocent and does not have to testify or present any evidence to prove his innocence. During the sentencing phase, additional evidence may be presented by the Government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist, and, if so, whether those aggravating factors sufficiently outweigh any mitigating factor or factors found to exist or the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

An aggravating factor is a fact or circumstance which might indicate or tend to indicate that the defendant should be sentenced to death. A mitigating factor is any aspect of a defendant's character or background, any circumstance of the offenses, or any other relevant fact or circumstance which might indicate or tend to indicate that the defendant should not be sentenced to death. At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty.

Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too. During this questioning, we will refer to you by either your randomly selected number as a juror or your juror number, rather than your name.

You are in the seat in which you were randomly selected. The juror closest to me on the left-hand side of the jury box, as you face it the way a lawyer would face it when communicating with jurors, is in seat number 1. I will refer to that juror as juror number 1. We count sequentially until we reach juror number 6. The reason why we are using numbers is because I decided to use an anonymous jury in this case, as I have stated in a previous communication to you.

Any problems with the Court's communication to this point?

**MR. CLEARY:** No, Your Honor.

**MR. DENVIR:** No, Your Honor.

**THE COURT:** Now, I will give you a jury instruction.

Does any prospective juror have any problems hearing me? Have you heard everything I've stated? If not, raise your hand.

Okay. There's no response other than a response that indicates I've been clearly heard.

I will now say a few things about your conduct as jurors. First, do not talk to each other about this case, about anyone who has anything to do with it, until after you have been excused from service on this case.

Second, do not talk with anyone else about this case, about anyone who has anything to do with it, until the trial has ended or you have been excused as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me.

Third, do not let anyone talk to you about the case, about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately.

Fourth, do not read any news stories or articles or listen to any radio or television reports about the case, about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the Government to permit such information to influence your decision in this case. It would be – it would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they have no opportunity to discuss.

For these reasons, you should avoid reading or listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition.

Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me.

The trial schedule I contemplate having will be from 8:00 a.m. to 1:00 o'clock p.m. Monday through Friday. Please raise your hand if this poses a problem.

There's no response.

I contemplate observing the holiday season as follows. We will not hold court December 24, 25 and 26; nor on January 1st and 2nd. Please raise your hand if this poses any problem.

There's no response.

Please raise your hand if you do not understand any of the following. Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges, without consideration of any penalty. Do you have a response? If you didn't understand that, raise your hand.

There's no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death will be among alternative sentences the jury would be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The Government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning

anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence less than death. Does any juror not understand that? If you do not understand it, please raise your hand.

There's no response.

Raise your hand if you're unable to reserve your judgment on the sentence you believe should be imposed until after you have heard all the mitigating and aggravating evidence.

There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions, whether you agree with that law or not. Do you have any belief that will interfere with your obligation to do this?

There's no response.

I'd indicated earlier that you may prefer to sit on a case other than this one. You will recall that I mentioned that during my opening statement to you. Does any juror have a problem sitting as a juror on this case? If so, indicate that fact by raising your hand. PROSPECTIVE JUROR NO. 2: (Raises hand.)

**THE COURT:** Okay. We will talk to you individually about that later.

I'm now going to have my staff – at this point we're going to commence individual voir dire. I'm going to have my staff – in just a moment. I want to tell you one other thing. When we conduct individual voir dire, if you conclude that any question unduly pries into your private affairs and you, therefore, wish to discuss it privately, let me know of that fact.

Before I excuse the jurors, do you have any problems in the manner in which the Court has instructed and communicated with the jury?

**MR. CLEARY:** No, Your Honor.

**MR. DENVIR:** No, Your Honor.

**THE COURT:** I'll now have my clerk escort all but the earliest randomly selected juror to another room.

(The excused jurors were escorted out of the courtroom.)

**THE COURT:** Let the record reflect that all but the juror in Seat 1 has exited the courtroom.

I'm now going to ask you some questions.

VOIR DIRE EXAMINATION BY THE COURT:

**Q.** Since you answered your jury questionnaire, have you heard or read about this case? Have you heard or read anything about this case?

**A.** I've read about it; yes.

**Q.** What have you read?

**A.** I think the last thing I remember is the defense didn't want to have psychiatric examination of the defendant.

(Discussion off the record between the clerk and the Court.) PROSPECTIVE JUROR NO. 1: (Accepts microphone.)

**THE COURT:** Q. You mentioned a psychiatric examination?

A. Yes. That's the last thing I remember reading about.

Q. Why didn't you avoid being exposed to that information?

A. Well, reading the paper, it was standing out there in bold letters, and I just read the first part of it there. It was the first thing said before I moved on to something else.

Q. Can you provide me a further explanation as to what you actually read when you looked at the paper?

A. Well, I think that was it. That was just the caption of it. I don't read everything in the newspaper. I read a caption to see if I'm going to be interested enough to read the rest of it. I read that and then moved on. And I don't remember the exact words but it was something to that effect.

Q. Okay. That indicates that perhaps I should create a newspaper for the jury to read. I'm serious, that I should maybe delete things from the paper. Because you're indicating that the headline itself, or the title of the article caught your attention?

A. Sure it did.

Q. You didn't read the article?

A. I didn't read the article. It was in the title itself, in the captions.

Q. Okay. Since you answered your jury questionnaire, have you discussed this case with anyone?

A. No, I haven't.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror in this case?

A. I don't think it would affect my opinion about it. MS. CLARKE: Your Honor, I'm having a little bit of difficulty hearing. PROSPECTIVE JUROR NO. 1: I'm sorry. I'll move the microphone.

**THE COURT:** Could you repeat your response. PROSPECTIVE JUROR NO. 1: I haven't heard or read anything that would affect my opinion. I really don't have an opinion. I have not gone to the trial yet.

**THE COURT:** Q. That is my next question. I'm going to ask it, nevertheless, to make sure. Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. I do not.

Q. Do I have your assurance that Mr. Kaczynski will start this trial from your perspective on a clean slate?

A. That's the way I'd like to start it if I were on trial.

Q. And will you provide Mr. Kaczynski that assurance?

A. Yes, I will.

Q. Does Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Yes.

Q. Do you consider yourself a proponent or opponent of the death penalty?

**A.** I haven't really formed an opinion on that. I figure – I understand the ethical considerations in that, but I figured I would deal with that when I came to it. I don't have an opinion about it right now.

**Q.** What are your views on the death penalty?

**A.** I have not made a decision on that. It's not a matter of religious consideration.

**THE COURT:** At this point, I'm going to allow the parties to conduct voir dire should that be your desire. Do you have follow-up questions? And if so, which side desires to commence first? **MS. CLARKE:** Your Honor, we'd be happy for the Government to go first.

**MR. LAPHAM:** That's fine, Your Honor.

**VOIR DIRE EXAMINATION BY MR. LAPHAM:**

**Q.** Sir, I understand that you don't have an opinion on the death penalty. Have you given it some thought over the years?

**A.** I have; yes.

**Q.** What kind of thinking have you devoted to it?

**A.** Well, just whether it's the right thing to do take another person's life regardless of what they've done. And I've not made any determination on it yet.

**Q.** And what kind of ethical considerations have you discussed? What's the argument back and forth that you've gone through?

**A.** Well, one would be, you know, should we do that? Taking somebody else's life. Should we try to rehabilitate him or just imprison him for the rest of their life?

**Q.** And have you ever reached a conclusion on that?

**A.** I have never reached a conclusion on that.

**Q.** What do you think about the possibility that we could put this person away for the rest of his life?

**A.** What do I think about putting him away for the rest of his life?

**Q.** Right.

**A.** Well, if he's found guilty, that's a consideration.

**Q.** You think that would be an adequate remedy for the problem?

**A.** Well, I don't know. I don't know what all the problem is, you see. Sometimes I would think maybe we shouldn't take another person's life, but other times you read of horrendous crimes, like a serial killer or something like that, and you become angered and you think yeah, we should execute them.

**Q.** Do you think you could be – you understand that if you're chosen as a juror in this case that you would have to make that determination?

**A.** I know that; yes.

**Q.** I'm sorry. Go ahead.

**A.** I would do it at that time.

**Q.** Do what at that time?

**A.** Make the decision then.

**Q.** Do you think you could make a decision to send a person to his death?

**A.** I think so, yes.



**Q.** And in making that decision you would be asked to consider certain factors.

**A.** Yes.

**Q.** You understand that?

**A.** Yes.

**Q.** That's what the judge just instructed you. Do you think you could fairly consider the factors put before you, impartially consider those factors in reaching a determination?

**A.** I think I would, yes.

**Q.** You indicated in your questionnaire that you disagree somewhat with the statement that anyone who plans and commits a murder should get the death penalty. Do you recall that answer?

**A.** No, I don't recall it.

**Q.** Is that your feeling, that you disagree somewhat with the proposition that anyone who plans and commits a murder should receive the death penalty?

**A.** Yes. I'm not sure what I was thinking when I answered that, if that's what I answered. I might have been thinking several things and right now they don't come to mind.

**Q.** So is this another example of you just going back and forth on whether or not you believe in the death penalty?

**A.** I suppose so.

**Q.** As a result of that, do you think you would hesitate to make that decision when you were actually – if you were actually called upon to do that?

**A.** You know, after it's all over I would weigh everything. And I would make the decision then.

**Q.** But, given your views, you've stated, at least in your questionnaire you've stated you somewhat disagree with the proposition that someone who commits a murder should get the death penalty. Do you think you would take that feeling with you into the jury room?

**A.** Well, I think what I was probably thinking at that time, thinking of an example of someone who killed someone in the heat of passion. That would weigh a lot in my decision. But more extreme murders would also weigh in the other way.

**Q.** Well, you also said that you disagree somewhat with the proposition that someone who commits more than one murder should also get the death penalty. Do you recall that answer?

**A.** No, I don't.

**Q.** Is that your feeling?

**A.** Yes.

**Q.** You disagree somewhat?

**A.** Somewhat, yes.

**Q.** With the idea that that person should get the death penalty? And also with terrorism, you disagreed somewhat with the proposition that a terrorist who commits a murder should get the death penalty?

A. Yes.

Q. Now, do you think when you went back, if you were called upon to go back in the jury room and consider whether the death penalty should apply in this case, you would take that hesitation with you?

A. No. I think if I were put to the task, I would have to take everything into consideration.

Q. And that's with both the aggravating and mitigating factors?

A. Yes.

Q. Do you think you would, because of your view that a life sentence is sufficient, that you might give more weight to mitigating factors; you might find a reason to spare the individual's life so you wouldn't have to make this decision?

A. I might, yes.

Q. Because you realize it's a big responsibility?

A. Yes.

Q. You indicated that religion would not play a part in your decision. You don't consider yourself a religious person?

A. I'm not a religious man; no.

Q. Are you a spiritual person?

A. I'm a spiritual person; yes.

Q. Could you explain that for me.

A. I'm a spiritual person in that I try to do right action, and it's based on my gut feelings about things at the time. That's the reason why I stated no opinion on a lot of things, because I reserve making any judgment on most things. But then there's going to be a time when I'll have to make an opinion, I'll have to make a judgment, and I'll consider everything then.

Q. Do you feel you have a right to make a judgment as to whether someone should live or die?

A. Well, if I'm on the jury I will.

Q. Because the law gives you that right?

A. Right.

Q. And you will follow that law?

A. I will; yes.

Q. Do you believe that your – I'll call it spiritualness – well, let me ask you if you can clarify that for me. Tell me what that means to you or where that springs from.

A. Well, that springs from pretty much from – my mother is an American Indian. She's not a religious person. And she always stressed doing the right action. You basically know right from wrong even when we're children, and you follow right actions just because of your own spiritual being.

Q. Are there any writings that you've read that help you out with this spiritual feeling that you have?

A. Yes, I have. I've read – I don't know if you're familiar with the Bhagavad Gita, Maharishi Mahesh Yogi. I read a lot of his writings and other yoga writings.

**Q.** So it's more of an Eastern philosophy?

**A.** Eastern philosophy; yes.

**Q.** Is there anything in that writing that addresses the death penalty or the right of one man to take another man's life?

**A.** Not that I know of.

**Q.** Have you searched for any guidance on that issue?

**A.** No, I have not.

**Q.** Do you think that that spiritual side of you would have any impact on you if you were called upon to deliberate on a person's life or death?

**A.** I don't think so. I think it's a matter of – now it's a matter of civic duty. I have to make a decision just based on my understanding of what took place.

**MR. LAPHAM:** Your Honor, may I have a moment?

**THE COURT:** If you take a moment beyond just the point on the clock, we'll not be on schedule.

**MR. LAPHAM:** I'll waive the moment.

**THE COURT:** Okay.

**MR. LAPHAM:** Thank you.

VOIR DIRE EXAMINATION BY MS. CLARKE:

**Q.** Morning.

**A.** Morning.

**Q.** It's a little nerve-racking to talk with a microphone in your face.

You mentioned to the judge that the last newspaper caption you read was about the defense objecting to the psychiatric exam?

**A.** Yes.

**Q.** What did you think about that when you heard that?

**A.** I didn't give it much more thought. I figured I would deal with that if I was selected.

**Q.** Figured I'll just put that paper down and go on?

**A.** I went on to the next column.

**Q.** Do you remember what articles before that you might have seen the headline of?

**A.** I don't recall offhand but I did read some prior to that.

**Q.** Can you think of maybe the content or just the focus of the articles?

**A.** Well, I think earlier was – well, of course, I think years back we read that this was occurring and they nicknamed the case the Unabomber. And other cases where I think later his cabin was found. And that was about it, I think.

**Q.** Do you recall why they nicknamed the case the Unabomber?

**A.** I think it had something to do with the university.

**Q.** So you read a little bit about the case as it went along?

**A.** Yes.

**Q.** All right. The judge asked you if you had formed any opinions about the case and you indicated that you really had not.

A. No, I hadn't, because it didn't concern me, see.

Q. It wasn't something you had to deal with?

A. No, it's not something I had to deal with. You read a lot of things going on in the newspaper, and I don't concern myself. I get an idea about them, but I go on to something else.

Q. When you filled out your questionnaire, and I guess you're a little disadvantaged because you don't have it, there was a question about what did you think when you got your jury summons and you answered something like not much. Have you had a chance to reflect on that any more?

A. No, because I figured I understand there was going to be quite a few people in the jury selection process and the chance of me getting selected was pretty slim.

Q. You didn't know you'd be number 1?

A. I didn't know. So I didn't put a lot of thinking into it because – why?

Q. Well, did you have any more thoughts when you realized you were number 1; it wasn't going to be number 352?

A. No, I figured I'd just deal with that when I got here.

Q. You also – there were a couple questions about what do you think about Mr. Kaczynski or about his family and you indicated that you had no opinion. Have you had any –

A. I don't know anything about them really.

Q. Other than what you may have read about in the paper?

A. Yes.

Q. So have you reflected on that any more?

A. No, I haven't. I figured the Court would give me enough, more than enough that I would reflect on.

Q. You indicated, you told us a little bit about reading some about the case. On the questionnaire there was a question about do you recall any events attributed to the Unabomber. Do you remember that question?

A. Yes, but they're vague. I can't remember too much about them. MS. CLARKE: Okay. I wonder if I might have just a minute, Your Honor. I think I'm well within some schedule here.

**THE COURT:** You are.

(Discussion off the record between Ms. Clarke, Mr. Denvir and Ms. Delarue.) MS. CLARKE: Just one quick little question and I'll save my time, Your Honor. Can I bank my time?

**THE COURT:** I hadn't thought about that. I'll take it under consideration. MS. CLARKE: Thank you, Your Honor.

MS. CLARKE. Q. You indicated you work for the federal government. Does that play into your thoughts at all that it's the federal government bringing the charges?

A. No. No, it don't. I work at a defense logistics agency. It's military supplies.

Q. You don't work for these guys over here, do you (indicating)?

A. No. MS. CLARKE: Thank you very much.

**THE COURT:** Okay. I would like my deputy clerk to please excuse juror number 1. Please take him to the waiting area and bring in juror number 2.

(Pause in the proceeding.)

(Prospective Juror No. 2 entered the courtroom.)

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Thank you for picking up the microphone. That will amplify your voice so everyone can hear you.

You raised your hand; you wanted to explain a response to something previously. Why don't you go ahead and explain your response.

**A.** Okay. About the death penalty? I don't feel I can sit here and say whether he should live or die. I can't do that. Not in my conscience and then go along with my life, feel like, you know, as if nothing had happened. I can't do that.

**Q.** Are you indicating by your response that you would be unable, no matter what the circumstances, to sign a death penalty warrant or to recommend the death penalty?

**A.** I couldn't do that; no.

**Q.** You heard me tell you about the process, about the sentencing phase, about the type of things that would be considered during the sentencing phase. I mentioned aggravating factor or factors, mitigating concerns. Are you indicating to me that regardless of what the aggravating factors might be, under no circumstances would you ever recommend the death penalty?

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

**THE COURT:** Like counsel to approach the bench. I'll need my reporter.

(The following discussion was had at the bench outside the hearing of the jury.)

**THE COURT:** You've heard juror number 2's responses. I want your input.

**MR. DENVIR:** She's given other answers in the – in her questionnaire that where she's very strong on the death penalty. I think we'd like to voir dire her further on that. She's someone who has kind of suggested she doesn't want to sit on this case, and I think she may be using it. We'd like to do further voir dire and see. We're not prepared to stipulate.

**THE COURT:** Okay. Thank you.

(The proceeding resumed as follows in the presence and hearing of the jury.)

**THE COURT:** Counsel, this proceeding is being audibly fed to another building. They're using the microphones as the method for feeding the other building. My deputy clerk had taken the microphones off your tables, but we just noticed that they're back on your tables. If you don't want – **MS. CLARKE:** I thought we had them off, Your Honor.

**THE COURT:** – the world to know what you're discussing, you should cut off the microphone.

(Pause in the proceeding.)

**THE COURT:** Please don't break it. I've just been informed there's no cutoff switch. **MS. CLARKE:** Well, there's a little switch to deceive you into thinking there's

a cutoff switch. THE CLERK: (Complies.) MS. CLARKE: Well, perhaps we could just give those people a little different view of what goes on in the courtroom.

VOIR DIRE EXAMINATION (Resumed) BY THE COURT:

Q. Since you answered your questionnaire, have you heard or read any things about this case?

A. A few things.

Q. What have you read or heard?

A. Just about the different times the alleged bombs were mailed and people were injured or whatever. That's about it. And heard about it, talk about it on the news.

Q. Why didn't you avoid being exposed to that information?

A. I just saw it when I turned on the TV to see the news or whatever. I didn't intentionally set out to listen to it.

Q. I'm asking you this question because I have to figure out how to treat the ultimate jurors that are selected to sit on this case. See, I sent the jurors a letter that instructed the jurors to avoid publicity concerning this case. Did you receive that letter?

A. Yes, I did.

Q. Why didn't you follow what I told you to do in the letter?

A. I didn't intentionally set out not to do – I mean, to do it. It was just there.

Q. Did you watch the whole program?

A. The news?

Q. The news. I didn't mean to ask that question. Did you watch all of the news concerning this case that was reported by that program?

A. No, not really. It was just on.

Q. What does that mean?

A. I just turned it on for the noise. I don't really sometimes sit there and listen and watch it through its whole entirety. I just turn it on for the noise.

Q. If you are selected as a juror in this case, I wouldn't want you to do that.

A. (No response.)

Q. What action can I take to avoid a jurist such as yourself doing what you did?

A. I don't understand what you're saying.

Q. Well, I don't expect my jurors to be listening to news about this case. I want my jurors to learn about this case in this courtroom. I don't want them exposed to news. I don't mean to cast any disparagements against those involved in the news, but it is possible that certain news media sources could have an objective that's different than my objective. It is possible that a news media source will see some value in reporting something about this case that I would prefer my jurors not hear. And so I wouldn't want you to listen to the news about this case, to read a newspaper about this case or magazine or anything else. If you are selected as a juror in this case, will you follow what I want you to do?

A. Yes, I would.

Q. How would you do that?

A. I wouldn't do it.

Q. And I don't even want you to do it for elevator music.

A. I understand that.

Q. Has any information – well, let me back up. Let me ask you this: Have you had any discussions with anyone about this case since I had you fill out the jury questionnaire?

A. No.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. I don't know. I don't know how to answer that.

Q. It's important to answer that. The parties are entitled to a fair and impartial jury. They hope I'm completely fair and impartial, and they want a juror to judge the facts of this case to have the same type of mind-set which they hope I have. And so you have to be able to answer that question.

A. I don't know how to answer that.

Q. What is your hesitation in answering it? What causes you pause?

A. I don't know. I just can't answer it.

Q. Why? The only way we can understand what you're thinking is that you tell us. I need to know why you can't answer that question.

A. I just don't know how to answer it.

Q. You don't think you can be fair and impartial?

A. (Shrugs shoulders.) I don't know.

Q. What is it that causes you not to know? What are the things you ponder when you have difficulty knowing?

A. If I knew that, I could tell you, but I can't.

**THE COURT:** The defense has follow-up questions. I think it was agreed we would alternate back and forth. Since the Government went first, it's now the defense's turn.

**MR. DENVIR:** Your Honor, could we approach the bench?

(The following discussion was had at the bench outside the hearing of the jury.)

**MR. DENVIR:** Your Honor, for the defense, in light of the Court's questions and the jurors answers, we'd be prepared to stipulate to discharge her for cause. **MR. FRECCERO:** We agree.

**THE COURT:** She will be excused for cause.

**MR. LAPHAM:** Your Honor, in the future do we need to do this at sidebar, or if we have a stipulation can we do it in open court?

**MR. DENVIR:** If we have a stipulation, we can just say it in court.

**THE COURT:** Well, it may embarrass the juror. However, what we're doing now at sidebar has to be made public if there's a request. Thank you.

(The proceeding resumed as follows in the presence and hearing of the jury.)

**THE COURT:** Okay. Thank you for your candidness. I'm going to excuse you to the waiting room. I'll have my deputy clerk to bring in juror number 3.

(Pause in the proceeding.)

(Prospective Juror No. 3 entered the courtroom.)

VOIR DIRE EXAMINATION BY THE COURT:

**Q.** Thank you for grabbing the microphone. That will amplify your voice so everyone can hear your responses.

Since you answered your jury questionnaire, have you heard or read anything about this case?

**A.** No.

**Q.** Since you answered your jury questionnaire, have you discussed this case with anyone?

**A.** No.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** No.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No.

**Q.** Do I have your assurance that if you sit as a juror in this case, Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes.

**Q.** Does Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or opponent of the death penalty?

**A.** Proponent.

**Q.** If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

**A.** No.

**THE COURT:** The parties may conduct follow-up questions at this point.

**MR. CLEARY:** The Government goes first this time? I'm not sure of the order.

**THE COURT:** Well, the defense decided not to take its turn last time. But I think if we're going to – it's up to the defense. I'm going to turn to the Government, if you would prefer that. **MS. CLARKE:** That's fine.

**THE COURT:** Okay. Go ahead.

**MR. CLEARY:** I have no questions, Your Honor.

**THE COURT:** Okay. **MS. CLARKE:** Well, that was easy. Can we bank his time?

**THE COURT:** I don't think that'll work.

VOIR DIRE EXAMINATION BY MS. CLARKE:

**Q.** Good morning.

**A.** Good morning.

**Q.** I think they need you to hold that up to the very most awkward position you can.



I notice – and I have to tell you I have a member of my family who writes about “lawyers” in quotes too – on one of the questions, when you’re asked about what do you think about prosecutors and what do you think of defense lawyers, or those who prosecute crime and those who defend those accused of a crime, and you said they’re in the category of what I would call – and you put in quotes “lawyers.”

A. Okay.

Q. What were you thinking?

A. Can you read back to me what I said? It’s been more than a day, and I can’t remember.

Q. Sure. MS. CLARKE: Actually, Your Honor, I wonder if we could provide the questionnaires to the jurors. PROSPECTIVE JUROR NO. 3: (Accepts document.)

THE COURT: Ms. Clarke, I can give you my copy, which is the official copy. MS. CLARKE: Would that be all right, Your Honor?

THE COURT: Yes. You can return it to me once the juror finished using it. I mean, you don’t have to return it after this question. After you have completed all of your questioning. PROSPECTIVE JUROR NO. 3: That answer was that I’m going to feel that the person that is a lawyer can work either side of the case, whichever side that they have decided to work on. It could be defense; it could be prosecution, whichever fits, whichever side they’re working on. MS. CLARKE: Q. You aren’t sort of feeling like my sister does, that there’s some negative connotations?

A. Well, I do feel that there are some negative connotations to the law practice; yes.

Q. Could you tell us about that.

A. Well, I think there are perceptions that certain things are done, maybe little nitpicking things that might tend to get some person maybe off of a – if they’re accused of some crime or maybe even guilty of something, that they may be – get off because of some maybe, you know, they talk about illegal search or that type of stuff, or not reading the person’s rights or those types of things. And I think sometimes those are used to the – to their – to defendants’ – to help them, I guess, get off, as opposed to looking at what maybe the overall situation is with whatever crime. And also, you know, looking at the family or whatever of the supposed victims.

Q. How does that make you feel about the system?

A. Well, I – the system, I think, generally works. I think you probably hear more about the times when it supposedly doesn’t work. Myself, I have never been involved in any type of things like that, so I can’t really say. I can only say what I’ve seen on TV or read in the newspapers.

Q. Have you read anything about this case? Well, before you got your summons about any of the things the lawyers were trying to do?

A. No.

Q. You don’t recall?

A. I haven't really paid much attention to what was going on. I've seen things previously in the paper and heard about things, but I haven't really read stuff particularly about the case.

Q. Could you tell us a little bit about what you can recall reading?

A. Just about how the arrest came about, you know, about the brother come forth.

Q. What do you remember about the arrest?

A. Well, that was in Montana and – I – really, no particulars of it.

Q. Well, I think you said in your questionnaire that you remember something about the cabin?

A. Right.

Q. Can you tell us what you remember about the cabin?

A. I just remember seeing it and thinking how difficult it must be for someone to live in that type of climate in that small – The description of the cabin was a plywood-type shack. And to live in the area where the temperatures are extreme in the wintertime would seem to be difficult. That's what I thought about that.

Q. So you had a thought process when you saw the picture of the cabin?

A. Yes.

Q. Do you remember reading about what the Government seized from the cabin?

A. Yeah. There were some – I do remember reading some information about the stuff that was taken out of the cabin.

Q. Can you recall it?

A. Well, there was the typewriter and, I guess, a copy of what they were saying was the manifesto and some books and some parts for making explosive devices.

Q. Did that give you any kind of sense of leaning one way or the other as to guilt or innocence?

A. Well, I think it might make you think a little bit there must be something going on here; there must be some reason there was all that stuff in the cabin.

Q. Can you remember anything else they took from the cabin?

A. Not really; no.

Q. Now, you also mentioned in your questionnaire you thought Mr. Kaczynski was very bright.

A. Well, if he is the person that was guilty of these crimes, and for that person to do this over that number of years without being apprehended, they have to know something about what's going on, about the system and about how things work to be able to stay free for that amount of time.

Q. Now, you've gotten some sense from what you've read about there's evidence of guilt in the cabin, you think that the person that did this was very bright, and I think you also mentioned in your questionnaire – I could help you; I think it's at around 109 – that Mr. Kaczynski, you believe, was socially deviant. Could you tell us what you meant by that.

A. Well, I guess that does go back to some of the things. I did read about some of the –

Q. Let me help you with that question. That's actually a little later. 121.

A. I didn't mean "deviant" in a bad term. I meant just a person that is not, you know, in the main part of society, that lives a hermit-type life.

Q. How do you think that what you know about what was found in the cabin and what your impressions of Mr. Kaczynski are, how do you think that might affect how you feel about the case?

A. I guess – I guess it's hard to say what you really might think about it. It probably does tend to lead towards some thought of, well, you know, maybe there is some reason why he was arrested because of this information that they found there. But I mean without really knowing about what was really there, how it was, you know, how they found everything, you know, you really can't say. Well, I mean, you really can't form an opinion.

Q. Well, you've got a cabin out in the wilderness, right?

A. Mm-hmm.

Q. And with somebody that lives alone and you find all this evidence in it, you might draw the conclusion he's guilty?

A. You could.

Q. Would you?

A. I wouldn't draw that conclusion; no.

Q. I understand that where you work is near the California Forestry or where that office used to be?

A. Correct.

Q. Were you at work the day of that bomb?

A. Yes. Yes, I was.

Q. And did you hear it?

A. I did not hear it. I did hear that – I didn't hear the explosion itself, but I mean, right, I mean, I guess as soon as it happened there was a lot of words that it did happen.

Q. Did you go around and see what was going on? Did you observe any of the scene?

A. I did observe the scene. I parked my car right by there, so I saw it when I left work at 3:00 o'clock.

Q. So you saw some of the activity?

A. Right.

Q. Certainly after the blast?

A. Right.

Q. Do you know any of the people that worked in the –

A. No.

Q. Have you talked to any of them, or any of your coworkers talked to any of them?

A. The people that worked in that –

Q. Yes.

A. No. Not that I – I haven't talked to anybody that has talked to somebody.

Q. Did you check out that day when you were around the scene with anyone about what had gone on?

A. There was – yes, asked questions as to what happened.

Q. What kind of stuff?

A. Well, not – I mean, no, I mean people within our building. Not actually people at that site. I did not talk to anybody at the site.

Q. You were parked nearby, so you were able to see what was going on?

A. Right.

Q. And you didn't talk to anybody there?

A. No. No.

Q. You talked to others in your office building?

A. Right.

Q. Had they talked to anybody at the scene?

A. No.

Q. Had they gone over there?

A. No.

Q. And described any of it to you?

A. No.

Q. Can you tell us what you saw there when you parked your car there?

A. Well, I saw the emergency vehicles were there and police yellow tape around the site, and really you could not see inside the building. You could just see the door on the side where I guess the bomb had gone off inside the building.

Q. Mm-hmm. So you could see some of the results of the blast?

A. No. We couldn't see the results. Just see the outside. The outside door was open. But you couldn't see in. I mean, driving past, I could not see anything inside the door.

Q. See any smoke?

A. No.

Q. See firemen going in and out?

A. Yes.

Q. See policemen going in and out?

A. Yes.

Q. See anybody talking to people talking about what was going on?

A. There was news there.

Q. Overhear any conversations about it?

A. No.

Q. What other Unabom events, as they call them, are you aware of?

A. Particular explosions, none, really.

Q. Are you –

A. I've heard about, read about them in the paper, the ones here in – well, in Sacramento and then the other ones that have been out of town where people have been injured. But particulars I don't recall.

**Q.** Now, if I could – do you think from maybe knowing about the scene and knowing what you know about the cabin, it would make you feel a little queasy that you might have a little bit of knowledge about the case that you'd rather not have as a juror? Do you think it may be easier for you to sit on another case than sit on one where you seem to have some depth of –

**A.** I think it might be easier to sit on another case, yes, where you haven't had some actual – where you've read about what's happened and you've seen an actual site where, you know, something might have happened, right.

**Q.** So you almost feel almost like a witness, like maybe it would be more comfortable for you to just tell the judge that you'd be better off being summoned somewhere else?

**A.** Well, I think it probably would be easier to sit on another case where I haven't seen something with that case; right.

**Q.** So it might be sort of hard for you now to set aside that, because you had a visual memory of what's going on then that might override what you might see now?

**A.** It could; yes.

**Q.** Would you on that basis ask the judge if you think you might be – should be excused? Would that make you feel more comfortable?

**A.** I would feel – I guess it probably would; yeah. Yeah. MS. CLARKE: Before going on to other questions, I wonder if that would be agreeable.

**MR. CLEARY:** Could I ask a few follow-up issues on the publicity issue, Your Honor.

**THE COURT:** You want him to do that? MS. CLARKE: That would be fine, and then I'll come back. It just sounded like Mr. – Number 3 would prefer to be excused.

**THE COURT:** I understand your position. MS. CLARKE: Thank you.

**MR. CLEARY:** Would it make more sense to have Ms. Clarke to finish their questioning in case there are other areas I need to follow up on?

**THE COURT:** Why don't you do your follow-up on publicity.

VOIR DIRE EXAMINATION BY

**MR. CLEARY:**

**Q.** I wanted to ask you some follow-up questions in light of the newspaper accounts I think you said you had read. And let's start with the search of the cabin. I believe you said you read some newspaper accounts about what supposedly was seized from the cabin; is that correct?

**A.** Right.

**Q.** Is your only source of knowledge of that what you read in the newspapers?

**A.** Yes.

**Q.** And what you saw on TV, no other?

**A.** Right.

**Q.** So other than media accounts, you don't have any firsthand accounts?

**A.** No.

**Q.** And you're aware media accounts, newspaper and television accounts are sometimes inaccurate; right?

A. Right.

Q. Would you be able to, if you sat as a juror, be able to listen to and follow only the evidence that was presented in the case, the evidence from witnesses and the documents that you may see during the course of the case and put aside whatever you may have heard or read in the newspaper or on TV?

A. Yes, I would.

Q. Would you be able to decide the case if you got asked the question of guilt or innocence and ultimately life or death? Would you be able to decide that solely on the evidence presented here in the case and instructions on the law that His Honor would give you?

A. I believe I could; yes.

Q. And I take it you would have no problem following Judge Burrell's instructions on the law; is that correct?

A. That's right.

Q. Let me talk to you a little bit about what you saw at the California Forestry Association. I gather there was a lot of commotion over there?

A. Correct.

Q. Did you go over and start inquiring as to what had happened and what the cause of the commotion was?

A. No.

Q. Did you see basically what any passerby would see going down the street?

A. Yes.

Q. Is the image that you saw similar to what you might have seen on TV that night or in the newspapers the next day?

A. Exactly the same.

Q. Did you get any additional information from being close to the location of CFA, the California Forestry Association, above and beyond what you might have seen on TV or in the newspapers?

A. No.

Q. And because of that, do you think that you're basically in the same position in terms of your attitudes and ability to judge this case fairly and solely on the evidence presented in the case? Are you basically in the same position as any other juror that might have read news accounts of the various Unabom events?

A. I believe I would be.

Q. You think you could put those aside and decide this case on the law and the evidence; correct?

A. Yes.

Q. Would you be comfortable doing that, deciding this case on the evidence presented and the law as His Honor gives it to you?

A. Yes.

MR. CLEARY: Thank you.

**THE COURT:** Go ahead, Ms. Clarke. You've exceeded the amount of time I've allotted each side, but I'm going to permit you to continue to probe. **MS. CLARKE:** Thank you, Your Honor. I was only concerned about focusing – I knew that Mr. – Number 3 had seen the scene, and I was concerned that would make him uncomfortable and I spent some time on that. If I might just follow up very quickly.

**VOIR DIRE EXAMINATION BY MS. CLARKE:**

**Q.** I know you have a sense that's maybe what other people saw or could have seen on TV, but you were actually there?

**A.** I drove past it. I parked my car just down the street from there. And when I was leaving work, I drive past that way to leave my office.

**Q.** Right. And do you get a feeling there's something different about actually being there than seeing it on TV and it's removed?

**A.** Well, it is – it's like attending a sports event. You were there, you saw what was going on even if you're on the outside.

**Q.** You get a little more of an emotional feeling?

**A.** Not so much that but you've kind of seen it firsthand.

**Q.** And I know Mr. Cleary asked you about whether you could set all that aside, but you would feel more comfortable, it sounds like to me, not dealing with that.

**A.** I don't have a problem with seeing it. That doesn't present a problem for me. I was thinking since I have seen something that was attributed to this case, that, you know, I don't think that would necessarily affect any decision I would make.

**Q.** But you'd feel more comfortable not having to deal with it?

**A.** I – (pause) not really. I mean, I guess the more comfortable part would be not so – I mean, seeing that doesn't cause me any problems, seeing that site. I would be – I don't know that, I guess, to be – I don't think I'd be more comfortable not having to do with it.

**Q.** What's the word then I'm struggling for, the word I get a sense you think it would be better not to have to serve on this case and maybe fulfill your duty?

**A.** I was thinking of seeing a site firsthand that has been attributed to the case.

**Q.** And you may or may not know whether that gets set aside?

**A.** Yes, that's probably a good way to put it, may or may not know.

**Q.** And because you may or may not know, it would probably be easier to say, "Let me off this case and I'll come back another day"?

**A.** That would probably be easiest to do. **MS. CLARKE:** I would request that request, Your Honor, before we go on to some questions about the death penalty.

**MR. CLEARY:** I'm not sure I know what the request is.

**THE COURT:** She has a "for cause" request. Granted. **MS. CLARKE:** The request is granted?

**THE COURT:** Yes.

**MR. CLEARY:** Your Honor, could we be heard at sidebar.

**THE COURT:** You can come to sidebar, and I'll make a statement on the record. (The following discussion was had at the bench outside the hearing of the jury.)

**THE COURT:** I'm going to talk.

Although I'm giving you an opportunity to appear at sidebar, I've granted the "for cause" request because I have credibility problems. I have to make credibility determinations, and I believe that based upon the answers given, I should excuse this juror for cause. You will be able to argue, but you're not going to convince me. I'm the one that has to make that determination.

Since we're talking about credibility determinations, the defense responded to something the Government filed indicating that the judge doesn't have to read the jury questionnaires. In my opinion, the judge has to read everything, and I have. I have read and analyzed the jury questionnaires, and I have made notes about everything I find significant in those questionnaires.

**MR. DENVIR:** (Nods head up and down.)

**THE COURT:** Because I know I'm the one that has to make credibility determinations. And I used the jury questionnaires as assistance in making those determinations. MS. CLARKE: Thank you for that. We just wanted you to have more rest than that would permit.

**THE COURT:** I cannot rest when I have a duty to do something.

**MR. CLEARY:** Can I follow up?

I accept your ruling. I am not arguing, but could you tell us the basis of the Court's ruling. Maybe I missed something he said.

**THE COURT:** I didn't find the juror to be candid when he responded to Ms. Clarke's question.

**MR. CLEARY:** On the publicity issue?

**THE COURT:** Well, in a broad sense I would have to say yes in the publicity issue. She asked him about evidence in this case and about his opinion based upon that evidence. And I didn't find his response to be straightforward. If I found his response to be straightforward, then I would consider the Government's position that perhaps he could set it aside. I didn't find it straightforward.

**MR. CLEARY:** Your Honor, when we started setting up this procedure today, the Court said we would do "for cause" challenges on Friday.

**THE COURT:** I know. Let me cut you off.

We're ahead of schedule. We're five minutes ahead of schedule. And because of that, there's no sense in dealing with this issue on Friday. You probably want to argue it further, but there's no sense in arguing something that you're not going to prevail on. I have made a credibility termination and I've ruled, and we need to move on.

**MR. CLEARY:** If the Court's comfortable that that's the proper standard. I'm just not sure – if you're comfortable with that I'll shut up, and we'll move on.

**THE COURT:** Let's move on.

(The proceeding resumed as follows in the presence and hearing of the jury.)

(Prospective juror No. 4 entered the courtroom.)

VOIR DIRE EXAMINATION BY THE COURT:



**Q.** Thank you for grabbing the microphone. That will amplify your voice and allow all concerned to hear your responses.

Since you answered your jury questionnaire, have you heard of or read about this case?

**A.** No.

**Q.** Since you answered your jury questionnaire have you discussed this case with anyone?

**A.** No.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** No, it hasn't.

**Q.** Can you be a fair and impartial juror in this case?

**A.** Yes, sir.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No, I have not.

**Q.** From your perspective, does Mr. Kaczynski start this trial on a clean slate?

**A.** Yes, sir.

**Q.** Does Mr. Kaczynski begin this trial in your eyes clothed with the presumption of innocence?

**A.** Could you repeat that.

**Q.** Does Mr. Kaczynski begin this trial in your eyes clothed with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** I think it depends on each different case. I really don't have an opinion on it. It would depend on each case to me.

**THE COURT:** Okay. At this point the parties may conduct follow-up questions.

**VOIR DIRE EXAMINATION BY MR. DENVIR:**

**Q.** Juror number 4 – I can't address you by your name; as you know, it's an anonymous jury – you understand the reason for the anonymous jury is not for concern for the jurors' safety but merely to protect your privacy. You understand that's the reason?

**A.** Yes.

**Q.** From what the Court advised you previously?

**A.** Yes.

**Q.** My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski, as you may have guessed from where I was sitting.

I'd like to ask you a little more about your opinions regarding the death penalty. Have you given any thought to the question of the death penalty over the years? Is it something you have thought about or talked about with people?

**A.** Not really. I haven't.

**Q.** It's just kind of never come up with other folks where anytime you had to address it as a subject matter?

**A.** That's not something I usually talk about.

**Q.** Okay. Do you have any kind of religious or spiritual or other background that would affect your opinion on the death penalty one way or another either as a general matter or in an individual case, anything like that?

**A.** No.

**Q.** Can you tell me, do you have any feelings as to why we should have a death penalty? There are certain reasons you think that you could advance you heard that you agree with why we should have a death penalty as a general matter?

**A.** I guess in certain cases, maybe. I don't know. I guess there should be in certain cases.

**Q.** And can you think of any particular reasons why we shouldn't have the death penalty, as a general matter, arguments against having any death penalty at all?

**A.** Yeah. It's kind of inhumane, in my opinion.

**Q.** Let me ask you, if I can –

**MR. DENVIR:** Your Honor, could I borrow your questionnaire again? We will bring extra copies.

**THE COURT:** Sure.

**MR. DENVIR:** (Accepts document.)

**MR. DENVIR:** **Q.** By the way, I notice one of the three people you admire most is Jeff George of the Raiders. Do you still feel that way after last month?

**A.** I didn't get to watch the case. They blacked it out.

**Q.** Things change.

**A.** Everybody has heroes.

**Q.** You were asked to express an opinion – this is on page 27, if you notice: "Anyone who plans and commits a murder should get the death penalty." And you said you agree somewhat to that?

**A.** Well, it depends on the certain cases, but if someone goes out and plans it out and it's all premeditated, maybe they do. I don't know.

**Q.** But if it's a planned premeditated murder do you feel that anyone who commits that type of murder should get the death penalty?

**A.** I think it would depend on the situation.

**Q.** You notice the next question beyond that was to ask your agreement with the statement that "anyone who deliberately murders two or more people should get the death penalty," and you said you agree as to that. Can you tell me a little more about your feelings as to that, your agreement on that?

**A.** I put down I "agree somewhat," because it's hard to tell, because every case is different. I'm not really getting any information on the case, so how can I make a decision?

**Q.** But do you feel the fact it's a planned murder and there were two people killed

A. Well, it's the same opinion on both of them. Doesn't matter how many. It was how it was planned out and why it was done.

Q. You need to know more about what type of planning occurred?

A. It's hard to make a decision just on one sentence that you gave me.

Q. No; I understand that. And what I'm trying to see if you can tell me a little more about what you were thinking when you said strongly agreed as to.

A. I put "agree somewhat." But it would depend on each case differently, having to hear everything to make an opinion. I really didn't know had a to put down. I just kind of went through it.

Q. These are hard questions sure?

A. It's hard to make a decision just on a one-line question. I'm the kind of person that really is not opinionated until they hear everything.

Q. Is that the same way when you said you kind of disagree somewhat that anyone who commits an act of terrorism should get the death penalty?

A. Yeah. I just put something down. Without listening to everything, it's hard to make a decision.

Q. All right. I want to see if you understand what the procedures could be in this case, and there first would be this, a penalty, a trial where it would be determined whether the Government had proved whether Mr. Kaczynski was guilty of the charges that were made against him. That's what they call a guilt or not guilty trial.

A. Right.

Q. That's just the question, did he commit those charges?

If you were to find, you were on the jury and you were to find that he had in fact committed those charges and you found that he in fact committed a particular charge, which is charged involving the death of Mr. Murray from the California Forestry Association, if you found that he had either mailed or transported an explosive with an intent to kill or injure and a death resulted, Mr. Murray's death – if you were to find beyond a reasonable doubt that he was guilty of that, there would be a separate phase of the trial. Do you understand that?

A. Yes.

Q. There would be a sentencing or penalty phase. And at that particular phase, the same jury would come back again after having already decided guilt would come back again and either side would present evidence on the question of penalty – you understand that – as to what the sentence would be?

A. Right.

Q. And at that point the jury would actually decide the penalty that would be administered, that would be imposed for the death of Mr. Murray. And that could be either the death penalty, it could be life imprisonment without possibility of release, so that if that sentence were imposed, Mr. Kaczynski could not, would never be released from prison, or it could be a lesser sentence. That's what the judge will tell you.

I know it's hard for you to judge this, but if you kind of go out that far, if you go out this far to the sentencing or penalty phase, would you be able to listen to the

evidence presented by both sides, look at the range of sentencing options which I've described to you and then give your best call to that?

A. Yes.

Q. You don't feel you're coming in with any preconception that if you were in that particular point where you had found in effect a premeditated planned killing by an explosive and would have heard maybe evidence of another killing that you would have any preconceived notion as to what the sentence should be?

A. No. I don't think I would.

Q. Let me ask you, if I can, a little more about what you heard about the case. As you know, there was a lot of publicity about the individual so-called Unabom incidents, where there were explosives or attempted explosives. Did you follow that at all as they occurred? They occurred over a long period of time.

A. Not really. I remember the picture when they were looking for the so-called Unabomber but I really don't follow the news. I follow the sports.

Q. You follow the sports more. How about after as you know Mr. Kaczynski did you see in the papers that he was arrested last year in about April of '96?

A. Yes, I saw he was arrested.

Q. And since his arrest have you followed a little more about the case since they now had a suspect involved?

A. No.

Q. Did you read some of the articles and listen to some of the news programs about him?

A. I just where they – something about a shed, was about it. I really don't follow the news. It's depressing.

Q. I know what you mean. Do you have any sense from what you have seen in the news – and by "news," I mean television, radio, magazines, anything – do you have any sense of what evidence the Government might have or might claim to have against Mr. Kaczynski on this charges?

A. No, I don't.

Q. You don't remember any details for instance of what may have been found in his cabin or his shack, as you called it?

A. No.

Q. So based on what you have read and heard about both the Unabom crimes and Mr. Kaczynski since his arrest, do you have any kind of preconceived notion about the case whether he's guilty or not?

A. No, I don't. I don't much of anything about it.

Q. Do you have any preconceived notion about the type of sentence that should be administered to whoever would be found guilty of the Unabom crimes over time?

A. No, I don't.

Q. Pretty open-minded on this?

A. Yeah.

Q. If you were sitting as a juror on this, would deal with it as you went along?

A. Sure.

MR. DENVIR: I have no other questions, Your Honor.

THE COURT: Okay. Government?

VOIR DIRE EXAMINATION BY MR. LAPHAM:

Q. Morning.

A. Morning.

Q. I guess from your perspective, even the sports news is pretty depressing these days?

A. When you're a Raider fan it is.

Q. I understand. Sir, I just want to ask you a few follow-up questions about statements you just made.

A. Sure.

Q. You indicated that you thought that the death penalty was inhumane; is that correct?

A. Sort of. It depends on each case. I mean, if, I guess if it's done sadistically maybe it's not, but I feel it might be.

Q. It might be inhumane?

A. Yeah.

Q. And what's your reasoning for that? Is that the way it might be carried out or something about the death penalty itself?

A. No. It depends on each case. If maybe a murder is committed sadistically, maybe they deserve it and maybe they don't. It's not my opinion to make, really.

Q. So it depends on the circumstances of the case?

A. Yes.

Q. And you would look at the circumstances of each case?

A. Yes.

Q. Now, one of the things you're going to be told in this case is that the death penalty may apply in some cases, and that's because the law says it can apply.

A. Right.

Q. And one thing you want to make sure, you don't have a different conception than the law has. You understand that?

A. Can you repeat that a different way.

Q. Let me rephrase that. So if the law says that it's the death penalty is appropriate in these cases over here –

A. Right.

Q. – but you disagree that it should be appropriate in some of those cases, do you think you'd be able to fairly and impartially consider the death penalty in that circumstance?

A. If the law said, "Yeah, that's the way it should be," I could make a decision with the law.

Q. So you'd be able to put your own thoughts and opinions aside?

A. Yeah.

**Q.** And perhaps apply the death penalty in a case that you personally felt it shouldn't be applied to?

**A.** (Pause.) I could make the decision.

**Q.** I know it's tough.

**A.** It is. It's –

**Q.** We just want your best answer. You said a minute ago that, for instance, in a particularly brutal crime – that may not be the word you used, a torture-type crime – you thought the death penalty might apply there?

**A.** And even in that it depends on what the circumstances are.

**Q.** So even in a case that extreme, you wouldn't be sure if the death penalty should apply?

**A.** Not until I heard everything, no.

**Q.** And in cases where there was –

**A.** Are you talking that you actually proved the person guilty now and now we're to the sentencing part?

**Q.** Yes. You understand we wouldn't consider whether to apply –

**A.** – unless they are proven. Okay.

**Q.** So would you feel that the death penalty is only appropriate in cases, extreme type cases where there's been a torture murder?

**A.** (Pause.) Can I answer "I'm not sure"?

**Q.** That's a fair answer. Do you think you might hesitate to apply the death penalty in cases that didn't fit your –

**A.** I might.

**Q.** Didn't fit your particular criteria?

**A.** I might hesitate, yeah.

**Q.** Because you also said that the death penalty should only apply in certain cases. And is this bound up with your notion that there's something kind of inhumane about the death penalty?

**A.** I don't know much about this case, but it's really a hard decision to make a decision on someone's life or death. And it would be hard for me to do that unless I was proven to them that they are guilty, I was told they're guilty and then make a decision after that. To assume that they're guilty now and make that decision now is hard to do.

**Q.** Would you want to be extra sure before you applied the death penalty?

**A.** I'm sure everybody would want to be positive.

**Q.** Well, the law doesn't require that you be positive. The law requires –

**A.** Beyond a reasonable doubt.

**Q.** – beyond a reasonable doubt. Do you think because the death penalty was involved you might apply a higher standard and want to be positive?

**A.** (Pause.) Well, unless they were proven, you definitely want evidence.

**Q.** But proven to what degree? Proven beyond a reasonable doubt?

**A.** Proven beyond a reasonable doubt.

**Q.** And if you weren't – if you were convinced beyond a reasonable doubt, do you think you could go ahead and apply the death penalty to that particular case?

**A.** Probably.

**Q.** There's a little hesitation?

**A.** Yeah. To me, it would hard to condemn someone to life, I mean, take their life from them. Yeah, it would be a hard thing to do. But if there was evidence and they deserved it, maybe I could. It would be a tough decision.

**Q.** You think that's a responsibility you could handle?

**A.** If I had to.

**Q.** Would you have any hesitation talking to friends and colleagues afterwards telling them that you had voted to put someone to death?

**A.** (Pause.) If I did do that, I don't know if I'd want to talk about it.

**Q.** So would there be some feeling on your part that, having condemned this man to death, that you would in some sense have participated in an inhumane process?

**A.** I would feel bad if that's what I had to do. But I think I could make that decision if the time come.

**Q.** You understand that if you were selected as a juror, you would be asked to take an oath in which you would swear to apply the law?

**A.** Yes.

**Q.** And that might involve you in what you have called an inhumane process?

**A.** (Pause.) It's – all depends on the circumstance in the case. Like I said, it would be a hard thing to do to commit someone to death, but I guess if they deserve it I could do it. Does that answer your question?

**Q.** I'm not sure if it does. You still sound a little hesitant. And you understand, all we're asking for is to try to find out whether or not that hesitation would be with you in the jury room in your deliberations.

**A.** Well, after seeing the case I don't think it would be. I think you'd know whether you should or not. It's much easier to listen to the whole story and make a decision than make a decision on a book's cover. But I think I could if I had to; yes.

**MR. LAPHAM:** All right. I have nothing further.

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** You heard me explain the sentencing phase process earlier, and Mr. Denvir also explained that process to you. And he mentioned – I think he explained it to you. Maybe he explained it to another juror. Did he explain it to you?

**A.** Yes.

**Q.** The process involves consideration of aggravating factors and mitigating evidence, and I will be instructing you on the law. Is there anything about your beliefs concerning the death penalty that causes you pause in applying the facts to the law that I will give you at the conclusion of this case?

**A.** I don't think my beliefs would stop me from making a decision if I needed to.

**Q.** If this case reaches the sentencing phase, would you automatically vote against recommending the death penalty regardless of the absence of mitigating evidence and the presence of aggravating evidence?

**A.** No.

**THE COURT:** Have my questions prompted further questions by either side?

**MR. DENVIR:** No, Your Honor.

**MR. LAPHAM:** No, Your Honor.

**THE COURT:** Okay. Thank you. We will excuse you to the waiting room and we will bring you in another juror.

Do we need to take a break? Maybe we should do that. We will be in recess until 11:00 o'clock.

(A recess was taken.)

—oOo— **THE CLERK:** Court is now in session.

**THE COURT:** Let the record reflect all parties are present. My deputy clerk is bringing in juror number 5.

That's fine, sir. There's a microphone. Thank you for getting it. You can use that. That will amplify your voice. If you're having problems hearing the – PROSPECTIVE JUROR NO. 5: No.

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Since you answered your jury questionnaire, have you heard or read about this case?

**A.** No, sir.

**Q.** Since you answered your jury questionnaire, have you discussed this case with anyone?

**A.** No.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** I don't believe so.

**Q.** Okay. Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** I do not.

**Q.** Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes, sir.

**Q.** Does Mr. Kaczynski begin this trial in your eyes, quote, with a presumption of innocence?

**A.** Yes, sir.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** An opponent.

**Q.** Can you explain your response.

**A.** Well, I have considered the question over quite a few years, and it is my conviction that the death penalty did not serve a useful purpose in the judicial system; that



rather than being a punishment, it's a reaction to revenge. I have seen or heard of no anecdotal evidence that it has done what its proponents seem to feel it does, and that is to reduce the inclination to commit a murder. I have tried to consider the subject from all directions, and I've ended up with the same conclusion. I do not feel that it serves a good purpose in the judicial system.

**Q.** Would you automatically vote against the death penalty in any case where it is sought without regard to the facts and circumstances of the case?

**A.** No, I would not.

**Q.** You're indicating that there are cases where you may, in fact, vote in favor of the death penalty?

**A.** I would vote in favor of the death penalty because it's a punishment prescribed by law to be applied in the proper manner.

I know that may seem a little contrary, but I feel that though I may not feel the death penalty has a rightful purpose, it is the law of the land and therefore has to be applied in a case where it appears to be the proper punishment.

**Q.** What I discern, based upon what you just stated, is that you related your personal views about the death penalty; is that correct?

**A.** That's correct.

**Q.** Are you indicating to me that despite your personal views, you will follow the law that I instruct you on in this case?

**A.** Yes, sir.

**Q.** If this case reaches the sentencing phase, would you automatically vote against recommending the death penalty regardless of the absence of mitigating evidence and presence of aggravating evidence?

**A.** Would you repeat the question, please.

**Q.** If this case reaches the sentencing phase, would you automatically vote against recommending the death penalty regardless of the absence of mitigating evidence and presence of aggravating evidence?

**A.** No, I would not.

**THE COURT:** The parties may question the juror.

**VOIR DIRE EXAMINATION BY MR. FRECCERO:**

**Q.** Good morning, sir.

**A.** Good morning.

**Q.** Just one brief matter I wanted to follow up on. In your questionnaire, you remember filling out that questionnaire, the very last question said is there any matter not covered by this questionnaire that should be brought to the attention of the Court because it would affect your ability to be fair and impartial. You answered "yes" to that. You said something to the effect of it might be that you have a problem following the – following along.

If this case is a long case, is that going to affect your ability at all to serve?

**A.** It would to a degree. I don't have quite the retentive memory that I had when I was younger.

Q. So if this case goes a matter of months, is there a chance or a probability that you might have a difficult time assessing what has gone on a couple months earlier?

A. May I ask a question?

Q. Sure.

A. During the course of the trial, will we be allowed to take notes in writing?

Q. Yes.

A. I think that might solve that problem.

Q. If you are instructed later, however, that the notes would just be used for your aid and not as a record of what took place, would anything about the length of the trial be difficult for you to serve?

A. I don't believe so.

Q. Okay. Sir, going through your questionnaire I noted a number of things. For instance, you're a financial secretary for your church; is that correct?

A. Yes.

Q. It appears that your involvement with your church and your religion is an important part of your life; is that true?

A. That's very true.

Q. And you also note there that your religion counsels against the death penalty; is that fair?

A. I did not make that statement.

Q. Okay. I'm sorry. Does your religion impact your view at all upon the death penalty?

A. In a minor manner. It's – I would not say it's my primary reason for having the attitudes that I do.

Q. But it does at some level influence you?

A. Yes.

Q. Let me ask you. Given your own personal view about the death penalty, do you think in a case where you were called to serve as a juror, and assuming guilt was established, there was a conviction, and you went onto the sentencing phase, do you think there's – because of your views on the death penalty, you might hold the government at some level – to some higher standard than you would otherwise because you have these strong views about the death penalty?

A. That's a difficult question.

Q. Yeah. I realize that. That's what this process is about.

A. I understand.

Q. We're just trying to get a sense of that.

A. I don't believe that I would.

Q. Okay. Do you think – and we all recognize these are very difficult questions to pose to you. But try and imagine a circumstance in which you come to the conclusion based on the law that the Court gives you that the punishment, the death penalty in this case, that that would just violate your own personal conscious. Are you going to be able to, nonetheless, follow the law that the judge gives you?

A. At this point in time, I believe I could.

Q. Okay. Would you hesitate to do so? In other words, would your own personal opinion, would that affect you; you know, make you hesitate, slow you down, reconsider in some way that it wouldn't if you didn't hold that opinion? In some way?

A. Well, I can see that it would require me to think about it more deeply, and to feel in my own mind that beyond a shadow of a doubt the crime had been proven. I don't believe that it would cause me to not render a right decision. It would cause me to think about it more.

Q. Okay. And when you say a right decision, would that be a decision that's right by you, or right by the law that's given to you?

A. I knew you were going to nail me on that.

Q. We're sneaky people.

A. I wasn't going to say that. When I say right decision, I mean a decision based on the evidence that predominantly proves the guilt, and in accordance with what the law stipulates in such a circumstance.

Q. Okay. When we're talking about punishment, when we're talking about the death penalty, as the judge instructed you, we're talking about a separate phase after the issue. But before I –

Let me ask you. Going back when you're actually there to consider whether the charges are proven by the government, whether Mr. Kaczynski is to be found guilty or not guilty, in the back of your mind does knowing that potentially this is a death penalty case, is that in any way going to influence how you look at the evidence?

A. I would say that it would, but I think only in a positive way, that I would, again, have to consider it very carefully before I arrived at a decision.

Q. Okay. Would you come into it and say well, since I know this is potentially a death penalty case, the government's got to do a bit more than you would expect of it in some other case?

A. Well, since I have no idea how the government should come into any case, this is my – only my second experience in this situation, I don't believe I would be putting the government to any higher standard. I can only deal with the evidence as I hear it and as it puts in perspective its importance.

Q. All right. If you were sworn in as a juror and were off to this second phase, you're going to hear all kinds of instructions from the Court about different factors to consider. If there's some factor that you feel is really important that the law doesn't address, are you going to be able to put that aside?

A. That's kind of like how long is a piece of string. MS. CLARKE: Your Honor, that may also be an improper statement of the law.

**THE COURT:** Why don't you rephrase that question.

Q. BY MR. FRECCERO: The basic issue that we're talking about, and all of us here are very respectful of your opinions, we're just trying to get a sense of – because it's a difficult job to separate what we feel personally from strict legal instructions. And the issue would be:

Do you feel confident that when that time comes that you could say to yourself all I can consider is the evidence that's been presented to me and the law as given by the Court, so that whatever my other personal opinions are, I have to put them aside and just follow those instructions and consider that evidence?

Do you feel confident, given the strong views you've expressed, and given the importance of the decision, that you could do that?

A. Well, the only way I could answer that is at this point in time, I feel confident I can do that. Of course, the proof of the situation is what occurs at the time it occurs. But I feel I have a strong enough sense of the law having priority that I could do that.

Q. Okay. And if you were sworn in as a juror, you realize that that's the time that you got to – you got to make a commitment at that point that you would be willing to do that?

A. You're having a difficult time asking me these questions. And I'm going to have a difficult time arriving at my state of mind at the time that you do this.

Q. They are very difficult questions, and we all appreciate that.

Do you think that, given your strong feelings, your view on the death penalty, would you personally prefer to serve in some other type of case where you didn't have to face this issue?

A. Yes, I would. But I'd like very much to be on this jury.

**THE COURT:** I let you exceed your allotted time by a couple minutes. MR. FRECCERO: Thank you, sir. PROSPECTIVE JUROR NO 5: He had a tough job on his hands

VOIR DIRE EXAMINATION BY MS. CLARKE:

Q. Mr. Number 4 –

A. Number 5.

Q. I can't count very well. I have to say I enjoyed your response to what did you think when you got your jury summons and you put "oh, no."

A. Especially two weeks later I got one from the County.

Q. Did you repeat that same answer?

A. No, I didn't.

Q. What were you thinking when you wrote "oh, no," or are you – I guess I could guess what you were thinking.

A. My wife called me a poorly paid comedian. But I did feel that way. "Oh, no, what's this?"

Q. Then you kind of worked through that?

A. I did.

Q. You indicated that you had a casual relationship years ago, I believe, with somebody that worked for the FBI. Do you think that will play into this case at all?

A. No. It was very casual.

Q. And it's been some time ago?

A. Well, roughly about 25 years ago. He was a father of one of the kids in my Cub Scout troop.

**Q.** Okay. That was some time ago?

**A.** Quite some time ago.

**Q.** Your oldest son, I think you said, worked on guided explosives?

**A.** Yes.

**Q.** Could you tell us little bit about that?

**A.** Well, he works for a concern called OEA that has a factory out on Rio Vista Highway, and they manufacture items using direct explosives. They make components for air bags, for ejected bolts on rocketry and that type of thing. He works in their micronizing department where they grind and blend materials.

**Q.** So you don't really think that will have any effect?

**A.** No. The explosive connection, I hadn't thought about that.

**Q.** Right. I just wanted to find out.

Can I have just one moment, Your Honor?

**THE COURT:** Yes.

**MR. DENVIR:** Thank you very much.

**THE COURT:** I'll have my deputy clerk escort you back to the waiting room and bring in number 6.

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Thank you for picking up the microphone. That's there to amplify your voice so everyone can hear your responses.

Since you answered your juror questionnaire, have you heard or read about this case?

**A.** Yes.

**Q.** What have you read or heard?

**A.** Just articles in the Modesto Bee.

**Q.** Tell me about those articles.

**A.** Some stating evidence that was shown at the cabin, and written evidence that was relating to the two or three mail bombs, and that Mr. Kaczynski was negotiating maybe to plea bargain. And that's about it.

**Q.** Okay. I don't mean to embarrass you with this next question, but I have to ask this next question because I have a duty to ensure that the information jurors receive is information they receive in this courtroom.

Why didn't you avoid being exposed to the information that you gained from reading the Modesto Bee?

**A.** I think partially because of my curiosity. Unfortunately, I'm consider being inquisitive. And the opportunity – it was so easy for me not to.

**Q.** In one of my communications to prospective jurors before I summoned a number of prospective jurors to Cal Expo, I said, among other things, that jurors should avoid publicity in the case. And since I said so much in that summons, it's possible you overlooked that. But did you see that?

**A.** Yes, I saw it.

**Q.** Why didn't you follow what I asked you to do?

A. I would say I – I guess I was – because I was asked to be a jury member, I thought this would give me some insight.

Q. We don't want you to have insight.

A. I understand.

Q. Okay. Because the insight you're referencing may not be accurate.

A. I understand.

Q. It may provide you with information that other jurors don't have. It's not information that's been tested by the parties in this litigation forum, inside my courtroom. It is of paramount importance that jurors involved in this case avoid publicity.

Will you do that if you are selected as a juror in this case?

A. Yes.

Q. Is there anything I can do as a judge to assist you in that effort?

A. I think you're doing everything you possibly can, except for holding my hand. I would have to say that I would obey your instructions.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No, it hasn't.

Q. Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. I would say that it's kind of – it's kind of hard not to have, but I'm – I feel I'm open-minded and will base anything I hear on what's to be considered.

Q. What opinion have you formed or what preconceived notion do you have as to Mr. Kaczynski's guilt or innocence?

A. I feel that he's guilty.

Q. How strongly are you committed to that opinion?

A. I would say 60/40.

Q. I imagine that the 60 percent doesn't favor Mr. Kaczynski?

A. Correct.

Q. Could you set that opinion aside if you were selected as a juror and render your decision based solely on the evidence presented at this trial and on the instructions I will give you at the end of the trial?

A. I can – yes, I can do that. Did I hear you correctly?

Q. I'll repeat the question.

A. Please.

Q. Could you set that opinion aside if you were –

A. Yes.

Q. – selected as a juror –

A. Yes, Your Honor.

Q. – and render your decision based solely on the evidence presented at this trial and the instructions I will give you at the end of the trial?

A. Yes.

**Q.** If you are selected as a juror in this case, do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes.

**Q.** Does Mr. Kaczynski begin this trial in your eyes cloaked with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** I would say proponent.

**Q.** Can you explain your response?

**A.** I – the death penalty is something that I think we should have. I support the death penalty.

**Q.** If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

**A.** No, I wouldn't automatically.

**THE COURT:** The parties may conduct follow-up.

**VOIR DIRE EXAMINATION BY MR. DENVIR:**

**Q.** Hello, (Redacted.), I'm Quin Denvir. I'm one of the attorneys for Mr. Kaczynski, and I would like to ask you a few follow-up questions if I can.

You live in Ripon; is that right?

**A.** Yes, sir.

**Q.** How far is that from Sacramento?

**A.** Approximately 64 miles.

**Q.** Okay. And you indicated that you have some problem with your vision?

**A.** Yes, sir.

**Q.** Can you tell us a little more about what the nature of that is.

**A.** Okay. I have diabetic retinopathy and a loss of sight in my right eye. And I have cataracts on the left eye. So any transporting back and forth is difficult. My wife is doing all the driving now. I would not attempt to drive in the evening because at night the vision is even worse.

**Q.** You presently have a DMV driver's license?

**A.** Yes.

**Q.** Are there restrictions on it as far as driving?

**A.** It's been renewed, but I go in next year for my new license, and it just says I must wear glasses. For safety reasons, I leave the driving to my wife.

**Q.** So you don't drive at all?

**A.** Around town or in the day I'll do some driving, but I feel it's safer not to drive, especially with the reflectors on the highway missing, or if I go from light to dark, into a tunnel and back out again, then it's – my eyes do not react as fast as they used to.

**Q.** The reason I'm asking you this – I don't mean to intrude – but the judge told that you tentatively the trial would be from 8:00 to 1:00 five days a week, but it's

possible or maybe likely that the jurors would have to assemble at 7:00 o'clock in the morning somewhere in the Sacramento area.

**A.** Yes.

**Q.** How long does it take you to – I guess your wife – to drive from Ripon down here?

**A.** It's about an hour and five minutes depending on traffic.

**Q.** And I take it if you had to be here at 7:00 o'clock, she would have to drive you?

**A.** Yes. I checked into Smart Transit, and they come into Sacramento downtown, but I guess they get shifts from 7:00 to 4:00, or something like that.

**Q.** Would your wife be available, if the trial were to take from two to three months, to drive you in everyday and wait for you and take you back; is that a reasonable thing or is that a hardship upon you?

**A.** That would be a hardship.

**Q.** Do you think because of that it would be hard for to you sit as a juror in the case; I mean, if you had to worry about bringing your wife down every morning and have her wait around everyday to take you back?

**A.** Well, unless there was an alternative situation, it definitely would work a hardship.

**MR. DENVIR:** Can I speak to counsel for one moment?

Your Honor, Mr. Cleary wanted to discuss with (Redacted.) maybe a little more about whether this would present a hardship for him to sit as a juror.

**THE COURT:** Fine.

**MR. DENVIR:** And I was going to reserve any other questioning.

**THE COURT:** I understand.

VOIR DIRE EXAMINATION BY

**MR. CLEARY:**

**Q.** I wanted to ask you a couple follow-up questions on the difficulties with your wife driving you to court each day.

Is there any other alternative means of transportation that you have available to you?

**A.** I was – like I say, I checked out Smart, which is commuting from at least Stockton to here, and there's two trips, from what I understand, one in the morning and one in the evening. That's the only source I can find.

**Q.** Is that a bus?

**A.** That's a bus.

**Q.** And when you say two times a day, when would be the time in the morning that you would come down?

**A.** I believe it would get here about 7:00 o'clock in the morning, 7:00, 7:30.

**Q.** And so that wouldn't be too difficult for you to get here to start at 7:00 o'clock, right?



A. It's – it comes to the downtown area. I guess it's designed for state employees. I never ridden it. We would have to drive to Stockton from Ripon and park at the Great Western Motel in order to get the bus.

Q. How long of a drive would that be to get the bus?

A. Half hour at least.

Q. So that part doesn't sound like it's that big of a difficulty for you, am I correct in saying that?

A. It's not difficult. It's inconvenient, but it's –

Q. How –

A. You do what you have to do.

Q. How would you get home at the end of the day, which would be, as his Honor told you, 1:00 o'clock in the afternoon?

A. Then that would be fine. Either I would have the car there, or I would have my wife pick me up.

Q. At the bus station in Stockton?

A. Yes.

Q. How would you get from Sacramento to Stockton at the end of the court day, take the bus back?

A. Have to take the bus back.

Q. What time would that be?

A. 4:30.

Q. So you would have to hang around for about three and a half hours.

A. Yes.

Q. Would you be willing to do that in order to fulfill your jury duty service here?

A. I would – well, I guess I wouldn't be too pleased with it.

Q. I realize it would be a difficulty for you. I'm asking about your wife also, her views, because she's going to be involved in this.

Accepting the fact it would be a difficulty, is it something that you would be willing to do to serve on a jury?

A. I would say I would say yes.

Q. You would do it?

A. Yes.

Q. Let's talk about your wife now. Would she be willing to do her part in this, which would be taking you, I gather, taking you to the bus station each day and picking you up?

A. She would reluctantly, yes.

Q. She too would do it. It wouldn't be a happy time for either of you, but both of you would be willing to do so so you could serve on the jury if you were selected?

A. Yes.

**MR. CLEARY:** Thank you. I have no further questions, Your Honor.

**THE COURT:** Mr. Denvir

**VOIR DIRE EXAMINATION BY MR. DENVIR:**

**Q.** Let me ask you, if I could, juror number six, if you – I want to make sure we understand, because we do want to understand whether this would be the kind of hardship that would make it difficult for you to sit as a juror in a two- or three-month trial.

What you're saying is, I guess, that you would leave from Stockton at 7:00 o'clock in the morning?

**A.** 6:00.

**Q.** At 6:00 o'clock in the morning from Stockton, and then you would have to drive – to get there, you would have to leave your house at 5:30 in the morning?

**A.** Yes.

**Q.** About how much time do you need to get up in the morning before you leave, would you say?

**A.** Well, if we left at 5:30, we would be getting up at 4:00.

**Q.** Okay. And then you would – if court ended at 1:00 o'clock, you would have to stay here for three and a half hours?

**A.** Yes.

**Q.** And then what time would you get back to Stockton if you caught the 4:30 bus?

**A.** I would say it got there at 5:30, so I would be home by 6:00, give or take.

**Q.** That means you would be getting up at 4:00 in the morning five days a week and not returning home until 6:00 o'clock at night?

**A.** Yes.

**Q.** And you're how old, sir?

**A.** 64.

**Q.** Do you think, between having to burden your wife driving back and forth from Ripon to Stockton, and you having to meet the schedule, that it would be hard for you to concentrate and give your full focus to the trial if you had to do that five days a week?

**A.** The concentration part would be no problem. But it would be the other circumstances.

**Q.** Concerned about your wife and the sleep and just the general part of it?

**A.** Well, I'm diabetic, so I'm on insulin, so that also needs a schedule. So it would be inconvenient at that point too.

**Q.** I don't want to intrude, but whatever you had to do as a diabetic you would have to work in the schedule from 4:00 in the morning until 6:00 at night, correct?

**A.** Correct.

**Q.** Would that be a concern as you're sitting?

**A.** Yes, it would.

**Q.** Okay.

**MR. DENVIR:** I think there's agreement that we would excuse this juror, Your Honor, in light of the hardship.

**MR. CLEARY:** Yes, Your Honor.

**THE COURT:** Okay. Thank you for participating in the process. You can return to the waiting room. PROSPECTIVE JUROR NO. 6: Thank you.

**THE COURT:** Okay.

**THE COURT:** Counsel, my notes indicate that we have excused jurors two, three, and six.

**MR. DENVIR:** Yes, Your Honor.

**MR. LAPHAM:** Yes, Your Honor.

**THE COURT:** I'm going to direct my deputy clerk to tell those jurors that they are excused from further service on this case. Is that agreeable?

**MR. CLEARY:** Agreeable.

**MR. DENVIR:** Yes, Your Honor.

**THE COURT:** Anything further to cover?

**MR. DENVIR:** No, Your Honor.

**MR. LAPHAM:** No.

**THE COURT:** We're in recess until 1:30.

**MR. DENVIR:** I wonder if – I know the jurors are coming at 1:30. Can we convene ten minutes early? I think we might have some comments on the Court's voir dire, just a suggestion for a change or two that we would like to suggest to you, if we could. It's just a slight wording question.

**THE COURT:** Can we convene right now on that matter? MS. CLARKE: If we could have a moment, Your Honor. We independently took some notes as we were listening to the introductory. Could we write them down and pass them to the Court's clerk, and if the Court wants to convene early, we could?

**MR. DENVIR:** Or we could address it. If you give us five minutes, I'm sure we could. There's just some wording, things that didn't strike us, I don't think, until we heard it again.

**THE COURT:** Okay. Why don't you give my deputy clerk your input. Have you communicated with the government about it?

**MR. DENVIR:** We haven't had a chance.

**THE COURT:** Okay.

**MR. DENVIR:** Just something that came up. As we listened to you read the first time to the jurors, a few things struck individual lawyers. We haven't had a chance –

**THE COURT:** Let's handle it this way. You make the proposed changes you desire, chat with the government about those proposed changes, and then give them to my deputy clerk and she'll bring them back to my chambers. If I agree, then I will just tell me deputy clerk and I'll see you at 1:30. If I disagree, I'll return to the bench. And all this will occur before 12:00 o'clock.

**MR. DENVIR:** Sure.

**THE COURT:** All right. Thank you.

(Luncheon recess taken.)

—oOo—

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 12, 1997, 1:30 P.M.

—oOo—

**THE COURT:** Let the record reflect that the participants are present. I'm going to cover an additional matter with this group of jurors. I think three of this six have expressed hardship concerns. So I was going to discuss the importance of the parties being allowed to have a fair representation of the cross-section of the community from which to select prospective jurors.

Do you have any problems with that type of communication?

**MR. DENVIR:** No, your Honor.

**MR. LAPHAM:** No, your Honor.

**THE COURT:** I was going to do it when I have the group together so I don't have to repeat that message three times. All right. Let's bring in the jurors.

(Prospective jurors present.)

**THE COURT:** Let the record reflect that the prospective jurors have joined us. I'd like my deputy clerk to please administer the oath to the prospective jurors. **THE CLERK:** Please stand and raise your right hands.

(Prospective jurors sworn.) **THE CLERK:** Thank you. You may be seated.

**THE COURT:** Good afternoon. And welcome to my courtroom. My name is Judge Burrell. I will preside over this trial.

The person who just administered the oath to you is Shani Furstenau. She's my courtroom deputy clerk. Next to her on the same platform is my certified shorthand court reporter.

I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you for both your presence and your anticipated cooperation. You are performing an important function in our legal system under the principles of our justice system. The parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as yourselves making themselves available to serve as jurors.

The voir dire or questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will first involve questioning prospective jurors individually. However, I will keep you here as a group initially for some preliminary questions. After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group. Those required to participate in a group questioning will receive notice of when that will occur.

Our objective is to obtain a fair and impartial jury that will decide this case on the evidence that is presented to them in the courtroom and the law given to them by the Court. I have decided to do individual voir dire in part because the parties have requested it and because there has been some publicity about this case. During the

individual voir dire, we will cover the publicity area and other matters that tell us whether you should be a juror in this type of a case.

The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses, and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence.

This determination is made at the second phase of the trial referenced as the sentencing phase. If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please tell us. In fact, you can raise your hand right now.

Let the record reflect there's no response.

The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur like any other criminal trial in federal court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations, nothing more.

Mr. Kaczynski is presumed to be innocent and does not have to testify or present any evidence to prove his innocence.

During the sentencing phase, additional evidence may be presented by the government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist, and, if so, whether those aggravating factors sufficiently without any mitigating factor or factors found to exist or in the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

An aggravating factor is a fact or circumstance which might indicate or tend to indicate that the defendant should be sentenced to death. A mitigating factor is any aspect of a defendant's character or background, any circumstance of the offenses or any other relevant fact or circumstance which might indicate or tend to indicate that the defendant should not be sentenced to death.

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty.

We may ask additional questions in other areas too. During this questioning, we will refer to you either by your randomly selected number or by your jury number which was assigned to you. We will not refer to you by your name. This is because I've decided to use an anonymous jury in this case in order to protect your privacy as I have stated in a previous communication to you.

Now I will give you an instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from service on this case.

Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me.

Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately.

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any internet stories or comments on the internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case.

It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they had no opportunity to discuss. For these reasons, you should avoid reading or listening to future news accounts during the time in which you are involved in this case. Justice requires strict adherence to this prohibition.

Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me.

The trial schedule I contemplate having will be from 8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 o'clock a.m. to be brought to the courthouse. Please raise your hand if this poses a problem.

There's no response.

I contemplate observing the holiday season as follows: We will not hold court December 24, 25, and 26 nor on January 1 and January 2nd. I contemplate holding court December 22nd and 23 and the 29th, the 30th and the 31st.

Please raise your hand if this poses any problem. PROSPECTIVE JUROR 7: I have a letter, your Honor.

**THE COURT:** Please show it to the parties. MS. CLARKE: Your Honor, the parties would be in agreement to agree to release juror number 7.

**MR. LAPHAM:** That's correct, your Honor. MS. CLARKE: Thank him for service so far.

**THE COURT:** Do you want me to return the letter to him, or do you want me to do something else with the letter?

**MR. DENVIR:** Perhaps you could keep it for the files, your Honor, as the basis for the stipulation. MS. CLARKE: Unless there is a problem that he has.

**THE COURT:** The parties have just stipulated that I can excuse you because of the content of the letter. Do you mind if we keep the letter for the files? PROSPECTIVE JUROR NO. 7: No, that's okay.

**THE COURT:** I'm going to excuse you at this time but you won't leave. You'll just go back to the room from which we got you. PROSPECTIVE JUROR NO. 7: Okay. Thank you.

**THE COURT:** Please raise your hand if you do not understand the following. Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty.

There's no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then you would proceed to a sentencing phase of the trial.

At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence will be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented.

The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some other lesser sentence.

Does any juror not understand that?

Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence.

There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions, whether you agree with that law or not. Do any of you have any belief that will interfere with your obligation to do this?

There's no response.

We are seeking impartial jurors that are drawn from a fair cross-section of the community. I think this concept ensures that those eligible for jury service are to be found in every stratum of society. This fact lies at the very heart of the jury system. To disregard it could be perceived as opening the door to class or other distinctions which are abhorrent to the democratic ideals of trial by jury.

Therefore, even though a few of you have mentioned hardship reasons for not serving on this jury, I will probe those hardship reasons because of the fair cross-section principal that governs the various people who should be available for jury service.

Now, I'm going to – I have one more thing to say before I start individual voir dire. We're going to commence individual voir dire in just a moment.

If you conclude that any question I ask or the parties ask unduly pries into your private affairs and you therefore wish to discuss it privately, let me know of that request. I will now have my deputy clerk to escort all but the earliest randomly selected juror to another room.

**THE COURT:** Let the record reflect that the other jurors have exited the courtroom.

You're juror number 10.

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** You indicated in your response to a jury question that you don't feel you could be away from your work for four months. Is that correct?

Do you recall having stated that?

**A.** Yes.

**Q.** Without stating where you work, please explain whether your employer could adjust your work hours so that you could be considered for jury service in this case.

**A.** I guess it depends if I was selected. I guess I could. The hours could be adjusted and I'd probably be compensated by my employer.

**MR. DENVIR:** Your Honor, I believe before that the jurors were using the microphone.

**THE COURT:** You're right. Thank you for reminding me of that.

There's a microphone available in the jury box which I neglected to ask you to pick it up.

Did everyone hear his response?

**MR. DENVIR:** I didn't. **PROSPECTIVE JUROR 10:** Again, in response to the Judge's question if it's not really a true hardship, I guess I could be off for four months, and I guess my employer can adjust my hours so I can serve on the jury for the trial.

**Q. BY THE COURT:** Since you answered your jury questionnaire, have you heard or read about this case?

**A.** Some on the radio and a little bit on the TV, but I haven't read any articles in the newspaper or anything like that.

**Q.** Why didn't you avoid being exposed to what you were exposed to on the radio and TV?

**A.** Why wasn't I?

**Q.** Yes. Why didn't you avoid the exposure?

**A.** Oh, because when I was driving in today it was on the radio, listening to the stock market report, and it was kind of highlighting what was happening today in Sacramento.

**Q.** What I would expect you to do in the future is to not listen to that, to turn to another radio station.

**A.** Okay.

**Q.** Or cut off your radio. Can you do that in the future?

**A.** Yes.

**Q.** What information did you receive from those sources?



**A.** That they were starting to interview potential jurors today, Wednesday, November 12th, at 9:00 o'clock this morning and that it could take months or ten weeks to select – interview all the potential people to get a pool for the prospective jurors.

**Q.** Did you receive any other information?

**A.** No.

**Q.** Since you've answered your juror questionnaire, have you discussed this case with anyone?

**A.** I told my boss that it's a possibility that I may have to be off for some period of time in the future, but that's probably it.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** I believe not.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** At this moment, no.

**Q.** Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes.

**Q.** Does Mr. Kaczynski begin this trial, in your eyes, quote, with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** I think it depends on the circumstances of the crime. I'm not a hundred percent one way or the other. It's a case-by-case outcome, I guess.

**THE COURT:** The parties may conduct voir dire.

**MR. DENVIR:** We've agreed I'd go first, your Honor.

**THE COURT:** Thank you.

**VOIR DIRE EXAMINATION BY MR. DENVIR:**

**Q.** Good afternoon.

**A.** Good afternoon.

**Q.** My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'm going to ask you a few questions right now.

**A.** Okay. **BY MR. DENVIR:** Your Honor, do we have a copy of his questionnaire? I guess we didn't bring those extras. I'll give this to you. I may have a couple questions. Just so you can refresh.

**Q.** Let me ask you about your work. As I understand it, you believe that the trial may take, I think the estimate now is maybe two or three months after the jury is selected. And you feel that your employer can adjust your schedule so that that would not be a hardship on you to sit as a juror?

**A.** Yeah, because see, the company I work for pays for all jury duty, so financially I won't be hurt.

**Q.** Okay.

A. It's a possibility that the workload probably can be readjusted or reassigned to somebody else to make sure the work was done since I'm the supervisor in that department.

Q. So you think that you can work it out with your employer so that you would be able to sit as a juror and not worry about work or how is it getting done or something like that wouldn't distract you worrying about that?

A. If I knew ahead of time to put out a plan, for instance, if I knew, say, for instance, I got stuck in tomorrow and selected tomorrow and I knew it didn't start for a month from now, I could probably get some other people trained in responsibilities and delegate duties to other people.

Q. I don't know if we can guarantee you that much notice, but if you had shorter notice you probably can work things out to sit on the jury without having to worry about your employment?

A. Right.

Q. Let me ask you. In one of the questionnaires, I believe it was the first one you received, if you look at that one.

A. Small one?

Q. Small one. Right. You said that you felt that you couldn't be open-minded in this case. I'm wondering if you could tell me why you felt that way or what you were referring to.

A. To be honest with you, I thought by answering that question I'd be off the panel.

Q. It's not that easy, I guess, is it?

A. People told me if you put something like that in there, you would be off.

Q. Okay. You were saying that because people told you that would be a way not to be on the jury? It isn't because you couldn't be open-minded; is that what you're saying?

A. No, I could be open-minded, but that was just kind of a way to –

Q. Do you have any concerns about your ability to be open-minded? Is there any basis for what you wrote there about not being able to be open-minded?

A. No. Actually I think I'm in general a pretty open-minded person on almost all subject matters. I don't think that – most of my decisions are based on the facts that I get. Because of my position at work, I have to listen to both parties before I can discipline somebody, and I have to get all the facts before I can make a decision. I can't just go upon gut feelings because I can get in trouble for doing it that way. So I guess my training and my position kind of forces me to get the facts first before making decisions.

Q. And you have no concerns about your open-mindedness as to this case as you sit there now?

A. No.

Q. Okay. If you'd look at page, I think it's page 21, you indicated that you had served on a jury previously in 1993 in San Joaquin County; is that correct?

A. That's correct.

**Q.** And that jury reached a verdict?

**A.** Yes, it did.

**Q.** You said that you were asked if there was anything about that experience that would make you want to serve or not serve on a jury again. If you'd look at, I think it's question number 78, the bottom part of it.

**A.** Okay. And I said yes. Right.

**Q.** Yeah, you indicated that you – that that experience would make you not want to serve on a jury again. Can you tell me what you were thinking then?

**A.** Well, I was on a child molestation trial, and I guess your notions, what you see on TV, you know, make – like you watch Perry Mason, it's pretty fast-moving. This one here we kept walking out every time there was an objection. We had to be excused into the jury room and they had arguments. I guess to me it wasn't moving fast enough or it's like we had too much time in the jury room. I didn't feel that the time was spent, I don't want to say wise, but I guess – I guess wisely in my opinion.

**Q.** Let me ask you, sir, you understand that you may have some of those same frustrations here. There are certain matters that are dealt with outside the presence of the jury. There are in every case.

**A.** Right.

**Q.** And I don't know what happened in that particular case, but there may be certain rulings of law that the Judge has to make, other matters that the jury should not be present for under the law and you will have to go back to a jury lounge or something. And in this case, as we say, it could be a two- or three-month trial to begin with.

Is that going to bother you, the fact that it could be a long trial and it may not move as efficiently as the movies and TV? Is that going to cause you any problems serving as a juror?

**A.** I don't think it would bother me this much, probably since I know what to expect. Last time we had the perception that, you know, in your mind how it is, but after serving three days on that one in a real life trial, I understand there are times when people have to walk out so the defendant gets a clear chance. So we don't hear evidence which would incriminate him. So it was part of the process.

**Q.** So you don't think that will be a problem for you. Now that you've been through it once, you see it isn't like a TV show, it doesn't happen in an hour?

**A.** Right.

**Q.** It looks pretty inefficient, but you don't think that will bother you if you sit on this jury?

**A.** Well, I think also by walking out, that's part of the defendant's right to keep the jury people from getting –

**Q.** Would that also be the government's right, some party's right?

**A.** Right.

**Q.** Okay. You also said that, if you look at page 11, you were asked what did you think or feel when you received your jury summons for this case. And you said, maybe not surprising, you were shocked. What were you thinking when you wrote that?

**A.** Well, I never thought that I'd probably get selected for a highly visible case. And I thought maybe if in my life I got stuck on a case, it would be for a small one like I did in my own county, not something that could actually be watched by the whole country or the world, I guess.

**Q.** Was it more surprise than shock then? Would it be more that you were surprised that you –

**A.** Yeah, I guess it's kind of like winning the lottery. You don't expect to win, but I mean, the chances of all the people in the whole country or in the state that could potentially, you know, you're talking millions of people, and you hit, one out of 600 was in the first log. Yes, that I was surprised.

**Q.** There are a lot of people that think that getting selected for this case is just the opposite of winning the lottery, you understand?

**A.** Yeah.

**Q.** Let me ask you though, are you concerned about the fact that this case receives a lot of media attention and, as you say, the nation, the public is going to be watching the case and therefore watching, I suppose, how the jurors perform? Is that a concern to you?

**A.** It was in the beginning, but I think now it's not because since I have the Judge's assurance that we're anonymous and that people don't know who your names are, I feel more content and safe that people won't be bugging me or calling and stuff like that. Because I wouldn't mind doing the job, but not the harassment, you know, people trying to figure out where you live to interview you.

**Q.** And you understand that's why the partially anonymous jury, so you wouldn't have to put up with that?

**A.** Yes, I understand.

**Q.** Let me ask you, if I can, some questions about your attitudes on the death penalty. Do you have any particular religious, philosophical, or spiritual beliefs that affect your views on the death penalty either in the abstract or that apply to this particular case?

**A.** No.

**Q.** Could you summarize for me what your basic feeling is about the death penalty as a general matter.

**A.** I guess death penalty to me would be probably used in a case or a situation where a person maybe had multiple chances already and maybe never corrected. For instance, maybe somebody was like somebody already in prison, went to San Quentin as a mass murderer, I guess. And he went in there one time, and he served his sentence and he was kind of released, and he thought that he was rehabilitated in prison, and he went back out and he came back in again, committed some crime again which was maybe more malicious than the first one.

And so maybe those kinds of people don't have any promise or hope to correct themselves or be rehabilitated, and maybe those people, for their own good, maybe for society's good, maybe should be put to death. Where people who are maybe not as dangerous to the public as a whole but maybe need to be protected from the public because of their previous crime, maybe serve life in prison or in some type of penitentiary. So maybe those kind of people should live. I guess I really – I guess that's how I feel.

**Q.** I appreciate your sharing that. Would it be fair to say that you see the death penalty maybe as a penalty of last resort?

**A.** Yeah.

**Q.** Something along those lines. That seems to be what you're saying.

You understand what Judge Burrell told you about the procedures here. And I just want to make sure you understand because it's important or it's different than it is in other cases perhaps.

The first part of the trial is the guilty or not guilty part of the trial. And at that point 12 jurors decide whether the government has proved their charge against Mr. Kaczynski beyond a reasonable doubt.

Now, if the jury should come back, the jurors would hear all the evidence from both sides that would be presented, would be instructed as to the law, would go out and deliberate, and then would come back and render their verdict whether his guilt was proved beyond a reasonable doubt.

If you should find that Mr. Kaczynski, you, assuming you were one of the jurors, was guilty of one of two offenses involving the death of Mr. Gilbert Murray, those are the capital offenses, if he were found guilty of those beyond a reasonable doubt, then there would be a second phase only if guilty of those offenses.

But then there would be a second phase, and that is like a second trial. It's a sentencing or penalty phase where again the government can present evidence, the defense can present evidence, the Judge instructs as to the law. Again the jury goes out, is given a choice of either the death penalty, life in prison without release, or a lesser sentence, and then comes back and gives its verdict on that subject.

And you're given instructions as to how you go about that. The Judge tells you what the law provides and tells you in the end that each juror must make their own decision under those instructions. Do you understand by the penalty phase, you would have already determined a defendant's guilt of the capital offense and you would only be deciding the penalty at that point?

**A.** Right.

**Q.** Do you think that your views as to the death penalty or anything about you would make it difficult for you or would render you unable to sit in that second phase and listen to the evidence and listen to the law and make your own decision as to what was called for?

**A.** No.

**Q.** You understand the process, and it's a process – you've not been through it so you don't know exactly how it works, but when you've heard it described, it doesn't seem like something that you feel you wouldn't be able to do?

**A.** No. But I think after listening to all the facts presented by both sides, you have to make up your own mind.

**Q.** Now, you'd indicated that you had had some exposure to publicity about the case since you were first called on it by radio or television?

**A.** Uh-huh.

**Q.** Prior to that time had you had other experience with the case in terms of television, radio, newspapers?

**A.** I know when it first came out, they were talking about that – what do they call it – manifesto?

**Q.** Manifesto.

**A.** I don't know what they're talking about, but they were saying this on an interview that it was thousands and thousands of pages.

**Q.** That may be a bit of an exaggeration.

**A.** Whatever it is.

**Q.** Sure.

**A.** At that time I had no interest to look at that stuff. I don't think I've really, from the standpoint of, you know, publicity of the case, the Unabomber, all that, it doesn't really interest me that much.

**Q.** So when these crimes occurred over a long period of time, did you particularly follow them in the newspaper as they occurred?

**A.** No. What happens, every once in a while on the news, they will say that somebody's letter was found in somebody's office, something like that. It's potential so-and-so. So I knew the name. I didn't know who the person was, but I kept hearing the Unabomber's name, but I really didn't know who the person was.

I don't think it was until a year ago or whenever it was that there was a breaking news flash saying so-and-so got arrested. There was like a picture of the log cabin or whatever it was. That's all that I saw of the case, and that I didn't even think about it until I got the summons.

**Q.** So you didn't follow the case more after you heard about the arrest of the suspect? I mean, you didn't give it any particular interest after that?

**A.** No, I don't even think I followed the Oklahoma bombing case, because when that happened I'd already started my vacation. So I guess bombing stuff doesn't really interest me to follow something like that.

**MR. DENVIR:** Could I have just one moment, your Honor?

**Q. BY MR. DENVIR:** I have just maybe one question, your Honor, I hope, if you believe it.

If you would turn to page 109. Excuse me. Question 109 on page 28. That's in the bigger questionnaire.

**A.** Okay.

**Q.** You were asked to describe what you remember reading about – seeing or reading about the case, and you said something about protecting the jurors and threat against the defense.

What were you thinking about when you wrote that down? What were you referring to; do you recall?

**A.** I remember – I can't remember if I listened to it on the radio or on TV, but I know they were talking about the case, something like that they were trying to decide if the jurors were going to be made public or not or protected and not have a circus like the O.J. Simpson trial. That question was brought up.

The other one was kind of like – I may get the parties wrong, but I think somebody was mentioning on the news that this was a highly publicized case, and because of the people who were very angry toward the defendant that he would have to be protected, too, so that people could – somebody from the public could be sick or, you know, wouldn't attack him. I think I was hearing that this trial was going to have a lot of protection for the jury and for the defendant.

**Q.** And how do you feel about that?

**A.** I think it's only fair, because I don't think that any person can get a fair trial if there's people bombarding the parties involved. Because you, in other words, the more you hear from people, even though you try not to, you're going to hear key words from outside. And it's going to stick to you even though they tell you to disregard that. Once it's said, it's there.

**Q.** Now, you understand that Judge Burrell's order that the jurors' names be kept not available to the public is to protect the privacy of the jurors and it's not because of any concerns about the juror's safety. There's nothing like that involved?

**A.** No, I know.

**MR. DENVIR:** I don't have any other questions.

**THE COURT:** The government can proceed with questioning. I know that Mr. Denvir exceeded the time limit. I'll be flexible as far as the government is concerned too.

**MR. LAPHAM:** Thank you, your Honor. I just have a few questions however.

**VOIR DIRE EXAMINATION BY MR. LAPHAM:**

**Q.** Sir, I just want to ask you questions about your feelings about the death penalty. Mr. Denvir asked you under what circumstances you thought it would be appropriate, and you gave the example of a prisoner who had committed a heinous crime and then got out and committed that crime again. Is that a fair summary of your answer?

**A.** Yes.

**Q.** I don't think you meant to limit your answer to just that example or did you? Can you conceive of other situations where the death penalty would be appropriate?

**A.** Well, I guess the – I guess when somebody or a party was a danger to society and it was deemed that they were unable to be rehabilitated and the only thing – I mean, it's different with somebody who could be a harm to society if they're out there and cause more murders, something like that, and they can't be trained or changed.

So maybe as a last resort for their sake and society's sake, maybe they need to be put to death. Where some people may not be able to handle the outside world and maybe they have to have constant supervision. So maybe for those kind of people, they would be best put into a controlled environment so that they don't hurt themselves and hurt anybody else.

**Q.** Now, the Judge has told you that the trial is going to proceed in two phases, the guilt phase and then the penalty phase.

**A.** Right.

**Q.** And in the penalty phase if the defendant is convicted, you would be required to apply certain balancing. You'd balance aggravating factors and mitigating factors. Do you understand that?

**A.** Right.

**Q.** And if the aggravating factors that you were presented didn't necessarily agree with your feelings about the death penalty, would you, nevertheless, be able to consider those aggravating factors?

**A.** Can you – I'm not quite sure what you're requesting.

**Q.** Let me try and rephrase that. If the law provided that the death penalty should apply in certain types of situations and that you should consider the death penalty in those types of situations, would you be able to consider fairly, honestly the death penalty even if those situations didn't comport with your own feelings about when the death penalty should apply?

**A.** So you're saying if the judge gives you the circumstances of when death penalty is implicated and the evidence is proven to fit those criteria, am I able to vote for a death penalty even though I may not personally believe? Is that what you're asking?

**Q.** Yeah. If you don't personally believe that the death penalty should apply in that particular –

**A.** For my own sake. But if the facts according to the judge meet those criteria to vote on the death penalty, can I do that, you're asking?

**Q.** Yes.

**A.** Yes, I could.

**Q.** You could follow the law in that respect?

**A.** If the evidence matched – if it was proven on that, yes, I could.

**Q.** And if the government proved an aggravating factor to your satisfaction but in your view you didn't think it should be an aggravating factor, something that should go into your judgment on whether or not the death penalty should apply, you could, nevertheless, apply the balancing to that factor?

**A.** Yes, I could.

**Q.** And that goes for mitigating factors too?

**A.** Yes.

**Q.** So the bottom line is you could follow the law as the judge gives it to you and set aside whatever other views you may have about the death penalty aside?



**A.** Yeah, but usually the first part of the phase, guilty or not guilty, pondering the evidence, has to be majority. It has to be almost unanimous. If you have any doubt at all, you have to go the other way. So it comes down to the first part to if we did vote guilty, in my mind that would mean that whoever presented the case, presented evidence to me to vote that way. So I'd have to listen to the second part too. But if the case wasn't even as strong as the first, it wouldn't get that far, death penalty, because he'd be innocent.

**MR. LAPHAM:** I have nothing further.

**MR. DENVIR:** Nothing further, your Honor.

**THE COURT:** You may have my deputy clerk to escort you back to the waiting room. Thank you.

Would you pick up the microphone. Thank you. That will amplify your voice and make sure everyone hears your responses. PROSPECTIVE JUROR 11: Okay.

VOIR DIRE EXAMINATION BY THE COURT:

**Q.** Since you answered your jury questionnaire, have you heard or read about this case? You were nodding your head, but you'll have to be audible so that the record can reflect what you're saying.

**A.** Yes, sir.

**Q.** What have you read or heard?

**A.** What have I read or heard? Well, that Mr. Kaczynski would be in court today and when the trial was starting. Let's see, really not too much. Because I've been trying to avoid as much as possible listening to any media reports.

**Q.** You understand that if you are selected to serve as a juror in this case, I would absolutely expect you to avoid all publicity concerning this trial. Do you understand that?

**A.** Yes, your Honor.

**Q.** Since you answered your juror questionnaire, have you discussed this case with anyone?

**A.** No, sir.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** No.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No, I do not.

**Q.** Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes, sir.

**Q.** Does Mr. Kaczynski begin this trial, in your eyes, quote, with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

A. Proponent.

Q. Can you explain your response?

A. Why I am a proponent of the death penalty?

Q. Right.

A. Well, I feel that punishment for a crime should fit the crime. And I suppose because of my belief in the Bible and the Biblical laws.

Q. If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

A. I'm not sure I understand that fully.

Q. I will first repeat it and then if that still doesn't make it clear, I will rephrase it.

A. Right.

Q. If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

A. No.

**THE COURT:** The parties may conduct voir dire.

**VOIR DIRE EXAMINATION BY MR. FRECCERO:**

Q. Good morning.

A. Good morning.

Q. Good afternoon. My name is Steve Freccero. I'm one of the prosecutors in this case. I just wanted to follow up on a few points.

In your questionnaire, you indicated that you saw your role as a potential juror as a duty and you're willing to serve; is that right?

A. Yes.

Q. And so I take it then that you would be able then to make whatever arrangements are necessary to get to court on time and to be here according to the schedule of the Judge?

A. Yes.

Q. I think one of the things to follow up on, we've discussed, it's difficult for you to understand at this point exactly what all the intricacies are of the law involved here, but basically as the Court's explained to you, if you're chosen as a juror, there's going to be two phases. And if and only if Mr. Kaczynski's convicted will we then get to a phase where we'll discuss the potential punishment.

A. Yes, I understand.

Q. During that phase, you're going to get instructions from the Court exactly how that's supposed to work. How the law, what laws you can apply, what are called aggravating and what are mitigating factors.

Now, are you going to be able to follow those instructions and come out with a decision based on that evidence and that law sort of regardless whatever your other opinions may be?

A. Yes.

**Q.** For instance, you mentioned your own personal beliefs. Will you be able to base your decision solely on the law that the Judge gives you and the facts instead of maybe making a determination based on your own personal viewpoint as to what penalty?

**A.** Yes, I would make my decision based on the law. MR. FRECCERO: No other questions. Thank you.

VOIR DIRE EXAMINATION BY MS. CLARKE:

**Q.** Hi.

**A.** Hello.

**Q.** My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

Can I ask you to bring your mike closer?

**A.** Okay.

**Q.** I think I can hear you okay. I just was having a little problem.

**A.** I'm sorry.

**Q.** I was a little concerned – I guess Mr. Freccero asked you about it – that you live quite a distance out?

**A.** I live in Grass Valley.

**Q.** About an hour, little over an hour and a half?

**A.** It's about an hour and 15 minutes.

**Q.** Is that long enough for you to be able to stay overnight or short enough for you to have to drive every day?

**A.** I would be able to drive.

**Q.** And that's okay? You don't have a problem getting here at 7:00 o'clock in the morning?

**A.** No.

**Q.** You like getting up in the middle of the night?

**A.** Well, I work as a nurse so I have to.

**Q.** So you're kind of used to the shift schedule?

**A.** Yes, I am.

**Q.** The Judge asked you about what you had read or heard recently and you mentioned that you heard that Mr. Kaczynski was to be in court today and that the jury selection would start today.

**A.** Right.

**Q.** Can you think of any headlines that you saw or any other news that you saw?

**A.** Well, I've pretty much been making an attempt not to pay attention to it.

**Q.** Sometimes it can happen. It happens to you without your –

**A.** Well, I don't live in a cave so I'm not – I have seen, you know, about the trial. I really don't know that much about his case particularly because, I don't know why, I just didn't want to pay that much attention to it before.

**Q.** Right. But can you think of anything else other than that that you've heard? The Judge, none of us will be mad at you for telling us, because the Judge didn't instruct to you move to a cave. You're right.

A. No, I just know his name. I remember that he lived in Montana. I'm not really sure of all the details really. I haven't read any of the books or any of those things.

Q. Do you remember when Mr. Kaczynski was arrested there was a great deal of discussion about what was found in the cabin?

A. I'll have to honestly say I don't really recall. I didn't really pay that much attention to the details of this case at the time of all this evidence that was found.

Q. Do you have any overall impressions of the case from just the press? If you have no specific memory of it, do you have any overall impressions from what you've read or heard?

A. No, I haven't formed any opinions because I don't have any. I don't know Mr. Kaczynski and I don't have evidence – and I don't really pay all that much attention to the media because they get it wrong a lot.

Q. There are a lot of them in here, so be very careful what you say.

What did you think when you heard that Mr. Kaczynski would be in court today? Did you have any reaction to that?

A. I just felt he had a right to be here.

Q. If I could spend a moment, would you, do you have your questionnaire?

A. No, I don't.

Q. If we could talk just a moment about the question 107. Actually, I'd like to back up before we get into those and ask you – you've told the Judge that you're a proponent of the death penalty?

A. Yes.

Q. And that there are a variety of reasons why you are. And one of them really is the Bible, your reliance on the Bible. What is it about the Bible? Is that the eye for the eye?

A. Yes.

Q. That's a pretty firm religious belief of yours?

A. Well, I just feel that the punishment should fit the crime, that's my basic belief, but then I do understand that, well, nothing's black and white and there's other circumstances. Not all murders are the same either.

Q. What do you mean by that?

A. What do I mean by that?

Q. What murder would or would not be?

A. Well, there's manslaughter, there's defense, there's premeditated.

Q. Could you draw the line for us? Is there – where does the death penalty apply and not apply in those?

A. Well, to me, a premeditated, a deliberate malicious.

Q. Murder?

A. Would be murder.

Q. Would be murder?

A. Right.

Q. And that would subject somebody, in your opinion, to the death penalty?

A. Pretty much, yes.

Q. So the deliberate, intentional murder of another human would equal death for you?

A. Yes. If there was no other circumstances that the person was able to know that they had committed a crime.

Q. Presumably they wouldn't be found guilty if they didn't know they had –

A. Right.

Q. So because there are two phases to a case like this, then the determination of the deliberate, intentional murder is made in what the Judge has been referring to as the guilty or not guilty phase of the case?

A. Uh-huh.

Q. Shorten it down to the guilt phase, you're determining the guilt of the person before you?

A. Yes.

Q. So the guilt of the person would be the intentional murder of another human being?

A. Right.

Q. And that would equal death?

A. Well, I think, I guess that's the way I feel, yes.

Q. Well, I think that's perfectly fine. I'm just trying to inquire.

A. Right.

Q. So the circumstances in which you would feel that the death penalty may be weighed against another penalty would be where there's self-defense or manslaughter, or some lesser quality of murder?

A. Yes.

Q. So when there's a deliberate intentional killing, murder of another human being, that would equal death to you. That's how you feel about it?

A. That's how I feel about it.

Q. And you're committed to that because of your religious teachings?

A. Well, that and just my life's experiences and, you know, this is just what I believe at this point in time in my life. There was a time when I didn't believe in the death penalty. And as I've grown as an individual, I've come to believe that we have to pay consequences for our actions.

Q. So that would be a circumstance that would lead you to impose the death penalty is if the circumstances of the crime were a deliberate and intentional murder?

A. Right.

Q. And also if there are two or more people murdered deliberately and intentionally, that would lead you to a death penalty result; am I right?

A. Yes.

Q. I was just going through the –

A. Yes.

**Q.** So there wouldn't be a circumstance, assuming that the person's guilt of that crime was established, that could change you from your opinion that the death penalty was the only appropriate sentence?

**A.** Could you repeat that?

**Q.** When you've got the deliberate, intentional murder of one person or two or more people?

**A.** Right.

**Q.** Death penalty is the sentence for you?

**A.** Yes.

**Q.** There wouldn't be a circumstance then that would change your opinion as to the proper sentence then when you have a deliberate, intentional murder?

**A.** Right. That's the way I believe.

**Q.** You've told us that the Bible is part of your belief system there?

**A.** Yes.

**Q.** And your life experiences are part of your belief system?

**A.** Yes.

**Q.** And you've sort of evaluated that as a belief system?

**A.** Yes, I have.

**Q.** That's something that's pretty core to you?

**A.** I didn't come to it lightly, but it's something that I've spent a lot of time evaluating, and this is the way I feel. But I haven't always felt this way. It's just something I do believe in at this point in time.

**Q.** Sure. And no circumstance beyond the crime, that's what you would be looking at. You've got to look at the crime itself?

**A.** Yes.

**Q.** And if the crime itself is what you view as a death penalty crime, then the death penalty is to be imposed?

**A.** Right. And I wouldn't have trouble making that decision.

**Q.** And you would have trouble making any other decision if those were the facts that were proven to you?

**A.** Well, I suppose I would, yes. Put that way, yes. MS. CLARKE: Yes. May I have just one moment? PROSPECTIVE JUROR 11: Uh-huh. MS. CLARKE: I thank you very much. PROSPECTIVE JUROR 11: Okay. MR. FRECCERO: Your Honor, could I have just a couple brief follow-up questions? We haven't used much of our time, just to clarify a couple issues.

**THE COURT:** Okay.

**FURTHER VOIR DIRE EXAMINATION BY MR. FRECCERO:**

**Q.** Ma'am, if you get to the penalty phase and the Court sets out certain mitigating factors – let me back up for a moment.

You've been talking about your personal beliefs in response to those questions?

**A.** That's right.

**Q.** If the Court presented you with legal factors that you could take into consideration, could you put aside those beliefs and consider the instructions as the Judge gave them to you?

**A.** Yes.

**Q.** For instance, if you learned that the law viewed certain factors as mitigation and those hadn't occurred to you yet or you hadn't been able to verbalize it, does that mean you're just going to disregard them when it comes time for the decision?

**A.** Well, no.

**Q.** Okay. So ultimately will you fairly evaluate all the evidence and use the law that the Court gives you as opposed to your own guidelines to make your determination?

**A.** Yes. MR. FRECCERO: Thank you. Thank you very much. MS. CLARKE: Just a follow-up.

FURTHER VOIR DIRE EXAMINATION BY MS. CLARKE:

**Q.** I know we don't want to do what lawyers try often to do, and that is try to put words in people's mouths. So please don't let me do that. But it's important that we all understand where you are.

I heard you tell us that you had not always been the proponent of the death penalty, that you are now?

**A.** Uh-huh.

**Q.** And that was a decision that came about as a result of a lot of reflection and life experiences?

**A.** Yes.

**Q.** And it became a part of your belief system in your opinion?

**A.** Yes.

**Q.** How long ago was that switch to the position that you hold now?

**A.** I would say maybe ten years.

**Q.** So it's been with you quite some time in your adult life?

**A.** Since I've changed my opinion?

**Q.** Yes.

**A.** Well, it's not something I would take lightly in any event, but it's what I believe, yes.

**Q.** And that's very fair. And it's very hard when you have the question put to you, can you follow the judge's instructions, isn't it? I mean, to say anything but that I can follow the instructions; right?

**A.** No. I believe my opinion is not, you know, the only opinion, and so I would have to follow the judge's instructions.

**Q.** The judge's instructions would get you into the penalty phase in this case.

**A.** Uh-huh.

**Q.** And the judge's instructions would allow you to make a decision as to life or death. That's all.

**A.** Uh-huh.

**Q.** Are you with me?

A. Yes.

Q. To get into the penalty phase, this jury would have made a decision of intentional, deliberate murder.

A. Yes.

Q. And what I heard you say is that if a decision of intentional, deliberate murder is made, then that equals the death penalty. MR. FRECCERO: Your Honor, I do object first of all, because that's not the charge in this case. I think we're in a careful ground in describing the legal – the Court's already outlined for the prospective venire what the charges are here.

**THE COURT:** Overruled.

Q. BY MS. CLARKE: Want me to try that again?

A. Yeah.

Q. To be where you would be making the decision of life or death, you would have made a decision that there was an intentional, deliberate killing of at least one person. And there are charged two people.

A. Well, I can't say exactly what I would do until I were on the jury and heard all the evidence and after hearing the judge's instructions and –

Q. And I don't want you to tell me what you would do because that –

A. No, no.

Q. That would be unfair to you.

A. I have a certain belief, but it's not, you know, written in cement as far as mitigating circumstances as it's been explained to me.

Q. What could some of those circumstances be for you –

A. I don't know.

Q. Just in your own opinion, what kinds of mitigating circumstances? You have mentioned to me self-defense would be a mitigating circumstance.

A. Yes.

Q. And that would not exist if the jury had found the deliberate, intentional killing; right?

A. Right.

Q. Because there would be no excuse for it. And you mentioned the manslaughter, which would be a lesser grade of killing; right?

A. Right.

Q. So what circumstances could you think of that could move you off of your belief that the death penalty is the appropriate penalty in that circumstance?

A. I'm really not sure. I don't think I've thought about it in that – to that depth maybe that you're asking.

Q. Can you think as we stand here?

A. No, because, you know, I don't understand the law that much as far as – I've just always felt that if you – if I deliberately went and killed somebody, I wouldn't feel that I deserved to live, I suppose.

Q. And so in the sense that the punishment should fit the crime –



A. That's my basic belief, pretty much.

Q. We can't ask people to come in and serve on juries and say throw away your belief system.

A. Right.

Q. And so I think that's why it's so important to talk about what it is. I don't want you to change it.

A. I understand. I feel that – Well, I think I already answered that, that I feel that punishment should pretty much fit the crime. But I don't understand the crime, so I don't know in this particular case.

Q. And not to belabor it, one last time, the finding of the jury would be an intentional killing of another human being.

A. Deliberate, intentional.

Q. Yes. That would equal death for you?

A. Premeditated.

Q. Yes.

A. That's my understanding as far as I know the law, which I don't know the law that much.

Q. And those circumstances would equal for you the death penalty?

A. Yes, I guess that's right. MS. CLARKE: Thank you.

FURTHER VOIR DIRE EXAMINATION BY THE COURT:

Q. If there was a finding by the jury of an intentional killing and this case reaches the sentencing phase, will you automatically vote to recommend the death penalty no matter what mitigating evidence the defendant presented?

A. Not automatically until I heard everything there was to hear.

Q. Do you understand that the law requires that before imposing the death penalty the jury must consider the facts and circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the death penalty should not be imposed?

A. Yes, I understand that.

Q. Are your views in support of the death penalty so strong that you feel you are incapable of considering such information?

A. No.

Q. Do you think you could fairly and impartially consider that type of evidence?

A. Yes.

Q. If in your view the mitigating evidence truly outweighed the aggravating evidence, do you think you would be able to vote for a sentence other than the death penalty?

A. Yes.

Q. Can you set aside your feelings in favor of the death penalty and decide the case based on the law as I give it to you and the facts of this case?

A. Yes. MS. CLARKE: May we approach, your Honor?

THE COURT: Yes.

(Following proceedings held at the Bench.)

**MR. DENVIR:** I think our concern is, your Honor, with the questions that you ask – and we haven’t had a chance to brief this enough – is I think the questions you’re asking, my sense is that you feel that the answer you receive would probably be sufficient under *Moore vs. Illinois*. I would think the consideration she has to give is not consider in the sense of listen to that’s a concern, but it means that it could actually leave her open to an alternative sentence. And I just don’t believe that the answers she’s given are going to be sufficient.

We haven’t had a chance to get into this, and I know we’re going to make our challenges at a different point, but we may need to keep going in to ask some more questions if we could. There’s a big debate. I’m not sure whether the parties will agree or, if given an opportunity to focus on exactly the answer to those questions, would they be dispositive of a Morgan challenge or not. We don’t think they are. We think that it really needs more than something that says I’m for death, but I could listen, I would consider, I would do all that.

But I think the reality is that she could never be taken off of that. She could never be taken off her views that death follows from intentional killing.

And so I think it’s – I don’t know if it’s a question we need to brief more or maybe we need to go back and visit with her again. But my sense was that regardless of what she said – and she wants to say I can obey the law, and she doesn’t say all that – she equates very clearly in her mind and thought-out position, after ten years changing it based on religion, if it’s an intentional, deliberate killing, then the punishment fits the crime and it’s death. And I think saying she would listen and consider it is the way you respond to a judge’s questions, and she wants to appear to be fair.

**THE COURT:** What do you want me to do?

**MR. DENVIR:** Well, we haven’t had a moment. Do you want to ask some further questions? Do you want to take a second? I don’t know when you were planning on breaking. **MS. CLARKE:** I guess it depends in my mind how significant the answers to the Court’s series of questions are to the Court in terms of the cause challenge. My understanding of Morgan is it’s the equivalent of Witt. And if a juror is substantially impaired, would either be prevented from or substantially prevented from performing duties which would lead to the consideration of life, then that juror is off for cause. And I think that we are clearly there with this juror.

**THE COURT:** Well, that’s a legal standard. But why are we here at this moment?

**MR. FRECCERO:** That’s right. Because we could make the same challenge as to an earlier juror. It was my understanding we were going to do this Friday.

**THE COURT:** I understand, and I understand the government’s concern. I didn’t say more about that juror because what I would have said would be made public, and it would probably embarrass the juror. **MR. FRECCERO:** Sure.

**THE COURT:** If you want a more elaborate record, I can provide that. But this juror is different. So why are we here on this juror at this moment?

**MR. DENVIR:** Your Honor. **MS. CLARKE:** We're concerned about the Court's questions about the automatic death, and the Court seemed to be following the series of questions that the government provided to the Court.

**THE COURT:** I've done my own research. **MS. CLARKE:** It just rang government bells to us.

**THE COURT:** Well, if it does – **MS. CLARKE:** I can't say how those sound.

**THE COURT:** If it does, it's through happenstance, because I did independent research, and I formulated the questions I thought should be asked. But still we're back to why we're here at this very moment.

**MR. DENVIR:** My sense was from the questions that you felt that the questions were dispositive if they were answered the way she answered them. And we don't believe they are dispositive. Maybe we just need to make our record further, but we didn't get a chance to kind of brief with you the question of the Morgan challenge.

**THE COURT:** You had a chance – you didn't take an opportunity to do it – at a number of status conferences in this case. But that still doesn't answer the question why are we here at this very moment. What do you want to occur now?

**MR. DENVIR:** Do you want to just further your questions? **MS. CLARKE:** I will do a couple more follow-up questions. Would that be all right?

**THE COURT:** We have time. We only have two more jurors; right? **MS. CLARKE:** Right.

**THE COURT:** Okay. We have time. **MR. FRECCERO:** Will the government be allowed a couple of questions to follow up?

**THE COURT:** I think you actually opened the door to this type of an approach, because you said you had two minutes left, then she got up and she wanted to say some additional things. **MR. FRECCERO:** We've made an effort to be brief, but sometimes –

**THE COURT:** I understand. **MS. CLARKE:** If you can give me just a minute, then maybe we can stop this.

**THE COURT:** If this is for the opportunity for further probing, then that's appropriate. The for cause arguments will be made on Friday.

**MR. DENVIR:** We understand that. We aren't trying to do that now. **MS. CLARKE:** We really wanted to stand up and stretch.

**MR. LAPHAM:** Your Honor, if I may make one other point. I think we started down this path because we started talking about some specifics about the law, which these jurors are not going to understand the difference between murder and manslaughter and self-defense. I don't have any specific recommendation to make, but I think it's dangerous when we go down that path, and we need to avoid talk of legalese and put it in more plain terms. **MS. CLARKE:** I'll disagree very strongly to that. And we can always get into that discussion at some later point.

**THE COURT:** Let's go back to the main part of the courtroom.

**MR. DENVIR:** Okay.

(Proceedings resumed in open court.)

**THE COURT:** Just a moment. We have a problem with our connection to those people receiving the audio feed, and we're trying to clarify the problem.

I'm ready to proceed. Go ahead. You wanted to ask some additional questions. Your request for leave to probe further is granted. MS. CLARKE: No, I think we'll stop at this point.

**THE COURT:** Then is there any reason why I shouldn't have my deputy clerk escort this juror to the holding room? MR. FRECCERO: None, your Honor. MS. CLARKE: Thank you.

**THE COURT:** I'll let you do that and then bring in the next juror.

(Prospective juror no. 12 entered the courtroom.)

**THE COURT:** Thank you for picking up the microphone. If you use it, that will amplify your voice, and we can be assured that everyone should hear your responses.

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Since you answered your juror questionnaire, have you heard of or read about this case?

**A.** No, I haven't, sir.

**Q.** Since you answered your juror questionnaire, have you discussed this case with anyone?

**A.** No, sir.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** No, sir.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No, sir.

**Q.** Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes, sir.

**Q.** Does Mr. Kaczynski begin this trial in your eyes, quote, with the presumption of innocence?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** I would probably label myself as a proponent.

**Q.** Please explain.

**A.** I'm of the belief that a society has the right to set rules and laws that we all go by or are governed by and that the society can set up consequences if individuals break those laws or rules or regulations.

And if those consequences are the death penalty, then I believe a society has the right to administer the death penalty.

**Q.** If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

**A.** No.

**THE COURT:** The parties may conduct voir dire.

**MR. DENVIR:** Thank you, your Honor.

**VOIR DIRE EXAMINATION BY MR. DENVIR:**

**Q.** Juror number 12, my name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski.

**A.** Hello.

**Q.** I can't address you by your name. You evidently were a juror in a previous case, I guess, in state court; is that correct?

**A.** Yes, I was.

**Q.** And can you tell us a little bit about that case, what type of case it was?

**A.** It was a murder trial involving two defendants. One was a 17-year-old. One was 18 or 19. It had other aspects to it where it might have been gang related, weapons charges. I can't remember all of them. Attempted murder. I think those were the charges.

**Q.** Do you know if that was a case in which the death penalty was a possible sentence? Were you asked questions like this like you're being asked today in that particular case?

**A.** To be honest, I don't remember.

**Q.** So you don't remember if it was a capital case?

**A.** I don't remember if it was a capital case or not. We never got to the jury deliberation part, because after five weeks they plea bargained and settled.

**Q.** And do you know what the plea bargain was?

**A.** Yes. The judge informed us and then the lawyers talked to us afterwards. They pleaded guilty.

**Q.** Was there anything about that experience that would affect your ability to sit as a juror in this case or give you any views about sitting in this case?

**A.** No, not that I know of.

**MR. DENVIR:** Your Honor, I wonder if I could have the questionnaire for this juror.

**Q.** We have a copy of that questionnaire you filled out, and I may just ask you some questions, and it might refresh your memory by giving you a copy of it. This is the original. I think it's on page 30, you were asked about what you remembered about the case, and you stated that you remembered something about beefed-up security.

Do you see that? I think it's question 113. It's on page 30. It's way back there.

**A.** Uh-huh.

**Q.** Could you tell me what you were thinking about when you wrote that?

**A.** I don't listen to the news very often, but sometimes when it's on or the radio is on and there was something that because the trial was being brought here to Sacramento that there were extra security precautions being taken. That's all I remember hearing.

**Q.** Okay. And then I think on page 32, you say as a reason you might not want to serve as a juror in this case is you didn't want the media intruding into your life or your family's life; is that right?

**A.** Right.

**Q.** Let me ask you, you understand that Judge Burrell has entered an order that the identities of the jurors will be kept from the public and from the media?

**A.** Yes.

**Q.** And the reason is to protect your privacy. Does that pretty well take care of the concern you expressed here?

**A.** Yes. It's just that, like I said, I don't watch these kinds of things or the news very often, but I've seen how the media tends to have a feeding frenzy. And I don't mind doing my duty, but I don't want to be bait.

**Q.** They're out they're right now.

**A.** That's why I'm not looking now.

**Q.** And you understand that the anonymous jurors is strictly to protect the juror's privacy? It's not a concern about physical safety of the jurors or something like that.

**A.** Oh, I understand.

**Q.** As far as your prior – over time, you may have become familiar with the case. Did you pay any – do you understand that these crimes that are attributed to the Unabomber occurred over a long period of time?

Did you pay any particular attention to them as they were reported over time? Was it something that interested you, and you said, oh, what's that about?

**A.** No. Basically, I'm from Southern California, and if I ever heard of the Unabomber, I didn't pay attention. I very rarely watch the news. I have two sons, a husband and a life. I have more pressing things to listen to.

**Q.** Mr. Kaczynski was arrested as a suspect in about April of last year. Have you paid more attention because somebody was arrested for being the Unabomber?

**A.** No. I feel the law or the legal system will take its course.

**Q.** Do you have any particular feelings about either the charges or Mr. Kaczynski, from whatever exposure you had? I know it wasn't great. I mean, do you come in with any preconceptions, any thoughts in particular about either the case or the defendant?

**A.** No, not really.

**Q.** If you would go to –

**THE COURT:** Excuse me, Mr. Denvir. He gave you the questionnaire, and that's now consuming both of your hands. **THE WITNESS:** Sorry.

**THE COURT:** You need one on the microphone. Thank you.

**Q. BY MR. DENVER:** I wanted to see if I could ask you a little bit about your views on the death penalty. First of all, do you have any religious or spiritual views that influence your views regarding the death penalty as a general matter?

**A.** No, I don't believe so.

**Q.** And could you describe what your basic feeling is about the death penalty as a general matter, not in this particular case, but whether it's a good thing to have, bad thing to have?

**A.** I have mixed feelings. I know it's something that I never want to have to face as a citizen. I think there are times when, like I said, society has the right to exact that as its consequence.

I'm not a proponent of killing anyone, you know. Frankly, I don't give the death penalty a lot of thought.

**Q.** Well, a lot of people don't. It doesn't come up a lot.

**A.** Yeah. It's not part of the dinner conversation that I ever have with my family.

**Q.** You had said that you think society should have certain rules and set consequences, and then if the rules are violated, consequences are followed?

**A.** Uh-huh.

**Q.** Do you understand that as to the potentially capital offense here, which is, in essence, a mailing or a transporting of a bomb with an intent to kill resulting in the death with Mr. Murray, who was with the Forestry Association, that the law does not provide just one penalty, the death penalty, it provides that the penalty could also be life in prison without possibility of release? So it provides for alternative consequences.

**A.** Okay. I understand that.

**Q.** Do you think you could make a choice between the consequences provided by the law? I mean, your feelings don't preclude you from doing that?

**A.** Oh, no. If the Judge were to say these are the things you could consider, I would have no problem considering that.

**Q.** I'm going to give you very quickly a sense of how the trial might proceed, because I think it's an important question. First there's a phase of the trial like a normal trial where the government presents its proof as to whether the defendant is guilty of the charges brought. The defense can present evidence. The jury hears argument, is instructed by the judge, deliberates, reaches a verdict on it. That's what we're calling the guilt or not guilty phase of the trial.

Only if the jury found the defendant guilty of a capital offense, which is, as I say, a mailing or transporting an explosive with an intent to kill resulting in the death of Mr. Murray, would there be a second phase, a sentencing phase.

So if you were a juror, you wouldn't go into the second phase unless you had sat and heard all the evidence and said he's guilty beyond a reasonable doubt of that crime, and now we will determine the penalty.

At that second stage, the sentencing or penalty phase, again the government could present evidence about either the crime or about the defendant. The defense could also present evidence of that type. You again would be instructed, different instructions, by Judge Burrell as to some of the considerations that could be given. But in the end, you would be told pretty much that it is your choice between those penalties.

Do you feel that you would go, having sat through the first part of the trial, you would go in with any preconceptions or any ideas as to how it should come out on sentencing?

**A.** I would try very hard not to. I would try to stay very open-minded.

**Q.** Do you think that would be hard for you for any reason, or do you think that's something you could do?

**A.** No, I don't think so. I'm usually very open-minded.

**MR. DENVIR:** If I can have just one moment, your Honor. I have no other questions, your Honor.

**THE COURT:** The government.

**MR. CLEARY:** No questions, your Honor. PROSPECTIVE JUROR NO. 12: Thank you.

**THE COURT:** I'd like my deputy clerk to please escort the juror to the waiting room and bring another juror. Don't bring another juror. I think we'll take the afternoon recess. Court will be in recess until 3:25.

(Recess taken.)

—oOo—

**THE COURT:** Let the record reflect all participants are present.

Mr. Denvir, you indicated something at sidebar concerning the questions I had asked you, wanted to know if the Government had proposed those questions. The Government did propose all of those questions except for one. I looked at the draft of my notes.

So that answers your question.

**MR. DENVIR:** Thank you.

**THE COURT:** Are you ready to proceed?

**MR. DENVIR:** Your Honor, there was one question, one point we did want to make. I think the Government agrees.

At some point in the questions you were asking, I think you used the phrase, the jurors, that they would "recommend a sentence." And I think that is inaccurate, because they impose, they select – it's kind of a Caldwell question if they don't realize they had a responsibility, for instance, if they thought it wasn't a binding recommendation. At the time it didn't seem to have any great significance.

**THE COURT:** You want me to define the word "recommend"?

**MR. DENVIR:** Maybe put "select"? That's, in fact, what they do.

**THE COURT:** Government agree?

**MR. LAPHAM:** Yes.

**THE COURT:** I'll search for that word and substitute the word "select" in its place.

Anything further?

**MR. DENVIR:** No, Your Honor.

**MR. LAPHAM:** No, Your Honor.

**THE COURT:** Let's call them.



(Pause in the proceeding.)

(Prospective juror number 14 was brought into the courtroom.)

VOIR DIRE EXAMINATION BY THE COURT:

**Q.** Sir, did you express any reason as to why you should not be available for jury service in this case?

**A.** No.

**Q.** You are available?

**A.** I have to be.

**Q.** Thank you for picking up the microphone. When you respond to our questions, if you hold it a little closer to your mouth, then your voice will be amplified.

Since you answered your questionnaire, have you heard of or read about this case?

**A.** I haven't read anything about it. And when I hear Unabomber or Kaczynski, my radio has push buttons, I push the button.

**Q.** I think I understood.

**A.** I change the stations.

**Q.** Okay. Thank you. That's what I thought you said. Since you answered your questionnaire, have you discussed this case with anyone?

**A.** Not other than – this is basically what the trial was. But as far as specific information, no.

**Q.** Can you elaborate on what you are referencing as part of the discussion you had with someone?

**A.** Say that again, please.

**Q.** You seem to indicate that you had some type of a discussion, and I don't understand the nature.

**A.** Oh, simply that this was the Unabomber trial, specifically as to – well, what are they taking you down there for? That's what it is. Other than – specifics, no.

**Q.** Would that be work colleagues or something like that?

**A.** Yes.

**Q.** Who want to know where you were going and you indicated that you were coming to court for this particular trial?

**A.** Well, yeah, because it's on the news that they're taking people down there for such and such in Sacramento. So that's where I had to go, so that was the first question.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** I don't think so.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No.

**Q.** Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

**A.** Yes, sir.

**Q.** Does Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

**A.** Yeah. That's what the whole system's based on, isn't it?

**Q.** That's correct. Do you consider yourself a proponent or an opponent of the death penalty?

**A.** I would say I'm a proponent of it.

**Q.** And can you explain your answer.

**A.** (Pause.) Well, there's – there's crimes that are such that the person has really no place in society. Somebody deliberately sets out to kill somebody; I think that the punishment should match the crime.

**Q.** If this case reaches the sentencing phase, would you automatically vote to recommend the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

**A.** No. There's nothing automatic – no. There are gray areas in everything. Death sentence is not automatic ever, I don't think.

**THE COURT:** The parties may conduct voir dire.

**VOIR DIRE EXAMINATION BY MR. FRECCERO:**

**Q.** Good afternoon, sir. My name's Steve Freccero. I'm one of the prosecutors in this case.

You have to come quite a long way for this proceeding.

**A.** Mm-hmm.

**Q.** And I take it – you mentioned in your questionnaire that this was an inconvenience, but you didn't really have any valid reason not to serve.

**A.** It's just an inconvenience.

**Q.** So your job, you're set with your job in terms of if you were selected as a juror in this case?

**A.** Yes.

**Q.** The judge asked you some questions about the possibility of the death penalty in this case. Do you understand that you only get to that question after there's a trial where the only issue is whether the charges have been proven, whether the individual's guilty or not guilty?

**A.** Of course.

**Q.** And it's only then, afterwards, that there will be a second proceeding. At that time, you would be given further instructions by the Court and, in essence, you'd be asked to weigh a number of factors, both what are called aggravating factors and mitigating factors. Is there any reason why you couldn't listen to those instructions and fairly consider all those factors?

**A.** I don't think so.

**Q.** You feel confident that you could listen to both sides, listen to the Government's case but also reflect on and consider the information that the defendant chose to put forward before making any decision?

**A.** Yeah.

**Q.** And your own personal view that you're a proponent of the death penalty that you mentioned, would you be willing to put that aside and only make your decision based on the instructions of the Court and the evidence that's presented?

**A.** Sure.

**Q.** So that even if something – if you thought it should be done in some other way, but if that's the way the law, the community's law sets it out, you'd be willing to follow that?

**A.** Sure.

**THE COURT:** I didn't hear the response. **PROSPECTIVE JUROR 14:** Yes. **MR. FRECCERO:** **Q.** So that really the key issue is that are you going to go into a penalty phase before hearing any of the evidence, before hearing what the law is, and are you going to go in there and say, "Well, I've already sat through this guilt phase, so my mind is made up on punishment"?

**A.** No. It depends on what the judge's instructions are for what the circumstances are.

**Q.** I noticed you have – is it correct you have a sister who works for a district attorney's office?

**A.** Yes. And she used to work for the public defender's office in the same county.

**Q.** I noticed that. So you understand, then, the importance of hearing both sides of the story?

**A.** Sure.

**Q.** And you understand that both the lawyers for the Government and the lawyers for the defendant have a job to do, and you'd be prepared to listen with an open mind to both sides?

**A.** Yes. **MR. FRECCERO:** No further questions.

**VOIR DIRE EXAMINATION BY MS. CLARKE:**

**Q.** Good afternoon.

**A.** Good afternoon.

**Q.** My name's Judy Clarke, and I'm one of the lawyers for Mr. Kaczynski.

I was a little concerned about your response on number 41. **MS. CLARKE:** Do we have the questionnaire?

Thank you, Your Honor. **PROSPECTIVE JUROR 14:** (Accepts document.) **MS. CLARKE:** **Q.** About receipt of the summons and what your – let me see if I can help you with the page.

Eleven. You got it. I was just a little concerned for you that what you felt when you received the summons was that it would be time-consuming and inconvenient, and you mentioned to the prosecutor that it was some inconvenience. Could you help us understand the inconvenience?

**A.** Well, anytime you're uprooted from your – no, it's just a matter of it's 140 miles from home, which is no big deal. I spent time in the service; it's a lot further than that. But being taken out of your own house is an inconvenience. That's all I'm saying.

**Q.** Is there any particular hardship on your family with you doing that kind of travel?

**A.** No. This is wintertime. Lawn don't have to be mowed. Somebody's going to have to feed the dog.

**Q.** Good way to get out of this, I guess?

**A.** I try to get out of what I can.

**Q.** Would you be driving down every day?

**A.** No. I couldn't function if I drove 140 miles every day.

**Q.** I was just perhaps concerned that it was a hardship. We would want to discuss and see if there was any reason you should ask the judge to be excused on that basis.

**A.** I wish I could. But no, my job pays me, the Court pays for the room, so you know, I can't.

**Q.** Can't think of another good reason?

**A.** No, I really can't.

**Q.** Okay. You mentioned in your questionnaire, and I don't want to get too personal with you, but you have a deceased son. Could you tell us anything about that, the circumstances of that?

**A.** He went to sleep coming down the freeway.

**Q.** Okay. So it was a traffic matter. I'm sorry. I needed to know.

Your sister worked for the public defender?

**A.** Yes.

**Q.** And then changed and went to the D.A.'s office?

**A.** Yes.

**Q.** Did you know much about her work as a public defender or as a D.A.?

**A.** Not really, no. She's – I knew she worked in the office, and really that's about it. In fact, I think it was the same person that she was working for. I'm not certain, but I think the public defender went to D.A. or vice versa, I think. Some of the same people.

**Q.** So you think she switched jobs to go with the co-worker?

**A.** I think so, yes.

**Q.** Did you have any impression of her work as a public defender versus her work as a D.A.?

**A.** I really don't talk to her that much. I think she's the office manager at the D.A.'s office now. It's mostly clerical. And as far as the public defender's office, she didn't say much about it. Somebody's got to do it.

**Q.** Somebody's got to do it. In your answers to 58 and 59, on page 16 – you see those?

**A.** (Examines document.) Okay.

**Q.** The question about the attorneys who prosecute, your response was it's an important and necessary job. And then attorneys who defended, you expressed your opinion varies depending on the tactics of the individual lawyer. Could you discuss that with me a little more.

A. Mainly what I'm driving at is that, you know, the attorneys don't have to tell the truth when they're up there.

Q. Don't say that in front of the judge.

A. Okay. Your job is maybe to bend things a little bit to get the impression you want, whatever. What little I saw of the O.J. trial gave me a very bitter taste. Not just the defense attorneys but the trial system in general. I thought it was a farce. But that's only one, too. So I'm just saying that if the attorneys are not trying to put something in a way that isn't there, then – I'm not saying this very well, but I think you understand what I mean.

Q. But the O.J. case, I think we all have sort of our impressions what that meant to us. When you say it was a farce, you talking about the result or how it went or what?

A. I'm talking about more it was a camera circus than a court of law. And what little I did watch of it, I'd watch about 15 minutes, say, I have to turn this off, this is baloney.

Q. It sort of turned you off. Was it the in-court proceedings or the out-of-court?

A. I'd say a combination of both.

Q. Can you remember anything in particular that the lawyers did, so we won't repeat that performance?

A. No. I really can't. Like I said, I watched very little of it. But what I did – okay. One thing, it's almost like they're searching for a certain answer out of somebody. They ask the same question 17 times in a row. After the first 15, that's enough.

Q. Take it and go with it. Okay.

In – you mentioned to the judge that you hadn't read anything about the case since receiving your summons but that you had mentioned that you were going down to the Unabomber trial because it was clear where you were coming to?

A. Yes.

Q. Who did you say that to, and what was the response?

A. Who? Well, my wife, for one. My boss, for another. Several of the people that I worked with, which are, you know, guys sitting around the table in the morning or whatever. But the basic response from them was, you know – my boss, of course, says, I hope you don't because it could run into a long time and we're underhanded – we're shorthanded.

Q. You're talking about the lawyers.

A. Right. But everybody else is just basically – that would be a long, time-consuming thing to get hung up on.

Q. Did anybody express an opinion one way or another to you about what should happen in the trial?

A. No.

Q. Did you express an opinion at all yourself?

A. No.

**Q.** Can you remember reading anything about this case before you got your summons?

**A.** Sometime back – I don't remember, must have been 18 months, two years.

**Q.** The arrest of Mr. Kaczynski was April of '96.

**A.** Okay. Looking at about a year and a half, there was a big to-do about the tape of the arrest, and there was a cabin up in Montana, whatever, but I really wasn't –

**Q.** Paying much attention?

**A.** – particularly interested. I get the Red Bluff Daily News, which sometimes it's four inches thick if it's got ads in it. I'm serious. I'm not being facetious. That's the only newspaper we get. So unless it's something really big, it's more local stuff and obituaries.

**Q.** Was anything reported about what was found in the cabin or any comments about?

**A.** Yeah. There was. I believe Al Gore's was book there.

**Q.** What was that?

**A.** Was Al Gore's book there?

**Q.** Is that what you remember hearing?

**A.** Yeah.

**Q.** I guess we better not get into politics. Do you remember what else?

**A.** No, I don't.

**Q.** What else went through your mind?

**A.** I listen to Rush.

**Q.** Actually, you had several radio stations, talk shows that you listen to regularly. Have they commented on this?

**A.** Actually, back in that period of time there was probably some comment, but recently there really has been none.

**Q.** If I could get you to go to the – if I could talk to you a moment about your opinions on the death penalty. And those questions are at pages 26 and 27. And you've indicated to us that you are in favor of the death penalty; am I right?

**A.** In some cases, yes.

**Q.** Could you help me understand what circumstances death would be appropriate?

**A.** Well, for one thing, like the Oklahoma City bombing, where he set out to cause mass destruction, whatever. I think it's very, very justified in a case like that. Repeat murders. People that have killed and been turned loose. The recidivism rate after the death penalty is zero.

**Q.** So a situation of mass destruction. And how would you define that?

**A.** Well, I think the Oklahoma City –

**Q.** That's –

**A.** – was pretty graphically mass; yes.

**Q.** Would there be some gradations on that?

**A.** I'm sure there would.

**Q.** Multiple murders?

A. Basically the same thing, yeah.

Q. It's my understanding that you strongly agree with the death penalty in acts of terrorism, and I guess that's what you're thinking of in Oklahoma City. Would there be other acts of terrorism you would agree the death penalty would be appropriate, would be the sentence to impose?

A. I'd say mailing bombs might be one.

Q. So a case such as Mr. Kaczynski is accused of would be a case of terrorism in your mind?

A. I think it would be appropriate, but I'm not saying it's necessary.

Q. I'm just trying to figure out where we are on the definition of the word. The questionnaire just uses the word "terrorism" and doesn't really define it.

A. You sit down with a 30-page – and by the time you get back into the middle, you're kind of getting frayed.

Q. You're not sure what you've said. But would that be fair that would be your opinion – that's page 27, number 107? The third checklist down.

A. I would say in most cases. Not in all cases.

Q. And could you describe circumstances in which the death penalty would not be appropriate where you have mailing of bombs, as you said?

A. (Pause.) Not, not right off.

Q. Can you think of a circumstance in which someone mails a bomb – and I take it when you mail a bomb you're thinking that's planned, premeditated intent?

A. I would say you'd have to think pretty hard about it.

Q. And that would be the intent to kill. You don't send a bomb without the intent to kill; am I right?

A. Yeah.

Q. And your belief about the death penalty would be that it would be appropriate for a circumstance where somebody plans and premeditates and deliberately sends a bomb to somebody to kill them?

A. Yes. But I would feel the same way if they planned and sat and waited on somebody and put a rifle bullet through their head. It's the premeditation and whatnot. If you set out deliberately to do that type of damage to somebody else, why should you not expect the same to come to you?

Q. And I understand. And your opinion about the death penalty, has this been a long-held opinion for you?

A. I would say so.

Q. So it's something you've thought about?

A. Mm-hmm.

Q. And considered?

A. (Nods head up and down.)

Q. Am I right?

A. I don't spend lots of time –

Q. Right.

A. – pondering it, no. But if that's what you're asking me, but it's an opinion I've had for a number of years.

Q. You didn't just walk into court today and come up with an opinion. Sometimes people really haven't thought of their view of the death penalty until they're in this kind of circumstance. And I guess that's really what I'm asking about.

Would there be a circumstance, if you have convicted somebody of mailing a bomb, finding that they did it with planning and premeditation and with intent to kill, you have convicted them beyond a reasonable doubt of that crime, would there be any circumstance that you could think of that could warrant any sentence other than death?

A. (Pause.) There's – you know, no possibility of parole would be possibly a logical substitute. But I'm kind of drawing a blank.

Q. If those – let's look at the last – if I could ask you to put your glasses on one more time the last checklist on page 27.

A. Yes.

Q. You indicate there that you strongly agree that a person's background does not matter. Am I right?

A. I think a person has the ability to commit a capital crime and sit down and think about it. They know if it's right or wrong before they do it. If their mother spanked them when they were little or not is not an excuse for what they're doing. Accountability is there.

Q. So basically – and this is really sort of a heart-to-heart discussion about beliefs, and there aren't right or wrong beliefs in this area; it's just we're in an awkward spot of having two phases of a trial and having to find out a belief system that someone will be guided by – and what I'm hearing you say is that you are more comfortable in making a decision about death based on the circumstances of the crime than based on the circumstances of the offender? Does that make sense?

A. I think that's basically what I'm saying.

Q. That's pretty much it?

A. I think, if I understand, yes.

Q. Then pretty much if you have decided as a member of the jury beyond a reasonable doubt that the person planned and premeditated and sent a bomb with the intent to kill and the death resulted from that intent to kill, then that equals the death penalty for you?

A. (Pause.) Ninety percent, maybe.

Q. What would the other 10 percent be?

A. I don't know. I've never sat through one of these proceedings and heard what the other – you know, there's – I'm sure in a period of months there would be a lot to go through that I wouldn't think of just sitting here talking to you.

Q. There's the crime and there's the circumstances of the person who commits the crime. And I thought what we were talking about is the crime is what is going to guide you in making a decision about the death penalty. Am I right?



A. Yes, that's basically true; yes.

Q. So the circumstances of the offender are not going to be something that are of concern to you in making the decision that the death penalty is an appropriate penalty?

A. (Pause.) Circumstances. Okay. You're saying rich, poor, black, white, how he was raised; is that what you're driving at?

Q. Yes. Any circumstance of the offender.

A. I don't think that really enters into it once you get to the – if you've gotten to the point of beyond a reasonable doubt, period.

Q. Right. So that would be the determining focus for you is finding that the crime was committed beyond a reasonable doubt by that?

A. Well, that's first and foremost, yes.

Q. Well, and I guess what I'm stumbling with is, is there anything else? I know you could be asked, "Well, would you follow the instructions?" I'm sure you would say yes to that.

A. Yes.

Q. But it's sort of a heartfelt decision. The imposition of a death penalty or a sentence of life without parole is a very personal decision that each juror gets to make.

A. That's true.

Q. And you can't really instruct a juror as to impose the death penalty or not to impose the death penalty. So it's really a situation of, are you able to be open to anything other than the circumstances of the crime, and what I'm hearing you say is the circumstances of the crime are the determining factor for me.

A. Well, the fact that the crime was committed is why we're here.

Q. Right. Right. And if it is proved beyond a reasonable doubt that Mr. Kaczynski is the one who sent the bomb that resulted in the death of Mr. Murray, it sounds to me like the death penalty is what you believe is the appropriate and only logical sentence to impose?

A. I'm not really saying that at all.

Q. What are you saying? Help me a little bit before the judge tells me I've been up here too long.

**THE COURT:** You've already exceeded your time, but we have a little time. I'll let you probe further. **MS. CLARKE:** Thank you. **PROSPECTIVE JUROR 14:** All I'm saying is that that's not one hundred percent. And I've never been put in that position. I would assume that if I was, and that was what I felt at that time to be the appropriate punishment, then that would be what I would recommend. But if at that point in time there had been enough gone through that I felt there was some reason not to – and I can't pick you out a specific reason right now but, you know . . . **MS. CLARKE:** Could I have just one moment? Could you hold that thought? **PROSPECTIVE JUROR 14:** Sure.

(Discussion off the record among Ms. Clarke, Mr. Sowards, Ms. de La Rue and Mr. Denvir.) **MS. CLARKE:** I just have a final series of – **MS. CLARKE:** Q. If there's no

justification for the sending of the bomb intending to kill someone, would that make a difference to you?

A. Say if there is no justification for it?

Q. Right.

A. (Pause.) I don't see where there would ever be justification for that.

Q. So that decision would be made when you decide that the person mailed the bomb. Justification would be out as a consideration, because there couldn't be a justification for killing somebody with a mail bomb?

A. (Pause.) I think if somebody did something to my family that I felt justified killing them because I was really upset at that point in time, sending a bomb through the mail wouldn't be the way I'd do it.

Q. Would it matter to you – remember, we were talking about it's the circumstances of the crime that I'm understanding you say you focus on in determining the appropriate penalty; right?

A. Yeah.

Q. And not the offender?

A. Not the offender?

Q. The person you've convicted. It's not the circumstances of that person that you're looking at to determine the appropriate penalty; right?

A. Mm-hmm.

Q. So would that mean that it would not matter to you in terms of determining the right penalty, in this struggle that you will go through, how the person was raised?

A. I don't know what you're – are considered mitigating circumstances and whatnot.

Q. Right.

A. What other things we would have to consider when it got to that point if it did.

Q. Well, you can choose to consider whatever you choose to consider. What I'm trying to do is work through – MR. FRECCERO: Your Honor, can I interpose an objection, because there are legal requirements as to this decision. And I don't think we're getting a proper legal instruction as to what's going to go on in that phase.

**THE COURT:** Isn't that true, counsel? You just told the prospective juror that he can consider anything he wanted to consider. Doesn't he have to consider my instructions? MS. CLARKE: But your instructions are that he can consider whatever he can consider. He can find aggravating circumstances outweigh mitigating circumstances. He can find mitigating circumstances outweigh aggravating circumstances. He can find no aggravators, no mitigators. He has the power to make a determination based on his belief about what the appropriate sentence is. MR. FRECCERO: Your Honor, I would object. The jury would be required to find at a minimum one statutory aggravator. They would have to find one of those in the notice, and then the mitigating factors are listed by statute and contain any other information. So I don't think that's a correct statement. The jury is not free to impose the punishment based on anything. They're bound by statute and specifically those for which the notice has been given in the case.

**THE COURT:** The jury has to follow the law that I instruct the jury to follow. To the extent the question indicates otherwise, the objection is sustained. MS. CLARKE: One of the statutory aggravators is a substantial planning and premeditation.

**THE COURT:** Let's start with a new question. MS. CLARKE: Q. One of the statutory aggravators that the Government has alleged is substantial planning and premeditation. As I understand you describing mail bombs, there would be substantial planning and premeditation in the process of making and mailing a bomb to someone. Am I right?

A. Quite obviously.

Q. If that were your finding, would there be anything that you could consider that would make you open to a sentence other than death?

A. Sounds like the same question to me over and over.

Q. Right. And what I heard you say – I'm just trying to pin it down – is "No; death is the right sentence"?

A. I'm saying it would be appropriate but it's not necessary.

Q. If it's appropriate, is that the sentence that you would pick?

A. Four or five months down the road after hearing everything, I may not. I can't answer that question directly right now. I can't do it.

Q. You know a little bit about the Unabomber case, as it's called; right, do you?

A. Very little.

Q. You know, basically, bombs were sent to people, and in the Sacramento case two people died?

A. Yes. MR. FRECCERO: Your Honor, I would object. The Government would object to the fact-specific voir dire. That's not the purpose, as we understood of the Court, of the "for cause."

**THE COURT:** Sustained. MS. CLARKE: Q. From what you know about the Unabomber case, do you have an opinion as to the appropriate punishment for the Unabomber? MR. FRECCERO: And again, Your Honor, I would interpose the same objection that's fact-specific, what he knows about the facts of this case. MS. CLARKE: That's not asking, Your Honor, to judge Mr. Kaczynski. It's asking to judge what he knows about the Unabomber case.

**THE COURT:** Sustained. MS. CLARKE: Q. I want to ask you to put your glasses on one more time, but I will not do that.

When you said at the bottom of the page that you strongly agree that a person's background does not matter, what did you mean by that?

A. (Pause.) I suppose it would matter in some cases. I mean, if a child is brought up in a violent atmosphere constantly and has never known anything else, I would expect that child to be somewhat violent when he gets older and basically reflect the way he was brought up.

But there still has to be a certain amount of accountability when that person gets to be an adult. Supposedly this person had the knowledge and the wherewithal and the brainpower to construct explosive devices and to plan and figure out ahead of time

that this is the result he wanted. And I don't think that that reflects that type of background.

**Q.** So in circumstances that you just described, the background of the person would not be a relevant consideration; would that be fair to say?

**A.** Try that again.

**Q.** In circumstances that you just described, where the person is smart enough, bright enough, to construct an explosive device, a bomb to mail, in those circumstances the person's background would not be – would not matter in the decision?

**A.** Can't say it wouldn't matter at all, but that person is also intelligent enough to know what the risks are and when he does it, it's definitely not a proper thing to do in our society. I don't know how much plainer I can be. We're going through this over and over, sounds like.

**Q.** In that circumstance you would default to the circumstances of the crime in making your decision?

**A.** Four and five months from now, after having heard everything, I can't say that that would be exactly what I would do; no.

**Q.** Okay. Do you have anything else you'd like to tell us about that maybe you've left out of the questionnaire, or are you just tired of me?

**A.** I'm not tired of you personally.

**Q.** Thank you.

**THE COURT:** Any further examination? MR. FRECCERO: Very briefly, Your Honor.

VOIR DIRE EXAMINATION BY MR. FRECCERO:

**Q.** Sir, I just want to – I think the key question is, whatever your personal beliefs are right now as you sit here, if you were chosen as a juror could you put aside and would you really be able to listen to this evidence and follow the law and make a decision based on that, not your own feelings as you sit here right now?

**A.** Yes.

**Q.** Do you think you'd be able to do that?

**A.** Yes, I think I could.

**Q.** And if someone came to you and gave you a bunch of reasons, put forward evidence, circumstances, and the judge told you to consider them, that might lead – that the law says could allow you to make a decision other than the death penalty, would you consider those fairly and honestly and make an effort to listen to all that and come up with a decision after you'd heard that?

**A.** Of course. MR. FRECCERO: All right. Thank you. MS. CLARKE: Your Honor, may we very quickly approach the bench? I just have one question I want to ask the Court.

**THE COURT:** Okay. Does this need to be on the record?

Well, better come over here, Susan.

(The following discussion was had at the bench outside the hearing of the jury.) MS. CLARKE: Thank you. I'm sorry.

I asked this juror about his son's death to find out if there was some suspicious circumstances, and he was very emotional about it as he explained to us that his son fell asleep driving down the freeway. And I backed very quickly off of that because of a sense of, you know, his emotion about it. The only thing I'd worry about is perhaps we should ask him whether that experience would be very hard on him. We're going to be talking about the death of other people. And I don't know, since his emotion's so raw, whether the Court should inquire in a more private setting whether that would make a difference to him or whether that is a factor in his ability to sit.

I meant – I was going to do it, and I just felt concern for him with the emotional state that he was in. So perhaps the Court could do it at sidebar or –

**THE COURT:** We're going to have First Amendment problems with the media if we try to probe that area at sidebar in my chambers. I can ask him a question in open court. If his response suggests that I should conduct the examination in a more private setting, then we can do that. MS. CLARKE: Would the Court mind doing it?

**THE COURT:** I'll do it.

**MR. DENVIR:** If it sounded like, after the (unintelligible). **THE REPORTER:** Excuse me?

**THE COURT:** I heard him. Counsel has asked me to be cognizant of if there's any kind of response that may indicate that I should sua sponte – MS. CLARKE: Bring him to chambers.

**THE COURT:** – take the matter to a more private setting.

**MR. DENVIR:** You might ask him if he wanted to do it in chambers. I don't think the media could complain. You've already told people they could do that. MS. CLARKE: Thank you, Your Honor.

**THE COURT:** All right.

(The proceeding resumed as follows in the presence and hearing of the jury.)

VOIR DIRE EXAMINATION BY THE COURT:

**Q.** Sir, I'm going to ask you a question, but before I ask you the question, I want you to know that you have a right to respond to the question in a more private setting. But I want to try to see if we can cover the matter here in open court first.

Clearly, one experiences considerable grief and loss with the loss of a loved one. And I can understand how painful that loss would feel. The question is whether any aspect of this trial, which would most likely cover the topic of death and the loss experienced by other people, whether that could remind you of the personal tragedy you experienced yourself and somehow affect your ability to judge this trial in a fair and impartial way.

**A.** (Pause.) I really don't – I don't think so. I found out that life is far more precious than I thought it was before. It's not to be taken lightly. I don't take somebody else's life lightly. But I don't think – I don't think it would make a difference here. I don't.

**THE COURT:** Okay. Any further questions? MS. CLARKE: No, Your Honor.

**THE COURT:** Okay. I'm going to ask my deputy clerk to escort the juror back to the waiting room and bring in the last waiting juror.

(Pause in the proceeding.)

(Prospective juror number 15 was brought into the courtroom.)

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Thank you for picking up the microphone. If you use it appropriately, it will amplify your voice and everyone will be able to hear your responses.

I believe you indicated in your response to a question that because of hardship reasons, you should not be required to be considered for jury service on this case. And without disclosing the name of your employer, please tell me why we shouldn't consider you for jury service, since we plan on adjourning by 1:00 p.m. daily.

**A.** I couldn't pay my current bills on \$40 a day. So it would cause me to lose my apartment, my car. My boss has already told me that with the workload that I carry that he'd have to hire somebody else to take over my position while I was gone.

**Q.** There's no way an adjustment could be made so that you could still work that portion of the day that you're not here fulfilling your civic responsibility?

**A.** After I left here it might be possible for me to work the remainder till 5:00 o'clock, but after that everything's shut down.

**Q.** I explained earlier that the parties are entitled to a fair cross-section of the individuals in the community from which to select prospective jurors. You're part of that cross-section.

**A.** Mm-hmm.

**Q.** Could you make the adjustment you just indicated and survive in some manner for the duration of the trial?

**A.** I could see about working till 5:00 after the trial and sell my car and maybe make it. I don't say that as a joke. I'm serious.

**THE COURT:** I'd like to talk to the parties. Or maybe you should talk to each other first.

(Discussion off the record among Mr. Denvir, Mr. Cleary, and Mr. Freccero).

**MR. CLEARY:** Your Honor, could I ask a couple questions?

**THE COURT:** You may.

**MR. CLEARY:** Thank you.

**VOIR DIRE EXAMINATION BY**

**MR. CLEARY:**

**Q.** I take it you just found out today the court would be sitting till 1:00 o'clock?

**A.** Yes.

**Q.** So I assume you've not discussed with your boss the prospect of you getting out of court each day at 1:00 o'clock?

**A.** That's correct.

**Q.** Do you think that would be an accommodation your boss would make for you, if you could agree to be at work after 1:00 o'clock every day, to allow you to work and keep you on at your salary?

**A.** I'd have to ask. I couldn't answer that.

**Q.** As you sit here now, you don't know what your boss would say?

A. Right.

Q. How many employees are at the outfit you work in?

A. There are three that carry the workload that I do.

Q. But how many overall?

A. I'd say seven or eight.

Q. And if your boss would make the accommodation for you to sit on this trial, knowing full well that you would be finished at 1:00 o'clock each day, and continue to pay you, would you then be able to sit as a juror in this matter?

A. Of course.

Q. And you wouldn't lose your car then, you'd keep your salary and your apartment; right?

A. Right.

MR. CLEARY: I have nothing further, Your Honor. Thank you.

MR. DENVIR: May I ask a couple questions, Your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION BY MR. DENVIR:

Q. Maybe I can follow up a little. My name's Quin Denvir. I am one of the attorneys for Mr. Kaczynski.

As I understand, you work full time for your employer?

A. Yes.

Q. What's your hours?

A. 8:00 to 5:00.

Q. You get paid for a full-time job?

A. Yes.

Q. Have you discussed with your employer whether he would – would pay you full time for working half time?

A. No, I haven't discussed that.

Q. If you were to work half time, which I guess is – you can't work past 5:00 o'clock and do your work?

A. Not very effectively; no.

Q. If you were to work from 1:00 to 5:00 half time, or 1:30 to 5:00 and were paid half time, would that cause a financial hardship? Is that what you're saying would require you to sell your car?

A. Half time? (Pause.) Let me think. I might be able to make it.

Q. So really, if your employer is willing to pay you either full time or half time for half-time work, then you wouldn't have a financial hardship?

A. That's correct.

Q. Had you explored any of that with him or her at all?

A. No. I assumed I would be in court all day long, so I never thought to ask him about that.

MR. DENVIR: All right.

MR. CLEARY: Can we approach to make a recommendation, Your Honor?

**THE COURT:** Okay. Does this recommendation need to be on the record?

**MR. CLEARY:** I think it should, Your Honor. Yes.

**THE COURT:** Okay.

(The following discussion was had at the bench outside the hearing of the jury.)

**MR. CLEARY:** I was going to recommend, since he's the last juror of the day, we instruct him to go talk to his supervisor or boss tonight, come back tomorrow, and tell us what the answer is as to whether the boss would keep him on full time or part time, knowing that he'll be done each day at 1:00 o'clock.

**THE COURT:** Make him part of the 12?

**MR. DENVIR:** For tomorrow. We only have 10 minutes left to end at 4:30.

**THE COURT:** We will do that. But I think I will go through the individual questions that I ask right now.

**MR. DENVIR:** Could I ask one thing? Perhaps, when you ask him to inquire of his employer, since he will – when he's released at 1:00 o'clock, he will be taken to another place – MS. CLARKE: – it might take him till 2:00.

**MR. DENVIR:** We need to be realistic. He's not going to walk out of here at 1:00 o'clock and work. There's going to be some half-hour, 45-minute delay. So if he could have some commitment.

**MR. CLEARY:** The other point that should be made to him is, as a juror, to communicate to his boss would be that this would not start for a couple weeks. So in other words, they'll have time, the two weeks it takes us to select a jury, to get people trained or whatever they have to do to cover for him.

**THE COURT:** I'll have him to appear at 4:00 o'clock tomorrow, with the thought in mind that the questions will be quicker as far as the other jurors are concerned and maybe we can get him on about that time. Okay.

**MR. DENVIR:** Thank you, Your Honor.

(The proceeding resumed as follows in the presence and hearing of the jury.)

**VOIR DIRE EXAMINATION BY THE COURT:**

**Q.** Sir, what the parties have jointly recommended is that I provide you with an opportunity to speak to your boss and explain to your boss the predicament you're in.

What we would like you to do is see if your boss is agreeable to allowing you to work at least commencing at 2:00 o'clock – we can't be assured that you will be able to arrive at work before 2:00 o'clock during the duration of the trial – with the understanding that at least one or two days, if you are one of the jurors that is picked for the group examination, it is possible during those two days that you would be away from work during the hours of about 9:00 to 4:30. That would only be a couple days.

Do you think you can do that? **PROSPECTIVE JUROR 15:** Yeah. I can speak to him about it.

**THE COURT:** Then my thought is to have you to return tomorrow at 4:00 o'clock. **PROSPECTIVE JUROR 15:** Okay.

**THE COURT:** Let me talk to the marshal.

(Discussion off the record between the Court and the U.S. marshal.)



**THE COURT:** When you return tomorrow at 4:00 o'clock, there is an accessed device to my chambers. If you use that device and tell my secretary that I told you to report for jury service at 4:00 o'clock, she will ensure that you end up in the waiting room where the other jurors will be located.

Okay. PROSPECTIVE JUROR 15: Okay.

**THE COURT:** You would be by yourself, not escorted by any marshals. It's important you not talk to anyone or let anyone talk to you. You understand that? PROSPECTIVE JUROR 15: Yes.

**THE COURT:** I'm still going to ask you some questions. The parties will be able to conduct follow-up voir dire tomorrow.

VOIR DIRE EXAMINATION (Resumed) BY THE COURT:

**Q.** Since you answered your jury questionnaire, have you heard of or read about this case?

**A.** Yes, I've heard of it.

**Q.** What have you read or heard?

**A.** I read what's called the Unabomber's manifesto. Seen some articles in the newspaper but just glanced at them, haven't really paid much attention to them.

**Q.** You've read the Unabomber manifesto since you appeared at Cal Expo?

**A.** Before that.

**Q.** No. I'm asking you what information you received about the case since appearing at Cal Expo. My question was not clear.

**A.** Oh, I see. The only thing I've seen since then was one article in the Sac Bee – I believe the man was a professor that was writing an article in there. It was the Sunday paper.

**Q.** Why didn't you avoid being exposed to that article – well, first of all, did you read that article?

**A.** Not when I saw – not when I saw what it was about. It was above some articles that I was looking at, and I just glanced at the headline above the first paragraph. But I left it alone.

**Q.** The other articles you've indicated that were located below that article, they were articles pertaining to other matters, not this case?

**A.** Yes.

**Q.** Since you answered your juror questionnaire, have you discussed this case with anyone?

**A.** No.

**Q.** Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

**A.** I don't believe so.

**Q.** Have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** (Pause.) I'd like to think not.

**Q.** When you say, "I'd like to think not," it indicates that you may have formed an opinion or you may have some preconceived notion.

**A.** Well, I'd like to say I don't have enough information about it to form a complete opinion.

**Q.** But you're not saying that. Why aren't you saying that?

**A.** Well, I'd be a liar if I said I wasn't influenced by things I've seen in the media. But I'd like to think I'm still a fair person.

**Q.** This is precisely the reason I'm asking you the questions, because I want you to be candid with us. That's the only way the parties can find out what's on your mind. They want a juror to be completely straightforward when they answer questions, and you are fulfilling your duties at this moment.

Have you formed an opinion? I need to know.

**A.** Not yet, no.

**Q.** What type of preconceived notion do you have?

**A.** Well, after reading that manifesto, I was kind of curious – I don't know where that came from. It's been called the Unabomber's manifesto, but I don't know if that was something that came from Mr. Kaczynski or if this was how this was found. If I knew that, I think that would definitely affect my opinion if I knew where that came from.

**Q.** I'm still not certain as to what opinion you have at the moment.

**A.** Well, in reading the manifesto, there was one part in it where it said that – that the ideas in the paper would never be read if it was published through a regular publisher and if it was read, it wouldn't be read by very many people.

It also said in order to get it into the hands of the public in general, it would be necessary to kill people in order to create a hoopla and this kind of atmosphere where the press would pick it up. It would get notoriety, people would start reading it.

Now, I think that if I knew that that was something that Mr. Kaczynski wrote, if he wrote the Unabomber manifesto, I would say, sounds like he's carried out his plan here if he's indeed guilty. If it's something that there is no proof of any connection to him, then I would say I'd have to leave that alone. I wouldn't have an opinion about his guilt.

Have I made any sense with that?

**Q.** Are you – I'm going to lead you in a question –

**A.** Okay.

**Q.** – to see if I understand what you've just told me. Are you indicating to me that you have formed an opinion about whoever wrote the manifesto?

**A.** Yeah, I'd say that's true.

**Q.** And so you are stating that before that opinion applies to Mr. Kaczynski, you would need to receive proof that Mr. Kaczynski authored that document?

**A.** Yes. That's what I'm saying.

**Q.** Absent that connection, have you formed any opinion about Mr. Kaczynski's guilt or innocence of the charges involved in this case?

**A.** In that light, I'd have to say no. In order to make that kind of connection I need more information.

**Q.** Is there any reason why you will not be able to give Mr. Kaczynski your assurance that he will start this trial on a clean slate?

**A.** Would you repeat that, please.

**Q.** Let me rephrase it. Is there any reason why Mr. Kaczynski will not start this trial with no evidence against him whatsoever except for the evidence that is presented in my courtroom, any reason in your mind why he shouldn't start the trial like that?

**A.** No.

**Q.** Does Mr. Kaczynski begin this trial, in your eyes, clothed with the presumption of innocence?

**A.** (Pause.) Yeah. That's the way we work it.

**Q.** But you paused. You thought about that. What were you thinking about before you answered the question?

**A.** I was thinking if I really meant it.

**Q.** Do you mean it?

**A.** Yes.

**Q.** Do you consider yourself a proponent or an opponent of the death penalty?

**A.** Neither.

**Q.** What are your views on the death penalty?

**A.** That's complicated. I don't really see that it serves a purpose. I don't believe it's a deterrent. I think I wrote in my questionnaire that I wrote it was more of a statement than anything else, that there is certain things you can do there's no coming back from, that you can't become a part of society after you've done.

But as far as the death penalty goes, I don't believe there's any purpose in it. I believe people – for example, murderers, the most important thing is I don't want to live with them. And whether they're in jail or put to death, it serves the same purpose. I don't have to live with them.

**Q.** Is it something you could consider in this case along with other alternative forms of sentencing?

**A.** Yeah. I could consider it.

**THE COURT:** I'm about to discontinue questioning. I assume the parties have no questions until tomorrow. Is that correct?

**MR. DENVIR:** Yes, Your Honor.

**MR. CLEARY:** That's correct, Your Honor.

**THE COURT:** I'd like my deputy clerk to please escort the juror to the room where the other jurors are waiting. **THE CLERK:** (Complies.)

**THE COURT:** Do we have other business to cover?

**MR. CLEARY:** I don't believe so, Your Honor.

**MR. DENVIR:** There was one question. I believe that I may have inadvertently misspoken a juror's name, maybe juror number 6. And I think the parties had agreed that perhaps the Court could seal that in the transcript or have it redacted.

**THE COURT:** Do I have authority to do that?

**MR. DENVIR:** I think you do, Your Honor. Really, it should not have come out. I apologize for it. It was part of your order for a partially anonymous jury and the fact that I may have blurted it out – I’m not used to not being able to use names. And the parties feel that is just carrying through your original order, in effect.

**THE COURT:** So you believe that my anonymous juror order is my authority for such a ruling.

**MR. DENVIR:** That would be our position, Your Honor.

**THE COURT:** Does the Government agree?

**MR. CLEARY:** Yeah, we do, Your Honor. Thank you.

**THE COURT:** That’ll be the order.

Anything further to cover?

**MR. DENVIR:** Your Honor, just for the record, we had previously inquired of the Government as to whether they had planned on conducting any independent investigation of prospective jurors. And I just wanted to state that I just recently asked that of the Government attorneys, and they told us they had not.

**THE COURT:** You just wanted to make that statement for the record?

**MR. DENVIR:** Yes, Your Honor.

**THE COURT:** Okay.

**MR. CLEARY:** They don’t need a response from us.

**THE COURT:** Okay. Proceeding’s adjourned.

(Time noted: 4:37 p.m.)

– oOo –

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

– oOo –

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

– oOo – UNITED STATES OF AMERICA, ) Plaintiff, )

) Plaintiff, )

) vs. ) No. Cr. S-96-259 GEB

) THEODORE JOHN KACZYNSKI, )

) Defendant. ) \_\_\_\_\_)

– oOo –

REPORTERS’ DAILY TRANSCRIPT

JURY TRIAL

VOLUME 1, pp. 1-197

WEDNESDAY, NOVEMBER 12, 1997

– oOo –

Reported by: SUSAN VAUGHAN, CSR No. 9673

DENNIS McKINNON, CSR No. 2223

KELLY O’HALLORAN, CSR No. 6660

A P P E A R A N C E S For Plaintiff UNITED STATES OF AMERICA: OFFICE  
OF THE U.S. ATTORNEY

650 Capitol Mall Sacramento, CA 95814 BY: ROBERT J. CLEARY STEPHEN P.  
FRECCERO

R. STEVEN LAPHAM Special Attorneys to the

United States Attorney General For the Defendant:

OFFICE OF THE FEDERAL DEFENDER 801 "K" Street, Suite 1024

Sacramento, CA 95814 By: QUIN A. DENVIR

Federal Defender, Eastern District of California JUDY CLARKE

Executive Director, Federal Defenders of Eastern Washington and Idaho

STERNBERG, SOWARDS & LAURENCE 604 Mission St., 9th floor

San Francisco, CA 94105 BY: GARY D. SOWARDS Also Present: TERRY  
TURCHIE, Assistant Special Agent, F.B.I. Unabom Task Force

ROBERT ROLFSEN, JR., Special Agent, F.B.I. DENISE DE LA RUE, Attorney  
at Law

– oOo –

INDEX OF EXAMINATIONS

By Page Voir Dire Examination of Prospective Juror No. 1

The Court 11 Mr. Lapham 14

Ms. Clarke 21 Voir Dire Examination of Prospective Juror No. 2

The Court 25 The Court (Resumed)

27 Voir Dire Examination of Prospective Juror No. 3

The Court 31 Ms. Clarke 33

Mr. Cleary 43 Ms. Clarke 46 Voir Dire Examination of Prospective Juror No. 4 The  
Court 51

Mr. Denvir 52 Mr. Lapham 59

The Court 65 Voir Dire Examination of Prospective Juror No. 5

The Court 67 Mr. Freccero 70

Ms. Clarke 76 Voir Dire Examination of Prospective Juror No. 6

The Court 78 Mr. Denvir 82

Mr. Cleary 84 Mr. Denvir 87 Voir Dire Examination of Prospective Juror No. 10  
The Court 101

Mr. Denvir 104 Mr. Lapham 117 Voir Dire Examination of Prospective Juror No.  
11 The Court 120

Mr. Freccero 123 Ms. Clarke 124

Mr. Freccero 132 Ms. Clarke 133

The Court 137 Voir Dire Examination of Prospective Juror No. 12

The Court 144 Mr. Denvir 146 Voir Dire Examination of Prospective Juror No. 14  
The Court 155

Mr. Freccero 158 Ms. Clarke 160

Mr. Freccero 179 The Court 182

INDEX OF EXAMINATIONS (continued)	Voir Dire Examination of Prospective Juror No. 15	The Court	183
	Mr. Cleary	185	Mr. Denvir 186
	The Court	189	The Court (Resumed) 190

The Ted K Archive

Jury Selection Day 1  
November 11, 1997

[unabombertrial.com](http://unabombertrial.com)

**[www.thetedkarchive.com](http://www.thetedkarchive.com)**