

Jury Selection Day 4

Nov. 18, 1997

SACRAMENTO, CALIFORNIA
TUESDAY, NOVEMBER 18, 1997, 9:10 A.M.
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THE COURT: Let the record reflect all participants are present. We're starting late because two jurors were late. One juror didn't appear as directed. It's possible that the juror had car difficulty or something. We don't know. That's juror number 50. Juror number 50 as of this moment is not here.

MR. DENVIR: Your Honor, before the jurors are brought in, I wonder if we could address the Court at sidebar. It will just be a moment.

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

(Prospective jurors present.)

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

THE CLERK: Please stand and raise your right hands.

(Prospective jurors sworn.)

THE COURT: Good morning and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is Shani Furstenau. She's my courtroom deputy clerk. Next to her on the same platform is a certified shorthand reporter who will assist us in administering this proceeding by reporting it.

I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and your anticipated cooperation. You'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 yourselves making themselves available to serve as jurors.

The voir dire or questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions. The voir dire process will involve questioning prospective jurors individually, which will commence after I question you as a group.

After a number of jurors are questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group. Those required to participate in the group questioning will receive notice 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 explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence.

This determination is made at the second phase of the trial referenced as the sentencing phase.

Is there anything about the charges that causes you to prefer not be a juror on this type of a case? If you have a response to the question, please indicate that fact by raising your hand now.

PROSPECTIVE JUROR NO. 42: I'm not sure I understood. About the death penalty? I have a problem with that.

THE COURT: Okay. We will ask you questions about that in the individual session.

PROSPECTIVE JUROR NO. 42: Okay.

THE COURT: The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur like any other criminal trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict.

The charges are not evidence. They are simply accusations, nothing more. Mr. Kaczynski is presumed innocent and does not have to testify or present any evidence to prove his innocence.

During the sentencing phase, additional evidence may be presented by the government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist and, if so, whether those aggravating factors sufficiently outweigh any mitigating factor or factors found to exist, and 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 by the number by which you were randomly selected as a juror to possibly serve on this case. This is because I have

decided to use an anonymous jury in this case in order to protect jury privacy, as I've stated to you in a previous communication.

Now I will 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 or you have been excused as jurors. Anyone else includes members of your family or your friends. You may tell them that you are a juror, but don't tell them anything about this 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 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 o'clock in the morning 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 schedule poses a problem.

I will discuss that with you when we have the individual session.

You're juror number 54.

I contemplate observing the holiday season as follows: We will not hold court December 24, 25, nor the 26th, nor on the 1st or 2nd of January. I contemplate holding court December 22nd, 23, 29, the 30th, and the 31st.

Please raise your hand if this poses a problem.

Thank you. Juror number 42 raised his hand.

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 punishment. If you do not understand that, please raise your hand.

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. In the sentencing phase, a sentence of death would be among alternative sentences the jury

would 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 that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context, or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence.

Does any juror not understand that?

There's no response.

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

There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions whether you agree with that law.

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. While I'm authorized under law to protect your legitimate privacy, I may ask some questions in the area that you indicated a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this can't occur, let me know so that I can then determine whether the matter should be covered in a more private setting.

This approach is taken because the trial should be open unless I have a legitimate reason to close any aspect of it, and I can only make that determination by probing your responses.

I now want my deputy clerk to escort all but the earliest randomly selected juror to another room and to place the remaining juror on the witness stand.

(Prospective juror 42 remained in the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to refer to you, sir, you're the 42nd randomly selected juror.

A. Okay.

Q. So I'll be referring to you by that number. And I'm going to see if I can ask you questions from my location here on the bench. If it works, meaning if you use the microphone and when you respond if you'll communicate with the parties at counsel table, this will work. I can sit here and talk to you.

A. Okay.

Q. But they need to hear your responses.

I read your questionnaire, and you've indicated – I know you've asked for the opportunity to respond to two things I've already covered.

A. Right.

Q. Maybe we should do the scheduling issue first. What's your response to the schedule problem?

A. I just – I'm not sure if this is a big deal or not, but I do have plans to be with my family in Oklahoma. We have a cabin reserved from the 24th through the 29th.

Q. Of what?

A. Of December. Sorry.

Q. Of December?

A. Right.

Q. So you'll be on vacation at that time if you have your way?

A. Right. Yes.

Q. Okay. You also raised your hand when I asked the question: "If there is anything about the charges that causes you to prefer not to be a juror on this type of case, please raise your hand." You raised your hand in response.

What is your response?

A. I just had a problem with a case that involves the death penalty. I couldn't, you know, judge somebody if I felt like the death penalty might be applied. I just feel that the death penalty is wrong, morally wrong, under any circumstance.

Q. I'm going to take out your jury questionnaire just for a moment.

A. Sure.

Q. It appears that you responded to one of the questions by stating you have religious and philosophical convictions which would prevent you from ever agreeing to a guilty verdict if you thought the death penalty might be applied.

Did you give that response?

A. Yes, I did.

Q. That was your opinion at the time you filled out this questionnaire. Is that still your opinion?

A. Yes.

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

A. Yes, pretty much so.

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

A. Yes, that's true.

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

A. Yes.

THE COURT: The defense.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, sir. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. Could you tell me – I guess your feelings about the death penalty are based on some religious and philosophical reasons. Could you tell me a little bit about that?

A. Sure. I guess there's two aspects of – well, I guess it's more than that. But part of it comes from value of human life. I don't believe that somebody should be killed for whatever reason. Part of that is, at least in this situation, I don't think we can know for certain that somebody committed a crime. I mean, there can be very, very strong evidence, but we – there would always be some doubt about whether the person was guilty or not. And just that doubt, no matter how small, you know, I would be part of condemning some person to death is just, for me, unacceptable.

And excuse me. I just – I'm kind of nervous here.

Q. Take your time. It's hard to be up here, and this is a difficult subject.

A. I mean, even if I knew for certain that somebody committed a crime, to me that doesn't justify, you know, killing this person. I mean, the person has a right, and it's not sort of our – I don't feel at least it's my position to judge this person to the extent that, you know, that it would result in his death. I just don't feel that this is my place to do that. It may be, you know, this is in a sense where the religious part comes in. You know, this is before what you might call God, you know, to do. It's not our role to say that this person should die.

Q. And you understand that you don't have to support the death penalty in order to be a juror in a capital case?

A. Right.

Q. That what the system wants is a cross-section of people with a cross-section of views in these areas?

A. Sure.

Q. And you'd want that if you were facing those kinds of charges?

A. Oh, sure.

Q. Let me ask you about your religious or philosophical views. Can you envision the need for killing, for instance, in a war, a just war, that society has a right to – the country has a right to defend itself in a war?

A. Well, one of the – I'm a follower of non-violence. I've been involved in a number of protests and actions against war. So I am a very strong, you know, believer in nonviolence.

I don't hold any sort of belief of you might say absolutely. I can imagine that there may be some case where killing might be – might be sort of the lesser of various evils.

Q. Maybe in self-defense, somebody killing in self-defense?

A. Probably. There's these cases where I'm not sure exactly what would be the best thing to do, but those I think would be very unusual situations.

Q. Well, let me ask you, if you were selected as a juror in this case, you understand that there's two separate phases to a trial?

A. Right. Yes.

Q. The first one is like a normal trial, the question of guilt or not guilty –

A. Right.

Q. Jurors make a determination. If they found the defendant guilty of the capital offenses, which were mailing and delivering a bomb with intent to kill resulting in death, then there would be this second phase.

A. Yes.

Q. And the Judge would give instructions to the jurors at that time. There would be evidence put on by each side as to what the proper sentence should be, and the options to the jurors would be, if they found Mr. Kaczynski guilty of the two capital offenses, would be life without possibility of release, because there's no parole in the federal system, unlike the state.

A. Uh-huh.

Q. Or death. What I'd like to know is could you have an open mind to either of those penalties and be willing to listen to all the evidence if you were in that second sentencing or penalty phase?

A. Sure. I think I'm, you know, I have an open mind and could listen to the evidence.

Q. And would you be willing to consider the two different penalties and consider the views of other jurors as to the two penalties?

Do you understand the two penalties I'm referring to?

A. Right. Yes. No, I understand the question.

When you say consider, I mean, I'm always willing to consider. I mean, it's not like that I, you know, I have this very strong belief, and I can't say in the future that that would never change. And I'm always willing to listen to points of view. So I can't say for sure that at some point I may change my view. I'm just saying that now and for the past 20 years of my life, I've had this view of the death penalty.

Q. I understand. There's two different things. One is somebody's view maybe of the death penalty as a legislative matter. Should we have a death penalty.

A. Right. Yes.

Q. As a voter, as Congress putting it in.

A. Right. No, I understand.

Q. And, of course, in this case Congress has selected these two alternative penalties for these types of offenses. And the question then is whether someone who might choose not to have a death penalty can nevertheless as a citizen serve as a juror and consider that as one of the two alternative punishments in the given case.

A. I understand the distinction. When I say, you know, whether I can consider in the second phase the death penalty, I can't now imagine any circumstances which I could agree to the death penalty punishment.

Q. Well, let me ask you this: If you had gone through this first phase and found the defendant guilty of capital offenses, went in the second phase, and one of the aggravating factors alleged by the government was a future danger, that the defendant would remain a danger even in prison, a sentence to life in prison. And if you felt that the government proved that, that this person might kill in prison, from prison, or

escape from prison, could you consider the death penalty then as the necessary – the last resort in that situation?

A. Well, I can't imagine any possible evidence that would prove that this person is going to kill in the future. We have absolutely no way of knowing that. The person can change. People change. We have no– we can't say this person is going to kill.

If we do kill this person, we know definitely that a person is going to be killed, this person here. If we don't apply the death penalty, then this person now escapes, maybe he will kill, maybe he won't. We don't know that.

Q. Well, I guess my question is if the government alleged that as an aggravating factor, a reason to impose death –

A. Right.

Q. – and you heard the evidence and concluded that there was, in fact, a real danger, a future danger, could you then consider that penalty?

A. No. No. It would not be enough.

Q. You couldn't consider the death –

A. No.

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

THE COURT: Yes.

MR. DENVIR: Thank you, sir.

MR. CLEARY: The government would move to dismiss the juror for cause.

THE COURT: I'm going to excuse you from further participation on the case. I thank you for your honesty, sir.

PROSPECTIVE JUROR NO. 42: Sure.

THE COURT: You can join the other jurors in the adjacent room, and my deputy clerk can bring in the next juror.

(Prospective juror number 49 entered the courtroom)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 49th randomly selected juror. I'll be referring to you perhaps periodically by your juror number. I'm going to see if I can ask you questions from the bench here. When you respond to my questions, I want you to use the microphone so your voice is amplified, because I want to you speak to the parties at the counsel table. Make sure they can hear everything you say.

In your response to a jury question that asked about whether your beliefs might influence you if you were chosen as a juror in this case, you responded – I'm going to quote your response:

"I honestly can tell you I would not be a fair juror."

You answered another question giving a similar message. I'm going to quote in part your response:

"I would not be a fair juror. He would not receive fair due process as a citizen of the United States if I served."

And that's the response you previously gave to –

A. Uh-huh.

Q. I appreciate the candidness in your response. The only way the selection process works is that individuals are honest when they respond. It has been stated that trial by jury is the most rational, effective method for discovering the truth. That idea obviously presupposes that those on the jury are open-minded in their search for the truth. I don't know what you meant by those responses. I want you to tell me, the responses you gave, do they represent the opinion you now hold?

A. Yes, I do.

Q. Tell me what you meant by those responses, sir.

A. I've been following this case a little bit. The ideas that have been displayed in the media, my own personal convictions of this particular case, I have some very strong views. I feel the party that is in question right now – the evidence I know is not evidence until it's in front of the jury, but I have a very strong view as far as a predetermined verdict in my mind of this case, and I feel that would hinder my ability to listen to the defendant's case in a more open-minded way.

Q. Okay. The prospective jurors we consider for this case do not have to be totally ignorant of the facts and issues involved in the case. The real question is whether a juror can render a verdict based solely on the evidence that's presented during this trial and the instructions I give the jury after the trial.

You're indicating that you won't be able to do that?

A. Yes, your Honor.

Q. You can't do that? Maybe my questions are awkward.

A. Okay.

Q. You have formed an opinion about Mr. Kaczynski's guilt or innocence?

A. Yes, your Honor.

Q. And what is your opinion?

A. The defendant is guilty.

Q. And how strongly do you believe in that opinion?

A. Very strong.

Q. Is that an opinion that you can set aside?

A. I thought this one through. I knew that you would probably ask me a question similar to this. And it would be very difficult for me to do. I would have a very hard time.

THE COURT: Approach the bench. Maybe I should do it in open court. I'm going to do it in open court.

My inclination is to thank and excuse the juror at this time for cause.

MR. LAPHAM: We would stipulate, your Honor.

MS. CLARKE: Thank you, your Honor. Thank you.

THE COURT: Thank you for your candid responses. You can join the other jurors in the adjacent room, sir.

PROSPECTIVE JUROR 49: Thank you.

THE COURT: All right. ////

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You are the 51st randomly selected juror.

A. Okay.

Q. I'll be referring to you perhaps periodically by your jury number. Since you answered your jury questionnaire – I didn't tell you that when you respond to my questions, I want you to use that microphone, and I want you to act as though you're speaking to the lawyers at counsel table so I can be certain they hear everything you say.

A. All right.

Q. And if it's more convenient when you do that to look at them instead of me, that's okay. I don't mind.

A. All right.

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

A. No, I haven't.

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

A. No, I haven't.

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. It has not? I don't know what the "no" means.

A. It has not affected my judgment.

Q. Okay. 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. Yes.

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

A. I'm a proponent of the death penalty.

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

A. Could you repeat that again?

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

A. I guess I'd have to determine the evidence first.

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

A. No.

Q. If I gave you instructions that required you to consider mitigating evidence, would you be able to follow those instructions and consider the mitigating evidence, and if the mitigating evidence favored imposition of a sentence less than death, would you then consider imposing a sentence less than death?

A. Yes.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION BY MR. CLEARY.

Q. Good morning.

A. Good morning.

Q. My name is Robert Cleary. I'm one of prosecutors in this case. And I wanted to ask you several questions about some of the information that you wrote down in your questionnaire.

In fact, let me do this. I'll give a copy of your questionnaire so you can follow along with me.

A. Okay.

Q. In a number of the answers to the questionnaire, starting at question number 10, you disclosed that you have some law enforcement officers in your family. I don't want to disclose what agency they work for, but is it fair to say there are a number of people in your family, acquaintances, that work for law enforcement agencies?

A. Yes.

Q. None of them work for the FBI; correct?

A. Correct.

Q. And, in fact, none of them work for any federal law enforcement agencies; is that right?

A. Correct.

Q. And are you aware that the FBI and other federal law enforcement agencies are the primary investigative agencies in this case?

A. Yes.

Q. And you recognize those agencies, the primary investigative agencies in this case, are different from the law enforcement agencies that are – that your family is involved with; is that right?

A. Yes.

Q. So one really has nothing to do with the other; is that correct?

A. Correct.

Q. And you also recognize, don't you, that each case that is brought, each case that is investigated, and indeed each defendant that is investigated, is different, one from the other; is that right?

A. Yes.

Q. And you recognize that the types of cases and perhaps investigations that your family members have worked on have nothing to do with this case or this particular defendant; is that right?

A. Yes.

Q. And you also recognize, don't you, that our system of justice can only operate if each juror comes in, sits in judgment of a case and decides that case based solely on the evidence presented in the case before the juror; is that right?

A. Yes.

Q. Do you also recognize that, as with any other profession, there are good and bad law enforcement officers?

A. Yes.

Q. Would you be able to sit in judgment in a case in which a law enforcement officer testified and fairly appraise the credibility or believability of that law enforcement officer?

A. Yes.

Q. That's really the only fair way for the system to operate; correct?

A. Correct.

Q. Given that you do have family members in law enforcement, can you give us your assurance that that relationship standing alone is not going to cause you to favor or disfavor either of the parties in this case?

A. Yes.

Q. Can you assure us that you will evaluate the credibility and believability of each law enforcement officer that would testify in this case solely on the facts presented in this case?

A. Yes.

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

A. Yes.

Q. Turn, if you would, to question number 46, which is on page 12.

A. Okay.

Q. And, again, I want to try to do this without revealing the particular test you took, but you reflect that you did take a test involving a law enforcement agency; correct?

A. Yes.

Q. Could you tell us the status of your test or the test results?

A. I think I was ranked seven.

Q. Is that something that's still pending?

A. No. This is several years ago.

Q. So that's not a job – the job for which you took that test is no longer a job you're interested in?

A. Correct.

Q. Approximately how many years ago was it that you took the test?

A. '86 or '87.

Q. Is there anything about the experience in taking that test or your interest at the time in applying for that particular job that would cause you to favor or disfavor either side in this case?

A. No.

Q. I'd like to ask you a couple of questions about the death penalty. Turn, if you would, to page 26. I'm going to direct your attention to question 103.

You tell us in response to question 103 that you believe the death penalty is appropriate for society basically for deterrent purposes; is that correct?

A. That's correct.

Q. And you still believe that to be the case, an appropriate sentence for deterrent purposes; is that right?

A. Yes.

Q. Turn to the next page, please, and take a quick read through question 107. I'm going to ask you some follow-up questions to that.

THE COURT: Why is he doing a quick read? Why don't you just ask your questions?

Q. **BY MR. CLEARY:** Why don't I do that. I'm going to direct your attention to the second part of that question in which you say that "Anyone who deliberately murders two or more people should get the death penalty." And you strongly agree with that proposition; correct?

A. I do.

Q. And, likewise, in the next part of the question you strongly agree that anyone that commits an act of terrorism in which someone dies should get the death penalty; is that right?

A. I do.

Q. And you recognize that when you were answering these questions, all four parts of 107, you were answering based on your own personal beliefs about the death penalty; correct?

A. That's correct.

Q. And you do recognize that when you're in court here, you're going to have to follow Judge Burrell's instructions on what the death penalty is; is that right?

A. That's correct.

Q. Do you feel confident you can do that?

A. Yes, I do.

Q. And do you feel confident that if the Judge gives you some instructions that may be different with what your own views of what the death penalty should be, that you can place – put your own views aside and follow Judge Burrell's instructions on the death penalty?

A. Yes.

Q. Can you envision a situation where you have two different defendants committing basically the same crime, let's say murder, and that because of the background of the

defendant or other attendant circumstances to the crime that one defendant would get the death penalty – should get the death penalty, and the other defendant should not?

A. Yes.

Q. And if Judge Burrell told you that there were certain background circumstances of the defendant over whose life or death you were adjudging, certain background circumstances that you must take into account in assessing whether the death penalty is appropriate or not, could you do that?

A. Yes.

Q. Could you envision a situation where a person who committed a crime, a murder, committed it under circumstances that you believed warranted the death penalty, can you envision a circumstance whereby, because of that defendant's background, for example, let's say he's mentally retarded, that you would not vote for the death penalty in that case?

A. Yes.

Q. You would vote against the death penalty in that case; correct?

A. Correct.

Q. Can you also envision a circumstance where the crime that was committed was so heinous that you felt the death penalty was warranted, but, again, because of the background circumstances of the defendant or the crime, for example, he committed the crime under duress, somebody forced him to do it, that you would vote against the death penalty in that case?

A. Yes.

Q. Is it fair to say that you understand that – following up on the two hypotheticals we just talked about, do you understand that it's almost impossible to judge an appropriate sentence before hearing all the evidence; is that correct?

A. That's correct.

Q. And is that because until you hear all the evidence, you wouldn't know what the mitigating circumstances were in the examples I gave, mental retardation and duress; is that right?

A. That's correct.

Q. And is it also true that until Judge Burrell tells you what mitigating circumstances you need to consider, you may not be able to imagine what those mitigating circumstances are?

A. That's correct.

Q. Before you came in here today, you may not have thought about duress or mental retardation as a mitigating circumstance that would compel you to vote against the death penalty in a case that you otherwise might have been predisposed to voting for the death penalty; is that right?

A. That's correct.

Q. And if Judge Burrell instructed you that there were many other mitigating circumstances that you must consider before making the decision, a death sentence or a life sentence, you would consider those circumstances?

A. Absolutely.

Q. You feel very confident about that?

A. Yes.

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

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning.

Q. My name is Judy Clark. I'm one of the lawyers for Mr. Kaczynski. And I also have a few follow-up questions. Nobody's really talked to you about your work. It sounds like maybe you have a sales territory.

A. That's correct.

Q. Is there any problem with money for you if you were sitting on this case and it took somewhere between three or and four months?

A. No.

Q. You can still work and earn your income?

A. Probably not work, but the company will pay me.

Q. The company will still pay you?

A. Yeah.

Q. That's pretty nice.

A. It is nice.

Q. Nice deal.

You indicated on your questionnaire that you have quite a number of contacts with folks in law enforcement. In fact, members of your family are actively involved in law enforcement?

A. Yes.

Q. Have you had any opportunity to talk to them about this case, any of those family members?

A. No. Just the fact that I got summonsed. That's it.

Q. Did anybody express an opinion to you about the case?

A. No.

MS. CLARKE: Your Honor, there is one question I'd like to go into that I hesitate to do in a public setting because it could identify the juror by the nature of his father's employment.

THE COURT: What number is the question?

MS. CLARKE: It starts on page 2 at the bottom. The last, at the very bottom, in the handwriting. And on page 15, your Honor, at number 55. I'm sorry.

THE COURT: I think you can ask the question. You just don't have to identify the location of the agency, or do you think do you?

MS. CLARKE: I think given the nature of the agency, I would think that would be appropriate. I can stumble around and try, your Honor. There are a limited number of folks on that agency, and their function in our community is pretty significant.

THE COURT: I see no problem in identifying the agency, but the location of the agency is what I'm troubled by.

Why do you have to tell about the location of the agency?

MS. CLARKE: Am I talking about the same one the Court is, the bottom of page 2, the last line?

THE COURT: I'm not clear as to why you have to mention this particular entity. Why can't you just show what you want to ask the juror, show it to the juror and then ask the juror a question without identifying?

MS. CLARKE: I'll try.

THE COURT: Okay.

MS. CLARKE: May I approach?

THE COURT: Sure. I can leave my copy of it.

MR. CLEARY: Your Honor, I believe he has a copy of the questionnaire.

THE COURT: Thank you.

Q. BY MS. CLARKE: You're aware of what I'm talking about?

A. Yeah.

Q. Your dad's role in that, do you have an opportunity to talk to him about his thoughts and the procedures and how that goes?

A. Yes. Cases on – yes.

Q. And he talks to you about cases?

A. Yes.

Q. I guess what I'm trying to approach with you is do you have such a knowledge of how the system works, that your dad has involvement with, that would influence you one way or the other in this case?

A. No.

Q. Has he talked to you about particular cases, why they do or do not make certain decisions?

A. Yes.

Q. And what has that meant to you in terms of your own thinking process about criminal cases?

A. Well, we talk about the cases, and it's either I agree or disagree. And there's times where I do both ways.

Q. Has there been any particular insight that you've gained from your father about mental health issues?

A. I don't understand.

Q. In any of the cases that your dad may talk to you about, has there been any discussion of a particular person saying that they have mental health issues or don't have mental health issues?

A. No.

Q. Does he ever make any judgments about mental health claims?

A. No.

Q. And so I guess you haven't talked about that?

A. No. Right. Correct.

Q. Your dad was also an active member of law enforcement all during the time I suppose that you were growing up?

A. Yes.

Q. And I take it that he would have had many friends in law enforcement that would have been in and out of the house?

A. Correct.

Q. And that the folks in law enforcement might have become sort of role models for you. Would that be right to say?

A. No.

Q. Not at all?

A. I can't think of any.

Q. You applied to be an agent. Am I right?

A. Correct.

Q. Several years ago.

A. Correct.

Q. What was your interest in that? Was that from your dad or from your family?

A. Actually it was an opportunity that – I was getting out of college at that moment. It was an opportunity, and I figured I'd try.

Q. And what –

A. My interest? Probably looking for a job after college.

Q. That's fair enough. What turned you away from that?

A. Well, my father's in law enforcement, my brother is, my brother-in-law. I figured I'd do something different.

Q. Thought you'd strike out on your own?

A. Right.

Q. I guess one of the questions would be since you grew up with law enforcement, of course, it might affect your judgment one way or the other. If there was a challenge to the FBI conduct in this case or a challenge just generally to law enforcement's conduct, would you think given your background with law enforcement, and your dad's background, your brother's background, that maybe you wouldn't be willing to criticize law enforcement?

A. That I wouldn't be willing to?

Q. Right.

A. Not at all.

Q. Do you think you'd be harder on law enforcement?

A. Probably. No, I would not. I disagree with my father and brother all the time. I'm not one in the same.

Q. And I don't mean to cast you in that. You understand my concern about sort of – sort of inquiring?

A. Correct.

Q. I guess the bottom line question is, knowing what you know about your view of law enforcement and your background with law enforcement, would you be comfortable being somebody who sat in judgment on somebody in a capital case?

A. Yes.

Q. The Judge asked you a question of if it was proven beyond a reasonable doubt – I may be paraphrasing the question – that the defendant, the person you’re sitting in judgment of, committed a premeditated, intentional, deliberate murder, could you impose a sentence of less than death? And I believe you said not likely or something like that. Probably not.

A. Depending on the circumstances.

Q. When you say to yourself ”depending on the circumstances,” are you thinking about circumstances of the crime itself?

A. Correct.

Q. And not circumstances of the person who committed the crime?

A. I’m assuming they’re one in the same.

Q. Well, you could be looking at the crime and saying, well, if it was self-defense, that’s one thing?

A. Correct.

Q. I wouldn’t want to sentence somebody to death if there was self-defense?

A. Correct.

Q. You could be looking at the crime when you evaluate it, as the prosecutor asked you, whether there was duress that caused the commission of the crime?

A. Uh-huh.

Q. And in that circumstance, you wouldn’t want to sentence somebody to death; right?

A. I’d have to hear the evidence I guess. I just need more.

Q. Well, here’s where I’m trying to get to, maybe inartfully, is that self-defense and duress would be a defense to the crime itself.

MR. CLEARY: Objection. That’s an inaccurate statement of the law.

THE COURT: Overruled.

Q. BY MS. CLARKE: What I’m hearing you say is if there’s a defense to the crime itself such as self-defense, in other words, if you attacked me and I kill you.

A. Right.

Q. In defense of myself, I’m legally not guilty of a crime if, in fact, it’s self-defense?

A. Correct.

Q. So you wouldn’t want to even be judging penalty. You’d be judging guilt at point?

A. Correct.

Q. So what I’m trying to figure out – and it’s you. I mean you can’t give a right or wrong answer. We’re just trying to probe how you feel about it.

A. Right.

Q. If a person is convicted by a jury that you're sitting on beyond a reasonable doubt of a deliberate, premeditated, intentional murder, can you conceive of a circumstance, assuming that that's the conviction, can you conceive of a circumstance where you could impose a sentence of less than death?

A. No, I can't.

Q. And that's really coming from your heart?

A. Yes.

Q. So when we talk about the Judge giving instructions about aggravating or mitigating circumstances, you've considered that in your decision as to whether or not the person is guilty of the planned, premeditated, deliberate murder?

A. Correct.

Q. And once you've found beyond a reasonable doubt that the person is guilty of the planned, deliberate, intentional murder, that dictates the sentence for you?

A. Yes.

Q. And that's just basically a core belief system?

A. Right.

Q. So if the Judge said to you, I would give you instructions to consider aggravating and mitigating circumstances, those considerations would have been done in what we call the guilt or not guilty phase of the case.

MR. CLEARY: Objection.

THE COURT: That's confusing.

MS. CLARKE: Sorry, your Honor.

THE COURT: Please rephrase it.

Q. BY MS. CLARKE: If the Judge were to tell you that he would instruct – that the Court would instruct you that there are aggravating and mitigating circumstances that will be presented and that the jury is to weigh them, and even in the absence of mitigating circumstances, you can consider whether the aggravating factors are enough to warrant a sentence of death – I'm confusing even myself at this point.

MR. CLEARY: I'm going to object because of the confusion.

BY MS. CLARKE: Can I start over?

Q. You basically have said you have a core belief if you convict somebody of the crime that I described that that means death?

A. Correct.

Q. And what I'm asking you is it would be very difficult, if not impossible for you, to consider another sentence?

A. No. I mean, if there's – if the Judge instructs me otherwise to weigh certain evidence.

Q. Well, the Judge will instruct you to weigh evidence.

A. Okay.

Q. And I know that it's very difficult to look at a judge and say I wouldn't follow your instructions. So I'm not asking you to do that because none of us could look at Judge Burrell and say thanks for your instructions. Now I refuse to follow them. But it

would be very difficult for you to consider a sentence of other than death if you sat as a juror and convicted a person beyond a reasonable doubt of a deliberate, premeditated, intentional murder?

A. Well, I'd definitely consider it.

Q. But your belief system is that death is warranted in those circumstances?

A. Yes, I do.

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

THE COURT: Yes.

MS. CLARKE: May I have just a couple more questions, your Honor?

THE COURT: Yes

Q. BY MS. CLARKE: Could I get you to turn to page 27, question 107.

THE COURT: Perhaps I should ask some questions before you do so that you can do follow-up questions.

MS. CLARKE: Thank you, your Honor.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I'm going to ask you a couple questions.

Do you understand that the law requires that before imposing the death penalty, the jury must consider the facts and circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the death penalty should not be imposed?

Do you understand that?

A. Yes.

Q. Are your views in support of the death penalty so strong that you feel you are incapable of considering such information?

A. No.

Q. Do you think you could fairly –

A. I mean – I'm sorry.

Q. Go ahead.

A. Yes, I can consider information.

Q. Okay. Do you think you could fairly and impartially consider that type of evidence?

A. Yes.

Q. If in your view the mitigating evidence during the sentencing phase of the trial truly outweighed the aggravating evidence, do you think you would be able to vote for a sentence other than the death penalty even if the defendant was found guilty of premeditated and intentional murder?

A. Yes. If the mitigating evidence outweighed the aggravating?

Q. Yes.

A. Yes.

THE COURT: Go ahead, Ms. Clarke.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. You answered a question that the prosecutor put to you, if there were two defendants involved in a capital case, could you distinguish between them and sentence one to death and one to something other than death.

Do you remember that?

A. Yes.

Q. If there were two defendants convicted beyond a reasonable doubt of an intentional, deliberate act of terrorism, there was more than one death involved – are you with me?

A. Can you repeat that, please?

Q. If you have two defendants convicted of an intentional, deliberate act of terrorism.

A. Okay.

Q. Because I think you indicated on your questionnaire that a person who commits an act of terrorism, you strongly agree with the death penalty; am I right?

A. Right.

Q. And there was more than one death. Would the defendant's background matter to you in determining the sentence or would it be the crime?

A. It would be the crime.

Q. And that's a strongly held belief?

A. It's a strong, yes.

Q. And if you had a situation where there was, as Judge Burrell put to you, a planned, deliberate intentional murder and the aggravating factors proven to you beyond a reasonable doubt was that there was substantial planning and premeditation that went into the conduct resulting in the killing, would there be a sentence other than death that you could impose?

A. Probably not.

Q. So when you say that you would attempt to consider mitigating information, what I think I'm hearing you say is that would be very difficult in a circumstance of aggravated, premeditated, deliberate murder or an act of terrorism resulting in death.

A. I'll definitely consider it, yes.

Q. But it would be very difficult for you?

A. I wouldn't say difficult.

Q. I'm sorry?

A. I wouldn't say difficult. I definitely would consider it.

Q. Can I ask you this: How do you square in your own mind – and just help me with it because I understand you're grappling with these issues. How do you square in your own mind your instinct, your belief, your core belief system, that you strongly believe that the death penalty should be imposed in a case of premeditated, deliberate, intentional murder or in a case of terrorism where death results, how do you square that with saying I would try to consider mitigating circumstances?

A. Well, I'd consider everything. All the facts.

Q. But your heart says death is the appropriate sentence?

A. Well, correct.

Q. So when you say "I would consider everything," that's your own attempt to say to yourself I'm a fair person?

A. Well, I don't want to paint myself as a black-and-white person.

Q. Right.

A. You know, there's a gray area.

Q. But you're trying to be very honest with us when you say that in those circumstances, the one that the Judge described and the one that I described, the terrorism, that death is the appropriate sentence inside your belief system?

A. My gut reaction, yes, immediately.

MS. CLARKE: Thank you. Thank you, your Honor.

MR. CLEARY: Can I just follow up on the terrorism hypothetical?

THE COURT: Okay.

MR. CLEARY: Thank you, your Honor.

VOIR DIRE EXAMINATION BY MR. CLEARY.

Q. Couple of quick questions on that.

The hypothetical that Miss Clarke gave you involved a terrorist act, death resulting, and you believe, to you, your personal belief, that that warrants the death penalty; correct?

A. Correct.

Q. And that I think you said was because of the nature of the crime; correct?

A. Correct.

Q. If Judge Burrell told you, in that same fact pattern, told you there are some background circumstances of the defendant, whatever they may be, he's mentally retarded, he's the product of an abused childhood, whatever they may be, and Judge Burrell told you you had to consider those, could you fairly apprise those, fairly consider those, and use them to determine whether in that case the death penalty is or is not appropriate?

A. Correct. I would definitely consider it.

MR. CLEARY: Nothing further. Thank you.

THE COURT: I think we're going to excuse the – we're going to excuse the juror to the next room, and I think we should take the break at this point so we don't interrupt the examination of the next juror.

Court will be in recess until 10:35.

(Recess taken.)

—oOo—

THE COURT: Let the record reflect all participants are present.

Please bring in the next juror.

(Prospective juror number 52 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 52nd randomly selected juror. I will be perhaps referencing you by that number periodically.

Do you have any problem that would make it difficult for you to sit as a juror in this case?

A. Not necessarily. I had heart surgery in April, but I feel good now. I feel fine. And I'm retired.

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

A. Yes, somewhat.

Q. What information have you received about the case and from what source?

A. Well, in watching the news once in a while it comes up. There hasn't been an awful lot of it yet, because there's still a lot of stuff going on, but just more or less they were starting the jury selection and things like that. That's all I picked up on recently.

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

A. No, not really. Just with my wife sometimes at coffee about whether I'm going to be selected or anything like that. I haven't – I've been kind of careful not to give my opinion or anything like that to anyone, no, discuss it. Not working, I haven't been pressured at work or anything.

Q. I think your voice has been amplified during your responses to me, but to ensure that it continues to be amplified, you can use the microphone and speak to the lawyers at counsel table, and that way they will be assured of hearing everything you say.

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

A. No, it hasn't.

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

A. No. I really haven't had any feelings one way or the other yet. I haven't over the years followed as closely maybe as I should have, but I don't have any real strong opinion as I stand.

Q. Do you have opinions on that topic that could be characterized in any manner, whether or not it's strong, do you have any opinions?

A. (Pause.)

Q. I'm asking you the question, sir, because one of the functions that we're involved in at this very moment is to determine whether jurors have been exposed to information and if jurors have formed opinions of any kind based upon that information. It's understood that jurors are perhaps going to be exposed to information. We don't expect jurors to necessarily be ignorant of the issues involved in the case when they walk into our courtroom. But we do want to know what type of information the jurors receive and whether they formed opinions concerning that information. And then I will

ask you a question about the opinion. It has nothing to do with whether you ultimately end up sitting on this case or not. It's just a function –

A. Yeah.

Q. – I have to perform.

So have you formed any opinion?

A. I haven't formed any real strong opinion. I feel that if the evidence, the way it stood as what I've seen and read in the paper, there's a possibility I would probably at that time – I would probably say yes, I would have an opinion. But it's certainly not a strong opinion.

Q. Recognizing that the opinion you have is not a strong one, can you share that opinion?

A. Well, with the evidence the way it's been presented and what I seen, I would – I would think that he probably done it.

Q. Would the evidence that you are referencing be the things you saw in the newspapers and heard on the news?

A. Exactly.

Q. What type of things have you heard that cause you to have that opinion?

A. The fact that the . . . the fact that it would – the – his family was instrumental in thinking that it possibly could have been him probably was the strongest thing that swayed me. And then, of course, it would take someone of intelligence to do what had been done. And, basically, that was probably about the most – strongest reason I would have for that opinion.

Q. How strongly are you committed to that opinion?

A. (Pause.) Well, on a scale of one to 10, I would say maybe six or seven.

Q. Ten being real strong?

A. Ten being the highest; yes.

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

A. Certainly, if the evidence changed my mind.

Q. Because we would want you to set it aside at the very beginning of the trial. We don't want you to wait until you receive evidence. So would you be able to set that opinion aside? We don't want Mr. Kaczynski to be tried by the news. We want Mr. Kaczynski to be tried in this courtroom. So could you set all of the information that you've received about Mr. Kaczynski aside and make a determination as to his guilt or innocence based upon the evidence you receive in this courtroom and the instructions I give you at the close of the trial?

A. I certainly could.

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. You certainly do.

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

A. Yes, sir.

Q. You understand that, based upon that presumption, he doesn't have to present any evidence?

A. Yes, sir.

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

A. I am a believer. If the evidence warrants it and justifies it, then I believe the death penalty can be justified.

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.

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

A. (Pause.) Possibly.

Q. Do you understand that the law requires that before imposing the death penalty, the jury must consider the facts and circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the death penalty should not be imposed?

A. Yes.

Q. Are your views in support of the death penalty so strong that you feel you are incapable of considering such information?

A. No.

Q. Do you understand that you would have to consider such information even if you were on a jury that found Mr. Kaczynski – assuming he would be so unfortunate to have to face such a finding – that they found that Mr. Kaczynski intentionally murdered another human being, you would still have to consider that information?

A. Yes.

Q. And that you would not be expected to reach a decision as to what alternative sentence should be imposed until you consider all of that information?

A. Yes, sir.

Q. If in your view the mitigating evidence truly outweighed the aggravating evidence, do you think you would be able to vote for a sentence other than the death penalty?

A. (Pause.) Yes, sir.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, sir. My name is Quin Denvir. I'm one of the lawyers for Mr. Kaczynski, who is over at the table there. I want to ask a couple follow-up questions about the questionnaire.

And let me just make sure – I know you did have an operation back in April, and at one time you'd indicated that your medical condition was a concern that may be a reason why you shouldn't sit on this jury. Do you feel okay about it now?

A. Yes. I don't feel I have a problem with it now. That's over a month ago, and it was still a little fresh in my mind, but I feel fine.

Q. You understand it might be five days a week, from – report at 7:00, get out at 1:30 or 2:00, and might go three or four months?

A. Yes, sir.

Q. But you don't have any concerns about your health?

A. I've retired.

Q. I understand. I was really thinking more about your health. It won't be too much of a strain on you or anything?

A. No, sir.

Q. Now, you said that you have followed this case somewhat in the newspapers, I guess, or in the media generally, and that you had a – some view that – an opinion as to whether Mr. Kaczynski was guilty or not, right?

A. Yes, sir.

Q. And you understand that there's nothing wrong with reading the newspapers; there's nothing wrong with being influenced by them. We just need to see how much you have been influenced and whether it would affect your ability to serve as a juror. You understand that?

A. Yes, sir.

Q. You said you thought that he had probably did it, and you said that your degree of certainty would be six to seven on a scale of one to 10, I guess?

A. Mm-hmm.

Q. Can you tell me what leads you to that opinion, what that you read about it makes you get that degree of certainty?

A. Well, I think it's like everything else. Of course, I'm – not knowing I was ever going to be on a jury or anything, you have a tendency to just read or see whatever is put in front of you. And, if anything, I'm being honest with you. I thought the way the evidence has been presented by the press or whatever, it would give you that – it would give me that opinion. I've always tried to be one of these doubting Thomases type of people that I don't always believe everything that's generally told to me.

But in this particular case, it's been over – of course, at my age I've more or less seen it happen the whole 18 years or so it's been in the papers. So you're bound to develop some kind of an opinion.

Q. Sure.

A. That's how I developed it.

Q. And I'm just trying to explore that opinion. And I guess part of it is, I guess, how much of that is just based on a gut feeling from seeing this or how much is based on particular items of evidence or something that you read about that supported it?

A. I think it's probably more than the – the evidence that I've seen. Whatever's been reported – not evidence, just what's been reported. It's not a gut feeling by any stretch of the imagination.

Q. Do you remember any particular evidence that's been reported that kind of influenced that belief?

A. Well, I would like to say it's probably, being honest with you, the fact that he was thought of being maybe the fellow that did it by his family.

The physical evidence, well, that's hard to see, understand, until you see it – you know, the shack, pictures of the shack and all the other things that are part of it. I haven't seen or heard much of the other evidence as far as packages or anything like that.

Q. Well, do you remember reading about evidence that was seized from the cabin at all, I mean, the nature of it? Does that influence you?

A. Yes. I remember seeing something about them seizing some of the manifesto, as I recalled, and the typewriters and things like that. But that's all I can remember.

Q. Do you also – from reading this case and having this opinion that Mr. Kaczynski probably did it, do you also have an opinion as to what the proper sentence would be for the Unabomber?

A. I have no opinion on that.

Q. You haven't got one, one way or another?

A. No.

Q. Based on what you read or think about the case?

A. No, sir.

Q. As Judge Burrell has told you, if you sat as a juror, you would be instructed you could only make your decision based on the evidence in court.

A. Yeah.

Q. And I guess what no one knows but you, whether you'd be able to follow that instruction, whether you'd be able to put aside this belief that he probably did it and say, "That's gone, and I'm starting over new, and I'm going to see what's going on in this case."

Do you think you'd be able to do that?

A. Yes, si.

Q. And as far as the sentence, you don't come in with any particular belief or opinion as to what sentence should occur in the case if it got that far?

A. Mm-hmm.

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

THE COURT: It's in close proximity to him now right on the ledge. He just has to reach up and grab it.

MR. DENVIR: You beat me to it.

THE COURT: I anticipated your question.

MR. DENVIR: I'm becoming predictable. I think that's my problem.

MR. DENVIR: Q. Let me begin with – well, sir, if you would turn to – well, let's start with page 26. If you can turn there and –

A. Mm-hmm. (Complies.)

Q. If you look at 103, question 103, you were asked your opinions and belief about the death penalty and its use in our society, and you said it may be used in some extreme cases, and the basis for that opinion is as a deterrent.

So you see the death penalty mainly as a deterrent of other people's conduct?

A. Yes.

Q. Do you see any other reason for the death penalty or any other purpose it serves besides deterring others?

A. Well, it's a deterrent, and if the crime justifies the – this certain penalty, well, I have no problem with it.

Q. Okay. And your views on the death penalty are not based on any particular religion or philosophy or anything of that nature?

A. No.

Q. Just your gut – your feelings, your experience?

A. Mm-hmm.

Q. Let me ask you, you said – if you could turn to the next page, to 107, that if a – the statement was: Anyone who deliberately murders two or more people should get the death penalty.

Correct? You see, that's the second one?

A. Yes.

Q. And you said you agree somewhat?

A. I said I disagree somewhat.

Q. I was going to the – okay. The first one was anyone who plans and commits –

A. Oh, I'm sorry. Okay.

Q. The second one, above, deliberately murdering two or more people – you said you agree somewhat that that person should get the death penalty.

A. Yes.

Q. Now, can you tell me, if you were in a case where someone was convicted of deliberately premeditated, intentional murder of two people, could you also consider for that person the alternative provided by law, which would be life imprisonment without possibility of release?

A. Yes, sir.

Q. You would be open to either one of them?

A. I'd be open to either one.

Q. And let me ask you, if you go down to the next question, you said that any person who commits an act of terrorism in which someone dies should get the death penalty – you said you agree somewhat, again?

A. Mm-hmm.

Q. Now, when you're talking about act of terrorism, what were you thinking? Well, how'd you interpret that?

A. Well, myself, an act of terrorism – well, like I say, depending how the evidence would weigh in the situation, but I would think an act of terrorism would be – well, an act of terrorism, somebody comes and blows up a building or even goes and shoots someone in a courtroom or – you know, terrorism is either a foreign body or someone local. I don't know if you –

Q. I just wondered how you would interpret it. Would that encompass someone mailing a bomb with an intention to kill someone or delivering a bomb with an intention to kill someone? Would you consider that an act of terrorism?

A. Possibly, yes.

Q. And if someone committed that type of act and someone died from it, you feel they should get the death penalty?

A. Like I say, a lot of it would depend on the circumstances.

Q. How about the last question on that page, where it says a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder. And you said that – it's on page 27 again, the last one – you said that you strongly agree with that.

Could you tell me what you were thinking when you checked that box?

A. Well, it shouldn't matter what their background is when considering –

Q. Well, by that do you mean that if you were on a sentencing jury, would you be willing to listen to evidence about a person's background in the sense of who they were and how they grew up and did they have any mental illness, just the story of that person?

A. Yes. Yes.

Q. Did you think of background more in terms of whether they're wealthy or not wealthy?

A. Yes, I think that's probably how I read, it whether they were – nationality, or whatever. I think that's probably the way I read it.

Q. Okay. But if you got into the penalty phase of a case and the defendant put on evidence about the defendant's background and other evidence that the defense felt argued towards a life sentence, would you be willing to consider that; you wouldn't have any problem with that?

A. I wouldn't have no problem with that.

Q. And then if you go to the next page, I guess, page 28, question 108. Your view was that when one person intentionally kills another person, you felt the death penalty may or may not be justified depending on the circumstances of the case.

A. Yes.

Q. So I guess what I'd like to ask you is – you understand there's this double phase in this type of case.

The first phase is the phase where a jury would determine Mr. Kaczynski's guilt of the charges brought against him by the federal government, is he guilty beyond a reasonable doubt of those charges.

If he were convicted of two particular charges involving the death of a man by the name of Mr. Murray, those are capital offenses, and there would be a second trial, what Judge Burrell has referred to, I think, as a sentencing trial or a sentencing phase, penalty trial or penalty phase.

At that second trial, the same jury, having found Mr. Kaczynski guilty, would then determine between the two, the two sentences, should he be sentenced to death or should he be sentenced to life in prison without possibility of parole. The Government would likely put on evidence arguing for death. The defense would likely put on evidence arguing for life. Would you be able to consider the evidence on both sides and then make your own call as to what the proper penalty was?

A. Yes, sir.

Q. You wouldn't go into that second phase with any preconceived notion leading towards one penalty or the other?

A. I would try not to.

Q. You think you'd be able to go in without that?

A. Yeah.

MR. DENVIR: Oh, one second, Your Honor.

Thank you.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, good morning. My name is Steve Lapham. I'm one of the prosecutors in this case. And I don't want to dwell on this, but I just want to ask you a few more questions about your condition.

You had heart surgery in April?

A. Yes.

Q. And you indicated in your questionnaire that you have problems dealing with stress as a result of that?

A. Well, at – originally – what I'd like to tell you, in any heart surgery, stress is a factor. I've learned to control it. I get my exercise, have my diet controlled. I don't have that big a problem with stress now.

Q. You don't feel that's going to be a problem in the trial?

A. No.

Q. Are you on any medication as a result of it?

A. Just a light blood pressure pill.

Q. Does that affect your ability to concentrate or anything like that?

A. No.

Q. And you're on currently retired on disability?

A. Well, I'm on California disability, but that's all.

Q. You're disabled?

A. Yes.

Q. Is that as a result of your heart condition?

A. Yes.

Q. I just want to ask you a few questions about your views on the death penalty.

If you turn in your questionnaire to page 26, question 103 – that’s the same question Mr. Denvir asked you about – you indicated there that your opinion of the death penalty is it may be used in some extreme cases. Is it your view that the death penalty should only be used in extreme cases?

A. Yes, sir.

Q. What do you define as "extreme"?

A. Well, if the evidence proves that without any reasonable doubt that person has done a certain thing, and then my opinion at the time it’s bad enough, and the evidence proves it, I have no problem with it.

Q. Murder would be one of those cases –

A. Yes.

Q. – where you think –

A. Not necessarily just murder. It would have to be the type of murder and how it came about, with everything else.

Q. Okay. So it would have to be a murder with some aggravating circumstances?

A. Definitely.

Q. And if you were given a situation, murder with some aggravating circumstances, would you be able to also consider mitigating circumstances?

A. (Pause.) Yes, possibly.

Q. Let me put it to you this way. In this trial, you’re going to go through a guilt or not guilty phase first. And at that portion of the trial you would learn circumstances of the crime but not necessarily all the circumstances of the crime.

If you should vote to convict, you would then go on to a second phase of the trial. You understand that?

A. Mm-hmm.

Q. And that would be the phase where you would consider additional evidence, perhaps additional circumstances of the crime, and perhaps additional circumstances and facts about the defendant who committed the crime.

A. Mm-hmm.

Q. You understand that?

A. Yes, sir.

Q. And the judge would give you instructions that you could and should consider all of that evidence. You would be able to do that?

A. (Nods head up and down.)

Q. Despite your views on the death penalty, in the case of murder with aggravating circumstances, you could consider evidence that there might be mitigating circumstances as well?

A. Yes, sir.

Q. And you might – and even in a case where there’s murder with aggravating circumstances, you would be able to consider things about the defendant’s character that might show that the death penalty should not be considered?

A. Possibly, sir.

Q. Now, you talked about your opinions about the case in general based on your reading in the media and hearing about this case on the news.

A. Mm-hmm.

Q. And you said that you were at a six or a seven on a scale of a 10. Do you recall that?

A. Mm-hmm.

Q. Okay. Now, you know that what you’ve read and what you’ve heard about this case up until this point is not evidence?

A. No. Yes, sir, I know that.

Q. Because those news accounts were not under penalty of perjury, and those are not people who had any personal knowledge about this case.

A. Right.

Q. Those are going to be the people who actually come into this court and testify. So do you understand that when you – if you were selected as a juror in this case, the Government would start at zero, not at a six or a seven?

A. That’s right.

Q. So you would hear for the first time the evidence in the case. And it’s not a situation where the Government would have to just go that extra step and prove seven, eight, nine and 10?

A. Oh, no. No.

Q. We’d have to prove all 10. You don’t have any problem with that?

A. No, sir.

Q. And you don’t think that the information that you’ve already received before coming to court today would require you to view the Government’s evidence more favorably?

A. (Shakes head from side to side.)

Q. Or, on the other hand, less favorably if you should hear something in court that you hadn’t heard before you came in, you wouldn’t let that affect your opinion?

A. Well, yes, if I heard – no, it shouldn’t affect it. Be new material to me, you say?

Q. You know, I stated that just the opposite of the way I meant to say it. If you heard something out of court and you come into court as a juror and that piece of information isn’t presented by either side, would you let that information affect your judgment on the case?

A. No, sir.

MR. LAPHAM: That’s all I have.

MR. DENVIR: Your Honor, I wonder if I could ask one or two follow-up questions from Mr. Lapham. It would just literally be one or two.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Sir, it may just be a question of the words we were using, but I think when you were asked by both the prosecutor and the judge whether you could consider mitigating evidence or mitigating factors, I think both times you hesitated and said, "Possibly." And I wonder if you could tell me, do you have some hesitation about that, or is it just you don't understand what that word means particularly?

A. Well, "mitigating" is kind of a vague word in some respects. Exactly what would that be, the "mitigating"?

Q. I think the judge may have told you earlier, and I'll paraphrase it: it is any evidence about the crime or about the defendant, or any other evidence that would be a reason to select life instead of death. And "aggravating" is just the opposite.

A. Yes.

Q. Anything that goes the other way. It's not the nature of what it is, it's what does it point to.

A. I would have no problem with that.

Q. I thought maybe it was confusing.

MR. DENVIR: Thank you, Your Honor.

THE COURT: Thank you. You can escort the juror into the other room and bring in the next one.

PROSPECTIVE JUROR NUMBER 52: Leave this here (indicating)?

THE COURT: Yes. Thank you.

(Prospective juror number 52 left the courtroom.)

(Prospective juror number 53 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You are the 53rd randomly selected juror. I'll be asking you questions, and I may from time to time reference you as juror number 53, and the parties may reference you in that fashion also.

I'm going to see if I can communicate with you from this location on the bench, but when you respond to me, I want you to use the microphone so that your voice is amplified and the parties on counsel table can hear your responses.

A. (Nods head up and down.)

Q. I'm going to look at your questionnaire just for a moment to make certain that what I have in my note is, in fact, what you stated. (Pause.)

It appears that you've responded to the jury questionnaire, which asked you a number of things, but there are two responses I want to ask you about. One, at least then you indicated that you don't believe it's right to take the life of another individual for any reason.

A. (Nods head up and down.)

Q. And you also indicated that the death penalty is never justified.

A. (Nods head up and down.)

Q. Was that something that you indicated at the time you –

A. Yes, it was. Yes.

Q. And that was your opinion then?

A. Yes. Yes, it was.

Q. Is that still your opinion?

A. Yes, it is.

Q. Can you explain your opinion?

A. Well, I just feel that it's not productive, it's wrong, it's . . . it's morally wrong.

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

A. Yes, I would.

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

A. That's right. I would not be able to do that.

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

A. That's right.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I wanted to do some follow-up questions, if I could, about what the judge was asking you about the death penalty.

And I certainly understand what you say when you say that you're opposed to the death penalty and believe that it's morally wrong. I understand and appreciate those thoughts.

Would you agree with me also that everyone has an obligation if they can to serve on juries?

A. Yes, I would agree.

Q. And that's sort of a civic obligation or a duty of citizenship for all of us to do that, if we can?

A. Yes.

Q. Kind of like paying our taxes or voting or whatever?

A. Yes.

Q. And it – would you agree with me that it's important that on a jury that sits in judgment of a person's life that there be a variety of views?

A. Yes, I would agree.

Q. So it's important to have people that favor the death penalty and don't favor the death penalty sitting in judgment of another person's life?

A. Yes.

Q. It wouldn't be fair to have a jury that just everybody was in favor of the death penalty sitting on the jury?

A. No, it wouldn't be fair.

Q. Same way it wouldn't be fair to have everybody opposed to the death penalty?

A. Right.

Q. So it's important and you'd agree that a mixture is good?

A. Yes.

Q. And that the thing that we strive for when we talk to jurors is that we want to make sure somebody's not just going to go into the jury room with their arms folded and say "I'm not going to listen to the other side"?

A. No.

Q. And I take it you wouldn't be one of those jurors that would just fold your arms and say "I'm not going to listen to the other side"?

A. No.

Q. And I bet this is the first time that publicly you've had a chance really to think about and talk about the death penalty?

A. Yes.

Q. In a public forum?

A. Yes.

Q. So if the judge were to instruct you that you had to consider the views of the other jurors and you had to consider aggravating circumstances, such as substantial planning and premeditation in the commission of a crime or such as the risk of danger to others or such as the lack of remorse of a person, you could consider that with your other jurors, I take it?

A. I could consider it; yes.

Q. And I guess what I'm asking you is, you would be open to another juror saying, "But we need to consider the death penalty for these reasons"?

A. (Pause.) No. Another person's opinion about the death penalty is not going to change my opinion about the death penalty.

Q. Right. Now, I understand that you have an opinion about the death penalty, and if called on as a voter, you would have said, "We should not have the death penalty in our society"?

A. Yes.

Q. If called on in Congress, if you were an elected representative, you would say, "We should not as a society have the death penalty"?

A. Yes.

Q. But we do.

A. Yes, we do.

Q. And it is a sentencing option in capital cases, right?

A. Yes.

Q. And the legislature has defined in a narrow set of cases when the death penalty is an option?

A. Yes.

Q. The – and I think Judge Burrell would tell you that the legislature has never said that if a person commits a particular crime, you have to give him the death penalty. We don't have an automatic death penalty.

A. Right.

Q. So the point is whether when, if you sat on a jury with other people who believed in the death penalty or didn't believe in the death penalty, when Judge Burrell instructed you to consider aggravating circumstances in making your decision as to whether life or death was the appropriate sentence, I take it that you could consider those aggravating circumstances?

A. I could consider them; yes.

Q. And you could listen to your other jurors' points of view on aggravating and mitigating circumstances?

A. Yes. I could listen to them, mm-hmm.

Q. And you wouldn't go into the jury room with your mind made up?

A. As to guilt or innocence?

Q. Well, that's a good question. You wouldn't go into the jury room with –

A. Definitely not, no.

Q. Let me ask this. Let's say that you were sitting in judgment of a person who you believed in your heart would be dangerous, would kill, if released from prison. You're sitting in judgment of that person for a murder, for a capital crime, and you are persuaded by other jurors and in your heart believe that that person would kill again in a deliberate and intentional way if he could either get out of prison, escape from prison or somehow be released from prison, or could from prison direct a killing.

Would that be a circumstance in which you could consider a death sentence?

A. I could consider it; yes.

Q. And when you say you "could consider it," you would be open to the views of your fellow jurors? When they say to you, "He's going to get out of prison; he's going to kill again; the only way we can stop him is by this verdict," you would be open to those views?

A. Yes.

Q. So there is a circumstance in your mind – although I understand that you disagree with the death penalty, there would be a circumstance in which you could consider the death penalty as a sentencing option?

A. Well, when you're coming up with circumstances as you've just done and you're putting it on a person's mind that somebody's going to die either way, you have to consider it.

Q. And I understand that, and I guess I don't want to put you at such a struggle with yourself, but when we think about having on a jury people of different viewpoints and know how important that is, it's important to know that you could sit and consider in a meaningful way the views of other people before making your judgment.

A. Yes. Yes.

Q. So you could follow the Court's instructions to consider aggravating circumstances and weigh them against mitigating circumstances before you made your mind up?

A. Yes, I think I could.

Q. You wouldn't go into that jury room with your arms folded and predisposed towards a particular penalty until you heard everybody else talk to you?

A. I wouldn't go in with my arms folded; no. I would be open to what the others had to say.

Q. And you would consider it in a meaningful way?

A. Yes. Yes.

MS. CLARKE: Thank you.

PROSPECTIVE JUROR NO. 53: Mm-hmm.

VOIR DIRE EXAMINATION

BY THE COURT:

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

A. I haven't read anything about the case. Occasionally the television set is on in my home and I have to leave the room as coverage is being produced on the television.

Q. Have you discussed the case with anyone since filling out your jury questionnaire?

A. No.

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

A. No.

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

A. No.

Q. Have you received any information from news sources or any source that has caused you to have any opinion on that issue at all?

A. No.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Morning.

A. Morning.

Q. My name's Steve Freccero. I'm one of the prosecutors in the case. I'm going to give you a copy of the questionnaire you've filled out.

A. Okay. (Accepts document.)

Q. If you could take a look at that. Now, if at anytime I ask you something that you don't understand or are not following, please speak up and just let me know.

A. Okay.

Q. If you could, look at your answer to question 40. That's on page 10.

A. (Examines document.) Yes.

Q. And there it asks you if you have any political, social or philosophical beliefs that may affect your service, and you responded at that time, "I wouldn't sentence anyone for any crime to death."

Has anything we've talked about today changed your view on that?

A. Well, yes. The – the "what if" situation that she just presented to me made me think that sometimes it's not as cut and dry as what I've written on here, that perhaps it would have to be considered if there was a circumstance where other people might be hurt.

Q. And so as you're sitting here today, you can imagine that you could vote to send the defendant – vote the death sentence; is that what you're telling us?

A. (Pause.) This whole death sentence thing is kind of evolving for me. As you can probably understand, it's not something that we think a lot about every day. It's more complicated, I guess, than I originally thought of it.

Originally, I thought I don't want that burden. I wouldn't want that guilt on my shoulders. I don't want to be a part of that, even if I'm just one of 12. But if – because I do believe killing anybody for any reason is wrong. It's – it shouldn't be necessary. But if you're placed in a position where you have to choose putting other people in danger or having to do that, then that might be a situation in which it would be required; it would be necessary.

Q. So in that situation, you could see yourself voting to return the death sentence?

A. I could see myself considering it.

Q. Okay. Well, again – and I don't want to – I want you to tell us in your own words, is there a difference between considering something and – you're making a distinction there between "consider" –

A. Mm-hmm.

Q. – and "voting." Can you imagine a situation in which you're serving as a juror – you're actually a juror, you've already sat through a trial phase and you've listened to evidence back and forth, and now you as a juror has found this person guilty. Now you have the second proceeding. And I understand that you said you'd consider, you'd listen to anything your fellow jurors have to say.

A. Mm-hmm.

Q. But as you sit here today, do you think you could – you can imagine a situation in which you could too sign that verdict form sentencing the defendant to death?

A. Yes. I think now I could, given the "what if" ideas that are now going through my mind.

Q. Okay. Now, let me ask you –

A. But there will be other options.

Q. Oh, absolutely. The jury will have to consider a number of factors and circumstances. And there will be a number of alternatives to consider. My question to you – and they're very difficult questions, and I appreciate that you're struggling with some of those. And I'm just trying to get a sense.

In the beginning when Ms. Clarke talked to you, she asked you that you could agree that it's important to have a wide range of opinions on the jury in terms of the penalty. Right?

A. Yes.

Q. That you shouldn't just have people who are all in favor of it or people who are all opposed to it?

A. No. It wouldn't be fair.

Q. Right. Let me ask you – however, there is one thing we need to talk about. There are certain guidelines. There are certain rules for a juror. And one of them is that they can follow the laws, our laws as a society as given to them by the Court, right? Do you understand that distinction?

A. Yes. Yes.

Q. For instance, when the jury's instructed that the defendant is presumed innocent, okay, that's a law that the jurors have to follow. For instance, it's not a question of fairness, you should have half the people on there that believe he should be presumed innocent and half the people on there that believe he shouldn't be. Do you understand the distinction?

A. Yes, I understand.

Q. So there are certain things. And so my question to you – and they're difficult questions – is if you were in there, okay – and again, these are – we're talking about "what if's."

If you're in the jury, and you've gone through the guilt phase. You've found this person guilty. Now comes this penalty phase. You're going to hear a lot of evidence, but you're also going to be given legal instructions from the Court. Okay? And the judge is going to say, "These are the possibilities, but these are the laws that govern it."

If one of the legal instructions were – and how about if I pick a hypothetical that's got nothing to do with the case. Let's say there was a legal instruction that said since this crime – the death penalty is applicable if the Government establishes certain aggravating factors, let's say that it was intentionally planned, prepared, and some other factor along with it, for example – hypothetical – that, and nothing to do with this case – say the defendant had been convicted in the past of serious drug crimes.

Now, you're in there in the jury room and you think to yourself that doesn't sound right to me. That's not a good basis for me. Could you nonetheless apply that law if the evidence warranted it?

MS. CLARKE: Your Honor, I'm a little confused – maybe the juror is not – as to what "applicable" means in that kind of circumstance. And it seems like we're leading towards an automatic death for a drug offense, and that –

MR. FRECCERO: No, it's –

MS. CLARKE: – certainly isn't going to be an instruction in this case.

MR. FRECCERO: All right. I'll try to rearrange it.

THE COURT: All right.

MR. FRECCERO: Q. The point I'm trying to get to is, could you consider the death penalty even if in your own opinion – you've told us you considered it morally wrong. Could you nonetheless, if the law allowed it in a certain circumstance that you yourself didn't think was right – do you understand the distinction I'm trying to make between here's a law that you yourself don't think is right, but you look at the evidence and you say, "If I followed that law, the death penalty would be warranted."

MS. CLARKE: Your Honor, that cannot be the circumstance. That's an improper and inaccurate statement of the law. The law would never say if something happens, then the death penalty must be applied.

MR. FRECCERO: No, again, I didn't – I'll rephrase it for the Court. And I'm not trying to put words –

THE COURT: There's no need to rule, because you have won. He's going to rephrase the question.

MS. CLARKE: (Nods head up and down.)

MR. FRECCERO: Q. I'm not – ma'am, I'm not telling you in any circumstance that anything is automatic. Okay?

I'm just trying to understand whether you yourself think you could, if the evidence – all right – if you had all this evidence that came in, and you listened to the law, and you yourself said, "If I follow the law as I understand it and listen to this evidence that I heard it, the death penalty, according to that law and this evidence, should apply, but I myself don't agree with that law," could you nonetheless apply the death penalty?

MS. CLARKE: Your Honor, I again object. That is an inaccurate statement of the law. The law would never be a certain set of circumstances: if this happened, then you must apply the death penalty.

THE COURT: Sustained.

MR. FRECCERO: Q. All right. I guess what I'm trying to get at is – could you – let's start with a smaller proposition. Could you follow a law that you yourself felt was morally wrong?

A. (Pause.)

MS. CLARKE: Your Honor –

PROSPECTIVE JUROR NO. 53: It's a no-win answer, right? Could I follow a law, any law that I morally thought was wrong?

MR. FRECCERO: Yes.

MS. CLARKE: I think that's an inappropriate question to put to any juror, Your Honor. The law will never advise a juror to impose a sentence of death.

THE COURT: The question essentially asked the juror whether she would be willing to follow the Court's instructions even if those instructions did not comport with her personal beliefs. That's the question. I see nothing wrong with the question as I have framed it. Do you? Because you can always – you can object to the judge's questions; you know that.

MS. CLARKE: I would be hesitant to do so. If the Court could put that question to the juror, I think that would take care of the problem that we're in.

THE COURT: Okay.

I don't know if you have the question in mind. I can have the reporter read it back, or do you have it in mind?

PROSPECTIVE JUROR NO. 53: I'd like it read back, please.

THE COURT: Okay. Well, I can ask it again.

PROSPECTIVE JUROR NO. 53: Yeah, the way you put it was better.

Sorry.

I know now where he's going. You're asking me if I would sacrifice what I morally believe to be right and wrong for the sake of following the law in a case.

THE COURT: That's pretty much what I've asked you.

PROSPECTIVE JUROR NO. 53: Well, I can follow the law, given the idea in my mind now of these "what if" circumstances that we're playing with. I could follow the law.

THE COURT: Okay.

MR. FRECCERO: Q. And if – and the "what if" circumstances, what are those circumstances?

A. Well, there's probably a million different ones out there, but currently in my mind is what she's just posed to me: the threat to other people.

Q. And if there wasn't a threat to other people, would that change your view?

A. Yes. If there's not a threat to other people – yes, it would change my view.

Q. So if you were given a set of instructions and the aggravating factors to be considered did not include a threat to another person, would you nonetheless be able to consider those aggravating factors in a determination as to whether the death penalty was one alternative to be considered?

MS. CLARKE: Your Honor, that's an inappropriate question, and as you know –

THE COURT: Sustained.

MR. FRECCERO: Q. Do you think that any of your views about the death penalty, do you think if you knew, sitting in the trial stage where you're to consider whether the charges had been proven beyond a reasonable doubt –

THE COURT: Start again. I'm not following your question. Start again.

MR. FRECCERO: Q. Okay. We've talked about two different phases of the trial, right?

A. Yes.

Q. And you only get to the second phase, the penalty phase, if during the first phase, what we've called the guilty or not guilty phase – so you don't even get to the penalty phase until after that phase. Do you think that, knowing that the charges, potentially at least, that the law authorized among sentences a sentence of death, do you think that would in any way influence you during the first part?

A. No.

Q. You wouldn't look at the Government and think, since –

THE COURT: That's asked and answered.

MR. FRECCERO: Okay.

MR. FRECCERO: Q. Let me ask you this.

And I'm trying – obviously I'm not doing a good job today, that I'm getting everybody confused here, but do you think that your own views on the death penalty, do you think they would cause you, in the jury room, to hesitate in any way? Do you think they would substantially impair your ability to deliberate?

MS. CLARKE: Your Honor, it is okay if those views cause a juror to hesitate.

THE COURT: I agree. I think we've had enough questioning.

MR. FRECCERO: All right.

Thank you, ma'am.

THE COURT: All right. Let's escort the juror out. And before you escort the next juror in – you can escort her out, but pause. I want to say something to the parties. I meant pause outside the door.

(Prospective juror number 53 left the courtroom.)

(The following discussion was had with no juror present in the courtroom.)

THE COURT: The next juror is juror 54. Juror 54's employer sent a letter to the jury commissioner indicating – well, have you received the letter with your package?

MR. LAPHAM: (Shakes head from side to side.)

MR. DENVIR: September 10th, 1997, Your Honor?

THE COURT: Correct.

MR. DENVIR: Yes, Your Honor.

THE COURT: I hope you didn't mind the Court calling the employer about this letter.

MR. LAPHAM: Your Honor, we have not received the letter.

THE COURT: You have not?

MR. LAPHAM: No.

THE COURT: Well –

MR. LAPHAM: We have it now.

THE COURT: Okay. I called the employer about this letter. Do you have any objections to that?

MS. CLARKE: No, Your Honor.

MR. DENVIR: None, Your Honor.

THE COURT: If I received such communications and I decide to call an employer – maybe I shouldn't decide that without communicating with you first, but I'm doing that right now. Do you have any problems if I call employers to try to determine whether they can adjust their policy for jurors before they appear in my court, if it comes to my attention that they have a policy that might interfere with the juror's service?

MR. LAPHAM: No, Your Honor, and in fact we encourage that.

THE COURT: Defense?

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

THE COURT: Okay. The employer indicated to me that the juror – let me rephrase that – in all likelihood the juror will not be paid for jury service and there’s no other position in which to place the juror, although there’s some type of a committee that could meet about this problem.

And so I asked the individual I spoke to, who is the author of the letter, to provide me with the probabilities of the committee issuing a decision that would be favorable to the juror being able to serve on this case, which means they’d have to take the juror and place her out of the shift she’s now in into another shift. And basically he responded by telling me that the possibilities seemed slim to none.

The other information I received is that the juror could work between the hours of 2:00 to 5:00. I’m telling you this because the juror has indicated that this case will pose a financial hardship if she is required to serve.

Any questions before I call the juror in?

MR. CLEARY: Just to follow up one of the things the Court said, if she does work part time I assume she only gets paid part time; she’s not going to get her full salary, then?

THE COURT: I didn’t ask the question whether she would receive a full salary, because if they’re not going to pay her for jury service, that indicates she’s not going to receive a full salary and she’s only going to receive part-time wages. But I didn’t ask that precise question, because I thought it was obvious.

MR. CLEARY: Thank you.

MR. DENVIR: Your Honor, we’ll willing to stipulate to excuse her if the Government is.

MR. CLEARY: We’re willing to, Your Honor.

THE COURT: Without even talking to her?

MR. DENVIR: The way you said it, it doesn’t sound like there’s much chance she’s – she’s in the process of – she’s supporting two children by herself. And that sounds – very concerned about it.

THE COURT: Let’s see if she’s changed her status.

MR. DENVIR: Oh, okay.

(Juror number 54 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You’re the 54th randomly selected juror.

I noted when I looked at your response to the jury qualification questionnaire, at least at the time you filled it out, you indicated to me that if you have to serve as a juror in this case, it would cause you a financial hardship because of all of the obligations you have.

A. Yes.

Q. Has the situation changed?

A. No.

Q. If you were just to work three hours a day, would that reduce the hardship, eliminate the hardship?

A. (Shakes head from side to side.)

Q. You'd still have the hardship?

A. Mm-hmm.

Q. We're going to thank you and excuse you. You need not respond to further questions we recognize the hardship it would cause you.

A. Okay.

(Prospective juror number 54 left the courtroom.)

THE COURT: Anything further to cover before we adjourn?

MR. DENVIR: No, Your Honor.

MR. CLEARY: No, Your Honor.

THE COURT: It's adjourned.

(The lunch recess was taken.)

SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 18, 1997, 1:30 P.M.

—oOo—

THE COURT: Let the record reflect all parties are present.

Are you ready to proceed?

MR. DENVIR: Yes, Your Honor.

MR. LAPHAM: Yes, Your Honor.

THE COURT: Please escort the jurors to the courtroom.

MS. CLARKE: Your Honor, before that, I wonder if the Court was going to bring up the two jurors that your clerk contacted us about that had hardship problems.

THE COURT: What information did she give you?

MS. CLARKE: As to juror number 13, we understood that there was not going to be an adequate replacement at her job. She was also concerned about her legs and getting on and off the van.

There was some problem and as to juror number 36. There would be a financial hardship because he wouldn't be paid, not only wouldn't he be paid for the 20 days he thought he was going to be paid for, he wouldn't be paid for any of the days.

THE COURT: Do I have a stipulation with regard to those two jurors?

MR. LAPHAM: Your Honor, as to juror 13, my understanding is she said – that the question there, if you recall, was whether or not they could find a person that would satisfy her as a replacement, and –

THE COURT: That's the juror that was the supervisor?

MR. LAPHAM: Yes.

THE COURT: Okay. I understand why I don't have a stipulation as to 13.

Now, about 36.

MR. LAPHAM: 36, we do have a stipulation as to that.

THE COURT: 36 is excused for hardship reasons.

MS. CLARKE: Financial hardship.

THE COURT: Financial hardship. That's the order. I will not excuse juror 13 at this time.

(All the jurors entered the courtroom.)

(Prospective jurors present.)

THE COURT: Would my deputy clerk please administer the oath to the prospective jurors.

(Jury sworn.)

THE COURT: Good afternoon and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial.

The person who just administered the oath to you is my deputy clerk. Her name is Shani Furstenau. Next to her on the same platform is a certified shorthand reporter who will assist in administering this trial.

I trust that you will fulfill your civic duty during this voir dire questioning process. I thank you both for your presence and anticipated cooperation. 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 you making yourselves available to serve as jurors. The voir dire questioning process is an essential way of insuring that a fair and impartial jury is obtained.

Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions.

The voir dire process will involve questioning prospective jurors individually, which will commence after I question you first 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 this courtroom and the law that I give them at the end of the case.

I have decided to do individual voir dire in part because the parties have requested it, and because there has been some publicity about this case. During the individual voir dire we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case.

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

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

There's no response.

The first part of this trial, which will be referred to as the guilt or not guilty phase, will occur like any other criminal trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations, nothing more. Mr. Kaczynski is presumed to be innocent and does not have to testify or present any evidence to prove his innocence.

During the sentencing phase additional evidence may be presented by the government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist and if so, whether those aggravating factors sufficiently outweigh any mitigating factor or factors found to exist or in the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death.

An aggravating factor is a fact or circumstance which might indicate or tend to indicate that the defendant should be sentenced to death. A mitigating factor is any aspect of a defendant's character or background, any circumstance of the offense, 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 will 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 you questions in additional areas too.

During this questioning we will refer to you by the order in which you were randomly selected. So we will use your random selection number. This is because I decided to use an anonymous jury in this case in order to protect juror privacy. As I stated in a previous communication to you.

Now I will 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 you've been excused from service on this case.

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

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

Fourth, do not read any news stories, articles, listen to any radio or television report or access any Internet stories or comment 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 with this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

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

Let the record reflect that juror number 58 raised her hand. We'll talk to you about it individually later.

I contemplate observing the holiday season as follows: We'll not hold court December 24th, 25, nor the 26th; nor on the 1st or 2nd of January. I contemplate holding court December 22, 23, 29, the 30th, and the 31st. Please raise your hand if this presents 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 is no response. No one raised a hand.

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

The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will be asked. You will have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Does any juror not understand that?

(No response.)

THE COURT: Raise your hand if you will not be able 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're selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at the trial and by applying the law as I will give it to you in my instructions whether you agree with that law or not. Do you have any belief that will interfere with your obligation to do this? If so, please indicate that fact by raising your hand.

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. While I'm authorized under law to protect your legitimate privacy, I may ask some questions in the area that you indicated a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this can't occur, let me know so that I can determine whether the matter should be covered in a more private setting. This approach is taken because the trial should be open unless I have a legitimate reason to close any aspect of it.

We'll now have my deputy clerk escort all but the earliest randomly selected juror to another room, and to place the remaining juror in the witness stand.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 56th randomly selected juror, so I may reference you from time to time as juror number 56. Since you answered your jury questionnaire at Cal Expo have you heard of or read about this case?

A. No, I have not.

Q. Since that time, have you discussed this case with anyone?

A. No.

Q. I'm going to ask you to – I should have said this before I started asking you questions. I want the parties at the counsel table to hear your responses, so when you answer my questions, if it's necessary to use the microphone and look at them as you respond, that's fine, because it's important that they hear everything you say.

A. Okay.

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 really don't believe it has.

Q. Okay. What type of information have you received about the case?

A. I remember seeing a sketch on the news, and hearing about one of the incidents I believe that happened maybe back East in the eastern states, and basically, that's, it's pretty vague. I don't really have any clearer recollection of things that have happened.

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

A. No, I have not.

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

A. Yes, sir.

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

A. Yes.

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

A. I would say a proponent, in the right circumstances.

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. Can you repeat that, please.

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.

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

A. Yes, depending on the evidence.

Q. Do you understand that the law requires that before imposing the death penalty, the jury must consider the facts and circumstances of the crime, the background and character of the defendant, and any other information that might tend to indicate that the death penalty should not be imposed?

A. Yes.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon, ma'am. My name is Steve Freccero. I'm one of the prosecutors in this case. I just want to ask you some questions.

And without telling us exactly where you live, it's fair that you had to travel quite a ways to come here; is that correct?

A. Yes.

Q. Anything about that distance that would make it difficult for you to serve as a juror?

A. No.

Q. Okay. You've never served on a jury before; is that correct?

A. That's correct.

Q. You mentioned that you have some recollection of hearing some information about this case?

A. Yes.

Q. Is there anything about the information you've heard that would make it difficult for you to evaluate the evidence when it's presented here?

A. I don't believe so. I – it's so vague that – no.

Q. Okay. So because the Court is going to give you instructions that anything you might have heard outside of court shouldn't be considered in here. And do you feel that you would be able to follow such an instruction?

A. Yes, I do.

Q. And if anything came up here that, I don't know, either didn't square with your past recollection, or you thought in your mind I thought I heard something else, you would be able to just put that aside and base your decision on only what takes place in court?

A. Yes.

Q. Let me just ask you a few questions about your views on the death penalty. First of all, is there anything about the fact that were the defendant in this case to be convicted of certain charges the death penalty could be one of the penalties imposed, would that cause you any problems for you as a juror?

A. No.

Q. Would you be able to consider all the different alternatives based on the Court's instructions to you in order to reach your decision?

A. Yes.

Q. There's sometimes, there's a difficult situation in that sometimes people have personal beliefs that may not coincide with the law and that might create problems for them. Do you think if you were told that what counts is the law as you're given by the Court, do you have any beliefs that would interfere with your ability to follow those instructions?

A. No.

Q. Okay. You're confident that whatever the Court instructs you is the law that should govern this proceeding you would be able to follow that?

A. Yes.

Q. All right.

MR. FRECCERO: No further questions. Thank you.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Hi. Good afternoon. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I just have a few questions if I may.

You told the judge you didn't believe you would be affected by what you heard?

A. Right.

Q. Can you think, can you help me and think back to what you have heard about this case. I know you cut it off as much as you can, after filling out your questionnaire.

A. Right.

Q. But can you help and think back to what you actually have read or heard about the case or Mr. Kaczynski.

A. Basically, what I remember is the sketch on television.

Q. The drawing?

A. The drawing. And that's it, and about a bombing that occurred back East I believe it was. I'm not sure.

Q. You remember the timing of that?

A. No, I don't. And I remember one more thing. I do remember seeing on television the news, it was – I don't really remember the details, but it was I believe, when the – when he was arrested.

Q. Mr. Kaczynski –

A. – possibly, and that was it.

Q. Do you remember the image that you saw on TV? Do you remember whether you saw him being arrested or –

A. I just saw a bunch of people walking around. That's basically – trucks and people.

Q. All right. Do you remember where he was arrested and his living circumstances?

A. It was in the woods, in the forest.

Q. You remember the state?

A. No, north – somewhere north.

Q. Somewhere up there?

A. Yeah.

Q. Do you remember anything about the circumstances that he lived in?

A. A cabin.

Q. Right.

A. Think it was.

Q. Do you remember hearing anything about what the government said they seized from the cabin?

A. No, I didn't pay any attention to that.

Q. So you have sort – do you remember when Mr. Kaczynski was brought to Sacramento from the northwest?

A. No.

Q. So you have sort of just a general sense of some of the crimes that were going on?

A. Uh-huh.

Q. And the arrest of Mr. Kaczynski?

A. Yes.

Q. Do you have any feelings about any of this stuff as you sort of pulled it back out of your mind?

A. No.

Q. Does it mean one thing or the other to you in any way?

A. No.

Q. Okay. You mentioned – Do you have your questionnaire?
Is it close, Your Honor?

If you go to page 24 with me. Are you there? Question 95. About mental health professionals, their role in a court case, and you indicate they may or may not be useful. Can you help me understand what you were thinking when you wrote that?

A. Oh, boy. I basically was looking at it from both sides, maybe it would be useful for the defendant, or the person being tried to better understand where they're coming from and maybe a professional would be able to bring that out. I guess I was looking at it from both sides.

Q. So you're open to the question of mental health professionals testifying?

A. Yes.

Q. Do you ever think they kind of go out on a limb or anything and sort of say things that you just can't buy?

A. I only – a person may have that opinion, I'm not sure. It depends on the individual who's, you know, giving the information, and I would have to – I never been in that position to have to.

Q. Make those judgements?

A. That's correct.

Q. Have you ever had a – Have you read about any cases or heard about any cases in the paper that have involved the testimony of mental health professionals?

A. I can't recall any.

Q. Okay. You worked at one point for an airline?

A. Yes.

Q. You're no longer with the airline?

A. No.

Q. In the airline business?

A. No.

Q. Do you think it would have any effect on you to hear testimony about one of the bombs that may be alleged in this case involved a bomb on an airliner? Do you think your past employment with the airline would make you feel uneasy at all, or how would that make you feel?

A. I don't think it would make me feel uneasy pertaining to this case.

Q. Just because you worked for an airline?

A. Right.

Q. If I could take a moment and ask you a little bit about your feelings about the death penalty. If you could look at page 27. The – the checklist questions, 107, the fourth – the third one down. Anyone who commits an act of terrorism you strongly agree should receive the death penalty.

A. Yes, in general.

Q. What were you thinking when you – about what's an act of terrorism for you?

A. A heinous crime of terrorism that – like the World Trade Center or something like that.

Q. How about a bomb sent through the mail to somebody with the intent to kill?

A. I think it would depend on the circumstances that's considered terrorism. I don't know.

Q. Would that be in your mind be considered – I was just wondering when you answered this question how does that fit?

A. I don't know if this would be an act of terrorism.

Q. Would it be to you?

A. I don't think so. I mean, I don't know. To me an act of terrorism is like blowing up a big building like in Oklahoma, you know, what they did there.

Q. All right. You indicated that the death penalty is appropriate in your opinion in some cases. Right?

A. That's correct.

Q. And could you give us some parameters of where the death penalty may be appropriate and where it might be inappropriate. Assuming that a capital crime has been committed that the crime is eligible for a sentence of death.

A. I think it would depend on the law and what the law says.

Q. If you learned that the law doesn't tell you how to vote on that –

A. Then you make a judgment on within the parameters of the law and make a judgment on the evidence that was brought forth and base the opinion on that.

Q. When you're looking at making a decision about the sentence of death or a sentence of life in prison without the possibility of release, would you be looking at the crime itself or the person who you found committed the crime or both?

A. I think it would be both.

Q. And do you think that one would weigh heavier than the other?

A. I don't think so. I think they're both equally should be considered.

Q. When the judge asked the question of you, if you can recall it, about would you automatically impose a sentence of death in a certain circumstance, you hesitated slightly. Do you recall that question?

A. No.

Q. The question?

A. Not specifically.

Q. The question was: Would you automatically impose a sentence of death in a case of premeditated murder regardless of the circumstances. And I saw you kind of study the question in your mind and then say no.

A. I probably wasn't hesitant, I'm a little nervous so probably just waited to be sure what he was saying. But no, without hesitation. I mean, you have to consider the information and the evidence.

Q. Would it be important to you – let's – the judge also asked you a question about if the jury convicted Mr. Kaczynski of premeditated, deliberate, intentional murder, are you open to a sentence of life. If you made that finding beyond a reasonable doubt, of premeditated deliberate, intentional murder, do you remain open to a sentence of life in prison without release?

A. Yes.

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

THE COURT: Yes.

Q. BY MS. CLARKE: Let me just quickly jump back to your prior employment with the airlines. If you were aware that the airline that you worked for was the same airline that was involved with one of the bombs of the Unabomber, would that affect you one way or the other?

A. No.

Q. How would you feel about that it was your former employer?

A. I wouldn't take it personal.

Q. When you worked for the airline did you hear anything about the Unabomber crimes in connection with the airline?

A. No.

MS. CLARKE: Thank you very much.

THE COURT: I'm going to have my deputy clerk bring in the next juror. Is that your jacket in the jury box?

PROSPECTIVE JUROR NO. 56: Yes.

THE COURT: You can take that with you. Thank you.

(Prospective juror 58 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 58th randomly selected juror. I may reference you by that number periodically.

When you looked at your jury questionnaire – before I ask you a question, there's a microphone right in front of you. When you respond to my question, I want you to make sure that your voice is transmitted in that microphone so that the parties at the counsel table can hear you. And even if it's required that you not look at me and look at them when you answer, that's okay.

A. Okay.

Q. When I looked at your jury questionnaire, at least the questionnaire that dealt with whether you have a hardship that could interfere with your ability to serve as a juror on this case, you indicated that you had young children and you need to provide transportation for your children to and from school. I'm wondering if the court hours that I've indicated keeping in this case will solve that problem.

A. Actually no. My children don't start school until

9:15. And the hours that you announced, I not only would have to serve as a juror, but I would then have to go work half a day. Because as I understand – I work for (Redacted). If you are released anywhere within, I believe it is, 25 or 30 percent of the day can still be spent working, you have to report to work. So I believe I would have to go to work roughly from 1:30 to 5:00 o'clock and my work involves writing reports and the like. Then pick the children up from school, go home and write reports, take care of my family, and be up at 6:00 the next morning to be wherever by 7:00.

I think that would be very difficult to do, plus I think, you know, I would have to be relying on family members, grandmothers, aunt, uncles, to, you know, I would have to have the children somewhere by 6:30 in order to be wherever you wanted me to be by 7:00. So I just think it would be difficult. Not impossible, but difficult.

Q. It's not me personally.

A. I know.

Q. It's actually the judicial system, and it's Congress and –

A. I understand that.

Q. The parties are entitled to, under the Constitution, to have individuals that represent a clear cross-section of the community from which to select jurors. And you're part of the stratum they want to reach. The parties haven't told me to say this, I'm assuming that that is true.

A. I understand.

Q. And that's why I'm still asking you questions despite what you've stated. I know it would cause you an inconvenience, if you had to contact family members so that you could make yourself available for jury service on this case. Assuming you did that, would your kids be okay? Could you be relaxed as a juror thinking that your kids would be okay? And it would cause some additional problems for you, but could you cope with them just for the short period of this trial thinking about your civic duty after things like that?

A. Probably.

Q. Okay. You told us where you worked. I didn't want you to do that. You're – so you already done that.

I think in view of what she said, if you want to probe hardship, I'll let you do that. If you don't want to do that, I will proceed with questions, because she's indicated that she will perhaps make adjustments so that she can be available for jury service on this case.

MR. DENVIR: The only question I had, Your Honor, is you referred to short period of time. I want to make sure the juror knew it might be two to four months.

Q. BY THE COURT: I told you how long the trial could possibly last in your communication I sent, and I assume that you have that on your mind?

A. Yes, I do.

Q. Okay. And maybe I shouldn't have referenced it as a short period but I have that on my mind. When I said what I said, did you understand what I was referencing?

A. Yes, I did.

THE COURT: Do you want to probe hardship in light of the responses to my questions? I presume you don't.

MR. DENVIR: No, Your Honor.

MR. LAPHAM: No, Your Honor.

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

A. I have not read anything about the case. I do listen to the radio, so I have basically just heard that jury deliberation is continuing as far as selecting a jury. At one point a week or two ago I heard something about Mr. Kaczynski's feelings towards his parents, on a radio broadcast. And then more recently, it seems to me on a radio broadcast I heard something regarding perhaps not so much jury consideration as to whether guilt or not guilty, but more the death penalty sentence, and mental capacity being perhaps the major issue in the case.

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

A. Discussed the case itself, no.

Q. Any aspect of the case or have you discussed information about the participants or anything?

A. No. No.

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

A. No.

Q. What type of information – before Cal Expo, what type of information have you received about the case?

A. Through our – I'm sorry, are you asking me how I heard information on the case?

Q. No, I'm trying to ascertain what information have you received about the case.

A. Actually very little. I think, as I put in my questionnaire, we do not get a newspaper at our house, so we tried it a number of times and they ended up stacking up so we don't get newspapers. So information that I have gotten, I've gotten through the radio or through prime time TV.

I don't know a lot about the case, to tell you the truth. I know that there is a gentleman, Mr. Kaczynski, who's reported or charged with being the Unabomber. I know that there was a gentleman, I believe, in Sacramento by the name of, I think, Hugh Scranton who was killed. I don't know for sure how many other people were killed. I believe there might have been one or two others, and perhaps some maiming done. And I just think that I seen, for example, through Dateline or 20-20 regarding the cabin where Mr. Kaczynski lived. General things like that, but I don't know a lot about the specifics of the case itself.

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

A. Of my own, no.

Q. When you say of your own no, can you explain why you phrased it that way?

A. Yes. Because I think as I mentioned before, I think I heard that there's an overwhelming amount of evidence, but I have, I myself come to say gee, this guy is definitely guilty, no. But I know that others have, I guess, or that there's a heavy preponderance of incriminating evidence.

Q. Will you state that – are you indicating that people have said that you’re not aware of the evidence they’re referencing necessarily or are you?

A. No, not specifically. I think I heard where they found a typewriter at the cabin, I think I heard on a radio broadcast or something where a copy of the manifesto was found in the cabin, yes.

Q. Has anything about, anything about the things you heard concerning things found at the cabin or any other information that you would construe as pointing from your perspective toward Mr. Kaczynski’s guilt, has that caused you to have any opinion?

A. A definite opinion, no. But as I say, from what I heard there does appear to be a heavy preponderance of incriminating evidence.

Q. Okay. The reason I’m asking these questions is we don’t expect our jurors to walk into this courtroom unaware of news reports about a case. But we have to get an idea as to how a particular juror has been exposed to news reports and whether that exposure is going to affect the juror in any way. You’re indicating that the exposure you received should not affect your service on this case should you be selected as a juror; is that true?

A. That’s true.

Q. Do I have your assurance that Mr. Kaczynski will start this trial, from your perspective, 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. A proponent, no.

Q. What are your views on the death penalty?

A. I believe that it is a just sentence for some people for some crimes.

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

A. Yes, I would.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon.

A. Hi.

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

A. Nice to meet you.

BY MR. DENVIR: Your Honor, is the questionnaire up there?

Q. I would like to ask you a few questions. Maybe I’ll go back over your questionnaire a little bit. If you would turn to page 11, question number 41. Where you were asked

what did you think or feel when you received your jury summons about the case. You said a little fearful, a little bit of excitement, and a little dread. Can you give me a little more feeling of how those were or what mixture?

A. It was sort of springs out. Sort of out of the blue to get it, and then to see it was such a high profile case like jeez, where did they get my name from. Why did they pick me kind of thing. Dread because I believe it was stated in the initial summons from the judge the anticipated time of this trial, it looked like would be a lengthy trial. And I think the seriousness of what a juror could be asked to do, that was heavy on the brain a little bit.

Q. Okay. I do want to ask you a little bit about your knowledge about the case. You indicated that, I guess, almost all that is from radio and TV, not from magazines or newspapers?

A. Right.

Q. And you have a very good memory, I might say. For particulars. I guess you said first of all, you had seen something recently about something about Mr. Kaczynski's feelings about his parents. Can you tell me what you recall about that and what you felt about it?

A. I believe – I don't remember if it was a statement that his brother had made, something about his desire or wish to spit on his parents' grave perhaps, and I did not see it. I heard it. I heard it on the news broadcast.

Q. What was your feeling or reaction when you heard that?

A. You know, I don't really remember what my initial thinking was. Perhaps why it was even reported, why that's important. To be reporting.

Q. Good question. You also said that, I guess, you were saying you really don't have an opinion about the evidence, it's more the sense what other people are reporting as the amount of evidence against Mr. Kaczynski. Is that a fair statement?

A. I haven't seen any evidence or heard of any evidence, so if you look at the media, as I say, it's part of my job, I use my car. I travel all day long, and I constantly have either talk radio or some type of radio going on, where I'm always listening to the news. So you do hear reports just as far as a heavy preponderance of evidence having been found. If you're asking me right now am I sure he's guilty, no. Because I think I know enough to know that quite often media presents its view of things and that you need to sort of weigh carefully what you hear from the media.

So if you were to take what the media said, I might think jeez, why are they bothering to conduct a trial if it's that overwhelming. I understand why there's a trial, but if it's that overwhelming, then – as I said, more recently I heard that perhaps it won't be so much – I think I heard that the defense lawyers were not so – I don't want to say not interested in the evidence, but more as far as the sentence, plea bargaining perhaps.

Q. What did you hear exactly about that? Can you give me a little better sense of that?

A. I think that was last week. That perhaps actually I was thinking maybe I wouldn't even be called to come before you all today because I had not yet received a date. And I heard something on the radio that there might be a possible plea bargain in the works because of the heavy preponderance of evidence against –

Q. What did you think when you heard that?

A. Gee, I might not have to go next week.

Q. Okay. Obviously you're here. Is that going to affect you – now that the speculation you heard on the radio about that, does that have any place in – as you approach the case?

A. Does it affect my ability to listen and to weigh evidence? I don't believe so. I would imagine if the radio's reporting it, someone, I mean, the prosecution is going to be presenting the same thing, and I could hear it from their point of view rather than hearing on it a radio. So I mean, yes, you hear things on the radio, but I don't think that it would interfere with my ability to listen to the evidence presented in this trial.

Q. Okay. Based on what you have heard about the case and Mr. Kaczynski, you very candidly admit you have the sense that he's probably overwhelming evidence of guilt, I think that's what you said, a preponderance of evidence along those lines. Do you also have any kind of an opinion as to what this sentence should be based on what you've heard on radio and TV, et cetera?

A. No, I don't.

Q. So but as to guilt, you have some opinion just because you keep hearing all these things, but as to sentence, that hasn't affected you at all?

A. No.

Q. Only you can answer these questions and we rely on you to do it. And obviously, the judge will instruct you that you are not to consider what you heard outside the courtroom, and you're only to decide it here and that's our goal. That's what we would like everyone to be able to do ultimately, but the question is can a jury in fact do it. And I guess – do I understand from your questions – and I asked you on this and Judge Burrell has that you feel confident that no matter what you heard outside the courtroom, you won't come in with any preconceived notion as to what the result should be and will just decide on what you hear here?

A. Yes.

Q. You feel good about that?

A. Yes.

Q. If you could look at page – let me discuss with you first of all, on page 10, if you could look at that. If I can find it, I'll tell you what question. It's page – question 40. You just – you didn't answer that question. Was that just oversight?

A. Yes. The answer is no.

Q. Your answer would be no. That's what I thought. I'll even mark it down.

THE COURT: What was the question?

MR. DENVIR: Do you have any political association or philosophical beliefs that may affect your service as a juror in this case. There was a blank. Then, if yes, please explain.

THE COURT: Thank you.

Q. BY MR. DENVIR: On page 24, this was a – you were asked a couple questions about mental health experts and one of them was, your opinion about psychologists, psychiatrists or other mental health professionals. You said you had no particular opinion one way or another. Some people can be helped and some cannot. Can you tell me what you were thinking about at the latter part of it. When you wrote that in it comes back?

A. I work in healthcare, and I think it's just a general feeling, I believe that there are some people who can be helped by the system then there are other people that cannot. I believe that mental health is one of our systems that is very much lacking and not well understood.

Q. And as far as those types of professionals testifying in court, you have no particular opinion. Does that mean that you don't have any problem with that role they might play in testifying in court for one side or another?

A. No, not at all.

Q. If you look at page 20 and 21, you indicated you previously served on a case in state court. Is that right?

A. Yes.

Q. And can you tell me when that was, how long ago it was?

A. You know, I can't.

Q. More like five, ten?

A. Within ten definitely. It might have even been one in the last five years when I was called to serve. I really don't know.

Q. If you look on page 21 under 78, you said it was generally positive experience. And afterward the attorneys spoke to two groups, I take it the jurors, and gave you more info than you were privy to during the hearing. How do you feel about that, the fact that there was information that didn't come into the trial that evidently you learned about later?

A. As I recall, in that particular case, it sort of supported the verdict that we had come up. I think it made you feel a little bit better because as I recall, the gentleman's family was there and they were not happy with our verdict, and they were yelling or shouting a few things and then, when we had a chance to talk with the attorneys and all, I think everyone felt a little bit better even though it seemed to be and it wasn't a real difficult case. There was a great deal of deliberation, as I recall. It seemed to be a very more of an open/shut-case-type thing. There wasn't a great deal of deliberation. But it made you feel better, I think, to know that, you know, this wasn't such a nice person.

Q. Did you feel any resentment that that hadn't come out in the trial and you only learned it later? Sometimes people feel, wait a second, why weren't we told that. Did you have that sense?

A. No, I didn't.

Q. Let me, if I could ask you if you would turn to page – again, I'll try to find it. 27. And if you could, I would like to ask you about the third – it's question 107, it's the third one of the four examples down there. It's the statement that any person who commits an act of terrorism which someone dies, should get the death penalty. And you indicated you agreed somewhat with the four choices. Can you tell me when you read and answered that what were you thinking was an act of terrorism?

A. You know, I probably was thinking more of the Oklahoma federal building more than anything else. Or perhaps in terms of an airline bombing, probably were the two things probably that stuck out in my mind when I was answering that question.

Q. Would you think that the mailing of a bomb to another person with the intent to kill them, is that what you would think of in that area of terrorism or is that different than that? In your mind. I mean, there's no definition.

A. That doesn't readily come to my mind as an act of terrorism. But perhaps by legal definition it is. I don't know.

Q. I think Judge Burrell indicated, this is a capital – potentially capital case. There's two phases. There's the guilt or not guilty part, which is like a normal trial and proceeds if the jury were to find Mr. Kaczynski guilty one of the charges of Mr. Murray that you referred to. Those are capital offenses and there would be what Judge Burrell's referred to as a sentencing phase or trial or penalty phase or trial.

And at that point, the parties would each put on different evidence. Either could be about the crime that was involved there, it could be about Mr. Kaczynski. And there might – there would undoubtedly be some aggravating evidence which would be evidence the prosecution would urge that the proper penalty was death and there would be evidence that would be put in by the defense that would say that the proper penalty should be life.

Would you have any problem in just listing to all that evidence and making the decision between those two alternative penalties?

A. No, I don't believe so.

Q. You don't feel you would come in, having made the decision beyond a reasonable doubt as to guilt, you don't feel you would come in with leaning towards one penalty or another? I know it's hard to.

A. You know, it's hard to imagine when you are not in that situation. I mean to say, I would be totally in the middle, or that I don't, wouldn't lean more towards the death penalty. I may lean – Well, I don't know. That's a hard one to answer. I do believe in mitigating factors and hearing mitigating factors.

Q. You understand the penalties would be – at that point, the penalties you would be selecting as a juror between would be between execution or life in prison without possibility of release. The federal system has no parole, so it's life in prison. Would

you try as best you could and think that you could accomplish it? Come in there and have an open mind to either of those penalties, both of which are provided by law as alternatives?

A. Yes. Open mind, yes.

Q. Okay. Thank you.

MR. DENVIR: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good afternoon.

A. Hi.

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

A. Nice to meet you.

Q. Let me just ask one question about your family situation first. You understand that because of the schedule we have for the trial, you would be asked to assemble possibly around

7:00 in the morning?

A. Yes.

Q. And you made arrangement or can make arrangements to get your kids to school at that time?

A. I could always take them to grandma's.

Q. Okay. Let me ask you first about some comment you made in your questionnaire. Do you have your questionnaire in front of you?

A. Yes, I do.

Q. Let me – I'm not sure which question it is, but you answered that you thought that he would plead insanity, that the defendant would plead insanity. Do you recall that answer?

A. On the questionnaire?

Q. Yes.

A. No. But –

Q. That's your view?

A. That he would, that he could. I'm not saying that he would but that that would be a strong possibility.

Q. Okay. And then I think earlier today during earlier questioning in this court, you said that you thought the mental issue would be a major aspect of the case?

A. Yes, it could be, yes.

Q. What do you base that on?

A. Probably on the media things that I heard on the radio.

Q. Do you –

A. More than anything else, that would be, again, because there appears to be a heavy preponderance of evidence that the best road to go might be to plead an insanity plea.

Q. Is it based on any of the accounts you read in the media regarding the defendant's characteristic or background?

A. Nothing that I read, no.

Q. The reason I ask is it goes, again, to this issue of what you can set aside if you should become a juror. It sounds like you understand that when you come into this court you haven't presented, you haven't been presented with any evidence in the case.

A. Correct.

Q. And you already said you could put whatever you read aside and fairly consider the case. My question is: If you should not hear any evidence about any mental aspect in the case, would you have a hard time forgetting about what you read or heard outside of the courtroom?

A. Let me understand this. If I can put aside – Would you rephrase that, please.

Q. Okay. You understand that your duty is, if you become a juror, to put aside anything you heard or read about the case.

A. Right.

Q. And what I'm asking you is, could you do that with respect to this view you have that you think the mental issue is going to be part of the case?

A. Could I come in with an open mind, with a clean slate. Yes, I believe I could.

Q. And if you came in and didn't hear any evidence presented at the trial regarding any mental issues, you could forget about what you had read outside the courtroom?

A. I haven't read anything outside the courtroom.

Q. Or heard or anything upon which you based your thinking about mental issues being a component?

A. If no evidence was presented, could I put aside the whole issue, yes.

Q. Okay. Let me ask you a few questions about the death penalty. You said that you believe it's a just sentence for some people for some cases?

A. Yes.

Q. Could you explain what you mean by that.

A. I believe that there are evil people in the world who do very heinous crimes, crimes having to do with children. Unfortunately I could barely blink an eye, and I could very easily give the death penalty on child cases. For an adult, I could probably also do it. But again, I believe that there are evil people in the world who are beyond any type of rehabilitation.

Q. And you said you could probably do it with respect to an adult. Could you explain what you mean.

A. It's much easier in my mind to make a snap judgment and say I could do it for a child. It's a little harder for an adult and I don't know why. I asked myself that because still that adult is someone's father, someone's brother, someone's uncle. It's easier for me when it comes to a child perhaps because children are more helpless. It's easier for me to just know right off the top of my mind I could do that for a child. It's a little harder for that adult, but I believe I could also do it if I thought it were the right thing.

Q. One of the things we worry about is people might bring not only their own views of the evidence into the courtroom with them but they might bring their own views of the law in with them. And I understand – that you're not an expert on the law.

A. True.

Q. But you seem to have a particular view about when the death penalty is appropriate and not appropriate for certain types of crime. Is that correct so far?

A. Certain types of crime – I don't know so much for certain types of crime. I would hope that we would receive some instruction along those lines. No, it's not correct, not for certain types of crime always. I said it would be perhaps easier for me as a mother to – easier for me to give the death penalty or vote for the death penalty if it were a crime against a child is all I was saying. But as far as I would hope the judge would be giving instructions on whether it was appropriate or was not appropriate.

Q. So you would take your lead from the Court?

A. Definitely, yes.

Q. Whatever instructions he gives, you would attempt to follow?

A. Yes.

Q. And you wouldn't confine the death penalty just to cases of a child who's killed?

A. No.

Q. If you were instructed that it was appropriate to consider it in other cases?

A. No, I would not.

Q. Okay. Would you require that greater standard of proof for if it was an adult who was committing the crime? I'm sorry. If it was an adult who was killed as opposed to a child who was killed?

A. I would hope not.

Q. You think you would be able to judge it in that case according to what the judge tells you the standards are?

A. I believe so.

Q. And basically, your decision-making would be guided in so once you would be told that you could consider certain mitigating factors and certain aggravating factors and those would be provided to you. You feel you have an open mind on both scores, both aggravating and mitigating factors?

A. Yes.

MR. LAPHAM: Thank you.

THE COURT: I'm going to redact the name of this juror's place of employment from the record under the authority of my anonymous jury order. And I hope that the media sources present will ignore what they heard. You may be called back when we have the larger group, so at that time, try not to mention your place of employment. And I gave an instruction earlier about avoiding information about the case. If you could abide by that instruction, I would appreciate it. Thank you for your responses.

I'm now going to have my deputy clerk take you to the adjoining room.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 60th randomly selected juror.

A. Thanks.

Q. I will probably reference you by that number during this questioning process. Let me get your questionnaire.

Is this your questionnaire?

A. Yes it is.

Q. I'll leave it at the ledge. You indicated that you wanted to respond to at least three questions in private?

A. Right.

Q. Does the matter referenced in those questions have any bearing on whether you can be a fair and impartial juror in this case?

A. No.

Q. Do the matters referenced in those questions affect whether or not you will be able to devote your full attention to this case without having your ability to do so bothered or interrupted by those matters?

A. Yes.

Q. It does?

A. Yes.

THE COURT: I'm going to have to discuss this matter in private. The questions indicate to me that she may very well have a legitimate interest in not having those matters discussed publicly. I have to make that threshold determination before discussing any matter in private.

I have made that threshold determination. I thought we could still proceed in open court provided that the answer to both questions I just asked was no. But in the face of affirmative answers, I'm going to have to discuss it in private. I think we may do it right here.

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

THE COURT: Okay. We're going to ask you to change your location. You understand that we're going to discuss it in a more private setting, and if I concur with your determination that it should be a matter kept in private, I will seal the record. But the parties have a right to hear what you tell me. We're going to do it over here.

THE COURT: Let the record reflect we are going to excuse juror number 60 for health reasons. Okay.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 61st randomly selected juror. I may periodically refer to you by that number as I ask you some questions.

When you respond to my questions, if you will use the microphone that's in front of you and speak directly into it so that your voice is amplified in a way that will allow the parties to hear at counsel table.

You mention in your juror questionnaire that you have a financial hardship reason for asking to be excluded from further consideration for service on the jury. I'm wondering – first, am I right in what I said?

A. Yes.

Q. Okay. I'm wondering whether the trial schedule I indicated using in this case will alleviate that financial hardship?

A. No, it won't. What I meant by financial hardship was that that work will pay for my salary for 30 days. Thereafter I get nothing, my medical will expire and everything. I'll have to pay all that myself.

Q. Is there any way your employer will make an exception to allow you to serve on this case?

A. I don't think so, because they've discussed this – the natural thing at my work was they paid jury duty. They pay it. If you had jury duty that lasted a week or three days, it was no question. Once this case came up and I was selected, they made some changes there.

Q. You're indicating that they told you in no uncertain terms they would not extend the policy for you?

A. They had no policy.

Q. They instituted a policy after you were selected?

A. More or less. They talked about it and they told me what they would do for me, and then they said they would pay up to 30 days. Actually, they never really had a policy. It was just expected, I guess, being in management that when this case came up, they discussed it and they said we can't do it for four months, six months, that's too long.

Q. Are you the only person in your family that's bringing in income?

A. I'm the only person in my family. I don't have a family. It's just me.

Q. I see. Do you have a type of job where you can work part time and still be able to pay all your bills? I'm wondering – that's not a good question.

I'm trying to determine whether you would be able to go to work at 2:00 o'clock?

A. No, sir. I live in Manteca, which is 60 miles from here. I work in Union City, which is about 62 miles from my house heading west. If I left here at 1:00 o'clock and I reached my house at 2:00 o'clock, by the time I reached my work they would be quitting.

Q. What time does the work typically end?

A. At 3:15.

Q. I see.

THE COURT: The parties want to communicate with each other and stipulate?

MR. DENVIR: We would stipulate, Your Honor.

MR. LAPHAM: Just one question. I think I already know the answer.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, you work a normal 9:00 to 3:15 workday five days a week?

A. Actually, I'm a factory superintendent. I work five days a week. And I leave my house at 4:00 in the morning, arrive at work at 5:00. The day starts at 6:45 and lasts until 3:15.

Q. Long day. Do you work weekends?

A. No, sir.

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

THE COURT: Okay. We're going to excuse you. You're excused from further service from this trial. For the time being, I'm just going to let you go to the adjacent room until we can escort you back to where we picked you up.

Bring in the next juror.

(Juror 62 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 62nd randomly selected juror. I may reference you by that number periodically during this questioning. The parties may also reference you by that number.

When I ask you questions, I would appreciate it if you would use the microphone and then speak to the parties at counsel table so we can make sure they'll hear your answers. They'll have an opportunity to ask you some formal questions after I question you.

A. All right.

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

A. No.

Q. Since that time, have you discussed this case with anyone?

A. No. When it comes on, I turn it off.

Q. All right. You're indicating that if something is being reported, you don't listen to it?

A. No, I turn it off.

Q. All right. Thank you. I appreciate that you are doing that. 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 information you received about this case from any source affected your ability to be a fair and impartial juror?

A. No, I don't think so.

Q. What type of information have you received about the case even before Cal Expo?

A. Well, if I remember correctly, the gentleman lived in Montana. Very little else. I just haven't paid any attention to it.

Q. Have you received any information about the allegations involved in this case?

A. I suppose over the years I probably have.

Q. What type of information do you have memory of?

A. Seems to me like there was a gentleman that lived in Sacramento that was killed by a mail bomb. Other than that, I don't know.

Q. Has any of the information you have received about the case caused you to have any opinions at all about Mr. Kaczynski's guilt or innocence?

A. No.

Q. From your perspective, will you be able to assure Mr. Kaczynski that he will start this trial, in your eyes, on a clean slate?

A. Yes.

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

A. Yes.

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

A. I believe in the death penalty.

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

A. I don't know. I never been in a position to where I would have to do that. It would definitely be a first.

Q. Okay. Do you understand that the law requires that before imposing the death penalty, even if Mr. Kaczynski is unfortunate enough to be convicted of the offense I just told you about, that you would still be required to consider the facts and circumstances of the crime during the sentencing phase of the proceeding; in addition, you would have to consider the background and character of the defendant and any other information that might tend to indicate that the death penalty should not be imposed; do you understand you would have that obligation under the law?

A. Yes.

Q. Would you be able to accept that obligation?

A. I think so.

Q. Are your views in support of the death penalty so strong that you feel that you would be incapable of considering such information before you decide whether Mr. Kaczynski should be sentenced to death, life imprisonment without the possibility of release, or some lesser sentence?

A. I don't think I understood that quite.

Q. I may not be able to repeat that question.

A. I'm sorry.

Q. It's not your fault. I didn't write that question down.

A. I didn't either.

Q. I will attempt again because I do want to know the answer. The question I believe I asked you, there is certain information you are required to consider should Mr. Kaczynski be unfortunate enough to be found guilty of the offense I just told you about, and I'm asking you whether your views in support of the death penalty are

so strong that you feel you would be incapable of considering such information such as mitigating evidence before you decide what sentence to impose, what alternative sentence to impose?

A. No, I don't think so.

Q. You don't think that your opinions about the death penalty would stop you from considering alternative sentences?

You understand the alternative sentencing I'm referencing could be the sentence of death?

A. Right.

Q. It could be the sentence of imprisonment without the possibility of release or some lesser sentence.

A. Right.

Q. If in your view the mitigating evidence that is presented during the sentencing phase of this trial truly outweighed the aggravating evidence, do you think you would be able to vote for a sentence other than the death penalty?

A. Yes.

THE COURT: I am going to allow the parties to ask follow-up questions. Which parties want to proceed?

MR. FRECCERO: The government will proceed.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. My name is Steve Freccero. I'm one of the prosecutors in this case. I want to ask you some follow-up questions.

Do you remember filling out that questionnaire?

A. Yes.

Q. That's yours, right?

A. Yes.

Q. With reference – if I could have you turn to page 32, question 121.

A. Uh-huh.

Q. Do you remember filling out that question?

A. Yes, I do.

Q. Can you tell us what was that based on, what information was that that you were referring to?

A. Well, I would feel that way about my brother if he turned me in.

Q. Is that information you received prior to filling out that questionnaire?

A. Yes.

Q. Obviously. Do you remember where you got that information, what the source was?

A. Television.

Q. Television. One of the things that the judge was talking to you about before is that in a trial proceeding, it's important that everyone realize that the only information you're allowed to consider in a trial –

A. Is what's presented here.

Q. Right. And so sometimes it's a difficult question, but one of the obligations of being a juror is being able to put aside any information they might have heard of from some other source and just concentrate on the trial.

A. Yes.

Q. If you didn't hear any information about a subject in the trial but you remembered it back from some television show, do you think you would be able to set that aside and just concentrate on what's presented in the trial?

A. Seriously, I didn't remember this until you brought it up.

Q. Well, that's good. The parties just want to make sure that whatever information is considered by jurors comes actually in the trial which is controlled by the court.

A. Right.

Q. So it's important to be able to distinguish between what you might have heard on TV versus what actually takes place.

So you understand that?

A. Yes.

Q. You feel confident you would be able to do that?

A. Yes.

Q. All right. We talked about a number of terms. Do you have a good sense of what is meant by this term mitigating factors when you hear that?

A. I think so.

Q. Okay. And as you understand it, what does it mean to you?

A. I don't know how to explain it.

Q. Okay. Well, let me ask you it this way. Another important thing is that, just like we don't want to have our judgment interfered with with anything other than evidence – that's going to be a rule. In other words, the Court is going to tell you that that's one of the rules that's – one of the things you're going to have to swear to.

A. Right.

Q. – if you're a juror. By the same token, if this case proceeded to the second phase – you remember we were talking about two different phases. The first where we're not supposed to think about punishment, simply whether the government has proven beyond a reasonable doubt that the defendant is guilty as charged. That's the first phase.

When we get to the second phase, the Court is going to give a set of instructions, and, basically, that's where you're going to hear about aggravating information, information that the government is going to argue should support the sentence it seeks.

A. Yes.

Q. The death sentence. And then mitigating information, that would be any information – it could be some circumstance about the crime itself, it could be some

circumstance about the defendant himself, something about his character or background, or any other fact that's brought to your attention that would weigh against the imposition of a sentence of death.

Now, it's very – the issue is really that if you already convicted the person, you already made that decision with the jurors, you decided that beyond a reasonable doubt, are you still going to be open to hearing about this mitigating evidence in the second phase?

A. I think so.

Q. All right. So your mind wouldn't have already been made up just because you voted to convict the person?

A. I think your mind is pretty well made up when you made the serious decision to convict him.

Q. Okay. That's what we're getting at.

A. Therefore, you've got to kind of change the whole way you think about things in order to go into the second phase.

Q. That's the issue I want to focus on. If you already got your mind made up as to the first phase, okay, guilt, you already decided that, are you open to different alternatives in the second phase, the punishment?

A. Yes. Yes.

Q. So just because you convicted the defendant doesn't mean that automatically you're going to give a certain punishment?

A. No.

Q. You would be willing to listen to both sides of the story, both parties, hear whatever evidence?

A. I think that's what you would have to do from the time you stepped into that box until you time you got out of it.

Q. Okay. And that's something you feel confident about, you're going to be able to do that?

A. No, I feel confident that I can try.

Q. Okay. And I think that's one of the things the parties are trying to probe, because when you swear an oath as a juror, that's kind of saying, okay, I accept this responsibility, and I accept the obligations that the Court is going to impose on me. And it would be a problem if you took that oath and then later changed your mind and said, well, I can't follow the law.

Do you realize that?

A. Yeah.

Q. So do you think as you're sitting there now you feel confident that if you were chosen as a juror, you could take that oath and you would be up to the job of fairly considering the evidence on both sides?

A. Yes, I think so.

MR. FRECCERO: No further questions. Thank you, ma'am.

VOIR DIRE EXAMINATION

BY MR. SOWARDS:

Q. Good afternoon, ma'am. How are you?

A. Fine, thank you.

Q. My name is Gary Sowards. I'm one of the attorneys on behalf of Mr. Kaczynski. I just wanted to pick up with some of the questions that you left off with with Mr. Freccero regarding – and I appreciate your thoughtfulness in distinguishing for him the difference between trying to do what we've been talking about as a juror versus knowing right now that you would.

You remember that answer?

A. Yes.

Q. Could you tell me a little more about what you meant by that?

A. If you've never been in that situation, you don't know what you would do. All you can do is to do the best you can by what is presented in front of you, and that means all you can do is try.

I don't think there is a person in this world that has a definite answer as to what they would or would not do in any given situation if that situation was not presented to them.

Q. And with respect to you, ma'am, when you say a definite answer to what you would do, are you thinking in terms of the particular decision, or are you thinking in terms of whether you could actually make any decision?

A. I think I could make a decision. I have never been in a position where I would feel obligated to give a death penalty. But I think I could if it was necessary, if I felt that it was necessary.

Q. Okay. And can you tell me what sort of things you were thinking of in terms of your hesitancy as to whether you could impose the death penalty?

A. I think I would have to really believe that the man was guilty – person, not man or woman. I would really have to believe that they were guilty, doing something deliberately to harm someone, to kill needlessly. I don't know how else to explain it.

Q. I think you're doing a good job. As you sit here today and think ahead to your service as a juror, can you tell me, after you have made a decision that a killing was deliberate and a killing was needless so that there was no justification for it, and there may have been even another killing that was needless and no justification for it, do you have an idea now which particular penalty you would choose on the basis of that information?

A. No, because I haven't heard the information.

Q. And the information as to what? I'm sorry.

A. Okay. I haven't heard what – I haven't heard all the evidence on both sides. So, therefore, I could not tell you what I would do in any given case.

Q. Is there a – as you think in terms of your position on the death penalty, is there one way that you would be – you know, right now that you would be leaning if you heard evidence of a senseless, deliberate killing?

A. No. There's not any way I would be leaning right now.

Q. And with respect to your answers on the – do you have your questionnaire?

A. Yes.

Q. Over on page 26, question number 103.

A. Uh-huh.

Q. Do you recall at this time what you had in mind when you gave the last part of that answer with respect to your problems regarding the time necessary to carry it out?

A. Yeah. I think the time that elapses between the time that a death sentence is given and the death sentence is carried out is cruel and unhuman punishment, because it's very seldom under ten years.

That means that the person under the sentence is sitting in death row ten years sometimes, maybe up to 15, and I think that's cruel and unusual human punishment. I think the time – if a person has been on death row that long, they ought to turn him loose.

Q. Does that give you any feelings with respect to how you might select punishment in a particular case?

A. No.

Q. Can you tell me whether that – how that makes you feel as to whether a death sentence you might return would or would not be actually carried out?

A. No.

Q. Would you have any doubt that if you were asked to vote for the death penalty and you did impose death, that that sentence would actually be carried out?

A. Yeah, I think I would. There's been quite a few of them that haven't been carried out, that have been commuted to other sentences.

Q. How would that make you feel about how serious a decision you're making; in other words, whether it's a real decision or just a –

A. It's a real decision all right.

Q. Would it make you feel as serious about it as if you were convinced that it would be carried out?

A. Yeah.

Q. Okay. And with respect to – just looking over at the question that Mr. Freccero asked you about on page 35. I'm sorry, 32. I beg your pardon. Question 121.

A. Yeah.

Q. Judge Burrell was speaking with you earlier about evidence at a penalty phase that would be introduced, and maybe for our clarity we could refer to evidence that would be pro-death evidence and that would be pro-life.

A. Right.

Q. That evidence that would make you think the death penalty is appropriate and evidence that would make you think a life is a better sentence.

One of the things that you would be asked to consider is evidence of a person's background and history. Would that be something you would be open to considering?

A. Yes.

Q. Okay. And can I ask you, with respect to question 121, what it is about any information you received that made you arrive at this conclusion?

A. I think I answered that. If it was my brother, I would feel the same way.

Q. And is that because of the act of turning Mr. Kaczynski in?

A. Yes.

Q. And nothing else?

A. No.

Q. And did you have any suggestion as to what instead his brother should have done?

A. No, I don't. I don't have any suggestions there.

Q. Okay. Now, you were good enough to tell us – and until Mr. Freccero raised this issue with you – you put it out of your mind.

What I'm wondering is, do you think that if Mr. Kaczynski's brother were to come in here and testify before you as a juror, that you would be reminded of this information that you've written down here?

A. Probably.

Q. Do you think anything about your opinion would change regarding him?

A. I don't know. Until I heard the man speak, until heard what he had to say, I really don't know.

Q. Okay. Do you think – as you sit there at this time, is there anything that you can think of that would make you likely to change your opinion about him?

A. No.

Q. Okay. And let me ask you, if someone that you heard about or had information about was in your estimation a jerk, do you think that it would be appropriate for you to be a juror in the case where that person is going to be a witness?

A. I don't think that would make any difference.

Q. Okay. So I'm – were you going to say something else?

A. No.

Q. So if someone came before you as a person to whom you formed an opinion about his character, would that in some way affect the way you're going to listen to his testimony?

A. No.

Q. Wouldn't intrude into your willingness to hear what he has to say as anything influencing Mr. Kaczynski's background or history?

A. No. I think there's only one thing that's going to really make it hard for everybody, for Mr. Kaczynski, for you, for the judge, and for us as jurors, is the media. They have made a three-ring circus out of it already.

Q. Can you tell me what you mean by that?

A. You turn on the television, the first thing on the news is – that's all you hear. You turn on the radio, it's the same thing. You open up the newspaper, it's the same thing. Right now I read the funny papers and Ann Landers, and the rest of it I put

away because I don't know what else is going to happen and I don't need any more opinions on it.

Q. And do you normally, ma'am, read the news section, sports section, other parts of the paper?

A. Yes. And I normally listen to the news all the way through. My television is on 24 hours a day. And I normally listen to the news. Now I flip through it.

Q. I'm sure Judge Burrell is grateful that you're following that aspect of his order. Is that having any disruption to your life in any other ways?

A. No.

Q. And you, without giving any specifics, ma'am, you live some distance away, approximately an hour, hour and a half?

A. About an hour.

Q. Okay. Can you tell me, with regard to getting into where you need to be to be here in court, whether that's posing any problems or have you experienced any problems?

A. No, because it's early enough in the morning, I would beat the morning traffic, and it would be early enough in the afternoon so we would also miss the afternoon traffic.

My only problem would be is if the weather, El Nino, decides to do a good number on us and we get snow. If we get snow, I do live 2,200 feet.

Q. With any luck, it won't come down that low.

A. It does every once in a while.

Q. That's right.

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

THE COURT: Yes.

MR. SOWARDS: Thank you.

Q. One other aspect I overlooked with respect to the answers you gave us on the death penalty questions, and that was with respect to your belief in the appropriateness of the death penalty for terrorist acts. Do you recall those answers?

A. I don't recall it, but I would presume it's in here.

Q. Okay. Thank you for trusting me. Let me just find that. It's over on page 27.

A. Okay.

Q. 107, about three questions down there. It's that multipart question.

A. 107.

Q. Yes, ma'am. Question 107.

A. Okay.

Q. Three down with respect to terrorism. You see that?

A. Uh-huh.

Q. My question was, with respect to your answer there, could you tell me your feelings about the appropriateness of the death penalty for someone who's convicted of an act of terrorism that resulted in a death of someone else?

A. Yeah. The Oklahoma City bombing. If a person is convicted of that crime, I think they should get the death penalty. The man who – the persons who were responsible for the big building in New York where a lot of people’s lives were in danger. That’s still terrorism.

I don’t approve of terrorism in any way, shape or form. I hate to see so much of it now in this country. It’s been in foreign countries forever. But I hate to see it move here.

Q. Before the judge asked you to stop reading about any information regarding this case, based on what you did know about the Unabomber offenses, did you categorize those as terrorist acts?

A. Yeah, kind of.

Q. Can you tell me what you mean, just a – I know you’re trying to help.

A. To the magnitude of what I told you about a person who would put a bomb on a plane, because there’s many people involved. A person who would deliberately harm children for no apparent reason, senseless. The person who is involved in this New York thing, that was senseless. That to me is terrorism.

Q. Are those then the crimes that you think – among the crimes you think the death penalty is appropriate for?

A. Yes.

Q. As you think about those crimes in general, are there any factors that, as you sit there today, you can imagine that would make you think the death penalty is not an appropriate punishment for that sort of senseless violence?

A. No.

Q. You heard what we talked about earlier is that in cases of the death penalty, sometimes you are asked to nevertheless think about whether someone who has senselessly killed people in the course of a terrorist act should nevertheless be spared the death penalty because of something perhaps that happened in their background when they were children.

A. I think a person should be responsible for their actions.

Q. And that’s irrespective of what may have happened to them as children?

A. Yes.

Q. What about given the strength of your feelings, what about situations where someone may have an emotional problem or mental problem but it doesn’t amount to insanity or an excuse for their acts and they committed a senseless act of terrorism that killed someone?

A. I don’t know. I really don’t know.

Q. Okay. Given your feelings about terrorist killings, do you think that you would be leaning strongly in favor of the death penalty for someone who’s committed that sort of an act despite the fact that they may have some kind of background problem?

A. I don’t know.

Q. Okay. You seem to be thinking there about something. Can you tell me what that was?

A. Well, kind of a deep question.

Q. I understand. It's a very deep subject, ma'am. If you can help me out, I would appreciate it.

A. I just don't know. It would be something I would have to hear. I would have to hear both sides of it. At this point, I don't know what I would say. I never been in a position where I had to.

Q. And I appreciate the difficulty of doing this. If you could take, ma'am, just a moment and just reflect on this and look in your heart and try to recall the feelings that you had when you answered my question about terrorist killings.

Can you look into yourself and tell me whether you think there's going to be difficulty considering issues like someone's upbringing as a child or background if you have evidence that a person has intentionally, senselessly and premeditatedly killed someone in the course of terrorist acts?

A. I just don't know.

Q. Let me ask it the other way, because this is an important issue. Do you know whether you could faithfully and honestly listen to all evidence of that sort of background?

A. I could listen.

Q. And then the next step is, do you think you could, without any struggle at all, give someone the benefit of that pro-life evidence despite the fact that he may have killed others in the course of a terrorist act?

A. I just don't know. I really don't know. I –

Q. That's fine, ma'am. That's exactly the sort of thing we're asking you to share with us. But I take it that the uncertainty comes from the strength of your emotional feeling about –

A. Yes.

Q. – the harm that's done in terrorist acts?

A. Yes.

MR. SOWARDS: Thank you very much, ma'am. I have no further questions.

THE COURT: My deputy clerk can escort the juror to the adjacent room. We're going to adjourn for the afternoon recess. Court will be in recess until 3:45.

(Recess taken.)

—oOo—

THE COURT: Let the record reflect all participants are present. My deputy clerk will get the juror.

(Prospective juror number 63 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 63rd randomly selected juror. I'm going to be asking you some questions. So that we can ensure that the parties hear all of your responses, I'd appreciate it if you would use the microphone that's at the stand there and then speak to the parties so that they can hear your responses.

A. Okay.

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

A. Yeah, actually. I have a medical problem, sleep apnea. And I stop breathing in my sleep. And I've been pursuing for about three years now, and I didn't really anticipate this happening, but I finally got the go-ahead for surgery, and they've scheduled it for December the 16th. So I don't know whether that – the surgery is on the 16th, and they tell me it's a seven- to ten-day recovery period after that. I don't know how that fits in with the time line.

Q. Either at home or in the hospital?

A. It's one overnight in the hospital, and if things go well, then the rest will be at home.

THE COURT: Parties.

MS. CLARKE: We would have no problem with excusing the juror.

MR. CLEARY: We'd agree also, your Honor.

THE COURT: Okay. In view of the medical explanation, I'm going to excuse you from further participation on this case. You're excused. My deputy clerk will escort you back to the room from which you came. Thank you.

(Prospective juror number 63 left the courtroom.)

THE COURT: We've just covered all the jurors that I called for today. I think we should cover a matter, though, before I adjourn.

It came to my attention that one of my reporters transcribed a sidebar conference, perhaps more than one sidebar conference. The reason why I found out about it is because there was some information discussed at a sidebar conference which concerned the workplace of a juror. And the reporter asked me whether that information should be made public. And when I probed to determine why the question was being asked, I then learned that the reporter assumed that all sidebar conferences were required to be transcribed and included in the transcripts.

I then issued a directive to the reporters that – I just issued the directive today. I just found out the information today. That I wanted the sidebar conferences to be transcribed. My practice is to have everything in a criminal case reported. Legally I don't have to do that, but I do that in just about every criminal case. I can't think of a criminal case that I've had where that has not been done.

So the directive I gave the reporters is to transcribe the sidebar conferences, to not include them in the portion of the transcript that is publicly filed, and to indicate on the nonpublic aspect of the transcript which only concerns the sidebar conference where in the filed transcript this material would have been placed had it been transcribed. So that if I ultimately decide to order the filing of sidebar conferences, I should say the transcripts thereof, then the public would know where in the record those conferences occurred.

It is my impression, it's only an impression, that at least one of the parties is of the opinion that sidebar conferences are not to be made public. I'm discussing this issue with you because I need to know your opinion on the issue.

MR. DENVIR: Did you want the parties' position, your Honor, on that?

THE COURT: I would appreciate that.

MR. DENVIR: We would agree that the nature of sidebars is that they should be transcribed and made available to the Court and parties but should not be made part of the public record at this time.

MR. LAPHAM: Your Honor, we would agree with that. We think it's a timing issue. That it would defeat the purpose of a sidebar to have a contemporaneous release of that information. The Court could certainly release it at a later point in time either after jury selection or after the trial is over.

THE COURT: What's the defense's position on the timing of the release?

MR. DENVIR: Your Honor, I don't know that we've spent a lot of time thinking about it. We think it could very well wait until the conclusion of the trial. Certainly there's no reason to do it before jury selection is completed, as far as the timing.

THE COURT: Does either side have authority on the issue?

MR. DENVIR: We don't readily available, your Honor, no. We can research it if you'd like.

MR. LAPHAM: Your Honor, it may be a case by case judgment call on your part. Maybe if the sidebar pertains to a juror who has been – a prospective juror who has been excused, then after jury selection the need for privacy no longer exists, the need for secrecy and anonymity. But if it still pertains to a juror who is selected, then it may be necessary to keep that sealed until we be finish the trial.

THE COURT: What if it doesn't pertain to a juror at all; it only pertains to whether a particular question is appropriate under the law?

MR. LAPHAM: Again, that's a judgment call. I think there may be no need for secrecy at that point. But it may be a case by case approach is what I'm saying.

THE COURT: Do you want input on any decision I reach, or do you just want me to decide?

MR. LAPHAM: Your Honor, we wouldn't want input. I think that's a decision that the Court could make.

THE COURT: You don't want input?

MR. LAPHAM: I don't think we need input unless the Court would like input from us.

MS. CLARKE: Your Honor, we'd be happy to provide some input to the Court on this if we could have a couple days on it.

THE COURT: All right.

MS. CLARKE: Little busy with a lot of things.

THE COURT: I understand. I would appreciate your input.

MS. CLARKE: Thank you, your Honor.

THE COURT: When can I expect to receive it?

MS. CLARKE: That brings up a collateral issue, if the Court wouldn't mind me raising it.

THE COURT: That's fine. We have time.

MS. CLARKE: And that would be the question of when the Court wants briefing on additional challenges for cause. We filed yesterday – both parties filed yesterday challenges for cause from last Wednesday and Thursday. And now we’ve completed some additional questioning, and I didn’t know when the Court had in mind us filing on those people.

THE COURT: I was going to talk to you about that.

MS. CLARKE: Those lines kind of crossed because we have limited – I mean we have resources, but we can only be in so many places at once.

THE COURT: Well, let’s deal with the for cause issue first. What is your idea as to when you should submit briefs or do you think you need to submit briefs? You’ve already submitted briefs. I don’t know if you need to submit additional points and authorities or not. But you know that. I don’t know what you’re thinking.

MR. CLEARY: Your Honor, I would recommend that we carry over the same approach we applied last week, which would be then on Friday of this week the parties tell each side who they’re going to be moving against, who they’re going to move to challenge for cause, briefs get filed on Monday. So it would be next Monday for the people for this week. And responses get filed on Wednesday of next week for the people of this week.

MS. CLARKE: I think it’s really whatever the Court wants, but we had in mind trying to keep the cause challenges a little closer in time to the time that the voir dire occurs so that we have a – and I know we’ve all taken notes and we have the transcript, but we thought maybe the Court would consider on this Friday hearing Monday and Tuesday of this week as well as Wednesday and Thursday of last week. I know that that would put a crunch on it, but we would try to get something over to the Court on Thursday morning or by noon on Thursday. I think the Court really needs to help us with this because it’s a question – I know that the Court has a heavy load as well.

THE COURT: It would be difficult for me to analyze your input if I receive it in the morning on Thursday because I’m going to be in trial with you. So the only time I would have to analyze it, it really depends I guess on how many for cause matters are involved. The only time I would have to analyze it would be during the lunch hour and that evening, Thursday evening.

MS. CLARKE: Mr. Denvir just mentioned he thought for this particular week we could probably file by tomorrow night given the number of people that we believe are at issue. The court reporters have been very helpful in making the transcripts available each day.

THE COURT: Okay. By what time tomorrow?

MS. CLARKE: By the close of business tomorrow.

THE COURT: 4:30.

MS. CLARKE: And that would be for Monday and Tuesday of this week.

THE COURT: I understand. Does the government concur?

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

THE COURT: Are you going to file replies?

MR. DENVIR: How about the close of business on Thursday, your Honor? I'm sure they'll be short replies.

MS. CLARKE: We might even just simply end up arguing the reply if that's a problem for the Court.

THE COURT: I want the option of not having to have argument. I want to have your input. I think this, to a large extent, involves credibility determinations. I think you would be in a position to point to matters in the record that arguably from your perspectives indicate conflicts and positions taken by prospective jurors, and perhaps you could bring something to my attention that I wouldn't have seen otherwise. I would prefer to have that input before the actual hearing so that I can analyze your positions. And I don't want to do it from the bench. I don't want to receive that information for the first time on the bench.

MS. CLARKE: Well, then in that case we would request an opportunity to reply by Thursday, close of business Thursday.

THE COURT: Can you do it by noon?

MS. CLARKE: We'd make every effort, your Honor. If we get it Wednesday night – well, that's true, I don't know if we could do it by noon Thursday.

THE COURT: I see. Okay. Let's schedule it as you've requested. And if I can't hear it, I can't hear it. We would then just continue it to another day. Both parties would then be filing replies by 4:30 on Thursday?

MS. CLARKE: Yes, your Honor.

THE COURT: Okay.

How about the other matter?

MS. CLARKE: That just eclipsed this week. I wonder if we could get the Court something on Monday on the sidebar issue.

THE COURT: That's fine. By a particular time?

MS. CLARKE: Whatever is good for the Court.

THE COURT: Noon?

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

THE COURT: Anything further to cover?

MR. CLEARY: No, your Honor.

THE COURT: Thank you.

MS. CLARKE: Thank you, your Honor.

(Recess recessed at 4:05 p.m.)

—oOo— 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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Reported by: KELLY O'HALLORAN, CSR No. 6660 SUSAN VAUGHAN, CSR
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