

# Jury Selection Day 12

Dec. 2, 1997

SACRAMENTO, CALIFORNIA  
TUESDAY, DECEMBER 2ND, 1997 - 9:00 A.M.

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**THE CLERK:** You may remain seated.

Court is again in session.

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

Are you ready to proceed?

**MS. CLARKE:** Yes, Your Honor.

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

**THE COURT:** Just a moment.

I spoke to Juror 151's employer through the president of the company yesterday, and I received the following information:

He said that the juror holds a critical engineering position which is vital to the company's operations. I asked whether – You know, the juror stays a considerable distance from the courthouse and would have to commute if the juror did not stay in Sacramento over night, approximately four hours a day, 2:00 in the morning and 2:00 in the afternoon, and the president indicated that even if the juror commuted, the juror would not be able to work that many hours because of the functions of the juror.

The juror is a management-type of an individual. The company will only pay for five days of juror service; therefore, if you still want to keep this juror, you will have to conduct the examination on hardship. Because based on the information I have received, it appears that the juror's hardship claim should be sustained.

**MR. DENVIR:** We would stipulate to excuse the juror for cause.

**MR. LAPHAM:** Your Honor, we'll stipulate.

**THE COURT:** Okay.

I think since the juror has traveled this distance, I will explain to the juror the situation, why we didn't make the determination earlier so that the juror understands how the system works.

Juror 153, I'm concerned about the juror's response to question 120 on page 32. It causes me to question whether the juror will be fair and impartial.

**MR. CLEARY:** Does the Court want to know if we would be willing to stipulate as to this juror, Your Honor?

**THE COURT:** I do want your views on it because that response is troubling.

**MR. CLEARY:** Right. And I understand that.

I think we would like to voir dire the juror just to find out the basis for that statement. And some of the other related statements in the questionnaire, I think we would like to question her about.

**THE COURT:** Okay.

**MR. CLEARY:** Thank you.

**MR. DENVIR:** Your Honor, the other thing the Government might want to look at is this juror has said she's the sole support, and the juror's fees and mileage would not pay her bills.

I think we would stipulate to excuse her for both reasons. She seems to have a hardship. She also has an \$850 ticket she has for a trip to visit her daughter over Christmas. So she doesn't seem a very good candidate.

**THE COURT:** I think the inquiry will probably begin with its focus on that hardship claim.

All right.

(Whereupon, the prospective jurors were brought in and seated in the jury box.)

**THE COURT:** Thank you for joining us.

My deputy clerk will administer the oath to you at this time.

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

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

The person who just administer the oath to you is Shani Furstenau. She's my courtroom deputy clerk. Right next to her on the same platform is a certified shorthand reporter who will assist the Court in administering this trial.

I trust you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and your anticipated cooperation. You are performing an important function in our justice system.

Under the principles of our constitutional democracy, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as yourselves making themselves available for jury service. The voir dire or questioning process is an essential way of ensuring that such a jury is obtained.

Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will involve questioning prospective jurors individually which will commence after I question you as a group. After a number of jurors are questioned in this manner, some prospective jurors will be assembled later for further questioning as a group.

Those required to participate in that group process will receive notice as to when it will occur.

Our objective is to obtain a fair and impartial jury that will decide this case based on the evidence that is presented to them in this courtroom and the law that I give them during the trial.

I have decided to do individual voir dire, in part, because the parties have requested it, and because there has been some pretrial and trial publicity about this case.

During the individual voir dire, we will cover the publicity area and other matters that tell us whether you should sit 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 that causes you 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 this trial, which will be referenced as the guilty or not guilty phase, will occur like any other 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 the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty.

We may ask questions in additional areas too. During this questioning, we will refer to you by your randomly selected number as a juror rather than your name.

This is because I have decided to use an anonymous jury in this case in order to protect jury privacy, as I've 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, about anyone who has anything to do with it, until after you have been excused from jury service on this case.

Second, do not talk with anyone else about this case, about anyone who has anything to do with it, until the trial has ended or you have been excused as jurors.

Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports 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 in this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m., Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse.

Please raise your hand if this poses a problem.

There is no response.

I contemplate observing the holiday season as follows: We will not hold court December 24, 25, nor the 26th, nor on January 1 or 2.

I contemplate holding court December 22, 23, 29, the 30th and the 31st.

Please raise your hand if this poses a problem.

**PROSPECTIVE JUROR NO. 153:** (Raises hand.)

**THE COURT:** The record will reflect that Juror 153 raised her hand with regard to the holiday schedule.

We will cover that later on. Okay.

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 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 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 the law or not.

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

There is no response.

During the individual questioning, if you conclude that any question unduly pries into your private affairs, and you therefore wish to discuss it privately, let me know of that request.

While I'm authorized under the law to protect your legitimate privacy interests, I may ask some questions in the area you have indicated 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 we 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.

A few of you have indicated that hardship reasons should excuse you from jury service on the case. I want to explain why you are here now despite what you have indicated.

I have an obligation under the law to evaluate a juror's claim of hardship. And I have to balance that claim of hardship against other constitutional principles.

The parties are entitled to a fair cross section of the community from which to select prospective jurors. And I have to do what I can to ensure that they, in fact, receive that cross section.

If I automatically exclude jurors because of what a juror views as a hardship, then I could, in theory, exclude a whole stratum of society from consideration for jury service.

You may not know this, but even United States District judges can be called for jury service over in the state system. At this point Congress has not elected to exclude us from consideration for jury service over in the state system. So I have personally filled out jury applications and explained my plight as a United States District judge

in hope that I did not have to go over to the state system to serve. So you're not the only one that is required to make appearances against your will.

I'm now going to have my deputy clerk to escort all but the earliest randomly selected juror to another room and replace the remaining juror in the witness stand.

(Whereupon, the prospective jurors were escorted from the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 151 was seated on the witness stand.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** Thank you for joining us. You're the 151st randomly selected juror. You have stated hardship reasons for being excused.

Do those reasons still exist?

**A** Yes, they do.

**Q** I called your employer yesterday. It took a while for me to be in a position to make the phone call. I have more things on my docket than just this case. But I have communicated what your employer told me to the parties, and everyone agrees that you should be excused for hardship reasons.

I didn't find out that everyone would be in agreement until this morning or we would have called you and stopped the travel that you had to engage in to get here. So you are excused from further service on the case because of the hardship reasons you have articulated.

**A** Thank you.

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

(Whereupon, Prospective Juror Number 151 was escorted from the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 152 was seated on the witness stand.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** Thank you for joining us.

**A** Thank you.

**Q** You're the 152nd randomly selected juror. I may be referring to you by that number during this questioning process.

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

**A** Just the hardship deal is all.

**Q** What is the hardship?

**A** Well, I would have to relocate. I would have to move down here. I can't commute every day. 110 miles from here.

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

(Discussion held between Court and Clerk.)

**MS. CLARKE:** Your Honor, could we approach for a real quick second?

**THE COURT:** I want it on the record.

Does it have to be?

**MS. CLARKE:** I was just going to show you something.

**THE COURT:** Just a moment.

(Whereupon, the following discussion was held at sidebar between counsel and the Court.)

**MS. CLARKE:** She says she is deaf and she is 77-years-old. So she –

(Parties look at questionnaire.)

**THE COURT:** I'm not going to do that.

(Whereupon, the discussion at sidebar was concluded.)

**BY THE COURT:**

**Q** I just communicated with my deputy clerk concerning your travels, and I think that you would be entitled to a per diem, which means that you would be able to stay over night at the court's expense if you were selected as a juror.

**A** I would have to.

**Q** Okay.

**A** Yeah.

**Q** Does that relieve you of the hardship you have indicated exists?

**A** Well, mainly.

**Q** Okay. Have you had any difficulty hearing any aspect of this proceeding since we've been in court?

**A** No.

**Q** Okay. Is there any other reason why you would prefer not being a juror on this case?

**A** Well, I have never been on a jury before so I don't know.

**Q** Okay. We would like to consider you as a possible juror.

Is there any reason why we shouldn't continue to consider you as a possible juror?

**A** No.

**Q** Okay. I'm going to ask you a few questions. If you could use that microphone so that we can make sure your voice is elevated, I would appreciate that, because the parties will have an opportunity to ask follow-up questions when I finish.

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

**A** Yes, sir.

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

**A** Well, I don't see how you can help but know a little bit about it. I haven't read anything about it.

**Q** What have you heard since you appeared at Cal Expo about the case?

**A** What have I heard?



**Q** Yes.

**A** He's just been in court. And you know, the jury has been trying to pick a jury. And whatever is on the six o'clock news.

**Q** Any other information?

I'm asking you this question because we need to know. We don't expect jurors to walk into the courtroom unaware of the publicity that surrounds the case, but we need to know what publicity you have been exposed to.

**A** Well, I really and truly have not read, because it didn't interest me until I was picked for this jury, and then I kind of started listening to the news at six o'clock. And then my husband would say, "Don't listen. Don't listen," you know.

**Q** Okay.

**A** That sort of thing.

It was on the news this morning about the cabin may be going to be moved. Like I say, just what I heard on the news.

**Q** Have you discussed the case with anyone or overheard discussions concerning the case since you appeared at Cal Expo?

**A** No. Not really.

**Q** Okay.

**A** You know, something might be said while we're listening to the news, you know, or something. But other than that, nothing of importance.

**Q** I have a duty as a judge to ask certain questions. I'm going to tell you what my duty is so you can understand why I'm asking the questions.

I'm required to find out what information a juror – a potential juror has been exposed to in order for the Court and the parties to be in a position to evaluate what impact that information could possibly have on the juror. And I will also give you an opportunity to tell me how you believe the information has impacted you, if at all.

Anyway, that's the reason why I want to ask you a series of questions.

I want you to tell me what information you received about the case even before Cal Expo. I want to know as much detail as you can provide about the information you have received about this case.

**A** Well, he was caught in the cabin in Montana. I don't know. And I heard something about a manifesto, but I didn't even attempt to read it.

I really don't know.

**Q** Did you hear anything about a search of the cabin?

**A** Yeah. They found a couple of old typewriters. And – Well, that's what kind of stuck in my mind, was this – this old cabin. And I wondered how anybody could live like that, that sort of thing. I mean, that made an impression on me. But I mean – I don't know.

I guess I just wasn't interested. I didn't pay much attention.

**Q** Do you know about the allegations involved in the case?

Do you know what the trial is about?

**A** Oh, yeah.

Q What do you think the trial is about?

A Yeah.

Q Tell me.

A Oh, made bombs and mailing them. And I think there was three people killed or two people killed.

Q Okay.

A That – I mean I knew that.

Q Okay. Have you – Based upon the information you have received about the case, have you formed an opinion or do you have any type of idea as to Mr. Kaczynski's guilt or innocence?

A Well, from what you hear, I mean you're bound to think he's guilty. You don't hear both sides of it, you just hear the one.

I would say if you just believe what you read, he's guilty. Or not read, as much as see on TV.

Q How strongly are you committed to that opinion?

A How strongly?

Q Yes.

A You have to hear both sides of anything to be able to form an opinion.

Q We are looking for jurors that are capable of leaving the information they received about the case outside the courtroom and making a determination as to Mr. Kaczynski's guilt or innocence based on information that is presented in this courtroom during the trial.

Are you able to do that?

A I have never had to do that, so I don't know. I hope I could do it, but I never have had to do it.

Q I know.

A How can you say.

Q I may be asking you questions that you haven't be forced to think about before and –

A Yeah.

Q – and my job is to ask these questions because of our justice system.

A I don't know if I could do it, but I hope I could do it.

Q If you think about that, that that is something that we would want you to do, can you think of anything that would interfere with your ability to do that?

A You mean, have somebody convince me otherwise?

Is that what you mean?

Q Well, if you were to take a seat in the jury box, I would want you to make a determination as to Mr. Kaczynski's guilt or innocence based upon evidence that is presented in this courtroom solely, not based upon anything you may have heard or read outside the courtroom.

Is there anything that would stop you from being able to do that or interfere with your ability to do that?

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

**Q** Under the law, when an individual is charged with a crime, as I indicated in my opening comments to you, those are just allegations. Nothing more. Just mere allegations.

The individual is presumed innocent under law until or unless the Government proves the individual's guilt beyond a reasonable doubt.

If the Government does not prove every element of the offense beyond a reasonable doubt, then you would have to find the defendant not guilty.

Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski to have the benefit of the presumption of innocence?

**A** Well, if you can prove it. If the defense could prove that he was innocent, I guess you would have to go that way.

**Q** Okay. He doesn't have to prove anything. A defendant doesn't have to prove anything.

When a defendant is charged with a crime, under our legal system, the defendant can simply sit in a chair in the courtroom, not present any evidence at all. The defendant never has to say anything. And it is the Government that has the burden of proving everything.

The defendant is presumed innocent. And under our system of justice, the defendant does haven't to present any evidence at all.

Is there anything about your belief system that would stop you or prevent you from accepting that principle?

**A** Well, I don't know why they'd just sit there and do nothing. I mean, wouldn't they try to prove that he was innocent?

**Q** That would be a choice the defendant has. But the defendant doesn't have to do anything. He does not have to prove his innocence. He is presumed innocent under the doctrine I just told you about.

So a defendant can come into the courtroom and basically rely on that doctrine, the presumption of innocence. Because there is no sense in the defendant presenting a case. The Government has to prove his guilt beyond a reasonable doubt, has to prove every element of the offense beyond a reasonable doubt. The defendant has no obligation to present any evidence whatsoever.

**A** Well, what's – I don't understand the question that you are asking me.

**Q** I'm trying to make sure that if you were selected as a juror, you would allow Mr. Kaczynski the benefit of the presumption of innocence doctrine.

**A** Until proven guilty.

**Q** Yes. By the Government.

**A** And you're asking me if I can do that?

**Q** Yes.

I'm not sure what you mean by "do that," but I'm asking you whether there is anything about your belief system that would interfere with the thought that Mr.

Kaczynski is presumed innocent until or unless the Government proves his guilt beyond a reasonable doubt?

**A** I'm sure I could. I think. I am so confused because I think I could do it, but I don't know. I have never had to approach something like that.

**Q** Okay. And we really appreciate your honest answers. And that's what this process is about, for us to ask prospective jurors questions and for the jurors to tell us their answers.

And if the answer reflects that you are thinking about a particular concept, and you have to think about it, that is fine. That is accepted. And we appreciate it. And there is nothing wrong with giving that kind of response.

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

**A** Well, there we go again. I mean, I've got mixed emotions. I voted for it, but I have mixed emotions on it. So I don't know.

**Q** Okay. You don't have to be a proponent or an opponent.

What is your opinion on the death penalty, or have you thought about it?

**A** Thought about it?

**Q** Do you have an opinion on it?

**A** Yeah. I – I think it's – I think we should have it in some cases, but then there is some cases I don't think we should have it. So I don't know. There you go. I guess I'm a waffler. I don't know.

**Q** Okay. Let me ask you a question. And it's going to be I'm going to ask you to assume certain things.

Assume that you were, in fact, selected to be on the jury, and that you sat through with your fellow jurors the guilt and not guilty phase of the trial.

And then, to Mr. Kaczynski's disappointment, the jury found Mr. Kaczynski guilty of the offense of deliberate, intentional, premeditated and cold-blooded murder of another human being.

Then after that finding, you would go into the sentencing phase of the trial. In the sentencing phase of the trial, knowing that you made the finding I just told you about, would you still be able to consider voting for a sentence less than death?

**A** Less than death?

**Q** Correct.

**A** Yes.

**THE COURT:** The parties may conduct examination.

**VOIR DIRE EXAMINATION**

**BY MR. FRECCERO:**

**Q** Good morning, ma'am.

**A** Morning.

**Q** My name is Stephen Freccero. I'm one of the prosecutors in the case. I just wanted to ask you some follow-up questions.

You filled out a questionnaire at Cal Expo?

**A** (Nods head.)

**Q** Can I ask you, is this a copy of your questionnaire?

**A** Yeah.

**Q** Okay. I'm just going to ask you a few questions about that.

If you could look at page 12, question 45, I just wanted to know in response to that question you wrote, "Have had acquaintances in police work."

**A** Yeah.

**Q** Is there anything about having acquaintances – Well, let me start again.

Does that mean that – were they police officers that you were acquainted with; is that what you meant?

**A** Yeah.

**Q** Is there anything about having an acquaintance a police officer that you think would affect your ability to fairly judge a criminal case?

**A** No. No. This is just through work. We had clients that were police officers. While I was in high school, my uncle was a police officer.

That sort of thing.

**Q** Okay. Nothing about that is going to make you –

**A** No.

**Q** – look one way or the other in a trial?

Okay. In – If I could ask you to take a look at page 29, question 110.

You were asked about what stood out about this particular case in your mind. And you wrote, "His cabin. How anyone could live like that."

Could you give us an idea of what you meant by that or what you were thinking?

**A** Well, I guess I was thinking about when we used to go camping, and we didn't have water. We didn't have the conveniences and so forth and so on. And I guess that's what was – Before we retired, we lived in a 35 foot travel trailer while we were waiting for our place to arrive. And it was inconvenient. And that's what I was thinking about. I thought, Gee, how could anybody do that. No electricity.

**Q** Okay. If I could follow-up on that.

You mentioned that you had seen a few things about this case on the TV news; is that right?

**A** Yeah.

**Q** One of the questions – And you know, I think all of us recognize that this is – this might feel a little awkward for you, us asking you all these questions, but it's just part of the process.

Is there anything that you remember seeing on the news that makes you think you couldn't be fair in this case, that you couldn't, in your own words, listen to both sides of the story?

**A** Anything that I saw?

**Q** Yeah. Anything about the things you mentioned on TV?

**A** I don't think – I can't think of anything. I mean . . .

**Q** Okay.

**A** I've had opinions. I mean, is that what you want me to . . .

**Q** What we are driving at is – there is nothing unusual about people having opinions about a subject.

The issue is that when it comes to being a juror in the case, if you're actually selected as a juror, and you take an oath, one of the things you take an oath to do is that regardless of whatever opinion you might have had once in the past or might have, that when it comes time for you to make a decision in the courtroom as a juror, you have to swear that you'll do that based only on two things, the evidence that's actually presented in court – nothing that you heard outside, none of that counts, only the evidence in here – and the law and instructions that the judge gives you. So that's basically your duty.

So when I'm asking you these questions, and you're the only one that can tell us this, we just want to know if you have any opinion that's so strong or that you feel so strongly about that you, yourself, think you couldn't set that aside if you were actually a juror.

Do you understand my question?

**A** I understand.

**Q** Okay. Do you – Do you think any opinion you might have formed or might have, do you think that would interfere with your ability to be a juror, to fairly listen to both sides of the story?

**A** I think so. I don't know. Like I said, I'm – I have a strong opinion, and I'm not easily swayed. I mean, ask my husband. He says I'm stubborn. I don't know. So I don't know what to tell you.

**Q** Well, we're not looking for any set answer.

**A** Yeah.

**Q** You're the best judge of yourself, and we just want your best, honest response. Because once you're selected as a juror, once that happens, that obligation kicks in. So if there is any problem, we need to know about it ahead of time.

**THE COURT:** You should probe what she means when she says she has a "strong opinion," counsel.

**MR. FRECCERO:** Okay.

**BY MR. FRECCERO:**

**Q** You mentioned a "strong opinion".

Could you tell us what you meant by that strong opinion?

**A** If you tell me this is black and white, I'm going to say it is black and white. It's like my son used to argue with me all the time. I said, "You would argue that milk isn't white." And he said, "No. I'll argue what makes it white."

I mean, that's what I mean. Until I have been proven wrong, I am pretty obstinate about it.

**MR. FRECCERO:** Yes.

**VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q** Do you have any strong opinions about this case?

**A** I really don't know too much about it. I mean, I have seen the things on TV. I have to be honest, I didn't know very little about it until I was picked for that first jury.

And like I say, I have never been on a jury before. So I don't know how I would react.

**Q** When you say "picked for the first jury," do you mean when you appeared at Cal Expo?

**A** Yeah.

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

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

**Q** Okay. And I – Just in terms of this case, the opinion you have, do you think that would prevent you from listening to the evidence presented here in the court and basing your decision just on that evidence?

**THE COURT:** That's a confusing question. It assumes something. And I don't – She's indicated she doesn't have an opinion. Why don't you rephrase the question.

**MR. FRECCERO:** All right.

**THE COURT:** Or I can view it as a compound question.

If you believe she has an opinion, then you should probe the opinion.

**MR. FRECCERO:** Okay.

**PROSPECTIVE JUROR NO. 152:** Right now I have no opinion – Right now I have no opinion, but I don't know that much about it.

**BY MR. FRECCERO:**

**Q** Right. And that's all I'm getting at.

If you were a juror, it would be in the trial where evidence is presented, and it's based on that that you would be asked to make a judgment?

**A** Like I said, I hope I could do it the right way.

I have never had this – How can you say it is something you would do if you have never had to do it.

**Q** All right. Fair enough.

Let me ask you –

**A** I can listen. I mean, I'm a good listener, but I'm not – I just don't know how to answer your question.

**Q** And I realize – And I – I guess the main issue is, have you already made your mind up before hearing any evidence?

**A** No. No.

**Q** Okay.

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

**Q** Let me just ask you a few other questions.

If you could, look at page 27.

I want to ask you just a couple of – just a few questions about your views on the death penalty.

If you could, look at page 27, question 107. That was that long question that had four parts.

If you could, look at the last one 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." And you checked the box that said, "Strongly agree."

Can you tell us what you were thinking about the term "a person's background." What did "background" mean to you?

**A** To tell you the truth, that morning I wasn't thinking very good, period. A person's background?

Well, that means anything that he has done in the past.

**Q** And you agree that that should not matter?

I'm just trying to understand.

**A** Well, depends on what he did.

**Q** Okay. The reason I'm asking is, as the Judge explained to you, in a case such as this, if Mr. Kaczynski were, in fact, convicted of a charge that potentially carried the death penalty, there would be a second proceeding after he was found guilty.

At that proceeding you would be asked, along with your fellow jurors, to decide among penalties; the possibility of the death penalty, life imprisonment without release, or some lesser sentence. Those alternatives.

Now, you would make that decision. You would be told by the Judge to consider additional evidence that was put forward.

You would be told to consider the circumstances of the crime, but also anything about the person who committed the crime. Anything about – It could be, if they chose something about that person's past conduct, something about that person, him or herself, their character.

But as a juror, you would be asked to fairly and honestly consider all of that information before making your decision.

Is there any reason to think you would not be able to do that?

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

**MR. FRECCERO:** Okay. If I could have a moment, Your Honor.

**THE COURT:** Yes.

(Brief pause.)

**MR. FRECCERO:** If I could have a couple more follow-up questions.

**THE COURT:** Okay.

**BY MR. FRECCERO:**

**Q** Following up again on that second proceeding where the jurors would have to decide which alternative punishment would be appropriate, would you go into that second proceeding automatically thinking one penalty would be better than another?

**A** Well, I would have to listen and – listen to the case first.

**Q** The law would require you to listen to the case, to listen to everything before you make that determination.



And I'm just asking you, again I know these are hard questions, if you have any belief that you think would prevent you from being able to wait until you had heard everything before you made –

**A** No. I have to hear it first.

**Q** – that determination?

Okay. Thank you, ma'am.

**A** You're welcome.

**VOIR DIRE EXAMINATION**

**BY MS. CLARKE:**

**Q** Good morning. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. If I could ask you just a few follow-up questions.

**A** Okay.

**Q** I notice, you know, on your questionnaire you wanted us to know that it would be a hardship for you to move to Sacramento.

And I didn't know whether you had a full chance to tell us, would that be a hardship on any members of your family if you had to live down here?

**A** Oh, my husband would cry.

**Q** Will you?

**A** I don't think I would like it, no.

I mean . . .

**Q** So it would be a difficulty?

**THE COURT:** I'm going to ask a question right there.

Could your husband come with you?

**PROSPECTIVE JUROR NO. 152:** Oh, yeah.

**THE COURT:** All right.

**BY MS. CLARKE:**

**Q** Would that solve the problem there?

**A** Yeah.

**Q** If he came down and –

**A** Do they pay for him too then?

**THE COURT:** Well, they wouldn't pay for him, but they'll pay for your room.

**PROSPECTIVE JUROR NO. 152:** Okay.

**BY MS. CLARKE:**

**Q** You could share.

**A** Yeah.

**Q** I just didn't know how much of a problem that would be if you had to leave him. If you could bring him down here, would that solve the problems?

**A** Yeah.

**Q** Does he eat very much? Maybe he could eat off yours?

**A** Pardon me.

**Q** Does he eat very much? Maybe he can eat off your per diem?

**A** No. He eats a lot more than I do.

**Q** You also mentioned in your questionnaire, I think at page 32 – Do you have it there?

**A** Yeah.

**Q** And I don't know whether you wanted to explore that with us at all.

Question 123: "Was there any particular reason you would not like to be a juror." And you indicated you might have some hearing problem that –

**A** Well, I do have a hearing problem in my left ear.

**Q** Is that correctable, or is that –

**A** No. No.

**Q** Do you think it would cause you some difficulty? Or – You got to tell us. You know.

**A** Well, I can hear. Like I can hear you.

**Q** Uh-huh.

**A** You know. And I guess I could hear up there because I hear – I hear out of my right ear. But I don't – I'm totally deaf in the left.

**Q** Does it depend on whether you're being distracted in one ear?

Does a particular noise bother you?

**A** No. Not noise.

**Q** I just don't know. You know, you'll be sitting in one of these chairs or down here in the front, and the witness will be where you are. And the lawyers may be anywhere in the courtroom.

I didn't know whether that would be a problem for you to hear or not.

You would have to tell us?

**A** I may not be able to hear if they didn't talk loud enough. I can hear you very well.

**Q** Because were one-on-one?

**A** Yeah. Uh-huh.

But if I was sitting over there, and you were facing this way, I don't know whether I could hear you.

**Q** And I guess you would raise your hand or something and say, "I couldn't hear," or would that be difficult for you to –

**A** No. I can raise my hand. But I don't think you'd want me to do it all the time, would you?

**Q** We would want you to hear everything, yes.

**A** Yeah.

**Q** I just don't know the extent of the hearing problem.

If you would rather – If you think that would be a difficulty for you, then we ought to understand that.

**A** Well, I think – I think it would have a problem without a doubt.

**THE COURT:** I think we can find out right now. What I can do, if you don't mind, we can have you go to the jury box. You can take the first seat there, and I can sit where you are located, and I can talk. And you can see if you could hear us.

**PROSPECTIVE JUROR NO. 152:** Okay.

**MS. CLARKE:** I have a few questions I would like to ask the Judge anyway.

**MR. DENVIR:** Do you want his questionnaire.

(Whereupon, Prospective Juror No. 152 takes a seat in the far end of the jury box.)

(Whereupon, Judge Burrell takes a seat on the witness stand.)

**THE COURT:** Oh, no. Not that far away. I was thinking – Well, but if you can hear us from that point, then that would really indicate you wouldn't have any problems hearing at all. So I guess you could sit over there.

**PROSPECTIVE JUROR NO. 152:** I can hear you very well.

I can hear you now.

**THE COURT:** Can you hear me right now?

**PROSPECTIVE JUROR NO. 152:** Oh, yeah.

**THE COURT:** Okay. We can require people to use the microphone. And if you can't hear, you can just raise your hand, and I could correct the situation.

**PROSPECTIVE JUROR NO. 152:** Well, I can hear, but if she's talking to you, and her voice is going that way, I don't know whether I can hear.

**THE COURT:** Let's see.

(Whereupon, Ms. Clarke questions from the podium.)

**MS. CLARKE:** Good morning, Your Honor.

Could I inquire about how you feel about the death penalty?

**THE COURT:** Not at this time.

**PROSPECTIVE JUROR NO. 152:** I can hear that.

**THE COURT:** Okay. All right.

**MS. CLARKE:** Thank you, Your Honor.

**THE COURT:** Thank you.

You can resume your seat.

Thank you for cooperating.

(Whereupon, the participants resumed their seats.)

**BY MS. CLARKE:**

**Q** Thank you very much.

Does that make you feel comfortable about maybe being able to hear?

**A** Yeah.

**Q** Because I think if you said to the Judge, "I really would rather be excused," he would – he would honor that request.

**A** Well, it's up to him. I don't know. Like I said, if you get somebody up here that doesn't talk very loud, I won't be able to hear them.

**THE COURT:** I think we're going to proceed with the questioning.

**MS. CLARKE:** Thank you, Your Honor.

**BY MS. CLARKE:**

**Q** If I could take a moment of your time and talk with you about your feelings about the death penalty, you did indicate, when the Judge asked you, that you had mixed emotions. That you had voted for it, but you kind of weren't sure how you felt about it.

Could you tell us a little more about that?

**A** Well, there has been some murder cases I wouldn't hesitate about giving the death penalty to. But if I'm in doubt as to if it was accidental or self-defense or mental, I think I would have to do a lot of thinking about it.

**Q** So you want –

**A** Polly Klaas' murder, I wouldn't hesitate about it. I mean, so there is where I don't know.

**Q** So it's sort of the application of the death penalty in your mind?

**A** The what?

**Q** The application of the death penalty in your mind; is that the question?

**A** Is the application?

**Q** Whether it applies in a certain case or not?

I mean, it – it's just a difficult question whether to apply it?

**A** Yeah.

**Q** Not whether to have it, but whether to actually apply it?

**A** Yeah. That's . . .

**Q** You mentioned the Polly Klaas murder. Is that because it was a child victim or is that –

**A** Probably.

**Q** Was there anything in the background of the particular defendant in that case that you considered mitigating or aggravating, or was it the type of crime?

**A** It was the type of the crime. It was the defendant. I mean, it was obvious. It was – There wasn't any question there. That's why I wouldn't hesitate.

But if I have a question, then I would – I would probably hesitate about it.

**Q** Is the question – and only you know because you know where you are on the death penalty – is the question whether or not the person is guilty of the crime?

Is that where your hesitation is?

**A** I think so.

**Q** So once you would decide that the person is guilty of the murder, it becomes less of a question as to what the penalty should be?

**A** Yeah. I think so.

**Q** So when you think of a person who would be convicted of – found guilty of a premeditated, intentional, deliberate cold-blooded murder –

**A** And it was proven to me.

**Q** – that's proven beyond a reasonable doubt, you put your stamp of guilty on that finding, what does that mean for the penalty?

**A** I think that – If it was all of those cases involved, I think I could vote for the death penalty in that case. But it would have to be proven. All of those things would have to be proven to me.

**THE COURT:** Excuse me.

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** You said you think you could vote for the death penalty. I think that's what you said?

**A** Probably.

**Q** If you were on a jury that made that finding, that is that a defendant was, in fact, guilty of premeditated, intentional, deliberate and cold-blooded murder of another human being, is there anything about that finding that would interfere with your ability to consider alternative sentences; the sentence of death, the sentence of imprisonment without possibility of release, or some lesser sentence?

**A** Yeah. I could go that way. You mean, in other words I – I could go the other way too, or I would have to say death?

**Q** I'm trying to – I'm trying to have you tell me what is in your mind because you

–

**A** Confusion.

**Q** I'm sorry.

**A** Confusion.

Well, you asked me.

No. I think I could do it if –

**Q** Go ahead.

**A** I'm confused.

**Q** All right. I'm trying to –

**THE COURT:** I'm sorry.

You're going to probe the same issue?

**MS. CLARKE:** I was, but I'll be happy for the Court too.

**THE COURT:** You want me to do it?

**MS. CLARKE:** That would be fine.

**BY THE COURT:**

**Q** I'm trying to determine whether after making a finding that a defendant is guilty of the offense of cold-blooded murder?

**A** Yeah.

**Q** Planned type murder?

**A** Right.

**Q** Would you still be able in the sentencing phase to wait until you hear all the evidence, the aggravating factors and the mitigating factors, before you decide what penalty is appropriate?

**A** Well, yeah.

You wouldn't judge – You wouldn't say right away what was wrong or what the verdict would be. You would have to listen to everything, wouldn't you?

**Q** You should. You're supposed to.

**A** That's what I mean. Yeah. You're supposed to.

**Q** And if you listen to everything, would you have an open mind, even in the face of that finding, that's cold-blooded murder, that type of finding, would you have an open mind so that you could consider the sentence of death –

**A** I would try.

**Q** – the sentence of imprisonment without the possibility of release, no parole – there is no parole in the federal system –

**A** Okay.

**Q** – if you were sentenced to life in the federal system, you receive life –

**A** Okay.

**Q** – or some lesser sentence. Would you have an open mind to all of those possible sentences?

**A** I think so.

**Q** All right.

**THE COURT:** Thank you.

**MS. CLARKE:** May I probe just a little bit?

**THE COURT:** Sure. I wanted some clarification because she used the word "could".

**VOIR DIRE EXAMINATION**

**BY MS. CLARKE:**

**Q** There are two potential parts to this trial. The first part is where you would sit as a juror and decide whether or not Mr. Kaczynski was guilty of the crimes charged.

The jury would make a finding of guilty or not guilty. And if it was not guilty, we would all go home. If it was guilty, then there would be a second part.

**A** Oh, that's the penalty phase.

**Q** That's the penalty phase.

And I guess the question is, is your mind about penalty made up as a result of your finding in the guilt part of the case?

In other words, if you make the finding of guilty beyond a reasonable doubt, of a cold-blooded, deliberate, intentional, premeditated murder, does that dictate the sentence for you?

**A** I don't think so. I mean, I hate to say it would, but I really don't know.

**Q** And when you say "you don't know," what are your thoughts that are going back and forth because you are thinking?

**A** Well, are you asking me that – could I go for imprisonment without parole against death, if I would have to pick one or the other, even though he was found guilty?

**Q** Right.

**A** That it would be my choice to pick one or the other?

**Q** That's right.

**A** Now, what is the question? Could I do that?

Q Right.

A Yes.

Q That's right.

A Yes.

Q Could you do that?

A Yes.

Q Could you give both sentences a fair chance?

A I would try.

Q And when you say "you would try," what do you mean?

Do you mean I have never done it before, so I don't know?

A That's right.

Q All things are possible in life?

A That's right.

Q But you know who you are. You know how you make your decisions. You know how you have led your life.

Would you be comfortable, if you were Mr. Kaczynski, having a person like you sitting on the jury?

A No, I don't think I would.

Q You don't think so?

A I don't think if I was him I would probably want me up here because I don't know half the time what I'm saying.

Q Oh, no. You seem to be pretty on the ball.

Could you help us understand why – why you would be nervous having you on your jury?

A No. I was just being smart.

Q All right. That's fair enough.

So what you know about yourself, do you think you could be open to all options when you got – if you got to the penalty phase in this case?

A I think so. I don't know.

Q What would your husband say about that?

A What does my husband say?

Q What would he say about that?

A You don't want to know what he says about me.

Q I'm actually afraid I do.

He called you stubborn. I heard that part.

A Yeah.

Q How would he call you on the open-mindedness issue on the penalty?

Once you have made a rather hard and harsh finding at the guilt phase of this case, how would he call you on the open-mindedness to both penalties in the penalty phase?

A Well, it's been kind of a joke in our family. I mean, he has served jury duty, and I haven't. And, oh, I've made remarks about when we've been watching a show or

something, "Oh, he's guilty." "How do you know?" "Cause I don't like the color of his eyes."

Well, he always throws this back up to me, that I would be a lousy juror. I mean, it's been a game with us. And then when I'm called to come down here, of course the game has just escalated. That's why I said you don't want to know what has gone on between us.

**Q** I think you may be right now.

I think you may be right.

When you answered – Have you got the questionnaire nearby?

**A** Yeah.

**Q** When you answered the series of questions about the death penalty, on page 27, do you see the check off questions?

**A** Which one?

**Q** At the top, number 107, the very first one: "Anyone who plans and commits a murder should get the death penalty." And you said, "Strongly agree."

**A** Yeah.

**Q** What were you thinking at that point in time?

**A** What was I thinking when I answered that?

**Q** Uh-huh.

**A** That's premeditated.

Well, I don't know. I think – I think I have to be honest, and I think it would have to be the type of crime.

**Q** That would dictate the sentence?

**A** I mean, if you're asking me what I feel.

**Q** Uh-huh.

**A** Now, child molesters or something like that, I think I would (gesturing) – that would be it. But others I think I would have to think about.

**Q** Does premeditated, deliberate, intentional, cold-blooded murder fall into the same category as what you are saying child molesters do?

**A** Yes.

**Q** So when we step back a little bit, the conviction itself would dictate the sentence and result for you?

**A** The crime?

**Q** Yeah.

**A** Yeah. I think so.

**Q** And it would be very difficult for you to consider in the sentencing phase any other information about the defendant once you had made a finding on guilt; is that what I'm hearing you say?

**A** I could change my mind?

Is that what you are asking me, if I could change my mind?

**Q** Once you made a finding on guilt, that is a done deal?

**THE COURT:** You need to rephrase that question.



**MS. CLARKE:** I'm sorry.

**THE COURT:** Rephrase the question, counsel.

**PROSPECTIVE JUROR NO. 152:** You want her to rephrase?

**THE COURT:** I do. I'm not talking to you.

**MS. CLARKE:** He wants me to figure out what I'm saying.

**THE COURT:** Yes. I'm talking to Miss Clarke.

Ask a new question. You can ask the same question.

**MS. CLARKE:** But in a different way? I just got stopped in the middle. I'm sorry.

**THE COURT:** No. You asked a question that was complete. Then you heard her respond, then you asked another subpart of that question.

And so it's not clear what the subpart relates to. That's why I've asked you to rephrase the question.

**BY MS. CLARKE:**

**Q** Can I back up?

**A** Okay.

**Q** Because only you know. I'm just trying to understand myself.

Do you place intentional, deliberate, cold-blooded murder in the same category as a child molester in terms of looking at the crimes?

**A** Right. Yeah.

**Q** Is that where you place it?

**A** Yeah. The worst it could be. The worst crime.

**Q** Right. So I guess we're back to the same concern. If you have made that finding in that first phase of the case, the guilt or not guilty phase of the case, does that necessarily dictate the result in the sentencing or penalty phase of the case for you?

**A** Golly, I don't know how to answer your questions. I don't think so.

That's about the only thing I can say. I don't think so.

**Q** Okay. I guess I got a little confused with the – when we were going over question 107.

**A** I'm always confused about these things.

Yes.

**Q** We were going over question 107. And the top one, with the "strongly agree," you see that?

**A** Yeah.

**Q** And you seem to say, well, I think I need to be honest, I think it's the type of crime?

**A** I think so.

**Q** So what does the type of crime – Is there anything that can move you off the type of crime when you are considering the penalty?

**THE COURT:** That's not clear.

**PROSPECTIVE JUROR NO. 152:** No.

**THE COURT:** You said, "when you are considering the penalty." What does "penalty" mean?

**BY MS. CLARKE:**

**Q** When you are considering to vote for a sentence of death, or a sentence of life in prison without possibility of release, or a lesser sentence, those are your choices, when you are considering those choices –

**A** Okay.

**Q** – have you already made up your mind because of the finding you have made of cold-blooded, deliberate, intentional murder?

**A** If it was proven to me, yes. That's the way I would do it.

**Q** And your mind has been made up in which of those three options?

**A** Some cases I guess I would vote the death penalty.

**Q** So there could be some cases of –

**A** Yeah.

**Q** – of cold-blooded, deliberate, intentional murder that you would say the death penalty is appropriate?

**A** Right.

**Q** And some cases of cold-blooded, intentional, deliberate murder where you would say another sentence, life in prison without parole, or a lesser sentence, would be appropriate?

**A** Is that the same thing?

Aren't you asking me the same question?

**Q** No.

The first part of it is there would be some cases of cold-blooded, deliberate, intentional murder that you would say the death penalty is appropriate for, right?

**A** Yeah.

**Q** And am I correct, or just tell me, are there other cases of cold-blooded, deliberate, intentional murder where you could say that a sentence of life in prison without parole or a lesser sentence was appropriate?

**A** To me you're asking me the same question.

I mean, you are putting the same crime in the same category.

**Q** Right. And I'm trying to find out whether there could be some cases of that kind of murder where you could find the death penalty was appropriate, and whether there are some cases of that kind of murder where you could find a life in prison without parole sentence was appropriate?

**A** I don't know where it would be if it were the same premeditated, cold-blooded murder, why would you hesitate on one and not the other one.

**Q** So if you found a cold-blooded, intentional, deliberate murder, then the death penalty would always be the appropriate sentence?

**A** If it was proven that way, yes.

I mean, I would have to listen to all of the – You couldn't just get up there and tell me that it was cold-blooded, premeditated murder without proving it to me.

**Q** Right.

**A** Is that what you want me to say?

**Q** No. I want you to say –

**A** Well, that’s what I mean. I would have to listen and find out.

**Q** All right.

And once you found that it was a cold-blooded, premeditated, intentional murder

**A** And I was convinced.

**Q** Convinced beyond a reasonable doubt.

**A** Right. Right. Beyond a reasonable doubt.

**Q** Absolutely.

**A** Right.

**Q** Then the death penalty is always appropriate?

**A** Yeah.

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

(Brief pause.)

**MS. CLARKE:** Thank you.

(Whereupon, Prospective Juror Number 152 was escorted from the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 153 was seated on the witness stand.)

**VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q** Thank you for joining us. You’re the 153rd randomly selected juror.

You raised your hand when I mentioned our holiday schedule. Why did you raise your hand?

**A** Because I have already booked a trip out of country to be with my daughter who is going to medical school on an island in the Caribbean. And I’ll be leaving the 22nd and won’t be home until the 3rd.

**Q** When did you book the trip?

**A** In August.

**Q** Are those tickets refundable?

**A** I don’t know. I guess I could find out. I don’t know.

**Q** I know it’s important to be with loved ones, and especially when they are involved in the endeavor that your daughter is involved in.

I’m wondering, is it feasible that you could see if the tickets are refundable and you could make yourself available for the trial or maybe shorten the trip or anything so that you could sit as a possible juror in this case?

**A** I can check on it.

**Q** Go ahead. I’m sorry.

**A** I would rather not, but if I have to, I will check and see if it is refundable.

**Q** What type of problem would it cause you if you, in fact, checked, and if you found out that the tickets are refundable, and then you went on and you got your money back, what type of a problem would that cause you personally?

**A** It would be very upsetting to me. To be very honest with you, I feel that my daughter is more important in my life than sitting on a jury for something that I have definite ideas about.

**Q** I'm going to see if this is your jury questionnaire.

(Document shown to prospective juror.)

Is this your jury questionnaire, ma'am?

**A** Yes, it is.

**Q** Okay. I'm going to show you your response to one of the questions. It's question 120 on page 32.

**A** (Witness reviews document.)

**Q** When you stated you have definite ideas about the case, does this response reflect what you were telling me?

**A** Exactly.

**THE COURT:** If the parties desire, you may probe hardship and the matter that I just covered concerning definite ideas.

**MR. CLEARY:** One second, Your Honor.

**THE COURT:** Okay.

(Brief pause.)

**MR. CLEARY:** We would be prepared to stipulate for this juror.

**MR. DENVIR:** We would too, Your Honor.

**THE COURT:** Okay. We're going to excuse you from further service on the case.

**PROSPECTIVE JUROR NO. 153:** Thank you.

(Whereupon, Prospective Juror Number 153 was escorted from the courtroom.)

(Brief pause.)

(Whereupon, Prospective Juror Number 154 was seated on the witness stand.)

**VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q** Thank you for joining us. You're the 154th randomly selected juror.

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

**A** No.

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

**A** Uh-huh.

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

**A** No. Every time it's on TV or something, I'll make my husband or wherever I'm at shut it off.

**Q** I appreciate that. That's exactly what I'm hoping that jurors do.

Despite that effort and what you have apparently directed your husband to help you do, have you still been exposed to information about the case?

**A** No.

**Q** Have you discussed the case with anyone or overheard discussions by other people since Cal Expo?

**A** No. Because I tell them I don't want to hear anything.

**Q** I'm now going to direct your attention to the time period before Cal Expo. I have a purpose in asking you the question that I'm going to ask you, and I'm going to explain the purpose so that you can do your best to help us achieve the objective.

My understanding of the law requires that I ask potential jurors about their exposure to publicity surrounding the case.

Being exposed to publicity doesn't mean that you still won't be considered as a juror on this case. But the law requires that the judge ask questions about the exposure so that we are in a position to objectively evaluate how you could possibly be affected by the exposure, and we'll also give you the opportunity to tell us from your own viewpoint whether you feel that you have been, you know, affected in any way by the exposure.

What I would like you to do is provide as much detail as you can possibly provide concerning everything you know about the allegations involved in this case.

**A** Well, it's not much. I know that his brother turned him in. And I'm assuming it all took place in Montana because I did hear that they might bring the cabin from Montana that he lived in.

And I really never paid that much attention about it. My granddaughter told me that there is a lot of books out. I said I don't want to hear anything about it.

And I have seen him brought in or out of the courthouse with, evidently, a deputy on each side of him. But I don't – I didn't hear anything because, as I said, I turn it off.

I don't even know if the man was married, had children, or anything. I don't know.

**Q** Do you have information concerning why his bother turned him in?

**A** No. All I know that he is accused of sending through the mail bombs that killed people or hurt them.

**Q** Have you been exposed to any news information concerning what you have just related about bombs?

**A** No.

**Q** Do you have any information concerning a search of the cabin?

**A** No.

**Q** Do you know whether or not anything was allegedly found in the cabin?

**A** No. I guess I could assume, because they would have to have it to come into court.

**Q** Has any of the information you have received about the case caused you to form an opinion concerning Mr. Kaczynski's guilt or innocence?

**A** No.

**Q** Knowing yourself the way you do, are you in a position to disregard anything you have heard about the case, if you were selected as a juror, and make a determination as to Mr. Kaczynski's guilt or innocence based solely on the evidence that's presented here in this courtroom?

**A** Yes. I definitely could.

**Q** If you are selected as a juror in this case, will Mr. Kaczynski begin this trial in your eyes cloaked with the presumption of innocence?

**A** Would you repeat that.

**Q** Will you allow Mr. Kaczynski to be presumed innocent if you are selected as a juror in this case?

**A** Well, they are innocent until they are proven guilty.

**Q** You are correct. That's what the doctrine means.

**A** Right.

**Q** That Mr. Kaczynski need not present any evidence whatsoever to prove anything. He can rely on the presumption of innocence unless and until the Government, if it should in fact do this, prove his guilt beyond a reasonable doubt. And if it doesn't –

**A** Right.

**Q** – you would have to find Mr. Kaczynski not guilty.

**A** Right.

**Q** Anything about your belief system that would prevent you from being able to do that?

**A** No.

**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** (Inaudible.)

(Reporter interrupts.)

**Q** She didn't hear your response.

**A** A proponent.

**Q** Can you explain your views?

**A** Well, once again, you have to prove them guilty before a penalty can be passed on them. And, like, if somebody killed 20 or 30 people, they don't have that right any more than the rest of us do. And yes, I could say they were guilty if it were proven to me without a doubt that they did something like that.

**Q** I want you to join me in a hypothetical.

Assuming you were in fact on the jury, and you sat through the guilt and not guilty phase of the trial with your fellow jurors, and ultimately waded through all of the evidence, and you decided, to the disappointment of Mr. Kaczynski, that he, in fact, is guilty of the offense of deliberate, intentional, premeditated, cold-blooded murder of another human being, then you would then go to the sentencing phase of the trial.

In that 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 you made?

**A.** Yes. Very definitely.

**THE COURT:** The parties – I think I’ll allow the parties to conduct examination after the break.

We’ll be in recess until 10:45.

(Off the record at 10:30 a.m.)

**THE COURT:** Let the record reflect the participants are present. The juror will join us in just a moment.

(Prospective Juror No. 154 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

**Q.** Good morning.

**A.** Hi.

**Q.** Ma’am, my name is Steve Lapham, and I’m one of the prosecutors in the case. And I just want to ask you a few follow-up questions.

In your questionnaire you indicated that you felt you knew very little about this case, and I think you’ve reiterated that here in court today. You said you’ve read very little of the coverage about the case.

**A.** I haven’t read any that I can recall. I don’t read books. I haven’t got time. And as for the newspapers, I might read one once a week or something, but anything pertaining to this case that has been in the newspapers – I have not read the paper at all.

**Q.** And that’s over the years, not just since you got your summons?

**A.** Right. Right.

**Q.** And you’ve probably gathered by the judge’s questions here that what we are looking for here are jurors that can keep an open mind.

**A.** Right.

**Q.** And wait until the evidence is presented before they make their decision.

Now, the trial, as the judge indicated, is going to proceed in two phases, and the first phase is the guilty or not guilty phase. And we have asked you if you can keep an open mind in that phase, but we also need you to keep an open mind in the second phase of the trial. In other words, if the defendant is convicted of the crimes that the judge has talked about, then we would go on to the determination of what the appropriate penalty is. And we want to make sure you have an open mind to consider all the various options that you’ll be given, and that’s where your views on the death penalty come in.

The question is: Having found the defendant, just in general terms not having anything to do with this case, just in general terms, would you automatically vote for the death penalty for any person who has been convicted of a murder?

**A.** No. I would have to hear the circumstances.

**Q.** And the law makes a distinction between the way the same crime can be committed. Some crimes – some murders are committed in a more heinous fashion than other crimes, and some are planned, for instance. Some are committed in passion, and those are the types of things that the law looks at in determining what the appropriate sentence is.

Do you think you could do that if you were called upon?

**A.** Yes, definitely.

**Q.** And the law also recognizes a distinction among offenders. We look at every defendant as an individual, and we want to know what that individual is all about and why he committed the crime that he did.

Do you generally agree with that?

**A.** Yes.

**Q.** And the reason that becomes important is because if we get to the penalty phase you may be presented with additional information about the defendant, about his background, and you are going to be asked to consider that as – or in determining whether he should be given the death penalty or a sentence of life imprisonment without possibility of release or some lesser sentence.

And the question is: Would you be able to consider information about the defendant's background in making your ultimate decision as to the penalty?

**A.** Right, yes.

**Q.** There is nothing, in other words, about the crime of murder or about the crime of mailing bombs to other people that would make you automatically decide on one sentence or another?

**A.** No. But can I say one thing?

**Q.** Please?

**A.** There is a member of my family that is in law enforcement and been through quite a bit, and he said one thing to me that sticks out in my mind. He says, can you think of anything, anything in your whole life that is any worse than to be in prison and not be able to go home or go out shopping or go home to your family. He said there is nothing worse, not even the death penalty, and I don't know – that sticks with me for some reason. I don't know why.

**Q.** What did you think about that remark?

**A.** I think he is a person who is fair, and I think he should know. And I kind of agree with it. If you stop and think about it, I mean, you're there all your life. You can't ever go home. You can't ever associate with anyone.

**Q.** Now, is there anything about that view that would impair your ability to talk to your fellow jurors about what the appropriate penalty should be?

**A.** No.

**Q.** Because of that view would you automatically decide that the worst form of punishment should be life without possibility of release, and that's what you would automatically vote for regardless of the facts and circumstances of the case?



A. There, again, I would have to hear the facts of the case before I would make a decision of any kind.

Q. And what you will be instructed is that you are going to be required to weigh what has been called the aggravating factors against the mitigating factors and determine if the aggravating factors outweigh the mitigating factors.

Do you understand that concept?

A. Yes.

Q. Okay.

A. I've been reading the book in there.

Q. You've been reading?

A. A book in the jury room on the court system and stuff.

Q. And it explains this procedure?

A. Um-hum.

Q. Is this a book that was given to you by the Court?

A. No, it wasn't given. It was just laying in there, and I picked it up and started reading it.

**THE COURT:** I'll have my deputy clerk see what she's talking about.

**PROSPECTIVE JUROR NO. 154:** It's just a pamphlet that tells about the District Court and other things.

**THE COURT:** My deputy clerk believes it's a juror handbook.

**BY MR. LAPHAM:** That's what it sounds like.

Q. And I think the point I was making is that the judge is going to instruct you about what the law is and how you should weigh those as mitigating factors?

A. Right.

Q. And part of this is being able to set aside any personal views you may have, any preconceived notions, and be able to follow the law as the judge gives it to you.

You would have no problem doing that?

A. I have no problem, I mean, considering I really don't even know that much about the case.

Q. One last question. You do you have a son in law enforcement?

A. A what?

Q. You do have a son in law enforcement?

A. Son, yes.

Q. I don't want to reveal where he is in law enforcement.

A. Right.

Q. But is there anything about the fact that he is in law enforcement that would make you either favor or disfavor the prosecution in this case?

A. No. He is the one who told me what I previously told you.

Q. Right.

A. And no. He loves his job, and – no.

Q. Is there –

**A.** He can see both sides of stuff. He would make a good – what do I want to say? I can't think of the word I want to say. I mean, he really sees both sides of a problem.

**Q.** And is there anything about the fact that he is in law enforcement that would make it difficult for you to give Mr. Kaczynski a fair and impartial verdict?

**A.** Definitely not.

**MR. LAPHAM:** That's all. Thank you.

VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

**Q.** Good morning.

**A.** Hi.

**Q.** My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski, and I have just a few follow-up questions, if I may.

**A.** That's fine.

**Q.** Do you have your questionnaire nearby?

**A.** No.

**THE COURT:** Is this your questionnaire?

**PROSPECTIVE JUROR NO. 154:** Yes.

**Q. BY MS. CLARKE:** If you could go to page 11?

**A.** Okay.

**Q.** I notice your – page 11, question 41 at the top, it's the second part of that question. Your granddaughter was really excited and wanted you to serve?

**A.** She thinks it's wonderful. She was very excited that I was told to come down for jury duty, and she said, "If you don't get on it, Grandma," she says, "tell them I'll do it." And I said, "It's not done that way." She says, "I know it," but she says, "You tell them anyhow." And she knows quite a bit about it. She's the one that told me there are a lot of books written, and I told her, I said, "I don't want to hear anything about it." So they automatically, if anyone comes on to you, they say, "Shut up. Grandma doesn't want to see it".

**Q.** So they respect this?

**A.** Definitely.

**Q.** Did she tell you how it should go?

**A.** She said, "Grandma, there is a book written. You could go to the library, but you don't want to know anything. So I'm not going to tell you anything." But she says, "Anything you want to know, go to the library. I won't tell it to you, but you can find it for yourself".

**Q.** Yeah, more or less if you wanted to. Well, I guess I won't inquire into grandmother/granddaughter confidences at this time.

Could you look at page 17?

**A.** Okay.

**Q.** Question 64, and it goes over to the top of page 18, and it's about the criminal justice system. And you express your opinion that it needs overhauling badly. "We

need to enforce the law and we need stricter laws and to give policemen back their rights.”

Could you tell me where that opinion developed from?

A. Probably hearing my son talk. But like, they have certain guns they can carry, but yet the criminals have stronger guns and more gun power than our policemen do. They need something to protect them too, you know, and I mean there is just so many things that happen. You know, I mean that. Our policemen don't have the rights anymore that they used to have.

Q. What do you mean by that?

A. Well, if somebody – if they arrest somebody, or if they hit the policeman in the head or something, I mean, he's got to explain why it was done. I mean, he can't even defend himself, I mean, legally.

Q. How does that make you feel as a potential juror in a case?

I mean this concern about the system working well, as it appears that you genuinely have, how does that make you feel about possibly being a juror sitting in a criminal case?

A. I think I could do it, you know.

Q. You said fairly strongly, I think, when the judge was asking you questions about your statement that you're innocent until proven guilty.

A. Right.

Q. Do you think that's gotten a little out of whack, given your feelings about the system? Is that a troublesome concept?

A. No. Because I believe that – that you're innocent until you're proven guilty, and they have to prove that they definitely did it. I would hate to put somebody to death or something if there was any doubt whatsoever.

Q. About whether they did it?

A. About whether they did it or not, yes.

Q. How do you think the concept of innocent until proven guilty plays against the thought that policemen should really need to get back more rights, that they have lost too many rights?

A. Not really so much. Like I say, they do need to have some more rights to protect themselves, I believe. But there again, I don't believe it has anything to do with the –

Q. Presumption of innocence?

A. Right.

Q. You had – if I could take you to your page about the death penalty and ask you a few questions about that. When you talked with your son who is in law enforcement about the difference between a death sentence and a sentence of life without parole or life without release, was it in the context of this case, or was it in the context of any particular case?

A. No. This was way before this ever happened. Because he also worked in a prison, and he dealt with some very famous people.

Q. In the prison?

A. Uh-huh.

Q. And he would talk to you about how horrible a prison sentence was compared to a death sentence?

A. No, not really. He is kind of closemouthed. He doesn't talk too much. He doesn't ever say too much, you know, about a job, because he doesn't tell you about it, but I do know about the prison. When he first started out he was a guard, and I know there was some famous people there. Because one of them gave him a birthday card and said, "Keep it. It might be worth some money some day".

Q. Has your son expressed any particular opinion about this case knowing that you're coming down for jury service?

A. What he said is, "They ought to pick you, Mom, since you don't know anything about it".

Q. Did he express any opinion about what he thought the results should be?

A. No. He wouldn't. If I asked him, he would, but he wouldn't because he knows. And in fact my granddaughter said, "Don't ask her anything. She gets really upset. She don't want to hear nothing. Don't say nothing".

Q. In your questionnaire at the back we had the extra sheets there.

A. Uh-huh.

Q. Page 37, you have a discussion about there are people that need food and clothes and money to go to school. And people that go to prison, they get everything because they have done something wrong. It sort of is expressing the unfairness of that concept.

How does that compare with what your son has been telling you about prison? Where do those thoughts connect?

A. He didn't really tell me about that. That is my own thoughts. There are people here – I mean, like we help other countries. I feel that they need to help the people in our own country first and then help the others, you know, if there is any left over.

I mean, we have got children here in the United States that are starving to death and need help, and then there are a lot of people that want to go to college. And they don't have the money or the means to go, but yet it seems when the people go to prison they can learn anything in there, anything they want to.

Q. Do you have any particular thoughts about alternatives there?

A. No, not right now. I think there are certain things that they shouldn't be allowed to do since – I mean, our young people haven't got the money to go to college and stuff. And they used to have a weight program in the jails and stuff, and I think they have taken that away in the prison because they say they are as strong as the prison guards or stronger.

Q. So am I getting you correct, your son has this sort of different view of what a life without parole sentence means as compared to a death sentence, but your own personal view is that perhaps a sentence in prison is maybe too cushy?

A. No, not necessarily, because I agree. If you go to prison, I agree with him, I can't think of anything that's more horrible than to spend the rest of your life behind bars and confined to a cell.

**Q.** You mentioned, I think, when the prosecutor asked you would you automatically vote – are you okay?

**A.** Uh-huh.

**Q.** – vote for a sentence of death if you found a person guilty of murder. Do you remember that question?

**A.** Uh-huh.

**Q.** And you said you think you would have to hear the circumstances.

**A.** I would.

**Q.** What do you mean when you talk about hearing the circumstances?

**A.** I would have to hear the case, the prosecutor's case against him. I would have to hear the facts. I mean, you know, I don't think that you can just look at a person and make a decision. You've got to hear both sides and then weigh the facts and decide.

**Q.** The case, as the judge explained when the group of jurors were sitting in the jury box, proceeds potentially in two parts. One is the guilty/not guilty phase, as the judge described it, where you sit as a juror and you determine whether or not the crime was committed, and you do that beyond a reasonable doubt.

**A.** Uh-huh.

**Q.** And if the jury finds beyond a reasonable doubt that the crime was committed, then you proceed to the penalty phase.

When you talk about the circumstances, are you thinking of the circumstances in the guilty/not guilty phase or the circumstances in the penalty phase?

**A.** Probably – well, after all the facts are in then it's up to the judge to give you, you know, the different ways. And I – so I would say probably – what did you say, the penalty, or what – or the other?

**Q.** Right, the penalty phase.

**A.** Uh-huh, probably. You know, like I say there again, I would have to listen to the facts and listen to the judge.

**Q.** Let me ask you, if I could, if you could turn to page 27, question 107. Do you see that string of checkoffs?

**A.** Uh-huh.

**Q.** And the first one is, "Anyone who plans and commits a murder should get the death penalty," and you checked off strongly agree.

What were you thinking about when you did that?

**A.** I really don't know. I mean, to agree somewhat is the one I meant to check. That's what I thought I did check.

**Q.** The second one down, "Anyone who deliberately murders two or more people should get the death penalty," is that a strongly agree?

**A.** There again, I think that you have to consider the circumstances and the facts before you can actually make that decision.

**Q.** The circumstances of the murder itself, or the circumstances of the person who commits the murder?

A. Well, both, because I feel that sometimes there is a murder where people, say, have had an argument. And they get in a fight, and the people didn't really mean to kill them in the first place. So there again, I would have to hear all of the facts and the circumstances and the situation.

Q. If you were in a – the third one is, "Anyone who commits an act of terrorism in which someone dies should get the death penalty," and that was a strongly agree.

What were you thinking of the circumstances for that?

A. Oh, like when other countries bomb our airplanes and stuff and kill so many people.

Q. That would be an act of terrorism?

A. Yeah.

Q. And the death penalty would be an automatic result of that action?

A. No. I don't think it should be automatic. There again, I think you should have to hear the facts and the circumstances of what preceded that to even happen.

Q. When you think of terrorism, where would you place the mailing of a bomb to someone with the intent to injure or kill them and their death resulted?

A. Iran.

Q. Would you place that as terrorism, a terroristic act?

A. In Iran, yeah.

Q. What about in the United States?

A. I don't know if that would be terrorism or not. I would have to hear the facts again.

Q. In a circumstance where the defendant – and I think the judge asked you this, if I could just get it clear in my mind where you are on it. If you are sitting as a juror, and during the guilty/not guilty phase of the case you made a finding beyond a reasonable doubt that the person was guilty of deliberate, premeditated, intentional, cold-blooded murder, you made that finding beyond a reasonable doubt, would there be anything that you can think of that would move you off a particular sentence – well, what would the sentence be for you if you made that finding?

MR. LAPHAM: Your Honor, I'm going to object to a question that includes aggravators. Cold-blooded implies planning, lack of remorse, things of that nature. So the question is loaded.

THE COURT: Do you understand the question?

PROSPECTIVE JUROR NO. 154: I think so.

THE COURT: Overruled.

Q. BY MS. CLARKE: Are you with me? Did you need it again?

A. Yes. Tell me again, please.

Q. If during the first phase of the case, the time where you are making a decision as to whether the person is guilty of the crime, you find beyond a reasonable doubt that the person committed a deliberate, intentional, premeditated, cold-blooded murder, what would be the penalty in your opinion?

A. In my personal opinion?

**Q.** Yes.

**A.** I would say either the death sentence or imprisonment for life without parole.

**Q.** Those would be the two options that you would be considering?

**A.** Uh-huh.

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

**THE COURT:** Yes.

**MS. CLARKE:** Thank you very much.

**PROSPECTIVE JUROR NO. 154:** You're welcome.

(Prospective Juror No. 154 left the courtroom.)

(Prospective Juror No. 155 entered the courtroom.) /

**VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 155th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

**A.** No, sir.

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

**A.** Yes, sir.

**Q.** Since you filled out that questionnaire have you heard of or read anything about the case?

**A.** Yes, sir.

**Q.** Tell me what you have heard of or read.

**A.** Well, the news media, and we take The Sacramento Bee. We read something about that.

**Q.** Okay. What information did you gain when you read it?

**A.** Just under investigation and different things, you know.

**Q.** I'm asking you the question for a couple of reasons. The primary reason is because I think I'm under an obligation by law to find out what information you have received. Jurors aren't necessarily excluded from being considered for jury service on this case because they have been exposed to pretrial or trial publicity, but we have to know what information you have actually received so that we are in a position to objectively evaluate the possible effect that information could have on you. And we will also give you an opportunity to tell us from your own personal perspective whether you believe the information has any effect on you at all.

So can you give me more detail about the information you've actually received so we are in a position to do that?

**A.** No, not really. Just what I see in the news media on all three of the stations, and then what I read in the paper, in The Bee. So I don't know, I'm sort of –

**Q.** You don't have a present memory of what you actually were exposed to since Cal Expo?

**A.** Beg your pardon?

**Q.** Do you have a present memory?

**A.** You mean on some of the questions?

**Q.** No. I'm not talking about the questions. I'm talking about the information you saw on TV and what you read in the newspaper. I'm trying to determine if you can remember any specifics about what you actually became aware of.

**A.** No. The only thing, like I seen on TV, was when they was moving the cabin, and that's just about the highlights that I remember. I've been sort of out of touch. We are building a home in South Lake Tahoe for the last two years. So we have been pretty busy.

**Q.** How about the newspaper articles, do you remember any specific information?

**A.** No, not really, just sort of like the headlines, just sort of skim over it for the headlines, the highlights, whatever.

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

**A.** No, not really. And just like, the wife and I just say we seen some stuff on TV or whatever, you know.

**Q.** Do you recall the content of any of those discussions?

**A.** No, not really. That the gentleman was going to be transported to Sacramento, and I did see when he arrived at the airport; and it was on the news media.

**Q.** I'm going to direct your attention to the time period before Cal Expo, and I want you to share with me as much information as you possibly can that you became exposed to before you appeared at Cal Expo. Give me as many details as you can.

**A.** Before Cal Expo? You know, like I say, I seen when they was in the cabin and then transporting it, and that's just about it really.

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

**A.** No. I haven't.

**Q.** Do you know about the allegations?

**A.** Yes. I do.

**Q.** What do you know about the allegations?

**A.** Well, that he just – let me see. Well, they say building bombs, and what I've read – and I'm sorry about this. I've got – this is the first time I've ever been on jury selection, so just –

**Q.** You don't have to apologize, sir. We expect you to take your time and to think about the questions and give us your very best response, and you don't have to apologize for it. I understand that you're the focus of attention, and I'm asking questions that you probably haven't had to respond to before. But if you can just do your best and give me as much information as you can about the things you became aware of about the case.

**A.** That's just about it, really.

**Q.** Okay. You mentioned bombs. Did you read any news articles about bombs?

**A.** No. They just said – what I read was what the FBI went in the cabin and found some evidence or something about a bomb, building a bomb. But like I say, I really didn't get into reading the whole article or whatever, just sort of the highlights.

**Q.** Anything else concerning the cabin, what was allegedly found inside the cabin?



A. No, not really.

Q. Has the information you've been exposed to about the case caused you to form an opinion as to Mr. Kaczynski's guilt or innocence?

A. No, not really.

Q. When you say not really, that –

A. No. I don't think so. I don't think I've formed an opinion.

Q. Knowing yourself the way you do, is there anything about your psychological makeup that would prevent you from being able to leave the information you received about this case outside the courtroom if you were selected as a juror, and would you be able to make a determination as to Mr. Kaczynski's guilt or innocence based on the evidence that's actually brought into this courtroom during the trial?

A. Yes. I would.

Q. If you were selected as a juror, would Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Yes.

Q. What does that mean to you?

A. Well, if he is – he is innocent until proven guilty on the evidence.

Q. You are right. That's what the doctrine reflects, that he is protected by that doctrine. He need not present any evidence in this courtroom. The Government has the burden of coming forward with evidence, and the Government must prove his guilt beyond a reasonable doubt. And if it fails to do so, you must acquit Mr. Kaczynski.

Is there any problem with you following that principle?

A. No, sir.

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

A. No, sir.

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

A. Yes. I do. I believe in the death penalty.

Q. Okay. Can you explain your views?

A. Just – no, not right at the time.

Q. Okay. I'm going to have you to join me in a hypothetical. I'm going to present a certain set of facts, and I want you to just assume for purposes of my question these facts.

Let's assume that you were in fact selected to sit on the jury, and you sat with your fellow jurors, listened to all of the evidence during the guilt and not guilty phase of the trial. You later evaluated all of the evidence, and then you all decided, to Mr. Kaczynski's disappointment, that he was guilty of the offense of deliberate, intentional, premeditated, cold-blooded murder of another human being.

In the face of that finding would you still be able to consider voting for a sentence less than death?

A. No. I wouldn't.

Q. Can you explain your response?

A. Well, just the jury and the facts and everything was there, and they proved that the gentleman did it. It's the law.

Q. Did you say it was the law?

A. Yeah. I'd say so. Well, maybe I put it wrong. I don't know.

Q. Okay. Do you understand that the law requires that before imposing the death penalty, even for the offense I just told you about, the jury must consider the facts and circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the death penalty should not be imposed?

A. Could you rephrase that a little bit?

Q. Okay. Do you understand that the law requires – let me back up.

A. Okay.

Q. In the hypothetical we were dealing with the guilt and not guilty phase of the trial. Then we assumed that you found Mr. Kaczynski guilty of intentional murder, and we called it cold-blooded murder; and I used other adjectives.

Is there anything about your belief system that would prevent you from going into what I've explained earlier is a sentencing phase of the trial with an open mind as to what sentence could be imposed?

A. No. It wouldn't be. I wouldn't have no problem with that.

Q. If this case reaches the sentencing phase, and you were on a jury that found Mr. Kaczynski guilty of intentional, premeditated, deliberate, and cold-blooded murder of another human being, would you automatically vote to select the death penalty no matter what mitigating evidence is presented?

A. Yes. I would.

Q. Do you understand that the law requires that before imposing the death penalty, even for the offense I've been explaining, the jury must consider during the sentencing phase of the trial the circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the sentence of death should not be imposed?

A. No.

Q. You don't understand that?

A. No. I don't understand, to a certain degree.

Q. During the sentencing phase of the trial the Government would most likely present what's called aggravating factors, evidence concerning aggravating factors. It would be evidence that the Government believes points toward death. There could also be presented what's called mitigating evidence, mitigating factors. It would be evidence that points towards life imprisonment without the possibility of parole or some lesser sentence.

I'm trying to determine whether your views in favor of the death penalty are such that you would not be able to withhold your judgment as to what sentence should be imposed until after you have heard all of the aggravating factors and the mitigating factors?

A. No.

Q. I'm sorry?

A. Go ahead, sorry.

Q. No. I'm waiting for a response.

A. Yes, sir. I do understand, but I would take that under consideration about the death penalty. And what my point is, if all the evidence points toward the gentleman is guilty, I would still vote for the death penalty. Maybe I don't understand, or –

Q. Okay.

**MR. FRECCERO:** I'd like to ask a few questions.

**THE COURT:** Okay.

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

Q. Sir, my name is Stephen Freccero. I'm one of the prosecutors. Let me just ask you a few questions.

The term mitigating evidence that we have heard here, what does that mean to you?

A. I am sort of confused. I don't understand right now. No. No, sir. I don't know. My memory is gone, I guess.

Q. Okay.

A. At this time.

Q. And I appreciate that we are asking you a lot of questions. As we have talked about, if there were a trial, and you were a juror that voted to convict the person, there would then be another proceeding before the penalty for that crime was imposed in which additional evidence would be presented to you.

A. I didn't know that.

Q. Okay. That's so that in a case in which there is a crime that potentially carries the death penalty there would be two steps. First the jurors would have to decide whether or not the person was guilty.

A. Okay.

Q. All right. Then if they found the person guilty, then the jurors – then there would be a second proceeding different from the finding of whether the person is guilty or not guilty.

A. Right.

Q. At that proceeding it would be the jurors' job to decide whether the penalty should be the death penalty, life imprisonment without parole, or some other sentence.

Now, the question is: Are your views about the death penalty – your personal views, so strong that you would already have made your mind up before you got to that second proceeding?

A. No, not really. No.

Q. Okay. Would you be open to honestly and fairly consider any evidence presented to you in that second proceeding?

Because at that second proceeding the Government would give the reasons why it thought the death penalty was appropriate, and the defendant had the – would have the option, wouldn't have to, but could present evidence as to why some sentence other than the death penalty would be appropriate. And the issue is, would you have an open mind before making any decision?

Would you be able to consider the evidence presented by both sides before you made up your decision as to what would be the right penalty?

A. Yes. I would.

Q. Okay. And again, we are only talking about a crime of an intentional murder. You would only get to that second phase if you had already convicted the person of intentionally murdering. Okay.

Is that where the confusion was?

A. Yeah. That's where the confusion was, on the second part.

Q. All right. If you were the – the law that applies to a case like this allows for the death penalty with other alternative sentences for a crime of intentionally taking a life, and so we are only talking about a case where someone is charged with intentionally taking another person's life. And the first step is only to decide whether or not that person did in fact intentionally take that life. That's the first step.

Do you understand that?

A. Right. Yes, sir.

Q. And the jurors would have to deliberate and decide beyond a reasonable doubt to make that determination, but if they find the person guilty of that intentional murder then there would be that second phase because the jury itself would have to choose among punishments. The law would require a juror to consider openly each possible alternative.

So the question is: Are your personal views about the death penalty such that you wouldn't have an open mind in that second proceeding; you would have already made up your mind that the death penalty was the only punishment?

A. No. I would keep an open mind.

Q. All right. You could honestly consider life imprisonment based on that if the evidence warranted it?

A. If the evidence warranted it I could.

Q. Okay. Have you ever had to think about this legal situation before?

A. No, sir. Never.

Q. Okay. Did you know anything about the law that applied before you came here?

A. No, sir, very little.

Q. Are your beliefs about the death penalty strong personal beliefs?

A. No, not really, because I've never got into it. I've never had this before.

Q. I noticed, I think, in your questionnaire you said that you thought you could be fair and just.

A. I am fair and just. I could be.

**Q.** Okay. Would you agree with me that part of being just is following the law that applies in a criminal case, the law that the judge would give you?

**A.** Yes, sir.

**Q.** Okay. Because if you were a juror you would have to make your decision based on two things, the actual evidence that's presented, the facts as they are presented here, and then you would have to follow the law that the judge gave you.

Is there anything about your personal beliefs that would prevent you from following the law that the judge gave you?

**A.** No, sir.

**Q.** And if the judge told you that before the jury could make a decision in a murder case as to what penalty, you had to consider all of the evidence at that second proceeding – okay, it may be things about the crime itself. It may be things about the person who committed the crime, something about their background, their character, you know, what led up to the commission of the crime. You would be required to consider all those things and honestly deliberate with your fellow jurors before making a decision.

Do you think you could do that?

**A.** I could do that, sir.

**Q.** Okay. Have you ever had to think about all the possible circumstances that could be involved in a murder before?

**A.** No, sir.

**Q.** Okay. Is there anything in your belief system that you think would cause you – in this particular case where the death penalty is potentially to be applied, is there anything about your belief system that you think in this type of case you couldn't be fair and follow the judge's instructions?

**A.** No, sir. I could be fair.

**MR. FRECCERO:** I have, on another subject, a couple brief questions, if I could follow through on them?

**THE COURT:** Why are you asking me?

**MR. FRECCERO:** I'm sorry. Because I'm out of order, but if I could follow-up on a couple other questions?

**THE COURT:** You're already out of order. I mean, you might as well ask your questions.

**Q. BY MR. FRECCERO:** Let me just ask you along those lines, I notice in your questionnaire that you have a son-in-law who is involved in law enforcement; is that correct?

**A.** Yes. I do.

**Q.** Okay. Is there anything about that relationship, about the fact that your son-in-law works in law enforcement that would make you favor or disfavor any side in this particular case?

**A.** No, sir, not at all.

**Q.** You feel you would be able to fairly evaluate the testimony of a law enforcement officer based on his testimony and his demeanor in court?

**A.** Yes, sir. I could.

**MR. FRECCERO:** Okay. Thank you, sir.

**PROSPECTIVE JUROR NO. 155:** Thank you.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Good morning, sir. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions too.

Let me ask you particularly, when the judge was asking you these questions about your views on the death penalty you seemed to be a little upset by that. Am I right?

**A.** No. At the time I was nervous.

**Q.** Nervous. Do you feel a little better about it now?

**A.** Yes, but I've never did this before.

**Q.** And you're in the hot seat, but we are just trying to get you to tell us what you think in these areas. Do you feel okay about that now?

**A.** Yeah. Yes, sir.

**Q.** Do you have your questionnaire there?

**THE COURT:** Is this your questionnaire, sir?

**PROSPECTIVE JUROR NO. 155:** Yes. It is.

**THE COURT:** Okay.

**Q. BY MR. DENVIR:** Did you fill it out at Cal Expo?

**A.** Yes. I did.

**Q.** Okay. And do you remember you were asked to fill that out as if you were under the penalty of perjury? Do you remember that's what the instruction said?

**A.** Yes, sir.

**Q.** And you were asked some questions about – and what I want to ask you now is your own personal views about the death penalty. Everybody has views one way or the other, and there is no right or wrong. But I want to know what you think about that, I mean, how you view the death penalty.

**A.** Well, if a person committed the crime, and the law warrants it, that's my opinion. You know, my opinion may be – I'm not very good at words, but you know.

**Q.** You are doing fine. We just ask you to express it is as you feel, but as I understand it, you do support the death penalty?

**A.** Yes. I do.

**Q.** You want to have a death penalty?

**A.** Yes, sir.

**Q.** And if the law authorizes the death penalty in a case, and the person is found guilty of that crime, then am I right that you believe that that is the penalty that they should be given?

**A.** Yes. I do.

**Q.** And the reason that I ask that is if you look on page 26, you indicated – if you can look there on page 26, question 103, where you are asked about your opinions about the death penalty and its use in our society, as I understand it, you said that if the facts are found proven by the jury then the death penalty should be imposed.

**A.** I put down that's the law, and if it's the jury's belief if he's found guilty.

**Q.** And if the facts are found and proven, then the death penalty right below that?

**A.** That's true. Yes, sir.

**Q.** And you may have changed your mind since then. I'm just trying to understand, because it's very important to us to understand what your views are.

And then if you would turn to the next page, you were asked, "Anyone who plans and commits a murder should get the death penalty"?

**A.** I put strongly believe.

**Q.** You strongly agree with that question?

**A.** Right.

**Q.** If a person is convicted of planning and committing a murder they should get the death penalty; is that right?

**A.** That's right.

**Q.** And then you were asked about the question, "Anybody who deliberately murders two or more people should get the death penalty," and you strongly agree with that?

**A.** Strongly agree, yes, sir.

**Q.** If someone is convicted of deliberately murdering two people then they should get the death penalty?

**A.** Yes, sir.

**Q.** And then you were asked, "Any person who commits an act of terrorism in which someone dies then they should get the death penalty," and you strongly agree with that also?

**A.** Yes. I do.

**Q.** Again, if someone is convicted of an act of terrorism and somebody dies, then the penalty should be death?

**A.** That's right.

**Q.** In other words, if he is convicted of a murder, the person's background shouldn't matter at all; is that right?

**A.** No, sir, no matter who.

**Q.** I mean, in other words, if they commit that crime, a murder, then it doesn't make any difference who they are or what they are. The crime itself says that they should get the death penalty?

**A.** Yes, sir.

**Q.** And then on the next page you were asked to check what most accurately stated your views about the death penalty, and you said where one person intentionally kills another person the death penalty is always justified; right?

**A.** That's my belief. Yes, sir.

**Q.** And as I say, people have different views on this. Some people think there should never be a death penalty. There are people in the middle, and they could be anywhere. I want to see if I understand it.

My understanding is if a person who is convicted beyond a reasonable doubt by evidence of committing a murder or an intentional murder or a premeditated murder or a deliberate murder of two people or an act of terrorism, all those kinds of crimes, if they are guilty of that crime and the law allows the death penalty for that crime as it does, then you think that that person should receive death?

**A.** Yes. I do.

**Q.** They shouldn't receive something less than that in your view?

**A.** Well, if the evidence warrants it, and the jury and I say yes with the death penalty.

**Q.** But what I'm asking you now is: If you sat on a jury, and you found that the person intentionally planned and premeditated and cold-bloodedly killed somebody with no excuse and justification, and you said the evidence proved that beyond a reasonable doubt; you know the person did it?

**A.** Yeah, the death penalty.

**Q.** It would be the death penalty; wouldn't it?

**A.** That's true.

**Q.** It wouldn't be life?

**A.** No, sir.

**Q.** It wouldn't be life?

**A.** No, sir.

**Q.** It wouldn't be less than life?

**A.** No, sir.

**Q.** And there is nothing wrong with that, and those are the views that people have. And the question I have is: If you sat on a jury in that kind of a case, and the Government put the evidence on, and you said along with your other jurors that he committed that intentional murder, he killed this person, cold-blooded, premeditated, intentional, no excuse, no justification; he is guilty, then aren't you going to always vote for the death penalty?

**A.** Yes, sir. I would.

**Q.** You are not going to let somebody off?

**A.** No –

**THE COURT:** Just a moment.

**MR. DENVER:** I'm sorry.

**THE COURT:** You hadn't finished your answer. At least you were talking at the same time, which caused me to conclude that you hadn't finished your answer.

**PROSPECTIVE JUROR NO. 155:** I would say premeditated. That's one reason I would go with the death penalty.

**Q. BY MR. DENVER:** Right. If it is a premeditated murder with no justification or excuse then you are going to vote for the death penalty?



A. If it's proved that it's premeditated.

Q. Then you're not going to let somebody off light?

A. If it's proved.

Q. Let me ask you this. You said as a juror you would be fair and just; am I correct?

A. Yes, sir.

Q. And am I correct that the fairness is that you would not do anything unless you were convinced beyond a reasonable doubt by the evidence that the person was guilty; right?

A. Yes, sir.

Q. That's the fairness part. And isn't the justness part that once you were convinced of that, that they were guilty beyond a reasonable doubt of a premeditated murder, that you think the just thing that should happen is they should get the death penalty?

A. Yes, sir.

Q. And it would be very hard for you to let them off with a lesser sentence?

A. Yes. It would.

Q. It would violate your conscience; wouldn't it, if you had to do that?

A. Yes. It would.

Q. So what the purpose of this is, is that no one asks you to violate your conscience. The question is, in that situation where you had fairly determined that the person had committed a premeditated murder without justification or excuse, then you would feel compelled by your sense of justice to sentence that person to death and not to let them off with something less?

A. If it was proven, yes.

MR. DENVIR: If I could have one moment, your Honor?

THE COURT: Okay.

MR. DENVIR: I have no further questions. Thank you, sir.

(Prospective Juror No. 155 left the courtroom.)

(Prospective Juror No. 156 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 156th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. Well, I would like to be excused because I have a small business that takes 12 hours a day now, and I'm not sure what would happen if I was to go away for four months.

Q. I need you to scoot a little bit closer. I heard everything you said until you said something about months.

A. I said I'm not sure what would happen if I were to be absent for four months.

Q. It is possible that this trial will be over in two months. It could last as long as you've just indicated, and you heard the trial schedule I plan on using.

Will that reduce the hardship for you?

**A.** Well, it just happens to be the first four months of the year when we have a lot of tax problems to solve, and I'm really still working on last year's tax problems.

**Q.** I recognize that sometimes jury service can cause hardships, and the hardship is probably even more pronounced when you have a case that's going to last possibly as long as this one is going to last. But I still have to do a balancing function when I consider the hardship against other things I have to consider.

Is there any way you can cope with the hardship and allow yourself to be available for jury service?

**A.** Well, from my own standpoint I think it would be all right, except that my wife is a partner in this business. And she already figures she is overworked, and she is close to coming unglued as it is. I'm not really sure she would appreciate the extra burden.

**Q.** Could you sit?

**A.** What's that?

**Q.** Could you sit as a juror?

**A.** Could I?

**Q.** Yes.

**A.** I would prefer not to. There is probably other reasons too, but I would like to see justice done. But I figure I'm kind of open-minded, but in this particular case I think I have already made up my mind.

**Q.** Let me hear about the other reasons.

**A.** Other reasons?

**Q.** Yes.

**A.** Other than what?

**Q.** Well, you said that there are probably other reasons too.

**A.** Yeah.

**Q.** And then you indicated that you're usually open-minded.

**A.** But in this case I'm not so – I'm not sure that I'm really a fair juror.

**THE COURT:** Do the parties want to confer, or do you want to probe?

**MR. CLEARY:** May I ask a few questions, your Honor?

**THE COURT:** Yes.

**MR. CLEARY:** Thank you.

VOIR DIRE EXAMINATION

**BY MR. CLEARY:**

**Q.** Good afternoon, sir. My name is Robert Cleary. I'm one of the prosecutors on this case. I wanted to talk to you a little bit about your work situation.

Are there other employees in the company or people working at the company besides your wife and yourself?

**A.** Yes. Actually, my wife and the other people work pretty much on the sales end of things, although I get involved in the sales also. But I'm the only one that can handle the contract work and a lot of the accounting.

**Q.** How many employees do you have total?

A. Well, actually, there is only five of us in the place at one time, but we do have an outside sales staff of another six or eight people.

Q. I'm sorry?

A. Another six or eight people. It rotates a little bit. There is a core of about five.

Q. So you're talking about somewhere in the neighborhood of 10 or 13 people working for the company?

A. Yeah, maximum.

Q. And you mentioned particular tax problems that you're having. Do you have an accountant or bookkeeper?

A. We have a bookkeeper and an accountant. It's just because of the nature of the business and the way we get paid, every transaction is a different – we work on commissions, and how we are paid varies with every transaction. Just to get the material to the bookkeeper, even though we are automated, I have to go through all the downloads every day to make sure that all the transactions are handled properly so the bookkeeper doesn't get screwed up.

Q. Is the bookkeeper an employee, or is this someone you contract?

A. Outside.

Q. So too with the accountant; right?

A. Right.

Q. And your business, as I take it – I don't want to know precisely where it is, but it's somewhere around the downtown Sacramento area?

A. It's in Sacramento County.

Q. Would you be able to get to your office, knowing we are only sitting until 1:00 each day, get to your office by a decent hour in the afternoon?

A. It's a possibility. Since I work late at night anyways I could just extend my day.

Q. Would you be able to do that?

A. Although some days it goes to 11:00 anyway.

Q. Recognizing that you have a number of employees and other people that you contract with for outside services, would the fact that you could get to work at a decent hour in the afternoon relieve some of the burden on your wife?

A. Some of it, but even as it is now I have to carry a cell phone around with me to handle situations all day long, even when I'm not in the office.

Q. Do you think with the accommodations and the schedule your wife would be able to tolerate you sitting on this jury?

A. I think she would prefer not to, but she gets unstrung at times as it is, because of, you know, the complexities and the hours.

Q. And I recognize it would be inconvenient for her, and she would not want to do it. Could she do it without causing any great distress to her?

A. It would be a great distress, but she could probably do it.

**MR. CLEARY:** May I have one minute, your Honor?

Your Honor, we'd be prepared to stipulate as to this juror.

**MS. CLARKE:** We would too, your Honor. Thank you.

**THE COURT:** Okay. We are going to excuse you from further service on the case. Thank you.

**THE WITNESS:** Thank you.

**THE COURT:** That's all the jurors we had scheduled for this morning. Do you want me to provide you with a ruling on the for-cause challenges with respect to two jurors, Juror 72 and Juror 74?

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

**THE COURT:** Kaczynski moves to excuse Juror 72 for cause, arguing that her fixed views on the death penalty would prevent or substantially impair her ability to consider mitigating evidence in determining whether life imprisonment or death is the appropriate penalty, should Mr. Kaczynski be convicted of a death-eligible offense. The Government rejoins that the juror is not disqualified simply because she harbors a predisposition towards capital punishment.

The Government appears to counter Kaczynski's assertion that the juror's answers to questions show bias by arguing that the determination of juror bias does not depend on the precise wording of any particular question or answer, but is based on the totality of circumstances, including the demeanor of the prospective juror.

As the Supreme Court stated in *Ristaino vs. Ross*, 96 Supreme Court, 1020, "Determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge." The trial judge is required to make an independent assessment of a juror's ability to render a fair and impartial verdict.

This can be assessed by considering the juror's express admission of a bias, but more frequently biased attitudes are revealed by circumstantial evidence. Once a juror has indicated bias, a trial judge may not simply accept the juror's promise to be fair and impartial.

Rather the judge must determine whether the juror entertained capital punishment scruples that would prevent or substantially impair the performance of her duties as a juror. *Witt*, 105 Supreme Court at 852. A juror's bias need not be proved with unmistakable clarity. *Russell vs. Collins*, 998 Fed 2d at 1294, Note 40.

The issue concerning Juror 72 is whether the juror would follow the Court's instructions as opposed to her own belief concerning what law applies in the case. While I recognize that the record supports each party's position on this question, I have the definite impression that the juror's views on the death penalty would substantially impair the performance of her duties as a juror. I don't think she knows whether she will follow my instructions.

As observed in *McDowell vs. Calderon* 1997 West Law 725767, Ninth Circuit, November 24, 1997, "A juror cannot fulfill her central role in our criminal justice system if she does not follow the law. The law is not an unguided missile free, according to its own muse, to do as it pleases. To accomplish her constitutionally-mandated purpose a juror must be properly instructed as to the relevant law and as to her function in the fact-finding process, and she must assiduously follow those instructions."

Therefore Juror 72 is excused for cause.

Kaczynski also seeks to have Juror 74 excused based on the argument that since his job is the functional equivalent of a police officer he is barred from jury service under 28 U.S.C. Section 1863(b)(6)(B). Kaczynski mentioned the juror's employer in his motion. This is the second time this has occurred. Kaczynski is directed to comply with my juror anonymity order, which prohibits public disclosure of jurors' places of employment.

The applicable statute bars members of the fire or police departments of any State from jury duty. Kaczynski seeks to equate Juror 74's work position with that of a police officer's work position. However to paraphrase and quote from the Tenth Circuit decision in McCullah 76 Fed 3d at 1099, Kaczynski's interpretation of the statute goes against the plain language of the statute, which clearly refers to only members of the police departments of any State. While the juror's position – employment position, that is, may have some police-like duties, the juror is not a member of the police department.

For the stated reasons the motion is denied, and the defense needs to cease disclosing the employment of the jurors in the motions. That's the second time.

Anything further to cover before we adjourn until 1:30?

**MR. FRECCERO:** Your Honor, one matter. I think you asked us to confer about some jurors, and I thought I would give you those numbers. I believe the parties have stipulated excusal for those jurors so that we could save them coming back. That would be juror 167, 173, 181, 189; is that right?

The parties – the Government certainly stipulates to their excusal.

**MS. CLARKE:** That's correct, your Honor. We do too.

**THE COURT:** Okay. Then I will have my deputy clerk contact those jurors, or at least have someone contact jurors 167, 173, 181 and 189, and I'll see if we can find replacement jurors.

Thank you for looking at the matter.

**MR. DENVIR:** Thank you, your Honor.

**MR. FRECCERO:** Thank you, your Honor.

(Whereupon the luncheon recess was taken.)

SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 2, 1997, 1:30 P.M.

—oOo—

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

Ready to proceed?

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

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

**THE COURT:** Bring in the jurors.

(Prospective jurors enter the courtroom.)

**THE COURT:** Thank you for joining us. I would like my deputy clerk to please administer the oath to the prospective jurors.

(Prospective jurors sworn.)

**THE COURT:** Good afternoon. Welcome to the 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. And on the same platform with her is a certified shorthand reporter who assists the Court in administering this trial.

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

The voir dire or questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your 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 first question you as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be invited back for a further group questioning. We will let those know who are involved in that process as to when that process will take place.

Our objective is to obtain a fair and impartial jury that will decide this case based upon the evidence as presented here in the courtroom and on the law that I will give you during the trial. I have decided to do individual voir dire in part because the parties have requested it and because there's been some publicity about this case. During the individual voir dire process 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 requires or provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the 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, what is referenced as the sentencing phase.

If there is anything about the charges that causes you to prefer not being a juror on this type of a case, please indicate that fact by raising your hand now.

There's 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 he 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 the defendant's character or background, any circumstance of the offenses, or any other relevant fact or circumstance which might indicate or tend to indicate that the defendant should not be sentenced to death.

At the conclusion of that hearing, the jury would then deliberate 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 process, we'll refer to you by your randomly selected number as a juror rather than by your name. This is because I've decided to use an anonymous jury in this case in order to protect your privacy as I informed 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 and you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are jurors but don't tell them anything about this case until after you have been excused by me.

Third, do not let anyone talk to you about the case or about anyone that 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 and 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 no opportunity to discuss. For these reasons you should avoid reading and listening to future news accounts during the time period in which you are involved 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.

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 schedule poses a problem.

**PROSPECTIVE JUROR NO. 164:** I have a question. I am a traveling salesman, and it would interfere with my work in that aspect of it. Is that what you're asking?

**THE COURT:** Yes. Let the record reflect that juror 164 responded to the schedule question.

We'll talk to you about it – about it during the individual session, sir.

I contemplate observing the holiday season as follows: We'll not hold court December 24th, 25, or the 26th; nor January 1, or 2. I contemplate holding court December 22, 23, 29, the 30th, and the 31st. Please raise your hand if this poses a problem.

There's no response.

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

There 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 it will urge the jury to find supports the sentence it seeks.

You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this.

There's no response.

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

There's no response.

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

There's no response.

During the individual questioning, if you conclude that any question you have been asked 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, I may ask some questions in the area you indicated a desire to



discuss in private to determine whether we can discuss any aspects of it in open court without disclosing what you desire to keep private. If this can occur, let me know so I can decide whether the matter should be discussed 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 recognize that a couple of you have made hardship claims in your response to a juror question. I want you to know why you're here despite what you've indicated in the question. I don't want to interfere with your time needlessly. You are here for a purpose. I have to evaluate the hardship you have articulated against the overriding concern that I have as a judge to fulfill a legal principle or satisfy a legal principle.

The parties are entitled to select jurors from what is called a fair cross-section of the community. If we automatically exclude certain jurors because of a job or other matters, then it is possible that a whole stratum of society could be excluded, and the parties would not be able to realize what they are entitled to receive. United States district judges are sometimes called for state jury service. I have, as a United States district judge, filled out a state juror questionnaire, and explained my availability. I think it's pretty obvious I wouldn't want to sit over there at this moment because of this trial.

In one of my previous positions I was chief of the civil division of the United States Attorney's Office. I had responsibilities for supervising lawyers in the Fresno and Sacramento Division of the United States Attorney's Office; I also had my own case load. I was called for jury duty. I didn't want to do it. But I did it. I was actually selected and placed on a jury and I had to do work at other times because it was a sacrifice I have to make.

So we don't know by looking at your responses to questionnaires whether you can make a sacrifice. That's why, despite the fact that a couple of you have indicated that you have hardships, you're still here. I just want you to understand I'm just trying to do my job.

I now want 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 left the courtroom except for number 146.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You're the 146th randomly selected juror. Is there any reason on why we shouldn't continue to consider you for possible jury service on this case?

**A.** I have a concern with the death penalty. I don't know if you could get to that now or not.

**Q.** We can get to it now.

**A.** I really didn't give it a lot of thought until I actually got involved with this jury selection, and I find that, although prior to being this close to sitting on a jury I could give lip service to favoring the death penalty, I don't feel that way anymore. I would

have difficulty imposing that or voting for that or being on a jury that was faced with that.

**Q.** Okay. We're not looking for jurors who necessarily are for or against the death penalty. We are looking for jurors that are willing to consider the death penalty as one of the sentencing options. The options available would be the sentence of death, life imprisonment without the possibility of parole, and that really means that in the federal system. If you're sentenced to life in the federal system, you receive life. Or a lesser sentence.

Is there anything about your beliefs against the death penalty that would interfere with your ability to consider each of those sentencing options?

**A.** No.

**Q.** Okay. Other than what you shared, and I do appreciate you sharing that right away, is there anything else that –

**A.** I got practical concerns, because I'm a solo physician, ophthalmologist, and I got about 15 people on the staff. Now, I could – this would be morning only?

**Q.** Yes. It would be from morning only but cover part of the afternoon. It would be from 8:00 until 1:00, but you would have to meet with the other jurors at 7:00 o'clock, and then we would release you at 1:00 o'clock, and then it would take the marshal perhaps 15 minutes to half an hour to get you to the location they're going to drop you off. So you should be free at 1:30.

**A.** Well, it would be difficult but doable. I would have to rearrange my schedule and I would have to cut back and perhaps – there's about 15 people on my staff. I might have to lay off some, or maybe they would understand the situation. It wouldn't be easy but I would say doable. And so I'm concerned about that especially. I'm expecting a duration of a few months, who knows how long it might take.

**Q.** We have had some discussion about the estimate of the trial in the courtroom. And we're hopeful that it could be finished as early as two months, but we're not certain about that. It could be two to four months.

**A.** Okay. Well, I can't say that I couldn't do it. It would be difficult, but I could arrange things.

**Q.** Okay. Did you appear at Cal Expo?

**A.** Yeah.

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

**A.** Well, I have, sure.

**Q.** Okay. Can you share that information?

**A.** What stuck in my mind was someone sitting in this chair who made a comical or emotional comment. And some of the things, I don't remember what it was reading, hearing, TV or whatever, about the reaction of Mr. Kaczynski had to some potential conflict with one of his attorneys, I believe. I also since that time – those are the two things that come to mind.

**Q.** Since Cal Expo have you had discussions about the case with anyone or overheard people discussing the case?

**A.** Yes. Yes.

**Q.** Can you tell me about that?

**A.** Well, my wife's an attorney. She's very much interested in this case, and especially since I got the potential involvement with it. And I have to admit that after the Cal Expo experience, I thought I was – I was cut from the pool. And I'm in a dinner group with – there's some – there's a superior court judge and some law professors and this subject came up. And I did say is that I filled out the questionnaire. "We really want to know what's on that questionnaire." People want to know. But nevertheless, the case came up at the dinner conversation with some people that had strong legal backgrounds.

**Q.** Do you recall the content of the communications?

**A.** Well, there was one person who commented that he, on the day that we did the questionnaire, was contacted by the media and made some commentary, I can't – other general things, but that was the only specific one.

**Q.** I'm going to direct your attention to the time period before you appeared at Cal Expo and I'm going to explain the reason why I am going to ask the question.

**A.** Sure.

**Q.** I have a duty to ask jurors about the information jurors were exposed to so that the Court and the parties are in a position to objectively evaluate how that information could possibly have an effect on the juror's ability to be a fair and impartial juror in the case. I'm also going to ask you your own view on that too. Can you share with us in as much detail as possible the information you received about the allegations involved in this case prior to Cal Expo?

**A.** I remember specifically reading excerpts, reports on the book that one of the people who was harmed by a mail bomb had written, and thinking to myself I would like to read that book. I remember following the events that led to the – I'm thinking carefully of my words here – the finding of the suspect, the cabin and the things that were found there. And being a native of Sacramento when there was the Sacramento connection, bringing him here, and having him, having a celebrity in town. And then the fact that Mr. Kaczynski left the Sacramento jail to go to another jail because of some problems in our community or in that setting.

I remember thinking to myself that here's a man who's had a fantastic education, who showed brilliance, and thinking about the frailty of the human being, the human condition, the complexity of the mind, the things that can happen that are unpredictable. Since I'm a physician, I put that in the context of the wonders of nature, the miracle of life. And through radio or TV or newspaper, the background that Mr. Kaczynski spent some time at the University of Michigan was important to me because I spent nine years there. That's where I got my education. Probably some other details I could run down, but those sort of things.

**Q.** You mentioned the cabin and things being taken from the cabin. Do you recall what things were taken from the cabin?

**A.** I don't know whether they were taken or not, but things – a typewriter found there, diary listing actual dates or plans for sending mail bombs, I think there was some chemicals found there. Maybe some wood-working materials.

**Q.** Based upon your exposure to information concerning the allegations involved in the case, have you formed an opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** I do.

**Q.** What is that opinion?

**A.** Think he's guilty.

**Q.** How strongly are you committed to that opinion?

**A.** I'm quite strongly committed, but I realize I haven't heard the other side.

**Q.** All right. Is that an opinion that you would be capable of setting aside and leaving outside this courtroom if you were selected as a juror?

**A.** Yes, I would be capable of it and I would feel that's my obligation.

**Q.** If you were selected as a juror, would Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

**A.** Well, yes. I like that. Cloaked with the presumption of innocence.

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

**A.** There's one other point I wanted to mention having to do with my background and knowledge, and that's the fact that Mr. Kaczynski's brother gave information to the federal authority that led to his arrest. That, I think, is a point that will influence – would influence my – not my judgment on the guilty or innocent phase, but certainly on the penalty phase.

**Q.** If you were selected as a juror, is it feasible that you could leave all of the information that you received about this case prior to the trial outside the courtroom and make a determination of Mr. Kaczynski's guilt or innocence solely from the information that you receive in the courtroom?

**A.** It's feasible, yes.

**Q.** How feasible is it?

**A.** I could do it.

**Q.** Okay.

**THE COURT:** The parties may conduct examination.

I want to ask you one more question.

**Q. BY THE COURT:** We were talking about hardship and you indicated to me that you could make some personal adjustments to your schedule that would allow you to perhaps sit as a juror. But you did indicate, I think, that certain employees you have could possibly lose their job.

**A.** Well, it – that's – the answer is yes. I would hope that – I would hope that we could find some way maybe to cut back a little bit on each person instead of one or two

people having to go. There's a natural turnover of staff anyway, but I just wouldn't have the – I mean, basically, I'm the bulk of the practice and if I'm not there for the same number of hours per week, there's no need to have that support staff.

**Q.** Can you assist me in evaluating whether that's a type of a hardship that we shouldn't subject your staff to?

**A.** Of course I haven't discussed this with them. I would say – I would say that they would understand and that people would either voluntarily be able to cut back or there may be somebody, maybe more than one person who was already thinking for whatever reason they would be looking for another job. That would help out.

**THE COURT:** Okay. The parties may conduct examination.

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

**Q.** Good afternoon, sir. My name is Steve Freccero. I'm one of the prosecutors in this case.

Just to follow up on that last note in terms of your own practice. Do you have any sense as you sit here today as to how many employees might be affected by the decision if you –

**A.** I think we're talking about all of them being affected. Which is, say, 13 people.

**Q.** And by "being affected" would they actually lose money by the fact that –

**A.** They would lose some income, right. But I think they know this is important, like I know it's important. It may be overly optimistic on my part, but at this point I think it could be done and handled in a fair way without really being a hardship on any one individual.

**Q.** Okay.

**A.** Without it being an unreasonable hardship.

**Q.** Okay. So you would be able to serve here, and whatever the concerns were about your practice, do you think you could make arrangements such that they wouldn't distract you from the concerns from the job you would have here?

**A.** That's different. I haven't thought about that. If I have a patient that's got a real problem that's on my mind at the time.

**Q.** Is that a likelihood?

**A.** Well, over a two-month period, I'm thinking to myself I could still do surgery in the afternoon, and whenever I do surgery there's a chance something could go wrong. And if that happened, certainly the next day or two until it got worked out one way or another, it would be a distraction.

**Q.** Okay.

**A.** It would be very difficult for me to stop doing surgery for that long.

**Q.** Do you have surgeries already scheduled in the upcoming months?

**A.** Well, yes. Maybe a dozen.

**Q.** Okay. And the reason we ask these is, you, sir, are the best judge of this. We're just asking you. But would your practice with the scheduled surgeries or your concerns about that, do you think that would interfere with your ability to be a juror?

A. I don't think it would interfere with my ability to be a juror. I wouldn't be able to – I wouldn't be able – I might not be the best juror that I – well, that's not right. It would be a distraction, but I could still do it.

Q. Okay. And following up on that, is there any likelihood that if you were a juror, there would be times you would be called away for some – to treat a certain –

A. I would have to make arrangements for someone to back me up in the times I was gone, and I could do that.

Q. So I'm just trying to see if that is feasible so you don't –

A. It's a lot of work, but it could be done.

Q. Okay. All right. If I could follow up on some of the other subjects we talked about. In the beginning, one of the first things you mentioned is that you – and correct me if I'm wrong, what I wrote down is you said you had a concern about the death penalty, and then you said I would have difficulty imposing that. Could you just explain for us more about the concern.

A. It's the finality of it. It's my, perhaps, my desire to avoid that particular responsibility. The overlay of culture and religion and a personal level. Heaven forbid if it was the wrong decision and undoable. It would have a tremendous impact on me for the rest of my life. And looking at it just from that standpoint, I – I don't want to do it. I don't want to be put in that position.

Q. Okay. Do you think that would make it difficult for you personally to serve in a case in which you might be asked to decide whether or not the death penalty applies?

A. Well, yes.

Q. In your own view – and, again, I'm just asking –

A. Sure.

Q. – for your view of it, sir. For instance, if this – if you were called upon to make that decision, that would come in the second phase of the trial after the determination has already been made and a finding of guilt. Then there would be this second phase. And the death penalty would be, as the judge told you, one of three options. Your duty as a juror would be to consider each option, and consider it in a meaningful way and weigh the facts and the instructions as given to you by the judge. Given your concern, do you think it would be difficult for you personally to meaningfully consider the death penalty as an option?

A. I could consider it, but I can see myself arguing against it even if it was 11 to one.

Q. I guess the issue would be, would your arguments be based on some personal conviction separate and apart from the evidence that's presented in court and the law as given to you?

A. Yes.

Q. So as you sit here today – let me follow up a little bit about that. Is this a strongly held personal conviction?

A. Well, it's not strongly held, it's a new conviction. And I think even personal convictions are subject to change, but at the moment, that's how I feel.

**Q.** Okay. Do you think that your personal conviction would substantially impair your ability to consider the death penalty, to truly consider it as an option in the sentencing phase?

**A.** I hope we're not getting confused by semantics here. I could consider it, it possibly could change my conviction, but I really – it's easy to consider it, yes. I don't think I would change the conviction, and as I indicated, I would argue against it.

**Q.** Okay. And I guess – and I don't want to play a semantic game with you. But could you see yourself, if the evidence warranted, if the evidence was presented here in the sentencing phase and you listened to the instructions of the court, and you said if I take those instructions and I weigh those factors the court is telling me about, then based only on that, that could be a death penalty case, but I have some personal conviction that's going to interfere with my ability to do that.

**A.** Exactly the way I feel.

**Q.** Do you feel that way? So do you think as you sit here today that really, regardless of the evidence that's presented in that penalty phase, you would be voting for some sentence other than death?

**A.** Exactly right.

**Q.** Okay. So that as long as there's always the option of life imprisonment without release, you're – you can't see yourself ever voting for the death penalty?

**A.** Yes, that's right.

**Q.** Okay. Regardless of what the facts are in the case or the instructions you're given?

**A.** A tough one. I mean, you know, saying never ever, those words, regardless of the facts, which we don't know or I don't know yet, we don't know yet, it's trouble – you can tell it's –

**Q.** I realize that. Only you, sir, can tell us. And I guess the issue I'm driving at is: If you listened to the law and if you listened to the instructions, in other words, the law allows the death penalty in certain circumstances. A law allows it, but doesn't require it. There's always the option, but the law allows it. And you hear those, they'll be called aggravating factors, you personally disagree with that – with those. You think that that shouldn't be that way. Could you nonetheless set aside your personal feelings and base the decision solely on the evidence and the instructions?

**A.** And the instructions – I don't think I could do that. I mean, I'm casting a vote. I'm participating in this. It's my responsibility.

**Q.** Okay. So as you sit here today, then you think because of your personal conviction, you could not see yourself signing that form sentencing the defendant to death?

**A.** That's correct.

**Q.** If I could ask you another subject. And I don't want to reveal the occupation, but I notice in your questionnaire that you have a son in a certain line of work?

**A.** Right.

**Q.** Do you have more than one son?

**A.** Two children, both boys.

**Q.** Okay. Maybe I should give you the questionnaire so that you know what I'm talking about. Is this your questionnaire, sir?

**A.** This is it.

**Q.** If you could look at page 6, question 23.

**A.** Okay.

**Q.** At the bottom it says if yes to any of the above, please explain. And then you describe your son's occupation. And my question is simply, given the level of attention that this case has gotten, do you foresee any problems with the fact that your son is in that line of work?

**A.** Actually, no. I mean, we had a little discussion about the questionnaire, but there was no probing, there was no seeking special privilege.

**Q.** Do you feel confident that were you called as a juror you could keep that separate?

**A.** Right. He would be the first one I talked to when I had the opportunity.

**Q.** I'll just follow up on one comment you made before. You said that based on what you had read in this or heard about this case, you say – I wrote down as an example – the frailty of the mind?

**A.** Yeah.

**Q.** Can you just explain for us what you meant by that?

**A.** It seems like so often there's brilliant people, talented people, artistic people who end up in extremely strange positions. And I think it's because the mind or the body in general is so complex, things can go wrong. And the more sophisticated the system, the more bizarre the problems can be.

**Q.** Does that have – do you see that as having any impact on your own personal view as to the responsibility of people for their own actions?

**A.** No. I mean, I still think people are responsible for their own actions, yes.

**MR. FRECCERO:** No more questions. Thank you, sir

**VOIR DIRE EXAMINATION**

**BY MR. DENVIR:**

**Q.** Good afternoon. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions, if I could too.

What I would like to know, I think, is your views about the death penalty since. Obviously, that is the big question. I want to preface by saying we appreciate your candor on this. And it's something that we need to ask you in public about, and we appreciate your sharing this with us.

But you do – I want to make sure you understand a couple things. One is no one is asking you to prejudge now what you would do as a juror in this case if you sat there. We're just asking generally about your views on the death penalty and your ability to obey the judge's instructions.

And the second thing, I think, is Judge Burrell told you you don't have to be a supporter of the death penalty to sit on as a juror in a death penalty case as long as you can follow the law as given by the judge. You understand that?



A. Is there an instruction – I can't imagine, but I want to clarify – is there an instruction that says if certain criteria are met, one must vote for the –

Q. No, there's no –

A. Okay.

Q. There's nothing that requires anybody to vote for the death penalty. There's nothing that says you have to vote for the death penalty.

A. So I can follow the instructions and do my civic duty.

Q. I'm going to explore the instructions with you further, but I want to start. First of all, as I understand it, the death penalty is something – I think you said on page 26 that your views and opinions on it have changed over time somewhat?

A. Yes.

Q. Developed over time. And I think you said on page 23 that you were asked – let me get your questionnaire?

A. 23?

Q. Page 23.

A. Okay. I wrote I'm uncertain about the death penalty.

Q. Right. And what I want to do is go back over the questionnaire because that was when you were first asked in this case to think about the death penalty. And then, of course, you may have changed your mind in the meantime on that. At that point, as I understand, you said that you were uncertain about the death penalty. And if you go to page, I think it's 26, you said that your opinion and belief had changed over time. And then you were asked on the next page, 27, to express your extent of agreement with certain statements there. And one of them was anyone who plans and commits a murder should get the death penalty, and you were given four choices and you said you disagreed with that somewhat.

A. Okay.

Q. Then the next one was anyone who deliberately murders two or more people should get the death penalty, and you disagreed with that somewhat as opposed to strongly disagreed. Any person who commits an act of terrorism in which someone dies should get the death penalty, and you disagreed somewhat. And then you were asked on the next page, question 108, to select the line that most accurately stated your views about the death penalty, and that was where one person intentionally kills another person. You said the death penalty may or may not be justified depending on the circumstances of the case. You could have said never justified, always justified. I want to go over that.

There's two things I need to explore with you. One is, you have certain views about the death penalty, and if you were a lawmaker, presumably you would vote against the death penalty, or in most cases, or if you were voting on a proposition as to what the law should be. And everybody – there's a wide range of views on that. And the law, as I said, does not say you have to be one who would vote for the death penalty as an abstract matter as a law in order to sit on a jury.

And as you can imagine, the hope of the parties is to get a jury that has a cross-section, a representative cross-section of views about the death penalty so that there will be a more informed decision on a given jury. You don't want all people who support it fully, you don't want people to oppose it totally. That makes sense. I mean, it's what you would want if you were in that position. But what I want to focus on is you have, obviously, some views about the death penalty as to when you vote for it if you were a legislator or a voter. Those are one thing. Then the second thing we have to explore with all the jurors is how do those views interact with your willingness to serve as a juror and be instructed in this case and would they interfere with your ability to carry out the instructions that Judge Burrell would give you.

Now, the way that the case goes, and I know you haven't sat on a jury before so it's hard to ask you what you would do down the line, but this is even different than most cases because it's a capital case. There is – first there's the trial like any other trial where 12 jurors sit on the question of guilty or not guilty. The government presents its case, the defense can present its case. The judge instructs you on the elements of the offense, the burden of proof, and everything, and the 12 jurors then go out and they determine whether the Government's met its burden of proving beyond a reasonable doubt that Mr. Kaczynski committed the crimes that are charged against him, two of which are capital crimes involving the mailing of a bomb with intent to kill and actually killing someone when it exploded. One event, two charges.

If the jury, having deliberated – and I take it you don't have a problem with just making a determination whether the government met its burden of proof of proving that he did that?

**A.** No problem with that.

**Q.** If the jurors, the 12 jurors, and yourself included, were to find that he were guilty of the two charges that carry the death penalty, rather than having a sentencing by the judge as you would have in most cases, the jury makes the determination.

Congress has determined for those charges that the penalty can be either the death penalty, or it can be life in prison without possibility of release, which in the federal system means that. There's no parole.

What the judge – and at the second trial, with the same 12 jurors, having decided that he's guilty, you now have to say what are we going to decide among the legal alternatives, what should we do. The government is allowed to put on and undoubtedly would put on further evidence about the crimes or any evidence about Mr. Kaczynski that they considered to be aggravating evidence. And that means evidence they think supports the death penalty, reasons why you as a juror should select that punishment.

The defense would then put on any mitigating evidence, that's the legal term for just the opposite. There is the pro-death which we're talking about, the pro-life, anything about Mr. Kaczynski or about the crime that would point to a lesser punishment than death.

The judge would then instruct you as to the law, and the law would pretty much leave to each juror to make their own decision on that. But it would tell you that

you would have a duty and you would have to be willing to abide by that to actually consider the evidence, the prosecution and defense aggravating and mitigating, and then actually keep an open mind as to what the proper sentence should be.

And the question I have I guess is: Would your views about the death penalty as a legislator or how you think it fits in our society really interfere with your ability, prohibit you from actually looking at the two and saying if I'm convinced the death penalty is right then I would do it? Only you know the answer to that.

**A.** Well, it wouldn't – I mean, if, in fact, I was convinced and I have – I do change my mind. I do change my views on this specific issue. If I was convinced, especially in that hypothetical, I could vote for it. Today, I think that's highly unlikely. Not impossible.

**Q.** Since you never sat on a jury and you never sat in this particular situation, all you could do is really give us your best assurances, and they have to be from your heart because you only really know these answers. No one asks a juror to do the impossible. If they cannot put aside their views on this and just say I could not do that under – I just can't do it, I'm out of it, then that's one thing. If someone says I feel this way, and I have my opinions and I wish we had something else, but since Congress has elected these two punishments for this type of crime, if someone is found guilty beyond a reasonable doubt, I'm willing to listen to the argument for both sides and I will not foreclose one automatically, I will listen to it and I'll make my best call, I'll listen to the other jurors, if they come out a different way and want to persuade me, that's the real question we have.

**A.** I can do that.

**Q.** You could actually, in the case, sit, listen to both aggravating, mitigating, and then the judge's instructions, which will pretty – it doesn't require you to do anything. I mean, other than to listen, consider, and keep those as options, but it doesn't tell you have to find one way or another. And you think you could do that?

**A.** Yes.

**Q.** Let me ask you, if I could, on page – let's see if I can – on page 15 or page 19, either one you can get to.

**A.** 19.

**Q.** Number 69.

**A.** Right.

**Q.** You at one time had been retained and testified as an expert witness in a civil matter?

**A.** Yes.

**Q.** Okay. Is there anything about that experience, whether it was pleasant or unpleasant, that would affect in any way your ability to sit in this case?

**A.** No.

**Q.** There's a possibility that in this case there could be testimony by experts, not in the – well, in the medical field, I guess, psychologists, psychiatrists, or otherwise. Would you be able to listen to that testimony and, having served as an expert, look at

the credentials of the experts on each side, look at their opinions and what the basis for that opinion is and make your call on that?

A. Well, yes. But I do have some feelings about expert witnesses in general.

Q. Having been one?

A. Well, having been one and having talked to at least one person who does this in another field.

Q. I guess the question is, if you are presented with that, will you be able to follow the judge's instructions, which really is you can either accept or not accept an expert's opinion. You should consider such things as their credentials or expertise, what their opinion is and the basis for that. I mean you can. You can do that?

A. Yes.

Q. If I could ask you, I think you said you read a review of a book by Professor Gelernter?

A. Right.

Q. Can you tell me what you thought when you read that?

A. Well, I thought he was very bitter, rightfully so. He was a talented man whose life had been changed for the worst through no fault his own, and he supported the death penalty. He was critical of our society for not being more forthright about penalizing criminals. And I remember getting the feeling that he's moving forward with his life in spite of the handicap that he has now. And I think he was a musician of some sort and might have been able to participate in that activity in spite of the handicap. Those were the things that come to mind.

Q. You would be able to put what you read about the book or maybe put off reading the book until the case is over, I take it?

A. Sure.

Q. You kind of have done that?

A. Yeah.

Q. You did say that you had your view based on what you seen in the press, and obviously you have a good memory of what exposure you had from the press. Your view, is that, if you had to give an opinion now, that Mr. Kaczynski is guilty?

A. Guilty.

Q. But the judge will instruct you, I think as he explained already, and as you understand, that if you sat as a juror you would have to – again, we always ask you to put that aside and just judge on what the government presents as evidence. What the defense presents as evidence, if any, and what the judge instructs you as to the law. And evidently you feel you can do that?

A. I can do it.

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

Thank you, sir.

**MR. FRECCERO:** Your Honor, if I could have a couple follow-up questions.

**THE COURT:** Okay.

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

**Q.** Sir, if I could ask you, is there a distinction in your mind between are you making a distinction in your mind between considering the death penalty as an option and saying that you could vote for it if, in fact, the evidence and the law that the judge gave you warranted it?

**MR. DENVIR:** Your Honor, I'm not sure I even understand what that question means.

**THE COURT:** I understand it.

**PROSPECTIVE JUROR NO. 146:** I'm – these are my thoughts. I could certainly consider it, that's easy to do. And I could see myself, under some circumstances which I can't imagine now, but keeping an open mind, I could see myself voting for it. Unlikely that I would. As we discussed it. Does that answer or help?

**Q. BY FRECCERO:** I'm just trying to get a sense. It would be very difficult as you sit here today, you're telling us, it would be very difficult?

**A.** Very difficult.

**Q.** For you?

**A.** Yes, very difficult.

**Q.** And that I think I asked you before, that it – and you just correct me if I'm wrong, but that it impairs your ability, your personal conviction, to – again, I apologize, I don't want to –

**A.** All right.

**Q.** We're drawing a distinction here. If you were a juror in the case, there could come a time where you would actually have to decide whether to vote for one penalty or another. And I'm just asking you, if your personal views as you sit here today, make it far more likely that you would always choose life imprisonment without release over a death penalty?

**A.** The answer to that is yes, far more likely.

**MR. FRECCERO:** Thank you, sir.

**THE COURT:** Thank you. You can bring in another juror.

(Prospective juror number 146 leaves the courtroom.)

(Prospective juror 157 enters the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You are the 157th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

**A.** I'm not really certain. I have some questions about my own beliefs that I'm still searching about my belief as far as the death penalty. So I haven't really decided what I believe in, so you might not want me because I'm indecisive.

**Q.** Well, I'll ask you some questions, and we are really here to use this time to perhaps ask you questions that you haven't been asked before, and cause you to think about some things that maybe you haven't been required to think about before.

And I appreciate your opening comment to me because it allows me to know that you are, in fact, going to give a considered response before you respond, and that's exactly what everyone wants. We want to know what you think and why and what's on your mind about various issues.

Since – you did you appear at Cal Expo?

A. Yes.

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

A. Yes.

Q. Okay. Tell me what information you received since that time.

A. I think I came to the conclusion after I got the check in the mail that it was over. So, you know, whatever has been on the news. I can't be specific. But, you know, I have had some awareness.

Q. Okay. I'm asking you the question because I haven't objected. One function I have as a jurist is to find out what information a potential juror has been exposed to. That doesn't govern whether or not you are going to necessarily sit on the case. But the law allows the parties and the Court to know, objectively speaking, how you could possibly be affected by the information and we could also get your subjective views on it.

Do you recall any of the specifics about the information you were exposed to since Cal Expo?

A. I'm not even sure that I can remember how long ago I was at Cal Expo. So since then – it's hard to put it in a time frame. But I – you know, sometimes things come on the news.

Q. I'll ask you a different-type question. Let me just find out all the information that you can remember receiving about the case. If you can – that's even before Cal Expo. If you can provide as much detail as you possibly can, that would be appreciated.

A. I remember, I guess, initially hearing about the arrest and about some evidence in a cabin somewhere. I'm not sure where it was exactly. Let me see. I think as you're listening to me you'll note that I don't always pay attention to the news often. I go to sleep in the middle it so I get bits and pieces of things. But I guess kind of the general picture of some things about extradition. I wish I could be more specific but I am – it's all kind of a blur.

Q. You mentioned evidence of a cabin. Can you recall any specific item of evidence?

A. No, I really don't.

Q. Based upon the information you received about the case, have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. I probably don't have a preconceived opinion. And probably because of experiences that I've had and maybe my experiences would make it – let's see, I might not be a person – I should have mentioned in the beginning that my husband has had some contact with the legal system, and I think it has influenced the way that I see the legal system in this country.

**Q.** Okay. I have discerned from your answer that you are indicating that the legal system may not be perfect?

**A.** That I do believe that it's not perfect, yes.

**Q.** Okay. Is there anything about that view that would interfere with your ability, if you were selected to be a juror in this case, from being fair and impartial to both sides?

**A.** I think it would make me very balanced because I think that maybe I would – maybe I wouldn't be balanced. I don't know. I would like to believe that I was balanced. Because when you go through certain experiences you realize that often what people read in the news is not a total picture, so I think that's certainly true. When it happens to you, you know it.

**Q.** Do you have any suspicions that – let me rephrase it. Do you have any opinions based on suspicions as to Mr. Kaczynski's guilt or innocence in this case?

**A.** Well, I believe that he would not have been arrested if there wasn't a reasonable suspicion. So I think that certainly that would enter.

**Q.** Is that your opinion?

**A.** My opinion is that his – that when people are arrested, there usually is at least some suspicion. Usually if the government goes that far out on a limb, there's some suspicion. It might not be justified.

**Q.** It's my impression based upon what you told me at this point you don't have any strong opinions about Mr. Kaczynski's guilt or innocence in this case?

**A.** I think I would try not to have any strong opinions until I hear both sides, after the experiences that I've gone through.

**Q.** Are you – do you have any opinion that you are trying to repress in that regard?

**A.** I don't think I thought about it a whole lot. I think maybe because in the last year my own personal experiences have been so much in the forefront that I really haven't been that involved with everything that's going on.

**Q.** Is there anything about your awareness of the allegations, any aspect of the allegations involving this case, that would prevent you from leaving that knowledge bank that you received outside this courtroom outside the courtroom, and that you would, if you were selected as a juror, be able to make a determination as to Mr. Kaczynski's guilt or innocence based upon the information that you receive in this courtroom?

**A.** I think that I would try to weigh evidence, because basically I try to be a honest person. I think that would be the reason I would do that.

**Q.** All right. Would you allow Mr. Kaczynski to start this trial, in your eyes, with a clean slate?

**A.** Yes. I think everybody that comes before the Court should be able to do that.

**Q.** What does that mean to you?

**A.** That means that having been involved in the system, I would want to be treated the same way that I would treat somebody else.

**Q.** Okay. Are you in a position to provide Mr. Kaczynski the assurance that he need not worry about any publicity or other information that you received about this case outside the courtroom?

**A.** I think so. That would be true, yes.

**Q.** Okay. If you are selected as a juror in this case, will Mr. Kaczynski be cloaked with the presumption of innocence?

**A.** Absolutely.

**Q.** What does that mean to you?

**A.** That means that he, along with any other person that is brought into a courtroom, should be able to have all sides of all evidence presented before a decision is made.

**Q.** Under our legal system, a criminal defendant is presumed innocent. That's a presumption that the criminal defendant can rest on, need not present any evidence at all. Can simply watch to see what the government presents. The defendant would be shielded by that presumption unless and until the government proves his guilt beyond a reasonable doubt, and if the government fails to do that, you would have to enter a not guilty verdict. Is there anything about your belief system that would preclude you from allowing Mr. Kaczynski to take advantage of that doctrine?

**A.** I don't think so, no. I don't think there would be any problem.

**Q.** Can you think of anything that could interfere with your ability to be a fair and impartial juror to both sides?

**A.** I still have to go back to the experiences that my husband has had. I don't know whether they would affect me or not. I think that having had some involvement of the federal government in his life, and I know the kind of havoc it has wreaked in our lives, I would like to believe that I could be objective. I might be more questioning of government evidence. Probably I would be a little more skeptical.

**Q.** Would that heightened sense of questioning interfere with your ability to be fair to the government?

**A.** I believe that I could be fair. I don't know whether anybody's totally objective. I believe that I could be.

**Q.** We began our communication by talking about the death penalty. Do you consider yourself a proponent or opponent of the death penalty?

**A.** I guess up until this trial, I really hadn't come to any firm conclusion about my beliefs. They kind of vacillated. If I were in a situation where someone very close to me got murdered, I would probably believe in it. I mean, that's – you know, but if it were my child who might have to be, you know, the one that was being tried, maybe I wouldn't. I mean, that's – I never wanted to have to make that decision. So what I'm trying to do is to look at my spiritual beliefs and just really search my own heart to see what I truly believe. I can't say that I come to a conclusion other than that. I'm just kind of indecisive. One day I think yeah, I probably believe in it, and the next day I'm not sure.



**Q.** What sources of information would you use to formulate your opinion on that topic?

**A.** Well, a long time ago I read a book by Clinton Duffy, and it affected me a lot because it seemed as though a lot of people who were sentenced seemed to be people who couldn't get good legal help, poor people, less well-educated people. So I think it didn't seem fair from that standpoint.

Then there are other people who's guilt seemed to be pretty well determined, who seemed to get good legal help and get out of the death penalty.

So I guess maybe my question had to do with the equity, not necessarily whether it's right or wrong morally.

In the Bible, certainly there were times when death seemed appropriate for certain types of behaviors and crimes. I just think it's a really hard thing for me to just say absolutely yes or no, because people are imperfect, and sometimes our judgments are.

**Q.** We're not looking for jurors that are necessarily for or against the death penalty. We're looking for jurors that are willing to consider the death penalty as a sentencing option. There will be three sentencing options during the sentencing phase of the trial. There will be death, life in prison without the possibility of release – that really means that in the federal system. If you're sentenced to life, you receive a real life sentence. Or some lesser sentence than life.

Is there anything about your beliefs as you know them today that would interfere with your ability to consider all three of those sentencing options?

**A.** Good question. I don't know whether I have a good answer. I'd say I'm still indecisive when it comes to the death the penalty. I'm still vacillating.

**Q.** Can you –

**A.** You don't want me not to vacillate.

**Q.** You can vacillate. It's okay. I just want to know the mechanics of the vacillating. Are you in a position to articulate what type of thoughts are going through your mind that causes you to say what you just said?

**A.** I think that probably I am doing more spiritual searching than anything else. I think I'm trying to use the Bible as a source of determining. I guess the Bible is kind of hard because there's a lot of killing in the Bible, so – but I'm trying to determine in my own mind whether it's appropriate, and I think if I came to that conclusion, then I probably could make the decision. But I'm still – I'm studying. I'm still there.

**Q.** I'm going to allow the parties to conduct examination, but I'm going to say something before you begin, and I'll say it from the bench.

I'm going to communicate with the juror before I make a comment. Is this your juror questionnaire?

**A.** Yeah. Yeah, that's mine.

**Q.** I am going to ask you a question about it. I want to show you question 54. I don't want you to read it out loud. There is an asterisk next to it. Did you place that next to it because you want to keep that information confidential?

**A.** I don't think the information is confidential. It's pretty public information.

**Q.** So you don't mind discussing it publicly?

**A.** No. I don't – isn't it public record? Wouldn't that kind of information be pretty public?

**Q.** I think you're correct. I think it – I think it probably is public, but it's not public in this trial.

To be honest, I don't know.

**A.** How public?

**THE COURT:** Do you know the answer to that?

**MS. CLARKE:** The only question would be whether it would connect this juror to an identity.

**PROSPECTIVE JUROR NO. 157:** Well it –

**Q. BY THE COURT:** Why did you place the asterisk next to it?

**A.** I guess – did they tell us to put an asterisk for some reason?

**Q.** Yes. You were instructed, I believe, to use an asterisk if you wanted to keep the information confidential and private.

**MS. CLARKE:** That's correct.

**Q. BY THE COURT:** Is that why I placed it next to it?

**A.** Yes, probably. But I guess after I thought about it, it – well, it certainly has been published, you know, in the state papers, and also – I'm not sure. I'm not sure how public it is. But I know that certainly the information is not confidential information.

**Q.** You placed an asterisk next to your response to question 68 and 70 as well.

**A.** Yeah, involving the same information.

**Q.** Does that mean that I can discuss this with you privately or – I don't think I need to discuss it with you.

**A.** Okay.

**Q.** I'm only asking you the questions at this point because it is the type of information that I believe I can legitimately keep private because it doesn't concern you, it concerns someone else.

**A.** Okay.

**Q.** But the question is whether you want to keep it private, and that's why I'm asking you the question. I analyzed your questionnaire, and this is the first one I've seen that contains information that arguably could legitimately be kept private.

**A.** Okay. It was – I mean, there was information published in our local paper, so I think it would be possible for people to connect me because of that information. So maybe it ought to be private.

**Q.** I don't know. I'm trying to –

**A.** I'm not sure how much of what I'm saying now can be – how much of this is open to news media?

**Q.** Everything you're saying in this courtroom is open to news media.

**A.** Okay. Maybe it ought to be kept private.

**MS. CLARKE:** May I introduce to you a few folks.

**Q. BY THE COURT:** That would involve question 54, 68 and 70.

Does 63 concern the same subject matter?

A. Yes, it does.

Q. How about 81?

A. Yes.

Q. Okay.

**THE COURT:** All right. I think those questions involve matters that could be kept private.

Counsel, if you're going to inquire about such matters, please bear in mind that I do plan on sealing that aspect of the questionnaire.

VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

Q. I wanted to address with you – I didn't think we gotten around to talking about whether or not the case would be a hardship for you personally to sit. It sounds like to maybe the hours have resolved that problem for you?

A. Yes. If it's over by 1:00, it would be easier, certainly.

Q. So you're okay if you have to show up early in the morning. As long as you can be he free by 1:30, that satisfies the problems you suggested in your questionnaire?

A. Yes.

Q. Okay. If I could spend just a moment or two on your views on the death penalty. And I certainly appreciate the sort of agony it sounds like maybe you're going through in weighing where you are on an issue like that.

I guess the biggest question for all of us is the judge will give you instructions to weigh aggravating and mitigating circumstances in a particular case and that you have to weigh them in determining what the appropriate sentence is, life or death.

And I guess the question is, as you sit here now with us, you feel able to follow those instructions?

A. I think I can understand them and follow them, yeah.

Q. In other words, you wouldn't go into the jury room and say, listen, guys, I have my mind made up on the death penalty, so I can't listen to what you have to say about it?

A. No, I don't think that I would say that. I think I would feel better if I had a little more time to study and come to a real conclusion about it.

Q. It probably is a slightly different question. The question would be, would you be able to, are you the kind of person who could be open to the views of somebody who says, yes, I think death is appropriate in this given case, and at the same time open to somebody who would also say, no, I don't I think death is appropriate in this kind of case; would you?

A. I would like to believe that I'm a very open person. I would like to believe that.

Q. So would you like to believe – and you got to tell me if you believe you could balance and consider both sides of that question.

A. I believe that I can. My husband might not believe I'm balanced, but I believe I am.

**Q.** I don't think I want to go into that. But you believe that you can?

**A.** I believe that I can.

**Q.** So in a given circumstance, where you in your heart inside of you decide that a life sentence is appropriate, you could say to your other jurors I believe in this case, this particular case, that life is the right sentence, you could say that?

**A.** I don't usually have any problem stating my beliefs.

**Q.** And at the same time, if you believed you were persuaded, you were convinced, that the death penalty were the appropriate result in a given case, you could do that as well?

**A.** I think if I could be convinced, probably I could. If I could be convinced.

**Q.** Either way?

**A.** Either way.

**Q.** Life or death?

**A.** I think I – to be very honest, I think if it came to a death sentence, I would definitely weigh it very differently, because of my own conflicts. Yes, I think I could consider it.

**Q.** Give full consideration to it?

**A.** I don't know what you mean by full consideration. This is – it's difficult because I've asked myself this question. If one of my children was a defendant, what would my stand be. If one of my had children was a victim, what would my stand be.

These are hypothetical situations. So I don't think it's that – it's easy, you know, when you're just philosophizing not to come up with something. So I don't have a hard and fast belief, the belief that some people have. I'm still weighing.

**Q.** You mentioned the scenario if your child were the defendant versus your child being the victim. And God forbid either one would happen to you. But you would weigh whether or not you thought the death penalty would be appropriate, I mean, just as a personal matter.

**A.** I believe I probably would, you know. I think I would probably see things differently. Maybe I wouldn't. I know parents who are very compassionate and still feel – I'm not certain how I would feel.

**Q.** That's probably an unfair position to even try to put yourself into. I guess the one for us to put you into is would you agree with me that it's good to have all views on a jury, right?

**A.** Yes, I believe that.

**Q.** In a capital case, you would want people on the jury who believe in the death penalty and don't believe in the death penalty and have a mixture of views?

**A.** And some people like me who are confused it's probably best to have. I would want all those views. That would be the reason – the only reason I would want to serve is that I would want the same kind of weighing of evidence if I was the defendant. I would want that.

**Q.** If you feel like you're actually – I mean, that's sort of what where we're trying to head. It sounds like to me you could listen to the proponents and the opponents

and be able to make up your mind whichever way you felt committed to make up your mind?

**A.** Making up my mind is something usually I can do a lot more quickly than with the death penalty. I'm noted for being able to make up my mind and weighing evidence.

**Q.** I think that's what your husband would tell us.

**A.** That's what he would tell you.

**Q.** I don't think anybody will ever tell you that the decision of whether to impose a sentence of life or sentence of death should be an easy one that anyone arrives at quickly. Maybe that's what I'm hearing you say.

**A.** You're hearing me say that. But you're also hearing me say that I'm not – I haven't – I haven't totally come to a conclusion about my own belief in that area.

**Q.** The question is would your own beliefs or your own confusion about the beliefs stop you from being open and considering both sides to the argument?

**A.** No, I don't think that it would keep me from considering it. No, I don't.

**Q.** You could listen to the Government's reasons for the death sentence and you could listen to the defendant's reasons against the death sentence and give weight to both sides and make up your mind, right?

**A.** Yeah. Probably could argue both sides even. That's one of my problems.

**Q.** But your own personal confusion, your own personal beliefs about this would not stop you from giving fair consideration to both sides of the argument?

**A.** I would like to believe that I could be fair, I could listen to both sides, and I'd like to think of myself as being that way.

**Q.** Can you give us that commitment that you can be?

**A.** I can give you the commitment that I'll certainly try to be that way.

**Q.** Do you have any reason to believe that you wouldn't be able to pull that off?

**A.** I don't think that I would consciously be dishonest or in any way fudge. I don't think that I would consciously do it. Sometimes subconsciously do things.

**Q.** I think you told us in your questionnaire that one of your views of life is that you would try to be fair and honest?

**A.** I try to be.

**Q.** And I guess that's what you're telling me that you will do your best to commit to being?

**A.** Yes.

**MS. CLARKE:** Can I have one moment?

**THE COURT:** Yes.

**MS. CLARKE:** Thank you.

**VOIR DIRE EXAMINATION**

**Q. BY MR. LAPHAM:** Good afternoon.

**A.** Good afternoon.

**Q.** My name is Steve Lapham. I'm one of the prosecutors on the case. I want to follow up on some of those questions about the death penalty. You seem like you're struggling with your own views at this point.

**A.** That's a good description, yeah.

**Q.** And that certainly seems to be what you indicated in some of your answers to your questionnaire also. And what also seems clear to me is you're trying to keep an open mind and be fair about this. One comment in particular you made is that you like to believe that you're a very open person. I want to start with that remark.

**A.** Okay.

**Q.** That's certainly a laudable goal, and that's what we're looking for in a juror. But there's certain beliefs, principles and values that anyone would have a difficulty keeping an open mind on. Some people feel very strongly, for instance, about their religion, and a question wouldn't make sense if you asked them could you keep an open mind about changing your religion to something radically different.

Does that make sense?

**A.** Yeah, I think I'm understanding you.

**Q.** Okay. So my question is, are your feelings one way or another about the death penalty so strong that you would have difficulty keeping an open mind one way or another?

**A.** I can't say that my feelings are strong. They're just not maybe well-defined. I am studying. I'm reading. I'm trying to come up with my own beliefs, what I believe to be, you know, for me morally right.

**Q.** Let me ask you about that then. It sounds like some of the influences you had is Clinton Duffy's book?

**A.** That. And I think also, I think as a black person, I believe that sometimes people are sentenced to death because they just didn't have good legal help. It's not just black people that got sentenced, but, you know, that did happen.

So I don't know whether the question is whether the death sentence was appropriate so much as whether it was fairly administered. I guess that was the – that's the problem.

Now, I need to think things – I think it's a serious enough thing that I need to think about it.

**Q.** That's certainly been a criticism of the death penalty over the years, that it's been unequally applied, and that's actually what Congress had attempted to address in this new death penalty statute. And I want to get into that in a minute.

Let me ask you this. Given that view, how would that affect, if at all, your potential service as a juror in this case?

**A.** I don't know. I'm really not campaigning to be a juror. But I'm trying to be honest, and I really don't know. I think it might provide some balance.

**Q.** In what way?

**A.** Because I don't think that my views are so strong that I'm unwilling to listen.

**Q.** Well, that's what we're looking for. Would the fact – just staying with Mr. Duffy's book for a minute and your feelings about the unequal application of the death penalty. Would that creep into your thinking?

**A.** Probably not, because it's been decades since I read the book. A long time ago. I read the book probably when I was in college, which is a few decades ago.

**Q.** Let's forget about Mr. Duffy's book for a minute. Your feeling that the death penalty has been applied unequally in the past, would that creep into your thinking in this case?

**A.** I don't know. I really don't know.

**Q.** You think it might be a possibility?

**A.** I think I'd think about it.

**Q.** Because just as we don't want you to bring in any understanding that you read in the media about the facts of this case, we ask you to put those aside, we also ask you to put aside other extraneous beliefs that you might have regarding the law and how the law should be applied.

Do you think you could do that?

**A.** As I sit here, I think that I would like for you to believe, and I'd like to believe myself, that I'm just a real objective person, and nothing that has happened in my life will influence me.

I don't think anybody is made like that. I think I'm influenced whether I want to be or not. I mean, everything that happens to us influences us. I try to – I try to be honest so that I can live with myself. As to whether I'm always objective, I believe that I am.

As I mentioned, my husband says that I'm not and my children agree that I'm not, too. So I have to say that perhaps I'm not always objective. I try to be.

**Q.** I don't think there's a person in this world that could claim to be totally objective about anything.

Let me see if I can put some meat on the bones. The judge explained to you how the trial would proceed in two phases, and in the second phase, if we should get there, if the defendant should be convicted of the crimes the judge has indicated, then it would be the job of the jury to consider the appropriate punishment. And in that stage, you would hear additional evidence about the crimes that were committed, potentially about the character and background of the defendant, and you would be asked to consider those factors, and you would have to weigh those factors, what the judge referred to as aggravating and mitigating factors, and only those factors and not factors that you imported in from outside the case. You would have to set those aside.

And the question we're all trying to get at is, could you set those aside, could you set aside your uncertainty about the death penalty to do your weighing when the time comes?

**A.** Sitting here now and feeling patriotic and noble, I think I probably would like to feel that I can. That's – you know.

**Q.** Do you think that might change when you actually get confronted with the actual situation?

**A.** I would like to believe that it wouldn't. But it's kind of hard to answer these questions, you know. I would like to believe that I'm just – I reached a point in life where I had enough experience that I can be without bias and be noble and a public servant. I'm not sure I'm all those things. I think I am just a human being.

**Q.** And that's understandable. We're not – I don't think I'm asking you to try and predict the future. I'm asking you more would you give it your best effort?

**A.** Oh, I would give it my best effort.

**Q.** You think you could do that?

**A.** I believe that I would try. I would try to do that.

**Q.** In your questionnaire you indicated that you were uncertain as to what your religion indicated about the death penalty?

**A.** Yes. I don't know that my particular denomination has ever taken a stand. I think it might be something that's a personal – people are, you know, personally allowed to – I have never known that.

**Q.** I think you indicated in your questionnaire you were going to do some studying on that or try and look that up. I think you said I need to study in greater depth.

**A.** Yes.

**Q.** Have you done that?

**A.** I'm in the process of doing it.

**Q.** And have you come to any preliminary conclusions?

**A.** I think you can tell that I'm still vacillating in deciding.

**Q.** What if you should get on to the jury and complete your study in that area and find out that your religion is opposed to the death penalty.

**A.** I think that I would – I could easily call and, you know, find out. I don't think that I would accept service if I knew that there was a stand.

My particular religion allows leeway in those areas. For instance, there are people in my religion who are conscientious objectors, but the denomination does not require that they be. They support people who choose to be, you know, who are conscientious objectors for military service. But it's up to the individual.

I would imagine that's the same stance they take on the death penalty.

**Q.** So you don't think that would be a problem even if your church was opposed to the death penalty?

**A.** I don't – I think that there is enough leeway in the structure of our denomination that people make some decisions like that without any fear of being excommunicated.

**Q.** Well, it's not – that would be the extreme case. The question is really would you have any difficulty serving on the jury reaching a decision with regard to the death penalty knowing that your church was opposed to the death penalty?

**A.** I think my own personal conviction would be what would make the difference. No matter what the stance of my church would be, I would like to know. I'd certainly



like to know how my denomination came to that conclusion. I would like to know. But it would still be my individual conclusion that would matter.

**Q.** You would steer your own course?

**A.** Yeah.

**Q.** Do you have your questionnaire there?

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

**Q.** Would you turn to page 27, specifically question 107. That's the four-part question. The first question is anyone who plans and commits a murder should get the death penalty, and you strongly disagreed with that statement.

Is that – I don't want to go over old ground. Is that the – your confusion or your struggle over coming to terms with the death penalty?

**A.** I think perhaps it's the word "anyone." I think that was maybe some. But the word "anyone" is a very general term.

**Q.** You would want to know more about the person?

**A.** Yes.

**Q.** Before you make that decision?

**A.** Yeah.

**Q.** I think you said, and I may be wrong about that, correct me if I'm wrong, I think you said in response to earlier questions you were trying to decide in your own mind if the death penalty was an appropriate sanction or penalty.

**A.** Is that in here?

**Q.** No. I think earlier this afternoon. Do you recall making that statement?

**A.** I don't recall making it in just that way. But state what I said again.

**Q.** What I wrote down was you were trying to decide in your own mind if the death penalty was an appropriate penalty.

**A.** I'm not – I don't know whether that is exactly what I was meaning. In the Bible, you know, death was often the penalty for even some things that we considered quite minor. So, you know, apparently the death penalty was appropriate then.

I think that what I need to wrestle with is whether God expects us collectively as citizens to use death as a means of keeping society ordered, and, you know – that's what I got to deal with.

**Q.** That kind of brings us back to the religion question again. What if the result of your study is that you conclude God did not intend for the death penalty to be applied, that that was His domain?

**A.** I think if I came to the conclusion that that was beyond what we as human beings could do, I think I would certainly take that stance and say, no, I don't feel that it's ever appropriate or should ever be considered.

**Q.** And that would be regardless of whatever facts or circumstances were involved in the case?

**A.** I really don't know. I know you're wanting me to say – I really don't know. I mean, I lean sometimes one way and I lean sometimes another way. I just don't know.

**Q.** Well, we all understand.

A. I'm indecisive.

Q. We all understand it's a difficult question. And, again, we're not trying to ask you to predict the future. We're just trying to find out.

A. I'm right back where I started from. I'm studying. I'm praying. I'm looking at it at objectively as I can.

Q. Let me ask you a couple questions on a different subject. If you can turn to page 19, question 68 and 70. Those are the questions that the judge indicated should be kept private. And I'm not going to refer to the subject matter of those, and you needn't feel like you need to refer to the subject matter.

You did indicate, I think, that those might affect in some way your service as a juror on this case?

A. I think that it definitely – I think having gone through that experience, my outlook has changed. So, you know, I don't know. I believe that it's made me a more objective person, you know. But as a prosecutor, you might not feel that way.

Q. Well, that's what I was asking. Let me ask you first. Neither one of your answers to either one of those questions involved the federal government, did it?

A. Maybe indirectly. Indirectly. But not directly, no. It involved the state.

Q. Because earlier in your one of your answers this afternoon I think you mentioned something about the federal government, and I didn't see anything in your questionnaire regarding the federal government.

A. Well, there was – there was some involvement with the federal government as a consequence. Not primarily.

Q. Okay. Do you think that's going to cause you to be a little harder on the prosecution as a result of that?

A. I think it will cause me to listen very carefully to evidence and weigh it. I think that maybe before this experience, I felt that I would have felt anything that I read in the paper, anything that the government presented, I would accept without question. Now I question.

Q. And that's what you meant when you said you would weigh the government's evidence a little more differently?

A. Yeah.

Q. Okay. Differently than you might weigh it before?

A. In the past.

Q. Before these experiences?

A. Yeah.

Q. Okay.

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

**THE COURT:** Yes.

**MR. LAPHAM:** Thank you, ma'am.

**VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q.** When you ultimately decide whether you would consider the death penalty as one of the three options in this case, what will be the source that governs your decision, will it be your personal conviction apart from religion or will it be religion?

**A.** I think it will probably be everything all together. Certainly, my spiritual beliefs will be a part of it. I think that will be a part of it. But I certainly feel that my civic duty – I mean, there are a lot of things that are weighed. We aren't in a theocracy. We aren't living in Bible time so you take everything from a scripture and apply it. I don't take everything and try to apply it to a government in the way government works right now. But I try to look at principles and understand why things are being done.

So certainly the moral beliefs, my moral and spiritual beliefs will be part of that. That will be what –

**Q.** I will be giving you jury instructions based on secular law.

**A.** Right.

**Q.** Is there anything about your beliefs that would interfere with your ability to follow that law?

**A.** I can't think of anything. I think that for me the commandment that says thousand shalt not kill, I have to define that as does "kill" mean "murder." It certainly doesn't mean killing a fly. Under what context was that, because God, who gave the commandment, did kill.

So I have to figure out for myself what my ultimate beliefs are, because I think when you make a decision like that, you should feel comfortable that you done it. If you have to make a decision about a death penalty, you should be able to know that you did it and it was something that you could be comfortable with. And I definitely want to feel that way.

I never had to come face to face with it the way I'm having to do now, so I'm really wanting to examine my beliefs.

**Q.** How do you know you would be able to follow my instructions; I mean, how do you know that your beliefs will not prevent from you following the instructions I ultimately give you in the case?

**A.** That's a good question. I guess I did not – I have not felt that my beliefs were so strong one way or the other that I couldn't do it.

**Q.** You can understand that the law has to govern this case, whatever law I tell you has to govern this case. We can't have 12 jurors using a different body of law to decide the defendant's guilt or innocence. I'm trying to determine whether you would use the law that I give you as opposed to some other law when you decide the issues involved in this case?

**A.** Well, I don't think that you – that is a problem. But I think that anyone who would serve on the jury would certainly have some moral beliefs that came from somewhere, you know. I mean, my belief about honesty is a moral belief, and if I didn't have that, I couldn't be a good juror.

**Q.** We don't expect jurors to leave common sense out of the equation. But we do expect jurors to follow the instructions that the judge gives them and in this case to be willing to consider three sentencing options, which would be the possibility of death, life in prison without the possibility of parole, or a lesser sentence.

Is there anything about your beliefs that would interfere with your ability to do that, to consider all three of those sentencing options, which includes the death penalty?

**A.** I guess I keep coming back to my original statement that I'm still in the process of trying to get beyond being indecisive. I guess that's all I can say. I'm in the process of searching.

It would have been good if I could have come here today and say I have it all resolved. I really don't. Now, when I was asked if I could weigh – I think I could listen to evidence and be objective. But when you asked me about what my belief is, I do not have a well-formed belief about the death penalty. And that's just where it is.

**Q.** I don't want you to accept what I'm about to say, but I do want you to listen because I want your response.

It's my discernment as this very moment as we talk you do not know whether you could vote for the death penalty as a sentencing option; is that true?

**A.** I can't say that I really know, nor can I say that if I heard, you know, evidence that was so strongly, say, negative evidence, that I couldn't. I just don't know. I really don't know. I don't really know what I would do.

**Q.** Not knowing because you don't know the evidence is one thing. That's understandable.

**A.** I know.

**Q.** But not knowing because of a conviction you may have against the death penalty is another thing. And that's what I'm trying to probe.

**A.** I think that – you know, all the questions are do I have after strong conviction against the death penalty as being morally wrong. I can't say that I do.

You know, I said I didn't feel that it had been equally administered. That's what I – but to say that I believe that no one should ever get the death penalty, I never had that stand. But I just felt that going into this trial, I want to know. I want to go in feeling good about making a decision that might involve somebody's life. I would like to know that I looked at it and clearly feel that that is – it could be an appropriate sentence.

**THE COURT:** Thank you. We're going to take the afternoon recess. Court will be in recess until five minutes to 4:00.

—oOo—

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

(Prospective juror number 158 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 158th randomly selected juror. Is there any reason we shouldn't continue to consider you for jury service on this case?

A. Well, none that I really know of except for the fact that sometime either this month or first part of the year, the place where I work for is supposed to have an early buyout and I was looking forward to retiring and I'd hate to have this – I mean, I wouldn't mind being here, but I also would like to take up retirement too.

Q. How could jury service interfere with that?

A. Well, that I don't know. See, if – I've never gone through a retirement, so I wouldn't know. I mean, papers to sign or . . . or – you know, just in general, what you go through to be able to retire.

Q. Is that something that could be taken care of between the hours of 2:30 and 5:00 or so?

A. It's possible it could be, yeah.

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

A. Yes, sir, I did.

Q. Have you been exposed to information about this case since Cal Expo?

A. Well, just – nothing any more than what I put down in the paper there, you know. Just more or less looked at the headlines in viewing the newspapers or if it happened to come out on TV. I didn't sit there and watch it or really put an interest into it.

Q. Since that time, what information have you been exposed to?

A. Oh, I don't know. Just – there was just certain things that had come out in the paper, I really couldn't, you know, like – one time where I seen something about where they were supposed to bring the house out here or something like that. You know, just general information like that.

Q. Have you had any problems hearing any aspects of the proceeding since you've been in the courtroom?

A. No.

Q. Okay. Have you had any discussions with anyone or overheard other people discussing the case since Cal Expo?

A. No.

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

A. Like what do you mean?

Q. I'm trying to find out everything you know, everything you can remember. I've got a duty to try to make an objective determination as to how that information could possibly have an effect on you as a juror, and I'm going to be asking you for your subjective opinion as to how that information has affected you.

A. Like I said, you know, I read the newspapers, and you can't help but see something when it's in a big long headline. Or I watch TV and something comes on – I don't jump up out of the room to, you know – I sit there and think and just . . .

Q. Okay. Let me ask it another way. What do you know about the allegations involved in this case?

A. I don't know what you mean by allegations. I'm –

**Q.** What do you think this case is about?

**A.** Oh, it's about the Unabomber. That's what . . .

**Q.** What information do you have about the so-called Unabomber?

**A.** Nothing other than he used to send bombs through the mail. That's all I know.

**Q.** Okay. Do you know anything about a cabin that could be involved with allegations involved in this case?

**A.** I know he lived in a cabin, yes, I know that.

**Q.** Did you receive any information about any items that were allegedly found in the cabin?

**A.** No. I don't remember hearing about anything like that. Or – I don't know what was in the cabin, actually.

**Q.** Have you formed any opinion as to Mr. Kaczynski's guilt or innocence based on any information you received about the case?

**A.** No.

**Q.** In your opinion, if you are selected as a juror in this case, would Mr. Kaczynski begin this trial on a clean slate?

**A.** Yeah.

**Q.** What does that mean to you?

**A.** Well, I could be objective one way or the other, you know.

**Q.** Do you have the capacity to leave outside this courtroom any information you believe pertains to this case that you received outside the courtroom and to make a determination as to Mr. Kaczynski's guilt or innocence based on information that you receive in this courtroom only?

**A.** Yeah, I think I could.

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

**A.** Well, everybody is innocent until proven guilty.

**Q.** That's correct.

**A.** That's the way I look at it.

**Q.** That's the law. And that means that Mr. Kaczynski has no obligation to present any evidence whatsoever. He can rely on the presumption of innocence. You would presume he is innocent unless and until the Government proves his guilt beyond a reasonable doubt. Is there any reason why you couldn't give Mr. Kaczynski the benefit of that presumption?

**A.** I don't know. I don't see where I would, or – see, I'm not really following you, actually, by – what you're wanting. I mean, it's – I'm not a well-educated man, and . . .

**Q.** I'm really not trying to get you to say any particular thing. Maybe it sounds like that. But I really just want you to tell me what you think. And the presumption of innocence idea is construed by people in different ways, and I was trying to tell you what it means. And maybe I didn't do a good job in telling you.

**A.** Well, like I said, maybe I'm not understanding it either, myself. It's a . . .

**Q.** Okay. Well, do you understand that that doctrine, the presumption of innocence, basically means that Mr. Kaczynski does not have to present any evidence to prove his innocence? You presume he is innocent. Do you understand that?

**A.** Yeah. I think I do. I'm not real sure.

**Q.** Will you accept what I just told you about it?

**A.** I guess I could, yeah.

**Q.** Does that bother your belief system?

**A.** Well, I don't really have any belief system. I mean, it's . . .

**Q.** Okay. 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. None that I can think of.

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

**A.** Neither.

**Q.** Okay. Well, what are your views on the death penalty?

**A.** If somebody deserves it, then yeah, they should get the death penalty. And that's the way I feel. I mean, in my opinion of it.

**Q.** Assume that you were in fact selected to sit on the jury, and you and your fellow jurors listened to all of the evidence in the guilt and not guilty phase of the trial. And then you made a determination that would disappoint Mr. Kaczynski: you determined that Mr. Kaczynski is guilty of the offense of deliberate, intentional, premeditated, cold-blooded murder of another human being.

And then you would, after making that determination, you would go to the sentencing phase of the trial. Despite making that finding, is there anything about your belief system that would prevent you from still being able to consider voting for a sentence less than death in the sentencing phase of the trial?

**A.** No, there wouldn't be.

**THE COURT:** Okay. The parties may question.

**VOIR DIRE EXAMINATION**

**BY MR. FRECCERO:**

**Q.** Good afternoon, sir. My name's Stephen Freccero. I'm one of the prosecutors in this case.

Let me show you – is this a questionnaire you filled out?

**A.** (Examines document.) Yes.

**Q.** Okay. I just want to ask you a couple quick questions about that, if that's okay.

**A.** (Accepts document.)

**Q.** If you could look at page 28, question 108. It's a question that deals with the death penalty. And that question says, where one person intentionally kills another – and then you're given choices, and you marked the box that said the death penalty may or may not be justified, depending on the circumstances of the case.

Can you just give us a sense of what you were thinking about when you checked that particular box?

**A.** I really wasn't thinking of anything when I checked it. Just the opinion I had at the time when I was doing the – filling out the questionnaire.

**Q.** Okay. So let me ask you a couple questions and – would it be, from the answers you've given, would it be fair to say that when it comes to the punishment that a person should receive, in your opinion, for committing an intentional, deliberate murder, that would depend on certain of the actual circumstances of the case? In other words, whatever the punishment should be between the choices of the death penalty, life imprisonment without possibility of release or some other sentence – in your view, none of those penalties are automatic. Each case depends on its particular facts. Is that a fair statement of your view?

**A.** Yeah. I would agree. Yeah.

**Q.** Okay. As you were told when you first came in, if you're called as a juror in this case, if you were sworn as a juror and you did, in fact, find the defendant guilty, when you got to that stage where you decided what penalty, the judge would instruct you that you must consider each alternative and make a decision based on the particular evidence presented to you.

Is there – do you hold any belief that would prevent you from waiting till you heard all the evidence in that second phase before you made that decision?

**A.** No.

**Q.** If you could just look at the page before, page 27. Let me quick ask you – before you were summonsed in this case, had you ever thought a lot about the death penalty?

**A.** No, never really did.

**Q.** Okay. Did you have any understanding as to what the law was concerning the death penalty in a federal criminal case?

**A.** No.

**Q.** If you could look on page 27, question 107 – again, that's a series of statements, and you're given choices to mark – the very last one says: "A person's background does not matter when it comes to whether or not he should be sentenced to death for a murder." And you checked the box that said "agree somewhat."

What does the word "background" to you mean?

**A.** Oh, to me it means the way a person was raised or where he lived or, you know – that's my opinion what background is.

**Q.** Okay. The reason I ask you is, again, because if you were at that second phase, what we've called the sentencing phase – you've already found the defendant guilty of a deliberate, intentional murder, and now you've got this second phase where you've got to determine what the penalty is, the judge will instruct you that you need to consider all kinds of circumstances – not just the crime itself –

**A.** Yeah.

**Q.** – but also any information about the person who committed the crime, maybe his or her background or their character or what led them to commit that crime or what they had done in the past. All those things, you would be required to consider honestly and openly. Do you have any belief that would cause you to say, "No, it doesn't



matter; once the crime's committed, that's all I care about and I'm just going to vote for one penalty."

**A.** No, I could consider everything, I guess.

**Q.** All right. You could keep an open mind until you've heard both sides of the story?

**A.** Mm-hmm.

**Q.** And even if as you sit here today you don't know what those facts are, do you feel confident that when the time came, if you were actually called as a juror, you'd be able to weigh both sides and wait until both sides have had their say and then follow the judge's instructions before you make the decision as to which of the alternative penalties should be given in that case?

**A.** Yeah.

**Q.** Okay. You feel confident about that?

**A.** (Nods head up and down.)

**MR. FRECCERO:** If I could have a moment, Your Honor.

(Discussion off the record among the Government's attorneys.)

**MR. FRECCERO:** Thank you, sir.

No further questions.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Good afternoon, sir. My name's Quin Denvir. I'm one of the lawyers for Mr. Kaczynski who is the defendant in this case. I'd like to ask you a few questions too, if I can.

Do you have your questionnaire there that you filled out at Cal Expo?

**A.** Yes, sir.

**Q.** I was curious about one thing. If you turn to page 11, question 41, when you got your summons you said you felt upset and disappointed. Can you tell me what you were thinking then, what your feelings were?

**A.** Well, I've never been one to like to be serving on juries, in other words. I mean, yes, I was kind of – kind of upset, you know, because it meant that I had to serve on a jury or possibly serve on a jury. And just kind of disappointed because – I don't know, just . . .

**Q.** Wasn't like winning the lottery, right?

**A.** That's right.

**Q.** I can understand the disappointment. But the upset part, are you comfortable with the part that if you are selected as a juror that you can do it and do it as part of your duty?

**A.** I think I can do it, yeah.

**Q.** Let me ask you – on page 5, if you look there – if I'm correct that both you and your spouse are employees of the federal government; is that right?

**A.** Yes, sir.

**Q.** Now, you understand that this is a case brought by the federal government. The prosecutors are employees of the federal government. Is that going to cause you any problem if you had to sit as a juror with both you and your wife employed by the Government?

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

**Q.** You wouldn't feel any pressure to decide something a certain way or anybody starting out ahead or anything?

**A.** No. (Shakes head from side to side.) No.

**Q.** As I understand it, you read the paper every day and you pretty regularly watch television; is that right?

**A.** Yes, sir.

**Q.** I get the impression from your questions in the questionnaire and also from when you were talking to Judge Burrell that you just didn't follow this case very much?

**A.** Not really, you know, I . . . I mean, when it was going on, you know, I'd read a little bit about it, you know. But, you know, after they supposedly had caught him or after they caught him or whatever, you know, it really didn't – I could care less, you know.

**Q.** So was most of your reading or listening to TV about the case before the arrest of Mr. Kaczynski, as the crimes occurred?

**A.** Yeah. I read a little bit about it, like "Unabomber strikes again" or, you know, something like that. Just different articles or whatever. And I'd read it.

**Q.** And then after the arrest you paid less attention to it?

**A.** Yeah.

**Q.** Am I correct?

**A.** Yeah.

**Q.** And as you sit there, you don't have any preconceived notion, any opinion as to whether he's guilty or not of those crimes?

**A.** No.

**Q.** Let me ask you: do you have any preconceived notion, any opinion of any kind as to what the penalty should be for whoever's convicted of the Unabomber crimes, what should happen to them?

**A.** Well, that would have to be decided. I wouldn't say right now that he, you know – what it would be, like – I have no pre- – whatever you want to call it.

**Q.** Any early opinion?

**A.** Yeah.

**Q.** Something like that?

**A.** Yeah.

**Q.** So as you sit here now you don't feel one way or another that whoever's convicted of those crimes ought to get life or death; is that a fair statement?

**A.** Yeah.

**Q.** Now, you understand that – am I correct that as far as the death penalty is concerned, you're not an opponent of the death penalty?

A. No.

Q. And you're not a supporter of the death penalty as such?

A. No. Not – no.

Q. You're just kind of neutral on it as a general matter?

A. Yeah. I mean, I could form my own opinion one way or the other.

Q. But as you sit here now you don't have an opinion one way or another about the death penalty, for or against it?

A. No.

Q. You understand that in this case, Mr. Kaczynski's charged with 10 charges actually involving four different incidents. And two of the charges are capital offenses, and they have to do with mailing or transporting a bomb with the intent to kill someone and then killing someone when the bomb exploded. And Congress has decided for that if someone's found guilty of that, that there can be two or three different sentences that are available; there isn't just one sentence. There's different ones that could be – you have to make a choice among them.

A. Yeah.

Q. One of them is the death penalty, execute the person. The second one is life in prison without possibility of release, and that means just what it says – in the federal system there is no parole, so you're sentenced to life. That's life. Then the jury could even impose a lesser sentence than life in prison without possibility of release.

And the question I have for you is that if you were to convict someone of mailing a bomb with intention to kill someone and actually killing someone when it went off, and you then had to decide – you were convinced beyond a reasonable doubt that the person committed that crime; you've decided that – and then you on the jury would have to decide among those three possible sentences: death, life and a lesser sentence, would you be leaning one way or another as you went in to try to make that decision?

A. I could be, yeah. If it, I mean, I'd like to hear more evidence or whatever, or –

Q. I guess my question is that if – you understand there's two phases to the trial. In the first phase, we're assuming, for purposes of what we're about here, that you're sitting on the jury and you're listening to the evidence and you're deciding beyond a reasonable doubt that Mr. Kaczynski committed the crime we're talking about, mailing a bomb with intent to kill someone and killing someone when it exploded.

And then there's the second, the second phase of it, where the jury's going to make the decision as to it, not the judge, the way it's usually done.

A. Yeah. Okay.

Q. What I want to know is, as you're starting to go into that, you've convicted him and you're starting to go into this penalty phase, would you be leaning one way or the other on what you thought the penalty should be?

A. Yeah. I probably would be.

Q. Which would that be?

A. I'd probably go with the death penalty.

Q. Would you?

A. Yeah.

Q. That's because of the nature of the crime?

A. Yeah.

Q. The judge will tell you that you'd have to be willing also to consider maybe not – no death penalty. In other words, maybe you let somebody off the death penalty and give somebody life without parole. Could you consider that as something you could actually do? At the end of the sentencing, you could select that?

A. Yeah. I could.

Q. You wouldn't feel, gee, somebody who commits that crime, that's death, I don't want to hear any more?

A. No. Like I say, if I had the choices, I could . . .

Q. You wouldn't have a closed mind?

A. If somebody told me that you can't give him death, you have to give him life in prison, that's what I'd have to go with.

Q. Well, I think what the judge would tell you is that you have to listen to the evidence that the prosecution would put on that they think supports the death sentence. That's what they call aggravating evidence. That's pro-death; that's why you should impose the death sentence. You have to listen to what the defense puts on. That's mitigating evidence. That's no death, that's pro-life. But the decision would be yours. You wouldn't be told you have to decide either one of those. You would be told you have to make the decision, along with the other jurors, as to which one of those after considering all the evidence.

How do you feel about that?

A. Oh, I don't really have no opinion. I mean, I could – I could, like I say, I could go – vote for it, death penalty, or the life in prison. I mean, it . . .

Q. So you see yourself as being able to say that for a person who mailed the bomb with an intent to kill someone and then it blew up and killed him, that life is okay? You don't have to execute the person?

A. If he killed somebody, I'd rather – yeah, I'd rather see him put to death.

Q. And I guess what I'm trying to see is just how strongly you feel that way. This is just something only you know. And people have their own views as to what's the proper sentence or what the death penalty is, and in your heart do you feel that if you committed that crime and I know you did it, then you should be executed?

A. Yeah. Well, I mean, yes, I guess, but – I don't know, a lot of times, in my opinion, the death penalty, it's a – it isn't carried out soon enough.

Q. Well, do you think that that would affect the way you would look at which way to vote on for or against death, on whether it's carried out soon enough, or –

A. Yeah. I think it would.

Q. Again, I don't want to – these are hard questions and you haven't had to address them, certainly, in public like this before, but what we really need to know is that – if you convicted somebody of mailing a bomb to somebody else intending to kill them

and killing them when it exploded, can you actually see yourself deciding that the person could live instead of dying, if it was your decision?

**A.** (Pause.) Yeah, I could.

**Q.** Okay. You don't feel that crime means death automatically is the punishment?

**A.** No.

**MR. DENVIR:** May I have one moment, Your Honor?

**THE COURT:** Okay.

(Discussion off the record among defense attorneys.)

**MR. DENVIR:** Thank you.

**THE COURT:** Bring in another juror, please.

(Prospective juror number 158 left the courtroom.)

(Prospective juror number 159 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 159th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

**A.** Well, I claimed financial hardship, so –

**Q.** Can you elaborate on it, so I can evaluate it –

**A.** Sorry.

**Q.** – In light of the other factors I have to consider?

**A.** My income basically supports my bills. I am a paycheck-to-paycheck employee. And between my rent, my utilities, my car payment, my insurance payment and all of that, that that is my income. I have very little to be left over.

So basically if I were to go onto this jury – well, I do have a question regarding that, but my understanding was if I had gone onto this jury that I would basically, if it had gone beyond 22 days, that I would be out of house and home. So – because my employer does pay for 22 days worth of – well, 22 working days' worth of jury duty.

**Q.** What was your question?

**A.** My question is, I had understood while I was sitting there that it was – the hours of court were going to be from

8:00 to 1:00?

**Q.** Right.

**A.** Okay. I don't know if that's something I could work around and be able to work from, you know, 2:00 to something to supplement the other half of the income. But I'm not sure. I would have to find that out.

**Q.** If you could work around it, would you be available for jury service?

**A.** Yes.

**Q.** Okay. And how will you find out? Ask your employer?

**A.** I would have to ask my employer how they would be willing to work that.

**Q.** How much inconvenience did we cause you by having you come in here today? I'm wondering if we should have you come back after you've asked your employer.

**A.** Well, I mean, there wasn't really an inconvenience. My company pays me to be here today.

**THE COURT:** Okay. I think what we're going to do is have the juror return. Have her ask the question; if the question is favorable, then we'll have her return.

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

**MR. DENVIR:** Okay. Your Honor.

**THE COURT:** Okay.

I won't ask you questions today.

**PROSPECTIVE JUROR NO. 159:** Okay.

**THE COURT:** I'm going to have you talk to your employer. You can communicate with my deputy clerk. She'll give you the information that you need to reach her. And then you can give her the answer, and if the answer's favorable, we'll have you back.

**PROSPECTIVE JUROR NO. 159:** Okay.

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

**PROSPECTIVE JUROR NO. 159:** So if it's not favorable, I don't have to come back?

**THE COURT:** I think that's the other side of it.

Okay. Thank you.

**PROSPECTIVE JUROR:** Thank you. That was easy.

(Prospective juror number 159 left the courtroom.)

(Prospective juror number 162 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 160th (sic) randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

**A.** No.

**Q.** You filled out your jury questionnaire yesterday?

**A.** Yes, I did.

**Q.** Okay. Did you receive communication from me about appearing at Cal Expo?

**A.** Yes.

**Q.** Okay. Since you appeared at Cal Expo, have you discussed the case with anyone or received any information about the case?

**A.** Okay. I did not appear at Cal Expo.

**Q.** I know.

**A.** Oh, okay.

**Q.** You're right. That was a poor question.

Since you received the communication concerning going to Cal Expo, have you received any information about the case, discussed it with anyone, or overheard other people discussing it?

**A.** No. I mean, I've told people that I had received the letter, in my family. But no, I have not discussed the case.

**Q.** I want to direct your attention to the time period prior to Cal Expo. I want you to tell me what information you received about the case in your lifetime, and I want you to give me as many details as you can about that information.

**A.** I really recall even hearing about it when something occurred in Sacramento. I don't recall prior to that really knowing about it. I know that a bomb was received, someone was killed. I've heard that – I know there's something about a cabin, he lived in a cabin. I'm not honestly that familiar with it.

**Q.** Okay. Did you receive any information concerning the cabin other than what you've just indicated?

**A.** No.

**Q.** Okay. Based on the information you received about the case, have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No. I haven't. (Shakes head from side to side.) I don't, because I don't know enough about it.

**Q.** Is there any reason why you wouldn't be able to give Mr. Kaczynski your assurance that he will start this trial, in your eyes, with a clean slate?

**A.** Oh, it would be that way, yes. Yeah.

**Q.** What does that mean to you?

**A.** That he would be innocent until proven guilty.

**Q.** Okay. Is there any reason why you couldn't be fair and impartial to both sides?

**A.** At this point I don't feel there's any reason. Again, I don't know – I haven't heard both sides, so I don't . . .

**Q.** Under the presumption of innocence doctrine, Mr. Kaczynski has no obligation to present any evidence whatsoever. He would be presumed innocent until or unless the Government proves his guilt beyond a reasonable doubt. If the Government doesn't do that, you'd have to enter a not guilty verdict in favor of Mr. Kaczynski. Is there anything about your belief system that would interfere with your ability to give Mr. Kaczynski the benefit of that doctrine?

**A.** No.

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

**A.** Oh, that's hard. I at one time was totally against the death penalty. But I have since changed my views and I agree that in some cases it does apply; it needs to be used.

**Q.** If you were selected to be on the jury and you and your fellow jurors listened to the evidence presented during the guilt and not guilty phase of the trial – and just assume hypothetically that the jury convicted Mr. Kaczynski of the offense of deliberate, intentional, premeditated, and cold-blooded murder of another human being, and that would be something that you would find during the – for purposes of this hypothetical, during the guilt and not guilty phase of the trial, when you go into the sentencing phase of the trial, because you only would go into the sentencing phase of the trial if you were to convict him of such an offense –

A. Right.

Q. – when you go into the sentencing phase of the trial, would you still be able to consider voting for a sentence less than death?

A. Yes.

**THE COURT:** The parties may conduct examination.

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

Q. Good afternoon.

A. Afternoon.

Q. My name is Steven Lapham. I'm one of the prosecutors in the case. Let me just pick up where the judge left off.

You went through a change in your opinion about the death penalty?

A. Yes, I did.

Q. Was there any one thing that brought about that change, or was it just over the course of your life?

A. Over – yeah, over the course of years.

Q. What was it that made you change your opinion? Can you tell us, or is that too broad a question?

A. I couldn't tell you. I don't know what made me change my opinion. I don't know.

Q. Okay. You said in your questionnaire, and you don't have your questionnaire right in front of you, but I can quote the question –

**THE COURT:** I can provide her with a copy if that's helpful.

**MR. LAPHAM:** Thank you, Your Honor.

**THE COURT:** Is this your questionnaire?

**PROSPECTIVE JUROR NO. 162:** (Examines document.) Yes.

**MR. LAPHAM:** Q. Let me ask you to turn to page 26.

A. (Complies.)

Q. And specifically to question 104. Why don't you read that to yourself, the question and your answer.

A. (Complies.) Okay.

Q. The question was essentially how does your religion play into your view on the death penalty. And part of your answer says, "Only God can decide that." Could you tell us what you meant by that?

A. Well, that's how I was raised to believe, that we were not here – we were not put here to determine whether someone dies; it was up to God, not me.

Q. Okay. And now that you've changed your views on the death penalty, that –

A. That changes –

Q. That doesn't apply anymore?

A. Right. Right.

Q. So if you were on the jury you would be able to vote for the death penalty if you felt under the facts, the circumstances and the law that it was the appropriate course?



A. Yes.

Q. And let me ask you the other side of the coin. If you felt under the facts and circumstances of the case that a lesser form of punishment, such as life imprisonment without possibility of release was appropriate, would you have any trouble coming to that conclusion?

A. No.

Q. Because the way this works is, you'll finish off the guilty/not guilty phase having determined, hypothetically, that the defendant is guilty of the crimes that the judge talked about.

Then you'll go into the second phase of the trial, where you're supposed to determine what punishment is appropriate. Now, you haven't heard all the evidence in my opinion; we're only halfway through the trial. You're going to hear more evidence on what the appropriate sentence is. And that will include additional evidence about the crime that was committed and possibly additional evidence about the background and the character of the defendant. And you'll be asked to weigh these factors and determine whether the death penalty is appropriate or life sentence is appropriate.

Do you understand that so far?

A. Yes.

Q. Do you think you'd have any difficulty weighing those factors and deciding among the alternatives you're given?

A. (Pause.) I can't say that I wouldn't have any difficulty, I don't think, but I'm sure I could come to a conclusion.

Q. The law distinguishes – or the law recognizes that no two crimes are alike, that murders, even – all murders, you understand, are intentional, deliberate and premeditated, but – you look a little quizzical there, you –

A. No. That's okay. All murders are premeditated?

Q. Yeah. By definition, all murders are intentional, premeditated and deliberate killing of another individual.

A. Okay.

Q. But the law says that just because someone commits a murder, that doesn't automatically mean they should get the death penalty. You have to go on and look at other factors: how the crime was committed, who committed it, what, what that person's character and background is – let me give you an example. For instance, some people commit a murder and they have no prior record whatsoever of any violence; and then there are other people who commit murders and they've got a long history of violence.

So you understand why the law would see a distinction between those two people?

A. Right.

Q. Okay. And some murders – again, an intentional, deliberate killing of another human being – some murders are committed with lots of planning; maybe it's committed in return for money, contract killing. And other murders are committed kind of on the spur of the moment. For instance, two people are involved in a traffic accident and

they become enraged at one another and somebody goes and gets a gun and in that few seconds or minutes in going to get the gun he has time to think that I'm going to kill this man, he has time to deliberate and he has time to premeditate, and he shoots the individual.

Now, can you see why the law would make a distinction between a person like that, or a murder like that, and someone who accepts money in payment for a cold-blooded killing?

A. Yes, uh-huh.

Q. Okay. So that's what we're talking about, that you will hear some of the facts of the crime in the first phase of the case. You'll hear how the crime was committed.

But that doesn't end the story, because we'll go into the second phase, and we'll talk about more evidence about how the crime was committed, so-called aggravating factors about the crime, and mitigating factors, facts that the defense will put forth for your consideration to convince you that the death penalty is not warranted.

And all we're looking for is whether or not you would be open to listen to both those types of evidence.

A. Yes.

Q. And you wouldn't have already formed an opinion simply because you'd already convicted the defendant of a murder?

A. No.

Q. Okay.

Thank you very much.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

Q. Good afternoon, ma'am. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski, the defendant here. I'd like to ask you a few questions too, if I can.

Do you have your questionnaire there?

A. Yes.

Q. If you'd turn to page 11, please.

A. (Complies.)

Q. Question 41. It was a question what you thought or felt when you received your jury summons – you said you were shocked. Can you tell me what you meant by that, why you were shocked that –

A. To me it just seemed like the odds of me being called in a publicized case would be rare.

Q. It was just that the odds would come out that way?

A. Yeah.

Q. It surprised you?

A. Yeah.

Q. I noticed that – if you could turn to page 7. I guess it's actually the tail end of that question 24. You see the last part of it there, right above question 25, about a cousin?

A. (Examines document.) Okay.

Q. I guess what I'd like to ask you – you understand, of course, that Mr. Kaczynski is accused of mailing or placing bombs with the intent to kill and then either killing or injuring people as a result of that. Is that – does what happened to your cousin in Vietnam, would that make you uncomfortable sitting in this case because of the nature of the charges, do you think?

A. No.

Q. It wouldn't?

A. No.

Q. If you'd turn to page 12. It sounds like you have a lot of cousins and other family who have worked or do work in law enforcement; am I correct?

A. Yes.

Q. I guess my only question on that is, do you think that would affect you at all in your ability to sit as a juror in the case?

A. No. I've sat on a jury before, and I felt that I was fair.

Q. Okay. And in particular, do you think that you would feel any pressure just, you know, if you had to see these people, perhaps to return a verdict of guilty or if you found, if you had returned one, to return a death sentence because it's kind of like these people would say, "Well, what are you doing, you know, how could you not do that?"

A. No.

Q. That's not the kind of relationship you have with them?

A. No.

Q. Okay. As I understand it, you had not heard of this case at all until the latest incident that occurred in Sacramento; is that right?

A. Yeah. I don't remember hearing anything about it until then.

Q. And then, I guess – I think you also said in your questionnaire you haven't thought much about the case?

A. No.

Q. So as you sit there, you don't have an opinion or preconceived notion right now as to whether Mr. Kaczynski is guilty or not?

A. I really don't; no.

Q. Do you have any preconceived notion as to what the proper penalty would be for someone who was convicted of the Unabomber crimes?

A. No. I would have to hear more.

Q. You don't have this feeling of well, whoever did it, that's somebody who should get the death penalty?

A. No, not necessarily. I don't feel they would have to get the death penalty for that.

Q. I think you understand that for two of the charges against Mr. Kaczynski, the mailing of a bomb with an intent – the mailing of a bomb with an intent to kill someone and actually killing someone when it exploded, if the jury were to find him

guilty beyond a reasonable doubt, if that happened there would be a second phase. Normally if you found somebody guilty the judge would do the sentencing. If you were sitting as a juror and found him guilty of those crimes, then you and the other jurors would have to decide the sentence; it's a little unusual because they're death penalty crimes. You understand that? It's unusual.

**A.** Yes.

**Q.** The law provides that the penalty for those crimes that the jury has to consider – one is the death penalty, execution; the second one is life in prison without possibility of release, and that means literally that, because in the federal system there's no parole, so a life sentence means life in prison; or a lesser sentence. And the jury could impose any of those three sentences for those crimes and would have to make that decision.

Do you feel that, if you had convicted someone of that type of crime and then had to enter the sentencing phase where you were to make that kind of decision, you would go into it leaning in favor or kind of thinking, well, this is probably what should come out of it? Would you be leaning toward one penalty instead of another one?

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

**Q.** And you'd be willing to listen to whatever evidence the Government put on which they thought showed you should vote for the death penalty, whatever evidence that the defense put on that said you should vote for something else, life without –

**A.** Yes, uh-huh.

**Q.** And then you would go, be able to go in and make your own decision as to whatever you thought was right among those three penalties?

**A.** I will, yeah.

**MR. DENVIR:** If I could have one moment, Your Honor.

**THE COURT:** Okay.

(Pause in the proceeding.)

**MR. DENVIR:** Q. I do have one more question I just thought of, before I get coached.

On page 24 I wanted to ask you about your answer to question 95, there.

**A.** Okay.

**Q.** You see that?

**A.** Mm-hmm.

**Q.** It's possible that in this case, either in the guilt or not guilty stage that the judge spoke of or in the sentencing phase, if we reach that, that the Government and/or the defense may present testimony of psychiatrists, psychologists or other mental health professionals to give opinions for the jury to consider.

I guess from your answer there – I was wondering whether you would have any problem with listening to that kind of testimony and making your, you know, your own decision as to how much weight to give it or how to resolve any conflicts in it.

**A.** I wouldn't have any problem listening to it. What I'm saying is, and I'm referring to cases that recently have been televised – that's all I know about it, you know, that

I've seen, where this occurs, it is confusing when they start to bring out so much that I think people get confused. But I think I could listen and form my own opinion.

**Q.** What cases are you thinking of? Is there some case or cases in particular you are thinking of?

**A.** Well, the au pair and O.J. Simpson.

**Q.** Oh, I see.

**A.** Those are the ones.

**Q.** But what the judge, he would give you an instruction on expert opinion, and I'll try to paraphrase it – I may not have it right, but it essentially says that you would be – as each juror should give whatever weight they thought as to that opinion; they could either reject it or accept it, and that if you had conflicting opinions, that you should look to the credentials, the qualifications of the experts and what their opinions are and what they give as the basis for their opinion, and then make your own decision as to how you resolve any conflicts or how much weight you give to that.

I mean, you don't feel that that's something you couldn't do?

**A.** No. I think – I could do it.

**MR. DENVIR:** No other questions. Thank you very much.

**PROSPECTIVE JUROR NO. 162:** Mm-hmm.

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

(Prospective juror number 162 left the courtroom.)

**THE COURT:** We're going to bring in another juror. My deputy clerk just informed me that this juror is actually 162 rather than 160.

(Pause in the proceeding.)

**MR. LAPHAM:** Your Honor, I'm sorry. I didn't understand what you just said.

**THE COURT:** That juror is 162. We were given misinformation about it, and the master list indicates that the juror is 162, rather than 160. The juror that just left the courtroom is not 160; that juror 162.

**MR. LAPHAM:** Is the name correct?

**THE COURT:** Yes.

**MR. LAPHAM:** Okay. I see.

(Prospective juror number 163 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You're the 163rd randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

**A.** I can't think of any.

**Q.** Did you go to Cal Expo and fill out a juror questionnaire?

**A.** Yes.

**Q.** Have you been exposed to information since you went to Cal Expo?

**A.** Well, I tried to avoid watching the news or reading the articles in the papers.

**Q.** I appreciate that. Despite that effort, have you still been exposed to information?

**A.** Yeah.

Q. Okay. What information –

A. Well, that the cabin is being brought to Sacramento.

Q. Okay. Anything else?

A. (Shakes head from side to side.) No.

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

A. Well, I overhear people, but I walk away and I don't retain very much.

Q. What have you overheard? I appreciate the fact that you walked away, but what did you overhear before you walked away?

A. I can't quite recall. It's practically everybody's talking about it, you know.

Q. Okay.

A. And I can't remember in detail exactly what I heard.

Q. Do you recall where you were when you heard people talking about it?

A. Oh, in the malls or shopping.

Q. Okay. I want to direct your attention to the time period before Cal Expo.

A. Mm-hmm.

Q. I want you to tell me as much information that you received about the case as you can recall. Give me as many details as you can.

A. I don't know if I can.

Q. Okay. I'm asking you the question because I have an obligation as a judge to find out how much information a juror has received about a case. That doesn't mean that you can't serve as a juror on the case, but we have to be able to evaluate how that information could possibly affect you, and we'll be asking you the question how you feel the information affected you, too.

A. Well, when I first heard that he was arrested and they wrote about all the evidence, I thought he was guilty.

Q. What evidence are you referencing?

A. Well, the things they found in the cabin –

Q. Okay.

A. – seemed to show that he was guilty.

Q. What things are you referencing when you tell me about things found in the cabin?

A. I can't really recall.

Q. Okay. How strongly are you committed to that opinion that you just indicated?

A. (Pause.) Well, there would have to be some extenuating circumstance to change my opinion.

Q. If you were selected as a juror in this case, is that an opinion that you could set aside, meaning you could leave that opinion outside the courtroom and you could have a frame of mind that allows you to make a determination as to Mr. Kaczynski's guilt or innocence based solely on the evidence you receive inside this courtroom?

A. I could try. I don't know if I can, but I can try.

**Q.** Okay. I appreciate your answer because I can see that you are evaluating the question in your response.

What type of things would you be struggling with as you try to do that?

**A.** Well, his reasons for doing what he did, and his frame of mind, his mental capacity.

**Q.** A criminal defendant in our justice system does not want to be on trial concerning allegations or publicity that surrounds the case. He doesn't want to have to defend himself against such publicity. You can imagine the unfairness that would be reflected if a criminal defendant had to do that. Is there anything about what you know about yourself that would interfere with your ability to leave such information outside this courtroom if you were selected as a juror?

**A.** I – I don't think so.

**Q.** What does that answer mean?

**A.** I think I can leave whatever I have in my – you know, what I've heard and what I've read and start fresh.

**Q.** If you were selected as a juror, would you allow Mr. Kaczynski to be presumed innocent?

**A.** (Pause.) Yes.

**Q.** Okay. What does that mean to you?

**A.** Well, he's innocent until they show something else to prove that he's guilty.

**Q.** That's exactly what the doctrine means. It means a little bit more, too. Mr. Kaczynski has no obligation to present any evidence in this courtroom whatsoever. He is presumed innocent unless and until, should it in fact occur, the Government proves his guilt beyond a reasonable doubt. If the Government does not prove his guilt beyond a reasonable doubt, you would have to enter a not guilty verdict in his favor. Could you do that?

**A.** Yes.

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

**A.** I am for it.

**Q.** Okay. If you were in fact selected to be a member of the jury, and assuming that you and other jurors – this is a hypothetical type of a question –

**A.** Mm-hmm.

**Q.** – you found Mr. Kaczynski guilty of the offense of premeditated, intentional, deliberate, cold-blooded murder of another human being – and that would be a finding you would make, hypothetically, in the guilt and not guilty phase of the trial.

And if you make that finding, you would then go to the sentencing phase of the trial. And in the sentencing phase of the trial, you could receive additional evidence which would be aggravating evidence which the Government would argue points toward death, and you could also receive what's called mitigating evidence; that would be evidence that points toward life.

After making the finding that I just told you about – that’s the intentional, cold-blooded murder finding – would you still be able to consider voting for a sentence less than death in the sentencing phase of the trial?

A. (Pause.) No.

Q. You would vote for death?

A. Yes.

Q. And explain your answer.

A. Well, if it was a cold-blooded, premeditated – premeditation to commit the murder, I would vote for death.

Q. Now, if this case reaches the sentencing phase of the trial and you were on a jury that, in fact, found what you just repeated – that’s intentional, deliberate, premeditated, cold-blooded murder – would you automatically vote to select the death penalty, no matter what the mitigating evidence is?

A. Well, I probably would take the mitigating circumstance into consideration and see if it – how do I express this? I don’t know how to express myself.

Q. I know you’re on the spot and you haven’t been asked these – I presume you’ve never been asked –

A. No.

Q. – these type of questions before.

A. No.

Q. The mitigating evidence would point toward life. Is there anything about your pro-death penalty feelings that would interfere with your ability to listen to the mitigating evidence which points toward life and perhaps considering a life sentence or a lesser sentence other than death?

A. – than death? I believe I could.

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

**VOIR DIRE EXAMINATION**

**BY MS. CLARKE:**

Q. Good afternoon.

A. Hi.

Q. My name’s Judy Clarke. I’m one of the lawyers for Mr. Kaczynski. And I wanted to follow up with a few questions, if I could.

A. Okay.

Q. I noticed in your questionnaire you indicated that you had some difficulty hearing. Is that still a problem?

A. Well, I guess. I need, like when I’m on the phone – I don’t know if it’s the connection or just the phone, I have to ask, you know, ask the person to repeat.

Q. You would have to tell us – I don’t know anything about the nature of whatever your hearing problem is – does it affect your ability to sit –

A. No. I can hear you really well.

Q. If you were sitting with other people nearby moving their chairs or making noise, would that cause a problem?



A. Sometimes it can.

Q. Is that in both ears?

A. I have nerve damage. I don't remember which ear it was. But the doctor didn't think I needed a hearing aid, so . . .

Q. You'd have to tell us. Is it of such a problem that it would cause you concern –

A. Well, sometimes if it's real noisy, like people talking or like shopping in the malls and people are talking, radios blaring and – I have difficulty hearing.

Q. How about if it's a witness on the witness stand and a lawyer asking questions?

A. I can hear.

Q. You can hear that?

A. Yes.

Q. Would it necessarily be that he'd need to be at the microphone or speaking loudly?

A. No.

Q. You don't think there'll be a problem?

A. No.

Q. Because only you can tell us.

A. No.

Q. Your questionnaire indicated that you have a number of family members who are involved in law enforcement –

A. Law enforcement, yes.

Q. – occupations. I don't know what your relationship with the variety of family members – they seem to be fairly close family members?

A. My son-in-law is in the [employer deleted] –

Q. I don't think you need to tell us exactly where.

A. Oh, okay.

Q. But I wonder if those relationships would affect your sitting on this case?

A. I don't think so.

Q. Well, they're all in law enforcement.

A. Yeah.

Q. Have any of those members of your family talked to you about this case?

A. No.

Q. Once they knew you were coming down to?

A. They just teased me about it. Because I've never been – I've never done this before. At my age.

Q. Had they ever talked to you about the case before you got your summons?

A. No.

Q. Mentioned the case as a matter of interest to them?

A. (Pause.) No.

Q. Do you think it would be at all hard for you to go back and talk to them after sitting on a case like this?

A. I'll just tell them I can't talk about it.

**Q.** What about after the verdict is over? Let's say that you sat as a juror and you decided that Mr. Kaczynski did not commit the crimes. Would it be hard for you to go back, in the face of what all the publicity has been, and deal with your family members?

**A.** No.

**Q.** How about if you sat on the penalty phase and you decided that a sentence of life was appropriate? Would that be difficult for you?

**A.** No.

**Q.** Because their opinions don't count or they just would respect whatever, what you said?

**A.** Well, they should respect my opinions, too. It goes both ways.

**Q.** I don't know. It's just hard for an outsider to know what relationships family members have.

**A.** No. They wouldn't be – it wouldn't be a problem.

**Q.** I think that when you were talking about the judge you mentioned that, based on everything that you'd read and heard, you believe that Mr. Kaczynski was guilty?

**A.** Mm-hmm.

**Q.** Right?

**A.** Mm-hmm, yes.

**Q.** And you told the judge that you would do your best to set that opinion aside?

**A.** Mm-hmm. Yes.

**Q.** Can you tell us where – what percentage would you place on his guilt at this point in time? Is he a hundred percent guilty, ninety percent guilty? Where would you place it?

**A.** Ninety percent.

**Q.** Ninety percent guilty?

**A.** Yes.

**Q.** Would that be real difficult to move off of?

**A.** (Pause.) Well, I'd just have to tell myself that whatever I've heard or read about is – doesn't exist.

**Q.** Well, sometimes the concern that you might have would be that you can't remember what you've heard –

**A.** Mm-hmm.

**Q.** – going into a trial –

**A.** Yeah.

**Q.** – and something may trigger a memory that you have that makes you remember why you thought the person was guilty. You know what I'm talking about?

**A.** I think so.

**Q.** So that it might be that – and if nobody ever raises that fact and talks about that fact, you might have that in your head?

**A.** Mmm –

**Q.** Am I right?

A. Yes.

Q. Would that be difficult for you, given what your ninety percent belief is, that he's guilty?

A. I wouldn't know until I get into that situation.

Q. Well, you know you –

A. Yes.

Q. – and nobody else knows you. Knowing how you – how you believe about your own opinions, do you come off of them very easily, or is that something that –

A. No. No, not easily. It has to be something really big or definite. I would . . .

Q. So your belief that Mr. Kaczynski – ninety percent that he's guilty, that would be an opinion that you hold strongly?

A. What?

Q. Is that an opinion that you hold strongly?

A. (Pause.) Yes. Okay. I'll say yes.

Q. I'm just – nobody knows but you.

A. Yes.

Q. And knowing how you hold on to your opinions, do you think that that would be a difficult opinion to come off of?

A. Not if I heard a different evidence that would show that I was wrong. I could be wrong.

Q. Would that mean that there would be some obligation in your mind for Mr. Kaczynski to come forward and explain the case to you?

A. No. There will be evidence brought in, right, during the trial?

Q. Right.

A. And if it's – if it doesn't coincide with what I've heard or read, then I'll leave my mind open to determine – change my opinion.

Q. Do you think, knowing where you are right now, ninety percent belief that he's, that Mr. Kaczynski is guilty, do you think that that in your own mind sort of places a burden on him to come forward with any explanation?

A. (No audible response.)

Q. I mean, if he sat there and said nothing the entire trial, would that just sort of re-affirm in your mind the ninety percent guilty?

A. No, because he doesn't – he doesn't have to defend himself. He doesn't have to prove anything. It's what comes into court that'll help me decide.

Q. I guess I'm just trying to figure out what would make you move off of your opinion that he's ninety percent guilty.

A. I can't say. I don't know.

Q. When you were talking about the death penalty – if I could ask you a few questions about your opinion about the death penalty.

I think at first you indicated to the judge when you were asked if you found Mr. Kaczynski guilty of a cold-blooded, premeditated, intentional, deliberate murder would you be able to sentence to less than death – and I think you said no, I couldn't?

A. Mm-hmm.

Q. That the death penalty would be the sentence; am I remembering right?

A. Yes. Yes.

Q. And then when you were asked would that be the automatic sentence that you would impose without consideration of mitigating factors –

(Brief interruption in the proceeding.)

MS. CLARKE: Q. Remember the first question? That it would be difficult – you couldn't impose a sentence less than death?

A. Than death.

Q. And then when the judge asked you would you automatically impose a sentence of death without consideration for mitigating circumstances, you said, well, I could consider the mitigating circumstances?

A. Yes.

Q. Could you help me understand the difference between those two answers?

A. Well, the first time was without the mitigating circumstances, but mitigating circumstances have a way of changing whatever it is you believe.

Q. When you heard that word "mitigating circumstances" with the judge's question, what were you thinking mitigating circumstances were?

A. Something – oh, I can't think of the word. Extenuating.

Q. For example?

A. (Pause.) I don't know. I can't think of any right now.

Q. If the crime that you found the defendant guilty of was a cold-blooded, premeditated, intentional murder –

A. Mm-hmm.

Q. – would there be any category of mitigating circumstances that you could think of that would make you change your mind from a death sentence?

A. Not off the top of my head, no.

Q. So when you're thinking mitigating circumstances, are you thinking something that changes the fact that the crime was a –

A. Cold-blooded or –

Q. Cold-blooded –

A. – premeditated –

Q. – murder?

A. Mm-hmm. Yes.

Q. So what I'm hearing you say is that once you make the finding as to the crime itself, then that dictates the penalty?

A. (Pause.) Yes.

Q. And when you answered – do you have your questionnaire nearby?

A. No.

Oh, I didn't bring my glasses.

THE COURT: (Indicates document.) Is that your questionnaire?

PROSPECTIVE JUROR NO. 163: Yes.

**THE COURT:** I wonder if we could switch. Let the Government question, and then you can ask follow-up questions, if necessary.

**MS. CLARKE:** Yes, thank you.

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

**Q.** Ma'am, good afternoon. My name is Steven Lapham. I'm one of the prosecutors. Let me ask you first, are you the type of person that believes everything you read in the paper?

**A.** No.

**Q.** Do you believe everything you see on television?

**A.** No.

**Q.** Is it possible, or do you admit that it's possible, that some of the things that you've read about this case could be wrong, just plain wrong?

**A.** Yes.

**Q.** And some of the things you've seen on television could simply be wrong?

**A.** Right.

**Q.** That the fact is you haven't heard any evidence about the case. No matter how much you've read about the case in the papers or seen on television, you haven't heard any of the evidence. You understand that?

**A.** Just what they've printed, not what's going to come up in court.

**Q.** Right. And what they've printed is not under oath, like it will be in court, and it's not subject to cross-examination, like it will be in court –

**A.** Yes.

**Q.** – and it's not subject to the argument of both sides, like it will be in court.

**A.** Yes.

**Q.** So, knowing that, can you give us your assurance that whatever you've read or heard about the case outside of court, you'll just leave –

**A.** Put aside.

**Q.** Put it – exactly. Put aside.

**A.** In the back of my mind.

**Q.** Because it's important that we understand that you can decide the case based solely on what you hear –

**A.** What comes up in court.

**Q.** Exactly.

Let me ask you about your views on the death penalty and –

**THE COURT:** Approach the bench, please.

(The following discussion was had at the bench.)

**THE COURT:** I just told the Government that nothing they can cover during the examination will change my opinion about the juror. In light of the answers she gave to defense counsel, if there's a motion, I will excuse her for cause.

**MR. LAPHAM:** It is on the publicity issue?

**THE COURT:** Right. That's correct. That's why I interrupted defense counsel's examination. And I might as well just tell you that's how I feel.

**MS. CLARKE:** Well, consider the motion made.

**THE COURT:** Then it's granted.

**MR. FRECCERO:** Very well.

**MS. CLARKE:** Thank you.

(The proceeding resumed as follows in open court.)

**THE COURT:** We're going to excuse you from having to respond to further questions. My deputy clerk will take you back there.

(Prospective juror number 163 left the courtroom.)

(Prospective juror number 164 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 164th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

**A.** Other than what I mentioned earlier about my traveling.

**Q.** About your job?

**A.** My job.

**Q.** Okay. Go ahead and explain it now.

**A.** I work for a small company. We are – the basis of our income is commission, so we're basically commissioned sales. There are only six or seven of us in the company, three of us that are outside sales. I cover the northern portion of our territory. So it's not only my own income but the rest of my company. I represent about a third of our income in my sales.

**Q.** My schedule, my proposed trial schedule doesn't assist you?

**A.** As long as I didn't travel it would be fine, but I do have a large territory to cover. I cover basically all of Northern California, Oregon, Washington, Utah, Idaho, Montana, Alaska, and Hawaii.

**THE COURT:** Okay. The parties may examine, if you desire.

**MR. FRECCERO:** (Shakes head from side to side.)

**MS. CLARKE:** We'll stipulate.

**MR. FRECCERO:** Yes. The parties would stipulate, Your Honor.

**THE COURT:** You're excused from further service on the case because of the hardship you've expressed.

**PROSPECTIVE JUROR NO. 164:** Thank you.

**THE COURT:** Okay.

(Prospective juror number 164 left the courtroom.)

**THE COURT:** That's all the jurors we've summoned for the afternoon.

My jury administrator brought to my attention that we've asked juror number 143 to appear for questioning. A juror qualification questionnaire concerning juror 143 reveals that she cares for her six-month-old son in her home, which is a considerable

distance from this courthouse, at least two hours. She also attends night classes at college. And she says that she has no one to watch her son.

On the surface, she appears to have a bona fide hardship excuse. And I just want to get the parties' input before we force her to come in.

**MR. LAPHAM:** Your Honor, we've actually talked about that, and we're prepared to stipulate.

**MR. DENVIR:** So are we, Your Honor.

**THE COURT:** Okay. Then I will excuse this juror for cause.

Thank you. I assume there's nothing further to cover?

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

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

(Time noted: 5:14 p.m.) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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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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Reported by: CATHERINE E.F. BODENE, CSR No. 6926 MARGARET McNAMARA, CSR No. 6729 DENNIS McKINNON, CSR No. 2223 SUSAN VAUGHAN, CSR No. 9673

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