

Jury Selection Day 2

SACRAMENTO, CALIFORNIA
THURSDAY, NOVEMBER 13 1997, 9:00 A.M.

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THE COURT: Let the record reflect all participants are present. My deputy clerk informed me that the parties stipulate that juror number 22 may be excused for hardship reasons. Is that correct?

MS. CLARKE: That's correct.

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

THE COURT: I've directed my staff to call juror number 31 to replace juror number 22. Not in sequence but so that we'll have six jurors this afternoon.

Are you ready to proceed?

MS. CLARKE: Yes, your Honor.

THE COURT: Okay. Please escort the jurors to the courtroom.

(Prospective jurors entered the courtroom.)

THE COURT: Let the record reflect that the prospective jurors have joined us. I'd like my deputy clerk to please administer the oath to the prospective jurors.

THE CLERK: Please stand and raise your right hands.

(Prospective jurors sworn.)

THE CLERK: Thank you. You may be seated.

THE COURT: Good morning. And welcome to the United States District Court. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my deputy clerk. Her name is Shani Furstenau. Next to Miss Furstenau on the same platform is the certified shorthand reporter who will be reporting this proceeding.

I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and your anticipated cooperation. You are performing an important function in our legal system. Under the principles of our justice system, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as yourselves making themselves available to serve as jurors. The voir dire or questioning process is an essential way of ensuring that such a jury is obtained.

Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions. The voir dire process will involve questioning prospective jurors individually which will commence after I question you as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group. Those required to participate in the group questioning will receive notice as to when that will occur.

Our objective is to obtain a fair and impartial jury that will decide this case on the evidence that is presented to them in the courtroom and the law that will be given to them by the Court. I have decided to do individual voir dire in part because the parties have requested it and because there has been some publicity about this case. During the individual voir dire, we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case.

The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these charges and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence. The determination is made in the second phase of the trial referenced as the sentencing phase.

If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please raise your hand now.

THE COURT: You raised your hand.

PROSPECTIVE JUROR NO. 16: Yes.

THE COURT: You're juror number 16.

PROSPECTIVE JUROR NO. 16: Okay.

THE COURT: Did you raise your hand too? Okay.

We will cover the reason why you raised your hand later.

PROSPECTIVE JUROR NO. 16: Yes, sir.

THE COURT: The first part of this 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 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 any mitigating factor or factors found to exist. Or in the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

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

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too.

During this questioning, we will refer to you either by your randomly selected number or by the seat number that you have been assigned. This is because I've decided to use an anonymous jury in this case in order to protect your privacy, as I stated previously to you in a communication I sent you.

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 – I'm modifying that instruction, counsel. If we excuse a juror before the jury is selected, then they are free to talk about the case. The instruction needs to be modified. I'm going to read that last sentence again. I'm going to change the word "and" to "or."

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.

Counsel, is there any problem with the modification?

MR. LAPHAM: No, your Honor.

MR. DENVIR: No, your Honor.

THE COURT: You may tell them that you are a juror but don't tell them anything about the case until after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it.

Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this

case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard or which they have no opportunity to discuss.

For these reasons you should avoid reading or listening to any news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem.

There's no response.

I contemplate observing the following holidays. We will not hold court December 24th, 25th, and 26th; nor on January 1st and 2nd. I contemplate holding court December 22nd, the 23rd, 29th, the 30th, and the 31st. Please raise your hand if this poses a problem.

There's no response.

I'm now going to ask you a series of questions. Please raise your hand if you do not understand the following: Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty.

There's no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider.

Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented.

The government may focus on certain aggravating factors, things 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 other lesser sentence.

Does any juror not understand that?

There's no response.

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

There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions whether or not you agree with that law.

Do you have any belief that will interfere with your obligation to do this?

PROSPECTIVE JUROR NO. 16: May I ask a question?

THE COURT: Yes.

PROSPECTIVE JUROR NO. 16: Are you in reference to the death penalty? Is that one of your questions? Or is that for later?

THE COURT: You're asking me whether the last question also encompasses –

PROSPECTIVE JUROR NO. 16: I don't need any understanding of what you said because I understand all that. But I personally do not feel –

THE COURT: Well, I think what we're going to do is this.

PROSPECTIVE JUROR NO. 16: I'm sorry.

THE COURT: No, that's all right. You asked me if you could ask a question, and I said yes. But I think what we'll do, I am going to conduct individual examination of jurors.

PROSPECTIVE JUROR NO. 16: Thank you.

THE COURT: You're number 16; is that correct, Shani?

THE CLERK: Yes.

PROSPECTIVE JUROR NO. 16: I think so.

THE COURT: So you will be the first juror examined, and I will give you an opportunity to ask the question then.

PROSPECTIVE JUROR NO. 16: Thank you.

THE COURT: When I conduct the individual examination of each of you, 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 at the time I ask the question.

I will now have my deputy clerk to escort all but the earliest randomly selected juror to another room. I'm going to have juror number 16 to take the jury box. Not the jury box, the witness stand.

PROSPECTIVE JUROR NO. 16: May I leave these here?

THE COURT: Yes, you may leave that there. Take the witness seat.

THE COURT: Counsel, the reason why I have changed is because the court reporters indicated to me some difficulty in hearing counsel's questions, and this will ensure that the juror has a microphone that can be used. It will also encourage counsel to use the microphone that's at the podium.

I'm going to reference you by your number.

PROSPECTIVE JUROR NO. 16: Okay. Got it. ////

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Juror number 16, you indicated to me when I asked a question that – I'd asked a question if there was anything about the charges that causes you to prefer not being a juror in this type of a case. And I gave you the opportunity to raise your hand immediately, and you took advantage of that opportunity. What is your response?

A. I could not vote to put a man to death.

Q. Would you automatically vote against the death penalty in any case where it was sought regardless of the facts and circumstances of the case?

A. I could not vote to put a man to death. I'm sorry. Excuse me.

Q. I understand. And I can see that my questions have caused you to respond with tears. But I have to ask these questions.

A. It's okay.

Q. It's my job as a judge. I've got to be certain.

Are you telling me what you're telling me just because you don't want to be on the jury?

A. No, sir. I would tell you the truth.

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

A. Yes, sir. I could not sign something that would put a person to death.

THE COURT: Okay. Counsel.

MR. LAPHAM: Your Honor, we would move to excuse the juror for cause at this point.

THE COURT: The defense?

MS. CLARKE: I'm sorry, your Honor. Could we have just one moment?

THE COURT: Yes.

MS. CLARKE: Thank you. We thank juror number 16, your Honor. We would agree.

THE COURT: I thank you for your candidness. I'm going to excuse you to the waiting room where the other jurors are assembled.

PROSPECTIVE JUROR NO. 16: Thank you, sir.

THE COURT: Thank you.

(Juror No. 17 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Good morning, juror number 17.

A. Good morning.

Q. You mentioned in your response to a question in the jury questionnaire that you have financial reasons that should be a basis for being excluded from the jury. You basically have requested what could be characterized as excusal for financial hardship.

Without disclosing the name of your employer, please tell me why we shouldn't consider you for service since we plan on adjourning by 1:00 o'clock p.m. daily. If you got to work by 2:00 o'clock p.m., wouldn't that reduce the financial hardship you've identified?

A. Yes, that does change the picture. And it would probably – it would be hard, but it would be workable.

Q. Okay. Since you answered your jury questionnaire, have you heard or read about this case?

A. Yes.

Q. What have you read or heard?

A. Actually I haven't read, I've tried to avoid the articles, but with the radio on it's almost constant no matter where you're listening. I haven't heard any specifics about the case, just it's starting and things like that.

Q. What's referenced by "things like that"?

A. Jury selection is starting. Six people were talked to this morning. Yesterday. That's about it really. Nothing – no details.

Q. You understand that I expect jurors to avoid public or private discussion about the case?

A. Yes.

Q. How does what you've heard – Well, let me rephrase it. What you have indicated doesn't seem consistent with what I want jurors to do. Why didn't you avoid hearing what you heard?

A. I did. I guess what I'm saying is you have the news bits where they're, you know, this is what's coming, and I'll try and change the channel to avoid hearing the details of what they're saying.

Q. Did you do that following your appearance at Cal Expo?

A. Yes.

Q. Since you answered your jury questionnaire, have you discussed this case with anyone?

A. No.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No.

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

A. I think I answered on my questionnaire from information I saw prior to receiving the jury notice, it appears that he is the one that did it, but that's about the extent of it.

Q. How strongly are you committed to that opinion?

A. I guess I'm not committed. He appears that way, but I am willing to listen to the evidence. And I'm not firm that that's the way it is. I've not made up my mind that that's fact, if that's what you're asking.

THE COURT: Can the parties hear his responses?

MS. CLARKE: Very difficult, your Honor.

BY THE COURT: All right. Thank you.

Q. Could you set aside what you have characterized as an appearance associated with Mr. Kaczynski's alleged involvement with the crimes of which he's charged if you were selected as a juror and render your decision based solely on the evidence presented at this trial and the instructions I will give you at the end of the trial?

A. I believe I could.

Q. Do I have your assurance that you have set aside whatever information you received that caused you to give me the opinion you just gave me and that you will allow Mr. Kaczynski to start this trial on a clean slate?

A. Yes.

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

A. Yes.

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

A. I would be a proponent of the death penalty.

Q. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

A. It would not be automatic. It would be consistent with the instructions that we were given.

THE COURT: At this point the parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, sir. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a question if I can.

A. Sure.

Q. I'd like to go back to this question of whether you would have suffered some kind of a hardship if you were to sit on this trial. Because you've noted that you were very concerned that your employer would only pay you for three weeks and that you support, I guess, yourself and five – your wife and five children. And you mentioned two or three different times you were concerned about that.

As the Judge has told you, the tentative schedule is that the jurors would – the court would be from 8:00 to 1:00 five days a week. Jurors may assemble around 7:00 o'clock in the morning and probably be released somewhere around 2:00 o'clock or 1:30 or 2:00 o'clock.

Do you know what your employer would do in terms of would he be willing to pay you either full-time or part-time for that if you were working, say, after 2:00 o'clock?

A. I believe – it is my belief that we would work something out where I would be paid at least part time if not full time. I would be able to put in substantial hours.

Q. Can you do your work after 5:00 o'clock?

A. Yes.

Q. So you would be able to work into the night if necessary?

A. Yes.

Q. And you had said also that you were concerned for your employer. It might be a hardship on your employer to serve on the jury. Do you feel that that's taken care of now if this trial schedule is what Judge Burrell tells you?

A. The schedule helps out a lot, yeah. My initial reaction was thinking that I would be full time, you know, a full day here.

Q. Now, do you have any concern about financial hardship? You were very concerned before you came in, and I want to make sure that if you're sitting in the jury for three or four months that – I think nobody wants you to be thinking about, oh, my gosh, what's going on back at work, can I pay my bills, things like that.

A. Right.

Q. How do you feel now about it? Before you were very concerned about it.

A. I feel much better about it, yeah.

Q. You don't think it's a concern at all?

A. It's a slight concern but not real strong.

Q. Wouldn't interfere with your sitting as a juror?

A. No.

Q. Let me ask you, if I can, what you may know about the case coming into the trial. Can you tell me did you pay attention to the so-called Unabom crimes as they occurred over that time period and were reported in the media, in various forms of the media?

A. No, not detailed attention, other than when it happened, you know, and what happened, but I wasn't following the actions of the Unabom.

Q. Did you read the accounts as they occurred, as the incidents occurred pretty much?

A. The local ones.

Q. The two that were local to here you paid a little more attention to?

A. Yeah.

Q. Since Mr. Kaczynski was arrested in April of last year, have you been keeping track of the coverage since then?

A. Yes, up until the time I got the notice.

Q. That's the first notice?

A. In September, I believe it was.

Q. Now, prior to that time, from the time of his arrest up until the time you got that notice, how would you have described the coverage in terms of the coverage of the case of Mr. Kaczynski in your mind? Was it slight, extensive?

A. It was fairly extensive around the time that he was arrested.

Q. And then how did you see the coverage after that?

A. It just slowly tailed off.

Q. You felt there was a drop-off on it or was there a continuing pattern of coverage?

A. I felt it was more of a drop-off.

Q. Now, you indicated that you had some exposure to the case since you received your summons and since you went to Cal Expo; is that right?

A. Yes.

Q. And can you tell me what you recall hearing about the case in that time period?

A. Primarily just in the last couple of days. Just news bits about something to the effect that, you know, stay tuned, six people were questioned that day and we'll have more shortly. Stay tuned. On the radio.

Q. So during that time period is the only exposure you had within the last couple of days?

A. Pretty much just the last couple of days.

Q. And all of that had only to do with jury selection?

A. Yeah.

Q. Do you read The Sacramento Bee?

A. I do.

Q. Do you get The Sunday Bee?

A. Yes.

Q. Did you happen to read the stories in The Sunday Bee about the case?

A. No, I did not.

Q. Have you read The Bee at all about the case since you got your summons?

A. No.

Q. Haven't seen any articles?

A. I've seen the headlines but then I've ignored them.

Q. Then you ignore them?

A. Yes.

Q. You said that – Your Honor, could I give the juror the questionnaire perhaps? Perhaps the Court could.

That's the questionnaire you filled out at Cal Expo.

A. Yes.

Q. I want to ask you some questions about it. If you'd turn to page 28. I think it's question 109. You were asked about what you remember seeing or reading about the case and anything that in particular stood out in your mind, and you said it was mostly about either defense or prosecutor's moves to strategically improve their case. Can you tell me what you were referring to there?

A. I guess I would be referring to articles that dealt with evidence being able to be introduced or not. Moves to suppress or introduce evidence.

Q. And do you remember – can you give me some idea of what you remember about the efforts?

A. Not really a lot, other than I think most of them were denied, at least the ones that I saw, but I couldn't tell you. I think some of them, for instance, had to do with your motions to suppress evidence that were found in his cabin.

Q. And what happened to that motion as you recall?

A. I believe it was denied.

Q. And does the fact that the defense filed a motion to suppress evidence, how do you feel about that?

A. I sometimes wonder why, but not knowing all the details, I don't have a firm conclusion on that.

Q. Does the fact they found that evidence kind of contribute to your feeling that Mr. Kaczynski must have done it?

A. It certainly doesn't help that. That's true.

Q. Do you remember – that was the motion to suppress. Do you remember any other moves or motions that you recall by the defense about evidence?

A. I don't recall any specific. I know there were other ones, but I don't recall what.

Q. You don't remember the nature of any of them?

A. No.

Q. You referred to the prosecutor's moves. What do you recall the prosecution doing that was reported?

A. To be honest with you, I don't recall. I don't know.

Q. You can't recall what you were thinking about when you wrote that?

A. No, I don't know.

Q. That's fine. Do you remember anything about a motion by the prosecution to admit certain kinds of evidence?

A. Nothing specific.

Q. Now, if you'd turn to page 32. You were asked there what were your thoughts and opinions about this case before you came out to Cal Expo when you filled this out.

And you said that he seemed to be the one. I guess you meant at that point based on what you knew about the case from the media that Mr. Kaczynski appeared to be the Unabomber, he appeared to be guilty?

A. That's correct.

Q. And then you said later on what were the thoughts and opinions about him, that he apparently did it?

A. Yes.

Q. So I mean, based on what you had read, you have a feeling that based on what you read that Mr. Kaczynski is guilty; is that correct?

A. That he did the bombing, yeah.

Q. That he's guilty, he's the Unabomber, he did the Unabomber crimes?

A. From what I've seen, yes.

Q. And that's based on what you've read about the case and before you were told not to read about the case. You didn't know you'd be out here.

A. Correct.

Q. Can you tell me what your kind of degree of certainty would be about that based on what you have? I mean is this something like you think there's a 10 percent chance, 20, 40, 70, 80, 90 percent?

A. 75.

Q. 75 percent chance?

A. (Nods head.)

Q. As – the Judge has instructed you, of course, that we want jurors to make their decision based on the evidence that's presented at trial. Sometimes that's not always possible. People get exposed to things through no fault of their own.

Do you feel that with the feelings you have about that issue, that you're coming into the case different than other jurors with kind of a preconception as to what the result should be?

A. I don't believe I have preconception. My opinion is just based on what little I've read in the newspapers. I would expect that in a courtroom I would see much more detailed evidence than what I've read about up to now.

Q. And what would you expect to see in that regard, do you think?

A. Exactly what it would be? I have no idea.

Q. Types of evidence?

A. I have no idea. I just would expect to see much more detail than what I've seen in the past, and that should weigh much more heavily than what I got out of the newspapers.

Q. But if you have a kind of a 75 percent feeling that Mr. Kaczynski is guilty, would you expect him then to present evidence to kind of reduce that probability to take that feeling away from you?

A. It shouldn't be that way. I wouldn't expect that, no. Like we swore to earlier, the presumption should be that he's innocent.

Q. Well, now, sir, I understand that, and we ask jurors to do sometimes things that are very hard to do. We ask them to maybe do things that are, you know, Herculean. They aren't able to do that.

What I need to know is whether you, and you know yourself better than anyone else, going into a case where basically you feel about 75 percent certain that Mr. Kaczynski is guilty, will you really be able to just say I'm coming in here with no presumption of guilt in spite of this 75 percent feeling, and I wouldn't expect any evidence to be put on by the defense, and I'm starting kind of from scratch unlike maybe somebody who hadn't seen the publicity that you saw?

A. Uh-huh.

Q. Do you think you can do that really? I mean –

A. Yeah.

Q. And you don't feel that as you sit there if no evidence was put on by the defense that you wouldn't be 75 percent of the way towards convicting Mr. Kaczynski?

A. Well, that's assuming that there's no evidence put on by the prosecution either; right? Is that what you're saying?

Q. Yeah.

A. No evidence presented by anybody, my thoughts today are that he did the bombing. If there is evidence presented by either side, that's obviously going to weigh into my feeling.

Q. Let me ask you that. Wouldn't you presume that the prosecution, if they were going to put on evidence, would put on evidence that would point further towards Mr. Kaczynski being guilty?

A. Yes.

Q. So that evidence put on by the prosecution is unlikely to pull away from your 75 percent belief in his guilt. I mean, it's more likely to move it up?

A. Yeah, it would likely strengthen.

Q. So if Mr. Kaczynski did not present any evidence, aren't you really going in with a 75 percent feeling that he's guilty that's likely to be increased as you hear more of the prosecution's evidence and that will control unless he puts on evidence?

A. Well, that would control anyway. The prosecution gave evidence and the defense gave no evidence, would that not tend to sway me towards a guilty verdict?

Q. You'd have a feeling that the defense really should come in and rebut the prosecution's case and prove that he did not do this?

A. I feel that's true in any case.

Q. And if we did not go forward with evidence and the prosecution did, and based on what you've already heard about the case, is there any chance that you would find Mr. Kaczynski not guilty, do you think?

A. I suppose that could happen, yes, if the prosecution had that weak a case.

Q. Even though you started out feeling that their case is about a 75 percent?

A. As I said, that's based on newspaper articles that I read eight, nine months ago.

Q. So you really do feel that you can sit there with your 75 percent belief in guilt and still presume that Mr. Kaczynski's not guilty?

A. Innocent?

Q. Not guilty. Right?

A. Yeah.

Q. And is innocent?

A. Yeah.

Q. And you wouldn't feel there's any burden on us to go forward in any way?

A. Other than to prove his – you would have a burden to rebut the prosecution's evidence, I would think.

Q. And if we were unable to do that or declined to do that, then you would feel you had to convict him?

A. Again, depending on that evidence, it would have to be solid evidence in my mind.

Q. But you would still feel that we would have a burden to rebut that evidence to counter the prosecution's evidence?

A. Assuming that it was good evidence, yes.

Q. And at this point you feel that it's probably 75 percent certain evidence?

A. I haven't seen anybody's evidence, and that 75 percent is not based on either yours or the prosecution's information.

Q. Have you ever sat on a jury before, sir? I don't recall.

A. No, sir. I have not.

Q. Let me ask you, I believe that you said you had a sister who is deceased who was a psychiatrist; is that correct?

A. That's correct.

Q. Did she ever testify in court; do you know?

A. No. She practiced for only about a year since she got her degree before she passed away.

Q. Is your – is the fact that your relative was in the field of psychiatry, does that give you any feelings one way or another about mental health professionals?

A. No.

Q. Or about their testifying in court?

A. No.

Q. Does it bother you that at times parties will call mental health professionals to testify?

A. No.

Q. I'd like to ask you a couple questions, if I could, about the death penalty. As I understand it, you are a proponent of the death penalty.

A. That's correct.

Q. You support it as a general matter?

A. Yes.

Q. I think you said your opinions and belief are that we need the death penalty.

A. Okay.

Q. Is that based in any way on a religious or spiritual foundation or is it influenced by something like that?

A. No. Basically I feel that it's a deterrent.

Q. And as I understand it, one of the things you base it on is the Bible?

A. Did I say that?

Q. Yeah. I'm sorry. I should tell you what page. Page 26, I was looking at.

A. Okay.

Q. So the Bible itself is part the basis of your support for the death penalty?

A. Yes, it would be a part.

Q. And in particular, the part of the Bible that speaks of an eye for an eye?

A. Correct.

Q. Now, are your feelings about death penalty something that you've held for a fair amount of time?

Is it something –

A. Yes.

Q. And is it something you've given thought to over that period of time and your opinions have kind of developed over time?

A. My opinion's probably been pretty static on the issue for probably as long as I've been an adult.

Q. Okay. And would you say that you're a strong proponent of the death penalty?

A. Fairly strong, yes.

Q. And as I understand it, you feel that the death penalty can serve two functions in society. This is question 105. One is you feel just as punishment for the wrongdoer?

A. Yes.

Q. Is that the concept of an eye for an eye?

A. Yes.

Q. And then also for deterrence?

A. Correct.

Q. And is that to deter other people from committing crimes or to deter the person who's the defendant who would be sentenced?

A. Both.

Q. Can you think of any other purposes it serves, the death penalty would serve?

A. None that would sway my decision.

Q. Can you tell me how the Biblical statement an eye for an eye fits into your views as to the death penalty?

A. Simple as that. If you take someone's life or if you take someone's – you injure someone, the punishment should be similar.

Q. So it pretty much is just literally what it says. If you took somebody's eye, you should lose an eye?

A. Yes.

Q. So in your view then, is it true, I take it, that if someone intentionally kills someone else, you feel that they've pretty much forfeited their own life and they should be sentenced to death if they were convicted beyond a reasonable doubt for doing that?

A. Of the murder, yes.

Q. And I take it that – and that would be true – is that true of any intentional killing or any, let's say, planned, intentional killing?

A. I suppose there could be circumstances.

Q. Can you think of any circumstances about a planned, intentional killing that you think –

A. A child that kills their abusive parent.

Q. Okay. Can you think of anything else?

A. Not offhand.

THE COURT: Excuse me. You're approaching 20 minutes in your examination. Is there a way to expedite it?

MR. DENVIR: I'll try to, your Honor. I'm just on this end, and I think it's a critical point.

THE COURT: Okay.

Q. BY MR. DENVIR: Now, if someone plans and commits a murder, you said you thought anyone who does that should get the death penalty. I guess that's – you were asked that on page 27.

A. So long as he does it with malice.

Q. With malice you mean?

A. With malice or without reason.

Q. Without a justification or excuse?

A. Yes.

Q. Is that true with anybody who doesn't have a justification you believe should get the death penalty?

A. I believe that's a fair penalty, yes.

Q. And if someone then were to kill two or more people without intentionally planning, without justification or excuse, you believe that person should get the death penalty even more?

A. Can't do it twice.

Q. Okay. But you feel even more strongly that that's a person who merits the death penalty across the board?

A. My feeling would be the same towards that person or the person who did it once.

Q. Now, you said that you felt the death penalty may or may not be justified depending on the circumstances of the case where one person kills another person. That's on page 28, just so I – I want you to see that.

A. Uh-huh. Yes.

Q. And am I correct that if that one person kills another person intentionally and without justification or excuse, you would believe it's always justified, you would check a different box on there?

A. Yeah.

MR. DENVIR: I have no other questions, your Honor.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, sir.

A. Good morning.

Q. My name's Steve Freccero. I'm one of the prosecutors in this case.

Let me ask you a few follow-up questions.

Turning first, you were asked some questions about what you had read in the past about this case. And as you were answering Mr. Denvir's questions, you kept making a distinction between an opinion that you had based on something you'd read versus what would take place in a trial. Can you just explain that? I'm just trying to understand what's the distinction you're making.

A. The newspapers, I sometimes take with a grain of salt. I don't believe they're always as they should be. I would expect much more detail in here.

Q. Now, again, it's hard. We don't expect you to understand all the different laws that are involved and there's a lot of technology that's thrown out here, but let me try and direct you to a certain issue.

The way things are decided in a courtroom, they're done with certain laws. In other words, the Court is going to tell you what your responsibilities are. For instance, you would be told if you were sworn as a juror, that to establish whether or not the defendant is guilty or not guilty, that's got to be done with evidence that the Court controls. And that the defendant is presumed innocent. He doesn't have to put on any evidence.

Now, if you were a juror and you got that instruction, could you accept that? Could you say to yourself okay, these are the rules I've been given. I can follow that.

A. Yes.

Q. All right. So the fact that you might have heard something at some other time, do you think you'd honestly be able to put that aside and only listen to the evidence that's presented here in court before making any determination?

A. Yes.

Q. And for instance, if the Judge told you that, look, it's the government's obligation, they've got to prove everything beyond a reasonable doubt, and if they don't do that, it's your duty to find the defendant not guilty.

Now, could you really do that if in the back of your mind you thought, well, I read something in The Sacramento Bee a while back. Would you be able to say, but the government didn't do its job, it didn't present its case so I have to vote not guilty? Do you think you'd be able to do that?

A. Yes.

Q. You realize that to be a juror serves an important function. The system really wouldn't work without people being able to do that.

A. Yes.

Q. As I understand it now, you're saying that you're confident whatever concerns you had with your employer, you could work that out now?

A. Yes.

Q. So you'd be able to come in here and do your job and just deal with whatever circumstances and not let it interfere with this trial?

A. Yes.

Q. Now, you were asked a number of questions about the death penalty. Now, the way the trial would proceed is you'd only get to that issue if all the jurors had unanimously found the defendant guilty of the charges in which that penalty could apply. Do you realize that?

A. Yes.

Q. So before you even thought about whatever penalty, you'd have to do that job, you'd have to hold the government to its proof?

A. Yes.

Q. And it's only after that, now, after that, this penalty phase that they're talking about, you're going to receive additional instructions from the Court, and it's going to be the laws of the United States provide for the death penalty in certain circumstances.

Now, you've mentioned – you've been talking about circumstances that you think the death penalty might be appropriate. If your personal views, okay, where you think the death penalty is appropriate, if those views don't match what the law is as the Judge gives it to you, are you still going to be able to follow the Judge's instruction? Are you going to be able to say, well, I think it should apply for these reasons, but the Judge told me, no, I have to follow these reasons. Are you going to be able to do that?

A. Yes.

Q. You mentioned on your questionnaire – Do you still have it in front of you?

A. Yes.

Q. On it's page 28, on question 108, you wrote that the death penalty may or may not be justified depending on the circumstances of the case.

Now, again, we don't expect you to understand all of the law certainly as you sit here today. The point is when the Court tells you what you may or may not consider and gives you those instructions, are you going to be able to honestly consider all those factors before you make that decision?

A. Yes.

Q. You realize that we're talking about a serious matter here, these penalties. And the defendant has a right to have someone who is going to keep an open mind and listen to whatever other reasons there might be. And can you honestly say that you'll keep an open mind and you'll consider those?

A. Yes, I can.

Q. So you're not going to, once the defendant's found guilty, are you just going to say it doesn't matter? As far as I'm concerned, based on my personal opinion, I'm going to vote for the death penalty?

A. No. I believe I'm entitled to my personal opinion, but that does not mean that that's the only way I would hold. I mean I would listen to the Judge and follow the instructions.

Q. Okay. And you'd consider any other evidence, any other circumstance that's put before you?

A. Certainly.

Q. Now, you realize that here – I mean, I think I'm trying to get you in that direction because that's the difficult thing you've got to say. Everybody is entitled to their opinion, but in a courtroom, the job is not to decide things based on your own personal opinion but to try and take evidence and match it with the law and do what the law tells you honestly. That's really what we're about in here.

And even if you have strong views, are you going to be able to put those aside and follow that law and do it honestly and talk and discuss and reach a decision with your other jurors? Do you think you can do that in this case?

A. Yes, I can.

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

MR. DENVIR: Your Honor, I wonder if I could ask just maybe two or three questions. I'll try to make it up on another juror.

THE COURT: All right. You've got to be brief please, sir.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. I will be.

Sir, can I ask you, you did follow the Unabomber events in the media somewhat and since Mr. Kaczynski's arrest?

Based on what you've read about the case, do you have any opinion now as to what would be the proper sentence for the Unabomber?

A. No, I don't.

Q. No feeling at all one way or another?

A. No.

Q. Let me ask you another question.

When Judge Burrell gives instructions in the penalty phase of a trial like this, you would find that each individual juror is given considerable leeway as to those choices of penalty. What I would like to ask you is if in the guilt phase of a trial you were to find that the defendant mailed or delivered bombs with the intent to kill and then killed someone and you found that beyond a reasonable doubt, now you're in the sentencing phase, and in the sentencing phase, the prosecution alleged that it was done with planning and premeditation. So intentional, planning, premeditation, no justification or excuse, mailed bombs and killed someone. Can you think of any circumstance where you would not vote for the death penalty under those facts?

A. It would depend on the instructions from the Judge and the legal precedence, but absent any instructions or any other information about the law that I know, yes, I probably would.

Q. I guess what I was wondering is, and I understand you don't have the instructions. It's very hard to ask these questions.

A. I know.

Q. But can you imagine any circumstance about either the defendant or the defense in the situation I just gave you that would leave you open to the idea that the person should get life in prison instead of death?

A. I would be open to it. As I sit here today, knowing no more than I know, that I would probably vote for death.

MR. DENVIR: Okay. Thank you. I appreciate your candor.

THE COURT: I'd like my deputy clerk to please escort juror number 17 to the waiting room and bring in juror number 18.

(Juror No. 18 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. It's going to take a moment before I ask you a question.

A. That's fine.

Q. I had prepared some questions. There's a typographical error on my note here, and I want to make sure that this applies to you.

A. Okay.

Q. Since you've answered your juror questionnaire, have you heard or read anything about this case?

A. I've heard, yes, just on television but just briefly. You know, since answering the questionnaire, I just kind of veer away from it.

MS. CLARKE: Your Honor, I'm having a little difficulty.

THE COURT: Okay.

THE WITNESS: I'm sorry.

MS. CLARKE: Okay.

THE COURT: I think if I ask you questions from this place at the podium, then the parties will be able to hear you.

PROSPECTIVE JUROR NO. 18: Fine. Okay.

THE COURT: Because I can understand why you would direct your voice and attention to me when I ask you the questions from the bench.

PROSPECTIVE JUROR NO. 18: All right.

Q. BY THE COURT: Tell me what you actually heard about the case.

A. Well, just that he was being transported to Sacramento, and that was a while back.

Q. Since you answered your juror questionnaire, have you discussed this case with anyone?

A. No.

Q. In the communication I sent you as part of the summons that required you to appear at Cal Expo, you were asked to make every effort to avoid public or private discussion about this case. Have you done that?

A. No. Just the fact that I needed transportation to and from the parking lot or whatever with my children.

Q. Can you elaborate on what you just told me? What does that mean?

A. That I needed one of my boys to drop me off so that I could get here.

Q. Here at the courthouse?

A. Uh-huh.

Q. For your appearance today?

A. Yes. Things of that nature.

Q. What distance did you have to travel to get here? Approximately how many miles?

A. About 42, maybe 47. In between there.

Q. Okay. Will you have any difficulty traveling that distance if you were selected as a juror on this case?

A. Well, let me tell you. Today my transmission was going out as I was coming over here. My son was driving me, and I thought, oh, jeez. So that's something that we have to take care of possibly today, and once that's taken care of there shouldn't be a problem.

Q. Okay.

A. Hopefully.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No, sir.

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

A. No, sir.

Q. Do I have your assurance that Mr. Kaczynski will start this trial from your perspective on a clean slate?

A. Yes, sir.

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

A. Yes, sir.

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

A. Well, let's say that I'm for it.

Q. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence or absence of aggravating evidence?

A. Yes, sir.

Q. You would?

A. Yes, sir. Would you repeat the question, please?

Q. Yes. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence and the absence of aggravating evidence?

A. No, sir, no.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good morning, ma'am.

A. Good morning.

Q. My name is Robert Cleary. I'm one of the prosecutors on the case, and I want to ask you several questions mostly following up on information that you've put in the questionnaire that you filled out at Cal Expo. And if any of the questions I ask you are unclear, feel free to ask me to rephrase them.

The first thing I want to ask you about is you mentioned that you baby-sit for your grandson.

A. That's right.

Q. And how many days a week do you do that?

A. Five days a week.

Q. How old is your grandson?

A. He'll be three in April.

Q. And will there be other people that can take care of that responsibility while you're here?

A. Oh, yes, his parents. I assume that if I have to serve, they will have to make some kind of arrangements.

Q. And you're aware from what Judge Burrell told you earlier you're only going to be sitting until 1:00 o'clock in the afternoon; correct?

A. Right.

Q. So to the extent that the – your grandson's parents have to take care of the baby-sitting duties, that would only be until sometime in the afternoon.

A. That's right.

Q. So that won't present a problem for you. It may be a little more inconvenient, but it will not present a problem for you sitting?

A. No.

Q. Now, I'm going to show you a copy, if I may, your Honor, a copy of the questionnaire. I have a clean copy here.

THE COURT: Fine.

Q. BY MR. CLEARY: And you have marked a number of questions.

A. Yes.

Q. With an asterisk.

A. Yes.

Q. Could you tell us what you meant by that?

A. Well, it says in the beginning; right?

Q. Uh-huh.

A. That if they're –

THE COURT: Sir, just a moment. I need you to talk to her from the podium, because if you talk close, she's just going to talk to you and everyone can't hear.

Q. BY MR. CLEARY: Tell us what you meant by putting the asterisk there.

A. Well, at the beginning of the questionnaire, it stated that there was something – that if there was something that we wanted not presented before reporters, et cetera, for us to put an asterisk.

Q. And that's what you were signaling to us that you wanted to talk about those things privately?
A. Right.

Q. So most of the questions about the death penalty you feel that way about; correct?

A. (Nods head.)

MR. CLEARY: Your Honor, at this point I just need some guidance from the Court.

THE COURT: Her response was inaudible.

MR. CLEARY: Sorry.

THE COURT: You need to assist the Court in making sure the responses are audible.

What was the last question, Reporter?

(Record read.)

THE WITNESS: Correct.

THE COURT: I've got to ask you some questions about that matter.

THE WITNESS: Okay.

THE COURT: You don't have to look at me when you answer my questions, because it's important that your voice is amplified for the lawyers because they have an opportunity to ask you follow-up questions.

PROSPECTIVE JUROR NO. 19: Okay.

THE COURT: Why is that the type of matter that you shouldn't be required to discuss in open court? Why is it so private to you?

PROSPECTIVE JUROR NO. 19: Well, I think it's private for the party involved, and this way he will have a fair chance. Because otherwise you're going to be hearing opinions from a lot of people, and you have to base it on whatever evidence is brought before you or as the trial or the case progresses, then you more or less go ahead and decide. But on the other hand, if you're going to be listening to the news, be listening to people around you, they might want to infiltrate you with their opinions.

Am I answering this right?

MR. CLEARY: May I follow up, your Honor?

THE WITNESS: Go ahead.

THE COURT: Okay.

Q. BY MR. CLEARY: What I was going to do is ask you some questions about your opinion on the death penalty. Your views of the death penalty.

A. Okay.

Q. And I was going to propose to do that right now in open court.

THE COURT: I think you should. You should just ask questions.

MR. CLEARY: Okay.

THE COURT: And if we need to consider conducting the matter elsewhere, we will cross that bridge later.

BY MR. CLEARY: Okay.

Q. I turned open the questionnaire to where question 107 is. That's the multipart question.

Do you have that in front of you?

A. Uh-huh.

Q. And you've answered a number of those questions as though you agree somewhat with the proposition stated. So that if someone commits murder, you agree somewhat that they should get the death penalty. So too if they murder two people, and so too if there is terrorism involved.

And then in the next page, you'll see question 108. And you tell us that the death penalty may or may not be justified depending on the circumstances.

You see where you said that?

A. Correct.

Q. Okay. I'm going to ask you about those two different things.

A. Okay.

Q. Is it your view that the circumstances of the case would affect your decision, the precise circumstances of the case would affect your decision on whether it is an appropriate case for the death penalty or not?

A. I believe so, yes.

Q. And in answering those questions, you were answering them in terms of what your own personal view is; is that correct?

A. That's correct.

Q. And you recognize that here in court, you may be asked to put your personal views aside and follow the instructions that the Court gives you; is that right?

A. That's right.

Q. Okay. Will you be able to do that?

A. Yes.

Q. Now, if the Court's instructions on the law differ from what your personal view is, would you be able to set your personal view aside and follow what Judge Burrell tells you?

A. Yes.

Q. Turn back, if you could, to 107 which is the prior page.

A. Uh-huh.

Q. And you see at the very bottom of that question, you said that you strongly agree that a person's background does not matter when it comes to whether he should be sentenced to death; is that correct?

A. That's correct.

Q. Could you envision a circumstance in which a person's background, like say someone who murdered somebody, that their background may affect your opinion on whether they should be sentenced to death or not?

A. (Nods head.)

Q. Can you envision –

THE COURT: I couldn't hear the response. You need to help the Court make sure that she's responding audibly.

MR. CLEARY: Certainly, your Honor.

THE COURT: What was the question, Reporter?

(Record read.)

THE COURT: What was your response to that question?

PROSPECTIVE JUROR NO. 19: I said yes. Yes.

Q. BY MR. CLEARY: And particularly if the Judge told you that there were certain circumstances you would have to consider relating to a person's background, relating to the defendant's background –

A. Correct.

Q. – You could consider those things; correct?

A. Yes. Yes.

Q. So as an example – and I'm not giving you any facts related to this case – I just want to make sure I understand your answer and we're talking from the same sheet of music here. That if you found a defendant, for example, as part of his background, you determined he was mentally retarded, would that be the sort of background circumstance that you could consider and use to evaluate whether that particular defendant should be sentenced to death?

A. Yes, I would. I would.

Q. So there are a number of factors, are there not, and I'm not going to ask you to dream them up for us, but there would be a number of factors in which a person's background may be important to you in deciding in this case whether to impose the death penalty or not; correct?

A. Like I said, I would have to, you know, see the evidence and the background and think it over. Yes.

Q. And if the Judge told you what those factors were, you could consider those factors?

A. I would consider those, yes.

Q. And if you disagreed with the Judge, you thought that he was incorrect, could you still, nonetheless, follow the Judge's instructions and evaluate the background of the defendant?

A. Yes.

Q. Now, in question 104, which I think is the page prior to the one you were just looking at, are you with me?

A. Uh-huh.

Q. Okay. You've got to speak up loud.

A. Okay. Here we are.

Q. You say that your religion teaches thou shalt not kill?

A. Correct.

Q. How does that religious teaching relate to or affect the things we were just talking about, your ability to follow the Judge's instruction on the law and apply the law to the facts in this case?

A. Well, my religion teaches that, but that's where I have to separate. I have to separate religion and what I feel, again with all the evidence and everything, what's right.

Q. And if there was sufficient evidence presented to you consistent with what Judge Burrell instructs you on the law that made you believe that the death penalty was appropriate in this case, would you be able to set aside your religious views of thou shalt not kill?

A. Yes.

Q. Does your religious view, thou shalt not kill, does that even apply in this context, in the courtroom?

A. To be honest, I really don't know.

Q. I'm sorry?

A. I don't know.

Q. Okay. Whether it does or not, you feel comfortable that you could put that aside?

A. Yes.

Q. Is that an issue, the principle, the religious principle that thou shalt not kill, is that an issue that you discuss at your church or house of worship?

A. I haven't discussed it, no.

Q. Does it come up in discussions in your church or house of worship?

A. It hasn't, not for a long time. I haven't heard it.

Q. If it did, do you think you would feel uncomfortable had you voted to impose the death penalty here? Would you feel uncomfortable discussing with your congregation or your minister or priest, discussing with them the fact that you sat on a jury in which you voted for the death penalty?

A. No, sir.

Q. No hesitation about that at all?

A. No hesitation.

Q. Could you turn to question 123, please.
It's on page 32.

A. Uh-huh. Okay.

Q. Are you with me?

A. Yes.

Q. Okay. You stated there some reasons you would not like to sit as a juror on the case. One of which is your grandson and I think we've established –

A. Right.

Q. – you can handle that problem; correct?

A. Right.

Q. Then you also said that if it will affect my family members that work for the government.

A. Correct.

Q. Is this an area I can question you a little more about?

A. No.

THE COURT: Why not?

THE WITNESS: Because I think I've stated before that where some of my children work, who their employers are, and I was not to make that public.

THE COURT: Okay. Is it possible for you to discuss this subject matter without disclosing where your children work, the other people in your family that you were referencing?

PROSPECTIVE JUROR NO. 19: Yes.

THE COURT: Okay. Let's try that.

Q. BY MR. CLEARY: Without telling us where your children work, either physically where they work or which agency or group they work for, can you tell me what you meant by that statement?

A. No.

Q. Meaning you can't tell me without revealing the details?

A. Well, I can't tell you. Maybe I can tell the Judge in chambers, but no, I will not say them public.

Q. BY MR. CLEARY: How about if the lawyers from both sides went back in chambers, could you tell all of us that?

A. Yes.

THE COURT: Can you tell me generally in public what you mean by it without disclosing those things that you consider to be extremely private?

The reason why I asked you that question is because most of the discussions we have should occur in open court. There are times when I can move the proceeding to a more closed setting, but I should only do that if I see a need to do so. And I'm trying to avoid moving the proceeding. It's time-consuming for all of us to move to another location. There's an interest in the case. And so why don't you attempt to state generally what it is that is troubling you.

PROSPECTIVE JUROR NO. 19: Okay. Because I don't know if it would affect me as a juror or the prosecution or the defense might hold it against me or remove me from serving. Okay? Because of my feelings towards this.

THE COURT: Because what?

PROSPECTIVE JUROR NO. 19: My feelings towards this question here.

THE COURT: What type –

PROSPECTIVE JUROR NO. 19: My family in other words.

THE COURT: But tell me –

PROSPECTIVE JUROR NO. 19: Okay. I'm going to – I'm going to just come right out and tell you then because there's not going to be no way around it. Okay. One of my sons was in a federal building.

THE COURT: Was what?

PROSPECTIVE JUROR NO. 19: In a federal building. And there was a threat. Okay. So that was very close to home.

Q. BY MR. CLEARY: A threat to your son or to the people working?

A. To the building. And he was like – it was down below, and he was on the upper floor.

Q. BY MR. CLEARY: Was this a bomb threat?

A. It was a bomb threat.

Q. When was it?

A. Just about those times.

Q. Meaning recently?

A. Recently. Maybe about two years ago.

Q. Okay. And how does that – and because of that, you're saying you don't want to be a juror?

A. Well, no, I'm not saying that. It's just I don't know if the defense might take that into account and just remove me because of, you know, they're going to say, well –

Q. I don't think you have to worry about either the prosecution or the defense.

A. Okay. Okay.

Q. We're just trying to get at what you think and what your views are.

A. All right.

Q. Let me follow up on that a little bit.

A. All right.

Q. Is that the only matter you had in mind when you wrote that statement or response to question 123?

A. Yes.

Q. And it was a bomb threat to your son's building?

A. To the federal building, yes.

Q. Is there anything about that event, the fact that there was a bomb threat to your son's building that will cause you to either favor the prosecution or hold something against the prosecution or favor the defense or hold something about against the defense in this case?

A. No, no.

Q. And that's true even though this case, as Judge Burrell told you, involves allegations of bombing; correct?

A. Yes.

Q. And there's no allegation in this case relating to the bombing of the federal building that your son worked at.

A. I have no idea.

Q. I'm telling you that.

A. Okay.

Q. It doesn't relate to that. And you recognize therefore that that's a separate issue?

A. Yes.

Q. Unrelated to the facts of this case.

And so that issue, the fact that your son's building was bombed, is not going to affect your opinion in this case or your ability to fairly evaluate the evidence?

A. That's right.

MR. CLEARY: Thank you.

THE COURT: The last response was inaudible.

PROSPECTIVE JUROR NO. 19: Yes. I said yes.

MR. CLEARY: Sorry, your Honor.

THE COURT: No. Let me have the question reread, please.

(Record read.)

THE COURT: Counsel, rephrase that question.

MR. CLEARY: Sure. I hope I have the right one in mind.

THE COURT: She can read it again.

MR. CLEARY: Just rephrase the question?

THE COURT: Do you have the question in mind?

BY MR. CLEARY: I believe so.

THE COURT: I want you to rephrase it so that it's rather clear what a yes answer means or what a no answer means.

Q. BY MR. CLEARY: I'm sorry. I probably gave you a bad question. The point I was getting at is the fact that your son's building was the subject of a bomb threat, I'm assuming – and you tell me whether I'm correct or incorrect – I'm assuming that that will not affect your ability to fairly evaluate the evidence presented in this court.

A. That's correct.

Q. That's a correct statement?

A. That's correct. Yes.

THE COURT: Okay.

MR. CLEARY: Thank you, your Honor.

THE COURT: I'm going to allow the defense to conduct voir dire after the break. We're going to be in recess until

10:45.

(Recess taken.)

—oOo—

THE COURT: Let the record reflect all participants are present. Juror number 18 is in the witness stand.

You may commence questioning.

MS. CLARKE: Thank you.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

I take it from your answers on your questionnaire that you have a fairly close family?

A. Very much so, yes.

Q. That would include your son?

A. Sons.

Q. Your sons and your daughter-in-law?

A. Yes.

Q. An extended family, very close?

A. Yes.

Q. And, in fact, one of your answers when you got the summons is you were worried about ruining your grandson by not being able to baby-sit with him?

A. Yeah. Not ruin him, but not being there, you know. Because his mom works and his dad was working, and so I had him since he was, what, six weeks old.

Q. Are you still concerned about that? I know you're willing to say that's not a problem and I'll be happy to sit.

A. Yes. I am concerned, yes. Yeah, and I'll probably stop being concerned once I find out that, yes, they can find someone to take care of him in the morning.

Q. Have they been able to do that yet?

A. I haven't discussed it with them, so I don't know.

Q. Is it such a concern that you would like to ask the judge to give you another chance on a later case or –

A. No, this is fine.

Q. All right. All right. You also said when you got your summons that one of your sons, I think, said, wow, mom, that's great.

A. Yes.

Q. What did he mean by that?

A. Just a matter of speech.

Q. Which –

A. In other words – let's see. I think son number 3.

Q. Is that the son that is –

A. No. No.

Q. You knew what I was going to ask?

A. Yes.

Q. And you didn't want me to go on and do that?

A. No.

Q. Do you have your questionnaire in front of you?

A. No, I don't.

MS. CLARKE: Could we borrow that, Your Honor?

Q. Could you look with me at page 32, all the way near the end.

A. Uh-huh. Here it is.

Q. Down at the bottom, question 123. When you're asked is there a reason you would –

A. Right.

Q. – not like to be a juror in the case, you said your grandson. I guess that was the concern about the baby?

A. That was the concern at the time, yes.

Q. And you also said if it will affect my family members that work for the government.

A. Right.

Q. What did you mean by that?

A. Well, like I said before, I mean, there's – I can't expose the information of where they work. So I didn't know if later on, if I was selected, you know, to serve on the jury, if through the media or whatever this would get to them, or they would say, oh, your mom, you know, if it would affect them in any way.

Q. Let's say they did figure that out.

A. Uh-huh.

Q. How do you think it affects them?

A. Well, let's say my daughter-in-law, for instance, what I wrote about her.

Q. Your daughter-in-law, the federal law enforcement officer.

A. Yes. She works for one of the, yes, agencies.

Q. If you have a concern when I ask a question about either the question or about your answer, would you let the judge know?

A. Sure.

Q. So that daughter-in-law?

A. That's one of my concerns also, yes.

Q. Can you explain that concern. I'm having some trouble.

A. Well, my concern is that – okay. Let's say she goes undercover, okay. And, again, because of the work, the line of work that she's in, and because of my of last name and her last name, maybe people that she's investigating or whatever might say, oh, you know. Or they might link it, in other words, the last names with the job that she's doing, and it might interfere. That was my concern with her line of work.

Q. I would guess that if she went undercover, she wouldn't use her last name.

A. Not necessarily, no. But maybe the other fellow officers, you know. I don't know. I'm just thinking ahead.

Q. Sure.

A. I'm just thinking ahead.

Q. Would there be any pause in your mind for thinking that maybe if you sit in judgment in the Unabomber case, that that will reflect on them?

A. I think it will reflect on them, yes.

Q. And that's a concern to you?

A. That's a concern.

Q. Would you think maybe that with such a concern, that it might just be better not serving on this case because of the high profile nature of it?

A. Well, that's where I'm kind of like, okay, I want to serve. I want to serve my community. I want to serve my country. I want to serve the state, whatever. But then, again, because of my family, I have those concerns.

Q. There are other opportunities to serve.

A. Yes, I understand. I understand.

Q. You don't necessarily have to really struggle within your own self to clear to serve on this case?

A. That's fine.

Q. If it's such a problem for you, the nature of their employment – and I can understand, you got –

A. Right.

Q. – a couple of kids in federal –.

MR. CLEARY: Your Honor, I'm going to object to this line of questioning. We have an anonymous jury for that particular purpose, and I think it's inappropriate to be questioning along those lines and suggesting that the jury should go sit on another case.

THE COURT: Overruled.

Q. BY MS. CLARKE: Do you have in mind what I'm talking about?

A. Yes, I do.

Q. Do you think it would be preferable for you to serve your community in another case?

A. Well, I want – I would have to say then yes, yes. Yeah, as much as I would love to serve and be on it, and I – again, my family means a lot to me.

Q. Well, you're a very tight-knit family?

A. Yes.

Q. In fact, you have experienced some of the emotion of what this case could do by the fear for your one son's life?

A. Right.

Q. So even further discussion of bombings could make that emotional connection for you again; would you think so?

A. Well, I don't know. I'm pretty good, pretty good at, you know, just setting aside certain things. When it comes to doing a job, let's say, I know that I'm there for that purpose. Okay. But then again here we go.

Q. Right. So what I'm trying to just sort of conclude with is, it would be better for you, and you would ask this judge, let me come back another day for another case because of my family; would that be fair to say?

A. That would be fair, yes.

THE COURT: I don't understand why I should do that, though. How does sitting on this case reflect on your family?

PROSPECTIVE JUROR NO. 18: As I stated, because of the line of work that they're in. You know, especially my daughter-in-law. Like I said, she has to go undercover. And just the fact that it might slip among her coworkers or whatever, because she likes to talk and – I don't know. That's – it's a concern. It's a concern.

Q. BY MS. CLARKE: I think what you're trying to tell us is you're trying to be honest with us that that's something that would make it very difficult if not impossible for you to be comfortable serving in this case, not another one.

A. That's – okay. That's – let's say yes.

THE COURT: You can proceed to another line of questioning.

Q. BY MS. CLARKE: I didn't want to get confused, but as I see, son number 3 – could I just clarify that for myself on page one.

You said son number 3 was the one that said, well, Mom, that's great.

A. Let's see. Oh, it was three. Yes, you're right.

Q. So it's son number 3, the federal law enforcement officer?

A. Yes. Yes.

Q. What did that mean to you?

A. Nothing really. It's just, oh, great. That was it. Just a matter of speech, you know. It had no real like, wow, you're going to go over there. No, it wasn't implied like that.

Q. Have you talked to him about the case?

A. No.

Q. About the facts of the case?

A. No.

Q. Talked to any of your family members about the facts of the case?

A. No. Just the fact I was going to be on here. That's it. Whatever they hear on the outside, I tell them don't tell me, I don't want to hear it, we're not going to discuss it.

Q. How about before you got your summons?

A. Before I got the summons. I had heard some, you know, what had happened here in Sacramento. That was bits and pieces that you hear in the news, maybe walking by. I don't just sit there and listen to the news, no.

Q. Had you talked to your family, your sons, about that or your daughters about the case before you got your summons?

A. We just discussed it, I guess, like any family. You know, did you hear what happened, and that was it. But we certainly weren't sitting in judgment, no. We just wow.

Q. Could you tell us a little bit about what you talked about?

A. At the time – at the time – gee, it goes back. I think we talked about the fact about how somebody had sent a package and somebody had received it, when they opened it, it exploded.

Q. Do you remember when that was?

A. Probably that incident that happened in Sacramento. That's the most vivid in my mind.

Q. What's vivid about it?

A. I did see that section in the TV where the police were there and they were putting ribbons around the place. And that was it. You know, just all the commotion that was going around there.

Q. What did you think when you saw that?

A. I go, poor fellow. That's it.

Q. Did you talk to your family members about that?

A. No. No. That was it. It was just – you know, I go onto something else. I – you know, I have so many things to do.

Q. When your son, the federal law enforcement officer, was in the building with the bomb threat, did that make you discuss that?

A. With him?

Q. Yeah.

A. I mean, are you talking about the case, or just the fact of the bomb or –

Q. The case.

A. No. No, that – no.

Q. Did you connect the threat to the federal building?

A. No, not with that incident, because we didn't know. Okay. I think the other incident was the one at the airport, when my son and my daughter-in-law – that was another – you know.

Q. We'll talk about that too. When was the threat to the federal building, before or after the incident you're recalling in Sacramento?

A. Had to be after.

Q. After?

A. After.

Q. And you didn't connect that to the bomb?

A. No. No. We just – we didn't know what was going on, you know. It could have been some other people, like what happened in New York or whatever. We didn't know.

Q. How did that bomb threat in that federal building make you feel?

A. Concerned for his safety and his family. As a parent, I mean, I was concerned, yes.

Q. And do you think that that emotion – I want you to think about that emotion, that level of concern that you had. Do you think that if there's an discussion of bombs in buildings, that that will come back to you?

A. I have to put it aside.

Q. But –

A. Because that was a personal thing. That's personal.

Q. You know, one of the problems that we have is that it is very difficult to put our personal life aside. Would you agree with that?

A. Yeah, that's true. Yes.

Q. I mean, we always like to tell the judge, yes, we'll do our best to follow the law; right?

A. Yes.

Q. But we have to realize we're human beings; right?

A. Yeah, you're right, yes.

Q. And we have feelings about things.

A. Yes.

Q. And what I'm just trying to explore with you a little bit is the depth of your feeling about your son, which is completely understandable, with how that might play into how you'll be feeling if you're talking about bombs in buildings in this case.

A. Uh-huh. It probably – yeah, it probably will connect, you know. It probably will connect. I'm not going to say no. It probably will.

Q. That would be a honest answer to say that it would connect.

A. Yes. It probably would connect, yes.

Q. Would that be another reason why it might just be better for you to say please don't make me serve in this case?

A. No. I won't say that, no.

Q. Would that be another reason, this emotional sort of reaction?

MR. CLEARY: I'm going to object.

THE COURT: Sustained.

Q. BY MS. CLARKE: When your son – you also told us in the questionnaire that your son and daughter-in-law – is that again son number 3?

A. No, that's another son.

Q. Was in an airport?

A. Yes.

Q. With a bomb scare?

A. Yes.

Q. And when was that?

A. That was sometime, I think, last year, the year before last. I can't recall.

Q. Was it before or after the bomb here in Sacramento?

A. It had to be after.

Q. After. Did you have that same kind of –

A. Same – yes, because they had left their children behind, and just my son and his wife were in New York. And so I was concerned for them. I was concerned for my grandkids that were in –

Q. And did you have that same kind of level of emotion?

A. Yes, ma'am.

Q. Emotional concern?

A. Yes.

Q. Do you think that emotional reaction will again play out as you hear about bombs here?

A. It might, yes. Yes, it might, yes.

Q. How do you think that will play out?

A. Just the fact I will probably be thinking about, okay, this could have happened to my kids at the time or whatever.

Q. And it might make it difficult for you to sit in judgment in a case involving bombs?

A. Possibly, yes.

Q. You mentioned in your questionnaire –

THE COURT: Just a moment. Why?

PROSPECTIVE JUROR NO. 18: Repeat the question, sir.

THE COURT: You have just indicated to counsel that the emotional reaction you have experienced

PROSPECTIVE JUROR NO. 18: At the time.

THE COURT: – stemming from bomb threats involving your loved ones could somehow carry over into this case, and I'm trying to figure out why you have indicated that and what you mean by that.

PROSPECTIVE JUROR NO. 18: Well, the only reason, like I told her, would be that at the time, you know, all this was going on, so that emotion probably would come back, come back, you know. Like he stated, if there was talk of bombs, boom, it would come to my head again.

THE COURT: Do you understand that the defendant in this case has nothing to do with those events?

PROSPECTIVE JUROR NO. 18: Yes, I do.

THE COURT: And that we are looking for jurors that will make a determination as to his guilt or innocence based on the evidence that is presented in this courtroom solely. Do you understand?

PROSPECTIVE JUROR NO. 18: I understand that, sir, yes.

THE COURT: Are you indicating that the emotional experiences you have related could interfere with your ability to do just that?

PROSPECTIVE JUROR NO. 18: I said it was a possibility. But then again, I have to, you know, kind of put one emotion and set it aside and go with whatever I have to work with.

THE COURT: Tell me your state of mind, if you can, when you state it's a possibility. I want to know what type of thoughts you have that causes you to choose the word "possibility."

PROSPECTIVE JUROR NO. 18: Okay. I would have to be very, very sure that I would be able to do that, and I can't be sure until I'm there, you know. I mean, I could tell you right now, yes, I'm going to put my emotions aside or whatever, but when we get down to it, I can't tell you what I'm going to be feeling at that moment, you know.

THE COURT: Okay.

Q. BY MS. CLARKE: And that's because of the depth of the emotion?

A. Yes.

Q. If I could follow up on one of the judge's questions. I believe page 31.

A. Uh-huh.

Q. Question 118. You see that you were asked when you were fearful or worried about one of your loved ones being harmed by the Unabomber; right?

A. Right.

Q. And you connected that airport bomb threat; right?

A. Uh-huh.

Q. To this case actually; right?

A. Yes. Yes. Yes. Yes. Here it is. That's right.

Q. Is that right?

A. That's correct. That's correct. I'm sorry.

Q. So that emotional connection would even be connected to this case because of that answer; right?

A. Uh-huh. You're right, yes.

Q. And that would make it more difficult for you?

A. Yes, it would. Yes. Yes.

Q. I know you're struggling with this.

A. I know, because I want to serve so bad, you know. But then again, like I told you, I have to get rid of these emotions, and right now, I'm probably nervous and all this, so –

Q. But as you sit here now, you believe that it would be very difficult to get rid of these emotions in this case?

A. Yes.

Q. Would there also be a concern that your two family members, who are federal law enforcement officers, that they work with federal prosecutors?

A. Yes.

Q. Would there be some concern that this is federal prosecutors prosecuting this case?

A. Yes.

Q. And that it might affect your family if you disagree with the federal prosecutors in this case in some way?

A. It shouldn't, but –

Q. But would you have that fear?

A. Yes, I would. Yes, I would.

Q. You indicated when the prosecutor talked to you – can I have one moment before I go to the final area, Your Honor?

THE COURT: Yes.

Q. **BY MS. CLARKE:** I'm sorry for the interruption.

A. No problem.

Q. I want to talk to you just a moment about the death penalty if I could.

A. Okay.

Q. And it's a question, question 107, page 27.

A. Okay.

Q. Do you have that, at the bottom?

A. Yes.

Q. Where you marked that you strongly agree that a person's background doesn't matter. That's not a consideration really; is that right?

A. That's right.

Q. The prosecutor asked you about whether you would follow the judge's instructions to consider background, and I think you said that you would.

A. Yeah, I would. Because at the time, I guess, I was, you know – yes.

Q. It would be awful hard to sit here and say I'm not going to follow the judge's instructions.

A. Uh-huh. I'm going to follow the judge's instructions, yes.

Q. That wouldn't be anything any of us could really say.

A. No.

Q. But what we're searching for is not for your following of the instructions right now, but your feelings about the death penalty.

A. Okay.

Q. Right? You with me?

A. Right. Yes.

Q. And the question would be: Could you not just consider but could you give full force and effect to different things about a person's background?

I understand you would tell the judge yes, I'll follow your instructions and I'll consider. But the real question is inside, can you give it real meaning?

A. The background – I would say yes.

Q. What do you mean when you say you could give it real meaning?

A. For instance, like the gentleman asked me a while ago, if it was due to mental retardation. That would be a background that I would have to consider. Maybe because of this – or I would have to weigh it, in other words. That is –

Q. We're talking about where you find a deliberate, planned, intentional killing of another person.

A. Okay.

Q. Can you give anything about the person's background, the killer's background –

A. Can I give –

Q. Can you give real meaning to anything about the killer's background when you have already found that the person killed with a deliberation, planning, and intent?

A. It would matter. It would matter.

Q. What would matter?

A. The intent of the killing, the – you know, why.

Q. All right. At this point, let me help you a little bit. There's two parts to a capital trial. The first part is whether or not the person did it. And if they did it, the second part is about what the penalty is. That's what the judge explained to you earlier.

A. Uh-huh.

Q. In the first part, let me put you in this frame of mind. You have made a decision. You as a juror along with the rest of your jurors, all 12 of you, have decided beyond a reasonable doubt that the person killed another person with planning, premeditation, deliberation, and intent.

You with me?

A. Yes.

Q. That there was a deliberate, planned, premeditated murder of another human being. You found that beyond a reasonable doubt, you and all 12 jurors; right?

A. Right.

Q. Now, would the person's background at that point matter in determining whether you're going to impose the death penalty?

A. No. No, shouldn't matter. It shouldn't matter. I mean, if all the evidence is there, the background shouldn't matter.

Q. See, that's where we sometimes get confused.

THE COURT: Just a moment, Counsel.

But if I instruct you that it matters, would you listen to my instructions?

PROSPECTIVE JUROR NO. 18: I would have to, yes, sir.

THE COURT: Would you follow my instructions?

PROSPECTIVE JUROR NO. 18: Yes, sir.

MS. CLARKE: May I go back to that area?

THE COURT: I don't think so.

MS. CLARKE: If I could ask just a couple questions.

THE COURT: No. You're taking too long. We got three other jurors. I think that's enough on that precise area.

MS. CLARKE: May I have one more area?

THE COURT: What area?

MS. CLARKE: Mental health.

THE COURT: Okay.

Q. BY MS. CLARKE: At question 94, page 24. You with me?

A. Yes, I am.

Q. What is your opinion about psychologists, psychiatrists and other mental health professionals. You said no comment.

A. No comment.

Q. What did you mean by that?

A. Well –

MR. CLEARY: Objection. That's not going to for-cause challenge.

MS. CLARKE: Yes, it is.

THE COURT: She says it is. I can't evaluate it until I hear where she's going.

PROSPECTIVE JUROR NO. 18: My opinion about these people is, well, they're in a profession, okay, to care for people with these problems. But that doesn't necessarily mean that a person wasn't sane when they committed a crime, and then afterwards, or whatever, it could have been, child abuse, then they decided to go a psychologist.

So what I'm saying here is that, hey, I have to see everything, the evidence. Again, I'm going with that, okay.

Q. You just kind of believe they're really not worth considering, mental health professionals?

A. No.

Q. Do you think –

A. They are. I mean, you know. But I've heard of so many other cases where some people have gotten free because they pleaded that they were insane.

Q. And how did that make you feel? You just didn't buy that?

A. I don't buy it, no, because –

Q. Why is that you don't buy that? Because you think the mental health professionals don't have a good sense of people, they're just paid to say something?

A. No. No. No. They're – they are – they're doing their job. What I don't buy is that maybe, maybe that person wasn't – again, that person wasn't insane at the time. Maybe he became insane afterwards. And so, of course, if he became insane afterwards, maybe the professional is going to say okay, well, he's insane.

Q. Do you think that a psychological problem or psychiatric problem should be considered in the sentencing part?

MR. CLEARY: I repeat my same objection.

THE COURT: I have to –

MS. CLARKE: Can I note the juror was shaking her head no?

THE COURT: If I instruct you that you are to consider such evidence, will you follow my instructions?

PROSPECTIVE JUROR NO. 18: I have to, yes.

THE COURT: We have to move to another juror.

MR. CLEARY: Can I follow up the question of her concern for her emotion, the juror's concern and emotion that Ms. Clarke was questioning about?

THE COURT: Yes.

MS. CLARKE: May I ask the Court to inquire as to prejudgment as to penalty. The Court inquired as to prejudgment as to guilt, and I think it's fair to inquire as to prejudgment as to penalty. That was the last area I wanted to go into.

THE COURT: What do you mean?

MS. CLARKE: Is there any sense of the proper penalty in this case knowing what she knows.

THE COURT: I'm going to let the government ask some questions in that limited area.

MR. CLEARY: Certainly, Your Honor.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. You were discussing with Ms. Clarke, the defense attorney, the concerns you would have serving as a juror on this case. Do you remember generally that line of questioning?

A. Yes.

Q. And I believe you said that you were concerned because of the occupation of one or more of your family members; is that right?

A. Right.

Q. You're aware that Judge Burrell has ruled that the jurors will remain anonymous. That's why no one mentioned your name in court. Do you understand that?

A. Right, yes.

Q. And if you had assurances from the Court that the Court will make every effort to keep your name anonymous and to take other steps, to take other measures to protect your anonymity, to protect the family, that people will not know who you are, do you think you could serve fairly and honestly in this case?

A. Yes.

Q. And would you be able to, despite what understandable concerns you might have, would you be able to fairly evaluate the evidence in this case. And be a conscientious juror and apply the instructions the Court gives you?

A. Yes.

Q. You were also asked a number of questions about the emotion that this case might have for you. Do you recall, generally, that line of questioning?

A. Right.

Q. I believe you told us that, in fact, it would be an emotional experience for you; correct?

A. Yes.

Q. Can you envision that for any jurors sitting on a case like this or other cases involving bombings and where people are killed that it would be emotional for those jurors?

A. Yes.

Q. And that's in large part due to the nature of the facts and the evidence that would be presented to those jurors; correct?

A. Right. Correct.

Q. Don't you think it's fair that those jurors, like yourself, even though the facts would cause some emotion to well up in them, that they too should do their civic duty and sit on that jury?

A. Yes.

Q. Do you think you yourself should be included in that, that you should be eligible to sit on this jury even though this may well up some emotions in you?

A. Yes.

Q. And despite the fact that you would have some understandable emotion in hearing some of the evidence in this case, can you give us your assurance that you will be, a conscientious juror who will listen to the evidence in this case and evaluate the evidence in light of what Judge Burrell's instructions are to you?

A. Yes.

Q. And you're confident you can do that?

A. Yes.

Q. And you recognize that Mr. Kaczynski has not been charged or in any way associated with any of the events that may cause some emotion for you, you recognize that; right?

A. Right.

Q. And do you recognize that it would be very unfair to Mr. Kaczynski?

MS. CLARKE: Your Honor, I think that's incorrect given the answer to question 118. I'm sorry to delay.

MR. CLEARY: I'll come back to 118 in a second.

MS. CLARKE: That's an incorrect line of questioning, and I think it's misleading for the juror.

THE COURT: Why is that misleading?

MS. CLARKE: Because she has already stated that one of the events involving her kids she does connect to the Unabomber, question 118.

Q. BY MR. CLEARY: Is that correct?

A. That's correct.

Q. Let me start with that one then. That had to do the question what was it about the Unabomber that you're concerned about in question 118?

A. What page is that?

Q. I'm sorry. Page 31.

A. Okay. Yeah. Your question what was my concern.

Q. Which Unabomber events were you thinking of at that time?

A. I was just thinking of bombs, you know. And, again, like I said, the closest one was Sacramento.

Q. Okay. You just had the notion of bombing generally?

A. Right.

Q. Correct. You weren't thinking of any particular threat, Unabom threat to an airline or anything of that nature; is that right?

A. No. No, I was concerned about that.

Q. Just bombs generally?

A. Yeah, and the fact that they might get on the plane and somebody might plant a bomb there.

Q. In stating what you said in response to question 118, you didn't have any knowledge or suspicion one way or another that the Unabomber had threatened to bomb an airplane or put a bomb near where your family members were; correct?

A. No, that's not correct. I think I overheard that might be associated with the Unabomber. I have to keep back.

Q. That's what I'm trying to figure out, what is it you're saying might be associated with the Unabomber?

A. Because that's what the news said.

Q. What though?

A. That there has been a bomb threat to the airports and which one, and it might be the Unabomber.

Q. Do you remember when that was?

A. I think this was about two years ago.

Q. Okay. Now, if you knew that there were no charges against Mr. Kaczynski relating to that event, would you be able to put aside what you heard and your understandable concern about your family, put that aside and be a juror that will evaluate this case solely on the evidence presented here in court?

A. Well, before – a while ago I said that it was a possibility, okay, because my feelings for my family would still come in here. But, yes, I would have to put that aside because I would be here to do a job.

Q. You served as a juror before; correct?

A. Yes.

Q. And you know how the system works; don't you?

A. Yes.

Q. And it would – you would agree it would be unfair to make a decision in any case, either the case you sat in previously, or if you were to sit in this case, to make a decision affected by emotion; is that right?

A. That's right.

Q. And indeed, Judge Burrell may tell you you can't assume, you can't have your emotion affect your decision.

A. Right.

Q. That's why we're all asking you a lot of questions about this. Because just as you were probably asked those same questions when you served in your prior jury service, the parties here and the Court need to know, need your assurance, that just as you did in your prior jury service, you can have emotions but they will not affect your assurance, they won't affect your evaluation of the evidence. Can you give us that assurance?

A. Yes.

Q. Okay.

THE COURT: Are we done?

MR. CLEARY: Yes, Your Honor.

THE COURT: Let's bring in juror number 19.

MS. CLARKE: Before any jury is excused, may we approach sidebar?

THE COURT: Yes.

(Sidebar discussion held.)

MS. CLARKE: Your Honor, Mr. Cleary just told this juror that the government has not charged Mr. Kaczynski with this bomb threat. As I understand the evidence, the government is going to put on direct evidence that Mr. Kaczynski is responsible.

THE COURT: What's the purpose for being here?

MS. CLARKE: Because I think it was a misleading question to this juror. I think the Court needs to clear it up. I need to let the Court know that the juror –

THE COURT: I heard enough. We are going to call in the next juror. I'm sorry. I let the parties examine this juror for an extensive period of time. I'm going to discontinue examination.

MS. CLARKE: Could I state for the record what the concern is. The government intends to put on evidence –

THE COURT: You can tell me on Friday.

MS. CLARKE: Okay.

(Open court.)

THE COURT: Please bring in juror number 19.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're juror number 19. I'm going to ask you questions from the podium so that your voice will be elevated more and the parties will hear your responses.

Since being in my courtroom, have you had any difficulty hearing aspects of the proceeding?

A. So far, no.

Q. If I have witnesses that take the witness stand use the microphone just as you are doing, do you think you'll have any problem hearing any aspect of the proceeding?

A. I don't think so. I do have some hearing problem, but generally I can hear most everything.

Q. That's why I'm asking you the questions I'm asking you now.

A. I can hear you clearly.

Q. Okay. During the trial, if you were selected as a juror, I would provide you with the opportunity to raise your hand at will if at any point in the proceedings you were unable to hear any witness. Do you understand that?

A. Yes.

Q. And I would correct the situation for you.

A. Okay.

Q. You mention in a question in response to one of the matters you were inquired about in a jury questionnaire that you have financial hardship reasons that should be considered for excluding you from further consideration as a juror in this case. Without disclosing the name of your employer, please tell me why we shouldn't consider you for service, since we plan on adjourning by 1:00 p.m. daily, and if you get to work by 2:00 o'clock, wouldn't that reduce the hardship you were concerned about?

A. No, because there is no way I could be at work by

2:00 o'clock considering I live 100 miles from here.

Q. Okay.

A. And my territory covers Marysville, Yuba City to Eureka.

Q. Okay. All right. Thank you.

The parties may voir dire on hardship.

VOIR DIRE EXAMINATION

Q. BY MR. LAPHAM: Ma'am, you work two jobs, is that correct?

A. Yes.

Q. Those are both part-time jobs?

A. Yes.

Q. And it sounds like from your answers those are jobs that require you to travel?

A. The one does. The other one is in my hometown, so I do not travel for that one.

Q. Could you just tell us what your typical work hours are.

A. I leave the house about 8:00 o'clock in the morning and I get home anywhere between 2:00 and 3:00, and it takes me anywhere from an hour to an hour and ten minutes to get to my destination, my furthest destination being two and a half hours away.

Q. And that's your entire workday for your two jobs or –

A. No.

Q. Is there another job?

A. In addition, sometimes I have to come home. I try to schedule one job where I work Tuesday, Wednesday, Thursdays, and my other job I'm required to be there three to four days a week, and so I let myself be available on Mondays. And then on Wednesday, depending upon my schedule, I'll either come back and go to work Wednesday night or I go to work Tuesday night.

Q. Based on your answer to the judge's question, I assume that there are no accommodations you can make with your work if we had an 8:00 to 1:00 schedule?

A. No, there's not, because I'm responsible for ex-amount of accounts to do sales, do them also.

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

Your Honor, the government will stipulate she may be excused.

MR. DENVIR: So stipulated.

THE COURT: I'm going to excuse you based upon the hardship excuses or reasons you have given. I'm going to now allow you to return to the room where the other jurors are waiting.

PROSPECTIVE JUROR NO 19: Thank you.

THE COURT: Please bring in juror number 20.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're juror number 20. I'm going to ask you some questions from this location, but I want you to talk as though one of the lawyers was asking you a question from the podium so that your voice is carried in that microphone. Let's see if this works?

A. Okay.

Q. You mentioned financial hardship as a basis for being excluded from consideration for jury service on this case.

Without disclosing the name of your employer, please tell me why we shouldn't consider you for jury service since we plan to adjourn by 1:00 o'clock daily, and I'm assuming that with that type of a schedule, you should be at work by

2:00 o'clock, and perhaps that will reduce the hardship you indicated?

A. I work in Martinez, so I still have to commute all the way to Martinez, and our normal working day is from 7:00 a.m. until 3:30, and that would be my normal schedule Monday through Friday.

Q. The type of work you have is such that an adjustment couldn't be made in you scheduling?

A. No, it couldn't. It's a construction-type job.

Q. Okay.

THE COURT: The parties may voir dire on hardship.

MS. CLARKE: Your Honor, we would be happy to excuse the juror for the hardship.

MR. FRECCERO: Your Honor, if I may just ask a few questions.

THE COURT: Proceed.

VOIR DIRE EXAMINATION

BY FRECCERO:

Q. Sir, my name is Steve Freccero. I'm one of the prosecutors in this case. I just want to ask you a few follow-up questions.

The company – without telling us the name of the company, can you give us an idea of how large a company it is that you work for?

A. It's national. It's large.

Q. Okay. Do they have a policy about covering people when they're called for jury duty?

A. Yes, they do. I would be paid for up to two months.

Q. You would be paid for two months?

A. Right.

Q. Okay. So in light of that, do you understand that during the time that this jury selection is going on, you could be called back at some later time for kind of group questioning, and then if you were chosen to serve, your commencement would start at that point, so that it would probably be at least a few weeks before you would have to be here full-time.

Okay. So at the point, you're starting, if your company can – will pay you for about two months' worth of jury duty –

A. Uh-huh.

Q. Okay. So if this trial – if this went some period not too much longer than two months, would that change your view as to whether this would be a hardship for you?

A. If it didn't go too much over two months, I would be able to handle that.

Q. Okay. So would it be fair – and we realize that any long trial is going to be a inconvenience for any person, and I think all the parties recognize that. We're just – it's important that people recognize that the system really can't work if everyone didn't agree to do whatever they could within reason to participate.

In your case, seeing that your company would pay your salary for two months, given that we're not going to start for a couple weeks, and we'll have some holiday breaks, do you think you could make a commitment that you could be a juror in this case?

THE COURT: Before you answer. Why don't you explain to the juror what type of commitment you're trying to see if he could make monthwise. You're indicating that he doesn't have to worry about the first two months because he's obviously going to be paid. But how much time beyond that does he have to be concerned about. That's what he wants to know.

Q. BY FRECCERO: Okay. What about – let me put it this way. The government estimated its case will take about ten weeks. Okay. And so that would be a little – two weeks or so over two months. And then there would be some amount of time after that, depending on what happened and that result. So let us say three months.

That additional month beyond what your company would pay you, if you had a schedule so that you could go work part-time during that time, do you think your employer, given that they had this policy that would pay you for two months, could work it out with you so that it would be less of a hardship in that additional month?

A. Yeah, that's possible to go that additional month.

Q. Okay. Is that something you would be willing to go to your employer and talk about if you were selected as a juror, seeing that they had this policy, to see if you could work something out with your company in that way?

A. Yes. I'm not sure I would be getting any hours necessarily, you know, in that month.

Q. Okay. Given that situation – I guess the bottom line is, is it going to be – can you at least commit that if it's possible with your employer, you would try and make those arrangements given that at least the first two months your –

A. Yes, I would approach and ask them and see what could be done.

Q. All right.

MR. FRECCERO: I would have no more questions. I would make the same recommendation that we had with another juror, Your Honor.

MS. CLARKE: I have just a few questions on hardship.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Since we're the defense, we go second every time, not in the questioning necessarily, but in the concept of the trial.

The government has estimated ten weeks for their evidence in what's called the guilt or not guilty phase of the case, determining the responsibility of Mr. Kaczynski for the acts. They've estimated ten weeks. That's two and a half months.

So if there is any defense case to be put on, we're the ones sort of causing you not to get paid. Is that going to cause you some anxiety? I mean, if the defense goes a little bit of time, we're well over.

A. I was understanding four months, and I figured it would probably go longer than that just depending.

Q. And then there would be – if there is a decision in the guilt phase adverse to Mr. Kaczynski, then it would go into this penalty phase, the sentencing phase, and that could be another month. So we're talking about, you know, possibly four months of no work.

A. That's why it's a financial hardship to me. That's why I made that determination.

Q. So if it goes that long, that's just not something that you need to put yourself through?

A. If it goes over four months, that really far too long. I won't be able to pay my bills properly.

Q. If it goes to four months?

A. If it goes four months or longer, I really don't think I'll be able to pay my bills.

Q. Would the cutoff for you be after you been unemployed for a month?

A. I would say the cutoff for me is one month without any kind of pay. I would need to start working then.

Q. Right.

A. Otherwise, it's definitely a hardship.

Q. So once we hit the three-month mark, it's hurting you pretty bad?

A. Yes, it is.

Q. And, realistically, you can't go to work after the trial hours because you live so far away?

A. That's correct.

Q. So you would miss that time that you were here in Sacramento in trial?

A. Yes.

Q. That would be just a hardship you really couldn't live with?

A. Not easily, no.

Q. I don't think any of us could go without an income for a very long period of time.

A. That's correct.

Q. All right.

MS. CLARKE: I would ask the Court to excuse for hardship.

THE COURT: We can discuss that later. I am going to have my deputy clerk escort this juror back to the waiting room and bring out juror number 21. Thank you.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to be trying to ask you questions from the bench where I'm now located. But when you respond to my questions, I want you to use the microphone and speak to the lawyers, the parties, located at counsel table. That way your voice will carry, and I can continue to ask you questions like this. Let's try it to see if this works.

You'll have to get closer to the microphone.

Since you answered your juror questionnaire, have you heard or read anything about this case?

A. Yes. I follow the news quite a bit. I watch most news programs, local, ABC, NBC, FOX, and I usually watch the 11:00 o'clock news before I turn in at night.

Q. What have you heard or read?

A. Most of everything. I've been following from the O. J. case and the one on the nanny. I watch quite a bit of the news.

Q. Were you one of the jurors that appeared at Cal Expo pursuant to my summons?

A. Yes, I was.

Q. There was some language that was connected with the summons which asked you to make every effort to avoid public or private discussion about this case. Did you see that language?

A. I probably did see it, yes. I don't remember.

Q. It doesn't appear as though you complied with what I told you.

A. Well, no, I can't say I did. It just went over my head.

Q. What do you mean by that?

A. Well, I like to listen to the news, find out what's going on in the local news and everything else, and I just didn't pay attention.

Q. When you say you just didn't pay attention, can you explain what you mean by that statement?

A. I'm not too sure what you mean.

Q. As a judge in this case, I have a duty –

A. Yes.

Q. – to ensure that the jurors involved in this case only receive information about the case from this courtroom.

A. That's true.

Q. And I attempted to discharge that duty in part when I explained to the jurors in the communication that summoned the jurors to Cal Expo that they make every effort to avoid public or private discussion about this case. I was trying to carry out my duty to ensure that the information the jurors that are considered for this case, the information that they receive is only information that they receive in the courtroom, and I'm trying to figure out how we miscommunicated about that, if we did.

A. Well, I never discussed it with anybody. I mean, you watch TV, you see the news. It's all over the news, all over the papers. I don't see how an individual could miss it.

Q. How could you avoid missing it if you're selected as a juror in this case?

A. It would be very hard for me to avoid it because I watch a lot of TV. I even have a small TV in the garage when I work on my woodwork and where I'm doing my home projects and painting. I'm retired and I watch a lot of news.

Q. Is there anything that can be done to change your habits in that regard as far as the news concerning this case is concerned?

A. It would be very hard for me to do that, because I watch a lot of TV, I read the papers, and it would be just very hard for me to do that.

Q. You would be disobeying my order.

A. Well –

Q. I would, in fact, issue an order that my jurors seek to avoid public and private discussion about this case, and I would mean every word of that order.

Would you disobey the order?

A. I don't see how I could stop from hearing about it.

Q. Okay.

A. You go to the grocery store, you hear people talking about it. You go to the barber shop the, barber will talk about it. You go anyplace in this state, anyplace in the country, you hear about it. You hear about cases in Boston, Chicago, Dallas. I don't care where you go, you hear.

Q. Maybe I'm mistaken in my approach. Maybe my focus is wrong.

What type of things do you hear? And I need to know what you hear.

A. Well, you hear – if you watch the news, you hear everything on the news. It's – I don't see how a person can even turn on the radio without hearing something about it. And I have followed the news quite a bit. And I read the paper. I get the local paper and I get the Sacramento Bee, and I think just about every page you turn on, or every other page, there's something about it.

Q. There was an article, I think maybe more than one article, in the Sacramento Bee concerning this case. I believe it was in the Sunday Bee.

Did you read that article?

A. Not this Sunday, no, because I was down on 49. We went on a shopping tour with my wife and friends, and I didn't get the Sunday paper this week. I normally do.

Q. If you had been home and received that paper, would you have read the articles concerning this case in that paper?

A. Yes, I probably would have.

Q. Every word of it?

A. Just about every word that would interest me in it, yes.

Q. I don't understand why you would do that if I'm telling you I don't want you to do that. Can you explain that?

A. No, I can't. Because it would just interest me.

Q. If you're selected as a juror in this case, could we devise a method that could satisfy your curiosity about this case after the trial so that we can, basically, take out those articles and give you the Bee without those articles in it; would you avoid reading the articles if we did something like that?

A. I had that happen in another jury that I was on, and when I got the newspaper, they cut the article out and it was delivered. But I still heard parts of it through going to the grocery store, something like that.

Q. But you didn't read about it, though, right?

A. No, because I couldn't. There was a hole in the paper.

Q. Okay. Since you answered your jury questionnaire, have you discussed this case with anyone?

A. Other than what I read in the news or seen. My wife has come down, she said did you hear this, and I said, yeah, I heard it.

She said did you know that your – where you're going to be picked up at or – and she mentioned about –

Q. Don't tell us where you were picked up at.

A. No, I understand that.

Q. Okay.

A. But, yes, my wife has come down from watching TV. She sits up watching TV. She watches the news upstairs while she's doing her crocheting or something like that. She'll come down and say did you see that, and I'll say, yeah, I'm watching it on the TV downstairs. She tells me.

Q. What do you know about this case?

A. I can't remember any specifics right offhand. But I know about the building in Montana. My dad was raised up in that area, so I know the area a little bit.

I heard different things. What's on the paper. I just can't remember right offhand. But I have heard a lot about it.

Q. Has the information you received about this case left you with any type of lasting impressions, memories?

A. Yeah. I think it's a waste of taxpayer's money. I more or less made my own decision.

Q. I don't know what you mean when you say it's a waste of taxpayer's money. Can you explain that?

A. Well, I think from what I read in the paper, they got quite a bit of evidence and everything else, and –

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

A. Somewhat. I haven't heard it all like in the courtroom, what you hear. They probably bring out more than they do in the papers. But from what I read in the papers and seen on TV, I kind of semi made my opinion. That's all I can say. I don't know any more than that.

Q. What is your opinion?

A. Well, from what I read and everything else, I think he's pretty well guilty.

Q. And –

A. That's my opinion.

Q. How strongly are you committed to that opinion?

A. It's hard to say because I haven't heard the rest of the story.

Q. The opinion you have, is it one that can be set aside if you were selected as a juror in this case?

A. It's hard to say, too. I can't commit myself.

Q. You can understand that an individual facing charges as serious as the charges being faced by Mr. Kaczynski would want someone to answer that question.

A. Yes.

Q. He deserves an answer.

A. I don't know. I can't really say.

THE COURT: The parties may conduct voir dire. Maybe the parties should communicate first.

MR. CLEARY: Why don't we do that.

Your Honor, the parties will agree to discharge this juror.

MR. DENVIR: Yes, Your Honor.

THE COURT: Thank you very much for your candidness. I appreciate it. Thank you, sir.

Let the record reflect that the parties have stipulated that I could excuse juror number 21 for cause. How about juror number 20?

MR. FRECCERO: If I could have a moment to confer, Your Honor?

THE COURT: That's fine.

(Short discussion off the record.)

MR. CLEARY: Your Honor, if we may, the question for juror number 20, as I understand it, was the length of service, and everyone is operating and has been operating on the assumption that the government's case is going to take ten weeks, which is an estimate we gave the Court a number of months ago.

Since that time, we have been working to pare down the case considerably. And from where I stand, it's always difficult to say we're going to do a case much shorter, because if we're wrong on that, it messes up everyone's schedule.

But we are hopeful, recognizing we only control one part of the trial, we are hopeful that we're going to be able to get our case in in six weeks. And, again, that's a guesstimate, and we only have control over one piece of the estimate. But because of that, we're a little reluctant to agree to dismiss someone if the basis for the dismissal is a ten-week government trial or ten-week presentation of government evidence.

THE COURT: Okay. Were going to proceed into the lunch hour.

Will my deputy clerk bring juror number 20 back to the courtroom.

VOIR DIRE EXAMINATION (Cont'd.)

BY THE COURT:

Q. Juror number 20, since you answered your juror questionnaire, have you heard of or read about this case?

A. Yes, I have.

Q. What have you read or heard?

A. I heard that Theodore Kaczynski had been accused of mail bombing, and I heard that there was a cabin in Montana, that this is supposed to have taken place, a typewriter involved, some manuscripts, that he was turned in by a family member.

I think that's most of what I heard.

Q. Did you hear that information since the time you appeared at Cal Expo?

A. No, it was prior to Cal Expo. I been avoiding reading the papers since then.

Q. I'm trying to find out what you heard since you appeared at Cal Expo. I didn't ask the question that way because you answered your jury questionnaire at Cal Expo. So since you appeared at Cal Expo. Maybe I should reword that question.

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

A. I heard probably some things with people talking, but I haven't been reading the paper. I've been trying to avoid it on the news and whatever I listened to on the radio.

I'm trying to think of what new I heard since then. I have a blank right now in terms of what I can remember new from what I already told you.

Q. Since you appeared at Cal Expo, have you discussed this case with anyone?

A. I discussed with my wife that I may be selected. I wasn't sure if I would be selected. I discussed it with her, not in terms of the case, the details, but the fact of maybe having to go to jury duty.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No, it hasn't.

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

A. Other than the media I heard, that's only opinion I heard. That's not on an objective opinion. That's just what I been fed from the media previous. So I think I could be a fair and impartial juror based on the evidence.

Q. I understand that you have been exposed to publicity about this case, and I'm trying to determine whether that exposure has caused you to form an opinion about Mr. Kaczynski's guilt or innocence or whether you have any kind of idea about his guilt or innocence based upon that exposure to publicity.

A. My opinion is I don't believe the publicity unless I actually can see facts and document it, because it could be used for propaganda also. That's my opinion.

Without being directly involved and being able to see facts and proof of everything, I can't go with just the opinion of the press or something like that.

Q. So you don't have an opinion?

A. I don't have an opinion on whether he's guilty or innocent until I can actually see facts and different things to determine that over a period of time.

Q. Do I have your assurance that Mr. Kaczynski will start this trial with a clean slate?

A. Yes, you do.

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

A. Yes, he does.

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

A. I'd say I stand in the middle on that. I'm not against it, but I only would want to use that in the most severe type circumstances if it could be proved beyond a shadow of a doubt.

Q. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence and absence of aggravating evidence?

A. I would not select the death penalty. It would depend on the evidence. I would not necessarily select the death penalty, though.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. If may I revisit hardship for just a moment. There are some varying thoughts on the length of this trial. But my concern would be that the government will use the time that you're getting paid for, and then the defense may use the time you're not getting paid.

How do you think that would make you feel about us?

A. In terms of the government?

Q. You get paid for a couple months.

A. Correct.

Q. And I'm concerned that the Government's part of the case will use up the time that you're getting paid. So your free time, your unpaid time, would be caused by the defense involvement in the case.

Would that – how would that make you feel about us?

A. That wouldn't make me feel negative towards us, because if I was going to commit to it, I would go through the whole process regardless of the length of time. You know, if I was going to do that, it wouldn't weigh. I would have to just make adjustments and work around it.

Q. If the case goes into its third or fourth month because the defense is presenting evidence, you don't think that would cause you some concern about us?

A. No, I don't.

Q. Okay. The judge asked you some questions about what you knew from the news.

A. Uh-huh.

Q. And you indicated that you would rather express an opinion only after you seen facts because what the media prints is not necessarily fact. Is that right?

A. That's true.

Q. Do you have an opinion, though, based on what you read as to Mr. Kaczynski's guilt or innocence?

A. They make him look like he's guilty in terms of what I read.

Q. And is that opinion – based on what you've read, is that opinion fairly strong?

A. You mean my opinion whether I think he's guilty or innocent?

Q. Right, based on what you read.

A. It's not strong, no.

Q. It just a feeling that he's –

A. Yeah. According to what I read in the press, yeah.

Q. Do you have a feeling as to the appropriate penalty in this case assuming that Mr. Kaczynski is guilty of the crimes based on what you read?

A. No, I don't. I don't have an idea in my mind what the penalty should be.

Q. Do you weigh it one way or the other yet?

A. I haven't really given it that much thought other than I was asked questions whether or not I go for the death penalty.

Q. How do you feel about that?

A. About what?

Q. Based on what you read, how do you feel about the death penalty in this case?

A. It's not comfortable for me to want to select the death penalty. But if the circumstances warranted it, then I would.

Q. What kind of circumstances would you consider to warrant it?

A. Proof beyond a shadow of a doubt. Repeat offenses, things that have been repeated over and over, a pattern that was never broken, that sort of thing, I would think, in terms of taking other people's lives repeatedly.

Q. When you talk about repeated pattern, are you talking about when somebody is arrested and then gets out and does it again or –

A. They're arrested, they're convicted, they're punished they get out. They're arrested, they're convicted, they're punished, that sort of thing. At that point, for violent type crimes I think the death penalty would be warranted.

Q. All right. Could I ask you a couple of questions about mental health.

If you have the questionnaire, Your Honor.

If you could look at page 24, question number 95. It asks you about your opinion about mental health professionals who testify in court, and you talk about there should be a scientific repeatability. What do you mean by that?

A. Take as much subjectivity out of the process as possible, you know, so that it is fair and unbiased in what they're doing. I don't know enough about necessarily the psychologists' or psychiatrists' methodology and stuff to be – you know, make a good decisions on that.

Q. So you're concerned that there isn't a hard-and-fast rule about making decisions on mental illness?

A. I'm not sure that there is. I don't have that – that's why I'm kind of questioning the way I answered this question.

Q. What caused you to answer the question that way, do you have some experience, some thoughts about it?

A. Probably the different things like hypnotherapy, all these types of methods that are used. I question the validity of some of those cases. And then you hear things that aren't true or happening or are true. So that's why it's difficult.

Q. Does any particular case come to mind that made you think about that?

A. Well, I heard like about people with repressed memories, and then things that actually never occurred that were suggested. And so I think that's what brings to mind. There's no specific person or somebody that's happened to that I know other than just media accounts.

Q. You just have sort of an intuitive reaction that that repressed memory or the hypnosis is not reliable?

A. That's correct.

Q. Do you have any problem listening to mental health professionals?

A. No, I do not.

Q. Just as long as you have a sense that their methodology is not kind of –

A. Way out, that's true. Not way out.

Q. You indicated in your questionnaire that you had some interest in law enforcement in the past. You did the ride-along program and –

A. That is correct.

Q. And applied for a job with the Highway Patrol?

A. That's correct.

Q. Do you still have those interests?

A. No, I don't. I became interested in electronics and went away from law enforcement, probably because the danger in working in Los Angeles for ten years didn't appeal to me.

Q. Move to the Sacramento area and change jobs?

A. That's why I didn't pursue it when they called me to be employed by the California Highway Patrol.

Q. Is there any sense of greater respect for law enforcement than for others in terms of judging credibility of a witness or something?

A. I think there can be good and bad people in every profession, and that's going to depend on each individual case.

MS. CLARKE: Could I have just one moment?

THE COURT: Yes.

MS. CLARKE: Thank you very much.

THE COURT: The government.

She didn't mean you could leave.

PROSPECTIVE JUROR NO. 20: I'm sorry.

MS. CLARKE: I'm with you.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Just a couple quick questions. More than a couple. I shouldn't say a couple. Lawyers always say that.

Let me just touch upon a few matters that were talked about. You mention in your questionnaire – do you have that?

A. Yes I do.

Q. For instance, your answer to question 108.

MS. CLARKE: May have the question, Your Honor?

MR. FRECCERO: 108 on page 28.

Q. You got that?

A. Yeah.

Q. Okay. You indicated on the answer to that that where one person intentionally kills another person, the death penalty may or may not be justified depending on the circumstances of the case.

I just want to ask you a few questions along that line. You realize that were we ever to get to that position in a trial, not only would you listen to evidence presented here, but you would have to follow some instructions that the Court gave.

Do you realize that?

A. Yes, I do.

Q. Now, one of the issues when we're talking a lot about people's personal opinions, it's very difficult to do, but we try and make a distinction between someone's personal opinion and whether they would be able to follow the law as given by the court to certain facts.

You mentioned that in your mind you thought of some circumstances where the death penalty might be appropriate. Do you realize that in the court, in a court of law, during a trial, the Court's really going to give you the ground rules for you to make your decision. It's not really just your own personal opinions. You're going to be given rules to follow.

Do you understand that?

A. Yes, I do.

Q. Are you going to be able to – let's just – and it's difficult to do, and I know lawyers are all asking you these kind of questions. But if you were told – if you were given – you were told here's a circumstance, okay, and you may consider this in order to return a death penalty. That may not be a circumstance that you personally believe, you know, on your own. If you had to make up the rules yourself, that wouldn't have been one you listed.

Would you be able nonetheless to say that's what the law provides, I'm going to use that standard and listen to that evidence?

A. Yes, I could. But I might have some reservation.

Q. Okay. Well, would the reservations be such that if you got in there and you listened to all these instructions – and, again, it's difficult to do, because we're asking you, you know, general, hypothetical questions, and none of us expects you to either know the law or the facts. You can't. The trial hasn't started.

But try and imagine a situation where you're in there. And, for instance, you said the death penalty may be appropriate in extreme circumstances. But the instructions you get you sort of think, well, I think it should be more extreme than that.

Can you, nonetheless, consider that the law allows it in this circumstance, and if you reach that determination and say to yourself well, if I were in charge and I wrote this law, maybe I would do it a little differently, but that's the law of the land and I got to consider it, would you be able to do that?

A. Yes, I would.

Q. And by the same token, when it came time to consider reasons not to impose the death penalty, to consider some other alternative, and you were told there's a number of factors you can consider and the evidence.

Now, if one of those factors you said to yourself well, that doesn't cut it with me personally, I don't believe that. Can you nonetheless sort of consider that honestly, openly and think about that and weigh that in that process?

A. Yes, I could.

Q. Do you feel like whatever reservations – you said it's a hard decision, right; you see this as a potentially hard decision to make?

A. Yes, I do.

Q. Do you feel confident when you get back in there during jury deliberations that you're going to be able, once you made the decision, once you been selected, you've heard the evidence, you got to the penalty phase, that in those circumstances, you can put aside whatever your personal judgment is and listen to the law and that evidence and do what the law and the evidence – what is the right decision based on those factors; can you do that, would you be able to, no matter which way it came out, if in your gut you thought it's not right to your own personal beliefs, would you still be able to do that?

A. Yes, I would still be able to do that.

Q. Okay. You feel confident about that?

A. Yes, I feel confident. But I haven't been in that situation just the same.

Q. It's a tough situation, and that's why you're getting the – that's why the lawyers are probing you on all these things, because it's also the kind of decision you got to make up front, because when

you're sworn to do your job as a juror, that's your way of saying, okay, I commit to this process, and I'm willing to do this because the system depends on it. Right?

A. That's right.

Q. You understand that. If someone said later I know I swore, but now I decide, no, I'm not going to follow that law, the system – we would have a problem in the system, right?

A. That's correct.

Q. And so that is really what we're probing about, and you think if push came to shove, if you were called to do that, once you swore that you would do it, you would remember that when you got back in the jury room and say to yourself, well, look, I committed, I got to follow the law, and I got to consider this evidence?

A. If I'm going to commit to this trial and go through the process, I would go all the way through to its completion and do my duty, because I feel civilly obligated, just like voting and stuff like that that I already do.

MR. FRECCERO: Thank you very much, sir.

THE COURT: Good point to adjourn until 1:30?

MR. DENVIR: Absolutely.

THE COURT: We're adjourned.

MR. DENVIR: Thank you, Your Honor.

(Luncheon recess taken.)

—oOo—

SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 13, 1997, 1:30 P.M.

—oOo—

THE COURT: Let the record reflect all participants are present. I'm going to have my deputy clerk invite the prospective jurors into the courtroom.

(The prospective jurors entered the courtroom.)

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

(The prospective jurors were sworn.)

THE COURT: Good afternoon, and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial.

The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. On the same platform next to Ms. Furstenau is my certified shorthand reporter.

I trust that you will fulfill your civic responsibility during this voir dire and questioning process. I thank you for your presence and for your anticipated cooperation. You are performing an important function in our legal system. Under the principles of our justice system, the parties in this case are entitled to a fair and impartial juror. The right would be meaningless without citizens such as yourselves making themselves available for service in a case such as this one.

The voir dire or questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answer. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will involve questioning prospective jurors individually, which will commence after I question you as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group. Those required to participate in the group questioning will receive notice of when this will occur. Our objective is to obtain a fair and impartial jury that will decide this case on the evidence that is presented to them in this courtroom and on the law that I will give them.

I have decided to do individual voir dire in part because the parties have requested it and because there has been some publicity about this case. During the individual voir dire we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case.

The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release or a lesser sentence. This determination is made at the second phase of the trial, referenced as the sentencing phase.

If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please raise your hand now.

There's no response.

The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur like any other criminal trial in federal court. The Government will present its case first. The Government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict.

The charges are not evidence. They are simply accusations, nothing more. Mr. Kaczynski is presumed to be innocent and does not have to testify or present any evidence to prove his innocence.

During the sentencing phase, additional evidence may be presented by the Government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist, and if so, whether those aggravating factors sufficiently outweigh any mitigating factor or factors found to exist, or, in the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

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

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too.

During this questioning, we will refer to you by either your randomly selected number as a juror or by your juror number rather than your name. This is because I have decided to use an anonymous jury during this case in order to protect your privacy, as I have stated to you in previous communications.

Now I will give you an instruction. I will say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone having anything to do with it until after you have been excused from service on this case.

Second, do not talk with anyone else about this case, about anyone who has anything to do with it, until the trial has ended or you have been excused as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they have no opportunity to discuss. For these reasons, you should avoid reading and listening to future news accounts during the time 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 o'clock a.m. to be brought to the courthouse. Please raise your hand if this poses a problem.

PROSPECTIVE JUROR NO. 26: (Raises hand.)

THE COURT: Okay. Juror number 26 raised her hand. I'll talk to you about that later.

I contemplate observing the holiday season as follows: we will not hold court December 24th, 25th, and 26th; nor on January 1st or 2nd. I contemplate holding court December 22nd, 23rd, 29th, 30th and the 31st. Please raise your hand if this poses a problem.

Please raise your hand if you do not understand the following. Your first duty as a juror will be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty. If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence would be presented, and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The Government may focus on certain aggravating factors, things it will argue the jury to find that 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 other lesser sentence. Does any juror not understand that?

There's no response.

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

There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions whether you agree with that law or not. Do you have any belief that will interfere with your obligation to do this? If so, indicate that fact by raising your hand.

There's no response.

We are seeking impartial jurors that are drawn from a fair cross-section of the community. I think this concept recognizes that those eligible for jury service are to be found in every stratum of society. This fact lies in the very heart of the jury system. To disregard it could be perceived as opening the door to class or distinctions which are abhorrent to the democratic ideals of trial by jury.

Therefore, although even a few of you have mentioned hardship reasons for not serving on this jury, I will probe those hardship reasons because of the fair cross-section principle that governs the various people who should be available for jury service. My task, as a judge, is to determine whether your asserted hardship excuses outweigh the important societal objective of enabling the parties to draw impartial jurors from a fair cross-section of the community.

During individual voir dire, 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.

I'll now have my deputy clerk to escort all jurors to the adjacent room except for the earliest selected juror, using the random selection process, who will be located in the witness box.

(Pause in the proceeding.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to ask you some questions. You are known in this courtroom, because of the anonymous jury concept, as juror number 24.

I recognize that you're looking right at me. I think what I'm going to do is take the podium, because it's customary for people to look at people when they're being talked to by an individual, but I want the lawyers to hear what you have to say, and if I'm at the podium, then perhaps you would use that

microphone and you would communicate with me in a way that would allow everyone to hear what you have to say.

Sir, you mentioned financial hardship as a basis of being excluded from our juror pool in response to a questionnaire. Without disclosing the nature of your business or the name of your employer, I need to probe that a little bit at this moment. But before I probe it, let me tell you some assumptions I have.

I'm assuming that it may be possible because of our trial schedule that you could still go to work at least by

2:00 o'clock and that perhaps would reduce the hardship. Can you tell me whether that's a correct or incorrect assumption?

A. That is one of the assumptions which, by the nature of my work, is really impossible to say. My business is an independent contractor. My business is one of these businesses where I – basically I have to, to some extent, tell you what I do. I run my own business as a meeting planner. I organize meetings for other companies. It's one of those things where I have periods of very intense work and then I have periods of slow work.

As a result of this, I have been in a situation where I have been unable to do any sort of advertising or any sort of about my company or anything about my company now for – ever since I've gotten the notice. So basically I'm in a situation where I am taking in no income at all except for the \$40. And I've picked up a few minor little contracts on the side.

So basically it's one of those situations – yes, theoretically it might happen, but then again I might be in the situation where if I get a big contract, I'd probably be in a situation where I'd have to say no. Since my business is fairly new, it would probably not very well to continue my business.

Q. Is it possible that you could fulfill your civic responsibility and sit as a juror in this case by making some adjustments?

A. Once again, Your Honor, it's one of those things. I'm speaking about it theoretically. I cannot predict the future. If somebody came in with a contract, a big, long, involved contract – I have been in situations where I've had to put in eighty-hour weeks, ninety-hour weeks. I've had other situations where it's really slow. I cannot make an accurate decision if it will or it won't. I couldn't do that with honesty.

THE COURT: Okay. I'm going to allow the parties to cover the hardship issue at this point, if you desire.

MR. CLEARY: Thank you.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon. My name is Robert Cleary. I'm one of the prosecutors on the case, and I'm going to follow up on some of the questions the judge just asked you.

How many employees do you have in your company?

A. You're looking at the entire company.

Q. No support help, no part-time help?

A. No, nobody.

Q. And how long have you been in business?

A. I started it just before I got the notice from the judge. I got my business license.

Q. And is that your full-time employment?

A. I'm doing – I do – right now I've been doing little temporary short-term jobs in related areas, but that is my employment; yes.

Q. And you told the judge something to the effect that you really can't predict whether the 8:00 to 1:00 schedule would help you because if a large contract comes in, that may create problems for you even if you're sitting 8:00 to 1:00; is that correct?

A. That's correct.

Q. And could you, without disclosing much about the nature of your business, tell us why that would be true, why you could not handle that large contract after 1:00 o'clock.

A. Basically it is a combination of things. I would be dealing with people potentially anywhere in the United States, so I have time zone problems. I have to deal with people all over the country by phone, Internet, or whatever.

Two, it's simply a case where I quite frequently am in a situation working under very short lead times. I have to have it out in two weeks, three weeks, and taking off between

7:00 o'clock in the morning and 2:00 o'clock in the afternoon is a fairly substantial chunk of the day, and it's the time when you get hold of people most easily.

Q. Where do you live?

A. Sacramento.

Q. That's where your business is?

A. Yes.

Q. How long would it take you to get from court to your business?

A. If I had to go the route from Cal Expo and back, it would probably be about a half hour.

Q. You mentioned that, because it was difficult to predict how this would affect your work, are there circumstances under which you could work the 8:00 to 1:00 schedule and still keep your business up and running?

A. As I say, I can't make any sort of declarative statement. I know it's – theoretically, yes, but then theoretically yes, it's also equally possible no. I mean, I cannot predict what will come in the door. By running a business, it's the nature of the beast.

Q. And you said "theoretically." That's what I want you to probe on. And I know you're predicting something that may not happen, but that's what I want to get you to tell us, what circumstances would be in place whereby you could serve on the jury.

A. If I got short-term contracts that were local, if I got things like running a meeting for, like, 40 or 50 people in Sacramento, yeah. If I end up with, you know, if – but I can't make that prediction. I'm trying to be accurate about things.

Q. Right. Now, I take it, then, long-term contracts that are not local, that's where you're going to have problems?

A. That would be a problem, and also bigger contracts. There's a big business – there's a scaling factor. The more people, it isn't arithmetic, it's more geometric. You have more people, it gets really a lot more complicated.

Q. You said you've had to shut down the marketing arm or marketing part of your business.

A. Yes, because I can't very well go out and say, "I'd like to have a contract with you," if I also have to say at the same time, "But of course, there's a possibility I might be serving on a jury and I don't know how long the case is going to last."

Q. That's affected your business?

A. Oh, definitely. I know of people who have said "we're probably going to be going to other people," and I'm going to have to get them back.

MR. CLEARY: No further questions, Your Honor. Thank you.

Thank you very much.

(Discussion off the record between Mr. Denvir and Mr. Cleary.)

MR. CLEARY: Your Honor, the parties would agree to discharge the juror.

THE COURT: I'm going to excuse you to go to the waiting room. You need not answer further questions.

(Prospective juror number 24 left the courtroom.)

(Prospective juror number 25 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Sir, I am going to ask you some questions. You are going by the juror number 25, and I want to see if I can ask you the questions from the bench here. In order for me to be able to do that, you would have to respond using the microphone and speak to the parties at the counsel table.

A. Okay.

Q. If that works, I can use this seat. If that doesn't work, I'll just change my location and move to the podium.

A. Okay.

Q. Since you answered your juror questionnaire that you received at Cal Expo, have you heard of or read about this case?

A. Yes.

Q. What have you read or heard?

A. Just some – what's on the local media.

Q. I didn't hear your response. What was your response?

A. Just what's been on the news, on the local media stations and stuff.

Q. I'm going to move to the podium.

What have you heard? That tells me the source, but what have you heard?

A. Specifically?

Q. Correct.

A. What he's charged with, mailing bombs and, you know, that stuff. And I don't know how much I've heard or whatever. I just – I haven't read anything about it. There was some things on last night on Court TV which I changed it when I seen what was on there. So I just know that he's charged with the – mailing the bombs, you know.

Q. Okay. Included in the summons material that required you to appear at Cal Expo, a message that requested that you make every effort to avoid public or private discussion about the case. Have you done that?

A. Yes.

Q. Okay. Since you answered the jury questionnaire at Cal Expo, have you discussed this case with anyone?

A. Just my wife.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. I don't believe so.

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

A. I'm pro-death penalty.

Q. And can you explain what you mean.

A. Well, I believe in certain cases that it's a necessary part of our system.

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

A. Yes.

Q. Would you follow that law?

A. Yes.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Good afternoon.

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

I wanted to talk to you a little bit – you indicated on your hardship questionnaire you remember the – I think it was either the hardship questionnaire or one of the questions about would this case be a hardship, that you had bad knees.

A. Yes. I talked to my doctor this morning and he asked, you know – I told him where I was going, and he said that I probably shouldn't serve on the jury, even though I felt that I would kind of like to because I think it would be an interesting thing to do, you know.

Q. Sure. But there's some medical reason?

A. Yes.

Q. Can you tell us a little bit about that, if you feel comfortable doing that?

A. I have one knee that there's no cartilage; it's bone on bone. I have a bad back. And my other knee is damaged as well. And so they become very uncomfortable if I have to sit for long periods.

THE COURT: I'm going to interrupt.

MS. CLARKE: Thank you, Your Honor.

THE COURT: I didn't realize that was a response that you had given in your questionnaire.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Has a doctor recommended that you not sit on a jury?

A. He told me that this morning.

Q. Go ahead. I can't hear you.

A. He said that he didn't feel that I should because of my health was what he told me. He said he would write a letter for you if that was required.

Q. Do you know enough about the condition to provide an explanation as to how the condition would interfere with your ability to serve on the jury?

A. Just a matter of comfort, I guess. I don't know.

MS. CLARKE: I think, Your Honor, he was explaining the bone-on-bone on the knees, and a bad back.

THE COURT: **Q.** Can you tell me in your own words what you mean by "matter of comfort"?

A. Well, it's just however much pain you want to put up with, to – if I sit in one spot for long periods of time, then it's difficult for me to . . . very uncomfortable.

Q. Are you taking pain medications?

A. Yes.

THE COURT: I want the parties to discuss this juror.

MS. CLARKE: Thank you, Your Honor.

MR. LAPHAM: Your Honor, may I ask a few questions?

THE COURT: Do you mind, Ms. Clarke?

MS. CLARKE: Not at all.

MR. LAPHAM: I'll be brief.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, you have pain when you sit for extended periods of time?

A. Yes.

Q. What's an extended period of time?

A. Well, probably anything longer than an hour or so.

Q. And that's pain in your back or pain in your knees or both?

A. Primarily my knees.

Q. And if you were allowed to take breaks periodically, does that alleviate the problem?

A. Yes.

THE COURT: But he's not going to be taking breaks every hour.

MR. LAPHAM: No; I was just about to ask that.

MR. LAPHAM: **Q.** Do you think if you were able to take a break every two hours, that would still be sufficient, or would you still have the pain?

A. The two hours would probably be pushing it.

Q. And if you were able to stand periodically –

A. That helps.

Q. – in place?

A. Just move around, just a little bit.

Q. And then sit back down in your chair, that would help?

Do you feel – now, are we still talking about your knees, or is that your back also?

A. Well, both. My back doesn't bother me that much just from sitting. It's standing and carrying things that bothers my back.

Q. And the pain medication you take, is that taken on an as-needed basis or do you take it every day?

A. I take it daily.

Q. Does that affect your ability to concentrate at all?

A. I don't think so.

Q. Do you have any other side effects as a result of that –

A. No.

Q. – medication? Do you feel like the circumstances I've described, taking breaks every couple of hours, standing up in place, is something you'd want to put up with or would you rather just forego the experience?

A. With the advice of my doctor, I would rather not. He seemed to indicate that he didn't feel that I should do something like that.

MR. LAPHAM: A moment, Your Honor?

(Discussion off the record between Mr. Lapham, Mr. Cleary and Mr. Freccero.)

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

THE COURT: The defense?

MS. CLARKE: Yes.

THE COURT: I hope your condition improves, sir. You're excused from responding to further questions. You can go back to the waiting room.

PROSPECTIVE JUROR NO. 25: Thanks.

(Prospective juror number 25 left the courtroom.)

(Prospective juror number 26 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to be asking you some questions. You are the 26th juror randomly selected, so I'll be referencing you as juror 26. And when you respond to my questions, although it's typical for people to do just as we are doing, looking at each other, I want you to do something that's atypical so that we can assist the parties in hearing what you have to say. I want you to talk to the parties when you respond, so your voice is amplified by the microphone there.

You raised your hand when I told you about the schedule I contemplate using for the trial in this case. You can go ahead and respond now.

A. I don't have any transportation. I'd have to use public transportation, and I don't know that it runs that early in the morning. I didn't have a chance to check the schedule.

Q. It does run early in the morning.

A. It will get me where I need to at 7:00 o'clock?

Q. Well, I shouldn't say that. Do you live within about 45 minutes of this courthouse?

A. No. Well, yeah, 45 minutes, an hour. Almost . . .

Q. Okay. What area do you live in?

A. It's near Sunrise Mall. Today it took almost an hour.

Q. Okay. There is available public transportation.

A. At that hour? Okay.

Q. So with that concern –

A. Mm-hmm.

Q. – aside? All right.

You also mentioned in response to a question in the jury questionnaire you filled out that you have a financial hardship, or you would have a financial hardship if you were required to serve on this jury. Because of the court hours that I've indicated I'm going to use, would you still have a financial hardship?

A. Yes.

Q. And can you explain why.

A. The job that I work at, we're only open till

5:00 o'clock. So by the time I got back there, it would almost be time to close up so my shift is over. I work the closing shift, 10:00 to 5:00.

Q. Do you have another member of your household that is also bringing in income?

A. My mother gets – I live with my elderly mother and she gets an annuity but beyond that, no.

Q. That wouldn't be enough for you to exist during the duration of this trial?

A. It would be touch and go. Part of the reason that I said it would be a financial hardship is that my boss would more than likely have to replace me, at least for the duration of the trial. And I don't know that I would be able to regain the number of hours that I worked at that job.

Q. So you believe you would be able to keep the job but you think that you would have a reduction of hours?

A. As a bare minimum, yes.

Q. Okay.

THE COURT: The parties may ask questions, unless you want to talk to each other first.

MR. DENVIR: Could we have a moment, Your Honor.

THE COURT: Yes.

(Discussion off the record.)

MR. DENVIR: I just have a few questions, Your Honor, if I could.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, or good afternoon. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski.

I just want to check: your employer will not pay you while you're on jury duty?

A. No. I have no kind of leave benefits.

Q. Have you checked with the employer about the jury duty in itself, not just leave or vacation? Some employers will pay for jury duty, and I wondered if you'd checked.

A. I really hadn't checked, but I seriously doubt it.

Q. But you don't know for sure.

A. No, not absolute sure.

Q. And your concern is that obviously when you're not working you don't get paid.

A. Right.

Q. And that you probably would only be able to work a few hours a day, if at all?

A. During the trial?

Q. During the trial.

A. No, during the trial, by the time I could get to my job, there wouldn't be a shift left for me to work.

Q. I see. And your shift is from 10:00 to 5:00?

A. Right.

Q. Okay. And then you're also concerned that – whether you would have a job awaiting you when you finished the trial as a juror.

A. Correct.

Q. And have you checked with your employer about that at all?

A. I discussed that briefly with my manager, and I told her the potential time allotment for the trial, and she said that yes, she probably would have to hire someone to take my place. We didn't really

discuss whether she would let that person go, as, you know, have it be a temporary thing and bring me back in. That's kind of hard to say for her at that point.

Q. Is it a concern that if you sat on a trial for three or four months and maybe had these financial problems during the trial, that would be a real problem for you in sitting as a juror, do you think?

A. Yeah. It would kind of weigh on my mind; yes.

MR. DENVIR: Thank you.

THE COURT: The Government?

MR. FRECCERO: If I could confer with counsel.

(Discussion off the record between Mr. Freccero and Mr. Denvir.)

MR. FRECCERO: I just have a few follow-up questions.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon. My name's Steve Freccero, and I'm one of the prosecutors.

THE COURT: Before you ask a question, I want to talk to the lawyers at the side of the bench.

(The following discussion was had at the bench outside the hearing of the jury.)

THE COURT: Let me ask you a question, Mr. Denvir. What is your thought about this juror?

MR. DENVIR: I think what we thought is we would suggest we do the same thing as we had with Mr. Lassley and see what the situation is. I think they have to have a job open for her. And it wasn't clear whether they would give her time off for juror duty. I think we were going to suggest what we did with juror 15. She could even call in and give the answer to it. If the position, as she says, is that she can't work during the time period, then obviously we would stipulate to it. If she would get paid for jury duty, then obviously we don't think that would be a hardship. But I don't think she had checked with her employer.

THE COURT: Government?

MR. FRECCERO: That's a fine position. If she's not going to get paid and obviously she can't get her job back, then this would be a hardship. If she is going to be paid, then that's a different story, I think.

MR. DENVIR: And I thought there was a state law that said they had to give you your job back when you came back from jury duty. We'll check.

MR. FRECCERO: I think it depends on the size of the employer.

THE COURT: I only know the laws I have to know at the moment.

MR. DENVIR: We'll check, in the meantime.

THE COURT: I will have her to check to see if her employer will pay her and have her call my deputy clerk or jury administrator with that information.

MS. CLARKE: Pay her? Or give her her job back?

THE COURT: You want to know – well, she's indicated that – oh, the same job back?

MS. CLARKE: Yeah, same job back.

THE COURT: Okay. Thank you.

(The proceeding resumed as follows in the presence and hearing of the jury.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Juror 26, I'm going to tell you everything we just discussed at the side of the bench. You probably wondered why we discussed it at the side of the bench if we're going to tell you the information. I didn't know what the parties were going to tell me.

I'm going to state what I believe we would like to see occur and if anyone believes what I state should be corrected, you have leave to do so.

We want you to check with your employer to see if your employer will pay you during the time that you are on this jury. That's one thing we would like to find out. The other thing we would like to find out is whether your employer will give you your job, the job you have right now, if you have to leave that job temporarily in order to fulfill your civic responsibilities to serve as a juror on this case.

You are giving me the impression by your reaction that the answer to both of those questions will be no.

A. The second one is a possibility. I could probably – I work well with these people.

Q. Okay.

A. We have no problems. I don't foresee them paying me.

Q. I don't mind calling your employer if you think that would help.

A. The actual owner I don't believe is in town at the moment, but I can give you my manager's name and number and you can call her right up.

Q. I want you to give that to my deputy clerk.

A. Okay.

Q. Then we want you to give us the answers to those questions.

A. Okay.

Q. I want you to give the information to my deputy clerk. She will tell you how you can reach her.

A. Okay.

Q. And until we receive answers to those questions, we're not going to ask you more questions.

A. Okay.

Q. Okay. Thank you.

A. Thank you.

(Prospective juror number 26 left the courtroom.)

THE COURT: Lawyers, I probably will call her employer. You don't have any problems with that, do you?

MR. DENVIR: Absolutely not.

MR. LAPHAM: (Shakes head from side to side.)

(Prospective juror number 29 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Sir, you were randomly selected as the 29th juror, so I'm going to refer to you as juror 29.

A. Okay.

Q. I'm going to ask you first about a response you gave to a jury questionnaire. I'm going to move down to the podium to ask you questions so that I can be assured that your voice is amplified and the parties can hear your responses.

You mentioned in response to a question that you should be excluded from service on this jury because of financial hardship reasons. I'm hopeful that the trial schedule I have contemplated will alleviate those concerns. Has it?

A. Yes.

Q. Okay. So that's no longer a concern you have?

A. No.

Q. Okay. Since you answered your jury questionnaire which occurred when you went to Cal Expo, have you heard of or read about this case?

A. Not much.

Q. Okay. What's included in the answer?

A. Just a slight – stuff that was found, where he was found, in his cabin, that's basically about it.

Q. Move a little closer to the microphone or pull it closer to you.

A. Okay. (Complies.) I just heard that they found some writings in his cabin where he was living in Montana and basically nothing much more than that.

Q. What was the source of that information?

A. The news.

Q. What news?

A. Channel 3.

Q. Since you answered your juror questionnaire at Cal Expo, have you discussed this case with anyone?

A. No.

Q. All right. Let's go back to the information that you received from television. Was it possible for you to have avoided receiving that information?

A. Yes.

Q. Why didn't you?

A. It just happened to be on when I was in the room. I just happened to see something.

Q. You understand that jurors in this case are expected to make every effort to avoid public or private discussion about this case and receiving any information about the case except for what they receive in this courtroom?

A. Yes.

Q. Okay. Will you do that, your very best to best to ensure that you avoid receiving any information except what you receive in the courtroom?

A. Yes.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No.

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

A. No.

Q. Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

A. Yes.

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

A. Yes.

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

A. Yes.

Q. I don't know what the "yes" means. Are you a proponent or an opponent of the death penalty?

A. Yes. I believe in the death penalty.

Q. Can you briefly tell me your views on the death penalty.

A. As far as?

Q. What are they?

A. My views on the death penalty?

Q. Right.

A. Oh, I think that it might be effective if it was actually enforced a little better than what it actually is, because people who do get the death penalty usually sit in prison for long periods of time. So in its present state I don't really feel that it is too effective. But I think that it might be if it was more to the fact that that's really what happens, not 10 or 15 or 20 years later.

Q. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence and the absence of aggravating evidence?

A. No.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Good afternoon.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

A. Yes?

Q. So no question, huh?

I was a little concerned – you indicated on your hardship questionnaire that there could be a financial hardship because you were the sole provider.

A. Yes.

Q. And apparently the hours have taken care of that for you?

A. That, and my work rules pay, yes [sic].

Q. They'll accommodate you?

A. Yes.

Q. You also indicated your wife has a serious illness?

A. Yes.

MS. CLARKE: And, Your Honor, could the juror have his questionnaire?

THE COURT: Yes. Well, I can give it to him.

PROSPECTIVE JUROR NO. 29: (Accepts document.)

BY MS. CLARKE: Q. If you could look at page 35, question 136. And there was a question about whether you'd have any specific problems at home or at work that would affect your ability to concentrate, and you indicated that your wife's illness could do that?

A. As far as my ability to concentrate on what's going on? No.

Q. Well, I just was looking at the answer, and I wanted to explore it a little further with you. If you could look at 136.

A. I'm looking at it; yes.

Q. Do you have any problems at home or at work that might interfere with your ability to concentrate on the case? And you answered yes. And it was a "please explain" – your wife has fibromyalgia. Was that out of concern with taking care of her while you were here?

A. No.

Q. Was that because you'd be thinking about her? I'm just trying to inquire what the basis for the answer was.

A. No, I wouldn't be thinking about that if I was here; no.

Q. Are you worried about somebody taking care of her? Do you have some responsibilities for her that no one else can take care of?

A. Well, some days she just has a hard time with the kids and stuff, and I'm right at home most of the time.

Q. You're not home, or you are?

A. I am.

Q. You are home. And able to help her?

A. Three or four days out of every week I'm home; yes.

Q. So I guess what I'm asking is, would the fact you'd be tied up here from 7:00 to 1:30 or 2:00 every day, would that cause you some anxiety about helping her?

A. No.

Q. Okay. That's not a problem for you?

A. No. It's short hours.

Q. You told the judge that you had read about the case or knew some about the case from media accounts; right?

A. Yes.

Q. And basically was there – were writings found in Mr. Kaczynski's cabin and where he was arrested?

A. Yes.

Q. Do you recall the content of those writings according to the press reports?

A. No, I don't.

Q. You indicated in your questionnaire that you had some awareness of where Mr. Kaczynski lived.

A. Yes.

Q. Could you tell us how you learned about that.

A. From news.

Q. And what did you learn from the news?

A. Just aware that he was arrested in the cabin in Montana. That's all I know.

Q. And you were aware that certain things were found in the cabin. Could you tell us what else was found in the cabin other than writings?

A. No.

Q. Did you have any sense of the news reports about what else they said they found in the cabin?

A. No.

Q. You also indicated in your questionnaire that you were aware that there was evidence that Mr. Kaczynski had taken bus trips to various cities where the bombings occurred.

A. Yes.

Q. Where did you learn about that?

A. The news media. TV.

Q. And do you remember what more you learned about that from the news media?

A. No, just that he had been in the general vicinity of – in the same towns. I don't know whether it was at the same time. I have no idea.

Q. Do you remember how many of the cities happened to correspond with bus trips?

A. No.

Q. And I also think that you said in the questionnaire that there were lots of evidence found in the cabin. I don't know whether I'm quoting you or not. Do you recall that?

A. No.

Q. You want to look, see if that will help you remember?

A. (Complies.) Do you know what page?

Q. I'm looking – page 28. You see that in the middle of the page, question 109?

A. (Examines document.) Basically all I said was he lived in a cabin and took rides to cities of bombings and evidence was found in his cabin, that's basically all I know.

Q. Found lots of evidence in his cabin, do you know?

A. Types of evidence? No.

Q. Right.

A. Besides the writing, no. I'm not – I don't pay that much attention.

Q. You're just aware of a general sense of lots of evidence?

A. Yes.

Q. Has anybody talked to you about what their impressions were about what was found in the cabin?

A. No.

Q. No family member or friends or –

A. No.

Q. And you're also aware, according to question number 109, that Mr. Kaczynski was turned in by his brother?

A. Yes, I am.

Q. Did you get that from that same series of news accounts?

A. Yes.

Q. Do you remember how many series of news accounts there were?

A. That I've seen?

Q. Right. About how many?

A. Maybe three or four.

Q. Did they seem to repeat the same information?

A. Yes.

Q. Or did you learn new information as you went along?

A. Seemed to repeat the same information.

Q. And was that fairly recently for you or was that – when was that in the context of this case?

A. Four, five months ago, probably.

Q. And that was out of The Sacramento Bee?

A. I don't read the newspaper. It would be off the TV, TV news.

Q. I see. I believe there are a couple of questions that addressed what you might have heard about

Mr. Kaczynski if you could look at page 30.

A. (Complies.)

Q. With me? Question 113.

A. Basically what I said on the last question the only thing that's different is that he was an ex-professor.

Q. Would that have been some part of the same news accounts or some comment to you?

A. Same.

Q. Same series of –

A. Yes.

Q. Does that trigger your mind that there was maybe anything else that you heard on the TV about

Mr. Kaczynski?

A. No.

Q. Anything recently? I know that you're concerned about turning the TV off if you hear stories, but have you heard anything recently that just captured your mind and then you flipped the channels?

A. No.

Q. If you – I think when you got your jury summons, you said, "Just my luck." That was your thought. Can you tell us –

A. I've been a registered voter since I was 18, never been called to jury duty in my life, so yeah, it's just my luck.

Q. Was that kind of a "that's too bad I got it" or "that's too good I got it" or should I guess?

A. (Laughs.)

Q. I think I got it.

There are a couple of questions on the questionnaire about mental health. Do you remember those?

Page –

A. Oh, vaguely. There was a lot of questions.

Q. Page 24.

Are you with me in questions 94 and 95?

A. Which one? 95?

Q. Well, 94 first, your comment about mental health professionals, it's their jobs. What do you mean?

A. That's their profession, it's their job.

Q. Do you see a role for mental health professionals in our world?

A. Most definitely. Yes.

Q. And can you tell us what kind of a role?

A. Help people that have problems with their mental health; yes.

Q. But do you see that as a legitimate role?

A. Yes, it's a legitimate job; yes.

Q. And when you have no opinion about mental health professionals who testify in court, is that because you've had no experience with that or not been aware of cases where that's happened?

A. That's their job. Why should I have an opinion about somebody's job?

Q. Well, most folks do have some opinions about lots of things.

A. No. I have no opinion about them testifying in court. That's part of their job. If they get called into court, they have to testify.

Q. Do you see anything particularly reliable or unreliable about the testimony of mental health professionals?

A. All depends on the person.

Q. So you'd sort of judge credibility based on how you saw the person testify?

A. Somewhat, yes.

Q. I have – I'm a little confused about the source of your information. If we can go back to it just for a second, you indicated you don't read the newspapers or you do read the newspapers?

A. No, I don't. I won't buy a newspaper usually except for Sunday when the ads come out.

Q. If I could ask you at page 28, question 109, have you heard about this case in the newspaper, and you indicate "yes"?

A. Yeah. I've seen it on the headlines but I've never really read anything about it in the newspapers. The newspaper's laying everywhere, but I don't really read the newspaper.

Q. Can you tell us what headlines you remember.

A. Just having to do with the Unabomber, that's basically all I can remember. It's just basically the captions. I didn't pay that much attention.

Q. And how recent would that have been?

A. Not too recently.

Q. Back about the same –

A. Yeah. Months ago.

Q. Could I take just a moment to talk with you about your views on the death penalty.

A. Yes.

Q. You indicated – if I could take you to question number 108. It's at page 28.

A. Okay.

Q. And it's a check-off question. And it says where one person intentionally kills another person, you marked that the death penalty is always justified. Is that right?

A. It should be, yes.

Q. Is that how you feel about when the death penalty should apply?

A. Yes.

Q. Is when there's an intentional killing of another human being?

A. Yes.

Q. Can you think of any circumstance when the death penalty should not apply if there is an intentional killing?

A. Self-defense.

Q. If there's self-defense, then it wouldn't be an intentional killing; it would be a defense to the crime itself?

A. If you intentionally go out to kill somebody, you should get the death penalty. If it's premeditated and you sit around and think about and plan it, yes, you should.

Q. So it would be very hard for you, if you sat on a jury where there was a finding of an intentional killing, it would be very hard for you to consider any penalty other than a sentence of death?

A. Depending on the evidence.

Q. And when you talk about depending on the evidence, are you thinking about self-defense?

A. It could be. Could be other circumstances. I have no way of knowing.

Q. Would it always be circumstances of the crime itself that you'd be looking at?

A. The details of the crime and what caused it and – yeah. Just in general, everything about it.

Q. There would be one way to get to a decision in a capital case about the penalty. And that would be if you found that the person – the jury, the entire jury found that there was an intentional killing of another human being, okay?

A. Mm-hmm.

Q. So before you're even thinking about the penalty, you've made the determination that there was no justification, no excuse, no self-defense, that there was an intentional, premeditated, deliberated killing of another human being. Okay? Are you with me?

A. Mmm.

Q. Then what I'm hearing you say is that the only appropriate sentence for that conduct would be death?

A. I can't say that because I don't know the evidence. You're making – you're making something up and you're not giving me any evidence or anything, so how would I know?

Q. Right. I'm giving you the facts.

A. No, you're giving me this little narrow thing I'm supposed to shoot for, and that's not possible.

Q. Okay. Could you tell me what you want to hear about that would make a difference to you in deciding the sentence?

A. I've never been in that position, so how would I know?

Q. There was a – if you turn to the page before, at the bottom of page 27, you see the last one – a person's background does not matter when it comes to determining whether or not he should be sentenced to death for a murder? You see that one?

A. Yes, I do.

Q. And you marked "strongly agree"?

A. Yes, I do.

Q. Do I take it from that that it's your opinion – and it's your opinion that I'm interested in mostly, not, you know, there is no right or wrong –

A. I understand.

Q. – opinion here. Is it your opinion, then, that you can only look to the circumstances of the crime and not the background of the criminal in determining the sentence? Do you see the distinction that I'm trying to make for you?

A. Yeah, I think I do. It all depends on the evidence to me. A lot of people have bad backgrounds and make something out of their life. Just because you have a bad background, had a bad childhood doesn't mean you're going to be a killer or murderer. I mean, there's good people who are too.

Q. You're the only one who knows how you feel, but knowing how you feel about the death penalty for a deliberate, premeditated, intentional murder, knowing how you feel –

A. Yes.

Q. – would it be difficult for you to consider evidence such as psychological evidence in –

A. No.

Q. – determining how you would consider psychological evidence if you feel like somebody's background is not really relevant?

A. You're talking about mental background. You're talking – if you're talking like documented – doctor, psychiatrist, yes, this person has a mental problem, has ever since he has been in childhood, yes. This is one thing.

Q. Now, this is a psychological or mental evidence that has nothing to do with whether or not the person is guilty; right?

A. Right.

Q. And then what you're telling me is that it would have something to do?

A. With my opinion and my judgment, yes. Anything brought before me would.

Q. So when you answered at the bottom of page 27 that you strongly agreed that a person's background didn't matter in deciding –

A. Background to me doesn't mean that they have a mental health problem. Background to me means the way they were raised, the way they were treated. That's background to me.

Q. Mm-hmm. I understand.

A. You understand?

Q. Yes. Would it make a difference to you that a person could do well in prison in determining whether the sentence should be life or death?

PROSPECTIVE JUROR NO. 29: Excuse me?

MR. FRECCERO: Government objects to fact-specific –

PROSPECTIVE JUROR NO. 29: Do well in prison?

THE COURT: Just a moment, sir. I've got to hear the objection so I can respond.

MR. FRECCERO: The Government objects to voir dire on specific factors or circumstances that may or may not be used in a potential penalty phase. As we understand the "for cause" challenges the law sets forth, it is opinions that would interfere or substantially impair the ability of the person to carry out whatever the law and the instructions of the Court is, not an opportunity to test certain theories or certain factors back and forth.

THE COURT: You've been questioning now for almost 20 minutes.

MS. CLARKE: That's summing it up for me, Your Honor.

THE COURT: But I think the Government's correct in the objection.

MS. CLARKE: May I complete with one final question?

THE COURT: Yes.

MS. CLARKE: Q. From what you know about the case, because you've read some about the case, and I understand that's not the evidence before you, but from what you know about reading or headlines or hearing about it on the TV, do you have an opinion as to the appropriate sentence for the Unabomber?

A. You can't believe everything you see on TV, and I don't. So no, I don't.

MS. CLARKE: Thank you. No further questions.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon, sir. My name is Steve Freccero. I'm one of the prosecutors in this case. I'd like to ask you a follow-up on a few questions.

Just a moment ago you said you can't believe everything you see on TV. Do you realize that in a trial proceeding, if you're called as a juror, you've got to take an oath, you've got to swear that the only decision you'll make is based on evidence here presented in court. Do you realize that?

A. Yes, I do.

Q. Do you feel that no matter what you might have heard, whatever, eight months ago or a headline or a couple of news stories, what counts is evidence that's actually presented in court?

A. No, I don't.

Q. Pardon me?

A. No.

Q. "No"?

A. I wouldn't consider that as being evidence, what I've seen on the news.

Q. All right.

A. Because that's people's opinions.

Q. So would you be able to, if the Court told you put whatever you heard before this trial starts, you got to put that aside because what counts is here in court, could you do that?

A. Yes.

Q. You realize that when we are talking about whether a particular penalty, whether it's the death penalty or life imprisonment or some lesser penalty, that's something that's only decided if a jury unanimously finds that the charges against the defendant are actually proven beyond a reasonable doubt? Do you realize that?

A. Yes.

Q. So you don't even get to that, the issue of punishment unless you make your decision along with your fellow jurors unanimously that the charges had been proven beyond a reasonable doubt.

A. This is true.

Q. Okay. Any problem with you being able to do that? Do you think you'd be able to do that?

A. Yes, I do.

Q. Now, a moment ago you were telling us about opinions, your opinions about the death penalty. And you were asked about, you know, what circumstances, a number of things. What circumstances

might you consider, and when would it be justified and when wouldn't it be justified. The issue is going to be whether the law authorizes it for certain acts. You realize that?

A. I realize that.

Q. So even if you think the death penalty would be appropriate, if the law is given to you by the Court, doesn't authorize it, would you still be voting for the death penalty in that case?

A. No.

Q. You're sure about that?

A. Yes.

Q. Well, what about when – you know, we've used a lot of words here – "background" and "mitigation" – the point is, if we got to that stage, a penalty phase, you would be given instructions, you would be told that there are certain factors you can consider, given this word "aggravating factors," and then there's these other categories of factors, they call them "mitigating factors." And you're supposed to consider them and weigh them together. Now, if you personally, if you personally didn't feel that one of these mitigating factors were significant, just personally if you had to write the law you wouldn't have done it that way but if you're told by the Court you've got to go back there and consider that, would you be able to do that?

A. Yes.

Q. Would you be able to give, to give the Government a fair hearing, listen to what we, what our position is, consider it with the law? You'd be able to do that fairly?

A. Yes.

Q. And by the same token, whatever other factors, what we're generally calling mitigating factors, you'd be able to set aside whatever your own personal feelings are and say look, I've been told I've got to consider this stuff, I'm going to look at it honestly and consider it. Do you think you'd be able to do that?

A. Yes.

Q. If you were on a jury that reached a decision, a decision of guilt, you've already reached that, you're not thinking about punishment, you've considered the evidence, you've reached a decision of guilt as to a charge and that means that you've already found beyond a reasonable doubt that that person intentionally took another person's life, now you have the penalty phase. Are you, going into that penalty phase, are you just saying automatically "I'm going to vote for the death penalty"?

A. No.

Q. Are you going to be able to listen to whatever the evidence is to come up with your final decision?

A. Yes.

Q. You feel confident about that?

A. Yes.

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

PROSPECTIVE JUROR NO. 29: Thank you.

THE COURT: I'd like my deputy clerk to please take the juror to the waiting room and bring in the next juror.

(Prospective juror number 29 left the courtroom.)

(Prospective juror number 30 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You were the 30th randomly selected juror, so I'm going to be referring to you as juror number 30.

Although I'm asking you questions in somewhat close proximity, I want you to respond to my questions as though one of the lawyers asked you a question, because there's a microphone there that will amplify your voice and that will ensure that everyone hears what you have to say.

Since you answered your jury questionnaire at Cal Expo, have you heard of or read about this case?

A. No. I haven't.

Q. Since you answered your jury questionnaire at Cal Expo, have you discussed this case with anyone?

A. No.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No, it hasn't.

Q. Do you think you could be a fair and impartial juror in this case?

A. Yes, I think so.

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

A. I wouldn't say I know enough about the case to form an opinion about the case yet.

Q. Do you have your assurance that Mr. Kaczynski will start the trial on a clean slate?

A. "Clean slate"?

Q. I'm going to rephrase it. Do I have your assurance that nothing you heard about this case outside this courtroom will interfere in your judgment whatsoever about whether Mr. Kaczynski is guilty or not guilty of the charges?

A. Yes. You have my assurance.

Q. And that the evidence that you consider as to his guilt or innocence will be evidence that you receive here in this courtroom only?

A. Yes.

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

A. Yes. Yes.

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

A. Neither.

Q. What are your views on the death penalty?

A. I guess I've never really thought about it, because I've never really had to decide one way or the other. I . . . I'm not for it or against it. I'm not. I don't know – I don't know what I'd do if that was put to me where I actually had to make a decision, it was something I had to be faced with when the time came. I don't know.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon.

A. Hi.

Q. My name is Robert Cleary. I'm one of the prosecutors in the case. I'm going to be asking you several questions, mostly to just follow up on the information you provided in your questionnaire.

You indicated to us that you work, and I don't want to disclose where you work, but you work as a clerk; correct?

A. Mm-hmm.

Q. Are you going to get paid during the course of your jury service?

A. Yes.

Q. So that's not a problem at all?

A. No.

Q. Even if the trial goes for several months, that's all taken care of?

A. Yes.

Q. You also indicated in your questionnaire that you have made acquaintance in the past with a number of criminal defense attorneys; is that correct?

A. Yes.

Q. In the course of those friendships and acquaintances did you have occasion to discuss the work that the criminal defense attorneys do?

A. Yes.

Q. Are you familiar with the types of cases they work on?

A. Yes.

Q. You're familiar with their views, your defense attorney friends' views of the prosecutors and the agents and police officers that would oppose them in the cases?

A. No. Not that way, no.

Q. Is there anything about the knowledge that you gained from having these acquaintances as criminal defense attorneys that would affect your view of either side, of either the defense attorneys in this case or the Government, prosecuting attorneys?

A. Not in, no, not as a prosecutor or a defense attorney, no. Just in – attorneys in general.

Q. Okay. What do you mean by that? That's a loaded question.

THE COURT: Let me have you move the microphone a little closer when you respond to the question.

PROSPECTIVE JUROR NO. 30: (Complies.) Well, it was more of a – it's more like a game to them. It was at least to these men that I knew.

MR. CLEARY: Q. I'm going to hand you a copy of your questionnaire. In particular I'm going to direct your attention to page 23, question 92 and ask you to just read that to yourself for a moment, please.

A. (Complies.)

Q. Could you explain to us in a little more detail what your answer meant and it relates to how your religious views might influence you in this case?

A. I felt that through common sense and prayer and just knowing in your heart what's right from what you know, that that kind of decision should be made as far as what you know what I would feel about doing in a certain – in a certain case.

Q. Does your religious or philosophical or spiritual views dictate to you in any ways whether the death penalty is a good thing or a bad thing?

A. No.

Q. Do those same views have an impact on you in terms of what you think about the death penalty?

A. No, they don't. No.

Q. If you turn to question 103 on page 26 and just read your answer there for a moment.

A. (Complies.)

Q. And then turn over two pages to page 28. And read your answer to question 108.

A. (Complies.) Mm-hmm.

Q. You seem to be suggesting there, and correct me if I am wrong, that you do believe the death penalty is justified in some cases but not justified in others; is that correct?

A. May or may not be, yeah.

Q. What do you mean by that, "may or may not be"?

A. It would just depend on the case. I really wouldn't know, because I haven't been involved in such a case. Like I said, I couldn't tell you unless I knew all the facts, unless I really felt this was the thing to do.

Q. I'm not asking you, again, about what specific facts would control your decision. All I'm asking is the general question of – and just following up on what you said in the questionnaire, the general question of do you feel that in some instances the death penalty is warranted and in other instances the death penalty is not warranted?

A. It's possible. I can't say a yes or no answer on that – it's possible. I can't give you a yes or no answer on that. It's hazy. I've never had to make that decision.

Q. Is it possible, therefore, that there would be – that you may decide when you do have to make the decision, that there are no circumstances under which the death penalty is appropriate?

A. And I could go the opposite way too.

Q. So as you sit here today, there is the possibility that if you served on the jury, you could decide – and these are just possibilities in your mind – you could decide, when you get asked the final question, that under no circumstances is the death penalty appropriate? Is that correct?

A. (Pause.) You're asking for a yes or no answer; right? I suppose that's possible.

Q. That's a possibility? That's all I'm trying to get from you. I'm trying to understand what your views are on the death penalty. Is it also possible that when the day comes when you absolutely have to answer that question, that you would decide that under all cases in which there is a murder, an intentional killing of a person, that the death penalty is warranted?

A. No.

Q. That you would never do?

A. I don't think so.

Q. But the other extreme is true. You may, when the time comes, reach the conclusion that under all circumstances the death penalty would not be warranted?

A. It's possible, yeah.

Q. This, I take it, is an issue you've not given a whole lot of thought to.

A. I don't like to think about it.

Q. And I apologize for making you think about it a little more than you might want to. Turn to page 26, please, question 104 and just read that to yourself. I'll ask you a couple of questions to follow up on it.

A. (Complies.) Okay.

Q. You mentioned in your answer that you have a conscience and an opinion. Do you see that at the bottom of your answer?

A. Mm-hmm.

Q. What opinion were you referring to?

A. We all form opinions. But it's – what does it teach us about the death penalty? Okay, you're asking what opinion does it have according to the death penalty. All I was referring to is that, you know, each circumstance is different. If I was to study something and decide – say, I was doing this for a college class and I was to decide does this deserve the death penalty or not, yeah, I would form an opinion. But I haven't.

Q. So the reference to an opinion in question 104, you weren't referring to a specific opinion that you have. You were just saying in general people have opinions?

A. Which one are you – wait a minute.

Q. Question 104. You said, "I do have a conscience, an opinion." And what I'm trying to get from you is, what opinion were you referring to? Did you have a particular opinion in mind you were referring to when you answered that question 104?

A. Not a particular opinion, no. More, you know, a conscientious one.

Q. In what respect?

A. Of which way I should – which way I should go, whether it should be yes or no.

Q. And were you referring to a particular thing or your view on the death penalty, for example?

A. I was talking about the death penalty, yes.

Q. Okay. And that's why I'm asking this question and spending some time on this.

A. Okay.

Q. You seem to be suggesting in your questionnaire, and in your answers to me now, that you did have an opinion at the time you filled out the questionnaire you did have an opinion on the death penalty?

A. No.

Q. That's not what you were saying here?

A. No. No. (Pause.) No, that doesn't say that.

Q. What does this mean? What does this say to you?

A. It doesn't say that to me. No, it just says each circumstance is different and I don't judge. I'm not a judge. But I do have a conscience and an opinion and a duty to follow the laws of the country to the best of my ability.

Q. And when you said you have an opinion, what opinion were you referring to?

A. That would be the one that I would form if I was on the jury.

Q. If you had to form an opinion?

A. Yes. Yes.

Q. At the bottom of that page, in response to question 105, you say that the death penalty you hope would cut down on capital crime but you doubt it. By saying that, did you mean that you doubted that the death penalty would have any effect?

A. (Nods head up and down.) Mm-hmm.

Q. Do you still feel that way?

A. Mm-hmm. We have capital punishment and we still have a lot of crimes.

Q. Take a look at question 107, which is on the next page. 107 is a multipart question. And the first three parts ask you about certain events. If a murder takes place, if two murders take place, if there's an act of terrorism, should the person that did that, committed that act, get the death penalty? And in each instance you checked "strongly disagree." What do you mean by that?

A. I don't know the case. I don't know anything about it except that this person committed a murder and this other person murdered two more people and the other one committed an act of terrorism where someone died, and the other one – it's about the person's background affecting whether he should get the death penalty. You don't know the circumstances.

Q. Okay. Why, then – how come you, if you didn't know the facts and circumstances, and, you know, we're not giving you many facts in the question, how can you strongly disagree with the proposition that someone that committed that act should get the death penalty?

MR. DENVIR: Your Honor, that is not a correct statement of the question. It doesn't say someone who committed. It says anyone who committed. I don't want him confusing the juror.

MR. CLEARY: I'm not sure I understand the difference between the two.

THE COURT: Counsel is indicating that you haven't correctly asked the question that's in the questionnaire. I don't know if you have or not. Can you rephrase the question to make sure.

MR. CLEARY: Q. I'll just read it. The question says, "Anyone who plans and commits a murder should get the death penalty. Anyone who deliberately murders two people. Anyone who deliberately commits an act of terrorism in which someone dies should get the death penalty." And you've answered that you strongly disagree, and you've pointed out correctly that you don't know the facts and circumstances because they're not provided to you.

And my question to you was, because you don't know the facts and circumstances, how come you strongly disagreed with the proposition that that person, that "anyone" should strongly get the death penalty?

A. Because I'm being asked to give an opinion about something I know nothing about.

Q. And by answering "strongly disagree," you don't think you were rendering an opinion, then?

A. I don't – I'm not – yes. I'm not rendering an opinion, because I strongly disagree about the question. I strongly disagree that that should happen, because I don't know anything.

Q. Okay.

A. I'm not qualified to say that that should be, because I don't know.

Q. And it may be that, based on what you told us earlier, that if you are forced to render an opinion at some point and you do have all the facts and circumstances, that under no facts and circumstances would you be able to vote for the death penalty; is that correct?

A. No, I didn't say that.

Q. What did you say about that?

A. I said that I would have to choose. I would have to choose from the way – from the information and from what I feel.

Q. I believe when I first started questioning you, you said that you had not formed an opinion?

A. Right.

Q. And that it would be possible for you to, at the end of the day when you have to make the final decision, to vote against the death penalty. And when I asked you, I believe, about could there be a set of circumstances under which you would vote for the death penalty, I think you said quite properly, well, you don't know because you've never been forced to make that decision.

A. Right.

Q. Am I correct on what you said so far?

A. Right.

Q. And then I believe I followed up and said, since you don't know, is it possible that once you have all the facts and circumstances and are finally forced to make that most difficult decision, that you will finally conclude that there are no facts and circumstances under which you could vote for the death penalty?

A. I – no, that's not true. No. There are – of course it would – it would depend on the case. It would really depend on the case before I would say yeah, I want the death penalty.

Q. I'm sorry?

A. Before I would say yes, this one deserves the death penalty.

THE COURT: That microphone doesn't amplify.

THE WITNESS: It's the circumstances. It would be –

MR. CLEARY: Q. And what sort of circumstances?

A. It would take a lot of information.

Q. Such as?

A. A trial. And hearing all of the information that you do hear during a trial.

Q. What if we had a trial in which you found that the person, the defendant, the person on trial, committed – let's take the two middle permutations, the two middle parts of question 107 – deliberately murdered two or more people and committed an act of terrorism in which someone died, and you weren't presented with any more facts. You found out that there were these multiple murders; there was an act of terrorism. In that circumstance – and let me add one other fact. The person planned, substantial planning and deliberation brought the defendant to commit these crimes. Are you with me so far?

A. Yeah.

Q. Could you vote for the death penalty in that case?

A. I'd have to know a heck of a lot more to vote.

Q. But if you had no other facts?

A. I couldn't – then I couldn't know.

Q. Could not vote for the death penalty?

A. No, because I wouldn't know.

Q. I'm sorry?

A. No, because I wouldn't know anything about it. How could I base an opinion on something I don't know anything about?

Q. Okay. But I'm telling you that's what you know. Those are the things you know.

A. No, I couldn't do it then.

Q. On the last part of that question 107 at the bottom of page 27, you say, in response to the question a person's background does not matter when it comes to whether or not he could be sentenced to death for murder, and you strongly agreed with that. What did you mean by that?

A. Yeah. Just because somebody, somebody who is poor or wasn't brought up well or is from another country, another race, whatever, that shouldn't matter over, say, somebody who's had a lot of money or a politician that is well liked. It shouldn't matter.

Q. And you would treat both those people the same –

A. I sure would.

Q. – in deciding whether there should be a death penalty or not?

A. I sure would.

Q. Do you think, when the time comes for you to make the decision to impose the death penalty or not, that you would have some hesitation, some serious hesitation about voting the death penalty, voting for the death penalty?

A. (Pause.) Once I knew I wanted to do it, I would do it.

Q. I'm sorry?

A. Once I knew which way that I felt it should go, I would do it. I'm sure it would take thinking – you know, it would take some time and deliberation and it would take talking with the jurors, but, you know, once I knew what I wanted, I would vote for what I knew – what I felt was right.

Q. And are there circumstances, as you sit here today, are there circumstances under which you will feel comfortable and that it is warranted for you to vote the death penalty?

A. Probably.

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

THE COURT: Yes.

(Discussion off the record between Mr. Cleary and Mr. Freccero.)

MR. CLEARY: Just a couple of follow-up questions, Your Honor.

MR. CLEARY: **Q.** If, when you finally got to the point where you have to make the decision as to the death penalty and is it appropriate for a particular defendant, if you believed that certain circumstances, certain factors are irrelevant, that they shouldn't weigh on – like, background for example, you think that should not relate to the ultimate decision you have to make, and the Court instructed you that you must consider those factors, even though you think you shouldn't, will you be able to do that? Will you be able to set aside your own personal views, and follow the law?

A. Well, you're making it sound like their position in life might have some bearing on that case. If it did, yeah. Like I say, if those become a circumstance of what caused or, you know, what was what happened to cause the reason this person is here on trial, then, yeah.

Q. But what if you didn't believe it caused the person to be a defendant on trial? Your own personal belief was that fact is irrelevant; it has nothing to do with why we're here, has nothing to do with the decision we have to make, sentence the person to life or death. That's your own view. Are you with me so far?

A. Right.

Q. And the Court told you that you have to consider those factors, that they are, as a matter of law, factors you have to consider.

A. As a matter of law?

Q. Yeah. Now, you understand the question so far?

A. Yeah.

Q. Would you, in that circumstance, be able to set aside your own personal convictions that this factor or factors are irrelevant and have no place in the courtroom, would you be able to set those aside, and your views, and evaluate the factor and factors because the law requires you to do so?

A. I'm not sure I understand why you're asking me this, but I would think that it would be your job to convince me.

Q. Okay. I'm not asking about the lawyers' roles here.

A. I mean, I would have to be convinced that that was a reason, that there was a reason that I shouldn't let that factor into my decision.

Q. Okay. And if you were not so convinced, if you personally were not convinced that this background information was a factor that you should consider in voting for or against the death penalty, and the Court told you as a matter of law that is a factor, you are saying that – correct me if I am wrong – you are saying that it would be very difficult for you to put your own personal views aside, your personal conviction aside?

MR. DENVIR: Your Honor, I don't believe Mr. Cleary is stating the law correctly. First of all, he's badgering the juror, and the other thing is he's misleading her on –

PROSPECTIVE JUROR NO. 30: Because I would never be told – I would never be told something like that.

THE COURT: Don't respond.

Overruled.

PROSPECTIVE JUROR NO. 30: I don't get it.

MR. CLEARY: You're having a little trouble with my question?

THE WITNESS: Yeah.

MR. CLEARY: Let me try it again.

THE COURT: I'm going to try it.

He is trying to determine if you are going to ignore the law that I instruct you to follow and, in place of that law, use your own personal beliefs about what you think is right or wrong.

PROSPECTIVE JUROR NO. 30: Over the law?

THE COURT: Right.

PROSPECTIVE JUROR NO. 30: No, I obey the law. I try to.

MR. CLEARY: Q. And when you say you'll "try to" –

PROSPECTIVE JUROR NO. 30: No, I do. I'm kidding. I just got a speeding ticket on my way here, so I was joking.

MR. CLEARY: Okay. Thank you.

THE COURT: You don't have to commence questioning now if you want me to take a break.

MR. DENVIR: We'd like to take one.

THE COURT: We have to take one at some point in time. This is probably as good as any other time. We'll be in recess until 3:25.

(A recess was taken.)

THE COURT: Let the record reflect that all participants are present. My deputy clerk is going to have the prospective juror to return to the witness stand.

I think you were about to commence your examination, Mr. Denvir.

MR. DENVIR: I was, your Honor.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon. My name is Quin Denvir, and I'm one of the attorneys for Mr. Kaczynski. Let me ask you, you said that based on your experience with some defense lawyers that you thought that those lawyers were playing a game.

A. No, no. It's kind of all a game. In the end it's all a game. Sort of like we won, you won.

Q. But you're not going to assume that the defense lawyers in this case treat it as a game or that the prosecutors treat it as a game?

A. No. Or during. It's afterwards.

Q. You were asked at the beginning by the Judge whether you were either a proponent, a supporter of the death penalty, or an opponent. As I understood what you said is you were neither. You were in the middle, between them?

A. That's right.

Q. And then in your questionnaire, you were asked a number of questions about your views on the death penalty. One of them – let me see if I can find it with some kind of luck. One of the questions was asked to you to state your views about the death penalty. And you were asked where one person intentionally kills another person, you were given three choices, that the death penalty is always justified, the death penalty is never justified, and the third one was the death penalty may or may not be justified depending on the circumstances of the case.

Is that your view now after all the questions and being here?

A. Uh-huh.

Q. You would look at the circumstances of the particular case and make your decision between the two possible penalties?

A. Yes.

MR. DENVIR: I have no other questions, your Honor.

THE COURT: Okay. I'd like my deputy clerk to please escort the juror to the adjacent room and bring in juror 31.

(Prospective juror no. 31 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You were randomly selected as the 31st juror for potential service in this case. I'm going to be asking you a series of questions, but when you respond to my questions, you can speak to the lawyers at counsel table. That will encourage you to use the microphone that's before you. And that will amplify your voice, hopefully.

Since you answered your jury questionnaire, have you heard of or read about this case?

A. When I was initially summoned I discontinued or made a conscious effort to avoid the newspaper, the radio, television. Whenever anything would come on, I would either switch the channel or turn it off or turn the page or whatever it would take.

Q. I appreciate that. That's exactly what I asked you to do in the communication I sent you.

A. I remember.

Q. Were you successful in that effort?

A. Yes. I can consciously say yes.

Q. Since you answered your jury questionnaire, have you discussed this case with anyone?

A. No.

Q. Has any information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No.

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

A. No.

Q. Do I have your assurance that Mr. Kaczynski will start this trial on a clean slate?

A. Yes.

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

A. Yes.

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

A. Yes.

Q. What does "yes" mean?

A. Yes, I am for the death penalty.

Q. Can you expound on what you mean by that?

A. Well, it's the only thing that I – that we have currently, and I feel that it's there and if it's used or if it's agreed upon, that's my thinking is that that's the way justice is served at this time currently with what we have.

Q. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence and the absence of aggravating evidence?

A. No.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Ma'am, good afternoon.

A. Good afternoon.

Q. You're retired?

A. Yes.

Q. And I assume because of that, serving on this jury, if you're selected, would be no problem?

A. Right.

Q. And you want to serve on this jury?

A. Yes.

Q. And why is that?

A. Well, number one, do my civic duty, and I feel that I would be a good juror as far as being unbiased. As I mentioned to his Honor, when I initially was summoned, I made a very conscious effort to avoid anything regarding the trial, I mean what's coming up. And it was hard to do, you know, because at the top of the hour there's the news and on the front page of the newspaper and all this. But I can honestly say that I made a very conscious effort so that I would not be biased and that I would be fair and open-minded.

Q. And if you were selected on this jury, that would be uppermost in your mind to try and be unbiased and fair?

A. Yes.

Q. Now, the Judge is going to help you a little bit in that respect. He's going to give you some instructions during the course of the trial on how to evaluate the evidence and what things can and can't be considered. You would be able to follow those instructions?

A. Sure.

Q. And you would want to follow those instructions because uppermost in your mind is that you'd like to be fair?

A. Absolutely.

Q. You said that you considered yourself a proponent of the death penalty; is that correct?

A. Yes.

Q. And in your jury questionnaire, you responded to some questions on the death penalty. One of the questions you were asked was: Anyone who plans and commits a murder should get the death penalty. That was the question. And the box you checked was that you agreed somewhat with that proposition.

Is that correct?

A. Yes.

Q. Could you explain your answer?

A. I think basically when I was answering that question, I was – in my mind I was thinking that I would base my decision on everything that was presented, you know, in a case, and from there make a decision. You know, you can't very well just say, yes, death penalty. I feel you have to listen to everything and hear everything and see everything in order to make that decision. So that's why I answered somewhat.

Q. So you're the type of person who would want to consider all the facts you can get and all the circumstances?

A. Sure, absolutely. Yes.

Q. You would be able to consider all the facts in aggravation of the crime that was put forth by the prosecution?

A. Yes.

Q. Would you also be able to do the same for the defense and consider any facts that they put forth in mitigation of the crime?

A. Yes.

Q. And I note that in your questionnaire another question was asked whether a person's background matters when it comes to whether or not he should be sentenced to death for a murder.

Do you recall that question?

A. Yes, I think I do.

Q. And your answer, again, was you agreed somewhat with that proposition. Would you be willing to consider a defendant's background if you were advised by the Court to do so?

A. Yes.

Q. And would you be willing to consider any factors in mitigation regarding the defendant's character or background in determining whether or not you would sentence the person to death, life imprisonment, or to some other form of punishment?

A. Yes.

Q. Do you feel like you have any stake in sentencing murderers to the death penalty or any other particular form of punishment?

A. As far as a stake, I just feel that based, again, on evidence and what has been presented, I would feel that my judgment and my decision would be based on all of that so I would have no problem if it came to that to make that decision.

Q. You understand that the law provides that the death penalty should be invoked only in certain instances?

A. Yes.

Q. You have no problem with that proposition as a general rule?

A. No.

Q. And if you were told by the Court that the particular circumstances in which you thought the death penalty should apply was not what the law said about that, you would be able to live with that?

A. Yes.

MR. LAPHAM: I have nothing further.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Good afternoon.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski.

A. Uh-huh.

Q. I wanted to ask you just a little bit about the – you indicated to the Judge you've done everything you could to sort of cut yourself off from the news and from hearing anything about the case.

A. Right.

Q. Before you learned that you could be a juror in the case, you had some opportunity to be exposed to press accounts.

A. Sure.

Q. Could you tell us a little bit about what you learned in those accounts?

A. I don't really know any specifics, just that, you know, it was a case that had been around and I, just to be honest, I mean, there was really not that much of an interest until when I knew I was going to be summoned. Then I felt it was my duty to be, so I could be impartial and unbiased, that I just disassociated myself with it. But to say that I read every little detail or that I know every detail, no, I don't.

Q. Oh, no. I wasn't suggesting that. I was just trying to help you with me search through what information you might have had before you had any idea that you were going to be summoned. Because that was completely understandable that you had some information.

A. Well, yes, of course. But I don't have that much, you know, knowledge about the case if that's what you're basically getting to.

Q. Right. Could you just give us some sense of what knowledge you did have about the case before the summons came to you?

A. Basically that it just took a long time, you know, to – to capture him. You know, that's all I know really. And really, it's hard for me to answer that because there was an interest, of course there was an interest, but it wasn't an extreme interest where every little detail that would ever come up during all this time before he was captured that I would read about, no.

Q. You're aware of some of what they call the Unabom events here in Sacramento?

A. Yes.

Q. Can you tell us what you are aware of as the Unabom events here?

A. Just the one that was here, one of the victims. That's all that I know.

Q. And do you remember when that was?

A. No, I don't. I'd say a couple of years, three years. I don't know. I don't have the exact –

Q. That's fair. Do you have some sense of who that victim was?

A. The name, you know, I'm not even sure of the name, honest. Murray, Murphy. I'm not sure.

Q. So you're aware that Mr. Murray worked here in Sacramento?

A. That he was from Sacramento.

Q. And he received a bomb in the mail; were you aware of that?

A. That's what I read, yes.

Q. Can you help me just a little bit. I don't want to put words into your mouth as to what you heard. I'm just –

A. It probably was so long ago when it happened, you know, I just – I really don't know all that many details about it.

Q. All that publicity about the Sacramento-based Unabom events sort of took on new life when Mr. Kaczynski was arrested; right?

A. Yes, of course, because we're from here, yes.

Q. Certainly. And do you recall what you learned about his arrest when he was arrested, where he lived?

A. That he was from Montana.

Q. And do you recall what circumstances he lived in in Montana?

A. Yes. It was in the paper. It was in a cabin or something.

Q. And do you recall from those series of news reports what the government seized from the cabin?

A. I don't know specifics, you know. I can't remember specifics, but there was some evidence gathered, but I don't know the specifics of what was gathered.

Q. If you can think back, one of the things you try to uncover in this kind of questioning is what's going to occur to a juror as they're listening to evidence. Oh, yeah, I've heard that before. Because that can happen. So if you can bear with me and just sort of think through what kind of evidence was found in the cabin. Do you remember any comments about the type of things found in the cabin?

A. I really can't remember. I don't know. I just know that there was evidence that was found in the cabin and that was it. But specifics I can't – I can't right now think of any specifics.

Q. How about any journals, do you remember any talk about that or any publicity about that?

A. The journal that I recall reading was something that was sent to the paper. You know, wasn't there a journal or something sent to a paper or something? That's all I can – I'm just thinking when you said journal.

Q. Do you remember any of the physical evidence that they talked about was seized from the cabin?

A. No.

Q. But you remember it was a cabin in Montana?

A. Yes.

Q. Do you remember having any impression of Mr. Kaczynski when he was arrested?

A. Not really, no.

Q. Do you remember seeing any pictures of him when he was arrested?

A. Yes. One of the – on TV when he arrived in Sacramento when they brought him to Sacramento.

Q. So you remember when he was arrested what he looked like and then what he looked like when they brought him to Sacramento?

A. Right.

Q. Can you describe those two differences?

A. I mean, I don't understand. I remember when they had it on TV when they were bringing him to Sacramento.

Q. Uh-huh. Can you just describe that?

A. Just getting off the plane and they whisked him away and that was it.

Q. And do you remember what he looked like when he was arrested? Can you describe that?

A. A beard. And that's – basically just a beard and a jacket or whatever. I mean, nothing specific that I can think of.

Q. Do you remember where it was that you saw this picture of him when he was arrested?

A. When he was arrested?

Q. Yes.

A. No, I don't remember that. I just know when they brought him to Sacramento. They showed it on TV.

Q. Did you have an opportunity to talk to your husband at all about the case as Mr. Kaczynski –

A. I think in the beginning when he was captured, you know, we did mention it, because it had been quite a long time that he had, you know, that they'd been looking for him. But nothing specific, no.

Q. Did you talk to maybe other family members or friends?

A. No.

Q. What kinds of comments would your husband have made to you about it?

A. Just that he was caught or something. I can't remember. This was, what, how long ago was it they caught him, a year ago or something?

Q. April of 1996.

A. Okay. I mean it wasn't in this case specific.

Q. Any overall impression from your conversations about it or just from what you can recall about the media?

A. No.

Q. No impression at all?

A. No.

Q. Are you pretty nervous sitting here today?

A. Well, a little bit, because I just feel that I have done my best in trying to be prepared in case I am selected of avoiding as much as I could. And I just feel that I've done my part. I've done as much as I can. And on these questions that you're asking are something from way before, that the interest wasn't there in the beginning, you know, and now actually it is, but that's it.

Q. All right. You indicated on your questionnaire that you have a family friend who is a Superior Court judge.

A. Yes.

Q. And where does that judge sit?

A. In Sacramento.

Q. Can you tell us who that is?

A. Jeff Gunther. And he's not a friend. He's more of a social friend that sees my husband whenever there's boxing events in Sacramento. Apparently he likes boxing. So my husband is there, and that's when I do see him. But it's not a social thing, it's just, you know, an acquaintance.

Q. Do you see him enough that you might talk to him about your service on this case after it's over?

A. No. And, in fact, I hardly ever see him. It can be a couple years at a time. My husband would probably see him more than I would whenever there's boxing in Sacramento.

Q. You indicated – Your Honor, may the juror have her questionnaire?

THE COURT: Yes.

Q. BY MS. CLARKE: If I could get you to go to page 24, question 94. Do you see that?

A. Uh-huh.

Q. Do you have any experience with – actual experiences yourself or an understanding of any cases where mental health experts have been involved?

A. No. And that answer that I have written down is just my opinion of how I think that they are valuable, you know, to have, but as far as on a personal level, no.

Q. And have you heard about or listened about any cases that have involved the use of – criminal or civil cases that have involved the use of mental health professionals?

A. No, not really.

Q. How do you think they might play a role in a case in court?

A. As I answered there in my answer, you know, that they're valuable in determining a person's state of mind. They're professionals and they would have the know-how to be able to present that, you know, as the case may be. And I would respect what, you know, whatever they would have to say based on, you know, their knowledge.

Q. So you don't have any problem with listening to that kind of testimony?

A. No.

Q. If we could talk a moment about your views on the death penalty. I think you indicated in your questionnaire that the purpose served by the death penalty would be that justice would be served.

A. Uh-huh.

Q. What did you mean by that?

A. As I mentioned to his Honor, that's the only thing that we currently have in our legal system. And I think that if that's what we have and if that's what we're allowed to make a decision on, yes, I would think justice would be served by honoring what we have to chose on.

Q. How would you feel about being placed in the decision of having to make that kind of life or death decision for another human being?

A. I don't think I would have a problem based on the evidence and everything else that, you know, that was given.

Q. If the evidence given to you were that the person is guilty beyond a reasonable doubt of the intentional, deliberate premeditated killing of another person, what would be the appropriate penalty?

A. If we were given a choice of the death penalty or life imprisonment without parole, I again, based on what is presented on the case, I would have no problem in going with the death penalty.

Q. What I'm asking is would you be able to consider and give weight to considerations of a life sentence where somebody is convicted beyond a reasonable doubt of the deliberate, premeditated, intentional killing of another human being? Would you be able to consider a life sentence?

A. Yes.

Q. And what would the considerations be assuming that set of facts, that it's the deliberate, intentional, premeditated killing of another human being, that's what the person has been found guilty of?

MR. LAPHAM: Your Honor, I'm going to object to that question. That's calling upon her to dream up situations, factual situations in a context that she's not even familiar with.

THE COURT: Response.

MS. CLARKE: It's precisely the question that Mr. Cleary was asking the last juror, your Honor. I think it's appropriate in the law.

THE COURT: Well, just because another lawyer asks a question that was not met with an objection doesn't make it a proper question.

MS. CLARKE: It's appropriate, your Honor, to probe what considerations this juror would have in weighing the sentences.

THE COURT: Why don't you rephrase the question.

Q. BY MS. CLARKE: What considerations, assuming that fact pattern, would be in your mind in determining the penalty?

MR. LAPHAM: Your Honor, I think that's the same question, and I've got the same objection.

THE COURT: I'm going to see if the juror understands the question. I understand the objection, but I'm going to allow the probe then.

Do you understand the question?

PROSPECTIVE JUROR NO. 31: In other words, the evidence, if it comes down to that, yes, it's proven that the crime was committed, would I have an opinion of whether to even do the death penalty or either do the life imprisonment without parole. Is that it?

Q. BY MS. CLARKE: Yes. You're better at asking it than me.

A. As I stated before, the only thing that we have currently in our legal system is the death penalty. But given a choice, it's very hard for me to give a definite answer on that. I can't honestly give you a good answer on that. I feel that I would need to have more information, more, you know, evidence, facts, whatever, to be able to say yes one way, no another. I can't answer that.

Q. Would you need more information about the crime itself or about the person who committed the crime?

A. I think it would go hand in hand. The two would have to go hand in hand.

Q. When you say it's the only thing we have, and you've been pretty clear that that's one of your considerations about the death penalty, it's the only thing we have, what do you mean by that?

A. Well, the only thing that we have in addition to choosing from life imprisonment without parole. I mean, we have in our legal system these choices to make. But if the choice was to come down to make a decision on the death penalty or the life imprisonment without parole, again, it would have to be what the evidence is, of the person, of their background, whatever it is. Everything into one. And like I said before, I can't answer and just say, yes, I would do this, yes, I would do that. If I'm given the choice, then I would base my decision on the facts.

I don't know how else I can answer that.

Q. I understand that you're struggling with it.

A. Well, I just feel like I've answered it, you know, and I don't know how else to answer it.

Q. And I certainly appreciate that. You can understand the desire of the lawyers to sort of – because we don't get a chance to talk to you again before any penalty phase in this case to see how do you feel, do you, you know, are you open to both options. So we kind of have to explore it now. And it's hard for you because you don't have a whole lot to go on; right?

A. That's it. That's what it comes right down to. If we're given the choice, then again the decision would need to be based on what has been presented through, you know, the case.

Q. If I could ask one last question with your patience on this issue.

If you could look at question 108 on page 28.

A. Yes.

Q. Have you got the question? It's a checklist.

A. And ergo's my answer based on what I've been answering.

Q. Absolutely. And what I'd like to ask you is this: What was going through your mind when you selected the second option?

THE COURT: Well, I don't have the question. I want to know what the second option is.

MS. CLARKE: It's the three-option question.

THE COURT: Well, tell me.

Q. BY MS. CLARKE: The intentional killing always justified, may or may not be justified, never justified. And it's the second option that this juror selected. And I simply want to ask what was going through her mind. What made you choose option number two?

A. The same thing that I've been answering before. Depending on the circumstances of the case and the evidence, that would be my answer on that. I don't know how else to answer that.

MS. CLARKE: I thank you.

THE COURT: I'm going to have my deputy clerk to escort the juror to the waiting room and bring in juror number 15. Prospective juror.

(Prospective juror no. 15 entered the courtroom.)

PROSPECTIVE JUROR NO. 15: Hello.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 15th randomly selected juror so we're going to be referring to you as juror number 15. I thank you for returning to my courtroom.

You were requested to determine whether you could make adjustments to your work schedule so that you would be available for jury service in this case. Did you make that determination?

A. Yes, I asked about that last night.

Q. What's the response?

A. The response was they didn't feel I could handle my workload at three hours in the evening and they would still have to hire somebody to take it over.

Q. What do you mean they'd have to hire someone to take it over? Does that mean you would be displaced?

A. Means I wouldn't be making any money until I returned, until I was able to work full time again.

Q. I'm sorry. Would you have part-time work?

A. No.

Q. You wouldn't have a job?

A. They said they would hold some kind of a position for me for when I returned, but, no, I would not be working if I was on the trial, as long as I was on the trial.

THE COURT: Do the parties have questions?

MR. DENVIR: I just have one question, your Honor.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Do I understand then that if you were sitting as a juror in this case, you would have no income other than the \$40 a day that you get as juror fees; is that pretty much what it is?

A. That's true.

Q. And that's not sufficient, is it, for you to live on?

A. No.

MR. DENVIR: No other questions.

MR. CLEARY: Stipulate to discharge, your Honor.

MR. DENVIR: We'd stipulate, your Honor.

THE COURT: Okay. In view of this hardship, we're going to excuse you from further participation in this trial. You're excused.

PROSPECTIVE JUROR NO. 15: Okay.

THE COURT: Ladies and gentlemen, we have completed examination of all jurors I've called for today. I'm about to tell my deputy clerk to tell the marshal that the jurors are finished for today. Since we have some time, maybe we should cover another matter.

I want to discuss what will occur on Friday. I have a hearing scheduled at 1:00 o'clock on Friday to cover for cause challenges. Do I need that hearing?

MS. CLARKE: Yes, your Honor.

THE COURT: Will I receive any type of input from the parties in advance of that hearing?

MS. CLARKE: It is our intention to provide the Court with a written basis for the challenges for cause that we can get into writing by tomorrow morning. Others we could notify the Court of the people we intend to challenge for cause so the Court would at least be aware of them. But it's our desire to put it in writing. And if we can't get it all done, we'll at least alert the Court as to those challenges.

THE COURT: As to those jurors that you will be providing the Court notice of, what form of notice would you provide?

MS. CLARKE: However the Court would like it.

THE COURT: Were you going to add something?

MS. CLARKE: No.

THE COURT: Let me hear from the government on the same issue.

MR. CLEARY: Can we have one second, your Honor?

THE COURT: Yes.

MR. CLEARY: Thank you.

MR. LAPHAM: Your Honor, we can notify chambers in advance if that's your preference. And we would hope to file the written brief or some kind of written document by 11:00 o'clock tomorrow if that was acceptable to the Court.

THE COURT: 11:00 o'clock would only give me a couple hours to consider it.

MR. LAPHAM: We'll definitely try and get it to you earlier than that. Our problem is we have to look at the transcripts.

MS. CLARKE: Is it possible that the Court would move the hearing to later in the day so that the Court would have time with whatever briefs could be filed?

THE COURT: I'm going to talk to my deputy clerk. That's not – that is possible, but it's not something I want to do because there's another matter that I wanted to attend.

I think I'm going to schedule it for hearing a week from tomorrow, on Friday. That will provide you with an opportunity to give me your briefs, and I assume that if I schedule it at that time you will also be in a position to provide me with citations to the transcript, if necessary.

MR. LAPHAM: Your Honor, that's fine. I was wondering if we could exchange notices, each side, so we could be prepared to meet whatever objections each party raises. We would be willing to notify the defense which challenges we would be making. We'd ask that they notify us.

THE COURT: Is there any possibility that if the parties meet and confer on the issue, you could agree on any challenges?

MR. DENVIR: Your Honor, I would, to be frank with you, I don't think there's much chance. If you'd like us to do so, we will. But my guess is from having heard the voir dire, it's fairly unlikely.

THE COURT: I would like you to each know what challenges are involved so that you could both prepare oppositions if you were going to oppose your opponent's challenge. And in that way the brief I receive will be helpful because I will have some insight into your position concerning your opponent's position.

Do you contemplate having more than one brief filed?

MS. CLARKE: We would be hearing next Friday just this week's cause challenges?

THE COURT: Well, you would definitely be hearing this week's cause challenges next Friday, and I would think that we should cover as many cause challenges that you have which don't arise until next week on Friday if we can do that.

MS. CLARKE: If the Court just picks a time for the filing of the briefs, that will tell us when the cutoff is.

THE COURT: We really can't discuss it that way. We first have to discuss this week's challenges because next week's challenges may present a different problem. So let's just assume that we're dealing with this week's challenges.

MS. CLARKE: Would you like us to file by Monday and then the possibility of a reply by Wednesday for this week's challenges?

THE COURT: By the close of business 4:30 on Monday.

MS. CLARKE: If that's fine with the Court.

THE COURT: The government.

MR. LAPHAM: Your Honor, that would be fine if we could get exchange of notices on Friday. That would give us a head start.

THE COURT: You need to meet and confer on Friday so that you each know what challenges are involved, then you can focus your attention to those challenges. Is that all right?

MS. CLARKE: Yes.

MR. LAPHAM: That will be fine.

THE COURT: How about the reply? You're both going to be filing a brief, I presume, by 4:30 on Monday.

MR. LAPHAM: Correct. And Wednesday is fine for the government for the reply.

THE COURT: By what time?

MR. LAPHAM: 4:30.

MS. CLARKE: That would be fine, your Honor. Whatever is good for the Court.

THE COURT: It would be better for me to get it earlier than 4:30.

MR. LAPHAM: Noon would be fine.

MS. CLARKE: Then we'll aim for noon.

THE COURT: Okay. Noon on Wednesday. Anything further to cover?

MS. CLARKE: There is one matter, your Honor. Had we been doing the challenges for cause as we went along as we had originally discussed, the juror would have been asked to leave the courtroom, the challenge for cause would have been made in open court with the juror not hearing the challenge, and then the Court would have ruled and brought the juror back in and told him or her what the bottom line is.

At this point it would make the challenges for cause in a public forum. The jurors will be reading about what the lawyer's positions on them are in the cause context. As the Court knows, there can be credibility issues argued about various jurors' answers. And that would put each party at a great disadvantage with that juror should the Court not then grant the cause challenge.

THE COURT: I'm missing something, because I don't see how that would have been avoided if you'd used the first approach you told me about. Everything that happens in connection with this matter would be public. You are assuming that I would – I mean if I don't grant your challenge, I mean using the first approach, if I don't grant, if that challenge turns out not to be granted, then the juror would still arguably read about it in the paper.

MS. CLARKE: The Court is correct. In those circumstances we would have asked to approach sidebar to make a credibility discussion with the Court. I think that it would be a question of timing.

THE COURT: Your assumption is that the sidebar discussion is not public and that it would forever be sealed.

MS. CLARKE: At least until later.

THE COURT: How about the – you don't think that Brooklier applies?

MS. CLARKE: I think it's a question of the timing, your Honor. If the Court grants the cause challenge, I don't think there's a problem with the release. But if the Court denies the cause challenge and there have been credibility issues argued, then I think the standard would allow the Court to seal that transcript until after the trial and then release it.

THE COURT: Maybe I can assist. I'm not sure I need the parties arguing credibility issues. Unless I don't have the correct understanding of the law, it is the judge that makes the credibility determination. I have excused one juror which the government didn't want me to excuse. And I stated that I made a credibility determination. The government wanted to argue the point. I didn't provide the government with the opportunity it wanted. It would be very difficult to change my opinion about something I observed in the courtroom. And that's why I didn't give the government the opportunity to argue.

I'm not sure I need detailed argument on credibility determination. I'm going to read the transcript myself. If you are challenging a juror for cause, I will read the full transcript applicable to that juror. So perhaps a different approach should be used by the parties so that we can avoid the First Amendment issue.

I'm waiting for your input.

MS. CLARKE: Well, I think that maybe some time to reflect on it would be helpful to us, and it may be that we can simply note to the Court in the briefs if there are additional arguments that we'd like to make, we can ask the Court at the time if it's appropriate for a sidebar for further argument.

I understand the Court's position on credibility. I think that sometimes it is helpful for at least the party to call the Court's attention to, given the mounds of reading to do, to call the Court's attention to some credibility issues. And perhaps we can just do that during the hearing at a sidebar if the party thinks that that's appropriate.

THE COURT: And I'm indicating to you that what you are suggesting may not be necessary. I have been taking notes. In fact, I've taken copious notes in certain instances. I am more interested in the

legal justification for excluding a juror. The judge clearly makes the credibility determination. There's no doubt about that. That's my duty. And I will do that.

MS. CLARKE: I think we understand that, and we'll go that route.

THE COURT: Okay. Thank you.

MS. CLARKE: Thank you, your Honor.

MR. LAPHAM: Thank you, your Honor.

(Court recessed at 4:15 p.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

— oOo —

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

— oOo — UNITED STATES OF AMERICA,) Plaintiff,)

) Plaintiff,)

) vs.) No. Cr. S-96-259 GEB

) THEODORE JOHN KACZYNSKI,)

) Defendant.) _____)

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A critique of his ideas & actions



Jury Selection Day 2

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