

Jury Selection Day 16

Dec. 9, 1997

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

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THE CLERK: Court is now in session.

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

MR. DENVIR: Yes, Your Honor.

MR. LAPHAM: Yes, Your Honor.

THE COURT: Okay. Before we left court yesterday, the defense proposed to stipulate that jurors 214 and 215 could be excused for hardship reasons. The government was asked to look into the matter and inform the Court of its position on the issue, and the government's communicated its agreement to one of my lawyers yesterday evening that those jurors could in fact be excused. So I have excused those jurors. I thank you for looking at the matter. Both of those jurors would have been required to travel considerable distance to reach this courthouse. One of the jurors was going to be traveling from Red Bluff, which is quite a few miles from this area. It is my understanding that this morning the parties notified my secretary that they have agreed to excuse jurors 208, 209, and 213. Is that correct?

MS. CLARKE: That's correct.

MR. FRECCERO: That's correct, Your Honor.

THE COURT: It's my understanding 209 is here; right?

THE CLERK: Yes.

THE COURT: Okay. I'm going to invite 209 into the courtroom. I'd like my deputy clerk to bring that juror in and we'll do – if the marshals can't transport that juror out, I will have my secretary take the juror back to the pick-up spot so she doesn't or he doesn't have to stay here until 12:00 o'clock. Also, the jury administrator informed me that juror 233 – I am going to interrupt my communication to you. (Prospective juror no. 209 entered the courtroom.)

THE COURT: I invited you in. You don't have to sit. I just wanted you to understand we're going to excuse you from further service on the case. We just found out this morning, at least I did, that you were going to be excused. I wanted you to understand that if we had known earlier, we would have stopped you from your travels and we wouldn't have interrupted your day. The parties are extremely busy in this case, it involves many issues, and I think they're probably working almost around the clock. I'm doing a lot of work myself. And that's why it's a last-minute deal for us to figure this out. And I'm sorry that we interrupted your day. I will either have the marshals or my secretary take you to the point where you were picked up so that we don't interrupt your day needlessly.

PROSPECTIVE JUROR NO. 209: Thank you.

THE COURT: Thank you. I was discussing juror 233. That juror has prepaid vacation plans from December 9th through December 22. I think my jury administrator

told me late last night that the juror is, in fact, leaving in connection with the vacation, if I'm not mistaken, today is the 9th.

MR. LAPHAM: That's correct.

THE COURT: I don't see any choice but to excuse the juror.

MR. DENVIR: We would stipulate, Your Honor.

MR. LAPHAM: Yes, Your Honor.

THE COURT: That juror is excused. I'm going to invite the – that was 233.
(Prospective jurors enter the courtroom.)

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

THE COURT: Good morning and welcome to the District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is Shani Furstenau. She's my courtroom deputy clerk. Next to Miss Furstenau on the same platform below me is the certified shorthand reporter who will report this proceeding. His name is Dennis McKinnon. 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 are performing an important function in our justice system. Under the principles of our constitutional democracy, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as you making themselves available for jury service on this case. The voir dire questioning process is an essential way of insuring 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 answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions. The voir dire 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 of the prospective jurors will be assembled later for further questioning. Those required to participate in the group questioning will receive notice as to when that will occur. Our objective is to obtain a fair and impartial jury that will decide this case on the evidence that is presented to them in this courtroom and the law that I will give them during the trial. I have decided to do individual questioning in part because the parties have requested it, and because there has been some publicity about this case. During the questioning, we'll cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case. The law requires me to ask you questions about the publicity to which you have been exposed in a case that has received widespread news coverage. Prospective jurors do not have to be unaware of pretrial publicity to be eligible jurors in the case, but we do have to know the extent of the publicity to which prospective jurors have been exposed so that the Court is provided enough information to objectively assess the impact that information could have on a juror. I will also provide you with the opportunity to explain whether you personally believe that the information has had any effect on your ability to be a fair and impartial juror. The defendant has been charged with transporting and mailing

explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses, and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence. I should tell you that life in prison under the federal system means just that. If you receive a life sentence in Federal Court, you are, in fact, confined to prison for the rest of your life. The sentencing determination is made during the second phase of the trial referenced as the sentencing phase. If there's anything about the charges that causes you to prefer not being a juror in this type of a case, please indicate that by raising your hand now. There's no response. The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur like any other criminal trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations, nothing more. Mr. Kaczynski is presumed 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 sentence. 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 question process about your views on the death penalty. We may ask questions of additional areas too. During the questioning we'll refer to you by your randomly selected number as a juror rather than your name. This is because I've decided to use an anonymous jury in this case as I told you in a previous communication. I'm doing that to protect juror privacy. 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've been excused from service on this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended or you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror but don't tell them anything about the case until after you have been excused by me. Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If

someone should try to talk to you, please report to it me immediately. Fourth, do not read any news or other articles or listen to any radio or television report 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. 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 and listening to future news accounts during the time period in which you are involved with this case. Justice requires strict adherence to this prohibition. Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me. The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem. There's no response. I contemplate observing the holiday season as follows: We'll 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's no response. Please raise your hand if you do not understand the following: Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty. There's no response. If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this. There's no response. Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There's no response. If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions, whether you agree with that law or not. If you have any beliefs that would 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 some questions in the

area that you have indicated a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this can't occur, let me know so I can determine whether the matter should be covered in a more private setting. This approach is taken because the trial should be open unless I have a legitimate reason to close any aspect of it. I'm now going to have my deputy clerk to escort all but the earliest randomly selected juror to another room and place the remaining juror in the witness stand. (Prospective jurors leave the courtroom.) (Prospective juror number 34 remains in the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Is this your jury questionnaire?

A. Yes.

Q. Okay. I'm going to ask you questions from the podium. It will just take a moment to position myself there. You're the 34th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. No.

Q. Okay. I'm going to ask that you make a slight adjustment so your voice is amplified just a bit more by the microphone. Did you appear at Cal Expo and fill out the jury questionnaire that I showed you?

A. No.

Q. Did you receive any communication from me asking you to go to Cal Expo?

A. The letter I received was last Saturday. The first one did not get to me.

Q. I see. What information have you received which you assume is associated with this case? Just tell me all the information in as much detail as you possibly can.

A. Information such as from the media and –

Q. Any source.

A. Bits and pieces from news reports, depending on if I'm watching the news for that evening. I don't read the newspaper regularly.

Q. Let me ask it a different way. I want you to assume that you don't know that I know something about the case. And that I want you to tell me as much information as you can tell me about the case thinking that I'm someone who's interested in knowing as much as I possibly can about the case.

A. Okay.

Q. Okay?

A. That there's a man accused of mailing some type of deadly explosives to various individuals. The ones I remember are people on university campuses, I believe Berkeley, was a professor at Berkeley was one of them. I'm not positive. That people have died from opening these packages, and the accused was found in Montana. It's been a few years. I don't know exactly how many. That officials have been trying to find this person that they labeled the Unabomber, and I know that security in airports has been stepped up within the last few years, especially during holidays, for fear that something might get sent through an airport. I know that the manifesto was published

in the newspaper, in a newspaper, I don't know exactly which one, in hopes that it would help bring him out, to figure out who he is. I know that he was a, I believe, a graduate student at Cal Berkeley. They found him in Montana living in a secluded area. I believe his family, his brother, is the one that let officials know that he may be the Unabomber. His house or cabin is being driven over here in a truck or van or something, and all his belongings are in it. Let's see, I knew I shouldn't have stopped. I know that – well, I don't know. I heard that he, the accused, doesn't want to go under some kind of psychiatric evaluation. I don't know that I heard that. And the question of his sanity, there's – it's being questioned if he's a sane person or not. I think that's all.

Q. Okay. Did you receive or hear of any information concerning a search of the cabin?

A. I heard on local news, you know, they kind have been mapping out the trail – not the trail, but how close the van is getting to the designated area, I assume Sacramento, that designated area. I haven't read anything.

Q. Other than transporting the cabin from another state to this state, have you received any information as to whether or not the cabin was ever searched?

A. No.

Q. Has the information that you received concerning the case resulted in your formation of any opinion or preconceived notion or suspicion as to Mr. Kaczynski's guilt or innocence?

A. Most of the information I received is assuming that he – that he did commit those crimes. I haven't received any information that would show otherwise. So I can't say too much, right? I mean –

Q. You can say everything.

A. I mean –

Q. When you say you can't say too much, the answer is yes you can't say too much.

A. I mean, from the information I have, it's although you're innocent until proven guilty that he has committed these crimes and –

Q. Okay. We are trying to get all prospective jurors to be honest with us and tell us everything that's on your mind. If that requires you to stop and think for a while before you respond to a question, that's appropriate. Just because you're in this courtroom setting, it's formal, people are watching you, that shouldn't take you out of that type of a role where you are really deliberate in your thinking and your responses. The information you received then does cause you to have an opinion concerning Mr. Kaczynski's guilt?

A. Yes.

Q. Are you in a position to tell me the opinion or have you already stated it from your perspective?

A. My last comment I think.

Q. You stated it. How strongly are you committed to that opinion?

A. Like I said before, the information, the bits and pieces that I've received, are one side of the story. I can't say that I've heard anything otherwise, or that I heard or read anything that would be in favor that he wasn't guilty.

Q. Okay. Sometimes we have opinions about matters and they are opinions that we're not committed to, and there other times we have opinions about matters and we may have a certain degree of commitment to that particular opinion. Are you in a position to evaluate this gentleman? That may not be clear. You don't have to respond to questions that aren't clear. If I ask you a question that's not clear and the parties ask you a question that's not clear, you don't have to respond to that question. You can tell us it's not clear; you don't understand some aspect of it. But are you in a position to tell me how strongly you are committed to the opinion you have?

A. I have to honestly say I'm not committed because I don't – I haven't heard both sides of the story.

Q. Okay. If you were selected as a juror in this case, are you capable of, based upon how you know yourself, of putting aside the information you received about this case and leaving that information outside the courtroom and making a determination as to Mr. Kaczynski's guilt or innocence based solely on information you receive in the courtroom?

A. Yes.

Q. You could do that?

A. (Indicates in the affirmative.)

Q. Do I have your assurance that if you are selected as a juror in this case, Mr. Kaczynski will begin this trial in your eyes with the full benefit of the presumption of innocence doctrine?

A. Yes.

Q. What does that mean to you?

A. That what I just told you earlier about him, everything pointing towards him guilty, that I would have to – I mean, I would have to assume that he's innocent and hear what was presented in court and base my decision on that.

Q. You almost defined the doctrine. That's pretty close to it. You would presume that he is innocent, and all criminal defendants under our justice system are entitled to the full benefits of that doctrine. And there's nothing that deprives him of the benefits of that doctrine, and you would presume Mr. Kaczynski is innocent unless and until, should it occur, the government proves every element of the offenses charged against him beyond a reasonable doubt. And if the government fails to meet that burden, you would have to find Mr. Kaczynski not guilty. Do you have any problem with that doctrine?

A. No.

Q. Anything about your belief system that would make it difficult for you to do that?

A. No.

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

A. No.

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

A. It's not one of those things I think about often. I wouldn't consider myself for the death penalty.

Q. You wouldn't consider yourself for the death penalty?

A. No.

Q. We're not looking for jurors that are for or against the death penalty. We're looking for jurors that are willing to meaningfully consider three sentencing options should this case reach the sentencing phase. And that would be the sentencing option of death, the sentencing option of life in prison without the possibility of release, and the sentencing option of some lesser amount of time of incarceration. Is there anything about your views on the death penalty that would interfere with your ability to meaningfully consider all three of those sentencing options?

A. I don't – the life in prison and the death penalty I – I don't know. I don't know if you need a yes or no answer. I – I don't know if something would interfere or not. I don't, based on my personal beliefs and the fact that I consider myself a law-abiding citizen, but if that's the case, and the law says this person should be sentenced to the death penalty, I kind of operate under the assumption that two wrongs don't make a right. I don't know if I'm chosen and I go through the whole process and listen to all this, would I be able to give that sentence. I don't know.

THE COURT: Okay. I am going to allow the parties to conduct examination.
//// VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good morning. My name is Steve Lapham. I'm one of the prosecutors in the case. Do you still have your questionnaire with you?

A. No.

Q. You've filled out your questionnaire yesterday; is that correct?

A. Yes.

Q. Okay. And in your questionnaire, you indicated that you have difficulty being a juror because of your school, is that correct, you said I can't do it?

A. Oh, because of school and work, yeah.

Q. Right. You said you can't do it because you have school?

A. I just assumed it would be a morning to night kind of thing, but yes, I am a student and I did indicate that.

Q. Does the trial schedule that the judge gave you take care of that problem?

A. Kind of it does.

Q. What do you mean?

A. I'm a student, I'm also a track coach at –

Q. You don't have to say where.

A. So I – you said 8:00 to 1:00 o'clock. Track practice is at 2:00. I don't know how long you keep us around here afterwards, so it would – it's not – it wouldn't be as bad as I thought.

THE COURT: Let me ask her a question. I plan on stopping the trial promptly at 1:00 o'clock. That means that the jury would be transported by the marshal right around

1:00 o'clock. You would be taken to the drop-off point probably between 1:15 and 1:30. So by 1:30, you should be free to travel to whatever destination you're referencing.

Q. BY MR. LAPHAM: Okay. That takes care of your track coach problems. Do you also have other school obligations?

A. Actually I'm a student in the evening.

Q. In the evening?

A. And I teach in the evening.

Q. So that would fit in well with our trial schedule?

A. Yeah.

Q. Okay. Let me ask you about your views on the death penalty. This is not an issue you've thought very much about?

A. No, not at all.

Q. You indicated in your questionnaire that you are religious. And again, you don't have to indicate what religion that is, but your religion teaches you against the death penalty, that it's not – the death penalty is not appropriate?

A. To kill another human being.

Q. How does that play into your feelings about the death penalty?

A. It plays, I'd say, a large part. I'm not a devout person in my religion, but I try to, you know, go by the basics, you know, of it, and it plays a part. I haven't put a lot of thought into it, but when I do think about it, that's a red flag that goes up that I've been taught you don't kill another person.

Q. You have indicated in your questionnaire, and I think it's question number 124 at page 33, you said I could not sentence him to the death penalty. Could you tell us what was going through your mind when you wrote that?

A. At the time because of the previous questions about my philosophical and religious beliefs, I said that I couldn't based on what I believe in or what I've been taught.

Q. The one thing that – you understand the law, this has been debated in our society about the death penalty, and that debate has essentially been resolved by Congress. For our purposes the debate is over. In other words, the death penalty is the law. And if you were seated as a juror, you would be asked to follow that law in appropriate circumstances. But the law doesn't require you to give up your convictions and your beliefs. The law would never ask you to become a juror if becoming a juror would violate those convictions. You follow that so far?

A. Uh-huh.

Q. The question is, if you become a juror in this case, you would be asked to honestly consider the death penalty as one of the options in this case. And the question is, could you consider imposing the death penalty in an appropriate circumstance?

A. No.

Q. And why is that?

A. Based on what you just said, that it's the law, the law doesn't ask you to give up your moral convictions. To me, sitting in jail for the rest of your life is – that's plenty as far as – death is – that to me, that's not something that I – that I have the right to decide, that somebody – that somebody's life should be ended.

Q. Knowing your views on the death penalty, and knowing that life in prison in the federal system always means a life sentence, no possibility of parole, would you automatically vote against the death penalty as an option regardless of the facts and circumstances of the case?

A. Can you repeat that one more time.

Q. Given your beliefs about the death penalty, would you automatically vote against the death penalty regardless of the facts and circumstances of the case?

A. Yeah, if – yeah.

Q. You thought about that a long time.

A. Because I – because I know it's difficult for everybody, but it's a two-sided thing that I'm – you know, I am a responsible person and things that I'm asked to do, I feel I do them as best as I can. And if I were asked to do that, I don't – I'm sorry. I don't – I don't know, I don't think that I could.

Q. I just want to explain one other thing to you. The law wouldn't direct you, the judge would never direct you to vote for the death penalty or against the death penalty. The decision would be yours. But if you take the oath to become a juror, you would have to swear that you would honestly consider that as one of the options, and what I'm hearing you say is –

A. That I would lie and say no. So that's why I'm having a problem answering it, because I know if I were one of those jurors and I took an oath, then I would have to consider that. So I – that's why I'm having such a hard time.

Q. But that's what we don't ask you to do. We don't ask you to lie.

A. Right.

Q. If you can't take the oath, you can't take the oath. And that's what we need to know from you. If you're telling us you can't take the oath to honestly consider those three options, that's fine, but we need to know that now.

A. To honestly consider them, I consider that these are what the three options are. If we come back with a certain verdict, is it out of my hands, then it's automatically the death penalty, or it's up to us that it's the death penalty or life in prison?

Q. The law states that if the jury returned a verdict of the death penalty, the judge is required to impose that sentence.

A. So then we're the ones that make the decision A or B.

Q. That's correct.

A. So if – then I wouldn't be able to take the oath that I – that I could sentence somebody to death. Am I understanding your question?

Q. Yes. That's exactly what we want to know.

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

THE COURT: Yes.

MR. LAPHAM: That's all I have. Thank you. VOIR DIRE EXAMINATION
BY MR. DENVIR:

Q. Good morning. Hi. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions too, if I can, and primarily about your views on the death penalty and how it might affect you, how you do here. You want to go through that again?

A. No, that's fine.

Q. Okay. Obviously, in a case where the death penalty is an option, it's one of the critical things that – I mean, we could reach a phase like that where there would be a sentencing phase and the jury would have to make the decision. We need to ask people to explore where they would be and whether they could perform as a juror. One of the things is somebody's – I think the prosecutor gave you an idea of what we're concerned about. One is what are your views on the death penalty and then would that, you know, render you unable to sit as a juror or you feel like you're violating your oath. As I understand it, your view is the death penalty is not something that you spent a lot of time thinking about; is that a fair statement?

A. Right.

Q. And you are against the death penalty, though?

A. (Indicates in the affirmative.)

Q. And you understand that, as Judge Burrell told you, you don't have to be for the death penalty to sit on a jury in this kind of case.

A. Right.

Q. I mean, the law wouldn't want all – would like people with differing views on the death penalty sitting in the jury. You can imagine if you were the defendant you wouldn't want everybody supporting the death penalty, and if you were the prosecutor, you wouldn't want everybody against the death penalty. So the idea is to see if we can get, if it's possible, a range of views so that the decision that comes out is the best decision. And so our questioning now is really to help you maybe think through where you are on the death penalty. And I know it's hard to do in front of the whole crowd here and the media and everything. But we then see where that – how that impacts on where you are. Are your feelings against the death penalty primarily religion or primarily personal or philosophical, would you say?

A. I would say both.

Q. As far as your religion, does your religion have an opposition on the death penalty; is that the part that you're thinking about?

A. To be honest with you, I really couldn't tell you. Like I said, I'm not a diehard or anything like that. It's that you don't kill another human being. And I could be

wrong and they may feel the total opposite about it. Just based on how I was raised and right and wrong. Is that – that's not the answer.

Q. Okay. What we really want to know is whether your beliefs are personal or spiritual or religious, is one thing. How you feel about the death penalty in general. And as a voter, you might vote against having a death penalty. If you were a legislator, you might vote against it. People's views on the death penalty, of course, vary tremendously. Of course, as the prosecutor told you, the death penalty has been decided by Congress for certain kinds of crimes. In this case, mailing or transporting a bomb with an intent to kill someone, then having it explode and kill someone, Congress has decided that is one of the sentencing options. And the way the trial proceeds – I know you haven't sat as a juror before. You probably seen it on television. The first part of the trial is to determine whether the defendant is guilty of the charges brought by the prosecution, and that is like a normal criminal trial would be in state or Federal Court in the sense that the prosecution puts on its evidence, the defense can put on its evidence if it wants to. The judge instructs the jury as to what the law is, and then the jury determines whether the prosecution has met its burden of proving guilt beyond a reasonable doubt as to those charges. And you're told what the charges entail and everything like that. That's like any other trial. In most other trials, once a jury finds the defendant guilty, then the judge does the sentencing. What's different is Congress has provided that when they have put the death penalty in as an option, that rather than having the judge make that decision, we have the same jury who determined the guilt then decide the penalty. And Congress has provided that for the type of crime at issue here, at least two of the ten charges involving the death of one man, the jury is to select from three different possibilities. One is the death penalty, one is life in prison without possibility of release – and that's what that means, there's no parole – and the jury can even find a lesser sentence of imprisonment if it wants to. What happens in the second phase of the trial then is that the government puts on any evidence, what the judge termed aggravating evidence, and that's any evidence that he may have, further evidence about the crime, or any evidence about the defendant that they feel should persuade a juror to vote for death, that they think merits the death penalty. The defense then puts on this mitigating evidence. This means the opposite of that, that's any evidence the defense has about the defendant or about the crime that points the other way, points to life instead of death. And then the jurors listen to that and then go out and deliberate again. And what the judge would instruct the jurors is you are never told you have to vote one way or another. What you would be told is, just so you understand what you would have to do, is that you would have to agree to obey the judge's instructions, and his instructions essentially are that you have to weigh the aggravating evidence, the death evidence, against the mitigating evidence, the life evidence, and that you have to weigh them against each other and make your own decision between the two penalties. What you would have to do as you went into the case, you would have to be willing to consider that as something you might really vote for, that you might – if the evidence convinced you that death was necessary, actually

vote for the death penalty. You don't have to commit yourself ahead of time, but you can't close your mind and say I know where I'll come out on this. You have to say I will listen to everything the government says, I'll listen to everything the defense says, and I will actually consider between the two of them, and if I was convinced that death was the necessary punishment or proper punishment, I would vote that way. And I wanted to explain all that to you, because in the end, you know what you have – no one asks you to violate your conscience. On the other side is what we ask people to do, if they can do it, is to put aside their views about the death penalty in the abstract and obey the judge's instructions if they can. And you obviously indicated that you would have a lot of difficulty with that, and I want to explain it to you a little more to see if that helps you, if you still feel that you just could not participate in that kind of a proceeding.

A. I just keep looking at it, that it comes down to the same thing, that even though I'm not asked to, you know, set aside my convictions and what I believe in and then vote for the death penalty, or, you know, whatever, that then I just – I just did – I just – that's not what I – that's not what I believe in.

Q. You just feel that you really could not sign a verdict of death for anybody at all; I mean, under any – that sounds like what you're saying?

A. Yeah.

MR. DENVIR: Okay. That's great. Thank you. We stipulate, Your Honor.

THE COURT: All right. Thank you very much for participating in the process. I'm going to excuse you from further involvement in the trial. We appreciate your cooperation. (Prospective juror number 34 left the courtroom.)

THE COURT: The defense has stipulated to excusing the juror for cause. I just excused the juror for cause. (Prospective juror number 191 enters the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you. Thank you for joining us. I'm going to show you what I believe is your juror questionnaire. I'm just going to have you verify that it is?

A. Yes.

Q. Thank you. I'm going to ask you questions from the podium. So it will take me a moment to position myself there.

A. Okay.

Q. You're the 191st randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. Not that I know of.

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

A. Yes, I did.

Q. Since that time, have you received any information about the case?

A. No, I haven't.

Q. Since that time, have you discussed the case with anyone or overheard other people discussing the case?

A. I overheard one comment out at the golf course.

Q. At a golf course?

A. Yes.

Q. What was the comment?

A. It was derogatory against Mr. Kaczynski.

Q. Okay. Can you share the content?

A. Well, it's – they said anyone that's sends a bomb through the mail deserves to die.

Q. Okay. Did that have any impact on you?

A. Just that I felt like I should get away from what they were saying. And I got up and left.

Q. Did it cause you to think anything, did you have any type of reaction to it in your own mind?

A. As a juror, a potential juror, in order to be fair and impartial that I should leave.

Q. Okay. I do appreciate the fact that you left. I'm just trying to –

A. I understand.

Q. We're just human.

A. Did I react to it?

Q. Right, did it cause any reaction?

A. No.

Q. Did it cause you to think anything when you heard it?

A. Not about the trial, no.

Q. Okay.

A. About the individual, yes.

Q. Okay. I want you to assume, pretend like I don't know anything about this case. And I want you to tell me as much information as you can so that I'm informed about the case. So everything you heard about that, you know about this case, tell me as though I don't know anything and you're trying to fix it so I know as much as you know.

A. Okay.

Q. Go ahead.

A. About the situation that occurred?

Q. About everything that you assume is connected to this case. All the news reports you received, everything you read, anything you can remember that you associate with this case I want you to explain that information.

A. Okay. I first became aware of the case when there was a Roseville explosion behind Radio Shack because that was an area where I used to shop with my little boy. And I can remember at the time thinking that a child could have picked up the bomb. Other than that, then it was, you know, like years went by and then recently it's been in the media again. I don't normally read news about violent crimes because it disturbs me. I don't watch the local news. So I'm pretty ignorant of the entire case.

Other than the headline, you know, as you walk by the newspaper stands that tends to jump out or when I bring the paper in from outside. But I don't sit down and read the entire article. I remember seeing the picture of the Unabomber with the hood and the glasses. I remember I saw a comic showing the evidence that was extracted from the cabin in Montana. What else do I know about the case. I remember reading a little bit about the manifesto, you know, and the psychologist – I was taking psychology courses at the time at the university. The psychologists were trying to come up with a profile, a psychological profile of the Unabomber in order to track him down. I think that's just about it.

Q. Okay. Did you receive information concerning what evidence was taken from the cabin? I think you said you saw a comment about that?

A. Right. It was a political cartoon where they showed, you know, the cabin this small and the evidence this small. It couldn't all fit into the cabin.

Q. I see.

A. So that was just a –

Q. Do you have any knowledge about any evidence allegedly taken from the cabin?

A. No.

Q. You mentioned being aware of the location of what you assume is one of the bombing incidents, and you said something about the possibility that a child could have picked up the device?

A. Right.

Q. Does that event cause you to have any kind of an emotional response to that situation of perhaps thinking that your child could have picked up that device?

A. He was two years old then and we used to walk by that particular spot.

Q. All right. I'm just trying to see how that information could possibly affect you. Can you share whether it would have any effect on your ability to be a fair and impartial juror?

A. No. I mean, it's a difficult question to answer because it would certainly be a mitigating circumstance one way or the other, you know, as far as the degree of the culpability of a crime. Do you know what I'm saying?

Q. Not yet.

A. Okay. I feel that if you have a political statement to make and you target a particular situation, that when you endanger children, that that's particularly heinous, you know, like the terrorist in the Mideast and –

Q. I have to ask you these questions, and I – I know that you pause, and that's appropriate, and I will basically commend you on the pause. That showed me that you were really reflecting on your response, and it gave me the impression that you were trying to give me the best response possible. And that's exactly what the parties want. They want to really know what you think about the questions. If we ask a question that is confusing or even if there's a word that is ambiguous or vague, we don't want you to guess at what we're trying to ask you. We want you to tell us that so we can ask you a clear question. And it's appropriate to take your time just as you did in responding to

questions. Has the information you received about the case resulted in your formation of an opinion, a preconceived notion, or suspicion concerning Mr. Kaczynski's guilt or innocence of the offenses?

A. No.

Q. Okay. 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.

Q. What does that mean to you?

A. I haven't decided his guilt or innocence. I don't know. I don't know anything about any of the evidence that has been collected against him. I don't know Mr. Kaczynski from anyone. I haven't read anything about the case; I'm totally ignorant. You asked us not to, and –

Q. I appreciate that.

A. Because of my particular situation, I don't normally read. I do have some other questions of my own, but –

Q. That you want to ask me?

A. The reason that I don't read about violent crimes is because I'm particularly disturbed by violent crimes, and I put that in my questionnaire, that I have difficulty dealing with violence. I avoid violent movies. I make my children avoid violent movies, which they hate, and I don't know if that's going to make me, you know, the proper juror.

Q. I'm looking at your questionnaire now, and I wasn't mindful of that before you told me.

A. I have an incredible imagination. I'm a writer and that's one of the side effects of using your imagination all the time, that you can visualize things much better than most people. So even reading about things are just – is disturbing to me. I write children's books so –

Q. Only you can tell us whether you would be able to sit through this trial. I believe you have an idea as to the type of allegations involved. Would you be able to sit through the trial without being unduly disturbed by evidence presented and therefore not able to concentrate?

A. Well, I think I could concentrate. I have some concerns about the long-term effect, you know, of a situation where I would have to view evidence that was disturbing. I don't mean to sound like such a wuss, but you know –

Q. I'm not – each of us have idiosyncrasies, and we each have our preferences and things that we perhaps would like to avoid in life.

A. If we can at times, I realize that.

Q. But no one is going to force you to hear something that you don't want to hear if you have good reasons for not hearing it. And only you can tell us that. So I need to have you search your mind to let me know whether this is the type of trial you believe you could sit on as a juror without undue difficulty. If it's not, then you could be a juror on some other case.

A. I would prefer condemnation cases.

Q. Okay. You would prefer not being a juror on this type of a case?

A. Well, see, I have not seen any of the evidence or read anything about it, but I do have an imagination and I could imagine that there would be photographs that would be like evidence in my mind for the rest of my life. That I would not want to look at. I don't know what's there. See, it's – I'm working in a vacuum.

Q. I'm in a vacuum to a certain extent too, but I'm assuming that one of the parties, the government, will try to get into evidence photographs that perhaps depict the type of things you indicated you would prefer not to see. I'm not going to give an advanced ruling on whether I'm going to admit such photographs, but if I do admit such photographs, they would be in evidence. And typically, when something is in evidence – not typically, always when something is in evidence, the jury receives the evidence at some point in the trial. What effect would that have on you?

A. Well, it would be disturbing to me. As to whether I would be fair and impartial as a juror, I don't think it would affect my judgment except for the fact that I would be horrified. You know, I would be traumatized. But I don't think it would affect my judgment.

Q. How would it affect your fairness and your impartiality? Ideally, what the parties are hoping, they're hoping that they have a fair judge, they're hoping I'm impartial. And they want to have a judge of the facts, the jury, that have the same type of mind-set, makeup, that they believe I have. Is there anything about being exposed to pictures or – that show perhaps the results of an act of violence that would cause you to prefer not being a juror on this case because of the lasting effect you believe such showing would have on you?

MS. CLARKE: Your Honor, the parties have just communicated and I believe we stipulated.

THE COURT: You both stipulate?

MR. CLEARY: Yes, Your Honor.

THE COURT: Okay. The parties have been listening to your responses and apparently been communicating back and forth, and they reached a stipulation that because of what you shared thus far, that this is probably not the case for you to be a juror on. So we're going to excuse from you further service. Thank you for your candid responses. (Prospective Juror No. 206 Enters Courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. I am going to show you a questionnaire and I want you to tell me if that's your questionnaire?

A. Yes, Your Honor.

Q. I'm going to position myself at the podium. I'll ask you questions from there. Thank you for joining us. You're the 206th 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 fill out this juror questionnaire at Cal Expo?

A. Yes.

Q. Since that time, have you received any information about the case?

A. As far as receiving information?

Q. Have you heard any information or read about this case?

A. I didn't read actually anything. I did hear certain things watching TV. Something would come up. But I frequently stayed out of everything like I was told to do.

Q. Despite your effort, which I appreciate, were you exposed to things that you can share? I would like to know the content of what you were exposed to.

A. A lot of it, I think, was actually before I actually got the questionnaire or did the questionnaire or found out that I was going to participate.

Q. I am only focusing on what information you were exposed to after you received my instructions.

A. I realized that there's been a cabin that's been moved to Mather. It's bits and pieces of how many juror selections they were going to make, things like that. But as far as any other part of the case, I really haven't.

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

A. You hear people talk. But it isn't really a high-profile kind of a thing. From where I'm at and what I do, I'm out the majority of the day in public.

Q. You recall anything you heard?

A. No. Just the continuation of trying to get a jury selected, and that's pretty much it.

Q. Okay. I'm going to direct your attention now to the time period before Cal Expo. I want you to assume I don't know anything about the case, and I want you to educate me with all the information you received about everything that you think is associated with the case so that I can know as much as you know.

A. Okay. Well, from what I understand, for quite a few years, I believe it's 1978 on, a number of incidents have happened where there's been mail bombs that have been mailed to certain individuals and that two people have been killed here in the Sacramento area. I'm not even familiar with where. And I definitely know that Sacramento wanted the case, they felt they wanted to bring the trial here. I know that the accused was supposedly a teacher at UC Berkeley. That kind of rung a bell because that's where my dad went to college. And he pretty much lived kind of out of the limelight for quite a while. Pretty much secluded himself. That's pretty much it. I'm not very familiar with exactly everything in detail.

Q. You ever receive any information about the cabin associated with any of the allegations?

A. Received any – no.

Q. Read anything about a cabin other than it's transport?

A. No. Just that it was very – I mean, no running water, supposedly. Supposedly there was a typewriter found. My job consists of being out, like I said, gone all day. When I come home, I don't read a lot of newspapers or, you know, do a very – I

have a lot of family and I try to spend a little time with them more than anything. I don't mean to sound like I'm not concerned with what's going on in the world, it's important, but there are other things that are important too.

Q. Other than a typewriter, have you received information about anything else allegedly found in the cabin?

A. No, Your Honor.

Q. Has the information you received about this case caused you to form an opinion or any preconceived notion or suspicion concerning Mr. Kaczynski's guilt or innocence in this case?

A. No. Just that – I mean, obviously, if he's here, there must be some evidence that the state feels, you know, he's guilty. That's why we're having a trial. You know, everybody is entitled to a fair trial. That's what it's all about.

Q. Other than the fact that he obviously has been brought here by authorities, is there anything else that would cause you to suspect that he is guilty or not guilty of the offenses?

A. Not without hearing everything.

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

A. Yes.

Q. What does that mean to you?

A. It means that anything I've heard in the past I should pretty much not even pay attention to, set aside, and listen to the evidence, everything from the word go.

Q. That's exactly what it means.

A. Good.

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

A. Yes. I believe – I always believed if I was in a situation, I would like to be considered innocent until proven guilty. That's pretty much the way I been raised. Some countries it's the reverse, but –

Q. That's a fundamental part of our legal system, that a criminal defendant is presumed innocent and need not present any evidence in defense of him or herself, and has the benefit of that presumption until and unless, should it occur, the government proves every element of the crime charged beyond a reasonable doubt. If the government fails to meet that burden, you must render a verdict of not guilty in favor of the defendant. Is there anything about your belief system that would interfere with your ability to give Mr. Kaczynski the full benefit of that doctrine?

A. No.

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

A. No, Your Honor.

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

A. I'm in favor of the death penalty.

Q. Okay. I want you to join me in a hypothetical. Assuming you were in fact selected to be on the jury, 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 into the jury deliberation room and to Mr. Kaczynski's disappointment you found him guilty of the offense of intentional murder of another human being without justification. That type of a finding by the jury would take us to the sentencing phase of the trial. After making that finding, would you still be able to consider voting for a sentence less than death?

A. Consider less than death, is that what you said?

Q. There would be three options.

A. Yes.

Q. Death, life in prison without the possibility of release, or a lesser amount of time of incarceration. Would you still be willing to meaningfully consider each of those three options after having found Mr. Kaczynski guilty of the offense of intentional murder of another human being without justification?

A. I would definitely consider all of them. I mean, I don't think I would be hard found on one specific one.

Q. Okay.

A. There's different things, you know, that – as far as cases, certain cases. I think there's certain ways of maybe not everybody deserves the death penalty.

Q. Okay. I'm going to allow the parties to ask you questions. In responding to a couple of my questions, you took your time. It's obvious you were thinking about your response. You're entitled to do that. I appreciate the fact that you did that. The parties want your honest response. We don't care how long it takes you to answer a question. If any of us asks you a question that is confusing, you need not answer that question. You don't have to speculate as to what we're asking you. You can tell us that you have a problem with some aspect of the question. All right. Thank you.

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

BY MR. FRECCERO:

Q. Good morning, sir.

A. Good morning.

Q. My name is Steven Freccero. I'm one of the prosecutors in this case, and I would just like to ask you some follow-up questions. First of all, I take it from your response to the judge's first question that there would be no difficulty for you with your employment if you were actually called as a juror?

A. No, there shouldn't be. Any time somebody is taken away from their job, it creates a little bit of a problem, but I do work for a larger company that would probably, I already been told, take care of the situation.

Q. So they pay you during your jury service?

A. Yes.

Q. Okay. If I could – do you have your questionnaire.

A. Would you like it?

Q. No, you can have it. I'm going to ask you some follow-up questions on that. I think on page 31 at the very bottom on question 119 you were asked to describe your knowledge of the case, and you checked the box not very knowledgeable. Do you think that's a fair assessment of what you learned about the case prior to coming here?

A. Yes, sir, I do.

Q. I noticed in your questionnaire you said you don't read the newspaper often, but if you do, it's usually the sports or business section?

A. Yes.

Q. If you could look at page 29, question 112. It's just asking for your thoughts about what you remember hearing about this case. And at the very end of your response you wrote his family turned him in and you put a question mark, I think. Is that a question mark at the end?

A. Yes.

Q. And did that signify you weren't real sure as to – about that information?

A. Exactly. Exactly. Since then I kind of been educated a little bit on that by picking up, like I said – which I did not bring up. I wasn't trying to avoid that question or anything but –

Q. You remember something about his family turning him in?

A. Yeah. I – I believe it was through, quote, the manifesto that somebody picked something up that might have familiarized themselves with the accused.

Q. Okay. And again, correct me if I'm wrong, but by putting a question mark there, or, for example, earlier when you were answering some of the judge's questions, you said, I wrote down, supposedly there was a typewriter found. By that are you indicating that you might have – you don't consider the mere fact that you read or heard something on TV to mean that is actually the truth?

A. Right. I'm not sure, but I think that was one of the items that was supposedly found that they linked, I believe, to the writing.

Q. The point I'm getting at is, if you were actually selected as a juror, you'd swear to take an oath to make whatever decision you're to make based solely on evidence presented here in the courtroom.

A. Yes.

Q. You would not be allowed to say, well, wait a second, I remember something that I read or heard or something else. You would have to take an oath saying your determination is not going to be based on anything that didn't happen in the courtroom. Any reason to think you would not be able to do that?

A. No. I understand that.

Q. Okay. If you could look at page 16, please, question 57. In that response – do you have that?

A. Yes, sir.

Q. Okay. In that response you noted that you had a friend that was a probation officer?

A. Yes.

Q. Let me ask you, anything about that friendship that should give either side any concern that because of that friendship, you might favor one side or the other in a criminal case?

A. No. He deals pretty much with youth. Just been a friend, you know. One of the things I do have to mention, though, my father-in-law – I did not put this down – worked for the state police quite a few years ago. He's retired.

Q. Okay. Anything about that fact that you think would make you favor the prosecution?

A. No. No.

Q. Okay. Anything about those relationships – let me ask you. Are those – have you discussed with either your friend or your father-in-law that you were potentially a juror in this case?

A. No, I haven't. I haven't talked to them about that.

Q. Do you realize that if you were actually called as a juror, you would have to take an oath that you wouldn't discuss anything during the course of the trial with anybody other than your fellow jurors at the end of the case?

A. Yes, sir.

THE COURT: I already instructed him about that.

MR. FRECCERO: All right.

Q. If I could ask you some questions about your views on the death penalty. If you could look at page 27, question 107.

A. Yes.

Q. That's the one that has a series of propositions, and you were asked to mark the extent of your agreement. If you look at the very last one, where it says a person's background does not matter when it comes to whether or not he should be sentenced to death for murder, and you check the box strongly agree. Can you tell us what you had – what you were thinking the word "background" meant?

A. Well, I was just saying no matter pretty much your thinking, maybe race or just the person's upbringing, whether or not, you know, he comes from a high-profile family or a poor family or where they live or what they do.

Q. Okay.

A. Their work, things like that shouldn't even matter.

Q. So whether a man's rich or poor shouldn't make a difference as to whether or not he gets sentenced to death?

A. No.

Q. And similarly, what race a man is?

A. Right.

Q. If you could look at the next page, page 28, question 108. Again, you checked the box that says the death penalty may or may not be justified depending on the circumstances of the case. Can you give us – can you explain to us what you were thinking about when you expressed agreement with that?

A. Well, if I could bring up a case maybe?

Q. Sure.

A. That sticks in my head. I believe the Ellie Nessler case. My feeling is she knew what she was going to do. I mean, premeditated when she went in there. But I don't think she would deserve the death penalty. That's my own personal feeling. I don't know really that much about that case either. But, I mean, obviously, what she did – she knew what she was doing.

Q. Okay. So that even if someone knows what they're doing when they commit a murder, you still think it's important to take any considerations about that person into effect before deciding what punishment that person should get?

A. Yes.

Q. Okay. And, in essence, if you were selected as a juror, that is precisely what you would be called on to do in that second phase, you would be called on to consider not only the facts about the circumstances of the crime, but any other information about the person who committed the crime, about his or her reasons for doing it potentially, or whether they done things like that in the past. You would be asked to consider all different information presented either by the government or by the defendant, if he chose to do it. Do you think you could keep an open mind and wait to make whatever decision is appropriate until after hearing all that evidence?

A. Yes.

Q. All right.

MR. FRECCERO: No further questions. Thank you, sir.

THE COURT: We're going to excuse the juror for 15 minutes. We're going to take a morning break. But I want to make a comment to the parties once the juror leaves the courtroom about another matter. (Juror exits courtroom.)

THE COURT: Let the record reflect that the juror has left the courtroom. I received a document from the defense concerning several jurors who are scheduled to appear tomorrow, and it's my understanding that the defense has given this document to the government and asked the government to consider excusing these jurors for various reasons. I would like the Government's input on it, not at this precise moment, but at some moment, preferably around the noon hour, if that's feasible. What I'm hoping is to get your input, and if you believe that one of the jurors – this is just an example. If you believe one of the jurors that the defense indicates should be excused should be contacted for some reason, the juror's employer should be contacted for some reason, if you provide me with that information during the noon hour, I will endeavor to contact the juror's employer. Many of the reasons indicated by the defense don't deal with financial hardship. It really deals with impartiality. I think that we should strive to avoid interfering with the lives of citizens, if we can do that. There's no need to call them here for this process if we're simply going to ask them two or three questions and then let them go. That doesn't reflect positively on our judicial system. I understand that there are times that we just can't look at the questionnaire and make certain determinations and we need to ask questions, but a couple of the things

that the defense has cited here are a little bit troubling, and I really would like the Government's full consideration. What I'm hoping is to receive the Government's input at least by 1:00 o'clock. I typically don't take lunch hours outside the courthouse, and you would be able to call one of my staff members and provide me with the input, if that's feasible. I would appreciate it. If that's going to interfere with your lunch hour unduly, then we'll have to cover it at a later time today.

MR. CLEARY: Not a problem.

THE COURT: All right. Let's take the recess until ten minutes to 11:00. (Recess taken.) (On the record at 10:50 a.m.)

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

THE COURT: Let the record reflect all participants are present except for the juror. My deputy clerk is in the process of getting the juror. (Whereupon, Prospective Juror Number 206 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q Good morning.

A Morning.

Q My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I had a few follow-up questions if I could?

A Okay.

Q Do you have your questionnaire?

A Yes, ma'am.

Q At page 32, if I could ask you just to look there with me. Actually, first, I wanted to go over with you, I thank you for sort of searching your memory as to what you could recall about this case or what you had read about the case. Has anything else come to mind since you took the break?

A No. Our conversation in there was completely different.

Q Didn't help you with the answers out here at all?

A No, no.

Q On page 32, at 121 – you see the question? You were asked – and I think you were trying to be very honest with your own thoughts – you were asked what your thoughts and opinions were about Mr. Kaczynski and his family, and you wrote that he was probably guilty and still needed to stand trial. Do you remember answering that question?

A Yes. I would imagine – yes.

Q Did you have a sense of what you were basing that on when you wrote it? Was it –

A I think it's just little bits and pieces. I think, obviously, like I said, since the case had been going on so long and trying to find somebody, I just don't think they would have been grasping so much at straws or whatever. I think they had a pretty good case or evidence that they felt was, you know, that this was – that the accused might be the person.

Q So it's kind of like some of the stuff you read and then the fact that there was this arrest after this long period of time?

A I think sometimes anytime someone is arrested right off the bat, no matter what it is, I think right off the top of your head, you think he's probably guilty.

Q Uh-huh. So it's the fact of the arrest? I mean, are there some facts that you have read about that sort of led you to that conclusion?

A No, not anything that . . .

Q Not anything?

A That you haven't heard, no.

Q How firm is that opinion for you? I mean, only you know sort of how you feel about it.

A I think maybe I'm basing myself more that I feel the judicial system needs to take its course and, you know, I'm here to listen to the evidence and base my opinion on everything I hear.

Q Sure. I think we would all like to say, "look, we'll let the trial go forward and let the jury decide what it decides," but we all sort of have opinions about things, and you were kind enough to express yours to us in the questionnaire, and I guess I'm trying to figure out how firm is that opinion?

A I would say – I would say – Looking at a percentage or – I would say – I don't believe in percentages anyway, but I would say that he is more likely.

Q Guilty than not?

A By the evidence that I have heard. But like I said, I'm willing to listen to the whole case I mean.

Q No. Certainly. I understand that. I'm just trying to explore with you because some of the things that you wrote about what you knew about it – I think you wrote about his letter. Look at page 29. Down at the bottom of 112. I think the prosecutor asked you about the question mark on the family?

A Yes.

Q But right before that was his letter to the newspapers. Were you talking about what the press has called the manifesto?

A Yes.

Q And was there something that made you believe that it was Mr. Kaczynski's letter?

A No, no. Just that they felt it was.

Q Okay.

A I never read the manifesto. Like I said, I just never did.

Q Is there anything that you feel like we ought to know about how firmly committed to that opinion that you are that would make it hard for you to sit?

A No.

Q No?

A I feel I would be fair. That's just the way I feel.

Q Okay. At page 11, if you would go with me there, number 41 at the top of the page, it was the question about "How did you feel when you got your summons."

A Yes.

Q And you were somewhat concerned about your safety. Can you help us understand that?

A Hold on. I don't think my safety as much as my family's safety. And I think after receiving the letter and knowing that, you know, everybody is anonymous right now, I feel a little bit better about it. I think anytime you go to a high-profile case, you are worried about things, such as we are, you know. But I don't think there is anything that I'm really scared to be on the trial, no.

Q No. That wasn't the sense I got from reading it. Was it more an invasion of privacy, or was it a physical safety?

A More of a physical thing. Like you kind of have that impression, you know, if it, quote, you know, are you going to start receiving something in the mail from somebody or whatever, you know, if you are selected or whatever.

Q Who would that somebody be? Are you concerned about just some outsider reading your name?

A I think there are always people that sometimes kind of follow or try to make – try to think that maybe they're – trying to throw the lead one way or the other, you know.

Q Sure.

A Who's to say that, you know, that another bomb isn't going to go off somewhere. You know, right off the bat, is it the Unabomber or is it who, you know.

Q Are you concerned that because of potential service you could be a victim of the Unabomber?

A No.

Q You're not? That's not what I'm hearing.

A I'm not worried.

Q How have you resolved those concerns? Did you resolve them with your family? Did you think them through or –

A Pretty much thought everything out on my own. Just like I say, you know, from the beginning of the case to where we are now, I think everything has been pretty much hush-hush, and I don't hear a whole lot about it, you know. So at first I think it was a big – when that first arrest, I think you hear a little bit, you know, and you think. But then you think, boy, if I was on the case, what would happen. You know, how it affects people's privacy, I don't know. I have never been on a big case before so

...

Q But at this point you're feeling pretty comfortable with your privacy being protected?

A Yes.

Q Tomorrow, who knows, but today –

A Yeah.

Q – today okay? If you can, look at page – the bottom of 21 and the top of 22, question 82. Can you tell us what impact that might have on you serving on a case where we are talking about the killing of other people?

A As far as a crime?

Q Uh-huh. Well, as far as your friendship, what happened to you, how you reacted to that?

A This was more – it was more of a surprise just in the fact that it was a shooting, and it was something that took place – not a very close, close friend, but just somebody that was more of an acquaintance than a friend. It was his brother kind of a thing. So I think maybe that's what shocked me more than anything.

Q Sure. Do you think that will have any kind of impact on you? I mean, is that a worry to you sitting on a – what could be characterized as a murder case now or a killing case?

A I don't.

Q You don't think so?

A No. I don't have any problem with it.

Q At page 24, you were asked about your opinion about mental health professionals who testify in court, and you said "No opinion as long as they have the facts." What were you thinking about? Can you fill that in a little bit?

A Well, I think sometimes they try to twist things to be certain ways or one way or the other.

Q What is your experience based on with that?

A Just my own personal thought. It wasn't anything I read or anybody I have really known, you know. Just, you can go to one counselor, and let's say if you have a problem, they're going to tell you something totally different than, let's say, another counselor. So you know, their opinions are totally different.

Q Is there anything about the fact – I'm sorry?

A Well, no. So I feel, you know, that, you know, that they would probably fall in the same way, that psychiatrists or somebody would probably have two different opinions on one individual. They don't always agree.

Q Was there anything about mental health professionals that would make you say, nah, I don't need to listen to them?

A No. I would listen to their reasoning and why.

Q You just feel like they'll always – if you have one, you'll have one on the other side?

A Sometimes.

Q Uh-huh.

A I think you could always find somebody, yes.

Q Is there – have you – are you relying on any cases, any reading, or just sort of a gut reaction?

A More personal feeling I think. Yeah. There isn't anything that stands out in my mind to make me feel one way or the other.

Q If I could ask you very quickly a question about your work. I notice that you told us at page 32 that you had missed some work this year, and that was a concern to you, question 123?

A Yes.

Q Is that any problem with your work?

A No. It's just I have already missed three months of work, okay, and it was due to an injury, and I ruptured my bicep muscle. So the kind of work I do involves some physical labor so . . .

Q Sure.

A They don't – they wanted me to kind of rest it a little bit. And even though it's a big company, we're still a satellite operation out of the larger company. So there isn't – it isn't like there is a whole lot of people. There is always someone who has to take your place when you are gone. And like I said, I discussed – showed the letter to my boss, which I had to do anyway to get the time off. So he's aware of my situation. You know, sure, they hope, you know, I'm with them. But, you know, they understand what could happen. If I was to miss work, I would miss work.

Q So that's not a problem? I mean, it's kind of like you miss three months, now they say how can this happen to you?

A Not when you work 20 years –

Q Yeah. Right.

A – and you've been off three months. It's the first time I had ever been off. And it affected me as far as, you know, any time you work for that length and period of time, then all of a sudden you are off, you are kind of glad to get back to work.

Q Sure.

A And you know. So – But like I said, it's my duty, I guess.

Q No problem with the job?

A I don't know.

Q Because I think we'd listen to that if that really was a problem.

A Yeah. If there was a problem with work, I think I would tell you.

Q You would tell us?

A Yes.

Q Okay.

A I mean, like I said, I think they hope I stay at work, but –

Q They hope you're not here?

A Yeah. You know. I mean, that's –

Q But they can live with it if you are?

A Yes. I was told that anyway.

Q If I could ask you a few questions about your opinions on the death penalty. I think when the judge asked you a question about could you consider a sentence of less than death, remember that hypothetical question?

A Yes.

Q And you thought for a moment, as I recall, and you said, "Yes, I could consider that." What did you mean when you were using the word "consider"?

A I think based on the evidence and maybe the reasoning, number one, first of all, if someone is guilty, you have to decide that first. And then the reasoning behind it, I think, you know, just the feeling, maybe a gut feeling within yourself.

Q A gut feeling about what?

A Well, just which way you would decide on the fate of that person.

Q What do you think your gut would be driven by?

A The evidence. Whatever – whatever the evidence will be.

Q Okay.

A And the reasoning behind maybe what – what happened. You know, why.

Q Why the killing occurred?

A Yeah. Why. You know, things like that.

Q Is the question answered for you when you – when you step back and you say that I'm on a jury that has found the defendant guilty of a premeditated, deliberate, intentional murder, one without justification or excuse, is the question answered for you then, or is there more you need to know?

A Probably want to know a little more.

Q A little more?

A Well, yeah. Just the evidence and see it for myself.

Q Uh-huh. When you are thinking you want to know a little more, you want to know a flavor for the evidence, or you want to know a little more facts?

A Probably facts.

Q You mentioned at page 27 – if I could take you back – the prosecutor asked you some questions about the fourth of that check list. Remember the check off on "strongly agree"?

A Yes.

Q Prosecutor asked you about what you meant when you wrote – checked strongly agree regarding background doesn't matter?

A Uh-huh.

Q He said rich, poor, where you live, those are the things you are thinking about. What if you were presented with evidence of a person's mental health; is that background in your mind, or is that another factor?

A Yeah, it would be.

Q "Yes" meaning?

A Well, I think you can be – everybody probably is a little crazy. I mean, I think that I will take that under consideration probably.

Q That is something that you think should be considered when evaluating the penalty of death versus life in prison?

A Yeah. And to what degree of mental illness a person has.

Q And to what degree?

A Yes.

Q And how would you evaluate that? What would you be looking for?

A I'd just be looking for the evidence and how it is presented to me. I mean, I'm not a psychiatrist, you know. So I need to have that evidence presented to me. Probably didn't answer your question.

Q No. Could I look at the other three with you?

A Sure.

Q "Anyone who plans and commits a murder should get the death penalty." And you say "agree somewhat." What were you thinking when you checked that?

A There again, I was thinking more on my own basis. I mean, if I was to come home and find my wife murdered, something like that, and the assailant was still in the house, maybe I could commit murder, you know. I mean, realistically. What my mind was at that time, I don't know. You know, I mean I'm just saying the way it is. You never really know until you get put in that position.

Q Uh-huh. And on the second one, deliberate murder of two or more?

A There again, I think it's based more on a mental condition and the reasoning behind the crime.

Q And if you found that the two or more murders were committed in a premeditated, deliberate, intentional way without justification or excuse, how would that affect you?

A It would affect me more strongly on being for the death penalty.

Q And what would you be wanting to know that would affect your decision on death versus life?

A Why the person did it.

Q Why the person did it?

A Why. I mean, you know, you just don't commit those crimes without a reason, I don't think.

Q At page 26, you tell us that your opinion and belief has changed over time. I think your answer is "some." Can you tell us where you have come – You see it? Question 103, that third part? Has your opinion and belief changed over time?

A Yes.

Q Can you tell us where you have come from?

A Why I came up with the "some"? How it affected me some?

Q Sure.

A It hasn't really affected me as an individual as much as just my opinion of the death penalty and where it – where it goes. Once someone's – Once someone is, let's say, accused, been accused, and they get sentenced to the death penalty, one of my things – one of my answers was it just seems like it really never gets taken care of. It's just a long, long process, you know. So it's pretty much just like life in prison anyway.

Q Does that give you – I mean, your feeling that it never gets carried out, that's what I'm hearing you say, does that give you any feeling that, as a juror in a capital case, it really doesn't matter what you do?

A No. I think it's important. I think the decision is important.

Q I guess maybe I don't understand or maybe you're saying it and I'm not getting it. When you say your opinion and belief has changed some over time, does that mean you have gone from being opposed to the death penalty to in favor of the death penalty, or just –

A I think growing up, you may not – you don't really have that decision or it hasn't been brought to you, and I think as you age, you have more time to think about it. So you see more cases, you see more things going on, so your opinion of the death penalty – I mean, I remember back, I believe California did not have the death penalty. It was on the ballot. So, I mean, now that it is here, you know, what I have seen – what I have seen of it, really haven't seen a whole lot really happen.

Q So you're not sure it really works in any way?

A Yeah. You know, I've seen a lot – so many appeals, I believe is the proper term, that just keeps getting appealed and appealed and appealed.

Q How do you think that feeling, that it really isn't a real sentence, will affect you in making a decision about life or death?

A I don't think it would affect me. I would go with what I feel.

Q Is right?

A What I feel, yes.

Q You mentioned at the top of page 27 that you had seen Dead Men Walking, and it really didn't have any effect. Do you remember any thoughts that you had about that movie? Did it harden or soften your feelings on the death penalty?

A No. I take movies pretty lightly. I mean, I know they're a movie. Although, some of them – I know that was a very serious movie. Maybe my answer that it didn't affect me at all or none is not really an answer. You know, it's not – but, you know, to me it was a movie that, you know, I'm kind of in and out of a little bit, I was with the family and everything, and I saw the final end of it. And you know, like I said, it was a movie. And it didn't make me strike my thoughts of, you know, wow, the death penalty, this is what – this is what it is all about. So . . .

Q Didn't particularly form your thoughts on the death penalty one way or the other?

A No, no.

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

THE COURT: Yes. (Brief pause.)

MS. CLARKE: Thank you very much.

THE COURT: Please bring in another juror. (Whereupon, Juror Number 206 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospective Juror Number 207 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. You're the 207th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A None, sir.

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

A Yes, sir.

Q Since that time, have you received any information about this case from any source?

A No. Just from – from the jury selection committee. A letter. That is all.

Q Okay.

A And a phone call.

Q Okay. And that phone call was from my staff, the jury administrator?

A Yes, sir, requesting my presence.

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

A None in detail. Just hearsay, then walked away.

Q Okay. I appreciate the fact that you walked away, but what did you hear, if anything, before you walked away?

A Oh, just a name or – that tied in with that. And I couldn't even really tell you exactly what they were saying. I was trying to adhere to the initial brochure that was given to me when I was notified.

Q I appreciate that. I want you to assume I know nothing about the allegations surrounding the case and that I haven't read any news reports or listened to any radio reports about the case, and I want you to educate me, to tell me everything you know so that I know as much information as you have received about the case and give me as much detail as you can.

A I heard about, previously, the building getting bombed. Somebody doing it. Manifesto. And that's about all. Nothing that I can put together and so forth.

Q How about a cabin?

A I heard about a cabin. Yeah.

Q Did you receive any information as to whether the cabin you heard about was searched?

A Not that I know of sir, no.

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

A No, sir.

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

A No, sir.

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, sir.

Q What does that mean to you?

A It means that every person in this – on this earth is, unless proven guilty, is innocent.

Q Do I have your assurance that Mr. Kaczynski will be presumed innocent in your eyes if you are selected as a juror?

A He's innocent now.

Q That's right. The presumption of innocence doctrine is an important doctrine under our legal system. And because of that doctrine, a defendant need not defend him or herself. A criminal defendant is presumed innocent until or unless the Government proves every element of the crimes charged beyond a reasonable doubt. If the Government fails to meet that burden, you must enter a not guilty verdict in favor of the defendant. You have no problems allowing Mr. Kaczynski the full benefit of that doctrine?

A No problem whatsoever, sir.

Q And getting back to the pretrial publicity, the news reports or other publicity surrounding the case, is there anything that you know about yourself that would prevent you from forgetting about that information and allowing Mr. Kaczynski's guilt or innocence to be determined solely on evidence presented at this trial?

A I think I can – I'm trying to find the right words to say. I think I can make an honest decision based on what is presented to me.

Q And you can disregard everything that you heard about outside the courtroom?

A I have already disregarded everything, sir.

Q Okay. If I ask a question or if the lawyers ask a question that is unclear, I don't want you to be polite in dealing with us. I want you to tell us that there is a problem with the question, it's a problem with the word. I don't want you to assume that just because we received some training in the law, that we know how to ask clear questions. That may not have been true.

A I understand, sir.

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

A Nothing whatsoever, sir.

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

A I'm not a proponent and I'm not – I just base on what is presented, and I can make a decision.

Q What are your views on the death penalty? Do you have views on the death penalty?

A I believe in the death penalty if it's warranted, based on what is presented to me, as I stated in my questionnaire.

Q Okay. I'm going to ask you to join me in a hypothetical.

A Yes, sir.

Q Assuming that you were selected to be on the jury and that you and other jurors sat through the guilt/not guilty phase of the trial, you heard all of the evidence, you listened to my instructions, you went back to the jury deliberation room and you followed the instructions, and to Mr. Kaczynski's dissatisfaction, you found Mr. Kaczynski guilty of the offense of intentional murder of another human being without justification, that type of a finding by the jury would take us into the sentencing phase of the trial. You understand that?

A Yes, sir.

Q After making that finding and going into the sentencing phase of the trial, would you still be able to consider voting for a sentence less than death?

A If I was – During the sentencing phase, if I was presented something that would put me towards on that side, I could, if I’m understanding you correctly.

Q Okay. I want you to explain your response.

A Explain my response?

Q Yes.

A If I understood you correctly, during the first phase, I made a decision that if the person – that if that person was guilty, I can – I can say he’s guilty, based on all the facts. Then on the second phase, I guess I’m presented with more facts to determine whether what sentences I would vote for; is that correct?

Q That’s correct. In fact, like I can share more information on that on the second phase.

A And I’m pretty sure that on the second phase, whatever is presented to me, I can make an honest decision based on what facts is presented to me.

Q Okay. And in the second phase, would you be open to all three alternative sentences; that would be a sentence of death, life in prison without the possibility of release, or some lesser amount of time of imprisonment?

A I can do that too.

Q All right.

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

BY MR. DENVER:

Q Morning, sir. My name is Quin Denver. I’m one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions, too, if I can.

A Yes, sir.

Q Do you have your questionnaire there or maybe the Court could give it to you.

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

PROSPECTIVE JUROR NO. 207: Yes, sir.

THE COURT: Okay.

BY MR. DENVER:

Q If you could, turn to page 11, please, question 41 up there. ”What did you think or feel when you received your jury summons for this case.” And you said ”apprehensive”? Can you tell me what you were thinking when you wrote that?

A Well, when it is out of the norm, I get apprehensive on something that I’m not – haven’t been exposed to, accustomed to, or whatever.

Q Just the fact that it was a new experience; you mean you hadn’t done it before?

A Yes, sir.

Q And you were kind of nervous about that?

A Yes, sir.

Q And if you could, turn to page 32, question 120. Again, you were asked a question about: "Before coming here –" meaning Cal Expo – "what were your thoughts and opinions about this case." And you wrote "apprehension." Was that again just you were apprehensive about being a juror?

A You say what question? 120?

Q 120. Top one, sir.

A Yes, sir.

Q What were you – What were you referring to when you answered the question: "Before coming here today what were your thoughts and opinions about this case."

A Still feel the same thing; nervous, apprehensive, don't know what is – what the procedures are. So just – just a feeling. Just like when – I'm a softball sports official, and every game I go to, I don't know the coach, don't know the spectators, so you get that apprehensive, how you are going to perform and so forth.

Q Okay.

A So that's my feeling.

Q And you are – you are a sports official? You say you umpire in some –

A Yes, sir.

Q So you're used to making decisions?

A A lot of decisions, yes, sir. Sometimes right, sometimes wrong, depending on what the coaches see.

Q And you do have eyeglasses.

A I got a spare one in the jury room also, sir.

Q Okay. Let me ask you, on page 19, if you – if you will turn there, question 69. Was that – was that a matter where you appeared as a witness in some type of proceeding?

A Yes. Yes, sir.

Q Was that in a court marshal – a military-type proceeding or civil-type proceeding?

A It was a civil proceeding pertaining to a military individual.

Q And did you actually have to testify and be questioned and everything like that?

A I did. I was asked certain questions. Yes, sir.

Q Anything bad about that experience that would make you not want to participate as a juror here?

A No. It was a sad experience, but nothing that I couldn't handle based on the job I was doing, sir.

Q Then if you could, look at page 22, question 84.

A Yes, sir.

Q You understand that the nature of the charges in this case involve the – the transporting or mailing of bombs and exploding. And would your experience in the military affect you in any way in terms of sitting on this case do you think?

A No, sir.

Q As I understand it, you read – you read the newspaper every day?

A Sometimes every day. Sports page.

Q Sports page mainly?

A Yes, sir.

Q Okay. And then also watch some TV news?

A Yes, sir.

Q Am I right, though, that you don't have a lot of knowledge about either this case or Mr. Kaczynski?

A Yes, sir.

Q It's not something you paid a lot of attention to?

A No. I hardly paid attention to it, sir. And once I was made aware that I was being tapped to or possibly have jury duty, I tried to stay away from any information that pertained to this particular case.

Q How about prior to that time? Had you paid much attention to it? Was it something that caught your interest much?

A Not really. No. Unless it was in the sports page.

Q You didn't see it on the sports page?

A No, sir.

Q As I understand, you told Judge Burrell based on what you do know about the case, either through the media or people you know, you don't have any – any preconceived notion or opinion now as you sit there as to whether Mr. Kaczynski is guilty or not; is that right?

A I don't have any perceived notion, no.

Q Do you – Based on what you know about the case up to this point in time, just what you know here, do you have any – do you have any opinion or preconceived notion as to what is the proper sentence for somebody convicted of the Unabomber crimes between life and death; do you have any –

A No, sir.

Q You don't have any – You're not leaning one way or the other as you sit there?

A No, sir.

Q I would like to ask you a few questions, if I can, about – just about your general opinions about the death penalty. You had – I believe when – when you were talking to Judge Burrell, you said you believe in the death penalty if it's warranted. That's what I wrote down at least. Can you tell me, do you have some idea in your head as to what types of cases the death penalty might be warranted in when you said that?

A I don't have a formula or – that would say, well, yes, that's the death penalty. But I feel that if it was really – I'm trying to find the right words to say it.

Q Take your time.

A If it was proven to me that a person did something that really, really no remorse did this and that and – and took the lives of a bunch of people and so forth, and I have to weigh the case, that I maybe could vote for the death penalty. It all depends on what is presented to me and then I can make that decision.

Q Okay. And as I understand it, if you look at page 28 of your questionnaire, question 108 up at the top, you were asked to check the line that most accurately stated your views about the death penalty. On the proposition where one person intentionally

kills another person, you selected "The death penalty may or may not be justified, depending on the circumstances of the case." Is that pretty well – That's your general feeling? Does that summarize pretty well your feeling on it?

A Based on the three options that was presented, yes.

Q Right. You wouldn't say it is never justified, you wouldn't say it's always justified you, you would want to hear what the facts are?

A Depending on what the facts is presented to me and if it's enough to put me on that particular – on that particular side of the fence to vote for that death penalty.

Q You have not sat on a civilian jury before as I recall; is that right?

A I was called on a municipal one, but they plea bargained, and then I was released.

Q I want to just give you a quick idea what the – what the procedure would be here, which is – which is different because there are death penalty type charges here. There is the first part of the case, which may be the only part of the case, is the guilt or not guilt part of the case. And at that part, the prosecution would put on any evidence that it has to show that Mr. Kaczynski was guilty of the ten charges against him. The defense could put on evidence on that but is not required to do so. Judge Burrell would instruct you as to the law, including what the – what the elements of the offense were. And then you – if you were selected as a juror – you and eleven other people would go and deliberate and determine whether the prosecution had met their burden of proving beyond a reasonable doubt that Mr. Kaczynski was guilty. And I take it you have no problem with performing that function?

A No, sir.

Q All right. If you were to find Mr. Kaczynski guilty of two of the charges that have to do with the death of one gentleman, those charges – normally after a criminal trial, if you find someone guilty – the jury finds someone guilty, then the judge does the sentencing. But as to these two charges, because Congress has authorized the death penalty as one of the potential penalties, the same jury that determines guilt then determines sentence. And so what would happen at that point then, is having found him guilty of basically of a premeditated, intentional murder without justification or excuse beyond a reasonable doubt, you would then have to determine the penalty. The prosecution then would put on what Judge Burrell has referred to as aggravating evidence. And that's the legal term for any evidence that they have about – more evidence about the crime or evidence about Mr. Kaczynski that they think – think should point to death as the proper thing. The defense can put on mitigating evidence. That is just the flip side of that. Any evidence about Mr. Kaczynski or about the crime that we feel points to life as the proper sentence. You would then be instructed by the judge to weigh both evidence on both sides, and then would pretty much be told that you then make your own decision as to which of those two penalties, or in fact, you even could find a penalty of less than life, some other number of years. I guess my question would be, if you sat through the first phase and found the defendant guilty beyond a reasonable doubt of that type of a crime, would you be leaning towards one penalty or the other as you went into the second phase?

A I would keep an open mind because it's the second phase. And based on what is presented to us on both sides –

Q Right.

A – then I have to make another decision again. And I would use those facts to make my decision.

Q Okay. And you feel that you – that you could – you could listen to the evidence on both sides, weigh it, evaluate it, give it your own – your own value, and then look at the two or three – actually three different sentencing options, and then make your call as to what you think is the one that's called for?

A I believe I can, sir. Because if I didn't feel that way, I wouldn't be here today.

MR. DENVIR: If I can just have one moment, Your Honor.

THE COURT: Yes. (Brief pause.)

MR. DENVIR: Thank you, sir. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q Morning, sir.

A Morning, sir.

Q My name is Robert Cleary. I'm one of the prosecutors on the case. I want to ask you several questions. You indicate in your questionnaire that you have had some law enforcement and criminal justice training a number of years ago, correct?

A Just an exposure to a few of them, yes, sir.

Q Is there anything about that experience that you think would affect your ability to assess the believability or credibility of law enforcement officers that would testify during the course of the trial?

A I didn't think it would have any negative or positive effect. It wouldn't interfere with my ability to sit on the jury, no, sir.

Q One way or the other, correct?

A Yes, sir.

Q Let me talk to you a little bit about the death penalty. On page 26, if you want to turn to that, question 103, you say that you believe the death penalty – you believe in the death penalty in extreme cases. Could you tell us what sort of extreme cases you had in mind when you filled out the questionnaire?

A (Brief pause.) I heard a case before where a parent who took the lives of, I think, two of her kids and a couple other people and so forth, and just based on information, that was – maybe that would warrant, if I was sitting through the court, you know, that might have been a candidate. But I wasn't a juror, so forth, but I couldn't – but in my mind, that could possibly be a case.

Q And what was it about that circumstance or those facts, as you understood them, that leads you to believe that might be, in your mind, an appropriate case for the death penalty?

A I guess children. I don't know, taking the life of a child, I guess.

Q So the type of victim it was?

A I guess so. Maybe that. That's not a hundred percent. But there is no exact case that I say he or she should have the death penalty. But it comes to my mind, that's all.

Q Are there, in your view, extreme cases which in your opinion would warrant the death penalty when the victims of a killing are not children?

A I can't say because I don't have all the facts to determine whether that would warrant the death penalty.

Q Right. And I'm not trying to put facts before you. What I'm trying to do is have it come the other way. If you could kind of shed some light for us on your statement in response to question 103 as to the sorts of extreme cases you're thinking of when you say, "In my mind I think the death penalty is appropriate"?

A I don't have a specific case, but I could – I could paint a picture. If an individual, say, all of a sudden goes into a school or something, and murders a bunch of children, so forth, with no apparent reason – and I'm using the word "no apparent reason", but maybe there is. I don't know. I'm not a doctor. I'm not a lawyer. – but just on the overview of that particular case, that could maybe warrant the death penalty.

Q And it sounds like one of the relevant factors there for you was the fact that, again, the victims were children, correct?

A I keep using "children" maybe because I got three grand kids now. I don't know. But it could be going into the Post Office or something and shooting all the postal workers. That could warrant a death penalty.

Q And how would you –

A Change it to not just kids. It could be grownups too.

Q And how would you distinguish those cases in which – hypothetical cases – in which you are talking about killings, how would you distinguish that from other cases in which there are killings and which you might believe they're not extreme cases and therefore not warranting the death penalty?

A Well, it's hard for me to – to say because I'm always an individual based on my, I guess, military career, that I try not to make a judgment based on what I just see or hear because I don't have all the facts. I learned early in life that sometimes when you try to draw a conclusion without the facts, sometimes you're wrong. So I try to in all my decision making, whether it's on the job or dealing with friends, I try to hold my opinions and so forth until I know all the facts.

Q That's a good way to live your life. And what I'm asking you to do here is not to make a – give us your view on a set of circumstances where I'm not providing you all the facts, but rather what I'm asking you to do is tell us what would be the facts. What facts would you – When you say you need all the facts, what facts would you look at to determine whether the death penalty is appropriate or not appropriate in a certain circumstance? So in other words, you provide the facts to us. That's what I'm asking you to do.

A If a person would, say, take the life of my family with no reason whatsoever, that would fall under a person that he or she might deserve the death penalty.

Q But not so if that same person killed somebody else's family?

A Oh, that too. But like I say, if I don't know all the facts, I shouldn't say, well, he deserves the death penalty just because he or she did something. I would like to have the facts of what really transpired.

Q And what facts would be material to your decision in making that determination?

A Sometimes you're not privy to all the information. So you can make a general statement, yeah, he should – he or she should have the death penalty. But you know, that's just a statement you are making. You're not feeling that way because you really don't know.

Q Are there certain factors in making that determination that you deem more central to your consideration, more important to your consideration of whether the death penalty is appropriate or not?

MR. DENVIR: Your Honor, I object. I think this series of questions is asking the juror to prejudge when he would vote for the death penalty in a particular case, and I think it is objectionable.

THE COURT: Overruled. I'm not ruling on previous questions because I only have to rule on the pending question.

BY MR. CLEARY:

Q You can answer the question if you remember it.

A Well, I think some of the questions keep repeating itself in different ways. What I'm trying to say is I made a statement saying that, yeah, I think that warrants the death penalty, but I cannot specifically say that he should have it because I don't know all the facts. What I'm saying is I can make a decision on the death penalty if I got all the facts, and I feel in my heart that's what it should be.

Q Okay. Let me follow up on what you just said, that you could make the determination based on the facts.

A Right.

Q If you were not provided adequate facts, you could not make the decision, correct?

A Oh, I can make a decision, like anybody else, say, oh, yeah, he needs the death penalty because of such and such you hear or read or so forth. But I couldn't do that. I can just say it, that one person is asking me to say it or think, you know. But we're talking – we're talking here in the courtroom whereby I don't know if that warrants the death penalty unless I hear specifically what – what's transpired.

Q And so there will be some instances where you would not have enough facts or the right type of facts to make an informed decision as to when the death penalty is appropriate, correct?

MR. DENVIR: Your Honor, I object to that. I don't know how the juror could possibly know whether he would ever be in that kind of a situation.

THE COURT: The answer, I think, is obvious. And in light of his previous response, I think you should –

MR. CLEARY: I'll move on.

THE COURT: Right.

BY MR. CLEARY:

Q Let me direct your attention to the next page, page 27 of the questionnaire.

A Page 27.

Q 27, question 107, which is that multi-part question?

A Okay.

Q Okay. You are given in the first three parts of it several propositions about the death penalty. You disagree somewhat with the first and third, and you agree somewhat with the second. Can you tell us what basis you had for distinguishing between the first and the third where you disagree somewhat, and the second scenario you which you agree somewhat?

A The numbers, and when I took this with all the questions going through your mind, I tried to make a real honest answers. And based on the two that you – that you asked, "Anyone who plans and commits murder should get the death penalty," and I disagree somewhat is my answer. And then the next one said, "Anyone who deliberately murders two or more people," which gives us a heavier problem here, and I said I somewhat agree because of the multitude of people that is involved, that – the greater – the greater the situation here.

Q Okay. The number of victims, correct?

A That's what kind of pushed me to say "agree somewhat".

Q Okay. So that would be – Am I correct, then, in suggesting that that's one of the factors you would want to look at in determining whether in your view the death penalty is appropriate or not, the number of times the defendant committed murder or killed people, correct?

A That has something to do with it, yeah.

Q And in the third instance, "An act of terrorism in which someone dies," you are back to disagree somewhat. Why do you distinguish that from the murder of two or more people in which you agree somewhat?

A Again, just by reading the – the statement, there might be some extenuating circumstances that caused this act. I don't know. So I have left myself some room to – to – so that way I didn't go from one end of the spectrum to the other end of the spectrum. I kind of tried to keep myself in a – what's the proper word – consistent mode in how I was answering these questions based on how I feel.

Q And when you answered that third part of question 107, what did you understand "terrorism" to be?

A That's a – That's a big, big picture. You know, that's – "terrorism" is a word that – it's just like "if". If is a small word that casts a long shadow. Terrorism is also, I think, could be a little one, could be a big one. You know, it's – I don't know.

Q Could it – Could be a little one or big one of what? What is the act of terrorism that you had in mind when you answered this question?

A Well, you can have terrorism from your two-year-old granddaughter versus another terrorism, you know, Empire State Building. So that word "terrorism" can mean a lot of things.

Q Turn, if you would, to the next page, question 108. And I believe Mr. Denvir, the attorney who questioned you a few moments ago, asked you some questions about that. And I believe your answer was, I think I got this right, that based on the three options presented, the middle option was the one you were most comfortable with. Is that correct?

A You talking about – yeah – he mentioned question 108.

Q That's right.

A Okay. I went with the middle answer again. Yes, sir.

Q When you say based upon the three options presented, that's the one you would have picked, were there other options you would have liked to have available to you here that would have maybe more appropriately described your feelings?

A No, sir. I wouldn't be able to – no.

Q Now, I've been asking you a lot of questions – I guess we both have been asking you questions – about your own personal feelings about the death penalty kind of as an abstract notion. Let me make it a little more concrete and applicable to this case, or any case in which you may sit in judgment in the penalty phase or sentencing phase. At the end of the penalty phase, any penalty phase you could sit in, the sentencing phase, you might sit in judgment in, the question presented to you as a juror at the end of that is whether you, yourself, as a member of the jury, could sentence somebody to their death. And if you found – My question now is: If you found circumstances that you believed warranted the death penalty, you are sitting as a juror, would you be able to sentence the defendant to death?

A Yes, sir.

Q And is that true even though, as you tell us, that in response to question 105, that the death penalty serves no purpose in our society?

A I said none on there, but I guess I didn't answer that correctly because I do feel that there is room for that.

Q What – What do you feel that the purpose of the death penalty is in our society?

A I guess, if you can find a word, I guess it's – it would be justice.

Q In what sense?

A In what sense? Put it this way: To maintain – I guess to maintain order and to try to prevent, I guess. That's probably one of those tools to keep civil order.

Q And when you say that, do you mean that by having the death penalty available, and it being used, people being executed for aggravating and heinous crimes, that that may deter other people from committing those same crimes?

A I guess you could use that word, deterrent. If it's – Whether it's successful or not, it's not the question. But deterrent to try to prevent other people from preventing crimes that fall in that particular nature.

Q That's one of the purposes that you believe the death penalty at least might serve in society?

A Might serve, yes.

MR. CLEARY: Thank you very much. Nothing further, Your Honor.

THE COURT: Take the juror to the adjacent room. Is there anything to cover before we adjourn?

MR. DENVIR: No, Your Honor.

THE COURT: Court is in recess until 1:30. (Off the record at 11:50 a.m.) SACRAMENTO, CALIFORNIA TUESDAY, DECEMBER 9, 1997, 1:30 P.M. —oOo—

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

MR. DENVIR: Yes, Your Honor.

MR. LAPHAM: Yes.

THE COURT: Mr. Lapham called me during the lunch hour stating that the government agrees to join the defense in stipulating that the following jurors can be excused. For the public's benefit, I will indicate next to each juror the reason I believe the juror has been excused, and the parties are free to correct me if I'm mistaken. 210 and 220, financial hardships. 221, a question about impartiality. 229, a financial hardship and a question about impartiality. 234, because the juror is a full-time student, the juror has presented a such hardship reason for being excused, and there's a question about impartiality. 235, a possible health problem that could interfere with service and a possible financial hardship. The government requested that I call the employers for jurors 219 and 231. I called and left a message with the employer for juror 231, but given the nature of the juror's employment, and the distance that the juror lives from the courthouse, I suspect I'm wasting my time. I doubt that the juror's employer will be able to accommodate this court. But I nevertheless left a message and will speak to the individual later, presumably. I reached the individual who wrote a letter to the Court asking to have juror 219 excused for hardship reasons, and after I explained to that individual my contemplated trial schedule, I asked about the juror's possible availability, in light of that trial schedule. That individual said that an adjustment could be made to the juror's work schedule. I don't know if the juror will be satisfied with that adjustment, but it appears that the juror should appear as scheduled and we can ask the juror that question. Juror 233 was also on the list, but the parties stipulated earlier this morning that that juror could be excused because of prepaid vacation plans and the juror, I understand, is already on vacation. Any reason why I shouldn't call in the prospective jurors?

MR. DENVIR: No, Your Honor.

THE 3170: Okay. Thank you for your cooperation in that endeavor. (Prospective jurors enter the courtroom.)

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

THE COURT: Good afternoon. Welcome to the District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath is my courtroom deputy clerk. Her name is Shani Furstenau. On the same platform next to Miss Furstenau is the certified shorthand reporter who will be reporting this proceeding for us. His name is Dennis McKinnon.

I trust that you will fulfill your civic duty during this 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 are entitled to a fair and impartial jury. That right would be meaningless without individuals such as you making themselves available to serve as jurors. The questioning process, sometimes referred to as voir dire, is a way of insuring that a fair jury is obtained. Please answer the questions as honestly as possible. Don't be concerned about someone else's view of your answers. Each prospective juror is entitled to their own opinion. The parties value your opinions. The questioning process will involve questioning prospective jurors individually which will occur after I first question you as a group. After a number of jurors are questioned in this manner, we will call some of the jurors back for further group questioning and we will let those jurors know when that process will take place. Our objective is to obtain a fair and impartial jury that will decide the case based upon the evidence that's presented in this courtroom and on the law that I will give you in my jury instructions later during the trial. I have decided to do individual questioning in part because the parties have requested it and because there has been some publicity about this case. During the questioning, we'll cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case. The law requires me to ask you questions about the publicity to which you have been exposed in this case, since the case has received widespread news coverage. Prospective jurors do not have to be unaware of pretrial publicity to be eligible jurors in a case. But we have to know the extent of the publicity to which prospective jurors have been exposed so that the Court can evaluate whether – I should say so the Court can evaluate, objectively speaking, I can assess the possible impact that information possibly has on a juror, and we will also give you the opportunity to tell us from your own individual perspective whether you have been impacted at all by the pretrial publicity. The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life in prison without the possibility of release, or a lesser sentence. This determination is made at the second phase of the trial referenced as the penalty or sentencing phase. If there's 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 referenced as the guilty or not guilty phase, will occur like any other trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. 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 of the trial, 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 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 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 because I decided to use an anonymous jury in this case in order to protect juror privacy as I told 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 and you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me. Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately. Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone that 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 any 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's 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's no

response. Please raise your hand if you do not understand the following: Your first duty as a juror will 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 the sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context, or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this. There's no response. Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There's no response. If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial by applying the law as I will give it to you in my instructions whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this, please indicate that fact by raising your hand. There's no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under the law to protect your legitimate privacy interests, I may ask some questions in the area that you indicated the 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 I can determine whether the matter should be covered in a more private setting. I take this approach because the trial should be open unless I have a legitimate reason to close any aspect of it. I am now going to have my deputy clerk escort all but the earliest randomly selected juror in the other room and place the remaining juror in the witness stand. (Prospective jurors leave the courtroom.) (Prospective juror number 141 remains in the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Is this your jury questionnaire?

A. Yes, it is.

Q. Okay. I am going to ask you questions from the podium. It will take me just a moment to assume that position. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. The main reason I feel is financial. I'm the only person who pays my bills, the only person who pays my rent. And I get reimbursed for two weeks from my employer, and I wouldn't be able to live on that.

Q. Is there any type of schedule adjustment that could be made so that you could work after I released the jurors? You would be released from my courtroom at 1:00 o'clock. The marshals would take you to the drop-off point probably between

1:15 and 1:30, which means that at least by 1:30, you would be free to carry on your normal life activities including work.

A. 1:30 in the afternoon?

Q. Yes.

A. I could check to see if I could do some evening – I also work for a CPA, firm it's the busiest time for them. I could check to see if that's possible.

Q. Okay.

A. I don't know.

Q. Okay. You would have to drive to the work location, and but I assume that you would be up at that location around

2:00 o'clock. So it is possible that you could work; you don't know at this moment as we talk?

A. It's possible. I don't know.

Q. I understand. Do you know anything about the probability of that occurring?

A. No, because I've not discussed that with them. I assumed that the jury would go from 8:00 to 5:00, and I wouldn't be able to put in my whole schedule after that point. So I had not even discussed it with them.

THE COURT: Okay. Do the parties have input?

MR. CLEARY: I thought it would be a good idea to follow up with the employer and find out if that schedule – they could accommodate the schedule. If so, call the juror back.

MS. CLARKE: We offered to stipulate, so however the Court wants to handle it.

THE COURT: We're going to question now. Let me ask you this. Maybe I shouldn't question you now. Could you call your employer? Maybe I can delay questioning you at this time.

PROSPECTIVE JUROR NO. 141: Yes.

THE COURT: Make an arrangement so that you can call your employer, and then we'll call you back in later after we question some other jurors.

PROSPECTIVE JUROR NO. 141: That would be fine.

THE COURT: Let's do it that way. (Prospective juror 141 leaves the courtroom.) (Prospective juror number 212 enters the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Is this your questionnaire?

A. Yes, it is.

Q. I'm going to ask you questions from the podium. You're the 212th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. Not that I know of. I'm free to come. Farmer's wife.

Q. Okay. Did you fill out this jury questionnaire at Cal Expo?

A. Right.

Q. Since that time have you received any information about the case?

A. All I've been looking at is what you're doing with the jury. When the news program comes on, I avoid it because I know we are supposed to if we were selected.

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

A. Not really.

Q. Okay. I want you to pretend like I know nothing about the allegations involved in this case, and that you will – you are engaged in the process of trying to educate me. I want you to tell me everything you think you know about the allegations involved in this case, anything that you know at all and give me as much detail as possible.

A. Not really very much. I haven't followed it much in the news. I know that there were cases of bombs that did kill two people. And there were injuries to some others, and I understood that it had to do with environmentalism and someone that the defendant was felt was in odds with him. That's the main thing that I had heard. And I do know that it was either a mother or brother, and I since have been told that it was a brother, who turned over some information to the FBI feeling he might be a suspect in this case.

Q. Okay.

A. And that's really about all. I haven't had anything to do with the manifesto or anything of that. I do know that you're bringing down the cabin. That was in the news on TV. When they start on it, I usually just turn it to another station to avoid it.

Q. Other than being aware that the cabin was being transported to this area, have you received any other information about the cabin?

A. No.

Q. Have you ever heard that there was a search of the cabin?

A. Oh, yes.

Q. What information did you receive in that regard?

A. I heard that they had gone and taken it literally apart and brought all the written information and stuff they could get out of the cabin.

Q. Do you have any specific information you can share about what you understand was taken from the cabin other than what you just stated?

A. I think they mentioned there was components and things that they felt would be components of a bomb.

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

A. No, I would have to have it proven that he was the Unabomber.

Q. If you're selected as a juror for this case, will you allow Mr. Kaczynski to start this trial on a clean slate?

A. I think I would. It's kind of hard because you feel if there's enough evidence for indictment, that there's probably some grounds. But I would think that he's got a chance to show whether it's right or not.

Q. Okay. I appreciate your response, because it does show me that you are doing your best to give me what's really on your mind, and that's exactly what the parties want all prospective jurors to do. Do you have any beliefs that would interfere with your ability to leave outside the courtroom the information you received about the case before you appeared and also to not hold against Mr. Kaczynski the fact that he's brought here to deal with the charges?

A. I can let all of that be out of the picture and start with a clean mind.

Q. Okay. Do I have your assurance that Mr. Kaczynski will begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Right.

Q. Does that have a meaning to you? What does that mean to you?

A. That means that at this point, all it is is a charge and somebody's got to bring me some evidence before I can believe it.

Q. That is part of the concept. And there's another part. Mr. Kaczynski doesn't have to bring any evidence. He is presumed innocent. That doctrine is a fundamental part of our system, legal system, and he need not present any evidence whatsoever. And he has the benefit of that presumption until and unless, should it occur, the government proves every element of the crimes charged against him beyond a reasonable doubt and that if the government fails to do that, you would have to return a not guilty verdict in favor of Mr. Kaczynski. Is there anything about your belief system that would interfere with your ability to afford Mr. Kaczynski the full benefit of that doctrine?

A. I believe his lawyer is just going to try to countermand what they say and their evidence is what has to prove that.

Q. I didn't hear the last part of the answer. (Record was read.)

Q. BY THE COURT: Mr. Kaczynski doesn't really have to do anything. He can allow Mr. Kaczynski to rely on the presumption of innocence doctrine and can just watch and see what the government does. If the government doesn't overcome that doctrine, then you would have to find Mr. Kaczynski not guilty. Do you understand that?

A. Yes, I understand that.

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

A. I don't know of any.

Q. Okay. Do you consider yourself for or against the death penalty?

A. I consider myself for it in most cases, yes.

Q. Okay. I'm going to have you join me in a hypothetical and I hope it's clear. And if I don't ask you something that's clear, or even the lawyers, I don't want you to think that we know how to necessarily present a clear question. We make mistakes, and if there's something ambiguous about my question, you need not try to answer it. You can just tell me that, tell the lawyers that. It's our job to ask clear questions. I'm going to ask you to assume that you are selected and you were part of the jury and then you participated with fellow jurors in the guilt/not guilty phase of the trial,

and then you heard all the evidence, you received my jury instructions and went back to the jury deliberation room, fully followed my jury instructions, and to Mr. Kaczynski's disappointment, you and your fellow jurors convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification. That type of finding by the jury would then take us to the sentencing phase of the trial. At the sentencing phase of the trial, the jury would receive additional evidence, which I told you about in my opening comment, aggravating-type evidence which the government will opine points toward a death sentence, and mitigating-type evidence which would point toward a life sentence. After having made the murder finding that I told you about, in the sentencing phase, would you still be able to consider voting for a sentence less than death?

A. Yes.

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

BY MR. FRECCERO:

Q. Good afternoon, ma'am. My name is Steve Freccero. I'm one of the prosecutors in this case. And I'd like to ask you a few follow-up questions on the answers to some of the questions in the questionnaire you filled out. If the Court –

A. There were probably some questions where I might have added a little more but my printing was too large to fit on there.

Q. I'm going to ask you to look at certain parts.

A. Maybe I should have brought my glasses.

Q. Okay. Do you have them?

A. They're in my purse, and I left it back there.

THE COURT: Sure, she can get her glasses.

Q. BY MR. FRECCERO: If I could ask you to look at page 12, question 45. I am just going to ask you a series of questions about some of the information you put down there. But in response to question 45, you noted that you have a neighbor who's in a sheriff's department?

A. Uh-huh.

Q. Is there any reason, that you have a neighbor that you may know who works in law enforcement, is there any reason to think that could cause you to be partial to one side or the other?

A. Not really. He's a very honest police officer, but that doesn't speak for the whole general population, so –

Q. Okay. You recognize that each individual person has to be judged in terms of their particular testimony?

A. Right.

Q. All right. If I could ask you to look at page 19, question 70. I don't think you need to talk about the experience unless you want to, but I would simply ask is the experience that you reference there in question 70, is there any reason to think that

could affect, or would it influence you if you were called as a juror in this particular case?

A. No, I don't believe so. I don't think it would affect the case.

Q. All right. I'm going to ask you a few questions about some of your opinions. If you could look at page 17. In response to question 64 there, you were asked your opinion regarding the effectiveness of the criminal justice system, and you checked the box it's not working well at all. Is that a strongly held opinion that you have?

A. About what I have seen so far, yes, with my grandson and what some other people get as punishment compared to what he has gotten.

Q. Do you think that particular opinion would affect your service as a juror in this type of case?

A. No, I would try to do my best to be one that could make it be working right at least.

Q. Okay. So no reason to think any of that would cause you to be –

A. No.

Q. – concerned?

A. My grandson has been punished too much so I'm not going to punish him too much. No, I wouldn't think that.

Q. You told us about some of the information that you had heard about the case, prior to coming here to court. Do you feel confident that regardless of whatever you heard before you came here today, you could commit to making your decision solely on the evidence presented here?

A. Yes, and I would like to hear it all.

Q. All right. I am just going to ask you a few questions about your views on the death penalty. Let me ask you first, have you – is the subject of the death penalty something you have given a lot of thought before coming here today?

A. Not a lot.

Q. Before hearing the judge's instructions this afternoon when the judge explained to you about the way the process would work in this case, did you know anything about the federal death penalty law?

A. No.

Q. If you could look at page 27, question 1 on 27 was the question that gave a series of statements and asked you to check which box to express the extent of your agreement with the statement. If you would look at the one on the very bottom of the page where it says a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder. You marked the box that said strongly agree. Can you give us an idea of what the word background meant to you?

A. That they came from a family that was abusive or that they had hardships in their life that made them become what they were. And I don't think that that should be an excuse.

Q. Okay. The reason I asked you that, were you to be called as a juror in this case, and were the jury to convict the defendant, find him guilty of the crime, that the

second phase would proceed. In that second phase, there would be additional evidence presented by both sides. That's what the judge referred to as the aggravating and mitigating factors. Now, one of the things in order to be a juror, to take that oath, you would have to be able to say that you would openly consider any information presented to you in that second phase. That information may be not only more information about the crime itself, what took place, but it might be information about the person who committed the crime. What led them to commit the crime, their personal character, the history of other acts they may have done that brought them to that point. Is there anything about your personal beliefs that would prevent you from keeping an open mind and actually considering any of that information prior to making your determination?

A. I would be able to consider it.

Q. Okay. If I could ask you to look at the next page, page 28. Question 108 asked you some views about the death penalty where one person intentionally kills another person. You checked the box that said the death penalty may or may not be justified depending on the circumstances of the case. Can you give us an idea of what type of circumstances you were thinking about?

A. Well, I just, I know that in not all cases you're just going to say verbatim, you know, that because somebody killed somebody, the death penalty is the only answer.

Q. Okay.

A. There could be cases that you feel something pushed this person far enough to push him into that kind of situation, and maybe it wasn't a planned, cold-blooded thing. And in those kind of cases, I don't think I could go along with the death penalty.

Q. Okay. You would have to know the actual circumstances and facts before you would make that determination?

A. Yes, that's why I go for moderate rather than firmly one way or the other.

Q. So you don't have any opinion that is going to automatically make you vote one way or the other once you determined that someone is guilty?

A. No.

Q. Okay. And you may not be able, as you sit here now, to think of every circumstance that there could possibly be, but the issue would be what evidence was would be presented to you in that phase, and that would be the time when you would have to consider that evidence along with your fellow jurors to make that determination. And you don't – do you have any opinion, strong opinion, that is not going to allow you to hear all that information with an open mind?

A. No, I would listen to it all.

Q. There's one other point that I would like to ask you about. If you were called as a juror and it came to the point where you would be asked along with your fellow jurors to make that determination, after the person had been convicted of the intentional, deliberate taking of another life, you would be asked to make the decision but you would get some guidance from the judge. In other words, there are certain laws that apply that would tell – give you some on guidance how to make your determination. Do

you have any strong personal belief that you think would prevent you from following the judge's instructions as to how to go about making that decision?

A. No, I'd listen very carefully.

MR. FRECCERO: If I could have a moment.

THE COURT: Okay.

MR. FRECCERO: Thank you very much, ma'am. ///// VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon, ma'am. My name is Quin Denvir. I am one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions following up on what the judge and prosecutor asked you, maybe your questionnaire also, which I guess you have with you. Good. If you could turn to page 21. You served as a juror one previous time and you were asked about how you felt about your experience as a juror. You said you felt neutral, and you said you found the jurors weren't totally truthful at interview. What were you referring to there; what were you thinking about?

A. This one was like a traffic case, and there were people that said they had no reason be prejudiced against an officer because of an occasion that they had had a run-in with the officer, and when it came right down to it, there were two people that thought they were unfairly treated in a traffic case.

Q. So these were people that when they were being questioned like you were said they would be fair and impartial and then –

A. Right.

Q. – in fact weren't. Do you think that they were answering those questions untruthfully at the time or that it just turned out they weren't able to be fair?

A. I guess they answered them untruthfully, or they felt it wasn't going to come down to just the officer's word against the defendant's word, in which case they couldn't just take the officer's word. It was a hung jury on a traffic case, so six and six, you know, and it had to be all of them, I believe.

Q. A split six and six. Did you feel all six of the people that voted for not guilty had not been truthful in their voir dire?

A. No, only the two.

Q. And I just – was your concern they had been – had really not told the truth, or just that it turned out they couldn't be fair?

A. Well, I thought, well, if they're going to ask you a question, you should tell them the truth.

Q. Okay. Now, what about the second part there, you said something about smart lawyers help set the image. What were you referring to there?

A. Well, he had a lawyer who acted like it didn't matter who the juror was, it wasn't going to affect their case because their case was so good, you know. And the prosecuting attorney was eliminating everybody he could. And I felt that this lawyer was just smart enough to know how to use that attitude.

Q. I guess I don't understand the attitude. He was – was this in selecting the jurors part, you mean?

A. Yeah. Right. He just sat back and it doesn't matter who we get because our case is so strong. You know, that attitude. That's how it came across.

Q. I see.

A. I do think that influenced people.

Q. Okay. Was there anything about serving on that jury that kind of leaves a bad feeling in your mind, sour taste about it?

A. Well, only the fact that the ones that didn't tell the truth, because there wasn't good reason not to.

Q. Okay. If you could turn to, I guess, maybe page 16. You were asked your opinion of attorneys who defend people accused of crimes.

A. You didn't like my description of them?

Q. Well, I tell you what. You said some are shysters who work every angle, and others are sincerely concerned public defenders but not very committed. Does that cover the whole – that's it, one or the other?

A. Well, I'm sure there's some in between too. But, I mean, I do feel that sometimes they just seem like they're just doing their job. They're not really putting all the effort into trying to help their client. And then it seems like some of the ones you see in court that I refer to as the shyster ones – I mean, they'll find every little point that they can to try to help their defendant, the person they're defending.

Q. I guess it sounds like if someone works hard for their client, you think they may be shysters. If they don't work hard for the client, you don't think they're committed.

A. No. There's just kind of an in between there that some of them are ones that I would admire and respect and others that try to get their client off, but they want to pull all the angles to get their client off.

Q. Everybody is entitled to their opinions of lawyers, and lawyers don't exactly have the greatest opinion in general. Maybe defense lawyers don't either. I guess I'm – what I am concerned is that your view of defense lawyers may work against Mr. Kaczynski, who obviously is represented by a couple of defense lawyers.

A. Well, if I see he's got some good lawyers, I think I could probably judge that, then I would feel he got the best defense he could.

Q. You're not concerned if we look like we're good lawyers, we would be trying to get him off on any angle because we're shysters?

A. No, it would be how you treated it.

Q. There's some room in the middle for us there?

A. Yeah, there's room in the middle. Hopefully, you're in the middle.

Q. What about the next page, 17, question 63. You were asked about a favorable/unfavorable experience with a lawyer or a judge. Could you – did that have to do with one of the – something else that you mentioned in the questionnaire?

A. This has to do with my grandson who is in prison.

Q. That had to do with his case?

A. Yes, because he was given a public defender who really didn't go to very much effort in contacting him and using the right information; therefore, he didn't get anywhere with a writ of habeas corpus because the judge didn't appear to understand exactly what we were trying to state.

Q. Again, what we're obviously trying to find is do you think that experience is going to cause any problems in this case if you were to find out that Mr. Kaczynski's represented by public defenders, for instance.

A. No, if it's a good public defender, and I'm sure there are.

Q. I guess we'll see, won't we. We'll have to find out. Let me ask you, on page 22 – I think that's right – question 83 referred to your daughter's best friend's brother. Was that a serious injury?

A. I believe one of the boys in that case was killed by setting off one of these play-type rockets in a vacant field.

Q. That was your daughter's best friend's brother; is that the first one you referred to?

A. The brother was playing with another boy who was killed by a rocket.

Q. Is the second one, the brother's friend, does that all happen at one time?

A. No. The other one was my brother. He had a friend that had gotten hold of a blasting cap and had blown off some fingers. That's my only experience with a bomb.

Q. I guess you probably had a little more experience through other people with that type of thing than most people. Do you think those experiences – do they carry some kind of emotion with them, something that might make it hard for you to sit as a juror where that's what the charges are, obviously?

A. I don't know that dying by bombing would be any worse, but the mutilation would probably be something that would bother you a lot, to think of living with it.

Q. Do you think that the fact that your daughter's best friend's brother was evidently killed in that type of – with some kind of explosive, and your brother's friend actually lost some fingers, is that the kind of thing that makes it more difficult for you to sit as a juror because of the nature of the charges here, which is not like fraud or something, it has to do with explosives and bombs?

A. I don't think it would matter if they found that he was the Unabomber. How he did it wouldn't be important.

Q. I want to ask you a little bit about what you knew about the case. Have you discussed this case at any time with anybody else either before or after you got your summons? Did anybody talk to you about it or mention anything?

A. Only my own husband and what we had read, and neither of us has followed it that much because being in a small town, terrorism has not been something we felt would touch us.

Q. And you see the Unabomber crimes as terrorism pretty much?

A. That's what you consider it, uh-huh.

Q. When you and your brother – when you and your husband discussed it, what did you talk about at all?

A. Not really anything that I can recall in any depth about it. You read these things in the paper, and one will say, well, this case and what you read about it. But I would never have recognized anybody by the drawings in the paper, so I wouldn't be looking for this person or anything.

Q. Did you ever at any time talk with your husband or anybody else about, for instance, whether it sounded like he was – Mr. Kaczynski was guilty of the crime?

A. Not any more than speculation on it.

Q. Can you tell me a little about how you and your husband talked about that?

A. Just the speculation in the paper. That's what we read. We really didn't form any conclusions ourselves at all.

Q. What you're saying is you read in the paper speculation that he was –

A. Yes.

Q. That he was guilty?

A. Right.

Q. And then how did you discuss that with your husband?

A. We just didn't really even discuss it at all, because this is not a person we know. The people that were killed were not. And so it didn't impress us, you know. No deep impressions.

Q. I think you said that you had read or heard somewhere that the Unabomber crimes may have had something to do with environmentalism. What do you remember in that regard?

A. Well, at that time I wasn't even sure which side of the issue he was on, and then my nephew said that he was for the environment, he was a strong environmentalist.

Q. So is your view that these crimes were committed by somebody who was unhappy with what was happening to the environment?

A. The Unabomber was.

Q. The Unabomber?

A. Yes. Uh-huh.

Q. And then you said something about you heard it was somebody at odds with the defendant. I think that was the phrase you used. I didn't know what you were referring to.

A. I don't know what statement you were –

Q. At odds. When you were talking with Judge Burrell, you don't remember saying something about the environmentalist and you thought it was somebody at odds with the defendant. Doesn't ring a bell?

A. That he had a certain person that he was singling out that he had something against. That's what I understood.

Q. What did you read about that? What's your sense of that?

A. I since heard one of them was the timber industry or something. That's the real only one I know anything of.

Q. And that the Unabomber singled out somebody from the timber industry?

A. From the timber industry.

Q. To send one bomb to?

A. And he had some conflict with him.

Q. The judge asked you about what you remember hearing about the cabin, that there had been a search of the cabin by FBI. And I think you said that you recall that there was some materials that had been taken from the cabin that were associated with bombs or something of that nature. Do you remember anything else that you remember either hearing or reading about that was taken from the cabin by the FBI?

A. Writings that seemed to kind of follow the same pattern.

Q. Do you remember a little more, can you tell us a little more about what you recall about the writings?

A. That's all I had heard, that it seemed to kind of follow the same pattern of letters that they had received or writings that had come from the Unabomber.

Q. That were actually found in the cabin, copies of them, is that –

A. That's what I read in the papers. Now –

Q. I understand. I'm just trying to see what you learned in the papers.

A. Right.

Q. What else do you recall that the FBI found in the cabin? Do you remember reading –

A. That's the only two things I remember.

Q. You don't remember anything else about any other physical evidence –

A. No.

Q. – in that regard?

A. No physical evidence.

Q. Do you remember anything about journals or diaries, does that ring a bell?

A. That – is that what his parents – his brother, mother who, what they had sent, was a journal of some kind?

Q. I'm trying to find out what you recall about it.

A. That –

Q. If that rings any bell.

A. That's vague, so I don't know what his writings were.

Q. But some writings that were found in the defendant's cabin?

A. In the cabin that they felt had particular resemblance, I guess, to what they had already had.

Q. Now, you said that one of the reasons you suspected he might be guilty was they must have had evidence in order to get an indictment. Where did you hear about that and what did you hear?

A. That's what I feel. You know, they won't come for an indictment unless they got some good evidence that points to this person anyway.

Q. What do you understand an indictment to mean exactly or what –

A. That you have to go before – the prosecutor has to go before the judge and take what information they have to see if they have a strong enough case to at least indict this person.

Q. Did you actually hear there was an indictment returned or brought against – I mean –

A. You just assumed since there was going to be a trial.

Q. It wasn't something you read about, an indictment?

A. No.

Q. You assume, therefore, a judge looked at the prosecution's evidence and found there was a basis to –

A. A basis for a trial, yes.

Q. And how does that make you feel, the fact that a judge already looked at the evidence and –

A. They still have to prove it, and the defense has to have their say as well. So it doesn't make him guilty.

Q. Do you think the fact that there was an indictment, as you understand it, would make you kind of look to the defense to come forward?

A. Disprove, yeah. I feel that we do, yes, because that's the way the Court system is. You know they can't just bring a charge without having something as a basis for a trial.

Q. And I guess because of the fact that the indictment and the charges brought, as you sit there, you kind of would expect that the defense, therefore, to prove the other side of the case?

A. Well, to refute what they bring as evidence, right.

Q. And if the defense didn't do that, you would feel pretty much compelled to find him guilty, right?

A. I feel there has to be some evidence to refute some of the evidence that the prosecution brings. You can't just go by the prosecution's evidence; there's got to be a defense.

Q. And if the defense was not put on, does that mean that you pretty much have to find him guilty?

A. If the defense didn't say anything, I don't know what else you could do. You have to take it by their word.

Q. Do you, from what you know about the case – well, let me ask you – maybe I better ask another question. If you could turn to page 32. Did you – if you look at page 121, you were asked before coming here today what were your thoughts and opinions about the defendant and/or his family, and as to the defendant you said you never formed an opinion about him other than to think what a waste of apparent intelligence. Is that part of because he was indicted that there must be evidence that he did this, and therefore he wasted his intelligence, is that what you're kind of saying?

A. If he was the one that did commit this, yes. But it sounds like he was a professor. I have heard that he was like a math professor or something, and he did a lot of deep thinking. So –

Q. Then you were asked in the question right above it, before coming today what were your thoughts and opinions about this case. And did you fill this out at Cal Expo with everyone else?

A. Yes.

Q. You said you're glad they caught the alleged perpetrator and hope they can prove it. Is that kind of your feeling, that you kind of hope that he is the guilty one so that we can end –

A. There wouldn't be another, for that matter. But mainly I would like to see what the proof is. And too often you never know what the full case is.

Q. I was wondering, when you wrote – you said you were glad they caught the alleged perpetrator and hope they can prove it. Does that mean that, which could be understandable, that you feel that they probably caught the right person and you hope that he's the right person so that the –

A. Yeah. If they can prove it to us, then you know that there isn't an Unabomber out there somewhere.

Q. So you kind of hope the government can prove that he's the Unabomber?

A. I hope they can, yes, that they got the right person.

Q. In the question 122 you were asked is there any particular reason you would like to be a juror in this case, and you said you'd like to see how the FBI proves its case.

A. Yes.

Q. Is that same kind of thought, that you kind of hope that the Unabomber is caught and can be taken care of in this case?

A. Right, and I can see it's done right. I started to say no, as you could see, and then I put my yes over it, because I do have that curiosity I'm sure most people have.

Q. I see. You originally were going to say there wasn't a particular reason, then you changed it to yes and said the reason is you would like to the FBI prove its case. Let me ask you, if I can, a few questions about the death penalty. When the judge asked you whether you were for or against it, you said you were for the death penalty in most cases, is that right? I think that's the phrase you used. I think that's kind of what you confirmed when you were talking to the prosecutor. And as I understood when you explained it later, you said you didn't think it should be in all cases, that there could be cases where it wasn't required. And as I understand it from – if you could turn to page 26 – I hate to bounce you around like that, but that's the way it's set up.

A. We could go in order.

Q. You were asked in question 103, the very last part, about whether your opinion and belief about the death penalty changed over time, and you said no it hadn't. So is this something that you've kind of believed in for a while? I mean, you had kind of a fixed opinion about the death penalty and it's kind of stayed that way over time?

A. I think a death penalty is suitable in a lot of cases, but not all. Nothing – no law fits always every case.

Q. Right. Now, as I understand it, in question 104, your views about death penalty are not based on religious or philosophical or spiritual, it's just a personal – your experience, your view of society and everything?

A. Right.

Q. As you say, it's your basic instincts?

A. Uh-huh.

Q. You were asked – if you turn to the next page, you were asked to express the extent of your agreement with four statements there, and I want to see if I can go over those with you. The first one was that anyone who plans and commits a murder should get the death penalty, and you said you strongly agreed if you planned and committed a murder and were convicted, that someone should get the death penalty?

A. I usually have felt that in cases I've known, yes.

Q. So you strongly agree with that basic statement?

A. That that is cold-blooded if they actually follow the plan, go through it and all that, that's my feeling pretty well on that one, yes.

Q. And I think before when you said you didn't think the death penalty – when you were talking to the prosecutor, you said it shouldn't be in all cases, but that there could be cases where it's not necessary, but you said if it was planned and cold-blooded, you really felt the death penalty was the only penalty for murder, that was the only penalty that's proper?

A. At this point, that's what I strongly agreed with. But I would listen to what the facts were and make my judgment based on the different penalties.

Q. Right. I guess I was thinking when you were talking to Mr. Freccero a couple minutes ago, I thought that you gave an example. You said that if it was not planned and cold-blooded, you could consider something less than death. Did I hear that right or wrong? I mean, I'm not trying to put words in your mouth. That's just the way I heard I it.

A. I could consider it either way. I mean, I'm not firmly convinced until I hear what the case is and circumstances.

Q. Even if it was a planned and cold-blooded murder, premeditated, you still think you could consider something less than death?

A. I think I could. I would try.

Q. Maybe we can go to the next one. So you thought anyone who planned and committed a murder should get the death penalty, you strongly agreed with that. The next statement was anyone who deliberately murders two or more people should get the death penalty. You strongly agreed with that one also?

A. Right. That's where I would – that's where I would place my feelings at that point.

Q. Right.

A. Strongly on all of them.

Q. And the reason on the first one about plans and commits it was really the planning part that you thought deserved the death penalty?

A. More that, yes.

Q. And the second one was the deliberately murders and the two or more people, both of those – is that both those things?

A. It wouldn't make any difference to me whether it was one or two.

Q. It's the deliberate part?

A. Yeah.

Q. Okay. And then the third one was any person who commits an act of terrorism in which someone dies should get the death penalty, and you said you strongly agree if they are aware of that possibility.

A. Right.

Q. That was the person who commits terrorism aware of the possibility that someone dies?

A. People dying in that action, yes.

Q. So –

A. Like blowing up a building. I could understand, you know, without feeling that that required the death penalty. But blowing up a building with the possibility there were going to be people in it, then that's the same thing as planning to commit an act of murder.

Q. So somebody who blew up a building with the intent to kill somebody in it, you would feel that should be the death penalty?

A. That would be the plan.

Q. When you were talking about an act of terrorism there – that's kind of a word you had to interpret yourself. Did I understand that you included in that when you were answering the question the kind of charges of the Unabomber, mailing bombs, intending to kill people, and actually killing them?

A. Yes, because for one thing there it was kind of indiscriminate, because anybody could have opened them. It wouldn't have necessarily been his target.

Q. Your sense is that somebody who's convicted of that crime or those kinds of Unabomber crimes, should get the death in terms of your own views on it?

A. At that point until I heard all the evidence on both sides. But I would wait. I wouldn't just say, yes, death penalty.

Q. If we go back to the previous page, page 26, you were asked what purpose a death penalty serves, and you stated – serves in our society, you said you felt it was a deterrent, at least that person won't kill again. I guess there is two things there. Obviously, you think one purpose is so that the defendant who's convicted won't kill again, is that right?

A. Right.

Q. And you also think that it's a deterrent to other people so they wouldn't commit the same kind of crime?

A. It's supposed to be. And, like I said, at least if it isn't a deterrent to somebody else to commit a crime, that it is going to eliminate the person that has committed the crime.

Q. Then if you go up a little higher, question 103, the second part, as I understand it, your basic view on the death penalty is that the punishment should fit the crime, is that right?

A. Yes.

Q. It's kind of the idea of an eye for an eye.

A. Yes.

Q. If you take a life, you shall forfeit your life. Obviously an intentional killing. Is that kind of the basis of your views on it?

A. That's how I feel, yes.

Q. Then if you look right above that, 103, you were asked what were your opinions and beliefs about the death penalty as it's used in our society, and you said if the defendant is found competent to stand trial, I could vote for it. What were you thinking when you wrote that exactly?

A. Because I felt that there may be a mental problem in this case that would be used as a defense.

Q. So when you were writing that, you were actually thinking of this case, you were thinking of this defendant?

A. I was thinking of that, yes.

Q. And your basic view is that if he's competent to stand trial, if there isn't a mental –

A. Defense.

Q. – defect or defense, and he was convicted, then you would vote for the death penalty?

A. I would feel I could if I hear enough evidence that makes me convinced.

Q. I guess when you say enough evidence that makes you convinced, are you talking to show that he in fact committed that crime?

A. That he committed the crime, yes.

Q. But let's just assume – I think Judge Burrell's question was kind of like this. In the first part of the trial, you would determine whether the evidence put on by the prosecution proved beyond a reasonable doubt that he was guilty of the charged crimes according to go law that Judge Burrell would give you.

A. Yes.

Q. And then you would go into the second – if you found him guilty of two of the crimes which involved mailing or transporting a bomb with intent to kill someone and actually having it go off and kill someone, both charges relating to one person, instead of having the judge sentence as you would in most cases, the same jury would sentence that made the decision as to guilt. And I guess when you're answering 103, and I want to find out, were you saying that if you found that he was – that he was guilty beyond a reasonable doubt and he was competent to stand trial, that you would then vote for death given the nature of the crimes?

A. Well, you see, I put I could. Not I would. I could if all the circumstances in the instructions and the mitigating circumstances or aggravating circumstances warranted. I would listen to what I gave as a choice.

Q. Let me see if I can ask you about that. Back on page 27, that last proposition, you were supposed – I understand you're just checking these. You're forced to multiple choice.

A. The choice of the four, yes.

Q. You said a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder, and you said you strongly agreed with that.

A. Uh-huh.

Q. Whether they'd been abused as a child or whatever their background.

A. What drove them to it.

Q. What drove them to it shouldn't have any effect on how they're punished if they committed the cold-blooded, premeditated murder, is that right?

A. Right.

Q. I guess what I'm trying to – I understand that you're saying that you could, but you would listen to other evidence. If that type of evidence made no difference, and if you found there was no mental problem, he was competent to stand trial, is there any evidence that could lead you to let him off with a life sentence instead of death?

A. I can't really visualize, so I don't – I don't know.

Q. But it wouldn't be the information about the defendant and maybe how he grew up and what, as you say, drove him to it that, type evidence you don't think weighs into between life and death if he's guilty?

A. I don't know. I would have to hear it. I might consider there was, you know, if I heard something. But at this point in life, I can't imagine circumstances, background circumstances that would cause it.

Q. That would make any difference to say –

A. Cause him to commit a crime, so I couldn't justify it.

Q. That's what you were basically saying when you said you strongly agree that background doesn't matter when it comes to whether or not someone should be sentenced to death for murder?

A. Right.

Q. That's what you meant?

A. That's what I meant.

Q. Okay.

A. I think.

Q. I know, there's a lot of questions going on. If I could have just one moment, Your Honor. Thank you very much.

THE COURT: Thank you very much. (Prospective juror no. 216 enters courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 216th randomly selected juror. Is this your juror questionnaire?

A. Yes, it is.

Q. Okay. You indicated in the juror qualification questionnaire that you have a trip planned?

A. I do.

Q. Do you still have that trip planned?

A. Yes, I do.

Q. Have you purchased tickets for the trip?

A. I did this last July, because it's a trip that I do every year at Christmas.

Q. Nonrefundable tickets?

A. Yes, nonrefundable.

Q. Would you experience a hardship if you lost the money associated with the tickets?

A. Yes. \$400 is a lot of money to me.

Q. Can you tell me a little bit about the plans. Were you planning on visiting family or what?

A. No. I have a very good friend that I go back and visit every year. My only family member past away several years ago and – I'm very nervous – and her husband past away several years ago, and we just made kind of a Christmas tradition of it. It's in Louisiana.

THE COURT: Parties.

MR. CLEARY: We stipulate, Your Honor.

MR. DENVIR: We stipulate, Your Honor.

THE COURT: Okay. In light of your vacation plans, we're going to excuse you from further service on the case. (Prospective juror no. 217 enters courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Is this your juror questionnaire?

A. Yes, it is.

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

A. The only thing I can think of is that if we're sequestered during deliberation, I have a toddler at home and a husband that works nights, so that would be my only problem. I wouldn't have child care.

Q. I'm going to go to the podium. You're the 217th randomly selected juror. I'm saying that so the record is clear as to who I'm talking to. I don't know if I'm going to sequester the jury during deliberations. I left open that option in the letter I sent the jurors. I didn't promise I wouldn't sequester them during deliberations. How old is your toddler?

A. He's three.

Q. Three years old?

A. Uh-huh.

Q. If I ultimately decide to sequester the jury during deliberations, is there an arrangement that could be made for that period of time so that someone else could take care of your toddler?

A. My parents aren't in town. I've got neighbors, but that's kind of a hard thing to ask them to do, and a hard thing for him since he wouldn't see me most of the day.

Q. Do you have relatives that could do that for you?

A. My parents live in Dixon.

Q. I'm thinking about others than your parents.

A. I got a sister, but she's got a baby of her own.

Q. Do you think she would be willing to? Like I say, I don't know if I'm going to sequester you. Would she be willing to do that for you?

A. I don't think she would say no.

Q. I have to ask these type of questions. Maybe I don't have to, but I choose to because the parties are entitled to a fair cross-section of the community from which to select prospective jurors, and they would consider you as part of the cross-section they're seeking to reach. I know that it would be perhaps difficult to be away from the little one for an extended period of time. I'm assuming that the deliberations may not involve an extended period of time, but I don't know that. Is it a hardship that you could bear during this trial if I ultimately decide to sequester the jury?

A. I don't know until that time, because I never been away from him for any period of time.

Q. I think arrangements could be made even if I did decide to sequester the jury so that the child could be brought to you. Would that alleviate the problem?

A. I suppose it would, yeah.

Q. Is there anything else that would interfere with your ability to serve on the jury?

A. No.

Q. I don't know if I'm going to sequester the jury. Did you fill out your jury questionnaire at Cal Expo?

A. Yes, I did.

Q. Since that time, have you received any information about the case or been exposed to information?

A. Just random tidbits. Nothing significant. I don't watch the news and haven't been reading the paper.

Q. Can you give me the content of those tidbits?

A. There was a little bit on the radio about his brother coming, and I heard somebody at work who said something about the cabin being moved. Other than that and just the numbers of jurors that had been kept in the pool, nothing more than that.

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

A. No.

Q. I want you to assume I know nothing about the case, and you're trying to help me understand what you know about the case and at least everything that you think is involved with the case. And I want you to provide me with as many details as you possibly can so I can see the nature of the exposure you had to the allegations involving the case. Can you do that?

A. Yeah. Probably the most that I recall about what I heard is the sketchings on the news when they were still looking for the Unabomber, and I remember hearing when they arrested him, and I remember seeing on the news the cabin, and vaguely something about his brother being involved in turning him in.

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

A. In the back of my mind I'm thinking that, yeah, I did hear that they had searched the cabin.

Q. Did you receive any information concerning what was found during the search?

A. Not anything specific. Maybe some documents. I'm not sure.

Q. Has any information you received about the case resulted in your formation of an opinion as to Mr. Kaczynski's guilt or innocence?

A. Leaning more towards, you know, since his brother turned him in, a little bit towards guilty, but that's nothing – I mean, my opinion can be swayed by the facts, and I'm open to the facts of the case.

Q. You're not strongly committed to the opinion you just related?

A. No.

Q. Is that an opinion you could set aside if you were selected as a juror in this case?

A. I think more I would have to be convinced that he wasn't. I know that's not the right – you know, innocent until proven guilty. But I probably would have to be swayed more to be innocent just from what I've heard on the news.

Q. Are you indicating that you would start off leaning toward guilt, is that what you mean by being swayed?

A. Just a little bit, yeah.

Q. Okay. You understand that a criminal defendant doesn't want a juror leaning toward guilt?

A. Yes.

Q. Criminal defendants would hope that a juror assumes the role that is akin to my role.

A. Right.

Q. I would be the judge of the law, and a juror would be the judge of the facts. So you would essentially be a judge. And they expect – they hope that I'm impartial and fair, and they're looking for a juror that has the same mind-set, impartial and fair. We only want what you can honestly tell us.

A. Right.

Q. So I'm going to ask you some questions. I want you to do your very best. Just to give me your honest response. Do you believe that the information you have received

about the case would interfere with your ability to allow Mr. Kaczynski to be tried solely on the evidence presented in this courtroom?

A. Yes, I think so.

Q. What does that answer mean?

A. That I think I could sit on a jury and listen to the evidence and make my decision on what I heard in the courtroom.

Q. Okay. Do you have the personal capacity – maybe you haven't had to think about this, but do you have the personal capacity to ignore the information you have received from news sources so that Mr. Kaczynski doesn't have to be concerned about being tried based upon information he may not even be aware of?

A. As a juror, I would do my best to do that.

Q. Is there anything that would interfere with your ability to do that? I mean, we would need your assurance that you could do that. We want a honest response, but I need to know whether you could in fact provide us with that assurance.

A. I can only say that I would hope that I could.

Q. You pondered a bit before you responded, and that's obviously permitted because we want you to think about your responses if needed so that we can be assured that we, in fact, receive a response that reflects your heart, your deep thinking. The use of the word hope doesn't –

A. I want to, but that doesn't necessarily mean that I could.

Q. Right. What are you thinking about when you select the word "hope," why is it that?

A. I really – I would like to be a fair and impartial juror. I would really like to do that. But just from things that I've heard and the fact that his own brother was a part in his arrest, it kind of – it just sways me a little to the other side, and I don't know that I can forget that completely if it's not brought up in the trial.

MS. CLARKE: We stipulate.

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

THE COURT: I appreciate your honest responses. I think you would be better to be on a different case, and I do appreciate what you told us. I'm going to excuse you from further service on the case. Thank you very much. (Prospective juror no. 141 enters courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Were you successful in reaching your employer?

A. Yes, I did. They indicated it would be a hardship on the business because it's during tax time, but that they would allow me to adjust my schedule. I could come in as long as I could work my full eight hours. That would be fine with me. And they said it's a hardship, but they were willing to do so.

Q. What do you want to do?

A. We can proceed.

Q. Okay. I am going to ask you questions from the podium. You're the 141st randomly selected juror. 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 the case?

A. I heard just small bits and pieces on the news that were on, but never anything that was – that I focused on recently.

Q. Can you share those small bits and pieces with us?

A. I heard basically that the cabin was being brought here. I remember seeing it on the back of a flatbed truck. And probably that's about all I remember. My sister told me that a juror had passed out or started crying, but that's about all I think I heard.

Q. Okay. Other than the discussion you had with your sister, have you had discussions with anyone else or overheard other people discussing the case?

A. No.

Q. I'm going to direct your attention to the time period before Cal Expo. I want you to assume I know nothing about the allegations involved in the case and that you're trying to educate me with all the information you know about the case, so take me back to the very beginning and work your way to everything that you know about the case so that I know as much as you know.

A. Well, I don't know much. I just recall hearing on the news different bombings. They were nothing I focused on. They didn't affect me personally, so I don't recall details on any of them. I recall seeing him being brought in, that he was arrested. I remember discussions on the news as to why they were arresting him. But I can't remember, I guess, the manifesto. I can't remember any other details. At the time I remember thinking, oh, they relate to the cases. But I can't remember to this date what they were. I think the only other thing I think I really remember is just recently when he wanted to be moved to a different jail or prison. Just vague pieces.

Q. Did you receive any information as to whether or not the cabin was searched?

A. No, I haven't heard anything like that.

Q. Okay. Has the information you received resulted in your formation of any opinion as to Mr. Kaczynski's guilt or innocence?

A. No, because I heard so little. As I said, it's not affected my life. I've not really followed it.

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

A. No. I know too little.

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

A. Of course.

Q. What does that mean to you?

A. That he's innocent, and I'll listen to what each of the sides present what they feel they have in the case, and I will make a decision at the end.

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

A. Yes.

Q. Can you explain what you interpret that to be?

A. Well, I personally have not heard enough of the case to know that it's him. I don't know him. There's no reason why I would think that it was him.

Q. The presumption of innocence doctrine is a fundamental principle in our legal system. And the word presumption means just what it states, that you presume the defendant is innocent. And because of that presumption, the defendant need not present any evidence or prove anything. The defendant can rely upon that presumption until and unless, should it occur, the government proves every element of the crimes charged beyond a reasonable doubt. If the government fails to meet that burden, 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 the presumption of innocence doctrine?

A. No.

Q. Can you assure him that he will receive that doctrine as I described it?

A. Yes.

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

A. No.

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

A. I believe it has a place in certain circumstances.

Q. I'm going to ask you to join me in a hypothetical. Don't let me confuse you. If I make a mistake and I do say something that's not clear, please allow me to correct myself so I present you with a clear question. The parties want the same opportunity. You don't have to guess at what we're asking you if we're not clear. Make sure all of us are clear in our questions. I want you to assume, hypothetically speaking, that you in fact become a juror, that you and your fellow jurors wade through all the evidence in the trial, you ultimately receive instructions from me, and then you go back to the jury deliberation room and you conscientiously follow all of the instructions, and then you ultimately decide, to Mr. Kaczynski's disappointment, that he is guilty of the offense of intentional murder of another human being without justification. That type of a finding in the guilty and not guilty phase of the trial would then take you to the sentencing or penalty phase of the trial. In the penalty or sentencing phase of the trial, the jury would receive additional evidence, the aggravating factors which the government would opine are factors that point toward a sentence of death, there would be mitigating factors which would be factors that point toward a sentence of life in prison without the possibility of release, or some lesser sentence. Is there anything about the jurors' finding of murder that would prevent you from meaningfully considering all three of those sentencing options?

A. What was the last question? I'm sorry.

Q. Is there anything about the jurors' finding of murder in the guilt and not guilty phase of the trial that would prevent you in the sentencing phase of the trial from considering meaningfully all three of those sentencing options?

A. I'm sure I would.

Q. You would?

A. Consider all three.

Q. All three of them?

A. Yes.

THE COURT: The 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 had some follow-up questions, if I may. There is a little concern about your schedule if you got to complete your workday when you leave here and you got to start as early as you start. Did you sort of calculate in your mind where you would be?

A. Well, I worked through tax season before and basically generally have gone home, eaten dinner and gone back to work until 10:00 or 11:00 at night. The only difference here would be I would be short a few hours in the morning.

Q. You have kind of a day job in the morning and then a –

A. Right.

Q. That's my concern. I wanted to sort of explore it with you, because you're one we don't want to kill here.

A. Well, like I said, last year my schedule was until 10:00 or 11:00 at night during tax season, going back in the evening. During the morning hours, they would have to have somebody there, the rest of the office would have to split responsibilities and cover what I can't do when I'm not there.

Q. As I figure it out, you would have leave home probably before 6:15 in the morning.

A. I have a sister that lives in Sacramento, about 15 minutes away from – well, from Cal Expo. I don't know how far this is from Cal Expo.

Q. Maybe you could stay over a little –

A. I could spend some time with her and then go home and do laundry.

Q. If you have time for that. You would be meeting up at

7:00 in the morning. You would be here until 1:00. The judge has said he would stop court at 1:00, so you would be out by, say, 1:30, and then you would drive to –

A. Probably about 2:15.

Q. Work until about 10:00 at night. Just a full-day schedule?

A. Uh-huh.

Q. And then maybe the overtime that's necessary in tax season. Are we pushing you a little too hard? I think everybody is kind of open for you sort of saying, hey, guys, I'm happy to do my civic duty, but maybe this isn't the time or the place.

A. I had experience. I worked at the Nut Tree years ago, and during pumpkin patch, it was the same thing. Weekends we're up, you know, 4:00 in the morning, going out there, up at 3:45, getting back late at night. I can do that for a short duration of time. I would not choose to do that the rest of my life, but I feel it's something that I can handle.

Q. Okay. We're talking about a trial somewhere between two and four months.

A. Yes.

Q. You're okay with that?

A. Tax season generally runs from January through April, and I usually have long hours during that entire time.

Q. You're okay with that?

A. Well, yes.

Q. Okay. Because this is sort of your shot at saying let me think about this.

A. As long as my job was willing to let me leave during the morning, I was fine with that.

Q. Okay. You're a hearty sole. Can I ask you, when you received your jury summons, your questionnaire – I don't know whether you need to see it to remember it.

THE COURT: It's next to her. Can you reach that from the stand?

Q. BY MS. CLARKE: Page 11. You explained you had a little apprehension. I guess that was over your privacy.

A. Yes. Over the notoriety of the case and being involved in that type of a case. There was a bit of initial apprehension.

Q. Have you worked through that, have you talked to anybody about it or are you satisfied?

A. Yes. I would say probably for quite a while I felt apprehensive, but the more I got into it and thought about it, I thought it's an interesting situation to be in hopefully once in a lifetime situation to be in, and I don't really fear it as I did before.

Q. That was what I was going to ask you about. I think your words either somebody said to you or you had said it would be a fascinating and educational experience. Can you tell me what you were thinking?

A. Pardon?

Q. Can you tell me what you were thinking, what made you say that?

A. Just learning about the judicial system. I've never really been a part. I was in a jury one time for two weeks and the case was thrown out, so I never really been a part of – a part of it, and I thought it might be a growing experience to kind of learn and see what it's about.

Q. Was it the fact of sitting on the jury or was it the fact of sitting on the jury in this case?

A. Just the notoriety of this particular case is what brought the apprehension. If it was somebody that stole beer in my local town, I would not have felt that way. But because there's been a build-up on the case suddenly, just my first thought was, my gosh, me. You know, I was just a – I think probably a lot of people felt that way.

Q. That would be the apprehension, the fascinating and educational experience. Is that the judicial system or this case, you think?

A. The judicial system, I think.

Q. Not particularly this case?

A. No.

Q. You kind of drew that answer out a little bit.

A. Well, I was thinking as I was saying it. But, no, I think it's just the overall experience.

Q. Okay. The judge asked you some questions about it, and I – actually, the question said you tell me what you know about the case, educate me, and you told him that you had heard about Mr. Kaczynski's move to a different jail. Can you recall your reaction at the time or what your thoughts were?

A. No. Like I said, I really haven't been following this. It's not anything that's affected my life. I have the news on usually when I get home, if I'm home in time, and I'm usually doing things. I don't usually sit down and watch it straight through. If I hear something that's intriguing or Tom Cruise is on there, I might come out and take a look at it. But otherwise I just listen to it in the background. And if it's something I think affects me, I'll make a point of paying attention. I can't really remember, other than there was just that comment that was made.

Q. It just kind of went on by you?

A. Yes. It didn't phase me.

Q. You mention in your questionnaire that you were aware that the newspaper or somebody had listed things found in the cabin. Remember that?

A. Yeah. I think I remember seeing it on TV when it first happened.

Q. Can you remember the things that they listed? I know when you wrote your questionnaire, you said it's evading me right now.

A. The only thing I can remember, and I think it's just because it has been brought to the forefront, is the manifesto. I can't really remember anything at the time. I can remember the comment that made it sound like something that could have been linked to some of bombings. But like I said, it's nothing that I focused on. You know, my memory long-term is good for some things, especially if it means something to me. But if it doesn't, you know, it's out, and I allow myself to think of something else, put something there.

Q. You mentioned that you thought they found the manifesto. Is that in the cabin?

A. That's what I thought.

Q. Okay. How do you react to that, does that make you have any feelings one way or the other about –

A. No, because I know very little about everything else that one piece of evidence doesn't really tell me.

Q. Okay. You remember the question about how is the criminal justice system working; remember that? Page 17. It was a long questionnaire. 64, down at the bottom of the page. You said it's working well.

A. Well, see, I'm not a part of it.

Q. I didn't mean to suggest that it wasn't. I was just –

A. I'm assume it's working well. I don't walk out into the street and find people shooting and stabbing people. There seems to be an order in our daily life. So I just feel it must be working well.

Q. Okay. If I could take a moment and ask you about your feelings about the death penalty. I think, basically, you told us in your questionnaire that you believe it has a place in our society, and that depending on the circumstances, it may or may not be justified in an intentional killing. Can you help us understand what circumstances you would be looking for?

A. It's difficult to try to paint one little hypothetical situation. Can you be more specific on what you're asking?

Q. Let's – certainly. Let's go to the questionnaire, page 27. Maybe this will help us both. You remember question 107, it's a series of checkoffs. Anyone who plans and commits a murder should get the death penalty, and your marking was agree somewhat, and then it was as long as the murder is the intent, but it depends on the circumstances. Does that help trigger what you were thinking about?

A. Yes. Well, basically, I think, if somebody killed someone, I would not necessarily feel she should be put to death for that. So I believe there are times when somebody has taken a life and I don't think their life should be taken as well. There may be times when somebody has shot somebody and planned to do so, had no regard for human life. Life is precious, time is short. If that was their intent, to kill somebody, and he planned to do that, then I would be more inclined to think that the death penalty could stand in a situation like that.

Q. In a situation like that, what else would you be looking for?

A. Well, basically –

Q. To make your decision?

A. The reason for why that person shot could also affect it. Why the person shot them would be a reason why it doesn't make it right. But there could be something that brought that person to commit the murder. And so definitely the reason would weigh whether or not for the death penalty.

Q. If you had a situation – and I believe the judge put part of this to you. If you were on a jury and the jury found beyond a reasonable doubt that the person had committed a premeditated, deliberate, intentional murder, one with no justification or excuse, where would you be on the penalty then?

A. Premeditated, no justification?

Q. Right.

A. I would probably – I mean, not having heard all the evidence there, but in that scenario I would probably lean more towards the death penalty.

Q. What else would you be searching for?

A. Well, like I said, there's no justification – well, I would assume maybe in that case there would be the death penalty. But, in any case I would want to make sure I knew exactly why the action was taken.

Q. When you mark – if you look at the bottom on 107, the last segment, page 27, question 107, the person's background does not matter. I guess you started to say agree somewhat, and then said strongly agree. What were you thinking there?

A. I don't know. I don't. I really don't know why I scratched it out.

Q. Whichever one –

A. Oh, well, I – basically, it doesn't matter who the person is, you know, where they were raised, what their upbringing is. If somebody has killed somebody, you're looking at not who they are or what their profession is or who they know, but why they did what they did.

Q. Can you envision a circumstance where who they are might play into why they did what they did?

A. Not really.

Q. Their upbringing, their family circumstances, their mental health?

A. Well, I imagine if they shot somebody, it could have been out of self-defense. I mean, I don't –

Q. You know –

A. – follow what you're saying.

Q. If we're talking about a self-defense situation, that may indeed not be an illegal killing. So we probably wouldn't be talking about the death penalty. So we're focused on a circumstance where there's a capital crime that's been committed, and the hypothetical we can work off is the premeditated, intentional, deliberate murder, no justification or excuse. Can you envision a circumstance where a person's background could affect the sentence?

A. You mean –

Q. In those circumstances?

A. Meaning mental?

Q. Sure. Upbringing, family circumstances –

A. See, it's difficult for me to give a direct answer when we're talking hypothetically.

Q. Sure.

A. To me, I could not make a decision to sentence somebody to death until I was able to hear all the evidence. So it's difficult for me to even say hypothetically, because I haven't heard all the evidence that's in your mind of what your hypothetical situation is.

Q. And what I've given you is premeditated, deliberate, intentional murder without justification or excuse.

A. That sounds like a death penalty, and yet I say that without knowing a shred of evidence. I don't know why it's gotten to that point.

Q. At that point do you want to know more about the crime itself or more about the person who committed the crime?

A. Both.

Q. Could we look at the third one down, the act of terrorism.

A. On what page?

Q. I'm sorry, page 27. I'm still stuck on that. Number 107.

A. All right.

Q. Where was the difference; what were you thinking of when you thought of terrorism?

A. Terrorism I think of as a very aggressive act. But, again, there are reasons why a terrorist does what he does. So I – you know, again, I can't really give you, I don't think, a direct answer of what you're asking.

Q. You say again that it depends on the circumstances.

A. Right.

Q. You're looking at the circumstances of the act of terrorism or the circumstance of the person who's committing the act?

A. Circumstance of the person, the circumstance of the act. It's just – everything that has to do with the act of terrorism I feel has to be dissected and analyzed. I think of terrorism as possibly being something more that you would lean towards the death penalty. But, again, there are reasons a person does what he does. Not that they're right and not that they're wrong, but before you can sentence them to death, you have to basically know what was in the mind, why did the person do what he or she did.

Q. Sure. You tell us in your questionnaire that the Unabomber crimes were unspeakable. Do you remember phrasing it that way?

A. I don't remember putting it that way.

Q. You said the crimes were unspeakable. Would that be a fair characterization?

A. Yes.

Q. Of where you are?

A. Uh-huh.

Q. Knowing how you feel about those crimes, the Unabomber crimes, do you have an opinion as to the appropriate penalty for the person who's convicted of the Unabomber crimes?

A. No, because I don't know enough about the Unabomber crimes. I know, just from what I heard, opening up a bomb that was delivered. That seems unspeakable that somebody would mail that. But if you're asking me what I feel about the Unabomber, I know very little about the case to be able to say what I feel about the person that did that.

Q. That's fair enough. Could I have just one moment, Your Honor? Thank you very much.

MR. CLEARY: And I have no questions for this prospective juror.

THE COURT: Okay. That's all the jurors we have for this afternoon. Is there any other business to cover before we adjourn?

MR. DENVIR: No, Your Honor.

MR. CLEARY: No, Your Honor.

THE COURT: Okay. Court's in recess until tomorrow morning. (Court recessed at 3:25 p.m.) —oOo— IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

– oOo –

UNITED STATES OF AMERICA,)) Plaintiff,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) -----

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Reported by: DENNIS McKINNON, CSR No. 2223 CATHERINE E.F. BODENE,
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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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