

Jury Selection Day 10

Nov. 26, 1997

SACRAMENTO, CALIFORNIA
WEDNESDAY, NOVEMBER 26, 1997, 9:03 A.M.

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THE COURT: State your appearances for the record.

MR. CLEARY: Robert Cleary, Steven Lapham and Stephen Freccero for the Government, Your Honor. Also at counsel table are Special Agents Terry Turchie and Robert Rolfsen.

MS. CLARKE: Judy Clarke and Quin Denvir here for the defense, Your Honor. And also with Denise de La Rue. Mr. Kaczynski is not here. He has waived his appearance for today only.

THE COURT: Thank you.

Two jurors this morning who were scheduled for this morning haven't appeared yet. We suspect that their failure to appear could be due to weather conditions. The marshals are waiting to see if they do in fact appear, and if they do appear, they will be brought to the courthouse.

One juror appeared who wasn't scheduled to appear; that's juror 140. The juror appeared with – I haven't personally spoke to the juror – the juror had communication either with my deputy clerk or the jury administrator, and the jury administrator provided me with the material that the juror brought in. It is material that provides a further response to a question asked by, I believe, Ms. Clarke. I've asked my secretary to make photocopies of that material, and I will make that available to you and I will allow you to conduct further examination of that juror, should that be your desire. That juror, by the way, is in the jury room with the other jurors.

Can I get your input on that?

MR. FRECCERO: If counsel could have a moment to confer?

THE COURT: Yes.

(Discussion off the record between Mr. Freccero and Ms. Clarke.)

MR. FRECCERO: Your Honor, if we could just have the material, see if there's any reason why the juror would need to be called back in, and if there isn't, then the juror would not have to come in again for any kind of voir dire.

THE COURT: I will have my deputy clerk send an e-mail message to my secretary directing my secretary to bring the material to this courtroom so that I can provide it to you.

I'm also going to give my deputy clerk a portion of the comment, my opening comments to the jury, to give to the parties.

THE CLERK: (Complies.)

THE COURT: I revisited Title 18, United States Code Section 3593(e)(3) this morning, and I believe we should substitute two words in my opening comments to the prospective jurors.

The proposed change is set forth in bold print in the second line from the bottom of the page each of you now has. There is a footnote above the bold print directing you to the bottom of the page where I explain the change. In essence, the word "any" has been deleted, and in its stead I have placed the statutory language "all the." And this deletion, I believe, should be made because the dictionary meaning for the word "any" is one, inferentially out of more than two, which I think is different from the dictionary meaning for the word "all." And I also placed the statutory language that is involved at the bottom of the page so that you can see exactly why I am proposing that change.

Do you agree with the proposed change?

MR. DENVIR: Yes, Your Honor.

MR. FRECCERO: Yes, Your Honor.

MR. LAPHAM: It's fine.

THE COURT: Okay. Then I'd like my deputy clerk – I assume there's nothing else to cover; we should bring in the prospective jurors?

MS. CLARKE: That's right.

THE COURT: All but 140.

(Pause in the proceeding.)

(The prospective jurors entered the courtroom.)

THE COURT: I'd like my deputy clerk to please administer the oath to the prospective jurors.
(The prospective jurors were sworn.)

THE COURT: Good morning, and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial.

The person who just administered the oath to you is my deputy clerk. Her name is Shani Furstenuau. She will assist the Court in administering this trial, as well as the individual who is on the platform with her who is the certified shorthand reporter who will report this proceeding.

I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and your anticipated cooperation. You are performing an important function in our justice system. Under the principles of our constitutional democracy, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as you making yourselves 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 involve questioning prospective jurors individually, which will commence after I question you as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning at a later time. Those required to participate in the further questioning, which will be a group questioning session, will receive notice as to 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 that I instruct them on during this trial.

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 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 in prison without the 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 raise your hand now.

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 outweigh all the mitigating factor or factors found to exist, or in the absence of 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 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 your randomly selected number as a juror rather than your name. This is because I've decided to use an anonymous jury in this case in order to protect juror privacy, as I stated to you in a previous communication.

Now I will give you a jury 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 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 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 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 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 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, nor the 26th; nor on January 1 or 2. I contemplate holding court December 22, 23, 29, the 30th, and the 31st. Please raise your hand if this poses a problem.

There's no response.

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 we 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 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 of life in prison without release or some lesser sentence. Raise your hand if you do not understand this.

There's no response.

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. If you have any belief that will interfere with your obligation to do this, please indicate that fact by raising your hand.

There's no response.

During the individual questioning, 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 request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions in the area that you indicate a desire to discuss in a private setting to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this should occur, let me know so I can determine whether this should be covered in a more private setting. This approach should be taken because the trial should be open unless I have a legitimate reason to close any aspect of it.

I will now direct my deputy clerk to escort all but the earliest selected juror into the jury room and to place the remaining juror in the witness stand.

(Pause in the proceeding.)

(Discussion off the record between the Court and the clerk.)

(The prospective jurors left the courtroom except for prospective juror number 123, who took the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 123rd randomly selected juror. I'm going to ask you questions from the podium so that you won't have to look away from the participants when you respond to my questions. So I will move to that location.

Is there any reason why we shouldn't continue to consider you for possible jury service on this case?

A. Like what?

Q. I don't know.

A. I don't think so.

Q. Since you answered your juror – well, did you answer a juror questionnaire at Cal Expo?

A. Yes.

Q. Okay. Since you answered your juror questionnaire at Cal Expo have you heard of or read anything about the case?

A. No. I've tried to avoid that.

Q. I appreciate that. Since you appeared at Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. No.

Q. I'm going to direct your attention to the information you may have been exposed to before you appeared at Cal Expo. Will you tell me as many details as you can concerning the information you received about this case or about allegations involved in the case before you appeared at Cal Expo, and you may have to make an adjustment so your voice is amplified by that microphone.

A. (Complies.) That okay?

Q. That's better. Thank you.

A. Okay. I have heard about the bombings, and I'm familiar with the term "Unabomber." I remember seeing a drawing on the news of somebody that they suspected might be that person. I've seen a news clip of Mr. Kaczynski. I believe it was when he was arrested. I heard or read that he was in a cabin. I know that one of the bombings was here in Sacramento. (Pause.) Well, and I've heard about the trial going to be here. I haven't really followed it, but prior to getting the letter from you I did occasionally see something or hear something, but it's not the kind of news that I would read in the newspaper or necessarily follow on television.

Q. Did you receive any information concerning what allegedly was found in the cabin?

A. (Pause.) I don't think so. I do remember prior to Mr. Kaczynski there was some document that was published by the newspapers that was – I didn't – I'm not even sure what it was, but there was some document that was published by the newspapers. I really don't know.

Q. Okay. Has the information that you received about this case caused you to form an opinion or have a preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. You don't have an opinion one way or the other as to that matter?

A. No, I do not.

Q. Do you have any feelings concerning that topic, the topic of Mr. Kaczynski's guilt or innocence?

A. No.

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

A. Yes.

Q. You understand that that means that any information you received outside the courtroom will remain outside the courtroom, and you will make a determination as to the guilt or innocence of Mr. Kaczynski based on information that you receive here in this courtroom?

A. Yes, sir. I understand that.

Q. And you can do that?

A. Yes.

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

A. Yes.

Q. So if you had to enter a verdict right now, you'd have to find him innocent?

A. That's correct.

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

A. (Pause.) I think I would be a proponent. I've never had to exercise the opinion, but there have been cases in the past where I would have thought that appropriate.

Q. If you happened to land on the jury and Mr. Kaczynski was unfortunate enough to be found guilty of the offense of deliberate, intentional and premeditated murder of another human being during the guilt and not guilty phase of the trial, would you still be able to consider voting for a sentence less than death?

A. Yes.

THE COURT: Okay.

The parties may conduct examination.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Morning.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

A. Yes.

Q. And I wanted to follow up, if I could, with a few questions.

A. Certainly.

Q. I saw you searching through your memory as the judge was asking you about what you knew about the case. And I think you said you recall some document being printed, in your questionnaire you remember there was some discussion about a diary. Is that what you were thinking about?

A. Possibly. I'm not sure what it was. I know there was some hubbub in the press quite some time ago that something was published, and I'm not sure what it was.

Q. So that might have been before Mr. Kaczynski's arrest or after?

A. Yes, I believe it was.

Q. Before?

A. Yes.

Q. Okay. So that might have been what everybody has referred to as this manifesto?

A. I think that's what it was.

Q. And when you mentioned in your questionnaire about discussion about a diary, does that provoke any memory for you?

A. I think I may have thought that was what I had heard about sometime before.

Q. Mm-hmm.

A. I'm not sure about a diary.

Q. Okay. So maybe you're mixing the two in thought?

A. I think so. I think what I'm recalling – I don't know when, it seems like it's been some time ago, a year or two, that there was something that was published and there was a lot of talk about it, that they shouldn't publish it or they should publish it; and like I said, I didn't read it, but I do remember hearing something about that.

Q. Certainly. Certainly. That makes a lot of sense. As you've been sitting thinking, do you think you recall anything else about the case?

A. I remember – maybe six months or a year ago, something in the news about Mr. Kaczynski's family. I didn't see the program, but I did see something where they sort of advertise it, and I think his brother and maybe a sister were having an interview with someone. I remember that.

Q. Okay. I think you also mentioned in your questionnaire that you had actually been by the building where one of the bombs went off?

A. Yes. I do some work occasionally in a building across the street. So I know where that building is, or I think I do.

Q. You think you do. How did that come to your attention? Did somebody say, "That's where one of the bombs went off"?

A. I think so. I think the people in the other building might have mentioned it or talked about it or something, because it's directly across the street.

Q. Would that have been some time ago?

A. Oh, yes.

Q. Or recently?

A. No, not recently. It was probably – I think the building across the street – it's a new building, and I think it was – I work for the State. And some of the State people were moving into that building at about the same time that that happened, and so there was some conversation about that.

Q. Do you remember what anybody said?

A. I think somebody called it ground zero.

Q. What did that mean?

A. That they were close to the place where the bomb went off.

Q. Did they tell you how they felt about it, or did it become a topic of conversation?

A. Just an occasional comment, like I said, from people that were moving to the building across the street. I haven't heard it mentioned for quite some time.

Q. Did that mean anything to you at the time?

A. Not particularly.

Q. Just sort of conversation?

A. It was just a comment that I heard.

Q. You've got some family members, and I obviously don't want to go too much into specifics, but you've got some family members in law enforcement?

A. Correct.

Q. Have you talked to them at all about the Unabomber case?

A. No.

Q. Before, I mean, before you were told by the judge to stay away from it?

A. No. Again, it's not a story that I followed very closely. And other than my partner, I don't see the other members of the family that often, and that isn't what we would talk about. I mean, we are talking about Christmas and Mother's Day and family get-togethers. So no.

Q. So your partner wouldn't have mentioned anything about the case?

A. I told him when I had been contacted for the jury that I wouldn't be watching it on the news and I wouldn't read it in the newspaper. So he helped me with that.

Q. He was just as happy as you were not to pay attention to it?

A. I really don't know how he feels about it. I haven't had any real conversations with him about that subject. (Pause.) I – I don't really think that's an area that we've discussed.

Q. Do you think that relationship at all would play into how you might feel about a particular verdict either at the guilt phase or at the sentencing phase in this case?

A. No.

Q. You don't think that would – you wouldn't have to go home and explain, "This is what I did today"?

A. No. We don't live together. And no, I don't have to explain what I did.

Q. You also had a sister, I think, that's been involved in the court system. Did I get that wrong? Court reporter?

A. Oh, yes. That was some years ago. She's been a homemaker now for about eight or 10 years, I think.

Q. Did her experiences in the court system come home to you?

A. Only that I have a lot of sympathy for the young lady sitting here.

Q. As do we all.

A. Lots of long days.

Q. Yes.

A. I don't recall anything specific but that it was hard work.

Q. Okay. I think –

MS. CLARKE: Have you got her questionnaire nearby, Your Honor?

THE COURT: It's adjacent to her. Here it is.

Well, let me make sure this is your questionnaire. Is this your questionnaire?

PROSPECTIVE JUROR NO. 123: Yes, sir.

Let me get my glasses.

MS. CLARKE: Q. Page 17. Oh, I'm sorry.

A. That's all right. Page 17?

Q. Mm-hmm.

A. (Complies.)

Q. Down at the bottom of the page you were asked a question about the criminal justice system, probably a hard question to answer in two lines. And you mentioned that you didn't think it was working well at all. Can you tell us a little bit about where that sentence comes from?

A. Well, I guess general information that – not being closely associated with it personally, but sort of a general perception that it's very difficult to convict or sentence or – I get the feeling that a lot of persons that are prosecuted – probably from TV shows primarily – that there's bargains and then sometimes they're let go before the crowding in the jails and people are released and things like that. It just seems that when people are convicted of crimes, they're not necessarily serving the sentences that

Q. That they're imposed?

A. Or that we think were supposed to be imposed. I don't know.

Q. That feeling about the system – and I understand what you're saying – do you think that would have any effect on you one way or another, your sitting in a case where a man's life is at stake, where the penalties are high stakes, life or death, life in prison without release or death, would you have any

sense that you wouldn't have the full responsibility because you're not sure whether the system really does what they say they're going to do?

A. No. I understand that it would be our responsibility to make that decision about guilty or not guilty. I think what I was referring to in that brief answer is that the process is complicated, and I think I tried to describe that it's more of a social problem than a legal problem.

Q. Sure.

A. That we just have too many people that are going through the system, and so to expedite the process sometimes the system doesn't work very well.

Q. Not a lack of individual responsibility, sort of more a systemic problem?

A. That's my general perception, that just as a society we haven't done a very good job of taking care of problems before they become problems.

Q. Sure. Sure. Could I ask you just a moment or two about your opinions about the death penalty. You've told us a little bit about it, and your answers, sort of your opinions about it or at page 26. And I think you pretty much say I believe in specific cases it's appropriate and in other cases it might not be. So I take it that if you felt it was appropriate in this case you could do it?

A. I think so; yes.

Q. And if you felt like it wasn't appropriate in this case, you could say no?

A. Yes.

Q. You mentioned that your religion teaches – see question 104?

A. Yes.

Q. That it teaches the same conflict that the Bible has, with an eye for an eye and thou shalt not kill. How have you resolved that, just there is a conflict?

A. Yes, and I guess I would – these are conversations that you have around the dinner table or playing cards with friends or things about, you know, do you believe in the death penalty or not and, you know, could you do this or not? And I recognize that, you know, some people say absolutely not, thou shalt not kill; and other people think, well, yes, for justice that is appropriate.

And I think I'm somewhere in the middle. I see both sides. But I do have the feeling that in some cases it is appropriate and it might be a deterrent. I'm not sure, but I do have that feeling. So I guess individuals relying on their own conscience in a specific circumstance can make that decision at that time. I don't know that you can really know it ahead of time.

Q. I think you're probably right.

A. I mean, I know a lot of people think they do. I thought I did, and when you're actually asked to consider it you give it a lot of thought.

Q. Because it becomes a decision for you?

A. Exactly.

Q. And I guess that's what you were thinking when you marked on page 28 – see at the top of the page, question 108?

A. Question 108?

Q. Right.

A. Okay.

Q. And you had three choices, and you said it depends on the circumstances?

A. Exactly.

Q. You – one last – I think there was some questions about mental health professionals. If I could get you to the page 24. See question 95?

A. Yes.

Q. Do you have any particular experience with the court system or with knowing about mental health professionals that are called to testify that gave you that sense?

A. Well, the only personal experience I've had would be going to the doctor and, you know, you'll see a couple of different doctors and you'll get different opinions presumably for the same condition.

Also I saw some of the O.J. case, not a lot of it – again, I work and I didn't really follow it, but I don't think you could be on this planet and not –

Q. Not see that?

A. – not know what was going on. And there were certainly experts that were called in and, you know, vehemently disagreed with each other. That's – and so I guess –

Q. You kind of had a baseline; it's common sense that ultimately –

A. I think so.

Q. – I can listen to both, and then I'll kind of go with what I think is probably right?

A. I think so. Especially if they were getting into some very technical and complicated stuff that most people, including myself, probably really wouldn't understand, but you just sort of get a sense of what feels right to you or sounds right to you.

Q. Right. I take it there's really nothing about mental health professionals that would make you say, "Well, they're all harebrained, crazy folks" or "They're all to be believed completely"?

A. No. No.

MS. CLARKE: Okay. Could I have just one moment, Your Honor?

THE COURT: Yes.

(Discussion off the record among defense counsel.)

MS. CLARKE: Thank you very much.

PROSPECTIVE JUROR NO. 123: Okay.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good morning, ma'am.

A. Hello.

Q. My name is Robert Cleary. I'm one of the prosecutors on the case, and I want to follow up on some of the questioning that you've already been asked about. If you could turn to page 11 of your questionnaire, please.

A. (Complies.)

Q. At the very top, question 41, you expressed some concern about the length of the trial. I take it that that's not a concern that would prevent you from sitting as a juror, correct?

A. No, it wouldn't prevent me from sitting as a juror.

Q. Okay. Could you tell us what you were thinking of when you said you were concerned about the length?

A. Primarily my work, my job. I just recently hired two new people. They've been on the job two weeks. At the time that we were doing this, I was interviewing people to come to work for us. And I thought, gosh, that would be not really terrific to hire some new people and then not be there to train them. But – so that's primarily where I was concerned.

Q. Okay. And I take it you've had some opportunity to train them, correct?

A. Well, they're on their own today.

Q. And the fact the judge has told you we'd be sitting from 8:00 to 1:00, that alleviated some concerns you had?

A. Yes, that was good news, because I work downtown so I could get on back down to the office. I guess that's okay, isn't it?

THE COURT: You probably wouldn't be able to get to the office until about 2:00 o'clock.

PROSPECTIVE JUROR NO. 123: Oh, okay. But I mean, we're not supposed to not go there? It's okay afterwards –

THE COURT: It's okay to go to work.

PROSPECTIVE JUROR NO. 123: Okay. That would help.

MR. CLEARY: Q. If you could turn to page 34, please.

A. 34?

Q. Yes, ma'am.

A. (Complies.)

Q. And in particular I want to have you look at question 133.

A. Yes.

Q. I take it that's nothing, the answer you gave there is nothing that would prevent you from sitting as a juror on this case, correct?

A. No. The chairs look reasonably comfortable, as opposed to the chairs at Cal Expo when we were doing this.

Q. Right. And we'll be taking a break about once every two hours or so, so you'll be able to stand and stretch, and that will be fine for you?

A. That'll be fine for you; yes.

THE COURT: I also, if the parties remind me, I will follow the practice in this case. The jurors in the back row would have the option of standing –

PROSPECTIVE JUROR NO. 123: Fine.

THE COURT: – even during the trial –

PROSPECTIVE JUROR NO. 123: Okay.

THE COURT: – if they desired to do so, as long as they did nothing to interfere with the view of other jurors.

PROSPECTIVE JUROR NO. 123: Right. I have a doughnut– you know, it's kind of a pillow with a hole in the middle. And if I go to conferences and things like that where we're seated for long periods of time, I bring that with me and I'm able to manage.

MR. CLEARY: Q. So this shouldn't be a problem for you?

A. No, I don't think so.

Q. Great. I want to talk to you a little bit about, without going into the details of it, your family members and partner who have had involvement with law enforcement.

One of the things you may be asked to do during the course of this trial is assess and judge the credibility and believability of law enforcement officers, both federal and local law enforcement officers. Is there anything about your personal relationships with people involved in that business that would, you think, affect your ability to fairly and accurately assess the accuracy and credibility of law enforcement people?

A. No.

Q. And I believe you said – well, let me do it this way. If you could turn to question 45, please, which is on page 12.

A. Yes.

Q. With respect to your answer to question 45, are any of the enforcement agencies, the law enforcement agencies you refer to there, are any of them federal law enforcement agencies like the F.B.I., the A.T.F., and the postal inspection service?

A. Yes.

Q. Knowing that there may be people from those particular agencies testifying here at the trial, is that going to create any sort of uncomfortable position for you, sitting in judgment of their credibility or believability?

A. No.

Q. Turn, if you could, to page 21 of the questionnaire.

A. (Complies.)

Q. At the very bottom, in response to question 82 – I don't want to reveal the details of the event, but there was obviously some tragedy in your life. Is that event that you refer to in question 82, is that going to create any emotional backlash for you if you're sitting in judgment in this case and hearing about bombings and serious injuries and people getting killed with bombs?

A. I don't believe so. This was an incident that occurred 30, 35 years ago.

Q. And you could put it out of your mind and assess the evidence that's presented in the court?

A. Yes.

Q. You feel confident you can do that?

A. Yes, I do.

Q. Okay. Let me ask you several questions now about the death penalty.

A. Okay.

Q. You said in response to question 103 on page 26 that you believe in certain cases, in specific cases, the death penalty would be appropriate. In what sort of cases do you believe the death penalty is appropriate?

A. I guess one that comes to mind is Polly Klaas.

Q. And what is it about that case that makes you believe that the death penalty would be appropriate in that instance?

A. Oh . . . I'm not sure. The fact that it was a child, I think, attacks my sensibility a little more, her defenselessness, her innocence, and that the fellow that was convicted of that crime, I believe, had a criminal history that suggested to me that he wasn't going to get better, he wasn't going to go to prison and be rehabilitated.

Q. Because of a long string of criminal activity in his prior life?

A. I guess so. I don't remember the specifics, but I believe that there was, you know, prior criminal – you know, convictions or – but I remember feeling that that was a man that probably wouldn't be helped and probably wouldn't get better and if he got out, he'd probably do something terrible like that again.

Q. One of the things you focused on, as you explained to us, was the innocence and defenselessness of the victim in that case.

A. Yes.

Q. Do you believe there could be defenseless and innocent victims who are not children?

A. Well, certainly.

Q. And do you feel that there may be instances in which the victim is not a child but is a full-grown adult in which the death penalty would be appropriate?

A. Yes.

Q. Can you give us some examples of what you're thinking of when you say that?

A. I can't remember the name, but there was a serial killer that had been convicted. I mean, there have been several. I can't remember which one. But, again, a sense that this was a person that was beyond fixing.

Q. Because of the repetitive nature of their crimes?

A. Yes. And sort of – I don't know how to describe it, but it's like they didn't really make any sense. They were just people that happened to be in the wrong place at the wrong time, I guess. I'm not really sure, but –

Q. The senselessness of the whole thing?

A. It's not like it was a, you know, an act of passion in a moment of anger or something like that. So I guess the randomness and the – that the serial killer is just somebody who looks for a victim and goes out over and over and over again.

Q. And you've been identifying for us now specific instances of the crime, for example, the victims, and when you discussed the Polly Klaas case, in addition, specific instances of the individual, the defendant, committing the crime, correct?

A. (Nods head up and down.)

Q. And are those the sort of things you would look at in balancing whether to vote for the death penalty or not in this case?

MS. CLARKE: Your Honor, I think at this point we seem to be prejudging on the case. But there's been plenty of exploration, and the question is, could the juror be open to both penalties?

THE COURT: Overruled.

PROSPECTIVE JUROR NO. 123: I'm sorry. Could you ask again.

MR. CLEARY: Q. Sure. You've identified for us, in telling us what it is you're looking at to determine whether there should be a death penalty or not. You've identified certain instances about the crime itself, for example, the victim, and other instances about the individual defendant, his history of prior acts of violence.

Are those the generic categories of things that you would look at to determine whether the death penalty is appropriate or not in the case you're sitting in judgment on?

A. I don't think I would say it that way. I don't think I'd call it that those are generic categories in reaching that decision. I understand that the job here is to weigh the facts of this particular case. I think what I'm trying to describe, and I don't mean to be ambiguous – I'm just not really sure anymore.

Q. Sure. And I'm putting you in a difficult spot, so I understand that.

A. But when those cases were in the news, when those stories were being talked about, I came to the conclusion or I had the feeling that I was comfortable, that, you know, the death penalty should be applied in that particular case. I recognize that this is a completely different situation. I'm not sure how to help you there.

Q. Okay. I think you've answered the question, and that is you'll basically decide based on the individual facts of the case which may include evidence about the victim, it may include evidence about the defendant, it may include evidence about the circumstances of the case; is that right?

A. Yes, sir.

Q. Now, let me ask you to turn to page 27, question 107 in particular, which is the multi-part question there.

You say that you "strongly disagree" that "anyone who plans and commits a murder should get the death penalty" and you "strongly disagree" that "anyone who murders two people should get the death penalty." Could you tell us what you had in mind when you answered those questions?

A. I didn't like the word "anyone." That was sort of a blanket that – I mean, I don't necessarily embrace it wholeheartedly as a concept that applies every time. I think it's appropriate in some situations, so without knowing, you know, anyone who plans and commits a murder, without knowing the circumstances of that particular case, I would strongly disagree that you don't just automatically assign the death penalty.

Q. Because the questions were too categorical?

A. I guess so. Again, the word "anyone," just like anytime this happens, boom, it's the death penalty, and I strongly disagree with that.

Q. Have you sat as a juror before?

A. No.

Q. Okay. Judge Burrell will tell you what would happen in any case, what the law is, and the law you're supposed to apply in this case. You've told us that you have in your own mind certain circumstances that may be relevant in deciding for you whether the death penalty is appropriate or not.

If Judge Burrell told you that there were other factors you must consider, ones that you didn't have in mind and, indeed, ones you may disagree with, your own personal view is that they're wrong, but Judge Burrell tells you that the law requires you to consider these other factors either because they aggravate the circumstance and hence would be argued by the Government in favor of the death penalty or they mitigate the circumstances and hence may be argued by the defense to suggest there should be less than the death penalty here, could you put your own views aside and follow the judge's instructions and fairly and carefully evaluate the factors the judge tells you to factor into the equation?

A. Yes, I feel I can.

Q. You feel confident you could do that?

A. Yes.

Q. One of the possible sentences in this case is – there are three possible sentences in the case. One is the death penalty; another one is life without the possibility of release – no parole in the federal system, so a real life sentence; and the third is some lesser sentence, some lesser term of years.

If it was your understanding that at the end of the day the defendant was either going to be sentenced to death if you voted for the death penalty unanimously or sentenced to life without the possibility of parole, would you automatically vote for life without the possibility of parole?

A. No.

Q. And again, you would consider all the factors we've been discussing?

A. Yes.

Q. One last area I want to talk to you about concerning the death penalty, and I believe Ms. Clarke asked you some questions on this, and that is the apparent conflict in your religious beliefs between the death penalty, whether it's appropriate or not. And I believe the two things you mentioned in your questionnaire is an eye for an eye, which would suggest that if somebody murders somebody, they should automatically get the death penalty, and thou shalt not kill, which would suggest that you can never vote for the death penalty.

A. Right.

Q. How have you resolved that conflict, or is it even a conflict for you?

A. I don't believe it's a conflict for me. I've recognized that there is a basis for difference of opinion, that some people feel very strongly one way and some people feel very strongly the other way. Sometimes I think I feel strongly for the death penalty; other times I'm not so sure. But I don't think it's based on a Biblical conflict. It's probably based on I don't know enough about it, you know, the circumstances of the individual subject for the discussion.

I – again, I feel like there are situations where it's appropriate, but it's something you have to have a lot of information that would – that would not conflict with your – basic moral code, but that with that information your conscience is clear.

Q. Is religion a core or central part of your life and your being?

A. I would say yes. I don't necessarily live by all the rules myself, so I recognize that, you know, we're frail human beings. But yes, religion is a part of my life.

Q. Could you set aside – well, let me state it this way. Would it do violence to your religious convictions or create any problems for you if your decision based – divorced from religion – based solely on the facts of this case were that you should vote for the death penalty and that would run counter to the teaching thou shalt not kill?

A. No.

Q. And if I switched the question around, you would give me the same answer?

A. That's correct. My religion teaches that you're not to divorce and remarry, but I've done that. And I live with it.

Q. I wasn't going to ask you about that.

A. I'm sorry. Okay.

Q. Thank you very much.

A. I probably shouldn't volunteer it.

THE COURT: Thank you. You can take the juror to the next room.

PROSPECTIVE JUROR NO. 123: Do you want this back?

THE COURT: I do. (Accepts document.) Thank you.

PROSPECTIVE JUROR NO. 123: You're welcome.

THE COURT: And bring another juror in.

(Prospective juror number 123 left the courtroom.)

(Prospective juror number 125 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I thank you for joining us. You're the 125th randomly selected juror.

I want to see if this is your juror questionnaire.

A. (Examines document.) Yes. It's mine.

Q. Okay. At the time you filled out the jury qualification questionnaire, you indicated that there was a potential hardship created by jury service on this case because you live some distance from this courthouse and you have young kids?

A. Yes.

Q. Has that hardship been reduced since the time you filled out the questionnaire?

A. A little bit. My mother now helps me with the kids, so she'd be able to do that.

Q. Okay. So we really can truly consider you for jury service?

A. Yes.

Q. Okay. I'm going to ask you some questions from the podium so the parties can see you when you respond and you won't have to respond in an awkward position.

A. Okay.

Q. Did you fill out your juror questionnaire at Cal Expo?

A. Yes, I did.

Q. Since you answered your juror questionnaire at Cal Expo, have you heard of or read anything about the case?

A. The only thing I heard was that they had already selected the jury. I thought that's what had happened, so I was surprised at having got the letter again, so that no, I have not read anything or heard anything else.

Q. I'm going to ask you to make an adjustment so that your voice is amplified a bit more –

A. Okay.

Q. – by the microphone.

A. Sorry. (Complies.)

Q. That's all right. Since Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. I have heard a few things; yes.

Q. What things have you heard?

A. I heard that the person accused has refused to take a psychology test or psychiatric test. And that's about all that I've heard.

Q. Did that cause you to have any particular reaction or feeling when you heard that?

A. No. I don't know much about psychologists, so . . .

Q. Okay. Prior to Cal Expo, can you tell me what information you received about the case. I want you to give me as much details, information as you can possibly give me.

A. Okay. I don't read the papers very much, because I do have two kids and work, so it's hard for me to read a lot of things.

I knew that this was – case had been called the Unabomber and that he – the person who was accused had mailed – or whoever the person was had mailed bombs through the mail and people had been harmed by them and even killed. And I did see on the news when an arrest was made, you know, of the pictures of the cabin that, you know, the media had shown and Mr. Kaczynski being brought in by, I guess, marshals or policemen or whatever. Other than that, I just have not kept up on it.

Q. Did you receive any information concerning alleged evidence taken from the cabin?

A. I had heard they had found some things that could be made to use a bomb, but I couldn't tell you what those things were. I – no specifics come up.

Q. Just directing your attention to the cabin, can you recall anything else about items allegedly found in the cabin?

A. Papers, stacks of papers. I remember hearing something about that. (Pause.) No. I don't know of anything else.

Q. Has the information you've received about the case caused you to have an opinion or any idea as to Mr. Kaczynski's guilt or innocence in the case?

A. No.

Q. If you are selected as a juror, do we have your assurance that you will allow Mr. Kaczynski to begin this trial with a clean slate, meaning that anything you heard before you walked into the courtroom will be left outside the courtroom and you will allow Mr. Kaczynski to be tried based upon the evidence that you receive in this courtroom?

A. Yes.

Q. You can do that?

A. I can do that.

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

A. Yes.

Q. Which means if you were a juror and you had to reach a verdict right now, you'd have to find him innocent because there's no evidence?

A. Right.

Q. And the Government would have to – they have the obligation, the burden of proving Mr. Kaczynski's guilt beyond a reasonable doubt. So if they don't do that, then the presumption, you'd return a verdict of not guilty?

A. Yes.

Q. Is there anything you can think of that would interfere with your ability to be a fair and impartial juror in this case?

A. No.

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

A. I do not believe in the death penalty.

Q. Okay. We're not looking for jurors who are for or against the death penalty.

A. Oh.

Q. We are looking for jurors, however, who would be willing to consider a sentence of death among other sentences. You'd have – there would be a guilt and not guilty phase of the trial, and if Mr. Kaczynski was unfortunate enough to be found guilty, they would go into a sentencing phase of the trial, and I explained that there would be an opportunity for other evidence to be presented to the jury at that time, and I mentioned aggravating factors and mitigating factors. And then the jury would receive further instructions from me, and then you would have three alternative sentences to consider. It would be a sentence of death, a sentence of life without possibility of release, or some lesser sentence.

Is there anything about your feelings about the death penalty that would interfere with your ability to consider imposing all three of those alternative sentences?

A. Yes.

Q. And tell me what you mean by your answer.

A. I could not consider imposing the death penalty.

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

A. Yes.

Q. Are your beliefs about the death penalty so strong that, no matter what the circumstances of the offense, you would not be able to sign a verdict form sentencing any defendant to death?

A. Yes.

Q. So your opinion against capital punishment prevents you from ever voting for the death penalty?

A. Yes.

Q. All right. Thank you.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Morning.

Q. My name's Judy Clarke. I'm one of Mr. Kaczynski's lawyers.

And I need to ask you about your opinions on the death penalty. Have you ever had a chance – have you ever been in a public setting like this?

A. Never.

Q. And had to discuss the death penalty?

A. Never.

Q. So I take it this is the first time you ever really had to face a judge or lawyers or an audience and think through your thoughts about the death penalty?

A. Yes.

Q. I mean, I've read your questionnaire and I understand your opposition to the death penalty. And you've made that very clear. And I certainly appreciate that. Would you agree with me, though, that it's important for people to try to serve as jurors if they can?

A. Yes.

Q. In fact, you've made arrangements for your kids so you could even be down here, right?

A. Yes.

Q. And that you could come and serve if you were chosen as a juror?

A. Yes.

Q. So you've made some accommodations already?

A. Yes.

Q. And I guess you see it sort of as a duty of citizenship?

A. Yes, I do.

Q. An obligation that we all have to try to be as open as we can and as fair as we can?

A. Yes.

Q. Would you also agree with me that it's important when we seat a jury that there be a variety of views on that jury?

A. Yes.

Q. That we not have everybody on the jury who's in favor of the death penalty?

A. Yes.

Q. And we not have everybody on the jury who's opposed to the death penalty?

A. I agree.

Q. So it would be important to have people sitting on the jury who say, "I don't believe in the death penalty." Do you agree?

A. Yes, I do.

Q. "I oppose the death penalty," right?

A. Yes.

Q. "I would have voted against it had I been given the opportunity to decide whether we would have it as a form of punishment"?

A. Yes.

Q. That would be important to have those views represented on a jury?

A. I think so.

Q. Just as it would be important to have represented on a jury the views of "I'm in favor of capital punishment; I would have voted for it, and I think that it's an appropriate form of punishment"?

A. That's important to have all views; yes.

Q. Because basically what the jury is doing is weighing the decision of whether to sentence somebody to life without parole or to the death penalty, right?

A. Yes.

Q. And I guess you'd agree with me that the most important thing that a juror not do is sort of go into the jury room – "My mind's made up; I'm not listening to you"?

A. Yes.

Q. In other words, "I'm so opposed to the death penalty I can't listen to your views." That would be important not to have on a jury?

A. Yes. You're right.

Q. That would probably be the single most important thing jurors would want to look for is an openness to consider other people's views?

A. Yeah, you're right.

Q. And I understand how you feel about the death penalty. If you had a situation – just go with me – to a horrible crime, where a person has committed a horrible crime, say, against a child, been sentenced – killed a child or some horrible crime, been sentenced and released, is back before the court system having committed the same horrible crime, and you are convinced by others sitting on the jury that if this person gets anything other than the death penalty, he or she will be released again or will get out of prison in some way or in prison again will kill again – in other words, the dilemma that you're in is that you have such a horrible picture in front of you that you are persuaded by your other jurors that if that person is not sentenced to death, he or she will kill again –

A. I don't think they could persuade me of that.

Q. When you say you "don't think they could persuade you," what do you mean?

A. Well, I know they couldn't persuade me, because I could not – I guess I'm one of those jurors that could not impose the death penalty.

Q. Regardless –

A. As I say, regardless of the facts or convictions that you're talking about or horrendousness of the crime.

Q. Your feelings against the death penalty are so strong that the opinions of your fellow jurors that someone would kill again could not get through?

A. Right.

MS. CLARKE: Thank you, Your Honor.

Thank you very much.

PROSPECTIVE JUROR NO. 125: Okay.

MS. CLARKE: We'd stipulate.

MR. FRECCERO: We'll stipulate.

THE COURT: Okay. Thank you very much for your honest response. I'm going to excuse you so you can return to the room you came from.

PROSPECTIVE JUROR NO. 125: Thank you.

THE COURT: I think rather than starting the next juror and then interrupting the examination with the break, we'll take it first.

But I have copies of the papers. I'll give them to my deputy clerk. The papers I'm referencing are the papers pertaining to juror 140.

MS. CLARKE: Thank you, Your Honor.

THE COURT: And I've made an extra copy which I will attach to the juror's questionnaire.

And I think I should state for the record generally what has been given to me by the juror. The juror, through my jury administrator, has asked that we return the originals to her.

(Defense attorneys examine documents.)

(Government attorneys examine documents.)

THE COURT: I've copied a small pamphlet titled "Don't be Affected by the World's Message" – it's by Jesse Duplantis, D-u-p-l-a-n-t-i-s; "How to Conquer Strife" by Kenneth Copeland – that's C-o-p-e-l-a-n-d; and then a one-page document which is in memo form dated November 23, 1997, and under the date it states "Requested Answers to Questions," and then there are what I am presuming are additional answers; I haven't read it, so I can't say that for certain, and the answers appear to pertain to biblical matters.

Anything further before we adjourn for the break?

MR. DENVIR: Just for the record, Your Honor, at least one of these appears to have underlinings on them. I assume that it was put on by the prospective juror, at least the second one, "How to Conquer Strife."

THE COURT: Thank you for mentioning that. You are correct. The actual – the original has underlining, highlighting with a felt type of pen. There are star-type symbols next to certain matters that are highlighted, and the – I just referenced what was in "How to Conquer Strife."

And the other booklet has portions of it highlighted in yellow.

The juror has asked that the originals be returned. If you don't have any problems, I will let my deputy clerk return the original. You can let me know later whether you have further questioning.

And do you need beyond 10:30 for the break? Is 10:30 sufficient?

MR. DENVIR: That's fine, Your Honor.

MR. LAPHAM: Fine.

THE COURT: All right. Thank you.

(A recess was taken.)

(On the record at 10:35 a.m.)

THE CLERK: You may remain seated.

Court is now in session.

THE COURT: Let the record reflect all participants are present and ready to proceed.

MS. CLARKE: Yes, Your Honor.

MR. CLEARY: Yes, Your Honor.

THE COURT: Please, bring in the next juror.

(Whereupon, Prospective Juror Number 126 enters the courtroom and is seated on the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. You're the 126th randomly selected juror. I may reference you by that number during this questioning.

Is there any reason why we shouldn't continue to consider you as a prospective juror in the case.

A None. None at all.

Q All right. Since you – You did appear at Cal Expo to answer a questionnaire, didn't you?

A Yes.

Q Since you appeared at Cal Expo, have you heard of or read about the case?

A I haven't read about it. Here and there on talk shows I have heard – oh, I've heard allusions to the jury selection process, but really nothing more than that.

Q Since Cal Expo, have you discussed the case with anyone or heard other people discussing the case?

A No.

Q Prior to Cal Expo, please tell me what information you received about the case and give me as many specific details as you can.

A It's very vague. I don't really read newspapers or subscribe to them. I heard over the news one night coming home from work that a relative had turned Mr. Kaczynski in. I don't honestly remember who or – who that was.

And I had heard that he had allegedly sent some bombs through the mail.

But other than that, I have not – I have no knowledge of any kind about him or any of the things that he's been alleged to do.

Q Have you received any information concerning allegations that one of those alleged bombs exploded some place in this community?

A I had heard that one exploded at an office in Sacramento sometime ago. I don't know where that was or how long ago that was or who was injured, but I did hear that one went off here in Sacramento.

Q Did you receive any information about a cabin?

A A cabin?

Okay. I did hear on the news one night that I believe the defense was considering, once the jury was selected, to possibly fly them to Montana and take a look at the cabin that Mr. Kaczynski resided in.

Q Did you receive any information concerning a search of the cabin?

A No.

Q Has any of the information you have received caused you to form an opinion or any type of preconceived notion as to Mr. Kaczynski's guilt or innocence?

A To his guilt or innocence, no.

Q If you're selected as a juror in this case, do you have the capability of leaving all the information you receive outside this courtroom and forgetting it and just allowing Mr. Kaczynski to be tried based upon the information you receive in this courtroom?

A Yes.

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

A Yes.

Q Is there any reason why you would be unable to be a fair and impartial juror in this case to both sides?

A None whatsoever.

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

A Proponent in certain cases.

Q If you were on the jury, and Mr. Kaczynski was unfortunate enough to be convicted by the jury, of the offense of deliberate, intentional and premeditated murder of another human being, would you still be able to consider voting for a sentence less than death?

A Yes.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q Good morning.

A Good morning.

Q My name is Robert Cleary. I'm one of the prosecutors on the case. I'm going to ask you a couple of questions based on the questionnaire you filled out.

A All right.

Q I'll hand you a copy now so you can follow along with me.

(Document given to prospective juror.)

Before I get to the questionnaire, I take it your wife is employed, correct?

A Yes.

Q And you now know we're going to be sitting from 8:00 in the morning until 1:00 in the afternoon, and not be sitting any later in the afternoon; is that correct?

A Right.

Q I take it that's not going to create any sort of financial hardship or difficulty for you?

A No problem at all.

Q Could you turn please to page 32 of the questionnaire.

In question 122 you state that you're impartial and fair minded. And I'm going to direct you to one other area, and and ask you some follow-up questions.

Turn two pages later to page 34.

Question 129 at the top, you state your opinion that you would make a excellent juror.

Could you tell us what you had in mind when you made those two statements?

A I tend not to rush to judge or condemn anybody. I have never been that way. I was raised that way. My parents are that way. My grandmother raised me as a young boy, and I had no brothers and sisters, and she and I were basically roommates growing up. And she and my grandfather divorced when I was a kid.

And I suppose just her influence on my life. She's just a very loving, genial, nice person. And people would come to our home, and she would feed them, and animals, and this and that and the other.

And if myself or my mother or dad ever made any negative comments about anyone or anything, she would always say, "Look for the good in them." And that always made a big impact on me. Just – It just stuck with me.

And I guess I carried that through – through school and through my working life and until now. I just tend to – I don't know. I'm just kind of a very relaxed, casual, amiable guy. And I just don't really have any problems with people for any reasons at all, unless obviously I'm attacked or thrust upon by something.

THE COURT: Just a moment, sir.

I need you to move a little closer to the microphone so your voice –

PROSPECTIVE JUROR NO. 126: Sure. Sorry.

THE COURT: That's all right. I didn't tell you. – so that your voice is amplified a bit more.

PROSPECTIVE JUROR NO. 126: Okay.

THE COURT: Okay. Thank you.

BY MR. CLEARY:

Q As a result of this, sounds like a life-long training and experience, is it your practice generally to listen to both sides of an argument and fairly evaluate both sides before making a decision?

A Yeah. And I usually – And I usually take a while deciding on just about anything. I probably drive my wife nuts because of that. I tend to really take a while just deciding on things, Especially if they're serious things, important things. But, yeah, I weigh things.

Q What I want to know now is see how that life-long teaching and experience translates into a decision on the death penalty.

A Okay.

Q Turn, if you would, to page 28 of your questionnaire, at the top, to question 108.

You tell us that the death penalty may or may not be justified depending on the circumstances of the case.

Is that correct?

A Uh-huh. Yes.

Q Is that kind of a reflection of the life philosophy you just explained to us?

A Yeah. I'm sure it is. Absolutely. It would – It would have to be proven to me way beyond a reasonable doubt, that anybody with malice of forethought, premeditation, what have you, yeah, before I could ever – I mean, I would – I strongly believe in the death penalty, but it is a very grave, serious thing to me. I just don't take it lightly.

Q Uh-huh.

A I hear a lot of people throw it around like it is just a light thing, but it would – it would have to be proven to me over and over again with hard substantive evidence before I could go that way. But like I say, I am a proponent of it.

Q And why do you believe strongly in the death penalty?

A I suppose to the core of me I believe that it's the ultimate justice for maliciously and wantonly and in a preplanned, premeditated way taking another life.

Q I have been talking to you for the last few minutes about your own personal views. And when you are in court, you obviously can have your own personal views sitting as a juror, but they're going to be guided by instructions on the law that Judge Burrell will give you.

Do you understand that?

A Yes.

Q Have you ever sat as a juror before?

A No, I have not.

Q But you understand basically how the system works?

A Yes.

Q Facts are presented to the jurors, you would decide what the facts are, then you would apply those facts to the law as Judge Burrell gives it to you?

A Right.

Q If Judge Burrell told you certain laws that you have to follow as a juror that conflicted with your on personal view, would you be able to set aside your personal view and follow Judge Burrell's instructions on the law?

A Yes.

Q Let me give you concrete example of that.

You mentioned a few moments ago that obviously the death penalty is a very, very serious matter. And you're a strong proponent of it but, it's a very serious matter. And because of the seriousness of it, you would want the crime to be proven, I believe you said, well beyond a reasonable doubt.

If Judge Burrell told you that the Government does haven't to prove things well beyond a reasonable doubt, they only have to prove them beyond a reasonable doubt, would you apply that, what will – would be a lower standard, just beyond a reasonable doubt, as opposed to well beyond a reasonable doubt, would you be able to apply just that legal standard that the judge gives you, even though it may conflict with what you believe the Government should have to prove?

A Yes. I would be able to.

Q Do you have any doubts about your ability to do that?

A None whatsoever.

Q I want to follow-up again with questions about drawing a difference about what your own personal views are and what Judge Burrell may instruct on you the law. And a good place to do that might be to ask to you turn to page 27 and look at question 107.

And let's first start with your views, and then we can move into Judge Burrell's instructions on the law.

You state you're – I assume what you are stating here is you are stating your own personal views, correct?

A Right. Right.

Q You're not familiar with the death penalty law – death penalty in federal cases, correct?

A No, I'm not.

Q You state your view – your personal view is that you strongly agree with a number of the propositions set forth here.

Anyone who plans a murder should get the death penalty; anyone who deliberately murders two people should get the death penalty; and anyone who commits an act of terrorism where someone dies should get the death penalty.

Could you square for us those statements with the statement you told us a few minutes ago about the need to sit back and evaluate both sides of the argument?

A Well, I suppose what I do mean here is that after I had listened to both sides and weighed both sides presented to me – this is positioning myself mentally ahead, as if I were a juror – and it was proven to me, as you said, just up to a reasonable doubt, yes, I would have to strongly agree on the death penalty if it was proven to me by the prosecution.

I do believe that a person is innocent until proven guilty. Anyone. I feel that my personal opinions here essentially are exactly how I would decide on a case if I were in a courtroom.

Now, obviously, if I were given instructions by – by Judge Burrell to modify my personal beliefs and whatever I have stated here, I would be more than happy and glad to do that.

But – I guess the way I put it here is personal, but it's also the way I felt that I would do it in a Court of law after all the evidence was presented to me.

Q And that, again, is without knowing anything about what the actual law is?

A Absolutely. Right.

Q The way that the process is going to work, if I can just give you a little snapshot view of how it's going to work, you'll sit, if you were a juror, first in judgment of the question of whether the defendant is guilty or not, having nothing to do with the appropriate penalty, just did he commit the crimes charged or not.

If the jury unanimously agreed that he committed certain of the charged crimes, one in particular involving the mailing of a bomb that killed an individual, you would then come back for what is, in essence, a second trial.

And you would be deciding in that second trial, not whether the defendant committed the act or not, you have already decided he did, in essence murdered somebody – intentionally murdered somebody, but you would be deciding whether he should get the death sentence or a life sentence. That would be the decision put on your plate at that point.

At that second trial, what we call the penalty phase of the trial, the Government would be presenting evidence of certain factors that it would argue suggest that this crime is so heinous that it warrants the death penalty. Or it may put on evidence about the defendant.

This could be in any death penalty case. I'm not talking about our case now, not this case.

Certain evidence about the defendant, which the Government would argue means he should, because of his nature, be sentenced to the death penalty.

In a death penalty case the defendant could, but doesn't have to in any death penalty case, at that penalty phase submit what they call mitigating evidence, evidence about the circumstances of the crime or the defendant which would suggest, because of the unique circumstances, that the defendant, even though he committed the crime, should not be sentenced to death.

Could you sit and fairly assess, having decided to – determined unanimously that the defendant mailed a bomb that killed somebody, sit and fairly judge both the aggravating circumstances put on by the prosecution and the mitigating circumstances, if any, that the defendant chose to put on, could you sit and balance those and make a decision after you heard all of that evidence as to what the appropriate penalty should be?

A Yes, I could.

Q And I want to give you some examples unrelated to this case just to make sure that you understand the concept and I understand your answers.

If you found out, for example, that during this penalty phase that the crime was – you felt, personally, that the crime was egregious enough to warrant the death penalty, but you found out during this penalty phase that the defendant had certain mitigating circumstances in his background, for example, maybe he was mentally retarded or maybe he committed the crime under duress, someone was either literally or figuratively holding a gun to his head forcing him to mail the bomb, and Judge Burrell instructed you those are mitigating circumstances you should consider, would you be able to consider those and evaluate whether under those circumstances the defendant should be sentenced to death or not?

A Yes, I would.

Q Can you envision a situation where those mitigating circumstances would make you vote against the death penalty, even though in the absence of mitigation you might decide the crime was so severe that the defendant warranted the death penalty?

A I think if it were proven that he were mentally ill and really absolutely did not fully understand the gravity of the crimes committed, and that it were proven to me that from the time he was very young that certain things that happened in his life that led up to the point to where he began doing these things, I would have a very hard time sentencing someone to death.

That if it would – were proven to me that there were mitigating circumstances upon mitigating circumstances that led a person to become, over the years, the person they've become today, and yet still was proven to me they did commit these acts – It's just a person's life is so – so very, very important. It would just be extremely hard – it would be a very arduous task for me to just sentence a person to death if it were proven to me that these mitigating circumstances made the overall fabric of his life and brought this person to this point, even though they did commit these acts.

Q Just to try to bring this all to a close, is it your view that despite the fact that I think you said you're a strong proponent of the death penalty?

A Yes.

Q You strongly agree under certain circumstances the death penalty is appropriate, that you would sit and listen to all of the – both the aggravating and mitigating circumstances before you made that decision as to whether you, yourself, would vote for the death penalty?

Am I correct about that?

A Yes. You are correct.

Q And you can envision situations where you might start out the process by thinking because the crime was so serious, the death penalty is appropriate, but at the end of the guilt or not guilty phase, that when you came to the penalty phase, you might hear mitigating circumstances that might suggest to you that the death penalty is inappropriate, and you would be able to judge that fairly and accurately?

A Yes, I would.

MR. CLEARY: May I have one minute, Your Honor.

THE COURT: Yes.

(Brief pause.)

MR. CLEARY: Just have one or two more follow-up questions for you.

BY MR. CLEARY:

Q In the penalty phase, where there is aggravating and mitigating circumstances, we were really just focusing on the mitigating circumstances. I haven't really focused on the aggravating circumstances.

A Okay.

Q Would you always, if you were presented with mitigating circumstances, whatever they may be, would you always vote against the death penalty in that instance, or would you balance it against the aggravating circumstances?

A No. I would balance it. I would not – I would not just look at one side. I would totally balance it.

I mean, I just wouldn't feel I would be a fair juror otherwise just to lean to one side or another. I mean, I wouldn't be impartial if I were to do that.

MR. CLEARY: Thank you very much.

Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q Good morning, sir. My name Quin Denvir. I'm one of the lawyers for Mr. Kaczynski, the defendant. I would like to ask you a few questions, if I can.

When you were first contacted by the court, you were concerned about a hardship because you had been recently employed. I guess your employer did not give you any – didn't pay while you were on jury service.

Has that been taken care of?

A Yeah. There is no problem whatsoever. Yeah. Everything is fine there.

Q And what – what has changed in the time?

Is your employer willing to pay for your jury service then?

A No. No. What happened is I was on call to begin with. And now I'm on a regular schedule as of about a month and half ago. But I spoke to my employer, and they said that they don't take care of the jury services, but it would not be a problem to excuse me.

Q So you mean – Would you be working some other hours?

You understand – Let me just see if you understand what the – what the time is.

The court will run from 8:00 to 1:00, but the jurors will be asked to assemble around seven o'clock, and then would be released maybe 1:30 to 2:00.

So that – And that would be five days a week, probably starting about mid-December and lasting anywhere from two to four months is the estimate.

And I guess – And I don't want you to reveal your employer, but would you be working during that time period if you were selected as a juror?

A No.

Q So you wouldn't be working at all?

A No. I have outside interests that I would be doing other things in the afternoon, but I would not be working for the company I'm employed with.

Q And your company wouldn't be paying you?

A No, they would not.

Q Okay. And then you – you were concerned before, you said that you really needed that job to live, I think, when you filled out your questionnaire back in September?

A Uh-huh.

Q Has something changed in that regard recently?

A Yeah. It – it has really. When I first started the job, I just – I really, really liked it.

Q Uh-huh.

A As with a lot of jobs, as you get going, you get to know people a little better and certain things transpire, you like it maybe a little less or a little more. I'll just say I like it a little less now. Nothing personal. It's just – I'm just – I mean, it's not a financial hardship in any way, shape or form.

And I must confess to you also my knee jerk reaction, when I first received notice of possible jury selection, was "No way. I don't want to do it."

I have changed probably 180 degrees since then. I just really thought about it. My wife and I have just sat down, and we've just talked about it privately. And I've just changed my mind.

Q What exactly has changed your mind from 180 degrees in that time?

A That if everybody in this country thought the way I did when I first got it, you would never get any jurors. Everybody would be looking to get out of it. What if everybody were like me. What if everybody was like that.

It would be like pulling out teeth without Novocain for you guys to get jurors. I mean, you would be fighting and fighting for ever and ever.

I thought, you know, it's just a very selfish first thought for – first reaction. And I've got a pretty good wife. And we just sat down, and she just really gave me a lot of good, positive input. And I changed my mind.

Q Let me just show you, if I could, the qualification questionnaire you filled out on September 8th.

You were asked a question: "Is there any other reason that would prevent you from serving on this jury?" And you said: "I have recently been hired by a new employer. My employer will not allow for absence for jury duty. I need this job to live. Please excuse me from service."

Is that right?

A Right.

Q And so what you told the court then is that you needed this job to live. I mean – And is that – is that changed in some way?

A Well, at that time it wasn't necessarily financially. It was just – it was just I really needed the job because I wanted something to do at that point. I really – I really just wanted to do it.

It's a – it's a – it's a – kind of a fun job. I enjoy it. It's a people job. It's a driving job. It's a very social job. And I just – I didn't qualify whether it was financial or not because it wasn't financial.

I just felt like this is what I wanted to do. I don't want to be bothered by anybody, especially jury duty. And that's as honest as I can be with you about it.

I just really felt at that time I wanted the job. It was a brand-new job. I had just gotten hired. At that point I really didn't know whether or not I could be paid for jury duty or not. I had to ask about that. But they will excuse me, but they will not pay for it.

Q So in other words, while you're serving on a jury, they will not pay you for it, but your job will be waiting for you?

A Exactly. Exactly.

Q I just want to see if I can understand this because – And that – that has not changed; is that right?

A What has not changed?

Q That has not changed from when you filled this questionnaire out in September until now? It's still the same situation?

They will not pay you for jury service, but the job will be available –

A Exactly.

Q – for you?

A Exactly.

Q And you were aware of that in September when you said that would prevent you from serving as a juror, right?

A Right. At that point I hadn't discussed it because it was just – like I said, it was a knee jerk reaction. I was not really aware whether or not they would pay me a stipend of any kind, whether they would excuse me, whether I would lose my job, whether anything.

I guess – I guess I really felt in my heart that, "Gee, I just got hired on this new job. I'll probably get fired if I approach them about this." And I didn't really want to get fired at the time. As I said before, when I first was hired, I really, really liked the job and everybody there. And that is not – it's just changed a little bit. Let's put it that way.

Q Well, you did talk to your employer before you filled out this first questionnaire around September 8th, didn't you; and they told you at that time that they would not allow for an absence for jury service – they wouldn't pay you for that?

THE COURT: That's a compound question.

BY MR. DENVER:

Q Did you check with your employer before you filled out this hardship questionnaire that you said that something prevented you from serving on the jury?

A No, I did not.

Q You hadn't checked with them at all?

A No. Absolutely not.

Q So when you said that my employer will not allow for an absence for jury duty, that was based on what?

A Probably my own personal feelings that I didn't feel they would. I didn't know for sure. I just didn't think they would.

Q Uh-huh.

A I wasn't a hundred percent positive. I just assumed, well, I'm the new guy on the block, I just started, like they're really going to like me to approach them with this.

I was in training. I just felt – I just felt they probably wouldn't let me.

But I have never – since I have never served on jury duty or gone through this process before, I was green as the grass about it. I really didn't honestly know. No. I had not spoken to them before I filled it out. It was my own opinion.

Q But since then you have spoken to them, and you have found out they will in fact not allow for paying you while you're on the jury, but your job will be available?

A Exactly. Yes.

Q And it's what you learned since then that made you think you don't have a hardship?

A Yeah. I don't have a hardship because we're financially fine. I mean, it's not going to hurt us.

Q But you thought it was going to hurt you back in September. I'm just – I'm having a hard time understanding, sir, what has changed in that time period.

A Because it was an emotional knee jerk reaction, and I didn't really want to do it. And I just sat down and just talked it over with my wife. And we just had a long, long talk. And I thought about it quite a bit too. And I changed my mind.

Q And at that point you did not want to serve on the jury?

A At that point, no. When I first got it in the mail, it was like, I suppose, a lot of people, "Oh, great."

Q And now you would like to serve on the jury?

A If they'll have me, I would be honored.

Q Let me ask you about what you – what exposure you might have had to – to information about the case in the media.

Judge Burrell asked you since you – You did fill your questionnaire out at Cal Expo? Is that – You're one of the people that went out there?

A Right.

Q And since that time, I would like – I think you said you had listened to some talk shows about – some talk shows?

A In my job, I just get in the – Well, I turn it on KGO radio. I pretty much listen to KGO radio in San Francisco most the day. They talk about a variety of different topics throughout the day.

Essentially, all I have heard is that they're going through the jury selection process. Usually the top of the hour news is the only time I will hear any snippets of anything eluding to this case. And it's primarily just been going through the jury selection process; this person was excused or whatever, this person remained in the jury pool or whatever.

Q And so you did hear something. And so just strictly about the jury selection during that entire time period?

That's all you heard?

Do you recall now?

A As I said earlier, earlier a long time ago, I don't remember where I heard it, whether it was TV or radio, that – that a relative of Mr. Kaczynski's had notified the authorities where to find him. And that I do remember.

But I don't remember where I heard it. I don't remember who the relative was or – And I assume – I assume it was that they went to Montana from what I have heard subsequent to that about taking – that the defense would like to possibly take the jury to a residence in Montana where he lived.

Q And I'm trying to focus on right now, if I can, is after Cal Expo. And as I understand it, that you don't read a newspaper at all; is that correct?

A Oh, occasionally I will at work. I have a buddy that brings the newspaper from his home, and I'll look at it. But I pretty much just restrict myself to the sports and entertainment sections usually.

Q Then you do listen to radio. I guess you listen to talk radio on KGO –

A Throughout –

Q – when you are working?

A Yeah. If I get bored with it, I'll flip it over to a contemporary jazz station, which I do frequently.

Q How about television? Do you watch television?

A When I get home at night, it will be on. I get home after about eleven hours, maybe have a tail end of the Larry King show. I watch Jeopardy, Seinfeld. I eat dinner, spend some time with my wife and go to bed.

Q Like how many hours a day would you guess that you watch television?

A Oh, if I'm lucky, maybe two tops – two to three.

Q Do you ever watch the news on television?

A Not much. Not much. Not nowadays. Not nowadays. I really don't have much time.

I get most of my news over the radio I suppose. I just hear a lot of – a lot of talk, a lot of banter, and this and that and the other about the current events of the day.

Q And do you read any magazines?

A No.

Q Now, as far as what you recall about the case, as I understand it, you recall that – Do you remember the name Unabomber coming up?

A Oh, yeah. Sure.

Q And that the Unabomber sent bombs through the mail?

A I've heard that.

Q One of them exploded in Sacramento?

A I've heard that.

Q And do you remember what happened as a result of that?

A Unless I'm mistaken, a man was killed. I don't know who the man was. I probably heard it on the news some time ago, but I couldn't tell you who it was or where it happened or what position that person held or anything like that. But I do remember hearing that a man was killed.

Q Do you recall when that was, that particular event that you're – Do you remember hearing about when it was?

A When I first heard it?

Q When it occurred?

A No. I couldn't tell you to save my life. I have no idea.

Q Do you remember any other details about it?

A Hu-huh. I really don't.

Q And you said that you do recall something about a cabin.

Can you tell me a little more about what you recall hearing about that?

A I remember hearing that authorities went to a cabin, I believe, in Montana, and picked up Mr. Kaczynski and took him into custody.

And also that it was away from – a pretty good distance away from other neighbors. That he pretty much kept to himself. I remember that.

I don't remember much more than that.

Q Do you recall hearing anything about the authorities searching a cabin?

A No. I sure don't.

Q Nothing at all about that?

A No, I don't.

Q Do you recall hearing anything about the evidence that the Government allegedly has against Mr. Kaczynski?

Anything at all?

A Not that comes to mind. No.

I probably have heard things here and there over the length of time that he was brought into custody, but I couldn't even begin to recall anything even in a – since I really – I couldn't tell you anything on it.

Q And you remember something about a relative turning him in?

A Yes, I do.

Q Anything further about that do you recall?

A Unless I'm mistaken, it was a male relative. Who it was, I don't know. I never heard any names that I remember. But if memory serves, it was a male relative.

Q You don't recall what type of male relative, hearing that?

A I don't. I really don't. Might – I mean for all – Well, I won't even speculate.

Q And as I understand it, at this point, based on what you've heard about the case, you have no opinion or preconceived notion as to whether Mr. Kaczynski is guilty or not?

A I really don't.

Q Do you have any preconceived notion as to what would be the proper penalty if Mr. Kaczynski were convicted of the charges brought against him based upon what you heard about the case and the bombs?

A No. That would have to be gone over with me in – in the Court of Law. As far as prosecution, defense, I would have to hear a lot of evidence from both sides.

Q So as you sit there, you don't have, based on what you know about the case, you don't have any sense at all about what you think the proper penalty would be if he were found guilty of those crimes?

A At this moment, no. Right at this particular moment, no, I don't.

Q Do you have your questionnaire there?

A Yes, I do.

Q If you could, turn to page 26.

You were asked some questions about the death penalty. I would like to, if I could, to explore that with you a little bit.

As I understand it, you're a proponent of the death penalty, and you strongly believe in it. I think that's what you told Judge Burrell?

A Yes, I do.

Q You were asked: "What does your religion, philosophy or spiritual training teach you about the death penalty?"

Could you tell me what your reply is and what exactly you're referring to?

A Yeah. You want me to read it right off the form?

Q Sure.

A Sure. I put an old Bible Scripture my grandmother gave me back when I was just a kid. It says: "By whom man's blood is shed –"

(Reporter interrupts.)

I'm sorry. It says: "By whom man's blood is shed, by man shall his blood be shed."

I believe it is in the Old Testament somewhere. My grandmother is a very, very religious woman. She just recently died at the age of 92. And it's funny. I just keep alluding back to her because so much of me is from her.

Other than school, she basically raised me. My parents both worked. And I played sports with my dad, but I got all this other from my grandmother. And it's just the cards I was dealt.

And as I say, she was extremely religious and always teaching me the Bible. I had to go to church. And this was just – this kind of stuff was pumped into me from the time I was probably about five or six-years-old.

Q And do you consider yourself extremely religious?

A Not extremely. Yeah. I consider myself a Christian, but not – I mean, not as far as like an extremist, no.

Q I didn't mean extremist. You described your mother as – your grandmother as extremely religious. I was wondering –

A Yeah.

Q – how you – are you extremely religious?

Certainly didn't mean you were an extremist.

A No. No. Because she was like born in 1905, and just the customs and the lifestyle and everything.

I was a child of the 60's. And I think I probably raised a few eyebrows from her more than once as a kid growing up with my music and just everything else at that time.

But the basic bedrock influence of her never really went away. It just never really left.

She just tended to be, I think, really to the puritanical side. She just – Like going to church all the time. She taught a Sunday School class. She played the piano. We had a piano in the house. All she ever played on the piano were songs like out of hymn books.

And I mean, all that had a tremendous influence on me. And you know, I just have very fond memories of her.

And – But as I got a little older, and I tried to discuss with her, as I began dating and got into playing music myself, and just certain things in my life, she just didn't approve of them. And I just sat down, and I told her, "I love you, but I just have to live my own life."

That was about the time I left Michigan and came to California 20 years ago. So anyway.

Q So she was an extremely religious person, and I guess had a very strong influence on you?

A Yes.

Q Was she – I take it part of her religion was a belief in the death penalty; an eye for an eye, or by whom man's blood is shed, by man shall his blood be shed?

A We never discussed that. It never came up or anything like that. I just remember different – different things she would teach me and things I heard in church too.

We never really discussed it. It was never an issue. Never came up. I don't remember any – as a kid, any real sensational trials or anything to where it was like a household conversation or anything like that.

Q Do you know where that phrase that you quoted as your religion, philosophy or spiritual training, is – that is from the Bible? Do you know where in the Bible?

A No. And I've probably paraphrased it. It's probably ever so slightly wrong. But it – it struck me as that was – As I wrote it down, it struck me as it was almost verbatim the way I heard it as a kid.

And it could be just a paraphrase. It could be wrong. I have no idea where it is in the Bible.

Q But it's part now of your religion, philosophy or spiritual training that you consider part of –

A I don't know that it's my philosophy. It's a deeply rooted belief that I never discuss, never talk about, never comes up. But because of this questionnaire, and the way the question came at me, it was like that just popped into my head.

Q And what – What does that mean to you, that Biblical phrase?

How do you interpret that phrase?

A Essentially an eye for an eye, I suppose, is the most I – Maybe it's an over simplification, but I guess an eye for an eye.

Q Someone who kills another without justification or excuse should forfeit their own life?

A Uh-huh.

Q You were also asked what purpose the death penalty served in our society. And you said: "Justice. Not revenge. Just elementary justice."

What did you mean by that?

What were your – Can you tell me more what you were thinking when you wrote that?

A Well, I went on to say: "Society without justice will ultimately fall apart at the seams." And I believe that.

I don't really know whether or not it's a deterrent or not. I'm not one of these kind of guys that, you know, just says, you know, "Just kill them," "Get rid of them," or anything like that. But I do believe in some cases that it is justified, and it is called for.

And not just by the court of popular opinion, which I don't give a lot of credence to, but I suppose I'm part of that. But I just think in some cases that it is justified – it is absolutely justified. But it is only justified within the bounds of a Court of Law where it is proven.

Q Well, so when you are talking about "elementary justice, not revenge," as the purpose of the death penalty, is that – is that more or less what you talked about before, the Biblical phrase about an eye for an eye?

A Yeah. But what you have to understand is I – I'm not some hard core fanatic that is going to come at you without any mercy tempered in with that.

I don't – I don't go running around rattling a saber about that. I don't even think that way.

I suppose I just answered that question the way I did because of the way it was phrased.

I don't suppose any of us would want to go into a Court of Law without believing that the jury was going to have a balance of both justice and mercy, and that you were going to have some fair minded people to really, really look at and study the evidence presented them and approach it with an honest and open mind and not be influenced by what they've heard or the Bible or any of this stuff.

I would say that what I said would be tempered with mercy after listening to the evidence, hearing everything, all lumped together, and the sum of that would be how I would render my own personal verdict.

Q Well, I know this is – it's hard to have to discuss these things in public and everything.

A It's not a problem at all.

Q But we need to know, you know, more about what your beliefs are and how they might affect your ability to serve as a juror.

A Okay.

Q As I understand it, really pretty much as a matter of your religion, you believe in an eye for an eye as – and that the death penalty is just elementary justice.

If you take somebody's life intentionally without justification or excuse, you forfeit your own life; is that a fair statement?

I don't want to put words in your mouth, but that's the impression I've got from what we talked about and what you wrote?

A If it were proven to me that the person had done something in a premeditated fashion, and they had, for a good time thought about this, and with – with malice a forethought, if they really had really thought about this for a long time, and then they did this, and then the reasons why they did that, I feel the death penalty would be justified. I do.

Q And – And let me – You refer to the reasons why they did that.

How does that play into your beliefs if someone had a premeditated, deliberated, well-planned intent to murder someone and murdered someone without justification or excuse?

A Well, if it were proven to me that they had a – they were of sound mind especially, because if a person has a sound mind, and they have a reasonable amount of intelligence – I'm sorry.

If they were of sound mind and had a reasonable amount of intelligence, and they did this, I have to scratch my head and say, "Why did they do this other than the fact they just wanted to commit murder."

Or if it were proven to me a person were not of sound mind, and as I said before, if the mitigating side proved to me from the time they were a child, and all the way up that there were reasons, real, true, legitimate reasons that brought this person to this point in their life, that they should be shown some mercy here. They should really be thought over. I would – I would strongly consider – strongly consider that.

Q Let me ask you, if you would, to turn to page 27.

You were asked: "What articles, movies or television programs you have read or seen which address the death penalty."

You talked about "In Cold Blood"?

A Yeah.

Q I take it the movie?

A Yes.

Q "What effect did it have on you?" And you said: "A positive effect tempered with mercy."

What were you thinking? What did you mean by that?

A Well, as a kid, this – This was the first film I ever went to see as a kid. The first time I ever went to the movies as a kid. And I stayed through and watched it twice.

It was one of the Saturday deals. Me and my buddy went, and it just really had a big impact on me. And it's how they made it out, I guess. The – How they played out the murders and showed that these guys just killed these people without mercy, for really no reason whatsoever.

And then later on they arrested them, went through the trial and everything.

As I recall, the one guy was a real fidgety guy. Had to take aspirins all the time. And just really had a – just an overall problem with life and social circumstances and situations.

And the other guy was – I don't know. He kind of was – He went along, but he just – I don't know. He just tended to be a little bit – a little bit less cold and calculating than the other guy.

But the way it played out, I just really felt that as it showed the trial, as they went through the – even as it went through the upcoming execution, I felt it was really fair.

It was fair for the people that were murdered and for their relatives and friends and everybody.

And I thought it was very fairly done also for the accused. I don't think it could have been any more fair for what they had done, what they had proven they had done in court in that film, and then the ultimate justice that was meted out.

Q As I recalling in that movie, both the defendants were convicted and then sentenced to death and executed; is that right?

A Right. Right.

Q I was wondering – And you felt a positive effect from the movie, but you said "tempered with mercy." I didn't understand what the "tempered with mercy" part was of that movie.

What are you thinking or referring to there?

A Well, they were given a fair trial. And they were given every means of a good defense. And – At least from the film.

I'll be honest with you, I never read the book. It appeared to me they had a very fair trial and an open-minded jury. That I thought was an extension of the mercy of our system that we have. That they were allowed that as compared in some countries to where they'll just take people out and hang them on sight and shoot them.

Q So the mercy you're referring to was the fairness of the process by which they were found guilty and then sentenced?

A Yeah. I felt it was a very fair trial, and they were given a good defense. Just turned out against them.

Q If I could ask you some other questions about page 27.

You were asked – You were given a statement of a number of propositions and were asked to express the extent of your agreement with it.

A Okay.

Q One of them was that: "Anyone who plans and commits a murder should get the death penalty." And you – you – Of the four choices, you said you strongly agree with that?

A Uh-huh.

Q And that is your view, I take it?

A Yeah. If it's proven to me in a Court of Law that someone has planned it, and then just methodically carried it out, I would have to here some real, real strong mitigating circumstances not to vote for the death penalty in a situation like that.

Q And how about – The next one was: "Anyone who deliberately murders two or more people should get the death penalty."

Again, you strongly agreed?

A For the same reasons.

Q And again, all of these we're assuming that the guilt is proven beyond a reasonable doubt?

A Absolutely.

Q Right?

A Yeah. Absolutely. Absolutely.

Q And then you said: "Any person who commits an act of terrorism which someone dies should get the death penalty."

And again you strongly agreed?

A Again, if it's proven in a Court of Law.

Q What were you thinking of when – Or how did you read that phrase, "an act of terrorism"?

Did that – What did that bring to mind when you were answering the question?

A An act of terrorism?

Well, probably the first thing that came into my mind was what happened in New York City in the high-rise. And when – I guess in the bottom there was a bomb planted. And just the whole high-rise and people were killed down in the basement down there, and it left a huge gaping hole that they showed afterwards. And so many people suffered and loss of loved ones.

That was the first thing that came to my mind as soon as I saw the question for some reason. I can't tell you why. But it just – I just remember the New York City high-rise, and that these guys carried it out.

And the other thing that – that came into my mind is what happened to the – the handicap gentleman on the Achille Laurel. I don't know if you recall that or not, where he was murdered and thrown overboard.

But that was – that was like right on the heels of this as I was filling that out. But those two things. But mainly the New York City incident jumped in my mind.

Q Well, when you were answering that question, when you read that phrase, did you think of an act of terrorism as encompassing the mailing of a bomb with intent to kill someone and then actually killing someone?

Was – You didn't –

A That type of thing never entered my mind.

Q You never – You don't consider that to be in that phrase "act of terrorism"?

A Act of terrorism?

If that were done – Terrorism?

I'll be honest with you, I'm not really sure if what you just described, if mailing something through the mail to someone, if that's an actual act of terrorism.

I suppose it could be defined as such, but I'm not really a hundred percent sure in my mind that I could call it that just right now this moment.

THE COURT: Excuse me, sir.

You have been questioning for 35 minutes.

MR. DENVIR: Your Honor, I have about two more minutes. I'll try to do it. I think part of it is he's very – the jurors are very willing to answer.

THE COURT: I understand.

MR. DENVIR: So I'm sorry. Which we appreciate. Sometimes you can't get people to express themselves.

BY MR. DENVIR:

Q Then the last proposition was: "A person's background does not matter when it comes to whether or not he should be sentenced to death for murder." And you strongly agreed with that also?

That's the last one down on page 27.

A Well, like I said earlier, if a person is proven to be a person that's had some extreme, extreme circumstances over their life, say, I don't know, abuse or whatever, I – yeah, I could – I could modify that.

I do strongly agree with it as far as, like, when the actual act has been committed. But again, I – presented to me, if a person's life were like from the time they were a child, and shown to be clearly in this confused, abusive, I don't know, just mentally tormented lifestyle, I suppose I could modify that.

And I don't feel that's in any way changing my mind as a proponent of the death penalty. It's really just, once again, it's just weighing all of the evidence. Because I must tell you a lot of these things, as soon as I see them, when I did answer them, some of it was a bit of a knee jerk reaction, and other things I thought about a little bit longer. This might have been one maybe I could have thought about maybe a little bit longer to be honest with you.

Q Okay. I just want to go into one little area, then I will cease, Your Honor.

You understand that this case will be tried potentially in two different stages. The first one would be a – what a normal criminal trial would be in federal court where the evidence will be presented on the question of guilt or innocence, the jury will go and deliberate with Judge Burrell's instructions, and then will determine whether Mr. Kaczynski is guilty of the charges against him beyond a reasonable doubt. That's the standard.

And then if he's found guilty of the two charges that involve the mailing or transporting of a bomb with intent to kill and resulting in the death of a gentleman here in Sacramento, those are the capital charges that carry under the law the potential penalty of death, then there is a second sentencing or penalty trial phase where the jury – normally the judge would determine the sentence, only in this instance the jury would determine the sentence.

And the possible sentences would be death, life in prison without possibility of release, or a lesser sentence.

At that point you would go in, if you were sitting on the jury, you would have heard enough evidence to be convinced beyond a reasonable doubt, you and your other eleven jurors, that Mr. Kaczynski had mailed a bomb with intent to kill, that it killed someone. And that there was no justification and no excuse, and that he was not – he was not – he was not not guilty by reason of insanity.

In other words, he had that intent to kill and he did that.

You would then go back into the second phase, and the prosecution would present any evidence they thought supported the death penalty. The defense could present any evidence they thought supported something less than death.

What I – What I would like to know is whether, if you had found him guilty of those crimes, beyond a reasonable doubt, no justification, no excuse, and that he was not insane, would – would you be able to consider life as a possible sentence for him as opposed to death?

A Yes. I could consider that. Sure.

Q Could you consider – I know we consider things a lot, but could you consider in the sense that it is something you could actually envision yourself doing, signing a penalty – a decision that says "no death, life" under those circumstances?

A Yes. Again, from the evidence presented me, which by that time I would have, I'm sure, just a bevy of, yes, I could.

MR. DENVIR: May I just have one moment.

I think that's it.

(Brief pause.)

MR. DENVIR: I have just one question, Your Honor.

BY MR. DENVIR:

Q If you would, look at page 11, please.

A Okay.

Q Page – Question 41 you were asked: "What did you think or feel when you received your jury summons in this case?"

And you said: "First reaction, time infringement. How can I get out of this." And then you said: "Now that I've had time to think about it, I feel quite differently."

Is that right?

A Yes, I do.

Q Then after that you were asked the question: "What kind of things did you say to others or did others say to you regarding your possible jury service in this case?"

And you put in, "You're kidding," "Larry King, here I come," "Hey, Bill, you gonna write a book."

A Right.

Q The "Larry King, here I come," what was that all about?

A That came straight out of my wife's mouth.

Q She said, "Larry King, here I come"?

A Yeah. She says – She said to me, "Yeah, you're going to go on Larry King now, right?" I said, "Right." And we left it at that.

The other – I'm sorry. Go ahead.

Q I was going to ask you, she used the phrase, "Larry King, here I come"? She said that?

A No. I thought that myself. That was my own wording of it after she said that to me. That's what I thought when she said that to me. So it's –

Q And who said, "Hey, Bill, you gonna write a book"?

A When I told my manager at work that I had to be excused to go through this. And it was just between him and me alone. And he said, "Well, man write a book." I said – And nothing more was said of it after that. That's all he said.

Q You reply to that at all?

A Not really. No.

MR. DENVIR: Thank you.

THE COURT: Thank you.

Please take the juror to the next room and bring the next juror in.

(Whereupon, Prospective Juror Number 126 exits the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 127 enters the courtroom and is seated on the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. You're the 127th randomly selected juror. I may reference you by that number during the questioning process.

Is there any reason why we shouldn't continue to consider you for jury service on this case?

A I don't think so.

Q Okay. Did you appear at Cal Expo and fill out your jury questionnaire?

A Yes.

Q Since you answered your jury questionnaire at Cal Expo, have you heard of or read anything about this case?

A Just a couple times on TV, which I don't watch the news a lot because it's usually always bad. I just happened to catch something about his brother leaving to come to California. I heard that. And something about psychiatric evaluations but –

Q I heard psychiatric?

A Evaluation.

Q I need you to – okay – make an adjustment so your voice is amplified a bit more.

Did the information you received leave you with any kind of feeling of impressions or thoughts?

A No. No, it didn't.

Q Okay. Since Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A No. Not – Just about me having to come down here for it, but nothing about the case.

Q Well, what type of discussions did you have about coming down?

A Well, I just was telling people at work I had to come down here for it. And they just thought it was kind of a neat thing, but – I don't know.

Q Can you –

A It makes me very nervous.

Q Do you recall any of the comments they actually made?

Do you remember any of the comments?

A I'm trying to think.

Couple people said, "Oh, you really don't want to do that." Or you know, "It's going to be a long process." Just stuff like that.

Q Now, I'm going to direct your attention to the type of information you received before you appeared at Cal Expo.

A Uh-huh.

Q And I want you to tell me what information you received before you appeared at Cal Expo and give me as much detail as you can.

A Okay.

Q Okay. I'll tell you why I'm asking the question. I'm asking the questions because we need to know what type of information you have been exposed to so we're in the position to objectively evaluate how that information could possibly affect you, and we're going to give you the opportunity to tell us from your subjective prospective how you think the information affected you.

So give me as much detail as you can.

A Okay.

Pardon?

Q I want you to tell me about that information that you received?

A Before I came?

Q I want to know everything you know about this case; as much detail as you can give me.

A Actually, I've already told you. I mean –

Q No. Before Cal Expo. It was on the news. It's been a lot of publicity about the case.

A Right.

Q I want to know what kind of publicity you heard about the case?

A The only thing – Well, because I didn't follow it on the news. Like I said, I don't watch the news very often. I might switch it on and get the weather report or sports or something like that.

I just knew there was a case about a person that had sent bombs in the mail. But other than that, that's all I know.

Q Have you heard of the so-called Unabomber?

A Well, yeah. I mean, I knew that was – what it was called. Yes.

Q And what type of information have you received that was attributed to the so-called Unabomber?

A This is really hard. Because like I said, I just – I don't pay any attention to that kind of stuff. I just don't.

Q Do you know anything about a cabin being connected with the allegations involved in this case?

A No.

Q About the State of Montana?

A No. In fact – No.

Q Do you take a newspaper?

A No, I don't.

The only time I pick up the newspaper is once in a while for the Want Ads, or you know, I just – No.

Q Have you seen any news reports ever concerning this case?

A Well, just this last week, like I said, it caught my attention because I was – you know, because of being involved with this it caught my attention a little bit. But that was it.

Q How about over the years, over the past few years, have you seen any news reports about the case?

A No, I haven't. In fact, I can't even tell you what year it happened.

Q Over the years have you seen any news reports about the so-called Unabomber?

A No.

Q Do you recall when you first became aware of the fact that an individual was being referenced as the so-called Unabomber?

A Not until I got my letter to – my first letter from the courts for jury.

Q Has any information you have received about the case caused you to form an opinion or have a preconceived idea as to the guilt or innocence of the defendant in this case?

A No. I don't – I don't have enough information. Like I said, I haven't heard enough about it or paid that much attention to it.

Q Do I have your assurance that if you are selected as a juror in this case, that the defendant will start this trial with a clean slate?

A Yeah. Seems since I don't know that much about it to begin with, yeah.

Q You understand that we expect our jurors to make a determination as to the defendant's guilt or innocence based upon the evidence that's presented in this courtroom – solely on that evidence?

A Yeah.

Q Are you capable of doing that?

A Well, I would think so. I hope so.

Q The defendant is cloaked with the presumption of innocence.

Have you heard of that concept before?

A Yes, I have.

Q Will he begin this trial in your eyes cloaked with the presumption of innocence?

A I guess. I mean, I really don't know how to answer that. I just – I don't have no feeling about him one way or the other.

Q Okay. That – That concept is going to be part of an instruction that I will give you later if you are selected as a juror.

Under our legal system, you must presume the defendant innocent unless and until the defendant is proved guilty beyond a reasonable doubt.

Is there anything about your belief systems that will prevent you from being able to allow the defendant to be presumed innocent?

A You want to ask me that again.

Q Okay. Under our legal system any defendant in any criminal case –

A Uh-huh.

Q – is to be presumed innocent.

A Right.

Q Unless and until, if it should ever occur, that the Government proves the defendant's guilt beyond a reasonable doubt.

A All right.

Q And I'm trying to determine if there is anything about your personal belief system, the way you think, that would interfere with your ability to allow the defendant to be protected by that doctrine, the presumption of innocence?

A Uh, no.

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

A I believe in the death penalty. They have it coming, yes, I do.

Q If you were on a jury –

A Uh-huh.

Q – that – I'm just asking you this. I want you to assume that a defendant was unfortunate enough

A Uh-huh.

Q – to be found guilty by a jury that you were on –

A Uh-huh.

Q – of the offense of deliberate, intentional and premeditated murder of another human being.

A Uh-huh.

Q Would you still, despite finding the defendant guilty of that offense, would you still be able to consider voting for a sentence less than death?

A No.

Q Explain your answer.

A I just believe that if somebody deliberately or intentionally takes somebody's life, they don't deserve to live either.

I don't know how else to explain it, but that's –

Q Do you understand that the law requires – that federal law is going to govern this case?

A Uh-huh.

Q It requires that before imposing the death penalty, even for the offense I just told you about, which would be an intentional murder, a cold-blooded murder?

A Right.

Q That before imposing the death penalty for that offense, the jury would then have to decide what sentence should be imposed in what is called the sentencing phase of the trial.

And at the sentencing phase of the trial, the jury would be presented with additional evidence.

It could be the Government would have to present aggravating-type evidence. The evidence that the Government will perhaps argue points towards a death sentence.

Then there will be mitigating-type evidence. The evidence that points towards a sentence of life in prison without the possibility of parole or some lesser sentence.

A Uh-huh.

Q Are your views on the death penalty so strong that you would not be able to consider the facts and circumstances of the crime during the sentencing phase; the background and character of the defendant

A Uh-huh.

Q – during the sentencing phase and other information that might tend to indicate that the death penalty should not be imposed?

A Uh, depending on the circumstances, the least – the – Well, how do I say this. Life without parole – possible parole. I mean, he – it would be that the person should be locked up then, if not put to death.

Q Okay. We're not looking for jurors who are in favor of or against the death penalty.

A Right.

Q We're looking for prospective jurors who would consider the death penalty as one of three sentencing options. And we also want jurors that will consider each of the three sentencing options.

The sentencing options are death, life in prison without the possibility of release, or a lesser sentence, a lesser amount of time in prison.

A Uh-huh.

Q Do your beliefs about the death penalty prevent you from being willing to consider each of those sentencing options?

A No.

THE COURT: Parties may conduct questioning.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q Hi.

A Hi.

Q Good morning.

A Morning.

Q My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

If I could follow-up a little bit on your opinions on the death penalty – Have you got your questionnaire nearby?

THE COURT: I don't think she has it.

I'll check to see if this is it.

(Document shown to prospective juror.)

THE COURT: Is this your questionnaire?

PROSPECTIVE JUROR NO. 127: Yeah.

THE COURT: Here you go.

BY MS. CLARKE:

Q Can you go to page 26 with me.

Are you there?

A Uh-huh.

Q And you were asked a series of questions about your opinions and beliefs about the death penalty. And 103 you said: "I believe in the death penalty."

A Uh-huh.

Q And part of 103 is basically the reason for your belief, right?

"If a person takes another person's life, so should his life or her life be taken."

A Uh-huh.

THE COURT: Just a moment. I need you to assist the Court in making sure the juror is audible. You nodded your head and said "uh-huh". But I don't want the reporter to interpret what you are meaning by your responses.

PROSPECTIVE JUROR NO. 127: Okay. Yes.

THE COURT: Thank you.

MS. CLARKE: I'm supposed to help you remember that.

PROSPECTIVE JUROR NO. 127: Oh, okay.

BY MS. CLARKE:

Q Is it – Is the basis for your opinion, that if a person takes a life, so should his or her life be taken?

A Yes.

Q Is that a belief system that you grew up with?

I mean, is that a long held belief?

A Yes.

Q Based on religion?

A No.

Q Based sort of –

A Just what I believe.

Q It's just what you believe?

A Yes.

Q Is this a belief that you've held for many years?

A Actually, I haven't really thought about it that often.

Q Well, you –

A It's –

Q You seemed to be fairly thoughtful when you wrote down your answers on the questionnaire.

A Well, I tried to be.

Q And so you had given it some thought before answering those questions?

A I guess. I don't – I don't know. It's just what I believe.

Q And you're fairly –

A I don't know what else to say.

Q Okay. You're fairly strongly committed to that belief?

A Yes. I am.

Q And you strike me –

THE COURT: Just a moment. Have you completed your answer just now?

Did you say everything you wanted to say?

PROSPECTIVE JUROR NO. 127: Yes.

THE COURT: Okay. Go ahead. I couldn't tell. That's why I interrupted you.

MS. CLARKE: Sorry, Your Honor.

BY MS. CLARKE:

Q You strike me as a person who once you have determined what your belief is, it's something you are committed to?

A Yes.

Q You don't just sort of take the belief of the day and adopt it?

A No.

Q So once you have decided on a position that you have, that's a fairly basic thing to you?

A Uh-huh. Yes, it is.

Q And when you answered on the next page, page 27, that anyone who plans and commits a murder should get the death penalty, you said: "I strongly agree with that"?

A On the next – Oh, yes.

Q That was based on your opinions about the death penalty?

A Yes.

Q And I know that the Judge put a hypothetical case to you, that if the jury found Mr. Kaczynski guilty of a premeditated, deliberate, intentional murder, you believe the death penalty would be the only appropriate sentence?

A Well, yeah.

It would depend on what the circumstances – Well, I don't know how to answer that either.

I feel like you got me on trial. I don't like this at all.

Q Oh, no. Please, don't feel that way because there is no wrong answer.

A I believe in the death penalty if somebody has taken somebody's life.

If the person didn't know what he was doing, maybe or – What can I say?

I know what I want to say, but I – I have it in my mind, I just don't know how to put it to you.

Q Sure. Just take a second then.

A If it was something that was premeditated and deliberate, yes. And the person wasn't – knew what he was doing, I guess is what I want to say, then, yeah. It's – I don't – It would be hard for me to say that there should be any other sentence but that.

But I also could be – I mean, you know, with help or other people, like the other jurors maybe, or discussing it, if there was – I don't know how I want to put this.

Like I said, the least that would be – would be life without parole. I mean, this person should not be allowed back out on the streets ever. That's – I just don't know how else to put it.

Q Would it be difficult, if not impossible, for you to consider any sentence less than life without release?

A No.

Q So it would be a consideration of death which you would lean towards?

A Yes.

Q But you would be willing to think about life without release?

A Yes.

Q But not any other lesser sentence?

A No. No.

Q Am I right about that?

A Yes. You are right about that.

Q If it came to it, could you really envision yourself signing a life sentence for someone who was – that you believed, beyond a reasonable doubt, had committed a deliberate, intentional murder, do you really see yourself ever, in any circumstance, signing a sentence of life?

A Of life?

Q Uh-huh. Rather than death?

A Oh. If the person was found guilty under –

Q Right.

A No.

Q Actually, I had wanted to ask you a little bit – if I could, I might come back to this – if I could, I wanted to ask you a little bit about your employment.

I don't want to have you say where you are employed.

A All right.

Q You're employed and you're also in school?

A Yeah. Well, the school is just a – it's a class that I take once a week. It's just something, I mean, for me. It's not really anything to do with my employment.

Q If you are on this jury, would you get paid by your employer?

A Yes.

Q For any period of time?

A Yes.

Q And would this jury service interfere with your school attendance at all?

A Well, yeah. I would have to drop that class that I'm taking.

Q Is that any kind of particular hardship for you?

A No.

Q I notice that, and I don't want to say where you live, but I notice you live quite a distance out?

A Yeah.

Q Would that – Would that trip every day, getting to the staging area by 7:00 a.m., be a hardship for you?

A No. Long as – Not as long as my car was running fine, and I – No.

Q I just worry that you would be getting up in the middle of the night.

A Oh, well, no. I would have get up, but I'm used to getting up. I go to work a lot of times at four o'clock in the morning so . . .

Q The Judge asked you a lot of questions about your knowledge of the case.

A Uh-huh.

Q And I noticed at page 11 on your questionnaire at the top – See the top question, number 41, "What did you think or feel . . ."

A Hold on a second here.

Page 11?

Q Yes.

A Okay.

Q Question 41?

A Uh-huh.

Q I think when you were talking to the Judge, you indicated you just really didn't know much about the case?

A Uh-huh.

Q And when you – When you got your summons, your reaction was disbelief?

A Right.

Q Where did that come from?

A Well, I didn't think I would ever be called for a jury duty in Sacramento for one thing.

Q How come?

A Well, because I always thought that when you were called for jury duty, it was in the county you live in.

Q Didn't some months ago you get a questionnaire from the Federal Court saying "Fill this out, you might be called for jury duty?"

You don't remember that?

A I don't remember that. No.

Q So that's what it was?

A If I did, I apparently filled it out if it was something from the courts. But I probably just – I probably didn't even realize what it was. I'm not very knowledgeable on the courts and the terminology. And that's – that's another thing. I didn't really fill like I qualified to do this.

Q And why was that?

A Because I don't – In fact, I think I wrote it in here, where I'm just not knowledgeable enough about it.

I mean, some of the terminology that will be used, words, I may not even understand what they are, or you know –

Q Uh-huh.

A – realize the meaning of them.

Q Does that cause you some sort of discomfort yourself and you think maybe not.

A Yeah. Yeah. It does.

Q Is it this particular case that causes you this level of discomfort or jury service?

A No. Jury service.

I was on jury duty about a year ago. And I was the alternate. And after we got started, I mean, I was – I got to be a little more comfortable with it.

Q Uh-huh.

A The judge was very – He explained, you know, a lot as we went along so it made it easier.

Q What kind of a case was that?

Was that a criminal case?

A It was – It was an assault case on a police officer.

Q And you didn't have any particular difficulty with that?

A No.

Q How do you think scientific terms or laboratory kinds of terms would affect you?

A That's – Well – See, I wouldn't have a clue what they're talking about probably.

Q Would that be difficult?

I mean, would it kind of cause you a little distress thinking, "I can't deal with that." "I don't feel capable of understanding that?"

A Well, yeah. I mean, if I was allowed maybe to – to read up on it or learn about it. Or you know – I mean, I would be willing to do that. But as it stands right now, I don't know anything about that kind of stuff.

Q So when you – When you said "disbelief," it wasn't necessarily this case, it was just generally?

A Yeah.

Q "How did I get called?"

I thought you mentioned to the Judge, and maybe I just didn't hear it, that somebody said to you that it would be a "neat thing"?

Did I hear you say that or did I just –

A Well, you would have to understand the people I work with. I mean, yeah. They just thought – I shouldn't use the word "neat". It would be an interesting experience.

Q Do you agree with that?

Or does it sound more like –

A Right now I don't, no.

Q Sound a little more like a terrifying experience?

A Yes. Yes.

Q Did anybody at work comment to you on the case, what it meant to them one way or the other?

A No. Not one way or the other really.

Q How about your kids? You got several grown kids?

A Yeah, I have.

I really haven't discussed this with my daughter.

Q So they haven't had a chance to say –

A Not yet. No.

Q Are you interested in what they might have to say about it?

A Well, yeah. I mean – I guess any mother would be.

Q Sure.

MS. CLARKE: Can I have just one moment, Your Honor.

THE COURT: Yes.

(Brief pause.)

MS. CLARKE: Thank you. /// /// ///

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q I guess I can say good afternoon now.

A Yeah.

Q Ma'am, my name is Steve Lapham. I'm one of the prosecutors on the case.

Let me say first I think we all sympathize with the situation you are going through. We ask you to fill out these questionnaires, and we don't expect you to know anything about the law, and we call you in and we proceed to ask you questions about the law.

A Yeah.

Q So having said that, let me just ask you a few questions about the law.

But let me give you some background first.

We were – You were talking with the Judge a little bit about the presumption of innocence. And it – I know you said you understand what it means, but you seemed to struggle with that just a little bit.

Let me just point a few things out to you.

You understand that just the fact that an individual has been arrested for a crime doesn't mean he's guilty of that crime?

A No.

Q You agree with that?

A Yeah. I agree with that.

Q And just because he's been brought to trial and evidence is going to be produced, that that evidence – or just the mere fact that there is a trial, doesn't mean that he's guilty of anything.

A Right.

Q Okay. That's all we're talking about when we talk about the presumption of innocence.

A Right. I understand that.

Q Okay.

On the death penalty you – the Judge pointed this out to you, but I know it was going rather quickly. So let me just see if I can explain it again.

You understand the trial is going to proceed in two phases. And the first phase is the determination of whether the defendant is guilty or not guilty.

A Right.

Q Okay. And then there is going to be a second phase, if the defendant is determined to be guilty on the charges that the judge mentioned.

A Uh-huh.

Q And in that second phase, there is going to be further evidence presented to you regarding what the appropriate punishment would be.

A Uh-huh.

Q You understand that?

A Right.

Q So the question we're trying to get at is: After the first phase is over, are you just going to fold your arms and say, "I've heard enough, and I don't need to hear any more evidence about what the penalty should be?"

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

Q Well, there is going to be more – there is going to be more evidence.

THE COURT: Just a moment. Had you completed your response.

You said, "I don't know. I don't know how to answer that."

PROSPECTIVE JUROR NO. 127: Uh-huh.

THE COURT: Was that the substance of your answer?

Were you still in the process of answering the question.

PROSPECTIVE JUROR NO. 127: No. I don't know how to answer it.

THE COURT: Okay. Go ahead. Sorry. I didn't know if she had completed.

BY MR. LAPHAM:

Q There is going to be more evidence presented after the finish of the first phase of the trial.

Do you understand that?

A Okay. Yeah.

Q Okay. Did you not know that before?

A No.

Q Okay. There will be more evidence presented at the second phase.

The Government will put on evidence as to all these reasons why we think the death penalty is appropriate.

A Okay.

Q And the defense will put on evidence or may put on evidence as to all those reasons why they believe that the death penalty is not appropriate.

A Okay.

Q Do you understand?

A Yes. I didn't realize this happened.

Q Okay.

A Okay.

Q Now that you realize that, the question is: Would you be able to listen to both sides before making your decision about what the appropriate punishment would be?

A Well, yes. I would have to.

Q Okay. And you – you don't have any problem with that?

A No.

Q Okay. Would you be able to consider factors that would support the death penalty, as well as factors that might not support the death penalty?

A Yeah.

Q Okay. And you wouldn't have any problem if the facts and circumstances warranted coming back with a sentence of less than death?

A life sentence or some lesser sentence?

A No.

Q Okay. Because the gist of what I got from your statements earlier was that you haven't given the death penalty much thought in your life?

A I haven't thought about this a whole lot one way or the other. Like I said before, I just – I mean, other than the fact, which I said before, if somebody takes somebody's life deliberately, they should be punished for it by taking their life.

Q And – But you also said that if – I think you said if a person knew what he was doing?

A Yeah.

Q Now, if a person didn't know what he was doing, if he was – if his judgment was impaired in some fashion?

A Right.

Q That would be something you would consider?

A Well, yeah. Other than the death penalty, yes. But regardless of –

MS. CLARKE: Your Honor, I'm sorry. That question could be very well misleading that a person didn't know what they were doing they won't be convicted of a crime.

BY MR. LAPHAM:

Q Maybe yes? Maybe no?

A Yeah.

THE COURT: I'm going to allow the juror to respond to the question.

BY MR. LAPHAM:

Q If –

THE COURT: You're rephrasing the question?

MR. LAPHAM: Yes.

BY MR. LAPHAM:

Q Ma'am, if – Now we're in the second phase. You have already determined that the defendant is guilty of the crimes, and now we're considering what punishment would be appropriate.

If you were to be given factors about the defendant's background that would indicate, for instance, that he had an abused childhood or that he was mentally retarded?

A Uh-huh.

Q Would you consider those factors, if the Judge told you it was appropriate to consider those factors, in reaching your ultimate conclusion?

A Yeah. Yes, I would.

That's – That's, I guess, why – what I tried to say earlier. It depends on those circumstances of why the crime was committed.

It sounds like I'm contradicting myself, but I'm not. Or at least in my mind, I'm not. But he would definitely to me should be locked up, like I said, and never, never let out. No chance of parole.

Q Okay. And those were the kinds of things you were thinking about earlier; you just – you couldn't express them because you just didn't –

A Yeah. I guess.

Q You couldn't think of them at the time?

A I guess.

Q Okay. But if – And that's – that's the point. In this second phase of the trial, we're not going to expect you to come up with these reasons.

A Right.

Q The reasons will be presented to you?

A Right. That's what I mean. Whatever – It depends on what is presented to me here, you know, how I'm going to feel about it.

Q Okay. And you feel you're open to that type of evidence?

A Yeah. I do.

Q Your main concern here is to be able to take in as much information as you can about –

A Right.

Q – the defendant, about the crime –

A Uh-huh.

Q – so that you can come to the best decision possible?

A Right.

MR. LAPHAM: Thank you. I have nothing further.

Thank you.

MS. CLARKE: Just one moment, Your Honor.

(Brief pause.)

MS. CLARKE: Could I ask one more question, Your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q I just want to go back to the death penalty just for a moment because it is a very important question for us, and only you know, you know, who you are and how you believe.

You have told us in your questionnaire, and again today, that your basic view is if you take a life, your life should be taken.

A Uh-huh.

Q Am I right?

A Uh-huh. Yes.

Q And that that is a strongly held belief?

A Yes, it is.

Q If you were in the situation where you find a person guilty beyond a reasonable doubt?

A Right.

Q Of a deliberate, intentional, premeditated murder?

A Right.

Q In your heart, do you believe there is really a circumstance that would allow you to do anything other than say that life should also be taken?

MR. LAPHAM: Your Honor, I think that question –

THE COURT: Overruled.

PROSPECTIVE JUROR NO. 127: I thought I answered –

MR. LAPHAM: Your Honor –

THE COURT: Overruled. That means you can't speak. It is overruled.

MR. LAPHAM: Your Honor, I haven't –

THE COURT: It's overruled.

PROSPECTIVE JUROR NO. 127: I don't know. I thought I answered it, but – I don't know how else to answer that question other than that's the way I think it should be.

BY MS. CLARKE:

Q That it should be a death sentence?

A Yeah. The only way that I wouldn't, that I could see it not being a death sentence is what I said before. Is if the person – I believe one of the words was retarded, or didn't know what he was doing, which doesn't make it any less – what's the word I'm looking for – doesn't make it any lesser of a crime, but – How can I put it?

I don't know how else to answer it.

I mean – There is a possibility maybe I could be convinced that he could be imprisoned for life, like I said, and that's it. I mean –

THE COURT: Okay.

PROSPECTIVE JUROR NO. 127: It would have to be – I just don't – I don't know how else to answer this.

THE COURT: I want to question the juror.

MS. CLARKE: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY THE COURT:

Q I understand that we're calling you from your daily routine and bringing you into this courtroom and asking you about concepts that you perhaps have not be focusing on in your normal living activities.

A Yes.

Q And I do recognize that you're the center of attention and we're all focused on you, and we expect you to answer some questions.

I do have a few questions to ask you.

There are two phases of the trial. Well, I shouldn't say it that way. There could be two phases of the trial.

A Uh-huh.

Q We know for certain there will be what is called Phase one. That means there will be a determination made by the jury as to whether Mr. – well, the defendant, is guilty or not guilty.

A Uh-huh.

Q We're assuming, just for purposes of discussion, that the jury did something that would be very disappointing to the defendant, and that's that the jury would find the defendant guilty of the offense of premeditated, intentional, deliberate and what sometimes is referred to as cold-blooded murder of another human being.

So we're starting from the premise that the jury made that type of a determination –

A Uh-huh.

Q – and found the defendant guilty.

Despite that finding –

A I'm sorry. Despite what?

Q Let me – Let me erase what I said.

A Okay.

Q Are you capable, despite that finding, of going into the sentencing phase of the trial with an open mind, meaning you will be able to lessen to all of the evidence?

That would be the – which could be aggravating evidence that the Government will perhaps present that would point toward the death penalty. And mitigating evidence that would point toward life in prison without the possibility of release or some other lesser sentence.

A Uh-huh.

Q Is there – Only you can answer this question.

A Uh-huh.

Q We are, in fact, seeking an answer that comes from the deep crevices of your heart. Things that you strongly believe in.

Would you be able to go into the sentencing phase, given the premise I have established, with an open mind on what sentence should ultimately be imposed?

A Yes.

Q Now, why do you say you could do that?

A I just believe I could. I mean, it's the only fair thing to do. I guess, that's what I –

Q If in your view – I'm going to take you to what I called the sentencing phase of the trial.

A Okay.

Q We're still operating from the premise that you are part of a jury that found the defendant guilty of the offense of murder, and that the murder was one that was committed with premeditation, it was intentional, it was deliberate, and it was cold-blooded.

You understand that?

A Right. Yeah.

Q After making that finding, if during the sentencing phase of the trial –

A Uh-huh.

Q – in your view you determine that 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 I really don't know.

Q I'm sorry.

A I really don't know.

THE COURT: Okay. Thank you.

I'm going to excuse the juror.

MR. LAPHAM: Your Honor, may I ask a couple of follow-up questions.

THE COURT: How about Juror 140?

MS. CLARKE: We're willing to stipulate to the release of Juror 140 completely.

MR. FRECCERO: Your Honor, we have no need to further question, but we do not stipulate to her being excused.

THE COURT: Okay. Then all jurors can be released then.

MS. CLARKE: Your Honor, if she's not – We were offering not this juror –

THE COURT: She's not released. I mean – What I mean by "release" is they can be returned to the location from which they were picked up.

(Whereupon, Prospective Juror Number 127 exits the courtroom.)

MS. CLARKE: 140, we're concerned enough about what she said to us.

THE COURT: Let's talk about 140.

The Government is not going to stipulate. We'll just have argument. There is another time to argue.

MS. CLARKE: Perhaps we should follow-up with questions with her.

THE COURT: Then I'll bring 140 in.

Bring in 140.

But before you do, I know you have an objection, Mr. Lapham, and I know you didn't fully state your objection.

A judge is not obligated, in my opinion, at all times to let you fully state an objection if the judge opines that he's not going to sustain the objection.

I had reached that conclusion. I could see that you disagreed with my conclusion. That's a matter for an Appellate Court. But I did not believe that I was going to sustain your objection. I overruled your objection, and you were wasting time by continually telling me that you wanted to finish your question. And that's why I didn't let you finish your question and I raised my voice.

I regret having raised my voice. A judge only has so many options when he is trying to maintain control of the courtroom. When you kept pressing the issue, I felt that either you would control the courtroom or I would. So I elevated my voice.

MR. LAPHAM: I understand, Your Honor. I appreciate that.

It's only a matter for the Appellate Court if I'm allowed to state my objection. I have no problem with your overruling an objection if I can state the objection.

THE COURT: Well, you don't have to state it at that moment. I mean, it was clear to me that the defense counsel had a question pending that the defense counsel wanted answered.

Even if there was some merit in your objections, I did not believe that it was sufficient enough to preclude probing in the area that defense counsel was probing. And that's why I didn't want to hear your explanation for it.

And in that instance, I think what you can do is you could ask me for the opportunity to make an explanation later, but not at the moment. I don't think that's appropriate.

MR. LAPHAM: Your Honor, I was also precluded from asking follow-up questions.

THE COURT: Correct. Because I've heard enough questioning. I'm the trier of fact. I have to make a determination as to whether that juror will sit on this case, and I've heard enough questions.

And sometimes I do allow additional probing. I don't think it would be helpful. I try to make the credibility determination. I will make it at the appropriate time, and your questions will not help me with that. That's why I didn't allow it.

MR. LAPHAM: Well, it sounds like you're prejudging the issue at that point if you already think that my question's –

THE COURT: Maybe I have. But that's my decision. I'm the one that will decide it.

I know whether or not additional questions will be helpful. And sometimes I allow it when I think it will be helpful. If I don't think it will be helpful, I don't allow it.

MR. LAPHAM: Very well.

(Brief pause.)

THE COURT: You can go ahead and take the podium.

MS. CLARKE: Thank you, Your Honor.

(Whereupon, Prospective Juror Number 140 enters the courtroom and is seated on the witness stand.)

THE COURT: Hi. Thank you for joining us. You're the 140th randomly selected juror. Defense counsel has some additional questions based upon what you have submitted.

MS. CLARKE: Good afternoon.

MR. LAPHAM: Sorry, Your Honor.

Does the juror need to be sworn or is the oath from the other day still pending?

THE COURT: That is still a sufficient oath.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q We received a copy of what you had provided to the court. Apparently you had typed something up and also provided two booklets?

A Right.

Q To the Court?

A Yes.

Q I guess I appreciate you bringing this in.

Could you tell us what you were thinking and what were your thoughts and the reason for submitting additional information to us?

A Only to just follow through with some questions you had asked me about in Matthew. So I went back and started looking for a Scripture. And so I couldn't find what you were looking for, so I just followed through.

And you asked me what my church was, what the corporate status was, and I don't know that, so I just followed through with it.

Q What the corporate status of your church was?

A Well, on the belief on the death penalty.

So I just wanted you to know. You asked, so I didn't know, and I thought it was a good – a good question to ask.

Q Was there something that was said when you were questioned either by the Court or by the parties that made you think you needed to respond and come back to us?

A Well, I thought so. Because I hadn't answered them. Well, I hadn't answered them for myself, so I didn't think I had answered them for you either.

Q Can you – Can you help us understand how you believe the brochures that – or the booklets – I've got copies, you have the originals.

A Okay.

Q How they are relevant to your service – potential service on this case?

A You just asked what my belief was. So that's pretty much – It shows that I stand – that I am for the death penalty.

You asked if I was, and I say yes. And in some circumstances, that it may not necessarily be necessary.

So you were asking me – well – and you asked me how and where I got my thoughts from. So that's why I was trying to shed some light for you.

Q And you pretty much told us that when you first came to court; did you not?

A Okay. Yes.

Q Had you?

I mean, your position on the death penalty?

A Yes.

Q And that – And your religious views of the death penalty; you pretty much told us that?

A Uh-huh.

Q Yes?

A Yes.

Q Did you have some sense these brochures would be more helpful than that?

A Well, you were asking me. You kept asking me questions about it. So I figured it might help enlighten you.

Q The underlinings that you had placed –

A I didn't expect you to bring me out here, though. I just was going to just share it with you. So sorry.

Q Did you think of mailing it in, or you felt like you needed to come all the way back down?

A I don't know what the protocol was. That was why they just said, "Come on over and just hand it in."

Q And had you underlined the underlinings and the starred portions of the booklets? Was that done for our benefit?

A Yes.

Q By you between the time –

A Yes.

Q – between the time you came –

A Yes.

Q – yesterday and today?

A Yes.

Q And you thought the underlined sections were particularly relevant to our understanding of your views?

A Yes.

Q If you – If you sat as a juror on this case, do you think that maybe you would feel like you have to go each night or every now and then and sort of investigate the Scripture and bring that back in? How would that play out?

A Not necessarily.

It was just that you kept asking me the same questions over and over again. So I thought I would give you some answers. Instead of "I don't know," how about "Let's find out something about it."

Q Okay. How deeply do you think that your service as a jury would be affected by what you view as God's wishes?

A How deeply?

Q Uh-huh.

A Well, that's what I base my belief on. That's what I base my way of doing things on.

I have to listen to the facts. I have to listen to what is presented. And you were asking me what would I – how would I make a decision when I don't have any facts.

That's why I'm saying, I can't give you an answer. That's why I thought maybe the little booklets would explain.

I have to know what I'm talking about. I can't just give you an answer right then and there. I'll have to know what I need to know before I can give you – or surmise an answer. I just can't do it.

THE COURT: Do you have a concluding question?

MS. CLARKE: Yes.

BY MS. CLARKE:

Q Do you have a sense, though, that you would be looking in the Scripture for God's wishes as to tell you how to – how to handle your service on the jury?

A Well, I'll pray about it, but I have to listen to the facts.

I mean, I have to listen to what is presented. That's the basic – That's why I wanted you to have the information so you would know.

Look, I don't – You were asking me to give you an answer. I don't have an answer about this guy. I don't know any about it. So in turn, I wanted you to understand where I was coming from, that I – I'll have to hear the facts.

I don't know. It's not fair to anybody if you don't know what is going on, not to have something presented. But you were wanting me to give you an answer that I could not give you an answer of exactly what was going on because I don't know.

MS. CLARKE: Thank you. Thank you.

THE COURT: Okay.

Juror will be released?

MR. FRECCERO: Yes, Your Honor.

PROSPECTIVE JUROR NO. 140: Thank you.

THE COURT: You can take her to the location of the other jurors.

(Whereupon, Prospective Juror Number 140 exits the courtroom.)

THE COURT: Any reason why we shouldn't adjourn until 1:30?

MR. CLEARY: No, Your Honor.

MR. DENVIR: No, Your Honor.

(Off the record at 12:36 p.m.)

THE COURT: Let the record reflect all participants are present.

When we conduct voir dire of a juror, I'm the judge. I'm the one that determines whether the juror is credible and whether the juror is death-qualified. A judge is not obligated to allow lawyers to ask any questions, at least orally, but what I could require is the lawyers submit questions to the Court; and then I then would decide whether to ask the question submitted.

As you know, I believe that I have a very flexible system developed here that allows you to probe even beyond the time limits I initially set per side for asking questions, but to indicate that the judge has prejudged something is wrong. If I make up my mind about whether a juror is qualified to sit on this case, that's not prejudging. That's judging.

At some point I do make up my mind. Sometimes I don't make up my mind, and I have to ponder over the jurors' responses and evaluate the matter in the quiet of my chambers.

As to the juror that was being questioned when the Government indicated that I had prejudged or decided the issue, something to that effect, I'm the judge. That's my call. It's no one else's call.

You can't make it for me. I make it myself. I know when I have received enough information to make the type of evaluation I need to make, and if I disagree with your opinion on that, so be it. I'm the judge.

I think we are ready to call in the jurors.

MS. CLARKE: Yes, your Honor.

MR. LAPHAM: Yes, your Honor.

THE COURT: I wanted to meet with you at side bar over one of the jurors.

(Whereupon there was a side bar conference reported but not transcribed.)

THE COURT: Please administer the oath to the potential jurors.

(Whereupon the potential jurors were administered the oath.)

THE COURT: Good afternoon, and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over the trial.

The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. On the same platform with her is the certified shorthand reporter who will assist the Court in administering this trial.

I trust that you fulfill your civic duty during this voir dire or questioning process, and I thank you for both your presence and your anticipated cooperation. You're performing an important function in our justice system. Under the principles of our Constitutional democracy, the parties in this case are entitled to a fair and impartial jury.

That right would be meaningless without citizens such as you 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 answer. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will involve questioning prospective jurors individually, which will commence after I question you as a group. After a number of jurors are questioned in the manner, some of the prospective jurors will be assembled for questioning later as a group. Those required to participate in that group questioning will receive notice as to when that will occur.

Our objective is to obtain a fair and impartial jury that will decide the case based on the evidence that is presented here in this courtroom and the law on which I will instruct you during the trial. I have decided to do individual voir dire, in part because the parties have requested it, and because there has been some pretrial publicity about this case. During the individual voir dire we will cover the publicity area and other matters that will tell us whether you should sit as a juror on 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 laws of the United States provide 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 the 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 any prospective member of the jury to prefer not being a juror in this type of a case, please indicate that fact by raising your hand now.

Let the record reflect that juror number 130 raised her hand. We'll talk to you about that later.

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 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, who is the defendant in this case, 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 outweigh all the mitigating factors or factor 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 the 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 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 your randomly selected number, rather than by your name. This is because I've decided to use an anonymous jury in the case to protect jury privacy, as I've stated in a previous communication to you.

Now I will give you a jury 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 or listen to any news 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 and listening to future news accounts during the time period in which you are involved with 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 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem.

There is no response.

I contemplate observing the holiday season as follows. We'll not hold court December 24, 25 nor the 26th, nor on January 1 or 2. I contemplate holding court December 22, 23, 29, the 30th and the 31st. Please raise your hand if this poses a problem.

There is no response.

Please raise your hand if you do not understand the following. Your first duty as a juror will be to determine whether the defendant is guilty or not guilty of the charges without consideration of any penalty.

There is no response.

If you find the defendant 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 would 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 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, the defendant in this case, deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this.

There is no response.

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

There is 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. If you have any belief that would interfere with your obligation to do this, please indicate that fact by raising your hand.

There is no response.

During the individual questioning, 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 request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions in the area that you indicate a desire to discuss in a private setting to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private.

If this can occur let me know so I can determine whether the matter should be covered in a more private setting. This approach is taken because the trial should be open unless I have a legitimate reason to close any aspect of it.

I now want my deputy clerk to escort all but the earliest randomly selected juror to the adjacent room and place the remaining juror in the witness stand.

THE COURT: I'm going to ask you questions – in just a moment, I'm going to ask you questions from the podium, and I'll need to look at you without you having to crane your neck looking up at the bench.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 130th randomly selected juror. You raised your hand when I asked if there was anything about the nature of the case that would cause you to not want to be a juror on this type of case; isn't that what you did?

A. Yes. I hope I didn't misunderstand what you were saying, but I have a very deep feeling against the death penalty, and that would have great bearing on my being on the jury, I think.

Q. Okay. We are not looking for prospective jurors that are for or against the death penalty. What we are looking for are jurors who would consider the death penalty as one of three sentencing options. The three sentencing options are death, life in prison without the possibility of release, or a lesser sentence, a lesser amount of time in prison.

Do your beliefs about the death penalty prevent you from being willing to consider each of the sentencing options and imposing the one that you ultimately conclude is justified based on the evidence and the instructions I give you?

A. My belief that the death penalty cannot be a choice that I would be able to make for someone would, I think, interfere. I would not be able to choose that one of the three.

Q. I heard what you stated. I just want to ask you a few more questions to make sure that your belief would interfere with your ability to follow the law. So that's why I'm going to ask you some additional questions.

The law would require you to at least consider the three sentencing options I just told you about. Would you automatically vote against the death penalty in any case where it was sought, without regard to the facts and circumstances of the case?

A. I would automatically vote against the death penalty.

Q. Are your beliefs against the death penalty so strong that no matter what the offense, you would not be able to sign a verdict form sentencing a defendant to death?

A. Yes.

Q. Okay. Would either party like to question on this issue?

MS. CLARKE: Your Honor, we think it would be appropriate to stipulate.

MR. LAPHAM: So stipulated.

THE COURT: We thank you for your honest response, and we are going to excuse you from further service on this jury.

PROSPECTIVE JUROR NO. 130: Thank you very much.

(Prospective Juror No. 130 left the courtroom.)

(Prospective Juror No. 131 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 131st randomly selected juror. I'm going to ask you questions, but I'm going to change my location. I'm going to ask you questions from the podium so that we can look at each other as I question.

Is there any reason why we shouldn't continue to consider you for possible jury service in this case?

A. Not that I am aware of, no.

Q. Did you go to Cal Expo and fill out a jury questionnaire there?

A. Yes. I did.

Q. Okay. Since you answered your juror questionnaire at Cal Expo, have you heard of or read anything about the case?

A. Yes. I have.

Q. Tell me what information you read or heard?

A. Well, I heard it on TV. If the news thing was coming on about him, I wouldn't watch it or listen to it. I would change the channel. I would leave the room, same way with the newspaper. There has been several articles. I just seen Kaczynski, and then I would go on to something else.

Q. It appears as though you were working diligently to follow the admonition I gave you.

A. I tried to, yes.

Q. I appreciate that, but despite those efforts were you still exposed to information?

A. Yes.

Q. And what information were you exposed to?

A. The part about he – Mr. Kaczynski's being upset, I guess at you, on something about his mental capabilities, that his mental capabilities were being questioned.

Q. Is that the extent of the information that you received?

A. Yes. I didn't pursue it any further.

Q. Did that information have any impact on you causing you to feel a particular way?

A. Not really.

Q. How did you receive that information? What did it cause you to think when you received it?

A. Probably that he wouldn't want that information known at this time.

Q. Can you elaborate on your thinking as far as that is concerned?

A. Well, it seems, in my opinion it's like he might be using this towards the end of the trial, during the sentencing phase or whatever, one way or the other, good, bad.

Q. Since you answered the questionnaire at Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. I haven't overheard anybody discussing it. I might have mentioned to a few friends that I had to go up and fill out a long questionnaire, but I didn't discuss anything. No.

Q. Do you have any memory of the discussions or whatever you may have mentioned to your friends?

A. Just that I had to go up and fill out a questionnaire at Cal Expo for a possibility of being a jurist on the Unabomber case.

Q. Was there any response by your friends?

A. Yeah. Well, you know, I was told, "Well, you can get out of that; can't you?" I said, "Well, I don't know".

Q. I'm going to direct your attention to the publicity and other information you've received about the case prior to Cal Expo. I want you to tell me as many details as you can about the type of information you were exposed to during that period. I will tell you why I'm asking the question.

Under the law, as I understand it, we need to get those types of details from you. It allows us to objectively evaluate the effect that it could have on you, and it also – ultimately I will be asking you the question to tell me how you believe it affects you.

A. All right.

Q. Okay. So give me as many details as you can about the information you were exposed to before Cal Expo.

A. I seen several news reports on the television about the Unabomber case prior to his – I don't say, his capture. He is presumed to be the Unabomber, or he wouldn't have been arrested. But prior to that there was several news articles on the television about it. I really didn't read anything on it, about some of his victims.

A while after that I believe they found – they said that his brother turned him in to the FBI, I assume, and that he was arrested in Montana, North Dakota, somewhere up north in a little shack; and that mountains and mountains of evidence was confiscated from his shack.

Q. Do you recall any items of evidence that was allegedly taken from the shack?

A. Just boxes and boxes of paperwork. I heard of the – his manifesto, or a manifesto. I have not read it, or I don't know what it contains. But I've heard of the manifesto.

Q. Does the manifesto that you are now referencing have any connection to the shack you were telling me about?

A. I don't know if they found a copy of it in the shack or not. I don't know, but I guess prior to his capture he demanded that it be printed in certain newspapers or that an airline would get blown up or something like that.

Q. Do you have any memory of any other items that were allegedly taken from what you characterize as a shack?

A. I believe there was an old typewriter.

Q. Anything else?

A. No.

Q. Has the information you have received about this case caused you to form an opinion or a preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. Well, yes. A preconceived notion based on the presumed evidence, he would seem like – I formed an opinion that he was probably guilty. However, you know, everybody is innocent until proven guilty. I guess the State would have to present their case and find him guilty.

Q. The opinion that you just mentioned, how strongly are you committed to that opinion?

A. Not real strongly. At first I thought it was pretty strong. You know, there was a relief, well, the Unabomber has been caught, and there will be no more mail bombs or whatever. But knowing that in the past there has been people that were arrested who were certainly not guilty.

So I guess it's like a horse race. Everybody is starting out at the starting line, and it's up to the prosecution and the defense to present their views and form an opinion based on the evidence.

Q. The opinion you just mentioned is – only you can answer this question. I need to know whether you believe you have the capability of leaving that opinion outside this courtroom if you are selected as a juror.

A. I believe I do.

Q. You just indicated that the defense – the prosecution would have to present evidence. There is a doctrine called the presumption of innocence. The defense never has to present evidence to prove innocence, and under our system of justice a defendant is presumed innocent.

You walk into a courtroom. You hear opening statements by the lawyers. The Government doesn't present evidence that that doctrine governs. You would have to enter a verdict of not guilty in favor of the defendant. He is presumed innocent.

Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski to take advantage of that doctrine, the presumption of innocence?

A. No. There isn't.

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

A. Yes.

Q. Is there anything you can tell me that would interfere with your ability to be a fair and impartial juror in this case to both sides?

A. No.

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

A. I guess I would be a proponent.

Q. Explain your views.

A. Well, I couldn't think up certain crimes that I would certainly want to see someone receive the death penalty for.

Q. Assuming that you were selected to be a juror, that Mr. Kaczynski was unfortunate enough to be found guilty during the guilt and not guilty phase of the trial, the first phase of the trial of the offense of deliberate, intentional and premeditated murder of another human being, would you still be able to consider, during the sentencing phase of the trial, voting for a sentence less than death?

A. Yes.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon, sir, my name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski. I'd like to ask you a few questions if I could.

Do you have the questionnaire there, Judge? I wonder if you could make that available?

THE COURT: Is this your questionnaire?

PROSPECTIVE JUROR NO. 131: Yes. It is.

Q. BY MR. DENVIR: Did you fill it out at Cal Expo?

A. Yes. I did.

Q. If you could turn to page 32, if you would?

A. All right.

Q. Question 123, you were asked if there was any particular reason that you would not like to be a juror in this case, and you replied, yes, a financial hardship.

Can you tell me what the nature of the hardship is?

A. Well, at the time I thought it would take me away from work. However, it really won't because I'm not working right now. I have taken an early retirement. When my Federal base was closed I took advantage of an early retirement.

Q. So when you went out to Cal Expo were you actually employed at that point in time, or you weren't?

A. Not at that time, but there was a prospect on the horizon, and there still could be.

Q. And is it the absence of that other prospect that makes you feel you don't have a financial hardship? Is that the difference between now and Cal Expo?

A. No. Either way, with or without the job, there is no financial hardship. I put it on there so that I wouldn't be called back.

Q. Okay. Let me ask you a few questions, if I can, about what you know about the case. As I understand, since you were out at Cal Expo – let me ask you this.

You put that on there because you didn't want to be called back; is that right?

A. Yes.

Q. And why didn't you want to be called back?

A. Well, as I understand it, it's going to be a long, drawn-out trial, and like I say, I had a prospect of a job that I was told was going to happen towards the end of October, first of November. So I didn't want that to interfere – the long trial to interfere with the job prospect.

Q. And –

A. Now, the –

Q. I'm sorry.

A. The job prospect is probably going to be after the first of the year sometime. Well, I've had a few months now of no work, and I kind of like retirement.

Q. I understand that. You understand that this trial could start – probably the trial itself would start maybe mid December and could last from two to four months?

A. Yes.

Q. And the job prospect you don't feel is going to cause you any problem in terms of hardship or distraction, inability to focus, anything like that?

A. No.

Q. Now, since you've been out at Cal Expo, I believe you said you had some exposure with the case both on television and from reading the newspaper; is that right?

A. Yes.

Q. And what do you recall exactly hearing about the case on television since Cal Expo?

A. I've heard little short blurps of jury selection process, and then I read about – it was on a headline that he was very upset at having his mental capabilities questioned. He didn't – I guess he doesn't want a mental analysis, I guess.

Q. Let me ask you this as to television. All you recall is something about the jury selection process. Is that something you saw?

A. Yes. It was an ongoing thing.

Q. Several reports about that process?

A. Two or three.

Q. But only about the jury selection process on television, nothing about anything else about the case?

A. No.

Q. And as far as the newspaper, how many times did you read something in the newspaper about the case?

A. Maybe two or three. I would see the headline as I was scanning the paper.

Q. And you would just read the headline and no more?

A. Just the bold print.

Q. And what do you recall reading in the headlines those two or three times?

A. Well, like I said, about his being upset at his mental capabilities being questioned.

Q. And when did you read that; do you recall?

A. It was here just real recently.

Q. Do you remember when it was?

A. Maybe last week.

Q. Last week sometime is your best recollection?

A. Yes. I'm sure I've seen another headline or two, but I can't recall what it was at this time.

Q. And tell me again what the headline said about the mental capabilities that you recall, as best you recall?

A. Just that Kaczynski is upset at having his mental capabilities questioned by the judge, or something like that. The judge wanted him to submit to testing, and I guess he was upset about that.

Q. And that was just in the headline; you didn't read the article itself?

A. No. I did not read the article.

Q. What was your reaction to that? What did you think when you read that?

A. Well, I thought that he doesn't want to have his mental capabilities acknowledged at this time, and that it would probably – he might think it would be more advantageous towards the end of the trial if he is found guilty, during the sentencing phase or whatever.

Q. And that just came – was that something you saw in the paper, or was that something that struck you?

A. That's something that just came into my mind.

Q. Did you discuss that with anybody at all?

A. No. I haven't.

Q. I guess you've talked a little bit to your friends since you've been to Cal Expo. Can you tell me, friends, acquaintances or family, what exactly you discussed with them, or they discussed with you about the case?

A. Well, they really didn't discuss anything about the case, just – in fact, they didn't even ask me what kind of questions were on the questionnaire. I told them I had to go to Cal Expo with about 600 other people and fill out a long manual of questions.

Q. And that's about all you discussed with them that you can recall?

A. Yes. They said, "Well, do you want to be on the trial, or can you get out of that," or whatever. And I believe I said, no. I don't want to be on the trial. And yes, I think I could probably get out of it.

Q. And what did they react to that?

A. Yeah, something like that.

Q. Did any of them express any opinions to you about what they thought about either whether Mr. Kaczynski was guilty, or what he should be sentenced to if he was found guilty?

A. No. They did not.

Q. And is what we just talked about now, that's all the exposure, discussion you had about the case since Cal Expo; is that right?

A. That's right.

Q. I'd like to see if we can go back prior to Cal Expo. As I understand it, you saw several news reports about the Unabomber prior to the arrest of Mr. Kaczynski.

A. Yes.

Q. And did you read any newspaper accounts or magazine accounts about that either?

A. Not really. It – I would see it on the news primarily in the picture when the Unabomber was in sunglasses and had like a ski mask on, or whatever. And, "Have you seen this man," type of a thing. This is who they think was the Unabomber.

Q. Was that back years ago?

A. That was quite some time ago.

Q. I mean 7 - 8 years, something like that?

A. Oh, geez, I don't think it was that long ago.

Q. What's your best recollection?

A. Maybe a year or two or three.

Q. And so you remember seeing that description of him, or that drawing of the Unabomber?

A. Yes.

Q. What else do you recall about the case?

A. Something about that he was responsible for a package here in Sacramento outside of – or in the back of a store, and I can't even recall what kind of store it was.

Q. And do you remember – did you hear about that just about the time when that occurred?

A. Yeah. I would say during the time it occurred.

Q. So this was kind of like a news report, a recent one that at the very time was reporting that that had occurred?

A. Yeah. Now that you mention it, the news probably went on to say some years back, I don't know how far back, timber – a logging-type person or a timber-type person was targeted. Now, whether he opened the bomb or not, I don't know. I remember something about a timber-type person.

Q. You remember hearing about that on TV also?

A. Yes.

Q. And then, as I understand it, you do remember something about his brother. Can you tell me what you recall about that?

A. Yeah, something about the way that they actually caught him was that his brother had turned him in, I guess, because – well, his brother was suspicious, I guess, and then must have had some bad feelings and wondered if in fact it was true; that he wanted to see the letter bombs or whatever stopped.

Q. And you say he must have had some bad feelings. I don't understand.

A. Well, guilt feelings, knowing that if your brother is possibly the Unabomber, or whatever, then you want to see that stopped. Even though he was a family member and a brother, you still should come forward with that information.

Q. Let me go back, if I can, before the arrest of Mr. Kaczynski. You heard about a couple of bombs in Sacramento. Can you tell me what else you recall about that before the arrest?

A. Before the arrest?

Q. About the Unabom crimes. The arrest was about April of 1996, if that gives you any help.

A. Before the cases or –

Q. Before he was arrested.

A. I had no knowledge of him prior to that.

Q. And then you recall that he was arrested in Montana at his shack?

A. Yes. They showed that on the news.

Q. And mountains and mountains of evidence, I think you called it, was confiscated?

A. That's the way I understood it.

Q. From what you read?

A. No, from what I saw on TV.

Q. You saw it on TV again?

A. Yes.

Q. As you understand, there were boxes and boxes of paperwork confiscated from the shack; is that right?

A. Yes.

Q. What did you understand to be the nature of that paperwork?

A. His writings, I guess.

Q. Any idea what those writings were about?

A. No. I presume that, you know, going back to this manifesto, it might have been some early thoughts on putting that together. I don't know. It just said mountains of evidence, and then they showed the boxes of material being hauled away.

Q. Do you recall anything else that you remember hearing was seized from the cabin or shack?

A. I thought – and I could be wrong, but an old typewriter. And I'm thinking, well, that might be evidence if he had typed out some of these letters and sent them. I don't know. Maybe they could prove it came from that typewriter. That's why it was confiscated as well.

Q. And as I understand it – let me ask you, can you recall prior to Cal Expo hearing about any other supposed evidence in the case, either on television or the newspapers or otherwise?

A. Well, they did quite an article on him when he was arrested, about how he – I guess he taught at California or Stanford. He was a mathematician – mathematics professor, kind of a loner, and it went on to talk about that kind of stuff.

Q. Do you remember anything else about that? I know it's hard to bring it back, but it's very helpful for us to find out what a prospective juror may know about the case.

A. He was – they said he was brilliant, a brilliant mathematician. He had a real good mind for stuff like that. He was a real young – from what I understand, a young professor. I guess he just got tired of it and just gave it all up and moved to Montana, I guess. I assume.

Q. Anything else you recall reading about or seeing on television about the case?

A. No – well, yes, sir. Here lately that his brother, I guess – you know, as you watch TV it's hard not – when this stuff comes up, it's hard to not hear pieces of it. But his brother is upset with the Government now because, according to his brother, he was promised that the death penalty in the case would not be an option, or whatever.

Q. And if you could think back again, is there anything else that comes to mind that we haven't discussed already about reading or hearing about the case on TV or something about Kaczynski?

A. Not that I can think of right now.

Q. As I understand it, based on what you have heard about the case, you have formed an opinion as to whether he is guilty or not; is that right?

A. I formed an early opinion, yes, based on the presumptive evidence, or whatever, that he would be guilty. But knowing now, and I've always known, everybody is innocent until proven guilty, and like the judge has stated, you know, the prosecution has to present all the evidence showing his guilt, and not the defense.

Q. Do you think it's going to be hard for you to sort of kind of put aside everything about the case and the relief that you felt when he was arrested and your opinion that he was guilty, to put that all aside if were you picked as a juror in this case?

A. Not if the defense is able to explain it away.

Q. Well, I guess maybe that's my question. You talked about coming in at the starting line. Is it your sense that when the defense comes to the starting line that we would have a burden to convince you otherwise? I mean, we would have to explain something away?

A. Well, that wouldn't be innocent until proven guilty. That would be the other way around.

Q. Now, I understand, sir –

THE COURT: I'm not sure that he finished his response.

MR. DENVIR: I'm sorry. I didn't mean to interrupt.

THE COURT: Had you finished your response?

PROSPECTIVE JUROR NO. 131: I believe I did.

THE COURT: I'm sorry. I didn't think he was done.

Q. BY MR. DENVIR: I didn't realize I cut you off. I'm sorry if I did.

This is a case that has had a lot of publicity, and what we are trying to explore is what exposure people have had and what effect it has had on their views on it, and see if that could affect their views as jurors. And obviously we have to have, in the end, jurors that can put that out of their minds. But we are all human.

A. I'm sure that almost anybody that has heard anything about the case probably has formed an opinion.

Q. I think that's probably correct, and some people have a stronger opinion, and some people have less strong opinions, things of that nature. And as I understand, you have your opinion based on a fair amount of knowledge about the case, and what we need to know is whether you really feel that you can just put that out of your mind and not feel, for instance, that the defense has to explain these things.

A. Well, if there is evidence indicating that, you know, he is the man, and the defense doesn't argue against it, well, then to me it's a one-sided case. And yeah, he is going to be found guilty.

Q. You said – I think you said something about coming to the starting line; am I correct?

A. I base that on the Richard Jewells thing. You know, everybody thought he was guilty at the Atlanta bombings, the Olympic bombings, and I guess that proved to be untrue.

THE COURT: You just indicated a response to a question that if there was evidence, that the defense would have to do something. Where does the evidence come from that you are talking about?

PROSPECTIVE JUROR NO. 131: Well, if the prosecution says, okay, we have a picture of Mr. Kaczynski mailing his bomb. Maybe they have good – some surveillance in a post office, or of him planting his bomb somewhere, and it explodes, injures a party. And the defense says, well, yes, that was him, but our – or just doesn't even acknowledge it, like it's not even there. To me, it's still evidence.

THE COURT: You're talking about evidence presented in this courtroom?

PROSPECTIVE JUROR NO. 131: Yes.

THE COURT: All right.

Q. BY MR. DENVIR: If you could turn to your questionnaire, when you went out to Cal Expo, I guess it must have been a month and a half ago – if you could turn to page 32, you were asked the question, "Before coming here today what were your thoughts and opinions about this case?"

And you said, "I didn't want to come," and that, "He is guilty". Am I right? That was your reaction when you were asked just a flat-out question, what are your thoughts and opinions about the case?

A. That's correct.

Q. And then you were asked – again, if you look on the next page at question 124 you were asked, as a result of any experience described in any of the previous questions in this questionnaire, and that covered all the publicity and your exposure to it, is there anything that would cause you to favor or disfavor either the prosecution or the defendant in this case. And you replied, yes. It says, "If yes, please explain," and you said, "I favor the prosecution."

A. Yes.

Q. And then if you would go to page 35, it's question 137, you were asked the question, "Is there any matter not covered by this questionnaire that should be brought to the attention of this Court before it would affect your ability" – excuse me.

"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 a fair and impartial juror?" And you responded yes. And then where it said, "If yes, please tell us what it is," you said, "I think he is guilty."

What I get is the sense, sir, that when you looked at this case out there at Cal Expo you had a very strong opinion that he was guilty, and that you favored the prosecution. And I guess the question is, what has changed now in the last month that would kind of allow you to put aside what seemed to be something where you said reasons you shouldn't serve, what your opinion was, why you couldn't be fair and impartial?

A. Well, at the time that I filled out the questionnaire I was in a hurry. I wanted to get out just as soon as I could, just writing short little answers. If I put down, yes, I think he is guilty, I wouldn't be called back. And at the time I presumed that he was guilty.

Q. And has something changed in the meantime as far as your presumption that he is guilty?

A. Just rethinking it, just – I still do think he is probably guilty, but that's my opinion. And if it's during the trial proven – if the facts were known that I'm not aware of right now, then I could think he is not guilty. So I guess the defense is kind of getting off to a slow start.

As far as a prosecution, in my opinion, they present – they don't present it. It's presumed evidence. All this evidence is built up, built up, built up. So public opinion is that, well, geez, they arrested the Unabomber, and he has got these mountains of evidence – so-called evidence, and the defense just has to bide their time to present their case in court.

Q. And do you feel that the defense would have a burden to come forward with evidence, given what you know about the case?

A. I don't believe so.

Q. You wouldn't feel any burden on the defense to come forward with any evidence?

A. During the trial, no. Prior to the trial, yeah. I don't think that the defense does not present their case in the media.

THE COURT: Why are you discussing presumed evidence and public opinion about the defendant's guilt? What does that have to do with it?

PROSPECTIVE JUROR NO. 131: He asked me why I thought he was guilty, and just based on the media.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 131: The media, you know, has presented the case.

Q. BY MR. DENVIR: Well, I think Judge Burrell had talked to you earlier and said you were selected as a juror in this case you would have to presume that Mr. Kaczynski was innocent.

A. That's correct.

Q. And you would have to keep that in your head as a presumption that you could act upon unless and until you had evidence to convince you otherwise.

Would you be able to actually presume he was innocent in light of your feelings that he is guilty, and you favor the prosecution?

A. I believe so. I think I could.

Q. How would you do that?

A. Well, like I say, this latest thing on the Richard Jewells case. I got to thinking about that. Now, the media and the press had him guilty, and public opinion, at least mine, was he was definitely guilty, or they wouldn't have arrested him. But I read a thing in the paper, I believe it was just this morning or yesterday, that he had been hired on as a police officer in some small town now and is completely exonerated. So a person's opinion can change.

Q. Were you aware that Mr. Jewel had been cleared prior to going to Cal Expo? You were aware of that; weren't you?

A. Yes.

Q. And let me ask you, you said you had gone through fairly quickly in answering this. If you'll look at questions – if you turn to page 109 – I'm sorry pages 28, 29, 30 and 31. Could you just glance through there?

You were asked there about what you knew about the case, what you had learned about the case, and the only thing you put in there was on page – as far as what you knew about the case was on page 31, question 117, that he was caught.

Can you tell me, you knew a lot more about the case then; didn't you, at that time?

A. Yes.

Q. And why wouldn't you have answered those questions with what you knew about it?

A. I was in a hurry. It's easier to talk about it than it is to write it down. First of all, there wouldn't have been near enough room in the question area for the – in the answer area of the question to write everything down. I just scanned through it and quickly jotted some stuff down.

Q. And the three things were, you jotted down twice that you thought he was guilty and once that you would favor the prosecution?

A. Yes.

Q. Let me ask you about your views on the death penalty if I could. Based on what you know about this case, you know up to this point you said you had a view that Mr. Kaczynski was guilty, you had an opinion.

Do you have an opinion as to what would be the proper sentence for the Unabomber if found guilty of the charges?

A. No. I don't.

Q. No idea between life and death as to the proper sentence at this time, a preconceived notion?

A. Well, if he is guilty I would like to see him removed from society. Now, whether that's death or not, I don't know.

Q. Okay. If you could go to page 26, I'd like to ask you about this. You were asked about your opinions on the death penalty, and you said you believed in it, and the basis of your opinion is an eye for an eye, and the belief hasn't changed over time.

Can you tell me what you meant, what you were thinking when you wrote those questions?

A. Well, yeah. I do believe in the death penalty. I feel there is probably cases where that is warranted. Just because a person kills another person doesn't necessarily mean I think he should receive the death penalty. In many cases I do not think that that person should receive the death penalty in such cases as drunk drivers or whatever.

Q. Well, when you say an eye for an eye, that only applies in some cases. You don't mean every case where there is an intentional killing of people without justification or an excuse?

A. I don't think that at all.

Q. As far as the purpose, you say, "Rid society of bad people." Is that in terms so they can't commit a crime again, or just to punish them?

A. Well, there would be certain crimes that are so bad that would certainly warrant the death penalty, and that would rid society of a very bad person.

Q. And are there particular crimes that you're thinking of when you say that that come to mind?

A. If someone was to dislike a person so bad and thought out a way to kill that – or murder that person over a period of time, well, I wouldn't have any problem if that person was guilty of imposing a death penalty.

Q. Would you think that should be the only possible sentence in that situation?

A. No.

Q. Okay. If you could turn to page 27, you were asked about four propositions, I guess they are called statements, whether you agreed or disagreed. The third one down is stated, "Any person who commits an act of terrorism in which someone died should get the death penalty." You said you strongly agreed.

What were you thinking about, or what did you read an act of terrorism to mean?

A. Something like the Oklahoma City bombing, like the Middle Eastern terrorist groups, you know, that blows up something and kills people, innocent people. I wouldn't disagree that they should get the death penalty.

Q. And what about somebody who mailed a bomb to somebody with the intent to kill them and then killed them?

A. I wouldn't disagree with the death penalty on that.

Q. I guess I'm asking you, would that be an act of terrorism for which you felt it should always be the death penalty?

A. Maybe not always, but certainly I would agree that a person – I would not disagree with the death penalty in that case. Now, should all cases be the death penalty? In that case, I don't know.

Q. Let me just ask you, and I will end this, your Honor.

There is two parts to a trial like this. One is a normal trial on guilt or not guilt, as Judge Burrell said, and the jury would determine whether the prosecution met their burden of proof to show that Mr. Kaczynski was guilty of the crimes that are charged, which include mailing or transporting a bomb with the intent to kill, and actually killing someone. Then if the jury were to find him guilty of that beyond a reasonable doubt, then there would be a second trial.

So it's not like a normal criminal case where the judge would do the sentencing. The jurors then would do the sentencing in this separate sentencing or penalty phase. At that point the jury would have to decide between the possible sentences available, one of which is execution or death, and one of which is life in prison without possibility of release, which means that. Because there is no parole in the Federal system, or it could even be a lesser sentence.

Do you think that having found a defendant guilty of intentionally mailing or transporting a bomb with an intent to kill, and killing someone with no justification or excuse, you would be open to a sentence other than death in that second phase?

A. Yes. If he was proved to be insane or whatever, something like that, if he is not responsible for his actions.

Q. But if he were not insane and were not found to be not responsible for his actions?

See, that would probably be decided in that first part of the trial. So you would have decided any questions about whether he was responsible for his actions and was sane or not sane in the first part of the trial.

So if that was all resolved beyond a reasonable doubt to your mind and your eleven fellow jurors, and you get to the second phase, the sentencing phase, could you actually consider sentencing him to anything other than death?

MR. FRECCERO: Your Honor, the Government objects to that. We feel that's a misleading question since issues relating to mental health potentially could be argued as mitigating factors in the second phase.

THE COURT: Overruled.

Q. BY MR. DENVIR: I don't know if you understood that question.

A. Are you asking me if he was proven to be mentally sane, and he was found guilty of his accusations, would that always determine a death penalty? Is that what you're asking?

Q. In essence here's what the question is, and I'm trying to make it so you understand. If in the first part of the trial you determine that he was guilty of this intentional mailing of a bomb intending to kill someone and killing them, no justification, no excuse, and no insanity as a defense, and that he was morally responsible and legally responsible for his actions, that's what you would decide if you found him guilty.

Then you would have to decide the penalty, and what I really need to know, and I ask you to really think about this, is given your feelings about the death penalty, and given your own self, could you actually consider anything other than death for that crime?

A. Yes. I could, but I would probably lean towards the death penalty on something like that.

Q. Would it be difficult for you to vote for a sentence less than death? Is that something you would have to struggle with?

A. No. I wouldn't really have to struggle either way, I don't believe.

MR. DENVIR: If I could just have one moment, your Honor. I appreciate it.

VOIR DIRE EXAMINATION

BY MR. FRECCERO: Q Good afternoon, sir. My name is Steven Freccero. I'm one of the prosecutors in this case, and I'd like to follow up on some of the questions you've been asked.

First of all, just to go back to one of the first points that was talked about. I take it from your responses that there is going to be nothing in your personal life that would interfere with your ability to be a juror here if you were actually chosen?

A. No. There isn't.

Q. Okay. There is no work or family problems that's going to distract you from your job here?

A. No.

Q. All right. Let me follow up on some of the these issues about publicity in the case. For instance, you mentioned that you had heard, or you had read, one of those two, something about mountains of evidence taken from the defendant's residence.

Now, if you were actually in a trial setting, if you became a juror and you listened to all the evidence, and you didn't – the Government didn't put on this mountain of evidence, as you described it, that you had heard about in this paper, would you be able nonetheless to evaluate and do your verdict one way or the other, depending on what was presented, or would you be thinking in the back of your mind, there must be something else there so I'm not going to vote to convict this man?

A. Well, no. I think I could – you know, when I say mountains of evidence, and I seen boxes being hauled out, it could be boxes of National Geographics. I don't know what's in the boxes. The media just called it mountains of evidence, and if it wasn't presented as evidence then I would presume that it was not evidence.

Q. You understand that the only thing that you are allowed to take into consideration if you are called on as a juror is actually evidence presented in this courtroom. Nothing else is allowed to be a part of your deliberation as to the guilt – whether someone is guilty or not guilty as to the charges presented?

A. That was presented in the case in the courtroom, yes.

Q. You mentioned, for instance, the Richard Jewells case. So I take it then you realize there could be times when the newspaper or the press reports something, and in fact it turns out later to not be accurate?

A. Yes.

Q. Okay. And that's – by the same token, for instance, you mentioned something about you had heard about the brother being upset because he claimed the Government had promised not to pursue the death penalty as an option. That's what I wrote down.

A. Yes.

Q. If you were sitting as a juror and you just didn't hear any evidence about that either in the first phase, and if in fact the jury convicted him, or in the second phase where the penalty, would you allow what you had heard about that to influence your decision as to what should be done in the case?

A. No.

Q. Do you still have your questionnaire?

A. Yes. I do.

Q. If you could take a look at page 28, I'm just going to ask you briefly some questions about your views on the death penalty.

First of all, if I could just go back a second. I take it that the answers you put on this questionnaire were based on your personal opinions?

A. Yes. It was.

Q. You, yourself, at the time you filled out this questionnaire, did you have any understanding of what the Federal law actually was that controlled a death penalty case?

A. No. I do not.

Q. If you look at page 28, question 108, the question there states, "Where one person intentionally kills another person," you checked the box that said, "The death penalty may or may not be justified depending on the circumstances of the case".

Can you give us an idea of what you were thinking about when you checked that particular box?

A. Well, yes. Not every time when a person, in my opinion, kills another person is the death penalty always warranted, or is it never warranted. It just depends on the circumstances of the case.

Q. Okay. And again, if you were called as a juror, and were you in that second phase we have been talking about, you've already decided that the defendant is guilty, should that happen, and in this second phase those same rules would apply. You would only be able to consider evidence presented during the trial. You understand that; right?

A. Just in this case, yes.

Q. Now, along with that there is another part, and that's that the judge, the Court, is going to tell you the legal obligations as to what your duties are. It's going to tell you that you must consider certain factors on both sides. Now, if you have a personal belief that's inconsistent with those instructions, some other factor that you personally believe is important but is not part of those instructions, are you going to be able to put aside that belief, follow those instructions and consider only the evidence that's presented in this case?

A. I believe I could. Yes.

Q. If you could look at page 27, question 107, again that's another – that's all those four different categories where you're asked for your personal opinions. The very last one says, "A person's background does not matter when it comes to whether or not he should be sentenced to death for a murder." And you checked the box, "Strongly agree".

Can you tell us what you had in the back of your mind when you saw the word, "background"?

A. Well, I would think – to me this meant his status, status in society. If he is a lowly homeless person or a big executive somewhere, that would have no bearing to me in the – whether or not he should or should not be – have the death penalty imposed on him.

Q. All right. For instance, whether a man is rich or poor, that shouldn't make a determination as to whether he gets the death penalty?

A. Right. That's correct.

Q. Again, if we were in this second phase, and you were told that you should take into account a number of things, not only the facts and circumstances of the crimes, but evidence or information pertaining to the person who committed it, any information that's presented to you about his or her life, his or her – anything about them, for instance, whether they were mentally retarded or not, or any of the circumstances that led them to commit the crime, do you think you could honestly and openly consider those considerations as part of your overall determination as to which of the penalties apply in this case?

A. You are saying it was presented in the case?

Q. That's correct.

A. Yes. Yes. I do.

Q. All right. The law basically understands that no two crimes are ever the same. Even if you personally didn't agree with that proposition, could you nonetheless look at the particular circumstances in a particular case?

A. Yes.

Q. And the same if the law tells you that every person commits the crime, they don't all get treated the same. You need to look at the facts and circumstances about that person. You feel confident that you could do that also?

A. Yes.

MR. FRECCERO: All right. No more questions. Thank you.

THE COURT: Please bring in the next juror and escort the juror to the adjacent room.

(Prospective Juror No. 131 left the courtroom.)

(Prospective Juror No. 133 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 133rd randomly selected juror. Is there any reason why we shouldn't continue to consider you for possible service as a juror in this case?

A. I don't believe so.

Q. Okay. Well, I'll ask you a few questions. There is a microphone nearby to make an adjustment so we can make sure your voice is amplified. I'd appreciate it.

Q. Did you appear at Cal Expo and fill out a questionnaire?

A. Yes. I did.

Q. Since you appeared at Cal Expo and answered the questionnaire, have you heard of or read anything about the case?

A. People talk, but I wasn't listening. I mean as to listen, I know they were talking about the case. I don't know specifics.

Q. Okay. Can you provide me the circumstances in which you heard people talking?

A. I work in a kitchen with five other ladies. The newspaper comes in on break time, and they read the newspaper and they talk. And I could go for break and walk, sometimes I do just to get out so I won't listen, but I know they are talking. And I hear, but don't really.

Q. Okay.

A. It's everywhere.

Q. It appears as though you have been trying to avoid hearing.

A. I have been. Yes. I use my mute button if I'm watching TV.

Q. Okay. I appreciate those efforts. Have you been exposed to information despite those efforts?

A. I just knew there was news media setting up camp, and I guess that's about it really. I wasn't interested when it started before I even knew I was going to be called. No. I didn't try to listen. I didn't try since I knew I was going to be a potential juror.

Q. You were pointing when you indicated that you knew there was news media setting up camp. You are talking about what's occurring across the street from the courthouse?

A. Yes.

Q. Since Cal Expo have you discussed the case with anyone or overheard discussions other than the ones you've just mentioned?

A. No. I haven't.

Q. What information did you receive about the case before Cal Expo, and I would appreciate it if you could give me as much detail as possible. We don't expect jurors to come into the courtroom unaffected or unaware of information that surrounds a case, but we need to know what information a juror has been exposed to so that we can evaluate, objectively speaking, how the juror could possibly be affected by the information. And we'll give you a chance to tell us subjectively how you believe you've been affected, if at all, by the information.

A. Something about a script – a manifesto. I don't know what's in it. I didn't read it. I'm not sure how it – where that came into play, how it was in the newspaper or anything, but supposedly it was in a newspaper. Something about a home in Montana, cabin in Montana.

Q. Okay.

A. And bomb-makings in the cabin, and the cabin being relocated. That's the only thing. I don't know about anything more than that.

Q. Are you aware of any allegations that were publicized concerning what this trial could possibly be about?

A. Someone sending bombs through the mail, and I have to say I do also – I knew also something about the family was the one that turned in Ted. That's – the family, that's all I do really remember hearing about was the family turned the Unabomber in – the supposed Unabomber.

Q. Has the information you have received about the case resulted in your forming an opinion or any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. Offhand if I had to say he is guilty or not guilty, I would say guilty, just because of his family turning him in. I do not know the details, and I understand I will have to go only by what is presented here. And I will have to go by the rules to make my decision, and if what I would think, if it doesn't go by the rules, I would have to go by the rules instead of what I thought, if that makes sense.

Q. I understand your response. You're indicating that – well, let me ask you this before I ask you that question. The opinion that you've just related, can you tell me how strongly you're committed to the opinion?

A. I am not strongly committed. I would like to know the details, but without knowing details, like I said, I'd have to say guilty. I don't really know.

Q. I think you've already indicated the answer to this question. You've indicated that you could set that opinion aside?

A. Yes. I can.

Q. Are you sure about that?

A. I'm positive I could.

Q. You would allow Mr. Kaczynski to start this trial on what's called a clean slate?

A. Yes.

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

A. I'd have to say no. I mean, right now, not knowing any details, I already told you, I'd have to say guilty. But I can start with a clean slate when we start. If this is starting, he has got a clean – he doesn't have a clean – well, what am I trying to say here.

If you ask me right now to make a decision, he is guilty. When I start hearing details I'll have a clear mind and can make a different opinion if that's the facts that are shown to me.

Q. Under our system of justice a criminal defendant is presumed innocent unless and until the defendant's guilt is proved by the Government in the courtroom beyond a reasonable doubt.

A. Yeah. I agree with that.

Q. Okay. Would you have any difficulty, based upon your own personal belief system, that would interfere with your ability to allow Mr. Kaczynski to have the benefit of that presumption of innocence?

A. I'm sorry. I spaced for a second there. Could you repeat that?

Q. Under our criminal system a criminal defendant is presumed innocent unless or until the Government proves the defendant's guilt beyond a reasonable doubt.

A. Yes.

Q. The defendant has no obligation to prove anything.

A. Yes.

Q. The defendant has no obligation to testify, present any evidence. If you were to decide the defendant's fate at this very moment, under that doctrine he is presumed innocent.

A. Yes.

Q. You have heard no evidence.

A. Yes.

Q. You would have to find that he is not guilty.

A. Right.

Q. Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski to have that doctrine protected?

A. No. There isn't.

Q. You can understand that a defendant wouldn't want to be on trial in this courtroom and have to defend himself against allegations that occurred outside the courtroom?

A. Uh-huh.

Q. Do you understand that?

A. I understand. Yes.

Q. Okay. So you would have to have the ability – I'm trying to see if you have the ability to set aside any information that you received about this case outside the courtroom and make a determination as to Mr. Kaczynski's guilt or innocence based on the information that is presented here in the courtroom.

A. Yes. I could do that.

Q. Is he protected by the presumption of innocence in your eyes?

A. Yes.

Q. Can you think of any reason why you will not be a fair and impartial juror in this case? Is there anything we should know?

A. I don't believe there is anything.

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

A. I believe in the death penalty.

Q. Can you explain your beliefs?

A. We have a system, as you explained when we all were in here, of a trial and such, and I just don't see jail doing anything. If you've been proved to do the crime, if you've been proven by the jurors, and if it is the death sentence, I believe I could do death.

I don't like the jails just filling up and filling up. I don't see any type of rehabilitation, anything, and I believe that there would be a lot less repeat offenders and a lot more thinking before the crime if there is a punishment.

Q. If you were selected for the jury during the guilt and not guilty phase of the trial, Mr. Kaczynski was unfortunate enough to be found guilty of the offense of deliberate, intentional, premeditated murder of another human being, would you still be able to consider voting for a sentence less than death?

A. I don't believe I could.

Q. Could you explain your answer?

A. I noticed differ degrees of taking another person's life, self-defense, an out-and-out right purpose of doing it, an accidental and all that other stuff. I believe if you have intentionally set out to do harm, to kill another person – I mean, kill somebody, that is the death penalty. I can't say, poor guy, I know he didn't really mean to do it.

But I think if you planned, and if you plotted, I think you've had enough time to know what you were doing, and I mean that. If you killed somebody, and you planned to kill somebody, I think, and you killed somebody, you should have the death penalty. If you've been tried by a fair and impartial jury you deserve the death penalty. You get the death penalty.

Q. Under the Federal sentencing law there is a concept referred to as aggravating factors. That is factors that the Government will perhaps be arguing in their case during the sentencing phase points toward death. There is another concept referred to as mitigating factors, which would be factors that would point toward life.

Do you understand that the law requires that before imposing the death penalty, even for the offense I told you about, which would be a premeditated, intentional and deliberate murder of another human being, that the jury must consider the facts and circumstances of the crime? This is during the sentencing phase, the background and character of the defendant and any other information that might tend to indicate that the death penalty should not be imposed; do you understand?

A. Yes.

Q. Are your views in support of the death penalty so strong that you feel you are incapable of considering such information?

A. No. I am capable of considering that.

Q. If in your view the jury found Mr. Kaczynski guilty of premeditated and intentional and deliberate murder during the guilt not guilty phase of the trial, then you went into the sentencing phase of the trial, you received aggravating evidence and mitigating evidence. 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.

THE COURT: The parties may conduct questioning.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good afternoon. My name is Steve Lapham. I'm one of prosecutors on the case. Let me just pick up and ask you a few questions about the death penalty, some of the statements you just made.

You said originally, before the judge instructed you as to what the law is and how you would be asked to determine the evidence, you said that if there was an intentional – if you were told that the defendant intentionally committed murder, that if he planned it is and plotted it out, that you thought the death penalty was appropriate?

A. Uh-huh.

Q. What if he didn't – what if there wasn't evidence?

THE COURT: Help the Court ensure that we can hear her responses with affirmative audible responses, rather than head shaking one way or the other.

MR. LAPHAM: Thank you, your Honor.

Q. And also you may either want to sit forward, or that microphone comes out of its sleeve if you want to just hold it.

What about an instance where a murder was committed, but the murder wasn't planned or plotted out, for instance, was committed in the heat of passion?

Do you want me to give you an example of that?

A. You're asking me how I would decide that?

Q. Right. What would you think about a situation like that?

THE COURT: Could you give her more facts? I mean, I don't know what you – I'm not sure that's going to help the trier of fact.

MR. LAPHAM: I will. Thank you, your Honor.

Q. You heard of cases where people become enraged at one thing or another, let's say a car accident. And the two people get out of their cars, and they are really angry at one another. And somebody goes into his car and gets a gun, and as he walks from his car to the other car, and he thinks about it, "I want to kill this guy".

He premeditates on it. He will wants to kill the guy. He intends to kill the guy, and he does kill the guy, is that different in your mind from a person who, for instance, takes out a contract to kill another person and then plots over time to carry out that contract and eventually winds up killing other individuals?

A. Yes. That's different.

Q. And why is it different?

A. A fit of rage. I've been in fits of rage, and I know people can get in fits of rage. I haven't carried it to killing anybody, but I've don't some stupid things.

Q. As have we all. Would you consider one example more aggravated than the other?

A. Yes. The hired contract one seems like they had a lot of time to think about it.

Q. A person who did that, the hired contract one, would that be a situation that would be more deserving of the death penalty than the heat of passion example I gave you?

A. I think so.

Q. And now that's – I've given you an example that goes to the circumstances of the crimes. Let's talk about an example that goes to the background or character of the defendant, and we can take the same example if you want. Someone – but in this case we have got an individual who has no prior record of committing any acts of violence, and in the other example we have a person who had done this before.

Do you draw any distinctions in that type of situation?

A. I'm having trouble. Because I feel like answering – I've answered a few of these questions already, and I've –

Q. It's our job to ask redundant questions.

A. Right. And so when I –

THE COURT: Just a moment, ma'am. What kind of distinctions are you trying to get her to draw between the guilty, not guilty and, the sentencing phase?

I think you need to rephrase the question.

MR. LAPHAM: I think you're right, your Honor.

Q. We're talking about in terms of determining what the appropriate punishment should be. Do you draw any distinction between those two examples as to who might be more or less deserving of punishment?

A. Someone who has contracted somebody over and over and over to kill somebody, yes, deserves it more than a person in a fit of rage, in my mind. On those examples, of course, I'd like to hear the details, and I must hear the details before I could sentence somebody to their death, details I would have to know.

Q. Okay. And that's exactly what we are getting at. Because when we get to the second phase, if we get to the second phase of the trial, and we start talking about the appropriate punishment, you will hear additional evidence, details, about the nature and circumstances of the crime and details about the character and background of the defendant.

And what we are asking is, can you be open to that type of evidence? Can you listen to it before you make your decision?

A. Yes. I can.

Q. You wouldn't automatically jump to the conclusion that because a person has been convicted of an intentional premeditated murder, that we should just skip over that evidence in the second phase because you've already decided he should be given the death penalty?

A. I can listen to the details and make my mind up.

Q. And – okay.

A. And my mind can change, yes. If I hear details of – you know, if I don't have any details, of course, I've form an opinion until somebody gives me some details, and I can start with a clean slate – at the beginning. You know, before I was here in this seat, before I knew anything, of course, oh, wow, you know, guilty just because – just because.

But having to be here, yes. I wipe my mind. I've tried hard not the listen to anything. I didn't even care in the first place. When I got the notice then it was hard to avoid. It was everywhere, but I did my best.

I'm here. I'm open minded. I believe in the death penalty. I can change my mind, but I need to know the details. And I don't know how else to express that. It seems like you've asked me these questions, and you've asked me the questions. And I'm here. I've got an open mind. Give me the details, and I can make a decision.

Q. And you raise a good point. Because we have been talking in hypothetical terms, and we haven't been giving you –

A. Right.

Q. – for the most part any facts, and the questionnaire didn't you give you any facts to deal with. They are just kind of asking open-ended questions, but the bottom line is for you to make a determination on whether the death penalty is appropriate, or life without possibility of release is appropriate, you want to hear the details?

A. I want to hear the details, yes, before I sentence anybody. Even before I reprimand my kids I want to know the details.

Q. Well, that's exactly it. You want to know the history of what your kid has been doing and how – whether the kid is a repeat offender, and we have been down this road before. And the kid just doesn't get it, things like that?

A. Right.

Q. I'll stop beating a dead horse here. I just have a couple more questions.

You indicated in your questionnaire that you felt you were not very knowledgeable about the case, and that you hadn't read very much about the case.

A. I didn't read anything about the case.

Q. And, in fact, you read the newspaper less than once a week?

A. I read the local newspaper maybe Saturday. It's just too full of ads to waste my money on a paper.

Q. All I'm getting at here is it doesn't sound to me like you'd have much difficulty starting off with a clean slate, because you're pretty much close to being there already.

A. I think I am. I am not in an igloo or a hermit. I know the case is out there, but I didn't pay attention to it. Now, I will have to if I'm called, and I will. I mean, here in the Court pay attention to it.

Q. Right. Okay. Thank you very much.

THE COURT: We'll take the afternoon recess. Court will be in recess until 3:30.

(Whereupon the afternoon recess was taken.)

THE COURT: Are you ready to proceed?

MS. CLARKE: Yes, Your Honor.

MR. LAPHAM: Yes, Your Honor.

THE COURT: It's juror 133.

(Pause in the proceeding.)

(Prospective juror number 133 entered the courtroom and resumed the stand.)

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Welcome back. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski, and I had some follow-up questions, if you can keep going.

A. Sure.

Q. You mentioned – do you have your questionnaire?

A. No, I don't.

MS. CLARKE: Is it close by, Your Honor?

THE COURT: Is this your questionnaire?

PROSPECTIVE JUROR NO. 133: Yes, it is.

MS. CLARKE: Q. At page 11, at the top of the page, you were concerned it might – that being called to serve could interfere with a particular family project – I don't want to talk about what it is –

A. Yes.

Q. – for your privacy interests. Is that resolved? Are you still going to be able to make that okay?

A. Yes, I've been there and back. I went to Saint Louis, Missouri, watched my daughter graduate from boot camp. And it's over and done with. That was my only fear, that I wouldn't get to go see her.

Q. And so you took care of that. That's good.

A. She's graduated, and I'm here.

Q. The second – the question right under that was you had talked to your boss and you wondered whether this would affect your pay and your status. Have you had a chance to resolve that?

A. Yes. I will still get my pay for being on jury, and I will get my hours. I won't fall behind in hours. It's just like I have never left there, even though I'm here.

Q. Okay. Regardless of how long this case goes –

A. Right.

Q. – they'll keep you at the same status; you won't suffer at all?

A. That was my concern and I – it's like I'm working, as long as I'm on jury.

Q. Well, you would be.

A. Okay.

Q. So that's not a problem we need to worry about anymore?

A. It doesn't worry me.

Q. While you have your questionnaire in your hand, if I could take you to page 24, question 95. That was the question about mental health professionals who testify in court.

A. Wait a minute. 25 –

Q. 95 on page 24; I'm sorry.

A. Oh, I'm on page 25.

Q. You were asked your opinion and you said, "Do you really know somebody or do you just really know what the somebody told them." Could you tell me what you were thinking when you wrote that?

A. If I were to go to talk to a psychiatrist – this is just how I feel – I don't know that person. I could tell them anything I wanted to tell them. How do they know me? It's what I'm telling them. I mean, how would they get the truth out of – they can't know anything different than what I'm telling them. And I could be telling them a lie. I mean, I don't trust people right off the bat, and you don't go to a psychiatrist and just spill your guts, you know. You go and – if you have to go to a psychiatrist, you're all frantic, you're just going to tell him – there's some things I might not say, and so it's not the truth.

Q. Sure. Is this from something you've read, seen, heard about, other people's experiences? I mean, is that what you're applying here?

A. I'm applying it to life. You meet some group of people and – oh, just say it's at a high society party, and I happen to be at a high society party and maybe I'm not high society, but I can pretend I am. And that's all they know of me is what I tell, what I act, what I do. So they might form their opinions of me as being high society.

Q. So you kind of reject the idea that they maybe have some sense of how people's brains work, or thought processes, regardless of whether somebody wants them to know, that they might have some special education that helps them see through that?

A. Education helps a lot, yes.

Q. Or experience.

A. Experience, yes. Do you really know your neighbor? You only know your neighbor as what you see them doing, hear them talking. And you form your opinion, whether you're a psychiatrist, whether you're a doctor, whether you're a cook. You just form your opinion. But you don't really know what goes on behind closed doors.

Q. Would those feelings about – just generally about mental health professionals, as I'm hearing you, anyway, sort of make you say, "That's a mental health professional; he or she doesn't know any more than I know"?

A. No, I won't say that. I'm sure they know some tricks to the trade – maybe that was the wrong phrase. There's not a trick. I'm just . . . how I can say it? Whatever someone is telling the other person – the doctor is going to go by what you're telling them. And if you tell them a lie, they can't fix what's the problem. You know? And how do we know whoever goes to a psychiatrist is going to tell the whole truth?

Q. Okay. Okay. I was just trying to inquire –

A. Right.

Q. – where you were on that.

You mentioned that you are a member of a particular church.

A. Not a member. I attend.

Q. You attend a particular church. And is your husband active or something?

A. He plays the organ.

Q. Do you know that particular church's position on the death penalty?

A. No, I don't – no, I don't. I don't know. I did not go through the membership classes. I go to church. I believe in Jesus Christ, God, Son, Father, Holy Ghost. And maybe the Nazarene believes baptizing is totally dunking and some in sprinkling and that doesn't matter. There's a base. And that's why I attend the Nazarene.

Q. So the topic of the death penalty hasn't come up in any of the sermons or any of the discussions?

A. I can't say it hasn't. If it has, it hasn't affected me. They're not telling me what to believe in. I believe in the death penalty –

Q. I was just trying to figure –

A. – not because the church told me.

Q. Not because it's religiously based.

A. No.

Q. If I could ask you very briefly some questions about your knowledge of the case. I think the it was the judge that you told about you'd heard of the manifesto and the cabin and Montana –

A. Did I say Montana? I don't even know if I said the right state.

Q. Is that not your memory that the cabin was in Montana?

A. I'm not sure that was the state. There's a cabin somewhere.

Q. Somewhere up there?

A. Somewhere in the snow. I did see snow pictures. I mean, I've got my mute button but it doesn't shut the TV off if I'm sitting there. I think there was snow.

Q. Probably wouldn't have known to mute it at the time you were seeing the pictures of the cabin.

A. If I'm there sitting and I'm understanding that this is coming up, I will mute. If I'm in the other room and the TV's on, I could go into the room and shut – and push the mute. But I can still see the picture.

Q. Right. But there was a time when you didn't know you were supposed to mute the TV –

A. Right.

Q. – or not read the paper, right?

A. Right.

Q. So there was a time when you were sort of seeing information, hearing information about the case?

A. I'm sure there was. Actively paying attention, I wasn't.

Q. Well, I was interested when I thought you said to the judge that you were aware there were bomb makings in the cabin. Can you recall exactly what that was?

A. I'm not sure if there was bomb makings in there. I – gathering some stuff, there was pictures on the television of pieces. So I – maybe I'm making it up in my head that the bomb pieces were in the cabin. I am not sure. But cabin and pictures of bomb pieces – this is what –

Q. They're connected together for you?

A. They're connected together.

Q. At page 32 in the questionnaire, do you see question 121?

A. 32, 121?

Q. Right. Are you with me?

A. Yes.

Q. You said you thought Mr. Kaczynski looked like he needed a shave and a haircut?

A. I took cosmetology classes. I mean, I just – well, you asked for my first thought, my opinions; that was truthfully my first thought.

Q. And where did that thought come from?

A. Saw a picture.

Q. Seeing the picture when you saw the snow on the ground?

A. No, that was not the snow on the ground – he was in handcuffs. I can't tell you every picture I've seen. You know, if it flashes in my head, I'll tell you about it. But he was in handcuffs or shacketing [sic]. He did need a shave and a haircut. I don't know exactly what day that was, how long ago it was. It wasn't yesterday.

Q. Okay. And you can't remember how many times you saw it, actually?

A. I believe I've seen him with a shave and a haircut since.

Q. Since remembering thinking he needs a shave and a haircut?

A. Right.

Q. Let me just spend a couple moments with you on the death penalty, and I must tell you I understand that – your frustration with the questions pouring in at you. But I would guess you would also understand the depth of our necessity of understanding –

A. I understand.

Q. – your beliefs and your opinions.

A. I was more frustrated with me maybe not making myself clear. I know what I want to say. How to say it is harder.

Q. Okay. The judge asked a question when he was standing at the podium about if you found a planned, premeditated, intentional, deliberate murder, could you consider a sentence other than death. Do you remember that question?

A. Yes.

Q. And did you – you said no.

A. If I don't have any details and I had to make a decision. If I had to make a decision, I guess that would be my only one. If I don't know any details in that minute you asked me to a make a decision – it was planned, it was meditated and it was done – death penalty.

Q. And I take it that, as you also, you explained – I don't know whether it was with the judge or the prosecutor standing here – that it really was, you know, the prisons are filling up, there's no rehabilitation in the prisons, the choice really is, at that point, whether to sentence somebody to death or not?

THE COURT: At what point?

MS. CLARKE: At that point when you feel that the prisons are filled up – I'm sorry, Your Honor.

THE COURT: Let's clarify it.

MS. CLARKE: Q. You also said something about your feeling about the death penalty was pretty strong because the prison system just didn't work. Is that the sense –

A. I didn't mean it that way.

Q. What were you –

A. The system could be busting at the seams, but if evidence and how I was told, by these rules, how I was told to decide if – if they were busting over and it was no death penalty, he would be in a busted over capacity jail [sic].

Q. So that's really not what?

A. He, she, or whoever.

Q. He, she, or the person on trial?

A. Person on trial.

Q. Could you look with me at page 26, I believe. 26.

A. (Examines document.)

Q. Are you with me? Question 103, what are your opinions and beliefs about the death penalty and its use? And you said, I believe in the death penalty; they don't use it enough, right?

A. Yes.

Q. And then the question is, what was the basis for that opinion? And you said if you kill on purpose, you should be killed. Right?

A. Yes.

Q. And that's your feeling about the death penalty. If you kill on purpose, you should be killed?

A. I know there's . . . a child taking a hammer and beating a cat, kills a cat. Yes, he picked up the hammer on purpose. Yes, he smashed the cat, killed the cat. But the kid didn't know he was doing it. The act was – I don't know if that's the right decision.

Q. Mm-hmm.

A. I . . . believe in the death penalty. I know there's degrees of – if you've killed somebody and – I'm getting frustrated just because –

Q. Sure.

A. – I thought I've answered the questions. I'm angry at myself, not at you for keep asking me.

Q. That's nice to know.

A. So I understand fits of rages. We went through this. Fits of rages. And – and – I'm just frustrated because I don't know how else to explain it.

Q. And I think it's difficult for us to try to compartmentalize it.

If you have a situation of a fit of rage, it seems to me – and tell me if I'm right or wrong – that that would affect whether or not the person intended and planned and deliberated the murder.

A. Right.

Q. And if you have a situation of self-defense –

A. Right.

Q. – that would affect whether the person planned and deliberated and intended the murder, right? I mean, we're looking at the circumstances of the crime at that point.

A. Right.

Q. And I guess what we're trying to get down to is, once you've made that finding that there was no justification or excuse for the commission of the murder, that it was in fact intentional, deliberate, premeditated murder, you've made that decision, could you envision a circumstance – and this is inside of you – in which any penalty other than death would be acceptable?

A. Given details and a set of rules to make a judgment by, yes, I could make a decision of not the death penalty. Is that what you're asking me?

Q. Mm-hmm.

A. Then I don't know how else to explain it any further.

Q. Let's say the only –

A. Is there something behind all this? I mean, are you asking me if someone's crazy, could I understand a crazy person murdering somebody? I don't –

Q. Well, now, a crazy person murdering somebody –

A. And who's to know what crazy is?

Q. Who's to know what crazy is? A crazy person – let me get you back to the facts. It's a premeditated, deliberate, planned murder without justification or excuse, and I take it that when you say a crazy person, assuming you could figure out who a crazy person was, that would go to whether that was planned, premeditated, deliberate, intentional murder. Am I right?

A. Yes.

Q. So you got beyond that. There was no excuse. There was no justification. It's that planned, premeditated, deliberate, intentional murder.

A. Well –

THE COURT: Well, you don't have a question yet. That's no question. That's not a complete question.

MS. CLARKE: Q. Would – can you envision a circumstance when those are the facts where a sentence of less than death would be acceptable to you?

MR. LAPHAM: Your Honor, I'm going to object to the hypothetical, because she's included an aggravator in the question with no mitigators, and she's also asking the juror to – the prospective juror to supply the mitigators at trial. The mitigators will be supplied to her.

THE COURT: Isn't that true, Ms. Clarke?

MS. CLARKE: I guess I'm asking the juror, Your Honor, to look inside herself and see if there are any possible mitigators for her. And I suppose that's where the difficulty in the questioning is. It's not a question of compliance with the law. It's a question of is this such a difficult decision for this particular juror, given the strength and depth of her beliefs, that there could be a possible circumstance that wouldn't affect the crime itself?

THE COURT: Sustained.

MS. CLARKE: Q. Could I ask you to look at page 27 with me, and then I'll finish. You see that series of checkoffs?

A. Yes.

Q. Question 107?

A. Yes.

Q. "Anyone who deliberately murders two or more people should get the death penalty"?

A. Is this the first set of –

Q. It's the second set. Where you marked "strongly agree."

A. (Examines document.) By this question, in those answers, I had to mark "strongly agree." I don't know the details.

Q. And what were you thinking when you marked "strongly agree"?

A. It says, "Anybody who deliberately murders two people should get the death penalty." I believe in the death penalty, and so I strongly agree with that.

Q. Okay. If you learned that that person had had a bad childhood, if a psychiatrist came in and said, "I've looked at the person's childhood and it was a bad childhood," could you consider that effectively? Would that be a meaningful consideration to you?

A. Meaningful, no. But if I had the rules to take that into consideration, I would have to.

Q. Well, the rules would be that you have to consider the circumstances of the crime, the background and character of the defendant, the good and the bad. The rules are you just consider it all, weigh it. But then you get to make the decision about how much weight to give any particular factor.

A. (Pause.) Bad childhood – I had a bad childhood. A neighbor of mine had a bad childhood. What's bad to who? My bad childhood might have been a luxury for this other kid. So backgrounds – on how you were raised – I'd have to know background.

Q. That would be a circumstance – somebody had a bad childhood, an unfortunate childhood, no guidance as a youth – would that be a circumstance that you really just couldn't give much weight to?

A. It would get a little weight. Just a little. Because, like I said, I don't – what's a bad childhood? I thought – my folks divorced. I was six. I thought that was a crushing, horrible thing to have happen. Did it affect me growing up? I guess it did somehow. I didn't have a father. But I'm not crushed by it.

I'm not angry at the world. I live my life the best I can. And you know, I didn't have parents that beat me. I didn't have parents that were horrible or anything, but –

You know what – I'm getting frustrated again. I'm talking too much. My bad childhood might have been a breeze to my neighbor's bad childhood. So when someone asks me, oh, he had a bad childhood or she had a bad childhood, you've got to give them some leeway – a little weight.

Q. Would it be the same – look at the third – "Anyone who commits an act of terrorism in which someone dies should get the death penalty" – and you said "strongly agree." And I understand that's taking those facts as they're set. Would you be able to weigh the circumstances of a person's childhood beyond minimally?

MR. LAPHAM: Your Honor, objection. We're talking about hypotheticals that have no facts. I think the prospective juror is having difficulty because she's just being asked –

THE COURT: Sustained.

MS. CLARKE: Q. When you say that any person who commits an act of terrorism in which someone dies should get the death penalty, and you say "strongly agree" –

A. Yes.

Q. – and you would be told to consider somebody's background, character and background, in the circumstance of an act of terrorism resulting in death, would there be anything so tragic about a background that would make you be able to give it anything more than minimal weight?

A. No.

MS. CLARKE: May I have one moment, Your Honor?

THE COURT: Yes.

(Discussion off the record among defense counsel.)

MS. CLARKE: Thank you.

Thank you.

THE COURT: We're going to let the juror go to the waiting room and bring in the next juror.

(Prospective juror number 133 left the courtroom.)

(Prospective juror 134 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 134th randomly selected juror. We may reference you by that number during the questioning.

Is there any reason why we shouldn't continue to consider you for possible jury service during this case?

A. I don't believe so, but there is something I would like to share with you. On the questionnaire, one of the things that you asked is if I knew any of the prospective witnesses. And at the time I answered no. And at the time I was not aware that there is a woman in my office whose mother will be a witness on this trial. I don't know her name; I don't know in what capacity she's going to be serving. I really don't know anything at all about it. But somebody did make a mention of that to me at work and so I thought you should know.

THE COURT: I want to probe that issue at sidebar. I'm going to ask the juror to come over. We've got to ask you more questions about that.

PROSPECTIVE JUROR NO. 134: All right. Me too?

THE COURT: Yes, you can come over.

(A bench conference was held but not herein transcribed.)

(The proceeding resumed as follows in open court.)

THE COURT: Q. Did you appear at Cal Expo and fill out a juror questionnaire?

A. Yes, sir, I did.

Q. Since you answered the juror questionnaire at Cal Expo, have you heard of or read anything about the case?

A. Not about the case, just about the jury selection process.

Q. What information do you recall receiving on that topic?

A. About the jury selection process?

Q. Yes.

A. Well, other than – I haven't actually received anything other than the check that I received for my service that day. But my husband told me that they have been selecting jurors over the last couple of weeks.

Q. Okay. Since Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. No.

Q. I want to direct your attention to the information you were exposed to before Cal Expo. Can you give me as much detail about that information as possible?

A. (Pause.) It's almost embarrassing to tell you that there isn't very much that I know about this case. I didn't really follow it. I've never really followed it very closely. It's just some memories that I have are of – I believe it was not last summer but the summer prior, not being able to mail packages over a pound because of something that was said, I think, in the manifesto that was written. I remember seeing an image on the news, a hand-drawn portrait, if you will, it looked like somebody who was wearing a hooded sweatshirt. And I remember, I just remember hearing about the Unabomber and how there was another victim, but I don't even know how many victims there were. I think somebody was killed, but I don't know how many. So really I know very little about this case.

Q. Do you know how the individuals you've referenced as victims became victims? Do you know what occurred to them?

A. Well, it's my understanding that pipe bombs were mailed and so perhaps it was the last person – and I may be getting this confused with another case, but it seems, if I'm remembering correctly, the individual just happened to open the box and that's how I believe they were killed; that detonated the pipe bomb. But I'm not even sure that those – is that right? I don't even know.

Q. I want to see what you know.

A. Oh, okay.

Q. Do you recall receiving any information about a cabin?

A. A cabin? Oh, I heard about the cabin. I heard when they – I believe it was when they initially arrested Mr. Kaczynski they located him in a cabin.

Q. Do you have on your mind any other information concerning the cabin?

A. Something about a typewriter. There was a typewriter in the cabin and that's one of the reasons why they think that he's the one who did it. I believe the font, if you will, on the typewriter matched some of the things that were typed, if I'm remembering correctly.

Q. Do you have on your mind any other information concerning the inside of the cabin?

A. No.

Q. Has the information that you've received concerning this case caused you to form any opinion, or do you have any preconceived notion or idea as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. Do you have any feelings in that regard at all?

A. I am – again, because I really don't know very much about this case, I don't even have enough to form an opinion. I would have to see the evidence. I would have to hear all of the information that was presented, because I'm not even sure why specifically they think it's him as opposed to somebody else. I don't . . .

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, sir.

Q. And do you recognize that that means that you will have to leave outside the courtroom any information you received outside the courtroom and only make a determination as to Mr. Kaczynski's guilt or innocence based on the information that you receive here in this courtroom?

A. Yes, I can.

Q. You can do that?

A. Mm-hmm.

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

A. Yes.

Q. Do you understand that if the trial began right now and you were a juror, Mr. Kaczynski would have the benefit of that presumption unless and until the Government proves his guilt beyond a reasonable doubt with evidence in this courtroom?

A. Yes, sir.

Q. And that if the Government did not meet that burden, you would have to find Mr. Kaczynski not guilty?

A. Yes.

Q. Do you have any problems with that?

A. No, sir.

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

A. (Pause.) It's difficult to say an opponent or a proponent. I will tell you that I believe that there are times when the death penalty is appropriate. But to say a proponent, in my opinion, seems too strong. It's a very serious thing to – to – what's the word – to give the death penalty, and so I understand that this case may merit that, but all of the evidence would need to be there. It's not something that I would take lightly.

Q. This could just be my impression, and I don't mean to force you to accept my impression as the truth, but it's my impression that when I asked you the question, you pondered for a bit before you responded. Is that true?

A. Yes, sir.

Q. What were you thinking about?

A. Well, I was thinking that I know that there – I'm trying to answer to the best of my ability the question, and I don't want to give you the impression that I'm the kind of person who thinks that there never should be the death penalty or that in any given circumstances that meet A, B, and C criteria, that if all of those criteria are met, there's instantly yes, the death penalty. The word choice, I guess, concerned me: "proponent" or "opponent." To me those are very strong words and they indicate very strongly one way or very strongly the other way. And I'm neither. I'm very, as I said – I feel that there are times when that is appropriate, but I would never say that I'm for – categorically across the board for the death penalty.

Q. I don't want to give you the impression that I'm being critical when you stop and ponder a question.

A. Oh, no.

Q. It is clearly appropriate for you to think about questions before you respond, because we want to know how you think what's really on your mind and if you have to take your mind and think about a question, that's appropriate. We would appreciate that.

A. All right.

Q. Assuming that you were in fact selected for the jury and Mr. Kaczynski was unfortunate enough to be found guilty during the guilt and not guilty phase of the trial of the offense of deliberate, intentional, and premeditated murder of another human being, would you still be able to consider voting for a sentence less than death?

A. Yes, I would, because I would need to know the motivation. I would need to know why.

THE COURT: The parties may conduct examination.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon.

A. Hello.

Q. My name's Stephen Freccero. I'm one of the prosecutors in this case. If I could ask you some follow-up questions on your questionnaire. I have a copy – ma'am, is that your questionnaire?

A. (Examines document.) Yes, sir.

THE COURT: Do you want me to give her this copy, counsel?

MR. FRECCERO: It's not necessary. I brought an extra one up.

MR. FRECCERO: Q. And let me ask you some questions, give you a page to turn to, but first let me just touch on one matter.

Without telling us the name of the company that you work for or even the type of business it's in, let me just ask you a few quick questions about that. First of all, is it a large company?

A. Yes, it is.

Q. And there are numerous employees –

A. Yes.

Q. – in it? Does it do business throughout the United States?

A. Yes.

Q. I notice that according to your questionnaire, among the clients or at least among the business contracts that are done with your company, you listed a number of groups but you noted that some of them were with the F.B.I., that your company does some business with employees of the F.B.I. Does that business have anything to do with the F.B.I.'s law enforcement function?

A. No. They simply, by virtue of being in the F.B.I., that makes them eligible for the service that we provide, but none of what they do, the F.B.I. or any of the other clients that we have enter in any form or fashion into the products or services that we offer. It's just a matter of eligibility.

Q. So is there anything about the fact that among your company's clients would be persons in the F.B.I., do you think that would in any way affect your ability to be fair and impartial in this case because it's likely that agents of the F.B.I. would be witnesses?

A. No. It wouldn't affect that at all. And particularly because – well, for a number of reasons. But the main one being I'm not in a customer contact position. The position that I'm in is an internal role so I no longer even have contact with any of them. Even if I did it wouldn't make any difference but particularly now it's not even an issue.

Q. Okay. So you don't actually interact with the people belonging to the F.B.I.

A. Correct.

Q. And do you have any doubt that you'd be able to evaluate each person's testimony fairly, regardless of who they were employed by?

A. I believe I would be able to evaluate everybody's testimony fairly.

Q. Let me ask you, along those lines, I noted in your questionnaire that your father was once a deputy sheriff.

A. That's correct.

Q. If I may, I'd ask you the same thing: is there anything about the fact that you're – let me back up a second. He's no longer?

A. Correct.

Q. Is there anything about the fact that he was at one time a deputy sheriff that may lead you to perhaps favor one side or the other, maybe favor the prosecution because your father was once a law enforcement officer?

A. No.

Q. And similarly any reason you would disfavor the prosecution because of that?

A. No.

Q. All right. I take it you realize there's good and bad persons in every profession?

A. Yes.

Q. Let me follow up with some questions about your views on the death penalty.

A. (Nods head up and down.)

Q. If you could look at page 27 of your questionnaire.

There on question 107, you were asked to express the extent of your agreement with a series of propositions and it's got little boxes there. But I note in your, in your questionnaire, you actually wrote in to all of the below statements, "It depends very much on all the circumstances."

Now, can you tell us – it didn't actually ask you to write that in there. Can you tell us what you were thinking about when you went ahead and wrote that there?

A. Yes. Before I wrote that, I read the question, all of the questions and I read what my answer choices are. And it concerned me because I didn't feel that the answer choices I was given allowed a lot of latitude for me. A very big philosophy on my life is it depends. A lot of things happen for different reasons. And even though you may have two different situations where the outcome is exactly the same, why it happened is every bit as important as what the end result was.

And so it concerned me that, you know, I basically got four choices of answers, and I just wanted to qualify by saying that I'm answering based on the choices you gave me, but that you needed to know some more information about the way that I see things.

Q. All right. So I take it, then, from your answer, what you're saying is that to any one of these propositions, it's going to depend on the actual facts involved in that case?

A. Correct.

Q. Is that fair?

A. Yes.

Q. And that's an important principle regardless of what your personal beliefs are, were you to actually be called as a juror in this case. You'd have to set aside your personal belief and judge, in this case, based on the evidence presented here and the law as the Court gave it to you. You understand that?

A. Yes, I do.

Q. And nothing about your personal beliefs – let me go back a second. Is there any reason to think any personal belief you might have would interfere in your ability to base your decision, if you were a juror, on anything but the evidence as presented here and the law as given to you by the judge?

A. A personal belief in terms of – are you talking about religious or . . .

Q. Well, any – let me – you make a good point. I'm not being specific enough. And let me try to do that. Let's talk about the death penalty.

A. All right.

Q. And were this case to proceed to a second phase, during that time, if it went to that second phase, you'd hear more evidence. Okay? There would be another whole session in which the Government would present evidence and the defendant, if he chose to, would also present evidence. And then the Court would give you instructions. And, of course, it depends on what the evidence is, so I don't want to tell you exactly, because we don't know and it's up to the judge to decide what those instructions are. But in essence the judge would tell you, "You must consider all these factors before making your determination as to which penalty."

And the issue – I'm just asking you if you can think of any personal belief that might interfere with your ability to consider that evidence and consider the judge's instructions.

A. All right. Thank you for clarifying. And no, I do not – there are not any personal beliefs that I have that would prevent me from doing that.

Q. And another rule – one thing that we've talked about is, to the extent it's impossible for us to expect jurors to come in and be jurors without having formed any opinion about any subject prior to getting here, but, for instance in this case had you heard some information prior to coming here about this case and it made you think one way or the other, your obligation as a juror would be to set that aside and base your decision solely on the information presented here in court, not on something you may or may not remember from a news or newspaper report. Do you feel confident that you would be able to do that if called as a juror?

A. I do, and a lot of that is because, as I'm sure you noticed when I was answering the judge's questions, I don't even trust my own memory. I don't even know if what I'm remembering is really even related to this particular case, so I would definitely have to rely on the information that was presented during this particular trial.

MR. FRECCERO: Okay. Thank you.

No other questions.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Hi. My name's Quin Denvir. I'm one of the lawyers for Mr. Kaczynski. I'd like to ask you a few questions too, if I can.

A. Certainly.

Q. Do you have your questionnaire there?

A. Yes, sir, I do.

Q. Could you turn to page 11.

A. (Complies.)

Q. And look at question 41 and your answer to it. The first two lines. Could you tell me what you meant by that?

A. (Examines document.) Yeah. And as I said, it feels a little odd to say this, but there have been times in my life when I've had a feeling or an impression about something and later it has come to pass, and in this particular instance, I remember hearing about when Mr. Kaczynski was being moved to Sacramento, I remember getting the feeling I will be called for that case.

Q. Had you had any communication from the Court up to that time?

A. Not at all.

Q. Not at all. Interesting. And how did you feel then when you did get summonsed as a juror and the premonition came true good or bad feeling?

A. Not really good or bad, just a little weird. And I know that that's very unorthodox, if you will, I recognize that that seems strange.

Q. No.

A. And I felt strange.

Q. Premonitions happen. No doubt about it. I was just curious about it.

Let me ask you if you could turn to page 23. And this is question 92. And you were asked about your religious philosophical and religious beliefs and how they might influence you if you were chosen as a juror, and you said everyone is entitled to a fair trial and the punishment should fit the crime. When you said that, I take it you weren't ruling out that the punishment should maybe fit the criminal, that the person who was convicted, that you would look to both what the crime was and who the person was in fixing the punishment.

And you said a little further, "I believe it is the juror's responsibility to give justice not revenge." Could you tell me what you were thinking then?

A. Yeah. Some time back – I believe it was as a result of the Polly Klaas trial – I remember getting into a very heated discussion, if you will, with several people at work, as people normally do talk about the things that are in the news, and that was a trial that caught my attention, and I remember being very interested to see how different people felt about particularly the death penalty and how it didn't seem that they – a lot of people are pro death penalty not because it's a just punishment for the crime for whatever it was but because they wanted to exact revenge on that other person. And I don't think that that's our role to play.

If the case merits it, as I explained to the judge, I believe that there are times when the death penalty is appropriate. But we do that in a fashion that's humane. I wanted to let you know that I – that I see that as justice and not trying to exact revenge for the victims' families, although, certainly my heart goes out to them for any loss that they may have felt.

Q. Okay. Let me ask you, when you were talking to the judge, you did say that you thought this was a case that might merit the death penalty. What did you mean exactly? Did you mean it was a case that you had some views as to whether the death penalty was appropriate or not, or just that it was available as one of the potential penalties that – you did make the statement, as I recall, or maybe I’m wrong.

A. Did I?

Q. I thought you said this case might merit it and I wrote it down. Maybe I was wrong.

A. I believe what I said was if the case merits it.

Q. Oh, I see. You weren’t referring to this case. You don’t have any particular views as to what the proper penalty might be if Mr. Kaczynski were convicted in this case, as I understand it?

A. Well, I . . . I’m smart enough to know that because of the things that he’s accused of and as a result of the things that happened as a result of those things, as I explained to the judge, it’s my understanding that at least one person died. Anytime somebody dies, that is a case that would potentially involve the death penalty. I mean, that’s just my understanding of the law. Isn’t that –

Q. Oh, right. As far as the law is concerned there are a total of ten charges against Mr. Kaczynski. Two of them involve the mailing or delivery of a bomb with intent to kill resulting in the death of a gentleman by the name of Mr. Murray. And those two charges are both capital charges in the sense that they carry as the penalty either death penalty, execution, or life in prison without possibility of release, which under the federal system there’s no possibility of parole, so that means just what it says.

So in that sense if Mr. Kaczynski were convicted of those charges, the jury would then do the sentencing as opposed to what normally happens when the judge does and they would look at those two sentences or even a lesser sentence in terms of less years. In that sense it’s a possible penalty. Is that what – among those penalties, you don’t have any preconceived notice as to what would be the proper one?

A. You are correct. As I stated to the prosecution, it depends very much to me on all of the circumstances that went behind. If Mr. Kaczynski is indeed the person who is responsible for these things, not only must I consider what happened as a result of his actions but also why those actions were taken.

Q. Okay. And this may be another thing. It was just a question I want to clarify; that’s a thing I wanted to clarify there. But if you turn to, I guess, page 27 and look at that last proposition, as they’re called, statements in there – whoever drafted it called them statements – and they said, “A person’s background does not matter when it comes to whether or not he should be sentenced to death for a murder.” And you said “strongly agree.” What did you understand that to mean?

You see the one that I mean? It’s the last of the four statements.

A. (Examines document.) Yes, sir, I see.

(Pause.) His background in terms of where he was born, what his race or religion –

Q. Social status, wealth, that type of thing?

A. Yes.

Q. But would you be willing to listen to all the evidence that might be offered by either side as to who the person was, I mean, information not just about the crime but about the defendant? Which in a sense is background too or character or any other information about the person?

A. Yeah. And I’m glad that you clarified that because yeah, that’s a very important part of, again, why this action might have been taken, you know, what was the mental condition of the person who took those actions, you know, was there a threat, whether it be perceived or real to that person, you know, all of those things, in terms of that background are very critical. I took this question to mean basically social status, if you will.

Q. It is ambiguous, and I just wanted to make sure that I could clarify with you.

MR. DENVIR: If I could have just one moment, Your Honor.

THE COURT: Yes.

(Discussion off the record among the defense counsel.)

MR. DENVIR: Thank you very much.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. We spoke at the side of the bench about a person you believe could possibly be a witness in this case. And one of the parties was curious as to whether you would be able to obtain the name of that individual.

A. (Nods head up and down.)

Q. Do you have that capability?

A. Yes.

Q. If you were to obtain that individual's name, could you do so without engaging anyone or allowing anyone to engage you in a conversation about this case or anything?

A. Yes.

Q. Okay. I'd like you to obtain the name and then give it to my deputy clerk. She will give you the information you need to reach her.

A. All right.

THE COURT: Okay. Thank you.

You can bring in the next juror.

(Prospective juror number 134 left the courtroom.)

(Pause in the proceeding.)

(Prospective juror number 135 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us.

A. Hello.

Q. You're the 135th randomly selected juror. We may reference you by that number during this questioning process. Is there any reason why we shouldn't continue to consider you for jury service during this case?

A. Nope.

Q. Did you appear at Cal Expo with other potential jurors and fill out a jury questionnaire?

A. Yes.

Q. Since that appearance have you heard of or read anything about the case?

A. I've done my best not to.

Q. I appreciate that and despite your efforts – I appreciate your trying to follow my admonition – were you still able to hear something?

A. I listen to the – they listen to music at my work. I'm a carpenter. And it was usually country music or something but they will have news briefs. I try and hum through it or whistle through it but occasionally I've heard things about it.

Q. What type of things have you heard since that time?

A. I usually just hear references about they've tried something about an insanity defense and controversy over that. I've done my best to cover over that so that doesn't leave any details.

Q. Did that leave you with any impression, any feeling that you heard?

A. No.

Q. Since Cal Expo, have you discussed the case with anyone or overheard anyone else discuss the case?

A. No.

Q. I'm going to direct your attention to the time period before you appeared at Cal Expo. I want you to tell me what information you were exposed to before Cal Expo and give me as much detail as you can about the things you remember.

A. I remember when the timber lobbyist was killed. I remember – my impression is when the manhunt kind of heated up and they released the composite drawing. I remember that. And I remember the arrest

and the Montana cabin that they searched and took apart or brought down or whatever. And I remember when the manifesto was released. I didn't read it but I remember the controversy about whether that should be done and all that.

Q. Did you receive any information concerning what was allegedly found during the search of the cabin?

A. Yes. I remember that some parts of the manifesto were found there or his manifesto was found there, and bomb-making materials, I believe, was, they said there was bomb-making materials there.

Q. Anything else?

A. I think that's it; no.

Q. Did the information that you received about the case result in your formation of an opinion or a preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. Did it leave you with the feeling as to whether Mr. Kaczynski was guilty or innocent?

A. The case was never that important to me till I got called. There's a lot more news going on at the time that struck closer to home than that, I guess. So no; I would say no.

Q. Do you have the capability of putting aside the information you received about this case outside, you know, the information you received from pretrial publicity and other sources, leaving it outside the courtroom and then coming into this courtroom as a juror without that information?

A. Yes. I've heard many things on the news that I knew were incorrect. I'm not surprised that they'd be way off in what they report about this.

Q. Does Mr. Kaczynski have your assurance that he will start this trial on a clean slate?

A. Yes.

Q. You know what that means?

A. Yes: that he's an innocent man until they convince me otherwise.

Q. That he's what?

A. That he's an innocent man until they convince me otherwise in here.

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

A. Yes.

Q. You understand that that presumption would stick with Mr. Kaczynski unless and until the Government proves its case beyond a reasonable doubt, if it's capable of doing that?

A. Yes.

Q. Is there any reason in your mind why you could not be a fair and impartial juror in this case?

A. None at all.

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

A. (Pause.) I have mixed feelings about the death penalty. I'm for it being legal. I don't think it should be a standard answer. I don't think it's really a deterrent as far as future crimes by other people. I don't think it should – I don't know. I just have mixed feelings about it but I think it should be legal. I think it's appropriate at certain times.

Q. Assuming you were selected as a juror and you participated in the guilt and not guilty phase of the trial, and then the jury voted in a way that would be unfortunate to Mr. Kaczynski, the jury found Mr. Kaczynski guilty of the offense of premeditated, deliberate, and intentional murder of another human being, despite that finding, when you enter the sentencing phase of the trial, would you still be able to consider voting for a sentence less than death?

A. Yes.

THE COURT: The parties may conduct examination.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Afternoon.

A. Hello.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

I notice in your questionnaire, and I just wanted to make sure there wasn't a hardship issue, at page 32 – do you have your questionnaire? I'm sorry?

A. No.

Q. I'm asking you to look at something that you don't have.

MS. CLARKE: Thank you, Your Honor.

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 135: Yep. (Accepts document.)

MS. CLARKE: Q. Question 123, you said "I'm not ready for winter yet"; is there any problem with that?

A. No, I'm okay now.

Q. You're okay?

A. Yeah.

Q. We don't need to worry about it. Okay.

I notice in your questionnaire you gave us some insight into some of the things you'd heard about the case, and you mentioned that you were aware of a controversy about the cabin in Montana and search warrants. Can you tell us what you were hearing about, thinking about there?

A. You know, it's been a long time now.

Q. Right.

A. But my impression was some of the warrants or at least the controversy was that some of the warrants were kind of vague, that people searching the cabin went a little further or went a lot further than they were supposed to and took away a lot more parts of the cabin or property and went beyond what the warrants allowed them to do.

Q. And what did you think about that as an issue?

A. I think if that's true, that's inappropriate.

Q. I noticed when you talked about the criminal justice system – remember that series of questions, what do you think about it and do you have any fix for it? Do you remember that?

A. Mm-hmm.

Q. And you said we really need to focus more on guilt and innocence and less on technicalities. Where would you place that warrant issue?

A. (Pause.) Well, it's more than a technicality.

Q. Kind of a core issue for you?

A. It is a core issue.

Q. So that's not something that disturbs you one way or the other that one side might challenge a warrant as being bad; that wouldn't affect you negatively?

A. Well, what do you mean by "affect me negatively"? If I was told that the information they gained there was not admissible here, then it's not admissible here.

Q. Right. But just because – I guess it's a question of if a defendant challenges a warrant, is that a problem for you?

A. No.

Q. You said also – and maybe we could go to page 30.

A. (Complies.)

Q. Question 113, the second part of that, when it says tell what you remember hearing and seeing about the case, you said Kaczynski's arrest, move to Sacramento, I guess that is?

A. Yes. When he was moved here and then he was moved out away from Sacramento, I guess because conditions of the jail or whatever it was – I can't remember what the condition was and I remember those things happening.

Q. How did you react to that? What did you think about that?

A. I was kind of surprised they moved him out, but I'm not surprised, considering the length of time that he would be there before his trial, that he would want to be somewhere else if the conditions

were bad there. He's not been convicted of anything. If I were on trial, I hadn't been convicted and it's going to be a year-long –

Q. – wait –

A. – ordeal, I don't think he should be kept in the worst conditions.

Q. You, I notice from some of your background, maybe employment background or some of your training background, that you've had some experience with mental disorders, working with people with mental disorders?

A. Yes.

Q. Could you tell us a little bit about that experience.

A. Yes. I was a counselor and then an administrator of several group homes that took in emotionally disturbed adolescents, so kids with schizophrenia or bipolar disorder, hyperactivity. And most of those kids were on probation for some reason and that's part of why they were there.

Q. They got there by virtue of the criminal justice system?

A. Well, I would say probably 50 percent. 50 percent came in through the mental health system or parents had placed them and 50 percent had got in trouble with the law in some way, but during the process it was found that the reason they were in trouble was their mental disorder, and it was decided that juvenile hall was not the appropriate place for them and that their disorder had caused – was part of the reason that they committed whatever – you know, whether it was drugs or school problems or whatever, was related to their disorder and so they were placed in the group home.

Q. What attracted you to that line of work?

A. Well, I started off working with retarded kids actually, and it just kind of flowed through into working with other – with mentally disordered kids rather than retarded kids.

Q. Sort of a natural progression?

A. Yeah. They separate them from mental retardation into mental illness, and that's just the way the people I was working with went and my opportunity went.

Q. Is the reason just sort of a change of scenery, change of circumstances that you left that kind of work?

A. I ended up, after 15 years of running a group home that kind of evolved into mostly child molesters, and I disagreed with those kids being with the other kids I had in the group home, which several of them were victims of molestation, and just the way the system works, that wasn't a consideration and I couldn't work that way anymore.

Q. Were you involved with the mental health professionals' decision-making on the kind of disorder that the person had?

A. You know, as far as participating in making a decision about that? No. The kids' psychologists and psychiatrists, we would have meetings where they would tell us what the disorder was and the best ways to treat that.

Q. Sure.

A. But I didn't have any say in making that decision, right.

Q. You just were aware of how the decision was made and the fact that it was made.

A. Right. I would transport kids or have them transported to see the psychiatrist or psychologist or both and they would send us a report and we would use that report to base treatment decisions on. But I had no role in deciding what their disorder was.

Q. Sure. What, how much experience did you have with schizophrenia? Did you learn about the characters about of schizophrenia?

A. Mostly the behaviors that went along with that and how to best deal with that. A live-in situation, our staff and myself – I did not live in the group home but we were there providing a parental role eight hours a day. All shifts someone was there. So the best way to deal with the behaviors that those people would just, you know, show.

Q. Sure. Did your experience with that group, with that group home and with the kids and with the mental health professionals, how do you think that might affect or what do you think of the role of mental health professionals in the court system in a criminal case?

A. Well, I mean, I think that's appropriate. I know that people's disorders are going to cause them to have behaviors that they have no control over, if that's what you're asking me.

Q. And I think you mentioned in your questionnaire that there were some – you were aware of some incompetent mental health professionals?

A. Oh, sure.

THE COURT: Excuse me.

MS. CLARKE: I'm sorry.

THE COURT: Are these peremptory challenge-type questions? They don't appear to be the subject matter what we're here for, and we have another juror waiting.

MS. CLARKE: Yes, I understand, Your Honor. If I could move on after just one follow-up question. It is a cause issue for me.

If you could look to page 24. And I guess you weren't talking about incompetent ones in the setting of a court system; you were talking about incompetent ones in the setting of personal interaction?

A. Well, I've had a psychologist fall asleep when we were sitting in a meeting with probation officer and parents deciding the future of his client, and he's dozing off. I think that's pretty incompetent, yes.

Q. Yes. If I could go very quickly to your thoughts on the death penalty, and you were kind enough to sort of write it out for us in your questionnaire. You were raised Catholic. Does that have any impact on where you are on the death penalty today?

A. No. The Catholic church, to me, has not grown with society and it's not within the real world a lot of times. So I have a difference of opinion with the church on a lot of things.

MS. CLARKE: Could I have just one moment, Your Honor?

THE COURT: Yes.

MS. CLARKE: Thank you.

THE COURT: You're done?

MS. CLARKE: Yes, Your Honor. Thank you.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon, sir. My name is Robert Cleary. I'm one of the prosecutors in the case. I want to ask you several questions, mostly following up on what you've included in your questionnaire.

You noted at one point that your brother has some training in the law. Is there anything about that that would cause you to favor or disfavor either side in this case?

A. No. He's actually – we never lived in the same house. He's 16 years older than I am. So we were raised totally separate. I actually know him better now, and he's no longer a policeman, than I ever did then.

Q. And he's not practicing law, correct?

A. No.

Q. And you also had a brother who was in the law enforcement field?

A. Same brother.

Q. Same brother. And you have your questionnaire there?

A. Mm-hmm.

Q. Turn to question 45, please.

A. (Complies.)

Q. On page 12. At the very bottom of your answer to question 45 you indicate some contact that you've had with P.O. and P.D. What is that?

A. Probation department and police department.

Q. I see.

A. But the same – through the group home situation.

Q. Anything about either of those relationships, your contact with the police department or the law enforcement position that your brother had that would cause you to judge law enforcement officers that would testify in courts, to judge them one way or the other?

A. No. My experience was, I was mostly neutral, either the client had violated his probation and I had to report that to his probation officer, or he did something in the group home that caused us to decide he was no longer appropriate. And the system was that we had the police department come out, pick him up, take him back to probation.

Q. One of the things, if you were to sit as a juror, one of the things you would be asked to do is judge the credibility or believability of witnesses that would testify, and there may be in this trial a number of law enforcement officers testifying. Is there anything about those experiences you had that would interfere or affect your judgment or individual judgment of the credibility or believability of people that testify in this courtroom?

A. No. I assume that they have no reason to lie.

THE COURT: It's my impression that the questions to this point are not covering the subject matter that we're here for.

MR. CLEARY: Okay, Your Honor. I'm aware of the Court's admonition. I'm wondering if I could just follow up on some question that Ms. Clarke asked, and particularly the answer the juror gave in regard to disorders causing behavior, mental disorders causing behavior.

THE COURT: Is that in the "for cause" area?

MR. CLEARY: It may be, depending on what his answers are. I have a couple of short questions. I can move through it very quickly.

THE COURT: All right.

MR. CLEARY: Q. Was I correct in stating what your answer was that it's your belief that some disorders cause behavior?

A. Yes.

Q. Is that true, in your view, for all disorders, mental disorders?

A. No.

Q. In your view, can people suffering from mental disorders form capacity to have intent to act?

A. My experience has been that it's generally a pretty spontaneous kind of thing.

Q. What do you mean by that?

A. Well, I mean that I've had teenagers that are hallucinating; that's part of their disorder. But when they're hallucinating something coming at them or whatever and they react violently to that – but I wouldn't say they planned that.

Q. On other disorders, someone who's not hallucinating, is it your view that people with mental disorders in certain instances can form, have the capacity to form the intent to act, are able to control their actions, let me put it that way?

A. I don't know if that – you can be very black and white about that either way. I mean, it depends on the disorder and people.

Q. If you were to hear testimony in this court that dealt with people with mental disorders and their ability to form an intent to act and their ability to control their actions, if what you heard differed from what your training and experience is, how would you evaluate that testimony?

A. I don't know what you're asking me. Whether I would believe what I hear in this trial over what I've been taught in the past?

Q. Right.

A. I probably would. It's been five years since I've been even in the field. I imagine most of the professionals in the field have changed their opinions about a lot of things.

Q. What if the Court gave you some instructions that differed in the mental health area, the Court gave you some instructions in the mental health area that differed from what your training and experience is, you disagreed with what the Court told you the law was? Would you be able to set aside

your training and experience and follow the judge's instructions on the law concerning how you evaluate mental defect and mental disorders?

A. I believe there's a lot of things about the system that should be changed but it's not up to me to change them, so I will follow whatever instructions the judge gives me on the issues.

Q. When you say there's a lot of things that need to be changed, what are you referring to?

A. Well, I mean, about the justice system in general. It could be improved but it's not up to me to try to do that as a juror. So I will follow whatever instructions His Honor gives me.

Q. Even if it's in the mental disorder area and you disagree with what His Honor says?

A. Yes.

Q. You'll still follow the judge's orders?

A. Yes.

Q. Let me talk to you a little bit about your views on the death penalty and ask you to turn over to page 28, question 108.

You indicate there that the death penalty may or may not be justified depending upon the circumstances of the case. Can you give me an example of what you're referring to there? When do you believe it's justified and when do you believe it's not justified?

A. Well, I think that whether or not there's remorse, whether or not the person would be likely to re-offend if they were ever released are important issues.

Q. And those are issues relating to the defendant himself?

A. Right. I mean, you're only talking about the death penalty after he's convicted.

Q. Right.

A. So if he's convicted and he's not remorseful and I believe he would re-offend or continue to behave in the same way if he was released, I would be more inclined to lean towards the death penalty than if I thought he was remorseful and would not offend again.

Q. Let me talk about circumstances of the crime. We just talked about circumstances of the defendant. How about circumstances of the crime? Could you give me some examples of when a crime – both murders, when a murder is more aggravated in your view and would require the death penalty or the death penalty would be appropriate versus another murder which is less aggravated and therefore in your view the death penalty would not be appropriate?

MS. CLARKE: Your Honor, I don't know whether the question is asking the juror to assume certain aggravators or mitigators that he's unaware of.

THE COURT: Overruled.

THE WITNESS: I don't know if you want examples. I guess a premeditated murder is more horrendous to me than a murder of passion or a murder where you can see how the circumstances led up to the altercation.

MR. CLEARY: **Q.** And in the crime of passion, the murder of passion, you would be more inclined to vote against the death penalty; is that what you're saying?

A. I would guess so, yeah.

Q. And if something was more premeditated – we'll say a contract killing or something of that nature – would you be more predisposed to vote for the death penalty in that case?

A. Yes.

Q. Now, the judge may instruct you during the course of your deliberations on the death penalty. In other words, should the defendant be convicted, and you're now dealing with the question of the appropriate punishment, the judge may give you some instructions that may differ from what your view is of when it's appropriate and when it's not appropriate. Judge Burrell may tell you, for example, there are certain things you have to consider, that you must consider, in determining whether the death penalty is appropriate or not. If you disagreed with what the judge told you, you thought that the factor the judge mentioned really shouldn't weigh in the decision, if you could you put your own personal views aside and follow the judge's instructions on the law and give that factor consideration?

A. I intend to. I believe I can; yes.

MR. CLEARY: Can I have one second, Your Honor?

THE COURT: Yes.

(Discussion off the record among the Government attorneys.)

MR. CLEARY: Q. If you were presented – one or two follow-up questions. If you were presented with a sentencing alternative that was going to be either death on the one hand or, on the other hand, life without the possibility of release – no parole in the federal system – those are the two alternatives, would you be inclined to vote one way or the other, knowing those alternatives?

MS. CLARKE: Objection. Calls for pre-judgment.

THE COURT: Overruled.

THE WITNESS: Well, not – no. Talking right now, I would not lean one way or the other. I haven't heard anything about what they're convicted of or remorse or anything else.

MR. CLEARY: Q. And in the discussion that we had previously, you gave me some examples of when you think the death penalty would be appropriate and when you think it would not be appropriate. The decision that it would be appropriate in those instances you gave me, you still think it would be appropriate even though the alternative is a life sentence without parole?

A. (Pause.) I don't think –

The death penalty is appropriate, but it's not the only answer to any crime or set of circumstances. So, I mean, I'm not sure how to answer.

Q. Maybe I'm not making myself clear. You told me earlier that there was some circumstances where you would vote for the death penalty and some more aggravated circumstances where you would vote for the death penalty, and you contrasted something that was planned and premeditated, maybe a contract killing I think was an example I gave you, and you contrasted that with a crime of passion, and I believe it was your testimony that for the planned, premeditated contract killing that you could vote for the death penalty in that instance, correct?

A. Mm-hmm.

Q. And depending on the circumstances of the crime of passion, you perhaps could not vote for the death penalty there, correct?

A. Okay.

Q. Is that correct? Am I stating –

A. Well, I wouldn't say, "I could not." I possibly would not. But then we go back to –

Q. Depending on the circumstances?

A. – circumstances and remorse. There are some crimes that are not preplanned. An example is those people that turned down the wrong alley and the delinquents at the end of the alley shot them for no reason. That wasn't preplanned but – I don't know a lot about the case but it would be a death penalty case –

Q. You're looking at these facts and circumstances about the crime and the defendant; that's what you're mentioning to me, correct?

A. Mm-hmm.

THE COURT: I think we'd better move to the next juror.

MR. CLEARY: Okay. Thank you.

(Prospective juror number 135 left the courtroom.)

(Prospective juror number 136 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 136th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. No.

Q. I want to show you one of your answers to the juror questionnaire. (Indicating.) You see that response?

A. Yes.

Q. Okay. Is there anything about that response that has provided you with information that could affect your ability to be a fair and impartial juror in this case?

A. No. None at all.

Q. I don't have a good memory of people that I meet. That's one of my faults. Nor do I have a good memory of names. Have I met you before?

A. No. We never met.

Q. Okay. You – in that response, you reference some other type of an acquaintance –

A. Mm-hmm.

Q. Would that be information that you would share with other jurors in this case if you were selected as a juror?

A. No.

Q. Does it have any bearing on this case at all?

A. I think none.

Q. Okay. Since you answered your juror questionnaire – well, I'm assuming you answered your juror questionnaire at Cal Expo?

A. Yes, I did.

Q. Since you answered your juror questionnaire at Cal Expo, have you heard of or read anything about this case?

A. Yes. I do watch the news fairly frequently, probably every day, and I read the paper. However, I have in fact since the beginning of August, or, excuse me, the beginning of September when I was notified that I'd be on this jury, I've pretty much avoided listening to any complete accounts that were on the radio, television, whatever. I've seen some headlines and I've heard some, you know, the lead-in statements on the television and radio, but that's the extent of what I've heard about this case.

Q. I'm interested in the window period from Cal Expo –

A. Oh.

Q. – to today's date.

A. Well, the same answer applies. From Cal Expo to date, yes, I've heard some things, but, like I said, they've been limited to a headline in the newspaper or a lead-in statement on a news broadcast.

Q. What information do you recall receiving or hearing during that period?

A. I would say that most of the things that I've heard have been in three areas. One is the jury selection process, you know; I saw pictures of, you know, of the cars going into Cal Expo and heard a few things about the number of jurors called, number of jurors dismissed, a couple of things about specific incidents in the court. One lady apparently made a statement something to the effect that or asked Mr. Kaczynski if he had done the list of charges that apparently had been read to her. There's been a lot of discussion, apparently, about the death penalty. And there's been a lot of discussion about Mr. Kaczynski's mental health.

Q. Has any of that information caused you to form any opinions?

A. No.

Q. Since Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. I'd say there's probably – at work one day, at work a lady that I know that I work with who knows that I'm on the jury came to me and made one statement regarding the case, essentially, I guess, the statement was, essentially, I don't know why they're bothering to have the trial. And at that point I simply told her, "Look, I don't want to talk about it," and we terminated that conversation. Other than that, that's the only conversation I can remember.

Q. Did that have any effect on you, what she said?

A. No.

Q. I'm going to direct your attention to the time period before Cal Expo. I want to know what information you received ever about this case, and I want you to give me as detailed of a response as you possibly can.

A. Okay. I was aware of the Unabomber case probably, oh, early '90s, I would say, is probably the first time I heard about it. Occasionally saw news accounts of, you know, different letter bombs or things that had been mailed across the country. Didn't hear a lot about it, didn't pay much attention to it until Mr. Kaczynski was arrested. Whenever that was, a year, year and a half ago, whenever that was. When he was arrested there was a considerable amount of news and television coverage.

Let's see. Prior to that, I did read the Unabomber manifesto was published some time ago, I did read excerpts from that. I didn't read the whole thing.

Again, when he was arrested, I read Time magazine article, a fairly extensive article and a couple of fairly extensive newspaper articles about the circumstances that led to his arrest. And what I learned was that Mr. Kaczynski was a fairly brilliant mathematician; he was a professor at Berkeley for some period of time, at some point in his life he kind of dropped out of, I guess, normal society, moved to Montana, and apparently lived in Montana for somewhere around 20 years, and apparently sometime prior to 1978, which is when the first letter bomb or whatever it was apparently that was attributed to the Unabomber was mailed.

I'm aware that he was turned in by his brother. His brother apparently recognized certain similarities in his writings and the Unabomber manifesto. His brother apparently went to the F.B.I. The F.B.I. then took that lead and observed Mr. Kaczynski for a period of two or three weeks before they arrested him. They arrested him in Montana in his cabin, essentially have taken the contents of the cabin into evidence.

Some of the things that they found in the cabin, there were, I would say – there were what I would call bomb-making devices and I don't remember what that included. I don't remember if there were actual explosives but I know there was some discussion of triggering devices that were used to or could have been used to explode these various letter bombs. There was some discussion about how these devices gradually became more complicated or more – that's not the right word . . . I'm missing the word, but basically, they became better – better explosive devices, I guess, and that they found certain things that indicated that at least he was capable of making some of these triggering devices.

They also found some writings in his cabin that would appear to have been similar to things that may have been said in the Unabomber manifesto.

I would say that's about all I recall.

Q. Has any of the information you've received about this case resulted in your formation of any opinion or any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. No. I don't think that I've made any decision as to his guilt or innocence. Certainly I would say that there's probably a considerable amount of evidence that the Government will present that would indicate that he may have mailed some of these letter bombs.

Q. How strongly are you committed to that opinion?

A. The opinion that he mailed some of those letter bombs?

Q. Correct.

A. (Pause.) I'm not committed to it. The evidence that I've read in the newspapers is just a newspaper account and things that are reported – I would say until those are presented as evidence in a court, I'm not willing to make a judgment on Mr. Kaczynski.

Q. By that statement, are you indicating that you can set aside that opinion if you were selected as a juror in this case and render your decision based solely on the evidence presented at this trial and the instructions I give you during the trial?

A. Yes.

Q. Do I have your assurance that you are capable of doing that, that you will do that, and that you would allow Mr. Kaczynski to start this trial on what I've been referencing as a clean slate?

A. Yes.

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

A. Yes, absolutely.

Q. Is there anything you can think of that would interfere with your ability to be a fair and impartial juror to both sides?

A. No.

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

A. I guess if I only have two choices, I'm a proponent.

Q. If I gave you more choices, what would you say?

A. Well, I would say that I think that having the death penalty in this country is an unfortunate thing. I don't particularly like it. But I think that in the society that we live in, with the amount of violence that we have, that we probably have to have that ultimate penalty as, you know, as something that society can fall back on as punishment.

Q. Let's assume that you in fact land on the jury, that you and other jurors wade through evidence, you ultimately decide to Mr. Kaczynski's disappointment that he is in fact guilty of the offense of deliberate, intentional, and premeditated murder of another human being. Would you still be able to consider voting for a sentence less than death?

A. Yes. I would consider that.

THE COURT: The parties may conduct questioning.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good afternoon.

A. Good afternoon.

Q. Or good evening. I'm not sure which. Sir, my name is Steven Lapham. I'm one of the prosecutors on the case. I just want to ask you a few follow-up questions.

You seem to realize the responsibility, the heavy responsibility of jury service. You mentioned that in your questionnaire. And you also indicated that in your questionnaire that you realize the duty to be fair and impartial.

A. Mm-hmm.

Q. And you indicated that in your oral answers here as well.

I want to ask you a few questions about the death penalty in that regard. What we're getting at here is, you haven't formed any preconceived notions as you sit here today as to what the appropriate penalty would be in this case?

A. That's correct.

Q. You said in your questionnaire that you thought that the death penalty should be restricted to very special circumstances?

A. Yes.

Q. What did you have in mind?

A. (Pause.) Well, I would say, again, that there's premeditation, intent, or at least a completely gross disregard for human life. And also, you know . . . well, I'm losing my thought here. But I would say it has to be only in the most extreme cases.

Q. Okay. The question that I'd like to get at is, the judge is going to give you some guidance here. You're not going to be on your own if you got selected for the jury. You'll go through the first phase of the trial, in which the determination will be made as to the defendant's guilt or innocence.

And if the defendant is convicted of the crimes that the defendant – that the judge has told you about, you would move on to a second phase of the trial. And in that second phase, you would be given additional evidence about – that would bear on punishment. Aggravating factors are those factors that the Government would propose to you would be why the death penalty should be applied. And mitigating factors are those – just the opposite side of the coin, what the defense believes are the reasons for not imposing the death penalty.

And the question is: if you believe the circumstances under which the death penalty should be imposed differ from those that you're given to consider in this case, would you be able to set your views aside and follow the law?

A. Yes.

Q. You're not so committed to a viewpoint about when the death penalty should apply that you wouldn't be able to consider what you're asked to consider?

A. No.

Q. And the factors that you'll be asked to consider are those that are going to be presented to you in the trial for which you are going to hear evidence. We're not going to ask you to dream up those factors or provide the factors yourself. Those will be given to you, and those are the ones that you'll be called upon to weigh.

A. Okay.

Q. Do you think you'd have any difficulty doing that?

A. None. I don't.

Q. Now, this is a case, and you've recognized it, that involves very serious charges and a heavy responsibility on the part of the jury. And you've indicated in your questionnaire that before imposing the death penalty, you'd want to know that the defendant was clearly guilty. Do you recall that answer?

A. Yes.

Q. You realize that the Government in this case, in any case, has a burden of proof, proving guilt beyond a reasonable doubt.

A. Yes.

Q. Would you hold the Government to any higher burden of proof because this is a case that potentially involves the death penalty?

A. (Pause.) Can I back up a second, now? Are we assuming at this point that we've pronounced Mr. Kaczynski guilty?

Q. No. Actually, that's a very good point. We're in the first phase of the trial and you know that if you convict the defendant of these crimes, then he potentially faces the death penalty. Knowing that, would you hold the Government to a higher standard of proof in the guilty and not guilty phase?

A. No, I don't. I think that's why we have the sentencing phase is to present aggravating or mitigating circumstances.

Q. Okay. Now we're in the second phase, and the question is: would you hold the Government in that phase of the trial to a higher standard of proof than what the judge advises you because you know that this is a case potentially involving the death penalty?

A. No. I think that I could follow the judge's instructions in that regard.

Q. Okay.

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

THE COURT: Yes.

(Discussion off the record among the Government attorneys.)

MR. LAPHAM: That's all I have.

Thank you, sir.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon, sir. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions too, if I could. Do you have your questionnaire there?

A. Yes, I do.

Q. Good. If you turn to page 7, I wanted to – the top question – in the military, 05 – is that commander?

A. Yes, it is.

Q. And then you said in 25 that you had served on a military jury. Was that actually – that's a jury? You weren't sitting as a presiding officer?

A. No, I was one of, I think, four jurors.

Q. You weren't the sole determiner; you were one of four?

A. I think four of us.

Q. And if you could turn to page 12, you indicated that you had two acquaintances who are law enforcement officers. You haven't discussed this case with them at all, have you?

A. No.

Q. And you have no reason to believe that they have any involvement in this particular case?

A. I don't think they have any involvement. However, I will mention that when I pulled up to Cal Expo back in October, the – let's see, the state policeman was on duty. But I didn't talk to him. I didn't see him.

Q. And you've never talked to them about the case or their opinions or anything?

A. No.

Q. If you would turn to page 24, you were asked your opinion about, basically, mental health professionals who testify in court and indicated it was probably very common to get completely different opinions from defense and prosecution expert witnesses, which is quite often true. And I take it you would have no problem with the fact that you would have conflicting opinions and if that evidence was presented you would have to make your own judgment among them?

A. That's correct. I have no problem with that.

Q. All right. If I could ask you to go back, for a moment, to page 18. You were asked the question as to what would improve the system and said that we'd gone overboard in protecting the accused's rights. Is that an opinion – which some people hold – is that going to have any effect on your ability to sit as a juror in this case?

A. No, I don't think so.

Q. And then if I could ask you to, if you could turn to page 32. You understand that this – obviously this is a case that has had a lot of publicity about that, and you've had some exposure to it, and you have an excellent memory of your exposure, I must say – we need to determine whether that exposure is going to have any effect on your ability to serve as a juror.

And at one point you had indicated – if I can find it, on page . . . it's on page 33, when you were asked, on question 124, was there anything that would cause you to favor or disfavor either the prosecution or the defendant in this case, and then you noted that – you said yes, all of the newspaper articles and magazines have told of a significant amount of evidence against the defendant, it may be difficult to ignore all of that. Do you think that's still true that you'll have a hard time ignoring that, what was in the newspapers?

A. No, actually I don't think it'll be difficult. And the reason I would say that is because my memory – what I think my memory is is it's very general. I don't remember any specifics at this point about what was actually found in the cabin and a lot of other things. Those things I would assume would come out in court. I think when those things come in in court – if I'm, obviously, on the jury – I'm going to remember those things because they're going to be a lot more specific than the generalities I remember right now.

Q. And you feel that you don't have any, as you would go into the jury box, that you don't have any preconceived notion as to guilt or innocence as to Mr. Kaczynski?

A. No, sir, I don't.

Q. Do you, from following the Unabomber crimes, have any preconceived thoughts as to what the sentence should be for someone who is convicted of those crimes?

A. I have no preconceived notion of what that should be.

Q. If you go back to page 32 again and if you go to question 120. And your answer to that question, could you tell me what you were thinking when you were asked your thoughts and opinions about this case. Could you tell me – you said it's obviously a high-profile case, it will be – that will be followed nationally; jurors will have a special responsibility because of its far-reaching impact. Can you tell me what you were thinking about at that point?

A. Well, only the far-reaching impact, only that this, because it's going to be followed nationally, there's certainly more people are going to be watching this trial than would some other crime. I think

any juror has a special responsibility when they're on a jury. I think just – it's just elevated a little bit more because of all the attention that this case has.

Q. Well, can I ask you, do you think the fact that it is a high-profile case that's being followed nationally would put any special pressures on jurors in the case to –

A. Well, no, I don't.

Q. – perform in a certain way?

A. I think when it comes down to guilt or innocence or the sentencing, the jurors – there should be no consideration of the fact that 50 states are watching it instead of a local trial.

Q. And shouldn't be any concern about how it's going to be received by other people. I mean, the jurors will have to make their own call regardless of how people nationally may see it?

A. I think so. I think it's an individual decision on the juror's part with no regard for the national news media.

Q. And you feel you could pretty well keep those things separate if you sat as a juror?

A. Yes, sir.

MR. DENVIR: May I have one moment, Your Honor.

THE COURT: Yes.

(Discussion off the record among Mr. Denvir, Ms. Clarke, and Ms. de La Rue.)

MR. DENVIR: Q. I just want to ask you one question.

In spite of what you know about the case, if you sat on a jury and found Mr. Kaczynski guilty of mailing a bomb with intent to kill and actually killing a person, found that beyond a reasonable doubt, that is, the capital offense, mailing or transporting, and went into the second phase where you would hear this aggravating evidence, the evidence the Government says about either the crime or Mr. Kaczynski that points to death as the proper sentence, mitigating evidence or evidence that the defense suggests is about either Mr. Kaczynski or the crime that points to life as the proper sentence, you feel that you could weigh both of those and make your decision between them?

A. Yes, sir, I do.

Q. And you wouldn't go into that sentencing phase having found him guilty of those crimes with any preconceived notion as to what should happen?

A. No.

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

Thank you.

THE COURT: You can take the juror to the other room.

(Prospective juror number 136 left the courtroom.)

THE COURT: Is there anything to cover before we adjourn?

MR. LAPHAM: No, Your Honor.

MR. DENVIR: No, Your Honor.

MS. CLARKE: Nothing, Your Honor.

THE COURT: Thank you.

(Time noted: 5:27 p.m.) 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,)) vs.) No. Cr. S-96-259 GEB) THEODORE
JOHN KACZYNSKI,)) Defendant.) _____)

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The Ted K Archive

A critique of his ideas & actions



Jury Selection Day 10
Nov. 26, 1997

unabombertrial.com

www.thetedkarchive.com