

Jury Selection Day 17

Dec. 10, 1997

SACRAMENTO, CALIFORNIA
WEDNESDAY, DECEMBER 10TH, 1997 - 9:00 A.M.

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

THE COURT: Let the record reflect all participants are present. My understanding is that the parties have stipulated, through communications they had before this proceeding with my secretary, to excuse jurors 242, I presume that juror has been excused for financial hardship reasons and because of a question of fairness, juror 243, and I assume that juror has been excused because of a question of fairness, and juror 247, and I assume that juror has been excused because the juror would have to travel 150 miles daily and has indicated that would cause her some stress; is that right?

MR. DENVIR: Yes, Your Honor.

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

THE COURT: Okay. I'm not going to invite jurors 242 and 243 in the courtroom to be excused. I'm simply going to have my deputy clerk to tell those two jurors that, based on their responses to the juror questionnaire, the parties have stipulated that they could be excused. Because I don't want to tell them the reason why they've be excused. Okay. (Brief pause.)

THE COURT: I'll stop communicating with you once my deputy clerk comes through. The defendant also proffered a stipulation with regard to excusing juror 231 for financial hardship reasons. The Government didn't readily accept the stipulation; asked the Court to call the juror's employer, which I did. My communication with the juror's employer revealed that the employer will experience hardship difficulties if the juror is impaneled. However, the employer was understanding of the need to allow the juror to fulfill her civic duty of being a juror on this case and was willing to make adjustments, but I don't think its fair to ask the juror to make those adjustments. I realized that in communicating with the employer. The juror has stated under penalty of perjury – I'll have to discontinue this communication. (Whereupon, the prospective jurors were escorted in and seated in the jury box.)

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

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

THE CLERK: Thank you.

THE COURT: Good morning and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. On the same platform with her is the certified shorthand reporter who will assist the court in administering this trial. I trust that you will fulfill your civic duty during this voir dire questioning process. I thank you both for your presence and your anticipated cooperation. You're performing an extremely important function in our justice system. Under the principles of our constitutional democracy,

the parties in this case are entitled to a fair and impartial jury. That right would be meaningless without citizens such as you making themselves available for jury service in this case. The questioning process is an essential way of ensuring that a fair jury is obtained. Please answer the questions as honestly as possible. I'm going to stop right there and explain what I mean. If it takes a moment for you to have to answer the question, take your time. We don't expect you to give us ready answers if we're asking you a question that you haven't thought about before. We hope that you will search your hearts and give us the most honest response that you possibly can. Although we are trained in the law, don't assume that we know how to ask you perfect questions. We make mistakes. Sometimes our questions contain ambiguities or they're vague or maybe we've been involved in the law too long and we don't know how to ask a clear question that a person that is not involved in the law would readily understand. Make us do our jobs. If we ask you something that is not clear, don't try to answer it. Don't assume that we know what we are doing. We want you to help us do what we can so that you have a clear question that you are responding to. We don't want you to be concerned about someone else's view of your answers. Each potential juror is entitled to his or her own opinion. The parties value your opinions. The questioning process will involve first questioning you as a group and then questioning jurors individually. Then later, I will call back certain jurors for a further group questioning, and I will give those who are to be involved in that process notice as to when that will occur. Our objective is to obtain a fair and impartial jury that will decide this case based upon the evidence that is presented here in the courtroom and on the law that I will instruct you on later during the trial. I have decided to do individual questioning, in part, because the parties have requested it, and also because there has been some publicity about this case. During the individual questioning, we will cover the publicity matters and other matters that will tell us whether you should sit as a juror on this type of a case. The law requires me to ask you questions about publicity so that I can ascertain how you have been exposed to publicity and so that we can objectively determine how that publicity could possibly have affected you. We will also give you an opportunity to tell us your own perspective as to whether or not you believe you have been affected by the publicity that has surrounded this case. The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life in prison without the possibility of release, or a lesser sentence. Life in prison under the federal system means just that. If you are sentenced to life under the federal system, you in fact receive a life sentence. There is no parole in the federal system. The sentencing determination is made at the second phase of the trial, which is referenced at times as the sentencing phase and at others times as the penalty phase. If there is anything about the charges that causes you to prefer not be on a juror on this type of a case, please indicate that fact by raising your hand now.

PROSPECTIVE JUROR NO. 232: (Raises hand.)

THE COURT: You are the 232nd randomly selected juror. I'll give you an opportunity to elaborate on why you are raising your hand during the individual session. The first part of the trial, which will be referred to as the guilt or not guilty phase, will occur like any other criminal trial in federal court. The Government will present its case first. The Government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations. Nothing more. Mr. Kaczynski is presumed to be innocent and does not have to testify or to 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 the 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 the hearing, the jury would then again deliberate as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during the questioning process about your views on the death penalty. We may ask questions in additional areas too. During this questioning, we will refer to you by your randomly selected number as a juror rather than your name. This is because I decided to use an anonymous jury in this case to protect your privacy, as I told you in a previous communication. I'm now going to give you a jury instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from jury service on this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended or you have been excused as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about this case until you have been excused by me. Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately. Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case about anyone who has anything to do with it. Statements contained in news accounts may be in inaccurate or exaggerated, and it would be unfair to the defendant, as well as to the Government, to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard

and which they had no opportunity to discuss. For these reasons, you should avoid reading and listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition. Fifth, if you need to communicate with me, simply give a signed note to my deputy clerk to give to me. The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem. There is no response. I contemplate observing the holiday season as follows: We will not hold court during the week of December 22, which is the Christmas week, nor on January 1 or 2. I contemplate holding court December 29, the 30th, and the 31st. Please raise your hand if this poses a problem.

PROSPECTIVE JUROR NO. 222: (Raises hand.)

THE COURT: You're the 222nd randomly selected juror. I'll talk to you about that in the individual session. Please raise your hand if you do not understand the following: Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty. There is no response. If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to the sentencing phase of the trial. At the sentencing phase, a sentence of death 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 consider all the facts and circumstances presented. The Government may focus on certain aggravating factors, things it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors; meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this. There is no response. Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There is no response. If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law, which I will give to you in my instructions, whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this, please indicate that fact by raising your hand. There is no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it in a private setting, please let me know of that request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions in the area you have indicated the desire to discuss in private so that I can determine whether aspects of the matter can be discussed in open court without disclosing the content of what you want to remain private. If this can't occur, please let me know so that I can determine whether we should immediately discuss the matter in private. 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 to place the remaining juror on the witness stand. /// (Whereupon, the prospective jurors were escorted from the courtroom.) (Whereupon, Prospective Juror Number 219 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. You're the 219th randomly selected juror, I think. Is that your jury questionnaire? (Document shown to prospective juror.)

A Yes, it is.

Q Then I'm right. You are the 219th randomly selected juror. I'm going to ask you questions from the podium. (Brief pause.) I called your employer yesterday. Did you receive information that I called your employer?

A Yeah, he did. He said you called.

Q The parties, they've authorized me to call employers of those prospective jurors that have indicated a potential conflict with the trial schedule and work hours. And I'm now wondering is there any reason why we shouldn't continue to consider you for jury service in the case?

A I don't think for work now because I think they have more – they've hired more people.

Q Okay.

A It was just personal.

Q I need to state on the record, because the parties don't know what I spoke to your employer about, so I'm going to tell the parties.

A Okay. That's fine.

Q And I asked your employer whether it would be able to make an adjustment to your work schedule. Of course, I don't know if you are able to work, given whatever adjustment could be made, but your employer indicated that an adjustment could be made. You indicated that you have a private matter?

A Yeah.

Q Is that something you want to discuss in private, or it's just something other than –

A I think I alluded to that in my questionnaire.

Q Let me look.

MR. CLEARY: Your Honor, I think it is question 41 on page 11, and question 122 on page 32.

THE COURT: All right. I remember then. (Brief pause.)

BY THE COURT:

Q I'm going to show you –

MR. CLEARY: Questions 41 and 122.

MR. DENVER: Page 11 and page 32, Your Honor.

MR. CLEARY: I'm sorry. 123, 41 and 123. (Brief pause.)

BY THE COURT:

Q I'm going to show this to you. (Document shown to prospective juror.)

A Okay. Sure.

Q That's where they directed my attention.

A I did plan –

Q I directed the juror's attention to question 123.

A Yeah. I had planned to visit a week with my father, and he's still alive. I didn't think – and I cancelled that vacation because I came up for that. I had planned the last of January to go visit him. He's been in a nursing home over a year. I don't know why he is still alive, but he is, and that was the other question. And then it's a family matter, helping two granddaughters, you know, I'm concerned about. That's my only concern is my family.

Q Is that the private matter you were just referencing?

A Yeah, that's the private matter.

THE COURT: Is that the private matter counsel wants to direct my attention to?

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

MR. DENVIR: Yes, Your Honor.

BY THE COURT:

Q Under the law, I'm obligated to assist the parties in being able to choose what is called a fair cross section of the community as potential jurors. The idea is that – and I didn't make this up and I'm telling you what I read some place.

A Okay.

Q I think the idea is that our forefathers thought that if you have jurors that reflect a cross section of the community, then a defendant has a better opportunity to obtain a certain measure of justice because you have people that would look at the factual situations differently, and then when they go back to the jury room, they bring their different ideas together. And it is better to have such individuals thinking about things than have individuals that look at a particular situation from the same perspective. So the thought is that we shouldn't exclude a whole stratum of society, and we need to be careful when we start excluding people. I'm saying all of this as a preface for the question: Is there any adjustment that you could make that would free you for jury service?

A As far as family?

Q Yes. I'm assuming family is the only problem right now?

A I guess I'd just have to see what I could do, you know. My schedule is made out. It's made out through January. You know, it's difficult to find – if I want to go home for the vacation holidays, it's difficult. So I guess I'll just have to – it's something I have to live with. If I can't, you know, if I have to serve on the jury, you know, I won't be happy about it, but I guess that's what, you know, I would have to do. I understand what you are saying. I understand that. And I feel like I have contributed to society. I work, I pay taxes, and I have served on a jury before. And you know, if that's my obligation, you know, I don't – you know, I like to fulfill it, you know. But the last

year, I have had a lot of, you know, personal matters. And that's in anybody's life, you know, if you understand what I mean. But seems like this year has been more. But that's life. So I guess that's all I have to say, really.

Q I don't mean to appear insensitive when I ask you these questions.

A I understand. I understand where you are coming from. I fully understand. I do.

Q We don't want an individual to serve who can't serve because of personal reasons. It's just clear that sometimes we experience things in life that make it difficult for us to perform civic responsibilities.

A Yeah.

Q And I don't – only you can answer that question for us. I mean, I could tell you things as to why I'm asking you questions, but you are the only one in the courtroom that can tell us whether you would be able to make adjustments and make yourself available for jury service.

A I guess, you know, I say I can, you know. I think my employer will compensate me, and so I'll just have to postpone, I guess, my vacation then. That's, you know – And I can make arrangements for my granddaughter, you know; just see if I can get other family members if the Court feels, you know, thinks that, you know, I'm a good candidate for, you know, the jury.

Q If you make the adjustments you just indicated, will it cause you to be disappointed in the court system and if so, would that interfere with your ability to be a fair and impartial juror? The parties want to have a fair and impartial juror. They don't want to have an individual that is upset with them for some reason or another. I'm just asking you that question because you sort of indicated that you won't be happy making adjustments, but you would make them. And I want to know if you make the adjustments, is there anything about making the adjustment that would interfere with your duty as a juror?

A I don't think so.

Q Okay.

A No.

Q Did you fill out the jury questionnaire that I showed you a few moments ago at Cal Expo?

A Yes, I did.

Q Since that time, have you received any information about the case, discussed it with anyone, or overheard other people discussing the case?

A Well, I think every day you hear it on the news, on TV. It's in the paper. And I'm a person that watches TV and the newspaper, you know. But I don't think I have paid any more attention to it than I do any other news, really. You know.

Q What information have you received about the case since Cal Expo?

A From the court system or –

Q From any – any source. We have to know what information you have actually been exposed to. And that's why I'm asking the question. The law obligates a judge, at

least in the Ninth Circuit, which is where we are located, to find out what information

–
A From news sources? Is that what you are speaking in regards to?

Q From any source.

A From the news I've seen he's been on trial, that, you know, juries have been selected. They are seeking the death penalty for him. That's from the news that I have watched.

Q Okay. Is that since Cal Expo that you –

A Yeah, that's been since Cal Expo.

Q Have you read any newspaper articles about the case since you appeared at Cal Expo?

A Yes, I did. But it was just – I don't even remember. I don't remember.

Q Okay. I want to direct your attention to the time period before Cal Expo. I would like you to tell me all the information you received about the case before that time period, including any information you received about the individual reference as to the so-called Unabomber. And what I would like you to do is to assume that I don't know anything, and you are trying to educate me so that I have all the information you have. And that means that I would like you to give me as many details as you can.

A You know, it's very briefly. I didn't – I just remember watching the TV. This gentleman had been arrested – Mr. Kaczynski had been arrested for, you know, sending mail bombs. And I really didn't, you know, there was – I think there were three people had been killed. And I just saw that on TV when he was arrested in Montana, and it showed the house. And that's about all I remember about it, really.

Q You said they showed the house?

A In Montana, yeah.

Q Did you receive any information as to whether or not the house you are referencing was ever searched?

A I guess it did show federal marshals going in searching it, but whether it was pictures of bombs or anything, I don't remember. I don't remember.

Q Okay. Has any of the information you received about this case caused you to form an opinion or any kind of preconceived idea or suspicion as to Mr. Kaczynski's guilt or innocence?

A You know, it's interesting. Excuse me. It's interesting there hasn't been any more bombs since he's been arrested, you know, mail bombs that I have heard of or seen in the news. That's about the only thing I could really say.

Q Did you make that comment to indicate that you have an opinion in the area that I asked about?

A No, I didn't. Hu-huh. Just a statement, really.

Q Do you have an opinion in the area I asked about as to Mr. Kaczynski's guilt or innocence?

A I do. I think he could possibly be guilty.

Q How strongly are you committed to that opinion?

A Well, I would like to hear the evidence, you know.

Q I'm going to ask you a question about that opinion. Is that an opinion that you are capable of setting aside, leaving outside the courtroom, if you were selected as a juror in this case so that Mr. Kaczynski could be assured of only being tried on the evidence that is presented here during the trial?

A Yes.

Q You could assure Mr. Kaczynski of that?

A Yes.

Q Does Mr. Kaczynski begin this trial, if you are selected as a juror, cloaked with the presumption of innocence?

A Would you repeat it, please?

Q Will you give Mr. Kaczynski the full benefit of the presumption of innocence doctrine if you are selected as a juror?

A I would, yes.

Q Can you tell me what you mean by that? What does that mean to you?

A It means listening to the evidence and weighing and seeing, you know, if he's guilty or innocent.

Q Okay. There is another component to it. The doctrine has two parts: the presumption of innocence, and so you are actually presuming that he is innocent. Any criminal defendant in our justice system is in fact presumed innocent, and they are entitled to the protection of that presumption until and unless the Government proves the defendant's guilt beyond a reasonable doubt and to meet that burden, the Government must prove every element of the offense or crime charged against the defendant beyond a reasonable doubt, and if it fails – if the Government fails to meet that burden, then you must find the defendant not guilty. Is there anything about your belief systems that would prevent you from allowing Mr. Kaczynski the full benefit of that presumption of innocence doctrine?

A No.

Q Okay. Under that doctrine, he doesn't have to present any evidence. He doesn't have to do anything. He can just sit and watch to see if the Government is able to meet its burden, and if he elects to do that, would you, if the Government doesn't meet its burden, is there anything that would prevent you from entering a not guilty verdict for Mr. Kaczynski?

A No.

Q Can you think of any reason why you couldn't be fair and impartial to both sides if you were selected as a juror?

A No, I can't.

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

A I believe in the death penalty if, you know, if you find someone guilty and they have taken another life. As it says in my thing, an eye for an eye, you know. If they're found guilty and they fit the crime, then I feel they should be guilty – they should be punished.

Q If this case reaches the sentencing phase and you were in fact a member of a jury that hypothetically found Mr. Kaczynski guilty of the crime of intentional killing of another human being without justification, would you automatically vote to select the death penalty, no matter what the mitigating evidence was?

A I think you would have to see what the mitigating evidence was.

Q So you would listen to the aggravating and mitigating evidence before you decided which sentencing option is the one to choose?

A Yes.

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

Q Morning, ma'am. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions if I could.

A Sure.

Q Excuse me. I want to – I want to explore with you a little more about the question of whether serving on the jury would be a hardship. And I guess you have to preface by saying that obviously serving on a jury is at least an inconvenience for everybody, and then for some people because of their condition, serving on a particular jury at a particular time can be a hardship. And both the parties are concerned about that. One, we don't want to unfairly burden any juror, but we – in addition to that, we don't want to have a juror who is sitting for a trial and is not able to fully concentrate and give their full attention to the case. So I would like to explore it a little with you, what your situation is, to see if, you know, this is a case you should be sitting on at this time. Is that okay?

A That's fine.

Q Okay. Let's start, if we can, first of all, with the schedule. You understand that the – that the trial will probably start on December 29th. It's expected to go for two to four months. We go five days a week. Court would sit from

8:00 until 1:00 o'clock. Jurors would have to assemble somewhere at 7:00 in the morning, be taken to court at 8:00, sit until 1:00 o'clock, then be taken back to the assembling point, and then would be released and have their day free. That's what the schedule is. As I understand it, in your employment – first, let me ask you, while you're sitting on jury duty, would you have to be working at your employment in order to be paid?

A I think my employer pays me. I don't know how much. And where they come, it takes me an hour to commute up here and an hour home, so I work an eight-hour period. But I know they do – they compensate. They do compensate.

Q Well, but I guess what my question is: If they compensate you, do they expect you then to work your normal workweek also?

A You know, I don't know. I don't think so.

Q Well, there are some employers that say, for instance, some governmental employers say when you are on jury duty, you don't have to come in at all, and we'll pay you your normal pay. There are other employers that say –

A I think they pay your normal pay. Because I work – you know, I work the weekends – every other weekend, and I think it's eight days. Eight days every two – two – It's part time. Eight days every two weeks. Every two weeks. But as far as I know, they pay you when you serve on jury duty.

Q Let me ask this because I guess I don't understand what your schedule is. How many hours a week would you normally work?

A It's 32 hours a week.

Q 32 hours a week?

A Right.

Q And during this trial, if you were to sit as a juror, would you be working the 32 hours? Is that what you are going to attempt to do?

A No.

Q So you would be replaced and won't have to sit?

A Would be replaced.

Q Okay. I see. So you don't have any concern then about the schedule? You would – you wouldn't have to go –

A Actually, when we started, we were short staffed, you know. When I first – we were really short staffed, but they've hired more people.

Q So you have no concern about – about the work situation?

A Not now. It's just I need to keep up my skills so I might see if I could work a day on the weekends or something.

Q But you could fit that around the Judge's schedule?

A Yeah, uh-huh.

Q Okay. And the second – the second matter you were concerned about, as I understand it, and I don't want to pry into this unduly, but I do want to make sure this is not going to be a problem for you, is on page 32. Could you turn to that? Do you have your questionnaire there?

A No. (Document given to the witness.)

BY MR. DENVER:

Q First, maybe I could ask you – let's see if I can – if you could first look at page 11, perhaps question 41. You were asked what you thought or felt when you received your summons in this case, and you said you were very – I'm not sure what that says.

A I was very angry.

Q Because you felt you didn't have the time to spare at this time for this case; is that right?

A Yeah, that's right.

Q And that was for the reasons that you then discussed more fully over on page 32?

A That's correct. That's correct.

Q Is the – let's start with the one about your daughter. Is that going to be a problem if you sat on the case, for the way with the schedule and the duration we are talking about, is that – or is that something that you can handle?

A I think it will be something I can handle because it's been going on for sometime, and like it's going to go on for sometime. And I have an older 19-year-old granddaughter that is living with me, and I think she may be able to help.

Q So you feel now that that problem will take care of itself?

A Uh-huh.

Q Then with regard to your father, as I understand it, you were planning on visiting him in November?

A Yeah, I was. And I cancelled my vacation so I came up for that, and then I didn't hear any more. Then I planned to go – he's still alive. I planned – and doing badly but – I planned – planned on going home in January. That was –

Q And how long would that – would that trip have been that you are planning?

A I was planning on about eleven days.

Q I'm sorry. About eleven days?

A Eleven days, uh-huh.

Q Is this a trip – this is out of the state some distance?

A Yes, back East.

Q Well, only you know, I guess, your father's condition. I mean, you wouldn't be able to make that trip if you sit on this jury. Is that going to be an unfair burden on you, given the stage of his illness and everything?

A It's just I wanted to go visit. I just wanted to visit him one more time while he was alive. That was the only thing. Of course, he could live for another year. I don't know.

THE COURT: There is a judicial conference, educational conference. I think it's the last week in January. So we won't be in session. I don't know the exact time yet, but would that allow you to visit your father?

PROSPECTIVE JUROR 219: Yeah. I was planning on going before the 31st of January.

THE COURT: This wouldn't allow you to visit him as long as you have indicated you desire to visit him, but the court probably would not be in session for at least one week in January, the last week in January.

PROSPECTIVE JUROR 219: That would be fine. That would be fine.

BY MR. DENVER:

Q So that you pretty well –

A That makes me feel better.

Q All those problems are pretty well taken care of?

A Yeah. That makes me feel better.

Q Let me ask you, if I can, if you could turn to page 20 and 21. Evidently, you served on the jury before about ten years ago?

A Yeah.

Q And then if you could, turn to page 21, question 78, the second part of it. You said that there was something about – you were asked: "Is there anything about that experience to make you want to serve or not serve on a jury again," and then you said

"not serve." And then you were asked to explain. I didn't understand exactly what – what was the reason you didn't –

A This was a drunk driving charge.

Q Uh-huh.

A And the guy was found guilty. The client was found guilty. And then two weeks later, he was out driving. But, you know, that happens. You know. That was my – I was just – I'm sure his license was – you know, it's the third time, and he was still – he was seen driving. And it's very upsetting to see this. But I mean, this happens.

Q But in spite of that prior jury experience, you said you are willing to serve on a jury again?

A Yeah.

Q Let me see if I can ask you about – about what you know about the case and about Mr. Kaczynski. Do you recall – is most of your – well, I guess your information comes from mostly newspapers and from television news; is that correct?

A Yeah.

Q And radio news too or –

A Yeah. Would you believe every morning the station I – that I listen to, the music while I'm getting ready for work tells what is going on. You know, just by chance. It's on the news, you know, how many jurors have been selected; what comment a juror made.

Q Do you recall then also in the newspapers and television you've had some exposure to information about the case?

A Yeah.

Q Can you tell me, do you recall anything about – about a cabin? Does that –

A Only I remember before this, he was arrested – or when they are arresting him, just in Montana, that it showed a cabin. I don't remember him. Just the outside. And it showed the federal marshals going in, but that's all I really remember.

Q Do you recall anything about the cabin being searched by federal marshals other federal officials?

A Not really. Not really. Because I didn't pay that much attention to it.

Q So you don't recall anything about that search or what might have been found?

A Well, I'm sure there must have been bombs but, you know, recalling that, actually seeing it, I don't. And then I have read in the news since then – or not – in the newspaper that they did find the makings of a bomb. You know, how he made bombs, had a book, and how to make them. That's about all.

Q Do you recall anything else that they found; reading about anything else they found?

A No. I don't – no, hu-huh.

Q Just the bombs, makings of a bomb, and a book on how to make them?

A Uh-huh. To be honest, I've been so busy with my own life, you know, you just – I wasn't that interested in it, really.

Q And as I understand it, as you sit there, you do have – you have some – based on what you have heard maybe what was found in the cabin, what you read was found in the cabin, and the fact that you haven't read about any similar crimes since Mr. Kaczynski's arrest, you have – you do have some opinion as to whether he is guilty or not?

A I think you would have to listen – My feeling is you have to listen to the evidence. You know, what is presented in, you know, in the trial to make your own opinion whether he is guilty or not.

Q But as you sit there now, you do have some opinion as to whether he is guilty or not, based on what you have heard up to this point and read and seen?

A He possibly could be guilty, but I think you still need to listen to the evidence.

Q And when you say "listen to the evidence," what do you – what are you saying? What are your concerns? Do you want to hear his side of the story?

A Yes.

Q Do you think that based on what you know about the case, the fact that there haven't been any – you haven't read about any other of these bombs and the things that were found in his cabin, that you are going – you're going to expect Mr. Kaczynski to put on some evidence to prove that he's innocent?

A I think you need to see what evidence that, you know, the federal court is bringing against him, or what they found. You know, they brought him to trial, and I think you need to see what evidence there is presented.

Q And based on what you know about the case, if Mr. Kaczynski didn't present any evidence, would you feel you had to find him guilty?

A No. I think you need to find out what they have, evidence that they've collected.

Q Let me ask you, if I could, a few questions about – about your views on the death penalty, since, you know, you said you understand that is potentially an issue in this case, right?

A (Nods head.)

Q When you were speaking to Judge Burrell, I think you said you believe in the death penalty. That if somebody was found guilty and they've taken a life, then – then they should receive the death penalty. Is that what I heard?

A That's correct.

Q And if you could turn to page 26. You said that the basis for your opinions on the death opinion is eye for an eye. If you take a life, you should be held accountable for it; is that right?

A That's right.

Q Now, you said your opinion and belief had changed over time. Can you tell me how it had changed over time?

A You know, when I – I used to be very religious, and I don't believe in killing, you know. But now it's – I guess I say killing, I mean If a person goes out and kills someone, and they're found guilty, and without a reason – you know, beyond a reasonable doubt, then I think they should be held accountable. I think they should be executed.

Q And you understand, ma'am, the reason we ask this is, you know, people have their views about the death penalty and they vary. You know some people are totally against it and people are mixed in the middle. Some are very much in favor of it. And we need to kind of explore those with potential jurors because it could be an issue in this case, and that's why I'm asking you. And if you turn to the next page, you were – you were asked to – to express your extent of agreement with some statements there in question 107. And the first one was: "Anyone who plans and commits a murder should get the death penalty." And you said that you strongly agreed with that. And that's in line with your – what you just told us, right?

A Yeah.

Q And then the second proposition was: "Anybody who deliberately murders two or more persons should get the death penalty." And you felt that you strongly agreed with that?

A I strongly agree.

Q You do in both those?

A Yes.

Q And then: "Any person who commits an act of terrorism in which someone dies should get the death penalty." And you strongly agreed with that. And those are – those statements are all in the – kind of follow your basic idea that if you intentionally kill someone, you forfeit your own life. Am I right?

A That's right. I think you have to have regard for life – a person's life.

Q Are your views on the death penalty, are they – are they based more on religion or more on your personal beliefs or a combination of both or –

A I think it's a combination of both, really.

Q Uh-huh. Now, if you could look at the fourth proposition there, statement there: "A person's background does not matter when it comes to whether or not he should be sentenced to death for murder." And it looks like you checked "agree somewhat."

A Yeah.

Q And could you – could you tell me what you were thinking about or how you read the word a "person's background," what you read that as meaning?

A You know, my – I think we're all brought into this world, and we're taught values. And I guess I'm going on my values. Respect another person's life. And it's hard for me to understand. They'll say, well, this person had a bad childhood. It's hard for me to understand how you could say, well, maybe they shouldn't die for a crime they committed. I don't, you know. I have – That's how I believe, you know. You have to respect another person's life.

Q And am I right – I don't want to put words in your mouth – but am I right that your basic feeling is, that if you commitment certain kinds of crimes, that the crime itself is what settles the question of the penalty. And if it's an intentional killing of someone, taking somebody else's life, then you should get the death penalty. Is that a fair statement or –

A No, I don't think so. I think you have to weigh the evidence and, you know, if you really feel the person did this, and that the crime – you know, if that's the punishment, you know, if the death sentence is the punishment for taking another person's life or life in prison, then you have to decide on the evidence.

Q But I guess I'm – I guess when we are talking here, we're assuming that you found somebody guilty beyond a reasonable doubt of the crime. And then the question –

A Yeah.

Q Then the question is whether it is intentional, premeditated killing, you found that beyond a reasonable doubt, what I understand you to say, is that if someone is guilty of that crime, the evidence proves them guilty of the crime, then the proper punishment would be that they should be executed too and forfeit their life?

A If that's what the punishment is stated, you know, by the Court, yeah.

Q Well, I think what Judge Burrell told you is that the law actually allows, for the kind of crime that is charged here, which in effect is an intentional, premeditated, deliberate murder without justification, mailing a bomb to someone, intending to kill them, having it explode and kill them, that the law allows three penalties. It says it could be death, it says it could be life in prison without release, or it could even be a lesser term of years in prison. And what I am trying to – trying to see is whether, based on your views of the death penalty, and its role when someone commits certain kinds of crimes, whether you would feel that someone who committed that kind of crime should get the death penalty, not these other two possibilities?

A Yeah. I think you have to consider the possibility maybe life in prison. You have to see what is presented.

Q So – okay. So if you were to find someone guilty beyond a reasonable doubt of a premeditated, deliberate murder without justification or excuse, found them guilty of that, you still think you could consider sentencing them to prison instead of taking their lives?

A Yeah.

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

THE COURT: Okay. (Brief pause.)

BY MR. DENVIR:

Q Let me ask you, ma'am, maybe a question or two. How would you square a willingness to sentence someone, let them off death, in life with your – with your views that if you commit an intentional murder without justification or excuse you should forfeit your life?

A I don't understand what you mean.

Q Well, as I understood it, your basic views are if you commit an intentional murder, premeditated, that kind of cold-blooded murder, you that should – you should forfeit your life by – just by the very act. And I'm just wondering how you would be able to believe that, then also sit on a jury and think that someone you convicted of that kind of crime that you might actually sentence them to death – I mean to life, that you would let them off of death and give them life?

A I guess maybe I was making a raw statement. You know, I believe if you take someone's life, then you should be punished. And that could be death. But still, I'm a human being. I have views, and I feel that when it comes down to it, I might decide that I want him to stay in prison the rest of his life.

Q So you also feel you could take somebody's life and still just go to prison instead of losing your life?

A Yeah. Yeah.

MR. DENVIR: Okay. Thank you. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q They don't make it easy, do they? Can I give you a hand with that?

A Yes. Thank you. (Counsel helps prospective juror with the water pitcher.)

Q Good morning. My name is Robert Cleary. I'm one of the prosecutors on the case, and I, too, wanted to ask you some questions about your views on the death penalty. If you could turn to page 28, please, at the top, question 108. You tell us there that when one person intentionally kills another person, the death penalty may or may not be justified, depending on the circumstances of the case? That was clearly your view at the time you filled out the questionnaire, correct?

A Yeah.

Q Is that still your view?

A Yeah.

Q And earlier, when Judge Burrell was asking you questions about the death penalty, and I believe he asked you about how would you feel about the appropriate penalty for someone that kills somebody, and I think you told us that you would have to wait and see the mitigating evidence; is that correct?

A That's correct.

Q And what do you mean by "mitigating evidence"?

A The circumstances surrounding the evidence and what happened.

Q The reason for the killing?

A Yeah.

Q Do you – does that mean that you would distinguish, in terms of your own mind, when the death penalty is appropriate or not appropriate, distinguish between certain different types of killings?

A That's correct.

Q Okay. For example, how the killing took place and maybe what the motivation was for the killing might determine for you whether the death penalty is appropriate or not appropriate in that case; is that right?

A Yeah. That's correct.

Q Would you also, in making that determination, want to know about the particular defendant? For example, whether he had murdered people in the past or had lived a life of good and charity his entire life?

A I think that comes into play, you know, as far as in the evidence. But that's something you have to weigh.

Q So those would be other factors you would want to know?

A Yes, other factors. Yeah.

Q And would those sorts of factors, might they affect your decision as to whether the death penalty is appropriate or not for a particular defendant?

A Yes.

Q You told us a little while ago that – I think what you said was that you didn't believe that an abused childhood would be necessarily a factor you would want to consider in doing that weighing process, correct?

A That's correct.

Q If you saw, however, that there was a connection, a link between the abused childhood – this is a hypothetical now – if you actually saw evidence that persuaded you that there was a link between the abused childhood and the killing – for example, if the evidence convinced you that as a result of an abused childhood the defendant had an impaired ability to control his actions, more difficult for him to control his actions than other people – might in those circumstances that abused childhood be a factor you would want to know about and consider in determining whether the death penalty is appropriate or not?

A That's correct.

Q So I guess the bottom line of it is it your opinion that it's difficult to answer the question in the abstract whether a killing justifies the death penalty?

A Yes.

Q And that's because you need to know what the mitigating circumstances are, correct?

A That's right.

Q And you would also want to know what the aggravating circumstances are; is that right?

A Yes.

Q Because some murders you would agree, wouldn't you, that some murders are more aggravating than others and might require or be more appropriate for the death penalty; is that right?

A That's right.

Q Would it be fair to say that in your view it would be almost impossible and certainly unfair to determine whether someone should be sent to death or not if you are sitting in judgment as a juror until you have heard all the aggravating and the mitigating circumstances?

A I think you need to hear all the evidence.

Q And in your questionnaire, when you use the phrase "an eye for an eye," and I think that was in connection with the reasons for your belief that the death penalty – we should have a death penalty in society, I take it, given what you just told us, that that's more of a figure of speech? It could be an eye for an eye, but you still want to know all the circumstances?

A Yes. That was just a broad statement filling out how many pages?

Q Too many.

A Yeah.

Q We've all been asking you about your views, your personal views of the death penalty. You realize from your prior jury service, however, which I realize was probably not even a criminal case, correct? It was a civil case?

A No, civil.

Q But you realize from that service you don't make decisions as a juror in a vacuum. You get legal instructions from the judge, correct?

A Right.

Q And you are presented with certain facts in the court by the prosecution, and if the defense chose to – they don't have to – but if they chose to, they could put on evidence also, right?

A That's correct.

Q And I believe Judge Burrell explained the process to you, if you were picked as a juror, you would sit in one proceeding known as the guilt or not guilty proceeding in which you would determine – make the determination as to whether the defendant committed the crimes that he was charged with, right?

A That's right.

Q And if in that proceeding you determined that the defendant committed certain of the crimes, for which the death penalty is an available penalty, you would then come back for a second proceeding. Is that the way you understand how the process works?

A Yes. Yeah.

Q And in that second proceeding, known as the sentencing phase or the penalty phase, the Government would present what it believes to be aggravating circumstances; facts that it believes would warrant the death penalty. The defense in that second proceeding, the penalty or sentencing phase, could – but they don't have to – could present to you mitigating circumstances. Are you with me so far?

A Yeah.

Q Okay. And Judge Burrell will tell you what aggravating circumstances are, and what mitigating circumstances are. And my question to you – and at the end of the day, you are going to have to evaluate – as a juror, you are going to have to evaluate all the aggravating circumstances versus all the mitigating circumstances and make a determination as to whether the aggravating circumstances outweigh the mitigating circumstances or vice versa. So all of that is pretty clear to you how that process works?

A Yeah.

Q My question to you is: Would you be able to follow Judge Burrell's instructions when he tells you that certain facts are aggravating circumstances and fairly and deliberately weigh those factors in the mix?

A Yes, I can.

Q Would you be able to do the same thing with respect to the factors that Judge Burrell tells you are mitigating factors?

A Yes.

Q And if Judge Burrell told you that certain factors are aggravating and certain factors are mitigating, and that you must weigh them in this balancing process you are going to be required to do, would you be able to do that even though you disagreed with Judge Burrell; you disagreed that a certain factor should be aggravating or you disagreed that a certain factor should be mitigating? Would you follow the Judge's instructions on the law and still consider those factors?

A Yes. Because, you know, I'm not up on the law. So I would have to, yeah.

Q And you feel confident that you can do that?

A Yeah. Uh-huh.

MR. CLEARY: Thank you. I have no further questions.

MR. DENVIR: Your Honor, there is one matter. It is my understanding that the juror believes that she would be paid by her employer without having – without having to work. In other words, she would be paid for her jury service. I may be confusing this juror with another juror, but my understanding is when you were discussing the employer, you indicated they wouldn't pay for jury service, they would adjust the schedule. And I wonder if that might be something the juror might want to explore with her employer while she is here because it might affect her availability. VOIR DIRE EXAMINATION

BY THE COURT:

Q I don't remember asking the employer whether the employer would pay for jury service. Whatever I told the parties is the best information on it because I have no present recollection of that topic. But I do remember asking the employer about making an adjustment to your schedule. And your employer indicated that an adjustment could be made, which I thought the employer was conveying the message that he was going to put you on a different shift if necessary, a different work shift.

A You know, I don't think that would be fair to me to have to come here, and then – if I had to work evenings or nights because that is high stress working in the emergency room, I mean.

Q Okay.

A It is something I need to explore.

Q All right. I understand.

A And ask my employer.

Q I think that's what –

A Yeah.

Q – counsel was trying to get me to do through you. Would you talk to your employer and then talk to my deputy clerk. I want you to have each other's numbers – telephone numbers so that she can get a response from you.

A Yeah.

Q If you can give that to us within a day or two, that would be appreciated.

A I sure can.

Q Okay. All right. Thank you.

A Uh-huh.

Q The bottom line, though, before you leave, if your employer is going to have you to work, you don't want to serve on the jury? That's really what you are telling me?

A That would be too much for me. It would be taking too much of me away from my home life.

THE COURT: Okay. Thank you. (Whereupon, Prospective Juror Number 219 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospective Juror Number 222 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. I think you're the 222nd randomly selected juror. I'm going to show you what I believe is your jury questionnaire and see if I'm right. Is that your juror questionnaire? (Document shown to prospective juror.)

A Yes, it is.

Q Okay. You raised your hand when you were with the other jurors, when I asked about the schedule, whether it was going to cause a problem.

A Your Honor, my brother is a school teacher in London, and he's going to back to the states on vacation during the holidays. I had planned to join him in Arizona for vacation time. So I would have to modify that. I guess it's not a serious problem, but it is a problem for me.

Q What do you reference as vacation time; what time period?

A My vacation schedule was the 21st of December through the 31st.

Q The trial is scheduled to actually begin, tentatively, we think it's going to begin with opening statements, perhaps evidence on the 29th of December.

A Yes, Your Honor.

Q On the 18th of December, which I believe is next week, we plan on calling all of those jurors back that are in the final jury pool for selection. Between the 18th – I should say from the 19th until the 21st – I should say the 29th, nothing will be occurring. Is it possible for you, without causing undue hardship to your plans, to make an adjustment so that you're not gone at the time – at the start of trial on the 29th?

A My brother arrives in San Francisco – in fact, I'm going to meet him at the airport on the 21st, on the afternoon – and then he continues on to Arizona. My plans were to go to Arizona after Christmas. Now, I can change those plans. But that was my tentative plans to leave on the 26th and come back on the 31st.

Q Okay. We're just trying to see whether it would cause you an undue hardship to make an adjustment to be here the first day of trial, which would be December 29. You wouldn't be able to go back after the first day of trial. Is there a problem? I mean, it's obviously a problem.

A I'll just have to adjust my plans.

Q How would that affect you? We need to know that. I'm not supposed to do something that is going to cause you undue hardship. I have a balancing function, and I need to know from your perspective how to balance your side of the scale.

A Well, my wife works in a gift shop, and they're busy until Christmas – until Christmas Eve, and so it would probably be a situation where I would have to go to Arizona by myself and come back after Christmas or something like that. So it would be without my family. Or I would just have to call off the trip to visit my brother and catch him next time I saw him, which would probably be next summer.

Q I don't want to suggest what you should do. I'm really just trying to get your perspective on your side of the scale so that I'm in a position to do the balance I have to do.

A Well, Your Honor, I take my duties seriously as a juror. So if I'm selected, I'll be here as required.

Q Okay, sir. Thank you. Is there any other problem other than that one?

A No. I can't think of any.

Q All right. I'm going to ask you questions from the podium. (Brief pause.) Did you fill out the questionnaire I showed you at Cal Expo?

A Yes, I did.

Q Since that time, have you been exposed to information about the case, discussed the case with anyone, or overheard other people discussing the case?

A I've seen some things in the Bee. I try to ignore – if I see anything in the paper, I don't read that part of the paper.

Q Okay. I appreciate what you have been attempting to do. Despite that effort, have you been exposed to things that you can share?

A I've seen some things. For example, the transportation of the cabin to the area. I can't remember too many other things specifically.

Q Okay. I want you to assume that I know nothing about the case, and that I'm going to direct your attention to the time period before Cal Expo, and I want you to engage in the role of educating me about the case, telling me as many details as you possibly can about the case so I end up knowing as much as you know. You can do that.

A I have heard quite a bit about the case before I was notified of jury duty. The case is – that the suspect allegedly had mailed or transported explosive devices to several people, mostly who were involved in high-tech type activities or education, and the bombs exploded and caused an injury and death. The suspect allegedly published a manifesto, and that was published in, I believe, the New York Times and other publications. And there were things that I recall reading, excerpts of that, certain phrases that were unusual that were used in that, and that subsequently when the suspect was apprehended, some of his letters to family or whatnot had the same kind of phrases in it. I guess that kind of sums up my knowledge of the case.

Q Did you receive any information about a cabin, other than what you have already related?

A Oh, yes, sir. I saw quite a bit on television and in the press about a cabin and the alleged contents of the cabin.

Q What do you recall in regard to the contents of the cabin?

A There were a typewriter found that apparently matched the manifesto scripts. There were bomb-making parts found, partially assembled bombs. It was a very small cabin. Very – I think one or two windows. Very primitive living situation.

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

A I don't believe so. I think that the Government has to make their case. They have to present evidence in court. That's what you have to base your decision on as a juror, what is presented in court.

Q That's clearly your ultimate responsibility. That would be the frame of mind we want jurors to be in. But did that information cause you to suspect that Mr. Kaczynski is guilty of the crimes?

A I guess from the information that I saw, which I realize is probably filtered by the press, whatever, it sounds like he's a very good suspect. I'm not sure if he's guilty or not.

Q Do you have the personal capacity to set aside the information you have received outside this courtroom, if you are in fact selected as a juror in this case, and allow Mr. Kaczynski to be found guilty or not guilty based solely on the information that is received in this courtroom.

A Yes, sir.

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

A Yes, sir.

Q What does that mean to you?

A That means that we all are innocent until proven guilty in a court of law.

Q You're right. That is the essence of the doctrine, that a criminal defendant in our justice system need not present any evidence or do anything at all in defense of him or herself. The criminal defendant is presumed innocent. It is in fact a presumption, presumed innocent unless and until, should it occur, the Government proves all elements of the crimes charged beyond a reasonable doubt. And if the Government fails to meet that burden, you must return a not guilty verdict in favor of the defendant. It appears to me that there is nothing about your belief system that would interfere with Mr. Kaczynski benefiting from that doctrine, sir?

A Not to my knowledge, sir.

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

A The only thing that I guess I need to bring forth is that I was in the Air Force for 22 years, and I was at Ramstein Air Base when terrorists exploded the building. They're the headquarters of the United States Air Force in Europe. And in fact, I was in the building within hours after the explosion. And I have a strong feeling about that situation, people who set off bombs and injure people who are innocent based on my experience there.

Q Only you can tell us how that feeling could possibly interfere with your ability to be fair and impartial. Can you elaborate on the possible connection between the feeling you have expressed and the juror's duty to be fair and impartial?

A Well, I still think I can be fair and impartial, Your Honor.

Q Okay.

A I do have strong feelings. If I feel somebody is indeed guilty based on the evidence, I would have strong feelings about it.

Q How will those feelings, if you can share, how will they manifest themselves, if at all, in this trial?

A I still, in spite of my experience, I think I can judge the evidence that would be presented and make an informed decision based on the evidence.

Q Okay. I appreciate your response because I wanted to know if there was anything in your mind, whatsoever, that could have a bearing on your ability to be fair and impartial. And I'm not indicating by the fact that I'm still questioning you about this that this has a bearing, but you mention it, and I want to know why did you mention it? You just want us to know about it so that we can evaluate it, or do you believe that it could have an effect on you personally? And if so, that's what I want you to explain. How can it effect you personally? We want the information.

A Yes.

Q And we can evaluate it, and the parties will handle it in the manner which they see fit. But does it effect you personally?

A No. I think I wanted to bring it out to let you evaluate it. It is a life experience. It is part of me. It will be with me for the rest of my life. I still think I can judge the facts and be fair and impartial.

Q Is it possible that the conviction that you have in regard to that matter could cause you as a juror in this case to become so emotionally affected by what you assume will be evidence that that emotional feeling sort of overtakes you and interferes with your ability to be impartial – to continue to be impartial?

A I believe I can set that aside, Your Honor.

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

A Neither.

Q What are your views on the death penalty? First, let me tell you we are not looking for anyone who is for or against. We want individuals that can consider all three sentencing options. Tell me your views.

A Well, my views are I think there are certain crimes where the death penalty is justified, based on the circumstances and the crime involved and – and the law. So I would have to base any decision on those factors.

Q Okay. I'm going to ask you to join me in a hypothetical. Assuming that you were in fact selected to be on the jury, you and your fellow jurors sat through the guilt/not guilty phase of the trial, you heard all the evidence, you listened to my instructions, you went back to the jury deliberation room, you did everything you're supposed to do under my instructions, and then you all decided on the following verdict, that to Mr.

Kaczynski's disappointment, you convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification. That type of a verdict in the guilt and not guilty phase of the trial would then take us into the sentencing phase of the trial. Are you with me on the hypothetical?

A Yes.

Q In the sentencing phase of the trial, in light of the finding that we just mentioned, the murder finding, would you still be able to consider voting for a sentence less than death?

A Sir, I'm not sure what the law calls for, but –

Q Let me give you some insight into that. We would only have the sentencing phase of the trial if the jury made the murder finding I just told you about.

A Yes, sir.

Q And then at the sentencing phase of the trial, the Government would then present what is called aggravating evidence. That would be evidence that the Government would opine points towards a death sentence. And then you would also be presented with what is called mitigating evidence. And that would be evidence that a party will opine points towards a life sentence, either a life sentence or a lesser amount of time in prison. So mitigating evidence would point toward life, aggravating evidence would be someone's opinion would point toward death, and then you would hear all the evidence, and you would give the weight to that evidence that you believe should be given, and then you would make a decision as to whether the defendant would be sentenced to death, life in prison without the possibility of release, or to a lesser amount of time in prison. Is there anything about the murder finding that I told you about that the jury hypothetically made in the guilt/not guilty phase of the trial that would interfere with your ability to listen to all of the aggravating and mitigating evidence, I would then give you instructions, and then you would go back to the jury deliberation room, and you would have to decide what sentence to impose. Would you still be able to consider imposition of all three sentences?

A Yes, sir.

THE COURT: All right. The parties may conduct examination after the break. We'll take the morning recess until 10:45. (Off the record at 10:25 p.m.)

THE CLERK: Court is now in session.

THE COURT: Let the record reflect that all parties are present except for the juror. And the juror is now joining us. You may conduct examination. VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, sir. My name is Steve Freccero. I'm one of the prosecutors in this case. And I'd like to ask you some follow-up questions. I wrote down when you were responding to some of the judge's questions, I wrote down that you said you took your civic responsibilities seriously. Can I take it from that answer that you would be willing to make an adjustment to your personal schedule if that's necessary to serve?

A. Correct.

Q. All right. I'd like to ask you some follow-up questions based on some of the information in your questionnaire. If you could look at page 16 of your questionnaire. In response there to question 59, you put down that every person accused of a crime is entitled to the best possible defense. Is that a strongly held view of yours?

A. Yes, sir.

Q. And would you agree with me that in order to get the best possible defense, it's important that every defendant be given the presumption of innocence?

A. Correct.

Q. And that's something you feel you're able to undertake and give the defendant in this case, that presumption?

A. Yes.

Q. You also noted on page 33, and I think you told us about it a few moments ago, on page 33 of your questionnaire, in response to question 124, you noted that you had pretty strong feelings. I would like to follow up that. First of all, would you agree with me that there's a distinction to be made between whether a particular act is terrorism or is right and wrong versus whether or not a certain person is responsible for that act of terrorism?

A. Yes, I can see the difference.

Q. Okay. Is there anything about your strong views that you think would prevent you from fairly deciding, based on evidence, whether or not a person is actually responsible for that act of terrorism?

A. No.

Q. And if I could follow up, maybe if you could give us in your mind what you mean when you refer to something as terrorism or a terrorist.

A. Well, my experience in Germany, we had terrorist activity in the 1982 through '84 period of time taken against United States forces, NATO allied forces, bombs placed in cars with just a military member, nothing special. Some of the commanders in chiefs were attacked with rocket launchers to make a political statement.

Q. Do you realize that there's absolutely no allegation in this case that any of those acts are involved in this case?

A. That's my understanding.

Q. Is there anything about your personal experience involving those acts that took place that you think would interfere with your ability to consider evidence in a case such as this where there likely will be testimony concerning bombs?

A. No, I think I could weigh the evidence.

Q. If I could ask you to look at page 28 of your questionnaire. And I'm going to follow up with some questions about your views on the death penalty. In response to question 108, you were asked to express the extent of your agreement with the series – with a statement where one person intentionally kills another person, you checked the box the death penalty may or may not be justified depending on the circumstances of the case. Can you tell us, give us some idea of what you were thinking about when you responded with that middle statement?

A. Well, again, I think it depends on the circumstances and the evidence presented in the case, if it was an aggravated situation, where one person – aggravated assault or whatever, that would be one thing. If it was premeditated, planned out, intentional, if there were multiple killings involved, other circumstances, then that would be another thing altogether.

Q. I'm sorry?

A. I just think you have to see what the circumstances are before you can make a decision.

Q. Okay. Prior to coming here to court today, did you know about the federal law that governs federal death penalty cases?

A. No.

Q. All right. Let me ask you, do you yourself, do you think you have any view, personal view that would be so strong that you think you would have a hard time waiting until after that second proceeding? As the judge explained to you, the first proceeding would be determining whether the individual was guilty or not guilty, and then in the second proceeding would be the presentation of aggravating and mitigating circumstances. Do you think you have any personal belief that is so strong that you could not wait until after you heard all the evidence in that second proceeding before you determined which of the three punishments available under law to vote for?

A. I think I can wait until it's presented.

Q. Okay. Now, in order to get to that second phase, the jury would have already had to decide that the person who committed the crime had committed the crime intentionally, deliberately, taken another life. And so in the second phase, it would come down to evidence presented either by the government about the crime itself or maybe something about the person who committed it, and the defense could, if they chose to present any evidence, it could be evidence about the defendant himself or some facts that they viewed pointed away from that. Now, before when you said that if the crime were intentional or deliberate, you would see that as making the death penalty perhaps more justified. What I'm asking you, if you already made that determination, that it was intentional and deliberate, you made that because you were part of the jury that voted to convict the defendant, could you still keep an open mind and wait until after you heard all the evidence in the second phase before you made that determination as to which penalty to select?

A. Yes, I can.

Q. Now, if you could look at page 27, the page right before that, and then again there's 107 gives all those statements and asks you to – you know, it lists the extent of your agreement with those. First of all, let me ask you, did you understand that question as to be asking your own personal views?

A. Yes.

Q. If you could look at the very last one, it says a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder.

You checked the box strongly agree. Can you give us an idea of what you were thinking about, what you thought the term "background" meant?

A. I guess what I thought it meant was, you know, matters of what happened to a person when they were brought up or whatever. To me, if they recognize right or wrong and they're found guilty, then the background shouldn't really matter that much. The facts of the case should speak for itself.

Q. Okay. The reason I ask you that is, again, if you were selected as a juror and you were part of a jury that convicted the defendant, in that second phase of the trial, a different kind of evidence could be presented to you. Now, some of that evidence might be background or circumstances about the person that committed the crime. The judge would instruct you that in order to make your determination as to what punishment, you and your fellow jurors would have to honestly consider any evidence given to you, you would have to take that in as part of your deliberation and part of this weighing process. Now, do you think you could keep an open mind and listen to any information even if it's about the background, something about the person who committed the crime, maybe something about the – that may suggest there's a reason why he did it; could you even if you yourself said, you know, I don't think based on my – if I were writing the law, that doesn't seem to me that important a factor, but the judge has told me I got to consider that as part of the mix, would you be willing to do that?

A. Sure. Absolutely.

Q. Do you think you could do that?

A. Yes.

Q. You think you could keep an open mind to that?

A. Yes.

Q. Now, following up on those, if you heard the evidence in this guilt phase about the crime that was committed, and you were part of the jury that found the defendant guilty, if in your mind that crime he committed was, in your mind, something you've defined as terrorist, do you think given your strong views you could still go to the next phase, the sentencing phase, and still keep an open mind, listen to whatever evidence brought by the government that the government feels should justify death but also about the person who you have just convicted of having committed that act, which in your mind is terrorism, do you think in that circumstance, you could still keep an open mind, listen to all that evidence presented at that second phase, evidence about this person, perhaps, who you just decided committed an act which you consider terrorism, could you still wait, keep an open mind, and deliberate with your fellow jurors before deciding what's the appropriate penalty in that case?

A. Yes, I believe I would have to hear the rules of law the judge would provide in the instructions and try to apply those the best way I can.

Q. Okay. If you could just look at page 17 of your questionnaire. Again, in response to – question 64 asked for your opinion about the effectiveness of the criminal justice system. And at the bottom you were asked to explain your view. Let me just ask you

is there anything about that particular opinion that you think would interfere with your ability in this case to fairly, objectively, listen to the evidence and then apply the judge's instructions of the law to that evidence?

A. No, that won't interfere. My opinion won't interfere.

THE COURT: You almost done?

MR. FRECCERO: I am, sir.

THE COURT: Okay. VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning. My name is Judy Clarke. I am one of the lawyers for Mr. Kaczynski. If I could just take a moment to talk with you about your experience in Germany with the building being blown up by the terrorist. At several places in your questionnaire you kind of alert us that you're concerned about your strong feelings about bombers. And you're concerned about your feelings about terrorists maybe affecting your impartiality. I mean, sort of like I'm in favor of the prosecution because of it. So I want to follow up, if I could, with you about that. Could you tell us a little bit about what your role was when you – in the building when it was blasted or –

A. No. That morning I was waiting for the base commander to come present a welcome at Ramstein Air Base, a presentation for his incoming officers and seniors and COs. The bomb had gone off before 7:11 in the morning, and the building that we were in shook, and we were about a mile and a half from the bomb site. We all went back to work immediately, and I was a member of the telecommunications squadron and we had to do bomb damage assessment to see how our systems were damaged in that building. So in about three hours after the blast, myself and a couple other individuals were back in the building taking a look at our systems to see what had been damaged, what we had to do to recover the damage.

Q. Did you assist in clearing the building in any way?

A. No.

Q. And removing the bodies from the building?

A. No, there were no – nobody was killed in that terrorist attack. There were several people injured, but no one was killed.

Q. Did you know people that were injured in the attack?

A. Not personally.

Q. Did you deal with any of the injured people during that?

A. No.

Q. The time you were at the building?

A. No, I didn't, but we a portion of our unit was across the parking lot and people there did provide first aid.

Q. So you were aware of what was going on?

A. Yes.

Q. Saw the first aid being given?

A. I actually didn't see that, but I know people in that particular facility did provide first aid.

Q. That was in 1981?

A. 1981.

Q. I take it from what I've read in your questionnaire and what I hear you saying now that was a pretty powerful experience for you?

A. Yes. I have to say so. It was a miracle nobody got killed. Virtually destroyed the building.

Q. And you actually felt the blast?

A. Yes.

Q. This case is about bombs being sent through the mail. People being killed, people being injured. And it happens that the case is about something that you've had a very powerful experience with in your own life. And so I guess the real question is: Do you think that as you're listening to this evidence in this case, would that experience be played back for you in your own mind? You know, it's one thing to sit on an embezzlement case or bank robbery case when you don't have any kind of real personal experience with it. And I just want to explore that with you.

A. I think I can set aside my feelings and experience and do a good job as a juror.

Q. What about you tells you you can do that, because it sounds like a powerful thing to try to overcome?

A. Well, I served in the Air Force for 22 years, and I always tried to be able to set aside emotional-type things and deal with facts.

Q. Do you think that your experiences with that bomb blast and going into the building after the blast and seeing the injuries would be something that would come to mind that you would talk to the other jurors about during deliberations if they were evaluating injuries and discussing the blast, the bombs in this case?

A. Well, hopefully, I would not try to bring in experiences outside what was presented in court. I don't think that would be fair to use my information that I have based on my experiences trying to evaluate the evidence. It has to be based on the evidence presented in court.

Q. But we are who we are. I mean, we are what our life has made us, and I guess it's a question of how hard would that be or how do you think you would deal with separating that experience out from listening to the evidence here and seeing pictures here and evaluating bomb scenes here?

THE COURT: That's a confusing question. You need to rephrase it. There's more than one question in that question.

BY MS. CLARKE: Thank you, Your Honor.

Q. You're going to be seeing a lot of evidence about crime scenes, bomb scenes; how do you think you would separate out what you saw and felt in 1981 from what you're seeing and feeling here?

A. Well, again, I would just have to look at the evidence presented here and try to set aside the other.

Q. If you were sitting as a juror and if you were the defendant in a case like this, and you knew that you had the experience you had in 1981, do you feel like you would want to be judged by someone with your experiences?

A. My honest feeling, probably not.

Q. Why not?

A. Well, I would think that the person might be biased one way or another. I would hope that I'm not but –

Q. But is there something in you that says maybe that's not, just not the right case for me to be on? Only you can tell us, and I know it's hard to sort of evaluate that, because I know how you probably treated all your life as, you know, I look at the facts and I judge the facts. But that had to be an emotional experience.

THE COURT: You got to start again. You got more than one question there.

MS. CLARKE: I think I probably had one more than one statement there, Your Honor.

THE COURT: Okay.

Q. BY MS. CLARKE: Do you have a feeling that maybe you wouldn't want to be judged by someone with your experiences; am I right?

A. Yes.

Q. Do you think this is a case you shouldn't sit on then?

A. I still think I can be fair; however, if I was sitting on the other side of the counter, I would look at myself differently.

Q. Meaning?

A. Meaning if I was the defendant, and I had a person, a juror, prospective juror that had my experiences, I probably wouldn't want them sitting on the case.

Q. I guess that causes me a little concern, and I am – I want – I'm not getting a good sense of why you think you can – I know you think you can be fair, but why you think maybe you wouldn't want to be sitting on a case if you were being judged.

A. I just – my feeling is that a person who's had that kind of experience perhaps might be biased in one way or another.

Q. And you think that's possible that that bias could be attributed to you?

A. I don't think so.

Q. What about you –

A. I think I can set it aside, that experience aside, and do a good, fair, impartial job.

Q. Do you think that you've told us – I think when you were answering the judge's questions you felt like you would be fair and impartial in judging the evidence, guilt or innocence.

A. Correct.

Q. And you could be very factual about that. How do you think that experience in 1981 would play when you're considering the sentence to impose in a case like this?

A. Well, again, I would have to – have to take the evidence that's presented in that portion of the proceedings and the judge's instructions and try to apply it factually.

Q. There is a great deal of discretion that's left in the hands of the jurors after they're given the instructions to consider aggravating and mitigating circumstances and weigh them. Then the decision becomes the jury's. And what to do. How do you think that experience in 1981 would affect your ability to sort of look at all the sentence options?

A. It might bias me toward a more harsher conclusion. I'm not sure. I'll try, again, to base it on facts.

Q. You told us in your questionnaire that – remember that series 107 with the checkoffs, the strongly agree?

A. I have to look at it.

Q. Page 27 or 28. 27.

A. Yes.

Q. That any person who commits an act of terrorism in which someone dies should get the death penalty, and you strongly agreed with that.

A. Yes.

Q. And you told us in your questionnaire that you felt like you may favor the prosecution because of your strong feelings about terrorism; right?

A. I don't have that question in front of me.

Q. I'm sorry. Page 33. Question 124, at the top.

A. Yes, I did say perhaps it might – may influence me.

Q. Perhaps. And you have, I think, told us also at page 25 that you feel because of your experience that you're more fearful and more concerned about terrorism than most folks.

A. Yes, that's true. I think the U. S. is ready for terrorist activity.

Q. Do you think given that, and we're all different, human, but do you think given your experiences and how you feel, that the person convicted of the Unabomber crimes, that's mailing bombs with the intent to kill or injure where death results, that the person convicted of that must get the death penalty?

A. I think that depends on, again, the evidence presented in the penalty phase to make a decision.

Q. And your feelings about terrorism you don't think would affect that?

A. I'm not sure if this is a terrorist event or not. As it's presented, it's not considered to be a terrorist event.

Q. The mailing of bombs with the intent to kill or injure?

A. Unless I misunderstand the case, which I might.

Q. You don't feel like that's a terrorist act, you don't place that in the category of terrorism?

A. At this point in time I don't.

Q. At page 33 you indicate to us that someone in your department may have had a connection to one of the victims. 126.

A. Yes.

Q. Do you know the person that you're talking about?

A. I know her professionally.

Q. And you talked to her?

A. Not in a long time.

THE COURT: Excuse me. "Her" references the person in his department.

MS. CLARKE: Yes.

THE COURT: Not the victim?

MS. CLARKE: Right.

THE COURT: Okay.

Q. BY MS. CLARKE: Am I right?

A. That's correct.

Q. Have you talked to her about any of the crimes in this case?

A. No.

Q. Are you – you're aware of the connection to the victim because of –

A. Office scuttlebutt.

Q. And she's never expressed an opinion to you?

A. No, not to me.

Q. Has anyone else in the office talked to you about her feelings about the case?

A. I've heard that she's pretty shook up about the whole situation.

Q. How do you think that would affect you, knowing a possible witness in this case?

A. I don't think it would affect me.

MS. CLARKE: Your Honor, I would wonder if we could go to sidebar and find out who the person is to see if it is a witness in the case.

THE COURT: You want to go to sidebar to determine whether the individual in his office, in fact, knows a witness?

MS. CLARKE: Knows a witness.

THE COURT: He hasn't indicated that, has he?

MS. CLARKE: I don't think he would know until he is told by the prosecution.

THE COURT: Let's do that later. Let's go through the other questions?

MS. CLARKE: I'm done.

THE COURT: All right. We can do that now. You're done with all your questions.

MS. CLARKE: Yes.

THE COURT: Okay. (Sidebar.)

MS. CLARKE: Question 126: The Forest Service officer killed was engaged to someone in my department. Could you tell us who that someone is?

PROSPECTIVE JUROR NO. 222: (Redacted).

MS. CLARKE: Is she a witness in the case?

MR. LAPHAM: Your Honor, the record should probably reflect that the Forest Association officer that was killed was happily married for 20 years, had two kids.

PROSPECTIVE JUROR NO. 222: Must have been the other victim in Sacramento, and I can't remember the circumstances of that.

MS. CLARKE: I believe the other victim was engaged.

MR. LAPHAM: What did you say the name was?

PROSPECTIVE JUROR NO. 222: I'm not sure of the circumstances of the second bomb, but I thought it was a computer store owner, must have been that individual.

MR. LAPHAM: And the name?

PROSPECTIVE JUROR NO. 222: (Redacted).

MR. LAPHAM: If I remember correctly, that person was engaged to Hugh Scrutton. She is not going to be a witness in the trial.

THE COURT: Okay. Anything further?

MS. CLARKE: I would be concerned. You never talked to her about it?

PROSPECTIVE JUROR NO. 222: No.

MS. CLARKE: Hugh Scrutton?

PROSPECTIVE JUROR NO. 222: No.

MS. CLARKE: Or the case?

PROSPECTIVE JUROR NO. 222: No.

THE COURT: Okay. (Open Court.)

MS. CLARKE: Thank you, Your Honor. (Prospective juror number 222 left the courtroom.) (Prospective juror number 225 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Yes, sir.

Q. Thank you. You can take a seat. I'm going to move to the podium where I will ask you questions. You're the 225th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. No, sir.

Q. Did you fill out the questionnaire I showed you earlier at Cal Expo?

A. Yes, I did.

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

A. No, sir.

Q. How about any news headlines in the local newspaper or your local newspaper, any news headlines about it?

A. I read it. When I get the paper, I read the sports mainly, sir.

Q. Did you happen to see any news headlines since Cal Expo about this case?

A. I try not to.

Q. Same question with respect to news on the TV or news on the radio.

A. No. I work nights so I miss the news in the afternoons.

Q. Okay. I want to now direct your attention to the time period before Cal Expo, and I want you to tell me everything you can about the case, everything that you think is associated with this case. I want you to assume I know nothing about it and your job is to educate me about the case, so give me as many details as you can.

A. Yes. I heard about the case on the news, about Ted allegedly sent – allegedly sent some explosives through the mail. That was, of course, he lived in this cabin, and his brother allegedly suggested that he may have did it. And a couple of people in Sacramento died from it. From – from the explosion. I guess there’s a couple back east may have received a package, explosion. That’s what I heard over the years.

Q. Did you ever receive any information as to whether the cabin was searched?

A. I’m not sure about being searched. Well, I guess at one time it was. Well, I guess when they located him, I guess it was searched, sir.

Q. Did you read about that or hear any reports about that from the news media sources?

A. I don’t recall any specific item that was taken from the cabin from the search, no, sir.

Q. Okay. Has the information you’ve received concerning allegations involved in the case caused you to form an opinion as to Mr. Kaczynski’s guilt or innocence?

A. No, sir, not at all.

Q. Do you have any suspicions in that regard based upon the information you’ve received?

A. No. No.

Q. What were you thinking, you didn’t give me a definite no?

A. Well, do I have any suspicions?

Q. Right.

A. Well, nothing that I know that, you know, people got from him that just shows that he did it, so I don’t have any suspicion that he did it. Does that answer your question?

Q. I’m not sure what the answer is you’ve given.

A. Would you repeat the question again, please.

Q. I’m trying to determine whether the information you have been exposed to about this case causes you to suspect that Mr. Kaczynski is guilty?

A. No, sir. I don’t know of anything they took from the cabin or him that say he’s guilty. No, sir, I don’t.

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

A. Yes, sir, you do.

Q. What does that mean to you?

A. That I would be neutral, you know. I’m just sitting there and listening to the evidence that is presented for me.

Q. The question that needs to be answered is whether you can leave outside the courtroom, if you were selected as a juror, information that you received outside the courtroom and you could make a determination of Mr. Kaczynski’s guilt or innocence based solely on the information that you receive inside this courtroom?

A. Yes, I can.

Q. Okay. Do I have your assurance that Mr. Kaczynski will receive the benefit of the presumption of innocence doctrine if you're selected as a juror?

A. Yes.

Q. What does that mean to you?

A. That he's innocent until proven guilty.

Q. That's part of the doctrine. And it also means it's a presumption which means he is presumed innocent and he is entitled to the benefit of that presumption unless and until the government proves every element of the crimes charged against him beyond a reasonable doubt. If the government fails to meet that burden, then you must enter a not guilty verdict in favor of Mr. Kaczynski. 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, sir. I can do that.

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

A. If a person is found guilty and that's part of the penalty phase, whatever it is, sir, I am. I have no problem with the death penalty.

Q. I'm going to have you join me in a hypothetical. We'll assume that you were, in fact, selected to be on the jury, and you and your fellow jurors heard all the evidence in the trial, you listened to my instructions, and then you went back to the jury deliberation room and you followed my instructions. And then after considering all of the evidence and doing everything else you're supposed to do under the instructions, the jury convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification. That would be a conviction in the guilt/not guilty phase of the trial. And after such a finding by the jury we would then go to the sentencing phase of the trial. At the sentencing phase of the trial, there would be more evidence presented. The government would present evidence characterized as aggravating-type evidence, aggravating factors, and that's evidence that the government thinks points toward a death sentence. And there could also be presented what's called mitigating evidence, and that's evidence that points toward life, either a life sentence or a lesser amount of time in prison. Is there anything about finding Mr. Kaczynski guilty in the guilt/not guilty phase of the trial that would interfere with your ability to consider voting for a sentence less than death in the sentencing phase of the trial?

A. You already said he's guilty. No, that would not.

Q. Well, just not guilty, you found him guilty of murder.

A. Correct.

Q. Okay.

A. No, I would have no problem in voting or finding him at a lesser – less than the death penalty.

Q. You would be able to meaningfully consider all three sentencing options?

A. Yes, sir, I would be.

THE COURT: The parties may conduct examination VOIR DIRE EXAMINATION

BY MR. DENVIR:

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

A. Sure.

Q. You filled a questionnaire out at Cal Expo?

A. Yes, I did.

Q. I would like to ask you a couple questions about it, if I could. If you could turn to page 21. I guess you served on the grand jury at one time, in question 80; is that right?

A. Yes, I have, sir. Yes, I have.

Q. Was that here or down in Atlanta?

A. Atlanta, Georgia.

Q. State or federal grand jury?

A. Federal grand jury.

Q. Okay. Was there anything about that experience that might have any effect on your service as a trial juror in a federal case, do you think?

A. No, sir. There's – no, it wouldn't have no effect on me.

Q. If you go to the next page, page 22, question 84, you served in the Army in Vietnam; am I correct?

A. Yes, I have.

Q. And when you were over there, did you witness or experience any experiences or anything of that nature or had anybody hurt?

A. No, I was in supplies.

Q. Okay. Let me ask you about your employment. You don't need to give any details on it, but in your employment do you actually handle or have any involvement with packages and things of that nature?

A. Letters.

Q. Just letters?

A. Just letters, automation.

Q. That's been the whole time you been working with your employer?

A. That's correct.

Q. Have you – you understand that the crimes attributed to the Unabomber that the government says were committed sometimes involve the mailing of packages with bombs inside them?

A. Yes.

Q. Was that ever discussed at work – do you remember ever hearing that discussed at work?

A. Not in particular. I don't work in that immediate section, so where I work at, we never talk about it specifically.

Q. So you didn't hear people at work talking about that was dangerous or something like that?

A. Where I was, around my friends, we never talk about it anyway.

Q. Let me ask you, given the nature of your work and the people you do work with, and the fact that the Unabomber evidently used the mails for mailing bombs, do you think that has any effect on how you look at this case?

A. Well, bombs. I work there. I still think – still think I could keep an open mind, you know, whatever the case may be.

Q. Do you think if you were to find the defendant guilty of those crimes, the fact of your employment and the people you work with, maybe potential danger to them from this mailings, do you think that might play any part in what sentence you would want to impose?

A. Well, I wouldn't – I work there, and coworkers – and there are other places like other agencies as well that the bomb could have gone through their outfit as well, so probably no difference. Our competitor, it could be sent through our competitor or sent through us.

Q. So you don't have any emotional feeling about the fact of your employment and the nature of the charges here?

A. No, I do not.

Q. Okay. Let me ask you about the death penalty. A couple questions on that. As I understand – if you could turn to page 26, I think it should be. As I understand it, you are in favor of the death penalty, you believe it's something that we should have as a possible sentence?

A. Yes, I think the death penalty is somewhat a deterrent.

Q. And I think if you look at question 103, has your opinion or belief changed over time, you said on some things. Could you tell me how your opinions on the death penalty may have changed over time. You see the second part of that question 103, actually it's the third part, I guess.

A. Uh-huh – well, when there is a mass killing, and the person is found guilty, probably the death penalty or whatever the Court –

Q. Is there – as to that part there about the mass killings, was there any particular case you were thinking about then when you wrote that?

A. Oh, not specifically, no, sir.

Q. Right below that, the question about has your opinion and belief changed over time, and you said on some things. That's the part, I guess, I wanted to ask you about. How have things changed over time about your opinion; are you more for the death penalty than you were or less for it or –

A. Well, I see I have it there, but I guess my answer still all combined, saying the same as, you know, mass murder or something like that, that's the way I see the death penalty. But on some things, I guess, some things. It wouldn't be for all things.

Q. I guess what I was trying to find out is the way you feel about the death penalty now of pretty much the way you always felt about it?

A. Oh, yes, sir.

Q. That's the part I was asking you. You always kind of felt the same way about it, it isn't like you used to be totally against it, now you're totally for it?

A. No, it's part of me.

Q. Pretty much the same all the way across?

A. Yes.

Q. The nature of the crimes here that are brought against Mr. Kaczynski are mailing a bomb with intent to kill, having it go off and kill someone. Congress has provided for that type of crime that there can be three penalties and one of them is the death penalty, execution; another one is life in prison without possibility of release – and that's what it means, life in prison – or it could be even a lesser sentence. The judge explained there would be two parts to a trial. The first part is the guilt or not guilt part, where the – which is like any other trial, where you the jury determine has the prosecution proved its case beyond a reasonable doubt, have they proved that the defendant committed those charges. And then if the defendant is found guilty of those charges, particularly two of them that have to do with one death, rather than – then there would be the second trial, which is unusual, because normally if a defendant is found guilty, then the judge does the sentencing. But because the death penalty is involved, Congress has decided that the jury that found guilt also will decide penalty. Same people sit down and do it. And I guess the question I ask you is: If you did sit on a jury and found the defendant was guilty of mailing a bomb with intent to kill someone, having it go off and kill someone, you found beyond a reasonable doubt on the evidence he's guilty, he did that, and as you started to go into the second sentencing trial, do you think you would be leaning one way or another between life and death as the sentence that should be imposed?

A. I'm not sure at this point that I would be leaning either way.

Q. Okay. And as Judge Burrell told you, the prosecution would put on their aggravating evidence, that's any evidence they think should persuade the jurors to vote for death. The defense puts on mitigating evidence, that's just the opposite, anything that the defense thinks would convince the jurors or should convince them to vote for life. The judge would give instructions telling the way to consider those and weigh those but in the end would pretty much tell the jurors they had to make their own decision between those two penalties. And I guess I wanted to ask whether you have any problem in going through that process and really considering both the aggravating evidence and the mitigating, considering both the death penalty and life as the possible sentences for someone convicted of the crime.

A. No, I think I could weigh the prosecution and the defense and draw my opinion as to the way things should be.

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

THE COURT: Yes.

MR. DENVIR: Thank you very much. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good morning. My name is Robert Cleary. I am one of the prosecutors in the case, and I also want to ask you some questions about the death penalty, if I might. On page 28, question 108, you tell us that when one person intentionally kills another

person, the death penalty may or may not be justified depending on the circumstances; correct?

A. Correct.

Q. In your view, what types of cases would the death penalty be justified?

A. Well, I really don't have an example as to pinpoint each case who deserves the death penalty. But I guess you could say the nature of the killing really.

Q. What is it about the nature of the killing that would help you make the determination in your own mind as to whether the death penalty is appropriate or not?

A. Well, you might say premeditation or accidental killing would be two different ways.

Q. Let me do it this way. In one of the earlier pages you mentioned mass killings, I guess, as an appropriate example of a case in which you feel the death penalty would be warranted?

A. Okay.

Q. Are there cases in which there was not a mass killing, can you envision cases in your own mind where a single person was killed in which the death penalty would be appropriate?

A. Well, in some cases where it's premeditated, someone deliberately, no just cause or – there's not really just cause to kill anybody, but no just cause – yes, there is.

Q. You say on page 26, question 103, in the top part of that question, you say the death penalty is okay when it's decided by the courts. I want to follow up on that. I know you never served on a jury before, but in a capital case, a death-penalty eligible case like this, the ultimate decision as to whether the death penalty would be imposed or not is going to be left to the jurors. Do you understand that?

A. Yes, I do.

Q. Okay. The judge will give you guidance on the law, and he will tell you what factors to evaluate in deciding the death penalty. But the ultimate decision as to whether the death penalty should be imposed or not, as to whether the defendant should be sentenced to death or not, is going to be left to the jurors. Do you understand that?

A. Yes, sir, right.

Q. Knowing that, in an appropriate circumstance, would you have any problem, any serious reservation about imposing the death penalty in a case?

A. No, I don't. I guess when I say left it up to the Court, I guess I mean left up to the jury, the system.

Q. The court system?

A. The system, right.

Q. I see at the bottom of that page you say the death penalty is something we must have in our society. Why is that?

A. Well, I believe it's a more or less a deterrent for the next guy, someone to think about.

Q. What will happen in the system is, the trial system, as Judge Burrell explained to you, is assuming the defendant is convicted of a death eligible crime which the death penalty can be the sentence.

THE COURT: Sir, I'm sorry. Can you assume that he knows what you're going to tell him because –

MR. CLEARY: Time is a factor. I'll make this very quick.

THE COURT: Thank you.

Q. BY MR. CLEARY: In the penalty phase, the second phase, Judge Burrell will tell you certain factors that are aggravating circumstances by statute. Those are factors the government would argue would suggest the death penalty is the appropriate penalty. You understand that?

A. Yes, I do.

Q. And the defense could at that point, if they chose, point to mitigating circumstances, circumstances they could argue to you suggests that life or a lesser sentence is appropriate. So you have guidance. You understand that?

A. I understand that.

Q. Do you think you'll be able to, whatever your own personal views are about when a death penalty is appropriate or not, do you think you'll be able to set your personal views aside and follow the factors and use the factors the judge tells you in making the determination as to whether the death penalty is appropriate or not?

A. Yes, I can.

Q. You feel confident you can do that?

A. Yes, I do.

MR. CLEARY: Thank you, Your Honor.

THE COURT: Okay. (Prospective juror number 232 enters the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Yes.

Q. Okay. You're the 232nd randomly selected juror. You did indicate in the questionnaire that you wanted to keep a matter private. I agree with you. That matter shall be kept quiet. I'm going to ask you a question, though, that concerns the matter. I'm going to tell you my tentative trial schedule. I typically communicate with lawyers, they haven't had an opportunity for input on what I'm going to say. But tentatively I'm thinking about having the trial schedule as follows: We would be in session from 8:00 to 9:30, then we would take 15-minute break; we would then be in session from 9:45 till 11:15 and take another 15-minute break. So that's an hour and a half in session both times. Then we would be in session from 11:30 to 1:00 o'clock, that's an hour and a half, and then you get to leave.

A. I don't think it would be a problem.

Q. Okay. You raised your hand when I was describing the nature of the case.

A. Actually, it was just the death penalty issue.

Q. Okay. Then I'll ask you questions about that from the podium.

A. All right.

Q. It was my impression you almost raised your hand another time.

A. I didn't understand what you were saying. I don't remember what it was.

Q. Okay. Let's deal with the death penalty issue. What did you want to tell me?

A. Only that I would hesitate if it had to be a death penalty convicting someone. I don't know if I could do that.

Q. You would hesitate – let me tell you what I just interpreted you to say, I may be wrong. Are you indicating during the guilt and not guilty phase of the trial you would hesitate?

A. If I knew that it was going to be a death penalty, yes, I would have hesitancy.

Q. Then you would be reluctant to find the person guilty during the guilt/not guilty phase even if the evidence would – even if the government met its burden?

A. As far as the guilt or innocence, I wouldn't have a problem, depending on what we find and so forth, but if the jury has a choice on the penalty, not a problem then if you don't – I don't know.

Q. The jury has a choice.

A. Okay.

Q. There are two phases. There's not necessarily two phases to the trial, but if Mr. Kaczynski is unfortunate enough to be found guilty of a murder by the jury, then that type of a finding would take us into what's called the second phase of the trial. And at the second phase of the trial it would be a regular trial. The government would present evidence, present evidence on what is called aggravating-type factors, and that would be evidence that the government thinks points toward a sentence of death. And then the jury would also probably receive what's called mitigating evidence, and that will be evidence that points toward a sentence of life or some lesser sentence. You would have three options. The jury, each individual juror has to make a determination as to which alternative sentence should be imposed. And I will give you instructions on the law, and following my instructions, then you would go back to the jury deliberation room and you would make your decision. The question is whether you would be able to meaningfully consider imposition of each option, whether you have something about your belief system that would interfere with your ability to meaningfully consider each sentencing option, a sentence of death, life in prison without possibility of release, or some lesser amount of time in prison.

A. I'm not a believer in the death penalty. I believe that it doesn't serve a purpose other than vengeance.

Q. We're not looking for jurors that are necessarily in favor of or against the death penalty. But we are looking for jurors that are without any inhibition that would prevent them from considering meaningfully all three sentencing options and, if necessary, signing a verdict form that would sentence the defendant to death. That's one of the options, that you could sign a verdict form that would sentence the defendant to life in prison or some lesser sentence. Is there anything about your beliefs as far as the death

penalty is concerned that would interfere with your willingness to sign a verdict form that would reflect any of those options should the evidence convince you personally that the option is justified?

A. It's one of those cases where never having been there, it's easy to sit in front of a TV or book and say I don't believe this is just. I probably would be able to do it.

Q. Okay. Did you fill out the questionnaire I showed you at Cal Expo?

A. Uh-huh.

Q. Since that time, have you – well, let me back up. I don't know if I asked you whether there's anything that would stop you from being considered for jury service?

A. No, there isn't.

Q. All right. Since Cal Expo, have you received any information about the case?

A. No.

Q. Have you discussed it with anyone?

A. No, I haven't listened or read. I haven't paid much attention to the case.

Q. Overheard other people discussing the case?

A. A little bit.

Q. What have you heard?

A. Oh, just comments, the house, the cabin coming here, those kinds of things.

Q. Okay. Where were you when you heard those comments?

A. I think at work.

Q. Have you read any headlines about it or heard any information on the radio?

A. I pretty much tuned it out.

Q. Okay. I'm going to direct your attention to the time period before Cal Expo. I want you to assume that I know nothing about what you know and that I'm trying to find out all the information you can tell me about the case so I can have the same knowledge bank that you have about the case. So I want you to give me as much detail as you can.

A. I don't know very much. I know that bombings had occurred. I know that. I don't know how many deaths, I know there was at least one. I don't know how many injuries. I don't know what places it took place primarily. I have not gotten into very much about the case. I know there was an issue with the brother. I know that Mr. Kaczynski, I believe, was a professor at Berkeley. That's about it.

Q. How about the cabin?

A. The cabin, I heard about it being moved here and so forth, yes.

Q. How about before it moving, have you received any information?

A. I saw a photo in a magazine.

Q. Anything about a search?

A. No.

Q. Okay. If you are selected as a juror in this case, do you have the personal capability of putting aside the information – well, let me ask you this before I ask you that question. Has the information you received about the case caused you to form an opinion as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. Has it caused you to develop any suspicion in that regard?

A. Some suspicion.

Q. Explain.

A. Well, I know very little about it so I think I would be fairly open to information from either side. But I think that anyone that's heard anything has some thoughts, some suspicion.

Q. Tell me more about the suspicion. I want you to articulate.

A. Well, it's not just because someone is arrested I presume them guilty. I don't do that. I like to give the benefit of the doubt and be nonjudgmental. I felt initially that I would be pretty open. I don't – it's difficult to say. I don't know that I would – I don't know that he did what everybody is saying or not. Just the little bit that I follow. I know I didn't answer your question very well.

Q. You indicated that you have a suspicion. You haven't articulated the suspicion.

A. No, I haven't. It's just very vague. I mean just a little bit of what I seen or read or heard, just the fact that there's a situation and someone has been involved.

Q. Okay. Let's characterize what you just told me as a suspicion. And tell me if you are strongly committed to that suspicion.

A. No.

Q. You can set that aside?

A. Uh-huh.

Q. Do you have the personal capability of leaving outside the courtroom, should you be selected as a juror, any information that you received outside the courtroom and the capacity to allow Mr. Kaczynski to be tried solely on the information received here in this courtroom?

A. Yes, I could do that, I believe I could.

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

A. Yes.

Q. What does that mean to you?

A. It means it really has to be proven that he was there, he was involved, and he did it.

Q. That's part of it. In fact, I think you may have, in a nutshell, summarized the doctrine. I'm just going to make sure we're talking about the same meaning. The presumption aspect of the doctrine means something, he's, in fact, presumed innocent. He need not defend himself, he need not present any evidence whatsoever in defense of himself, and he has the benefit of that presumption unless and until the government proves every element of the crimes charged against him beyond a reasonable doubt. If the government does not meet that burden, you must return a not guilty verdict in favor of Mr. Kaczynski. Will you give him the benefit of that presumption?

A. Yes.

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

A. No.

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

BY MR. LAPHAM:

Q. Good morning, ma'am. My name is Steve Lapham. I'm one of the prosecutors on the case. And I want to ask you a few questions about the death penalty because you did indicate you got some concerns in that area. Let me ask you first, do you still have your questionnaire with you?

A. No.

Q. I guess you never had it. Let me just ask you, if you would, to turn to page 23. And at the bottom of the page there's question 92, which asks how might your religious, philosophical or spiritual beliefs influence you if you were chosen as a juror in this case. And it looks like you forgot to answer that question.

A. I don't think I forgot. I didn't have a specific answer there. I don't have a specific religious reason that I would –

Q. Okay. You indicated elsewhere in the questionnaire in reference to the death penalty that in all the years you been a church member you never heard any sermons or any discussion about the death penalty; is that correct?

A. True.

Q. So religion, in your view, doesn't play a part in your thinking about the death penalty?

A. No, it doesn't for me.

Q. Okay. These are basically just personal beliefs that you developed over the years?

A. Uh-huh.

Q. Let me see if I can explain why we're interested in your views on the death penalty. You understand, I'm sure, that there's a great debate in our society about the appropriateness of the death penalty. But for our purposes here in court that debate has been solved. Congress has decided that in a case of this type the death penalty is an appropriate option to consider along with the other options that the Court has discussed. And as a result of that, the government is going to put on evidence suggesting to you why the death penalty would be appropriate in this case, and we're going to spend a fair amount of time doing that. And I think you can appreciate the unfairness to the government and –

A. Sure.

Q. To what Congress has dictated the law is if you wouldn't be able because of your own personal beliefs to consider that type of evidence. So the question we're all interested in is whether or not you could actually consider imposing the death penalty if it came to that.

A. Yes, I probably would. I don't agree with it, but I don't agree with all of the laws but I follow them, and so within that area of concern, I would.

Q. And that's fine. As the judge told you, it's not necessary that you agree or disagree with the death penalty. But it's important that you be able to follow the law. And specifically what that means in a case like this is if you were to convict the defendant of the crimes the judge has indicated, mailing bombs that resulted in the death of another human being, you would then proceed to the penalty phase and the government would put on so-called aggravating evidence which we think indicates the death penalty is appropriate. And the defense could then put on mitigating evidence that suggests, in their mind, the reason the death penalty would not be appropriate. What Congress contemplated when they passed this law is that you, the jury, would weigh the aggravating evidence with the mitigating evidence, and if the jury found that the aggravating evidence outweighed the mitigating evidence, or if there was no mitigating evidence that the aggravating evidence standing alone was sufficient to merit the death penalty, that the jury would then impose the death penalty. Do you understand that so far?

A. Uh-huh.

MS. CLARKE: Your Honor, I think that's a misstatement. We got two problems going on. First, it sounds like a prejudgment of this case; and, second, it's a "could" not "would."

THE COURT: Well, she's right on both points, I think.

MR. LAPHAM: I'll try and rephrase the question.

THE COURT: Do you think it's would as opposed to could?

MR. LAPHAM: I think it's a correct statement that Congress contemplated that the jury would if they found the aggravating evidence outweighed.

THE COURT: I see what you're saying. That could be confusing then. It was confusing to me. I didn't understand that you just wanted her to know about every – about Congress' contemplation.

MR. LAPHAM: I'll try and rephrase the question, maybe I can break it down.

THE COURT: All right.

Q. BY MR. LAPHAM: Ma'am, the point I was trying to get at was the weighing process. I think you understand how the weighing process works, and Congress contemplated at least the – let me back up. You understand that the Court is going to give you guidance on how to reach the decision of what the appropriate penalty will be. And the guidance is taken from the law that Congress has passed which basically says that you're to weigh the aggravating and mitigating factors, and that if you find that the aggravating factors outweigh the mitigating factors, you should return a sentence of death.

MS. CLARKE: That's not a correct statement of the law, Your Honor.

THE COURT: You could is what you want to hear him say.

MS. CLARKE: That's correct. It's an option, it's not a requirement.

BY MR. LAPHAM: All right. We don't need to debate. I'll change the language to could.

Q. You could return a sentence of death. If you found – and I’m not talking about this case, just talking in the abstract. If you found that aggravating factors outweighed mitigating factors, in your own mind, having weighed all the evidence and looked at the argument made by both sides, and knowing your personal views about the death penalty, would you be able to return a verdict of death?

A. I believe so.

Q. Do you have any hesitation there?

A. Well, again, never having been in the position, it’s easy to say one way or the other, but when you actually have to do it, it could be a little different, and I would presume that I could.

Q. I think we can all appreciate that. The one thing that the law does not require you to do is to set aside your personal core convictions. Let me put it differently. Doesn’t require you to violate your personal core convictions. If this decision would require you to violate those convictions, then we need to know that now, because you’ll be required to take an oath that you can undertake these duties.

A. I think I could.

Q. You don’t have any hesitation about that?

A. No.

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

MS. CLARKE: No questions.

THE COURT: Okay. Bring in the next juror. (Prospective juror 232 leaves the courtroom.) (Prospective juror number 237 enters the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Yes, it is.

Q. It’s the 237th randomly selected juror. I’ll leave it next to you in case the parties want to use it. All right. I’m going to ask you questions from the podium.

A. Okay.

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

A. Not that I can think of.

Q. Did you fill out the questionnaire that I placed next to you at Cal Expo?

A. Yes.

Q. Since that time, have you received any information about the case, discussed it with anyone or overheard other people discussing it?

A. No.

Q. Get any information from maybe headlines or –

A. Something I may have glanced at or seen on TV when they were saying something that’s going to be on the following news. That’s pretty much been about it.

Q. Okay. 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 are trying to educate me so you can tell me everything you know about what you assume to be involved in the case.

A. Okay.

Q. I want you to give me as much detail as possible. You can do that now.

A. When some of the incidents happened, I believe there was a couple here in Sacramento, I remember something about that. And then some of the news as to when they had made the arrest and a few of the things that happened in Colorado, finding his cabin. Pretty much about it. It wasn't a real topic of interest for me at that particular time.

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

A. I remember it being searched. I don't remember what was found. And then when it was moved, that was on the paper, a picture of the cabin being moved.

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

A. That's hard to answer. I'm not sure. I think it formulated into, well, he must have been the person. That's how the media portrayed it. But I think it was more something of a wonderment, not knowing that much about it and not being familiar with what he's being accused of. As far as – I think maybe the answer you're looking for, do I feel that he is guilty at this point in time, I don't know.

Q. I want to know any thoughts you have in that area at all, whether you have suspicions. You mentioned that the media portrayed something which would indicate from your perspective that the media has suspicions. I want to know if any of that has affected you and caused you to have suspicions.

A. Yes, I think so. He was the only person that the suspicions were directed at. If there would have been two people, it would have been, well, it could be either this person or somebody else. But he was the only one.

Q. How strongly are you committed to what you just related?

A. I guess I would say the same thing again. I'm not sure committed to.

Q. Well, I'm trying to determine whether the suspicion you related is something that you could set aside if you were selected as a juror.

A. Yes, if I heard something contrary to that.

Q. Okay.

A. That would change my mind as to – I mean, he is the only suspect. So who else could you be suspicious of at this point in time.

Q. Okay.

A. Until somebody tells me no, there's this particular evidence that shows that he shouldn't be the suspect.

Q. Is there anything about your personal belief system that would prevent you from putting that suspicion aside just because he's in the courtroom, he's a suspect and perhaps you're not aware of any other suspect, do you have a suspicion, is there

anything that would stop you from being able to leave that outside this courtroom to allow him to start this trial on what's called a clean slate?

A. Yes.

Q. Explain.

A. From whatever I heard in that trial, whatever you formulated to think that, well, this evidence is not founded – it's kind of hard to answer. I never had to answer that question before.

Q. I understand. But you can understand that a criminal defendant in a case, if he chooses to defend himself – a criminal defendant doesn't have to defend him or herself under our system of justice. If a criminal defendant chooses to defend himself, he doesn't want to have to defend himself against things that 12 jurors may have heard outside the courtroom because you don't know what they heard.

A. Right.

Q. You only want to defend yourself against allegations – not allegations, evidence that is presented here in the courtroom.

A. Exactly.

Q. So I'm trying to determine whether you have the personal capacity to leave outside the courtroom the things you heard outside the courtroom and to allow Mr. Kaczynski to only have to be concerned about evidence that is presented here during this trial.

A. Yes, I can.

Q. You can do that without a doubt?

A. Yes.

Q. If you are selected as a juror in this case, will you allow Mr. Kaczynski the benefit of the presumption of innocence doctrine?

A. Yes.

Q. What does that mean to you?

A. That means he has that right to defend himself, and he has the right of being represented, and just like you mentioned earlier, it's up to the state to prove that he did this.

Q. The latter part of your answer does reflect a component of the presumption of innocence doctrine. It has the word presumption, and generally you presume something, you're assuming it's true, it's presumed to be true. And Mr. Kaczynski need not present any evidence in defense of himself at all. He can rely on the presumption of innocence doctrine. His lawyer never has to say a word. Mr. Kaczynski doesn't have to do anything other than sit at the counsel table. The government would have the burden of proving his guilt beyond a reasonable doubt. Mr. Kaczynski has the benefit of the presumption of innocence doctrine. It would shield him from being exposed to any type of guilty finding until and unless, should it occur, the government proves every element of the crimes against him beyond a reasonable doubt. If the government doesn't meet that burden, you must enter a not guilty verdict in favor of Mr. Kaczynski. Anything about

your belief system that would interfere with your ability to afford Mr. Kaczynski the full benefit of that doctrine?

A. No, there's not.

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

A. Proponent.

Q. Assuming you were selected to be on the jury – I'm going to share a hypothetical.

A. Right.

Q. The jury, during the guilt/not guilty phase of the trial, listened to all the evidence, listened carefully to my instructions, went back in the jury deliberation room, and after deliberating, convicted Mr. Kaczynski 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. Going into the sentencing phase of the trial, you would still hear aggravating and mitigating evidence, and then the jury would have to decide the sentence. In the face of the murder finding would you still be able to consider voting for a sentence less than death?

A. Yes.

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

BY MR. DENVIR:

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

A. Sure.

Q. Do you have your questionnaire?

A. Yeah.

Q. Did you fill it out at Cal Expo?

A. Yes.

Q. Okay. If you could turn to page 11, question 41. There's – the second part of it. The kind of things you say to others.

A. Okay.

Q. I was – you said you notified your boss I will answer questions honestly and see what happens. What were you talking about then; how did that come up with your boss?

A. After that he – you mean what did he say?

Q. I wondered how – what was that conversation, the whole conversation with your boss.

A. When I told him that what I was going to have to do, it was kind of, I said I'm going to be true to myself, I'm not going to sit here and try to make up reasons or answers to get out of jury duty.

Q. I see. Okay. He said that was fine, I take it?

A. Yes.

Q. Okay. If you turn to page 22. You served in the Air Force in Vietnam and, I guess, witnessed an explosion there; is that right?

A. Yes.

Q. Is that going to have any effect on your ability to sit as a juror in this case that involves charges of mailing bombs and bombs going off and killing people?

A. It's a totally different situation. It was something that you would expect. I mean, if there was an explosion, of course it was a surprise then, but it – it was an expectation of just being in that situation. I was foreign to the thoughts of something happening other than that.

Q. I was wondering – that's an experience that a lot of other prospective jurors have not had, and I wonder whether having been through that experience you might – it might affect you in any way sitting as a juror?

A. It was a long time ago. I would consider it a life experience and that I since gone on from that.

Q. I'd like to ask you a few questions if I can about your views on the death penalty. As I understand it, when the judge asked you whether you were a proponent or an opponent of the death penalty, you said you were a proponent. Can you tell me what you meant by that, what your views are?

A. I don't think the death penalty is for everything, every murder case or – you know, I don't feel that it is a deterrent to crime. I think it's more that it would stop me from doing it.

Q. It's not a deterrent to other people, but for the person that committed the crime from reoffending?

A. Right. I believe in it in some cases, and other cases such as like a crime of passion, a man walking in on his wife or something, I would consider that to be a different situation.

Q. If you could look at page 26. First of all, as I understand it, your views on the death penalty haven't changed over time, you reached them at some earlier point and they have pretty much remained the same?

A. Pretty much.

Q. And am I correct that the purpose that you see the death penalty serving in society is keeping the person from reoffending?

A. Yes.

Q. You understand that for at least two of the crimes that Mr. Kaczynski is charged with, which is transporting or mailing a bomb with an intent to kill, having it go off and kill someone, two charges relating to one person's death, Congress has provided three possible sentences. One is the death penalty, execution, one is life in prison without possibility of release – and that means just that; if you're sentenced to that, you die in prison – and the third one is a lesser term of imprisonment. So Congress has said that all three of those sentences could be imposed. It also provided, because the death penalty is involved, that it isn't the judge who decides the sentence, it's the same jury that decides guilt or innocence, if we reach that point.

A. Right.

Q. Do you feel in a proper case that you could see life imprisonment without possibility of release as being a sufficient way of stopping someone from doing it again, from deterring that person?

A. Yes, possibly. I wasn't aware until today that life imprisonment meant exactly that. To me I always went, okay, with parole.

Q. There's no parole in the federal system. It doesn't exist. So it means just what the judge says. It's a little different than what you read about in the state cases.

A. I think that might be something I might have to mull over to see how it sits with me.

Q. Okay. If you could go to page 32. Let me ask you, first of all, from what you know about the case, you have some suspicion, I guess, that Mr. Kaczynski may be guilty, but you feel you could put that aside?

A. Yeah. Only because he's was the only person arrested.

Q. From what you know about the Unabomber crimes or about the case in general, do you have any preconceived notion, any opinion, any leaning as to what you think the proper sentence should be for someone who was convicted of those crimes?

A. I think originally I felt, as I mentioned earlier, about the death penalty.

Q. And having heard now that the other option would be this life imprisonment without possibility of release, is that more balancing things out between the them or you still think the death penalty probably is the proper one?

A. It possibly could.

Q. If you look at –

A. Obviously, I'm kind of reserving that until if I were selected. You know, whatever I hear, you know, I think will make a difference.

Q. If you look at page 32, question 121. You were asked what were your thoughts and opinions about the defendant, and you said if he did it, he should pay. What were you thinking when you wrote that, in terms of the death penalty or –

A. I'm not real sure. I don't think serving a minimal amount of time is sufficient, and learning what I learned today, I would probably say either the death penalty or life imprisonment, which, like I say, I just learned about the difference.

Q. No one expects you to know about the federal law. Most of us don't.

A. Right.

Q. Let me ask you, because I think this is the bottom line. If you were to sit as a juror in this case and were to find the defendant guilty of those two potential capital offenses and then had to go in with your other jurors into the second phase after listening to the government evidence saying this is why you should have him executed, the defense evidence saying this why you should impose something less than that, it should be life without parole or life without release, do you think that you could actually consider, having found him guilty beyond a reasonable doubt of those crimes, you could actually consider both of those as possible sentences you might vote for?

A. Yes.

Q. You wouldn't feel like, well, this sounds like the death penalty, I'm not going to let him off with life or something like that; you could really think about either one of these as something you think could be right?

A. Yes, because I'm not so sure life imprisonment is better.

MR. DENVIR: If I could have just one moment, Your Honor. Thank you, sir.
VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon. My name is Robert Cleary. I'm one of the prosecutors, and I want to ask you a few questions about your views on the death penalty. You said you just found out today for the first time that a life sentence in the federal system means life without parole or release at any point. You've been asked some questions about how that affects your view on the death penalty, and that's what I want to zero in on with you. How would you distinguish, if you had an appropriate case, in your mind appropriate for the death penalty, how would you distinguish whether you should vote to sentence the defendant to death or to sentence him to life without the possibility of parole or release?

A. I think that would be based on what I heard during the trial.

Q. What sort of factors would you look at to make that distinction?

A. I'm not real sure. I don't know what factors would sway me until I heard them.

Q. Okay. The reason you said you believed the death penalty – we should have a death penalty, I believe, is that you said you thought it would obviously prevent the person who's executed from committing crimes in the future.

A. Right.

Q. If you thought that life imprisonment without release would accomplish that same goal, would prevent the defendant from ever committing a crime in the future, would you then automatically vote for life without possibility of release –

MR. DENVIR: I believe he's asking not about a general view as to the death but prejudging the case.

THE COURT: Response.

MR. CLEARY: Given that they have asked how this juror – I know you don't like that. I'm just trying to follow up on the sort of questions they were asking and trying to get a sense from the juror as to –

THE COURT: Are you asking him to prejudge the case, sir?

MR. CLEARY: No, I'm not. I'm asking him about his views generally about the death penalty and how that would differ from his views of life without release.

THE COURT: He just found out about the latter sentence today. I'm not sure he has views on it.

MR. CLEARY: I guess that's the difficulty for the juror. I want to see if I can probe that a little bit and see if he has any views on it.

THE COURT: All right. Go ahead and ask the question again.

MR. CLEARY: I'm not really sure what the question was.

Q. But the gist of what I was trying to get at was, knowing that – if you felt that life without release would also prevent the defendant from committing any crimes in the future, would you automatically vote for that as the sentence as opposed to the dealt sentence.

MS. CLARKE: He is asking him to prejudge the case. He's not asking for his attitude about the death penalty. He's asking how he would vote as a juror.

THE COURT: Sustained.

Q. BY MR. CLEARY: If in the course of the sentencing phase, the second phase of the trial, should you get there, you found that certain aggravating circumstances outweighed the mitigating circumstances that you found to exist, in those instances would you vote for the death penalty?

A. Possibly.

Q. And is it also a possibility that you might vote for life without possibility of release?

A. Without hearing it, I do – I am – I can only answer possibly since I don't know exactly what would sway me one way or the other until I hear.

Q. What sort of factors would you look for to make that distinction, what factors would you want to know in order to make that distinction?

MR. DENVIR: Again, Your Honor, he's asking him how he would vote as a juror. He's asking him to prejudge the case. He's not asking him about general attitudes about the two penalties.

THE COURT: He's asking him whether he has in his mind at this moment factors that would sway him toward one penalty or the other.

PROSPECTIVE JUROR NO. 237: If that's the question, I would say no.

Q. BY MR. CLEARY: As you sit here today, you don't know what would cause you to go from life without release to the death penalty?

A. Right, I would not know.

Q. And do you also not know as you sit here today what information you would ask for to be able to make that decision?

A. I don't think I know enough about this to ask a question.

MR. CLEARY: Thank you. Nothing further.

THE COURT: Okay. (Prospective juror no. NO. 241 enters courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. The questioning has taken us longer than we anticipated. That's why we're late. Is that your questionnaire?

A. Yes.

Q. You're the 241st 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 fill out the juror questionnaire I just showed you at Cal Expo?

A. Yes, I did.

Q. Have you received any information or had any discussions or heard other people discussing the case since that time?

A. No.

Q. Have you seen any headlines about the case?

A. I seen headlines, but as soon as I see it, I put it away.

Q. Okay.

A. I don't read it.

Q. All right. I'm going to direct your attention to the time period before Cal Expo. I want you to act though I don't know anything about the case or the allegations surrounding it, and I want you to educate me. I want you to tell me everything you know thinking I'm going to do something with the information and I need to know all the details you can give me.

A. There were bombs sent through the mail. I'm not even sure how many people were killed. I know two from Sacramento. Several injured. That's about all I know about the case. I know Mr. Kaczynski's brother turned him in. And I seen pictures of where he lived.

Q. Did you receive any information concerning the search of the place where he lived?

A. Did I receive any information?

Q. Right.

A. In the paper, you mean?

Q. From any source.

A. Not that I remember. I – I live a busy life, and I just don't read a lot of details.

Q. All right. Has the information you received caused you to form an opinion or any type of suspicion concerning Mr. Kaczynski's guilt or innocence?

A. No.

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

A. Yes.

Q. What does that mean to you?

A. I don't know if he's innocent or guilty, and he's innocent until proven guilty.

Q. Okay. Do you have the personal capability of leaving outside the courtroom the information you received outside the courtroom concerning this case and allowing Mr. Kaczynski to have his guilt or innocence judged solely by the information that's received inside this courtroom?

A. I think so.

Q. Any doubt in your mind that you can do that?

A. No.

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

A. Yes.

Q. What does that mean to you?

A. He's not guilty.

Q. He's presumed innocent, he need not present any evidence in defense of himself.

A. No.

Q. And he has the benefit of that presumption, that doctrine, until and unless the government proves all the elements of the crime charged against him beyond a reasonable doubt. If the government doesn't meet that burden, you must return a not guilty verdict in favor of Mr. Kaczynski.

A. Right.

Q. Any reason why you couldn't be fair and impartial to both sides?

A. I don't think so.

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

A. I don't know. I'm not against it a hundred percent. I don't know. Unless you're faced with that –

Q. Okay. You don't necessarily have to know to be a juror on this case. We're not looking for jurors that are for or against the death penalty. We're looking for jurors, however, who are capable of considering meaningfully all three sentencing options should the facts justify that. That would be a sentence of death, a sentence of life imprisonment without the possibility of release, or some lesser time in prison. Anything about your belief system that would interfere with your ability to consider all three of the sentencing options?

A. No.

Q. If you were selected to be a member of the jury – and I'll have you join me in a hypothetical – and you and your fellow jurors listened to all the aggravating evidence during the guilt not guilty phase of the trial, you listened to all my instructions, and you went back to the jury deliberation room, you followed the instructions, you fully deliberated, and you all decided Mr. Kaczynski was guilty of the offense of intentional murder of another human man being without justification, that type of finding would take us to the sentencing phase of the trial, at which you would receive evidence that's called aggravating evidence which the government would argue points toward a sentence of death. You would also receive mitigating evidence which would point toward a sentence of life or lesser amount of time in prison. After making the murder finding, would you still be able to consider voting for a sentence less than death in the sentencing phase?

A. I think so.

THE COURT: The parties may examine the juror.

MS. CLARKE: We have no questions.

THE COURT: No questions. VOIR DIRE EXAMINATION
BY MR. LAPHAM:

Q. Good afternoon. My name is Steve Lapham. I'm one of the prosecutors on the case, and I just have a few questions for you. I wonder if you could take a look at your questionnaire.

A. I don't have my glasses.

THE COURT: Are they in the other room?

PROSPECTIVE JUROR NO. 241: Yes.

THE COURT: You can go get them if that will help you.

Q. BY MR. LAPHAM: I would ask you to turn to page 27, specifically question 107. Let me preface my question by saying I think we can all appreciate that you have some uncertainty about the death penalty. You have never been called upon to be in a situation like this before. But I want to see if I can clarify some of your thinking on it to the extent you've done any thinking on it. Question 107 asks the question anyone who plans or commits a murder should get the death penalty. It gives you some options, though you actually checked two of the four boxes, agree somewhat and disagree somewhat. Could you tell me what you were thinking at the time?

A. I couldn't decide the difference between the two. If you agree somewhat and you – if you agree somewhat, then you disagree somewhat too. I really could not decide which one I wanted.

Q. So they seemed kind of like the same answer to you?

A. Uh-huh.

Q. Okay. That explains why you checked the two boxes. Could you explain to me what your thought process was to get to those two boxes?

A. I think the circumstances have a lot to do with a case. Whether – how you – whether you agree – if you commit a murder, circumstances of why you did that and how you did that would have a lot to do with how I felt about the penalty.

Q. Okay. So you would want to know more about the circumstances of the crime. Would that also include more about the nature and characteristics and background of the defendant?

A. Yes.

Q. Because that's actually what the law suggests that you look at in making the determination between a life sentence and a death penalty. In your view, what are the purposes or have you formulated any thoughts as to the purposes of the death penalty?

A. No, I haven't really.

Q. You indicated in your questionnaire, this is at page 26, at the bottom of the page, question 105, it removes, referring to the death penalty, it removes from society a person who's committed a terrible crime and is not capable of being helped psychologically. What were you thinking when you wrote that?

A. I don't really know, because a life sentence would do the same thing.

Q. A life sentence would do the same thing as removing a person from society?

A. Yes.

Q. Okay. Now, knowing that, does that give you any pause as to whether or not you would actually impose the death penalty if the facts and circumstances warranted?

A. Like I said before, I don't know. I don't think you really know until you're put in that situation. I'm not a hundred percent against the death penalty, but I don't know.

Q. Okay. Maybe I could make my question a little more precise. Knowing that a life sentence always means a life sentence, in other words, no possibility of release, would you always default to a life sentence rather than the death penalty no matter what the facts and circumstances of the case are?

A. I don't think so, but I don't know why. I can't explain.

Q. I can appreciate that. Is there anything you can tell us that might help us with that?

A. I don't think so. I'm not clear. I don't know how I would –

Q. Let me see if I can help. I don't know if this will help or not. As the judge explained to you, if you were chosen as a juror in this case and if you were in the penalty phase of the trial, you would be asked to weigh certain factors, aggravating factors which the government believes merit a death penalty, mitigating factors, which are factors the defense believes do not merit the death penalty, something less, and that's what the law you requires you to look at and to weigh in making your determination. Do you think you would have any hesitation in being able to weigh those factors?

MS. CLARKE: Your Honor, I think that's an unfair question. Hesitation in –

THE COURT: Sustained.

MR. LAPHAM: I'll rephrase.

Q. Do you think you would have any problem undertaking that weighing process?

A. I don't think so.

Q. And if you found, based on your weighing of those factors, that the aggravating factors outweighed the mitigating factors, under those circumstances do you think you could impose the death penalty?

MS. CLARKE: He's asking for a prejudgment on this case, given the text of the question.

MR. LAPHAM: I didn't give any facts. How can I be asking for a prejudgment?

THE COURT: Why don't you just state that you're not asking for prejudgment. You don't have to say you haven't give any facts. That's arguing with counsel that made the objection. I don't really need that.

MR. LAPHAM: I apologize, Your Honor.

THE COURT: All right.

Q. BY MR. LAPHAM: If you were undertaking this weighing process, and if you believed, based on your view of the factors and the evidence in the case that the aggravating factors outweighed the mitigating factors – and I'm not asking about the facts and circumstances of this case – would you – could you return a verdict of death?

MS. CLARKE: Your Honor, the question is could you, not would you.

THE COURT: He said could you. He said would you at first, but he corrected himself.

PROSPECTIVE JUROR NO. 241: I think I could.

Q. BY MR. LAPHAM: Do you have any hesitation about that?

A. Again, I don't think so. Right now I don't think I would.

Q. Okay. I want you to understand –

THE COURT: Wait a minute. I don't know what the last answer means. What do you mean?

PROSPECTIVE JUROR NO. 241: I keep saying not ever being there, I don't know, but I think I could.

THE COURT: Okay.

Q. BY MR. LAPHAM: Okay. Well, I just want you to understand how the process works.

THE COURT: It's been explained how the process works. I don't want you to explain that again.

MR. LAPHAM: I was going to explain the oath that she would take.

THE COURT: Okay. I didn't know that. I'm sorry.

Q. BY MR. LAPHAM: You'll be asked to take an oath if you are chosen as a juror in this case, and the oath will basically say that you agree that you could follow the law in the case, and that would include, as a matter of necessity, if you got to the penalty phase, actually giving due consideration to all three of the options that you're presented, one of which is the death penalty. As you sit here today, do you feel that you would have any problem taking that oath?

A. No.

MR. LAPHAM: Thank you very much.

THE COURT: Adjourned until 1:30. (Luncheon recess taken.) —oOo— SACRAMENTO, CALIFORNIA WEDNESDAY, DECEMBER 10, 1997, 1:30 P.M. —oOo—

THE COURT: Let the record reflect all participants are present. Ready to proceed?

MR. CLEARY: Yes, we are, your Honor.

MR. DENVIR: Yes, your Honor.

THE COURT: Let's proceed. (Prospective jurors entered the courtroom.)

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

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

THE COURT: I'm going to communicate with you in just a moment. You can take a seat. I thought six people would appear and there's only five, so I've got to see why my numbers are wrong. Apparently 240 didn't show. Did you know that?

MR. CLEARY: Yes, we do, your Honor.

THE COURT: Okay. Good afternoon, and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who administered the oath to you, her name is Shani Furstenau, she's my courtroom deputy clerk. She will help me administer the trial as well as the certified shorthand reporter who is on the same platform with Miss Furstenau. I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and anticipated cooperation. You're performing an important function in our justice system. Under the principles of our constitutional democracy, the parties in this case are entitled to a fair and impartial jury. That right

would be meaningless without citizens such as you making themselves available for jury service. The questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. That may, in fact, require you to tell us if we're not asking you a clear question. It's our job to ask you a clear question. And if you don't understand any aspect of our question, you can ask us a question. You can have us to clarify. We would appreciate that. We truly want you to search your hearts, the deep crevasses of your minds to tell us what you can about things that would have a bearing on whether or not this is the type of case you should sit on. So you are at liberty to ask us questions as well as answer our questions. But when you do respond to questions, 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 questioning process will involve questioning prospective jurors first as a group as you are now seated and then later individually which will commence after you are questioned 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. You will be notified as to when that will occur. Our objective is to obtain a fair and impartial jury that will decide this case based on the evidence that is presented here in this courtroom and on the law that I will give you during the trial. I have decided to do individual questioning in part because the parties have requested it and also because there's been some publicity about the case. During the individual questioning, we will cover the publicity area and other matters that tell us whether you can sit as a juror in this type of a case. The law requires me to ask you questions about the publicity to which you may have been exposed in a case such as this one that has received widespread publicity so that we can make a determination, objectively speaking, as to how that publicity could possibly have affected you. We will also give you an opportunity to tell us your own personal view as to whether or not you believe you've been affected, if at all, by any publicity to which you've been exposed. 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 proves 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. Under the federal system, life in prison means just that. You are sentenced to life. There is no possibility of parole. In the state system, there is a possibility of parole so life may not mean life. That's not the federal system. The determination of sentencing is made at the second phase of the trial which is referenced as either the penalty phase or the sentencing phase. If there is anything about the charges that causes you to prefer not being a juror on this type of a case, please indicate that fact now by raising your hand. There's no response. The first part of the trial, which will be referred to as the guilty or not guilty phase, will occur like any other trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged be-

yond 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, you would then deliberate as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask you questions in other areas too. During this questioning process, we will refer to you by your randomly selected number as a juror rather than your name. This is because I've decided to use an anonymous jury in this case in order to protect your privacy. I've indicated that to you in a previous communication. Now I will give you a jury instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from service on this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended 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 talk to you, please report it to me immediately. Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated. And it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they had no opportunity to discuss. For these reasons, you should avoid reading 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 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 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 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 evidence which is called aggravating factors. Things it will urge the jury 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. 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 sentence. There's no response. If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions, whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this, please indicate that fact by raising your hand. There's no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under the law to protect your legitimate privacy interest, I may ask some questions in the area that you indicate a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this can'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 for closing any aspect of it. I'm now going to have my deputy clerk to escort all but the earliest randomly selected juror into the other room and to please place the remaining juror in the witness stand. (Prospective jurors leave the courtroom.) (Prospective juror number 227 remains in the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. I'm going to show you this. Is this your juror questionnaire?

A. Yes.

Q. Okay. I'll take it with me to the podium where I'm going to ask you some questions. You are the 227th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. I can't think of anything.

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

A. Yes.

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

A. If I slide up, is that better?

Q. That's excellent. Thank you. Since you filled out the questionnaire at Cal Expo, have you received any information about the case?

A. Not really. I tried not to.

Q. I appreciate that. Despite your efforts, were you still exposed to, like, headlines or something like that?

A. We have a very small local paper, the Sunday Chronicle, and the news at night. And that's it. So no.

Q. Did you discuss the case with anyone since Cal Expo or overhear other people discussing the case?

A. No. It said not to discuss it. That's what I tried to do.

Q. I'm now going to direct your attention to the information you received before you appeared at Cal Expo. And I want you to assume that I don't know anything about the case and that you're trying to educate me about everything you know about the case. So I want you to give me as many details as you can about everything you think is associated with this case.

A. In the paper several years ago, there were notices that somebody had mailed bombs through the mail. That's it. Didn't remember the name or anything else. All of a sudden, you know, there's been more PR before this came along. You hear it and it kind of goes in one ear and out the other. And I really had not made a study of it or, you know, it's just another news article.

Q. Did you receive any information concerning a cabin that you believe was connected to the case?

A. Only that it went down Highway 80.

Q. Before the cabin was moved down Highway 80, did you hear about the cabin?

A. Yes.

Q. And what did you hear about the cabin before it was moved?

A. That that's where the gentleman lived.

Q. Did you hear about the cabin being searched?

A. Yes.

Q. Do you know the results of the search?

A. Not really.

Q. Did you receive any information about any items allegedly taken from the cabin?

A. No, other than it was sealed.

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

A. I don't believe so.

Q. If you are selected as a juror in this case, will you allow Mr. Kaczynski to start the trial on what I've been calling a clean slate?

A. I would do my best.

Q. Are you able to leave outside the courtroom the information you received outside the courtroom from news sources and other sources so that Mr. Kaczynski can be assured that the determination of his guilt or innocence in this case will be made solely from evidence received in this courtroom?

A. I would do my best to – what I have heard before as you say, leave outside, and whatever information is given here, to make a decision on that.

Q. Is there anything that you know about yourself that would prevent you or interfere with your ability to do just what you've just indicated you will do your best to do?

A. I can't think of anything.

Q. If you are selected as a juror in this case, will you allow Mr. Kaczynski the benefit of the presumption of innocence doctrine?

A. Yes, I would try to make the judgment on what I hear here.

Q. The presumption of innocence doctrine, it means what it indicates, that he is presumed innocent. He never has to defend himself. He doesn't have to present any evidence whatsoever in defense of himself. And he has the benefit of that doctrine, the presumption of innocence doctrine, until and unless the government proves all of the elements of the crimes charged against him beyond a reasonable doubt. And if the government doesn't 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 allow Mr. Kaczynski the full benefit of that doctrine?

A. I don't believe so.

Q. Are you for or against the death penalty?

A. I think it would have to depend upon the circumstances.

Q. Okay. I'm going to ask you to join me in a hypothetical. I want you to assume that you have, in fact, been selected to be a member of the jury, and you and other jurors heard all of the evidence during what's called the guilt and not guilty phase of the trial. And you went – first you heard my jury instructions, and then you went to the jury deliberation room and you did what you were supposed to do in accordance with my jury instructions, and then after doing that, all of the jurors decided that Mr. Kaczynski is guilty of the offense of intentional murder of another human being without justification. That type of a finding would then take us into the sentencing phase of the trial. At the sentencing phase of the trial, the government would present what's called aggravating evidence. And that's evidence that the government thinks points toward a sentence of death. And you would also receive what's called mitigating evidence, and

that would be evidence that would point toward a sentence of life in prison without the possibility of release or some lesser amount of time in prison. Bearing in mind that using my hypothetical, you were just on the jury and you found during the guilt/not guilty phase of the trial that Mr. Kaczynski was guilty of murder, do you think in the sentencing phase of the trial that you could still consider voting for a sentence less than death?

A. I'm not sure, to be real honest. I'm not sure.

Q. Let me ask you another way. During the sentencing phase of the trial, bearing in mind the murder finding, would you be able to meaningfully consider all three sentencing options, which would be a sentence of death, a sentence of life in prison without the possibility of release, or some lesser amount of time in prison? I'm trying to figure out if the murder finding causes you to lean toward one sentence or whether you can be open-minded and listen to the –

A. I think I can be open-minded about it.

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

BY MS. CLARKE:

Q. Good afternoon. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And I had a few follow-up questions, if I could. I guess I wanted to ask you a little bit about the travel that you would have to undertake to come down here. Is that a problem for you?

A. I live at Tahoe, and like I put on the back of it, if I was chosen as a juror, I would make arrangements to stay here.

Q. And that wouldn't be a problem for your circumstances at home or anything?

A. No.

Q. Okay. When the judge asked you the hypothetical question about the penalty and he led you through a deliberate, intentional murder, and you said I'm not sure, remember the answer to that?

A. I think before I could make a judgment, I would have to know the facts or the evidence, and then you would go from there.

Q. That would be fair. What I'm trying to talk with you about is what were you thinking. You obviously paused for a while and were giving it some reflection. And I wondered if you could share with us what you were thinking.

A. I think trying to kind of think my way through, that I again would have to hear the evidence and then make a judgment. I can't say I'd put somebody to death unless I knew what, you know, what the evidence was or whether you would give somebody life imprisonment. I think it would depend upon the severity of it, perhaps why he did it.

Q. The severity of the crime and why the crime was committed. Could you look with me, if you would, at your questionnaire.

A. What page?

Q. Page 26. Question 103. What are your opinions and beliefs about the death penalty. And you said it depends on the level of the crime. What were you thinking when you wrote that, level of the crime, what does that mean?

A. If it's a crime of passion, that's one thing. If somebody perhaps plans a crime would be the difference.

Q. And you go on to explain that in the second part, right, it would depend on if there were a crime of passion or a planned act. If it were a crime of passion, I understand you to say it would not be a death penalty case for you necessarily?

A. Well, it might be, but people do things in anger. People do things in a crime of passion. Perhaps you found your husband in bed with another woman, you might shoot him.

Q. Perhaps I shouldn't make a public statement about that.

A. No, but what I'm saying the difference, you might do something in anger or at the spur of a moment.

Q. Sure. That you would think that really wouldn't be fair to subject somebody to the death penalty for that kind of a murder?

A. If he done it three times, yes.

Q. I don't have that many husbands.

A. Well, maybe the same husband did it three times.

Q. If you go on, though, and set yourself in the frame of mind that it was a planned act, how does that change the equation for you?

A. It might change my mind as to the severity of the penalty.

Q. To what? If we're talking about a planned – and I think we, at the next page at question 107, ran through the series of checkoffs. Remember that now?

A. Uh-huh.

Q. Anyone who plans and commits a murder should get the death penalty, and you said agree with somewhat. What were you thinking there? Is that, again, the difference between passion and –

A. I believe so. I didn't know this was going to come back and haunt me.

Q. No. No. Just a starting point to ask you some questions. If I could ask you to put yourself in the frame of mind of this scenario. If you're sitting on a jury and as a member of that jury found a person guilty beyond a reasonable doubt, all 12 of you agreed, it was unanimous, that the person was guilty beyond a reasonable doubt of a deliberate, intentional, premeditated murder, a murder with no justification or excuse, what would the penalty be for you if that was the crime of conviction?

A. You have a choice, do you not, you have life imprisonment and you have death.

Q. Right. Do you have a – just based on that set of facts, based on that conviction, would you be picking death or life just based on that?

A. Again, I don't know. Don't mean to evade. I think the evidence, why the man did it, why the person did it, would end up affecting my decision.

Q. So you'd want to know more?

A. I would want to.

Q. At the bottom before question 107 when you checked strongly agree, see the last question, a person's background does not matter, what were you thinking about when you said you strongly agree that the background does not matter?

A. Whether a man is well-educated or not well-educated, whether, I mean, I think that's what I was sort of thinking about at the time. In other words, what he's done with his life before would not sort of enter into it.

Q. Into the decision?

A. Yes.

Q. And why is that?

A. Sometimes people who are very, very well-educated are not life smart. Does that make sense? You can be book wise and life stupid.

Q. Would you be interested in knowing a person's background to assist you in understanding why something happened?

A. I believe so. I think people's life experiences have a lot to do with how they react and do things.

Q. So that would be something you'd want to consider?

A. Yes.

Q. Their life experiences, childhood, upbringing, those kinds of things?

A. I think they all affect us.

Q. You mentioned when – I think when you received your questionnaire, remember the question about what did you think when you got your jury summons? And I think you said you thought it would be an interesting case to serve on. Do you remember that?

A. Yes.

Q. What were you thinking?

A. I've never done anything like this before.

Q. So it's the service on a jury that is interesting?

A. Well, I've spent my life trying to give back to my community when the community's given to me, and this is just another way of doing it.

Q. Civic duty?

A. Right.

MS. CLARKE: May I have one moment, your Honor?

THE COURT: Yes.

MS. CLARKE: Thank you very much. VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon, ma'am. My name is Stephen Freccero. I'm one of the prosecutors in this case. And I just wanted to ask you some follow-up questions about your views about the death penalty. If you could look at page 28.

A. Yes.

Q. There when you put down that the death penalty may or may not be justified depending on the circumstances of the case, do you remember if you had any particular examples in your mind at the time you checked off that box, any examples come to

mind that you could think of where you thought the death penalty might be justified or wouldn't be justified?

A. No. As I say, this is haunting me.

Q. I know. So no examples come directly to mind?

A. No, I can't think of anything.

Q. Is this a subject matter that you've given a lot of thought?

A. I don't believe so.

Q. Okay. Well, let me just ask you a few basic questions. If you were actually called as a juror and if the trial indeed got to that second proceeding where the issue of which potential punishment the jury would decide to apply, if you got to that stage, you'd receive some guidance from the Court, the judge would give you the law that would apply to your deliberations, just like you would for the guilty or not guilty phase. And you know yourself. Do you have any strong belief that you think would make it very difficult for you to follow the judge's instructions and consider the evidence in the case? Are you aware of any reason that might interfere with your ability to do that?

A. I don't think so.

Q. And if you actually sat through that second proceeding and you heard what we've called the aggravating evidence and any mitigating factors and it came to a point where you had considered that evidence, you'd considered the judge's instructions, and based on those things you thought based on that evidence a sentence of death was justified, would you actually be able to sign a verdict form sentencing the defendant to death?

A. I believe so.

MR. FRECCERO: No more questions. Thank you.

THE COURT: I'll take that. Thank you. (Prospective juror number 227 left the courtroom.) (Prospective juror number 228 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. I left a document on the ledge right next to you. Can you look at that and tell me if that's part of your juror questionnaire?

A. Yes, it is.

Q. Okay. You are the 228th randomly selected juror. Is there any reason why we shouldn't continue to consider you for possible jury service?

A. No.

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

A. Yes, I did.

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

A. Very little.

Q. Share with us the information you've been exposed to since then.

A. Television and newspaper articles. That's about the extent of it.

Q. I'd like to get the content, if you could share.

A. What I heard or read or observed?

Q. Right. That's right.

A. Well, just indicated that Theodore Kaczynski had been arrested for the Unabomber and that he lived in Montana in a cabin and that his brother found some writings, and that's about all I –

Q. Was that since Cal Expo?

A. Yes.

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

A. No, I have not.

Q. I'm now going to direct your attention to the time period before you appeared at Cal Expo. I want you to assume that I know nothing about this case and that you are going to educate me about everything you know about the case.

A. I'm not a very good educator when I don't have much things.

Q. Well, tell me as much as you possibly can.

A. Basically that's all I know. That Mr. Kaczynski was arrested as the Unabomber. He had explosive devices that he made. And three people were killed and several injured. He was a math professor from Berkeley. That's about all I can tell you.

Q. You said that he had explosive devices that he made?

A. That's what the newspapers have said.

Q. What did that information mean to you? What did you visualize when you read that information?

A. Pretty scary.

Q. Did you receive any information concerning a cabin?

A. Yes.

Q. What information did you receive about a cabin?

A. Just in the newspaper – am I talking about the newspaper now or –

Q. I want you to talk about everything. I want to know everything you know from any source.

A. The only thing I know is I turned on the television and I saw a flatbed truck coming from Montana to California with the cabin.

Q. Prior to seeing that, did you see any other information about the cabin?

A. Only that it was very small.

Q. Do you know whether the cabin was ever searched?

A. I don't know that. I don't know, but –

Q. You said but?

A. Well, I may have read that, that it was searched and that a typewriter was found and some paper.

Q. Some what else?

A. Some papers.

Q. Do you know anything about the papers?

A. Typewriter papers that were supposedly evidence.

Q. Did you receive any information concerning anyone's opinion as to why that was considered evidence?

A. No.

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

A. I have no opinion.

Q. Do you have any suspicions in that regard based on the information you've received?

A. No, I have no suspicions.

Q. Have you read anything that has caused you to think that someone else has suspicions in that regard?

A. Perhaps the media or someone else, but not me.

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

A. Yes.

Q. What does that mean to you?

A. That means that according to the State of California, the law, or I guess anywhere, that you're innocent until proven guilty.

Q. The information that you became aware of before you walked into this courtroom today, is that information that you could leave outside the courtroom if you were selected as a juror in this case and assure Mr. Kaczynski that he will be tried on the evidence that is presented in this trial alone and no other evidence?

A. Without a doubt.

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

A. Yes.

Q. What does that mean to you?

A. Innocent.

Q. The doctrine that is a fundamental principle in our criminal justice system, it means just what it says. It's a presumption that the defendant is innocent and the defendant can rely on that presumption, need not bring any defense whatsoever, and has the benefit of that presumption throughout the trial unless and until 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 must return a not guilty verdict in favor of the defendant. Is there anything about your belief system that would interfere with your ability to afford Mr. Kaczynski the full benefit of the presumption of innocence doctrine?

A. I'm not sure I understand that question fully.

Q. Will you allow Mr. Kaczynski the presumption of innocence doctrine throughout this trial until and unless the government proves every element of the crimes charged against him beyond a reasonable doubt?

A. Yes.

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

A. I haven't been there.

Q. What does that mean?

A. I'd like to explain. When I was 17 years old I joined the United States Marine Corp. My primary function was to be a professional killer, trained. And before I was 18, I was trained to save lives. And I've never had the opportunity, thank God, to take arms against another human being.

Q. Okay.

A. So I don't know how I would respond to that.

Q. Maybe that was not a fair question to ask you. Maybe I should tell you this: We're not looking for – did I cut you off? Were you still –

A. No, that's fine. The thing I wanted to say is that I look at it in the same picture or feeling that – you asked the question do I believe in the death penalty. I believe that's what you asked initially.

Q. That's the essence of the question.

A. It's a law. The death penalty. Therefore like a 17-year-old who has to go to war, would I be able to – would I have trouble with that or do I believe in that, and I have to say that I don't know because I haven't been there. I don't know what all is involved with that. It's beyond me.

Q. Okay. We're not looking for jurors that are in favor of or against the death penalty. You don't necessarily have to have a particular view of the death penalty to be eligible for jury service on this case. We are looking for jurors that can meaningfully consider imposition of all sentences that can possibly be imposed in this case. It could be a sentence of death, life imprisonment without the possibility of release, or some lesser amount of time in prison. Is there anything about what you know about your belief system that would interfere with your ability to meaningfully consider imposition of all three sentences?

A. I think that's fair, yes.

Q. What does the yes mean?

A. Consider all three.

Q. Right.

A. Yes.

Q. Is there anything about your belief system that would interfere with your ability to sign a verdict form sentencing a defendant to death?

A. I guess I'll have to wait until that time comes. At this time, I don't know.

Q. Is there anything that anyone could tell you that could help you decide whatever you need to decide before you know the answer to that?

A. Probably at the time of the sentencing when all the facts have been demonstrated.

Q. I'm going to have you join me in a hypothetical. I'm going to assume that you were selected to be on a jury. You and other jurors listened to all the evidence during the guilt/not guilty phase of the trial. You then listened to my jury instructions, you went to the jury deliberation room, you followed my jury instructions, and then you ultimately decided, 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 would then take us to the sentencing phase of the trial. Are you with me on the hypothetical?

A. Yes, I am.

Q. At the sentencing phase of the trial, you would receive additional evidence. The government would present what is called aggravating evidence. That's evidence that the government thinks should cause you to vote for a sentence of death. They think it points to a sentence of death. And we'll be arguing that that's what you should consider. There would be mitigating evidence which would be evidence that will be argued points towards a sentence of life. Life in prison without possibility of release or some lesser sentence. I would then give you additional jury instructions, and then you as a juror would have to make another decision. Is there anything about the finding of murder in the guilt/not guilty phase of the trial that would interfere with your ability to meaningfully consider whether to impose all three sentences?

A. Yes.

Q. What does yes mean?

A. I'm not sure I understand the full question, your Honor.

Q. A shorthand way of asking you the question is if you are on a jury that convicts Mr. Kaczynski of murder, would you be able to consider voting for a sentence of death, life in prison without possibility of release, or some lesser sentence? Could you consider voting for all of them?

A. Yes.

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

BY MR. CLEARY:

Q. Good afternoon, sir.

A. Good afternoon.

Q. My name is Robert Cleary. I'm one of the prosecutors in the case. I'm going to give you a copy of your questionnaire and ask you some follow-up questions to the answers you gave in there. Are you looking for your glasses?

A. Yeah.

Q. Turn, if you could, to page 28, please. At the very top, at question 108, you tell us that where one person intentionally kills another person, the death penalty may or may not be justified depending on the circumstances; correct?

A. Yes.

Q. Can you tell us in what sorts of circumstances you believe the death penalty is appropriate?

A. Perhaps someone who has continued the same crime for – heinous crime such as rape or molestation or murdering someone, perhaps would be a consideration.

Q. Meaning they've done it several times?

A. Well, not necessarily the latter, but perhaps the first part that I mentioned.

Q. Which was what? I'm sorry. I didn't follow.

A. In other words, if someone were to do something more than once. I'm not talking about the murder. I'm talking about less – crimes that are less than murder.

Q. So someone who has a criminal history and then later commits a murder, that might be a person?

A. Knowingly, intentionally, and so forth and the evidence indicated that, then that's what I had in mind.

Q. So in that instance, you would be looking at the character of the defendant, correct, things he's done in the past separate and apart from the charged crime?

A. I'm not a doctor so I couldn't really – I don't like to answer that question.

Q. Okay. Are there any sorts of circumstances, factors or circumstances about the killing of a person that might make you determine whether they deserve the death penalty or do not deserve the death penalty?

A. I think it's – exactly what, I don't know.

Q. So you do think there may be killings which are more aggravated and more heinous and therefore might, in your view, warrant the death penalty than other sorts of killings?

A. Possibility, perhaps.

Q. And conversely might there be types of killings, facts and circumstances about a killing itself that would convince you that the death penalty would not be appropriate in that circumstance?

A. That's correct.

Q. Could you turn to page 107, please. I'm sorry, page 27, question 107. You were asked in that multipart question several propositions about the death penalty, and you strongly agree with each of them. Focusing you on the first three, dealing with a murder, a multiple murder and an act of terrorism in which someone dies. Can you tell us what you had in mind when you answered strongly agree with those propositions?

A. I think the question is anyone. I didn't like that. I just – I don't know. I have a problem with that.

Q. And what's the problem with the word anyone?

A. Well, anyone who commits a murder should get the death penalty. I don't agree with that.

Q. But your questionnaire, you say strongly agree with that?

A. Yes, I did.

Q. Is that just an error, you think, when you filled this out?

A. Yes, it was.

Q. So looking at it now and having perhaps more time to reflect on it, how would you more appropriately answer that first question?

A. Disagree somewhat.

Q. And how about the second one, anyone who deliberately murders two or more people?

A. I disagree with that somewhat.

Q. How about the next one, the act of terrorism which someone dies?

A. I disagree with that somewhat. Could I make a comment?

Q. Please.

A. When I filled out this paper, I was in a hurry, and I really didn't want to be considered for a juror. I went home and searched my mind and my soul, and I went back to – when I joined the military I had a responsibility, and I believe that at this time I have a civic responsibility. Therefore, I have to be truthful. It's not as though I intentionally lied. I had a lot of things going through my mind and I wasn't sure. As I read it, I just answered the question.

Q. And you're more comfortable now that the answers you've just given might more accurately describe how you feel about the death penalty?

A. That's correct.

Q. You mentioned just now – you alluded to your stint in the military. And I believe you told Judge Burrell about that. Could you maybe share with me and explain to me a little more how that experience affects your view on the death penalty?

A. See, I felt it as a responsibility to join the military and patriotic. Like I said, I'm thankful that I never had to bear arms and to take another's life. And I don't know how I would respond under the same conditions today if I would – or even then, would I be able to kill someone or take someone else's life. And so that has an effect on my thinking as to with regards to the death penalty. It's not that I agree nor do I disagree. It's just a matter of I don't have the whole picture at this time. I just have pieces, and it's kind of confusing to me.

Q. And you, I believe, said you're not sure if you could actually sentence someone to death?

A. Well, it's the law of the land, and I've been given three options hypothetically from the judge. And would I consider them, yes, I would. So therefore I have to consider that.

Q. And one of those options, as Judge Burrell told you, would be a life sentence in which the defendant would go to jail literally for his life. He would never get out of jail. Knowing that when presented with those options, would you always vote, no matter what the facts and circumstances are, would you always vote to send the defendant to jail for life as opposed to sentence him to death?

A. No.

Q. Are there circumstances under which you yourself could vote to sentence somebody to death?

A. I don't know.

Q. You're not sure about that?

A. I haven't been there so I don't know.

Q. That's where I'm switching you to now. We're asking you a lot of questions –

A. I don't know.

Q. Right. I understand that. I just want to make sure you and I are talking about the same thing here. We've asked you a lot of questions about your beliefs generally on the death penalty, and now I'm trying to ask you to put yourself in the jury box

as if you were sitting as a juror in the case. And the question presented to you at the end of that second phase that Judge Burrell told you about, the penalty or sentencing phase, is whether you yourself, as part of the jury, could sentence the defendant to death. Do you think you could do that?

A. It's like could I take a weapon and take another's life. I don't know. I haven't been there. I don't know at this time.

Q. Might it be that if presented with that question, that it might do violence to your own personal conviction, your opposition to death?

A. I don't know.

Q. Sounds like you do have concerns about your ability to send one to their death; correct?

A. I guess so, yes.

Q. Is this something that you've given some considerable thought to down through the years?

A. Yes, I have.

Q. And has your position been more or less the same down through the years?

A. Consistent.

Q. So over the many years, you've come no closer to the determination as to whether you, in fact, if called to, could do it, could sentence somebody to death?

A. I don't know.

MR. DENVIR: Your Honor, I would object. The jury is never called to sentence someone to death. I think that misstates the law. The law never requires a death sentence.

THE COURT: Sustained.

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

THE COURT: Yes.

MR. CLEARY: I have no further questions. Thank you. VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon, sir. My name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski. I'd like to ask you a few questions, too, if I can. And I want to ask you some questions about the death penalty. As you know, that's an important consideration because it could be an issue in this case. And I know it's hard for to you to answer questions in public, the judge, prosecutor, and myself, and in front of all of these people, but it's something that we need to kind of explore with you, if we can. I'd have to tell you in all honesty after reading your questionnaire, I had the feeling that you believed pretty strongly in the idea of kind of an eye for an eye, someone who killed someone forfeited their own life. And I guess that having come this far along in the process, that's not your view apparently?

A. That's correct.

Q. There's – and it sounds like, if anything, you are more leaning against the death penalty as in terms of a social matter than for it?

A. I can't say.

Q. Okay. Because if you recall, you had said you were in favor of the death penalty before and you thought that it served a purpose, and now it sounds as if maybe you're not as much in favor of it. You may have some doubts about it as to how it should be used in society?

A. It's the law. Therefore I have to – I'm obligated to uphold the law.

Q. Let me explore that with you. You understand what Judge Burrell told you is that to sit on a jury where the death penalty is a potential penalty, you do not have to be in favor of the death penalty. Do you understand that as a general matter? You don't have to be a pro-death penalty person. And as you can imagine, the parties would like to see a range of attitudes to the death penalty on the jury. The government wouldn't want everybody against the death penalty, and you can imagine the defendant wouldn't want everybody in favor of the death penalty. People in society have a wide range of views about the death penalty, and they all can serve on the jury provided one thing, which is that they have to be able to say that they can follow their oath as a juror and obey the judge's instructions. In other words, you can have a view about the death penalty. Whether you would vote for it if you were a legislator or if it was in the ballot box, that's one thing, or whether you think it's a good thing we should have and you may be for or against it there. The big thing is Congress has decided the issue that we will have a death penalty for certain crimes, including some of the crimes brought against Mr. Kaczynski. And the question that we need to explore with you is whatever your feelings are about the death penalty, they sound like you feel strongly about them, whether they would interfere with your ability to perform as a juror. If so, you shouldn't serve as a juror, you know?

A. No, I don't think so.

Q. Let me explore that with you. Because as I understood it, when you went to the military, you were trained to take up arms against enemy; right?

A. That's correct.

Q. And it sounds like you weren't exactly excited about the prospect?

A. Uh-huh.

Q. But you were willing to do that because that was your duty as a soldier?

A. That's correct.

Q. And the question here is whether you as a juror, although you may not be excited about the death penalty in a sense, are willing if you served as a juror to do your duty there?

A. Yes, I would.

Q. And what the judge has told you, and, again, we need your answer to this, what the judge has told you is that you would have to be able, if you sat on a jury and found a defendant guilty of a capital offense, an offense that Congress has said that one who has been found guilty beyond a reasonable doubt of that crime, the jury can then sentence that person to death, life in prison without possibility of release, or even a lesser term of years. And what the judge would instruct you is to sit on a

jury, you would have to be willing to listen to all the evidence in the second half. The prosecution's evidence, they say, look, doesn't this show you why death is necessary; the defense evidence, that's evidence that says there's no reason for the death penalty here. And then actually consider all of those sentences and give them an honest shot like, well, which one do I think is the proper one, and then deliberate with your other jurors, hear their views, and then make your vote among them. And the question we need to know is, the judge needs to know and the government needs to know and we need to know, is that something you can do?

A. Yes.

Q. Do you feel pretty confident about it when you think about it in terms of your duty and you'd have to really consider these options that Congress put in?

A. Yes.

MR. DENVIR: I have no other questions. Thank you. VOIR DIRE EXAMINATION

BY THE COURT:

Q. What did your yes answer mean? What did it mean?

A. That I could hear all the evidence and listen and discuss with the other jurors and come up with a verdict.

Q. If the evidence, in your opinion, persuaded you that you should sign a verdict form sentencing the defendant to life in prison without possibility of release, would you have any problem signing that form?

A. I don't believe so.

Q. Same question with respect to sentencing the defendant to death.

A. How much time do I have?

Q. To answer the question?

A. Yes.

Q. How much time do you need? Do you want me to call you back?

A. I've thought about it a lot. I don't know.

Q. Do you want me to ask other jurors questions and call you back in later?

A. I've had a lot of time to think with it, and I still haven't come up with an answer to that question as to whether or not I would be able to do that, just like would I be able to take another person's life. I haven't been there so therefore I'm ill-prepared to answer that question.

Q. Is there anything you could do to prepare yourself to respond to the question?

A. See it to the end I suppose, if selected. Perhaps at that time something may influence me to make that decision or to answer that question one way or another.

Q. As you sit here now, you don't know if you could sign a verdict form sentencing a defendant to death?

A. I don't know at this time.

Q. I'm going to be questioning some other jurors. Do you think that's something that you would be able to figure out during the time period I'm questioning other jurors, or do you think you just gave me your best answer?

A. I think I just gave you my best answer.

THE COURT: Okay. Thank you, sir. (Prospective juror number 228 left the courtroom.) (Prospective juror number 236 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Yes.

Q. Okay. You can take a seat. You're the 236th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. Nothing in particular other than the things noted in there.

Q. I better look at it again. I assume it's on the last page.

THE COURT: Are you aware of the section he's referencing?

MR. FRECCERO: I think, your Honor, if the Court looks at page 35, question 136.

MS. CLARKE: And at page 32, your Honor, at 121.

THE COURT: Thank you.

MS. CLARKE: 120 and 121.

Q. BY THE COURT: I'm going to show you one of the things they mentioned and ask you if this is what you're referencing.

A. Yes. And all this. This one.

Q. This one's the main item?

A. Yes.

BY THE COURT: Counsel, he referenced 136, and the second item referenced there is problematic with the juror.

Q. Do you think that that matter will interfere with your ability to concentrate on this case?

A. Pretty much with everything right now.

Q. I'm sorry?

A. Pretty much with everything at the moment.

Q. Okay. Are you indicating that jury service is something you could handle at a later time but perhaps not right now?

A. Yes, I think so, sir. I would like to not go into it personally in public.

Q. I can tell that this is a private matter for you.

MS. CLARKE: We'd stipulate.

MR. FRECCERO: The government would stipulate.

THE COURT: Because of the current problems, we're going to excuse you from further service on the case, sir.

PROSPECTIVE JUROR 236: Thank you. (Prospective juror number 236 left the courtroom.) (Prospective juror number 238 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

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

A. Yes, it is.

Q. Thank you. You're the 238th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. I don't think so.

Q. Okay. Did you fill out the questionnaire I just showed you at Cal Expo?

A. Yes.

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

A. Little bit.

Q. Share that with us, please.

A. Just the local paper in Chico doesn't carry a lot, but occasionally it will have something. And I tried to avoid it, but sometimes you catch headlines and that type of thing.

Q. What headline have you caught?

A. Actually I caught a picture moving a house or something. They have in Chico a fund-raiser each year that's a playhouse, and this year they did a log cabin playhouse. I got the paper, thought that's what the picture might be, looked closer, and that wasn't what it was.

Q. Anything else come to your mind?

A. No. I had my husband look for things, jury information because I wasn't sure if I was still in the jury selection process because I hadn't heard anything and was trying to get some idea whether they had selected the jury or not.

Q. Have you had any discussions or have you overheard discussions concerning the case since Cal Expo?

A. Just as I had to tell different people at work, friends, things that I couldn't plan for because of that. But most people wouldn't say anything, they would just kind of go, oh, no, understanding what that means as far as disruption to my life, missing work, that type of thing. I have told my mom to stop talking to me one time because she was talking about it.

Q. I want to direct your attention to the time period before you appeared at Cal Expo. I want you to assume I know nothing about the case. And I'm trying to get you to tell me everything you know about the case so I can be as knowledgeable as you are. And I'd like you to provide me as much detail as you possibly can.

A. I knew that there had been what they believed was the single individual that they had called the Unabomber who had sent letter or package bombs. I don't remember how many were sent. I know that they were sent to different locations. People were injured, and I believe someone was killed. I had heard that federal authorities had picked somebody up and believed that they had sufficient evidence to charge him with the case. And that was about it.

Q. Did you receive any information about the cabin other than what you related earlier?

A. Just when I had to tell my mother to stop talking to me. She was complaining about the expense of it. So I guess it cost a lot of money to move it.

Q. Do you know if the cabin was ever searched?

A. I guess I made the assumption that it was searched. I can't say I actually read that it was searched.

Q. Do you have any reason for making the assumption?

A. Other than that it's supposed to have been the cabin that the accused lived in, so I'm assuming that it would have been searched.

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

A. That's a really tough one. I don't believe everything that the newspapers write, but I think I'm a pretty standard citizen, that you hear things and you just kind of go along with what's there. I do recall when stuff started coming out in the newspaper about it that I did not read it, one, because I just didn't have the time, and I did not have the interest. And I figured that that was for a jury to decide. And I guess maybe some famous court cases of recent years have just led me to believe that I don't know everything and that I really can't form an opinion. And yet you do have – I don't even know how to say it. It's not an opinion, but you hear certain things and you maybe, again, assume until something happens to show otherwise.

Q. What's involved with the assumption you're referencing?

A. I guess faith in the government system that, you know, they must have considerable evidence that they would go to make an arrest in a case like this.

Q. If you are selected as a juror in this case, are you capable of leaving the information that you received outside the courtroom outside the courtroom and then making a determination as to Mr. Kaczynski's guilt or innocence based solely on evidence that's received in the courtroom?

A. Yes.

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

A. Yes.

Q. What does that mean to you?

A. That means that he's the same as anybody else, any other citizen, anybody else in the courtroom. He starts at zero.

Q. The presumption of innocence doctrine is a fundamental principle in our justice system. And the word presumption is used for a reason. You presume that the criminal defendant is innocent. The criminal defendant need not present any evidence whatsoever to defend himself. The criminal defendant has the benefit of the presumption of innocence doctrine unless and until, should it occur, the government proves all elements of the crimes charged against him beyond a reasonable doubt. And if the government fails to meet that burden, then you must return a not guilty verdict in favor of the defendant. Will you allow Mr. Kaczynski the full benefit of the presumption of innocence doctrine?

A. Yes, I do.

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

A. No.

Q. Are you for or against the death penalty?

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

Q. Assuming that you were selected to be on the jury, I'm going to now have you join me in a hypothetical. You and your fellow jurors sat through the guilt and not guilty phase of the trial, you listened to all of the evidence and then all of my jury instructions, then you went back to the jury deliberation room, followed all of my instructions, then you ultimately unanimously decided, to Mr. Kaczynski's disappointment, that he is guilty of the offense of intentional murder of another human being without justification. Do you have that finding in mind?

A. Okay. Intentional without justification?

Q. Right. That type of a murder finding would take us to the sentencing phase of the trial.

A. Okay.

Q. At the sentencing phase of the trial, you would then receive additional evidence, you'd continue to sit as a juror, the government would present what is called aggravating-type evidence, evidence that the government thinks points toward a sentence of death. You would also receive mitigating evidence. That would be evidence that points toward a sentence of life, life in prison without the possibility of release, or some lesser amount of time in prison. Is there anything about the finding of murder during the guilt and not guilty phase of the trial that would interfere with your ability to meaningfully consider all three of those sentences?

A. For me it would depend what the mitigating circumstances were.

Q. Okay. And you paused before you responded. And I invited all the jurors to do that, if necessary. Because I want you to think about your responses. Were you thinking about the answer you just gave me?

A. Yeah, because as you know from my questionnaire, I do believe in the death penalty as a consequence for the taking of innocent life or murder. I don't know what mitigating circumstances could cause me to translate that to life imprisonment, but I'm not ruling out that possibility.

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

BY MR. LAPHAM:

Q. Good afternoon.

A. Hi.

Q. My name is Steve Lapham. I'm one of the prosecutors on the case. And if I may, let me just pick up where the judge left off. As I understand your answer, you don't have a belief that all murderers should get the death penalty?

A. I think it's hard to make a blanket statement like that. Even though I do believe in the death penalty, I'm allowing the possibility for mitigating circumstances. Like I

said, I don't know, I haven't thought like what could that be that would translate to life imprisonment, but –

Q. Let me see if I can make it a little more concrete. The law distinguishes between types of murders. And you can probably appreciate the fact that some murders are committed in a more heinous fashion than others. And the law also distinguishes between the types of defendants. And that's why we look at both the facts and circumstances of the crime as well as what's going on with the defendant and what his motivations and what his background and character is. Sound right so far?

A. Uh-huh.

Q. Do you have any disagreement or questions about that way of thinking?

A. No, I understand.

Q. Okay. So, for instance, let's talk about the facts and circumstances of a crime of murder. And that's the only crime we're talking about here, murder. Some murders are committed with prior planning, some murders are committed for profit. In contrast, some murders are committed without very much planning. In fact, they could be committed on the spur of the moment. Two men get into a fight and it escalates and one person decides on the spur of the moment he's going to kill the other man. And some murders are committed where the defendant has real remorse for the murder and others the defendant has no remorse. Are those the types of distinctions that you would draw in reaching your ultimate conclusion?

A. Uh-huh.

Q. Now, in each one of those cases I described, we're talking about a murder, which would be an intentional, deliberate killing of another human being without justification.

A. Yeah.

Q. And when we talk about without justification, that's actually a legal term that means there's, for instance, self-defense would be a justification for why you committed the killing. So that's what we mean when we're talking about without justification. But what it gets down to is if you were selected as a juror in the case, you would be asked after you make the finding that the defendant is guilty of murder, you would be asked to then consider other evidence, some of which you might already have heard in the guilt phase of the trial, but you'd be asked to listen to additional evidence about how the crime was committed and about the defendant himself. And you'd be asked to hold off in your decision what the appropriate penalty is until you'd heard all that evidence. Is there anything about your belief system regarding the death penalty that you think you would have a problem doing that?

A. At this point, I don't think so. Again, I'm trying to allow for mitigating factors that would somehow, in my mind, justify a life imprisonment as opposed to a death penalty. And again, I suppose there could be some.

Q. Well, understand that it's not your job to dream up the mitigating factors. I'm not asking you to do that as you sit here right now. The mitigating factors will be provided to you. The government will present you with so-called aggravating factors and argue to the jury why those should be important to your decision on the death

penalty, and the defense can do the same with mitigating factors. They'll put those forward to you and argue to you that those are reasons for giving a life sentence, for instance. And the only real question here, is there anything about your views on the death penalty that would inhibit your ability to listen to those mitigating factors?

A. No.

Q. In fact, what I think I'm hearing you say is that's what you're waiting to hear. You want to hear the mitigating factors?

A. Yeah, and also I'm trying to be as honest as I can. I do support the death penalty. I do believe that it's an appropriate consequence for the taking of another innocent life. So I do believe in that. But there could possibly be mitigating circumstances that would cause instead of the death penalty, life imprisonment.

Q. Okay. And even in the case of murder, which is what we've been talking about all the way through here, you would wait to listen to those mitigating factors before you reached your final conclusion?

A. (Witness nods head.)

Q. You need to answer audibly.

A. Yes.

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

Q. Good afternoon, ma'am. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you some questions, too, if I could. And I'd like to follow up, I think, on the death penalty question because obviously that could be an important issue in this case as I know you are aware. Do you have your questionnaire there?

A. No.

Q. You were asked by Judge Burrell, first of all, whether you were in favor of the death penalty or not, and you obviously said you are in favor of it. And on page 26 – I take it, first of all, that your opinion on the death penalty evidently has not changed much over time; this is something you've thought about and felt about for a number of years?

A. Uh-huh.

Q. And am I correct that part of it is based on either religious or philosophical or spiritual training? That's at question 104.

A. Uh-huh.

Q. And I guess is it your religion that teaches that the death penalty is appropriate or is it spiritual?

A. Before I had religious convictions, I believed in the death penalty. So I can answer yes on both accounts. Ethical questions or from an ethical side, I have all of my adult life believed that the death penalty is a valid penalty in cases of murder. I think what my spiritual basis has provided is a clearer basis for it, which is a respect for life, in that if you have a respect for life and somebody takes that life, innocent life, that there needs to be a consequence for that. I probably in the past would have

thought it had a deterrent factor, and that no longer is an issue with me. Whether it deters somebody or not – obviously it deters a person if you put him to death, but whether it deters other people or not is not an issue with me anymore. It's a matter that in my mind is justice. That is the consequence for taking an innocent life.

Q. So it's retribution. If you take a life, then you forfeit your own life?

A. No, it's not retribution. I think retribution is different from the concept of justice. And again, it goes back to a respect for all human life. Whether a person is a person of high standing or high position or not, if as a society we are going to respect human life, when somebody disregards that and willfully, you know, without justification takes that life, there needs to be a pretty severe consequence for it.

Q. And you, I guess, as a matter of your ethical feelings and your religious principles, you feel that the just penalty for murder is the death penalty for the person convicted of it?

A. Yes, unless there would be mitigating circumstances that would change that.

Q. If you could go to the next page, page 27. You were asked about your extent of your agreement with certain statements. And one of them was anyone who plans and commits a murder should get the death penalty. And you said you strongly agree. I take it that fits in with your general attitude about the death penalty?

A. Uh-huh.

Q. And then you said as to anyone who deliberately murders two or more people should get the death penalty, and again, you strongly agreed?

A. Uh-huh.

Q. And anyone who commits an act of terrorism in which one dies should get the death penalty, and again, you strongly agree?

A. Uh-huh.

Q. So as I understand it, your feeling is that as a matter of justice, someone who is convicted beyond a reasonable doubt of murder should get the death penalty, but you said that there might be mitigating circumstances. Am I correct that if there were no mitigating circumstances presented by the defense, then you would vote for the death penalty for sure?

A. Most likely would.

Q. Is it most likely, or would you for murder?

A. I guess I would. Not ever having been there and done it, but –

Q. I'm just trying to follow through from your views on it. It seems you would allow the possibility that there could be mitigating circumstances that could justify something less than death, but you would, if you didn't see the mitigating circumstances, then you would vote for death automatically for murder?

A. Yes.

Q. And as I understand it from when you were answering questions from the prosecutor, you can't envision any particular mitigating circumstance for a murder that would justify less than death as you sit there. I know you haven't been through it.

A. As he mentioned the two men fighting and something happens and that, possibly a situation like that could be mitigating or, you know, that might be a situation. As he mentioned that, that was something I was thinking, yeah, well, maybe that one.

Q. I think you'll probably find that that type of fighting and then something resulting in a killing, an intentional killing is probably a manslaughter. It might be provocation or heat of passion. I think what we need, if we could focus you in on it, is what would be a planned, intentional murder. Not that type of crime. That's what the judge's question was. If you had intentional murder without justification and you were going into this second phase, would you be able to, having found one guilty of that beyond a reasonable doubt, could you consider a sentence of less than death, letting him off with something less than death?

A. I would certainly listen. Are you saying and then they would present mitigating circumstances?

Q. I guess if there was no mitigation presented, then you would automatically vote for death?

A. Yes.

Q. But you seem to leave hope – and I appreciate your honesty on this.

A. I'm trying to be as honest as I can.

Q. They're very hard questions. And I guess – I appreciate that you say that there could be mitigating circumstances, but as I understood it, you can't, right now at least, bring to mind an example of something that would mitigate an intentional, planned murder?

A. No. And to be honest with you, I haven't thought about it, you know, haven't given it – how can I say it? Gone through that exercise. I have not gone through that exercise except that I know there's things that go on that I don't know about, haven't thought of, haven't dreamt of. If something was presented that in my mind was significant enough, I believe I could in that case opt for life imprisonment.

Q. But your basic view is that if someone is found guilty beyond a reasonable doubt of an intentional murder, planned murder, without any justification, that that in itself is so aggravating that it has to be death unless there were some mitigating evidence presented?

A. Yes.

MR. DENVIR: Can I have just one moment, your Honor? Thank you very much.

MR. LAPHAM: Your Honor, your Honor, that suggests just two other questions, if I may.

THE COURT: Okay. VOIR DIRE EXAMINATION BY MR. LAPHAM.

Q. Ma'am, up until this point, we've been talking about your personal beliefs. And I forgot to ask you any questions about whether or not you could follow the law. And so my question is: If you were selected as a juror on this case, whatever your opinions about any individual circumstance regarding murder, would you be able to set your personal views aside and follow the instructions of the Court?

A. Yes, I believe I would.

Q. For instance, if you received an instruction, this is after you'd found the defendant guilty of a murder, if you were given an instruction that if you found no aggravating circumstances attendant to that murder that you would have to return a verdict less than the death penalty, could you follow that instruction?

MR. DENVIR: Objection, your Honor. I don't believe that that's the instruction that will be given. I think it's compressing an awful lot in there.

THE COURT: I don't know if that's going to be the instruction given or not. Does it make a difference? Why can't he ask the question? Whether or not the instruction is going to be given, why can't he ask that question?

MR. DENVIR: Because I think he was asking the juror, with respect to that instruction, he was asking how he would react to the instruction. I don't think that's what the law is on what would be given.

THE COURT: Why don't you rephrase it so we can avoid this debate.

Q. BY MR. LAPHAM: If you, after finding the defendant guilty of a murder and after listening to evidence in the penalty phase regarding aggravating and mitigating factors, if you found that there were, in fact, no aggravating factors that the government had proved, could you return a sentence of less than death?

A. And there were no mitigating factors?

Q. There were no aggravating or mitigating factors. Now, I'm not asking about your personal views now. I'm asking about – well, actually maybe I didn't ask the question correctly.

A. I do – maybe this will help. I do believe I could set aside what I believe to be my opinion if I believe that the law or my instruction overrules that. Does that –

Q. Yes, that helps. The law requires the government to prove at least one aggravating factor before you can consider the death penalty. Would you have any problem if the government didn't prove an aggravating factor, would you have any problem returning a sentence of less than death under those circumstances? In other words, if you knew the law didn't permit.

MR. DENVIR: Objection, your Honor. I was just going to say it didn't permit a death sentence if there was no aggravating factor.

THE COURT: You said the same thing. I'm going to overrule the objection.

PROSPECTIVE JUROR NO. 238: If what you're saying is the law doesn't allow the death penalty if there are no aggravating factors, I would have no problem with a lesser sentence.

Q. You would have no problem with a lesser sentence?

A. Uh-huh.

MR. LAPHAM: Thank you very much.

MR. DENVIR: Can I ask one question, your Honor?

THE COURT: Yes. \\\ \ VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. This is just to follow up on that. Am I correct that you believe that the fact of an intentional murder without justification is aggravating enough in itself to justify the death penalty? Isn't that what you said earlier?

A. Yes, that's my opinion.

Q. Right. And if the law allows you to find that that crime in itself was sufficient to justify the death penalty and there was no mitigation, then you would vote for the death penalty?

MR. LAPHAM: Objection, your Honor. That's a misstatement of the law.

MR. DENVIR: I don't believe so.

MR. LAPHAM: The law requires the government to prove one aggravating factor, one statutory aggravating factor.

THE COURT: I'm going to be the one that decides the ultimate question that has to be determined after everyone finishes their examination. I'm going to overrule the objection. I understand your position.

THE WITNESS: Can you –

Q. BY MR. DENVIR: My question essentially was that, as I understand it, you feel that the commission of an intentional murder without justification in itself is aggravating enough to justify the death penalty. And what I was asking you is if the instructions given you allowed you to impose the death penalty on that basis just because of that finding, would you automatically vote for the death penalty if there was no mitigating evidence presented?

A. I don't know, but I probably would.

MR. DENVIR: Thank you.

THE COURT: We'll take a break. (Recess taken.) —oOo— (On the record at 3:40 p.m.)

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

THE COURT: Let the record reflect that the participants are present, my deputy clerk is bringing in the juror. (Whereupon, Prospective Juror Number 244 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. I need to see if this is your juror questionnaire.

A Yes, sir.

Q Okay. I'm going to look at two responses before I move to the location where I will be questioning you. So I can ask you about them from this location if I need to. Let me show you the two responses. I'm going to show the prospective juror responses to question 129 and 136. I'll let you read them. 129 is toward the top. (Document handed to prospective juror.)

A You want me to read the question?

Q Not out loud. I want you to read it to yourself. I want to see if the situation mentioned there is still something that's bothersome to you.

A Not at this time. It's been resolved.

Q Okay. How about the next page, on question 136?

A That's been resolved also.

Q Okay. Thank you.

Q You are the 244th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A No, sir.

Q Did you fill out the questionnaire I just showed you at Cal Expo?

A Yes, sir.

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

A No.

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

A No.

Q Have you seen any headlines concerning the case or other such information since Cal Expo?

A No.

Q I want to direct your attention to the time period before Cal Expo. I want you to assume I know nothing about the case, and I'm trying to get all the information you know about the case, and I want you to do your best to help me in that endeavor by telling me all the information you know about the case, anything you believe is associated with the case and provide me with as much detail as you possibly can.

A Okay. I'm not much into reading the paper. I don't care for reading the paper. I go to school and concentrate mainly on that, but I know that Theodore was supposedly guilty of being the Unabomber from what the papers say, but I don't know any more about it than that, than what people have said at work and – and friends have said. But as far as knowing much about the case, I don't, because like I said, I don't really get into that too much. If I pick up the paper, it is to – to look at the weather or what is playing at the movies or maybe jobs or homes or something like that. But I'm not much into reading the news. I'm not much of a gossip person. When it comes to that kind of stuff, I got other things to do.

Q In my opening comments to you, I said something about explosive devices, do you assume that this case is associated with explosive devices?

A From what I've heard about it, yes.

Q What have you heard that has caused you to reach that conclusion?

A There was one comment that I heard about some kind of package being delivered to somebody that exploded, but that's all I know about it. Like I said, I'm not really too much into what is going on in the world besides my own involvement of going to school and trying to make it through life myself.

Q You ever receive any information about a cabin?

A I did see something on the news the other day about they were bringing it here to California.

Q Did you receive information concerning the cabin other than that?

A No. That's all.

Q How about information of a search of the cabin?

A Nope. All I saw was a little glimpse on the news when I was watching TV that said they were bringing the cabin to California.

Q Okay. You mentioned Mr. Kaczynski's name on the same sentence that you used the word "guilty." Can you explain that connection?

A That's just hearsay from what people have said.

Q Does that hearsay have any effect on you?

A No.

Q Does it cause you to have any suspicion concerning Mr. Kaczynski's guilt or innocence?

A No.

Q "No" means what?

A No, that it doesn't lead me to believe either way.

Q Okay. If you are selected to be a juror in this case, would you allow Mr. Kaczynski to start this trial on a clean slate?

A Yes, sir, I would.

Q What does that mean to you?

A Pardon me?

Q What does that mean to you?

A That means that I think people are innocent until proven guilty.

Q Okay. And would you leave out of the courtroom the information that you received from sources out of the courtroom and allow Mr. Kaczynski's guilt or innocence to be determined solely on information received in this courtroom?

A Yes, sir, I believe I could do that.

Q Is there any doubt in your mind that you could do that?

A No.

Q No, there is no doubt?

A There is no doubt in my mind, no.

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

A Yes, sir.

Q What does that mean to you?

A What that means to me, that a person is innocent until proven guilty.

Q That is the doctrine. There are aspects I'm going to share to make sure we both have in mind the same doctrine. A criminal defendant does not have to present any evidence whatsoever in defense of himself. A criminal defendant is in fact presumed innocent, and the word "presume" is a presumption of innocence. He's presumed innocent until and unless the Government proves every element of the crimes charged against him beyond a reasonable doubt. That if the Government fails to meet that burden, then the criminal defendant, you must find the criminal defendant not guilty. Can you do that?

A I understand what you just said. I believe so. I never been on a trial before, so I don't know. I have never been there.

Q Well, all I want to find out – and I appreciate your response, because If you don't know something, I want you to make sure that we discuss it for a while and the same with the lawyers – I'm trying to find out, and I probably asked you in an awkward way, I want to know whether you will allow Mr. Kaczynski the benefit of the presumption of innocence doctrine if you are selected as a juror in this case.

A I believe that I could do that, yes.

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

A I don't have a problem with that, no. I feel that I'm a very fair person, pretty much down-to-earth type of person. So I believe I could do that, yes.

Q Are you for or against the death penalty?

A I'm for the death penalty if it's warranted that the person deserves that.

Q Okay. I want you to join me in a hypothetical and assuming that you were in fact on the jury, and the jury, during the guilt and not guilty phase of the trial, heard all the evidence, you received my instructions on the law, and you went to the jury deliberation room, you followed my instructions on the law, you fully deliberated the case, and to Mr. Kaczynski's disappointment, you found Mr. Kaczynski guilty of the crime of intentional murder of another human being without justification. That type of a finding would take us to the sentencing phase of the trial. Are you with me in the hypothetical?

A Uh-huh.

Q At the sentencing phase of the trial, the Government would present aggravating evidence. That's evidence that the Government thinks should point towards a sentence of death. Then you would receive mitigating evidence. That is evidence that points toward a sentence of life, life in prison without the possibility of release, or some other amount of time in prison. Bearing in mind that you and your fellow jurors found Mr. Kaczynski guilty of murder in the guilt/not guilty phase of the trial, would you still be able to vote for a sentence less than death in the sentencing phase of the trial?

A I'm not exactly sure what you are asking me.

Q Let me make sure you understand. If you find Mr. Kaczynski guilty of murder and you go into the sentencing phase of the trial, could you meaningfully consider voting for all three sentencing options in the face of that finding of murder?

A If we had found him guilty, I wouldn't have a problem with the sentencing part, if that's what you are asking me.

Q Would you be able to sentence him to a sentence less than death if you found him guilty of murder?

A I'm not – Is that our option to –

Q You got three options.

A What – Would have to be what the majority voted. Doesn't it have to go with what everybody votes?

Q Okay. What I'm discerning you to say is that you would – you would listen to the evidence presented during the sentencing phase of the trial, and you would make a decision as to which sentencing option is appropriate?

A Yes, sir.

Q Okay. And it would be an individual decision. You're right, you would have to listen to your fellow jurors; but ultimately, you would be making your own individual decision as to which sentence is the appropriate sentence.

A Okay.

THE COURT: Parties may examine. /// VOIR DIRE EXAMINATION
BY MR. LAPHAM:

Q Good afternoon. My name is Steve Lapham. I'm one of the prosecutors on the case. Let me ask you, first, in addition to your full-time employment, you're also a part-time student?

A Yes, sir.

Q And you don't have to reveal where you're going to school, but is that going to cause any conflict with the trial schedule the judge has given you?

A Well, not at this time because we're right – the new semester starts in January. So if I was to get picked, then I wouldn't be able to go to school, no.

Q Okay. But the trial –

A It hasn't started yet so actually depends on if I was to start or not. If I had started school already, then, like I say, we're in between semesters right now so . . .

Q Okay. The trial is expected to go anywhere from two to four months. Did you understand that?

A Yes, sir, I did.

Q Okay. And the trial schedule we're going to have starts at 8:00 in the morning and goes until 1:00 in the afternoon. You would actually be required to assemble around 7:00 a.m. in the morning. And you would be released sometime around 1:15 or 1:30 each afternoon.

A Uh-huh.

Q Is that going to cause a problem with your work schedule or your school schedule?

A Well, I wouldn't be able to go to work. I would be able to go to school.

Q Okay. And you would be paid if you went to work. I'm sorry. Let me – If you were on jury duty, your work would pay you?

A Yes, sir.

Q And there would be no conflict in your school schedule?

A It might make it a little difficult for me to study, but I would be able to go to class.

Q You think you could handle both those things, the school schedule and jury duty?

A To be honest with you, if I knew before January 1st of this year if I was going to be on jury duty, I probably would not go to school for that semester.

Q Would that be a burden or a hardship on you if you were to make that decision?

A No, it wouldn't be a hardship. It would just mean I would have to go another semester later on down the line.

Q The law wouldn't necessarily – the Court and the parties wouldn't necessarily ask you to forego your schooling so that you could serve on this jury.

A Uh-huh.

Q But it is a civic – jury duty is a civic duty we all have, and burdens are attendant to that. So only you can tell us if that would be, in your view, an undue hardship for you to forego school.

A Well, I would do it because I like to be able to concentrate on my classes. And I think if I was on jury duty, I wouldn't be able to give my total concentration to my classes. So I probably would forego the class for one semester while this was going on.

Q And you wouldn't have any problem doing that?

A No.

Q You wouldn't feel angry at the parties or the Court because we're not making you do that? You understand that?

A I realize that.

Q Okay.

A No. I would do it because I want to be able to dedicate my time to school, and if I'm on jury duty, I probably would not be able to do that.

THE COURT: What Mr. Lapham has been trying to tell you is that there is two scales that would be involved. It would be society's interest in having you fulfill your jury service and your own personal interests. I'm not inclined to force you to drop out of school, if that's not something you want to do. If you want to continue to go to school, I think that's a recognized hardship. And I would recognize it. I wouldn't require you to serve as a juror. So it is your decision.

PROSPECTIVE JUROR NO. 244: Well, what I was trying to – the point I was trying to get across, is if I knew in January before the semester started, then it wouldn't be a hardship. If I was in the middle of my semester, then, yes, it would be a hardship. At this particular point in time, it isn't. But if I got picked after January 1st, then it would probably be because I wouldn't want to start school and be trying to do that and this at the same time.

THE COURT: What I'm interpreting you to say is that you understand that you do not have to serve as a juror on this case, but if you are selected, you will willingly serve, and you will just not go to school next semester. That's what I'm understanding you to say.

PROSPECTIVE JUROR NO. 244: Yes, sir. That's exactly what I'm saying.

THE COURT: You don't feel pressured into that decision?

PROSPECTIVE JUROR NO. 244: No, I don't.

THE COURT: Okay. All right.

BY MR. LAPHAM:

Q Okay. Just as one final point, you would – you would know before January 1st one way or another whether you would be selected on the jury.

A That would be great.

Q Okay. Let me discuss with you just a minute your views about the death penalty. The law doesn't permit the death penalty to be imposed against any defendant who commits a murder. Do you understand that?

A Yes, sir, I do.

Q Okay. The law distinguishes between the type of murder that have been committed, how aggravated or heinous the crime is, and other factors that are associated with the crime itself, and it also distinguishes between the types of defendants who commit that crime. Do you understand that?

A Yes, sir.

Q Okay. When – and when you go in, if you should get to the penalty phase in this case, if you're selected as a juror, you have only heard half of the evidence at that point. In other words, you have made a finding that the defendant is guilty of the crimes that the judge has discussed, the intentional killing of a human being, but you're still going to hear more evidence, by both sides perhaps, regarding what the appropriate penalty should be. And the evidence put on by the Government would be that called aggravating factors which the Government suggests should be a reason to impose the death penalty, and the defense also has a right to put on mitigating evidence, which is simply evidence that they believe merits something less than the death penalty. Are you with me so far?

A I understand, yes.

Q And the question is: Is there anything about the crime of murder in your view that makes you believe that automatically when anyone is convicted of the crime of murder, they should get the death penalty?

A I believe – No, sir. I believe it depends on the evidence and what has been given to us to decide. You know, the punishment fits the crime, whatever it is that we have been given as evidence that shows that. So I can't say that every murder means that you have to give the death penalty, if that's what you are asking me.

Q So after that first phase, where you have already convicted the defendant of intentional, deliberate killing of another human being without justification, would you still be open to listening to factors that might warrant something less than the death penalty?

A Of course I would be open to listen to factors.

Q You wouldn't automatically impose the death penalty simply because he's been convicted of murder?

A No, sir.

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

Q Good afternoon. My name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski. I would like to ask you a few questions, too, if I can. Let me see here. I just want to explore with you, when you were out at Cal Expo a couple of months ago, you seemed to be very concerned – I guess the judge has your questionnaire there – you seemed

to be very concerned about the prospect of serving on a jury at this time on such a lengthy case. Am I right? (Document handed to prospective juror.)

A Yes, sir. At that time my life was a little bit different than it is now.

Q Okay. And I guess some of – at – one of the problems was I think you were concerned about how it would affect you with work. I think if you go to page – I think it should be 21. You said – I think it's question 78 there – "At this time in my life I can't donate the time due to school and work." And so is whatever was a problem at work now taken care of?

A Yes. At that particular time, I worked for the Government, and we were under a RIF, which is a reduction in force, and I, at that time, did not know what was going to happen to me. And I was looking for employment. And I was also going to school at that time. Well, the semester has ended, and I have found another job with in the Government. So both of those things have kind of been relieved from me at that time. But at the time that I filled out this questionnaire, my job was being threatened.

Q So you – you lost out for the RIF, but you ended up in another federal job then so you're okay?

A Yes, sir.

Q And obviously, the Federal Government pays for you while you're on jury service, I take it, indefinitely?

A Yes, they do.

Q Right. And then the other question was school, and you're enrolled, I guess, in school pursuing, I guess, a degree?

A Yes, sir.

Q And you were enrolled in this last semester, and I just want to explore it again because it's fine, but you were concerned about school before serving on the jury, and I think Judge Burrell was telling you that you don't have to give up a semester of school to serve on this jury. If you – if you say that, you know, I want to continue with school, I think he was indicating you can say that and be excused and go to school. I don't know if you understood that.

A Yes, I understand that. And I still could go to school and serve jury duty. But the classes that I have to take are very difficult, and I would need a lot of time to do that. So I would be willing to take a semester off in order to do this, and also I could probably catch up on some things that I've wanted to take care of.

Q Do you actually want to serve on this jury, do you think?

A Actually, it – it doesn't really matter to me one way or the other if I do or I don't. I mean, I feel it's my civic duty to do so, and I'll do the best that I can, but – I mean, I'm not thrilled to death about having to drive to Sacramento every day, if you want my honest opinion. It's an hour and 15 minutes for me to drive here every day. So I mean – but I'll do what is expected of me.

Q Okay. And you're willing to do that driving and everything and lose a semester in school also and be set back by a semester?

A I don't have to lose a semester in school. I'm saying I know that my class I'm signed up for next semester is a very difficult class, and it is going to take a lot of my concentration. And I don't want to short myself and make get a C in the class when I could get an A, you know, the next semester.

Q I understand that fully, but if you – if you serve on the jury, you will not go to school next semester. You will lose that semester because you can't do both at the same time.

A But that's my own choice. I chose to do that. It's not because I have to. It's because I would do that because when I go to school, I want to dedicate all the study time I can. And I don't believe that I would be able to do that while, you know, commuting back and forth two hours or two and a half hours a day and then sitting on – in here on jury duty.

Q I don't want to belabor this, but I want to see if I understand. Your choice is either to go – to go to work and school, or to – or to forego school and sit on this jury; and it's your choice, and you would prefer to sit on the jury and just skip a semester of school knowing that would happen?

A I didn't say I would prefer to sit on the jury. I said if I did get selected for the jury, because of the class that I'm signed up for, that I would more than likely would not continue in that semester because of the time and dedication that I have to take in order to take that class. I wouldn't be able to donate all my time.

Q Okay. Could you turn to page 31. Page 31, question 117, you were asked: "What event or events do you remember hearing about that were attributed to the Unabomber." And that – you said that "He made bombs that killed some important people." Can you tell me what you heard about that?

A I don't even know the names of the important people. I think one of them was some kind of paper company or a lumber company man. Like I said, I really haven't read much about it.

Q But you heard something about important people, and I was wondering what you had heard in that regard.

A Just people that own companies or – one of them that sticks in my mind was some type of a lumber company man, from what I heard. And like I said, I really haven't followed this; don't really know that much about it. All that I know is that he supposedly made some bombs that killed some people, and that's – and some of them were innocent people that I guess he didn't intend to send the bombs to. I think one of them was some postal worker or something.

Q And when you said some important people, had you heard about somebody other than this person with the paper company or –

A No.

Q – timber company?

A Just –

Q But your impression was there was some other important people killed?

A That was my impression, yes, sir.

Q And how many people were killed from what you have heard?

A I have no idea.

Q The part about – then you said a few people that the bombs were killed who – I guess it's made bombs that killed a few people that the bombs weren't intended for, and what did you hear about that?

A I heard that one of them was – I thought it was a postal person or somebody that had picked up a package that – that it wasn't intended for.

Q Do you remember anything else about that that you heard, or when it was when that occurred or anything?

A No, sir.

Q Was that from friends or from news or –

A News. Like I said, I don't really read the paper.

Q Okay. If you could go to page 26, I believe. As I – as I understand it, when you were asked by Judge Burrell whether you were for or against the death penalty, you said that you were for the death penalty if it was warranted, if the person deserves it. Is my memory correct on that?

A Yes, sir.

Q Okay. And when you went out to Cal Expo and you were asked the question about what your opinions and belief about the death penalty and its use in our society is, you said you thought it should be used; is that right?

A Yes, sir.

Q And the basis for that opinion was an eye for an eye, a hand for a hand, a life for a life, et cetera; is that – is that –

A That's basically what the ten commandments have told us, you know, an eye for an eye.

Q And so are your opinions based in religion in part?

A I'm not a real religious person. I try to live by the ten commandments, and I feel that if the crime warrants it, yes, that, you know, if somebody took somebody else's life in a vindictive, vicious way, that if the evidence shows that they did that with the intent to, you know, maliciously kill somebody, that – that it warrants the death penalty or at least life in prison.

Q Well, then and I guess your religion – first of all, I guess your opinion and belief on that, you said, hadn't changed over time. You have been feeling that way for a while now?

A What is that, sir?

Q Your opinions about the death penalty, basically that – that it should be used and that it's an eye-for-an-eye type thing.

A Yes, sir.

Q And that's been true for a while; you have kind of felt the same way about it?

A Yes, sir.

Q And as I understand, in question 104, your religion or philosophy says if you take a life, you should have to pay for the crime. Again, is that the idea of –

A Yes, sir.

Q – an eye for an eye? And then you were asked what purpose it serves in our society, and you felt if it was used more, we would have less crimes and fewer people in jail.

A Yes, sir.

Q So is your view that the death penalty, for one thing, would deter – imposing it on one person may deter other people from committing crimes, is that one of the reasons you see?

A My opinion was that we had voted the death penalty in California, and people were – it was voted in that it be used, but it hasn't been used, as far as I know, not in California anyway. And I feel that if we were a little bit stricter, maybe less people would be doing some of the crimes and might – you know, we've got a lot of people on death row, cost a lot of money to keep somebody on death row, and I feel that we'd probably save the taxpayers some money.

Q Do you feel a little frustrated by the fact that California passed the death penalty laws, and then it doesn't seem to be used as much as you think it should be?

A I'm not frustrated by it, no. No, I don't sit around and think about it. But I do know we voted it in, and then they're always talking about how the jails are over populated and it costs so much money to keep people in jail, and it was voted in. I don't understand sometimes why they don't use it.

Q Okay. If you could turn to the next page, you were asked to express the extent of your agreement with a few statements there. One of them was that anyone who plans and commits a murder should get the death penalty, and you said that you strongly agreed with that?

A Yes, sir.

Q And that's the way you feel now?

A Well, yes, I do believe that. But like I said, I have never served on a jury before so I, you know – I don't know, there may be times when it wasn't intended to kill somebody. I mean, there is different degrees of how people get killed, you know.

Q But if someone plans and commits a murder, then your view is that they should – anyone who does that should get the death penalty? You strongly agree with that? Is that still true?

A Well, knowing more about what the judge told me about how the court system works, the knowledge that I was given today, I guess I can't really say that because it depends on what the circumstances were and what the evidence is.

Q Well, what about – what is it about what the judge told you that made you no longer strongly think that anyone who plans and commits a murder should get the death penalty, what particular part?

A Because of the way that he said that the evidence is what, you know, has to show that the person without a doubt intended to kill another person.

Q Well, first of all, I think he said beyond a reasonable doubt –

A Right.

Q – is the actual standard. But if somebody was found beyond a reasonable doubt to have intentionally killed another person, then do you feel they should get the death penalty?

A Yes, sir.

Q And that's – that's what you're kind of saying here; anyone who is convicted of planning and committing a murder should get the death penalty?

A Yes, sir.

Q And then you were asked about anyone who deliberately murders two or more people should get the death penalty, and you said you strongly agreed with that. And do you still feel that way, if someone is convicted beyond a reasonable doubt of deliberately murdering two or more people, they should get the death penalty?

A That are proven without a reasonable doubt, yes, sir.

Q Then the third one was any person who commits an act of terrorism in which someone dies should get the death penalty. And again, your feeling is if someone is proved beyond a reasonable doubt to have committed an act of terrorism, they should get the death penalty too?

A Well, my opinion is that people shouldn't run around killing each other. So in a lot of cases, yes, I think their life should be taken too because they took the life of an innocent person.

Q And ma'am, people have all sorts of different views on the death penalty, and I'm trying to get – you know, I'm trying to find out what your views are on this. And that's why I'm exploring this with you. And there you said – I want to see if you still feel that way, that anyone who commits an act of terrorism in which someone dies should get the death penalty if they're convicted beyond a reasonable doubt. You still strongly agree with that idea?

A I think if somebody is proven without a reasonable doubt that they took somebody else's life, in whatever shape, form they did it, that they should get the death penalty.

Q And if you go to the next page, then, where it said one – you were asked to check the line that most accurately stated your views about the death penalty. And it said: "Where one person intentionally kills another person," you were given the choice of the "death penalty is always justified," "the death penalty is never justified," "the death penalty may or may not be justified depending on the circumstances of the case," and you underlined the "intentionally" part, then checked "the death penalty is always justified." Right?

A If you intentionally kill somebody, yes, I do believe that you should probably – that you should get the death penalty because you intentionally killed somebody else.

Q No – And I'm not – I'm not trying to argue with you on that because I understand that that's your personal belief, and I guess it's your religious belief. What I am trying to determine – and you appear to be a strong-minded person and you have your views on this – is whether that basic belief, which sounds like it is a core belief, is that right? I mean, from the way you say it, it sounds like a core belief that if you intentionally

murder someone else, then you should get the death penalty. Is that a pretty strong belief in your mind?

A Yes. That's the way I feel, yes, sir.

Q And I guess the question I have is – is if you were - - can you imagine any case, where if someone was found guilty beyond a reasonable doubt of intentionally murdering another person without any justification or excuse, you know, intentionally murdering them, where you would not vote for the death penalty just because of the nature of the crime they committed?

A Well, I think that I could put my feelings aside and be nonbiased over it. If – You know if – But I can't say that I'm always going to say that they have to have the death penalty if – if the evidence shows that there may have been some reasonable doubt. But if it shows – I can't say that I'm always going to say, yes, they have to have the death penalty, if that's what you are saying.

Q Well, no. What I'm really asking you, if you found beyond a reasonable doubt, you know, based on the evidence presented, that the person had committed an intentional murder of someone, with no justification, planned murder, would you – could you ever imagine sentencing that person to something other than the death penalty?

A Like I say, I have never been on a trial before, so I really don't know what all goes on in here, but my opinion is that if you take somebody else's life, then your life should also be taken, if you did it with, you know, malice, intent to do so.

Q And – and if you – if you had found someone, if – The judge told you about the two trials here in effect where the jury first determines whether – whether the defendant is guilty beyond a reasonable doubt of the crime of this intentional murder without justification, planned murder, and then if you find that – the twelve jurors – then you go into a second phase where the twelve jurors decide among the three sentences that Congress has provided. Congress has said it could be the death penalty, could be life in prison, and it could be just a number of years in prison. And unlike most cases, where the judge makes the sentencing decision, in this case Congress says the same jury that finds guilt makes the decision. And my question is: Given your strong view that if you intentionally commit a murder, you should get the death penalty, would you be leaning towards the death penalty as you went into that second part of it?

A Actually, it wouldn't be fair for me to do that. That is being biased to a decision, and I can't really – Honestly, if I was going to be a juror, I have to put my personal feelings aside.

Q And I think – I think that's the question, ma'am, that we need to know, is that you appear to have some strong personal feelings about the death penalty and when it's warranted and when it is deserved that you have had for a number of years, and the question is: Are those the kind of feelings that you – that you think you can just put aside if you were to sit as a juror? Only you really know that, because if you can't put them aside, you don't have to sit as a juror. If you can put them aside, then you may sit as a juror.

A If I was going to sit as juror, I would have to set them aside because therefore, I wouldn't be an unbiased person, so I would have to. Now I believe that way, but it doesn't mean that I can't put those feelings aside.

Q Well, that's – that's what I mean. You believe – you believe that – Here's the question: Do you believe that you can keep a fully open mind if you convicted somebody beyond a reasonable doubt that they intentionally and planned, killed a person with no – no justification or excuse, that you can keep a – really keep an open mind to the idea that you would sign a verdict saying no death; I'm going to let this person off with life?

A Yes, sir. If I was going to serve as a juror, I would have to do that. Otherwise, it wouldn't be fair.

Q And the question is: Can you do it?

A Yes, sir. I can do that.

MR. DENVIR: May I have one moment? Thank you.

THE COURT: Do you have anything to cover before we adjourn?

MR. CLEARY: We don't, Your Honor.

THE COURT: I'm going to rule on some of the for cause challenges. Six have been fully briefed. Kaczynski moves to excuse for cause jurors 124, 152, and 155. Juror 124: I excuse Juror 124 because of her failure to show her understanding of the bedrock principle that presumes Kaczynski innocent. Juror 152: I reach only one ground asserted by Kaczynski for excusing Juror 152. I doubt that the juror could put aside the pretrial publicity to which the juror was exposed; therefore, that motion is granted. Juror 155: I think Juror 155's pro-death views substantially impairs his ability to discharge his oath. The parts of the transcript cited by Kaczynski supports the ruling. The Government moves to excuse for cause jurors 144, 146, and 157. Juror 144: The Government argues that Juror 144 should be excused for cause because his pro-life views will prevent or substantially impair the performance of his juror duties. Kaczynski counters that jurors who firmly believe the death penalty is unjust may serve on a capital case so long as they state clearly that they are willing to temporarily set aside their own beliefs in deference to the rule of law. The juror equivocated during his examination as to his ability to consider a death sentence. The juror ultimately said he could consider the death sentence, but when he said this, he conceded it again, quote, "would be very, very difficult and the circumstances would have to be extreme." The transcript 2084, lines 18 to 24. As the United States Supreme Court states in Adams versus Texas, 448 U.S. at 50, again quote, "such assessments and adjustments by jurors are inherent in the jury system, and to exclude all jurors who would be in the slightest way affected by the prospect of the death penalty or by their views about such a penalty would unnecessarily use a for cause challenge to narrow the cross section of the Venire members." As the Supreme Court stated in Gray versus Mississippi, 481 U.S. at 658, this would stack the deck against the capital defendant. Here the juror has not expressed an opinion evincing that his pro-life views will have just a slight impact on his consideration of the death penalty. Although the pro-life views of Juror 144

are weighty, the record does not support the claim that those views will substantially impair the juror's willingness or ability to follow the Court's instructions and obey his oath. Therefore, the motion is denied. Juror 146: The parties' arguments concerning Juror 146 are similar to the arguments they made concerning juror 144. The juror began voir dire by saying he would have difficulty imposing the death penalty. Again, quote, "or being on a jury that was faced with that." Transcript 2281, lines 23 to 25. He later told me that nothing about his beliefs against the death penalty would interfere with his ability to consider each sentencing option. Transcript 2282, lines 9 to 12. When the Government examined Juror 146, he illuminated on how he is likely to consider the death penalty as an alternative sentence by stating, again, quote, "it's easy to consider . . ." "I would argue against it." Transcript 2293, lines 2 to 3. In response to the prosecutor's question, the juror stated he had – now quoting from the transcript in part – "some personal conviction that is going to interfere with his ability to take the Court's instructions and weigh the sentencing factors." Transcript 2293, lines 4 to 18. Then the juror appeared to be in the process of explaining this response by stating, again, quote, "I mean, you know, saying never ever, those words, regardless of the facts which we don't know or I don't know yet, it's trouble – you can tell it's." Transcript 2293, lines 23 to 25; 2294 lines 1 and 2. At that point it appeared that the prosecutor interrupted the answer with another question. Before what I have just stated appeared to be an interruption. I construe that the juror was in the process of explaining his response. The juror seemed to be stating he could not make a sentencing decision until he knew the facts of the case. The interruption followed by a question, which is at the transcript page 2294, lines 4 to 13, the question asked the juror, in essence, again, quote, "Could he set aside his personal feelings and base the decisions solely on the evidence and the instructions." The juror responded, and I'm going to give you the response, another question, and another response: "Answer: And the instructions – I don't think I could do that. I mean, I'm casting a vote. I'm participating in this. It's my responsibility. Question: Okay. So as you sit here today, then you think because of your personal conviction you could not see yourself signing that form, sentencing the defendant to death. Answer: That's correct." Transcript 2294, lines 14 to 20. What did the questioner mean to ask when he asked the juror whether he could set aside his personal feelings? When the juror responded to the question, was he focusing on this aspect of it? Does setting aside personal feelings mean that the juror would be unable to render a decision "based upon common sense?" Part of the question stated that the juror would hear what is, now quoting verbatim from the transcript at 2294, lines 9 to 13, and I'll repeat it so that you can understand the context in which I am using the quote. Part of the question stated that the juror would hear what is "called aggravating factors. You personally disagree with that – with those. You think that shouldn't be that way. Could you nonetheless set aside your personal feelings and base the decision solely on the evidence and the instructions?" What was meant by this aspect of the question? Does the questioner suggest that the Court would be telling the juror how the juror must weigh a particular aggravating factor? Would such an

instruction invade the province of the jury? Since I have questions myself about what the questioner meant by aspects of the question, when the juror stated he could do what was requested because he had a responsibility to cast a meaningful vote, I don't think it can be assumed that he disqualified himself when he stated he would not sign a form sentencing the death to death. That statement made following his response to a question that in essence sought to direct his vote in a way that was tantamount to disenfranchising him as a juror. Here we have to speculate regarding what the juror referenced when he responded to a question about his personal conviction. In light of his comments that he be "casting a vote" "participating in this," "it's my responsibility," the inference can reasonably be drawn that he had a personal conviction to meaningfully participate in the jury process and would resist an instruction ordering him to weigh an aggravator in a particular way. This appears evident by the juror's inquiry of defense counsel, which is revealed in the record at 2297. Defense counsel's interaction with the juror follows. Defense counsel's question: "Question: And the second thing I think is Judge Burrell told you you don't have to be a supporter of the death penalty to sit on as a juror in a death penalty case as long as you can follow the law as given by the judge. You understand that? Answer: Is there an instruction – I can't imagine, but I want to clarify. Is there an instruction that says if certain criteria are met, one must vote for the –" The answer is interrupted by the question. "Question: No, there's no – Answer: Okay. Question: There is nothing that requires anybody to vote for the death penalty. There is nothing that says you have to vote for the death penalty. Answer: So I can follow the instructions and do my civic duty." Later in the response to a defense question, the juror said he could vote for the death penalty, but as of the day he was responding, he responded to the question he thought it was highly unlikely, but not impossible. Transcript 2301, line 25; 2302, line 1 to 10. The juror then listened to defense counsel's explanation concerning a juror's responsibility, including that the juror be willing to listen to the argument for both sides and not foreclose one automatically and listen to the other jurors and be open to their persuasion and responded, quote, "I can do that." Transcript 2302, lines 11 to 25; 2303, line 1. The Government then resumed questioning the juror, establishing that the juror has pro-life views. Despite the juror's conscientious scruples against the death penalty, the record does not support the contention that he is disqualified as a potential juror. Therefore, the motion is denied. Juror 157: Juror 157 was asked whether there was anything about her beliefs that would interfere with her ability to consider all sentencing options. In response, she stated that she was "indecisive" and "vacillating" about her position on the death penalty. Transcript 2315. She explained that she was again, quote, "doing some spiritual searching" in effort to reach a conclusion as to her position on the death penalty. Transcript 2316. Ultimately, she conceded that if as a result of this spiritual search, she decided the death penalty was wrong, she would refuse to consider death as a possible penalty in this case. Transcript 2333; 2334. This statement, taken in context of the entire voir dire, left me with the definite impression that Juror 157 would be unable to faithfully and impartially apply the law. She is still in the process of figuring out

what her beliefs are. She doesn't know what her beliefs will ultimately be on the death penalty. Therefore, this juror is excused for cause. In view of my rulings, do you have an idea about the status of the jury selection process, how long? Go ahead.

MS. CLARKE: I think with a quick count, Your Honor, depending on what happens to all people that are at issue, we should still have 70 or 71.

THE COURT: We still have 70 or 71?

MS. CLARKE: At least. We got several challenges still pending, and I'm sure some challenges will be filed on this week's group, but I think we have 70 or 71 even if the Court kicks all of those off that we challenge.

THE COURT: Do you think we need to meet tomorrow on it?

MS. CLARKE: No.

THE COURT: Government?

MR. CLEARY: Can we have one second, Your Honor.

THE COURT: Yes. Have you done a count? (Court and clerk confer.) (Brief pause.)

MR. CLEARY: Your Honor, having conferred with defense counsel, we concur with their agreement of the situation.

THE COURT: I haven't had time to do the count, so you are both assuring me we have enough jurors in the pool, and we can call off tomorrow's jurors.

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

MR. DENVIR: Yes, Your Honor.

THE COURT: Okay. There is one juror that we aren't certain that is going to be in the pool, that is Juror Number 98. The juror was supposed to check with his employer about something and contact the court. We sent a communication to him. We haven't heard from the juror yet. Do you want to keep that juror in the pool? (Court and clerk confer.)

THE COURT: My deputy clerk just reminded me there is another juror that has the same type of problem as that juror. I just communicated with the juror this morning. I don't remember it. I remember – I think I told the juror to – That's right. It was the juror that is not certain as to whether she will have to work while she performs jury duty. And she stated that if she has to work, then she won't be able to do jury duty. She just informed me that is Juror 219, which means we have a potential for losing two jurors, 219 and 98.

MS. CLARKE: Your Honor, we still think it's okay. If the Court can give us a few minutes with Shani after adjourning, I think we can confirm that and report that back.

THE COURT: All right. Are you indicating that I shouldn't call off the jurors we have called tomorrow until you have verified that with Shani.

MS. CLARKE: If you want a hundred percent certainty, I think we need to do a couple –

THE COURT: I do. All right. Thank you. But there are other matters. There is a matter that the parties are meeting and conferring about. Are you still meeting and conferring on that matter?

MR. CLEARY: We have tossed the ball over to the defense at this point, Your Honor, so whatever they have to offer.

THE COURT: It is not ripe for me to say anything yet or get involved?

MR. DENVIR: I don't believe so, Your Honor. We expect to have it resolved soon, and we'll get back to the Court.

THE COURT: All right. Thank you.

MR. CLEARY: Thank you.

MR. DENVIR: Thank you. (Off the record at 4:45 p.m.) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

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UNITED STATES OF AMERICA,)) Plaintiff,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) -----

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Reported by: CATHERINE E.F. BODENE, CSR No. 6926 DENNIS McKINNON,
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Law

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