

Jury Selection Day 3

November 17, 1997

SACRAMENTO, CALIFORNIA
MONDAY, NOVEMBER 17, 1997, 9:01 A.M.

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THE COURT: Let the record reflect all participants are present. Is there any reason why I shouldn't bring the jury in right now?

MR. LAPHAM: It's okay.

MR. DENVIR: No, Your Honor.

(The prospective jurors entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen. I'm going to have my deputy clerk administer the oath to you, after which you can take your seats.

(The prospective jurors were sworn.)

THE COURT: 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, her name is Shani Furstenau. She's my courtroom deputy clerk. Next to her on the same platform is my certified shorthand reporter. Her name is Susan Vaughan.

I trust that you will fulfill your civic duty during this voir dire and questioning process. You're 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 yourself making yourself available for jury service. The voir dire process is an essential way of making sure an impartial juror 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 opinion. The parties value your opinion.

The voir dire will consist of questioning jurors individually, which will commence after I question you as a group. After a number of jurors are questioned in the matter, some of the jurors will be assembled to be questioned as a group. Those required to participate in the group questioning will receive notice 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 I give them following the end of the trial.

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 the possibility of release, or a lesser sentence. This determination is made at the second phase of the trial, referenced as the sentencing phase.

If there is anything about the charges that causes you to prefer not being a juror 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 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 – actually, we're going to refer to you by the randomly selected number. You were each randomly selected by my jury administrator, so you each have an assigned number, and that's the number we will be referring to you by. This is because I've decided to use an anonymous jury in this case in order to protect your privacy, as I have stated in previous communication to 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 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 or listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

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

PROSPECTIVE JUROR NO. 28: (Raises hand.)

THE COURT: I will discuss it later with you. Thank you for raising your hand.

I contemplate observing – let the record reflect that it was juror number 28 that raised her hand.

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

There's no problem.

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 will be among alternative sentences the jury will be asked to consider. Evidence will 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 be asked to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski

deserves a sentence of life in prison without release or some lesser sentence. 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?

There's no response.

We are about to commence 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.

Under the law, as I understand it, I am required – well, not required, but it is prudent for me to give you the option I just gave you, and that is to allow you to request to answer a question that you believe is too sensitive to be answered publicly in a more private setting.

While I have given you that option, I don't want to disappoint you by probing, but I will be probing in a public setting, because I will try to determine if the matter that you have requested to be covered in a more private setting needs to be covered in a more private setting. And when I conduct that probing, you don't have to disclose the content of the matter that you believe is private. But it is important for me to do the probing, because under our Constitution, trials should be public to the extent they can be public. And I have to make sure I am adhering to the principles of our constitution. So that's why I will do that probing.

Any problems with the manner in which the Court has communicated with the jury?

MR. LAPHAM: No, Your Honor.

MR. DENVIR: No, Your Honor.

THE COURT: I'll now have my staff to escort all but the earliest randomly selected juror to the adjacent room and the juror that's going to remain in the courtroom can be placed in the witness box.

(The prospective jurors left the courtroom except for prospective juror number 13.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You were randomly selected as the 13th juror, so I'll be referring to you as juror number 13.

I want to take a moment to review my notes. I think I'm going to leave the bench when I question you so that I can make sure your responses are directed to the parties. They need to hear your responses.

A. (Nods head up and down.)

Q. I'm questioning you from the podium to encourage you to use the microphone and speak in a loud voice so the parties can hear your responses.

In your juror questionnaire, you were asked in a couple questions whether you have any beliefs that may affect your service as a juror in this case, and you responded "don't know." Would you please explain that response.

A. Well, I've never been on a jury before, and so it's an entirely new experience which – I really don't know.

Q. In response to question 41, you said you thought you would be dismissed as a prospective juror because of working for your employer and "all the information" – I'm quoting – "we've received and guidelines." Without disclosing the name of your employer, can you tell me what is it about the information that you are referencing that you believe would have caused us not to consider you as a prospective juror.

A. Well, because of the heightened security, for one thing. We just had more information, as far as trying to guess, you know, where it would be next or . . . I really don't know how to put it into words.

Q. Okay. I'm going to probe further.

A. Okay.

Q. Is there anything about that information that you are referencing that could affect your ability to be a fair and impartial juror to both sides?

A. I would hope not.

Q. I'm going to probe a little bit further even on that answer.

A. Okay.

Q. That answer is one that is typically given outside the court setting, but in the court setting, can you provide the parties with more assurances that whatever information you're referencing will not affect your ability to be a fair and impartial juror to both sides?

A. No, it wouldn't.

Q. Does your employment cause you to feel partial to either side?

A. No.

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

A. Just there was something on the TV last night about jury selection. But that's all I – that's the only thing I've seen.

Q. Do you recall any more about what you observed last night than what you just related?

A. It was just – just a small thing. And I think all's it said was it was taking a while to get the jury.

Q. Since you answered your questionnaire at Cal Expo, have you discussed this case with anyone?

A. Not really. My son knows that I had to come back because I just visited him and why I had to be back. But other than that, no, we did not discuss it.

Q. Do you understand that it is important to the parties and the Court that the information you receive concerning this case be information that you receive in this courtroom, I mean, from this point forward?

A. Right. Yes.

Q. Has any information that 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, if you are selected as a juror in this case, 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. (Pause.) Yes.

Q. It is appropriate to hesitate when responding to a question, and that's natural. But why did you hesitate?

A. Well, I had to look at my heart to make sure, and I was saying the right answer.

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

A. Yes.

Q. "Yes" means what?

A. I agree with the death penalty. On premeditated.

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. I would have to hear the evidence first.

THE COURT: The parties may conduct voir dire.

MR. DENVIR: Could we approach the bench, Your Honor, a minute.

THE COURT: Yes.

Susan, we need you.

(A bench conference was had but not herein transcribed.)

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski.

I'd like to follow up on some of the judge's questions and ask some of my own.

A. Okay.

Q. One thing I'd like to ask is whether serving on this jury might present some kind of hardship or some reason why you should not be serving on the jury. When you were first summoned around September 8th you had indicated that you should not serve on the jury, did not feel you should, because of your position, your job; is that right?

A. Right.

Q. And can I ask you how far do you live from Sacramento, approximately?

A. I just did the mileage this morning. It's two hundred and – well, I think round-trip was five seventy-seven.

Q. So that if you served as a juror you obviously would be staying in Sacramento from Monday morning or Sunday night until Friday morning if it's five days a week?

A. Yes.

Q. And as I understand it, in your particular employment you are the head of an office that has two employees; is that right?

A. Yes.

Q. And you've been the head of that office for 29 years?

A. Thirty-one.

Q. Thirty-one years. Okay. And that particular type of business, is extremely busy over the holidays; is that right?

A. Right.

Q. Particularly around Christmastime; is that right?

A. Yes.

Q. And you had indicated, you had asked that you – and also you understand that this trial has been estimated to take anywhere from two to four months?

A. Yes.

Q. The jury itself may not start sitting until maybe the first or second week in December when it's actually selected. So it might start somewhere in early September [sic]. it might continue somewhere from two to four months?

A. Yes, I understand.

Q. Now, you had originally indicated when you were first notified with the summons on this that you felt that you could not serve on the jury because of your employment and the fact you'd be gone over the Christmas period. Do you still feel that way?

A. Yes. I would have to turn my office over to somebody else. Might even have to come in and do an audit and turn it over to someone else. And two years ago I was sick and I had to do that and it was very dissatisfying to me when I come back because they had changed things around. I'm still looking for things they had changed. So it was very stressful.

Q. It was very stressful?

A. Yes.

Q. I mean, you've been run this go office for 30 years; then somebody else comes in and runs this differently; that's a concern?

A. Yes.

Q. How long did someone else run the office when you were sick a couple years ago?

A. Just for one month.

Q. Just for one month?

A. Yes.

Q. Now, you had said in that regard, if I may, you said that you thought it would be very stressful if you had to turn your office over to someone else to run while you were on this jury for two to four months; is that right?

A. Yes.

Q. And do you think that if you were sitting on the jury and were down here in Sacramento and the office was up there that you would be concerned about what was happening up there and kind of distracted and worried about the whole thing?

A. Yes. I'm afraid I would.

Q. Would it make it difficult for you to serve as a juror because of your worries about what was happening in your office with somebody else there running it?

A. Well, I would hope not, but I'm afraid it would.

Q. And do you think that that would interfere with your ability to serve as a juror and kind of – you understand to be a juror here, you have to almost give your full-time attention to what's happening here?

A. Yes, I understand that.

Q. And do you feel you wouldn't be able to do that because you were worried about your office and what was happening in the two to four months while you were gone?

A. Like I say, I'm afraid I would. It would be very difficult.

Q. And do you think it might distract you from, you know – you're trying to pay attention here; you're thinking what are they doing there and what's going wrong?

A. Well, like I say, I would hope it wouldn't, but I'm afraid it would.

Q. And you felt that when you first heard about the case back in the length of the time –

A. Yes.

Q. – back in September, and you feel that way today, still feel that way?

A. Yes.

Q. Let me ask you, if I could, a couple of other questions.

MR. DENVIR: I take it you want me to go on, Your Honor, into some other matters?

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

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Under our constitutional system, the parties in a criminal case are entitled to have a fair cross-section of people from which to select prospective jurors. And based upon your response to counsel, you're indicating that we shouldn't consider you because of the concern you will continue to have about how your office is run.

A. Yes.

Q. Is there any way that you could put that concern out of your mind and replace it with the concern we want you to have on your mind if you're selected as a juror in this case, and that would be the concern of doing justice in this case?

A. Well, it would probably depend on who I can turn my office over to. Last time I didn't have any choice. They just brought somebody in.

Q. So you're indicating that if you have a certain measure of confidence in the individual you are able to turn your office over to, then you could devote your full –

A. Yes.

Q. – attention to this case?

A. Yes.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. And if you were selected as a juror, when would you know who would be your replacement to take over the office? Do you know who that person is now, for instance?

A. Well, I had somebody that offered if I got sick again – we didn't know this was coming up, but I did have a person that offered, that said that they would if our other boss allows this to take place.

Q. But you don't know – you would be satisfied with that person?

A. Yes.

Q. But you don't know whether that person would be your replacement?

A. I don't know unless I went back and made some phone calls to find out.

Q. But they could give you advance notice of that? If you made some phone calls, you could find out what the answer is?

A. Yes.

Q. Let me ask you some other questions, if I could.

Because of the nature of your employment, you had some exposure to information about this case that other jurors haven't had; is that correct?

A. Well, I thought in the beginning I had, but maybe I haven't. Maybe it's, you know, just other than heightened security, it would have been –

Q. You understand that Mr. Kaczynski is charged with a series of mail bombing incidents –

A. Yes.

Q. – that are attributed to a person who's been called the Unabom?

A. Right.

Q. And can you tell me in your employment when you first were – learned about the Unabomber events or information about them or were asked to put in special security measures?

A. No, I don't remember on that.

Q. Was it back a ways?

A. Yes.

Q. Was it five or 10 years ago?

A. It's been a while, but it's been more so lately.

Q. "Lately" meaning how recently is that?

A. Oh, within the last two years.

Q. Maybe you can tell me about how many times, say, a year would you get some information or some direction that had something to do with the Unabomber events?

A. Oh, probably a couple of times a year.

Q. Couple times a year. And part of that, after that, did you then change security measures at your work?

A. No. When they first started up it pretty much stayed the same, other than a little tighter here lately.

Q. When did they make the change in the security?

A. Like I say, it's been about two years since they put it up.

Q. About two years ago. As a result of that, did you have some concern for your own safety as a result of the Unabomber events?

A. Not really.

MR. DENVIR: Your Honor, I wonder if you would have the juror's questionnaire and I could . . .

THE COURT: I'm going to give it to her, counsel. I'll put it on the bench where she can reach it.

PROSPECTIVE JUROR NO. 13: (Accepts document.)

MR. DENVIR: Thank you.

MR. DENVIR: Q. When you went out to Cal Expo, you filled out that questionnaire at Cal Expo, you were asked a question, was there any reason why you would not like to be a juror in this case? Do you recall that?

A. No.

Q. Well, if you turn to page 32.

A. (Complies.)

Q. Do you remember you were asked that question, is there any reason you would not like to be a juror in this case?

A. Yes.

Q. And you said, I feel like working at— and you mentioned your employer — and the fliers we receive, I'm not sure I could be fair and just in this case; is that right?

A. Yes.

Q. So you had a concern when you were asked that question that, because of where you worked and the information that you received, that you could not be fair and just in this case?

A. Yes.

Q. Do you still feel that way?

A. (Pause.)

Q. Has something changed since — in the last month or so?

A. Well, just thinking, you know, more about it, I hope I could — I would really try to be fair.

Q. And I understand that, ma'am, and no one's asking you to do anything more than that.

A. I know that.

Q. But our concern, obviously, is people can try and want to be fair and want to do certain things, but it may be very hard given their opinions or beliefs or exposure.

And when you were asked that question flat out, you said, back about a month ago, that you felt that because of where you were working and the fliers you received, you weren't sure you could be fair and just in the case. And I was wondering if that's changed over time for some reason, or is that pretty much the way you do feel even though you would like to – you'd do your best?

A. (Pause.) I think I'd stay with my statement.

Q. That you're not sure you could be fair and just?

A. Right. Like I said, I would try, but . . .

Q. Let me ask you another question, if I could.

Over the years you've had some exposure to or you've read about or watched TV or radio, learned something about the Unabomber events and the arrest of Mr. Kaczynski and what's happened since then; is that right?

A. Yes.

Q. And can you tell me a little bit about – let's just start with, maybe, before Mr. Kaczynski's arrest, which was back in April of '93 – excuse me, '96. Had you kind of kept track of the Unabomber events as they were reported? Because of their nature, because of your employment, did you kind of read the stories about him?

A. Yes. Yes, I did.

Q. You had a kind of little special interest because of your employment and the stuff you were receiving at work in the way of fliers and things like that?

A. No. I think just because it was news. I like to keep up on the news.

Q. And then after Mr. Kaczynski's arrest in April of '96, did you continue to keep up with the news reports about the case?

A. Yes.

Q. And would you – the news reports, would those be newspaper reports?

A. Not so much newspaper – I think at that time I took Newsweek and some of the Time magazine and some of those magazines.

Q. And also –

A. And the newspaper. Didn't have a whole lot in our newspaper, but we have a little American Weekly or something that. Once in a while we'll have an article in that.

Q. And then did you also watch on TV or listen to radio when there were reports on the case?

A. Well, I only get one station, so if it was on that station, yeah.

Q. Okay. Now, when you went out to Cal Expo again and you were asked the question, what were your thoughts and opinions about the defendant Theodore Kaczynski and/or his family – this is on the same page we were looking at, page 32 – you said that from what I can remember reading and hearing about the case, I felt he must be guilty; is that right?

A. Yeah, because that's the way the articles made him look.

Q. Right.

A. You know.

Q. So based on what you'd heard about the case, when you were out at Cal Expo your reactions to – your thoughts and opinions about him were that he must be guilty, right?

A. Just from what I had read.

Q. And has something changed that since, you know, since you were out at Cal Expo? Or do you still feel that, based on what you remember reading and hearing, he must be guilty?

A. (Pause.) Well, like I say, this is what I read quite a while back. And most of what I read I'd forgotten – sorry to say, but that's been a few years since I've really read anything about him. And so no, I can't say that I think he's guilty.

Q. Well, I guess, you know, ma'am, people do read and are allowed to read and hear things about cases, and they can have an influence on it.

A. Right.

Q. But we need to find out whether – there's nothing wrong with that, but we need to know whether your exposure to that information makes you feel a certain way when you come into the case. And when you were asked the question, you know, to fill out that question when you were filling out all the other questions, you felt that based on what you remembered about the case, you felt he must be guilty. And I guess I don't understand why that's changed since October 8th or 6th or whenever you filled it. Is there something that's changed in the meantime?

A. Not really, other than, like I say, I get to thinking it's been a long time ago. I don't really remember a lot of what I read. And sorry to say, but most of the news is biased, I think, towards anybody that's accused of anything. Nowadays it seems like he's guilty whether he is or not.

Q. Well, let me ask you, when you filled out that questionnaire, can you give me some sense of – you say he must be guilty. Was it – you felt he must be guilty. Did you have some sense of certainty about that? Was it 10 percent certain, 50 percent certain, 90 percent certain, absolutely sure a hundred percent certain?

A. No, maybe 10 percent.

Q. So when you said that you felt he must be guilty, you meant that he only had a 10 percent chance he was guilty?

A. Yeah.

Q. Okay. So that when you said that, you thought there was a 90 percent chance he was innocent and a 10 percent chance he was guilty?

A. I don't know. I really don't know. Like I say, the news is so biased that at the time I read it, I felt he must be guilty.

Q. Let me ask you, if I can, a few questions about your feelings about the death penalty. You were asked the question, what are your opinions and beliefs about the death penalty and its use in our society – this is on page 26, I'm sorry.

A. Yes.

Q. And you said that, "If premeditated, give the death penalty." And asked the basis for the opinion, you said, "Just the way I feel." So is your feeling generally as to

the death penalty if it's a premeditated killing and the defendant is found guilty of that beyond a reasonable doubt that they should receive the death penalty?

A. Yes.

Q. And you said your opinion and belief hadn't changed over time. So you've felt this way for a pretty good amount of time?

A. Yes.

Q. And is that based on any particular religious or spiritual basis or is it philosophy?

A. Personal philosophy.

Q. It's not based on religion in particular?

A. No.

Q. But it is something you've given some thought to over time?

A. Yes.

Q. And you feel pretty certain about it? I mean, this is a strong feeling?

A. Yes.

Q. When you were asked the question, what does your religion, philosophy or spiritual training teach about the death penalty and you put, "Forgive seventy times seven," and I don't know what that refers to. Could you tell me what that –

A. Well, there's a quote in the bible that says we're supposed to forgive seventy times seven.

Q. I see. But in spite of that, when it comes to the death penalty, I mean for premeditated murder –

A. For premeditated murder, I still feel the death penalty.

Q. Okay. And you said the purpose the death penalty serves is to let people know if they take a life on purpose then they pay with their life?

A. Yes.

Q. Okay. And you said that when one person intentionally kills – this is on page 28 – kills another person, the death penalty is always justified?

A. Yes.

Q. And you said that anyone who plans and commits a murder – this is on page 27 – should get the death penalty; you said you strongly agree with that?

A. Yes.

Q. And that you also – a person's background does not matter when it comes to whether or not he should be sentenced to death for murder – you strongly agree with that; that's down below there?

A. Yes.

Q. Would it be fair to say that you have a strong belief that, if a person commits an intentional, premeditated murder, that the only appropriate penalty is the death penalty?

A. Yes.

Q. And if you were to sit in a case where a – like this, where the charges is essentially a premeditated, deliberated murder and you were to find the defendant guilty beyond

a reasonable doubt based on the evidence you saw, would you then, going into the sentencing phase, believe that the death follows from that?

A. Yes.

Q. And can you think of anything that would change your view on that if you had already found the person was guilty beyond a reasonable doubt of a premeditated intentional murder?

A. No.

Q. That's just in your view and – everybody has different views in this?

A. Right.

Q. But your view it's just basically an eye for an eye; if you intentionally take a life then your life will be intentionally taken?

A. Yes.

Q. And you don't believe there's anything that – about the person themselves afterwards in the sentencing phase that would change your view that if you commit that kind of crime then you get that penalty?

A. No. It wouldn't change.

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

(Discussion off the record among Mr. Denvir, Ms. De La Rue, and Ms. Clarke.)

MR. DENVIR: Thank you.

THE COURT: Government?

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Ma'am, good morning.

A. Good morning.

Q. My name's Steven Lapham. I'm one of the prosecutors in this case. I just want to ask you a few questions about your service in this case if you were to be selected as a juror.

Let me start with that last topic area, the death penalty and your feelings about the death penalty. Now, we all understand that you filled out the questionnaire at Cal Expo before you knew anything about the law, and probably as you sit here today you don't know anything about the law in this area. But the judge instructed you a few moments ago that you would have choices –

A. Right.

Q. – in the matter. And he told you that if the defendant is convicted in this case you would have a choice between the death penalty, life imprisonment without possibility of release or some lesser form of punishment. You understand that?

A. Yes.

Q. Would you be able to consider those three options?

A. (Pause.) I still would go with the death penalty for premeditated murder.

Q. Well, one of the things you said in your questionnaire is that your – I wasn't sure if it was your religion or your philosophy – believed in some level of forgiveness?

A. Right.

Q. Can you contemplate situations in which there might be a reason to give a lesser form of punishment than the death penalty?

THE COURT: Let's clarify your question, because what you are really seeking to ascertain is whether if premeditated murder is involved she would be willing to do what you just asked. So you should ask that question.

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

MR. LAPHAM: Q. In fact, let me ask a different question. If the judge instructed you to consider factors that might indicate that the defendant should not get the death penalty, would you be willing to consider those factors?

A. Well, yes, if the judge is asking this.

THE COURT: I'm going to interrupt you, sir. Sorry.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You've indicated in response to defense counsel's question that if premeditated murder is involved you would automatically impose the death penalty? At least that's my understanding of what you've said.

A. Yes. Yes.

Q. That's what you said?

A. Yes.

Q. But if I instruct you that the law does not want you to automatically do what you just said you will automatically do and that the law requires you to consider the alternative sentencing that is available, would you follow my instructions on the law, despite what you have indicated you would automatically do?

A. (Pause.) Well I would think about it, but I'm sorry. It still to me would be the death penalty. I think that's part of what's wrong with our justice system.

Q. But another branch of the Government has enacted law that is to be followed in this courtroom. And that law will tell you that despite the fact that a defendant may be found guilty of premeditated murder, that you are still to consider whether aggravating factors exist, whether mitigating evidence exists, and you are to consider alternative sentencing such as life imprisonment without the possibility of release or a lesser amount of time imprisonment or death. Are you telling me that you would not consider those other alternatives and you would automatically impose the death penalty?

A. (Pause.) In that case, no. I would have to consider them.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Ma'am, let me just see if I can clarify this for you and show you how this might arise. And I'm not suggesting that any of these factors might have anything to do with this case.

A. All right.

Q. But let's take a situation where there is a premeditated murder. Can you conceive of situations, first of all, that – where one type of murder is less aggravated than another type of murder? For instance, if a murder was committed under some kind of duress?

A. Yes.

Q. And would that affect your decision perhaps on whether or not the individual, if convicted, should receive the death penalty or some lesser sentence? Would you consider that?

A. Yes. Yes.

Q. And if you found out, for instance, that the individual who committed this murder had no prior record, no prior criminal record, and had committed this crime kind of as an aberration, something that was out of character for him, would you consider that in concluding, in your –

A. Yes.

Q. – decision whether or not to give the death penalty or some other form of punishment?

A. Yes.

Q. So you'd want to know more of the facts that went into why this individual did what he did?

A. Yes.

Q. And would you want to know more of the facts about what this individual's makeup is, what kind of character he had?

A. Yes.

Q. Now, I don't want you to say that just because you think that's the answer –

A. No.

Q. – I'm looking for.

A. No. I was thinking about a husband beats his wife or vice versa, and they have so much of it and they end up killing the other party. Even though it would be premeditated, there would still be a lot of different circumstances. And so I guess I just changed my opinion on premeditated murder.

Q. Okay. That's a situation where it might not be, in your view, as bad a murder as somebody who intentionally goes out and plans to kill somebody, for instance?

A. Right.

Q. So you would view that in more lenient terms –

A. Right.

Q. – than the other example.

Now, you indicated in your questionnaire that you'd already – you'd formed this opinion that he must be guilty, and that's based on the news accounts.

A. Right.

Q. But it sounds like you've got some healthy skepticism about what you read in the media?

A. Right.

Q. Is that fair to say?

A. Very much so.

Q. I guess the question we're looking for is whether or not when you come into this courtroom you could put whatever you read in the papers or whatever you heard on the television, could you put that aside and decide the case based on what you hear in the courtroom?

A. Yes.

THE COURT: Just a moment, sir.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You told the defense counsel that you weren't sure if you could be fair and just.

A. Well, I think I can, because what I read, it has been a long time ago. And like I say, most of it I have forgotten. I still remember a little bit since this has come up but not – and I have not read anything since.

Q. What did you mean when you told Mr. Denvir that you're not sure if you could be fair and just?

A. Well, I wasn't sure – but the way his (indicating) questions are, I think I could be. So –

Q. Okay.

A. I'm trying.

Q. Okay. I have to ask these questions.

A. I understand.

Q. I have a function, and I'm trying to discharge it. I don't mean to embarrass you?

A. No. That's okay.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. And when you come in the courtroom if you can put that media coverage aside – what that means is when you would come into this courtroom to sit as a juror, the Government would start at zero.

A. Right.

Q. Could you do that?

A. Yes.

Q. And the Government would have to build its case a brick at a time and would have to convince you that the defendant is guilty, and not based on what you've read outside the courtroom?

A. Yes.

Q. Now, if, when the Government is presenting its case, if you heard something during the course of the presentation that differed from what you had read or remembered from the things you read outside the courtroom, what would you do with that?

A. I already told you I think the media is biased so I would have to go with what is presented in here.

Q. And if you heard something in court that you hadn't heard outside, or let me – actually, that's not the question I meant to ask. If you didn't hear something in court during the presentation of the case but you had heard something outside the court that was never discussed here in court, would you be able to set that aside and just forget about it?

A. Yes, I think so.

Q. You'd just assume it wasn't true?

A. Yes.

Q. You talked about the nature of your job and how you weren't sure if you could be fair as a result of it. Is that a fair characterization?

A. Yes, mm-hmm.

Q. Now, in your job you get a lot of fliers –

A. Yes.

Q. – regarding bombings in general –

A. Yes.

Q. – and particularly about this case?

A. Yes, we did.

Q. And did any of those fliers have anything to do with this defendant?

A. No.

Q. Did any of those fliers or any of the information you got through your employment have anything to do with any evidence relating to this defendant?

A. No.

Q. So what we're really talking about is not anything that you received relating to him but just about bombings in general?

A. Right. Right.

Q. Okay. And is there anything about that that you might – that might impair your judgment if you were to sit as a juror in this case?

A. I don't think so.

Q. You seem to have a notion – and maybe I'm wrong with this, and correct me if I am – you seem to have a notion that just because of your employment the nature of your employment you might be disqualified as a juror?

A. I was hoping.

Q. You were hoping. But that's something you thought we would –

A. Right.

Q. – conclude?

A. It wasn't – yes.

Q. That's not something that you felt would impair your judgment?

A. No.

Q. Just a few more questions about your employment. You've got two other employees working for you?

THE COURT: Excuse me, ma'am.

Is this the hardship issue?

MR. LAPHAM: Yes.

THE COURT: I don't need you to probe that.

MR. LAPHAM: Okay. I have nothing further.

MR. DENVIR: Your Honor, could we approach the bench, please.

(A bench conference was had but not herein transcribed.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I want to ask you another question. Because of the position I hold as a judge, I have to be concerned as to whether my position could have influenced you to give an answer to my questions that what you would have wanted to give. I don't know if that's the case, but I want to ask you that question. When I asked you questions earlier and you responded to my questions, the questions I personally asked you, did my position as a judge have any influence on your answer?

A. (Pause.) I think just the one you talked about the sentencing was all, which maybe I didn't understand it the first time.

Q. How did it have an influence or effect on your answer?

A. Well, it made me stop and think, and then his question about some premeditated murder – I wouldn't automatically give the death penalty. I would need to hear the case.

Q. When you answered, did you tell me the answer that is in your heart?

A. Yes, sir.

Q. Was your answer in any way influenced by the fact that I personally asked you a question?

A. I don't think so, no.

THE COURT: Please bring in the next juror.

Thank you.

(Prospective juror no. 13 left the courtroom.)

(Prospective juror no. 28 entered the courtroom.)

THE COURT: Let the record reflect that the 28th randomly selected juror has joined us. I will be referencing you as juror 28, perhaps, at times.

A. All right.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You raised your hand when I asked the question – oh, I see. I'm not sure – did you raise your hand when I discussed scheduling?

A. Yes.

Q. Go ahead and tell me –

A. I'm a single parent with two children, and because I'm here today they couldn't go to school, because their school schedules are different. So if I had to be in Sacramento every morning at 7:00, my kids would be off school for awhile, I guess. I mean, if I could arrange something, and I'll try, I'm more than happy to try to arrange transportation for them to school so that I can do my duty.

Q. Is that something that could possibly happen?

A. I have a niece who just moved into town. I could probably talk with her about it. I'm willing to go through this process and see what I could do.

Q. Okay. I'm going to give you a copy of your questionnaire.

A. Okay. (Accepts document.)

Q. You made a notation – that's the short questionnaire.

A. Mm-hmm.

Q. You made a notation at the bottom of it indicating that you wanted to discuss two questions in private. Do you see that notation?

A. Yes.

Q. I'm going to give you a copy of the more voluminous questionnaire and ask you to look where I'm pointing to tell me if that is the matter that you wanted to discuss privately?

A. (Examines document.) Yes. I have a note from the doctor, if you need it.

Q. Do you have a note from the doctor now?

A. Do you need it? I brought it with me.

Q. I'd like to see the note.

A. Here you go, Your Honor. (Complies.)

Q. (Examines document.)

THE COURT: I want to make the note available to the parties through my deputy clerk.

We'll give that back to you.

PROSPECTIVE JUROR NO. 28: That's all right.

THE COURT: You don't need it back?

PROSPECTIVE JUROR NO. 28: No.

THE COURT: Okay. Thank you.

MR. FRECCERO: (Examines document.)

MS. CLARKE: (Examines document.)

MR. DENVIR: (Examines document.)

(Discussion off the record between Mr. Freccero, Mr. Lapham and Mr. Cleary.)

(Discussion off the record between Mr. Freccero and Ms. Clarke.)

MS. CLARKE: Your Honor, I think both parties would agree to excuse this juror.

MR. FRECCERO: Yes, Your Honor.

THE COURT: Okay. We'll keep this note for our records. You're excused from responding to further questions because of a hardship and we'll let you join the other jurors. Thank you.

(Prospective juror number 28 left the courtroom.)

MR. DENVIR: Your Honor, I wonder if we could address the Court before the break with a suggestion about what to do with juror 13. I just wanted to advise you.

(Prospective juror number 33 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You are the 33rd randomly selected juror. I'll be referring to you, perhaps, periodically as juror number 33.

A. All right.

Q. I'm going to see if I can address questions to you from this position. That will work if you respond by using the microphone and you speak to the lawyers located at counsel table, the parties. If that doesn't work, I'll change my location so you have to talk to me at a different location. So you don't necessarily have to look at me, if it would be difficult having your voice amplified in the microphone there.

A. Okay. I can't see some people at that table, but that's okay.

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

A. Every once in a while I've heard a blurb on the television, but I've not read anything about it.

Q. What type of information have you received from the television?

A. About the jury selection, that they were starting to question the jurors, and that's basically it.

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

A. My family know that I'm here. But discussing the case, no, because I don't know that much about it.

Q. Do you understand that the jurors in this case are only supposed to receive information about the case here in the courtroom?

A. Right.

Q. Are you making efforts to ensure that that's where you receive your information, at least since Cal Expo?

A. Yes, sir.

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

A. No, I don't believe so.

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

A. No. I don't know that much about it, and I really feel that every story has two sides. And I've not really heard either side.

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

A. Oh, yes, sir.

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

A. Yes, sir.

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

A. I would say in certain cases I would think it was necessary.

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. CLEARY:

Q. Good morning, ma'am.

A. Good morning.

Q. My name is Robert Cleary. I'm one of the prosecutors in the case. I was going to ask you a number of questions following up on some of the questions you provided in your questionnaire.

You noted in your questionnaire that you have some acquaintances who are in the law enforcement community; is that correct?

A. That's correct.

Q. Okay. And you recognize, at least from what you've disclosed in your questionnaire, that those people are – it's a different agency than the people prosecuting and investigating this case, correct?

A. That's correct.

Q. And you recognize that each case is different and each person is different, correct?

A. That's correct; yes.

Q. And as you told us in your questionnaire and told us just a moment ago, you believe that every story has two sides; is that right?

A. Mm-hmm.

Q. So I assume there was nothing about your relationship with people in the law enforcement community that would make you either favor the prosecution or disfavor the prosecution in this case, correct?

A. That's correct.

Q. And am I also correct in assuming that there's nothing about your relationship with people in the law enforcement community that would cause you to either favor or disfavor the defendant in this case; is that right?

A. That's right.

Q. I'm going to ask you a couple of questions about your views on the death penalty. And let me hand you a copy of your questionnaire. And I'm directing your attention to start on page 26.

A. (Accepts document.)

Q. On page 26 and 27, you responded to a number of questions about the death penalty; is that right?

A. Yes.

Q. And the questionnaire was seeking your personal views on the death penalty; is that right?

A. Yes.

Q. That's what you understood those questions to be correct?

A. Yes.

Q. I want to switch focus a little bit now and ask you about your views of the law and your ability to follow the law, separate and apart from your own personal views. Do you understand that?

A. Mm-hmm.

Q. I assume – you're not a lawyer, correct?

A. No.

Q. And I assume that you really don't know anything about the death penalty statute, the law of the death penalty; is that right?

A. That's correct.

Q. And you are aware, are you not, that in the court proceeding Judge Burrell is going to tell you what the law is and what law you have to apply; is that right?

A. That's right.

Q. Okay. Will you be able to set aside your own personal views about the death penalty and follow the death penalty law as Judge Burrell gives it to you?

A. Yes.

Q. Take a look on page 27 at question 107, please.

At the second part of that question, you said that anyone who deliberately murders two or more people you strongly agree should get the death penalty. Can you envision

–

A. Where does it say "two" – oh, I'm sorry. I'm sorry.

Q. That's a multi-part question. Okay.

A. Okay.

Q. Can you envision situations where someone who deliberately murders two or more people should not in your view be sentenced to death?

A. Well, I would imagine that there's always a possibility; yes.

Q. For example?

A. For example, if maybe someone was trying to kill you or your child or your family or something and maybe there were two, you know, I mean, it's possible; yes.

Q. And if Judge Burrell told you that there was certain facts and circumstances you would have to consider, assuming there's a double murder, you would have to consider these facts and circumstances before you decide whether the defendant should be sentenced to death, would you consider and evaluate those circumstances that the judge gives to you?

A. Yes.

Q. So, for example, if you found out – I want to probe this just a little bit, give you some facts that really have nothing to do with this case.

But if you found out, for example, that a defendant who had murdered two or more people was mentally retarded, would that be the sort of thing you would evaluate and determine whether or not that person should be sentenced to death?

A. Yes, I would.

Q. And similarly, if that defendant who committed two or more murders had done so under duress, that is, he either literally or figuratively had a gun held to his head to force him to commit the murder, that would be another factor that you would consider in determining whether that person should be sentenced to death, correct?

A. That's correct.

Q. And some of those factors we just discussed would be properly considered the background of the defendant; is that right?

A. Right.

Q. And so at the bottom of that page, the bottom of page 27, question 107, you mentioned that a person's background does not matter. You strongly agree it does not matter when it comes to whether he should be sentenced to death for murder; is that right?

A. I guess I took it, when I read this, a person's "background" meaning not that they were – had a gun to their head or were mentally retarded but that they were maybe someone who knew the law more or were a wealthy person or something like that. I think that's what I was thinking when I said a person's background. I don't know.

Q. Okay. In any event –

A. But I do feel there are certain circumstances when in their, you know, background or, you know, their mental makeup or whatever, that there are times that people do things – I had to be very honest. I had a sister who was retarded, and she also from time to time had what they call nervous breakdowns or whatever. So I know that there are times when things happen. And I don't know, when I answered this question . . .

Q. Let me try it this way, maybe make it a little easier for you. If Judge Burrell told you there were certain circumstances in a person's background that you must consider in determining whether a death penalty is appropriate or not, you would consider those factors, correct?

A. Right; yes.

Q. And as we're talking about this and using some examples – we mentioned duress; we mentioned mental retardation, which you told us you would consider –

A. Mm-hmm.

Q. – does it make it clear to you that it really is impossible to determine the appropriate sentence in any given case before you've heard all the evidence?

A. Right. Right.

Q. And that's because you wouldn't know until you've heard all the evidence what the – what we call mitigation is; is that right?

A. Right.

Q. What we called two types of mitigation.

Could you assure the Court and the parties that in this case you would not make a decision as to death penalty until you've heard all the evidence, the aggravating circumstances and the mitigating circumstances, and follow the judge's instructions on the law?

A. Right.

Q. You can assure us of that?

A. Yes.

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

THE COURT: I'll allow you to address the juror after the break.

MR. DENVIR: That's fine, Your Honor.

THE COURT: Shani, you can escort her out of the courtroom.

PROSPECTIVE JUROR NO. 33: Shall I keep this?

(Discussion off the record between the prospective juror, the clerk and the Court.)

(Prospective juror number 33 left the courtroom.)

(The following discussion was had in the courtroom. The jury was not present.)

THE COURT: You wanted to say something.

MR. DENVIR: Yes, Your Honor.

With regard to juror 13, with regard to the question of hardship, she indicated if she had a particular person as a replacement at her employment she would not be concerned and distracted and that she would feel otherwise if she didn't know who the person was. And she seemed to say, as I recall, that she could make a phone call and resolve that with her boss. And I was going to suggest that perhaps she make that call or be asked to make that call and find out how it comes, because if she was not going to be concerned, it wouldn't distract her, that's one thing. But if she would continue to be concerned, that would be another thing on her ability to serve. And I think she said she could call now and find out what would happen a month from now or something if she were sitting on the jury.

THE COURT: Government?

MR. LAPHAM: Your Honor, we have no objection to that. However, I point out there's no legal cause why, at least demonstrated so far, why she couldn't serve. Even if that phone call doesn't turn out the way she wants it too. She said that she could make the drive; the office would be taken over –

THE COURT: Just a moment. I'm not sure you're right, because she indicated in response to Mr. Denvir that if she doesn't have an individual assume the reins of the office that she trusts, then she may not give her undivided attention to this trial.

MR. LAPHAM: And I was going to probe that area. The Court indicated that you were satisfied, I thought.

THE COURT: I'm satisfied that she's already given responses on the topic and there's no need for additional probing, so in that sense, yes, you're right, the Court did state it was satisfied.

MR. LAPHAM: Well, in any event, we have no objection to her making a phone call, seeing what she can do.

THE COURT: My inclination is to have my deputy clerk ask the juror to make the call. And then I assume you would want some response, and I'm assuming you would want that response to be given to my deputy clerk and then I give it to you; is that right?

MR. DENVIR: That would be great, Your Honor.

(Discussion off the record between the clerk and the Court.)

THE COURT: I want to cover another matter before we take the break. And I'm covering it at this time because if you agree, you will have to perhaps communicate with your respective offices about some additional research.

In Mr. Kaczynski's opposition to the Government's motion to preclude his use of expert testimony to support his mental status defense, he cited the Supreme Court's decision in Taylor vs. Illinois, 484 U.S. 400. In Taylor, the Supreme Court warns that when considering witness preclusion as a sanction – I'm now quoting from the decision at page 414, "a trial court may not ignore the fundamental character of the defendant's right to offer testimony of witnesses in his favor."

The Taylor court then cited with what I considered to be approval the Ninth Circuit's case of Fendler vs. Goldsmith. This case wasn't cited by either party in connection with the referenced motion. The Fendler case is at 728 F.2d 1181. You should see 1188 to 1190. It's a Ninth Circuit 1983 decision in which at least four factors were balanced in determining whether a preclusion sanction was consistent with the compulsory process of the Sixth Amendment. See Taylor, 484 U.S. at 415, footnote 19.

Those four factors were the effectiveness of less severe sanctions; the impact of preclusion on the evidence at trial and the outcome of the case, i.e., the materiality of the evidence; the extent of prejudice to the prosecution from the violation; and the willfulness of the violation.

I want to get the parties' input on the application of those factors to the matter that is pending Friday. Have you already considered those factors and decided that they're not applicable to the motion?

MR. CLEARY: We have not, Your Honor.

MR. DENVIR: Nor have we, Your Honor.

THE COURT: Okay. When can I get your input? Specifically, it appears to me that the parties should consider submitting supplemental briefs on whether the four Fendler factors are controlling on this issue and how those factors should be balanced.

MR. DENVIR: We could brief that, Your Honor, by 4:30 tomorrow afternoon and serve it on the Government and serve it on chambers, if that's agreeable.

THE COURT: That's acceptable.

MR. CLEARY: We could do the same, Your Honor.

THE COURT: Thank you. We'll be in recess until 10:45.

(A recess was taken.)

THE CLERK: Court is now in session.

THE COURT: Let the record reflect all participants are present except for the prospective juror that was being questioned. She is now being brought into the courtroom as I speak. The defense may question at will.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, ma'am.

A. Good morning.

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

A. All right.

Q. Thank you. I believe you said that since you been summonsed for this case or called in, the only people you talked to about the case at all was your family?

A. Family.

Q. Can you tell me a little bit what you talked about with them?

A. That I got this summons, and that I was going to have to come to court.

Q. Did they have any particular reaction to that one way or another?

A. No.

Q. Didn't –

A. They just said, you know – you know, it's a big trial, and, you know, they don't expect me to be here. I mean, to stay here. They just said, you know, what a great opportunity to, you know, see how the courts work.

Q. You said that they didn't expect you to be here or stay. Here in what way?

A. Well, I just – I don't know. I just don't think I would be picked.

Q. I see. That you wouldn't end up on the jury?

A. Right.

Q. But would be struck by someone?

A. Pardon?

Q. And just would not be picked for the jury?

A. Yeah. There's a lot of people that have been summonsed.

Q. Okay.

A. Hundreds, so my chances of getting on I don't – you know, I don't feel are that great.

Q. How do you feel about getting on one way or another?

A. Well, I think that it's an – it would be a learning experience. In fact, I, you know, had not, you know, spent any time really in court except just, you know, county jury duty. I been on that a lot, but one-day things. But not only that, it's very important, and there's, you know people, lives at stake and, you know, just a big responsibility for everyone involved.

Q. You evidently served on a county jury at least three different occasions, is that right?

A. Right. Right. I gone there four times this year, but I never been picked. It was settled.

Q. And when you were with those juries, were you at the time employed in the position of secretary of the law enforcement officers?

A. Sometimes I was. I been retired now for almost four years. I don't know how you get, you know, drawn, but I gone like every other year, maybe every three years for a long time.

Q. Let me ask you something. You obviously have more ties with law enforcement than most people who come on jury duty. I mean, you work for some –

A. Right.

Q. – law enforcement officers, a different one, for a long period of time?

A. Right.

Q. And I guess your present husband is retired law enforcement?

A. Right.

Q. Your ex-husband was retired and you have a lot of friends in that area?

A. Right.

Q. Let me ask you. Only you can tell us this. I mean, I assume you have a pretty high opinion of law enforcement. You know, these are your friends and relatives.

Do you think that's going to have any effect in your sitting as a juror in this case?

A. Well, let's put it this way. I have a lot of friends because I worked in law enforcement for a long time. But I also know that they are just like anyone else. There's good ones and there's bad ones, and to say I would believe a police officer over someone else's testimony, no.

I just have to feel in my heart what they're saying is true. But because they are a police officer, even though, you know, that I have worked there and I know a lot of them, no.

Q. Well, let me ask you another version maybe. There's another concern that I would have, and that would be that let's say you were sitting on this jury, and at the end of the guilt or not guilty phase you felt that the case had not been proved, or at the end of, say, a penalty phase, you felt that the proper penalty was life and not death.

Would it be hard for you to maybe go back if you have a lot of friends in law enforcement and kind of maybe say, well, you know, I sat at as a juror and my verdict was not the one that law enforcement, in the sense of the prosecutor, wanted; is that – you think that would be a problem at all?

A. No, because you have to do what's right, and if it's what I believe – you know, I'm going to have to really believe whatever it is I decide, and if it's against, you know, what may be law enforcement officers would be saying, or the prosecution, then that doesn't matter. That's not what's important.

Q. Okay. So if you felt you mean you would make –

A. Right.

Q. If your friends or family think, gee, how could you do that –

A. No, because if they are really my friends, they know me and they know that I basically –

Q. Your kind of your own person?

A. Right.

Q. And they know that?

A. Yeah. And sometimes I can see the other side when maybe they don't even bother to. And so sometimes we have a discussion, you know, and then pretty soon they think, well, yeah, I never thought of it that way.

So I don't let anybody make up my mind up for me.

Q. Okay. You said in your questionnaire that you thought that in certain cases the death penalty is necessary. I think that was –

A. Right.

MR. DENVIR: Your Honor, I wonder if we could have the questionnaire.

I want you to see exactly what you said.

PROSPECTIVE JUROR NO. 33: What page?

Q. BY MR. DENVIR: I think it's on page 26. You were asked your opinions and beliefs about the death penalty and it's use in our society. Number 103.

Can you tell me what you were thinking of as you said you believe in it for certain crimes; what particular crimes you had in mind?

A. Well, yes. There have been certain, you know, terrible crimes. I really think it's really important when you feel that someone is very guilty and has done a terrible thing, then I have – I would say that I believe in the death penalty. But I do know there are lots of cases or lots of extenuating circumstances to a lot of things.

And I do not think the death penalty stops people from committing crimes, because, you know, they say you execute more people, then more people wouldn't commit crimes. I don't believe that. And I do not believe that the death penalty is the highest price you can pay, because I think staying in jail for a long time is a bad thing to have to do. And I do think, because I believe in God, that death is not so bad.

So I think, you know, now that – when someone is executed, at least in the state of California, you know, they give them – maybe I'm not supposed to be saying all this.

Q. You are. We have to know what –

A. They give them shots, and they make them very sleepy, and then – you know, so a lot of the times death is not what they gave their victims. And so I don't really believe that that is the harshest punishment you can give someone. I think if you gave them the rest of their life in prison, a lot of times that's much harder. I mean, that's my own personal opinion.

Q. And people have all sorts of different opinions, and the jury will probably include people with all sorts of different opinions, and they, you know, will play into what the judge tells you is the law.

A. Well, yeah. I know how to follow directions. But that's exactly what I feel.

Q. Let me ask you. You say you don't really feel the death penalty is a deterrent, and yet you feel it should be in some crimes. Is it more a way of making sure that that person doesn't commit the crime again, or is it more just as a punishment, kind of, you know – kind of retribution for what they've done?

A. I think there are some people now that have done some terrible things, and they're let out and they do them over again. And the one that comes to mind to me is the man that chopped the little girl's hands off and raped her. He then did his time and got out. And then I think he ended up killing a woman the last time he was arrested. That kind of thing. I don't think they should ever get out.

Q. But you understand that in federal court, the crimes that Mr. Kaczynski is charged with, mailing or delivering a bomb with intent to kill resulting in death, the alternative penalty to death would be what they call life in prison without possibility of release. There's no parole in the federal system. So it would be some – it would be life in prison without any possibility of release.

Could you –

MR. CLEARY: Objection, because there are other alternatives.

THE COURT: Okay. I'm going to let him continue to ask his question.

The government states that there are other alternatives. I already told you –

THE WITNESS: Yes.

THE COURT: Go ahead.

Q. BY MR. DENVER: Well, of the two charges that Mr. Kaczynski is charged with involving the death of a man named Gilbert Murray, one of them holds the penalty of strictly death or life without possibility of release. The other one has a third alternative. So if you were to find Mr. Kaczynski was the person who mailed or delivered that bomb, the alternative you would be looking at would be – life without possibility of release would be the alternative to death. Just so you understand.

But what I really want to know – you don't have to get into the law. But what I want to know is could you consider that as an alternative penalty for death for that kind of a crime; can you really keep an open mind that that might be the proper penalty as opposed to death?

A. Right.

Q. You could. Okay. Let me ask you, because I want to also explore whether this might – as I understand it, your husband was ex-law enforcement, and there were two law enforcement officers, as we know, executed a number of years ago.

A. Blecher and Freeman.

Q. Freeman and Blecher. And that was a horrible crime.

A. It was in our county, and they worked with my husband, so it was close, you know. So it – it made more of an impact, probably, because it was my friends' husbands that died, it wasn't mine.

Q. Right.

A. So –

Q. Did you follow that case as it went on when they arrested the defendant and then he was convicted? It's been in the courts for a while. Have you followed as it went along?

A. Well, the last I heard they were still trying to get him another trial or something. But he was in the building, I mean, where I worked, and we held him there. So at the time, yes.

Q. I guess what I'd like to know is – you haven't sat on a death penalty case before?

A. No.

Q. Most people haven't. Does the fact that those two officers were friends of your husband and maybe acquaintances of yours, and there was this killing and a death

penalty trial in your county, is that going to have any influence on you in this case or make you uncomfortable sitting on this case, predispose you in any way, anything?

A. I don't think it would.

Q. You don't see any relationship with that experience? That was a hard experience for you?

A. Yes, it was. As I say, they were – it's a small squad, they were very, very close.

Q. But you don't see any relationship between that and you serving as a juror in another death penalty case?

A. No.

Q. Okay. When Mr. Cleary was asking you questions and informed you if it got to this penalty phase, – which you never been into before?

A. Right.

Q. You understand by the time of the penalty phase, the jury found the defendant guilty beyond a reasonable doubt of at least one capital offense?

A. Yes.

Q. Then there's new evidence presented from either side or by either side, there's new instructions given by Judge Burrell and the jury goes out and deliberates again and comes back with a decision as to penalty.

You said that you would be willing to look at all the circumstances about the case, the aggravating circumstances that the government would suggest pointed towards death as the penalty, and any evidence or circumstances that the defense would present to you that might point towards the alternative of life without possibility of release.

You feel comfortable with that, in doing that?

A. Yes.

Q. And I think you said that one of the things you might be willing to – that you would consider as a possible matter if it came up would be that the defendant may have been mentally retarded?

A. Well, I think that was a –

Q. It was a hypothetical question. If hypothetically there was evidence that the defendant had mental illness as opposed to retardation, is that something you could have an open mind to as to a reason maybe going towards a different penalty?

A. Yes. As I say, my sister had mental problems, and there were times in her life that she was very, very sick, and I know that happens, you know.

Q. But –

A. But I would still have to listen to whatever – you know, to what was, you know, was presented and examine all of it.

Q. But you would be open-minded to listen to the evidence presented going either towards life or death and then make your honest call as to what you thought the proper penalty was?

A. Right.

Q. Now, one thing I do want to ask you is during the course of the murder of those two officers, if you followed it you may have heard that the trial judge reduced the death sentence to life without possibility of parole.

Do you remember hearing that?

A. Yes. I know he did not get death.

Q. Right. In the federal system, I want you to know that the jury – that the judge does not have that power that the state one does of overturning the verdict. In other words, the trial judge cannot overturn the jury's verdict.

A. Uh-huh.

Q. You understand that, just so there isn't any – so you're clarified on that?

A. Well, I didn't realize that, but, yeah.

Q. So your decision then as to the sentence to be imposed would be the sentence imposed without any further review by Judge Burrell, which is different from the state one which you may be familiar.

A. Right.

Q. That seems fair with you, you understand; you're comfortable with the idea this is your decision and it will be the one that's carried out?

A. Yes.

Q. Is there anything else that we ought to know about you that might affect your sitting as a juror in this case now that you're here?

THE COURT: Could you ask a question that goes for for-cause type challenges. That's too broad of a question.

MR. DENVIR: Then I don't have anything else. Thank you very much.

THE COURT: Thank you.

THE COURT: The government.

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

THE COURT: Okay. Thank you.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 35th randomly selected juror, so I may from time to time refer to you as juror number 35.

Is there any reason why you can't serve as a member of the jury?

A. No, sir. I'm attending school right now, but I arranged to take finals at night if I have to.

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

A. I've heard – I haven't read anything. I made a point not to read anything. Normally, when something comes on the news, I make an effort to turn the mute button off or turn the TV channel.

If I heard anything, it's been incidental. I honestly made an effort not to hear anything or read anything.

Q. I appreciate your efforts, but has information come to your attention despite your effort, and if so, what information?

A. I know there's a point of discussion about the psychiatric examination. I heard something this morning about some letter that the prosecution had just found for the court or something. Other than that, really nothing else.

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

A. No, I have not.

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; do you have any preconceived notion –

A. No.

Q. – as to Mr. Kaczynski's guilt or innocence in the case?

A. No, I have not.

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

A. Yes, sir, you do.

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

A. Yes, sir.

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

A. I'm a proponent of 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 and the absence of aggravating evidence?

A. No, sir, I will not.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning.

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. If I could follow up just a little bit on your questionnaire.

If the Court could provide the juror –

THE COURT: Yes.

Q. BY MS. CLARKE: I have a couple questions. First, you indicated when you were answering the judge's questions that you had heard this morning about a psychiatric exam and about some letters.

Could you tell us what you heard?

A. Well, I heard – I heard earlier that Mr. Kaczynski did not want to see the court psychiatrist. And then this morning I heard that the prosecution had a letter

or something that had stated that he wanted to talk to somebody about his feelings, and that part of the defense's point of view was that Mr. Kaczynski was afraid of the psychiatrist, and how these letters would invalidate that point.

That's about it.

Q. How did you feel about that information that you received; did it give you an opinion one way or the other?

A. No, not really.

Q. What did you think about it?

A. Very honestly, I would – I gotten to the point where I would like to see all the facts of the case. I got to the point where I discount what the media tells me pretty much. I'm very skeptical what the press tells me. I really would like to see the facts and understand. After the O. J. Simpson case, with all the press, I don't care what the paper says. Without actually seeing the facts, I'm not going to make any conclusions.

Q. Did it cause you any concern – if it was reported that Mr. Kaczynski refused a psychiatric evaluation by the government, not by the court but by the government psychiatrist, would that cause you any concern about something being hidden from you?

A. Not necessarily, no.

Q. On page 24, if you could look there very quickly with me. You there?

A. Yes.

Q. Number 95.

A. Uh-huh.

Q. What is your opinion about psychologists and other mental health professionals who testify in court. You say okay.

Could you connect up when you said not necessarily I wouldn't think something was hidden from me with how you feel about mental health professionals testifying in court?

A. I think they're necessary in court, because I don't understand all the terms and I don't understand all the mental conditions and how people think. I mean, I understand how I am, but I think a – if there is a mental problem I, would like to have a psychiatrist explain to me what would cause this problem or what is the effect of these problems.

Q. So you would be open to thinking about that, considering –

A. Yes.

Q. – that kind of testimony?

A. Uh-huh.

Q. Okay. You indicated in your questionnaire that you also knew some other information about the case. I could point you to page 30, question 113. You were aware of the request for the mental exam and a change of venue to Sacramento?

A. Uh-huh.

Q. Could you tell us where that information came from?

A. Probably the evening news. I very seldom read the newspaper. Normally I try to catch an hour of the evening news every night. So normally that's the bulk of my common, everyday knowledge, my current affair knowledge.

Q. From the TV and not from the newspaper?

A. Not the newspaper, the TV.

Q. There's a question on page 32 about your thoughts and opinions before coming here today. Number 121.

You wondered what Mr. Kaczynski was trying to prove. Could you tell us what you were thinking when you wrote that answer?

A. I really don't remember. Probably the idea that if Mr. Kaczynski had done these things, why he would do them. I mean, what would cause a person to do these kind these actions.

Q. Could you have been thinking that I read a lot about or I heard a lot about the quality of the government's case here, that maybe you were concluding that Mr. Kaczynski was in fact the person, the right person; could you be thinking that maybe the evidence was there to establish his guilt and that's maybe why you wrote that?

A. Probably I was thinking that the evidence was there, but I hadn't heard the evidence. The media was tilted that way. But I hadn't heard the actual evidence of what was going to be presented.

Q. So if you were taking your value of the case out of the media, then you would believe that Mr. Kaczynski was guilty, basically?

A. If I were – if I were to believe the media, yes.

Q. Right. And that would be based on what evidence that you've heard on the media?

A. Basically, just that the FBI raided the cabin, and he had been arrested for these crimes. But, like I said, I really don't know.

Q. Do you remember what they said at the time of the arrest what they were finding in the cabin?

A. I know there was the copy of the manifesto in the cabin, but other than that, no.

Q. Any other writings, you remember anything about that?

A. Not in particular. I knew – I know they took boxes of papers out, but I don't know what was in them.

Q. That kind of reporting impressed you that Mr. Kaczynski must in fact be who they've called the Unabomber?

A. Yeah, that's who they suspected to be the Unabomber.

Q. Do you think that will cause you any problem as you sit and listen in court to what's going on, that it's kind of a mixture of information going around? I know that you would like to throw the media away, but, you know, sometimes that's hard to do.

A. I don't think it will cause me a problem.

Q. Kind of distinguishing out what you heard someplace else and what you're hearing here?

A. Uh-huh. I think I can do that.

Q. Okay. If I could ask you a couple questions about your opinions and beliefs about the death penalty. You indicated in the questionnaire that it should apply in certain cases.

Could you help us understand what kind of cases it should apply in?

A. I believe it should apply in the death a law enforcement officer. I believe it should apply in a terrorist act. The reason I believe in that is because a bomb or a terrorist act, or whatever, you have a tendency of taking an innocent life. If you were to murder somebody, you're after one particular person. But if it is a terrorist act, you could kill children or anybody walking down the street.

Q. And you define a terrorist act as something like a bomb?

A. Yeah, basically. Something like a bomb or somebody walking into an office building and shooting people. Something, basically, that anybody could get killed.

Q. In those kinds of circumstances, the death penalty would be the appropriate sentence, in your opinion?

A. Yes.

Q. Okay. Here Mr. Kaczynski is charged with mailing or delivering a bomb to someone and it killed them, right?

A. Uh-huh.

Q. And the only way we'll be in a penalty phase in this case is if the jury has found beyond a reasonable doubt that Mr. Kaczynski acted with the intent to kill Gilbert Murray with a bomb.

If that's the finding that you as one of the jurors makes beyond a reasonable doubt, would the death penalty be the sentence you would believe would be appropriate?

A. I think that would depend on what Mr. Kaczynski's state of mind was. If it was an act of malice, a deliberate act, then I would probably say yes. If there's something else, some mitigating circumstance, that would change my mind.

Q. And would that be part of the determination as to whether Mr. Kaczynski is guilty of the crime?

A. No, it wouldn't.

Q. An intentional killing would be the necessary finding that you would have made beyond a reasonable doubt before you could ever evaluate penalty.

A. Uh-huh.

Q. And do you think if you made the finding in your heart that Mr. Kaczynski was guilty beyond a reasonable doubt of an intentional killing with a bomb, do you think there's any other appropriate penalty other than death?

A. No.

Q. So I'm not feeling like I'm putting words in your mouth and getting us both confused. If Mr. Kaczynski were convicted, which is the only way we get to this penalty, of the intentional killing with a bomb, then the death penalty is the appropriate sentence in your –

A. In my opinion, yes.

Q. – in your opinion? And it would be very difficult for you, I take it, to consider any other penalty in those circumstances?

A. I could consider it, but I would have to be persuaded otherwise, yes.

Q. And what would it take to persuade you otherwise? And let me keep you on the focus of the intentional killing with a bomb. You're not there without the intentional killing with a bomb beyond a reasonable doubt.

A. I think I would have to know what his state of mind was, if there were mitigating circumstances.

Q. Would that not go into the judgment as to whether it was an intentional killing as opposed to what the penalty should be?

A. Can you rephrase that for me. I got lost.

Q. I'm sorry. There are two parts. One is was the crime committed.

A. Right.

Q. And who was it committed by. And then there's the question of what is the appropriate penalty. And in the crime box, you as a member of the jury and the other 12 jurors – other 11 jurors have found beyond a reasonable doubt that Mr. Kaczynski sent a bomb with the intent to kill and a death resulted. You found that beyond a reasonable doubt.

A. Okay.

Q. Then what's the an appropriate penalty?

A. Personally, it would be the death penalty.

Q. And it would be very difficult to move you off of that opinion?

A. Yes.

Q. One of the things that would happen is the judge would instruct the jury that you have to determine whether there are aggravating circumstances and whether there are mitigating circumstances, much as you were talking to me about, and you would weigh those.

A. Yes.

Q. Or you would find the absence of mitigating circumstances and you would decide whether the aggravating circumstances were sufficient to warrant a sentence of death. Those would be the instructions. What I'm trying to find out – and, basically, that leaves it in your lap.

A. Uh-huh.

Q. It is –

A. It's up to me.

Q. Consider these things, and then do what you think is right. What I'm hearing you say is that after hearing those instructions, what you would think is right is the death penalty in those circumstances?

A. If there were no mitigating circumstances, yes.

Q. What could those mitigating circumstances be; have you any thoughts on that?

A. I really can't tell you. I don't know.

Q. Okay.

A. I don't know.

Q. And I'll leave this alone after this. What I'm hearing you say is the mitigation in your mind would go to the commission of the crime, not to the penalty?

MR. FRECCERO: I object to that, Your Honor. She's now asking questions based on legal definitions.

THE COURT: Overruled.

Q. BY MS. CLARKE: Are you with me?

A. Repeat what you just said.

Q. The mitigation is you're thinking of mitigation. You're thinking of what would mitigate whether or not he was guilty of the crime rather than the penalty.

A. But I would – in my opinion, though, if he's guilty – if there are circumstances, mitigating circumstances that he's guilty of the crime, they – to me they roll over to the penalty side also if we found him guilty. Just because I find – just because he's found guilty, those circumstances don't go away. For me they become part of the other half.

Q. All right.

A. To me, they have to be considered, both ends.

Q. Okay. You mentioned in your questionnaire that you saw the movie Dead Man Walking?

A. Yes.

Q. And that it made you rethink the death penalty. How did that do that?

A. I never really – I've always been in favor of the death penalty, but I never seen how it affected people. I mean, I never seen how it actually – how a person deals with it when they're on death row. And, basically, that's what it made me think about it. This is a person that's being executed. But then I also turn around the other way where for me, if you shoot a police officer, you're putting my life in danger, and that becomes, you know – then it – if you have no respect for the law and you done this deliberately, then maybe society would be better off without you.

Q. So did it firm your belief in the death penalty more?

A. No. It just made me look at both sides of the picture, both sides of the coin.

Q. Do you think that psychiatric evidence is relevant in determining whether someone should get the death penalty even if they have committed an intentional premeditated murder?

A. Yes, I do.

Q. And do you think that how someone will do in prison under a life without parole sentence would also be a relevant consideration?

A. Yes, I do.

Q. One final area very quickly. In your questionnaire, you indicated that the justice system – and I can give you page 17, right down at the bottom and the top of 18 – no, it's all there.

I thought you mentioned – that's not exactly it. I thought you mentioned that sometimes the system fails when people have high-powered lawyers.

Had you not mentioned that in your questionnaire?

A. I think I did.

Q. Let's assume we're both right that you did. Can you tell me what you were thinking when you wrote about that; were you thinking about the O. J. Simpson case?

A. Mainly that's what I was thinking about. If you're rich enough and know enough people, that the system sometimes doesn't work right.

Q. How do you feel about public defenders?

A. They're fine. I mean, I don't have a problem with public defenders. I think everybody needs an attorney. I just wish – there are times I just wish everyone could afford the same level of attorney, and then maybe everybody could get a fair trial.

Q. Maybe it would be across the board?

A. More accross the board than hiring somebody for a million dollars. And getting a public – a public attorney, you're not getting the best, you're not getting as much support as if you would if you hired Johnny Cochran, and I think that's a disadvantage.

MS. CLARKE: Could I have just one moment?

THE COURT: Yes.

Q. BY MS. CLARKE: Do you think it's good or a bad that Mr. Kaczynski is represented by a couple of appointed lawyers, public defenders?

A. I didn't even know you were appointed public defenders until this minute.

Q. Now that I confessed –

A. I don't have a problem. I mean, it really makes no difference to me. Like I said, up until this minute, I didn't even know you were a public defender.

MS. CLARKE: Thanks very much.

THE COURT: The government.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning.

A. Good morning.

Q. My name is Steve Freccero. I'm one of the prosecutors in this case. If I could just take a little bit of time with you and follow up on some of your answers.

You still have your questionnaire in front of you?

A. Yes, I do.

Q. If you could take a look at page 32, question 222. In that question, you were asked is there any particular reason that you would like to be a juror in this case, and you responded yes, and then you said I would like to hear all the facts and draw my own conclusions rather than having the media do it for me.

Is that a fair summary about the way you feel about what you've heard about this case?

A. Yes, it is.

Q. You realize that being a juror in a criminal case is an important responsibility?

A. Uh-huh.

Q. And I think you mentioned before that having seen a particular movie made you think about how serious the consequences are in a case where the death penalty is a potential sentence?

A. Yes.

THE COURT: Could we be more pointed going after for-cause matters.

Q. BY MR. FRECCERO: We just need to know very directly whether you think – as you said, only you know yourself – whether you think that regardless of any information you’ve gotten from any other source, that you’re confident that when you come into a trial proceeding, you’ll be able to base your decision only on information you receive in the courtroom?

A. Yes, I can.

Q. You feel confident about that?

A. Yes.

Q. Now, with reference to some of the views that you’ve expressed regarding the death penalty, I wrote down that you answered at one point that your decision would depend on the circumstances.

A. Uh-huh.

Q. Now, again, if I could just take a moment, moving from your opinions and concentrating on what’s really one of the key issues in here, and that’s going to be if you got to that stage, if you got to a penalty stage, you would receive additional legal instructions from the judge, just like you did in the beginning here today, and those instructions would discuss many of the aspects of the information you would be presented with.

Now, could you follow those instructions even if in some respect they differ from areas of your personal opinion? For instance, you told us that in your opinion, in certain circumstances the death penalty is appropriate. It might be the case that the instructions you get address different issues or issues you don’t agree with.

But the key issue is are you going to be able to listen to those instructions and apply them to the evidence here even if you yourself might not agree with them?

A. Yes, I can.

Q. You feel confident of your ability to do that?

A. Uh-huh.

Q. And, likewise, right now, as you said, you don’t know what those circumstances might be as you sit here right now, right?

A. Right. I don’t know.

Q. Okay. But the point is, if I were to suggest circumstances to you and right now you thought, well, that doesn’t seem very significant to me, would you be able – can you suspend your judgment, suspend whatever your opinion is, and wait until you actually hear that evidence and consider the law, at that time do you feel confident that you would be able to do that, even if – you know, for instance, if someone had asked you to write the law, how it should be, maybe you would do it differently. But

the point is going to be that the Court, the judge, is going to tell you what the law is, and then you're going to have to listen to evidence.

You feel confident you can do that?

A. Yes, I do.

Q. You think you can give both sides – you can listen to whatever the Government's arguments are and consider them with respect to the law?

A. Yes.

Q. And the same with any information that the defendant presents, you think you can consider that even if your own personal opinion might tell you otherwise?

A. Yes, I do.

Q. You feel confident?

A. Yes.

Q. All right.

MR. FRECCERO: Thank you.

THE COURT: Please escort the juror.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 36th randomly selected juror. I'll be referring to you periodically perhaps as juror number 36.

You have indicated in response to a couple questions in jury questionnaires that serving as a juror in this case could possibly cause you a financial hardship.

I'm wondering whether the trial schedule I indicated I contemplate using in this case will eliminate that hardship?

A. Partially, but not totally.

Q. Will it eliminate it enough so that we can consider you as a prospective juror?

A. I would have to talk to my employer and see if that would work. I don't know. I mean, it would make a hardship out of it.

Q. I'm sorry?

A. It would make a hardship if they cut my salary.

Q. What type of things could your employer possibly tell you that would place you at ease?

A. That they would pay me for it.

Q. That they would pay you for what, the jury service?

A. While my time served here, yeah.

Q. Okay. Is it feasible for you to work after you complete your service here on a daily basis?

A. You mean like do an extended day later?

Q. Yes.

A. No, because my business is opened hours. It's retail.

Q. So unless your employer indicates a willingness to pay you for jury service, this case poses a financial hardship for you?

A. Yes, sir.

Q. Do you want to probe this issue?

MR. CLEARY: If we may, Your Honor?

THE COURT: Okay.

VOIR DIRE EXAMINATION BY MR. CLEARY.

Q. Good morning. My name is Robert Cleary. I'm one of the prosecutors in the case. I'm just going to follow up on some of the questions the judge was just asking you.

All right. What has your employer told you about the extent to which he's going to compensate you during your – if you were to serve on the jury?

A. If – well, the company's policy is if you're on a jury for over a certain amount of days, they're not going to pay you.

Q. How many days is that?

A. I believe it's 20.

Q. Have you had a specific conversation with your employer about that and whether there's any room for negotiation, maybe expand the 20 days for a longer period of time?

A. No. No, I haven't.

Q. The hardship you're referring to is based just on the company policy, correct?

A. Yes, sir.

Q. How big is the company?

A. It's worldwide.

Q. And you're based here in Sacramento?

A. Yes, sir.

Q. Do you think that maybe they would make some exceptions for you if you could work, we'll say, half a day – we're sitting, as Judge Burrell told you, to 1:00 o'clock – and presumably you can get back to your job by 2:00 o'clock?

A. I would have to talk to them about that. I don't know.

Q. If they would reach some accommodation with you, and if you agreed to work, essentially, part-time while you're on jury service, and they agreed to pay for you, would you be willing to stay and sit as a juror?

A. Yes, sir.

MR. CLEARY: Your Honor, if I may suggest a phone call might be appropriate to his employer.

THE COURT: Elaborate on what you're actually recommending.

MR. CLEARY: Sorry. It was a little unclear. That perhaps the prospective juror should contact his employer by phone and come back later and let us know what the answer is. And the particular question for the employer would be whether they could reach some accommodation, now knowing that the trial day would be ended at 1:00 each day, and pay him for a longer jury service, and if so, for how much longer.

THE COURT: The defense.

MR. DENVIR: That's fine, Your Honor, if the juror wants to make that inquiry of the employer. I think it's important, just so he understands, that he would be starting at 7:00 o'clock on jury duty and would not be freed up until

1:00 from court, and then probably would then go to another location before he could go to his job.

As I understood, it was retail work, and it may affect that.

I think the other thing is probably that the trial is going to take three to four months, just so the juror knows that when he's asking the questions of the employer

VOIR DIRE EXAMINATION

BY THE COURT:

Q. It appears to be two questions. One question is whether your employer will pay you for the time you have to serve on this jury beyond whatever the policy is right now, because you indicated that the policy may only pay you for about 20 days.

The second question is whether the employer can make some type of a work accommodation for you which would allow you to work during the day after you have completed your jury service. That's what the government asked you.

But I asked you that question earlier, and I thought you indicated to me that that wouldn't work.

A. It won't work if they won't pay me.

Q. What do you mean won't pay you?

A. Well, if they are only going to give me partial salary because I'm here half a day, that's not going to work.

Q. I thought you indicated to the Government's lawyer – maybe you didn't understand the question. Maybe I didn't understand the question or the answer.

Let me just ask a new question. Unless your employer pays you for your service on this case, are you indicating to me that you can't sit because of financial hardship reasons?

A. Yes, that's what I'm indicating. If they don't pay me while I sit, if they don't pay me my full salary while I sit on the jury, I won't be able to do it.

Q. Are there any other options, can you work part of the day and avoid experiencing the financial hardship?

A. That's the part I'll have to ask about. If they'll be willing to pay a full salary for half-day's work, then there's not a problem.

Q. So the only other option you see is that your employer pays you your full salary even though you only work half a day; short of that, you're indicating this trial poses a financial hardship for you?

A. Yeah.

Q. You need your full salary?

A. Yeah. I got bills to pay, a house to take care of.

Q. You can't exist with a part of your full salary?

A. No.

THE COURT: I'm going to excuse the juror. The question is how does the juror communicate to the Court in a way that will be satisfactory to the parties. Do you want me to have my deputy clerk provide the juror with her number, and then the

juror can telephone the response to my deputy clerk and I share it with you on the bench?

MR. CLEARY: That would be fine, Your Honor.

MR. DENVIR: That's fine, Your Honor.

THE COURT: That's how we'll proceed. We're not going to ask you any other questions until we find out what your employer is going to do.

You can bring in the next juror.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You are the 37th randomly selected juror. I will be referencing you at times as juror number 37.

Is there any reason why you can't serve as a juror in this case?

A. No, Your Honor.

Q. I'm going to ask you a series of questions. I'm going to see if I can ask the questions from the bench. I say it that way because sometimes when someone is communicating with an individual, such as we are, you have a tendency to look at me, which is polite, but what I want you to do is perhaps something that may not be polite. I want you to communicate with the lawyers, the parties so I can make sure your voice is amplified by the microphone on the table. They will be given an opportunity to ask you some follow-up questions, and I want to hear everything you tell me.

Since you answered your jury questionnaire at CalExpo, have you read or heard anything about this case?

A. Only that the trial had started.

Q. From what source did you receive that information?

A. Just on the news, just on the radio.

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

A. No.

Q. I'm going to take a moment to look at your jury questionnaire.

Prior to arriving at CalExpo, what information had you received about this case?

A. The first time, Your Honor?

Q. Anytime. I'm not sure what you mean by first time. What do you mean by first time?

A. CalExpo.

Q. Prior.

A. Just, I think, the general news. I don't – not too specific.

Q. What had you heard? I think I'm asking this question because I don't think I saw a response concerning this matter in your jury questionnaire, so I want to hear what information you received?

A. Just that the – just that they had picked up a suspect, and I think it was in Montana.

Q. What else did you hear about it?

A. That several letter bombs had been mailed. Several people had died in the process. That the – it was a cabin up in Montana, pretty barren, apparently. There was some incriminating evidence in the cabin.

That was really about it. I know there were memoirs written or mailed in. I never – I think I read probably a paragraph of those and just kind of stopped. Didn't really care too much at the time. That's about it.

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. What were you thinking about as you paused before you answered the question?

A. I was just thinking about the question. No, I don't can't think of anything.

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

A. Nothing absolute. I imagine that there is evidence that's been gathered that is incriminating. To what degree, I don't know.

Q. It is not required that a prospective juror be totally ignorant of the facts and issues involved in the case before the individual can be selected as a juror. But we have to know what information you received, and if you formed opinions, we need to know what opinions you formed.

Have you formed any opinion as to the guilt or innocence of Mr. Kaczynski or any preconceived notion as to his guilt or innocence?

A. Again, no, not absolute. I assume that there is evidence that incriminates him, that points to him. And, again, to what extent, I assume that in order to arrest someone, it would have to be pretty heavy. Again, though, not an absolute.

Q. Short of being an absolute, what is your opinion?

A. That he probably did do it.

Q. How strongly are you committed to that opinion?

A. Not strongly. I don't know that's really the best way to put it.

Q. Can you think of another way to put it?

A. I would say preponderance. Whether he did or didn't do it, I don't have a strong opinion either way, if that answers the question. I mean, I would lean toward, yes, he did it, but I wouldn't say it's strong.

Q. Could you set aside that opinion 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. Yes.

Q. Do I have your assurance that you have set aside whatever information you received about this case and you will allow Mr. Kaczynski to start this trial with 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. Probably a proponent.

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?

A. No.

THE COURT: The parties may voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I want to just have a chance to ask you a few questions, if that's okay.

You indicated to the judge that you heard in the media a lot of the evidence against Mr. Kaczynski, and that you viewed it as incriminating evidence, right? You with me?

A. Yes.

Q. Can you help us recall or can you recall for us what that evidence is that you can remember?

A. You know, I – I seem to remember something about some notes in the cabin, a typewriter maybe. See, I can't be positive if that was one of them. So, I think, again I'm not sure, but perhaps there's some supplies found in the cabin as well.

Q. Supplies that would be used in bomb building?

A. Yes. Specifically, I don't remember.

Q. Just generally that there was some things –

A. Yes.

Q. – having to do with bomb building?

A. Yes. I really didn't care, to be honest.

Q. How about the writings that you mentioned, the memoirs or anything, do you remember whether those writings – the press reported that those were incriminating or not?

A. As far as evidence gathered?

Q. Uh-huh.

A. I don't recall.

Q. The content of the writings, you remember anything about what's –

A. No. Like I said, it – it sounded random, babbling to me. I read a little bit and gave it up.

Q. Okay. You indicated to the judge that it's not an absolute, your notion of the guilt of Mr. Kaczynski. I mean, you just have a feeling he's probably guilty by a preponderance right now. That's sort of where you are yourself?

A. Uh-huh.

Q. Based on what you know right now. How would you go about setting that aside, how would you deal with that yourself if you're sitting on the jury, how would you set aside those feelings?

A. I would make a conscious effort to start with a clean slate.

Q. Do you have –

A. I know that a lot of what's reported in the media is false and/or flat-out made up, and so I start probably with that notion.

Q. You don't really have a very good opinion about what you read or hear about in the media?

A. It depends. But, generally speaking, I don't treat it as the gospel truth until I know for sure it is.

Q. What does it depend on? When you said it depends on –

A. Just because someone writes it and it's printed and distributed to the public doesn't mean it's correct.

Q. Okay. So you have to see it for yourself or hear it for yourself or –

A. I have to make – form my own decision.

Q. Okay. If I could ask you a little bit about your law enforcement experience. Do you have your questionnaire?

On page 12 you indicate that you have some connection with the police department. On question 44.

A. Yeah.

Q. Could you tell me a little bit about that experience, what that is?

A. On question 44 or question 45?

Q. Question 44 is the 832PC.

A. Yeah. After that I moved around a lot, so I never really had the opportunity to pursue that, follow up on that.

Q. What is that about; how did you get involved in that, in the 832PC?

A. It's just – it was just – at the time, it was something I wanted to do. But I had to move for more economic reasons, then I ended up in school, and so I just – I went another direction on it.

Q. Was that a job opportunity actually when you were intending to get involved in police work?

A. Yeah.

Q. And that's how that works, the 832PC Module A and B, that's where you were placed initially or –

A. No. At the time, I wanted to go that direction. I just didn't follow up on it. Sometime I may want to do that.

Q. So that wasn't actually work that you actually got?

A. No.

Q. Forgive my ignorance. I'm a little confused about what that means.

A. No, I didn't follow up on that.

Q. Okay. But you had friends that did go and follow up and actually participate in the police function?

A. Yeah, I have friends that are in law enforcement.

Q. Were those friends that were doing the 832PC work at the same time?

A. No.

Q. Okay. I'm just – I hate to ask you again but –

A. Sure.

Q. Was that something you applied to do or thought about applying to do?

A. Yeah.

Q. Or actually went down and interviewed for and then just –

A. I went through the Modules A and B, and then, again, they want a commitment for – a commitment that you're going to be stationary in one location for so many – for at least a year, I think it was.

Q. So you just kind of thought about it?

A. Yeah. I just couldn't make that promise.

Q. What does it mean to go through the Modules A and B?

A. It's just basic classes.

Q. At the police academy?

A. Yeah.

Q. How long did that take?

A. I don't recall. I think it was a semester.

Q. And at the end of the semester, you said, no, I'll go another route?

A. I mean, I still wanted to do it. It was just a matter of I knew it was going to be – I believe at the time I knew I was going to be moving up to Sacramento to go the school. So at the time I said, well, I'll wait until I go to Sacramento and then pursue it then. And I think when I got up here, I had a lot of other stuff with school going and I was working. And, you know, while I wasn't in school, I didn't have the time. And when I got out of school, I had work in the Bay Area, I was still living in Sacramento. It never happened.

Q. Just didn't happen?

A. Yeah.

Q. So that's been quite some time ago?

A. Yes.

Q. I didn't get a sense of the year?

A. I don't recall offhand. It was probably ten years ago, at least.

Q. Possibly pretty lucky to remember to put it down, it sounds like?

A. Yeah.

Q. You indicate – let me just drop back for a second – some knowledge of the case. Have you had any conversations at your office about this case or these crimes?

A. Other than I was picked for the jury summons, no.

Q. Before you went out to Cal Expo to fill out the questionnaire, before you got your summons and before you got the instructions from the judge to try to stay away from anything, did you have any conversations at your office then?

A. No.

Q. Did anybody ever express an opinion about the Unabom case?

A. Yeah. I mean, I can't say that people didn't express opinions. But, again, to be totally honest, I just didn't care.

Q. Nothing comes to mind as to any opinions anybody expressed?

A. Well, what happened were hideous crimes, if that's what you mean. Other than – I remember, well, they caught the Unabomber. I remember that comment. And I remember hearing about the cabin and being secluded. But not nothing that sticks out as being, you know, out of the ordinary. I mean, other than the very minor things. I don't remember any one particular conversation.

Q. Okay. Do you remember, were you in Sacramento when the bomb that killed Mr. Murray went off?

A. See, I couldn't even tell you that. I don't think so. I been up here for probably ten years.

Q. So your sense is, and you told us, you were very straightforward with us on your questionnaire, that the crime of letter bombs is bad?

A. Oh, yeah. I mean, what can you say. Yeah, sure.

Q. That's your feeling. I mean, there are a lot of crimes that are bad. Is this ranked right up there with one of those –

A. How do I rank it on a crime scale.

Q. Right.

A. Well, it's – it would be murder. It's attempted murder. I think it's a cowardice crime. It's not the same as – I mean, it's a cowardice attempted murder, is the way to put it. So, yeah, it would be up there as – I guess on a scale of ten, a ten.

Q. When you're thinking – and I saw you hesitate to think about you're a proponent of the death penalty. When you're thinking about crimes that should get the death penalty, would sending a bomb – the intentional sending of a bomb to somebody that kills them be in that category?

A. On the death penalty, I think that should be reserved for the most heinous crimes, and every case would be judged on its own merits.

I wouldn't want to guess as to how I would treat that until I heard everything on it.

Q. I understand that. When you say the most heinous crimes, what would you be thinking of that should be reserved for the death penalty?

A. Mass murder. Also, it has a lot to do with intent, mental state, a person's – again, I think a lot of things would fall into place, and I haven't really thought about it and made a list as far as every item I – so I –

Q. Sure.

A. I can only say that I would treat it when that time comes.

Q. When you're thinking of – –

A. But I would say that I do believe in it, that it should be considered as an option.

Q. You just have a lot of considerations that go into your own decision about whether it should apply or not?

A. Right.

Q. What I'm trying to connect up, and help me if I'm not doing it well enough, is placing mail bombs that kill someone on ten scale and the death penalty.

How do those two play together?

A. Well, I probably didn't explain it too well myself. It would depend also on mental state as well. If the person did it and went to – you know, like it was no big deal, and went out to dinner afterward, that would be one thing, as opposed to someone who was unstable going into it, or whatever else – you know, what other considerations, if the explosive charge was meant to, you know, scare – which I know that's not true. But – you know, I – again –

Q. There are a lot of things.

A. The more I think about it, the more items that come to mind that would be a consideration.

Q. In this case, there's the potential for two phases, as the judge explained. One is the jury is going to make a decision whether or not Mr. Kaczynski committed the crimes he's charged with. And one of those is the mailing of a bomb to the California Forestry Association, and it was opened by Gilbert Murray and it killed him.

If the jury makes a finding beyond a reasonable doubt that Mr. Kaczynski sent that mail bomb with the deliberation and intent to kill and death resulted, then the jury will make a decision as to the penalty.

What I'm trying to figure out in your mind, because it's your opinion that counts, it's nobody else's opinion here that counts, if you're on a jury and you find beyond a reasonable doubt with your other jurors that Mr. Kaczynski made the bomb, sent the bomb with the intent to kill, and Mr. Murray died, would that equal the death penalty?

A. With no –

MR. LAPHAM: Objection, Your Honor. This is case specific, and it's an insufficient hypothetical. We haven't gone into any mitigating or aggravating factors.

MS. CLARKE: I'm going to.

THE COURT: I want to talk to counsel at the side of the bench.

(A bench conference was had but not herein transcribed.)

(Open court.)

Q. BY MS. CLARKE: Maybe the best way to ask the question would be to have you turn to page 28 of the questionnaire, question 108.

Your Honor, that's the question about intentional killing, the three choices.

In the circumstance where you have made a finding comfortable to yourself beyond a reasonable doubt that a person has intentionally killed another person, what circumstances would you consider in weighing the sentence where you have found beyond a reasonable doubt that there's been an intentional killing?

MR. LAPHAM: Your Honor –

Q. Not excused by other circumstances?

MR. LAPHAM: Your Honor, I'm going to object to that question. It's not the juror's job to point out mitigating factors. It's the juror's job to consider whatever factors are presented here.

THE COURT: Sustained. Inquiring as to general legal principles that will be covered in jury instructions is unnecessary. *People of Territory of Guam vs Palomo*, 35 Fed.3d 368, 373, Ninth Circuit, 1994.

Q. BY MS. CLARKE: Is a consideration for you when there is a finding beyond a reasonable doubt of an intentional killing – would it be a consideration for you the psychiatric problems of an individual?

A. Yes.

Q. What kind of weight do you give mental health evidence; do you believe that – in fact, let's go to your questionnaire. I know it's in here somewhere.

You indicated to us that you don't really have an opinion of psychologists or psychiatrists. It's page 24.

A. Okay.

Q. How do you think you would consider mental health evidence in a court?

MR. LAPHAM: Objection, Your Honor. We're asking the juror to speculate on how he may weigh evidence if it's presented to him.

THE COURT: That does appear to be a difficult question to respond to. Can you rephrase the question.

Q. BY MS. CLARKE: What do you think you would – you indicate your opinion about mental health professionals that testify in court is you have no opinion about that.

What would you be looking for in a mental health professional; do you have any sense that you just couldn't listen to it or could listen to it?

A. As far as their qualifications?

Q. Sure.

A. I assume – I mean, you know, I assume they're qualified if they're medical doctors.

Q. Do you think that's the kind of stuff that's really way out there when you think about mental health professionals, or is that something that's legitimate for a juror to weigh?

A. The science itself?

Q. Yes.

A. I think it's a legitimate science.

Q. Would you have any particular concerns about weighing mental health evidence?

A. I – how would I phrase that? I assume that there are theories that are unproven less than other theories that are pretty well-substantiated and proven. And I understand they're different philosophies, Freudian as opposed to another one, that there may be some – regarding specific issues, there may be more disagreement between professionals. It would all depend on specifically what it was.

Q. You –

A. You know, so I think schizophrenia has pretty well been researched, and I think that that would be an example of something that's more established as opposed to some, I don't know, unique, off-the-wall philosophy. So, again, it would depend on –

Q. How far-reaching –

A. Yeah.

Q. – it was? Okay.

MS. CLARKE: Thank you very much.

THE COURT: The government.

MR. LAPHAM: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, my name is Steve Lapham. I'm one of the prosecutors in the case. And I'll be brief. I want to ask you a few questions about your views and attitudes about the case.

From your testimony, I gather you haven't paid much attention to the case over the years, is that correct?

A. Yes, that's correct.

Q. I think you said on the stand earlier in response to one of Ms. Clarke's questions that you really didn't care about the case that much, is that correct?

A. Right.

Q. And in your questionnaire, you indicated that you had only seen a moderate amount of news coverage, just basic coverage about the case headlines and things of that nature?

A. Uh-huh.

Q. Is that correct?

A. Right.

Q. You don't consider yourself very knowledgeable about the case?

A. Again, I cared in that people were getting hurt. But to spend a lot of personal time researching, that wasn't an interest. I mean, I'm glad that the bombing stopped, but other than that, you know –

Q. You didn't make it your life's work to follow the case?

A. Exactly.

Q. You hesitated when I think it was the judge asked you the question about whether you were for or against the death penalty.

Did that indicate that you weren't sure, or were you just pondering the question?

A. I was pondering the question.

Q. And what were you thinking about?

A. I don't think that it's something that should be applied in every situation even if it is murder, that there needs to be additional concerns over and above, if you will, an average murder. I mean, it's – I think it should be reserved for – it needs to be there, and I do believe it just depends on the circumstances.

Q. Now, you said that you thought it should be reserved for the most heinous crimes, and you picked out two. You said mass murder and then – you also said it had a lot to do with intent?

A. Uh-huh.

Q. You understand that the judge is going to give you instructions on the law in this area, and you would be prepared to follow those instructions?

A. Yes.

Q. Now, those instructions might not agree with your situations; in other words, they might not agree with the situations in which you think the death penalty is appropriate.

A. Right.

Q. You think you would still be able to follow the Court's directions in that regard?

A. Whatever the law is, I'll follow it.

Q. So even though you didn't feel in your own personal view that this case warranted the death penalty, if the judge gave you instructions that you should consider it, consider all the evidence, and that one of the possible results could be the death penalty, you feel you could consciously consider the death penalty?

A. Yeah. In the case of intent, that was just something that came to mind. I don't know how that applies legally at all for the death penalty. But, yes. Yes.

Q. You said that you disagree somewhat with the concept that any murderer should get the death penalty in your questionnaire, and I think you reiterated those views here on the stand.

A. Okay.

Q. Could you explain a little bit more what you mean there, or does this just go back to your statement about the death penalty being appropriate only in the most heinous crimes?

A. Pretty much, yeah.

Q. The fact that the death penalty – in your view the death penalty should be reserved for only the most heinous crimes, do you think that would affect your view at all about how you view the evidence in the guilt or innocence phase of this trial?

A. No.

Q. In other words, do you think you might hold the government to a higher standard of proof, a higher burden of proof knowing that this individual might face the death penalty if convicted?

A. As far as proving guilt or innocence, or as far as deciding death?

Q. I want to talk about that next, but just in determining guilt or innocence, do you think knowing that this individual might be facing the death penalty later on if convicted, do you think that might –

A. If they're two independent decisions, no. If that's not – if that's not what I'm supposed to do, I wouldn't. I mean, again, I would consciously make an effort not to.

Q. To put your own views aside and follow the –

A. Yes.

Q. When you get into the penalty phase, do you think you would be able to put your views aside; if this case didn't meet your specific criteria, do you think you would be able to put those views aside and decide the appropriate penalty based on the instructions that the judge gives you?

A. I think I could.

MR. LAPHAM: I have nothing further

VOIR DIRE EXAMINATION

BY THE COURT:

Q. In response to a question the prosecutor asked you, you said something to the effect that glad the bombing stopped. Can you explain what you mean by that?

A. Well, Your Honor, I earlier said I didn't care, and probably that wasn't phrased. I did care that people were getting hurt, that there were bombs being mailed.

Probably a better way to put it is I didn't make it my life's work to look into it. I mean, it was just – you know, I had other things going on. It was something – something in the news that wasn't affecting me directly. You know, it was a shame that the bombings were going on. And if they arrest someone and take them off the streets and he's no longer doing it, then that's good. And so it's not that I didn't care. I just didn't pursue it, or I wasn't that interested.

THE COURT: Any further questions?

MS. CLARKE: No, Your Honor.

THE COURT: If you can escort the juror to the other room.

(Jury not present.)

THE COURT: Last Thursday, juror number 26 indicated during her examination that she thought she would lose her job if she was required to serve on this jury. The parties authorized the Court to call the jurors employer. I called an individual at 6:30 a.m. on Friday who identified herself as the manager.

She indicated that she was aware of the juror's situation; that the juror does in fact use the public transit system in order to travel; and that if the juror is required to serve in this case; she will have to be replaced; that the office would have to hire someone else to work her shift.

That's the information I received. Based on that information, what's the parties' position.

MR. FRECCERO: Your Honor, the government would be prepared to stipulate to removal for hardship.

THE COURT: There's more to it, though. I just had a reflection. You recall that there was another question as to whether the juror could work part-time during the trial, and the nature of the business will not allow that. She will not be able to work that many hours even if she were able to reach the job cite at 2:00 o'clock because the business closes at

5:00 o'clock.

I asked whether it was possible for the juror to work on Saturdays. I probed to find out whether the business was in fact open on Saturdays. It's open on Saturdays, but

there's only two employees that work on Saturdays, the manager or some management-type of individual and some other employee who does not perform the type of work that the juror performs.

So that's another factor you need to consider.

MR. DENVIR: Your Honor, my memory may not be really good on this, but am I correct that she did say that – or maybe you found out with your phone call – she would not be paid during that time period?

That's the third factor, and I think that's correct.

THE COURT: That's correct.

MR. DENVIR: In that case, we would stipulate.

THE COURT: Okay. Anything further to cover before the noon hour?

MR. DENVIR: No, Your Honor.

THE COURT: See you at 1:30.

—oOo—

SACRAMENTO CALIFORNIA

MONDAY, NOVEMBER 17, 1997, 1:30 P.M.

—oOo—

THE COURT: Let the record reflect all participants are present. We added a juror to your list. Juror number 41. We had initially thought that juror resided out of our district. I found out during the noon break through my jury administrator that the juror does not reside out of our district and the juror appeared pursuant to the summons. So that's why we've added that juror.

Are you ready for me to call in the prospective jurors?

MR. CLEARY: We are, your Honor.

MS. CLARKE: Yes.

THE COURT: Thank you. While she's assembling the jurors for entry in the courtroom, maybe I can chat with the lawyers at the side of the bench. We won't put this on the record, but we will if there's a problem.

(Off the record discussion held at the bench.)

THE COURT: Good afternoon, ladies and gentlemen. Let the record reflect that I just communicated with the lawyers concerning a question I plan on asking prospective jurors during individual voir dire, and the lawyers have approved that question.

Will my deputy clerk 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: 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 Shani Furstenau. She's my courtroom deputy clerk. Next to her on the same level on this platform is the certified shorthand reporter who will assist us in administering this trial.

I trust that you will fulfill your civic duty during this questioning process for voir dire. I thank you both for your presence and your anticipated cooperation. You are performing an important function in our legal system. Under our principles of justice, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as yourselves making themselves available for service 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 do not 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 of 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 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 can sit as a juror on this type of a case.

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

If there is anything about the charges that causes you to prefer not being a juror on this type of case, please indicate that fact by raising your hand.

Now, let the record reflect that juror number 41 has raised her hand. You're in juror number 47's spot. That's our last called juror. That's why I was questioning what your number was.

Was there any other response?

There's no other response.

I'll talk to you individually about what you have to tell us.

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 shown are sufficient to justify a sentence of death.

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

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too. During this questioning, we will refer to you by your randomly selected number rather than by your name. This is because I've decided to use an anonymous jury in this case in order to protect jury's privacy as I have stated in a previous communication to you.

Now, I would give you an instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from service on this case.

Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone 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 had no opportunity to discuss. For these reasons, you should avoid reading or listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

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

There's no response.

I contemplate observing the holiday scene as follows: We will not hold court December 24th, 25th, and 26th; nor on the 1st or 2nd of January. I have contemplated holding court December 22nd, 23rd, 29th, 30th, and 31. Please raise your hand if this poses a problem.

There's no response.

Please raise your hand if you do not understand the following. Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges without consideration of any penalty.

There's no response.

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

The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence.

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?

There's no response.

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'm going to add a comment following that. Because trials are supposed to be public, I will still ask you questions about the matter. But just because I question you about it doesn't mean

you have to disclose those matters that you believe are private. But I will have to do some probing so that I can ensure myself that that is the type of private matter that I can, in fact, allow you to discuss in private. So just because I do that probing, it doesn't mean that I'm indicating to you that I won't allow you to discuss the matter in private should that be your ultimate desire and I conclude that it is a matter that should be discussed in private.

I will now have my staff to escort all but the earliest randomly selected juror to another room and to place the earliest randomly selected juror in the witness box.

(Prospective Juror No. 39 remained in the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I wanted to see if I can ask you questions from my location on the bench. But when you respond to my questions, if you would use the microphone and speak to the parties who are located at counsel table. That way they can hear everything you say, because they'll have an opportunity to do some follow-up questioning later on.

Is there any reason why you would be unable to serve as a juror on this case?

A. No, there's not.

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

A. I've heard of things like on the news and stuff, yes.

Q. What type of things have you heard?

A. Mostly about the fact that it's coming up, and I don't know. I tried not to pay attention to it too much.

Q. Can you give me more substance as to what you recall hearing?

A. Let's see, that Mr. Kaczynski had seen a psychiatrist, just that – a lot of – it was going to be covered a lot by the news and that sort of thing. I really don't remember too much.

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

A. Yes, at work. People have given me their opinions of whether or not he's guilty.

Q. We don't expect jurors necessarily to come in this courtroom unaware of a particular case.

A. Right.

Q. But we do probe because we want to know what type of information you've received about the case. Can you elaborate further on the type of discussions you've had with people at work?

A. Mostly about what they believe as far as the death penalty, that sort of thing. Not so much about the case itself but just – they're trying to get me to not be on the jury. They're giving me ideas of what to say so I won't end up being on the jury and be gone for six months, that kind of thing. But we really haven't discussed any particular incidents in the case.

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 think so.

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

A. Well, I have heard about the case since I've lived in Sacramento all my life, so I've heard about the case since we started hearing – reading about it and that sort of thing. I did have a problem with the fact that his brother had turned him in to the marshals or whatever. That if your family is thinking that something's wrong, I think that's a little indication to me that there could be a problem.

Q. What type of opinion have you formed?

A. That he's probably guilty.

Q. Is the basis of that opinion what you've heard from news sources?

A. Over the years, yes.

Q. How strongly are you committed to that opinion?

A. I don't know. I think so, but I don't know that I could be convinced the other way. I'm not sure.

Q. Are you indicating that you're not strongly committed to the opinion?

A. It's my first instinct that yes, he is guilty, but I generally do listen to both sides of things so –

Q. Could you set that opinion aside if you were selected as a juror and render your decision based solely on the evidence presented at this table and the instructions that I give you at the end of the trial?

A. I think I probably could.

Q. Could you do it?

A. Yes.

Q. Do I have your assurance that you will set aside whatever information you received about this case and you'll allow Mr. Kaczynski to 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, I can do that, I guess.

Q. You thought about that just for a moment before you responded. What thoughts?

A. Just about whether or not I could just totally forget everything that I've heard and just go with what was given to us, the information that was given to us in here.

Q. Can you do that?

A. I think so.

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

A. A proponent.

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. Not automatically, no.

Q. If the jury should convict Mr. Kaczynski for the offense of premeditated murder, would you be able to consider voting for a sentence less than death?

A. Yes.

THE COURT: Do the parties have follow-up questions?

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 follow up on some of the questions the Judge asked you and some of the information you disclosed in your jury questionnaire. All right?

Let me start with your occupation. And I don't want to reveal in court what precisely you do, but you indicated on your questionnaire that it may be a little difficult for you being away from your job during the day; is that correct?

A. Yes.

Q. Are there other people that can take over and perform your job for you?

A. Yes.

Q. Maybe not as well as you can but they can cover for you; correct?

A. Right.

Q. And you'll get paid for the period of time that you're on jury service; is that right?

A. Yes.

Q. You also mentioned a concern about leaving some of your own children at home during the day; is that right?

A. Yes.

Q. And I take it that problem gets taken care of because, you know, we're only sitting until 1:00 o'clock each day; is that right?

A. Yes.

Q. So that's not a problem anymore?

A. No.

Q. You mentioned to the Judge that you had certain – I think you called it a problem with the fact that the information you have or have read is that the defendant's family had turned him in; is that right?

A. Yes.

Q. You realize, of course, that the information you get outside is information that's filtered through the media; is that right?

A. Yes.

Q. And I know you've never sat on a jury before, but do you realize that the process that we have in place here requires evidence that Judge Burrell admits and receives in this courtroom, evidence to be presented to you here and only here, that's the only evidence you can evaluate; do you understand that?

A. Yes.

Q. And what you're going to be asked to do is to, at the end of the case, make a decision based solely on the evidence that was presented here in the courtroom and the instructions on the law that Judge Burrell will give you. Do you understand that that's the process?

A. Yes.

Q. Can you give us your assurance that you're going to be able to do that and put aside whatever problems you may have or issues you may have with the information you've received through the media?

A. Yes, I could.

Q. You feel confident in that?

A. Uh-huh.

Q. And you recognize, of course, that the media does get it wrong on a number of occasions?

A. Yes.

Q. And you recognize that the information you may therefore have at your disposal may be faulty information?

A. Yes.

Q. And you would agree with me, wouldn't you, that the only fair way to conduct the trial would be if jurors such as yourself and anyone else that may sit on the jury can put aside things they heard outside the courtroom and evaluate the case solely on the information that they all get, the entire jury gets presented to them here in court?

A. Yes.

Q. And you'll be able to give this case that sort of consideration; is that right?

A. Yes.

Q. Let me give you a copy of your questionnaire. And I'm going to select your answer to page 33, question 124. If you can just read that to yourself, I'm going to ask some follow-up questions to you.

You indicate in your answer to question 124 that you would favor the prosecution because of the evidence found in the defendant's cabin; correct?

A. Yes.

Q. And I take it that your understanding of what evidence was found in the defendant's cabin, again, is just through media sources; correct?

A. Right. Right.

Q. And you recognize that it would be unfair to judge this case based on those possibly suspect sources of information; correct?

A. Right.

Q. Are you going to be able to set aside what information you may have learned about or the sources of information you have concerning evidence in the defendant's cabin? Are you going to be able to set that aside and decide this case on the facts that you receive here in court?

A. Yes.

Q. And again, you have a level of confidence in that; correct?

A. Yes.

Q. I'm going to move on to another subject. And again, I don't want to disclose the details but if you look at page 18 of your questionnaire, question number 67.

A. Yes.

Q. Somewhat of a tragic event that happened in your life; correct?

A. Actually he is a first cousin, but I hadn't seen him in years.

Q. This is not a close, personal incident thing that happened to you?

A. No, but I had just heard about it the day before.

Q. Let me ask you to turn to pages 21 and 22 to read your answer to question 82, which 82 starts on the bottom of page 21 and carries over to page 22.

A. Yes.

Q. And I think that's an event that's a little closer to you; correct?

A. That one, yeah.

Q. And I imagine that that has some or has caused some feelings of emotion in you?

A. Yes.

Q. You realize, of course, that that event has nothing to do with this case; is that right?

A. Yes.

Q. And again, are you going to be able to set that aside, set those understandable feelings of emotion, set those aside and decide this case which has nothing to do with that tragic event, decide this case on the facts of this case?

A. Yes. This is totally different.

Q. Turn, if you would, to question 103. I'm going to be asking you several questions about your views on the death penalty at this point. In your response to question 103, you indicate that in your view there are some people that because of what they do deserve the death penalty; is that right?

A. Yes.

Q. And if you go over to the next page, page 27, in question 107, you've given us several instances of situations in which you feel you agree somewhat that the person in that situation should be sentenced to the death penalty and in another instance where you agree very strongly that a person convicted of, in that case an act of terrorism in which someone dies, should be sentenced to the death penalty; is that right?

A. Yes.

Q. Now, you understood when you were being asked these questions that the questions were posed to you to get your own personal views on the death penalty; is that right?

A. Right.

Q. And I take it that you're not a lawyer; correct?

A. No.

Q. You're lucky. And the views you were given were not views based on your understanding of the law; is that right?

A. Right.

Q. I'm going to have you switch focus slightly now and I want to ask you about the law and your ability to follow the law as Judge Burrell will instruct you. Okay?

I assume you don't know anything about the death penalty statute, the law that governs death penalty cases in federal court; correct?

A. No.

Q. Let me direct your attention to the third part of question 107 where you say that any person who commits an act of terrorism in which someone dies, you strongly agree should get the death penalty; correct?

A. Yeah.

Q. Can you envision situations in which, based on the unique facts and circumstances of this case, in which it is a terrorism case and someone dies, despite the view you articulated here that the defendant should not be sentenced to death?

A. I'd have to hear all the evidence.

Q. And that's because you need to hear all the facts and circumstances before you make such a decision; is that right?

A. Right.

Q. Can you envision a situation where you would have two – let's take the same situation we're talking about. Terrorist and a person dies. When you have two different terrorists who caused the death of somebody and that when you're asked to make the final decision for one of them you would decide that the death penalty is appropriate and the other one you would decide the death penalty is not appropriate.

A. Yes.

Q. For example, if Judge Burrell told you that one of the circumstances, what we call mitigating circumstances that suggest that the death penalty would be inappropriate, one of the mitigating circumstances that would be presented to you in this hypothetical case is that the defendant was mentally retarded. If Judge Burrell told you that and you had those facts before you that that terrorist who caused somebody to die was mentally retarded, would that affect your decision as to whether it would be appropriate for the death penalty in that case?

A. It could.

Q. And if you had other facts, for example, in another similar hypothetical situation where the terrorist defendant was the product of an abusive childhood, might that be

another fact you could consider in determining whether the death penalty would be appropriate in that particular case?

A. I could consider it, yes.

Q. And too, if the terrorist who committed the murder did his acts under duress, somebody was either literally or figuratively holding a gun to his head and making him commit the terrorist act, would that be another fact you could consider in determining whether in that particular case the death penalty was appropriate or not?

A. Yes.

Q. Is it fair to say that based on the discussion we've had over the last few minutes that it really is in your mind almost impossible to determine whether the death penalty is appropriate until you've heard all the facts and circumstances; is that right?

A. Yes.

Q. And that's because the mitigation factors, the factors that might suggest the death penalty is inappropriate in that particular case would not be presented to you until you've heard all the evidence; is that right?

A. Right.

Q. And could it be that in certain circumstances that mitigation evidence, the evidence that you would evaluate in determining whether a death penalty is appropriate or not, that that mitigation evidence might relate to the defendant's background?

A. Yes.

Q. Okay. So if you look at the last part of question 107 at the bottom of page 27, you indicate that in your view a person's background does not matter when it comes to the question of a death sentence or not.

A. Uh-huh.

Q. Based on what we've just said, you would be able to evaluate certain background factors if Judge Burrell told you they were appropriate to evaluate in determining whether the death sentence was appropriate in that particular case; am I correct?

A. I could.

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

THE COURT: Okay.

MR. CLEARY: Thank you. I have nothing further, your Honor. Thank you.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'm going to ask you a few questions too in this case.

I take it from your answers to Mr. Cleary that your concerns about your own children and your classroom children are pretty well taken care of because of the schedule that Judge Burrell has announced he's going to follow?

A. Well, I would be out of the classroom.

Q. I'm sorry?

A. My own children would be fine, yes, but my classroom children would have a substitute.

Q. Right. And you were concerned about that as a reason for maybe not serving. But do you now feel that you'd feel comfortable enough that the substitute would take care of them that you can give us your attention here?

A. I could. I guess I don't feel a substitute would do as good a job as I would do, no, but –

Q. But the fact that there would have to be a substitute doesn't make you not want to serve on the jury?

A. I can serve on the jury.

Q. In spite of that, that's what I want to make sure because you were concerned about that at one point I know.

A. Uh-huh.

Q. I think you said you had heard certain things about the case, you know, you lived in Sacramento and you followed it as these crimes occurred.

I think you said that you had heard since you'd been out at Cal Expo that the defendant had seen a psychiatrist; is that right?

A. Uh-huh.

Q. Can you tell me what exactly you remember seeing or hearing?

A. That's all I actually heard because it was just on the news after the weather, you know, one of those blurbs and that's – so I didn't listen to it.

Q. Did you have any particular feeling when you heard that one way or another?

A. No.

Q. I think you said some workers had given you their opinion. They had shared their opinions about the case; am I right?

A. Uh-huh.

Q. And did they give you their opinions as to whether they felt that Mr. Kaczynski was guilty or not?

A. Yes.

Q. And can you tell me what people told you in that regard?

A. That he was guilty.

Q. Have all your friends or coworkers who you talked to pretty much told you the same thing in that regard?

A. Yes.

Q. And how about did they also tell you what they thought the proper sentence should be for Mr. Kaczynski? Did they give you their opinions on that?

A. Some did, yes.

Q. And the ones that did?

A. Death penalty.

Q. And that was across the board of the people who had expressed their opinion?

A. Yes.

Q. You also said, I guess, that some of your friends had given you ideas on how to stay off the jury; is that right?

A. Yes.

Q. That happens. And I take it that you have rejected those ideas?

A. No. This is not exactly what I would like to do for the next six months, no. But if I had to, yes, I could do it.

Q. Okay. Now, you said that, you know, that based on what you knew about the case, you had the view that Mr. Kaczynski was probably guilty; is that right?

A. Yes.

Q. And I think you also said that you felt that based on the fact that his brother had turned him in that he must be guilty, that the fact that the brother turned him in must indicate that the brother knew he was guilty; is that correct also?

A. That he had strong suspicions, yes.

Q. And is it going to be hard for you to put away, for instance, that latter point, the idea that his brother had turned him in, therefore, the brother must have known something and, therefore, he must be guilty?

A. I think I could put it aside.

Q. You understand that, you know, obviously we want you to put aside any exposure you've had, but the law doesn't ask you to do something you can't do, and only you know whether you can and cannot do it. And you have to kind of let us know what you feel on that. People are exposed to facts about the case, they come to conclusions about the case, and they have to decide whether they're able to really put those aside or is it going to continue.

A. Uh-huh.

Q. And you feel you can put it aside?

A. Yes.

Q. You said at one point that based on what you had heard, that you could be convinced the other way. Do you feel that going into the case that the defense has kind of a burden, kind of a better prove something the other way or he'll be found guilty?

A. No. I feel that I'd have to listen to everything and decide then.

Q. Okay. But we don't come in having a burden?

A. No, I do know you don't.

Q. And will you be able to do that, to follow the Judge's instructions?

A. Yes.

Q. There's no real burden on the defense, the burden is on the prosecution.

A. Right. I understand that.

Q. And it's not a problem because of what you know about the case to stick to that concept?

A. I could do that.

MR. DENVIR: I wonder, your Honor, if we could have the juror's questionnaire.

THE COURT: Yes.

Q. BY MR. DENVIR: Let me ask you if I could, if you would turn to page 21, 22, question 82.

A. Yes.

Q. Was that something that happened fairly recently? When did that occur?

A. No, that was about 15 years ago.

Q. So that's pretty well, as an emotional event, is somewhat in the past for you?

A. Yes.

Q. You don't think the fact that that happened, which must have been pretty traumatic, is there, is that going to cause you any problems sitting in a case whereby there's a death or murder charge?

A. No.

Q. And I take it that's also true with the cousin that was more recent?

A. That was more recent. That, I mean, I could have read about it in the newspaper and not even recognized it as being my cousin.

Q. You don't have an emotional reaction sitting in this kind of case?

A. No.

Q. I believe that you said that your daughter's soccer coach was a lawyer. Do you know what type of lawyer offhand?

A. No, I don't.

Q. Okay. So that won't make any difference; right?

Now, you did say when you filled out your questionnaire, if you'll turn to page 33, you were asked if there's anything that would cause you to favor or disfavor either the prosecution or the defense in the case and you answered yes, you would favor the prosecution because of the abundance of evidence found in the cabin. What evidence are you referring to there? Can you tell me what evidence you recollect being found in the cabin?

A. Just some writings and materials that had been used in making bombs and things.

Q. The materials had been used in making bombs?

A. Uh-huh.

Q. Do you recall the nature of the writings that you read about?

A. Journals, that sort of thing.

Q. Do you remember what they said that you recall from the media, contents of them?

A. Not particularly.

Q. But you did feel it was pretty incriminating, evidently, what was found?

A. Yeah, I guess I did.

Q. And because of that, you felt you were going to favor the prosecution. I don't mean favor, favor, but you kind of felt that because you had heard of that evidence, you were leaning, I guess that's part of feeling that he is probably guilty. But, again, you feel that you can put that aside?

A. If I found out more about it, yes.

Q. Let me ask you if you would turn to page 26, please.

THE COURT: What do you mean in your response that you could put it aside if you found out more about it? What does that mean?

THE WITNESS: Just about what actually was found in the cabin, that sort of thing. More what was written.

THE COURT: All right. Thank you. Sorry, Counsel.

Q. BY MR. DENVIR: In question 103 you were asked about your opinions and belief about the death penalty and its use in our society, and you replied that there are people, because of their actions, that deserved the death penalty. Can you give me a sense of what you were thinking about as to the kinds of people who deserve the death penalty when you wrote that?

A. People like Ted Bundy who would go around and murder people.

Q. Serial killings?

A. Serial killers.

Q. Any other people you could think of? You said there are people.

A. Right. I mean, just, no, not any people in particular, but that type of person who would go and continue killing people.

Q. And I guess that your views on the death penalty, you arrived at them at some point in your adult life and they've pretty well stayed the same throughout that same time period?

A. Yes.

Q. You were asked what purpose does it serve in our society, number 105. And you said that it removed a threat from society; is that right?

A. Uh-huh.

Q. By that do you mean your concern is that the death penalty might be appropriate so that the person would not be a future danger?

A. Yes.

Q. And is there any other kind of reason for the death penalty that you see or purpose like that besides just protecting against future danger?

A. No.

Q. Do you believe it's a deterrent to other people that executing one person maybe other people will not commit crimes?

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

Q. And do you see it just as a matter of retribution? Do you see another version of it, that it's an eye for an eye, or you take a life, you forfeit your own life?

A. No. It depends on how that happened.

Q. And if you were selected on the jury in this case, which obviously is a capital case, and were to enter what's been called the sentencing or the penalty phase of the case, you would be given a choice other than the death penalty. Do you understand that? That the law provides for the kinds of crimes charged here not just a single penalty but a choice of penalties. And that penalty is a penalty of life imprisonment without the possibility of release.

A. Right.

Q. There's no parole in the federal system, and there's no release under this kind of sentence. Could you consider that sentence as a possible sentence to impose on someone in order to make sure that they never hurt again or offended again?

A. Yes.

Q. You said that death is, obviously, one way to ensure that, but would you also consider that maybe life in prison could be another way of accomplishing the same goal?

A. Yes.

Q. You did say that, on page 27, I guess about, must be the fourth one down, that on the proposition that any person who commits an act of terrorism in which someone dies should get the death penalty, you said you strongly agreed with that, whereas you only agreed with the proposition that anybody who plans or commits a murder should, or anybody who kills two people.

What did you have in mind as an act of terrorism when you checked that box?

A. Like the Oklahoma bombing or something, New York Trade Center, that type of thing.

Q. Would you consider the Unabom events to be acts of terrorism in that sense, within that?

A. Yes.

Q. Would you feel that whoever had committed the Unabom events, the mail bombings that are collected under that, is it your feeling that they should get the death penalty?

A. It's one of the options, yes.

Q. Just as an option though?

A. Right.

Q. I'm not trying to put words in your mouth, ma'am. I really need to find this out. And you had said that anybody who commits an act of terrorism should get the death penalty. That's your opinion. And everybody has a wide range of opinions on this. And I just wondered, you said you strongly agreed with that, whether you felt that way about the Unabom crimes. If that was an act of terrorism, that anybody who committed it should get the death penalty.

A. I think that would be one of the punishments that we could decide on.

Q. But you could consider an alternative punishment for that type of crime, that kind of terrorism?

A. Yes.

Q. And is that why you said on the next page, on 108, you said that the death penalty may or may not be justified depending on the circumstances of the case?

A. Right.

Q. Again, there's one part of a trial like this where guilt and innocence is determined like any other trial. And only if the jury were to find the defendant guilty of one or both of two charges involved in the death of a man named Mr. Murray, the capital offense, would there be the second phase. A unanimous jury would have to find beyond

a reasonable doubt that Mr. Kaczynski was guilty of that crime before you could go in the second phase where you would determine what the sentence would be for that crime for Mr. Kaczynski.

Can you tell me whether, if you were to sit on the jury in the first phase and find him guilty beyond a reasonable doubt based on the evidence that you'd seen, you then went into the second phase, would you have any kind of preconceived notion as to what the penalty should be, any kind of a this is what I think it should be, I'm leaning that way?

MR. CLEARY: Objection if this is a case-specific voir dire. I'm not sure if Mr. Denvir has asked about the Unabom case, in which case I object. If he's asking generally about her views, I have no objection.

THE COURT: Your response.

MR. DENVIR: The response was that there had been – I've asked her already whether she had views regarding these particular events as to the proper penalties. She had heard that from friends on that subject. I just wanted to see in light of that, because of that exposure, whether she would have any preconceived notion. I think this is the same question that you had asked pretty much, but I wanted to follow up if I could.

THE COURT: You can respond if you understand the question.

THE WITNESS: I feel that I could make up my own mind about what the punishment should be.

Q. BY MR. DENVIR: And could you come into that with just an open mind, say now I'll listen to whatever is presented by one side and the other side, I'll listen to Judge Burrell's instructions, and then I will make my decision between the penalties?

A. Yes.

Q. You feel pretty good about that?

A. I could do that.

MR. DENVIR: I have no other questions. Thank you.

THE COURT: Please escort the juror into the adjacent room and bring in another juror.

(Prospective juror 40 entered the courtroom.)

THE COURT: Thank you for joining us. You're the 40th randomly selected juror. I will be asking you some questions and I may from time to time reference you as juror number 40. When you respond to me though, use the microphone and speak to the lawyers or the parties at counsel table. That way they can be assured of hearing your responses, because they'll have an opportunity to ask you some follow-up questions when I finish questioning you.

PROSPECTIVE JUROR NO. 40: Uh-huh.

VOIR DIRE EXAMINATION

BY THE COURT:

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

A. I've heard of it but I have not read it.

Q. And what have you heard?

A. You hear it every hour on the hour on the radio, television, and you see it in the headlines and it's just, I guess, it's commentary what they think is going on now.

Q. What type of information do you remember hearing?

A. Well, you hear a lot about jury selection. And there was – I can't remember, it was concern about the health of the prisoner and just, you know, headlines.

Q. The health of who?

A. The prisoner.

Q. The President?

A. Prisoner.

Q. Prisoner?

A. Prisoner, yeah.

Q. You mean Mr. Kaczynski?

A. Yeah, Mr. Kaczynski.

Q. I'm sorry. Forgive me.

A. Yes. Uh-huh.

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

A. No, no one.

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 think so.

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

A. No. I don't know any, really, anything about the case.

Q. Do I have your assurance that if you are selected as a juror in the case, Mr. Kaczynski will start his trial on a clean slate? 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 an opponent of the death penalty?

A. I voted for 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 and the absence of any aggravating evidence?

A. No. I'd want instruction from the Court.

Q. If the jury should convict Mr. Kaczynski of the offense of premeditated murder, would you be able to consider voting for a sentence less than death?

A. I don't know. I think it would depend upon the instructions from the Court.

THE COURT: The parties may ask follow-up questions.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Good afternoon.

Q. My name's Judy Clarke. I'm one of lawyers for Mr. Kaczynski, and I have a few questions for you if I may.

A. All right.

Q. You just indicated to the Judge that you don't know how you'd feel about the sentence if you convicted Mr. Kaczynski of intentional, premeditated murder.

A. Oh, no, I didn't understand it that way. If it was intentional, premeditated murder, well, again, I would need the instruction on the laws governing this and the death penalty and –

Q. One of the difficulties, and we're just here right now because you're operating in a vacuum, so we're just kind of here right now exploring your own beliefs and opinion about the death penalty. But as I understand it, the Judge would instruct you to consider, as the Judge did in the initial discussion when the seven of you were out here, that you would consider aggravating circumstances, weigh them against mitigating circumstances, and if there weren't any mitigating circumstances, you would decide whether the aggravating circumstances were sufficient to justify a sentence of death.

A. It's possible.

Q. What would be possible?

A. Absent those other circumstances that it would be possible if we decided he was guilty.

Q. Of intentional, premeditated murder?

A. Uh-huh.

Q. Then the sentence would be death; is that what you're trying to tell us?

A. If that's the instructions from the Court, yes.

Q. I don't think the Judge would ever instruct a jury that they must sentence someone to death or to life in prison without parole. It's your own sort of moral judgment, your own evaluation of the circumstances at that point what you do. And it's very difficult to give you any instructions as to how to make a judgment. And I guess what the Judge was inquiring and what I'd like to know is if the conviction is of intentional, premeditated murder, are there any circumstances that would permit a sentence other than death?

A. It would have to be considered, yes, the death sentence.

Q. Are there any circumstances other than that would make a sentence other than death?

A. That's possible.

Q. Can you tell us what you might be thinking when you say that?

A. It would have to be other than intentional, I would think.

Q. The only way that you would get the case to decide the penalty would be if you found an intentional killing of another human being.

A. Uh-huh.

Q. And what I'm trying to find out is if you make that finding, if you make the finding beyond a reasonable doubt that there was an intentional killing of another human being, does that equal death for you?

A. Probably.

Q. And when you say probably, you're trying to say yes it does equal death?

A. Probably, yes.

Q. What would weigh against it in your mind?

A. Well, I don't know. It would depend on what came out as all the evidence in the trial, I think.

Q. Let's look, if you could have your questionnaire, if that's all right, your Honor.

THE COURT: This is your questionnaire, ma'am.

MS. CLARKE: If I can have you turn to page 27. And, Judge, it's the series of checkoffs.

THE COURT: Okay.

Q. BY MS. CLARKE: You have marked anyone who plans and commits a murder should get the death penalty, strongly agree and agree somewhat. Can you tell us what you were thinking?

A. Well, I guess it would be whatever came out in the trial. And the type of death and how everything happened.

Q. And are you talking about some situation where there might be a self-defense or some lesser form of murder? Is that what you're thinking of?

A. Probably.

Q. If you take that away and it is a deliberate, intentional, premeditated murder, are there any choices other than the death penalty in your opinion?

A. It would be hard to find one, I think.

Q. That would be difficult for you given your own views and beliefs about the death penalty?

A. Yes, uh-huh.

Q. You also marked strongly agree and agree somewhat on an act of terrorism. The third one down. And that would be the same circumstances?

A. Yes, the same circumstances.

Q. How would you define an act of terrorism?

A. Well, like we've had. You know, bombings of our buildings and so forth.

Q. So a mail bomb sent by someone would fall within an act of terrorism?

A. I think so.

Q. And you're aware that the charges in this case are of sending bombs through the mails and delivering bombs, you're aware of that?

A. I think so. Somewhere way back when, yes.

Q. And so that would be in your own mind how you would define terrorism.

A. Probably.

Q. So if you were in the position of finding beyond a reasonable doubt that an act of terrorism occurred resulting in the death of someone, then would I be correct in understanding that death would be the appropriate sentence there?

A. I think so. As far as, I mean just saying, yeah, with the circumstances that you give now, I think so.

Q. And it would be very difficult for you to impose a sentence other than death in those circumstances?

A. Well, I guess there could be, you know, other circumstances that would cause you to think, but I would say that anybody deliberately doing that, I mean, you have to protect society somehow.

Q. Certainly. And all I'm doing is asking you where you come down. There is no right or wrong answer in this area. I'm just trying to probe with you what your views of that are.

A. Well, I think it has to be stopped.

Q. You indicate when you were asked, I think the page before on the questionnaire, what is the basis for your opinion regarding the death penalty, and it was that society must be protected and there should be zero tolerance for hideous crimes.

A. Yes.

Q. So would you place in the hideous crime category the deliberate, intentional, premeditated murder of another human being?

A. Yes.

Q. And you would place in the hideous crimes category an act of terrorism; in other words, sending a bomb to someone?

A. Yes.

Q. And so in your mind then, in your heart, the death penalty would be the appropriate penalty?

A. Yes, but if there's, you know, circumstances that should lessen that by law, then it should be considered.

Q. And when you say if there are circumstances, are you thinking of circumstances that affect the crime or circumstances that affect the person who committed the crime?

A. Probably the person who committed the crime.

Q. And can you help us very briefly with some of those circumstances that you might be searching for?

A. It could be the victim having done something to him. I don't know. Something like that.

Q. So it would be some provocation by the person who was killed?

A. Yes. Yes.

Q. Would that fit within your definition of terrorism if – you don't normally think of somebody asking to have a bomb sent to him?

A. It would fit. I would say it was terrorism. I mean, if it's sent through the mail, as a package?

Q. Right.

A. That's pretty terrifying.

Q. Understand that. And there wouldn't be the mitigating factor that you were concerned about the victim sort of deserving the fight or deserving the –

A. Well, no, I guess you're eliminating all mitigating circumstances.

Q. No. I'm just wondering what you would consider mitigating, and it sounds like you're looking at the crime itself. It would be mitigating if I provoked you into attacking me and you killed me?

A. Yes, that's right.

Q. But so you would be looking at the crime itself?

A. Right.

Q. On page 27 at the bottom. Are you with me? The person's background, that's not in a situation of terrorism or deliberate murder, I would take it that that's not a consideration for you?

A. No.

Q. The background?

A. No, because you still have to protect society.

Q. Right. So it's the societal impact, you're looking at protecting society. Regardless of why it occurred, it's the fact it occurred?

A. That's right.

Q. And it's so heinous a crime?

A. That's right.

Q. If I could ask you to look at page 18 at the top of the page. What might improve the system, and your answer, do you see your answer? It seems to me that the judges should have better knowledge of the Constitution. Are you with me? Page 18 the top of the page?

A. Oh, I'm on the wrong page. I guess that's what was on my mind at the time.

Q. Well, I certainly appreciate that. Can you tell us what you were thinking, what provoked that thought about the judges having better knowledge?

A. What came before that?

Q. It was a question of is the system working well.

A. Well, when you hear a lot of the disturbing consequences sometimes. Well, some people are set free when you think that they should be guilty and so forth. That's all. There seems to be too much of that.

Q. Does a particular case or two come to mind that makes you think that way?

A. Well, the Simpson case, yes.

Q. And you just felt like that was a wrong verdict?

A. I thought – yes, I did. It seemed so.

Q. Well, it certainly seemed to divide the country in certain ways.

A. Yes, yes.

Q. If I could ask you, as we're close to it in the questionnaire, page 19. And you have an asterisk beside question 69.

A. Yes.

Q. And I wanted to have a chance to ask you about that, but I didn't want to ask it in a public setting if you did not want that. Because you had an asterisk beside it, is that what you were –

A. Yes. Well, actually I have – I actually was not. I brought a court case, but I was not involved in it because they decided I shouldn't be. But the case went on. I don't like to discuss it.

THE COURT: She has my copy so I can't see what you're showing her.

I'm wondering whether probing this area is going to disclose a for cause type of a matter.

MS. CLARKE: That was my concern, your Honor.

THE COURT: It doesn't appear on the surface of it. It doesn't appear to uncover that type of information. And if I'm correct, it's a matter that we need not probe at this time.

MS. CLARKE: I wonder if the Court could take a couple of answers at sidebar of the juror and then we could stop with that if that's, in fact, the case. But the juror has kindly acknowledged that this was a case she was involved in bringing but –

THE WITNESS: But when the case got started, I was not involved. It was taken over by someone else. So I should have answered no there.

Q. BY MS. CLARKE: Let me ask it this way: Would that case and that involvement in the court system have any effect on the fact you're sitting here?

A. I don't think so, none whatsoever.

Q. Did you think it would have any effect on how you view judges or lawyers?

A. No. No, because the outcome of the case was satisfactory.

Q. To you?

A. Yes, very definitely.

Q. And I take it it was some kind of a civil action?

A. I don't know what category it was in.

Q. Somebody was being sued for some kind of money damages?

A. No. No, it was not. It was not that.

Q. Somebody was being sued to stop some kind of conduct?

A. No.

MS. CLARKE: I'm stumped.

THE COURT: Is there anything you can tell us about the case without unduly disclosing things that you believe are private? Because you've indicated a desire to keep things private.

THE WITNESS: It involved my family. And I started the case, but when the court and the judge, you know, the decision came that I wasn't the one to do it, so my daughter took over and pursued the situation. So actually I should have answered no to that because I actually was not involved with the court case

Q. BY MS. CLARKE: Your family members, I understand, are in medicine and there's a medical background; am I correct?

A. Yes.

Q. And one of your nieces is a genetic engineer; am I right?

A. Yes.

Q. Is that a close relationship with that niece?

A. My sister's daughter, yes.

Q. But you have a close relationship?

A. Yes. A close family relationship. We don't necessarily talk about –

Q. Too much?

A. Too much, no. I don't think any of us are on the level to be able to talk to her.

Q. Then I won't try to get into exactly what she does. But if there was to be some evidence in this case that the person accused of being the Unabomber, that person had a particular dislike or hatred for genetic engineers, do you think that that might affect you one way or the other?

A. No. Right now she's, I think, she's working on sea life, so, you know –

Q. Yeah. That one really wouldn't connect up in your mind?

A. No, none whatsoever.

Q. Can I ask you very quickly in the category of the folks that you admire, I was very interested, I'm from North Carolina, and I saw Jessie Helms. Could you tell us –

THE COURT: This isn't –

MS. CLARKE: One last –

THE COURT: This isn't probing the cause matter, and I've got to watch the clock because we have got a number of jurors to cover.

BY MS. CLARKE: I understand. Could I ask the one of – Mr. Reagan was also one of your three. Do you have any opinion as to the Hinckley verdict?

A. Hinckley?

Q. Hinckley. The man that attempted to shoot President Reagan.

A. Well, he's in prison. And he should be there.

Q. And did you have any other opinions about that other than that?

A. No.

Q. Did you think he deserved a penalty of other than prison?

A. I never thought about it.

MS. CLARKE: Thank you very much.

THE WITNESS: Thank you.

THE COURT: Government.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. My name is Steven Freccero. I'm one of the prosecutors in this case. I wanted to ask you some follow-up questions. Do you still have your questionnaire before you?

A. Yes.

Q. If you could look at question 103 that can be found on page 26. Do you see that question and answer?

A. Yes.

Q. That was a question pertaining to the death penalty. And you answered that, as you have again told us, that you voted for the death penalty. But then you stated that you believe it should be carefully used. Could you give us some idea about what you meant by that?

A. Well, we have – I don't know much about law, but I think that if there are mitigating circumstances, you know, circumstances that the person found guilty perhaps was not in his right mind or was provoked or something like that, I think you should very carefully consider whether the death penalty should be used or not. That's what I was thinking at the time.

Q. Okay. And again, I don't want to put any words in your mouth, so if there's anything that I say that's incorrect, please stop me. But I take it from your answer that you're not saying that for certain crimes the death penalty should automatically be used?

A. Well, whatever they are. Aren't they categorized by law which ones are to be used?

Q. Well, I think if you remember back to the first instructions that the Judge gave you when you came out here a little while ago, we talked about that in a case in which the death penalty may potentially be used, there's actually two different phases to such a trial. Do you remember the Judge talking about that?

A. Yes.

Q. So the first phase you don't even consider penalty. The issue is simply whether or not the government has proved beyond a reasonable doubt whether the defendant is guilty of those charges. Do you remember that?

A. Yes.

Q. And that if and only if the jury finds the defendant guilty at that first phase where you don't even talk about punishment, then you have a second phase. And that's where the Judge is going to talk about aggravating factors; that is, factors that the government comes forward with, and the government supports its view of the proper sentence, and then mitigating factors, any other information that the defendant puts forward that supports his view of what the proper sentence is.

A. Uh-huh.

Q. So I guess what I'm driving at is if at the end of the first phase where it's just guilty or not guilty, at the end of that, and you're part of a jury, and as part of that jury you've agreed unanimously with your fellow jurors that the defendant is guilty as charged of a serious crime of an intentional taking of another person's life, when you go to that second phase, is your mind already made up as to what the penalty is?

A. I don't know. I think the death penalty should certainly be considered, if it's in order to be considered.

Q. Would you also consider some sentence other than death?

A. If we should, yeah. I don't know whether we should or not.

Q. Well, for instance, before you were talking about mitigating factors, and you mentioned, for instance, if somehow the defendant had been provoked. Do you remember saying that?

A. Yes.

Q. You also said that perhaps, or at least as I heard you, something you'd want to consider, something about the mental state of the defendant.

THE COURT: I'm going to interrupt you. I'm sorry.

MR. FRECCERO: Okay.

THE COURT: You just stated that you didn't know if you should or should not consider something.

THE WITNESS: That's right.

THE COURT: If I give you an instruction that tells you you should consider something, will you follow my instruction?

THE WITNESS: Yes.

THE COURT: Do you have any personal belief about the application of the death penalty that would interfere with your obligation to follow my instructions should I instruct you on the law?

THE WITNESS: No, I don't.

THE COURT: Is there anything about the fact that I'm asking you that question that could affect your volition in giving the answer you just gave?

THE WITNESS: No.

THE COURT: All right. Go ahead.

Q. BY MR. FRECCERO: If you got to this second phase, already decided guilt or innocence – and I know it's difficult as you're sitting here. I take it you yourself have no training in the law; is that correct?

A. No, none.

Q. And the point would be that if the jury unanimously convicted the defendant, found him guilty, at this second phase you'd be given instructions; in other words, the Court would tell you this is the way it works. There are certain factors we're going to call aggravating factors. And then there are certain factors that are going to be called mitigating factors. Aggravating factors could be things about circumstances of the crime or things about the defendant himself, and mitigating factors could also be circumstances about the offense itself or about the defendant.

You're going to have to listen to evidence, both sides would argue, you'd hear evidence. The key question is whether before you had even heard that evidence, before you'd heard the Judge's instructions, would you have already made your mind up before you even got to that stage?

Would you have already said, well, as far as I'm concerned, I'm going to vote for death? It doesn't matter what I hear during that phase?

A. No. I will listen to that phase, whatever.

Q. Do you think your – and, again, it's difficult. You're sitting here. Lawyers are asking you questions. The parties just want to get a sense of are you the type of

person that can keep an open mind, that can wait until you've heard both sides of the story and take that along with the Judge's instructions and weigh those two and come out with the best decision that you think you can based both on the law and on the evidence?

A. I think so.

Q. Okay. Whatever your own personal beliefs – and this is difficult to talk about, but a lot of times people have personal beliefs and it's just different from the way the law is.

Do you think that even if you had a belief, even if you said to yourself if I were in charge of the system, I might have written the law differently, but when you get there with your fellow jurors, what counts is the law. Could you set aside any other personal feelings and just consider the law and the evidence you heard here?

A. I think so. I would add more crimes.

Q. If you were in charge you would add?

A. (Nods head.)

Q. Well, that's a good example. If you yourself thought that the law, for instance, was too lenient, there's something that you could consider, some factor, but you yourself thought I wouldn't say that's a valid factor, but the Judge tells you, look, you've got to consider those factors, will you have already prejudged that?

A. No. What I was thinking – what I was thinking was that I think pedophiles should be added to the death penalty.

Q. Because the bottom line here from both sides, both the government and the defendant, is it's just important, we need to know honestly and truthfully whether you're going to be able to keep an open mind throughout this until the very end and consider whatever it is both sides are going to have an opportunity to argue, and that you can go back into that jury room and whatever your decision, that you can make a commitment that you are going to follow the law and base it only on the evidence and not be influenced by your own view that, well, I think it should be different. And that's a difficult question, but that's really what we're getting at here.

Do you feel confident you can do that?

A. I do.

MR. FRECCERO: Thank you, ma'am.

MS. CLARKE: Your Honor, I don't know if the Court has any questions, but there was a concern I forgot to raise about a hardship. If the Court would like to do it.

THE COURT: What's the concern?

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Question 131. Driving at night and arriving at 7:00 a.m. and coming about – what is it, about half an hour, 45 minute drive or so?

A. About 20 minutes. 20, 25 minutes depending upon the traffic.

Q. Is there any problem with driving in the dark if you have to get to where you're getting by 7:00?

A. It scares me. I don't like to drive at night or in the dark.

Q. Would it be such that it would be an enormous burden in this case to have to drive in the dark hours to arrive at the staging area?

A. Would we be driving downtown?

THE COURT: The actual place where you would have to report hasn't been disclosed publicly, but it would be some place near the courthouse. Perhaps within 20 or 30 minutes of the courthouse. You would probably have to report to that place no later than 7:00 o'clock in the morning. So you would have to get up in advance of that time to make your journey. I'm not even sure that it's dark at that time.

PROSPECTIVE JUROR NO. 40: If it's out where we have been parking, I think I could manage that. But I wouldn't like to come downtown in the dark.

THE COURT: Are you indicating that whether you are comfortable driving at night or in the dark depends on where you have to drive, what street you use?

PROSPECTIVE JUROR NO. 40: Yes. Yes.

THE COURT: Okay. I'm going to have my deputy clerk take the juror to the waiting room and bring in the next juror – next randomly selected juror. It would be number 41.

THE COURT: Let the record reflect the juror has exited the courtroom. Counsel, the question that I spoke to you about off the record and which I've asked, I may add a couple words to that if you don't mind. I think I'll add the words deliberate and intentional. Do you agree?

MR. DENVER: Yes, your Honor.

THE COURT: I don't think they're necessary if you're just talking to lawyers, but I think lay people will understand those other words. Do you agree, too, the government?

MR. LAPHAM: Yes, your Honor.

THE COURT: All right.

(Prospective juror no. 43 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 43rd randomly selected juror. You mentioned in your response to a jury questionnaire – I didn't tell you when you respond to my question, although I'm pretty close to you, it would be easy for you to just to talk with me without using the microphone –

A. That's fine.

Q. – I want you to use the microphone because I want the counsel and lawyers at counsel tables to hear your response.

A. I understand.

Q. You mentioned that serving on this jury could cause a financial hardship for you?

A. Not financial. I think it could cause some other aggravation in my life. I teach high school, I coordinate our yearbook.

THE COURT: I'm not sure if the lawyers can hear you.

Could you hear his response? Okay. Go ahead.

THE WITNESS: I teach a lot of subjects that I have to be personally really involved with. And I guess at the time I was thinking, yeah, that would cause some difficulty. So financially, no, it wouldn't be a problem.

Q. BY THE COURT: Is the difficulty you are referencing something that can be eliminated by allowing someone else to take over whatever job you have?

A. Well, like today I have a sub, but I don't think it's comparable. I'm also working on my administrative credential right now, and a lot of my class work which is after the regular school day ties into things that I'm doing during the school day. So not being there would cause some problems with that.

Q. Tell me about what you're working on again. I'm sorry.

A. Well, I'm working towards my administrative credential so I can be like a principal at a school. It's about a year and a half process of courses at night. And a lot of my course work involves research and interviewing and working in the regular school environment during the day to follow up work that we're doing at night in our classes. So if I wasn't there – if I was here and not there, I think it would impede my progress towards that credential.

Q. In what fashion?

A. Well, especially next semester, the next semester involves a project where you're actively involved with a project at the school site during the day, and I'd probably have to put that off because I wouldn't be there to be working on the project obviously.

Q. I have to probe further.

A. That's fine.

Q. Okay. The parties are entitled to a fair cross-section of the people in the community from which to select prospective jurors.

A. That's fine.

Q. You're part of that cross-section.

A. I understand. I understand.

Q. Is there a way that you can make an adjustment to delay doing the things that this apparently will interfere with and then accomplish those things later on?

A. I would imagine there is. I mean, you know, we have substitutes that would cover my teaching load. And, you know, I can't say for sure how much of an impact it would have on those things. I mean, I understand my role as a prospective juror.

I think, you know, and I don't want to overstate my importance in my school environment, but I am very active with my school. And I'm sure it would have an impact at my job if I were not there. But I could – those things could be mitigated I'm sure. I could have somebody cover me. I could work something out with my other course work.

Q. Since you answered your jury questionnaire at Cal Expo, have you heard of or read anything about this case?

A. No. I've tried to avoid it. It pops up at odd times like when you're listening to the radio and things like that, but I haven't had a big interest in it. I'm too busy. So I haven't followed it at all.

Q. Despite your efforts to avoid it, have you still heard things that you can tell me about?

A. You know, the only things I've heard, most of it were things that involved me. You know, I heard on the news the day we were going to Cal Expo, and I heard that they were going to start the jury selection process here. That's been about the extent of it. Nothing beyond that.

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 serve as a fair and impartial juror?

A. You mean like from media?

Q. Any source. Including the media, but any source whatsoever.

A. I don't think so. I don't think so, no.

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

A. No. You know, I'm intelligent enough to know that – no, I have not. You know, I mean, before I was selected as a juror, you know, there was information out there. You know, I've just experienced too many other things to know that, you know, there's two sides to everything, and everything I read may not be true. And so I didn't make any firm judgment at all.

Q. We don't expect prospective jurors to be totally ignorant of the facts and issues involved in this case.

A. Right.

Q. But one reason why we are conducting individual voir dire is to find out what information you've actually received about the case and whether you have formed an opinion or that information has given you any preconceived notion about the defendant's guilt or innocence.

A. Right.

Q. Can you assist me and tell me whether you have such information and what it is?

A. Well, I've lived in Sacramento for a long time. So part of my information is – I was here when all the bombings occurred here in Sacramento. So I'm familiar with that only from, you know, headline news stories. You know, I read the paper. So I have just offhand information how the case has progressed, but I honestly have not taken a serious interest in it. I know the manifesto thing was available. I didn't read that. I didn't take a look at it.

You know, I read the news for a lot of different reasons, and it just wasn't something that specifically interested me a lot so I didn't follow it very closely.

Q. But did the information you received cause you to form an opinion?

A. Yeah, I'd have to say no. No. I'd say – I've got to honestly say, though, that it doesn't look real good for the defendant I would say, based on what I've seen. But again, I would reserve judgment until I heard everything. Especially when I was selected for the jury, I thought that, you know, that I'd have to be impartial and hear things like for the first time and put any of that information that I'd heard aside.

Q. You understand that under our constitutional democracy, you would be expected to do just that?

A. Absolutely. And I feel fully capable of being able to do that.

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

A. You bet. 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. I'm definitely not a proponent of the death penalty. And I thought a lot about this since the questionnaire. And in my role in my school, I deal a lot with discipline and consequences. So these are issues I think about a lot. And the conclusion I've come to is I see it more as a politically expedient thing. I don't really have any moral issue with it necessarily.

I think it's kind of ironic, hypocritical maybe as a society if we prosecute people for murder and then as a consequence murder them. I think we as a society should try to be making a higher statement about human conduct, and we don't by doing that.

And then I look at all the logistical issues as well, and too often we don't exercise them. We punish people with capital punishment, and then we don't follow through. And I don't see the point in that.

And I just – I really feel like it's more politically motivated than it is anything else, and I don't want to be a part of that. And I think there might be other things. It doesn't act as a deterrent. I haven't seen anything that shows it acts as a deterrent.

Other modern industrialized nations don't have it as a consequence, and they have a lower murder rate than we do. And my experience with kids and people, you know, if we're going to deal with this as a problem, there's a lot of other things we need to be looking at instead of punishment necessarily all the time.

Q. We're not necessarily looking for prospective jurors to sit on this case who would favor the death penalty.

A. Right.

Q. We're looking for prospective jurors who would just consider the death penalty amongst other alternative sentencing.

A. Right. I heard that, yeah.

Q. Are you in a position to consider it amongst other alternative sentencing?

A. You know, I would consider it I suppose. I honestly don't feel comfortable about it. Part of it, when it's somebody else, you know, I can look at it pretty impartially and feel like it's kind of ridiculous. But I think if something happened to me or my loved ones, I'd have a much more emotional response to it.

And part of motivation just as a person is to help move our society to a better place. And that's part of what motivates me as a teacher. And I don't really think that it's helping us. I don't think capital punishment is helping us. So I guess I could say I would consider it, but I wouldn't feel real comfortable about it, and I'd wish there were other alternatives. You know, that's the law, I understand that, but I wish there were other alternatives.

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

A. Automatically vote against it? You know, I can't say. I don't know. Part of my opinion is based upon what have I experienced so far. I haven't seen any evidence at this point, so I don't know.

THE COURT: I'm going to allow the parties to ask you some questions after the afternoon recess. We typically take two recesses during the day, and it's time for the afternoon recess now. Court will be in recess then until 3:30.

(Recess taken.)

—oOo—

THE COURT: Let the record reflect all participants are present except for the prospective juror, and the jury will be in the witness box in just a moment.

(Prospective juror No. 43 entered the courtroom.)

THE COURT: The juror has joined us. The parties may voir dire.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, good afternoon.

A. Hi.

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

Sir, you answered quite forcefully that you were definitely not a proponent of the death penalty.

A. That's correct, yeah.

Q. You've held those views for a long time?

A. You know, I think I have. I've looked at the whole process for a long time. And questioned it sometimes. And I don't want it to make the appearance though that I feel people should be able to commit heinous crimes and not have some kind of serious consequences. I just wonder how good of a consequence it is for us, you know, and that's what I'm questioning.

Q. And you understand that there are other penalties?

A. Right.

Q. For murder?

A. Right.

Q. Right?

A. I understand that perfectly.

Q. One of those is life imprisonment. Is it your feeling you would always consider that a more appropriate sentence than the death penalty?

A. You know, I'd have to say no, because if, you know, we had Hitler on trial here, yeah, I wouldn't want to see him kept around. So I would imagine some situations I would, you know, I would say okay.

Q. Other than the extreme case though, like a Hitler, would you tend to believe that a life sentence is more appropriate than the death penalty?

A. Yeah. Yeah, I would, yeah.

Q. And you'd feel that way in every case other than the real extreme cases?

A. (Pause.) Well, you know, it's hard to say how I would think about it if I was put to the test there. But I've been thinking about it a lot. And, you know, I'm certainly sympathetic with people when they lose people, and I certainly feel a sense of rage when I see evil things take place, and I want to see something happen. But then I also get tied up in the political nature of the whole thing, and I see a lot of people waving this as a political thing rather than as a pragmatic consequence to protect us as a society and as a civilization.

And so I guess, you know, I would be more inclined to say I'd rather see somebody just put away, left there, than – and not even deal with it as an option.

Q. And that political process that's the one you said you just don't want to be any part of?

A. Yeah. I really don't. Yeah.

Q. Have you discussed your views with friends and colleagues and perhaps even your students?

A. You know, with this situation, no, I haven't.

Q. No, I don't mean this particular situation.

A. Oh.

Q. But the death penalty?

A. Oh, no, I haven't. In fact, I thought about it most recently as this day approached and – no, I haven't, you know, I wanted to make a judgment, you know, based upon my own feelings and attitudes about everything, definitely.

Q. You said that you felt the death penalty was hypocritical?

A. Yeah. Yes, it is.

Q. And that's because it's basically committing murder to avenge a murder?

A. Absolutely.

Q. Is that something you think you could ever be – could you ever participate in that type of process?

A. In making that decision?

Q. Yes.

A. (Pause.) Yeah, I could participate in the process. I just think as a consequence it's maybe inappropriate.

Q. Well, I guess the question of participation is you'd be asked to take an oath that you could consider it and actually in the appropriate case impose the death penalty if that appeared appropriate.

A. Right.

Q. Now, given your views that this is a hypocritical process and, in fact, murder, could you ever consider – could you ever take that oath?

A. (Pause.) You know, I think I probably wouldn't.

Q. I'm sorry?

A. I don't think I would. Because I was kind of undecided about this until very recently, and, you know, I feel very strongly about violence that's committed towards children, and, you know, I questioned that. You know, I thought what if something happened to my child, and I would be absolutely enraged, you know? And I would want to see something done. But in this situation right now or anything else like that – I don't know. I felt like I had to make some sort of commitment one way or another. And I think my commitment is to not have that as an option for us to look at.

Q. So even in the case of the murder of your child, you would consider a life sentence to be appropriate over the death penalty.

A. Well, I guess that isn't the point I was trying to make. In that situation, yeah, I'd want to see somebody, you know, sent to the moon. But that would be tied with a lot of emotionalism. Separating that out, looking at this more intellectually without that emotion attached to it, I felt I had to make some sort of commitment one way or the other.

And you know, I care greatly about us as a people, us as a society. I understand our need to have punishment and consequences. I just – every day I feel like we need to push ourselves to a better place at some point, and I think maybe that's a place to start with it. I know the intent is to hopefully have people think, you know, I won't do this because they might kill me too, but I'm not sure that works. And I just never could understand why to prevent killing people, we kill people. So I would have to be – I don't know if I'd want to take that oath considering all those things.

MR. LAPHAM: Your Honor, at this stage, with your permission, I'd turn the questioning over to the defense. We would be moving for a challenge for cause.

THE COURT: You can discontinue questioning. If the defense has questions – do you have questions?

MS. CLARKE: Yes.

MR. LAPHAM: I'll have no further questions on the death penalty is what I'm saying.

THE COURT: Well, finish your questioning.

MR. LAPHAM: Your Honor, what I'm saying is there may be no point –

THE COURT: Sir, finish your questioning.

BY MR. LAPHAM: Very well.

MR. LAPHAM: Q. Sir, you talked about your work was a schoolteacher.

A. Right.

Q. And you indicated you're involved in a lot of different things. That includes the various classes you teach. You also talked about your yearbook activities?

A. Right.

Q. How is that going to impact on your potential service as a juror?

A. Oh, man. Well, you know, one of my ex-principals used to remind me at one time we're all replaceable. But it would be a difficulty, definitely. It's just hard to explain how much individual direction things take. Let's say there's a basketball game Friday night. You know, somebody's got to call somebody to remind somebody to call somebody to have somebody be there and make sure the kids are doing what they should be doing. Technically a sub could, you know, provide a legal substitute in my absence. Whether they would remember to do all those things that I do, I don't know.

Q. Is that an area where you devote a lot of extracurricular time?

A. Definitely.

Q. Is that compatible with the type of schedule the judge has advised?

A. Not at all.

Q. And why is that?

A. Well, things happen all day long. If I was serving on jury duty, even if it was excused at 1:00, if that was consistent – well, actually that might not be a problem. The class meets after 1:00 o'clock, but that would mean zipping from here to there, back and forth, you know. I mean, all those things could be worked out, okay. That could be worked out.

Q. The type of teacher you are, also, you're in the performing arts?

A. Visual arts, yeah.

Q. Visual arts?

A. I'm also the division leader. At our school all the arts are grouped under one umbrella and one of my responsibilities is to oversee all of those. So . . .

Q. And how would that impact upon jury service? How would jury service impact upon that?

A. Probably have a pretty profound impact there. I mean, somebody else could take up some of the slack at the meetings I have to attend and working with the budgets I administer and all that stuff, but you know, I have a pretty high-profile role in some of those things, and not being there for several months would definitely have an impact.

Q. There – I'm sorry. Were you finished?

A. Yeah. I realize some of these things are kind of nebulous and it's hard to explain them, but I can't tell you how many meetings I go to a week, you know, representing that group. And, you know, certainly somebody else could take my place. But – and I don't want to sound kind of egotistical about it either, but I don't think it would be the same.

Q. Are there creative projects that you're working on with students?

A. Oh, yeah.

Q. That would be affected by your –

A. Oh, yeah, that aspect too. One of my classes is an advanced art class, and the kids are preparing portfolios for advanced placement, and that takes a tremendous amount of input. And not being there would – I didn't even think about that when I filled out the jury questionnaire. That's a tremendous, time-intensive process for me and the kids.

Q. Is that something where a substitute could fill the bill?

A. The right sub, yeah. I don't know if you follow – you know how hard it is to get good subs these days. I can't guarantee that, though. I can't guarantee that somebody would take that responsibility on.

MR. LAPHAM: That's all I have.

THE COURT: Okay. Defense?

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Hi.

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I take it for school that you could work that out. Sounds like the school district would try to help you work that out.

A. Yeah. We'd get along somehow, sure.

Q. Probably nobody sitting in the box would like to spend the next two to three months –

A. Right.

Q. But you could accommodate the court and serve.

A. Yeah. Well, you know, before I got here, I thought well, there's just no way I could make that work, you know. But the whole legal process, you know, is really of interest to me, you know, and you know, you know, I'm feeling more and more like I could probably work that out. I just know it would have an impact on my school side. It would have an impact on a lot of projects I'm working on there.

Q. Sure, but you could try to work that out?

A. If I were selected, I would try, certainly.

Q. If I could spend a moment with you on the issue of the death penalty, because it's important, and I think the judge would say to you that a person who opposes the death penalty can still sit in a capital case if they'll just be open to considering the punishments based on the evidence that they hear in the courtroom.

A. Right.

Q. And I certainly understand your view of the death penalty and understand how you feel about it. But would you agree with me that everybody has a duty to serve, if they can, on a jury?

A. Oh, absolutely.

Q. And it's sort of an obligation of citizenship, like paying our taxes or voting?

A. Right.

Q. And it's important when we seat people in a jury box to judge the life of another human being that we have people from all thoughts and all beliefs and all opinions?

A. Right.

Q. That we not necessarily have all people on the jury who are proponents of the death penalty, right?

A. Right.

Q. Or opponents of the death penalty?

A. Right.

Q. Right. We'd want to have a balance?

A. You want to have –

Q. A balance. You want to have a cross-section of a variety of beliefs, right?

A. Right. Right.

Q. So I suppose if you were being sat in judgment of in a capital case, you'd want to have a mixture of people who believed or didn't believe in the death penalty?

A. Right.

Q. And I guess what both sides are looking for is to make sure that you would be the kind of juror who could listen to the evidence as you heard it in the courtroom?

A. Mm-hmm.

Q. And be willing to listen to and follow the judge's instructions to weigh the aggravating factors and the mitigating factors?

A. Right.

Q. I guess the bottom line is we just can't have a juror who will go into the jury room, cross their arms –

A. Oh, I understand. I don't know. As I said earlier, I just felt like I kind of had to like get off the fence one way or the other on this issue. I don't think I would be – you know, not having heard the whole thing, it's hard to say what those factors are, you know. And reading of other things, you know, and hearing about other things, you never know what the whole thing is. So it's hard for me to say necessarily.

And part of my attitude, I guess, is kind of philosophical. So, you know, I could hear all those things and maybe there's something that would change my mind in the course of all that.

But I just felt like, you know, I don't want to come at the issue like, poof, you know, let's execute everybody, you know. Part of it I don't understand. There's different levels of committing murder. You know, in my opinion, how can that be sometimes? I just really feel like I had to make a commitment one way or the other.

Q. I can understand that, and I guess it's a question of the difference between being the voter or the politician or the legislator –

A. Right, and now being a juror.

Q. – who is making a political judgment for our society that the death penalty is an option for certain crimes; and a juror who is saying, "I will consider the aggravating factors and the mitigating factors, and I will give both sides a fair opportunity to persuade me one way or the other."

A. Right.

Q. "And I will listen to other jurors as they say why the death penalty should or should not be imposed, and I would be willing to consider the option of a death penalty as a juror –"

A. Right.

Q. " – not as a citizen voting in favor or against the death penalty."

A. Right. I think I could hear all that. I could listen. I could hear all the factors that are going to be – have an impact here. I could listen to fellow jurors.

And as you were saying that, I realized, you know, I have an opinion. That's my opinion. It's kind of my feeling about how we ought to conduct ourselves, you know. But I deal with a lot of opinions on a lot of issues and I have to make adjustments all the time. I have to have my own core sense of principles that I work from, but I certainly – certainly I can sit and be a part of something like that, certainly.

Q. And give fair –

A. You know, I don't feel . . . I don't want to be like – I can't think of the right word to describe what I'm thinking here. I have – this is my philosophical view on the issue, okay? And certainly, you know, I could, you know, under different circumstances be persuaded to look at it differently. I just felt like I had to make a commitment at this point.

Q. And I think we all appreciate the fact that you've made a personal judgment –

A. Right.

Q. – as to your personal belief about the death penalty. The question is, could you sit with your other fellow jurors and someone who felt as strongly on the other side of the coin as you feel personally?

A. Right.

Q. Could you entertain in a serious way –

A. Sure.

Q. – their position as to why the death penalty would be appropriate?

A. That's what I was trying to get to with this.

Q. So you would be open to them persuading you that their position is correct?

A. Provided they'd be open to them persuading me, I suppose, too.

Q. And it's in this case, too. I don't think we're asking you to let another juror persuade you to change your mind about what you believe is the wisdom or lack of wisdom of the death penalty.

A. Right.

Q. The question is, would you be open to having another juror who believed that death was the appropriate sentence in this case based on the evidence in this case, would you be open to considering with that juror his or her views?

A. Oh, yeah. I could do that.

Q. And that would not do violence to your oath?

A. No.

Q. So you would be able to take an oath and say that could sit and consider the evidence on both sides of the life and death issue and render what you believe is a fair and proper verdict?

A. Well . . . I might be able to, I suppose, yeah.

Q. Well, I guess the real bottom line on that is, can you do that? Because that's what makes the jury work is the ability of everyone to consider the position of everyone else on the jury in a meaningful way.

A. Right. Right. Well, I can certainly consider everyone's views on an issue like that, their opinions, their views of and their perception of the evidence as it would be presented, you know. And it's just hard to say, you know, having heard all that, what my opinion would be following that, you know. I just felt like I had to have some sort of foundation to work from coming to this.

Q. Right. And that's your foundation is that you oppose the death penalty. But I guess my question to you is, is that foundation going to stop you from considering the equally opposite foundation that other folks on the jury may have?

A. No. No.

Q. You could listen to them?

A. I could, yeah.

Q. You could consider their desire to impose the death sentence, and if you felt that the death sentence was appropriate in a given case, given your consideration of all the other jurors, you could say yes, given that we have the death penalty?

A. It would have to be hugely persuasive for me to say that yes.

Q. But there is a given set of circumstances you could consider imposing death?

A. Well, as I mentioned earlier, maybe yes. Yeah. Yeah.

Q. If you had a circumstance before you where the person you were judging, that you had the obligation to judge, I mean, you don't come to this lightly, you didn't volunteer and say, "Take me, take me, I'll do it." If you had a situation where that person had been convicted of a violent crime, a murder, served time and been released and went back into custody on another murder, and you were convinced by the other jurors in your heart that if that person did not get the death penalty, he or she would do it again?

A. Might go back. Well, I thought about that exact thing, you know, in trying to rationalize all this with myself. What if there was some – maybe they escaped, you know, maybe the laws changed in 20 years and these people were released. And those are all valid questions. And I don't honestly know how I would answer those right now.

Q. Well, am I correct in assuming that you could listen to your fellow jurors persuade you that that was the right result?

A. Yeah. Well, I mentioned to the other attorney that if it was, you know, if we were talking about like Stalin was in here right now, I mean, that's a person obviously so deeply evil we'd all be in danger all the time.

Q. So there are a given set of aggravating circumstances for you to impose?

A. Yeah. But as I mentioned they'd have to be pretty huge. So . . .

Q. I suppose the bottom line is you could listen to the other jurors?

A. Yeah.

Q. Consider their opinions, and if they persuade you that the death penalty is the right penalty in this case you could impose it?

A. Right. Right.

MS. CLARKE: Could I have just one moment.

THE COURT: Yes.

(Discussion off the record among defense counsel.)

MS. CLARKE: I thank you very much.

THE COURT: Please escort the juror to the jury room and bring in the next numbered juror.

(Prospective juror number 43 left the courtroom.)

(Prospective juror number 45 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to be referencing you as juror number 45 because you were the 45th randomly selected juror.

Is there any reason why we shouldn't consider you for service on this trial?

A. I don't know if I can handle this. I'm trying.

Q. I'm going to ask you questions from the podium. That way I'll be ensured that you use the microphone and your voice is elevated enough so the parties can hear what you have to say too.

What's the problem? What are you thinking about?

A. I just can't get him out of my mind ever since I got called for this. There's just something about him. I just don't like to be in this room.

Q. Are you in a position to elaborate more so I can understand what type of feelings are involved with what you just told me?

A. I'm just not a strong person.

Q. Is there something about the nature of this trial that you think will cause you pressure that would be difficult for you to handle?

A. Just the fact that I'm just – I'm just too tense. I don't know.

Q. Sometimes the courtroom setting itself, its decorum, can cause people to be tense. Even lawyers, you sometimes see the lawyers are tense when they – not experienced lawyers (indicating), but some of the newer lawyers are tense when they make arguments to the bench. Is it the courtroom setting itself that is causing the problem?

A. Somewhat. I just don't like to be away from home. Just I –

MR. DENVIR: Your Honor, I wonder if I could just point one thing out to you. Talking to counsel – something of a question here.

(Discussion off the record between Mr. Denvir and the Court.)

(Discussion off the record between Mr. Denvir and the Government's attorneys.)

MR. CLEARY: Could I ask a few follow-up questions, Your Honor?

THE COURT: Okay.

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 just wanted to ask you a couple of questions.

You're a little nervous, I can tell. Just relax. This is going to be nice and easy on you.

You've served as a juror before in a civil case?

A. One time, yes.

Q. Okay. And how long ago was that?

A. In '85.

Q. And did you have any problems?

A. I was an alternate.

Q. But you sat through the trial, right?

A. Yes.

Q. Did you have any problems sitting through the trial in that case?

A. No, because it wasn't murder. It was –

Q. It was a civil case?

A. Yes, it was just a simple little accident.

Q. And how long were you sitting as a juror in that case?

A. Six weeks.

Q. And there was nothing about that case or the fact that there were lawyers on both sides or a judge that concerned you; is that right?

A. No. No, but I was younger then, too.

Q. I want to try to get a handle on, in this case, what it is that concerns you. Is it the nature of the charges that have been brought in this case?

A. (Pause.) Well, yes. You don't want me to elaborate?

Q. Oh, I'd love to have you elaborate.

A. Well, I had two cousins that were killed in the Oklahoma bombing. They're second cousins, not first cousins. And it just bothers me every time I see those pictures of that building and what happened.

Q. And do you think that those feelings would interfere with your ability to sit in this case?

A. I'm sure they could. I don't know how.

Q. They were people that were close to you, I take it?

A. They were second cousins. I haven't been in contact with them in a long time. They lived back in – well, they lived in Oklahoma, but all my family was from Colorado.

Q. And how do you think – and I apologize for this; I do have to ask these questions – how do you think that will affect your ability to sit in this case which has nothing to do with that tragedy?

A. True. It was just a cowardly act.

Q. The Oklahoma City bombing case was?

A. Yes.

Q. Right. And my question is, how would that affect your ability to evaluate evidence, just like you did in the civil case when you were sitting, to evaluate evidence in this case that has nothing to do with that act in Oklahoma City?

A. I don't know. It's easy to say that I'm for the death penalty, but when you – when it comes down to having to make a decision, I don't know how I would.

Q. How you would vote on the death penalty?

A. Right.

Q. Actually, I wasn't even going to get into that right away. I was trying to understand what it is about the nature of this case and the charges in this case that upset you so. But let me ask you, is it the fact that this is a death penalty case that bothers you so much, or is it the fact that there is bombing charges in this case that bothers you?

A. Both. Both.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. How does it bother you?

A. It's just hard for me to make decisions at home let alone make a decision for somebody else in this case. In a sense, it's such a horrible bunch of evidence.

Q. Do you have to take care of anyone at your home?

A. I was taking care of my mother. She's having 24-hour care now.

Q. Can you tell us what type of thoughts are on your mind that cause you to be reluctant to make the type of decisions you believe have to be made in this case?

A. I'm frightened. I just – I don't know.

Q. Do you think that the feelings you have now are feelings that will go away with time?

A. It's going to be hard because it's been bothering me for a long time now.

Q. How long?

A. Ever since September when I first got the first notice. And I can't sleep.

THE COURT: Okay. Approach the bench.

(A bench conference was had but not herein transcribed.)

THE COURT: I'm sorry that this case caused you to experience the things you shared. We're going to excuse you from having to respond to any further questions. I'm going to allow you to wait in the waiting room until we are in a position to take all the jurors back to the location we're going to take you.

PROSPECTIVE JUROR NO. 45: I'm sorry.

THE COURT: That's okay. I understand.

(Juror number 45 left the courtroom.)

(Juror number 46 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to be asking you some questions in just a moment. You are the –
(Discussion off the record between the Court, the clerk and Mr. Denvir.)

THE COURT: Q. Okay. 46th randomly selected juror.

Since you answered your jury questionnaire at Cal Expo, have you heard of or read about this case?

A. I've heard headlines, but I haven't read anything.

Q. What type of information do you remember receiving from the headlines?

A. All I heard was the name, the Unabomber, on television, and I just changed the television.

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. I don't believe so, because I really haven't paid attention to it.

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

A. No.

Q. Has any of the information you've received prior to appearing at Cal Expo caused you to form any opinion about Mr. Kaczynski's guilt or innocence?

A. No, because I typically don't read about these types of things. I don't pay attention to them.

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

A. Yes.

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

A. Yes. But that's how our system is supposed to work.

Q. You're correct. It's a constitutional principle that's supposed to be observed by all jurors.

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

A. I have to admit I'm on the fence. I think it depends on the case and the facts presented.

Q. Okay. I'm going to ask you two questions. If this case reaches the sentencing phase, would you automatically vote to select the death penalty regardless of the presence of mitigating evidence or the absence of aggravating evidence?

A. Okay. I'm not sure – again, I know you defined these earlier but "aggravating" is what?

Q. Aggravating evidence would be evidence that's not favorable to Mr. Kaczynski.

A. Okay.

Q. Mitigating evidence would be evidence that explains background information concerning Mr. Kaczynski, perhaps other matters concerning the offense, the evidence of that.

A. Okay. And could you repeat the question, please.

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

A. I would not automatically; no.

Q. If the jury should convict Mr. Kaczynski of the offense of deliberate, intentional and premeditated murder, would you be able to consider voting for a sentence less than death?

A. Hmmm. Would I be – if all the facts are there and he’s proven that he’s done this and that’s what you’re asking, would I be able to consider less? (Pause.) Probably not.

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.

You indicated that you probably could not consider a sentence other than death in the circumstances in which the judge gave to you. Am I right?

A. Yes.

Q. And that’s really sort of based on your evaluation of the death penalty in your own beliefs and opinions about it; am I right?

A. Yes.

Q. I just want to probe with you where you are on that. And I’m assuming when we say all the facts are presented that it’s also – it’s a crime that has been pre- – that has been committed with full knowledge and sanity and whatnot. Because if it wasn’t committed with full knowledge and sanity there would be a defense and you might not convict him of the premeditated, deliberated murder?

A. Right.

Q. So that’s important to you. In fact, I think even on the questionnaire you were pretty straightforward about that, that if there’s a murder proven beyond a reasonable doubt, deliberate, premeditated murder, that’s it. That pretty much defines the penalty for you; am I right?

A. Mm-hmm.

Q. And that’s really reflected in your answers. Do you have your questionnaire?

A. I don’t.

MS. CLARKE: 46, Your Honor.

PROSPECTIVE JUROR NO. 46: (Accepts document from the Court.)

MS. CLARKE: Q. At page 27.

A. Yes.

Q. Where you mark off strongly agree that someone who plans and commits a murder gets the death penalty and someone who deliberately murders two or more people gets the death penalty?

A. Right.

Q. And an act of terrorism resulting in death gets the death penalty?

A. Right.

Q. How would you define terrorism? Would that be within the compass of this case, sending bombs to someone in the mail?

A. I can't compare it to this case because I don't know the facts involved in this case, but I think of foreign countries coming into this country and murdering people for political people. I consider that terrorism. Acts against an airplane that's going to kill a lot of people for political purposes, that type of thing is terrorism.

Q. Would sending a bomb through the mail that was designed to kill somebody be an act of terrorism?

A. Yeah. Probably.

Q. And so that would, in your belief system, is that that would equal the death penalty; am I right?

A. Yes.

Q. And also that it would not matter what the background of the person was, once you looked at the nature of the crime and made a decision as to the nature of the crime, that's pretty much what equals death; am I right?

A. Yes. And I mean, again, we're assuming someone who is a sane, reasonable person.

Q. Right. The intentional, deliberate, premeditated killing of another human being?

A. Right.

Q. And it would be very difficult for you to consider less than a sentence of death in those circumstances?

A. Yes.

Q. When you mentioned at page 28, if you're still with me there, you were asked in the middle of the page what you remembered seeing or reading about the case and you said he is accused of being the Unabomber. Can you tell us what else you can recall about the case?

A. I really can't. I mean, I have a personal philosophy that is not necessarily in favor of the news.

Q. Watch out.

A. I know. I'm sorry, guys.

But I feel that not all the facts are necessarily presented. And I also put in my statement that, as a child, my father taught me, believe nothing of what you read or hear and only half of what you see. And so I don't tend to spend time on that.

Q. Has that stood you well in life, that philosophy?

A. Very. Very.

Q. And that would be, it sounds like a very heartfelt view that you try to push aside whatever you might have read and heard and make your own judgment. But could you help me understand some of that that you might remember reading and hearing?

A. I really haven't read, other than seeing a title on a page. As a matter of fact, when I got this notification to appear, I only knew the name was familiar until I read further and saw the title the Unabomber. So I wasn't even really closely relating the name to the title that was given.

Q. You weren't connecting the case.

At page 24, number 95. Regarding psychologist, mental health professionals who testify in court, and you indicate your opinion on them depends on their experience and the line of questioning. Could you help me with that a little bit.

A. Well, what I'm thinking of is if a psychiatrist comes in here who has a lot of experience and the questions are directly related to the client. I mean, you've got two things going on. One is what is their background, for the credibility; and two, what is their experience with the person?

Q. Is it that sometimes you think psychologists get way out on a limb and stick out?

A. Yeah. They can. They can.

Q. Have you heard of any cases or thought about any cases where you think that's happened?

A. No.

Q. What would be the nature of your experience that would make you think they sometimes do go out on a limb?

A. Boy. Just my personal opinion in having dealt with friends who have been seeing psychiatrists and their experiences with them and having to go to more than one psychiatrist because one doesn't seem to fit into their philosophy and has a philosophy that sounds like it's far out to me. So it's pretty much it.

Q. So it would be sort of a personal connection to other people.

You mentioned that you're an active member in a particular organization. I don't want to mention it out loud. How did you get involved in that?

A. Having been a single mom and raising two young children and having an ex-husband who didn't pay support and having a tough time, I felt that there was a need to help women. I also knew that the majority of the welfare rolls are women with children. I have a strong belief that women make the home either a strong or a not so strong place but that support should be given to women to better educate themselves and to become more independent, and this organization is focused on that worldwide.

Q. Are you real active?

A. Yes, I am real active.

Q. Can you describe your level of involvement. Is this a weekly meeting?

A. There are weekly meetings on Monday mornings. I am the vice president of my chapter. And we have levels. So our chapter is a local community chapter. We're part of a regional chapter, which is part of the federation, which is all the Americas, which is part of international, which is – there are five federations worldwide.

Q. Is there a big issue you're working on or interested in with the group?

A. Right now I'm working on the welfare to work reform. And what we're trying to do is establish a microenterprise program so that women can, with a small grant, can start, identify a skill set and start a business and begin to prepare themselves to be independent.

Q. Very laudable goal. Could I have – it really is.

Could I have just one moment, Your Honor.

(Discussion off the record among the defense attorneys.)

MS. CLARKE: Thank you very much.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good afternoon.

A. Good afternoon.

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

A. This? Yes.

Q. Okay. Let me direct your attention to page 26, question 103. You were asked for your opinion and beliefs about the death penalty, and you started your answer by saying that you really have mixed emotions.

A. Mm-hmm.

Q. Could you explain what you meant by that.

A. One of the concerns that I have – and this is from my own experience with attorneys in personal cases, and one of the concerns that I have is the way our legal system works today in the courtroom. It's set up as an adversarial role and therefore, on each side the need is to present a case for the purpose of winning that case. So what comes out of that is a concern that facts can be presented in a way that might not be clear to the layperson who doesn't understand what's going on, so I want things to be pretty clear because I wouldn't want any doubt.

Q. In fact, this proceeding could be an example of exactly what you're talking about?

A. Could be. So it's scary.

Q. And that's something else I picked up in your answer here, that you wanted to be – I think you said beyond a shadow of a doubt you'd want to be convinced –

A. Right.

Q. – before you impose the death penalty.

A. Right.

Q. I want to talk about that standard in a minute. But what I want to focus on now is that you're – the degree of certainty you want. You understand this is a very momentous decision that you would be called upon to make?

A. Yes.

Q. And you would obviously want to take great care in arriving at that decision.

A. Yes.

Q. I assume you would agree with me that it would not be a good thing to have 12 jurors in the box each with different views on when someone should or should not get the death penalty?

A. Probably a good idea, yes.

Q. And it's for that reason that the law is here to guide your approach. You understand that?

A. Yes.

Q. You'll get some instructions, as you've gotten preliminarily today, about how to go about making that decision of whether or not to impose the death penalty or some lesser form of punishment. Did you understand how that procedure will operate? Let me just –

A. I'm not sure I do; no.

Q. Let me just go through it. You'll first be called upon to make the decision of guilt or not guilty.

A. Right.

Q. If you find the defendant guilty, you'll then move on to a second phase of the trial, in which additional evidence will be put on by both sides, perhaps, regarding what we've been calling aggravating factors and mitigating factors. And those aggravating factors are simply those factors which the proponent believes warrant the death penalty, and the mitigating factors are those that the proponent believes show that the death penalty should not be imposed.

Now, the question here – you talked about your beliefs with regard to the death penalty. But the real question here is whether or not you could listen to both sides before you render your opinion. Do you think you could do that?

A. Yes, I do.

Q. Is there anything about the concept of mitigating factors as applied to a convicted murderer that in your mind just means that you would not be able to listen to those arguments?

A. I think the combination of the mitigating and the aggravating – the two sides are very important. I mean, I don't think one by itself – so mitigating circumstances by themselves, I think those circumstances isn't going to be sufficient for making any kind of decision. So it's the combination of the two that's going to enable someone to make that decision.

Q. Okay. But what if there were some mitigating factors the judge told you that you were to weigh, and those mitigating factors just happen to disagree with your own personal philosophy about the death penalty, would you be able to consider those factors?

A. Is it possible to get an example of what you're talking about?

Q. Well, that's a good question. Let me see if I can do that. Now, I'm not saying that these factors have anything to do with this particular case.

A. Right.

Q. Let's just take a generic murderer. If one of the mitigating factors was that the crime was committed under some form of duress, would you be able to consider that factor in weighing whether or not this person should get the death penalty or some lesser form of punishment?

A. Yes.

Q. Or if there was some indication that the defendant suffered from some psychological illness that may not be insanity but it may be a troubled childhood, for instance, or something like that, would you be able to consider those types of factors if the Court said that you should consider them?

A. Yes. They have to be a consideration.

Q. And why do you say that?

A. Because that – the past predicts the future, if you will. I mean, the way a child is raised is the way that their mind is formed to think and view the world. And I'm not saying it's okay to commit murder, but I am saying that mitigating facts might have relevance.

Q. And you don't feel that it would be violating any of your principles or any of your strong beliefs about the appropriateness of the death penalty to consider in certain circumstances a lesser form of punishment?

A. No, because I'm not a staunch supporter of the death penalty. I mean, I think there are cases where it might be appropriate. I have not been put to the test before. But my personal beliefs are that, yeah, it's an appropriate result in some situations. I just haven't had an opportunity to actually test those beliefs.

Q. You actually anticipated my next question. We've been talking about abstract principles –

A. Mm-hmm.

Q. – about the death penalty. But if you were selected as a juror, this will become concrete to you quite quickly because you may be asked to make that decision. Do you think you could personally make that decision to give someone the death penalty or life without possibility of parole or some lesser form of punishment?

A. Yes, I do, once I know all the facts.

Q. Now, I want to go back to something we talked about earlier. You said that in making that decision you would want – I think you said proof beyond a shadow of a doubt. Now, that's a pretty tough, pretty high bar to set. And, in fact, the standard is proof beyond a reasonable doubt. Now, probably I can't tell you and you can't tell me what the difference is –

A. Right.

Q. – between those two phrases. But there is a higher standard of proof there with the one that you selected. If the judge told you that the standard you needed to apply was proof beyond a reasonable doubt, do you think you could follow that standard?

A. I could follow the standard. Could I bring down a death penalty? I'm not sure.

Q. Well, that's my question. In other words, would you hold, because it's a death penalty case, would you hold the Government to a higher standard of proof than the judge instructed you to?

A. Hmm. That's a hard answer – a hard question to answer. (Pause.) Would I hold the Government's responsibility higher than what the judge is instructing me to do? We're talking about the life or death of a person – that would be tough. Logically I could do it. Emotionally, that would be a tough thing to deal with. I can't answer you on that.

Q. Let's talk about it in two phases. First of all, in the phase that we've been talking about, guilt and not guilt, in making that finding, would you apply a higher burden of proof, knowing – to the finding of whether the individual is guilty or not guilty, knowing that the result of that decision might be that you would be asked to possibly impose the death penalty?

A. Well, I think anytime we're going to impose the death penalty, the stake's going to be pretty high. I mean, I don't want to have an unreasonable doubt in my mind. I couldn't do that.

Q. Okay. We're not asking about an unreasonable doubt. Forget about the unreasonable doubts.

A. And again, it depends on the facts that have been presented. The facts both, now that I understand aggravating versus mitigating, both of those situations, it depends on what's been presented. I think if the facts clearly indicate that murder has been committed with intent and that there are no emotional considerations to think about, I could give the death penalty. If you've got murder has been committed and there is an emotional side effect of some sort, that's going to shade my ability to decide on the death penalty versus being in an institution for the rest of their life.

Q. What do you mean when you say "emotional side effect"?

A. Emotional stability, ability to deal with living – I mean, the bottom line for me is if someone is making a conscious decision to commit a murder – I'm not talking about this case, any case – there's something gone awry. So it's almost – I don't know how to describe this.

It's interesting to have you ask these questions because I've had to think about them a lot. It becomes an issue of, is this person capable of making this decision, number one? Number two, what is the level of – what is the violence here? I mean, people have been murdered. Was that the intent? Or is it someone who walked into a room and brutally murdered people in that house? I mean, there are some differences.

Q. Okay. So when you're talking about emotional side effect, what you mean are the circumstances of the crime? You would want to know how this crime came about?

A. No, I'd want to know what the person committing the crime – well, yes. Yeah. Circumstances of the crime and the person's state of mind, what led them to that.

Q. A combination of the two?

A. Yeah.

Q. So you'd want to know about the person's background, what brought him to that?

A. Mm-hmm.

Q. And what kind of forces were at play when the crime was committed?

A. Mm-hmm.

Q. And you would balance those two factors and any other factors you were given and told you could properly consider and that's how you'd reach your decision?

A. Mm-hmm.

MR. LAPHAM: Thank you.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I asked you a question earlier which I'm going to repeat. If Mr. Kaczynski should be unfortunate enough to be found guilty by the jury of the offense of deliberate, intentional and premeditated murder, would you, nevertheless, be able to consider voting for a sentence less than death, bearing in mind that you would have to, in the sentencing phase, hear my instructions concerning aggravating factors and mitigating factors, without considering such factors, would you automatically vote for a sentence of death if he was found guilty of committing that offense?

A. Without considering your instructions?

Q. The aggravating and mitigating factors?

A. No. I'd have to consider the aggravating and mitigating factors. I'd have to consider those, so –

Q. Well, when you make your determination as to whether Mr. Kaczynski, if he was that unfortunate to be sentenced to death, life imprisonment without the possibility of release, or some other offense? Is that what you're saying?

A. Yes. I think – let me just make sure we're – I'm answering you. I'm saying I would have to consider other possibilities because of some information that you have given the jury to consider. I don't know what the decision would be, because I haven't heard the case and I don't know what those factors would be that you would talk to the jury about.

So am I answering your question?

Q. I think you are.

Earlier, you had asked for some clarification on aggravating and mitigating factors. I gave the jury an instruction on it earlier. I'm going to tell you part of that instruction again now, to ensure myself that you will follow the law if you're selected as a juror in the case.

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 the defendant's character or background, any circumstance of the offenses, or any other relevant fact or circumstance which might indicate or tend to indicate that the defendant should not be sentenced to death.

So my question is whether you would, even if you were to return a verdict of guilty during the guilt and not guilty phase of the trial, would you reserve judgment as to the sentence until you have heard all of the evidence and my instructions on the law?

A. Yes.

Q. The Government asked you a question about the burden of proof. Irrespective of what you personally think about the burden of proof, are you in a position to set aside your personal view and only apply the burden of proof that I instruct you to apply in this case?

A. I think so.

Q. What's the hesitation?

A. Just because I haven't been through this before. So I can't speak from experience, which is my best position. One of the things I pride myself on in all of the things that I'm involved in, in business, in the community and in raising two children, is my fairness and my sense of objectivity. And the feedback I've gotten is that I am an extremely objective person. I've had to many times put my personal convictions aside because a situation dictates that something else – now, I haven't had to go against my personal convictions, but I've had to put them aside and go down a path that has been recommended as a better path to go down. And it's worked out. It's never been in a courtroom, and it's never involved someone's life. So it's hard for me to answer that question.

But if I just look back, if I took away the intensity of what's going on, based on my personal experience and who I am, I can remove the emotion from a situation and assess what the situation is pretty clearly. So I could, I would say that based on that, yes, I would be able to put aside my personal convictions, take into consideration your instructions, and make an objective decision.

Q. I want you to follow my instructions on the law.

A. Right.

Q. I wouldn't want you to replace what I tell you is the law with something you have on your mind.

A. Right.

Q. You understand that?

A. Yes.

Q. Could you do that?

A. Yes.

Q. Okay. I'm going to have my deputy clerk to escort the juror to the other room and bring in the next juror.

(Juror number 46 left the courtroom.)

(Juror number 47 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 47th randomly selected juror. I will perhaps refer to you periodically as juror number 47.

You mentioned in your response to a jury question in the jury questionnaire that because of financial hardship reasons, we should consider excusing you from service on this case. I'm wondering whether the contemplated schedule I plan on using in this trial reduces the hardship you thought you were going to experience and whether now you can in fact make yourself available for service on this trial.

A. No. I'm self-employed. I am the only person in that company. And without me to run it, I can't coordinate my operations with the people, vendors, subcontractors, and people like that. To serve on this jury, as much as I would contemplate doing it, would just be a tremendous hardship. I would wind up losing my business, because the insurance companies and relocation companies and moving companies are not going to wait around for me. They'll just go to somebody else.

Q. You don't have any employees?

A. No. By choice.

Q. You work alone?

A. I work alone.

Q. Okay.

THE COURT: The parties should either meet and confer or approach the bench. (Discussion was held off the record between the parties.)

MR. DENVIR: I think the parties would agree the juror can be excused because of financial problems.

THE COURT: Q. We're going to excuse you from having to respond to further questions. If you'll go back to the waiting room and we'll get another juror.

A. Thank you.

(Juror number 47 left the courtroom.)

(Juror number 41 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You've been randomly selected as juror number 41. I may refer to you by that number periodically.

A. (Nods head up and down.)

Q. When I was instructing the full jury, I asked a question and you raised your hand indicating you have a response to the question. The question is: 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. I think that's the question you raised your hand to; am I right?

A. Yes.

Q. What's your response?

A. I misunderstood. I was nervous, and I want to be taken off the trial for financial hardship. So I got a little overanxious.

Q. Okay. That was my next question.

A. Okay.

Q. I noted that you indicated in the jury questionnaire that you believe you will experience financial hardship. The court hours I contemplate having, that doesn't reduce the hardship?

A. No. My company only pays for 10 days of jury duty. So no, I mean, it would help a little bit, but not really.

Q. Are you the only person in your family bringing in income?

A. No, I do get child support, but I am a single parent this year and my two-year-old depends on me.

THE COURT: Okay. Parties?

MR. DENVIR: Maybe I can ask a question or two, Your Honor.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Afternoon. I'm Quin Denvir, one of the attorneys for Mr. Kaczynski. The company you work for, is that a small company, large company?

A. It's a large company.

Q. Is it local or national?

A. It's national, based out of San Francisco.

Q. Okay. And you've asked them, and their policy has been that they just pay for 10 days of jury time?

A. Correct.

Q. Jury service?

A. Mm-hmm.

Q. Do you know whether they've made exceptions? Do they make exceptions to that at all, or have you explored –

A. No, I haven't explored that. I don't think so. It's – in every other case that I've seen – I haven't asked them, but I don't think that they make exceptions. I mean, I could ask them, but –

MR. DENVIR: Your Honor, I think we had suggested with another juror with a large company just to see if they would make an exception with a longer case. I think that's what we would suggest, that perhaps this juror could make that same inquiry.

THE COURT: You want me to have the juror communicate the response to my deputy clerk?

MR. DENVIR: That would be fine, Your Honor.

THE COURT: Okay. My deputy clerk can make the arrangements so that she can receive that response. But until we hear from the company, I don't think we're going to ask this juror further questions.

MR. LAPHAM: Your Honor, there is one other question I'd like to ask going to hardship, if I may, so we don't send her off.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Ma'am, you've got a two-and-a-half-year-old at home?

A. Mm-hmm.

Q. The judge advised you what our schedule is going to be. You would have to start assembling at 7:00 o'clock in the morning. Would that cause a problem with respect to the two-and-a-half-year-old?

A. Perhaps, yeah.

Q. What kind of problems would that cause?

A. My babysitter does not start the day care until 6:30, so it could possibly be difficult to do.

MR. LAPHAM: Okay. Your Honor, I would just suggest that would be something else we would have to look into if the juror were to come back.

THE COURT: She's heard your question, and she's indicated that it could cause a problem, but it's my impression that it may not. But she can communicate to my deputy clerk whatever the response is.

Anything further to cover with this juror?

MR. DENVIR: No, Your Honor.

MR. LAPHAM: No, Your Honor.

THE COURT: Okay. You can take her to the other room.

(Juror number 41 left the courtroom.)

THE COURT: Anything further to cover before we adjourn?

MR. LAPHAM: No, Your Honor.

MR. DENVIR: No, Your Honor. Thank you.

THE COURT: It's adjourned.

(Time noted: 4:48 p.m.) 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,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) -----

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REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 3, pp. 418-650
MONDAY, NOVEMBER 17, 1997

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Reported by: SUSAN VAUGHAN, CSR No. 9673 KELLY O'HALLORAN, CSR
No. 6660 DENNIS MCKINNON, CSR No. 2223

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BY: GARY D. SOWARDS Also Present: TERRY TURCHIE, Assistant Special Agent, F.B.I. Unabom Task Force ROBERT ROLFSEN, JR., Special Agent, F.B.I. DENISE DE LA RUE, Attorney at Law

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