

# Jury Selection Day 15

Dec. 8, 1997

SACRAMENTO, CALIFORNIA  
MONDAY, DECEMBER 8, 1997

**THE COURT:** Let the record reflect all participants are present. Are you ready to proceed?

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

**THE COURT:** Okay. Last Friday, it is my understanding that the parties, through contact with my secretary, agreed to excuse juror 166 for financial hardship reasons. Is that correct?

**MR. FRECCERO:** That's correct, your Honor.

**MR. DENVIR:** I'm sure it is, your Honor.

**THE COURT:** All right. The defense left a message with my chambers yesterday agreeing to stipulate to excuse certain jurors scheduled to appear today. And the government, as I understand, agrees to excuse jurors 198 and 200, which are two of the jurors that were mentioned in the defense's message.

**MR. LAPHAM:** That's correct, your Honor. We also – at the time we had not yet seen juror questionnaire 202. Having now seen that, we're willing to stipulate to him as well.

**THE COURT:** Is he on for this morning?

**MR. LAPHAM:** Afternoon.

**MR. DENVIR:** This afternoon.

**THE COURT:** So the parties also stipulate to excuse 202. We'll try to contact 202 so 202 doesn't have to travel this morning to reach the pickup location. I'm going to bring 198 and 200 into the courtroom so I can explain what has occurred and that they are being released immediately. I'm going to have the marshal to take them to the pickup spot right away so they don't have to wait until 12:00 o'clock to be released, but I thought I should tell them what has transpired. (Prospective jurors 198 and 200 entered the courtroom.)

**THE COURT:** Thank you for joining us. You're not going to be in the courtroom long. I'm only inviting you in to explain what has occurred. I want you to know that the parties and the Court, we have decided that, because of the hardship reasons you've stated for not being on this jury, we're not going to take up your time any more than we already have. We're going to excuse you. And I assume that you probably question, well, why did it take so long for us to excuse you. And that's why you're in here. We have to analyze hardship reasons to make that determination as to whether we should, in fact, excuse jurors. Sometimes jurors can make adjustments and it can alleviate hardships. And we are also busy doing other things. There are a number of issues involved with this case. The parties, I believe, are incredibly busy. I'm incredibly busy. And we are looking at these juror questionnaires as soon as time allows us to do that. And unfortunately for you, you had to travel to the designation where you were picked up, you had to appear in court. But I want you to know that the justice system may not seem to work for you quick enough, but it does work. And I'm sorry that it didn't work faster, that we, in fact, have interfered with your daily activities. I've

made arrangements for the marshal to take you back to the pickup point immediately so you won't have to sit here until 12:00 o'clock or 12:30 to be released. And I thought that I owed it to you to bring you into the courtroom to explain what happened. If you don't have questions, I will excuse you right now. Okay. (Prospective jurors 198 and 200 left the courtroom.)

**THE COURT:** My understanding, counsel, is that one juror wasn't at the pickup point. Did my deputy clerk give you that information?

**MS. CLARKE:** Yes.

**THE COURT:** Which juror?

**MR. DENVIR:** 193.

**THE COURT:** All right. (Prospective jurors entered the courtroom.)

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

**THE CLERK:** Please stand and raise your right hands. (Prospective jurors sworn.)

**THE COURT:** Good morning, and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. On the same platform with her is the certified shorthand reporter who will assist the Court in administering this trial. I trust that you 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. 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 a fair jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answer. Each prospective juror is entitled to her own opinion. The parties value your opinions. The questioning process will involve questioning prospective jurors individually, which will commence after I question you first as a group. After a number of jurors are questioned in this manner, some prospective jurors will be assembled later for further questioning. Those required to participate in that further questioning process will be provided notice as to when it will occur. Our objective is to obtain a fair and impartial jury that will decide the case on the evidence that is presented to them in this courtroom and on the law that I will provide them in my instructions. I have decided to do individual questioning in part because the parties have requested it and also because there's been some publicity about the case. During the questioning, we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case. The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of those offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of a jury

to determine whether the defendant should be sentenced to death, life imprisonment without the possibility of release – and that means just that in the federal system. In the federal system, if you are sentenced to life, you do, in fact, go to prison for the rest of your life . Or to prison for a lesser sentence than life. This determination is made at the second phase of the trial referenced as the sentencing phase or the penalty 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 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 the defendant should be sentenced to death. A mitigating factor is any aspect of a defendant's character or background or 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 includes the death penalty, you will be asked questions during the questioning process about your views on the death penalty. We may ask questions in additional areas too. During this questioning we will refer to you by your randomly selected number as a juror rather than your name. This is because I've decided to use an anonymous jury in this case in order to protect your privacy as I've indicated to you in a previous communication. Now I will give you a jury instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from service on this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended or you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about this case until you have been excused by me. Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately. Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who

has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they had no opportunity to discuss. For these reasons, you should avoid reading or listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition. Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me. The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem. There's no response. I contemplate observing the holiday season as follows. We will not hold court during the week of December 22, which is the Christmas week; nor on January 1 or 2. I contemplate holding court December 29, the 30th, and the 31st. Please raise your hand if this poses any problem. There's no response. Please raise your hand if you do not understand the following: Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty. There's no response. If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this. There's no response. Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There's no response. If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law that I will give to you in my instructions, whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this, please indicate that fact by raising your hand. There's no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under the law to protect your legitimate privacy interests, I may ask you some questions in the area that you've indicated a desire to discuss in private to determine whether we can discuss any aspects of the matter in open court without disclosing what you have indicated a desire to keep private. If this can occur, let me know. Let me know so I can determine 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 for closing any aspect of it. I now want my deputy clerk to escort all but the earliest randomly selected juror into another room and to place the remaining juror in the witness stand. (Prospective jurors left the courtroom.) (Prospective juror number 32 remained in the courtroom.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 32nd 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.** No, I came down Friday, this past Friday to this building.

**Q.** Okay. Did you receive any communication from me concerning Cal Expo?

**A.** Yes.

**Q.** Part of that communication dealt with avoiding media coverage and things of that nature; did you see that aspect of the communication?

**A.** I don't recall.

**Q.** Don't recall. Okay. I'm going to ask you a question concerning what information you have received about what you consider this case to be about. And the reason why I'm going to ask you the question is twofold. Under the law, I am required to ascertain what information a prospective juror received about a case so that the Court and the parties are in a position to objectively determine how that information could possibly affect a particular juror. And then I'll also give you an opportunity later to tell me from your own perspective how you believe the information has affected you, if at all. So with that in mind, with my goal in mind, I want you to search your memory bank and tell me in as much detail as you possibly can all the information you have received concerning the allegations that you believe will be involved in this case.

**A.** The only thing I can say is the different people's opinions on the radio and the newspaper, which I don't read that often. Articles in the newspaper.

**Q.** What type of opinions have you heard that you are now referencing?

**A.** Nothing that really sticks out in my mind.

**Q.** You mentioned articles in the newspaper. Have you been exposed to any articles in the newspaper?

**A.** No.

**Q.** Have you received any information about the individual referenced as the so-called Unabomber?

**A.** No.

**Q.** Have you heard of the individual referenced as the so-called Unabomber?

**A.** Just from the newspapers.

**Q.** What have you heard in that regard?

**A.** Just some of the events, like the one that happened in Sacramento and different allegations of the different possible victims in different states. It's really unclear.

Q. I'm sorry?

A. I mean, I don't – I didn't pay close attention to it, so it's really not something that's on my mind.

Q. Let's have you make a slight adjustment so that your voice is amplified a bit more by that microphone, so maybe you can adjust your chair. What did you hear about what you have referenced as an event occurring in Sacramento?

A. Nothing that I really can remember.

Q. What do you consider an event? You said something about event.

A. Just that I think they interviewed the recent – the victim in Sacramento, just something that came across the news.

Q. How do you believe that individual was victimized?

A. I believe he was the victim from the event in Sacramento, R Street or –

Q. What do you think happened on R Street?

A. A package came to his office and he proceeded to open it, and I don't know if it completely blew up or something happened. I'm unsure.

Q. Have you received any information about a cabin associated with this case?

A. Just that it arrived in Sacramento.

Q. Okay. I'm sorry. I cut you off.

A. That it arrived in Sacramento this week.

Q. Prior to receiving that information, had you received any other information about a cabin?

A. Just that they had found a cabin and that he was residing in Montana, some state.

Q. Any other information concerning the cabin other than what you've stated?

A. No.

Q. You mentioned, I believe, earlier in your response to my question that you had heard other people or entities express opinions. Did I hear you right, did you say something like that?

A. Like on the radio in the morning when they talk about different things going on from the newspaper. They just brought it up on the radio one morning. People were calling in with their opinions on the Unabomber and just as I'm driving, I'm listening to the radio.

**THE COURT:** I didn't hear part of your response. Could you read back? (The record was read.)

**Q. BY THE COURT:** Do you recall any of the opinions expressed by people on the radio that you just referenced?

A. No.

Q. Have you formed any opinion or do you have any preconceived idea as to Mr. Kaczynski's guilt or innocence of the crimes charged against him?

A. No.

Q. Do you have any suspicions in that regard at all?

A. No.

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

**A.** Yes.

**Q.** And what does that mean to you?

**A.** I'm open. That I don't have any preconceived opinions about it.

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

**A.** Yes.

**Q.** What does that mean to you?

**A.** That I'm not sure if he did it or not.

**Q.** The presumption of innocence doctrine is an important doctrine in our criminal justice system. And what it means is that an individual who is charged with a crime is presumed innocent, need not present any evidence in defense of himself, can rely upon the presumption of innocence doctrine until and unless the government proves every element of the offenses against him beyond a reasonable doubt. And if the government fails to meet that burden, then you must find the defendant not guilty because the defendant is presumed innocent at the very beginning. And that he has that presumption all the way to the end. He only loses it if the government proves every element of the offense charged beyond a reasonable doubt. Do you understand the way I just presented the doctrine?

**A.** Yes.

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

**A.** No.

**Q.** You can understand that a criminal defendant charged in a criminal case wouldn't want to be on trial and placed in a position to have to defend him or herself against allegations that a juror received outside the courtroom. You can understand that as a principle?

**A.** Yes.

**Q.** The information that you have received outside the courtroom, is that information that you could assure Mr. Kaczynski would be left outside the courtroom and that you would make a determination as to his guilt or innocence based solely on information that you receive here in the courtroom?

**A.** Yes.

**Q.** Any doubt about your ability to do that?

**A.** No.

**Q.** Are you for or against the death penalty?

**A.** Against.

**Q.** We're not necessarily looking for jurors in this case who are for or against the death penalty. We're looking for jurors that would consider the death penalty or I should say imposing the death penalty in addition to other sentencing options. If Mr. Kaczynski is unfortunate enough to be found guilty of murder during the guilt and

not guilty phase of the trial, we would then go into the sentencing phase of the trial. Do you recall I may have – I said that in my opening comments?

A. Yes.

Q. If we went to the sentencing phase of the trial, you would then receive aggravating – I mean evidence concerning aggravating type of factors that the government would argue points toward death, and there could be evidence of mitigating factors, evidence that would point toward life. And then the jury would receive instructions from me and you would go back to the jury deliberation room, and you would then decide whether the defendant should be sentenced to death, life imprisonment without the possibility of release, or a lesser sentence. Is there anything about your views on the death penalty that would prevent you from considering all three of those possible sentences?

A. I would never consider the death penalty.

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

A. Yes.

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

A. Yes.

Q. So you're telling me that your opinion about capital punishment prevents you from voting for the death penalty in this case regardless of what the evidence is?

A. Right.

**THE COURT:** Is there a desire by any party to conduct examination?

**MR. DENVIR:** Yes.

**THE COURT:** Okay. VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

Q. Good morning.

A. Good morning.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And if I could just for a moment talk with you about your views on the death penalty. Because I certainly understand what you're saying and appreciate your position on the death penalty. And I guess what we're looking for to sit on the jury is someone who can be open to all views. Would you agree with me that service on a jury is an important thing; if we can do it, that we should be able to do it?

A. Yes.

Q. Sort of an obligation of citizenship?

A. Right.

Q. So if we are able to, we should assist the court and sit on a jury?

A. Right.

Q. And would you also agree with me that it's important that on that jury, there be a variety of backgrounds and a variety of views about life?

A. Yes.

**Q.** And in a capital case, a case where the defendant is facing life in prison for the rest of his life or death, it would be important to have people sitting on the jury that have a variety of views about the death penalty?

**A.** Uh-huh. Yes.

**Q.** In other words, you wouldn't want everybody sitting on the jury judging a person's life who said I'm in favor of the death penalty, and I would always give it; right?

**A.** Right.

**Q.** And I guess at the same time, you wouldn't want always to have people on the jury that say I'm against the death penalty, I could never impose it; right?

**A.** Right.

**Q.** You'd want a mixture of views?

**A.** Uh-huh.

**Q.** I mean as I hear you talk, you are against the death penalty, and I would take it as a voter you would vote against having the death penalty?

**A.** Yes.

**Q.** And if you sat in the Congress, you would say I am not, as a legislator, going to have a death penalty for the country?

**A.** Right.

**Q.** You would vote against it?

**A.** Uh-huh.

**Q.** But the Congress of the United States has voted to say that it is a sentencing option in the federal courts in certain cases; right?

**A.** Right.

**Q.** So the point for the jury is to be open to considering all of the sentencing options in a case; right?

**A.** Right.

**Q.** And I guess the important point is that you not walk into the jury room and say I am not going to consider the other sentencing options. I'm so opposed to the death penalty, I cannot consider the a death sentence. In other words, you wouldn't want anybody to walk into a jury room and say I'm closed minded; right?

**A.** No, I wouldn't want them to, but I wouldn't want anybody to go against what their opinion is or what their beliefs are, and I don't believe in the death penalty so I would vote against that.

**Q.** If the judge instructed you that the law requires the jury to consider all options, that would be something you'd want to take into account, wouldn't it?

**A.** Of course I'd listen to his instructions, but I know how I feel about the death penalty.

**Q.** And I appreciate that. Let me ask you one – a couple of questions in one area. Have you ever had really a chance to talk about the death penalty in front of a group of people in a public setting?

**A.** No.

**Q.** So this is really sort of, I guess –

**A.** My first time.

**Q.** – the first time that you’ve had to confront it in a very public way?

**A.** Right.

**Q.** Let me ask you to consider a crime that a person – you’re sitting on a jury, and a person is there having committed a horrible crime, the murder of a young child. No excuse. Just a horrible crime. The worst thing that you could consider. And you learn about that person that they did it before, they were sentenced to a sentence that allowed them to get out. You’re sitting in judgment of them now considering the appropriate penalty, and your fellow jurors say to you they are persuaded that the person, if he doesn’t get the death penalty, will do it again. Done it before, did it now. And your fellow jurors are telling you that they are persuaded that if he doesn’t get the death penalty this time, he will do it again. Do you think in circumstances like that, that you could consider the option of the death penalty?

**A.** No, because he should have been confined to life. And if he had life, he wouldn’t be allowed to come out and do it again.

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

**THE COURT:** Please bring in another juror.

**MS. CLARKE:** Your Honor, we would stipulate on that juror.

**THE COURT:** Okay. We’re going to excuse you. You need not participate further in this case. Thank you very much for your candid responses.

**PROSPECTIVE JUROR NO. 32:** Okay.

**MS. CLARKE:** Thank you.

**THE COURT:** Thank you. (Prospective juror number 32 left the courtroom.) (Prospective juror number 147 entered the courtroom.) **VOIR DIRE EXAMINATION**

**BY THE COURT:**

**Q.** Thank you for joining us. You’re the 147th randomly selected juror. Is there any reason why we shouldn’t continue to consider you for jury service in this case?

**A.** No.

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

**A.** Yes, I did.

**Q.** Okay. Since that time, have you been exposed to information about this case?

**A.** Somewhat. I mean just on the news and, you know.

**Q.** Can you share your memory as to what you remember being exposed to since that time?

**A.** I think one of the things I paid attention to is whether or not they had selected a full jury or not yet to know if I was still being considered or not. And I saw the house structure being delivered to Sacramento.

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

**A.** Not really. Just that I was a potential juror. I think that’s about it.

**Q.** I'm going to direct your attention to the time period before Cal Expo. And I'm going to tell you the reason why I'm asking the questions so you won't have to be questioning, well, why is he asking me the question. I want you to know why I'm asking you the question so you can do your best to answer it. Under the law, I am required to find out what type of information a prospective juror has received about a case when the case is one that has received a lot of pretrial or trial publicity. The fact that a juror has, in fact, been exposed to publicity doesn't mean the juror can't sit as a juror on the case. But a judge is obligated to determine the nature of the publicity to which a prospective juror has been exposed so that the judge is in a position to evaluate, objectively speaking, how that information could possibly have affected the prospective juror. I will also give you the opportunity to tell me from your own perspective how you believe you've been affected, if at all, by the information. Can you tell me in as much detail as possible all of the information you believe you've been exposed to involving matters that you assume pertains to this case?

**A.** Okay. I am very aware of the drawing that was in the paper when they were looking for the suspect. I'm aware of some of the bombings in that we had special regulations at work put in force because of that, to be cautious with your mail and such. I know he was from Montana or the suspect lived in Montana in a rural area. You know, it's like – I know the bombs killed someone in the area. I've read some of the newspaper articles, and my own opinion of the newspapers are that I don't always believe them. So I just read them, and mostly just to see, you know, what was going on and that.

**Q.** Did you receive any other information about the cabin?

**A.** No. Well, okay, that it had no water and no power, I guess, in it. That was – and that they felt it had enough evidence in it to bring it down here for some reason. That's about it.

**Q.** Did you receive any information concerning whether or not the cabin was ever searched?

**A.** Yes. They went up and searched the cabin when they arrested him, and I think they searched at that time. But what they found, I don't really know what they really found in there.

**Q.** Has the information you received caused you to form an opinion or any preconceived idea as to Mr. Kaczynski's guilt or innocence?

**A.** Not really. I don't think I know enough about it to make a decision.

**Q.** Do you have any suspicions in that regard?

**A.** Not really. I really don't. I mean, I, you know, obviously there's something because they arrested him, but other than that, I don't know what that is. So without that, I don't think I could make a decision.

**Q.** Does the something that you referenced stemming from the arrest, does that indicate that you have an opinion?

**A.** No. I don't really have an opinion.

**Q.** Is there anything that would prevent you, should you be selected to be a juror on this case, from allowing Mr. Kaczynski to begin this trial on a clean slate?

**A.** No, there is nothing.

**Q.** What does that mean to you?

**A.** That means that I – I mean, I’m looking at the evidence starting from when the trial would begin and, you know, anything I’ve heard in the past, I would just nullify, that it didn’t exist.

**Q.** That’s exactly what it means.

**A.** Uh-huh.

**Q.** If you are selected as a juror in this case, 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.** That means that he’s not guilty of a crime until, you know, until he’s been proven.

**Q.** That is a component of the meaning. It means that he is presumed innocent. There’s a presumption. He is presumed innocent. He never has to present any evidence in defense of himself. And he is entitled to that presumption until and unless the government proves every element of the charges against him beyond a reasonable doubt. If the government fails to do that, you would have to find him not guilty.

**A.** That’s true.

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

**A.** No, I’d be fair.

**Q.** Do you have any leanings in favor of the prosecution or in favor of the defense or against either party?

**A.** No.

**Q.** Are you for or against the death penalty?

**A.** I’m for the death penalty.

**Q.** If the jury should convict Mr. Kaczynski – this is a hypothetical – of the offense of intentional murder of another human being without justification, would you still be able to, in the sentencing phase of the trial – you’d only go to the sentencing phase of the trial if the jury, in fact, convicted Mr. Kaczynski of such an offense. Would you still be able to consider in the sentencing phase of the trial voting for a sentence less than death?

**A.** Yes, I could.

**THE COURT:** The parties may conduct examination. VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Good morning, ma’am. My name is Quin Denvir. I’m one of the attorneys for Mr. Kaczynski, the defendant. I’d like to ask you a few questions, if I can. Do you have your questionnaire there that you filled out at Cal Expo? Maybe the Court has it.

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

**PROSPECTIVE JUROR NO. 147:** Yes, it is.

**THE COURT:** Okay.

**PROSPECTIVE JUROR NO. 147:** Okay. Now I have it.

**Q. BY MR. DENVIR:** Okay. If you could turn to page 15, please.

**A.** Okay.

**Q.** The question 53, your – and I don't want you to say who exactly you're employed by, but you're presently employed by the federal government?

**A.** Yes, I am.

**Q.** And your spouse or domestic partner also is employed by the federal government?

**A.** No.

**Q.** I guess I must have misunderstood. On page 5 – page 19, who were you referring to in 19, was it Department of Defense?

**A.** Former spouse.

**Q.** I see. Does the fact – obviously you understand that this is a case brought by the federal government against Mr. Kaczynski. The fact that you work for a different branch of the federal government is not going to have any effect on your ability to serve as a juror, is it?

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

**Q.** I think you said on number 12, page 12, that you have some involvement in your current job with federal law enforcement. The question 45.

**A.** Uh-huh.

**Q.** Can you tell us generally what that involves without –

**A.** Okay. Basically we use the – I list on here State of California MediCal investigators to investigate some of our cases for us. So I have contact in that they come in and we assign cases to them to investigate.

**Q.** And how about also with federal law enforcement people or not?

**A.** Office of Inspector General also.

**Q.** But not the FBI?

**A.** No.

**Q.** Or postal inspectors?

**A.** No.

**Q.** Alcohol, Tobacco, and Firearms?

**A.** No.

**Q.** Okay. If you could look at page 31, question 118. You were asked do you ever recall being fearful or worried about yourself or your loved ones being harmed by the Unabomber, and you answered yes. Could you tell me what that was?

**A.** Basically when the – when they were in search of the Unabomber, we got a lot of direction from our management to be very careful with our own mail because we do work in a federal building, and to take precautions. And we covered how to look for a bomb, whatever, in our mail room and that.

**Q.** And at that time were you actually fearful or worried about yourself?

A. Well, I think yes, just we're in a federal building and may be targeted because of that.

Q. And how often were you given some kind of instructions about how to handle these things? I think you said you had special regulations at work?

A. Right. Right. That were issued out, and my job as a supervisor was to inspect the mail before an employee opened it. So I had to kind of look at it and, you know, I think in the beginning I think they made it widespread that, you know, we didn't know what a target was and that we may be a target just being a federal building.

Q. Do you remember when you were first given those kind of special instructions or regulations, about how long ago it was?

A. I can't really say a time. At least two years ago.

Q. Couple years ago?

A. Yeah.

Q. It was before Mr. Kaczynski was arrested?

A. Yeah.

Q. In April of '96?

A. Yeah, way before that.

Q. And did you have to look at a lot of mail to kind of inspect it under those regulations, you personally?

A. Yes. We get the mail bins, we get three or four of them a day.

Q. You have to tell me what a mail bin is.

A. It's kind of like a file box. Probably about that long, 18 inches long and about 11 inches wide.

Q. And that just contains letters and packages sent to your agency?

A. Right.

Q. And you would get three or four of those a day?

A. Uh-huh.

Q. And then would you actually go through that mail under these regulations to kind of make sure?

A. Right.

Q. So every day you were dealing with this?

A. Right.

Q. And is that part of why you were a little worried about it because it was a major part of your life?

A. Because I was responsible, you know, I was responsible for my employees.

Q. And for how long a period did you do that?

A. I think we did it for about six months or so.

Q. I'd like to ask you – I think it's page 26. Maybe this is part of the same, question 101?

A. Yeah.

Q. Can you tell me what that –

A. We had an envelope that came in the mail one day, and it looked to be fine on the outside. It looked to be a lot of gibberish on the outside of the envelope. It was addressed to us. And when it was opened, something popped out of it. And the person opening it panicked and whatever and contacted me. I contacted our security guard, we contacted the police, the local police, they in turn contacted the federal police. Anyway, it ended up being nothing more than some – it was a straw and a bottle cap and a string and some powder substance. It had a powder in it or something when it opened. So it kind of scared everybody. That was it.

Q. Was that the only time when you were going through the mail that you had to call in somebody to take a look at potential –

A. Yes.

Q. I guess only you know this. Do you think that your – you have a little different experience than maybe the average prospective juror because of your responsibility as a supervisor and going through the mail. Do you think that might have any effect on your ability to be a juror in the case involving the Unabomber crimes as they're the ones alleged?

A. I don't really think so. I think I was cautious, but, you know, I think, you know, we just had to be.

Q. You don't feel emotional about it at all? I mean, whatever you were doing and then you think, well, this is the man who is accused of the crimes that required all of that?

A. No, because I – nothing got targeted to us, so I guess not.

Q. When you told people that, you know, you'd been summonsed as a prospective juror, can you recall what anybody said to you? Did you get any feedback from people?

A. That it would be a long trial, that would you really want to do that. You know, all the way to Sacramento. That kind of thing.

Q. But nothing about the charges or the evidence?

A. Well, some people asked me if I felt he was guilty or innocent, you know, and I said I really hadn't made up my mind.

Q. Did anybody tell you what they thought about that?

A. Well, yeah, everybody has their own opinion.

Q. What did you hear on that?

A. Both ways. But, you know.

Q. And as I understand, you have no opinion as to Mr. Kaczynski's guilt or innocence and are willing just to look at the evidence?

A. That's right.

Q. Do you have, based on your exposure to the information about the case, have any opinion as to what is the proper sentence for somebody convicted of the Unabomber crimes, life or death?

A. I don't really know. I mean, I guess it would depend on, you know, how and why and –

**Q.** You don't have any preconceived notion as you sit there right now that if someone is found guilty of that, they should get life, they should get death?

**A.** No. And I'm sure there's some guidelines that we would be given, you know, depending on how the – I guess how it was committed, you know, if the crime was committed then.

**Q.** Did anybody express any opinions to you about that, about what the sentence should be for somebody convicted of the Unabomber crimes when you were talking with them?

**A.** No. I mean just that, you know, that the trial would be probably death penalty – death penalty could be involved and, you know, do you believe in that, you know, and I said, well, yeah.

**Q.** If you'd turn to page 32, to question 123. At one point you were worried about or at least concerned a little bit about the press following you around. Judge Burrell has told you that he's instituted an anonymous jury so that, obviously, no one knows your name and your employment other than the parties and the Court. And that's for privacy reasons, not for safety reasons; do you understand that?

**A.** Right.

**Q.** Does that kind of take care of your concerns?

**A.** Well, yeah, I mean, a lot of other high profile cases that have been on television and that, and you see the news reporters chasing them around and whatever. And it's like, no, I don't want to spend my life about that.

**Q.** Do you feel better about that now that there's an anonymous jury?

**A.** Right, I do.

**Q.** Okay. Let me ask you, if I can, a few questions about your views on the death penalty. As I understand it, when you were asked whether you were for or against it, you said you were for the death penalty?

**A.** Uh-huh.

**Q.** Can you tell me a little bit about your feelings on the death penalty generally?

**A.** I think that, you know, I've never said this person should be, you know, should be given the death penalty. I don't know, you know, not serving on a jury, that I never had to do that, but I do think it could be a sentence that could be imposed.

**Q.** And are your views on the death penalty, are they just kind of – are they your personal views or are they religious or spiritual based?

**A.** Just personal.

**Q.** Just kind of experience in life experience?

**A.** Right.

**Q.** On page 26 of your questionnaire, you were asked some questions. I thought maybe I could ask you a little further on that.

**A.** Okay.

**Q.** You were asked what were your opinions and belief, and you said it was needed in some cases. Can you tell me what you were thinking about, what kinds of cases when you said some cases?

**A.** Death penalty, I mean mass murders, that kind of thing. You know, things that are very violent. The people that are innocent and, you know, get killed.

**Q.** And do you consider the Unabom crimes to be violent crimes like that?

**A.** I don't –

**MR. CLEARY:** Objection. Case specific voir dire.

**PROSPECTIVE JUROR NO. 147:** Am I supposed to answer?

**THE COURT:** Not yet. Why shouldn't I construe the question as asking her whether she has preconceived notions concerning what he just asked her?

**MR. CLEARY:** Because, your Honor, I think that question has been asked and answered. She has said she has no preconceived notion, certainly as to guilt or innocence, and I believe also as to the sentence.

**THE COURT:** But this is a different question. So I'm going to construe the question in light of what was just covered. You can answer the question.

**PROSPECTIVE JUROR NO. 147:** Okay. Can you say the question again?

**MR. DENVIR:** Could you read it back? (The record was read.)

**PROSPECTIVE JUROR NO. 147:** It could be. I mean, I guess I don't know all the evidence. I don't know, you know, so I guess it could be.

**Q. BY MR. DENVIR:** And you understand – I can't recall. You haven't sat on a jury at all before?

**A.** Yes, I have.

**Q.** You have. Okay. And do you understand that this case may be – that's right. You were on two different times in criminal cases. Well, do you understand this case would be a little different than that? In that case you sat on the question of guilt or innocence, and then if the defendant was found guilty, the judge did the sentencing and the jury went home. In this case, two of the charges are capital offenses. They potentially carry the death penalty or they could be life in prison without possibility of release. And as Judge Burrell told you, that's what that means. There's no parole in the federal system. So it's different than the state. Or it could be a lesser sentence. If you were to sit on a jury with 11 other people and find the defendant guilty beyond a reasonable doubt of those two charges, then what would be different is that the jury would pick the sentence instead of the judge, and there would be a separate, in effect, minitrial, if you want to call it that. What Judge Burrell has referred to as a sentencing trial or penalty trial or phase. And my question would be if you found beyond a reasonable doubt that the defendant was guilty of an intentional, premeditated, planned, deliberate murder without any justification or excuse, if you found that beyond a reasonable doubt, would you have any views as to what the penalty should be for that?

**A.** I guess I don't know without getting direction from the Court. I really don't. It could be death or it could be the life in prison. Either one.

**Q.** And then in the second phase, the prosecution could present evidence, what Judge Burrell has called aggravating evidence, which is evidence – it's a legal term – for anything about – either additional information about the crime or information about Mr. Kaczynski that they think points to a death sentence, and then the defense

could put on mitigating evidence which is the legal word that goes the other way. The antideath evidence. Some reasons why his life would be spared, if we ever reach that. And then at the end of the evidence, the judge would instruct you as to the law but would pretty much tell you that it was each individual juror's call between those. And do you think that in that situation, you'd be able to look at all the evidence and actually consider both the penalties, I mean, not just death but life also?

**A.** I do. I do.

**Q.** If you'd look at page 27 where you were asked the extent of your agreement with some statements. I know these are, you know, you've got to check multiple choice, but I'd like to ask you about the last one where you said you disagreed somewhat with the statement that a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder. And you said you disagreed somewhat with that statement. What were you thinking or how did you read the word background? What came to mind?

**A.** Background, I think I was thinking of criminal background, other crimes committed.

**Q.** Anything beyond that?

**A.** I guess mostly other crimes.

**Q.** And can you tell me how – well, would you feel that somebody who had committed other crimes should always be sentenced to death for a murder?

**A.** No, but they should be considered. The questions were very vague so –

**Q.** They were very vague, and you had to pick a choice among them.

**A.** Right.

**BY MR. DENVER:** If I could just have one moment, your Honor.

**Q.** If you'd go back to page 20, question 76. Apparently in one of your cases where you sat as a juror, the jury did not reach a verdict. Was that because the jury could not reach a verdict or was it settled?

**A.** No. The jury didn't reach a verdict. I mean, we didn't really deliberate that long. I'd say a couple hours.

**Q.** But it was unable to reach agreement?

**A.** Right. We had one person that strongly felt that the person was guilty, and the rest of us thought he was innocent.

**Q.** And how did you feel about that, the fact that it had to be a unanimous jury?

**A.** I kind of felt if they would have maybe gave us more time, we might have been able to talk that person into it. I don't know. But they decided we went in long enough so –

**MR. DENVER:** Thank you.

**PROSPECTIVE JUROR NO. 147:** Okay. VOIR DIRE EXAMINATION

**BY MR. CLEARY:**

**Q.** Good morning, ma'am. My name is Robert Cleary. I'm one of the prosecutors in this case, and I'd like to ask you several questions about your view on the death penalty. Could you turn to page 27, please, question 107. Are you with me?

A. Uh-huh.

Q. You were asked several propositions about the death penalty there. And you distinguished between the first one, which you disagree somewhat with, and the next two propositions that you agree somewhat with. Could you explain to me the basis for the distinction between those two different answers?

A. I think like the second one, the deliberate murders of two or more people, I guess I just felt if they were guilty of two or more murders and it was deliberate, I think that's the key word in there is deliberate. Where before in the top one, it just says commits murder. But it doesn't – is it deliberate? I guess that word.

Q. So it's the deliberate. And is it also the fact that there are two or more murders?

A. Right.

Q. As opposed to a single murder?

A. Right.

Q. And how about the terrorism question?

A. I think, you know, the terrorism, you know, the fact that that – just that means that they're doing that to – they're probably doing that to an innocent person. It's not, you know, a one-on-one type thing. An act of terrorism is usually after a group or something, you know. I felt that that's, you know, I feel more strong about that than I would, you know, just somebody going out and killing another person.

Q. So in that one, in the terrorism questions, are you viewing the circumstances of the crime as being more aggravated than some other types of murders?

A. Right, exactly.

Q. And therefore because you have this aggravated circumstance about the crime itself, you would deem the death penalty to be more appropriate there than in a situation where you did not have that aggravating circumstance?

A. Yes.

Q. So you distinguish in your own mind between the different types of murders that can be committed; is that right?

A. Right. Right.

Q. As to the second part of the question there when it talks about or asks about double murders, multiple murders, in that situation are you distinguishing the type of defendant, the character of the defendant involved in the crime?

A. I think so. In that, you know, if they've killed more than once, then they might do it again. I guess I'd just consider that.

Q. Again, an aggravating sort of circumstance that would warrant the death penalty?

A. Right. Right.

Q. The last part of that question asks you about a person's background, and I believe Mr. Denvir, the defense attorney, asked you a couple of questions about that. And I think you said that you had in mind there, when you were asked about background, other crimes that may have been committed by the defendant?

A. Right.

**Q.** And how do other crimes play into – would they play into your personal decision about whether the death penalty is appropriate or not?

**A.** I guess if it's been the same crime over and over again, then I guess I could look, you know, at that as, you know, obviously they served a penalty before for their crime that they committed, and I would just consider it probably more heavily.

**Q.** What if they had never served a penalty for that prior crime, so you had a person that committed a bunch of crimes and had never been caught or prosecuted for it. Is that the sort of background circumstance that you would also consider in determining whether the crime you're sitting in judgment on is more aggravated or the person deserves the death penalty?

**A.** I guess I'd have to hear exactly what is – I don't know, because if they weren't convicted of the crime, then you would never know if they were just accused of it or not.

**Q.** Now, we've been – everyone's been asking you questions about your personal views on the death penalty. Obviously you know from your prior jury service you don't make decisions in a vacuum. You're going to be given instructions from the Court as to how to evaluate certain evidence. You recognize that; right?

**A.** Right.

**Q.** And Judge Burrell may tell you, if we get to the penalty phase where you're sitting in judgment of what the proper sentence is, you've already convicted the defendant hypothetically and you're now making a determination as to whether the defendant lives or dies, Judge Burrell may give you some guidance as to certain factors you must evaluate in determining whether the aggravating circumstances outweigh the mitigating circumstances. Do you understand that that's how the process works?

**A.** Right.

**Q.** If Judge Burrell told you that there are certain aggravating circumstances or mitigating circumstances that you must evaluate in doing this weighing process and you personally, in your personal view, didn't believe that that was an aggravating or a mitigating circumstance, would you nonetheless be able to set your personal views aside and follow Judge Burrell's instructions on the law and actually evaluate those two series of factors?

**A.** I think I could.

**Q.** At the end of the – should you sit in judgment in this case, at the end of any penalty or sentencing phase, it's not going to be a question about as much how do you feel generally about the death penalty, but the question is going to be in this case if you deemed it appropriate, could you vote to sentence somebody to death. Which is a very concrete question, isn't it?

**A.** I think so.

**Q.** That's what I want to ask you. Could you do that if you deemed the circumstances, based on the instructions the Court gives you and the facts you hear in court, you deemed the circumstances of the crime you're sitting in judgment on to warrant the death penalty, would you be able to vote to send somebody to death?

A. Yes.

**MR. CLEARY:** Nothing further, your Honor. Thank you.

**THE COURT:** Bring in the next juror. (Prospective juror number 147 left the courtroom.) (Prospective juror number 199 entered the courtroom.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 199th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. No, I don't think so.

**Q.** I'm going to ask you to make an adjustment so your voice is amplified a bit more than it just was. Did you fill out your juror questionnaire at Cal Expo?

A. Yes, I did.

**Q.** Since that time, have you been exposed to information about this case?

A. Only a couple. Only a couple of things that I couldn't avoid hearing.

**Q.** I appreciate your effort to avoid being exposed to things, but tell me what you were exposed to nevertheless.

A. Well, I think it was last week, some friends were having a conversation, and they were talking about the Jon Benet case. That just happened to come up, and they – somebody just suddenly said that – I can't remember exactly the wording, but that this case there were three deaths and, you know, in her case at least there was only one. And I hadn't known that. I didn't know that, you know, what was involved really. And so I just said, you know, I don't really feel in the mood for this type of conversation, can we just change the subject, and we did. And then I think it was Friday, just it came on a little news piece, stay tuned at noon for the information on the cabin being brought to Sacramento. And that's all I heard about it. I don't know what that was about.

**Q.** Did the information that you heard concerning the amount of deaths have any type of impact on you that you can share?

A. Well, I was just surprised, because I didn't know that.

**Q.** Have you been exposed to any other discussions about the case since Cal Expo?

A. No.

**Q.** As a judge I'm required to find out how much information a prospective juror has been exposed to when the case that the juror is being considered for is one that involves widespread publicity such as this one. And I'm required to get that information so that the Court's in a position to objectively evaluate how that information could possibly have an effect on the jury. And I also provide the prospective juror the opportunity to state his or her subjective views as to how he or she believes he or she has been affected by the information. Being exposed to information doesn't necessarily exclude an individual from jury consideration, but we are supposed to probe to see how much information you've been exposed to. So bearing in mind my goal, I want you to search your memory banks and share to the best of your ability all of the facts that you recall

receiving about what you consider to be the matters that will be involved in this case. Go ahead.

A. You mean anything I know about this case?

Q. Everything you know about the case.

A. Well, I recall I think I heard that he went to Stanford maybe. I'm not sure that's correct. And was a professor at one time. I think his brother was the one that called someone and told them that maybe they could check him for possibility of the crime. And it seems like, I'm not sure it's this case, but I think that I heard at one time that a bomb was left somewhere like near a car or something. But I'm not positive it's this case. I just thought maybe it was. I know he lived in that cabin in the woods. I can't really think of very much else about it.

Q. Did you receive any information as to whether or not the cabin you've just referenced was ever the subject of a search?

A. Yeah, I think it was.

Q. Can you share what information you received in that regard?

A. No, I don't know anything about it, just that they went there to get him.

Q. Has the information you have received about the case resulted in your formation of an opinion or any preconceived idea or suspicion concerning Mr. Kaczynski's guilt or innocence?

A. No. I don't know enough about it. And actually I was caretaker for someone that was critically ill – well, two persons, and I haven't for quite a few years been listening to much of the news. So I don't know very much about it actually.

Q. Do you have the personal ability to set aside the information you have received about this case outside the courtroom should you be selected as a juror?

A. Well, again, I don't know enough about it to form any judgment.

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

A. Yes.

Q. What does that mean to you?

A. It means that I have no idea whether he's the person or not.

Q. You can imagine how unfair it would be for a criminal defendant in a case to have to defend him or herself in a trial against allegations that were reported by news sources. The individual may not even know what those allegations are.

A. Right.

Q. And so by allowing Mr. Kaczynski to begin this trial on a clean slate, you would have to put out of your mind any information you received about this case and make a determination as to Mr. Kaczynski's guilt or innocence based solely on the information that is received here in the courtroom. Is there anything about your personal belief system that would interfere with your ability to do just that?

A. No.

Q. If you are selected as a juror, does 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, just as I just said, I think we aren't even – I assume you haven't established that he's even involved.

Q. That doctrine reflects a fundamental idea in our justice system. It uses the word presumption for a reason. It is, in fact, a presumption. You presume that the defendant is innocent unless and until the government proves every element of the offenses charged against the defendant beyond a reasonable doubt. And if the government fails to do so, then in accordance with that presumption, he's presumed innocent and you would have to enter a not guilty verdict. Is there anything about your belief system that would interfere with your ability to afford Mr. Kaczynski the benefit of that doctrine?

A. No.

Q. Can you think of anything that would possibly interfere with your ability to be fair and impartial to both sides?

A. No.

Q. Are you for or against the death penalty?

A. I'm for it.

Q. I'm going to have you join me in a hypothetical. If the jury should convict Mr. Kaczynski of the offense of intentional murder of another human being without justification, it would take that type of a conviction for us to move from the guilty/not guilty phase of the trial into the sentencing phase of the trial. Do you understand that part of the hypothetical?

A. Yes.

Q. And do you understand that in the sentencing phase of the trial, the jury would be presented with what's called aggravating evidence which the government would present, and it would be evidence that the government thinks points towards death, a death sentence. And the jury would also be presented with what is called mitigating evidence, and that would be evidence that points toward life, either a life sentence or lesser sentence. If the jury returned the verdict that I just told you about, that's the verdict that finds Mr. Kaczynski guilty of murder, would you still be able to consider voting for a sentence less than death?

A. Could you repeat that last sentence?

Q. I'm trying to determine whether in the sentencing phase of the trial, in the face of finding, hypothetically speaking, that Mr. Kaczynski murdered someone, would you still be able to consider each of the sentencing options that would be available to you as a juror?

A. Yes.

Q. That would be a sentence – Your answer is yes?

A. Yes.

Q. And you know the three sentencing options?

A. Uh-huh.

**THE COURT:** The parties may conduct examination after the morning break. Court will be in recess until 10:40. (Recess taken.) —oOo—

**THE COURT:** Let the record reflect all participants are present. My deputy clerk will get the juror. Juror 199. (Prospective juror number 199 enters the courtroom.)

**THE COURT:** Let the record reflect the juror has joined us. VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Good morning, ma'am. 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 can. Do you have your questionnaire there?

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

**PROSPECTIVE JUROR NO. 199:** Yes.

**Q. BY MR. DENVIR:** Could you turn to page 32, question 123. When you get there. You were asked about reasons why you would like or not like to be a juror and you stated that it could be dangerous. Can you tell me what you were thinking?

**A.** Well, pretty far out, but I was thinking if Mr. Kaczynski is not guilty, then the other person that was still out there, maybe they would like to make, you know, some point of the trial if they're – from their normal behavior.

**Q.** Are you concerned about danger, do you think, or is that just something that – kind of a passing thought?

**A.** Right.

**Q.** And –

**A.** I actually don't know that he's the person.

**Q.** Right. You do understand that Judge Burrell ordered the jurors' names and occupations and everything be kept from the public and the press and known only to the parties and the Court. That was done strictly for purposes of privacy, but also to insure that your name would not be known. Does that take care of any concerns you had about danger or –

**A.** Yes. I just was – I guess the way the question was worded, it crossed my mind.

**Q.** Now, that's exactly what we appreciate your sharing so we can know what your feeling about that, how it may affect you.

**A.** Okay.

**Q.** If you could turn to page 5 and 6. I guess what I'm going to ask you, your husband's present occupation and his prior occupation are in areas where the press speculated were targets of the Unabomber crimes. Does that have any effect on you, the fact that he may have been in those kind of general areas?

**A.** I don't know about the target.

**Q.** There was speculation about computer people or airlines, aircraft, things of that nature.

**A.** Well, my husband was in the military and he's retired for 20 years, and –

**Q.** I guess what I want to ask you is, the fact that much of his present employment and past employment and the fact of what people have speculated about targets, does that cause you any problems or do you have any feelings about that?

**A.** I didn't realize it was.

**Q.** Do you – how do you feel about it now? Is this a problem for you?

**A.** Well, I am – I wish I knew more about it. I don't know what to say because I didn't realize that there was a problem with computer persons. I don't think it – I don't see that it's a problem.

**Q.** Doesn't upset you when you hear that?

**A.** No.

**Q.** When you were talking with Judge Burrell you said someone told you there were three people who were killed. Before you heard that, what did you think was involved in the case?

**A.** I didn't really know if anyone had been killed. I mean, it says bomber, so you assume there's been bombings, so I didn't know if he – if it was property or persons or whatever. And I assumed because it was a federal crime, there must have been possibly one person that was killed. And I – but I was surprised.

**Q.** And how do you feel now hearing that that may be true?

**A.** No different.

**Q.** Doesn't change your view of the case or the –

**A.** No.

**Q.** Particularly. You also said you recalled something, hearing about a bomb left by a car; is that right?

**A.** Right. I heard something about that on the – maybe it was in the summer. Something about that, they found a bomb, I think it was under a car or near a car or something. I'm not positive it was – it's this case.

**Q.** Did you have any particular thoughts when you heard that, learned that?

**A.** Well, no one wants to find a bomb somewhere. Just normal thoughts that you would have.

**Q.** Can you elaborate more on what you were thinking when you heard that, what went through your head? If you recall.

**A.** Well, I'm thinking that it didn't go off. I don't think it went off. I'm not sure. I just didn't – it was like a vague thing that I just heard in passing. I didn't really think a lot about it.

**Q.** Now, as I understand it, from what you do know about the case, you don't have any opinions or preconceived notions or anything as to whether –

**A.** Not from what I know now.

**Q.** Whether Mr. Kaczynski is guilty or not; right?

**A.** No.

**Q.** Do you have any thoughts or notions or leaning any particular way as to what would be the proper sentence for someone convicted of the Unabomber crimes?

A. No, because I don't know the law that well to know what – I mean, the sentence, I assume, would be dictated by the State and the laws. I would have to find that out.

Q. Okay. If you could turn to page 17, question 64. You were asked your opinion regarding the effectiveness of the criminal justice system, and you said sometimes criminals don't get proper punishment and victims get more than their share. What were you thinking about then?

A. Well, I noticed that what seems to me to not be working, that sometimes you hear of people that possibly kill someone and then they're out, you know, go to jail and they're out in a few years. And that someone that steals a loaf of bread because they're hungry and they get caught up in the – and they go back over and over and over for petty theft and get the same sentence. So it seems like that is not justice. And over time it does seem like the difference to make – it's a different part of the country or whatever that the same – depends on where the crime was committed what sentence you get. Just doesn't seem fair that you should be punished because you live in a different state more heavily. It seems like it should be more equal. If you deserve a certain sentence, then that's what you should get everywhere, not depending on where you live.

Q. Anything else you were thinking about when you wrote that comment? Kind of a broad question so –

A. Right. And then I guess the victims, I was thinking of possibly rape cases and things like that and other cases I've heard of different persons that were actually the victim, they go to court and they end up broke and, you know, the other person wins, and just seems a little that it doesn't always come out well, and I don't know how you would solve that but –

Q. Okay. I meant to ask you on, if you look at page 1. You're younger daughter's occupation in the media area.

A. Yes, she's a – she works for the –

Q. You don't have to say who it is, but I want to ask you, if you were a juror on this case, I assume you just would not – I assume she's more knowledgeable about the news than the average person?

A. Right.

Q. Being in that area. If you were to sit on this case, would – you would just not have any –

A. Yes, we would not discuss this case.

Q. That wouldn't be a problem at all?

A. No.

Q. Okay. She does –

A. She is a professional person. She would understand that.

Q. She doesn't write in this particular area?

A. No.

Q. Let me ask you, if I can, if you could turn to page 26. I want to ask you a few things, if I can, about the death penalty and your views on it. Question 103, you say

that you think in some situations the death penalty remains the only answer. Can you tell me, were you thinking of particular situations then?

**A.** Well, I – in high school, which was some time ago, I had to, we had to write a report at one time, and we were given a list of topics, and the first time I – I am a Christian and I thought that it was wrong to kill, you know, take a person's life. So I thought I was against the death penalty. I thought I was very strongly against it. And after I wrote this report and researched, I was actually very shocked by some of the crimes that I read about, and I couldn't see any, I guess, reason for saving that person. They just seemed beyond – you know, they were so terrible that there was no – you know, I couldn't see a reason. I didn't realize there were even such cases. You know, I didn't even know things like that happened. So in the end we had to summarize, and I said that I had to change my mind, and say that in certain, I would say very rare cases, that it was necessary or it was the best thing. And then later on, you know, in college, I looked into it again and thought well, maybe I was young and didn't look into this carefully, and so I read and did a different type of report about it and came to the same conclusion, in some very rare cases. And I think for me it would have to be extremely just absolutely no doubt, and the circumstances would, whatever they would be, would leave no other possible, you know, choice.

**Q.** All right. And in 104 you were asked about your religion, philosophy, or spiritual training; is that as you were raised earlier, or is that your thoughts now?

**A.** It's the same.

**Q.** The same?

**A.** Uh-huh.

**Q.** That was a person takes a life with a clear mind shall have their life taken from him?

**A.** Well, like I said, I don't – I definitely don't think everyone who takes a life. I think only in rare circumstances because, we have many things that come. Each person is just unique, and we would have to examine their – where they were coming from, what their reason was, what happened, what caused them to do this.

**Q.** So having their life taken from them could be either death or could be life without possibility of release also would be another way of –

**A.** Right.

**Q.** Of reconciling that?

**A.** Yeah. I think they should definitely face up to what they've done, but I think death would just be a very rare circumstance.

**Q.** Well, on the one hand, we ask people what their views are as to the death penalty because there's a wide range of views on that, and we need to see how they would fit with somebody's duties if they sat as a juror. And as I recall, you never sat on a jury before?

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

**Q.** Let me just give you a quick view of what that might be like. The first part – it is a little unusual because two of the charges here do carry the death penalty both

involving a single death. And what would happen in the first part, in that proceeding, the prosecution would put on evidence that it felt supported the proposition that Mr. Kaczynski was guilty of the charged crimes, and the defense could put on evidence if they wanted to show that he wasn't or raise a doubt as to that. The judge would instruct the jury as to the law, including the elements of the crime, things that had to be proven. The jury then would retire and would deliberate, and if they found unanimously that Mr. Kaczynski was guilty of the crimes, particularly these two crimes, there would be a second trial. That's what makes it different. Normally, if a jury finds someone guilty, then the judge does the sentencing. But Congress has provided for the jury to sentence when the death penalty and life without possibility of parole are the two different penalties. So then you would have the second trial. And at that trial, the same jurors are sitting, the prosecution presents this aggravating evidence, what Judge Burrell told you about, and that's just any evidence they have, further evidence about the crime, any evidence that they have about Mr. Kaczynski that they feel points to death as the proper penalty for the crimes. The Defense can put on mitigating evidence, just the reverse of that. It's any evidence about Mr. Kaczynski or about the crimes or anything that would point to something less than death as the proper penalty. The judge then would instruct you on the law but would pretty much tell the jurors it was their individual decision between life and death. And I guess I need to know whether if you sat as a juror, you would be able to consider all the evidence presented in that second trial, that sentencing trial, and then consider the two punishments or three punishments provided by law and make your call on that?

**A.** Well, like I said from – for me, personally, I think it would – I would have to hear all the second part, because it would – I could only make that decision if there was absolutely no other choice.

**Q.** You understand that you're never required to return a death sentence, what you're required to do is, if you serve as a juror, is to follow an oath that says that you will look at all the evidence and will consider – really consider the two penalties provided by Congress for that offense and then make your choice between them. And I guess the question is: Do you feel that you could do that?

**A.** Yes.

**Q.** You could look at the evidence and the prosecution saying this is something about this person and this crime that says that this is the case where the death penalty is required, and the defense is saying – telling them this is something about this person or these crimes that says there's no need to use the death penalty, then the jurors decide, basically, who's right, I guess is what one way to put it, or who they agree with at least, and you think you could do that?

**A.** Yes, I do.

**Q.** I guess the bottom line question is, as I say, you don't have to be – I think Judge Burrell said you don't have to be a supporter of the death penalty to sit on a jury as the as a general proposition, but you have to be willing to entertain it as something

that you would impose if you felt it was justified based on the case and the evidence in front of you. And I take it from what you said you feel that you could do that?

**A.** Yes.

**Q.** If you look at the whole case and said no, this is one of those cases I was thinking about when I supported the death penalty, then you would vote that way?

**A.** Right. If it – yeah. If the evidence was such that I guess you would – the only thing I can think of is absolutely no redeemable quality for that person, and I think that is – that would be very rare.

**Q.** And I guess this is a particular case that, as a juror, you would have to be willing to put aside any general ideas that you have about the death penalty if you were going to serve on there, just like somebody would have to if they were strictly for the death penalty, and basically listen to what the judge would require of a juror sitting on a case like this.

**A.** Right.

**Q.** And the essence of that is the willingness to put aside any views, to keep an open mind, to listen to the evidence in that second phase, you know, where there's no doubt about guilt at that the point. It's a question what do we do now and listen to the evidence presented by both sides and look at the two possible penalties there, death and life without possibility of release, and then make your own honest call between them but actually consider them both. Is that something that you feel you can do?

**A.** Yes.

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

**THE COURT:** Yes.

**MR. DENVIR:** Thank you. VOIR DIRE EXAMINATION  
**BY MR. LAPHAM:**

**Q.** Ma'am, good morning. My name is Steve Lapham. I'm one of the prosecutors in the case, and I would like to pick up where Mr. Denvir left off and just ask you a few more questions about your views about the death penalty. As I understand it, you can correct me if I'm wrong, you did some study of the question in high school and then some more study of the question in college, and you basically, grudgingly came to the conclusion that you don't like the death penalty, but it's, to use your words –

**A.** At times when necessary, yes.

**Q.** It's a necessary evil?

**A.** Uh-huh.

**Q.** And should only be used in those cases, I think you said in your questionnaire, as a last resort?

**A.** Well, that's the way I feel. I feel like I'm not going to be making any decision. A juror, I don't think, can make a decision. You give the evidence, the law gives the guidelines, you just kind of – I'm just here for the state. I myself am not going to be deciding anything. I'm just taking in the information and making the decision as to where it is. But I feel like your human qualities, from me it would have to be absolutely

– you know, I don't know how else to put it. It would be very difficult to do that, to make that decision, so it would have to be something very, very, very major.

**Q.** I'm not sure what you mean when you –

**A.** I guess a person that has no redeeming quality, what point is there if they ever got out or escaped or whatever, they're like – you know what I mean, it just – maybe vicious, I don't know how to describe it. But it would have to be a situation where they have no redeeming quality. I don't know how else to put it.

**Q.** I want to ask you about that. But I'm not sure what you mean when you say that it wouldn't be a decision you would have to make.

**A.** Well, I mean, I don't have any power to make a decision that this person should be punished or not punished or – I think I would have to go by the law. I can't just listen to it and say I don't like this person so I'm going to go this way. I would have to go by what the law says, and I, at this point, am not exactly positive what the law is, so I would have to have that told to me.

**Q.** Okay. I mean, because ultimately you have to make a decision.

**A.** Right.

**Q.** On whether if –

**A.** But only on – I have to go by the law and the facts that you give me.

**Q.** Right. Okay. And that's what we're getting at here, whether you could follow the judge's instructions. And I want to talk about that in some detail, because I think this goes back to one of your questions about punishment. You have a problem or you indicated that you're concerned that punishment isn't always equal throughout the country.

**A.** Well, just from – yeah, just from what I heard, things that I heard.

**Q.** Right. That some people get a harsher sentence in another part of the country than they would in this part of the country, for instance.

**A.** Right.

**Q.** That's actually at the very heart of our questioning today. Because you'll be given the law by the judge, how to apply that to your determination of the proper penalty in this case, and it's important that whatever views you may have, you can set those aside.

**A.** Oh, I realize that that's why they are given the sentences they are. The juries have to give the sentence. They're allowed in that area. I'm just saying those are some changes possibly that I think might be a good idea.

**Q.** Well, and that's actually –

**A.** But not for this case. I'm just saying maybe the law should be changed.

**Q.** But what I'm saying is that actually in this case, with the death penalty law, that's what Congress has sought to do. They tried to give a jury guidance on how to apply the death penalty so you don't have different decisions throughout the country that don't equal out.

**A.** Well, I would have to follow the law. I wouldn't be making any decision on my own.

**Q.** Good. Well, the question is: If you should find that your views differ from what the law actually is, would you, nevertheless, be able to set those views aside?

**A.** Right, I would have to go by what the law is.

**Q.** Okay. For instance, you said that you thought that the death penalty was only appropriate if there was absolutely no redeemable quality about the defendant or the crime?

**A.** Uh-huh.

**Q.** Correct?

**A.** Right.

**Q.** Now, if it turned out that as the way as the law is given to you by the judge, that that's not the only thing you're supposed to look at, would you be able to do that?

**A.** I think so.

**Q.** And even though you said that the death penalty is only appropriate as a last resort in cases of the most extreme type, you would be able to set that aside and perhaps apply the death penalty even though you personally didn't feel that this was a case of last resort?

**MR. DENVIR:** Objection, Your Honor. I don't think the law would never tell the juror they had to apply it in some other case as a last resort. That's a hypothetical. I think it's a false question.

**THE COURT:** You want to respond to his objection?

**MR. LAPHAM:** I don't think that's at all the question I asked.

**THE COURT:** I think it's close to the question you asked. Maybe you need to rephrase the question. Start anew.

**Q. BY MR. LAPHAM:** If you felt – let me start over. If you were instructed that you were to consider factors other than whether or not the defendant had any redeeming qualities, would you be able to consider the death penalty in those circumstances?

**A.** Could I consider it?

**Q.** Yes.

**A.** Oh, yeah, of course.

**Q.** Well, by consider, I don't mean just look at the three options and automatically discount one and go on to the other one, but could you actually consider giving the death penalty in the circumstance where you didn't feel that the defendant was unredeemable?

**MR. DENVIR:** Objection, Your Honor. Again, I'm not sure that she has to. I don't I think the instructions would restrict her in that way.

**THE COURT:** Isn't Mr. Denvir correct?

**BY MR. LAPHAM:** Your Honor, I don't believe – Let me state what I think my question was.

**Q.** Could you consider imposing the death penalty even if you didn't believe that the defendant was unredeemable?

A. If I didn't think he was unredeemable? Okay. I guess I could. It's so hard for me to understand – you know, to understand what – every situation would be different. I don't know if I could give blanket – I would follow the law and I think I could probably do that. But it's hard for me to imagine a situation exactly like that.

Q. Maybe a better way to ask the question would be to find out what you mean when you say redeemable. I think your exact phrase was no redeemable quality.

A. It was just cases that I read about that were so vicious and had been repeated, that I just couldn't imagine this person being, you know, rehabilitated or – and they had very little to offer society or that they were almost like animals or just very vicious. I don't know how else to put it. But I couldn't see any point in possibly turning this person loose on society again.

Q. Would your answer be different knowing that, as the judge has instructed you, a life sentence actually means a life sentence life without possibility of parole? You understand my question?

A. You mean would I have sentenced that person to a life sentence instead of death?

Q. Correct.

A. No, I don't think in some cases I would choose that.

Q. You would – you could still consider imposing the death penalty?

A. In some cases.

Q. Even though you knew that a life sentence would mean the defendant would be incarcerated actually for life?

A. Uh-huh.

**THE COURT:** Your answer uh-huh meant yes?

**PROSPECTIVE JUROR NO. 199:** Yes.

**BY MR. LAPHAM:** Thank you, Your Honor.

Q. You indicated, and this is along the lines where you indicated that the death penalty was only appropriate in rare cases, you said that you wanted, you think, to be extremely clear and absolutely – have absolutely no doubt. Were you referring to guilt, the guilt and not guilty determination?

A. Yes.

Q. Or were you referring to whether the sentence of death would be appropriate?

A. I'm not quite sure I'm understanding what you're asking.

Q. I'm asking you when you said you would want to have absolutely no doubt, did you mean absolutely no doubt that the death penalty was the appropriate sentence or have absolutely no doubt that the defendant was, in fact, guilty?

A. No, I would have no doubt. On the facts I been given, that there's no doubt that the person committed the crime and that what they did justified that punishment.

Q. Now, the law, of course, doesn't require that you have absolutely no doubt. The law requires merely that – I don't mean merely, but requires that you find guilt beyond a reasonable doubt. Do you understand that?

A. Uh-huh.

**Q.** It's not uncommon for nonlawyers to use phrases like absolutely no doubt, but the judge will actually instruct you it's beyond a reasonable doubt. You wouldn't have any problem following that standard?

**A.** I think so.

**Q.** You think you would not have a problem?

**A.** Yeah, I think I could follow that.

**Q.** You hesitated for quite some time.

**A.** I just wanted to think it through clearly.

**Q.** Is the fact that this is a potential death penalty case going to cause you any problems in that regard?

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

**Q.** And the reason for your hesitation was you wanted to think?

**A.** I was weighing the two, reasonable doubt and without a doubt. I was just thinking that through, if that was different or not.

**Q.** You still have your questionnaire with you?

**A.** Yes.

**Q.** Can you – could I ask you to turn to page 27, specifically question 107. You indicated in answer to the question anyone who plans and commits a murder should get the death penalty. You indicated that you strongly disagree with that statement. Could you tell me what you were thinking?

**A.** Well, like I just said, I don't think that person that kills someone should get the death penalty. It depends totally on the circumstances and surrounding what happened and why it was – why it happened. I mean, I think that could – any of us could end up in that position somehow.

**Q.** And you also strongly disagreed with the next question, anyone who deliberately murders two or more people should get the death penalty. Can you tell me what you were thinking there?

**A.** Same. Same as the first one. I would have to – I don't think every person that takes a life or – in case of a car or whatever, a drunk driver, you know, could easily kill a whole car full of people. That doesn't mean that they necessarily should be executed.

**Q.** You had some options there, and one of the other options was disagree somewhat. Can you tell me why you chose strongly disagree?

**A.** Well, just what I just said, I think there are many circumstances where lives could be taken which the person is, you know, could be redeemed – you know, pay some sort of punishment, take some sort of punishment but is not going to help anything to take their life also.

**Q.** Okay. Let me – a murder – now, these questions both dealt with murders.

**A.** Uh-huh.

**Q.** You understand a murder is an intentional –

**A.** Right.

**Q.** You need to let me finish –

**A.** Okay. Sorry.

**Q.** – asking the question. The court reporter is going to have a fit with us –

**A.** Okay.

**Q.** – if you don't. A murder is an intentional, deliberate killing of another human being without justification. So it wouldn't be like a drunk driver, for instance. Now, given that understanding, would your opinion still be the same about anyone who murders or who commits a double murder?

**A.** I think it would still be the same. I would have to know the circumstances and everything involved with it. I think every case is different.

**Q.** Now, in the next question down, regarding terrorist, you did put disagree somewhat with the question any person who commits an act of terrorism in which someone dies should get the death penalty. Could you help us understand the distinction you're making there?

**A.** Okay. I was thinking on that one that an act of terrorism is often committed against innocent persons that – you know, that's a different thing than getting even with someone or picking someone out to, you know – so I have to disagree with that because I think maybe that should be a heavier penalty. But I think in terrorism there's usually groups of people, and I think possibly some people might get involved with a group or something and not – and, you know, may be mistaken on their part, but I – so I don't know that every one of them should be held to such a high punishment.

**Q.** So that's why you want – you would want to know something about their motivation?

**A.** Uh-huh. Right. How they got involved and what was their part in it.

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

**THE COURT:** Yes.

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

**THE COURT:** That's all the jurors we have for this morning. So we can consider adjourning now. Do you have anything you want to cover before I cover a matter?

**MR. CLEARY:** Nothing from the government, Your Honor.

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

**THE COURT:** Okay. I can rule now on Kaczynski's motion to excuse for cause jurors 103, 105, 121, 126, 127, 133, and 140. Juror 103: Kaczynski moves to excuse juror 103 on several grounds. I reach only the ground involving the juror's failure to categorically assure Mr. Kaczynski that his guilt or innocence would be determined solely from evidence presented at this trial. The juror's failure to provide this assurance necessitates granting the motion. Therefore, it's granted. Juror 105: I also reach only one ground in ruling on Kaczynski's motion to excuse juror 105 for cause. Since I disbelieve the juror's answers in which he said he didn't know that the term "death penalty" meant imposition of a sentence of death, I also doubt other parts of his answers. Since I'm not convinced juror 105 became the indifferent juror which the Constitution guarantees Kaczynski, he's excused. See *United States vs Allsup*, 566 Fed.2d. at 72, Ninth Circuit decision. Juror 121: Kaczynski also moves to excuse juror 121 for cause on various grounds. Each ground is rejected. The record discloses that this juror is willing

to consider all the penalties provided by law. Further, I do not share Kaczynski's view that the juror had a somewhat hostile demeanor. I think this is defense counsel's perspective. However, since I couldn't see the juror's eyes and all of his features as he responded to some of the defense questions, perhaps I missed something. But nothing in his voice tone emoted hostility. Yet, since a couple of defense counsel's questions drew objections from the government and quick responses from the juror, perhaps I missed something in that rapid exchange. Inasmuch as the government perceived a problem with the questions, perhaps the juror perceived the same problem and reflected that perception in his demeanor. Nevertheless, those questions and responses don't disqualify the juror. The motion is denied. Kaczynski's next challenge is juror 126 for cause by seeking to have some of the juror's responses to questions discredited. Since I find the juror credible, the motion is denied. Juror 127: Kaczynski's motion to excuse juror 127, in essence, contends she was a proponent of the death penalty who would automatically impose it if the jury finds Kaczynski guilty of murder. Since I concur in most of the reasons stated in Kaczynski's motion, the juror is excused. Juror 131: Kaczynski moves to have juror 131 excused for cause arguing that he cannot be impartial because of his preconceived view that Mr. Kaczynski is guilty based on the juror's extensive knowledge of the case, and that he cannot – I'm now quoting from the motion – give effect to the most fundamental principle of our criminal justice system, the presumption of innocence. I disagree. I believe the juror's responses in which he stated he could set aside his suspicions about Kaczynski's guilt and would be capable of rendering a verdict solely on the evidence presented in court. The juror also convincingly stated he would afford Kaczynski the full benefit of the presumption of innocence doctrine. Kaczynski disagrees and proffers parts of the juror's voir dire in support of his position. However, the transcript portion cited by Kaczynski is taken out of context. It's clear that when the juror's responses are read in context, he honestly assured Kaczynski the benefit of the presumption of innocence doctrine. The motion is denied. Juror 133: Kaczynski argues that juror 133 should be excused for cause based on the contention that she lacks the ability to objectively and fairly evaluate mental health evidence and because of her pro death views. The challenge to her mental health views stems from her skepticism of the basis on which mental health experts formulate their expert opinions. However, her concern about the reliability of the data used by such experts to divine expert opinions does not evidence that she lacks the necessary objectivity to evaluate such evidence. Thus, this aspect of the motion is not persuasive. Kaczynski's argument that the juror's pro death views disqualifies her is also unavailing. The fact that she equivocated at a point during her examination as to her ability to consider both death and life in prison does not cause the juror to be disqualified. She ultimately said she could consider both sentences. I believe she was honest. Accordingly, the motion is denied. I did cite a case involving equivocation, *Murra vs Delo*, 34 Fed.2d. 1367, 1377, 1380, Eighth Circuit 1994. Juror 140: Next and lastly, Kaczynski argues juror 140 should be excused for cause because she is unlikely to be able to follow the Court's instructions. The government counters that Kaczynski

fails to support this contention with a single answer in the juror's voir dire. To place my ruling in context, I cite part of the voir dire which evinces, notwithstanding the rote assurances the juror gave that she would follow the Court's instructions, I don't think she really knows whether she could follow the Court's instructions. When Kaczynski's counsel asked the juror to explain her written response in the juror questionnaire regarding why the biblical book Matthew made her reflect on the imposition of the death penalty, the juror responded in significant part: "I don't know what I would do at this point in time." Record page 1363, lines 18 to 25. That response was nonsensical and evaded the question. The juror apparently sought to augment her response on November 26th, 1997, when she decided on her own initiative to personally bring to court additional information concerning "some questions" Ms. Clarke asked the juror "about in Matthew." See the record at page 1813. During the voir dire on November 26th, Ms. Clarke asked the juror – I'm now going to quote portions of the record concerning it. "Question: Was there something that was said when you were questioned, either by the Court or by the parties, that made you think you needed to respond and come back to us? Answer: Well, I thought so. Because I hadn't answered them." I'm now inserting my analysis of that aspect of the juror's response. The Court construes the word "them" to reference the possible connection between Matthew, the juror's church and the death penalty. The remaining part of the juror's answer to this question is as follows: "Well, I hadn't answered them for myself, so I didn't think I had answered them for you either." Record 1813, lines 24 and 25; 1814, lines 1 to 4. The juror explained that the document she supplied to the Court shows where she stands on the death penalty. This is a quote from 1814, lines 5 to 13, that she is for the death penalty. The pertinent part of the transcript also reveals the following exchange between Ms. Clarke and the juror: "Question: How deeply do you think that your service as a juror would be affected by what you view as God's wishes? Answer: How deeply? Well, that's what I base my belief on. That's what I base my way of doing things on. How would I make a decision when I don't have any facts. That's why I'm saying I can't give an answer. That's why I thought maybe the little booklets would explain. I have to know what I'm talking about. I can't just give you an answer right then and there. I'll have to know what I need to know before I can give you – or surmise an answer. I just can't do it. Question: Do you have a sense, though, that you would be looking in the Scripture for God's wishes as to tell you how to – how to handle your service on the jury? Answer: Well, I'll pray about it, but I have to listen to the facts." The record page 1816, lines 13 to 25; 1817, lines 1 to 2 and lines 6 to 10. The essence of the juror's response to an inquiry that was focused on whether her religious views would impact her beliefs on the propriety of imposing a death sentence in this case is that she personally doesn't know now and won't be able to know the answer until she hears all the evidence. The juror did not show she is capable of articulating how her religion bears on her views on capital punish. Rather, she hopes that others will discern this by gleaning the answer from the religious documents she submitted. Jurors should be able to state their opinions; it is not the general task of the court to glean a juror's opinion

from reading documents submitted. Since the juror was unable to state her opinion as to how her beliefs could interfere with her view on capital punishment, I do not know whether she is capable of following the Court's instructions. Accordingly, the motion is granted. We have a few minutes. I think I want to cover another matter during that few minutes. I know we have pending the defense's – no, it's the government's motion to exclude three jurors. I think I'm going to focus on one of those jurors, because I would like the parties to address a matter concerning one of those jurors. I assume that the defense will file some response to that motion, and I can expect your response pursuant to a schedule already issued.

**MR. DENVIR:** Yes, Your Honor. As I recall, it's the end of the day tomorrow.

**THE COURT:** Nevertheless, are you still able to address one aspect of the motion which concerns the physician's answer? The reason why I want to have a discussion on it is because I think the issue involves what state of mind should a juror be in when the juror begins the sentencing phase of the trial. When the parties indicate during voir dire that you expect a juror to be open-minded as he or she considers sentencing phase evidence, how does that expectation, if at all, bear on a juror's pro death or pro life views? As I understand the government's motion – and I'm not finished with my analysis of it – the physician indicated he was 95 percent pro life at least. He didn't say it that way. He said he was pro life in the high 90s, I think, and I think everyone is assuming that means 95 percent. I'm using the physician's examination, at least that point of it, as part of the focus, because I assume a good part of that would cause the parties to be focused on the argument I do want to hear. I assume the defense is going to disagree with the Government's perspective on this. Am I right in that assumption?

**MR. DENVIR:** Very confident.

**THE COURT:** Okay. That means that the defense – I assume this is correct – that the defense perhaps knows that the juror would enter the sentencing phase leaning toward life. I'm presuming that there are jurors that will enter the sentencing phase leaning toward death. So I want the parties' view on that. Is there anything wrong with having a juror entering the sentencing phase leaning one way or the other so long as the juror is willing to consider all sentencing phase evidence and ultimately the sentencing options that will be available? If you agree with what I just stated, then I don't need argument, although I do have a question I'm going to ask the government. But if you agree with what I just have stated, maybe I don't need argument. I'm waiting for your input.

**MR. FRECCERO:** On behalf of the government, Your Honor, our view is leaning one direction or the other, as long as it's based on evidence and law and they have an open mind, there is no problem. If it's based on a personal conviction other than evidence presented in court or law as the Court gives it –

**THE COURT:** I don't understand your statement. Let's deal with the essence of what you just told me. I discern what you stated is that they can't lean, because how can they be leaning one way or the other if it's based on law or evidence they haven't received, sentencing phase evidence or law. Are you indicating – perhaps I'm

missing something. Are you indicating that the guilt phase evidence may very well justify leaning?

**MR. FRECCERO:** Precisely, Your Honor. That's the way I understood your question, going into the sentencing phase. I think inevitably jurors are going to have impressions based on law and evidence on the guilt phase, and then they need to be open for that. And our issue, as we understand the –

**THE COURT:** I don't understand. Open for that, what does that mean?

**MR. FRECCERO:** Well, that they must commit to not making that decision based solely on evidence presented in the guilt phase.

**THE COURT:** What decision?

**MR. FRECCERO:** The decision as to what is the appropriate penalty for the crime.

**THE COURT:** Let's concisely hear the government's position. Can you crystallize it for me.

**MR. FRECCERO:** That any juror that is seated, in terms of what their view of the appropriate penalty should be, they can't – they must commit that no matter what occurs in the guilt phase, that they will remain open to consider any evidence presented in the sentencing phase and they may not make up their mind based solely on evidence presented in the guilt phase.

**THE COURT:** Your crystallization of the government's position didn't mention lean, and that's the focus of my inquiry.

**MR. FRECCERO:** All right. The court made a distinction. The first thing was as to the penalty, as to personal convictions, leaning one way or the other based on personal convictions separate and apart from any evidence they've heard. It is the Government's understanding that the test is whether that personal conviction will substantially impair their ability to follow the law for someone who has very strong pro death views. It would mean that this court would have to make a determination based on their answers in voir dire that those views are so strong that they cannot openly listen to the evidence to find some penalty other than death. With those who have strong convictions against the death penalty, they also cannot – those convictions cannot be so strong as to – and the only guidance we have is the Supreme Court's language of substantially impair in the case where someone says as I sit here today, I cannot imagine that I would ever sentence someone to death but it's not impossible. As in the case of, I think 152 said he is 90 percent sure that he could not sentence someone to death no matter what the facts were. In the case of 155, the words he used was highly unlikely.

**THE COURT:** How about the ten percent. Let's focus on 152. You're dealing with the 90 percent. Let's deal with the ten percent.

**MR. FRECCERO:** The ten percent chance, as we interpreted it, is that there's a ten percent chance that the evidence will get him to change his personal convictions and he will consider. That is why, in our view, that juror is substantially impaired. He not did not say categorically.

**THE COURT:** I think I'm going to just keep interacting with the government for a bit. How do you know what type of cases the ten percent covers?

**MR. FRECCERO:** We do not.

**THE COURT:** Does that mean that I would be engaged in guesswork? How do I discern for myself the type of case the ten percent covers?

**MR. FRECCERO:** No, I don't believe any of this is guesswork. Your Honor, I believe, has the obligation –

**THE COURT:** If you don't know what the ten percent covers, and you have the benefit of the same record that I have, why do you think I'm going to know when I look at that same record?

**MR. FRECCERO:** Well, as to 152, I would point to the Court's record. The only issue that that juror said he thought could persuade him otherwise would be whether he knew that harm would result to someone else based on that. Our view of the aggravating factors that Congress has allowed to be considered, that would eliminate all of the statutory aggravators we have listed and limit simply to one of our nonstatutory aggravators. In essence, the juror said the only thing he could think of at that time as he sat there that could get him to potentially change his mind was one potential nonstatutory aggravator that the government has listed, which means as he was sitting there before this court, before these parties, all the other factors which we specifically listed in this case would not get him to change his mind as he stated it in this court. That is our concern.

**THE COURT:** You're saying, in essence, that the juror appears to disagree with the Government's characterization of a factor as an aggravator as being one that the juror necessarily thinks must point toward death.

**MR. FRECCERO:** Your Honor, our view is it's the same as someone saying I know that an insanity defense is a possible defense, but as I'm sitting here now, I'm telling you I could not consider that as a defense or as a mitigating factor.

**THE COURT:** I understand. But you never really answered to my satisfaction – maybe you did to your satisfaction and maybe I need to analyze what you stated. But I'm still not clear as to the government's view on this pro life or pro death leaning. You seem to focus on the statute, which you should. I did research, by the way, before asking the parties this question, and I couldn't find anything that defined to my satisfaction, but I'm pretty busy so maybe I didn't do a through job in doing the research, the term substantially impair the performance of a juror's duty. Can't a juror lean pro life or pro death without having his or her performance as a juror substantially impaired?

**MR. FRECCERO:** Yes, they can, Your Honor. And if I could follow up on what the difference is. The United States Supreme Court said in *Lockhart vs McCrey*, I believe, that as long as the juror can clearly state to the Court's assurance – obviously, it's the government's view – you know, we'll make a motion if we don't have that assurance. But ultimately the judge has got to decide that they can, whatever firm convictions they might have, they can set that aside in deference to the rule of law. Our concern is we do not view that the law authorizes that they can make their decision on

guilt or sentence or whatever penalty is appropriate on anything other than evidence and law, and that's what we're trying to probe.

**THE COURT:** This is abstract, sir. This is very abstract. You're indicating that the juror has to provide assurance that he or she will make a decision on the rule of law. But I wonder if the rule of law allows the sentencer, referencing the juror, to decide how to weigh a particular aggravating factor or a mitigating factor. That would mean that the sentencer would have considerable discretion when deciding how to weigh such factors.

**MR. FRECCERO:** We do not disagree with that principle.

**THE COURT:** Don't we know that a pro life juror may lean toward a mitigating factor in a way that that pro death juror may not; we sort of know that, don't we?

**MR. FRECCERO:** I think that is the working assumption of both parties.

**THE COURT:** Anything wrong with that?

**MR. FRECCERO:** No. That's not the distinction that I'm trying to make. Perhaps I'm not doing a good job.

**THE COURT:** I asked you about leaning.

**MR. FRECCERO:** But the Court wasn't clear on whether you said leaning because of certain evidence versus leaning because they have a personal conviction that would override. That was our concern.

**THE COURT:** Don't you know that they would be leaning because of a personal conviction?

**MR. FRECCERO:** Well, the best I can – if the Court will allow me, the best analogy, if I could give –

**THE COURT:** I'm not sure I want analogy. Maybe we'll come back to it. I want to hear from the defense.

**MR. DENVIR:** We would like to brief, obviously, those individual jurors, and we will. But here's where I think we look at it, Your Honor. The basic question is whether the juror can follow the instructions given by the court in the penalty phase and consider the evidence on both sides and consider the penalties provided by law. That seems to me to be the basic question. Or are they prevented from doing that, or significantly impaired from doing that. What we do – and I think every juror, if they say I can't consider it, then we ended it. I think all these jurors have said, basically, they can do that, and the question the Court has to assess is the credibility of that. Not in the sense that the person is not telling the truth, but can you rely on their ability to do that. We tried to determine that in a number of ways. The first question is the Court's question, are you for or against the death penalty. And the fact that you're either for or against it doesn't disqualify you, but it may have some impact on your ability to follow those instructions that say you must consider both penalties. The next question that's been asked a number of times by the court and parties is we asked this hypothetical. Given your views on the death penalty, for or against, if you found the following type of crime in the first – in the first phase, how would you – how would you – would you be leaning one way or another. All they know then is their own views

on the penalty. They're trying to apply them to something we debated is intentional, premeditated, some word, and then we ask them what their feelings are about how they might be leaning as they enter the second phase. Again, I think that is just something that the Court can weigh in determining whether you can credit what they ultimately tell you, which is that they will be able to follow the Court's instructions. What they're saying is, based on their own views and the hypothetical, they maybe leaning one way or another. There's nothing that says they can't be leaning one way or another that I am aware of as long as they can put that aside and follow the Court's instructions. So I think the leaning or not leaning is just something that helps the Court determine the ultimate question, which they always say, which is I can follow the law.

**THE COURT:** I don't think that doctor is going to put his leaning aside. He's going to be leaning for life except for that ten percent. But I don't know what he means by the ten percent.

**MR. DENVIR:** I think he is allowed to lean given the fact that all he has to do is really consider if it's ten percent – first of all, to put that kind of a number on it is a little hard. Let's assume it is. What he's saying is I got some area of consideration. And this was based on the hypothetical of the type of crime that's somewhat parallel here. I think it was. I think it was probably the intentional, premeditated one. He said I'm open to that, I can consider that. I'm open to it at least to a ten percent factor. And I think that's possibly all that is required. I don't have that in front of me. I haven't reviewed the voir dire. But I think that's what he's saying. I can consider it. And even though I'm leaning one way, I can consider going the other way. We had a lot of jurors that went the other way. They're leaning towards death and thought that would be appropriate, but then say I'll listen to it. And the Court credits those people sometimes. Sometimes you don't. I think a lot of times the Court looks at the person's overall answers and says they're saying I can be fair, or I can be open, just doesn't sound right in the whole range of what they are – I think they're trying but they probably won't be. That seems to be what you decided over and over again. Sometimes when someone says I can be open to both penalties, you say I think they can. Other times you say based on their other questions, I doubt their ability to do that.

**THE COURT:** You appear to take the position that pro death and pro life leaning is okay so long as it doesn't prevent or substantially impair the juror's obligation to fulfill his or her oath.

**MR. DENVIR:** I think that's right, Your Honor. I think that's what the law is. Just like being for or against the death penalty may be leaning on these hypotheticals, it's the same way, it doesn't disqualify you as long as you can fulfill the oath.

**THE COURT:** That's my question. What does the government say?

**MR. FRECCERO:** We have no objection. Our understanding exactly of the law is that it doesn't matter your predisposition one way or other.

**THE COURT:** Took us a while to get there, but we're there. Thank you.

**MR. FRECCERO:** Thank you.

**THE COURT:** Okay. (Luncheon recess taken.) SACRAMENTO, CALIFORNIA  
MONDAY, DECEMBER 8TH, 1997 - 1:33 P.M. —o0o—

**THE CLERK:** You may remain seated. Court is now in session.

**THE COURT:** Let the record reflect the parties are present. I thought the parties would want to know that I sent the marshals out to contact two jurors. I'll share that information with you. Do you want to know who the jurors are? The jurors didn't respond to the summons. Is that enough information? Want me to go further? You want the jurors' numbers?

**MR. CLEARY:** Sure. Is the Court willing to share that?

**THE COURT:** Juror 166 didn't respond to the summons. That juror wrote the Court a letter about the same time I sent the marshals out. It's unclear whether the marshal contacted the juror before I received the letter. You have stipulated this morning that juror could be excused. Also juror 168. Okay. We're going to bring the jurors in.

**MR. DENVIR:** What was the second one, Your Honor?

**THE COURT:** 168. (Brief pause.) (Whereupon, the prospective jurors were brought in and seated in the jury box.)

**MR. CLEARY:** Your Honor, 168 is scheduled for this afternoon so I assume he is not here.

**THE COURT:** He's here. I'm just letting you know what has happened in the past.

**MR. CLEARY:** Thank you.

**THE COURT:** Okay. I think he is here. (Whereupon, the prospective jurors were escorted in and seated in the jury box.)

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

**THE CLERK:** Please stand and raise your right hands. (Whereupon, the oath was administered to the prospective jurors.)

**THE CLERK:** Thank you.

**THE COURT:** Good afternoon. Welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my courtroom deputy clerk. On the same platform with her is the certified shorthand reporter who will assist the Court in administering this trial. I trust that you will fulfill your civic duty during this voir dire questioning process. I thank you both for your presence and your anticipated cooperation. You're performing an important function in our justice system. Under the principles of our constitutional democracy, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as you making themselves available for jury service. The 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 views of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your

opinions. The questioning process will begin by the prospective jurors being questioned first as a group, and then I will question you individually. After a number of jurors have been questioned in this manner, we will call some jurors back for further group questioning. We will let you know when that will occur. Our objective is to obtain a fair and impartial jury based upon – that will decide this case based upon the evidence that is presented here in this courtroom and the law that I will instruct you on later during the trial. I have decided to do individual questioning, in part, because the parties have requested it, and also because there has been some publicity about this case. During the individual questioning, 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. In fact, I think I'm going to tell you one area we're going to cover now so I don't have to repeat the question several times. I will first ask you during that individual questioning session what information you have received, if any, since you appeared at Cal Expo, assuming that you all appeared at Cal Expo, and then I will ask you a question concerning all of the information you have ever received concerning matters that you believe pertains to this case. And the reason why I will ask you that question is because I am required to explore that area under law. The law requires that the judge ascertain, in a case that has received widespread publicity, whether a potential juror has been exposed to that publicity, and how that publicity could possibly have affected that juror from an objective perspective. Then we'll also give each juror the opportunity to tell us, from your own perspective, how you believe that information affected you, if at all. Being exposed to pretrial publicity does not prevent a prospective juror from sitting as a juror on a case. But we do have to understand the nature of the publicity that you have been exposed to. So that's the purpose of the question I will ask each of you later. 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 those offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life in prison without the possibility of release; and under the federal system, life in prison without the possibility of release means just that. If you receive a life sentence from a federal judge, you go to prison for life. There is no parole in the federal system. Or the third option will be whether the defendant would be sentenced to prison for a lesser amount of time than life. The sentencing determination is made at the second phase of the trial referenced as the sentencing phase. If there is anything about the charges that causes any of 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 referred to 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 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 the questioning process about your views on the death penalty. We may ask questions in additional areas too. During this questioning, we will refer to you by your randomly selected number as a juror rather than by your name. This is because I have decided to use an anonymous jury in this case to protect your privacy as I stated to you in a previous communication. Now I will give you a jury instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from 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 have no opportunity to discuss. For these reasons, you should avoid reading or listening to future news accounts during the time period in which you are involved with this case. Justice requires strict adherence to this prohibition. Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me. The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m., Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem. There is no response. I contemplate observing the holiday season as follows: We will not hold court during the week of December 22, which is

Christmas week, nor on January 1 or 2. I contemplate holding court December 29, the 30th, and the 31st. Please raise your hand if this poses a problem. There is no response. Please raise your hand if you do not understand the following: Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty. There is no response. If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to the sentencing phase of the trial. At the sentencing phase, a sentence of death will be among alternative sentences that 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 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 as a juror 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 which I will give to you whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this, please indicate that fact by rising your hand. There is no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs, and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions in the area that you 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't occur, let me know so that I can determine whether the matter should, in fact, be discussed in a more private setting. This approach is taken because the trial should be open, unless I have a legitimate reason for closing any aspect of it. I will now have my deputy clerk to escort all but the earliest randomly selected juror to another room and place the remaining juror in the witness stand. (Whereupon, the prospective jurors were escorted from the courtroom.) (Whereupon, Prospective Juror Number 168 was placed on the witness stand.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** Thank you for joining us. You're the 168th 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** Okay. Did you fill out a questionnaire at Cal Expo?

**A** Yes, I did.

**Q** Since that time, have you been exposed to information about the case?

**A** The only thing I've really been exposed to is just I heard some people talking the other day about the transportation of the cabin to Sacramento.

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

**A** No, sir.

**Q** Direct your attention prior to Cal Expo. I want you to tell me as much information as you possibly can concerning what you heard about the case or anything that you assume is connected with the case, and I want you to provide as much detail as you possibly can.

**A** I really don't know that much about it. I don't – I don't watch the news. I rarely read the newspaper. I can't tell you anything in detail that I know about the case other than, you know, I know I recognize the man's face from the newspaper and the television, you know, when I have seen it. But I really don't know any of the details about it. I mean, I've heard of a manuscript. I don't know anything. I've never read anything where it was an excerpt from that or anything like that. I don't know anything about it.

**Q** Do you take a newspaper?

**A** No, sir.

**Q** Did you know that allegations concerning explosive devices was involved in the case?

**A** Okay. Yeah. Yes, sir. I knew that there was bombs involved and mailing them and, you know, just the general part of the story of what he was accused of.

**Q** Okay. I don't want you to assume that we know anything.

**A** Okay. I'm sorry.

**Q** So go ahead and tell me what you know.

**A** Well, there was pipe bombs mailed to different people, different affiliations. I believe one of them was the forestry or something to do with the ecology, and I believe it was a couple of professors that were involved that had stuff sent to them. That's really about it.

**Q** Other than what you have indicated hearing recently about a cabin, before that information was received by you, did you receive other information about a cabin?

**A** No.

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

**A** No.

**Q** Has the information you have received about the case resulted in your formation of an opinion concerning the guilt or innocence of Mr. Kaczynski?

**A** No, sir.

**Q** Do you have any suspicions in that regard?

**A** No.

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

**A** Yes, sir.

**Q** What does that mean to you?

**A** I don't have any preconceived ideas.

**Q** You can understand that a criminal defendant wouldn't want to defend him or herself in a trial and have to deal with publicity that surrounded the trial because you have no idea what a potential juror could have been exposed to. By clean slate, I'm really seeking to find out whether there is anything about your personal beliefs that would interfere with your ability to allow Mr. Kaczynski to have his guilt or innocence determined solely based upon evidence that is presented in this courtroom.

**A** I would be able to do that.

**Q** Does 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, like you explained earlier, the Government has the burden of proving his guilt, and he's presumed innocent until proven so.

**Q** I think you just summarized the doctrine. It's a presumption, which means he is presumed innocent. He need not present any evidence on his behalf whatsoever, and he has the benefit of that presumption unless and until, should it occur, the Government prove all elements of the offenses beyond a reasonable doubt. If the Government fails to do that, then you must enter a not guilty verdict in favor of Mr. Kaczynski. Do you have any problems with allowing him the benefit of that doctrine?

**A** No, sir.

**Q** Is there anything you can think of that would interfere with your ability to be fair and impartial to both sides?

**A** No.

**Q** Are you for or against the death penalty?

**A** I would say basically I'm for the death penalty. I look at things individually, depending on what the situation is, what the case is.

**Q** Assuming you were selected to be a member of the jury – we're going to cover a hypothetical right now – and you and your fellow jurors sat through the guilt and not guilty phase of the trial, you heard all the evidence, you listened to my instructions, and you went back to the deliberation room, and to Mr. Kaczynski's disappointment, you convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification. With that type of a finding by the jury, we would then go into the sentencing phase of the trial. In the opening comments I tried to explain in the sentencing phase of the trial, the Government will most likely present aggravating type of evidence. That would be evidence that the Government thinks points toward a sentence of death. And then at that phase of the trial, you will also probably be presented with what is called mitigating type of evidence. That would be evidence that points towards a sentence of life, either life imprisonment without possibility of release or some lesser sentence. Bearing in mind the murder finding I told you about,

then going into the sentencing phase, would you still be able to consider voting for a sentence less than death in the face of the murder finding?

**A** Yes.

**THE COURT:** Parties may conduct examination. VOIR DIRE EXAMINATION BY MR. CLEARY:

**Q** Good afternoon, sir.

**A** Hi.

**Q** My name is Robert Cleary. I'm one of the prosecutors on the case. I'm going to be asking you several questions. I'll hand you a copy of your questionnaire and ask you to open up to page 28, please.

**A** Yes.

**Q** Question 108 asks you about your views on the death penalty, and you tell us there that in your view the death penalty may or may not be justified, depending upon the circumstances of the case. And I want to follow-up on that a little bit. In your view, in determining whether the death penalty is appropriate or not, do you distinguish between certain types of killings?

**A** Yes.

**Q** Do you view that certain killings, certain murders, may be more aggravated or more heinous than others?

**A** Yes.

**Q** And might that – the difference in the aggravated nature of one killing versus another – might that determine for you whether the defendant, the person charged, should be sentenced to death or not?

**A** Sure.

**Q** Can you give us an example of the types of circumstances you would look at concerning the aggravated or not so aggravated nature of a murder or killing that would make the distinction for you as to whether death or life is the appropriate penalty?

**A** I think when I – when I view things like that, the more heinous the crime, obviously, the more taken aback I am by – the more I would be prone to say this would be a capital offense.

**Q** And what sort of killings would you view as the more heinous types that might warrant the death penalty?

**A** Just random killings, you know, where you see, you know, where someone just goes in and shoots a half dozen people for no reason or, you know, that type of thing.

**Q** And do you distinguish that from a murder or killing that takes place, for example, as a result of passion or excitement at a particular point?

**A** I would say that would be something that I would take into consideration, yes.

**Q** In making the determination as to the proper penalty?

**A** Right.

**Q** In deciding whether – in your own view whether the death penalty would be appropriate in a particular murder case, do you also deem the background and circum-

stances of the defendant, whether he has a long criminal history or not, is that another sort of circumstance you deem appropriate in making the determination?

A Yes.

Q And just to crystallize that a little more, if you found that the defendant who you had found committed a murder, if you also found that he had committed murders or other violent crimes in the past, would that be the sort of circumstance that you might conclude warrants the death penalty for the murder he had just been convicted of?

A Yes, sir.

Q And conversely, if you found that the defendant who you had just found committed a murder had lived an exemplary life, a life of doing good and charity for the years prior to that single event, might that be a circumstance you would consider in determining that the death penalty would be inappropriate in that case?

A It would be part of my consideration.

Q Could you turn to the previous page, please, to question 107? You're asked several different propositions about the death penalty. And I want to focus you on the first three. You say that you agree somewhat with each of those propositions. Could you tell us what you had in mind when you were filling out the questionnaire and picked the somewhat – "agree somewhat" category?

A Well, I think, once again, what I was thinking when I checked these particular boxes was that I – like I stated before, I think each case needs to be reviewed by, you know – I like – I would like to know more about the situation itself than these simple sentences before I can tell you exactly how I felt about it.

Q And so basically, is it your position – or let me start with when you filled the questionnaire out. Was it your position at the time that under certain circumstances, for each of these propositions, the death penalty would be appropriate?

A Correct.

Q And then under other circumstances, under each of these propositions, the death penalty might not be appropriate?

A May not have been.

Q And that gets us back to the discussion we had a few moments ago, correct?

A Correct.

Q Turn to the prior page, please, page 26, question 103. You tell us that you believe the death penalty deters crime. What did you mean when you said that?

A I just – I feel that there are – there are people out there who think about committing crimes and see, you know, the punishment that goes along. Or just something that makes them not want to do it, you know. I also believe that it's a deterrent in the fact that some people that are no longer in society aren't committing those crimes any longer.

Q So you see deterrence from the death penalty as deterrence for others that may be considering committing violent crimes, as well as the obvious deterrence to persons executed because they cannot commit crimes anymore?

A Correct.

Q Now, I have been asking you a lot of questions about your personal views on the death penalty. Let me try to make it a little more concrete for you. If you were to sit as a juror on this case, and you had decided in what we call the guilt, not guilty phase that the defendant had committed certain crimes which a person died as a result of the defendant mailing them a bomb, we would then get to the penalty phase or the sentencing phase of the trial. And you'll be presented with additional evidence at that point. At the end of that, the decision put to you would be whether you would vote for a death sentence. In other words, you would vote to send the defendant to death or to sentence him to life. It's a very concrete question as to whether you could make that decision or not. And what I'm getting at is if you were presented with circumstances during the trial, during the penalty phase of the trial, which warranted in your view the death penalty, would you be able to vote for the death penalty in the case?

A Yes, sir.

Q During the course of the trial, you're obviously not going to be without guidance. You are going to be given instructions from the Court as to what circumstances are important in deciding the death penalty question. You may be given some guidance as to what aggravating circumstances there are as a matter of law; what circumstances you must consider in determining whether the defendant should be executed. You may also be given some guidance from the Court about what mitigating circumstances you must consider; circumstances that might suggest a life sentence is more appropriate. Do you understand that, how that process works?

A Uh-huh.

Q If the instructions the Court gives you in that regard varies or conflicts with what you personally believe, would you be able to set aside your own personal views and follow Judge Burrell's instructions on the law?

A Yes.

Q So to make it more concrete, if the judge told you in a hypothetical situation that you had to consider a – meaningfully consider the fact that the defendant was mentally retarded, and if you didn't believe that was important in making a death penalty decision, would you be able to follow the judge's instructions and consider – really meaningfully consider the mental retardation of the defendant in determining whether he should be executed or should get a life sentence?

A Yes.

Q You feel confident that you could do that?

A Yes.

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

**THE COURT:** Yes. (Brief pause.)

**MR. CLEARY:** Thank you, Your Honor. VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

Q Good afternoon.

A Hi.

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

**A** Okay.

**Q** The judge was asking you a number of questions about what you remember about this case or what you have read about this case. And I noticed in your questionnaire – Do you have it nearby?

**A** Yeah.

**Q** At page 28, you tell us you only saw headlines that you can't remember. Can you – Was that out of the Sacramento Bee?

**A** Yes. There is – where I work is everyone – not everyone – several people bring newspapers to work. They lay all around. I walk by, I see, you know, Unabomber this or Unabomber something that, but I have not read the stories or –

**Q** Okay. So you see the paper at work?

**A** Correct.

**Q** Laying down on a lunch table or whatever?

**A** Right.

**Q** And when you see Unabomber, what do you think?

**A** What do you mean what do I think? I don't understand.

**Q** What comes to mind when you say you saw something Unabomber, this Unabomber that? What do you think when you hear that phrase? What images does it conjure up for you?

**A** None. I don't know how to answer your question. I'm sorry, I don't.

**Q** Has anybody talked to you about the case over the course of a number of years, I guess?

**A** I mean, when I say I was talking about it, I hear people talk to my boss, "what about this" or whatever. And I haven't – you know, I don't have an opinion on it. I haven't had an in-depth conversation with anybody about this trial.

**Q** Sure, I guess, yeah. I didn't – You said you didn't have an opinion. I'm just trying to help you flush through to see if you have any memories.

**A** Okay.

**Q** Sometimes you can be seated in that jury box, then all of a sudden go, "Oh, yeah, now I remember what I didn't remember."

**A** Okay.

**Q** So it's just a chance for us to kind of push that – those memory cells around a little bit and see if there is something there, somebody at work or somebody at home or just somebody in the grocery store or anywhere.

**A** I guess when I – If I see or somebody says the word "Unabomber", the things that come to my mind is what I explained to the judge about what I didn't know, you know, about certain people being involved and pipe bombs being sent through the mail, and I guess that's what comes to mind.

**Q** I notice at page 2, if you go with me, and I don't want to talk about where your brother works –

A Uh-huh.

Q – but I notice a certain employment for your oldest brother, I guess. Did you ever have any worry for him with the Unabomber?

A No.

Q Did you ever connect the two?

A No. I never really did think about it.

Q Did he ever connect them up for you?

A No.

Q No discussion at all in the family about that concern?

A Well, he's in Wyoming. So I only speak to him a few times a year so . . .

Q Okay. So that really wasn't much of an issue for you?

A No.

Q And when you mention to the judge that you had heard about the transportation of the cabin, can you tell us what you knew about the – what you know about the cabin all together?

A All I know about the cabin is that it was apparently a very small cabin and that it was being transported from there to here.

Q "There" meaning?

A I want to say Montana, Idaho. I don't know. I'm not sure.

Q Someplace northwest?

A Right.

Q When you think about the cabin, did you think about anything else to do with the cabin, the lifestyle in the wilderness or anything?

A No, ma'am.

Q Did you think about anything in the cabin? Do you remember reading anything about –

A Only one of the headlines I did see was something about the amount of stuff that supposedly was in this cabin. Once again, I don't know what the article was about.

Q I thank you for going through this with me because I know you're kind of tearing at yourself, just sort of come up with some memories. When you say stuff in the cabin, can you remember what they wrote about?

A No. It was – it was an article in the Bee a while back, and it said something about, if I remember right, 1100 items or 1200 items or how did all of those items fit in this small cabin or something to that nature. That's all I –

Q Do you remember any of the contents of the items?

A No.

Q Written physical items? Anything like that?

A None.

Q Didn't stick or make –

A I didn't read the article. It was merely a headline that I saw.

Q Okay. All right. Well, thank you. I just – if you come up with anything as we're talking –

A I will.

Q – tell me. At page 11, when you were asked, "How did you feel about getting the summons," do you remember that question? Up at the top. Your question was, "How would it affect the amount of time I'm able to spend with my kids" basically?

A Yes.

Q What caused you to think that?

A Well, I'm a divorced father of two, you know. I only have so many hours a week with my children so – And part of that time is – my normal work hours are over at 3:30 in the afternoon, and I have my kids between 3:30 and 5:30 every day in the afternoon. So depending on what the judge had said, it wouldn't affect me at all.

Q Given the schedule that the Court said –

A Correct.

Q – that we would have? Is there any problem with your work, getting off work, any financial?

A No.

Q No issue there?

A No.

Q So actually, you might get off a little bit earlier and –

A Nods head.

Q – might actually help your schedule –

A Correct.

Q – with your kids? How do you actually feel about the possibility of serving as a juror now that you know the schedule is okay?

A How do I feel about it?

Q Uh-huh.

A I don't have a problem with it at all, you know. I don't know if – I believe there was a question here somewhere, you know, but I enjoy seeing how the judicial system works. It's a nice change for me from my normal job.

Q When you mentioned you were asked about that, I guess in the questionnaire, is the system working well in your opinion, and you said that it was, what were you basing that on?

A Just what I see going on around me. You know, I think our system works very well. I'm sure, you know, it has some glitches. It would work differently. It would work better. But, you know, I – in a realistic sense, I think our system works well. I mean, it's just a general phrase.

Q Sort of a gut level?

A Correct.

Q Is it from your last service as a juror, or is it from reading information about the criminal justice system?

A Let's just say when I – when I do see stuff about the criminal justice system, I agree with most of it.

Q With most of –

A If I – if I read about a trial or a case or something in a paper, or I see anything about it or I’m in a discussion about it, I usually feel like the right thing has been done. So –

Q And that was your experience as a juror as well?

A True.

Q So that sort of just corroborated what you thought about the system?

A Correct.

Q You mentioned at page 12 – and I won’t ask you – if you could go with me to page 12, question 45, I don’t want to identify your friend but –

A Okay.

Q Have you talked to your friend about this case at all?

A No, ma’am.

Q Is there anything about – what about that relationship that might affect how you – how you view this system?

A Nothing.

Q Not at all? Not a close friendship or –

A No. He’s a close friend. I mean, I see him probably once a week or so, every other week. We go camping and fishing together so . . .

Q But not particularly influential over your thinking; is that what you –

A Well, no.

Q Let me ask you, if I may for a moment, about some of your feelings about the death penalty. I think when the judge was asking you whether you are a proponent or opponent of the death penalty, you said, ”Basically, I’m for it. I kind of look at what the individual is and what the case is.” Can you fill that out a little bit more for us?

A Well, just like everything else I do, I believe that, you know, you got to have all the information in front of you before you can make a decision about something.

Q And what information came to you to make you have those feelings about the death penalty, to say basically I’m for it, it depends on sort of the case? I mean, where did that opinion come from? Where did that belief come from?

A The belief I’m basically for it, or the belief I want to hear all the information?

Q Both, I guess. That’s fair enough.

A The second part of that is just the way I am, just my nature. And as far as I – basing my beliefs on the death penalty are just like, once again, just things I have seen in our society that I think it works. I think it’s functional in our society.

Q Can you give me an example?

A Of?

Q Of why you think it works? I mean, I’m trying to sort of probe into how you came about the position that you did.

A Well, I think when somebody does something that warrants the death penalty, and that definitely is carried out, then I think justice has been served.

Q Are you thinking of a specific case?

A No, ma’am, I’m not.

Q Or a couple of cases or anything?

A No, I'm not.

Q Are you thinking about things you read or heard or how does that come to you?

A Oh, most of it, you know, hear a story, hear – I see something on the television or conversations with friends.

Q And you know what I'm about to ask you, can you think back to any of those TV stories or conversations with friends?

A No, I can't.

Q I thank you for your patience with me. You can kind of understand why.

A I do. I do.

Q Maybe we can look at page 26 and the second part of 103. What is the basis for that opinion? When it asks you about your opinion about the death penalty, you say, "It is only my opinion." I guess I'm really just sort of trying to figure – that came from conversations, TV, life experiences?

A Life experiences. I mean, its', you know, you know, probably 25 years of my life, you know – you know, evaluation of what goes on round me and how it works in our society.

Q Is there any religious basis for you?

A No, ma'am.

Q Any spiritual, philosophical basis for it –

A No.

Q – carried through the family, was this an issue that was –

A No.

Q – ever debated at home?

A Oh, when I was a kid, I'm sure it was. I mean, mostly, I would say basically everybody in our family – in my family, pretty much we're relatively conservative and follow along those lines.

Q If you look at the next page, at that series of 107 questions, you know, the check list?

A Uh-huh.

Q And I think the prosecutor asked you about you marked "agree somewhat" on the top three: the single murder, the multiple murder, and the terrorism. And you said that you needed to know more than these simple sentences, and I certainly understand that we kind of put you and forced you to answer something.

A Right.

Q What was it you were needing to know?

A In these cases that are in these situations?

Q Sure. Let's take the first one. Anyone who plans and commits a murder should get the death penalty. When you say – And that is pretty straightforward.

A It's a broad statement.

Q What were you thinking you needed to know to be able to feel more comfortable?

A Well, what the circumstances were; did they know each other; were there, you know

– was this a random act of violence; was it, you know, an act of passion; was it premeditated. Those types of things.

**Q** And how about on the two or more people, same kinds of considerations?

**A** Yes, ma'am.

**Q** On the third one where it says "anyone who commits an act of terrorism in which someone dies should get the death penalty," can you help me first understand what you were thinking terrorism was?

**A** Oh, I don't know. I guess I'm thinking, you know, what the – whatever the bombing was a year or two ago in New York. That type of thing. I guess that is what I was thinking.

**Q** Where do you place the mailing of a bomb with the intent to kill or injure somebody through the mail? Making a bomb, placing it in the mail, sending it to somebody with the intent to kill or injure, is that an act of terrorism for you?

**A** Yeah. You could say it would probably fall in that category.

**Q** When you say "agree somewhat," and again, it was that simple sentence concept, what was it that you wanted to know to answer that question for you?

**A** I really can't answer that. I don't know. I don't know exactly why that one was a little more cut and dry, but –

**Q** When you say that, would you say that you strongly agree on death for that one, or agree somewhat as you look at it again?

**A** Once again, I would want to – I would want to know who the person was, where they came from, what motivated them to do what they did.

**Q** If you had a situation, if I could ask you to step into a case for me, and you're sitting as a juror in the guilty/not guilty phase of the case, the first part of the case, and you and your fellow jurors find that the defendant committed a premeditated, deliberate, intentional murder with no justification, no excuse, what would the penalty be in your opinion?

**A** What would be the appropriate penalty?

**Q** Right.

**A** Under those circumstances, I would probably say death.

**Q** You would be basing your sentence basically at that point on the facts of the crime?

**A** Correct.

**Q** And would you say that your personal views of the death penalty are strong enough that that's where you would end up, is the facts of the crime are so horrible in that circumstance that death would be the natural consequence of that conviction?

**A** I'll say yes to that. I'm a little reserved about it. Once again, I'm not really good at these hypothetical questions.

**Q** No. And I didn't mean to interrupt you. Only you know, and I guess what I'm trying to find out is – is you and your own personal belief system, because only you know the answers to that. And is your own personal belief in the death penalty and its

role that it plays in our society so strong that a conviction of that nature, premeditated, deliberate, intentional murder, without justification or excuse, equals a death sentence?

**A** Well, I would say my opinion wouldn't be based on my belief in the death penalty. It would be based on what I heard in the courtroom.

**Q** And that's what you heard?

**THE COURT:** I don't – Okay. I didn't know if your were finished. Go ahead.

**BY MS. CLARKE:**

**Q** Would there be anything else for you to hear at that point in time?

**A** I can't think of anything else.

**MR. CLEARY:** Objection.

**BY MS. CLARKE:**

**Q** You can't think of anything else. Could you envision yourself, given your views of the death penalty and given that conviction, premeditated, deliberate, intentional murder without justification or excuse, can you envision a time that you would not hesitate to sign a sentence of life in prison as opposed to the death sentence?

**A** I would be able to do that.

**Q** Can you envision a time?

**A** Yes, ma'am.

**Q** Knowing how you feel about it?

**A** Yes.

**Q** And when would that be?

**A** If – I guess it would just be a feeling of if – what all the information that was put before me.

**Q** What would you be looking for outside of the crime that we have just put before you?

**A** I guess what led the person to do it; why it happened; were there other people involved; was there manipulation by other people. Those type of things I guess I would look for.

**Q** If you could answer those questions, do you think you would ever reach a comfort level in a sentence other than death, given that hypothetical set of facts: premeditated, deliberate, intentional murder without justification or excuse?

**A** Would I be able to do what now? I'm sorry.

**Q** Can you envision a set of circumstances where there would be any sentence other than death?

**A** Yes.

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

**THE COURT:** Yes. (Brief pause.)

**MS. CLARKE:** Thank you.

**MR. CLEARY:** Thank you, Your Honor.

**THE COURT:** Okay. Bring in the next juror. (Whereupon, Prospective Juror Number 168 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospec-

tive Juror Number 193 was seated on the witness stand.) VOIR DIRE EXAMINATION

**BY THE COURT:** Thank you for joining us. You're the 193rd 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** Yes, I did.

**Q** Since that time, have you been exposed to potential information about this case?

**A** Very limited. Like at the coffee house, if it was on the front page of the paper, maybe I read the headline. Other than that, not really. I don't watch the news.

**Q** Do you have any memory of anything you may have been exposed to since that time since Cal Expo?

**A** Yeah. His home got transported here.

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

**A** No.

**Q** Direct your attention to the time period before Cal Expo. Please tell me everything you can remember hearing about matters that you associated being involved with this case.

**A** That a man was – he was a math professor at UC Berkeley. I really don't remember that much. I was in graduate school, and I live pretty far away, and I was traveling several hours a day and working full-time. I don't – I don't know that much about it.

**Q** How about explosive devices?

**A** I have no information on them.

**Q** Did you receive any information concerning explosive devices being associated with this case other than what I told you during my opening comments to you?

**A** Well, okay. Yeah. That – that he was accused of – of mailing bombs in the mail. That I knew.

**Q** Okay. How about the cabin? Did you receive any information concerning the whereabouts of the cabin?

**A** Montana.

**Q** Do you know whether or not there was a search of the cabin?

**A** I would assume, but . . .

**Q** Okay. Anything else?

**A** No. I really don't know that much.

**Q** Has the information you have received about the case caused you to form any opinion, or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A** No. I have not formed any preconceived notions.

**Q** Do you have any suspicions in that regard?

A Well, I'm assuming that a lot of people think he is guilty. Because, you know, he's here.

Q Do you join those people in that suspicion?

A I have not made an opinion within myself on that.

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

A Yes.

Q What does that mean to you?

A That means that I keep my mind open to hearing what is presented to me in court and that, based upon that information within the guidelines and in the context of the law, then I make a decision based on that.

Q And is part of your answer telling me that you will leave the information that you have received outside of court, outside of this court? You won't bring that information into the court with you?

A I will try not to, but we are human. And sometimes – The little information I have, I mean I can't forget the information that I have.

Q Is there anything about your personal beliefs that would interfere with your ability to make a determination as to Mr. Kaczynski's guilt or innocence solely on the information that is received in this courtroom?

A No. I do not believe so.

Q Okay. I appreciate the response you gave me a question ago where you indicated that we are human, and we will do our best to do certain things because that indicates to me that you are only going to tell me what you can do. If you were, in fact, selected to be a juror in this case, is there assurance from you that you will not allow the information that you received outside the courtroom to interfere with your determination of the facts in the courtroom?

A Yes, I can give you that assurance.

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

A Yes.

Q What does that mean to you?

A That means in our legal system that though he is here, it does not mean he is guilty, that guilt is determined through the evidence that is provided in the court.

Q And there is another component to it. He is presumed innocent, and he has the benefit of that presumption under our legal system, unless and until the Government – should this occur – proves every element of the offenses charged against him beyond a reasonable doubt. And if the Government fails to do that, then you must return a verdict of not guilty in favor of Mr. Kaczynski. Do you have any problems giving Mr. Kaczynski the full benefit of that doctrine?

A No.

Q Can you think of any reason why you couldn't be fair and impartial to both sides in the case?

A No.

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

A I do not of either.

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

A Boy, that is such an incredibly complex question. There are so many angles to explore the death penalty from. It's difficult to just give a pat answer. I don't even know how to begin answering that question. Maybe you could guide me a little bit more.

Q I can guide you, I think. Is there anything about your views on the death penalty that would interfere with your ability to meaningfully consider all sentencing options that would be available to the jury in this case should this case reach the sentencing phase? That would be the option of imposition of a death sentence, imposition of a life sentence without possibility of release, or imposition of a lesser amount of time of imprisonment.

A Can I ask you a question back?

Q Yes, you can. A You're asking if my personal values and spiritual values and my religious values interfere with my ability to explore the option of the death penalty?

Q That's part of the question, yes.

A Okay. I don't understand that. If it goes through the trial and he is found guilty, then everybody is to determine – the jury has to determine the sentencing. Are there guidelines within how we're supposed to do that because that seems to be very subjective.

Q Yes.

A Here is three choices, you guys go ahead and decide.

Q Let me – Let me ask the question another way. Let's assume, hypothetically speaking, that you were, in fact, selected to be a member of the jury. I know in your questionnaire you asked for a definition of the word "murder." And that's appropriate. And I'm going to try to give you a definition. If you aren't satisfied with the definition I give you, or if anything I say seems ambiguous or vague, you can let me know of that, and I'll try to state something that is clear. Join me in the hypothetical. You and your fellow jurors sat through the guilty and not guilty phase of the trial. At the conclusion of the guilty and not guilty phase of the trial, I will give you jury instructions. Then after I give you jury instructions, the jury will go to the deliberation room and see if they can reach a verdict. Assuming hypothetically that the jury went into the jury deliberation room, listened to each other, and then all of the jurors unanimously decided – to Mr. Kaczynski's disappointment – that he is guilty of the offense of intentional killing another human being without justification – are you with me?

A Uh-huh.

Q After making that type of finding, then the jury would go into the sentencing phase of the trial. At the sentencing phase of the trial, the Government would present what is called "aggravating type of evidence." That would be evidence that the Gov-

ernment would opine points towards a death sentence. And then the jury would also hear mitigating evidence.

**A** Uh-huh.

**Q** That would be evidence that points toward a life sentence or some amount of incarceration less than life. Then the jury would consider that evidence and would have to decide the appropriate sentencing option. And it would be the option of sentencing the defendant to death, life in prison without the possibility of release, or some lesser amount of time in prison. Is there anything about your views on capital punishment that would interfere with your ability to meaningfully consider all three of those sentencing options given the finding of murder that I just told you?

**A** No. I think it would be very difficult to go through that process, but I don't think that I have any personal values that would interfere.

**THE COURT:** Okay. Parties may examine the juror. VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

**Q** Good afternoon.

**A** Hi.

**Q** My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And I want to follow up just for a certain period of time about your views on the death penalty, if the questionnaire is available.

**THE COURT:** Is that your response to the questionnaire? (Document shown to prospective juror.)

**PROSPECTIVE JUROR NO. 193:** Yes. You're going to ask me to read my own handwriting, aren't you?

**BY MS. CLARKE:**

**Q** If you could, go to page 28. At question 108 at the top, it's the question that gives you three options where a person intentionally kills another person: Death is always justified, death may be justified, death is never justified. Do you see that series?

**A** Yes.

**Q** Check offs. And you indicated that it may or may not be justified, depending on the circumstances of the case, right?

**A** Yes.

**Q** You had some questions about what the words meant, reflecting that you were really thinking about the issue; is that –

**A** Yes.

**Q** – what I take the handwriting to be?

**A** I was thinking very thoroughly, trying to understand legally what these words meant.

**Q** Trying to think through what "intentionally" meant and what "killing" meant?

**A** Uh-huh. Justified.

Q And what justified meant. But as I understand it from your answer, you are able to take a set of aggravating circumstances and a set of mitigating circumstances and weigh them?

A Yes.

Q And weigh them with an open mind towards considering both sides?

A Yes.

Q And I take it from the way that you debated, even in writing on the questionnaire, that you could listen to your fellow jurors debate the pros and cons of aggravating versus mitigating circumstances?

A Yes.

Q You would be willing to engage –

A I would be willing, yes.

Q – to engage in a meaningful discussion about the aggravating circumstances and the mitigating circumstances?

A Yes.

Q In other words, your views on the death penalty wouldn't send you into the jury room with any preconceived notion as to what the penalty had to be?

A Can you repeat that.

Q Your views on the death penalty wouldn't send you into the jury deliberation room with any preconceived notion about what the penalty had to be?

A Correct.

Q You would be open to weighing the options with your fellow jurors?

A I would be doing my best to do that, yeah. That would be my intentions.

Q I think what Judge Burrell was telling you is that in a capital case, there would be two potential phases to the case. The beginning of the first phase the judge referred to as the guilty or not guilty phase of the case where the jurors determine the guilt or innocence of the person accused of the crime. You with me?

A Yes.

Q And I take it you could follow instructions on the law then in applying the presumption of innocence to the set of facts and determining whether or not there was proof beyond a reasonable doubt?

A Yes.

Q That wouldn't be a problem for you?

A No, it would not.

Q You could be open to the other jurors' views about the quality and quantity of the evidence?

A Yes.

Q And in the guilt/not guilty phase of the case, right?

A Yes.

Q And then assuming that the jury made a finding of guilt on the crimes that qualify a person for consideration for the death penalty, then you would go in – the jury would go into the penalty or sentencing phase of the case. You with me?

A Uh-huh.

Q And it's the same sort of circumstance. You would be presented by the Government with aggravating factors that they believe would be warranting the death penalty.

A Correct.

Q There would be a presentation, probably of mitigating circumstances, that the defense would believe warrant a sentence of other than death, right?

A Yes.

Q And it would be your job to weigh those –

A Uh-huh.

Q – against one another?

A Yes.

Q And I'm hearing you say that – that while it would be a difficult decision, you would be able to weigh these circumstances and go into that deliberation willing to listen to the other jurors' positions on it?

A Yes.

Q Let me ask you, if I could – I did have some difficulty, and it wasn't your handwriting, it was the quality of the copy – on page 11 at the top of the page, "What kinds of things did you say to others or did others say to you," nobody tried to influence you one way or the other in how you felt about the case?

A No. No.

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

**THE COURT:** Yes. (Brief pause.)

**MS. CLARKE:** Thank you very much. VOIR DIRE EXAMINATION  
**BY MR. LAPHAM:**

Q Good afternoon.

A Hi.

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

A Hi, Steve.

Q I just want to ask you a few follow-up questions. You indicated in your questionnaire that – this is question 40 if you want to take a look at it. You indicated that prospective jurors must be ready to handle the case. Do you see that?

A Yes, I see that.

Q What did you mean by that?

A What I meant by that was the basic aspects of being removed from your life and asked to come down to hear information that is probably information that you're not used to hearing, learn a system, a legal system, a governmental system that you may not be used to, be willing to leave your personal values and who you are, in a way, outside the room so that you can listen with a clean slate and feel probably pretty isolated from the world because you won't be connecting to people as to your daily experience of what is happening and just some feelings that you would have, just what it was like during the day; that if that you're a juror and you're going to be asked to

do this, you would just need to be ready mentally for the amount of stress and effect that it was going to have on your life.

**Q** Sounds like you have given it a good deal of thought. You feel ready to undertake those responsibilities?

**A** Yeah. I feel ready. It doesn't mean that I exactly want to, but . . .

**Q** Well, you indicated, I think it was at question 128, that you would have to transfer some cases.

**A** Can you tell me what page that is?

**Q** I'm sorry. It's page 32. I don't want you to reveal what you do for a living, but you indicated you might have to transfer some cases, and there might be some amount of dislocation in your life. That, I take it, is not a problem for you at this point?

**A** Without revealing, we have a system set up where it is possible.

**Q** Okay. You discussed that with your employer?

**A** Yes.

**Q** Okay. Let me ask you a few questions about your views on the death penalty. You indicated at – I'll give you the page reference there too. It is question 103, on page 26. And you indicated that you thought the death penalty is a very sad brutal way to die. Do you see that answer?

**A** 103?

**Q** Yeah. It's question – it's your answer to question 103.

**A** Okay. What was your question? I see that.

**Q** And you said it's a very sad, brutal way to die. How might that impact upon your service in this case, if at all?

**A** Just exactly that. That I believe it is a sad way and brutal way to die.

**Q** Is it going to make it difficult for you to make that decision if you were called upon to do so?

**A** You guys are asking such difficult questions because we're not – I'm not there yet.

**Q** Uh-huh.

**A** I would hope that who I am, that I would be able to be able to recognize the emotions of it, along with the reality of making that decision.

**Q** Well, that's actually precisely the reason I asked. Do you think it's going to be an emotional experience for you?

**A** I believe that it's going to be an emotional experience within us throughout this whole thing. But the whole point of being here is to attempt – or I'm assuming – is to attempt to balance that out, to not have your emotions take over, but to have the weighing of the circumstances presented by both sides and the evidence in making your decision.

**Q** Well, that's exactly right, that it's a weighing process where you weigh the aggravating factors and mitigating factors, and hopefully you can do that in a somewhat dispassionate manner.

**A** I do that every day in my occupation. I'm asked to put away emotions. So I'm familiar with what you are asking me. Do I have the skill where I'm able to separate and make decisions, yes.

**Q** But you've probably never done it in a life-or-death situation?

**A** Correct.

**Q** So the question is: When you are doing that weighing process, knowing as you do that you feel that the death penalty is a very sad, brutal way to die, is that going to allow emotionalism to creep in?

**A** But I also believe that there are many other ways to die that are sad and brutal, just not limited to the death penalty. So my emotions as a human being and how the process of death is an opinion, it's not a sound judgment, you know what I mean, that would interfere with my ability to weigh information.

**Q** That's exactly true. There are other sad and brutal ways to die. The difference, though, is in this case you would be called upon to make the decision to – to impose that form of death.

**A** I would be called on to weigh circumstances that everybody has presented, yes. And –

**Q** Right.

**A** – and that means, as you're saying, the death penalty as a possibility, yes.

**Q** Right. And because of your feeling that it's a sad and brutal form of punishment, are you going to approach this in a different manner than you would those other decisions where you're asked to put your emotions away?

**A** I'm a little bit confused by that question, but my response in my mind was no.

**THE COURT:** It is a confusing question.

**PROSPECTIVE JUROR NO. 193:** Yeah.

**THE COURT:** You need to rephrase it.

**BY MR. LAPHAM:**

**Q** What I'm getting at, you indicated that you're used to putting your emotions aside in deciding questions objectively?

**A** Yes.

**Q** And that's what you would be called upon to do in this case –

**A** Yes.

**Q** – if you were selected as a juror. And knowing your feelings about the death penalty, that it's a sad and brutal form of punishment, do you think that would interfere with your ability to set your emotions aside?

**A** No, I do not.

**MS. CLARKE:** Your Honor –

**BY MR. LAPHAM:**

**Q** You also indicated in your answer to 103 that you said what ever body makes the decision on the death penalty must explore all the possibilities. And that's certainly true. Now, the judge in this case has told you that a life sentence without possibility of release is one of the possibilities that you'll be considering, and that in the federal

system, life means life, that there is no possibility of release. How do you think that will affect your decision when you weigh the various options?

**MS. CLARKE:** Your Honor, I object. He's asking to prejudge the case.

**THE COURT:** Aren't you?

**MR. LAPHAM:** I haven't given her any facts. How can I be asking her to prejudge the case?

**THE COURT:** How can she answer the question without trying to prejudge?

**MR. LAPHAM:** Your Honor, I can rephrase the question.

**THE COURT:** Okay.

**BY MR. LAPHAM:**

**Q** In approaching your views on the death penalty – and let's forget about your service as a juror – just in thinking about the death penalty and just your personal beliefs, knowing that life in prison in the federal system means life without the possibility of release, would that affect your thinking on whether or not the death penalty is an appropriate form of punishment?

**A** No.

**Q** Okay. So there are situations that you can envision where, even though a murder has been committed, that there are some situations where the death penalty is appropriate and other situations where a life sentence is appropriate?

**A** Are you asking my personal opinion, if I analyze the situation, do I make a personal judgment what is appropriate and what is not?

**Q** Well, yes.

**A** Of a punishment? As a human being or . . .

**Q** In thinking about your – That probably wasn't very clear. Let me see if I can rephrase it. We're talking about your personal views on the death penalty. Knowing that an alternative form of punishment is life without possibility of release, do you still see a purpose for the death penalty?

**A** The way that our Government is set up, yes, there is a purpose for the death penalty. That's why it is there.

**Q** Okay. Not sure I understood the answer. Knowing the way our Government is set up?

**A** When people – I don't have a huge understanding of the governmental process, but when a crime has been committed and punishment has been assigned according to the court, there are reasons as to each ladder of punishment, informal probation, probation, life, life without parole, the death penalty. It's a ladder process. That's kind of how I perceive it. And the death penalty in the United States of America means that the person has committed a crime at such a level that the Government feels this person's life – that he has – he or she has lost the right to live, and that their life will be taken. So do I feel it's necessary? The way that we have our system set up, it is necessary.

**Q** Okay. As I understand your answer, I think you are just saying you could set your views aside and follow the law, whatever that law happens to be?

**A** Yeah. That's, I guess, what I said.

**Q** Okay. Now, we talked about aggravating and mitigating factors. Aggravating factors are simply those that the Government believes merit the death penalty, and mitigating factors are those which the defense believes warrant a sentence of less than death. And you have indicated that you have a background in psychology, and again, we'll try and do this without revealing exactly what you do. And you work with the mentally ill or – in the mental health field. I'll put it that way, correct?

**A** Yes, I work in the mental health field.

**Q** Okay. Now, the defense has indicated that they may put on evidence in this case regarding the mental health of the defendant.

**A** Yeah. That makes sense.

**Q** And what we ask you to do as a juror, as with publicity, is that you set that – set whatever views you have about the case aside and determine the case based on what you hear in court.

**A** Yes.

**Q** And we'd ask you the same thing with regard to mental health evidence, that you not bring your own views into court regarding your own understanding of mental health issues. Do you understand that?

**A** Yes. I understand what you are asking me.

**Q** Okay. Now, the question is: Do you think you would be able to do that?

**A** I work primarily with children. So my limitations with my knowledge of adult mental health is very limited. But I do have information and training that I'm sure that I would have to not attempt to diagnose or pull from or analyze the defendant so that I may make a decision. You're asking me if I'm able to do that?

**Q** Yes.

**A** Again, you guys are asking questions that are very difficult to know the final answer. I know that I can say who I am would – I would definitely try to do that, to leave out who I am as a person personally and professionally when making the decision.

**Q** Now, in your position, you're called upon to participate in the diagnosis and development of treatment plans for individuals who have mental health?

**A** For children. I am not for adults.

**Q** Okay. For children. So you have to have some knowledge that allows to you to do that I assume?

**A** Yes. I have a lot of knowledge.

**Q** And if you heard testimony in court that maybe differed from that knowledge, how would you handle that?

**MS. CLARKE:** Your Honor, I'm not sure the prosecutor is asking a question that can be answered. I mean, a juror is able to listen and accept or reject testimony. Jurors are expected to bring their common experiences and common sense to the courtroom, and they're not expected to just simply reject something because it's testified to differently in court. I think that may be an unfair question. The question is: Can the juror listen to evidence and fairly evaluate it?

**THE COURT:** You want to respond to her – to the defense’s objection.

**MR. LAPHAM:** It was an open-ended question. I just asked what she would do, confronted with formation that contradicted her own training. We’ve asked the same question with respect to pretrial publicity. What if they heard something that differed from something they heard –

**THE COURT:** It’s a little bit different, though, isn’t it? How do we know whether the information that is presented violates all notions of common sense and reason, and she would have to speculate. So I think – I think Miss Clarke is right. I think that question is unfair. I don’t know how else to characterize it. I hate to say it like that, but I think you need to ask another question.

**BY MR. LAPHAM:**

**Q** Ma’am, do you think you would be able to set aside your training and experience in this field and listen to the psychological testimony if it is presented in this trial objectively?

**A** Yes. The good news is, I don’t have all the world of training. I believe to grow as a professional every single day. So I don’t think there is a limited one way of defining mental health or working within mental health. So therefore, it is very open, and the information that could be presented could be different.

**MR. LAPHAM:** Thank you. Your Honor, I think that’s all I have, but may I have a moment?

**THE COURT:** Sure. (Brief pause.)

**MR. LAPHAM:** No further questions. Thank you. (Whereupon, Prospective Juror Number 193 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospective Juror Number 201 was seated on the witness stand.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** Thank you for joining us. You’re the 201st randomly selected juror. Is there any reason why we shouldn’t continue to consider you for jury service in this case?

**A** No.

**Q** I’m looking through your questionnaire because I want to ask you a couple of questions concerning your response. Okay. Did you appear at – I changed my mind. Did you appear at Cal Expo and fill out your jury questionnaire at Cal Expo?

**A** Yes, I did.

**Q** Okay. You may have to make an adjustment so that your voice is amplified more than it is – or has been I should say.

**A** Yes, I did.

**Q** Oh, that’s great. Thank you. Since that time, have you been exposed to information about the case?

**A** No, I have haven’t.

**Q** Since that time, have you discussed that case with anyone or overheard anyone discussing the case?

**A** No, I haven’t. Just on the news. That’s all. On the TV.

Q What have you heard about the case on the news?

A Well, I heard about them moving the little house here from where he was. Last week, I think it was.

Q Anything else?

A No. Not – I can't remember all of it, but I know about that. That was one of the main things that I know.

Q I want you to now direct your attention to the time period before you appeared at Cal Expo and tell me as much information as you possibly can concerning what you heard about everything you believe could possibly be associated with this case. And I'm going to ask you, before you respond, I want you to make another adjustment with the microphone because your voice at times is perfect, and other times I've got to strain to hear you.

A Okay.

Q What information have you received about this case ever?

A Well, when I first heard about it on the TV, that was most of it. I haven't read anything in the paper, just the news that I watched on the TV, that when they first captured him, you know, to bring him to – when he was – brought him to – when was it – before he came to Sacramento.

Q Okay. Did you receive information concerning the allegations that gave rise to his apprehension?

A Yes.

Q What information did you receive in regard to those allegations?

A Well, I heard about what had – what he had done, you know. And well, it was – I guess I'm kind of nervous. That's why I can't remember –

Q Okay. All right.

A – right off.

Q Let me show you your questionnaire. Let me make sure this is your questionnaire first. Is this your questionnaire? (Document shown to prospective juror.)

A Yes, it is.

Q Okay. I'm going to show you your response to question 109, on page 28. Can you take a moment and look at that response? (Witness reviews document.)

A Yes.

Q Okay. Can you explain that response?

A About it was wrong for what he had done, yes.

Q Right. I want to know what you assume he did.

A Mailed out the bombs that killed the people that they did.

Q Okay. Did you receive any information concerning the cabin, whether there was a search of the cabin involved in this case?

A Of the cabinet?

Q A cabin. A house-type of a structure.

A Yes.

Q What information did you receive?

A I didn't receive any information. It was just that I heard it on TV.

Q What did you hear about that?

A That the house was being moved from Montana – I think it was in Montana – to Sacramento.

Q Did you hear any information concerning a search of that house?

A No. I didn't get all of that.

Q Based on the information you have received in this case, have you formed an opinion as to Mr. Kaczynski's guilt or innocence?

A I believe he is guilty.

Q How strongly are you committed to that opinion?

A Well, I feel like he's guilty and should pay for what he did.

Q It sounds as though you are strongly committed to that opinion; is that true?

A Yes. Yes.

Q Okay. It's my impression that that may be an opinion that you cannot set aside to be a juror in this case, or am I wrong about that?

A I can't set it aside.

Q I'm wondering whether that opinion is one that would prevent you from allowing Mr. Kaczynski to have his trial take place without him having to be concerned about pretrial publicity. He doesn't want to have to try this case being concerned about allegations that were reported in the news media. And your opinion is information you received from news-type sources, right?

A Yes.

Q Is there any way you have the capacity to set that opinion aside if you were selected as a juror in this case?

A Yes.

Q You could do that?

A Yes. Uh-huh.

Q Explain your answer. How would you go about doing that?

A Well, I would just – Oh, let me see now. Judging from what he did, even though if I hadn't seen it on TV, I still feel like that he should be punished for what he did, you know. If I hadn't gotten any information, just all the commotion that is on the news about it, and maybe just heard one time about it, and I would feel like that he should be punished for what happened.

Q Okay.

**THE COURT:** Approach the bench. (Whereupon, the following sidebar was held between the court and counsel.)

**THE COURT:** It's my impression that the juror has expressed strong opinions against Mr. Kaczynski. I analyzed her juror questionnaire, and I assume that she was brought here with the thought that she would divorce herself from those opinions. At this juncture she indicated that she could divorce herself from those opinions, but her last answer clearly reveals to me that she hasn't, and I'm beginning to think I'm

wasting my time. And if I allow the parties to examine, you will be wasting time as well. Do you have a different opinion?

**MR. CLEARY:** No. We will stipulate to her excuse.

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

**THE COURT:** Thank you. (Whereupon, the sidebar was concluded.)

**THE COURT:** Thank you for your candid responses, ma'am. I'm going to excuse you from further service in the case.

**PROSPECTIVE JUROR NO. 201:** Thank you.

**THE COURT:** Next juror. (Whereupon, Prospective Juror Number 201 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospective Juror Number 203 was seated on the witness stand.)

**THE COURT:** I'm going to ask you questions in just a moment, sir. VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q** Thank you for joining us. You are the 203rd randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

**A** Not that I can think of.

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

**A** No.

**Q** Okay. When did you fill out a juror questionnaire?

**A** At the federal building. About two weeks after that.

**Q** Okay. Did you receive any communication from me asking you to report to Cal Expo?

**A** Yes, I did.

**Q** Okay. And since the time you received that communication, have you been exposed to any information concerning this case?

**A** Some. You know, through the news and stuff.

**Q** Okay. What type of information have you been exposed?

**A** I think I remember back to America's Most Wanted. A long time ago they had a little thing on it. I mean, I hardly remember it, but I do remember something about it in Sacramento.

**Q** Was that before or since Cal Expo when you received –

**A** That was way before. That was a long time ago.

**Q** I'm just focusing on the time period since I sent you a summons requiring you to appear at Cal Expo. From that time period until today's date, have you received any information?

**A** No. Trying to stay away from it, you know, best I can. I live up in the foothills so we don't get much, you know, happening up there.

**Q** Have you been exposed to information despite your attempts to stay away from it, which by the way, I appreciate?

**A** Hauling the cabin down. I got a little bit of that from work. But that's pretty much about it.

**Q** Since I sent you the summons asking that you appear at Cal Expo, have you discussed the case with anyone or heard any other people discussing the case?

**A** No.

**Q** Now going to direct your attention to the time period before you received the summons concerning the appearance at Cal Expo. Tell me everything you have heard or read concerning the case and provide as much detail as you possibly can. I want to get your perspective on anything that you have been exposed to that you associate or been involved in this case.

**A** Like I said, the first thing I heard was that America's Most Wanted, I remember seeing a little thing on that. And I remember the description as a hood and dark glasses – like a sweatshirt, you know, with a hood – and there is like somebody put a bomb in a parking lot. And the guy, I think he was going out to his car or something, and it went off. That's the first I pretty much remember about it. And then when they arrested Mr. Kaczynski at the cabin, I remember seeing something about that on the news. And then, like I say, them hauling the house down on the truck.

**Q** You mention you remember seeing something on the news about a cabin around the time Mr. Kaczynski was arrested. What do you recall seeing?

**A** When they arrested him, brought him out of the cabin, and I guess taking him into custody.

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

**A** No. I don't remember anything about the search.

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

**A** No.

**Q** Do you have any suspicions in that regard?

**A** No.

**Q** If you are selected to be a juror on this case, will Mr. Kaczynski begin this trial on a clean slate?

**A** Yeah.

**Q** What does that mean to you?

**A** Innocent until proven guilty.

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

**A** Is he innocent, do you mean? Is that what you are saying?

**Q** Will you allow Mr. Kaczynski the benefit of the doctrine that presumes Mr. Kaczynski innocent?

**A** Oh, yeah. Absolutely.

**Q** Do you have the personal capacity to leave outside this courtroom the information you received outside this courtroom should you be selected as a juror so that Mr. Kaczynski can be assured that he is only tried based upon evidence that is presented at this trial in the courtroom?

**A** Yeah. I think so.

**Q** Any doubt about your ability to do that?

**A** No.

**Q** The presumption of innocence doctrine presumes that a criminal defendant is innocent. The criminal defendant has the benefit of that presumption until and unless the Government proves all elements of the offenses charged against him beyond a reasonable doubt. And if the Government fails to do that, the defendant is presumed innocent. So you must return a not guilty verdict in favor of the defendant. Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski the full benefit of that doctrine?

**A** No.

**Q** Can you think of any reason why you couldn't be fair and impartial to both sides?

**A** No.

**Q** Do you consider yourself in favor of or against the death penalty?

**A** Against.

**Q** We're not looking for jurors that are necessarily in favor of or against the death penalty. We are looking for jurors who would be willing to consider the death penalty as one of three sentencing options should the jury find Mr. Kaczynski guilty of a murder offense during the guilt and not guilty phase of the trial. Is there anything about your beliefs on the death penalty that would interfere with your ability to consider all three sentencing options should this case reach the sentencing phase of the trial, which would include a sentence of death, life in prison without the possibility of release, or some lesser amount of time in prison?

**A** I don't believe it is right for one man to take another man's life.

**Q** Would you automatically vote against the death penalty in any case without regard to the facts or circumstances of the case?

**A** I don't agree with it. I just don't. I don't agree with the death penalty.

**Q** So what is your answer to my question? I asked you whether you would automatically vote against the death penalty.

**A** Yes.

**Q** And you would vote against it irregardless of the facts or circumstances presented to you?

**A** Like I said, I don't believe in one man judging another man and taking his life. It wasn't right the first time. Why do it twice?

**Q** Your answer to my question is "yes" that you would vote against it automatically? I'm not trying to –

**A** Yes. I'm sorry. Yes.

**Q** You're not really – You're answering the question with an explanation, and it could be answered in a quicker fashion.

**A** Okay.

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

**A** Yes.

**Q** "Yes" means?

**A** That I wouldn't sentence somebody to death.

**THE COURT:** Does either party want to voir dire?

**MR. DENVIR:** I would like to ask a few questions, your Honor. VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q** Afternoon, sir. My name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski. I would like to ask you a few questions. You have not served on a jury before, am I right?

**A** (Shakes head.)

**Q** A little nervous?

**A** Oh, yeah.

**Q** Try to relax. I'm going to try to ask you a few questions. If you don't understand them, tell me, or if there is something difficult about them, but I want to talk to you a little bit about your views on the death penalty. And that is something that you're being asked, obviously, as prospective juror in this case because the case could involve the death penalty. Otherwise, it wouldn't be. We wouldn't ask you all that. Do you have your questionnaire there? The one you filled out?

**THE COURT:** Is this it, sir? That your questionnaire? (Document shown to prospective juror.)

**PROSPECTIVE JUROR NO. 203:** Yeah. ///

**BY MR. DENVIR:**

**Q** Did you fill that out at Cal Expo?

**A** Federal.

**Q** Back here at the building a couple weeks ago?

**A** (Nods head.)

**Q** If you could, turn to page 26, question 104. And there was a question about how your religion, philosophy or spiritual training, what it taught about the death penalty. Am I right, then, that your feeling about the death penalty is not influenced by religion?

**A** Yeah, it is. Yes, it is.

**Q** Oh, it is? So it is kind of a religious matter?

**A** I believe that god has a right to judge people, but not men – other men don't.

**Q** Okay. And in 105 you talk about an eye for an eye, are you referring to the Biblical eye for an eye?

**A** Yeah. Yeah. Yes.

**Q** And is that – How does that play into your feelings about the death penalty or religious views? Does it play in at all or –

**A** It's kind of, you know, gray territory. I believe an eye for an eye, but at the same time, like I said, I don't believe that one man has the right to take another man's life.

**Q** Could you turn to the next page – or actually, if you turn to page 28 – if you could go to page 28. That question 108 where you were asked to check the line that most accurately stated your views about the death penalty, and it was to the question where one person intentionally kills another person, but you were given three choices: death penalty, always justified, never justified, or may or may not be justified, depending on the circumstances of the case. Can you tell me why you chose that one instead of never justified or what you were thinking when you checked it?

**A** It may be something so horrible that, you know, it was – I'm not sure, but you know. I don't know. The answer is there's a little bit of doubt.

**Q** There is kind of two different things about the death penalty. One is the person's own views about the death penalty. And that's what I'm asking you about now. And you understand, as the judge told you, you don't have to be in favor of the death penalty to sit on a jury like this. And you can actually be against it to sit and still sit on this type of jury in a death penalty case. In fact, the law tries to get jurors who have varying views. It wouldn't be right to have the Government to have everybody against the death penalty, it wouldn't be right to the defendant to have everybody in favor of the death penalty. So – so what I need to explore then is what are your views. And is this – is this something that you have given a lot of thought to? Have you had to think about kind of what do I think about the death penalty up to now?

**A** Yeah. I – I used to believe that, you know, an eye for an eye, a tooth for a tooth. You know, the death penalty is right, and that, you know, they shouldn't – that it was the right thing to do. And it wasn't until probably a year ago or so that my aunt died, and I had a – I had a spiritual change of heart, I guess you could say. And I just – I don't know for some reason I totally feel the other way. And I don't know. It's hard to explain, but –

**Q** I'll ask you, if you can, you couldn't sit on a jury in this case if your views against the death penalty were so strong that you couldn't follow the judge's instructions. I mean, you know, that makes sense. And that's what I'm going to ask you in a minute about that. But what the judge would instruct you is that for two of the crimes charged against Mr. Kaczynski, mailing or transporting a bomb, and intending to kill someone and having it explode and kill someone, Congress has provided three – three penalties. They decided that someone convicted of that can be given any of three penalties. One of them is the death penalty. One is life in prison without possibility of release. And that's what that means. In the federal system there is no parole, or it could even be a lesser term. And someone who sat as a juror, if they were going to sit on this and convicted someone like Mr. Kaczynski of those kinds of charges, they – the same jurors who decided that he was guilty would have to decide the sentence, which is different than those cases where the judge decides that. If you were a juror, you would have – or anybody would have to be able to say, well, I could follow the judge's instructions. I would be able to, whatever I might feel about for or against the death penalty, I would

be willing to actually consider all those sentences, I would be able to, in particular, be able to consider voting for death and maybe voting for life, and I guess only you really know whether you could – you could do that?

**A** Right. Well, if I was on the jury, and the judge instructed me, you know, to consider it, I mean, I would have to consider it and try to be as impartial as I possibly could.

**Q** And I appreciate that because people have their views about the – about the death penalty, one eye for another. Then there is also what you have to do if you sit on a jury as your civic duty. And sometimes people's views mean they can't perform as a juror, like I feel so strongly I can't. And other times people say, I feel so strongly, but I think I can still be a juror. What the judge would tell you is that you have these two parts of the trial. The first part is the normal trial where the – where you decide guilt and innocence, in effect, or guilt and not guilt. The prosecution puts on all its evidence that they think shows guilt. The defense then can present any evidence they want, if they want to. The judge instructs as to what the crimes are and what they consist of and other things. And then the jury retires and the 12 people decide one way or another has the Government met its burden of proof beyond a reasonable doubt he committed the crimes. So that's the first part of it. If the jury were to find the defendant guilty of these two charges relating to one death, then – then it goes into the second phase. And you have a second trial, which is the unusual part, Judge Burrell referred to it as, I think, the sentencing phase, I think, of the trial. Then you have a different thing because the Government then presents this aggravating evidence. That's the evidence – any evidence that they think either – about more evidence about the crime or evidence about the defendant that they think is a reason to sentence him to death instead of to life. Then the defense presents any evidence about the defendant or about the crime or anything that they feel points the other way. So one is pro death and the other one is anti death, however way you want to do it. The judge would then would instruct you that as a juror you have to weigh those. You have to have – You have to weigh the pro death and the anti death and then make your decision between those two possibilities. And that you would have to be willing to go into that, to actually weigh and actually consider the possibility that you might come out and say that, I think death is the right – is the right penalty, or I think life is the right penalty. And I guess the question is: How do you think you could do that given, you know, how you generally feel about the death penalty?

**A** Well, like I said, if, you know, if the judge instructed me to do that, I would like to think that I could be fair and impartial.

**Q** Okay. And what he would really be telling you, to be fair to the Government, given your views, you would have to really be willing to listen to what they say the reasons for – for sentencing someone to death is, and they would give you every reason they can think of or every bit of evidence they can think of. And you would have to be able to say, you know, if I thought that they were right on that, that this – that their evidence, in fact, made me think that this is a case – this is a case that needs the

death penalty instead of life without, that you would actually be willing to vote for that if you personally felt that way. And again, we need to know whether you think you could do that, if you were convinced that death is necessary or death is proper or justified or whatever way, that you could do that?

**A** I think I could.

**Q** You think you could.

**A** I mean, you never know until you're in that situation, but, you know –

**Q** And no one really knows. And all we ask is that you make your best judgment, knowing yourself, about whether, you know, you could – you could fulfill your duty as a juror. And part of your duty would be to obey what the law is as the judge tells you. If you feel you can't do that, then it's fine to tell us that. If you feel that from what you're hearing about it, as much as you know about it, you think you can or you'll do your best or there is nothing that stops you from doing it?

**A** Right. I'll do my best.

**Q** As you sit there, despite that, I can see you feel emotionally about the death penalty. Do you think you can put that view aside about whether your – you might want to have a death penalty or something like that and actually perform as a juror in this case?

**A** Yeah.

**MR. DENVIR:** Can I have one moment, Your Honor. (Brief pause.)

**MR. DENVIR:** Thank you, Your Honor.

**THE COURT:** We'll take the afternoon recess. Court will be in recess until 3:45. (Off the record at 3:30 p.m.)

**THE COURT:** Let the record reflect all participants are present except for the juror. My deputy clerk is getting the juror. (Prospective juror number 203 enters the courtroom.)

**THE COURT:** Thank you for joining us. Go ahead. VOIR DIRE EXAMINATION BY MR. FRECCERO:

**Q.** Good afternoon, sir.

**A.** How you doing?

**Q.** My name is Stephen Freccero. I'm one of the prosecutors in this case. And I just want to follow up on – follow up with some more questions on your views about the death penalty. As I understand it from what you've told us, your personal view is that you're against the death penalty; right?

**A.** Yes.

**Q.** And is that a strongly held belief?

**A.** Yeah, I believe so.

**Q.** All right. And I wrote down based on what you've told us that that's based at least in part on some religious belief for spirituality; is that true?

**A.** Yes.

**Q.** And your views, you started formulating them against the death penalty, was part of an experience you went through about a year ago?

A. Yeah, approximately.

Q. Do you still have your questionnaire in front of you?

A. Yeah.

Q. If I could ask you to take a look at page 10, question 40. Do you see that question?

A. Uh-huh.

Q. That question asked you if you had any political, social, or philosophical belief that may affect your service as a juror. You wrote yes and then wrote: I do not believe in the death penalty. How did you think that belief might affect your service as a juror?

A. Just as far as having to – having a hard time sentencing somebody to death, I don't believe in it.

Q. And I notice in another place in your questionnaire, I think on page 26, or I think – yeah, page 26, question 103, you were asked what your opinions and beliefs are about the death penalty. And you wrote "wrong." I take it from that answer you believe that the law itself that authorizes the death penalty is wrong?

A. Well, not so much the law is wrong but that it's wrong for one man to take another man's life.

Q. And I guess the question I would ask you is in that context, do you think it's wrong for a jury to sentence someone to death?

A. It's kind of a little tough with that one because of the law and stuff, but I still – I really don't think it's – two wrongs don't make it right.

Q. Well, your view that sentencing someone to death – and again, stop me if I'm wrong. If I'm not understanding what you're saying or anything, please tell me. But sentencing someone to death for having taken another life you view as another wrong?

A. Right.

Q. The taking of a life is a wrong, and the sentencing to death would be another wrong, in your view?

A. Yes.

Q. And that's part of the reason you're against the death penalty?

A. Yeah. That's part of it, yes.

Q. Now, I guess the question I would put to you is do you think it would violate your own conscience to be put in the position where you might – you were a juror, you could actually be part of a process that could sentence a man to death?

A. It's hard to say. You know, I've never been put there. And I'd like to think that I could be fair and impartial but, you know, I don't know. I'm not positive.

Q. Okay. When the judge was asking you questions in the beginning, one of the questions was whether you would automatically vote against the death penalty in any case where it was sought. And I understood your answer to be yes. Is that still your view?

A. Well, if the judge were to instruct me that, you know, that I – that that was – that that would have to be done, then that's what I'd have to do, and I'd leave my personal feelings aside.

**Q.** Okay. That's, I guess, what I'm getting at. Do you feel confident that your own personal views against the death penalty, that you could put those aside and make the determination as to what penalty based only on evidence that was presented here and following the instructions that the judge gave you?

**A.** I'd like to think so.

**Q.** Okay.

**A.** I'd like to think I could, yes.

**Q.** And so that even though you personally might be against the death penalty, if the evidence presented were sufficient, you yourself, based on you and your determinations as a juror, you yourself could sentence a man to death?

**A.** Yes.

**MR. FRECCERO:** If I could just have a moment, your Honor.

**THE COURT:** Okay.

**Q. BY MR. FRECCERO:** If I could just follow up on it. When the judge asked you initial questions in terms of your views on the death penalty, as you're telling us now, what you just told me, is that the same as you were trying to say to the judge, or have your opinions changed during the course of this questioning?

**A.** (No audible response.)

**Q.** Do you understand that at all?

**A.** My opinions are the same, but I understand that if the judge were to instruct me to be fair and impartial and that that was the choice, and I had to make that decision, I, you know, would have to put my personal feelings aside and do the best I could to be fair and impartial.

**Q.** Okay. And you're confident you can do that?

**A.** Yeah.

**Q.** Yes?

**A.** Yeah.

**MR. FRECCERO:** Okay. Thank you. VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Sir, could you envision a set of circumstances where you would be willing to sign a verdict form that sentenced a defendant to death?

**A.** Where I would sign it?

**Q.** Yes.

**A.** Well, like I said, if you were to instruct me that I'd have to be fair and impartial and that, you know, then I would have to.

**Q.** We haven't finalized the jury instructions yet that would ultimately be given to the jury. We're not even up to that phase of the proceeding yet.

**A.** Yeah, we kind of jumped from the not guilty/guilty sentencing.

**Q.** Correct. You will be asked, should we reach that phase of the proceeding, to consider the aggravating-type evidence, the evidence that the government will argue points toward a sentence of death, and mitigating evidence, which is evidence that would point toward a sentence of life of some type. Is there anything about your views

on the death penalty that would interfere with your ability to meaningfully consider all three sentencing options after you've received aggravating and mitigating evidence? And the three sentencing options would be a sentence of death, life in prison without the possibility of release, or some lesser period of time in prison.

**A.** I would like to think that I could be fair and impartial.

**Q.** I'm trying to see whether your views against the death penalty would impair your ability to consider all three of those sentencing options.

**A.** No, I don't think so. I think I could consider all three possibilities.

**THE COURT:** Okay. You can bring in another juror. (Prospective juror number 203 left the courtroom). (Prospective juror number 204 entered the courtroom.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. Sorry about that device there on the floor. We've got additional wiring involved in this courtroom now. You are the 204th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

**A.** None that I'm aware of.

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

**A.** Yes, I did.

**Q.** Since that time, have you been exposed to information about this case?

**A.** Yes, just what I would consider minor, you know, the news, when I watch the news. We try not to pay attention, obviously, as we were instructed to do, but you don't have control over all of it.

**Q.** I appreciate your effort to abide by my instructions. Despite that effort, can you tell me what information you received?

**A.** The fact that the cabin is being moved. That's been a big thing this week. And that's probably about all. It is being moved to Sacramento.

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

**A.** No.

**Q.** I'm now going to direct your attention to the time period before Cal Expo. I want you to tell me in as much detail as you possibly can the information you were exposed to concerning what you assumed involves this case, everything that you can relate I would appreciate you telling me.

**A.** I would say my exposure has been minor. I tried to – I think I put that in the questionnaire. I didn't consciously read any of the articles in the paper about it. Just the exposure that you see on the news, you know, when you're cooking dinner or whatever. Do you want me to recap what I know – or what I think I know is probably a better way of putting it.

**Q.** Yes, the latter.

**A.** That I understand that the defendant went to Berkeley, that bombs were involved in the case. I'm not too sure, I know there were several people killed, but I'm not sure

of the details. Like I said, I really didn't read much about it. I understand that he lived in a remote place in, is it Idaho, that that's where the cabin is from. That kind of just minor stuff that I can't really put together for a full story or a full understanding and haven't tried to do that. So far I've gotten little bits and pieces of things that I've heard, but I haven't put it all together to say that I have an understanding of what took place or even what he's being tried for.

**Q.** We're interested in little bits and pieces. Have you shared all of them with us that you can recall?

**A.** I think so.

**Q.** Do you recall receiving any information about a search of the cabin?

**A.** I know the cabin was searched. I know there were things taken out of there. For example, a journal. I have never read any of the articles about the journal or even the significance of the journal, just that there's a journal.

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

**A.** I don't believe so. I guess I recognize that I have bits and pieces of stuff. But like I said, I haven't put it together so I don't believe that I have a preconceived notion.

**Q.** Do you have a feeling that you do have a suspicion in that regard? I'm focusing on your words, "I don't believe so." That doesn't convey certainty?

**A.** I could say certainly. I'm certainly convinced that I don't feel one way or the other about his innocence or his guilt. I mean, I don't have a notion about it.

**Q.** If you are selected to be a juror in this case, will Mr. Kaczynski start this trial, in your eyes, on a clean slate?

**A.** Yes, I believe so.

**Q.** What does that mean to you?

**A.** That means, yes, he will start with a clean slate.

**Q.** What does clean slate mean to you?

**A.** I mean, I don't know that he's guilty and I don't know that he's not guilty.

**Q.** Under the law, all criminal defendants are presumed innocent until – I should say unless and until the government proves every element of the offenses charged against the criminal defendant beyond a reasonable doubt. That presumption of innocence is something that stays with a criminal defendant until and unless the government meets that burden. If the government does not meet that burden, since the defendant is presumed innocent, you must find the defendant not guilty. Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski the full benefit of that doctrine?

**A.** No.

**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.** Yes.

**Q.** Under our system of justice, a criminal defendant does not have to defend him or herself at all under that doctrine, and it would be unfair for the defendant to have to be concerned about allegations or other matters that are reported by news sources outside the courtroom. Is there anything about your belief system that would interfere with your ability to leave such information that you have received outside this courtroom outside the courtroom?

**A.** No, there is not.

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

**A.** Yes, I do.

**Q.** What does that answer mean?

**A.** That means I believe in the death penalty.

**Q.** I'm going to ask you to join me in a hypothetical. If you were, in fact, selected to be on the jury and the jury, after hearing all of the evidence presented at the guilt and not guilty phase of the trial, and after receiving the instructions that I will give them at the end of the trial, receives those instructions, then goes to the jury deliberation room to deliberate on its verdict – assume that all that occurred, and then you went back with your fellow jurors and your fellow jurors and you reached the decision, to Mr. Kaczynski's disappointment, that he's guilty of the offense of intentional murder of another human being without justification. That type of a finding by the jury would result in us going into what's called the sentencing phase or penalty phase of the trial. At the sentencing phase of the trial, the government would present aggravating factors which would be evidence that the government would opine points toward a death sentence. The jury would also hear mitigating factors, the evidence that points toward some type of a life sentence, either life in prison without the possibility of release or some lesser time in prison. Bearing in mind that in this hypothetical the jury found the defendant guilty of a murder offense, after hearing the evidence in the sentencing phase of the trial, would you still be able to consider voting for a sentence less than death?

**A.** Yes, I would be able to do that.

**Q.** You paused and it's appropriate to pause when responding to our questions.

**A.** And the reason I paused is because I've never been in this situation where you have to do this, how you make a decision of the death penalty versus life imprisonment or the third option. And I paused because I don't know how that would work and if there is a lot of discretion allowed the jury. Is there? I don't know. I mean –

**Q.** It's an individual juror's decision.

**A.** Okay.

**Q.** And I don't mean to indicate that I'm being critical of you for having paused. You are at liberty to pause throughout this process. The parties want to know what you think. And if it takes time for you to think about what you think, you have all the time you want to think about it so we can make sure that we get your honest answer. Is there any reason that you can think of that would interfere with your ability to be fair and impartial to both sides?

A. No, there is not.

**THE COURT:** The parties may question the juror. VOIR DIRE EXAMINATION BY MR. CLEARY:

Q. Good afternoon, ma'am.

A. Hello.

Q. My name is Robert Cleary. I'm one of the prosecutors on the case. I'm going to hand you a copy of your questionnaire and ask you some follow-up questions to some of the information there.

A. I'm going to get my glasses.

Q. Sure.

A. Okay.

Q. Before we go to the questionnaire, let me ask you about something you told Judge Burrell a few moments ago, and that is that you've picked up along the line certain bits and pieces of information from the media, I assume, about this case. Correct?

A. Yes.

Q. You recognize, don't you, that media accounts are not always perfectly accurate; is that right?

A. Yes, I do.

Q. And have you served on a jury before?

A. Yes, I have.

Q. So you know how the process works. You come into court as a juror and you listen to the evidence presented in court; correct?

A. Uh-huh.

Q. And it's a fairly straightforward exercise. You listen to that evidence and apply the facts as you find them to be based on the evidence presented in court to the law that Judge Burrell would give you. Can you assure us that you would be able to put aside whatever bits and pieces of information you heard outside the courtroom and judge this case solely on the evidence presented in court and the law as the judge gives it to you?

A. Yes, I can.

Q. Do you feel confident that you can do that?

A. Yes, I do.

Q. Turn, if you would, to page 28 of your questionnaire, please. Question 108. You tell us there that the death penalty may or may not be justified depending on the circumstances of the case; is that right? Page 28, question 108.

A. Yes.

Q. In your personal view about the propriety of the death penalty, do you distinguish between the types and maybe aggravated circumstances of the killings involved?

A. No.

Q. What do you distinguish?

**A.** Well, if you're talking about this particular case, I really – I don't know about the killings that were involved. I know that there were a couple of deaths, but I don't know any of the details to it. So I can't say in relationship to this case.

**Q.** Right. And I wasn't – my question wasn't very good, but I wasn't asking in connection with this case.

**A.** Okay. I misunderstood.

**Q.** When you were filling out the questionnaire, did you understand that the questionnaire was just asking you generally about your views about the death penalty; is that right?

**A.** Yes.

**Q.** And I'm going to follow through on that, just general questions about your view of the death penalty. And in particular, you say that the death penalty may or may not be justified depending on the circumstances. I want to zero in on what those circumstances might be that would determine whether the death penalty, in your view, is appropriate or not appropriate. In looking at a case, a series of facts in which someone was killed and determining in your own mind whether the death penalty is appropriate or not, could you envision yourself distinguishing between different types of killings, some of which may be more aggravated and some which might not be quite as aggravated?

**A.** Yes.

**Q.** Could you see, for example, a murder, a killing, in which there was perhaps a contract killing and there was torture involved in the killing on the one extreme, and at the other extreme a killing that took place in the heat of passion?

**A.** Okay.

**Q.** You can see those two different types of killings; correct?

**A.** Yeah.

**Q.** Would you evaluate those sorts of circumstances, the fact that one is a contract killing and involved torture on the one hand, and the fact that one was no torture and was done in the heat of passion on the other, in terms of figuring out for you whether the death penalty would be appropriate or not?

**MS. CLARKE:** Your Honor, that may be a misleading question because the heat of passion killing could be a manslaughter and not even be eligible for the death penalty.

**THE COURT:** Could you rephrase the question?

**Q. BY MR. CLEARY:** Certainly. You know from your prior service on the jury that you're going to get some guidance from the Court as to how you're going to make your decision ultimately in this case?

**A.** Uh-huh.

**Q.** And just assume with me now you have sat through the guilt phase and you have found the defendant guilty – let's take it away from this case. You sat in judgment in a different case and you found the defendant guilty of a crime that the judge told you is appropriate, the statute allows for the death penalty. Are you with me?

A. Yes.

Q. And then you would come back in for, as the judge described, the penalty phase, for the sentencing phase.

A. Uh-huh.

Q. And in that penalty phase and sentencing phase, you would be presented with evidence by the prosecuting authority, whoever that might be in the hypothetical case we're discussing, aggravating circumstances, circumstances they believe, the prosecuting authorities believe, would suggest that the death penalty would be the appropriate penalty. In that same proceeding, the penalty or sentencing proceeding, the defendant in our hypothetical case would but doesn't have to present mitigating circumstances suggesting that a life sentence should be appropriate and not the death penalty. And if you sat in two different cases like that and were presented two different sets of facts, one of which you heard aggravating circumstances suggesting that there was torture involved and it was a contract killing, and in the other case that you sat in judgment on, you heard that it was not a contract killing but rather was a crime of passion, a killing involving passion and no torture whatsoever. Do you think you might distinguish between those two cases you were sitting in judgment on and impose a death penalty in one and not the death penalty in the other?

MS. CLARKE: Your Honor, I hate to do it after that lengthy of a question, but I think that's the same problem.

THE COURT: Overruled.

PROSPECTIVE JUROR NO. 204: What does that mean to me?

Q. BY MR. CLEARY: You're allowed to answer the question.

A. To answer the question – I'm not comfortable saying yes or no. I mean, because to me each situation has got circumstances as you've described, each situation, and there's going to be information in each case that is going to be presented to the jury that's going to affect their decision. And I could see me have – I mean, I could see, depending on the information, being able in one situation to say vote yes for the death penalty and in another situation say no. But I think it depends on the information that's being presented to the jury in the individual case. I don't think it's something I can blanketly say, oh, yeah, in that case I'd do this, and in that case I'd do that. I don't think so because I think I would take it very seriously.

Q. Background, even in the hypotheticals I was doing, I didn't give you enough facts to make that determination?

A. Right. And I believe that's what would be expected if we got to that point in any case.

Q. That's absolutely right, and I'll get to that in just a minute. Would I be correct in saying, though, that the differences in the two circumstances, the hypothetical examples I gave you, are the sorts of circumstances you would sit and evaluate to determine in each of those cases whether the death penalty is appropriate or not?

A. I've never done that, but that's what I imagined it would be like.

**Q.** And I've given you a hypothetical involving the circumstances of the crime. I want to switch a little bit and ask you about the character or the personality and life history of the defendant. Are those the sorts of things, the life history, personality, and character of the defendant, the sorts of things you could see yourself also evaluating and determining and using to determine whether in the case in which you sit in judgment on the death penalty is appropriate or not appropriate?

**A.** I don't think so. I mean, I don't believe that that should enter into it. I mean, I would imagine that what we're going to talk about is the case and what led to the crime and that should be the things that are being presented.

**Q.** And when I said background and character of the defendant, what did you understand my question to mean?

**A.** Imagined you to say that they were born here and raised here and their parents were like this and that kind of thing.

**Q.** It was a very bad question on my part so let me get a little more concrete for you.

**A.** Maybe I'm being too creative.

**Q.** No, I think you interpreted the question correctly. I just asked a poor question. Let me make it a little more concrete rather than abstract for you. If you heard that as part of the background of the defendant you're judging in determining whether a life sentence or a death penalty is appropriate, if you determined that this defendant had killed people in the past and determined that as a kind of a lifestyle he had no remorse for any sort of harm that he's created for people, would you distinguish that person, in terms of deciding whether the death penalty is appropriate or not, would you distinguish that person from someone who had led an exemplary life for their whole life and never committed a crime, had done acts of good and charity throughout their lives, and then on one day and one day only snapped and committed this crime that caused you to be deciding their life or death. Could you distinguish between those two types of people in making the determination?

**A.** I could imagine that, yes, I would.

**Q.** Turn, if you would, to the previous page, page 27, question 107. It's a multipart question. And I want to focus you on the three top parts, three first parts of that. You're given several propositions about the death penalty, and you agree somewhat with each of those propositions. Can you tell me what you had in mind as you were filling out the question and selecting "agree somewhat" in each instance?

**A.** Well, like I said earlier with one of your other questions, I agree somewhat because I think the information that's being presented in the trial – I mean, can have effects on these decisions. Somewhat, yes. Yes, I believe in the death penalty somewhat. But if there's information that's being presented that's going to – I don't know how to explain it – that maybe influences you another way, for whatever it could be, then I guess I'm just leaving room there for – I don't know how to explain it – I guess for facts being presented, you know, that would affect your decision.

**Q.** So is it essentially that the propositions set forth here don't give you enough facts and circumstances to make a categorical decision?

**A.** I just think the death penalty, I believe in it, but I think it's a serious matter. I think that everything – I just don't think it's cut-and-dried, you know. If it was that simple, we probably, you know, we wouldn't leave it up to a jury. They'd have it in the law or something that if you did this, then you automatically get the death penalty. I don't know.

**Q.** In the last part of that question at the very bottom of the page, you say that you agree somewhat that a person's background does not matter. When you read that, were you thinking of the same background things you identified for me before, where they were raised, who their parents were, where they went to school, that sort of stuff; correct?

**A.** Yes.

**Q.** Turn, if you would, to the previous page, page 26. Question 105, you tell us that the death penalty serves the purpose of controlling crime. Can you tell us what you meant by that?

**A.** Just like an eye for an eye or a tooth for a tooth. Sometimes if the penalty is so severe, sometimes it stops people, I think, and obviously, in crimes of passion, those kinds of things it doesn't, but in some instances people think, well, if I'm going to have this kind of penalty, maybe I shouldn't do this.

**Q.** So is it your view that if the death penalty is imposed on a particular defendant or individual, that may deter other people from committing the same types of crimes?

**A.** Yes.

**Q.** We've been talking a lot about your view, your personal view of the death penalty. When you get to court, should you sit in judgment in this case and find yourself in the penalty phase here, you'll be given some guidance from the Court as to what factors to do this balancing, what facts and circumstances are, what should be material and considered in a meaningful way, considered by the members of the jury. Do you feel that you would be able to follow the judge's instructions in that regard?

**A.** Yes, I do. I wasn't sure of the process, but that's what I was hoping would take place for anyone, that they'd be given some guidance because we're kind of novices at being juries.

**Q.** If during the course of the penalty or sentencing phase you were presented with evidence that was deemed to be mitigating circumstances, and Judge Burrell told you you must consider those mitigating circumstances in coming up with your decision as to what the appropriate penalty would be, for example, in a hypothetical situation if the judge told you that you must consider if you find that the defendant was mentally retarded or that he committed the crime under duress, somebody forced him to commit the crime, or was part of a gang and he played just a very, very minor role, you must consider those in balancing and determining whether in this case the death penalty is appropriate, would you be able to follow the judge's instructions on that?

**A.** Yes, I would.

**Q.** And if you disagreed with what Judge Burrell instructed you, if you felt, for example, that it was irrelevant in your mind in your own personal view that the defendant had just a minor role among many people that were involved in the killing, could you nonetheless put your personal views aside and meaningfully consider that mitigating factor that Judge Burrell tells you to consider in determining what the appropriate penalty should be?

**A.** Yes, I can.

**Q.** Do you feel confident you can do that?

**A.** Yeah, I do.

**MR. CLEARY:** Thank you very much. I have no further questions.

**THE COURT:** Any questions? VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

**Q.** Good afternoon.

**A.** Good afternoon.

**Q.** My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And if you can hang in there with me, I'd like to ask you a few follow-up questions, if I could.

**A.** Okay.

**Q.** You mentioned to the judge, I think, when you were searching through your memory – been a long afternoon?

**A.** Yes, I apologize.

**Q.** When you were searching through your memory about what you knew about the case, you mentioned that you were aware that the cabin had been searched and that there were journals found in the cabin.

**A.** Journal is what I said.

**Q.** A journal?

**A.** I didn't realize there were journals.

**Q.** It could have been just me mishearing what you said. Did you know anything about the content of that journal?

**A.** No.

**Q.** Hear anything about that, anything come to mind as you sit there?

**A.** No, I have no idea what relevant –

**Q.** How important that is or how relevant that might be?

**A.** Yeah.

**Q.** You mentioned to us also that since Cal Expo – I guess it would be hard to miss that the cabin was being moved to Sacramento. What thoughts came to mind when you did hear that?

**A.** The TV just said that they felt it was important that the jurors see the cabin, but I don't know why.

**Q.** Did you have any reaction, just yourself, to that rather than what the TV may have suggested to you?

**A.** No.

**Q.** Just –

A. I just know the weather was bad, that kind of stuff.

Q. Okay. When you received your summons – I don't know if you have your questionnaire nearby.

A. Yeah, I do.

Q. Questionnaire and glasses. When you received your summons, at page 11 you mentioned that you sort of considered how you would feel if you were selected. Can you take us through some of those thoughts?

A. Page 11.

Q. I think it's page 11. Number 41.

A. Question 41?

Q. Yes.

A. Well, you'd consider what kind of – in fact, we've been talking about it in the jury room. What kind of effect that a trial of this length would have on your life and is it something that you can work into your life. And those are the kind of thoughts, well, what would I do at work, what would I do at home, those kinds of things.

Q. How did you resolve some of those thoughts?

A. Well, work is not – I have no solution for work. It's not my place to solve that problem. If I get called to this trial, that would be something that they'll have to deal with. I'm an accounting administrator for an accounting office and –

**THE COURT:** We don't want to know your employer.

**PROSPECTIVE JUROR NO. 204:** Okay.

Q. **BY MS. CLARKE:** We know, and we thought we'd keep it private.

A. Apologize. Anyway, that's something that they'll have to, I guess, deal with. At home, I'm concerned about transportation, et cetera, for my children, but those are – I have temporary solutions in my mind for that.

Q. Are those things you can work out?

A. Yes.

Q. Is that causing you any sort of level of anxiety right now?

A. No, it's not.

Q. Then when you wrote, you considered how you would feel when selected, how did that compare to today's discussion back in the jury room about surviving this kind of case, if I'm characterizing your thoughts well?

A. I don't understand what your question is.

Q. When you wrote about, I had to consider how I would feel if selected, you had some series of thoughts, I guess, about your family and then you had some discussion back in the jury room.

A. Others were discussing how it would affect their lives. I mean it hasn't changed. Is that what you're asking me? It's about the same. You know, I can work it out if I have to. It's, you know, anything with the longevity that the trial is estimated to take is going to have an effect, rightfully so.

Q. Is that something you can come to grips with okay?

A. Yeah, that's my nature. My makeup is if I have an obstacle, I figure out my options and my solutions and –

Q. And deal with the problem?

A. Right.

Q. You don't have a problem with that? You don't have anything you want to sort of tell us about and say I can or can't do something?

A. Not at this point.

Q. Okay. Well, I mean, you strike me as fairly strong and determined and can decide for yourself. If I could go to your feelings about the death penalty. You were asked a question at page 23, question 92, at the bottom of the page. How much would your religious, philosophical, or spiritual beliefs influence you if chosen. And you said I don't believe it would. Would you tell us a little bit about your beliefs?

A. My religious beliefs?

Q. Philosophical or spiritual. What beliefs were you thinking of that you felt like would not affect you?

A. I guess because I believe in the death penalty. I mean, that's about the only thing that I can think of that is in relationship to this case that I would think would have a bearing, I guess.

Q. Okay.

A. I have religious beliefs, but I can't say that I'm a strong practicing this or a strong practicing that.

Q. Sure. Does religion play at all into your beliefs about the death penalty?

A. No.

Q. I think you said that it really doesn't?

A. That does not.

Q. That's sort of a belief that you've developed over time?

A. Yes.

Q. Through the influence of friends and family or has that come about on your own?

A. No, I think that's my own belief.

Q. I think when the judge was questioning you, there was some question in your mind about how much leeway you would have or how much guidance you would be given.

A. Exactly. I guess because I've never been through that process, I'm assuming that there is guidance that's given you; you're not just kind of left out there to kind of figure it out. And I would, I guess, seek that guidance and take that guidance very seriously, because I think it's something not to be taken lightly.

Q. There's really no bottom line guidance other than that the Court can give some assistance with saying that there are aggravating circumstances and mitigating circumstances that the jury may or may not find and that the jury should balance, but the bottom line, and I think as the judge indicated, it becomes a very individualized decision. Can you help us understand what you would bring to bear on that decision?

**A.** Honestly, I don't know. Because I don't know a lot about this trial, and as I said earlier, I think everything is very individual and each case should be considered individually. Would you want me to give you a hypothetical situation where I would think that the death penalty would apply?

**Q.** Sure. When you said on page 28 that it may or may not be justified, maybe that could give you some guidance. What were you thinking then? Up at question 108, do you see the three checked off?

**A.** Uh-huh. I guess, I think that the death penalty applies when, this word hasn't been used, but I guess when rehabilitation is not a factor. When it's beyond that. I guess when the crime is so horrendous and rehabilitation isn't, to me, a factor that enters into it, then yes, I believe that the death penalty would be considered.

**Q.** And when you talk about rehabilitation, can you help me understand what you mean?

**A.** Well, I guess the rehabilitation would be, I guess being in prison with hopes of releasing that individual to society. So that's what, I guess, if you can provide whatever it is to make that person a productive citizen again, that's, I guess, what I mean by rehabilitating them.

**Q.** How does it play into your beliefs when you consider that the options are either the death penalty or life in prison without possibility of release? And as the judge said to you, in the federal system, life means a sentence of the rest of your life in prison, no release.

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

**Q.** Is that because you haven't thought about it?

**A.** I really haven't given it a thought, you know.

**Q.** What comes to mind?

**A.** What comes to mind? Honestly, I don't know. I don't know what the deciding factor is. If it's life imprisonment and not life. I don't know. I haven't given that a thought.

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

**THE COURT:** Yes.

**MS. CLARKE:** Thank you very much. (Prospective juror number 204 left the courtroom.) (Prospective juror number 205 entered the courtroom.) VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 205th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

**A.** Well, my employer doesn't pay me for being here, and I have a son who is in law enforcement.

**Q.** Let me have you use the microphone so your voice is amplified a bit more than it is. I heard everything you said. You first stated that your employer won't pay you for being here?

**A.** No.

Q. And then you indicated that you have a son in law enforcement?

A. Yes.

Q. What else do you have to say or is that it?

A. That's it.

Q. You heard the trial schedule I contemplate using. That won't help your job situation?

A. I probably could work in the afternoons, yes.

Q. Would that reduce the hardship for you?

A. It may, yes.

Q. Only you can tell us whether jury service on this case will produce, in your life, an unbearable hardship. If not, then I'll ask you about the other matter you raised.

A. No, I don't think so. I don't think it would be a hardship financially, no.

Q. The schedule that I contemplate using would probably allow jurors to leave the pick-up and drop-off point right around 1:30. Then that means that you could go to work at that time. Do you have that type of schedule in mind when you indicate that you may be able to reduce the hardship you think this case will cause you?

A. I'd have to discuss it with my boss, but I don't think it would be a problem as far as my working those hours.

Q. Could you pull that microphone a little bit closer to yourself? Okay. Tell me why you mentioned your son's occupation as a possible reason why you thought you would be excluded.

A. Well, he, you know, he's in law enforcement, he's a sheriff. I just thought that, you know, that may have something to do with it. Also, I have a husband who works for a national laboratory who works on warheads. You know, I don't know if that's a conflict or not. I mean, I don't have anything to do with it, but my husband does. Like I say, I don't know.

Q. Okay. Have you had discussions with your son about matters that you believe are involved in this case?

A. No.

Q. Do you believe that your son will be disappointed in you if you vote a particular way in this case?

A. No, not at all.

Q. Okay. Did you fill out the jury questionnaire at Cal Expo?

A. Yes, I did.

Q. Since that time, have you been exposed to information concerning the case?

A. No.

Q. Have you had any discussions with anyone or overheard other people discussing matters involved with this case since Cal Expo?

A. Yes.

Q. And tell me about those.

A. Just the fact of people at work talking about Mr. Kaczynski's cabin being transported out here. But other than that, that's all.

**Q.** Did that cause you to think any particular thing when you heard that information?

**A.** No. I just kind of sat there and didn't say anything.

**Q.** I want you to direct your attention now to all the information you can remember hearing or reading about this case even before Cal Expo and provide us with as many details as possible concerning that information.

**A.** Probably the first thing I remember was a picture in the newspaper of a person they thought was the suspect. Second of all was the bombing at the parks and recreation or parks and forestry. And other than that, that's all I know about it.

**Q.** Prior to Cal Expo, did you receive any information about a cabin?

**A.** No.

**Q.** You never heard about the cabin before then?

**A.** No.

**Q.** Has the information you've received about this case resulted in your formation of any opinion or preconceived notion as to Mr. Kaczynski's guilt or innocence?

**A.** No.

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

**A.** Yes.

**Q.** What does that mean to you?

**A.** That means that I have no opinions right now, and I would listen to all the testimony before I made a decision as to what I believed.

**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.** Yes.

**Q.** What does that mean to you?

**A.** That means that I have made no decision prior to the testimony that will be given that Mr. Kaczynski was or is guilty of this crime.

**Q.** That doctrine, the presumption of innocence doctrine, it uses the word presumption for a reason. Because a criminal defendant is, in fact, presumed innocent unless and until, should it occur, the government proves every element of the offenses charged against him beyond a reasonable doubt. If the government fails to meet that burden, then you must enter a not guilty verdict in favor of the defendant. Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski the full benefit of that doctrine, the presumption of innocence?

**A.** No.

**Q.** Do you have the personal ability to leave outside the courtroom the information you received about this case and to allow Mr. Kaczynski to be tried in this courtroom and you will find him guilty or not guilty based upon the evidence that is presented solely in this courtroom?

**A.** Yes.

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

**A.** No.

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

**A.** I believe in the death penalty, yes.

**Q.** You thought for a while, and that's permissible. And I understand that I'm asking you questions that perhaps you haven't been required to answer outside this courtroom, and the parties may ask you similar questions. And it is appropriate to take your time when you're responding to such questions because we really want to know what's in your mind. In fact, during this questioning process, if your memory is jogged about something, you can volunteer that information so that we can make sure we have your present day thinking. What were you pondering before you responded to the question?

**A.** Whether I could make the final decision for that. I believe in it, but there again, having to tell somebody that they would be put to death because of a crime, not having to have to make that decision before, it's questionable. Like I say, I believe in it, but whether I could actually make that final decision, I don't know. I've never been put in that position before so it's kind of hard.

**Q.** Well, the question I asked you perhaps wasn't a fair question because it almost forced you to take sides. But you don't have to. We're not looking for jurors that are for or against the death penalty. We are looking for jurors that are willing to meaningfully consider three sentencing options if this case reaches the sentencing phase. And that will be a sentence of death, a sentence of life in prison without the possibility of release, or some lesser amount of time in prison. Is there anything about your belief system in the death penalty that would interfere with your ability to meaningfully consider all three of those sentencing options?

**A.** No.

**THE COURT:** The parties may conduct examination. VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

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

**A.** Okay.

**Q.** I want to go through with you the hardship. Because when you filled out your questionnaire, I know you were quite worried about your job. Do you work full time at your employment?

**A.** Yes, I do.

**Q.** Is that on a salary basis?

**A.** Yes.

**Q.** What do you work, eight hours a day, five days a week?

**A.** Well, I'm considered a manager so it's more hours than just eight hours a day or 40 hours a week. It's how ever long it takes to get the job done.

**Q.** How many hours would you say you average per day?

**A.** I probably work nine and a half, ten hours a day.

**Q.** And are you the only one that does the type of work you're doing because you're the manager?

**A.** No.

**Q.** You have other people that do the same type of work under you?

**A.** Yes.

**Q.** How far to your home to the staging place, how long does it take you to drive that?

**A.** An hour.

**Q.** And then about how far from that to your job from the staging place?

**A.** To my job?

**Q.** Yeah.

**A.** About 35, 40 minutes.

**Q.** Do you understand that as of now, the trial is expected to start about the end of this month, the 29th of December. It's projected to last anywhere from two to four months. Judge Burrell expects to have the trial run from 8:00 until

1:00 Monday through Friday for that time period. And you would have to report to a staging place at 7:00 in the morning, an hour ahead of time, and would be released from the same place about a half an hour later. I'm sorry. About

1:30. After you get out there. And I just wanted to give you that and ask you whether you think that you'll be – whether – because you were worried before about your financial hardship, whether you can now work it out with your job.

**A.** Well, like I said, I didn't know what the hours were going to be. I probably could work something out with my boss. However, right now is a bad time of the year because November 30th was the end of the fiscal year and December 31st is the end of a – our calendar year. So it's two months of back to back closings which is a rather hard right now.

**Q.** Well, you wouldn't have to worry about the November one, you'd have to, I guess, just worry about the December. And I think the schedule, the trial would start on the 29th, 30th, and 31st. And then we'd go into the regular schedule. I guess the only concern I had was whether – and only you know this – between getting up in the morning, driving to the staging place, coming here, sitting for five hours, returning to the staging place, driving to work and then working, are you going to be able to make sure that you can, when you're in court, you'll be able to concentrate and give us your full focus for that amount of time? I mean, you're the only one that knows that.

**A.** I believe I could.

**Q.** Okay. Now, on the question of whether you're a proponent or opponent of the death penalty, as I understand it, you are a proponent in the sense that you think there should be a death penalty in our society; am I correct on that?

**A.** Correct.

**Q.** And if you were voting on it in the booth or if you were a legislator voting on whether there should be a death penalty, you would vote for a death penalty?

**A.** Yes.

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

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

**Q.** Maybe Judge Burrell has it.

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

**PROSPECTIVE JUROR NO. 205:** Yes.

**Q. BY MR. DENVIR:** Now, you were asked a number of questions from pages 26 through 28 on about the death penalty. And I'd just like to go over those with you if I could just to see if I understand. You said what your opinions and belief about the death penalty are, that it should be an option that should be considered in any criminal case. What were you thinking then? Did you mean any criminal case or any – was there a particular kind of case?

**A.** Well, I would think of – well, not like misdemeanors or anything like that, but I would think that any heinous crimes like that would be considered.

**Q.** And you said the basis for your opinion was: I don't feel that anyone has a right to take another person's life.

**A.** Correct.

**Q.** Again, are we talking about your opinions as to what role the death penalty plays in society? Is that what you were thinking when you were answering these questions?

**A.** Yes.

**Q.** Because the question – and then if you go to the next page, you expressed your – some opinions that you agree somewhat with the proposition or the statement anyone who plans or commits a murder should get the death penalty. You strongly agreed that anybody who deliberately murders two or more persons should get the death penalty, and you strongly agreed that anyone who commits an act of terrorism in which someone dies should get the death penalty.

**A.** Correct.

**Q.** And I guess – is the death penalty something that you've given a lot of thought to or had you prior to Cal Expo or coming here?

**A.** No. Not until Cal Expo.

**Q.** As Judge Burrell told you, Congress has decided that as to two of the charges that were brought against Mr. Kaczynski, which is mailing or transporting a bomb with intent to kill someone and having it actually go off and kill someone, that one penalty could be the death penalty, another one could be life in prison without possibility of release. And in the federal system that means what it says. There's no parole. So life in prison means just what it says. It's a little different than the state system. And the question is if you were to sit on this jury and were to find Mr. Kaczynski guilty of those particular crimes, you would have to be willing to consider not just the death penalty as a punishment for that but also life in prison without possibility of release. Do you feel that's something you could do?

A. Yes.

Q. Because people have some ideas about, you know, the death penalty in the abstract, and then there's a question about if it comes down to an individual case and how you feel, those views you have might impact your ability to be a juror.

A. Well, I haven't heard any of the evidence or anything, so I can't really say, you know, until I hear that.

Q. Well, you understand that if you were to sit as a juror in a case like this, there would be these two separate proceedings in effect. Have you served as a juror before? I don't recall offhand.

A. Yeah, in municipal.

Q. Okay. The first one would be somewhat like your previous jury service. In a criminal case it would be a proceeding where the prosecution puts on their case, any evidence that they have to establish guilt, the defense has an opportunity to present any evidence they would like to present, you'd be instructed by Judge Burrell as to the general law and what the crimes consisted of, and then you would determine whether the prosecution had met its burden of proving guilt beyond a reasonable doubt. And I think you've done that before?

A. Yes.

Q. Normally, as before, if you find someone guilty, the judge would do the sentence, but this is different because it potentially carries the death penalty, and therefore the same jury that would find guilt, if it did find guilt, would then have to also determine sentence in the second proceeding. And I guess you have views about the death penalty which we've kind of discussed. And I guess my question was if you participated in that first part, the guilt or not guilt part of the trial, and found the defendant guilty beyond a reasonable doubt of mailing a bomb with an intent to kill and actually killing someone, as you started the second proceeding, would you be leaning towards the death penalty at that point just based on having found him guilty of that kind of crime?

A. No.

Q. No. Okay. Because what the judge would tell you you have to be able to do is you would have to be able to fulfill your oath as a juror, you would have to listen to the evidence the prosecution would put on in the second phase, which might be more information about the crimes, it might be something about Mr. Kaczynski. You'd have to hear what the defense put on. And, of course, the prosecution evidence would be what they felt pointed to death as the solution, and the defense would be pointing out evidence maybe about Mr. Kaczynski or the crimes that they felt meant that you don't need to impose the death penalty; life in prison without possibility of parole is sufficient. And as a juror, what you'd have to be willing to do and able to do is consider the evidence on both sides and actually meaningfully consider both of those penalties, you know, as something that you might vote for after you've heard it all and kind of said, no, I think this is the right one. And I guess I need to know, in light of your death penalty views in the abstract, whether you feel you could do that.

A. Yes, I could.

**MR. DENVIR:** You could. Could I have just one moment, your Honor?

**THE COURT:** Yes.

**MR. DENVIR:** Thank you very much. VOIR DIRE EXAMINATION  
**BY MR. LAPHAM:**

**Q.** Good afternoon.

**A.** Good afternoon.

**Q.** My name is Steve Lapham. I'm one of the prosecutors on the case. Mr. Denvir covered most of the ground that I need to cover. I just want to ask you a few questions. And correct me if I've got the wrong impression. We were discussing your views on the death penalty. You generally believe in the death penalty. Do you have some concerns that you yourself might be able to impose the death penalty if called upon to do so?

**A.** I don't believe so, no.

**Q.** I may have gotten it wrong. It appeared from one of your answers that you were concerned whether or not you yourself would have the ability to do that.

**A.** Well, like I said, never having to do it before, you know, but like I say, I haven't heard any evidence, I don't know, you know. I believe that I could make a fair decision. I don't think I would have a problem with it.

**Q.** And I'm not really asking whether you could be fair in the matter at this point. I'm just asking if there's anything about the prospect or possibility of sending another person to his death would impair your ability to make a decision?

**A.** No.

**MR. LAPHAM:** Okay. That's all I have. Thank you.

**THE COURT:** Thank you. (Prospective juror number 205 left the courtroom.)

**THE COURT:** That's all the jurors we called in for the afternoon. Maybe we should discuss the status of the selection process. By my count – I asked my deputy clerk to show you the list that the Court has created of those individuals that we think are eligible at this point. And the count as of the commencement of trial today was 72. I made a ruling which eliminated four jurors. That would change the count to 68. I don't remember how many jurors – go ahead and tell me, Ms. Clarke.

**MS. CLARKE:** There are three government challenges pending now, I think.

**THE COURT:** You're right.

**MS. CLARKE:** And three – are there not three defense challenges pending. And there's some more to be filed tomorrow.

**THE COURT:** Are there three defense challenges pending?

**MR. DENVIR:** Yes, your Honor. When the government filed those three, we filed three at the same time. I don't remember the numbers offhand.

**THE COURT:** I didn't receive those.

**MS. CLARKE:** Your Honor, I think I've got the numbers.

**MR. FRECCERO:** I have the numbers. Your challenges? 124, 1 –

**MS. CLARKE:** 152.

**MR. FRECCERO:** – 52 and 155; is that correct?

**MS. CLARKE:** Right. And the government has pending 144, 146, and 157.

**THE COURT:** I haven't seen the defense's challenges yet. Well, it appears that in light of those challenges, we should plan on a full day tomorrow?

**MS. CLARKE:** I think so, your Honor. By my count if all of the challenges go that are pending, we would be through juror 168 with 52, and then we still are 18 shy of our 70. And there are going to be challenges filed tomorrow that will affect a large chunk of that 52.

**THE COURT:** That indicates that we should plan on doing this all this week then?

**MS. CLARKE:** Our projection is through Wednesday, and maybe we should re-visit it tomorrow to see where we are. And I think we'll be filing, by the end of the day tomorrow, the challenges, the rest of the challenges from last week.

**THE COURT:** Okay. All right. We're having difficulty reaching one juror, that's juror 98. I believe the parties reminded me that we were waiting for that juror to respond to an inquiry as to whether jury service would affect some aspect of his employment. When I had my jury administrator to try to call him, we found out that the number we were given was a pager number. He didn't answer the page.

**MR. DENVIR:** He knew what it was.

**THE COURT:** Then we called his place of – my jury administrator called his place of employment, and it is difficult to find out his whereabouts by contacting that place because there are a number of employment entities doing the same type of work that he is engaged in at that location. So it would take them a number of hours to try to figure out what outfit he works for. I don't know the exact outfit that he works for. So I'm just letting you know.

**MR. DENVIR:** Your Honor, we're prepared to stipulate to excuse that juror. He had double problems, he had to worry about getting paid after the first of the year. I don't know how the government feels.

**THE COURT:** We have taken the step of summoning him again and asking him to fill out another questionnaire that would answer the questions we asked him to respond to, but I will hear the government's response to what you've just said.

**MR. LAPHAM:** Your Honor, it may come to that that we have to stipulate to excuse him, but I don't think we need to make that decision at this point. If he responds, then we'll have our answer. If it comes to a point where he just simply hasn't responded, we have to move on.

**THE COURT:** Okay. Any reason why I shouldn't recess the proceeding until tomorrow morning?

**MS. CLARKE:** No, your Honor.

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

**THE COURT:** We're in recess. (Court adjourned at 5:08 p.m.) —oOo— IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

– oOo –

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

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UNITED STATES OF AMERICA, ) ) Plaintiff, ) ) vs. ) No. Cr. S-96-259 GEB )  
THEODORE JOHN KACZYNSKI, ) ) Defendant. ) -----

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REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 15, pp. 2845-3073  
MONDAY, DECEMBER 8, 1997

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Reported by: KELLY O'HALLORAN, CSR No. 6660 DENNIS MCKINNON, CSR  
No. 2223 CATHERINE E.F. BODENE, CSR No. 6926

**A P P E A R A N C E S** For Plaintiff UNITED STATES OF AMERICA: OFFICE  
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FICE OF THE FEDERAL DEFENDER 801 "K" Street, Suite 1024 Sacramento, CA  
95814 By: QUIN A. DENVIR Federal Defender, Eastern District of California JUDY  
CLARKE Executive Director, Federal Defenders of Eastern Washington and Idaho  
Also Present: TERRY TURCHIE, Assistant Special Agent, F.B.I. Unabom Task Force  
ROBERT ROLFSEN, JR., Special Agent, F.B.I. DENISE DE LA RUE, Attorney at  
Law

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INDEX OF EXAMINATIONS By Page Voir Dire Examination of Prospective Juror  
No. 32 The Court 2855 Ms. Clarke 2863 Voir Dire Examination of Prospective Juror  
No. 147 The Court 2867 Mr. Denvir 2872 Mr. Cleary 2885 Voir Dire Examination of  
Prospective Juror No. 199 The Court 2890 Mr. Denvir 2898 Mr. Lapham 2910 Voir  
Dire Examination of Prospective Juror No. 168 The Court 2950 Mr. Cleary 2955 Ms.  
Clarke 2962 Voir Dire Examination of Prospective Juror No. 193 The Court 2977 Ms.  
Clarke 2985 Mr. Lapham 2989 Voir Dire Examination of Prospective Juror No. 201 The  
Court 3001 Voir Dire Examination of Prospective Juror No. 203 The Court 3007 Mr.  
Denvir 3014 Mr. Freccero 3023 The Court 3027 Voir Dire Examination of Prospective  
Juror No. 204 The Court 3029 Mr. Cleary 3035 Ms. Clarke 3047 Voir Dire Examination  
of Prospective Juror No. 205 The Court 3054 Mr. Denvir 3060 Mr. Lapham 3068

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