

Jury Selection Day 11

Dec. 1, 1997

SACRAMENTO, CALIFORNIA
MONDAY, DECEMBER 1ST, 1997 - 9:00 A.M.

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THE CLERK: You may remain seated.

Court is now in session.

THE COURT: Let the record reflect all participants are present.

Are you ready to proceed?

MR. LAPHAM: Yes, Your Honor.

MR. DENVIR: Yes, Your Honor.

THE COURT: The Supreme Court reveals in Witt that the trial judge is required to determine whether a prospective juror would be able to faithfully and impartially apply the law. That determination can, in my opinion, be made sometimes by simply looking at the juror's responses to the jury questionnaire.

In fact, one juror was disqualified last week. After I asked some questions, the parties stipulated the juror could be excused for cause, but in my opinion, that juror should never have been brought into the courtroom based upon responses given in the jury questionnaire.

In light of the fact that that juror was brought here and shouldn't have been brought here, I have decided to look closer at the jurors' responses to the juror questionnaires.

I think it slows down the selection process if we don't exclude individuals that have no business coming to the courtroom. It needlessly interferes with their life, and it causes us to have wasted time because we finish early and there is a number of people that we could call to fill those slots.

I'm now wondering whether Juror 27 should be called into the courtroom. Juror 27 is scheduled to come in here this afternoon. I'm talking to you about it now because we can make the necessary arrangements to eliminate Juror 27 if you agree.

I called Juror 27's employer. Juror 27's employer wrote a note asking the juror be excused from jury service. The information I received this morning, right around 7:00 a.m., from the employer follows: She's on probation. She has no accrued leave time. The employer doesn't know if her job will be left intact should she serve on this case. It is possible that she will lose her job, but it is also feasible that if the employer can find other employment for the juror, she will be given other employment. She doesn't get paid for jury service while she's here. And the employer told me that she believes that the juror knows one of the FBI agents that arrested the defendant.

I didn't go back and revisit the juror questionnaire in regard to that information.

The juror needs a job. The juror has a bona fide hardship excuse. The question is whether the parties believe the Court should bring that juror into the courtroom this afternoon?

MR. DENVIR: Your Honor, we stipulate to excuse the juror.

MR. FRECCERO: And the Government would also stipulate.

(Discussion held between Court and Clerk.)

MR. DENVIR: Your Honor, just so – you may be already aware of this, that this juror’s questionnaire and the letter from the employer, we only received, I think, on Wednesday.

THE COURT: I didn’t know that.

MR. DENVIR: It was – I don’t know why it took that long, but it was – it was only – you’ll see the dates on it, the 25th and 26th of November.

THE COURT: I did not realize that. I appreciate your sharing that information. Juror 139, scheduled to report this morning, is late.

As you know, Juror 124 is going to be examined this morning.

Juror 139 made a statement that causes me to question which party wants to consider Juror 139 for service on this case. Or do both of you want to consider 139?

MR. DENVIR: Your Honor, we would stipulate to excuse that juror based on her statements as to – that she is thoroughly convinced Mr. Kaczynski is guilty and would not be able to give him a fair trial. And she also has a hardship, I believe, as you –

THE COURT: I’m concerned about that statement. Her statement is that, ”I would not be able to impartially serve as I am thoroughly convinced Mr. Kaczynski is guilty and that honestly in my heart would not be able to give him the fair trial he does deserve.”

It is difficult to believe that examination is going to erase that statement from my mind.

MR. LAPHAM: Your Honor, we would agree with respect to this juror. We can stipulate she be excused.

Generally, though, we’re concerned about stipulating.

THE COURT: Let’s not deal with generalities yet. You wait a minute.

MR. LAPHAM: Yes, sir.

THE COURT: Okay.

I’ll tell you why I said what I said, Mr. Lapham. I’m disappointed about our communication the other day. I looked at the record to determine whether I was correct in my impression as to what happened.

I was correct.

The last thing the Court wants to do is make a mistake in ruling on an objection. And there are times when counsel are within their rights to ask the Court to approach the bench about a matter. And I think that those bench conferences, in part, are designed to provide the Court with a forum to hear from counsel about counsel’s unique prospective on a particular matter so that the Court can then decide how to rule.

In the area that we’re now in, it may be difficult for counsel to make crisp, concise objections. Because unlike the evidence code that governs what happens at trial, this area is one that I’m not certain lends itself to a very concise objection.

But there are times when speaking objections are disfavored, especially when the lawyer is trying to ask a question to determine whether a juror is fair, and on the surface of the question, it’s not a question that is inappropriate. And then for counsel

to practically demand that the Court listen to the speaking objection, in my opinion, invites the Court to allow counsel to perhaps say something that could suggest what answer the juror should give.

In a situation such as the one we're in, where credibility means everything, it is important for the Court to do as it did previously. And that is, if the Court believes that a lawyer's trying to make a speaking objection, and that the objection could, in fact, affect the answer the juror is going to give, then the Court has to do something to discontinue the speaking objection, which is what I did.

I was correct in what I did. And you also said I prejudged something, and I was prejudging the juror. That was disappointing too. I'm the Judge. I'm just telling you this. That's why I'm doing what I'm doing now. I'm looking at juror questionnaires. I want to expedite this process if I can.

And I realize that some – certain jurors were called in that shouldn't have been called in. So I'm going to ask questions about it.

I cut you off because you were talking about some general response. I'm not doing something general. What I'm doing is specific. I've analyzed each application, each juror questionnaire.

So Juror 136 is excused for cause, correct – I mean 139?

MR. DENVIR: 139, Your Honor.

MR. LAPHAM: Yes, Your Honor.

THE COURT: I want you to revisit the juror questionnaires of Juror 167. That juror will be traveling a considerable distance to reach this courthouse and has three young children and other hardship reasons set forth in the application. And I question whether anything she states will end up with her being on the jury because of her hardship reasons.

I want you to revisit Juror 173 and 181. They are both college students. Both stated in their application that they're full time college students.

And apparently I didn't indicate why I want you to revisit Juror 189, but I want you to revisit that application. I didn't have time to make a note about it, but I did set forth that juror on my note.

I think we're ready to call – Did you want to say something else, Mr. Lapham?

I cut you off, but you wanted to say something?

MR. LAPHAM: Your Honor, there is no reason to state it now. I would like to address the Court at some point, but we don't need to do that now.

THE COURT: You can address me now.

MR. LAPHAM: Your Honor, I just – I haven't reread the transcript regarding my objection. I didn't mean to – If I said it, I didn't mean to say that you had prejudged the juror.

What I meant is you cut me off, and I meant to say I thought you were prejudging my objection.

And Your Honor, I view my role here as trying to assist the Court, as well as to represent my client. I only meant to try and point some things out to the Court, and you didn't allow me to state my objection.

THE COURT: Why would you have wanted to have stated your objection?

MR. LAPHAM: Your Honor, I don't remember the precise issue at this point. I'm sorry.

THE COURT: Yeah.

MR. LAPHAM: But I didn't mean to say you were prejudging the juror.

THE COURT: You said that later. A lawyer is not entitled necessarily to spell out the four corners of an objection, at least not during this phase of the proceeding.

You objected, and I said it was overruled.

I was keenly aware of the question. There was no doubt in my mind what the question was. I heard it. And I was going to allow a response to that question. And nothing, absolutely nothing in your objection would have changed my opinion.

Then I said it again. Because I had to. Because you wouldn't accept my ruling. Then I said it a third time. I had to because you wouldn't accept my ruling. That's wrong.

Even during the trial, I don't generally entertain speaking objections. I believe that an objection should be concise and to the point. And if there is a need for a party to elaborate on an objection, I typically invite the additional comment.

I know that the area that we're in now, it is difficult to state a crisp and concise objection. Because as I read the cases, we have no guidance that would allow counsel to do that.

But I am well aware of my role on this bench at this phase of the proceeding. And I feel strongly that I was correct in my ruling. And it was very disappointing to have to issue the same ruling three times. That is atypical in my courtroom.

MR. LAPHAM: I understand, Your Honor. I apologize.

I wanted to point out to the Court that – that I didn't mean to indicate that I thought you were prejudging the credibility of the juror.

THE COURT: You said that later. That had nothing to do – I don't think that had anything to do with the objection. Your comment, in that regard, I think dealt with the fact that I didn't allow the Government to ask the juror further questions.

I left the bench, and I asked the juror pointed questions. And then after I completed my examination, the Government wanted an opportunity to ask questions. And I didn't give you the opportunity.

To the extent that there was judging involved, you were probably correct. That wasn't prejudging. That was my judgment.

MR. LAPHAM: I understand.

THE COURT: Okay.

MR. LAPHAM: Thank you.

THE COURT: Let's call in the jury.

(Brief pause.)

(Whereupon, the prospective jury panel was brought in and seated in the jury box.)

THE COURT: I would like my deputy clerk to please administer the oath to the prospective jurors.

THE CLERK: Please, stand and raise your right hands.

(Whereupon, the oath was administered to the prospective jurors.)

THE CLERK: Thank you.

THE COURT: Good morning and welcome to the United States District Court for the Eastern District of California.

I usually start closer to the starting time than we are this morning. I'm sorry about the delay. We had some preliminary matters to cover before we called you out here.

My name is Judge Burrell. I will preside over this trial.

The person who just administered the oath to you is my deputy courtroom clerk. Her name is Shani Furstenu. On the same platform next to her is the certified shorthand reporter. They will assist the Court in administering this trial.

I trust that you will fulfill your civic duty during this voir dire questioning process. I thank you both for your presence and anticipated cooperation.

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 themselves available to serve as jurors. The voir dire 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 answer of your questions – Please do not be concerned about someone else's prospective on the answers you give to questions. 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 questions are dealt with in this manner, some of the prospective jurors will be assembled later for further group questioning. We will let you know when that will occur.

Our objective is to obtain an impartial jury that will decide this case based on the evidence that is presented here in this courtroom and on the law that I will give you 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 pretrial publicity about this case.

During the individual voir dire, we will cover the publicity area and other matters that tell us whether you can 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 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 themselves that causes any potential juror to prefer not being a juror on this type of a case, please indicate that fact by raising your hand now.

There is no response.

The first part of the 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 any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

An aggravating factor is a fact or circumstance which might indicate or tend to indicate that the defendant should be sentenced to death.

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

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of 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 by your name.

This is because I decided to use an anonymous jury in this case in order to protect your privacy, as I have 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 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 this 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, 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 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 will not hold court December 24, 25, nor the 26, 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 would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty.

There is 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 imprisonment 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 you believe should be imposed until after you have heard all the mitigating and aggravating evidence.

There is no –

PROSPECTIVE JUROR NO. 124: I don't understand that.

PROSPECTIVE JUROR NO. 144: Same.

THE COURT: Okay. I have a response from two jurors, Juror 124 and Juror 144. And what I just stated, let me just clarify why you have indicated the response.

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

You did understand that?

PROSPECTIVE JUROR NO. 144: I just misunderstood you the first time you said it.

THE COURT: I see. You now understand it too?

PROSPECTIVE JUROR NO. 124: Yes.

THE COURT: 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 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 private 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'm now going to have my deputy clerk to escort all but the earliest randomly selected juror to another room and place the remaining juror in the witness stand.

(Prospective jurors exit courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 124 was seated on the witness stand.)

THE COURT: I'm going to ask you questions from the podium.

PROSPECTIVE JUROR NO. 124: Okay.

VOIR DIRE EXAMINATION

BY THE COURT:

Q You're the 124th randomly selected juror.

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

A No.

Q Okay. There is a microphone that is available, but it's turned the wrong direction.

A Okay.

Q You can adjust your seat so that your voice is amplified by that device.

I appreciate that.

Did you appear at Cal Expo and fill out a jury questionnaire at Cal Expo?

A Yes.

Q Okay. Let me just take a moment to look at a part of your jury questionnaire.

Since appearing at Cal Expo, have you heard of or read about this case?

A Which one do you want me to answer first.

Q Heard of?

A Just heard headlines on the news, which I didn't listen to. I turned it off or go to another room.

Q I appreciate that effort.

Despite that effort, did you become aware of any of the headlines?

A No.

Q Okay. How about the other part of the question?

A No.

Q Okay.

A I haven't heard anything about it.

Q Okay. 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 now going to direct your attention to the time period prior to your Cal Expo appearance.

A Uh-huh.

Q And I want you to share with me as much information that you received about the case as you can possibly share. I want you to give me as many details as you can.

A Uh-huh.

Q Can you do that now?

A About the case?

Q Yes.

A Prior to Cal Expo the first time?

Q Right.

A I had – I never heard of the man. I never heard of the case. I was – The first time I heard about it was from the letter of your summons to jury duty.

Q Had you heard of the so-called Unabomber before Cal Expo?

A No.

Q Do you take a newspaper?

A No.

Q How do you receive news when you receive news?

A I – Usually by the TV.

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

A No.

Q If you are selected as a juror in this case, will you allow Mr. Kaczynski to begin this trial with what is called a clean slate?

A Yes.

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

A Yes.

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

A Opponent.

Q Opponent?

A Opponent.

I'm sorry. Opponent means for the death penalty?

Q Against it.

A No. Proponent. Sorry.

Q You're in favor of the death penalty?

A Yeah.

Q What are your views on the death penalty?

A I think that if a person – Well, I think it's kind of a harsh kind of sentence. But it seems to teach other people not to, you know, go for – do other crimes. Because they know the consequences are – are very steep.

Q If you were selected to be on the jury, and if you sat through the guilt and not guilty phase of the trial, and assuming, just for purposes of my question, that the jury disappointed Mr. Kaczynski and found him guilty during the guilt and not guilty phase of the trial, are you with me in my question?

A Uh-huh.

Q If the jury found during that phase of the trial that Mr. Kaczynski was guilty 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.

THE COURT: The parties may conduct examination.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q Ma'am, good morning.

A Good morning.

Q My name is Steve Lapham. I'm one of the prosecutors on the case.

MR. LAPHAM: Your Honor, do we have her questionnaire?

THE COURT: Is this your jury questionnaire?

(Document shown to prospective juror.)

PROSPECTIVE JUROR NO. 124: Yes.

THE COURT: Okay.

BY MR. LAPHAM:

Q Just like to ask you a few follow-up questions about your questionnaire.

Would you turn to page 27, please, and specifically question 107. You were asked a series of questions actually, and the first one is: "Anyone who plans and commits a murder should get the death penalty." And you checked the box for "Agree somewhat."

A Uh-huh.

Q Do you see that?

Can I ask you why you chose that box?

A Because I didn't know of the trial. I mean, I don't know this man's – I haven't heard all the details yet. So I didn't want to commit myself to "strongly agree" until I heard everything.

Q Well, this is a question just generally about your views about the – generally about the death penalty. Generally, not about this case.

A Right. I know. I know.

Well, I find it difficult to sentence a person to death. So it's – It's difficult to say, you know, somebody should get the death penalty.

I don't know. I just put "Agree somewhat." I would have to hear all the details first.

Q And let me ask you about that. You indicated that your religion, on the page earlier, question 104, you indicated that your religion, philosophy or spiritual training teaches that the death penalty is wrong?

A Uh-huh.

Q Is that correct?

A Yeah. I wrote that.

Q Is that your religion that teaches that?

A No. It's philosophy.

Q Your own personal philosophy?

A Just from what I have – you know, people talk to me about. You know, what I hear from others, you know, pro or con death penalty. That's – You know, I have heard – I've heard – I've heard this saying that the death penalty is wrong, and I've also heard that the death penalty should be, you know, imposed. There is – You know, I've heard both views.

Q And where do you come down on that personally?

A Personally?

It's hard to say. It's hard to decide because it's not a black and white situation right now. I don't know the case so I can't decide at this moment.

Q So when you hear the facts and circumstances of the crime, you would be able to determine whether the death penalty is appropriate or some other form of punishment is appropriate?

A I would prefer to hear, you know, everything before I commit to a definite answer.

Q Well that's, commendable. That's exactly what the law requires you to do.

The Judge explained how the trial is going to proceed in two phases, and the first phase is going to be the determination of whether the defendant is guilty or not guilty.

A Uh-huh.

Q And if you should find the defendant guilty, then you would move on to the second phase.

A Uh-huh.

Q At which time you would determine what the appropriate punishment is.

A Uh-huh.

Q Now, at that point in time you would be given additional information about the facts and circumstances of the crime and about the character and the background of the defendant.

A Uh-huh.

Q Do you understand that so far?

A Uh-huh.

Q And the question is: Would you be able to listen to that evidence in determining what the appropriate penalty would be?

A Yes.

Q You have anything about your philosophy or your belief system that would make you automatically determine, after the first phase is over, that the death penalty is appropriate, or that some other form of punishment is appropriate?

A Umm – I don't know what to expect yet. It's hard to say.

Q I understand. You haven't heard any of the facts yet?

A Yes.

Q Is that what you are saying?

The point I'm trying to make is that after you finish the first phase of the trial, the trial is only half done. There is still a lot more to come.

A Which I haven't heard the first trial yet. You're moving me over to the second one when I haven't even heard whether he is guilty or not.

Q I understand. And I'm asking you to assume –

A Okay.

Q – some things. Assume you have already found him guilty –

A Uh-huh.

Q – of certain offenses, and we're now moving on to the second phase.

A Uh-huh.

Q And the question is: Could you keep an open mind at that point, even though you've already convicted him of these offenses, could you keep an open mind and listen to additional evidence regarding what the appropriate punishment would be?

A At this point I would say, yes.

Q You say "at this point" because you – you say it that way because you haven't heard any evidence yet?

A Uh-huh.

Q Okay. Now, in that second phase of the trial –

A Uh-huh.

Q – you're not going to be able to employ your own belief system. You're going to be guided by the law.

You understand that, as to what the appropriate punishment should be?

A Uh-huh.

Q The Judge will give you some instructions on what the law allows.

A Uh-huh.

Q And what type of evidence you should consider in arriving at your verdict.

A Uh-huh.

Q This is on the punishment.

A Okay.

Q And you're going to be asked to consider what we've called aggravating factors. Those are factors that the Government believes prove that the defendant should be sentenced to death.

A Uh-huh.

Q And you're going to be asked to listen to mitigating factors, which are those factors which the defense believes merit some sentence other than the death penalty.

A Uh-huh.

Q You would still be open to listening to both sides of the issue?

A Yes.

Q And I ask that, because if you'll turn to page 28 in your questionnaire –

A Uh-huh.

Q – question 108, the question is: "Where one person intentionally kills another person."

A Uh-huh.

Q You've got three boxes –

A Uh-huh.

Q – to chose from. And you checked the one, "The death penalty is always justified."

A Uh-huh. Oh, I see why you are asking me if – No. I – I would really need to hear what the circumstances are before I sentence somebody to death.

Q Okay. Because that's what we're getting at. You wouldn't automatically vote for the death penalty simply because he's been convicted?

A No.

Q Now, the crime he's going to be convicted of, if you get to this second phase, is intentionally killing another human being.

A Uh-huh.

Q By sending mail bombs.

A Uh-huh.

Q Or by placing bombs. I guess in this case it would be mailing a bomb.

A Uh-huh.

Q So you'll already have determined that the defendant is guilty of that crime before you get to the –

A No. I haven't determined that yet.

Q No. I'm giving you –

A Okay. Okay. The scenario.

Q Yeah. Yeah.

And so you'll already have found him guilty of intentionally killing another human being by sending a mail bomb.

A Okay.

Q And what we want to be sure of is that you wouldn't simply say, well, he killed somebody, and therefore he –

A He deserves –

Q – should get the death penalty.

A Uh-huh.

Q You could do that?

You could listen to additional evidence?

A I could listen to additional evidence.

Q And do you have any belief system or problem with the notion of possibly giving that individual a life sentence or some lesser sentence based on the facts and circumstances that you are given in the sentencing phase?

A What kind of lesser sentence would it be?

Q Well, the options would be life without possibility of release, or some lesser sentence below that. Something less than life in prison. A term of years, for instance.

A Uh-huh.

Q And my question is: Would you have any trouble considering those alternatives to the death penalty?

A Yes.

Oh, to the death penalty?

Q Yes.

A No. Life imprisonment I wouldn't have a problem with. To the death penalty . . .

Q I just want to ask you a few more questions. If you can, turn to page 17. I'm going to ask you about your answer to question 64, and that goes over – your answer goes over to page 36.

A Oh, page 36.

Q It starts on page 17 and then finishes up on 36?

A Uh-huh. Okay.

Q You were asked: "What is your opinion of the effectiveness of the criminal justice system."

And you said, "It seems that those accused of a crime have rights. And by having them stand trial and going through the process of the legal system, there they have a chance to prove themselves innocent or to be found guilty."

A Uh-huh.

Q And that's a common phraseology. We understand you're not trained in the law.

A Right.

Q But you understand that the defendant doesn't have an obligation to prove himself innocent. It's the Government's obligation to prove that he is guilty.

A Okay.

Q So the defendant – You understand that?

A Well, now I do.

Q Okay. The defendant never has a burden to prove his innocence. And he never – He doesn't have to put on any evidence he doesn't want to.

A Uh-huh.

Q You understand that?

A Well, now I do.

Q Okay.

A I didn't know that.

Q So you would base your decision on the evidence that is presented at trial, and you wouldn't require the defendant to prove his innocence?

A No. I think I would – I would – I would require him to prove his innocence. If he claims that he is innocent, then I need him to prove that.

Q Well, it's actually the Government that makes the claim here.

The Government claims that the defendant did something.

A Uh-huh.

Q And the Government will put on evidence –

A Okay.

Q – to prove that he did do that –

A Uh-huh.

Q – act.

Now, if the Government, at the end of the Government's case, if in your view the Government hadn't proven that claim, would you be able to vote not guilty?

A Yes.

Q Why do you say that?

You hesitated a little. Why did you say that?

A It has to be a hundred percent proven that he did do it, otherwise – I mean, it could be anybody if it's not a hundred percent and there is a doubt.

Q And if you had doubt at the end of the Government's case, what would your vote be?

A If I had doubt?

I would probably say not guilty.

Q In fact, you would have to say not guilty, wouldn't you?

A Uh-huh.

Q You need to answer audibly.

A Yes.

Q Okay. Because that's the way the system works. The defendant never has to put on any evidence. And if the Government doesn't prove its case to your satisfaction, beyond a reasonable doubt, you'll be instructed that you must vote not guilty.

Do you have any problem with that?

A No.

Q Now, you know nothing about the case coming into the trial?

A No.

Q So you have no trouble giving the defendant the benefit of the presumption of innocence?

A That's correct.

Q You understand what the presumption of innocence is?

A Yes.

Q He's presumed innocent –

A Until he's proven guilty.

Q Correct.

MR. LAPHAM: Thank you.

I have nothing further.

PROSPECTIVE JUROR NO. 124: Thank you.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q Morning, ma'am. My name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski who is the defendant here.

I would like to ask you a few questions, if I can, about your questionnaire and about some of your views.

I know this is hard for you. You're out in public, being asked a lot of questions, but we need to ask you certain things just to find out how you approach this case and whether you should serve as juror in this case.

So we're not trying to pry into your mind or anything. We just need you to kind of answer some things for us.

Is that okay?

A Uh-huh.

Q Let me ask you first of all, you understand that the trial will run from eight o'clock in the morning until one o'clock in the afternoon, and that you would have to report somewhere – the jurors would have to report somewhere at 7:00 in the morning

to be here at 8:00, and then would be released at maybe 1:30 or 2:00, and it would go Monday through Friday, probably start somewhere around the middle of December and could last three to four to five months.

Will you be able to sit as a juror?

Is that something you can do with your job and your family?

A Yes.

Q Okay. If you could turn to page 21 and 22 on your questionnaire.

Do you have it there?

A Yes, I do.

Q Actually, question 82?

A Uh-huh. Yes.

Q Was that person – What happened to that person?

Did they –

A Injured or died as a result . . .

Q Family friend?

A I don't remember what I was thinking at the time. I don't – Yes. I heard – I heard family – a family member was shot in his business from, you know, people trying to rob the store – his store.

And it's not a close relative. Just somebody that is a family – I mean, a distant relative.

Q Was he killed or just injured?

A I – I think killed. I'm not sure. It was something that I heard through the family. So I – It wasn't in the news or in the newspaper or anything like that.

Q Would that make it hard for you in any way to sit as a juror in this case where the charges are killing someone?

A No.

Q If you'd turn to page 18, question 65 where you were asked, "Victim or witness," and you put "Neither."

What exactly – Will you tell me what happened there?

A Number 65?

Q 65. Yeah. Page 18.

A Page 18.

Where did I put "neither"?

Q See, right under the third?

A Oh, okay.

Myself.

Q No. No. I guess what happened to your father? Was he the victim?

A Yes. Yes.

Q Okay.

A I guess I didn't understand the question.

Q No, I understand that.

Does that – Would that affect you in any way, your ability to serve as a juror in this case do you think?

A No.

Q If you would, look at page 15, question 53.

A Yes.

Q Can you tell me what you were thinking when you wrote that?

A There was an incident where my husband had a complaint. Somebody was harassing him. And the people that were harassing him ran away. And when he tried to tell the police officer, the police officer handcuffed him. And you know, he was accused of something that he was being assaulted.

Q I see. And then that's all been resolved, whatever that was?

It's over now?

A Oh, yeah. A long time ago. It's not – It's not anything serious. Just I was answering the questions, you know. And it – It seemed that, you know, when they see somebody, you know, different than them, they – that the officers, they tend to be a little bit more suspicious.

Q And do you think that will affect your ability to serve as a juror at all in this case?

A No.

Q Or where the Federal Government is the prosecutor?

A No.

Q Let me go back, if I can, to this question of the – of the – Let me ask you something about your knowledge of the case.

You understand that this is a case that received a substantial amount of publicity over the years, and particularly since Mr. Kaczynski was arrested?

A Uh-huh.

Q And – And many, if not most, if not all of the jurors who have come in, prospective jurors have had some exposure to that either through the newspapers, radio, television. And there is no requirement that people not have had that kind exposure because it is natural.

And I want to just kind of explore with you whether – whether – the only question would be whether that type of exposure to knowledge about the case would make you unable to be a fair juror?

A No.

Q But you understand that you can know something about the case from television and radio and still be a juror?

Did you know that?

A No.

Q Did you think that if you knew anything about the case, then you couldn't be a juror?

A No. I didn't think that.

Q Okay. As I understand it – Let me see if we can – Do you understand that the case is a case that’s been called the Unabom or Unabomber case?

A I read that when I got my first letter from the jury selection.

Q Okay.

A That’s what they said it was called.

Q And what that refers to is a series of bombs that were mailed or placed over an 18-year-period. They’ve been all lumped under that name.

Do you understand that?

A Yes.

Q Now, let me ask you, if you go to page 7, you were asked in question 26: ”What is the most important source of news for you.” And you checked television.

Is that right?

A Yes.

Q And then over on the next page, on page – question 31 on page 8?

A Yes.

Q You said that you watched television one to two hours a day and you watched news and talk shows?

A Yes.

Q Evening network news and evening or late night local news?

A Yes.

Q Am I right?

A Yes.

Q Then you said that you listen to local news broadcasts once a day for about 30 to 45 minutes on the radio.

Is that right?

That’s question 30.

A Did I say on the radio?

Talk – Talk radio.

Q Talk radio?

A Not news. Talk radio where they talk about certain issues. It’s not like every – every news story. Just like they will choose a story for the day, and they will talk about it.

Q Let me ask you, if you could, look at what you were asked: ”What news or talk radio programs do you listen to on the radio and how often.”

You said: ”Local news broadcast once a day, approximately 30 to 45 minutes.”

So I’m just asking you. I’m just trying to clarify.

A Which one?

The one that – I don’t know what they call it. You know, my radio is really freaky, and whatever station that is in reception that day . . . They have this talk show at one time – I forgot. I really forgot the name of it.

Q Well, I guess my question was that you said that you listened to the local news broadcast for about 30 to 45 minutes a day.

Is that right?

Do you listen to the news broadcasts or –

A On the radio?

Q On the radio.

A Not any more. Not any more. I used to, but now I just put on some classical music.

Q And then you also listen to talk radio on the radio?

A The talk radio, that's what I used to listen to. Not – not the news, talk radio.

Q Okay. And you don't recall ever hearing about the Unabomber case or Mr. Kaczynski's name?

A No.

Q On television or radio through all that time?

A No. I don't recall.

Q You don't remember hearing about a cabin in Montana?

A No.

Q And you never heard the phrase "Unabomber" until you got your summons to come to court?

A That's correct.

Q And what do you understand that to refer to now when you hear that, "Unabomber"?

A What I do understand?

Q Yeah. What does that mean to you?

A This case. John (sic.) Kaczynski case.

Q And what more do you know about it or what does that bring to mind?

A Bombings mailed to people. Certain people that injured or killed a few.

Q Do you remember approximately how many bombings?

A No. I don't know that. I've – I've just been learning through this whole process.

Q And do you recall where any of those bombings took place?

A No.

Q No sense at all of where that was, where they happened or –

A I could name a city, but I could be mistaken with another case. I mean –

Q Yeah. We're just asking you for what you think on that, if you –

A No. I don't know which cities.

Q You don't have any sense of what cities were involved or the time period?

A No.

Q Or anything about the arrest of Mr. Kaczynski?

A No.

Q Didn't see any pictures of him when he was arrested?

A No.

Q Okay. Let me ask you, you had stated, and I think the prosecutor talked to you about it, that you saw the trial as a chance for the defendants to prove themselves innocent, right?

That the Government could prove them guilty or they could prove themselves innocent; is that right?

A What was the question again.

Q Well, if you look at page 36, that's that – See your carry over answer to question 64. You talked about going through the process of the legal system. "There they have a chance to prove themselves innocent or to be found guilty."

A Yes.

Q What were you thinking when you wrote that down?

A What was the question? I mean –

Q The question is over on page 17, if you want to look at it.

A Excuse me.

Q It was: "What is your opinion regarding the effectiveness of the criminal justice system. Please explain."

It says – You said: "It seems that those accused of a crime have rights. By having them stand trial and going through the process of the legal system there, they have a chance to prove themselves innocent or to be found guilty."

A That's what I – That's what I know about the trials. I mean, that's what I hear what people say and on the news, and you know, different media. That you know, people go to trial and they present their case. And the Government – You know, the Government also tries to prove them guilty.

Q Would you expect the defendant to put on a case to prove innocence?

A I – Yes.

Q I mean, if the Government put on a case, you would expect the defendant to put on a case too to prove – they would try to prove guilt, and the defendant would try to prove innocence?

A Yes.

Q And – And if the defendant didn't put on any case, just the Government put on a case, would you feel that you had to find – find guilt because there was no proof of innocence?

A Because there was no proof of innocence?

Q Yeah. What if the Government put on a case, and the defense didn't put on any case at all, didn't prove any innocence. Would you feel that you had to find the defendant guilty then if he didn't prove his innocence?

A I don't know. I would have to listen to the – all the facts or all the – not facts, but – I don't know what you call it – the case, you know, what the Government has to say.

Q But what if the defendant didn't take the stand and didn't call any witnesses, didn't present any evidence at all.

A There would have to be some kind of proof that he did those things that they say that he did.

Q But you would expect him to prove his innocence?

I'm just trying to find out what your view is because you talked about defendants having a chance to prove themselves innocent.

A I thought that was the legal – that's what it was all about.

I thought that, you know, there is somebody filing a claim against him, and he's trying to prove himself innocent.

Q Well, if Judge Burrell were to instruct you, to tell you as one of the jurors that – that you had to presume that the defendant, that Mr. Kaczynski was innocent, you had to presume he was innocent, and that he had no obligation, no burden, didn't have to call any witnesses, take the stand or do anything, you would still have to presume him innocent, would you be able to do that do you think?

A Yes.

Q You wouldn't expect him to prove his innocence?

A It's – The question isn't fair. I don't think you're asking me a fair question because that's what the whole trial is about.

I have to sit here and presume that he's innocent until he is proven guilty. So, you know, when I sit through it and hear all the facts and all the proof, then I can decide. But I can't decide right now whether –

Q No. I understand that. I'm just – What I'm trying to – trying to find out is whether you can follow those instructions or not. Only you know that.

And what I'm really asking you is, are you going to expect the defense – the defendant to prove innocence, or can you actually presume he's innocent and not expect him to do anything at all?

A I can presume his innocence.

Q Okay. If you could turn to page 26, I would like to ask you a few questions, if I can, about the death penalty and your views on it.

As I understand it, you are a supporter of the death penalty? I mean, as the Judge said, a proponent?

A Yes.

Q You think we should have a death penalty?

A Yes.

Q And I think, as I understand it, the reason that you think is because if the death penalty is imposed and carried out, that will maybe make sure other people don't commit crimes?

A Yes.

Q Do you see any – any other reason for the death penalty, besides detouring other people from committing crimes?

A Punishing the person who did do the crime. If he did do the crime, then yeah.

Q Kind of an eye for an eye type idea?

A Uh-huh.

Q If you take a life, you forfeit your own life?

A Yes.

Q And can you tell me, is this – is this – is it a matter of kind of religious or just personal beliefs or what – what kind of is the basis?

A Just personal beliefs.

Q Personal beliefs.

Let me – Let me ask you if you'd go to the next page. And what I want you to – What I want to ask you, if you can focus on this, is on these questions you were asked: "Anyone who plans and commits a murder should get the death penalty."

Right? That's – That is question 107, the first one?

A 107?

Q It's on page 27.

A Uh-huh.

Q "Anyone who plans and commits a murder should get the death penalty."

A Uh-huh.

Q And you said that you agreed with that somewhat?

A Uh-huh.

Q And that means anybody who is found guilty of planning and committing a murder should get the death penalty.

Would you agree with that somewhat, or would you strongly agree with it if they were found guilty of that?

A That's the question. It says, "Who plans and commits a murder."

Q Right.

A It would depend on the – Somebody could plan something and not follow through, not actually murder somebody.

But who plans and actually does it and murders somebody should – should be put through some kind of punishment.

So it would have to be the severity of the crime. You know, that's another reason for the "I agree somewhat," because it could be 100 people, or it could be one person. So there is a difference.

I would have to listen and see what's, you know . . .

Q Okay. Then on the next one the proposition was: "Anyone who deliberately murders two or more people should get the death penalty." And you said "strongly agree" to that.

And is that your view, that if someone deliberately murders two or more people, they should get the death penalty?

That's what they merit? That's the right thing to do to them?

A Okay. Okay. Yes.

Q Uh-huh. And then you also – The next one was: "Any person who commits an act of terrorism in which someone dies should also get the death penalty."

Is that your view?

A Yes. Yes.

Q I mean, you think that's the fair punishment or penalty if someone commits an act of terrorism where someone dies?

A Yes.

Q Now, can I ask you, when you – when you read "act of terrorism" and you were answering that question, what did you – what did you – what did that put in your mind?

What you did see as an act of terrorism?

What were you thinking of when you read that?

A Somebody who doesn't like the way things are going and wants to change – change the world or change people's ideas or change people's views of things. So they feel that the only way that they would be heard is by committing, you know, what is considered a crime by killing people or bombing them.

Q Like mailing a bomb intending to kill someone; would you consider that to be act of terrorism?

And actually killing them, I mean?

A Yes. Because it scares. Terrorism means that you want to scare somebody. You want to terrorize them to – for whatever means.

Q And then on the next page you were asked – you were asked to check the line that most accurately stated your views about the death penalty.

"Where one person intentionally kills another person," you decided – you checked the one that said the death penalty is always justified.

A What number was that?

Q Number 108.

A (Prospective juror reads question to self.)

When you say "intentionally," yeah, I say always justified.

Q And your views about the death penalty, that basically somebody who intentionally kills another person should forfeit their own life, I take it you've had these for sometime; is that right?

Not something that just –

A Yeah.

Q What I want to ask you, and I think that, you know, you're the only one that can answer this, you understand Mr. Kaczynski is charged with mailing or transporting a bomb with an intent to kill and actually killing someone, by the bomb going off and killing them.

A Uh-huh.

Q The law says that the possible penalties for that, the law allows as penalties is the death penalty, life in prison without possibility of release, or a lesser sentence.

And I want to know, given your views about the death penalty, could you consider anything other than death if you found that beyond a reasonable doubt that he was the person who mailed the bomb intending to kill someone, then killing them?

A If he is found guilty – What was the question?

I'm sorry.

Q No. These are very hard. They're hard questions. It's a hard area. And all we're asking you – If it's not clear, I appreciate when you tell me that.

If you – If you found him guilty, beyond a reasonable doubt, based on the evidence in front of you as a juror, you and the eleven other jurors found him guilty –

A Right.

Q – and then you had to go into another – a second trial in effect, and decide what the sentence would be for mailing a bomb, intending to kill someone and killing someone, could you consider anything other than death?

Wouldn't you feel that death is the appropriate penalty given your views on the death penalty?

A I would have to actually hear the whole case before I decide on whether he is – he should be sentenced to death or life or the other one – life imprisonment without – without release.

Q Well, I guess what I'm asking you is: Would you be open to actually voting to spare his life, or would you feel that he had to be executed?

A Yes. I would be open.

Q You would be open to that?

A Uh-huh.

MR. DENVIR: If I may have one moment, Your Honor, I would appreciate it. (Brief pause.)

MR. DENVIR: Thank you.

PROSPECTIVE JUROR NO. 124: Okay. Thank you.

VOIR DIRE EXAMINATION

BY THE COURT:

Q Where did you receive the information you related to counsel – that you told counsel about involving bombings that were mailed to people?

Where did you get that information?

A From here.

Q From here?

A Uh-huh.

Q Meaning?

A This courtroom.

Q In this courtroom?

A Yes.

Q Do you remember I asked you about whether Mr. Kaczynski would be cloaked with the presumption of innocence in your eyes?

A Yes.

Q The presumption of innocence will be part of the law I will instruct you on later if you're selected as a juror in this case.

A Yes.

Q The law presumes that a defendant is innocent unless and until the defendant's guilt is proven by the Government beyond a reasonable doubt.

If the Government doesn't prove a defendant's guilty beyond a reasonable doubt, then under that doctrine, the defendant is presumed innocent, and you would have to find the defendant innocent.

Do you have any problems with that law?

A Somewhat.

Q Tell me about them.

A The fact that he was charged with this – with this case and – and the only way that he could be convicted is that it's a hundred – it has to be a hundred percent without reasonable – without any doubt. It's – You know, he could be guilty, but then on a technicality he could get off.

Q But just because an individual is charged with a crime, that doesn't mean that the individual committed the crime. That only means that some authority suspects the individual committed the crime.

A Yes.

Q So the law that I told you about, that a defendant is presumed innocent unless and until the Government proves the defendant's guilt beyond a reasonable doubt, it's a principle of law that will govern this case.

I know I've asked you the question before, and I appreciate the fact that you are thinking as you respond to the question. But again, is there any thing about your own personal belief system that would interfere with your ability to follow that law and apply that law in this case?

A No.

Q Do you understand that if you were selected on the jury, and I'm going to just use a hypothetical situation, you were in the jury box, and if you had to vote immediately on Mr. Kaczynski's guilt or innocence, before the Government presented evidence, you would have to vote that he was not guilty because he operates with the presumption of innocence.

Do you understand that?

A Yes.

Q Tell me what was in your mind when you were evaluating your answer that you gave to me earlier concerning this issue.

What were you thinking about?

Why – It seemed that you had some hesitation in agreeing to follow the law.

I want to know why.

A The first question when you were up here?

Q Right.

A It's the way that the question – It's the way the question is phrased. It – It tends to, you know, cause some doubt.

Q Can you explain what you mean by that.

A Well, when you said do you have any problems – do you have any problem with that being, and you know, if you couldn't – if the Government couldn't prove him without the benefit – without the shadow of a doubt that he was a hundred percent

guilty, would I have any problem proving – saying that he was innocent, and that’s what gave me the – you know, what did I say – it causes questions in myself. And it makes me, you know, want to tell you that, yeah, it does somewhat, you know, cause a problem.

Not cause a problem, but . . .

Q I know you may feel as though you are on the spot because in a sense you are –

A Okay.

Q – but I want you to know what I told you earlier, when I made comments to you with other prospective jurors, that the parties, they do value your opinion.

What we are trying to find out here is what is down in the crevices of your heart and what you think. And then we want to know ultimately whether if you have things down in the crevices of your heart that have a bearing, whether you can apply a particular principle of the law, whether you can set aside your personal beliefs and agree –

A Yes. I can.

Q – honestly to follow the law that I give.

A Oh, yeah. Yes. I can do that.

Q The instruction I ultimately will give you, which I’m not going to give you now, concerning the Government’s burden of proof, it won’t be proof beyond a shadow of a doubt, it will be proof beyond a reasonable doubt.

Will you have any problems following that instruction and applying that instruction?

A No.

Q I’m going to return to the issue of presumption of innocence one more time.

A Okay.

Q I want to make sure that I understand your views.

No defendant has to prove anything in a Court of Justice in this system.

The defendant need not testify, need not present any evidence, and can simply watch what the Government does.

And if the Government doesn’t sustain its burden of proving the defendant guilty beyond a reasonable doubt, then you are to assume to be true, that is that the defendant is presumed innocent, and you are to apply that presumption, and you should find the defendant not guilty.

Is there anything about your belief system that would interfere with your ability to do that?

A No.

THE COURT: All right. Thank you.

You can bring in the next juror.

(Prospective Juror Number 124 exits the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 137 enters the courtroom and is seated on the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us.

A Uh-huh.

Q You're the 137th randomly selected juror.

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

A Not that I know of.

Q Okay.

A I've tried to find an excuse, and I can't find one.

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

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 Just a little bit on the TV news, but I turn it off as soon as it comes on or go out of the room.

Q I appreciate that effort. But despite that effort, have you been exposed to certain information?

A Just on the jury selection of how many you selected, and you know, that type of thing.

But absolutely nothing about the essence of the trial.

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

A I've talked about being here with my daughter and my son and with a friend. But I haven't discussed details of the case or anything. Just the fact, you know, I was selected and my feelings about, you know, whether I wanted to be on the jury or not, you know. That type of thing.

Q Did they share any information in that communication?

A No. Hu-huh. No.

Q I want to direct your attention now to the time period prior to Cal Expo, and I want you to tell me what publicity or information about the case you were exposed to during that time period.

A Okay.

Q Give me as much detail as possible.

A Okay. I don't take the newspaper, and I don't take – you know, I don't take magazines. I do – So I don't read much. Most of my information that I get is from TV news because of the fact I don't have time to read the newspaper.

And so basically what I saw was I saw when the FBI was there at the cabin searching the area, and you know – and they showed the cabin on the news. I saw when he was arrested. I saw when we was brought to California.

And I saw when he was transported to another area. That was down in Vacaville or down in that area some place. That's about all I can tell you.

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

A I have seen there was a diary that was taken. What was in the diary it didn't say. Just said that he kept a diary, and that that was taken from the cabin.

I also saw that there were components for making bombs, you know, that was taken from the cabin or that could have been used to make bombs.

That's about all I can remember.

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

A I don't know because I find that you can't always believe what you see on the TV news. And so I think that it would be hard to make a determination from what I am seeing there, you know.

First you would think he was guilty, yes. But then when you read – see other stuff or see other things and hear other things, then you wonder, you know. You know what I'm saying.

I'm sorry. I'm not explaining it very well.

It's hard to determine from what I've seen whether he is guilty or not. Anyone could have those things. And I keep a diary myself, so I don't – You know, it would depend on what was in the diary whether he was guilty or not.

Q Has the information you have been exposed to caused you to suspect that he is guilty?

A Probably. But I – But I think that I – Probably, yes. But then, you know, like I say, I have so little information.

Q I have referenced the opinion as a "suspicion".

A Correct. Correct.

Q How strongly are you committed to that opinion?

A Not strongly. If I had evidence otherwise, I would definitely change it.

Q Is that an opinion that you could leave outside this courtroom if you were selected to sit as a juror on this case, and are you in a position to, in fact, leave that opinion outside this courtroom and assure Mr. Kaczynski that his guilt or innocence in this case will be determined solely from the evidence that is presented here at the trial?

A I think so. I could at least try. You know, I would try to do that.

Q Okay. What is it about your belief system that is perhaps preventing you from saying categorically that you could do that?

A Just because sometimes it's hard to – You know, the weakness – the human weakness it would be hard to do. That that would be my belief system.

Q Okay.

A But if the evidence was definitely the other way, I would – you know, I could change my mind easily.

Q Is there something about your belief system – Well, let me ask it a different way.

A Okay.

Q We don't expect prospective jurors to be unaware of the publicity surrounding this case before they walk in this courtroom.

A Right.

Q But you can understand that a defendant on trial would not want to be tried in accordance with things in the newspaper or things that are transmitted in other forms of media communication.

You can understand that?

A Yes. Definitely.

Q That no one would want to have to defend against such allegations?

A Definitely.

Q In our system, we don't expect individuals to defend themselves against such allegations. That may be almost impossible to do because you don't know what allegation is in a particular juror's mind.

A Correct.

Q We are trying to probe to see whether there is anything about your belief system

A Uh-huh.

Q – that would interfere with your ability to leave such communications, that would be pretrial publicity or now that the trial is going on, trial publicity –

A Right. Right.

Q – outside this courtroom, and that you would not listen to it, and that you would forget it. And that you would allow the information that you use to determine Mr. Kaczynski's guilt or innocence to the information that is received in this courtroom.

A Yes. I understand what you are saying.

I – I try to think that I'm open-minded about most things. And I think that because of that open-mindedness, I could – I would weigh the evidence accordingly.

Does that make sense, what I'm trying to say to you?

Q It does. And I'm – I'm continuing to probe this area –

A Right.

Q – because I recognize that the questions I'm asking, perhaps the questions the parties will ultimately ask you –

A Yes.

Q – are questions that you haven't had to respond to perhaps before.

A Correct.

Q And you are thinking of your response as you sit in the box where you are.

A Yes.

Q But as you think about what I am trying to determine, I want to know if you could do it.

If the trial began at this very moment, assuming you were a juror with 12 other jurors, and you had to render an opinion at this very moment, wouldn't you have to find Mr. Kaczynski not guilty?

A With what evidence I have now?

Q Right. See, you have no evidence right now.

A Well, I mean with what I know right now?

Yes. I would have to find him not guilty.

Q But I want you to forget about the information you know right now –

A Right.

Q – and you are telling me you know right now. And that’s what I’m trying to determine, whether you have the ability to do that.

Because he doesn’t want to have to be tried based upon that information.

The information that governs his guilt or innocence should be information that he sees here in this courtroom, information he has the opportunity, through counsel, to test, not something that is in someone’s mind that they received outside the courtroom.

Are you in a position to assure Mr. Kaczynski that whatever information you have received outside this courtroom will not be used in this courtroom, and that you will leave that outside the courtroom when you walk in here?

Can you do that?

A I think so. That’s, you know – It’s really hard for me to say yes, because it’s going to be hard to – that’s a very hard thing to do for one thing.

I don’t have an opinion as of yet whether he is guilty. I’m only saying that the evidence I have – you know, the things I have seen on the news give me a suspicion, as you say.

But I – I definitely would try with – the very best that I could to not use that.

I’m not sure that – that anyone could leave it out. Do you see what I’m saying?

I think it would be a very hard thing to do, to leave that out, but I would definitely do everything that I could not to do that.

Does that make sense?

Q It makes sense.

A I’m sorry.

Q What you have stated makes sense.

A But I’m still not saying what you want?

Q I want you to tell me the truth. And that’s all I want, and I appreciate that because I think you are being candid with me.

A Yes.

Q There is a doctrine under the law that is called the presumption of innocence.

A Correct.

Q You probably have heard about that doctrine on TV and perhaps from other sources.

A Yes.

Q That doctrine is basically based on an assumption that anyone accused of a crime is presumed innocent, need not testify, need not present any evidence whatsoever to prove his or her innocence.

And that doctrine would require a not guilty verdict unless or until the Government proves the defendant’s guilt beyond a reasonable doubt.

A Yes.

Q Do you understand that doctrine?

A Yes, I do. I believe very strongly in that too.

Q Would Mr. Kaczynski have the benefit of that doctrine in your eyes if you were selected as a juror?

A Yes. I think so. I think that he would because I believe very strongly in that.

Q Do you understand that the publicity or information you received outside the courtroom, if that were to be brought in this courtroom by you, that would interfere with Mr. Kaczynski having the benefit of that doctrine?

A Yes. I can see that would. Yes.

Q Could you leave it outside the courtroom, bearing in mind that doctrine governs?

A I think so. Uh-huh.

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

A Oh, that's – I'm a proponent. I agree with it in extenuating circumstances.

Q Assuming hypothetically that you were selected as a member of the jury, and that the jury waded through the evidence and reached a result that Mr. Kaczynski would find disappointing, and that is that the jury found during the guilt and not guilty phase of the trial that Mr. Kaczynski was guilty of the offense of deliberate, intentional and premeditated murder of another human being, the question is whether despite that finding, would you be able to go to the sentencing phase of the trial with a mind that would still be able to consider voting for a sentence less than death?

A Yes. Because I feel that extenuating circumstances that may be brought out in the trial would – you know, would make me feel differently about the death penalty.

I think that – that there are usually extenuating circumstances that causes a person to commitment a crime – any crime. And I think they – in the trial process, they have to be delved into to determine what to do about that person. You know, whether – if they're found guilty, how to sentence them.

THE COURT: All right. I think we're going to take the morning recess.

We are going to take the morning recess at this point.

Court will be in recess until 11:00 o'clock.

(Off the record at 10:45 a.m.)

THE COURT: Let the record reflect all participants are present except for the juror. My deputy clerk is getting the juror now.

Which side is going to question first?

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning.

Q. My name is Judy Clarke. I am one of the lawyers for Mr. Kaczynski, and I had a few follow-up questions, if I may.

A. Sure.

Q. You mentioned, I think, when the judge was talking with you that you had spoke with your family when you got your summons?

A. Yes.

Q. And you said that you had talked to them about your feelings about being a juror?

A. Yes.

Q. Could share with us some of those feelings.

A. Concern for safety, concern for the – would I have the ability or the, you know, knowledge that I needed to make the right determination, make the right decisions.

I was shocked that I was called. I had been called to jury duty several times, but it's been state jury duty, and it's – you know, it's not been like this, never been this serious of a crime. I was shocked about that. I was – I wouldn't say shocked, but "surprised" may be, I don't know, a better answer, surprised, as to – you know, just that type of thing.

Q. Could you help us a little more about your concern for safety.

A. Well, being a high-profile trial, you know, you're concerned about the press and all the people that are going to be connected with it. And having your privacy invaded because of the press. That type of thing was what I meant for safety. You know, being made public and that type of thing.

Q. Were you comforted by the judge's assurance that it would be a – that your identity would be anonymous for those privacy reasons?

A. Yes, definitely. In coming here today, seeing the marshals bringing us in, and so forth, and the safety precaution that they have taken has been a great comfort for that type of thing.

Q. Did you have any other concerns about safety? It was really just a privacy invasion?

A. Privacy and, you know – and you know, high profile like this, the press is always there, and people are always there wanting to ask you questions, and that type of thing, you know. And you don't – you know, I don't want to talk to anybody about it. You know what I'm saying. I realize the importance of not discussing it, and I don't want to hear other peoples' opinions on it. And so, therefore, that's one of the reasons why I haven't told anybody except my family.

Q. Sure, that's one way to stay –

A. To stop that and not have to, you know, not have to defend my actions or my feelings about it, and not have to listen to their feelings.

Q. Not have to fend off anybody else's opinion?

A. Correct.

Q. So really you just don't want to be influenced in any way and you don't want to have your personal privacy sort of violated?

A. Correct.

Q. But no fears for your physical safety?

A. No. No, not that. I haven't had that.

Q. You mentioned in your questionnaire, maybe this is the same thing – have you got your questionnaire?

A. No. No, I don't.

THE COURT: Is this your juror questionnaire?

PROSPECTIVE JUROR NO. 137: Yes, it is.

Q. BY MS. CLARKE: At page 11, if you could turn with me.

A. Okay.

Q. At the top of the page, "I was concerned about my ability to serve with an open mind and the publicity involved." Is that sort of the same thing?

A. Yes, that's the same thing. You know, the publicity that I, you know, that I explained, the publicity that I heard. And would I, you know, understand what you were trying to tell me, for one thing. Would I – how complicated would the trial be. How complicated would you be explaining things to me that I would be able to understand it and be able to understand it with an open mind. That's basically what the –

Q. Why do your fears of complication arise?

A. Details in – for example, if you were going to explain how a bomb was built or something like that, you know, scientific effect of – effect of it, because I have very little scientific knowledge, would I be able to understand that.

Q. Do you have any kind of learning disability or concern about it or are you just generally concerned this is new stuff to me?

A. No, I have no learning disability. It's just that it's been a few years since I went to school and everything has changed so much.

Q. You strike us all, I think, as very intelligent and forthcoming so I was just inquiring.

A. Thank you.

Q. Can you talk with me for a moment about your answer on page 23, at question 92. Are you with me?

A. Just about. Okay.

Q. How would your beliefs influence you, and you said I would try to be honest, just and merciful. Can you help us understand that.

A. Okay. Let me explain. I believe that there are – I believe that there is some crimes that require certain penalties, as I'm sure you do too. I believe that they, to be – the penalty that you give that person has to be justified. And I believe that in extenuating circumstances you have to show mercy sometimes towards that person for what they've done. For example, if there's an illness, or if there's been a physical abuse, for example, and they commit a crime. You see what I'm saying?

Q. Sure.

A. So then I feel that's where mercy comes into it.

Q. So there's sort of this competing justice and mercy considerations that –

A. Yes. Yes.

Q. Do you have any idea how you might involve them, how they collide for you?

A. Well, I think justice would be if the person just went out and committed a crime for no reason, then justice would be seeing that he paid for what he had done or she had done. But if they had extenuating circumstances, like I say, for example, child abuse, you know, and they committed a crime or spousal abuse or something like that

and they committed a crime, then I think that's where mercy comes in, because you have to – you have to weigh the evidence, what they did and why they did it along with the penalty of what they did.

Q. Sure. Maybe that connects up and we can talk a little bit about your views on the death penalty.

A. Okay.

Q. The question, I think, starting on page 26, and I think –

A. Okay.

Q. Question 103, I think you said that you believe it's necessary in some crimes. Did you have anything in mind when you were writing that?

A. Yes. I think that when a person commits a murder, deliberately commits a murder, then I think that sometimes the only way they can justly pay for that crime is by giving their life.

Q. What would play into that decision for you?

A. Extenuating circumstances.

Q. When you say extenuating circumstances –

A. Like I said before, if it was child abuse then and the person was protecting their child, then they committed a murder, that's different from just going out and deciding to kill somebody, you know, on your own.

Q. How would a person's background, the person who committed the murder, how would that play into your decision-making?

A. Well, I think it would have to play a great deal into it because you – as you find out about their background, you would probably find reasons for why they did something. It's just like I say, spousal abuse or child abuse, when you find out why that person did something, and you trace it back to the fact that they were abused or that they were – or they were beat or, you know, something like that, it would make you change your – you know, make you feel merciful towards them so that you could, you know, maybe not give them such a stiff penalty or, you know, consider how – consider why they did it.

Q. Is this something that you thought about for a long time over a period of years, or is this sort of – are you now sort of searching inside for the answers?

A. No, this has been my belief for a long time. I've had experience. I'm just telling you one of the experiences that I had of a neighbor whose daughter was murdered, and the press was very, very down on the parents because the daughter had run away from home when she was murdered. But then when the press came to their home to ask why the daughter was not living at home – well, to get pictures of the daughter to put on TV and in the newspapers and stuff, they never mentioned – never asked the people any questions. But then the stuff they put in the press was very derogatory against the parents who were doing the best job they could. You see.

And so as I evaluated that, it's been years ago, maybe 15, as I evaluated that, I could see that, you know, there were reasons for this. There were reasons the daughter

ran away from home. There were reasons the murder was committed and so forth, and I could see the extenuating circumstances.

Q. Things just aren't so simple?

A. No, they aren't. There's many, many things that can lead up to some person doing something.

Q. Page 27, at the top of the page, you mentioned that you had read "The Chamber" and that –

A. Yes.

Q. You found yourself going back and forth. Could you help us with your thought process?

A. I'm a great fan of John Grisham, the novelist. I really enjoy his books. "The Chamber" was one that was difficult to read for me, because first I would feel the man needs to be killed, this is the way it is, he's committed this crime. And then as they would bring out other things in the book, pretty soon I would say, oh, I'm not sure the death penalty is the right answer there, you know. And then pretty soon they were bringing out something else and, yes, he's – you know, it's the best thing to do. And I fluctuated back and forth so much that I really had to reassess myself and how I felt about the death penalty. And I had to realize that there were extenuating circumstances there, and that this man had been on death row for years and years, you know, and so he had changed, and wasn't really the right thing to do to take his life. And they finally did in the end of the book but, you know, this caused me to really think about my feelings on the death penalty.

Q. Sort of weighed back and forth how strong for or against?

A. Yes. And it's been a long time. It's possibly been a year and a half or more since I read the book, so I can't really remember all the details. I just remember fluctuating back and forth with the things I read in that book. And I think that was really Mr. Grisham's idea in writing the book in the first place, is to get – you know, to get people to fluctuate back and forth there.

Q. And to think about it?

A. And to think about it, yes.

Q. If we could take one moment for a couple of questions on page 24. Question 95. Your opinion about mental health professionals who testify in court. You see that?

A. Yes.

Q. And I would hope they would be honest in their testimony and could give some help or understanding. Have you had any particular experience listening to cases or hearing about mental health professionals testifying?

A. No. I had very little experience with mental health people. I have – I worked in an employment office that was in a social service office combined and they had, you know, clients coming in where they did counseling. And I found them very honest but I – you know, sometimes psychiatrists – oh, I don't know how to put this. Sometimes you wonder about the things that they delve into, how they delve into things, and so forth, when it's – you know, whether it's – you wonder whether it's the right way to

go or the right thing to do, you know. And you – and I’m not sure that always they get all the correct answers from people. You know, as they try to get people to talk about their problems, are people completely honest with them. So then they have to form an opinion, you know, on what this person told them, and – you know, is it an honest opinion or are they sometimes biased towards – you see what I’m saying?

Q. Where have you read about this, heard about this? Where does this source of your belief come from, other than sort of common sense it sounds like?

A. Okay. My – where does my source of belief come from?

Q. Uh-huh.

A. My upbringing with my parents is that I was to be an honest person, that I was to weigh anything that was given to me and try to determine what was right and wrong.

Q. Sure.

A. That type of thing.

Q. I guess I was probing more into where your reasons about mental health professionals being honest would have come from.

A. Okay. I don’t know.

Q. Have you read about or heard about them, some mental health professionals sort of reaching out to take an extreme position; is that what you’re thinking about?

A. Probably in books, yeah. Maybe novels, probably. That I don’t know. I would say probably so.

Q. Probably some kind of reading?

A. Uh-huh. I would hate to judge by everything I read in a novel, though.

Q. Fair enough.

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

THE COURT: Yes.

Q. BY MS. CLARKE: If I could ask you one more question.

You indicate that you had quite a lot information from the media about this case, reading about it, and, in fact, you were concerned about whether you could actually set those opinions aside.

A. I haven’t read anything about it, just what I heard has been on the TV news. I never read about it.

Q. Right. So it links to the TV?

A. Right.

Q. Based on what you know, do you have an opinion as to the appropriate punishment in this case for whoever is convicted of being the Unabomber?

A. No. No.

MS. CLARKE: Thank you very much.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, ma’am.

A. Good morning.

Q. My name is Stephen Freccero. I'm one of the prosecutors in the case.

You told us about a number of your beliefs. I want to ask you about some legal requirements. Before coming here today, did you know anything about the law that would govern this particular type of proceeding?

A. I'm not sure of what I knew, because I'm not sure – I'm not sure what the law is. You see what I'm saying?

Q. Certainly. And my questions, all I want to ask you is, if you were called to be a juror in this case, you would have to swear an oath. And among the things you would swear an oath to would be to follow the law as given to you by the judge in the case.

A. Correct.

Q. And I would just ask you is there anything about the beliefs you talked about today that you think might interfere with your ability to accept the law as given to you by the judge?

A. No, I don't think so.

Q. All right. For instance, some people sometimes may think to themselves I disagree with that particular law. But if you're called as a juror, that's your way of saying even though I disagree with it, my job is to follow that law. You don't think you would have any problems doing that?

A. I don't think so.

MR. FRECCERO: No further questions. Thank you.

THE COURT: You can take the juror to the next room and bring in the next juror.

(Prospective juror number 137 left the courtroom.)

(Prospective juror number 142 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 142nd randomly selected juror.

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

A. Not that I know of.

Q. Okay. Did you appear at Cal Expo and fill out a juror questionnaire?

A. Yes, I did.

Q. Since that time have you heard of or read anything about the case?

A. The only thing that I've read about it is my wife kept track of how far the jury poll has been to find out whether I was going to be on the jury.

Q. What type of information did she give you?

A. She just said it's not full yet, you're still in the hopper.

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

A. No, I haven't.

Q. I now want to direct your attention to the time period before you appeared at Cal Expo. I want you to give me as much information as you can and give me details, if that is possible, as to the information you received about this case.

A. Basically, like I put in the questionnaire, I never really done any reading about it. I know one of the questions on the questionnaire they asked about some document, I forget what it was called, if we read that or anything. I only heard just little tidbits of the headlines, and normally I listen – the only time listen to the radio is when I commute to work and stuff, so I just basically heard the barest amount of just the headlines of when, I guess, the action of when they caught Mr. Kaczynski, I guess, and just that stuff. I don't really know any more about that. It's something that for myself, it's so remote to affecting me that I just – I honestly didn't have that much interest.

Q. Let me tell you my goal. My goal is to have you share as many details as possible so that the Court and the parties are in a position to objectively evaluate the extent to which that information may have an effect on you. And we will give you an opportunity to tell us from a subjective perspective your views as to whether that information has any effect on you.

A. Okay.

Q. Did you receive – have you given me your best account of the details that you can relate?

A. Details. The details that I remember that they mentioned, that I just I heard in the last few months, that there was a cabin up in Montana, that they had found this cabin. I remember seeing a picture one time of – there was – it showed like the marshals or police officers outside this cabin. That's about the only details on the cabin portion that I seen. I seen the picture where they led Mr. Kaczynski from the scene. And that's really the only two pictures I can recall seeing on this case which were in the newspaper. That's about it.

Q. Does the scene reference the cabin? You said they led Mr. Kaczynski from the scene. You mean from the cabin?

A. No, not from the cabin, just kind of after he was apprehended I remember seeing a picture, they have a picture, and I think t was in the Chronicle of when he was – very soon thereafter from Montana that they had picture, it was kind of a blurred picture of walking into some kind of a van or something. And they had a picture, I believe it was the cabin with some tape around it. And that was basically it. I didn't read any of the stories. I just remember seeing the picture.

Q. You didn't receive any information concerning a search of the cabin?

A. No, not at all.

Q. Or are you aware of any items allegedly taken from the cabin?

A. No. I never did – like I say, I never did read any of the stories.

Q. In your response to one of the questions in the juror questionnaire, you indicated awareness that this case involves alleged bombs sent in the mail.

A. Right. I remember seeing that that was the whole idea of the Unabomber, that bombs were sent in the mail. That's – you know, basically if someone is asked what

is the Unabomber case, it's someone that has allegedly sent bombs in the mail. I don't know if they were letter bombs or whatever they call them. But somebody sent something in the mail and there was an explosion, I guess, and people were injured. That's pretty much my details. If someone was to ask you what is the Unabomber case, that's what I would reply as to who or what it was. I never – like I say, I never really read any of the detailed part of the summaries, it was just kind of that's how much I know on it.

Q. Do you have information in your knowledge bank concerning injuries allegedly resulting from bombs?

A. I heard that – no. I heard people were injured, and I think I heard someone was – heard someone was killed. I'm not sure when or where. But I heard there were injuries and there was a death, but as to if that was factual or not, I don't know.

Q. Have you formed any opinion or do you have any preconceived notion or idea as to Mr. Kaczynski's guilt or innocence based on the information you received?

A. No. No, I don't have any.

Q. Does the information you received concerning this case cause you to suspect that Mr. Kaczynski is guilty or innocent?

A. No. I would have no reason to suspect. I have kind of a strong belief in the jury system or trial system that they would have to prove – anyone would have to do that. So, no, I don't have any preconceived –

Q. Is there anything about yourself, your belief systems that would interfere with your ability, if you were selected as a juror for this case, to leave the information you received outside this courtroom outside this courtroom when you come into the courtroom?

A. Oh, absolutely. That's fine. I'd do that.

Q. Would you be in a position to assure Mr. Kaczynski that he will start this trial on what's called a clean slate?

A. Oh, absolutely.

Q. What does that mean in your mind?

A. It means that someone would think I have no reason at all to suspect that he is the person that has done it, and I would hope – I kind of go to that tact of trading places, if I was sitting here. I mean, no one is guilty until they're proven guilty. That's the whole idea. So, yes, absolutely.

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

A. That's the way it's supposed to be.

Q. What does that mean in your mind?

A. Right now he's allegedly charged with a crime, but it's up to the system, meaning the lawyers, to prove that he's actually guilty of that. As of right now, he's an innocent man, in my opinion.

Q. That's what the doctrine means. It means that he is presumed innocent unless and until the government proves his guilt beyond a reasonable doubt. That's the doctrine.

A. Correct.

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

A. I mean, I uphold the death penalty if it's really shown that someone has gone and given forethought, I guess, to try and specifically take someone else's life. My limited knowledge of that is I always thought that if someone intentionally and preplanned and talked about it and, you know, conspired with others to take someone's life, and it was proven that they had – you know, their motive was a malicious motive, yes, I would in that case. If it was a person defending their family from an intruder, I would have no qualms at all about someone like that that was trying to do harm to their family.

Again, to refer to my family, if someone tried to bring a weapon or something or tried to harm my family, yes, I believe in the death penalty.

Q. Assuming you were selected to be a member of the jury and the jury heard evidence during the guilt and not guilty phase of the trial, and to Mr. Kaczynski's dissatisfaction found him guilty of the offense of deliberate, intentional, premeditated, and cold-blooded 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. And your question was if they had gone and proven without a shadow of a doubt that's what he had done, in other words, they made – you're saying they made their case and proven it was willful and premeditated, I forget the other words that you used, but it was with intent and full knowledge, they would have to prove to me there weren't any other extenuating circumstances, but, yeah, I – in that case, the way you described it, yes.

Q. What does yes mean?

A. Yes means I would believe the death penalty in that case, the way you described it, as put to me, would be a proper sentence.

Q. Bearing in mind the type of offense I just described to you, is there anything about your belief system that would prevent you, after convicting Mr. Kaczynski of that type of an offense, based upon the hypothetical situation we're dealing with, would there be anything about your belief system that would prevent you from considering alternative sentences other than death, such as life in prison without the possibility of release or some lesser amount of time in prison?

A. No, there would be nothing that would prevent you from considering that. I would basically feel that, again, this is a matter of circumstances. If someone for some reason was doing something under duress, again going back to my example of if they thought they were doing an act because they were maybe trying to protect a family member, or doing something like that, yeah, that might be a, you know, a crime of passion at the moment. They shouldn't be taking anyone's life. But maybe they have thought they had a belief they were protecting someone or something like that. Yeah,

then I would consider – I would weigh the circumstances even though I believe what they did was a very, you know, a bad crime, I would consider all the circumstances, and I could consider something less than that if they could prove it to me what the reasoning was.

Q. If this case reaches the sentence phase and you're on the jury that found Mr. Kaczynski guilty of the offense of intentional, premeditated, deliberate, cold-blooded murder of another human being, would you automatically after that finding vote to select the death penalty no matter what the mitigation is?

A. No. I would have to hear what the – if there was something mitigating, I would have to hear that. I wouldn't be an impartial person if I thought that I wouldn't have to hear what the mitigating evidence was.

THE COURT: The parties may question.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good morning. My name is Steve Lapham. I'm one of the prosecutors in the case. I just want to ask you a few follow-up questions.

A. Sure.

Q. I gathered from your application – or I'm sorry – from your questionnaire.

A. I didn't –

Q. You wouldn't apply for this job. I gather that this is not a case that you devote much time or interest to?

A. No. This is something that's, again, like I said, is so remote to me, that it's just too far out there. I'm too busy with my other stuff.

Q. And you indicated in your questionnaire that you don't feel very knowledgeable at all about the case?

A. No.

Q. And as you sit here today, is that still your feeling?

A. Oh, absolutely.

Q. Just a few questions about the death penalty. You indicated in your questionnaire that you were neutral on that. Could you explain what you meant.

A. By neutral, I think – and again I'm probably going back again a little bit. But the death penalty for someone that is callus and cold-blooded, that shoots someone, say, walks up to your car and you're sitting in your car and he shoots you for some reason – you know, you hear about, I guess, gang initiation, they do that. Absolutely, I would think that those people definitely deserve the death penalty.

Now, other people that do something in a fit of passion, of rage, of protecting someone, maybe they're under the influence, things like that, I would have to really honestly hear – to me that's mitigating circumstances. I would have to really listen to that in order to be harsh. If it's straight down the line, cut and dry premeditated and nothing else would interfere with that, no, I do believe in the death penalty. But if there's something else there, then I would evaluate that.

Q. Is that what you meant when you said that you figure the death penalty is used where proper?

A. Pardon me?

Q. You said in your questionnaire that –

A. Yes.

Q. – you figured the death penalty is used where proper?

A. Correct.

Q. Is that what you meant?

A. Yes, it is.

Q. Now, you understand that the law will be given to you if you're seated as a juror in this case?

A. Yes,.

Q. You'll be instructed as to those cases in which you may properly consider the death penalty?

A. Okay.

Q. So and you'll be asked to put aside whatever your personal beliefs are –

A. Yes.

Q. – regarding the death penalty and follow the law.

A. Yeah, I would have no problem doing that.

Q. Okay. And even if your personal beliefs differed from the law as to what aggravating evidence and mitigating evidence should be considered, you would be able to follow the Court's instructions?

A. Sure. Yes.

Q. So for instance, if you were given mitigating evidence that you hadn't thought of before that might be appropriate, you would be able to consider that?

A. Yes.

Q. As well as aggravating evidence that you hadn't thought of before?

A. Yes.

MR. LAPHAM: Thank you.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

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

A. Sure.

Q. When Judge Burrell was asking you questions, you indicated you had some exposure to facts about the case from the media but that you didn't have any opinion as to Mr. Kaczynski's guilt.

A. Right.

Q. Is that correct?

A. Right.

Q. Do you have any opinion as to what the sentence should be if he were convicted of the Unabomber crime?

A. No, I don't.

Q. You don't have any preconceived notion based on what you read?

A. Not at all, no, sir.

Q. I don't know if you understand, but Mr. Kaczynski has been charged with ten crimes, ten offenses, basically involving four different incidents. One of the incidents is two crimes and they involve charges of mailing or transporting a bomb with an intent to kill and actually killing somebody when the bomb went off. And those are the capital offenses, those are the ones that carry the death penalty potential. The law provides, a federal law provides that for those crimes, the sentence can be death, execution, it can be life in prison without possibility of release, which in the federal system means just that because there's no parole. And what happens, which is different from other trials, is that in a case like this you would first have a guilt phase, I think Judge Burrell called it guilt or no guilt phase, where the government would present its evidence as trying to establish his guilt beyond a reasonable doubt. The defense can put on evidence if it wants to but is not required to. The judge would instruct you as to the law. The 12 jurors would go and make a determination whether the government has met its burden of proving beyond a reasonable doubt mailing a bomb with intent to kill and killing someone.

A. Okay.

Q. If they were to, if the jury were to find the defendant guilty of that, there would be a second phase, and what's unusual, normally the judge would do the sentencing. But because of this particular charge, the jury would actually pick the sentence for the crime of mailing a bomb with intent to kill and killing someone. And that, again, can be death or life without possibility of release. In the second phase, the government would present aggravating evidence. That's evidence they think shows death is the proper sentence. The defense would present evidence, mitigating evidence. That's the legal phrase meaning evidence that we believe would show that life is the right sentence.

A. I see.

Q. Then you would get instructions, but in the end it would pretty well be up to each juror to determine between those two sentences. And I guess I would like to know if you found the defendant guilty of intentionally mailing a bomb and actually killing someone when the bomb went off, would you be leaning one way or another between those two sentences provided by law.

A. I would – to me, if we found someone was guilty, I would want to weigh what the mitigating circumstances were, if there were any. If it was cut and dry, I mean, I would go on – I think the judge said that he would go and tell us what are the letters of the law or what are the things to be. But I would be interested in seeing the mitigating circumstances surrounding it. If there weren't any mitigating circumstances and someone said we find him guilty and you said there aren't any mitigating circumstances, they're right, that's the way it is, then, yeah, I would. That's seems to me pretty cut and dry. But if there are mitigating circumstances, I think that's what the jury would be balancing, to go and weigh necessary circumstances and talk about them, yeah.

Q. So you could listen to any mitigating evidence –

A. Oh, absolutely.

Q. – presented and you could actually consider saying even though the crime beyond a reasonable doubt was mailing a bomb and killing someone, I could consider life and actually vote for life if I thought it made sense?

A. Yes.

Q. Let me ask you, do you have your questionnaire there? I just had one quick question.

A. No, I don't.

THE COURT: Is this your questionnaire?

PROSPECTIVE JUROR NO. 142: Yes.

Q. BY MR. DENVIR: If you could turn to page 234, question 95. You were asked your opinion about mental health professionals testifying in court. You felt they were just professionals doing their job. Can you think of any particular cases where there were mental health issues?

A. The only trial I ever – I sat on one other trial in the superior court in Solano County. It involved some mental health professionals. It was an injury case where a school bus driver had hit a child riding a bicycle, and that was my only time for having mental health professionals come in and talk about they did an analysis of the driver and stuff. And I just know they were very professional and doing their job. So that's my limited one and only experience for hearing something like that.

Q. You had no problem listening to that evidence and giving it whatever weight you thought it deserved?

A. No. I thought it was very supportive.

MR. DENVIR: Thank you.

THE COURT: Thank you.

THE COURT: Bring in the next juror.

(Prospective juror number 142 leaves the courtroom.)

(Prospective juror number 144 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 144th randomly selected juror.

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

A. I don't know. Like?

Q. Do you have any difficulty serving as a juror in this case, anything we need to know?

A. I have no difficulty serving as a juror as far as determining guilt or innocence. I am not a proponent of the death penalty.

Q. We're not looking for jurors necessarily who are proponents or opponents of the death penalty.

A. I understand that. But I have no problem myself as far as judging myself, in determining based on evidence presented, you know, guilt or innocence. I don't see any – I don't know of any problem.

Q. We're looking for jurors who are open-minded, in the degree that I'm going to explain in just a moment, during the next phase of the trial to consider three alternative sentences, that would be the sentence of death, life in prison without the possibility of release, or a lesser sentence. Is there anything about your beliefs against the death penalty that would interfere with your ability to consider all three of those sentences during the next phase of the trial?

A. My personal – and I being called on this has put me in a position of really evaluating where I am. I don't think that I could find – life in prison punishment for the crime based on a finding of guilt, no problem with that. To find the death penalty, I don't believe that I could do that.

Q. Are your views against the death penalty such that you would automatically vote against imposition of the death penalty in any case where it is sought regardless of the facts and circumstances of the case?

A. Having never been in that situation, that's a hard one to answer, but I believe and feel that where I am today in my life today, yeah.

Q. What does your answer mean?

A. That – like you said, if it came to voting for that, I do not believe on circumstances presented in the case that I could vote for the death penalty.

Q. Are there any circumstances that could be presented in the case that would enable you to vote for the death penalty – I should say consider the death penalty amongst those three options, that would be a sentence of death, life in prison without the possibility of release, or some lesser sentence?

A. Not that I can think of.

Q. Are your beliefs against 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 the defendant to death?

A. Based on what I feel right now with myself, yes.

Q. So you are telling me that your opinion about capital punishment, that is, the death penalty, prevents from you voting for the death penalty in any case regardless of what evidence is presented?

A. As I sit here today, I would have to say yeah.

Q. Yeah means?

A. Just from looking at the thing, I do not feel or believe that the death penalty – I just – I really don't believe that I could find the death penalty. For any other punishment, I have no trouble with, but I do have a problem with that.

THE COURT: Thank you, sir. Parties.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. My name is Judy Clarke, and I'm one of the lawyers for Mr. Kaczynski, and if I could follow up with you if I may on the death penalty.

A. Sure.

Q. I had a chance to look at your questionnaire. Do you have your questionnaire?

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 144: Yes.

Q. BY MS. CLARKE: If you could go page 28 with me.

I must tell you I appreciate the struggle that you're going through with us. At page 28 when you had a chance to think about the question at 108, when one person intentionally kills another person, at the time you answered you thought the death penalty may or may not be justified depending on the circumstances of the case.

I mean, that was a honest opinion?

A. Yes.

Q. You were struggling, I assume, with the death penalty at the time that you gave that some thought?

A. Right.

Q. And I see on the page before at 106 that you saw a show on 48-Hours and your comment was it added to my confusion. Am I right?

A. Yes.

Q. So there's an ambivalence going on. It sounds like to me from listening to you that you're struggling to come to grips with a feeling about the death penalty realizing that you are against the death penalty as a matter of social policy?

A. Yes.

Q. Would that be fair?

A. I think that's fair. I think being put in this situation of facing it forced me, in a sense, to put my money where my mouth is.

Q. Sure.

A. In a sense of looking at it. It's not a matter of just saying this is my opinion anymore. I got to say what do I really, honestly, deeply believe.

Q. And what can I do?

A. With myself, right.

Q. Would you – and I certainly appreciate that and understand that. Would you agree with me that it is all of our obligations if we can to make ourselves available to sit as a juror in a case?

A. Oh, absolutely.

Q. It's a matter of civic –

A. Absolutely.

Q. – obligation?

A. I have no problem with that at all.

Q. Would you agree with me then also that it's important as a society that we have different views sitting on a jury?

A. Yes.

Q. And it would be unfair to an accused to have everybody on the jury who said I'm in favor of the death penalty, I can always give the death penalty, right?

A. Right.

Q. And equally, I guess, it would be unfair to the state or the government to say that everyone on the jury was against the death penalty and wouldn't consider it, right?

A. Right.

Q. So it would be important to have a mixture of philosophical, religious and personal beliefs about the death penalty when a jury is going to make a decision about a man's life; would you agree?

A. I agree.

Q. So that people who are opposed to the death penalty should search inside to say whether or not they can sit and listen to other peoples' views about the death penalty, right? I mean, it's an easy reaction to say get me out of here, I'm against the death penalty, I could never impose it, right?

A. Right.

Q. But that's not fair to an accused to have everyone avoid service on a capital case because they're against the death penalty?

A. Right, I agree with that.

Q. And it seems to me that probably what we're asking you is are you going to go into a jury deliberation room with your arms folded, I cannot consider what somebody else has to say about the death penalty?

A. I don't think I could do that, I mean with my arms folded. You know, I think I got an obligation.

Q. To listen to other people's views?

A. To listen to people and not to make judgments, but to really evaluate myself to where I firmly believe, you know – and if I sit here and answer his Honor's question as to where I'm at today, I could sign a statement for death, if circumstances and other people – where I sit here today, I don't think I could.

Q. I guess the first –

A. But I think I could be open to – I got to be open to it.

THE COURT: I'm sorry. Open to what, sir?

PROSPECTIVE JUROR NO. 144: Open to what is said, what's presented, the evidence in the case, the whole thing, you know. It's very difficult to make a prejudgment today because I don't know any – I just have – looking at myself and my beliefs and what – I won't say I have struggled through. What I'm currently struggling through, I don't believe today, to answer your question, that I could sign that statement.

But I also do not believe that if there was an option, that I – and I think your question is, would I come in to serve with a closed mind. I couldn't do that, either, because I believe I have to be open to all that's presented. It's like a dichotomy in a sense.

Q. BY MS. CLARKE: I guess the first question is, are you able, knowing how you feel, to be open to the consideration of other peoples' views? That's sort of the preliminary first question. And I hear you saying you are.

A. I think I am, yes.

Q. Then the second question is, are you open to considering the Government's aggravating reasons, their reasons for the imposition of a death sentence and weigh them against mitigating reasons, whatever reasons the defense may give you for the imposition of a sentence less than death and weigh those alternatives; would you be open to that kind of process of weighing alternatives?

A. I think I would be open to the process of listening to the prosecution's reasons for stating what they believe should be and weighing them against the evidence that's presented. I could be open to that process, yes.

Q. Let me ask you this. If you consider a crime so horrible, the intentional murder and abuse of a child, and the person who you sat on a jury for and convicted of that crime, a horrible crime, had done it before and been released through some procedure, and you were persuaded by your fellow jurors that unless you rendered a sentence of death that that person would be allowed to be released and commit that crime again, would you be open to considering the sentence of death if you believed in your heart that it would happen again?

A. Where I'm sitting right now, there's one side of me that says I could still not find for the death penalty. There's another side of me that says, because we're projecting and depending on circumstances and what have you involved, I think there's a requirement in looking for the overall best interest of society in general, and if there is a strong, strong possibility of something horribly occurring, you know, it's very difficult to answer, I might find, yes, under these circumstances in this case, I might have to do that.

Q. I think that's probably the bottom line question. Are you able – and only you know – to listen to the opinions of other folks that would be sitting with you on the jury, to be open to being persuaded by them for whatever reason they may give you, that they hold a sincere belief that the death penalty is appropriate, are you open to consideration of those views?

A. I'm open to consideration of those views. I don't know if I could be open to following – based on their views, comparing them to my views, there's no way I can predict what that outcome would be.

Q. Is this really sort of the first time that you've publicly had to address your feelings about the death penalty? I mean, there's some ambivalence, it would be fair to characterize it, in your questionnaire?

A. Yeah, there is. It's the first time really publicly, and I think it's because it's the first time that I have myself been put in the position, like I said before, putting my money where my mouth is. The last couple years I kind of become more involved in some pro-life efforts involving children, and that's kind of forced me to really look at that whole value of life and what my role and my position is.

But, again, you know, looking at the individual you're looking at – I don't know. I think right now there's a big part of me that's on one side, there's a part of on me on the other side. I'm in a state of confusion. I'm really in a state of really evaluating what I really believe, because I don't think there's any hard-line yes or no circumstance.

If I know somebody is going to walk out this door, and I feel for sure in my heart that he's going to – that individual is going to walk out of this door and commit some horrible crime, that innocent people are going to be – could I just let that go and happen? I don't think I could.

And I think that's part of what your question is. But it all depends, and until I'm put in that position of really having to do that – I'm trying to be as honest as I can.

Q. I guess what we're seeking is an assurance that you could listen to both sides.

A. I could listen to both sides.

Q. And give full consideration to both sides, because it would be unfair to have a belief system that would exclude one side in reality. And so what I'm asking is, could you be open to and give full consideration to both sides before you make a decision as to the appropriate penalty?

A. That's really a difficult question to answer.

Q. I guess that's probably the bottom line. Could you sit and listen to other people tell you why they believe that a certain sentence is appropriate?

A. I could sit and listen to them, yes.

Q. And give full consideration to it? It's one thing to say, okay, I'll listen to what you got to say, but you're never going to get through to me. And I guess the bottom line is, you got to be a kind of juror who can say, well, you can get through to me, I am able to listen and give full consideration to what you're saying before I render my judgment because nobody is going to tell you what is the right or wrong judgment to render?

A. Right.

Q. But before I decide what I in my heart believe is right, I'm going to be able to give full consideration to aggravation and full consideration to mitigation and make up my mind after listening to the positions of everybody.

A. I can sit here and say, yes, I could do that. But I'm kind of guessing, because as I sit here and say I'm not a proponent of the death penalty, I do not believe that it is the answer to the problems, and I'm guessing because I have not heard any of the evidence presented, the reasons why, the – you know, the things that – would I still hold that position depending on what is presented in this case, I don't know. I do not know.

Q. You're trying to be honest with us saying you got these conflicting feelings, so I don't know because I am not in that position, but I'm a fair person and I would try to give everybody a fair consideration?

A. I would try to give everybody a fair consideration, but I am not an advocate or proponent.

Q. Maybe what you're saying there is I would never as a citizen vote to have a death penalty the way I feel about it because I think as a political judgment maybe that's a bad idea?

A. Yeah, I think that's fair.

Q. But somebody else made the political judgment, so I as a juror would have the citizen's obligation to consider both sides before I made up my mind?

A. I think that's fair.

Q. Would you agree with me?

A. I think that's fair, yes.

MS. CLARKE: Could I have just one moment, Your Honor? I think I'm –

THE COURT: Are you going to cover the publicity area? You don't have to.

MS. CLARKE: I would be happy to go forward.

THE COURT: Okay.

MS. CLARKE: Did the Court want to? Was the Court done?

THE COURT: I didn't cover everything I typically cover. I'll ask you stay at the podium.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Sir, since Cal Expo – I assume you filled out your questionnaire at Cal Expo?

A. Yes.

Q. And since that time, have you heard or read anything about the case?

A. Not really. I mean, yes. I mean, you can't avoid it. But what I tried to do for myself is if it's come up on television, change the channel or walk out of the room. I have not read reports in the newspaper, other than you can't miss reading the headline. But I have not read reports in the newspaper. I purposefully have not done any of that, because I feel if I'm going to – if I were selected, I had the obligation to be as fair and honest and I can be without tainting.

Q. I appreciate your effort. But it appears at this point your efforts, which have been great, you have still been exposed to information. If so, what information?

A. Well, you know, there's things that come to mind. Some things that come to mind that I heard prior to being able to get the radio turned off or the TV changed, things that I heard, for instance, like the defendant's brother coming to town and the death penalty being an issue involved with that. Anymore detail than that, I do not know.

The incidents involving, apparently, some agreement or disagreement of a court-ordered psychiatric examination. Other than some question with that, the details of that, I don't know. But I remember seeing or hearing something or seeing something on the paper on that – you know, other stuff is stuff that was out before the – you know, it came to this point.

I know there was some questions as to the Government's legality issue of the warrant in the search of the cabin. I know there were questions, you know. I never – I never read the manifesto. I know it came out, but I never read it. I just wasn't interested.

Those sort of things. But I never really went into a lot of detail and especially tried not to since I got called.

Q. Prior to Cal Expo, can you provide any more details about the information you were exposed to?

A. Oh, boy. Again, I think mainly in general terms. Obviously, when it came in the paper that the individual was arrested, the circumstances behind that. I guess it was his brother, many words that were in the manifesto that led to the search and the arrest. Obviously, the case is being moved to Sacramento, having lived in this area for many years. Some information that I recall of things reported that were found in the cabin. You know, I'm trying to recall.

As I recall, there were some things that were reported.

A copy of the manifesto, either a bomb or bomb making equipment or what they determined was stuff that could be used. I remember that.

But, again, I'm saying the generalities, because for myself, I never really got to read every word on this. That wasn't – that just didn't happen.

Q. Has any of the information you've been exposed to resulted in your formation of an opinion or any preconceived idea as to Mr. Kaczynski's guilt or innocence?

A. If I were to take those alone and say that's all that's out there, yes. But not really knowing the details of it, I have tried to keep myself and my mind open, because as far as – my opinion is that type of information is basically circumstantial information that's been thrown out there. There's the possibility a degree of that is factual, there's a degree that's non-factual, and –

Q. What opinion has that circumstantial information led you to?

A. I guess the opinion it's led me to, especially since being called on this, I don't know whether or not he is or isn't guilty. I don't know. I don't have enough data to firmly make that type – that level of judgment, especially based on the circumstances of this case.

Q. If you were selected as a juror in this case, do you have the capability of leaving the information you've told me about or any information that's come to your mind during the trial that jogs your memory – something at trial could jog your memory – could you leave that information outside, not consider that information, when you make a determination as to Mr. Kaczynski's guilt or innocence in this case?

A. I believe I could.

Q. A short way of saying that is whether you could allow Mr. Kaczynski to start this trial with a clean slate.

A. I believe I could. I would do my best to do that.

Q. Is there anything that would interfere with your obligation to do that?

A. Like opinionwise?

Q. You can only answer the question.

A. Nothing that I know of.

Q. Okay. In your eyes, will Mr. Kaczynski, in fact, begin this trial with a clean slate if you're selected; meaning that everything that you received outside the courtroom

stays outside the courtroom, the determination of his guilt or innocence is based upon evidence received in this courtroom?

A. That's the position I tried to put myself in since I been selected for this, dropping all that and just being open to what's presented here, because I really do not know. I wasn't there. I didn't walk in his shoes. I do not know whether he's guilty or not. I really don't know.

Q. Have you placed yourself in that position so that that's the type of juror you would be?

A. I think so, yes. Yes.

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

A. I think so.

Q. What does that mean to you?

A. It means that based on the way our legal system is, that an individual, no matter what the circumstances are, is presumed innocent until found guilty. And to make the process work, that presumption has to be a firm presumption, and to make that judgment solely based on the evidence that's presented in the case from either side.

THE COURT: Ms. Clarke, do you have any additional questions?

MS. CLARKE: I do not, Your Honor.

THE COURT: The government.

MR. CLEARY: Yes. Thank you.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon.

A. Good afternoon.

Q. My name the Robert Cleary. I'm one of the prosecutors on the case. I want to ask you a couple follow-up questions on your view concerning the death penalty.

When you filled out the questionnaire, did you understand the questions to be asking you more or less as an abstract notion what your view was on the death penalty as opposed to a concrete set of circumstances would you yourself vote for the death penalty?

A. I don't – I'm not clear on your question.

Q. Sure. Let me rephrase the question. When you were answering the questionnaire, were you answering just generally that, for example, there may be certain circumstances in which generally the death penalty is justified or appropriate; is that correct?

A. At that time I answered the questionnaire, yes, I think that's correct.

Q. Have your views on that changed at all between the time you answered the questionnaire and today?

A. I think, again, as I said, I'm struggling with this. But I think that what it has forced me to do is really sit down and evaluate what my position is. And I think my position has become more firm as not being an advocate of the death penalty and

really evaluating and looking at it saying is this – I’m not sure – I become more firm in my position of not favoring and not supporting the death penalty.

Q. Since the time you filled out the questionnaire?

A. Since the time I filled out the questionnaire, because it forced me to put myself in a position of determining that evaluation for myself.

Q. You mentioned to either the Judge or Ms. Clarke when they were questioning you that you were involved with the a certain pro-life effort; is that correct?

A. Yes.

Q. And is that on the abortion issue?

A. Yes.

Q. And your pro-life views, is that a product of your religion?

A. Yes.

Q. Is your view against the death penalty, your anti-death penalty view, is that also a product of your religious training?

A. As far as a product of the teachings of my religious belief, I do not believe it is firmly, from what I been able to find out. But as part of my own personal views, yes, I think it is partly a part of my religious upbringing and training where I have – I am today in my life process.

Q. Just to make sure I understand. Your opposition to the death penalty is the product of both your religious training and your own personal philosophy, is that what basically you’re telling us?

A. Yes.

Q. And those views, it sounds like, the anti-death penalty views, have changed and strengthened over time, is that correct?

A. Yes.

Q. What I want to ask you now is rather than your views generally about the death penalty, I want to try to put you in the situation – I understand this is very difficult. These are difficult questions I’m asking, that we all asked you.

But I want you to put yourself in the position where you would be sitting as a juror in a case. I have not asked you about abstract notions about the death penalty, but about the question that would be put to you as a juror in this case, and that is, at the end of the day when the trial and the penalty phase is over and you heard all the evidence, the question is could you yourself vote to put a man to death. And I believe when Judge Burrell asked you that question, you said that you could not do that.

Is that correct?

A. From where I sit right here right now, yes, that’s correct.

Q. And you’re giving us your best view of what your view would be at the end of the trial, correct?

A. Again, as I say, where I’m sitting right here and right now, yes.

Q. And when Ms. Clarke was –

THE COURT: I’m not sure he completed his response.

PROSPECTIVE JUROR NO. 144: I was going to say, because you're operating in a sense of where I believe today. But there's a big void of data and information, and what have you, between this point and that point. So I got to be as honest as I can for what I firmly believe today.

Q. BY MR. CLEARY: I appreciate that. And when Ms. Clarke was asking you about whether you could consider the views of your fellow jurors, I believe you told us that you would be open to that process, is that correct?

A. Yes.

Q. When you said that, did you mean that you would be happy to and accept that you must listen to the views of your fellow jurors?

A. Yeah. I think that is a requirement.

Q. Right. That is the way the system works?

A. Yes.

Q. None of that, I assume, changes the view you just articulated to us, which is sitting here today, you could not vote to put a man to death, correct?

A. As I sit here today.

Q. Nothing about considering other people's views and being open to the process changes your view, the statement you made earlier that as you sit here today, you could not put a man to death, is that right?

A. As I sit here today. But as I sit here today is void of all the circumstances and all the particulars and all the evidence and all the – you know, it's very difficult.

Q. Sure.

A. As I understand –

Q. Sure.

A. It's very difficult, because as I stated before, if circumstances were such – and she brought up a case where it appeared that if a person was going to go out and do tremendous harm to a bunch of innocent people, and they're going to suffer, and what have you, based on an individual's action, if you do everything you can to stop that individual's actions.

On those type of circumstances, I think you do, because I think it has to be on the – weighing on a scale, there's no firm yes, there's no firm no. I think it's dependent on the circumstances of the individual incident, or what have you. But as I sit here today, with the knowledge that I have now, I got to agree with what you said and what I said to the judge.

Q. Which is that you could not vote for the death penalty, correct?

Let me follow up on a situation you just alluded to. In addition to the death penalty, there will be the option of life without parole, no possibility of release, in the federal system. In other words, a real life sentence. Someone goes to jail and spends the rest of their life in jail.

If you knew that, and given your views against the death penalty, would you always choose to vote for a real life sentence of life without the possibility of release over voting for the death penalty?

A. As I sit here today, again, with the information that I have today, that would be my tendency, yes.

Q. Could you assure us, knowing that the options are death and an option is going to be life without the possibility of release, as you sit here today, can you assure us that there could be circumstances under which you would vote, you yourself would vote to put a man to death knowing that another sentencing option you had would be life without possibility of release?

A. Boy, I don't know.

Q. You don't think you can give us that assurance?

A. I don't know if I could give you that assurance. I'm still struggling and agonizing over this process.

Q. Do you think it would do violence to your conscious, your personal dogma or your religious beliefs to vote for the death penalty, sentence someone to death?

A. I think as I sit here today, based on the evaluation I've done in this very short period of time, putting my money where my mouth is, I would have a lot of difficulty, yeah.

MR. CLEARY: Can I have one moment, Your Honor?

THE COURT: Yes.

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

MS. CLARKE: May I follow up for just a moment, Your Honor? I understand there are time limitations.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. I hear you saying as I sit here today. Do I take that to mean in the abstract, without aggravating factors, without mitigating factors, to consider, in the abstract you would find it very difficult to impose a sentence of death?

A. Yes.

Q. Is that what you mean by as I sit here today?

A. Basically, yes.

Q. After a trial, where you hear aggravating circumstances and where you hear mitigating circumstances, it will be different than as you sit here today preliminarily because you'll have a full body of knowledge.

A. Basically, yes. But I guess what I'm struggling with myself today is like, again, I'm being forced to be put in a position to really evaluate what my position is on that subject, because I really never have done that, and it would be very, very difficult for me, and I think the circumstances would have to be extreme, would have to be, to find for the death penalty. It would be very, very difficult.

Q. And one of the difficulties you're having right now is imagining those circumstances?

A. Yes.

Q. And I understand it is your personal belief that it's a bad idea.

A. Yes.

Q. The question is, if Judge Burrell says to you the law requires you as a juror to perform your civic duty, the law requires you to listen to the aggravating circumstances, whatever reasons there are in favor of the death penalty, and to listen to the mitigating circumstances, whatever reasons there are in favor of a sentence other than death, and to weigh those circumstances, that's what the law requires you to do, that's your civic duty, if you sit as a juror in a capital case, can you do it?

A. I believe, you know – I believe I can do it. I could do it. I – my biggest struggle is not being in that, when it comes to that end of that line, and I'm sitting here listening and thinking as you were saying if where I sit today were put on a scale, you know, a hundred percent to here, where I sit today, I would, without knowing what the mitigating, hard-line circumstances would be, I would have to say as far as life imprisonment without possibility of parole over death, I'm probably up in the mid-90 percent, but I don't think – I don't think I could not sit here and say I'm absolutely 100 percent – I don't care what is said, I don't care who does what, there's no way I could ever – I don't think I can do that because I don't know.

Q. What that is telling me is that you could, in a set of circumstances that you thought were appropriate, consider death?

A. I might.

MR. CLEARY: Objection, Your Honor.

PROSPECTIVE JUROR NO 144: I would really agonize over it.

THE COURT: Overruled.

PROSPECTIVE JUROR NO 144: I know I would really agonize over having – knowing myself personally, having to make that decision. But without weighing, you know, something I felt was very – you know, way out there – I think we have a responsibility, a sense of protecting others, protecting society. I served my time in the military with that belief, not wanting to have to kill somebody else. But –

Q. BY MS. CLARKE: But there can come a time when the killing of someone else has to happen?

A. Sometimes it has to happen. And I'm being put in a position of having to say now it's on my shoulders and really going through that process and could I do it. I'm saying, sitting here under the particular circumstances, I guess I could. Can I say I'm a 100 percent no matter what happens, no, I can't say that either.

It sounds like I'm beating around the bush, but I'm not.

Q. No. I think you're trying to be as honest as you can with us about your feelings about it. And I hear you saying you would do your best to be open to both sides, to be open to the jurors who thought the death penalty was right, and to giving serious consideration before you made up your mind.

A. I could be open to that. But where I sit here today, like I said, on that scale, I'm somewhere up in the high 90 percent, and I would have to say extreme circumstances.

Q. You could consider it under extreme circumstances?

A. I think so. But it would be dependent on those extreme circumstances.

MS. CLARKE: Thank you.

PROSPECTIVE JUROR NO. 144: I don't know. I don't know.

MS. CLARKE: Thank you.

MR. CLEARY: Nothing further.

THE COURT: Nothing further. Okay. You can take the juror to the adjacent room.

Anything further to cover before we adjourn for the noon hour?

MR. DENVIR: No, Your Honor.

THE COURT: We're adjourned.

(Luncheon recess taken.)

—oOo—

SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 1, 1997 1:30 P.M.

—oOo—

THE COURT: Let the record reflect all participants are present.

Anything to cover before I invite in the jury?

MR. DENVIR: You asked us to set a briefing schedule on the question on the notice of penalty phase. What we are proposing is that the Government file their brief by 4:30 Tuesday, and we would file a responsive brief by 4:30 on Friday, if that's agreeable with the Court.

MR. LAPHAM: That's fine, your Honor.

THE COURT: Okay. That will be the order.

MR. DENVIR: Thank you, your Honor.

THE COURT: I'd like my deputy clerk to please administer the oath to the prospective jurors.

(Whereupon the prospective jurors were sworn.)

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 this trial. The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. The person on the platform with her is the certified shorthand reporter who will assist in reporting this trial. Those individuals will help me administer the trial.

I trust that you will fulfill your civic duty during this voir dire questioning process. I thank you both for 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 are entitled to a fair and impartial jury. The right would be meaningless without citizens such as you making themselves available for service 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 first as a group. After a number of jurors are questioned in this manner some of the jurors will be assembled later for further questioning. Those required to participate in that questioning will be notified as to when that will take place.

Our objective is to obtain a fair and impartial juror that will decide the case based on the evidence that is presented here in the courtroom and on the law which I will instruct you on during the trial. I have decided to do individual voir dire, or questioning, in part because the parties have requested it, and because there has been some publicity in this case. During the individual voir dire we'll cover the publicity area and other matters that tell us whether you can 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 injury 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 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 concerning the charges that causes you to prefer not being a juror on this type of case, please indicate that by raising your hand.

There is no response.

The first part of the trial, which will be referenced as the guilty or not guilty phase, will occur like any other criminal case 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, and in the absence of any mitigating factors, whether the 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 may indicate or tend to indicate that the defendant should not be sentenced to death.

At the conclusion of that hearing the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase

of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too.

During this questioning we'll 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 the case in order to protect your privacy, as I've stated to you in a previous communication.

Now I will give you a jury instruction. I will 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 after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant, as well as to the Government, to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard, and which they have 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're 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.

Juror number 145 raised her hand about the schedule. We'll talk to you about that later.

I contemplate observing the holiday season as follows: We'll not hold court on December 24, 25 or the 26th, nor on January 1 or 2. I contemplate holding court December 22, 23, the 29th, 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 would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty.

There is no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase a sentence of death will be among alternative sentences the jury would be asked to consider. Evidence will be presented, and the Court will 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 supporting 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 is no response.

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

There 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 will 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 in private to determine whether we can discuss aspects of the matter here 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 will now have my deputy clerk to escort all but the earliest randomly selected juror to the next room and – to the adjacent room, and to place the remaining juror in the witness stand.

(Prospective Juror No. 129 took the stand.)

THE COURT: I'm going to ask you some questions from the podium.

VOIR DIRE EXAMINATION

BY THE COURT:

A. Okay. Is there any reason – well, first let me say that you’re the 129th randomly selected juror. I 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 in this case?

A. It would be a family hardship for me, I believe, because at this point in time my wife is three months pregnant, and if I were to stop working in the near future I think it would be really hard for us.

Q. Does your wife work outside the home?

A. Yes. She does.

Q. Do you have a job that you will not be able to perform given the schedule I’ve indicated we are going to have?

A. Yes.

Q. You won’t be able to do your work?

A. No. I work in the mornings.

Q. What are the normal work hours for you?

A. 6:00 a.m. to 2:00.

Q. I’m looking through your questionnaire so I can determine what type of work you do.

A. I do construction. I’m an apprentice carpenter.

Q. Okay. So you’re indicating that with the salary your wife brings in you will have a financial hardship?

A. That’s correct.

THE COURT: The parties may probe.

MR. CLEARY: Just on the hardship, your Honor?

THE COURT: Just on the hardship.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon. My name is Robert Cleary. I’m one of the prosecutors in the case.

Just to follow up on your work schedule, you realize we are going to only be going to 1:00 in the afternoon?

A. Correct.

Q. Any way of switching your work hours?

A. They tell me when to work, and I’ve only been doing this for a year. And we always work in the morning.

Q. So there is no opportunity to ask for different hours?

A. That’s correct.

Q. And I take it you won’t get paid if you don’t go to work?

A. That’s correct.

MR. CLEARY: We would stipulate.

MR. DENVIR: We stipulate.

THE COURT: Due to the hardship problem we are going to excuse you, and you can wait in the adjacent room.

(Prospective Juror No. 129 left the courtroom.)

(Prospective Juror No. 105 entered the courtroom.)

THE COURT: Thank you for joining us. You are the 105th randomly selected juror. I'm going to ask you a couple questions from the podium.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You raised your hand when I mentioned the schedule.

A. Yes.

Q. Can you explain your response?

A. I come from far away, and it would be a hardship on my family.

Q. I need to know more about the nature of the hardship. Let me ask you – tell you why I'm asking the question. The parties are entitled to have a fair cross-section of the community from which to select a prospective juror.

A. I understand.

Q. And if they don't have the opportunity of doing that we could exclude a whole stratum of society from consideration. So could you explain the nature of the hardship that it would cause your family?

A. Well, it would be me driving over 200 miles each day through the winter with fog and rain, which would mean that if I were to be here at 7:00 I would have to leave at about 4:00 in the morning.

THE COURT: Let me ask my deputy clerk a question.

Q. You would be entitled to a per diem, namely that the court system would provide you with a per diem and allow you to stay in this city.

A. Right.

Q. So you wouldn't have to do the driving you just indicated. Would that still pose a hardship to your family?

A. It would.

Q. Can you explain why?

A. I have grade school children that I am an integral part of their child care and their getting back and forth to their things that they need to do, which I've stated in the first questionnaire. And I couldn't be away from my family for all week.

Q. How old are your children?

A. I have a seven year old at home. I have an 18 year old and a 20 year old, but they are no longer living at home. But I have a seven year old at home.

Q. You just have a seven year old at home now?

A. Uh-huh.

Q. I have to ask these questions.

A. I understand that.

Q. Even judges, United States District Judges are sometimes subject to jury summons. The State system sometimes subpoenas us for jury service or summons us for jury service so we have to answer their questions too.

A. Right.

Q. Is there a way to make an arrangement with your seven year old that would allow you to serve on the jury?

A. I think – how long is this supposed to last?

Q. I'll have to answer that by giving you a range. We think it could possibly end as early as two months, but it could last between two and four months.

A. That's too much.

THE COURT: The parties may probe hardship if you desire.

MS. CLARKE: We'd stipulate, your Honor.

MR. LAPHAM: Your Honor, we'd stipulate.

THE COURT: Okay. We are going to excuse you from further jury service, but you just get to go to the next room for now.

PROSPECTIVE JUROR NO. 105: Okay. Thank you.

(Prospective Juror No. 105 left the courtroom.)

(Prospective Juror No. 149 entered the courtroom.)

THE COURT: Thank you for joining us. You're the hundred 149th randomly selected juror. I'm going to ask you questions from the podium.

VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Unfortunately, no.

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

A. Yes. I did.

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

A. All right.

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

A. No. I haven't.

Q. Since you answered that juror questionnaire have you discussed the case with anyone or overheard other people discussing the case?

A. No. I really haven't.

Q. I'm now going to direct your attention to the time period before you appeared at Cal Expo, and I'll tell you my objective. We want to know as much information that you can tell us that you received about the case before you appeared at Cal Expo.

Now, I have a twofold objective. One part of the objective is to allow myself and the parties to objectively evaluate how that information could have affected you, if at all. And the other part – I'll give you an opportunity later for you to tell me how the

information affected you, but I want you to search your mind, your knowledge bank and tell me as much as you possibly can about the information you received before you appeared at Cal Expo.

A. I know that Mr. Kaczynski's brother was the one who brought Mr. Kaczynski to the attention of the Federal authorities. I never read the letter that was written, the manifesto or whatever. I know that in the media the Unabomber and Ted Kaczynski are one in the same, and I really have not followed it. I know he was from Montana, and that's truly all I know.

Q. Did you receive any information about a cabin in Montana?

A. About a what?

Q. A cabin.

A. The cabin?

Q. Yes.

A. Very rustic, small, no amenities at all.

Q. Did you receive any information concerning alleged items found in the cabin?

A. I remember seeing on the news that it was virtually torn apart, and I do believe they found a typewriter that matched or supposedly matched the keys from the letter.

Q. How about the allegations that are involved in the case? Do you know anything else about the allegations?

A. I don't know what you're asking. I know that he supposedly sent mail bombs, and I'm afraid I don't even know how many. But I know people were hurt and killed.

Q. Did you read about what you're telling me about now about the mail bombs?

A. No. I am a big believer in trial by jury and not trial by media, and so, no. I really have not paid – you read the headlines. You see a little bit on the news, but I have three children and a life and don't always watch the news. And I really have not read about the trial at all or about the allegations.

Q. How did the information concerning the mail bombs come to you; do you know?

A. The one that happened – actually, I live in the area, and I remember the one in downtown Sacramento. I think it was the Forest Service, and I remember when it happened, reading then that it was connected to the Unabomber. But that's been so long ago, I really don't even remember much about it, other than it happened in Sacramento.

Q. Has the information you've been exposed to about the allegations in this case resulted in your forming an opinion or a preconceived idea as to Mr. Kaczynski's guilt or innocence?

A. I truthfully found myself feeling sorry for him the other day. Because as I said, in the media the Unabomber and Ted Kaczynski are one in the same, and I think that's rather unfair, that he shouldn't be found guilty before – or not before linking the two so completely and totally. But the media probably has paid more attention to this case than I have, so I don't know.

Q. My impression – it’s only my impression, based upon what you have stated, that some media source has caused you to think that that source believes Mr. Kaczynski and the Unabomber are the same?

A. Right. I think all media sources seem to feel that the Unabomber and Ted Kaczynski are the same. I have not seen anything though. I have not – I really have not looked, but I’ve seen nothing saying the opposite could be true.

Q. I am trying to determine, and only you can tell me, whether those media sources have caused you to form an opinion concerning Mr. Kaczynski’s guilt or innocence.

A. Yes, and no. I believe he is entitled to a fair trial. I truly do, but I do think that he probably is the man responsible for the mail bombings.

Q. That’s the yes part of your answer, and that’s the part I’m going to focus on.

A. I’m sorry.

Q. That’s okay. There is no right or wrong answer here. We don’t expect for individuals to come in this courtroom not affected by what they have read, or what they have heard. We don’t expect you to come in without opinions. We do expect you to communicate as honestly as you can in communicating with us, because we are seeking to find out what is down in your heart.

I’m calling it heart because I’m assuming that some part of our makeup is where we have our core beliefs, and that’s really what we are seeking to find out. We want to know about your core beliefs and the opinions you have about this case. But the opinion that is the yes part of your answer, how strongly are you committed to that opinion?

A. I don’t know. I am so embarrassed that I haven’t paid more attention than I have, but that which I have read all points – other people’s opinion, the writers, the reporters, they have all – like I’ve said, I have seen nothing to indicate that Mr. Kaczynski is not responsible for the mail bombings. And I do believe that the people who write these, while they may exaggerate, or they may push the truth or whatever else, they are probably much more informed than I. I have not paid attention. I have not looked into it myself. I don’t know.

Do I think he is guilty? I don’t know. Do I think they think he is? Absolutely.

Q. Is there anything about your belief system that would interfere with your ability to not bring into this courtroom, if you were selected as a juror, those things that you have read or those things you heard, and to allow Mr. Kaczynski to have his guilt or innocence determined here in this courtroom by evidence that is presented in this courtroom alone?

A. Well, that’s the way it should be. Oh, absolutely I believe that’s the way it should be. I would easily forget anything I’ve ever heard simply because I haven’t heard very much. So, yes.

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

A. No.

Q. Explain your answer.

A. He should be, but I don't think that's the way it is. In my own mind he is facing an up-hill battle.

Q. Can you explain your answer?

A. Everything I've seen, everything I've seen on T.V., everything I've read – and granted, while it's not very much, everything has pointed to Mr. Kaczynski as being the man responsible for the mail bombings. So while I agree that he should be cloaked in innocence, as you said, I don't think he is.

I think the system, the media, the knowledge that we have, it's not the same system as we used to have, you know, 200 years ago when people didn't have the access to knowledge that we have now. I think it would be foolish to even find, or unable – it would be impossible to find someone who does not have some knowledge. Unfortunately, it might not be very accurate. I don't know.

Q. Let's assume hypothetically that you in fact were selected to sit on the jury, and I move you from the witness box where you are now seated; and I placed you in one of those jurors chairs. Would you personally, based upon everything you know about yourself, be able to tell Mr. Kaczynski's counsel that Mr. Kaczynski is in fact protected by the presumption of innocence doctrine?

A. Yes. And boy, if you got – if I was over there it would have to be. It would have to be what they present in court. It couldn't be anything that went before. It would have to be.

Q. Under our legal system I will present you with an instruction that tells you that you must presume the defendant innocent unless and until the Government proves his guilt beyond a reasonable doubt. Is there anything about your belief system that would interfere with your ability to assure us that you will in fact allow Mr. Kaczynski the benefit of that doctrine?

A. There is nothing that would counteract that. Absolutely I would agree with that.

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

A. Both. I don't like the death penalty. I don't feel it's all that effective, but unfortunately that's because it was not used. I think if it was actually used it would be better. So, yes. I am a proponent for it.

Q. Assuming that you were in fact selected to sit on the jury, you recall I told you about the guilt and not guilty phase of the trial. Assuming that with your fellow jurors you sat through the guilt and not guilty phase of the trial, you evaluated all of the evidence, and then you made the determination that Mr. Kaczynski is guilty of the offense of deliberate, intentional and premeditated murder of another human being.

And at that point we would then go to the sentencing phase of the trial. At that phase of the trial, the sentencing phase, would you still be able to consider voting for a sentence less than death in the face of the finding I just told you of?

A. You're asking whether I can vote for the death penalty or for less than the death penalty?

Q. I'm really asking whether you would still consider all of the sentencing options, the alternatives, which would be death, life in prison without the possibility of parole or a lesser sentence?

A. Oh, I would want to be able to consider all choices.

THE COURT: Okay. The parties may conduct examination

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you some questions if I can.

Do you have your questionnaire that you filled out at Cal Expo?

A. Yes.

Q. You did fill it out at Cal Expo?

A. No. I don't.

THE COURT: I'll have to find that, Counsel.

Q. BY MR. DENVIR: Could you turn to your questionnaire, question number 41? You kind of have mixed feelings when it comes to your sons, I take it?

A. Right.

Q. How do you feel about it now? Do you feel okay if you were selected as a juror, serving as a juror?

A. Okay – I don't know. Okay would not be the right answer, but resigned.

Q. Prepared to do it if it's required of you?

A. Right.

Q. Turn to page 12, if you would, question 44. I guess the last part of it you refer to an uncle-in-law. Do you know when he served in that position, how long it was?

A. It was in the early '80s. I remember a case, it was when the couple from Davis was kidnapped, and they were found out – shot off of Sunrise or in the south area somewhere. It was during that time.

Q. So it was around in the early '80s, around that time?

A. Right. I think it was the 1980's.

Q. Did you talk to him at all about criminal law or about his job, or anything like that, or his former position?

A. He has been out of it. He only served one term. He has been out for a long time, and no. I haven't seen him since last Christmas.

Q. And the fact that he had served in that position, that wouldn't have any effect on you sitting as a juror? You wouldn't feel under any particular pressure to do one thing one way or the other?

A. No.

Q. And I take it that also goes for the brother-in-law that works in the other position?

A. Yes.

Q. Do you ever see them very often?

A. No. In fact, they don't live very close, and we only see them at holidays. And we didn't see them this Thanksgiving. So we'll probably see them at Christmas.

Q. On page 10, if you could look at the questionnaire, now you had training in that particular area. Did you ever actually appear in court during that?

A. No.

Q. Now, let me ask you if I can, about your knowledge of the case. You say that based on what exposure you've had in the media your conclusion is that if you are asked to express an opinion, it would be that Mr. Kaczynski is the Unabomber and is guilty of the charges.

Is that as I understand it?

A. Right, more than likely.

Q. And can you tell me, based on that same exposure, do you have some opinion or preconceived notion as to what the sentence should be if he were convicted of that?

A. No, not that I have thought about.

Q. And let me see if – I would like to ask you a few more questions in the area of your views on the death penalty. You understand that of the charges against Mr. Kaczynski, that there are at least two of them that involve the transporting or the mailing of a bomb with intent to kill that actually exploded and killed somebody, and those charges – one person, two charges, one victim. Those charges are capital charges as to which, first of all, the penalty is either the death penalty, life in prison without possibility of release, and that means what it says because there is no parole in the Federal system. Or it could be a lesser sentence, and as to those charges there would be a two-part trial.

As I recall, you have not served as a juror before?

A. No. I have not.

Q. Well, you've probably seen it on television. The first part of the trial would be like any other trial where the Government would present its evidence trying to establish the defendant's guilt beyond a reasonable doubt. The defense could put on evidence, if it elected to, but is not required to. The judge would instruct you as to the law.

And if you were on the jury you would go along with the other 11 jurors and decide whether or not the Government had met its proof in regard to those trials, that is as in any trial. If you were to find Mr. Kaczynski guilty of those particular charges involving the Department of Forestry, as you referred to, this would be different. In most cases the judge determines the sentence. However, when the death penalty is the option of law the jury is the one who determines the sentence.

In that case you would have a second phase, as Judge Burrell referred to as the sentencing phase or penalty part of the trial. And the Government would put on aggravating evidence, and that's the legal term for any evidence about the crime that the Government put on that pointed towards death as the penalty.

The defense would put on mitigating evidence. That's the other side of that, anything that would point in one's mind to a lesser sentence of life without the possibility

of release, and the judge would pretty well tell you you would make your own decision, your own individual choice between those. Then you would confer with your fellow jurors and make that determination between life and death on that.

Have you heard that – because I know you haven't sat in a trial before, and this is a little unusual in that sense. Do you see any problem in performing that role if you were selected as a juror?

A. No. I think it would be extremely difficult to sentence someone to death, and I would certainly be hopeful of finding something less. But I don't see that as a problem.

Q. But you would be willing to look at the evidence on both sides and then make your decision between the penalties that are provided by law?

A. Absolutely.

Q. So whatever your feelings would be about the death penalty in terms of if you were a legislator, should we have it and what society needs, if you sat as a juror, you would feel okay about the fact of making choices between the two different penalties that are provided?

A. Yes.

BY MR. DENVIR: Can I have just one moment, your Honor?

Q. If you could turn to page 24, if you would, ma'am, of the questionnaire, you were asked your opinion about mental health professionals who testified in court. And you said you find that both sides of an argument will find someone who will support them. Can you tell me what you were thinking then?

A. I think I was feeling a little facetious when I wrote this, but no. I do feel that both the defense and the prosecution can find anybody they want, and they will probably be licensed and probably believe wholeheartedly what they say. But you will find someone who will either say he did it because of this, and the opposing team will have someone who will say, no. He did it because of that.

Q. And do you think you would be able to look to the credence of those different people and what they are saying and the reasons they are giving for them, and try to make a judgment between them, or would you just say both of them are out of the game?

A. No. They are not out of the game. I would listen to both. I imagine it would come down to who is more believable. I would bet that your credentials are going to be high on both sides.

Q. So you would expect to see good credentials on both sides, and you would really have to see what their opinion was and how well it was supported?

A. Right.

Q. And you don't have any difficulty about doing that?

A. No.

MR. DENVIR: Thank you.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon. My name is Stephen Freccero. I'm one of the prosecutors in this case.

And do you still have your questionnaire in front of you?

A. Yes. I do.

Q. Okay. I'm just going to follow up on some of the questions that have already been asked of you. If you could look at page 28, question 108, and in that case the question was, "Where one person intentionally kills another person," then there is different statements that you can check. You checked the box that said the death penalty may or may not be justified, depending on the circumstances of the case.

Can you tell us, were you thinking about any particular circumstances at the time you checked that box?

A. No. But there is many reasons that people are killed, some for better reasons than others, and it would depend on the reason or what happened. I mean, if you are fighting for your life, if someone is attacking your child, if you are robbing a store, those are different reasons.

Q. Okay. If you could turn back to the previous page, on page 27, again there is another series of checklists there. The one on the very bottom of the page where it says, "A person's background does not matter when it comes to whether or not he should be sentenced to death for a murder," you checked the box that said, "Strongly agree".

Can you give us some sense of what you were thinking about by the term background? What did that mean to you when you checked that out?

A. I don't have a particular case, but I get so frustrated when someone – what I've read recently about the armed robbery – or the armored truck guy who killed his partner, and all of a sudden the first thing I read is he has attention deficit disorder, hyperactive. I hate that. That's just – he is 20 something years old and is an adult. There is no excuse – no excuse for killing someone and then blaming it on attention deficit disorder. I don't think so. That's just not right.

Q. The reason I'm asking you some of these questions is I take it when you were filling out this questionnaire you were putting down your personal opinions as to the subject at that time; right?

A. At the time.

Q. Fair statement. And I just want to get to one point, which is when someone is called as a juror, when they are actually selected and sworn in, they – obviously, we can't expect them to just automatically forget about every opinion they had in their life. But a juror would have to take an oath that as to the law that governed the proceedings they would agree to follow the judge's instructions. So that even if the person who is sworn as a juror disagrees with a particular principle of law, by taking an oath to be a juror, that's their commitment that for this proceeding they will put that aside and follow the law as given to them.

Do you think any of the opinions you have on the subject, for instance, the death penalty, do you have an opinion when you think it might or might not be justified, or what factors should or should not be considered important? Do you think you're the

type of person who could put those opinions aside and wait to hear what the judge's instructions were in terms of what you would actually have to consider?

A. Oh, absolutely.

Q. Okay. So if the judge were to instruct you that you need to consider any background information about the person who committed the crime, that you need to fairly and honestly evaluate that, and you yourself might be a little hesitant to do so, you might be skeptical of that, nonetheless the judge has told you that the law requires that you consider those honestly, do you feel confident you would be able to do that?

A. Yes.

Q. Let me ask you another question. If you could turn to page 32 and look at question 121, that question asked you, "Before coming here today what were your thoughts and opinions about the defendant, Ted Kaczynski, and/or his family?" And you wrote, "Kaczynski, if responsible - mentally ill."

Can you tell us what you had in mind when you did that response?

A. I can't believe a person in their right mind would deliberately kill someone. No. That's not right. A person in their right mind could send someone – that could randomly kill anyone. A mail bomb is so haphazard. If he had a vendetta against a certain person there is better ways to attack that person.

Anybody could have been hurt and probably was. I don't know, but I am assuming there was a number of injuries along the way. It's very haphazard. It's just not a – it doesn't seem like a very thoughtful way to attack someone.

Q. Does that opinion in any way influence what you think should be the proper result of the trial in this case?

A. No.

Q. Okay. For instance, if the issue of whether or not someone were mentally ill came up during a trial you would likely get instructions from the Court as to what the legal significance was on that. In other words, the Court would tell you if under the following circumstances you find this, then, you know, that could influence your result. And all I'm trying to say is that it's not simply – you would get some guidance from the Court as to the way the law views that issue, whether or not someone is mentally ill and whether or not that has anything to do with your job as a juror. Do you think anything about your own opinion as to what makes someone, in your words, in their right mind, would prevent you from considering the judge's instructions in terms of what your job as a juror would be?

A. No. I would have to consider what the judge instructs us to do.

Q. Okay. So that even if you yourself thought the person is not in their right mind, but you listened to the judge's instructions as to what the law says, how the law defines whether or not someone can be legally held responsible, you think that you could put aside your own opinion and base your decision only on the law as given to you and the evidence presented in the courtroom?

A. Yes.

MR. FRECCERO: If I could have a moment, your Honor?

THE COURT: Yes.

MR. FRECCERO: No further questions. Thank you.

THE COURT: Okay. Take her to the other room and bring in another juror. Thank you.

(Prospective Juror No. 149 left the courtroom.)

(Prospective Juror No. 150 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 150th randomly selected juror. I'm going to show you a questionnaire.

Is that yours?

A. Yes.

Q. I did call your employer today.

A. Yes. Were they excited?

Q. Well, I'll tell you what they told me. The reason why I called is because your employer – I don't know if the individual should be referred to as your employer. Someone from your place of employment wrote a letter on your behalf seeking to have the Court excuse you from further jury service, and I wanted to ask some questions about that letter.

The parties in this case have authorized me to call employers, and I've been calling periodically pursuant to that authority. So I spoke to that individual that wrote the letter right around 7:00 this morning, and he told me that you are in a management position. And that you have special job skills and knowledge that's possessed only by two individuals in your division, and that you are very important to that company and that division. And he told me they didn't want to lose you.

I shared with that individual the schedule I plan on keeping in this case, and he told me that that schedule could possibly interfere with you ability to contact clients because apparently you have to contact clients throughout the nation.

A. I work nationwide.

Q. That's what he said. So he thought that that could cause you some problems because by the time you are available for work after you are released from jury service here, the clients that you have in the eastern portions of the nation would probably not be available for contact. And I didn't ask him this, I assume that they could be available if you made some special arrangement?

A. That, or else I would do my phone calls before I left Sacramento, and then travel an hour to get to work, and then reach my west coast clients.

Q. Okay. So then I continued to ask him questions. I wanted to know whether your employer would pay you while you are on jury service, and he didn't know the answer to that question. He asked me –

A. Yeah. We don't know either.

Q. Okay. He asked me if he could contact someone inside the company. I don't recall what he asked me, or what he said he was doing at this point, but he did make

a contact. And he called me back, and he said, I'll quote him – he probably wouldn't like that. But he said, "I'm probably shooting myself in the foot when I say this, but she will be paid for jury service." So I have told you all of that. I didn't know if you had that information.

A. No. When I left work the other day we didn't know how the length of this would affect me payroll or any other way policywise. We just don't have any policy for more than a two-week jury duty.

Q. Right. Given everything I've stated, does your place of employment interfere with your ability to be considered as a juror in this case?

A. Yes, and no.

Q. Okay.

A. I think the 1:00 afternoon time would work – I could make that work for me, but I was supposed to be giving a seminar and a four-day training session this week and again next week out of state. So my travel – my work with my distributors would be impended or infringed.

Q. Okay. I know that jury service can cause hardships, and sometimes we can make adjustments and then reduce the hardship. And sometimes we can make adjustments that really eliminate the hardship.

A. Uh-huh.

Q. Are you willing to make adjustments so that we can in fact consider you for a – as a possible juror in this case?

I'm asking you the question in part because the parties are entitled to a fair cross-section of the community from which to select prospective jurors, and if we exclude certain individuals then that could end up excluding a whole stratum of society from jury service. And that's something we don't want to do.

I think that the founders of the jury service concept assumed that we would end up with a fair cross-section, and that we would have different minds that are analyzing the facts of the case.

A. Would you repeat your question?

Q. I can understand why you can't answer the question, because I told you a lot about it before I got to the question. Are you available for jury service?

A. I would have to say yes.

Q. Did you appear at Cal Expo and fill out a juror questionnaire?

A. Yes. I did.

Q. Since that appearance have you heard of or read anything about the case?

A. In passing. I haven't made an attempt to read. There were headlines in the paper when I opened the paper up. In the morning the T.V. is on, not really listening to it, or coming in in the mornings or evenings, as far as that goes.

Q. It appears as though you have been trying to avoid coverage, and I appreciate that. Despite your efforts, have you heard anything that you can share?

A. Just that we are like in the third week of jury selection, and that Mr. Kaczynski was to be here this morning.

Q. Okay.

A. Basically all I've heard and read is just jury selection.

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

A. Yes. I've overheard, but it's – I don't think that it would reflect anything on my opinions or your presentation.

Q. What did you overhear?

A. Just that his trial was going on, whether he was the Unabomber. There was a comment at the office at one point about the brother.

Q. Where did you overhear the other comments you told me about?

A. The office.

Q. Anything else?

A. Not that I can really recall.

Q. I'm going to direct your attention to the information concerning this case that you were exposed to prior to Cal Expo. I want you to share with us as much detail as you can about that information.

A. Basically I think that what I heard and saw was mostly the TV, followed by a newspaper, The Sacramento Bee. I know that there were incidences, not solely here in California, but I'm not sure whether they were nationwide. The young man that was killed in Rancho Cordova, and then the lobbyist were the most recent things that I think I really remember about this.

Q. How about the cabin, did you receive any information about a cabin?

A. I know that – I know that they were looking and searching after Mr. Kaczynski was arrested, and I think that they moved it. But I'm not sure. There was some talk, and I had other things to do.

Q. Did you receive any information concerning any items allegedly found during the search you referenced?

A. No. I don't remember.

Q. Has the information you've received concerning this case, or at least allegations surrounding the case, resulted in your formation of an opinion or preconceived idea as to Mr. Kaczynski's guilt or innocence?

A. No. I don't believe so. I think that my thoughts were that this was a man with a mission, and since our questionnaire and the Cal Expo and being notified, I think I probably put some thoughts together. But I think this is the bottom line for me is that he had a mission.

Q. What did you think that mission was?

A. Well, the T.V. tells us that it was a media-related, technology-related, and I wondered how he thought – the Unabomber thought that he could stop it, technology.

Q. Do any of those thoughts that you've just related pertain to Mr. Kaczynski?

A. If he is the Unabomber, yes.

Q. Do you have an opinion, or do you have any suspicion as to Mr. Kaczynski's guilt or innocence of the crimes attributed to the so-called Unabomber?

A. I think I do, in all honesty.

Q. What is the opinion?

A. As to his innocence or guilt, or –

Q. Yes, Mr. Kaczynski's.

A. If he is indeed the Unabomber, then he is indeed guilty.

Q. You're indicating that there has to be a connection made that would cause you to conclude that Mr. Kaczynski is the Unabomber before you have that opinion you just stated?

A. Uh-huh. Yes.

Q. Has any of the information – I'm sorry for continuously asking you this question.

A. No. That's fine.

Q. We don't expect jurors to come into this courtroom necessarily without opinions, but we need to know what they are. And that's why I'm asking questions, and that's why they appear to be perhaps repetitious questions.

A. I understand.

Q. Has any information that you have received about the allegations surrounding the so-called Unabomber and about Mr. Kaczynski caused you to suspect that Mr. Kaczynski could be guilty of those crimes that were attributed to the Unabomber?

A. Yes.

Q. Your answer is yes?

A. Yes.

Q. And what opinion is that? What is your opinion of that?

A. I think that Mr. Kaczynski is the Unabomber from the information that I have received via media, and the Unabomber is the one who is doing the bombs through the mail.

Q. How strongly are you committed to that opinion?

A. I really don't know how to answer that. I think that it's fairly strong with the information I have.

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

A. I think I would have to.

Q. Based on how you know yourself and your own belief system, do you have the capacity to do that?

A. Yes.

Q. Do I have your assurance that if you are selected as a juror in this case that you will in fact set aside whatever information you received about this case, and you will allow Mr. Kaczynski to start this trial on a clean slate?

A. To my best ability – I don't know.

Q. Explain your response.

A. I would always hope that I could be nonjudgmental until I have all of the facts and then make a judgment or make a decision. I used, "judgment", and I'm not

comfortable with that word, but then I would make the decision. Most everything and almost everything I do is with facts. I research. I look. I listen and then make a decision.

Q. We can only make a decision as to whether a prospective juror can be fair and impartial based upon our observations of the juror, our evaluations of the juror's responses. But I need to know, based upon what you know about yourself, whether you would be able to do whatever you would personally have to do to assure Mr. Kaczynski that he would start this trial on a clean slate.

And what I mean by that is that he wouldn't have to be concerned about trying to defend himself against allegations that surround the case in the media, and I'm calling those allegations because those things haven't been proved here in this courtroom. He would want to – if he chooses to defend himself, to defend himself right here in this courtroom based upon the evidence that the Government presents and to challenge that evidence.

Is there anything about what you know about yourself that would interfere with your ability to provide him that guarantee, that he doesn't have to be concerned about you coming into this courtroom and having on your mind allegations and other things that you heard outside the courtroom, that you would allow him to start with a clean slate based upon the evidence that is ultimately presented here in the courtroom?

A. I would hope so. Because that's what you're asking me to do.

Q. I want you to do what you can do.

A. That's what I will.

Q. That's all I'm asking you to do, and I do appreciate your responses. Because I can tell by the way that you're responding that you're thinking about your answers, and we absolutely want honest answers. And I think you are doing that, but when you say, "I hope so," that's not categorical.

What would you have to do in order to be able to provide a more sure response, if you can? Maybe you can't, and that's okay. That's understandable. But if – I want to know if you can provide a more sure response.

A. Under normal circumstances and normal situations I could, and I think I can now. And maybe that's not – doesn't give you the clarity, but I have never been in this kind of a situation. And so that's why I said I would hope that I could clear my mind, and I think I would and could and go forward.

Q. And I know you haven't been in this situation before, and that's one reason why I do ask about your answers. Because I am assuming that I have placed you in a predicament that you haven't experienced before, and some of these things you have to think about; and that's okay. There is nothing wrong with that.

A. Okay.

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

A. Repeat.

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

A. Yes.

Q. What does that mean to you?

A. Well, we have that right. I think the Constitution gives us that right, or somewhere along the history, and in the judicial system we are presumed innocent.

Q. Under our legal system a defendant must be presumed innocent unless and until, if it should occur, the Government proves the defendant's guilt beyond a reasonable doubt.

A. Yes, sir.

Q. And if the Government fails to meet that burden you must enter a not guilty verdict in favor of the defendant.

A. Uh-huh. That's what I understand.

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 am in favor of the death penalty.

Q. Have you been asked to articulate your views on the death penalty before?

A. I anticipated your question. I guess it goes way back. I have not really even thought about it until Robert Kennedy. I think that the people who commit crimes and have been proven to have committed them, and that they are to such an extent that they have taken a life or impaired a life, they should also be punished. Death would put an end to that. It wouldn't bring anybody back, and it wouldn't fix all the harm. But it would put an end to it.

When the Kennedy assassinations were happening and Martin Luther King and all that, I was in college, and I just felt that justice wasn't done. I've had to put myself through school, to house myself, to feed myself, and to dress myself, and I don't think that someone that has committed a crime should be given that for the rest of their lives, his or her, and I'm out there working for it.

Q. Assume a hypothetical with me. Assume that you were in fact selected to be on the jury, and that during the guilt or not guilty phase of the trial the jury, after carefully considering all the evidence, found, to Mr. Kaczynski's disappointment, that he was guilty of the offense of deliberate, intentional, premeditated and cold-blooded murder of another human being.

After making that finding in the guilt and not guilty phase of the trial and then moving into the sentencing phase of the trial, would you still be able to consider voting for a sentence less than death?

A. If we as a jury said guilty I would be for the death penalty.

Q. Can you explain your response?

A. Again, there needs to be an end, and by imprisoning him for the rest of his life without parole and numerous appeals for years, it just wouldn't end. And I don't see

that as justice. The person who was shot or killed or maimed or harmed did not ask to be harmed or killed, and they have no – not had any time to decide this.

Q. Assuming the same facts that I've just related, if this case reaches the sentencing phase, would you automatically vote to select the death penalty no matter what mitigating evidence is presented?

A. No. It would be strong, and it would be a priority. But if there was something else that I don't know now that I should know later, but it would have to be very strong.

Q. Okay. Thank you.

The parties may conduct examination.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Thank you. Good afternoon, ma'am. My name is Robert Cleary. I'm one of the prosecutors in this case.

Let me give you a copy – this may be a little difficult for you. Are you going to be able to turn that around to look at the pages?

A. Yes.

Q. Let me ask you some follow-up questions about what the judge was asking you and also some follow-up questions to your questionnaire.

Let me start first with your job situation. Now that you know, as the judge told you, that you are going to be paid while you would be serving on the jury, and I think you said you would be able to make some of your calls, I guess your East Coast calls early in the morning; correct?

Would you be able to assure us that because of those arrangements, the fact that we are only sitting from 8:00 to

1:00 and the fact that you are going to get paid, that you can concentrate and pay attention to what's going on in the courtroom during the course of the day?

A. I think as much as possible.

Q. And you've sat on a jury once before; correct?

A. Yes.

Q. So you know how the system works. You are going to be sitting, listening quite intently to the evidence as it develops during the course of the day, and you would be confident that you would be able to do that. Correct?

A. I don't know, but I would try.

Q. Would you give it your best shot?

A. You've got it.

Q. Were you working when you served on the other jury?

A. Yes.

Q. Was there anything that prevented you from giving your attention to the type of evidence that was presented in that case?

A. You just have to be balancing that.

Q. And were you able to do it in that case?

A. My job suffered, yes. I let my job go.

Q. Okay. What I'm asking you about is your ability to concentrate in the courtroom. Did you find in that other case you were able to concentrate in the courtroom to the evidence that was presented?

A. Yes, but we were only in there for about three half-day sessions.

Q. And here there would be five half-day sessions.

Let me talk to you a little bit about some of the publicity that you discussed with Judge Burrell. I think you said earlier that if Mr. Kaczynski is found to be the Unabomber then in your view he would be guilty; correct?

A. With what we have been – with what I have, yes, available.

Q. When you said that – I'm sorry. Did I cut you off?

A. No.

Q. When you said that, when you use the term Unabomber, do you mean somebody that has mailed bombs to people intentionally with the goal of killing or injuring them?

A. Yes.

Q. Okay. So if this defendant or anyone else was found to be the Unabomber, almost by definition they would be guilty; correct?

A. No.

Q. Are there people who, if they were found to be the Unabomber, you would think were not guilty?

A. No.

Q. Do you see what I'm getting at?

A. Yes. I think that the Unabomber has done the crimes as we have heard on T.V.

Q. And the question is then whether this defendant is the Unabomber; correct?

A. Yes.

Q. And that's what this trial is going to be about. You understand that; correct?

A. Yes.

Q. And you recognize that, I assume, to the extent you have information about this defendant, that that's information that you got from the media; correct?

A. Yes.

Q. And I believe you told us that on page 32. If you want to take a look at it, page 32, question 120, you told us that this defendant, Mr. Kaczynski, could possibly be the Unabomber, and that the media is not a reliable source to make this decision; correct?

A. Correct.

Q. Is that still your view, that the media is not a reliable source to make this decision?

A. Yes.

Q. And the source of all your information, I take it, is the media?

A. Thus far.

Q. And I take it that you recognize, based on what you've said, that media accounts are not always correct?

A. True.

Q. Based on the prior jury service that you had you are aware; are you not, that the very basis of the American justice system is that jurors from all different walks of life come together in a courtroom with different experiences and listen to and evaluate the evidence and only the evidence that they hear in the courtroom; correct?

A. Yes.

Q. And what that evidence is will be what Judge Burrell allows to be admitted solely in the courtroom; correct?

A. Right.

Q. And you can appreciate; can you not, that that's really the only fair way to conduct a trial; is that right?

A. Yes.

Q. Can you also appreciate that it would be unfair to the parties, the defendant and the Government, and unfair to the system, for different jurors to come in relying on different information that each of them heard outside the courtroom?

A. Okay.

Q. Do you agree with that proposition?

A. Start over again.

Q. That it would be unfair to the parties involved in the case, the defendant and the Government, for different jurors to come into the courtroom who have heard different things outside the courtroom – each juror has heard different information one from the other, and it would be unfair to decide the case based on what those jurors heard outside the courtroom as opposed to the evidence that the judge finds admissible in the courtroom?

A. Yes, sir.

Q. And what you are going to be asked to do, and again, I'm sure you know this from your prior jury service, is a fairly straightforward exercise. You are going to be asked to listen to the evidence that's presented here in the courtroom, and considering only that evidence, based solely on that evidence, determine whether this defendant is guilty of the charged crimes.

A. Yes, sir.

Q. Can you assure us that you will be able to do that, evaluate the evidence presented in the case and decide, based solely on that evidence, whether the Government has proven that this defendant is guilty of the crimes he was charged with?

A. I think I could. Not having been in this situation before, but –

Q. You believe you could do that?

A. To the best of my ability, yes.

Q. Now, you are aware again, I'm sure, from your prior jury service that the burden of proving a case, a criminal case is on the Government; right?

A. Yes.

Q. The defendant never has to prove anything in the case.

A. Yes.

Q. If the Government presented evidence to you, but did not prove beyond a reasonable doubt the parts of the crimes we have to prove, what we call elements of the crimes, each of the various elements that Judge Burrell would list for you, would you be able to return – because we have not met our burden of proof, return a not guilty verdict?

A. It would be very difficult.

Q. Why do you say that?

A. Because I would hope by the time that we have gotten to court that the Government would have a case strong enough to do this. We have had 19 years of this.

Q. But what if the Government did not have a case that was strong enough to prove the various parts of each of the crimes, would you be able to return – let me back up a little bit. Because Judge Burrell will tell you that if the Government does not prove each element of the charged crimes you will have to return a not guilty verdict on that charged crime. If the Government, therefore, did not fulfill its burden, did not prove beyond a reasonable doubt the required elements, would you follow Judge Burrell's instructions and return a not guilty verdict on that crime?

A. According to his instructions, yes.

Q. Would you follow the judge's instructions in that regard?

A. Yes. It's my responsibility, and I accept my responsibility.

Q. And do you feel confident that you could follow through on that responsibility?

A. I wouldn't like it.

Q. But could you do it?

A. And I – I would just hope that your department, or the Government, or however we should address you, would have all the elements.

Q. Okay. I don't want to belabor the point, but this is an important concept. I understand your view that you would hope that a prosecuting authority would prosecute the Unabomber, whoever is responsible for a string of bombings that have been investigated for a number of years. And I'm asking you a different question though, and that is, in this case sitting as a juror in this jury box in which evidence will be presented to you in this courtroom, and Judge Burrell will tell you that if the Government in this case – if the Government does not fulfill its burden of proof, if it does not meet the – prove the charges it needs to prove, Judge Burrell will tell you that you will have to, in this case, return a not guilty verdict to that charge.

My question is, leaving aside what you hope about the Unabomber in this case, if Judge Burrell gave you that instruction, and you found that the Government did not prove its case, would you follow Judge Burrell's instruction and return a not guilty verdict?

A. My responsibility would be that I would have to.

Q. Can you follow through on that responsibility?

A. That I don't know.

Q. Are you telling us – let me come at it from the other side. Are you telling us that you may – you may be sitting in judgment in this case, and you may find that

the Government has not proven that Mr. Kaczynski committed a crime. And yet you would still return a guilty verdict on that crime?

A. That doesn't sound fair; does it? No, not in your last question.

Q. You're confident you would not do that; is that right?

A. Too many negatives. I don't know. I just don't know. I wish – I think that my – I think that I would resent the judge's rulings and directions, and go from there.

Q. When you say you don't know – and again, I apologize for belaboring the point. But when you say you don't know, does that mean it is possible that in this case you would conclude – you yourself would conclude that Mr. Kaczynski did not commit the charged crimes, yet you would return a guilty verdict against him?

A. No, sir.

Q. That's what you would not do; is that right?

A. Maybe if you started with a more positive instead of all these double negatives.

Q. Let me go from the positive side then. The Government's burden is to prove each of the parts of the crimes. Judge Burrell is going to tell you that if the Government does not satisfy its burden and does not prove each part, the required part of the charged crimes, that you must return a not guilty verdict.

And the question I'm putting to you is, let's assume you were sitting in judgment in this case. The Government put its case on and did not prove to your satisfaction, to the legal satisfaction the judge instructs you on, did not prove an important, a critical, a necessary element of one of the crimes. Would you nonetheless, as to that crime, return a guilty verdict?

A. No.

Q. If you sat in judgment and you found that the Government did not prove the crime, you would be following the judge's instructions when you returned a not guilty verdict; correct?

A. By definition.

Q. Do you feel confident that you could follow the judge's instructions in that regard?

A. I think I would. Not that I could, but I think I would.

Q. There is a difference between those two, between the "could" and the "would"?

A. I would do as I have been directed to do.

Q. By Judge Burrell?

A. By Judge Burrell.

Q. In terms of requiring the Government to satisfy its burden of proof, is that what you mean?

A. Yes.

Q. And if the Government did not satisfy its burden of proof, you would follow Judge Burrell's instructions in returning the not guilty verdict?

A. I think I would have to.

Q. And you would be able to do that?

A. I don't know. It would be very difficult, as I have said before.

Q. And this is the part I'm having trouble following. If the Government doesn't meet its burden of proof that would mean the Government has not proved to you that this defendant, Mr. Kaczynski, committed the crime. What would be difficult under those circumstances about returning a not guilty verdict?

A. Because there is some questions in my mind that he has perhaps done these things.

Q. And that question in your mind comes solely from the media; correct?

A. Yes.

Q. And a little while ago you told us, and in your questionnaire you told us, that the media sources, in your view, are not a reliable basis upon which to make the guilt or not guilty decision.

A. Let's back up for a moment. The information that is discussed in this courtroom will be the substance upon which a decision will be made?

Q. Solely the evidence presented in the courtroom, correct.

A. And what –

Q. And I guess this gets us back to what we were talking about. If, based solely on that evidence – let me back up a little bit.

Could you decide the case based solely on the evidence that's presented here in the courtroom?

A. Yes.

Q. And that you feel confident you could do?

A. Yes.

Q. If the evidence presented here in this courtroom is not sufficient to prove to you under the law, as the judge gives it to you, that the defendant committed the charged crimes – are you with me so far?

A. I'm not sure.

Q. Okay. Let me try it again. You said that you would decide this case, and you feel confident you could decide this case solely on the evidence presented here in the courtroom; correct?

A. Yes.

Q. And Judge Burrell is going to instruct you that the Government has the burden of proving – based solely on the evidence presented here in this courtroom, the Government has the burden of proving each element or each part of the charged crimes. And if the Government does not prove each of those parts to you, the judge will tell you that you have to return a not guilty verdict as to the crime that the Government didn't prove the necessary elements of.

Do you understand that?

A. Yes.

Q. And my question is, if that's the way things play out, Judge Burrell instructs you that under those circumstances you have to return a not guilty verdict, and the Government does not prove an element of one of the crimes, would you be able to return a not guilty verdict as to that crime?

A. Is this one element that hasn't been proven going to determine the whole thing, the whole picture?

Q. Well, the judge will instruct you to evaluate – I believe, instruct you to evaluate each crime separately. So for each crime, and there is 10 charged crimes in this case, there are certain elements, certain parts. And the judge, I believe, will tell you that as to each of those parts of each of the crimes you have to consider them separately.

So you could return a not guilty verdict on some counts and not on others. You could return a guilty verdict on all counts. You could return a not guilty verdict on all counts, but you would have to assess the facts that go towards each separate crime against the law as the judge gives it to you for that crime.

A. Okay.

Q. Okay. And my question again is, if the Government does not prove one of the elements of one of the crimes, and the judge tells you because the Government hasn't met its burden you have to return a not guilty verdict on that crime, would you do so? Would you follow the judge's instructions and return the not guilty verdict?

A. Yes.

Q. If the Government similarly did not prove the elements of all of the crimes, all 10 crimes, and therefore Judge Burrell, in essence, would tell you you have to return a not guilty verdict to all 10 crimes, could you follow the judge's instructions and return that not guilty verdict to all 10 crimes?

A. I would think that I would have to.

Q. And do you feel that you would do that?

A. Yes.

Q. Let me move on to your views about the death penalty. Would you agree with me that there are different types of murder, some more aggravated or worse than others?

A. No, sir.

Q. You think all murder is the same?

A. Yes, sir.

Q. In your view then is the – would a brutal, protracted murder of a child – and by protracted I mean it began with torture, and then the child was murdered. Is that just as bad as a woman who is the product or subject of marital abuse who one night lashes out and kills her husband?

Are those two homicides, those two murders, of equal gravity in your mind?

A. The latter is self-defense. The former is murder.

Q. And is it your view that as to the marital abuse situation, that that would not be a crime?

A. It would be a crime that it occurred, the abuse.

Q. Not the murder, not the homicide, not the killing?

A. The self-defense, no.

Q. I'll change the facts of that situation slightly, that the woman is still subject to marital abuse, but the marital abuse has stopped. She has not been beaten in a

considerable period of time, but is just fed up, for lack of a better word, with her husband and comes home one night and kills her husband.

Is that murder, in your view, as aggravated or less aggravated than the torture and murder of the child?

A. If I understand the term aggravated, yes. She has – this was an aggravation in the marital abuse.

Q. Okay. My question is as between those two killings, the torture and killing of the child, and the wife coming home and maybe in a fit of emotion killing her husband, do you view the murder of the child as worse than the murder of the husband?

A. I don't know. I would see how she could do it. It would be murder, both situations, but I still can't help but feel that with the marital situation that they are both adults.

Q. Marital situation what?

A. They are both adults.

Q. Uh-hum.

A. And I think that – no. I still see the self-defense.

Q. What about if the wife came home and found her husband cheating on her and in a fit of rage killed the husband, not self-defense at all, just a fit of rage?

A. Then they are both murder.

MS. CLARKE: It seems like we're talking about a manslaughter situation rather than murder. I would object.

THE COURT: Is this asked and answered?

Q. BY MR. CLEARY: You said that would be murder; is that correct?

A. Yes.

Q. And my question is as to the torture murder of the child, do you distinguish between them as one being worse than the other?

A. No, sir.

Q. How about different types of defendants, do you think that there are different type of defendants that are murder defendants for which one is worse than the other?

A. No.

Q. Would you distinguish between a defendant on the one hand who committed a murder, but had committed a series of murders previously – would you distinguish that person, that defendant, from someone who has spent a lifetime of doing good, a Mother Theresa sort who all of a sudden one day snapped and committed a murder and had done nothing else wrong in his or her life previously?

Do you distinguish between those two defendants?

A. Perhaps Mother Theresa was a poor example, but they would be both murderers.

Q. And in terms of the type of punishment that should be meted out, in your view, should they each get the same punishment?

A. Yes, sir.

Q. Now, I've been talking to you at some length, and I'm going to try to move through this and get out of your hair quickly. We have been talking to you at some length about your own personal views about the death penalty. I want to switch focus

now and ask you about your ability to follow the judge's instructions in terms of deciding the death penalty in this case.

The way it will work is you will sit in judgment first on the question of guilt or not guilty. And assuming you found the defendant in this case guilty of certain of the crimes, we'll then have a second phase, which I believe the judge called the penalty or the sentencing phase. You will then be presented at that point, at the penalty or sentencing phase, with aggravating evidence on the Government's part.

It might have nothing to do with this case. It might be in a certain case that the person who was murdered was tortured first. There will be aggravating circumstances of the murder that the Government would point to and say, this is why we are going to ask you to impose the sentence of death.

The defendant at that second phase, the penalty phase, could, if he chose to – doesn't have to, but could present what we call mitigating evidence. Evidence such that the defendant could argue the fact that there should be a life sentence and not a death sentence. At that point Judge Burrell will give you some instructions as to the appropriate – the way to evaluate aggravating and mitigating circumstances. He may instruct you as to what mitigating circumstances are and that you should consider them in deciding whether in this case there should be a death sentence or a life sentence.

So do you understand how that process works?

A. Yes, sir.

Q. And my question to you is, when you get to that point will you be able to follow the judge's instructions on the law and fairly consider all of the mitigating circumstances that might be presented to you in determining what the appropriate sentence is?

A. Yes.

Q. Do you feel confident you can do that?

A. Here and now, yes.

Q. And if the judge's instructions on the law disagreed with your own personal view, would you be able to follow the judge's instructions?

A. No.

Q. You would not be able to set aside your own views and follow the judge's instructions on the law?

A. Judge Burrell will probably tell us and explain to us the circumstances for each of the penalties; right?

Q. I believe so. Right.

A. Right. So according to that I would have to respect his instructions, probably not being entirely comfortable with them.

Q. And not being entirely comfortable with them – the judge's instructions, but still follow them?

A. Of course.

MR. CLEARY: May I have one minute, your Honor?

THE COURT: Yes.

PROSPECTIVE JUROR NO. 150: Your Honor, may I have a moment?

THE COURT: Do you want a break?

PROSPECTIVE JUROR NO. 150: No. I need to ask you a question.

THE COURT: You want to ask it in public?

PROSPECTIVE JUROR NO. 150: I don't think so.

THE COURT: Do you want to ask it in private?

PROSPECTIVE JUROR NO. 150: Yes, please.

THE COURT: Okay. We'll move over here.

(Whereupon there was a side bar discussion that was reported but not transcribed.)

THE COURT: Okay. Thank you.

Court is in recess until 3:45.

(Whereupon the mid-afternoon recess was taken.)

THE COURT: Let the record reflect all participants are present.

MR. CLEARY: I've finished my questioning, Your Honor. Thank you.

THE COURT: Okay. Thank you.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions, too, if I can.

You understand you are on the hot seat here a little bit. No one means to put you there, but we do need to ask you a number of questions just to see what your opinions are, your feelings, and just to assess whether this is a good case for you to sit on as a juror.

So this is just part of what we have to do, I guess.

A. Okay.

Q. Let me ask you a few things.

First of all, about your job, I just want to make sure – I know you said you thought you could accommodate your hours on this Monday to Friday going from 8:00 till 1:00, reporting at 7:00 o'clock and probably being released at 1:30 or 2:00. And you feel you can accommodate that pretty well?

A. Yes. 2:00 o'clock might be pressing it.

But I also have to tell you that I have a 37-year history of diabetes, and I may need to eat before

2:00 o'clock.

Q. I was going to ask you that, because I noticed – do you have your questionnaire there?

A. Yes.

Q. You were asked the question 133, and then you answered "no" and then put on something after that. And I didn't know –

A. I don't feel myself handicapped, and that's what the question was – do you feel handicapped in the medical condition? And no, I don't feel handicapped, but I do have limitations or –

Q. Right. Is that something – the way the judge is planning to have the trial, as I say, is it would go from

8:00 o'clock to 1:00 o'clock with, I think, two breaks in the middle of 15 minutes each, somewhere – whatever, a third of the way in and two thirds of the way in. And you'd have to report at 7:00 o'clock to be brought into the courtroom and you'd be released at 1:00, taken back to that place and be free to go either back to work or make your phone calls.

And the thought is that the trial could start somewhere maybe in the middle of December and could run anywhere two, three, or four months.

And I guess – let me start first with, as far as the diabetic condition. Is that a schedule that you can live with? I mean, that . . .

A. Again, it's oftentimes in combination. I've learned to live with it. I know what my limitations are. I know what I need to do and there are my responsibilities – if I take care of myself, I'm up and moving.

Q. No, I guess I – I used a very bad word. Is that schedule such that it accommodates your condition, this being in court from 8:00 to 1:00 and then not out until maybe 1:30 or 2:00?

A. I'm concerned about it.

Q. Do you think that that would be something that might make it hard for you to concentrate on the evidence in the case and just keep focus on the case alone, being concerned about the medical condition?

A. It's always a concern.

Q. Is it affected at all by stress or something like that?

A. Yes.

Q. You had said that you had a couple of out-of-state training, I guess, this month – do you expect that type – would you have to do that type of work, say, in January, February, March? Is that part of your job?

A. That's part of my job. I travel 60 to 75,000 miles a year.

Q. And could you accommodate that kind of travel? Could you fit that into the schedule we're talking about five days a week from 8:00 to 1:00?

A. I'm usually – with the breaks that you're mentioning now, that helps a little bit, clarifies it, but – I've lived with the diabetes long enough so I know where my strengths and my weaknesses are, and my limitations. And I take my medicine and food accordingly.

Q. And you'd be able to do that on that schedule, you think?

A. It – I . . . 2:00 – anytime after 1:00 o'clock is stretching it for me.

I would have to have a snack at 10:00 o'clock or sometime between 10:00 – especially breakfast being at 6:00, here at 7:00, court at 8:00 – that's –

Q. Released at 1:00 from court?

A. I would have to eat in between, during the breaks.

Q. Well, you have to tell us, ma'am – we're not asking you to do something you can't do. I mean, obviously you understand it's a civic duty to serve if you can. And

I think we're all looking for you to give us advice in a number of areas as to whether this is something you can do, given this particular kind of trial, the length of it, the schedule we're using, the death penalty involvement, the publicity – all those questions are ones I'm going to go over with you.

And I think this you need to tell us whether this is a case that you can serve on. I mean, between the work, your work demands and the diabetic condition, is that something that you feel is okay with that?

A. I think I'd lose it. I've been thinking about this question, because I knew it would come up. And knowing myself as I do, it would be a real stretch for me to do this.

(Discussion off the record among the Government's attorneys.)

MR. CLEARY: Do you want to stipulate?

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

MR. CLEARY: Your Honor, we'd stipulate that she can be excused.

THE COURT: Okay.

MR. DENVIR: Thank you, ma'am.

THE COURT: We have a stipulation you can be excused. Thank you for participating in the process.

(Prospective juror no. 150 left the courtroom.)

THE COURT: That's the last juror for today.

Anything to cover, from your perspectives, before I consider adjourning?

MR. CLEARY: Nothing from the Government, Your Honor.

MR. DENVIR: Nothing, Your Honor.

THE COURT: Okay. I want to discuss a matter. Tell me if you're not prepared to discuss this matter.

This matter concerns the transcripts of sidebar conferences. I asked the parties whether they wanted the opportunity to brief the issue. The defense has briefed the issue. I have reviewed the defense's brief. I haven't completed my analysis of all of the authorities cited in the defense's brief, but there's a statement in the brief which seems to summarize what I discern to be the defense's position, and I want to assure myself that this is the defense's position.

The statement is as follows: "Mr. Kaczynski does not seek permanent sealing of the sidebar conference transcripts. He only seeks withholding release of such transcripts until the conclusion of trial proceedings in order to preserve his right to a fair trial and to render impermissible evidence unavailable to the jurors and to prevent interference with the privacy of prospective and chosen jurors."

That appears to state Mr. Kaczynski's position in a nutshell.

MR. DENVIR: I think that's correct, Your Honor.

THE COURT: Okay.

In a previous order, I stated a very technical view when – not dealing with sidebar conferences, but dealing with chamber conferences. I think the two issues are one and the same. I assume the parties agree with me.

MR. DENVIR: Yes, Your Honor.

What I'm wondering is whether there's any strong opposition to the Court's reviewing sidebar conferences in connection with the proceeding we're now in and deciding whether those conferences should be released immediately.

I can understand why the parties would perhaps take a different approach if we were talking about sidebar conferences occurring during trial, because there are a number of things that can be discussed at that time. As far as the sidebar conferences taking place during this voir dire session, there's only one that may involve discussions – and I don't know even if that's the situation, but I think there's only one that may involve discussions of subject matters that we wouldn't want necessarily to be released. But I don't know that. But my inclination is to review the sidebar conferences, perhaps exclude those matters the parties obviously never intended to be made public – although I don't think there are such discussions involved with the sidebar conferences we're now relating, I mean, I'm now referencing, and then to release them to the public.

MR. DENVIR: I think that's fine, Your Honor.

MR. LAPHAM: Yes, Your Honor.

MR. DENVIR: I think there was one sidebar conference that we didn't expect to be made public. I didn't expect it.

THE COURT: Is that one where you said something about one of my rulings? I mean, not my rulings but my questioning?

MR. DENVIR: I didn't expect it. But, well, that's your call.

THE COURT: Well, but you did. You ultimately expected that to be made public, because you were going to take it to the Ninth Circuit. So –

MS. CLARKE: Did he say that?

THE COURT: Well, I assumed that's the way he was talking to me, the way he expressed himself. But I think that would have to be released too.

Okay. Let's look at bench conferences. Although your research was focused on sidebar conferences – that's all I asked you to look at, but I'm wondering if the view that I just summarized, as far as the defense's position is concerned, is the same view you have in regard to chambers conferences that occurred before the trial began.

(Discussion off the record among the defense attorneys.)

(Discussion off the record among the Government's attorneys.)

MR. DENVIR: Your Honor, I think as to those chambers conferences that occurred before the trial began, if the Court reviewed them and felt they should be released, we would have no problem with that.

MR. LAPHAM: Your Honor, we agree.

THE COURT: Thank you. I will review all of the referenced conferences and make a decision then as to whether they should be released.

Thank you.

MR. DENVIR: Thank you, Your Honor.

MS. CLARKE: Thank you, Your Honor.

(Time noted: 4:00 o'clock 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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REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 11, pp. 1966-2162
MONDAY, DECEMBER 1, 1997

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