

# Jury Selection Day 5

Nov. 19, 1997

WEDNESDAY, NOVEMBER 19, 1997, 9:00 A.M.

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

**MR. DENVIR:** Yes, Your Honor.

**MR. LAPHAM:** Yes, Your Honor.

**MS. CLARKE:** Your Honor, could we approach sidebar for one matter before we start?

**THE COURT:** Yes.

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

(Pause in the proceeding.)

(The prospective jurors entered the courtroom.)

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

(The prospective jurors were sworn.)

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

The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. Right next to Ms. Furstenau on the same platform is my certified shorthand reporter. Her name is Susan Vaughan. She will assist in administering this trial. I trust that you will fulfill your civic duty during this voir dire or questioning process.

I thank you, both for your presence and your anticipated cooperation. You are performing an important function in our legal system. Under the principles of our justice system, the parties in this case are entitled to a fair and impartial jury. The right would be meaningless without citizens such as you 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 this 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 but also because there's been some publicity about this case. During the

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.

If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please indicate that fact by raising your hand right 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 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. This is because I've decided to use an anonymous jury in this case to protect your privacy, as I've stated in a previous communication to you.

Now I will give you a jury instruction. I will now say a few words about your conduct as jurors.

First, do not talk to each other about this case or about anyone who has anything to do with it until after you have been excused from service on this case.

Second, do not talk with anyone else about this case or 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 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 have no opportunity to discuss. For these reasons, you should avoid reading and listening to future news accounts during the time period in which you are involved in this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

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

**PROSPECTIVE JUROR NO. 65:** (Raises hand.)

**THE COURT:** Your juror number is –

**PROSPECTIVE JUROR NO. 65:** Two.

**THE COURT:** – 65. You're in spot two, but for our purposes you're 65. We'll talk to you about that individually.

**PROSPECTIVE JUROR NO. 70:** (Raises hand.)

**THE COURT:** You're number 69 [sic]. We'll talk to you about that individually.

**PROSPECTIVE JUROR NO. 66:** (Raises hand.)

**THE COURT:** Let's talk now – there's three hands.

What's the problem, sir, with the schedule? 65?

**PROSPECTIVE JUROR NO. 65:** I run a business and I often travel, and it would be a great hardship.

**THE COURT:** Okay. I think I will cover each response individually. I can see that they're all probably going to be different.

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 22, 23, 29, the 30th, and the 31st. Please raise your hand if this poses a problem.

There's no response.

Please raise your hand if you do not understand any of the following when I give you an opportunity to respond.

Your first duty as a juror would be to determine whether Mr. Kaczynski is guilty or not guilty of the charges, without consideration of any penalty.

There's no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial.

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

There's no response.

If what I've just stated has not been understood by any juror and you would prefer to ask me about that in the individual session, just remind me of that when we start the individual session, and I will give a further explanation.

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

There's no response.

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

**PROSPECTIVE JUROR NO. 70:** As far as the death penalty? Is that what you're saying? I'm sorry. I'm hard of hearing.

**THE COURT:** Okay. But you did hear?

**PROSPECTIVE JUROR NO. 70:** I believe your question is: do you have a problem in rendering a death sentence because of a belief?

**THE COURT:** You're absolutely correct.

**PROSPECTIVE JUROR NO. 70:** My religion and my faith does do that.

**THE COURT:** Okay.

(Pause in the proceeding.)

**THE COURT:** Juror number 70 [sic], did you raise your hand too?

**MR. LAPHAM:** Your Honor, I think the gentleman is 70 and the lady on the end is 71.

**PROSPECTIVE JUROR NO. 70:** I was 69.

**THE COURT:** You're right. I didn't know I had two sheets.

**PROSPECTIVE JUROR NO. 70:** So I'm not 69 anymore.

**THE COURT:** I'm sorry. We typically have six jurors. And I have a chart and I have a second sheet, and I never look at the second sheet. So it's been my error all along.

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

**THE COURT:** 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 indicate a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private. If this can't occur, let me know so I can determine whether the matter should be covered in a more private setting. This approach is taken because the trial should be open unless I have a legitimate reason to close any aspect of it.

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

(Pause in the proceeding.)

(Prospective juror number 50 took the witness stand.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You are the 50th randomly selected juror. I will be referencing you, perhaps, periodically as juror 50, as will the parties.

I'm going to ask you a few questions. And I will be able to ask the questions from the bench where I'm located if you would use the microphone when you respond to my questions and then address your responses to the parties at counsel table so they can hear everything, because they'll have an opportunity for some follow-up questions when I complete my questions.

**A.** Okay.

**Q.** Is there any reason why we shouldn't consider you as a prospective juror in this case?

**A.** Not that I'm aware of.

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

**A.** Have I – I haven't read anything about the case.

**Q.** Okay.

**A.** I've heard co-workers mention that the case is starting, nothing in detail.

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

**A.** No.

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

**A.** No.

**Q.** Even before Cal Expo, can you tell me what type of information you received about the case?

**A.** I really didn't know much about the case, to be honest with you. I knew that it was referred to as the Unabomber, and that's probably the extent of it.

**Q.** You must have heard something about it, though, other than what you've just stated.

**A.** That it involved some bombings. And that's it really.

**Q.** Did you read anything about a cabin?

**A.** No.

**Q.** Did you read anything about the state of Montana?

**A.** No.

**Q.** Are you aware of any allegations concerning the alleged Unabomber, whoever the Unabomber is, involving matters that occurred in Sacramento?

**A.** Can you repeat that? Am I –

**Q.** Have you heard anything about any allegation of this case that pertains to Sacramento, the Sacramento area?

**A.** I heard that there might have been some bombings here in Sacramento. That's

...

**Q.** What information did you receive about that?

**A.** It's not information I received. I just heard about it. And that's about the extent.

**Q.** What did you hear?

**A.** That there was bombings in Sacramento. That's it.

**Q.** That's it?

**A.** That's it.

**Q.** Okay. Have you formed any opinion in this case or do you have any preconceived notion concerning the guilt or innocence of Mr. Kaczynski?

**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 from your perspective on a clean slate?

**A.** Yes.

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

**A.** Yes.

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

**A.** Well, I – I'm not against it, but I feel that it should only be used in rare cases.

**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?

**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.** I would consider it.

**THE COURT:** The parties may conduct follow-up questions.

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

**Q.** Good morning.

**A.** Good morning.

**Q.** My name's Stephen Freccero. I'm one of the prosecutors in this case. I want to ask you some follow-up questions based on your questionnaire.

**MR. FRECCERO:** With the Court's permission, is there a copy available of her questionnaire?

**THE COURT:** Yes.

**PROSPECTIVE JUROR NO. 50:** (Accepts document.)

**THE COURT:** Is this your questionnaire?

**PROSPECTIVE JUROR NO. 50:** Yes, it is.

**THE COURT:** Okay.

**MR. FRECCERO:** **Q.** Ma'am, if you could turn to page 13, question 49.

**A.** Okay.

**Q.** And first of all I'd say, as the judge told you, there's been an order issued to protect your privacy, in other words your name, from the general public. And so I just want to ask you a couple questions, but I don't want you to specifically name the organization I'm referring to.

**A.** Okay.

**Q.** I just want to direct your attention there, and it just says that your brother worked for a certain office a couple of years ago. And I just wanted to ask you if there was anything about that that in any way influences – would influence you. In other words, did you receive any special information from your brother about his experience that you think in any way might influence you in the case?

**A.** No.

**Q.** All right. And similarly, if I could ask you to turn to page 14. And if you'd look at number 52 down there at the bottom.

And, again without mentioning specifically anything about the employer, but you note there that you have a brother and sister that works for an employer. I'd just ask you basically, anything about that, have they given you any information that would cause you to either favor or disfavor either side in this case?

**A.** No.

**Q.** All right. On page 23 – oh, I'm sorry. I'm giving you the wrong page here. It's actually question 23. That's on page 6.

Now, you noted there that at some time in the past you had worked at an advertising firm?

**A.** Mm-hmm.

**Q.** Can you just give us an idea how long you worked there, just roughly?

**THE COURT:** Does that go towards a "for cause" challenge?

**MR. FRECCERO:** Well, I wanted to ask if the nature of that prior employment, given some of the details that are potentially involved in this case, if that would give this potential juror any reason to feel uncomfortable in this particular type of case.

**THE COURT:** Okay. But she just heard your question, didn't she? Do you need to ask it, now that she has it?

**MR. FRECCERO:** Oh, no. Okay. She may not know there's any relationship between that and the case. That's the problem.

**THE COURT:** Okay.

**MR. FRECCERO:** Q. If you were to learn that – if during the trial the information that one of the victims in this case had been working at an advertising firm, would anything about your prior relationship, your prior work at such a firm, affect you in any way, do you think?

**A.** No.

**Q.** Okay. You wouldn't identify with one more than one side or the other because of that prior experience?

**A.** Oh, I just answered phones, really. I didn't do much else.

**Q.** Okay. All right. Thank you.

All right. If I could ask you to turn to page 27, question 107. And that's pertaining to your views on the death penalty.

And as you see in that question – there's a series of four questions. On each of them, you noted your response was that you disagreed somewhat with the proposition. Can you just give us some idea of what you were thinking about at the time that you responded to those?

**A.** Can I read the questions?

**Q.** Sure. Sure.

**A.** (Examines document.)

**THE COURT:** Aren't there four questions in that area?

**MR. FRECCERO:** Yes, sir.

**THE COURT:** You want her to give you a narrative that embraces all four questions?

**MR. FRECCERO:** Well, she's made the same response for each one.

**THE COURT:** So your answer to my question is yes?

**MR. FRECCERO:** Yes. Yes, sir.

**PROSPECTIVE JUROR NO. 50:** (Examines document.) Well, every – each question was pretty direct. They're yes or no. And I would need more information. So I disagree.

**MR. FRECCERO:** Q. Okay. And that's basically the reason, because you feel like there's not enough information there for you to make –

**A.** To go either way; yes.

**Q.** Okay. And so the – one of the things we're talking about here, and we're just trying to get a sense from you, I take it from your responses to the judge that you're a person who's open to any of the alternative punishments that's been discussed in this case, in other words, possible death sentence, life imprisonment without release, or some other sentence?

**A.** Yes.

**Q.** Okay. You'd be willing to wait until you got to that part of the case, if it came, because remember we're talking about two parts to the trial. Remember that? You'd be willing to wait until it got to that second phase, if it got there, and keep an open mind as to which penalty would be appropriate?

**A.** Yes.

**Q.** You'd be willing to listen to the arguments and the evidence of the defendant, the mitigating – what was referred to as mitigating factors?

**A.** Can you repeat that?

**Q.** Okay. In the beginning we talked about – you were given a brief instruction about aggravating factors and mitigating factors.

**A.** Mm-hmm.

**Q.** Did you have some sense of what that meant when you heard that?

**A.** When the judge was describing it? Yes.

**Q.** Yes. And I'm just asking you simply that, do you feel confident that you could wait and withhold your judgment and just wait to hear what those different factors are?

**A.** Yes.

**Q.** Okay. And do you think you would go into that second phase leaning one way or the other?

**A.** Well, it's hard to say. I think I would keep an open mind until I got the mitigating or aggravating factors. And that's in the second phase, correct?

**Q.** Right. Right. We're talking about – I know it's kind of – you've gotten a lot of information in a short period of time. But the basic principle is just that when we're talking about the penalty, that's a separate issue.

**THE COURT:** I think she said that she understood what you said. You're telling her something I think she already knows.

**MR. FRECCERO:** Q. All right.

So, in your view, you don't think that you personally would have any problem withholding judgment until after you've heard both sides?

**A.** No, I don't think so.

**MR. FRECCERO:** Okay. Thank you.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

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

You do have that questionnaire, I guess. I have a follow-up question, if you could look at page 13. That's the same question that was asked on number 49. Do you recall, when your brother held that job, whether it was with the federal government or the state government? Did he ever say?

**A.** I have no idea.

**Q.** No sense at all?

**A.** No.

**Q.** Okay.

**A.** I have a lot of brothers and sisters that have different employment, so it's hard to keep track.

**Q.** Was this a summer job or one-semester job?

**A.** It was an internship of some sort, and I don't know how long he had it.

**Q.** But you don't see it has anything to do with being a juror in this case or . . .

**A.** No.

**Q.** And then if you could turn to the next page.

**THE COURT:** Could you grab that microphone and pull it a little closer to yourself?

**PROSPECTIVE JUROR NO. 50:** Oh, sorry. (Complies.)

**THE COURT:** Okay.

**MR. DENVIR:** **Q.** If you'd go to the last question.

And you had a brother and a sister who apparently worked for the federal government. Am I right that neither of those are involved in law enforcement in any way?

**A.** No.

**Q.** They're in some other federal agencies unrelated to law enforcement?

**A.** It's unrelated to law enforcement.

**Q.** Okay. If you could look at page 11, question 41, you said when you received your jury summons you were surprised because you had never been summoned for jury duty. Was that basically just because you'd never been called before? Didn't have anything to do with this case, being summoned for this case?

**A.** Before I even opened it, I mean it said – it said court district. And I assumed it was –

**Q.** You knew you had been had, huh?

**A.** Yeah.

**Q.** Let me ask you, then, just generally about this particular case.

As you may know or may not know, these so-called Unabomber events stretched over a period of time, the crimes attributed to that person or charged to that person. Did you pay any attention to them as they occurred over time in the media, radio, TV, newspaper, as they occurred?

**A.** I paid attention to the extent where they would – have the picture of the so-called Unabomber. That’s about it. I would never listen to the story. I really don’t watch the news a lot.

**Q.** How about newspapers? Did you ever read stories about either of the crimes or the person who was arrested?

**A.** The same. I would see maybe a picture. And I don’t read the newspaper on a daily basis. Maybe once a month, if that.

**Q.** It sounds like you’ve got fairly limited exposure to information about the case. Is that a fair statement?

**A.** Yes.

**Q.** And you don’t feel that would have any affect on you as you came into the case, any preconceived notions about whether Mr. Kaczynski’s guilty or what the sentence should be?

**A.** No.

**Q.** I think Judge Burrell made clear to you that two of the charges that Mr. Kaczynski’s been charged with – I guess there’s 10 charges – are capital offenses. In other words, Congress has passed a law that said that one of the possible penalties is execution, the death penalty, and another one is life without possibility of release. There’s no parole in the federal system. And as I understand it, you don’t have any particular preconceptions about those two particular possible alternative sentences at this point in time?

**A.** No.

**Q.** And you understand that this, unlike other cases, there’s really two parts to this type of case, or could be two parts. One is a normal trial about guilt or not guilt. And if the jury were to find Mr. Kaczynski guilty of either of these two particular charges involving one incident that occurred here in Sacramento, then you’d have the second, the sentencing or penalty phase or trial, separate trial.

Now, I guess what I would – I’d have to ask you to ask yourself, if you sat on the jury and you found Mr. Kaczynski guilty beyond a reasonable doubt of one of those two charges or both of them which involved the mailing of or placing, mailing of a bomb with intent to kill resulting in death, as you went into the penalty phase where you have to determine between the two penalties would you have any preconceived thoughts as to what would be the proper penalty?

**A.** You’re saying if he’s found guilty?

**Q.** Found guilty beyond – you wouldn’t go into the second phase unless you found him guilty beyond a reasonable doubt guilty of one or both of the two capital offenses.

**A.** I believe I’d go into the second phase – you still can weigh both options, correct?

**Q.** Correct.

**A.** I believe I would still weigh both options.

**Q.** And you understand that in the second phase, you would probably hear additional evidence by the Government and additional evidence by the defense. The aggravating evidence is what the Government thinks suggests the death penalty, and

the mitigating evidence is anything that the defense feels it should be less than the death penalty, should be life. And you'd be able to listen to both of those and then make a decision between the two of those that are provided by law?

**A.** Well, I would have to listen to both of them to come to a conclusion, yeah.

**Q.** Well, some people have a hard time, because of their feelings about the death penalty or life without parole, without release, that they maybe have a hard time listening to evidence on both sides and making a decision. And you don't feel that you're in that position?

**A.** No. I feel like I would have to listen to both sides in order to make a decision.

**MR. DENVER:** Thank you.

**THE COURT:** Please escort her.

**MR. LAPHAM:** Your Honor, before we excuse the juror, could we approach sidebar?

**THE COURT:** Okay.

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

**MS. CLARKE:** Your Honor, I think given that information, we'd stipulate to thank and excuse the juror.

**THE COURT:** Okay.

(Prospective juror number 50 left the courtroom.)

(Prospective juror number 65 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You are the 65th randomly selected juror. I will be asking you some questions, and I may reference you by that number during the questioning.

**A.** Okay.

**Q.** Is there any reason why we shouldn't consider you – we shouldn't continue to consider you as a prospective juror in this case?

**A.** I do have some major hardships that would occur due to my job.

I have a medical condition that would be of – I prefer to talk about that in private.

**Q.** Well, let me say something to see if we can cover aspects of that in public, because that jogs my memory. I now remember that. And I'm sorry I didn't remember that at first.

Let me tell you the tentative schedule I could use and see if you would be able to sit, given the schedule. We would probably start – we're obviously going to start – at 8:00, unless I change my opinion on that, and we would probably be in session from 8:00 until 9:30. That would be an hour and a half. We'd take a 15-minute break. And then we'd be in session from about 9:45 to 11:00 o'clock – that's about an hour and 15 minutes – take another 15-minute break. And then we'll be in session from 11:15 to 1:00, be about an hour and 45 minutes. Would you be able to serve with that type of a schedule?

**A.** No.

**THE COURT:** I want the parties to approach the bench.

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

**THE COURT:** Given the difficulty you've just indicated, sir, we're going to excuse you, sir. Thank you for participating in the process.

(Prospective juror number 65 left the courtroom.)

(Prospective juror number 66 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You're the 66th randomly selected juror. I'll probably be referencing you by that number periodically. Is there any reason why we shouldn't continue to consider you as a prospective juror in this case?

**A.** Yeah. My two adult children live with me and my wife, and also my grandchildren. And I'm the sole provider for all these people. And I have to work overtime. I work a lot of overtime on my job so that we can live comfortably.

**Q.** Okay. You've already heard what I've indicated as a schedule. That wouldn't work for you at all?

**A.** No. I work the midnight shift. I work 12:00 till 8:00 in the morning. I don't get off till 8:00.

**MR. CLEARY:** Stipulate to excuse him, Your Honor.

**MR. DENVIR:** We would also.

**THE COURT:** Okay. Because of the problem it would present for you, we're going to excuse you from further participation. Thank you.

**PROSPECTIVE JUROR NO. 66:** Thank you.

(Prospective juror number 66 left the courtroom.)

(Prospective juror number 67 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You're the 67th randomly selected juror. I may reference you by that number during this questioning process. When I ask you questions, if you could use the microphone, and that would ensure that your voice is amplified and the parties at counsel table would be able to hear your responses.

Is there any reason why we shouldn't continue to consider you as a prospective juror in this case?

**A.** Yes, there is. My son is employed by the post office, and he has talked to two of the inspectors that are going to be testifying here. He's helped with some of the background in different items that they ask him about. He helped.

**Q.** So you have information that your son has given you concerning his work?

**A.** Yes.

**Q.** And it relates directly to this case?

**A.** Yes.

**MS. CLARKE:** We'd stipulate to excuse.

**MR. LAPHAM:** May I just ask a few questions, Your Honor?

**THE COURT:** You can probe.

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

**Q.** Ma'am, my name's Steven Lapham. I'm one of the prosecutors on the case.

Your son had – you don't have to disclose specifically what his employment was, but you're saying he did some work on the Unabom case?

**A.** Well, yes. Indirectly. He answered questions, and he's friends with the inspectors that are going to be testifying.

**Q.** There may be no postal inspectors testifying. And if – well, let me ask you this first: did you actually discuss the case with him, with your son?

**A.** Yes, because I live with my son.

**Q.** Oh, you do?

**A.** When I got the subpoena, he said – well, you know, that I talked to him about that; yes.

**Q.** And did he provide you facts about the case?

**A.** No. No.

**Q.** So what was the nature of the information he provided?

**A.** It's just that since he is a postal worker, that he had inside information on some of the questions.

**Q.** Is he a letter carrier?

**A.** No, sir. He's a clerk. And also in 1985 he was working at the Royal Oaks distribution center when the bombs were mailed through there, when the packages came through there.

**Q.** And he didn't provide you any facts about the case?

**A.** No.

**Q.** But did he provide you information about any of the bombings that occurred over the years?

**A.** No. Just what I know about them.

**Q.** So what you know about that is just what you've read in the papers?

**A.** Yes.

**Q.** And I take it any information that he would have gotten would have been in the nature of fliers that the post office would have put out periodically?

**A.** Yes, uh-huh.

**Q.** And that information was available to the public as well?

**A.** Yes.

**Q.** None of that information would have pertained to the defendant who's on trial today; that would have been general –

**A.** Yes.

**Q.** – information about the bombings?

**A.** Yes. And about where, right now, that any package that comes through they have to check. And they still have the bomb squad people there checking them and all.

**Q.** So the heightened security measures that have been taken as a result of the Unabomber's activities?

**A.** Yes, mm-hmm.

**MR. LAPHAM:** Your Honor, it doesn't sound like she has any direct information that would bear on –

**MR. LAPHAM:** **Q.** Would any of this information affect your ability to consider the information in court if you were to be selected as a juror?

**A.** No.

**THE COURT:** I understand.

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** I was on the verge of excusing you, and one of the parties was willing to acquiesce in that, because I received the impression that you had special information about this case. And you just indicated to –

**A.** He's just told me that, you know, he knows the two inspectors and everything, and that he had – he helped looked up some of the information on the stamps and the wrappings and things like that, that he had to look and he told them.

**Q.** Is it your feeling that what he had to do relates to this case?

**A.** Yes.

**Q.** And how do you believe it relates to the case?

**A.** (Pause.) I'm very nervous.

Well, one of the . . . I don't know. I just – I think because he's working for the post office, which I also have a son-in-law and a brother-in-law that works for them, and that the packages did go through the mail and all. And at the one time where he was working at, when the one bomb went through there, that if something had happened that the bomb blew up, my son could have been killed. That's a feeling I have.

**Q.** I'm going to ask you some questions from the podium.

Because of what you just related, does that cause you to have some type of emotional concerns about what you believe could have occurred to one of your loved ones and that could carry over into this case?

**A.** Yes.

**Q.** I appreciate the things you've told us. The only way the parties can meaningfully exercise their constitutional right to a fair and impartial jury is that we have individuals such as yourself telling us things that are on their mind and deep in the crevices of their heart. And I do, I think, also appreciate the fact that you're in this formal setting, which probably makes it more difficult to communicate. But do you have feelings about this case that cause you to believe that this is not the type of case you should be a juror on?

**A.** Yes.

**Q.** Have you already related the essence of those feelings to me? Are there things that you have on your mind that you haven't told me yet that would be part of the feelings you're referencing?

A. No. I think I've told you just what I feel.

Q. Okay. Do you think you could be a fair and impartial juror in this type of case and allow Mr. Kaczynski to begin this trial with what we sometimes refer to as a clean slate, which means that you presume he's innocent and you only make a determination as to his guilt or innocence based upon the evidence that's brought into the courtroom?

A. Yes, I do.

Q. You do feel you could do that?

A. I feel I could; yes.

Q. Well, what is it –

A. I still feel –

Q. I'm sorry?

A. It's still my son that might have been – and he's my only son. That's the only thing that would matter.

Q. I understand. Can you tell me how that, if it in fact could, how that could that interfere – it sounds like that could interfere with your ability to judge the facts of this case? Would it? Do you understand that question?

A. Yes. Yes, I do. I'm trying to just think some about it. (Pause.) I don't know. In a way, I think I could put my own personal feelings aside in the matter . . .

Q. Is it possible – did I cut you off?

A. No.

Q. Is it possible that you could be on this jury, and you could hear evidence concerning bombing events, and that that could cause you to think back to what could have happened to your son and cause you to lose your focus on just the evidence in this case?

A. I'm not sure.

Q. As you sit in that seat at this moment – I'm sorry for asking. I have to ask these questions.

A. No, I know you do.

Q. As you sit in that seat at this moment, you're not able to provide both sides the assurance that they don't have to worry about these obvious, understandable feelings that you have about what could have happened to your son?

A. (Pause.) I don't know.

**THE COURT:** Okay. Thank you, ma'am.

Do you want to say something to me, parties?

(Discussion off the record among Mr. Lapham, Mr. Denvir and Ms. Clarke.)

(Discussion off the record among Ms. Clarke, Mr. Sowards and Ms. de La Rue.)

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

**THE COURT:** Thank you for your responses. I'm going to excuse you from further participation in the case. My deputy clerk will escort you to the other room. Thank you very much.

(Prospective juror number 67 left the courtroom.)

(Prospective juror number 69 entered the courtroom.)

**VOIR DIRE EXAMINATION  
BY THE COURT:**

**Q.** You're the 69th randomly selected juror. I may reference you by that number periodically.

**A.** Okay.

**Q.** Is there any reason why we shouldn't continue to consider you as a prospective juror in this case?

**A.** Due to where I live, it's difficult – I have two small children that I need to get to school. The 7:00 o'clock becomes a problem. But that's about it.

**Q.** I'm going to ask you to use that microphone.

**A.** I'm sorry.

**Q.** I should have asked you that initially, because the parties need to hear your responses. And I think your responses were heard.

Are you able to make arrangements so that your children would be taken care of if you were to serve on this jury?

**A.** It depends on how long it is. It would be presuming a lot, because I would need to be leaving by, say, 5:30 in the morning. My day care doesn't start till about 6:30. So there's the hour there. And then my oldest son needs to get to school, so then that's another issue. My husband works out of town a lot; we own our own business. So it just – it depends.

**Q.** It depends on what?

**A.** The length of time of the trial.

**Q.** The parties have estimated that the trial could last between three and six months.

**A.** I would be presuming a lot of people if it lasts six months.

**Q.** If it lasts three months, could you make arrangements?

**A.** Yeah, I think I probably could.

**THE COURT:** I need input from the parties on this issue.

**MR. CLEARY:** In open court or in sidebar?

**THE COURT:** Well, you can ask questions. I can get your input through your questions.

**MR. CLEARY:** Thank you.

**VOIR DIRE EXAMINATION**

**BY MR. CLEARY:**

**Q.** Good morning.

**A.** Good morning.

**Q.** My name is Robert Cleary. I'm one of the prosecutors on the case. I wanted to ask you a couple of questions about the matters you just discussed with the Court.

Your children, you say, have a – day care or a nanny or something of that nature?

**A.** I have day care.

**Q.** You have day care. And the day care comes to your house, or you drop your child off at day care?

A. No. I drop them off.

Q. And – I’m sorry – you said you would have to do that by 5:30?

A. (Nods head up and down.)

Q. And what time would you have to leave in order to get to the Sacramento area by 7:00?

A. Well, actually – I’m sorry – today it would have been by 5:30. My husband took them today, because it’s raining where we are. But to be here in Sacramento, I have to leave by 5:00. So it would be between 4:30 and 5:00 o’clock in the morning is when I’d have to be dropping them off. I’d have to leave no later than 5:00 to get here by 7:00.

Q. And who would take care of that responsibility while you were serving on the jury, should you serve on the jury?

A. Which responsibility? Taking them to day care?

Q. That’s right.

A. That’s what I’m saying. I would, between 4:30 and 5:00. I would then have to get someone to pick them up, my oldest up, and take him to school by 8:00. I would have to arrange that, probably on a daily basis, because I don’t have anybody that could do that.

Q. And when the judge asked you if the trial were three months whether you could sit, you said you could probably do that?

A. Between the group of people I know, my friends, I think I could presume on them for three months. When it starts to be six months, I’m going to have to pay extra money or find some other arrangements to do it.

Q. They’re good friends, I take it, huh?

How difficult would it be for you to do that?

A. Depends on if the kids are sick, if day care will take them if they’re sick. There’s all those issues.

Q. Does day care take them if they’re sick?

A. Depends on how sick they are.

Q. And I take it if the children were very sick, then it would be very problematic to be here?

A. (Nods head up and down.) Yeah. But they’re healthy kids.

MR. CLEARY: Could I have one minute, Your Honor.

THE COURT: Yes.

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

MR. CLEARY: No further questions on that, Your Honor.

Do you want me to do the other questions on voir dire or just on the hardship?

THE COURT: I want to talk to the parties about the hardship issue.

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

THE COURT: I think it’s obvious that you were willing to make some sacrifices to fulfill your civic duty. And that’s appreciated, and I thank you for that. But we’re

not going to ask you to do that. We're going to excuse you because of the things you've indicated are of concern.

So my deputy clerk will escort you back to the room from which you came.

**PROSPECTIVE JUROR NO. 69:** Thank you.

(Prospective juror number 69 left the courtroom.)

(Prospective juror number 70 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 70th randomly selected –

**A.** I'm sorry?

**Q.** – 70th randomly selected juror. Maybe I'll use the podium and use the microphone. I can speak directly, because it's hard for me not to look at you when I talk to you.

**A.** Okay. That's fine. Okay.

**Q.** If I speak using this microphone, do you have any problem hearing me?

**A.** Well, sometimes I do get ringing in my ears. And I just had spinal meningitis this year, and I was in a coma for two weeks and I was in the hospital for over a month, and I lost hearing in my right ear. And I had some pretty severe brain trauma.

And I've been trying to get better all year. So I am medicated, and I do take medication for it. But if there's any other noise anywhere, I can't hear. If there's noise like the lady sitting next to me creaks her seat or something like that, I lose the whole sentence that you were saying. That's why I was kind of looking towards you.

And I do – even though I'm in the sales profession, I do tell everybody in meetings, "I'm going to have to ask you 'What?' a lot," because I do miss things. It does affect my hearing when my ears start to ring. And sometimes taking an extra pill will help it, and sometimes I just need to take a couple hour break. So it just really depends.

**Q.** Do you believe you heard everything I stated when all the jurors were assembled?

**A.** I think so. To the best of my knowledge, I did.

**Q.** Because during the trial, the witness will be located where you are located. I'm assuming that you would be able to hear the witness?

**A.** Unfortunately, it's my right ear that's – unless you put the box over there (indicating) I probably could, but – it is my right ear that I lost. And that's permanent, too.

**Q.** If you were selected as a juror and we placed you in that seat that I'm pointing to (indicating), which is the closest to the jury box, do you think it would be easier for you to hear?

**A.** As long as there is absolutely no noise to my left side, to my good ear. If I'm in a restaurant and there's any noise to my left side and somebody's speaking from the right side, I can't hear anything. Or if I'm in a meeting and somebody's having a casual conversation on this side (indicating) and I'm trying to talk to somebody on this side (indicating), I have a very, very hard time.

**Q.** You're indicating that just swiveling in the chair is noise that interferes with your ability to hear?

**A.** (Nods head up and down.) Any kind of noise.

**Q.** Did it completely cause you not to be able to hear? The noise that was made by the juror in the chair?

**A.** I would pick up parts of sentences, but enough, I think, when you were talking, because there wasn't any real bad noise that I picked up I think most of what you said. But that's because it's in the morning, too, and I'm not tired. As the day gets on, if I have to really, really concentrate, you know, usually as the day rolls on, it gets worse.

**Q.** Only you can tell us whether what you are describing is something that should cause us to excuse you from this jury. What do you think?

**A.** You know, I think that it is your civil duty to be on jury duty. I was on jury duty two years ago. And I was very willing – it was a state case – to stay as long as possible.

I do have some other beliefs that I think might hurt in this case.

**Q.** We'll talk about those.

**A.** But mainly it is, I think, the medical that would be – would be why I'd want to be excused.

**Q.** Did you have the same medical condition that you have now two years ago?

**A.** No.

**Q.** When you served on a jury?

**A.** This happened in January.

**Q.** I see. So you're asking to be excused because of the condition?

**A.** Yes, I am.

**THE COURT:** Okay. Do the parties concur?

**MS. CLARKE:** That's fine.

**MR. LAPHAM:** We concur, Your Honor.

**THE COURT:** All right, sir. We are going to excuse you for that.

(Prospective juror number 70 left the courtroom.)

**THE COURT:** I think we will adjourn for the morning recess. Court will be in recess until 20 minutes to 11:00.

**MS. CLARKE:** Thank you.

(A recess was taken.)

**THE CLERK:** Court is now in session.

**THE COURT:** Let the record reflect all parties are present. Please bring in the juror.

( Prospective Juror No. 71 Enters Courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Hello. You're the 71st randomly selected juror. I'll be referencing you by that number perhaps during this questioning process.

I'm going to cover some matters initially that tell me that you don't believe in the jury system. I think you indicated that in response to a question.

A. That's right.

Q. There's a former United States Supreme Court Justice named Ward Hunt who said, I'm now quoting from that individual:

"Twelve jurors know more of the common affairs of life than does one man. And they can draw wiser and safer conclusions than a single judge."

And it's also been stated, quoting from another source, "the jury system is characterized by its intrinsic fairness and is the most rational mode of determining questions of fact."

So our founders have decided that parties should be entitled to a trial by jury. Despite the fact that some of us may disagree with the need for that, that's the law.

Will you follow that law if you are selected as a juror in this case?

A. Yes, I will.

Q. And provide the parties their right to a jury trial?

A. Yes.

Q. Okay. I think you raised your hand when you were in the jury box in response to one of the inquiries I made when you were assembled as a group.

A. Yes.

Q. Do you recall the matter that you raised your hand about?

A. Regarding the death penalty.

Q. I see. We'll cover that matter during the questioning process. Is there any reason, other than that matter, why we shouldn't continue to consider you as a prospective juror in this case?

I didn't tell you, when you respond to my questions, would you respond using the microphone so I can make sure the parties hear your responses. I should have told you that earlier.

A. Thank you. I'm not sure I understand the question. You were talking about the other things we raised our hands to, and whether or not there was a reason I did not feel I could serve.

Q. Right. Other than the death penalty matter, any other reason?

A. Financially it would be an extreme hardship since I'm single, self-employed and not a wage earner. I'm paid a fee based on the hours I work. So there would be no income whatsoever if I did not – was not allowed to work.

Q. You heard the hours I plan on keeping for this trial, the proposed schedule. That should allow you to, perhaps, work daily by 2:00 o'clock.

Would that alleviate the hardship you're referencing?

A. Well, considering that I'm working ten- and 12-hour days, it would not make me very fit to serve either my client or the Court. I would have to end up working weekends also to make up the time.

Q. You would have to do what, ma'am?

A. Work nights and weekends both to be able to cover my responsibilities.

**Q.** The parties are entitled to a fair cross-section of the community from which to select prospective jurors. You're part of that cross-section. Is it possible for to you make some sacrifices so that we can consider you for jury service on this case just for the period of this trial?

**A.** What is the period of this trial?

**Q.** It has been estimated – actually, the government has indicated that it could be over in three months. The estimate is between three and six months at this point.

**A.** So I'm being asked to basically give up my income and jeopardize my future for the court system. If I am not able to meet my client's needs, he has the option to replace me at any time, which keeps me unemployed and threatens my financial security.

I don't know that I could be a fair and impartial juror with that threat over my head.

**THE COURT:** The parties desire to question, or do you want to meet and confer?

**MR. DENVIR:** Your Honor, I believe the parties would stipulate to excuse the juror for financial hardship.

**MR. FRECCERO:** So stipulated.

**THE COURT:** All right. You're excused.

That's all the jurors we summoned until 1:30 today. Is there anything to cover during this time period?

**MR. LAPHAM:** No, Your Honor.

**MR. DENVIR:** No, Your Honor.

**THE COURT:** My deputy clerk indicated to me that one of the parties desired to cover juror number 13.

**MR. DENVIR:** I think the only thing on that, Your Honor, was – I believe that that was the juror who was asked to call her employer to see if she would be able to be replaced by a person of her own choice.

As I understand it, she made that call and reported back to your clerk. I think when we were discussing it yesterday, as I recall, it was reported back that she had said she would not have any say in that. The employer said you will not have any say in your replacement.

I think what maybe did not come up, as I understand it, the clerk was also told that the fact that she would not have any say in that would cause – make it hard for her to concentrate on the trial, which I think is consistent with what she told you in response to your questions when she was on the stand.

So that's my understanding, and the clerk can correct me if the juror reported something else.

Also, she had some kind of – indicated that she had a medical problem with her legs and indicated that she was having a problem with the van.

Again, your clerk will know exactly what the words were. But she has some kind of knee problem, and the van was a problem.

So we just want to make sure that we got an accurate picture of what she reported back. That's what I've been told she reported back. I hope it's correct.

**THE COURT:** That's correct. Everything you stated is correct. What do you want the Court to do?

**MR. DENVIR:** Your Honor, we would ask – evidently the government does not want to stipulate. We would ask the Court to excuse her. She did indicate that she had previously been away from her work for a month. Someone else had taken it over. She couldn't find anybody. It was a very unsettling experience. She said if that were to happen again for three or four months, she would be very concerned unless she could have her own replacement of choice, but she would check to see if they would do that.

She's been told she could not, and has reported back she feels that she would be distracted, unable to focus on worrying about what was happening in her office up there.

So we think that's a cause basis for excusing her along with other reasons.

**THE COURT:** The other reason involves whether she will be able to get into the van.

**MR. DENVIR:** Correct, that's the other thing. She did indicate that – she indicated a medical problem in her questionnaire. She evidently reported back to your clerk having had to ride in the van – she has some kind of problem with her knees, and I don't know what she said about that other than that is a problem for her. We think a combination of the two would be a good reason.

**THE COURT:** That knee problem or the difficulty she experienced getting into the van is a problem, I believe, that can be remedied. I think the marshals will be able to handle that problem if that problem is brought to the marshal's attention. So I don't see that as a problem at this juncture. I think the marshals would have to remedy that. If that is a problem, she would have to communicate with the marshals. I'm rather confident they would figure out how to resolve that problem.

What is the Government's view on the other problem?

**MR. LAPHAM:** That other problem being her replacement.

**THE COURT:** Correct.

**MR. LAPHAM:** I don't think that's a valid excuse. Her business will continue to operate. And it's not at all certain that the person she wants to replace her will not wind up replacing her. She has been told she won't have any say in that, but the fact that you can't dictate who's going to take over – this is a government agency, it's not like she has a financial stake in an ongoing business. I don't think that is a sufficient excuse from jury service.

**MR. DENVIR:** Could I respond, Your Honor. I don't – I think the problem is that the juror expressed a state of mind, and what she has said is that her concerns about her business while she was gone would render her unable to fully focus on the trial. She becomes a substantial –

**THE COURT:** That's if she's not replaced by an individual of her liking. So at this juncture, we don't know if she won't get her way or not. And I'm not sure that the

excuse she gave is one that justifies excusing her for cause. I'm not willing to excuse her for cause. So she's going to remain part of the pool.

**MR. DENVIR:** Your Honor, I take it that's without prejudice to our renewing it if it turns out that the eventuality she is concerned about occurs and she wouldn't be able to focus on the trial.

**THE COURT:** We would have to probe that issue further. But I would want to ask her some questions myself, which I didn't do, at least not to my satisfaction. I don't think that's a good reason for being excused from jury service. Maybe she could convince me later, but I'm not convinced at this moment.

We're adjourned until 1:30.

(Luncheon recess taken.)

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 19, 1997, 1:30 P.M.

—oOo—

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

**MR. LAPHAM:** Yes, your Honor.

**MS. CLARKE:** Yes, your Honor.

**THE COURT:** Okay. Let's bring in the jurors.

(Prospective jurors entered the courtroom.)

**THE COURT:** My deputy clerk, please administer the oath to the prospective jurors.

**THE CLERK:** Please stand and raise your right hands.

(Prospective jurors sworn.)

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

The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. To her left on the same platform is a certified shorthand reporter who will help administer this trial.

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 are entitled to a fair and impartial jury. That right would be meaningless without citizens such as you making themselves available for service on a jury. The voir dire or questioning process is an essential way of ensuring that such 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 as a group first. After a number of jurors are

questioned in this manner, some of the prospective jurors will be assembled for further questioning as a group at a later time. Those required to participate in that group questioning will receive notice as to when that will occur.

Our objective, as I've indicated, is to just be assured that we have a fair and impartial jury that will decide this case on the evidence that is presented to them in this courtroom and on the law 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 parole, 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 being a juror on this type of a case? Please indicate that by raising your hand now if you have a response.

There's no response.

The first phase of this trial, which will be referenced as the guilty or not guilty phase, will occur just 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 bring any evidence to prove his innocence.

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

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

At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase

of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too.

During this questioning, you will be referred to by your randomly selected number as a juror rather than by your name. This is because I've decided to use an anonymous jury in this case in order to protect juror privacy as I've indicated to you in a previous communication.

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

Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended or you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about this case until after you've 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 had 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 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem.

There's no response.

I contemplate observing the holiday season as follows: We will not hold court December 24, 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 poses a problem.

There's no response.

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

There's no response.

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

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

If by chance there's a juror that doesn't understand that and you would prefer to ask me about it in a more private setting, when we conduct individual voir dire, you can raise the issue at that point in time.

Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until after you've 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 give it to you in my instructions whether you agree with that law or not. Do you have any belief that will interfere with your obligation to do this?

There's no response.

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

I now want my deputy clerk to 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 are the 72nd randomly selected juror. I may refer to you by that number periodically. I looked at your jury qualification questionnaire and also the voluminous

questionnaire you filled out. And I took the liberty to call your boss to see whether or not you have to find a job within a certain period of time. It's my understanding that you have about two years to look for a job. Is that your understanding?

A. Yes. They said at the base –

Q. I don't want you to tell us where you work.

A. I'm so sorry.

Q. In light of that, is there any reason why you can't serve on this case?

A. At this particular moment I am looking for another job. For one reason, I'm a single parent. And even though they gave us two years, at this point nobody can really say for sure how long they gonna keep my organization. So that's a very, very major concern on my part to start looking for another job at this time before the actual closure.

Q. When I ask you a question, I would appreciate it – and I didn't tell you this earlier and I should have – if you would use that microphone and then speak to the lawyers at counsel table. That way I can be assured that they hear your responses.

A. Sure.

Q. It's my fault for not telling that you earlier.

A. Okay.

Q. Will you be paid for your jury service by your employer should you be selected as a juror?

A. Yes, I will be.

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

A. I have heard it on the news, 6:00 o'clock news, when I get home from work.

Q. What have you heard?

A. The jury selection, and I did pay extra attention because I know I got my notice.

Q. What information did you receive? You indicated you paid extra attention?

A. Well, some of the news, like yesterday, they said they have excused, I think, three jurors for various reasons.

Q. Is there any other information you received when you heard the news?

A. No, sir.

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

A. No, other than just it's all over Sacramento. I'm going to be honest with you. And we're no different. People kind of say what's going on and what they think one way or the other. It really doesn't influence me one bit.

Q. Are you indicating that there are people in the community discussing the case?

A. Oh, yes.

Q. I'm trying to determine if you've been involved in any of those discussions.

A. No. But in our office we do just like many people in Sacramento, they do watch the news, read The Sacramento Bee, so therefore they are aware of this case. And in the morning, one of the things, especially the fact that, again, they know I was coming

here, and they just – we don't really pay much attention, but it is around where I work. They do discuss that.

**Q.** Has anyone been discussing it with you? Have you had conversations with people at your employment about the case?

**A.** No.

**Q.** Can you explain your response so I can understand whether you were involved in the discussions you've just indicated took place.

**A.** Well, for example, yesterday when I came to work, they said that they excused a couple of jurors, and they wanted to know what would I do if I get selected. And I said I really don't know. Because I don't know much about this case. And second of all, there's really not much to tell, because you have to listen to both sides before – at least I'd have to, to even make up my own mind. People kind of say whatever they want to say about the case.

**Q.** Prior to going to Cal Expo, what information did you receive about the case?

**A.** Just I was notified in the mail that I need to show up at Cal Expo. That's about it.

**Q.** I didn't ask my question in an artful way. I'm trying to determine what you knew about the case before you appeared at Cal Expo.

**A.** Other than Mr. Kaczynski is saying that he is the Unabomber, and I think everybody knows through the media and the newspaper saying that he was the Unabomber, and also the fact that there was the last victim, so-called victim, was here in Sacramento, and that kind of hit close to home so I did pay attention to that.

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

**A.** No.

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

**A.** No, sir.

**Q.** The information that you just related concerning some other sources or some other entities or opinion or person's opinion about the Unabomber, does that have any effect on you and the opinions you've formed?

**A.** No.

**Q.** From your perspective, if you're selected as a juror in this case, will you allow Mr. Kaczynski to start this trial on a clean slate?

**A.** I'm sorry. Repeat that, please.

**Q.** I'll rephrase it. From your perspective, will you allow Mr. Kaczynski to start this trial presumed with the presumption of innocence?

**A.** Yes, I think everybody should be until they're found guilty. I think that's what you need to find out after both sides present their case. Everybody is innocent until proven guilty.

**Q.** The information that you have heard about the case, would that be information you can leave outside this courtroom so that Mr. Kaczynski only has to be concerned about what information you receive in this courtroom?

**A.** No.

**Q.** What does no mean?

**A.** It means that what you hear outside, whether through the newspaper or from the TV, that's their point of view. That's why they do have lawyers on both sides, and I think they're the experts. And people just have to listen carefully and figure out which one is telling the truth when they bring their case. In other words, I did not form any opinion outside. I can't from listening to the news and the newspaper.

**Q.** You can understand why an individual wouldn't want to be tried based upon information that occurs outside the courtroom, and that's – I'm only trying to receive assurance that Mr. Kaczynski will be tried, in your eyes, based upon information that is presented here in this courtroom.

**A.** Absolutely.

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

**A.** I believe in the death penalty if it's premeditated.

**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.** Could you explain your answer.

**A.** I believe a person, again, through a premeditated murder or murders, for the simple reason I believe nobody should take nobody's life. And if that happened to be the sentence, then be it.

**Q.** Do you understand that the law requires that before imposing the death penalty for the offense I just told you about, that would be an intentional, premeditated, cold-blooded murder, that before you could take someone's life by 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.** I am so sorry but you'll have to repeat that.

**Q.** Do you understand that the law requires that before imposing the death penalty for the offense that you indicated deserves the death penalty, that 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.** No, I don't think it should have anything to do with his background whatsoever.

**Q.** I know. I'm not telling you it does. That's the law. And I'm trying to see if you will follow the law, frankly.

**A.** I think I'm having a tough time.

**Q.** You've indicated your opinion about what should occur if you are on a jury that finds a defendant guilty of premeditated and intentional murder.

**A.** Yes.

**Q.** And I'm telling you that even if you make that finding as a juror, it does not necessarily follow that you would sentence the defendant who is the subject of that finding to death. You would still have to consider other things in the sentencing phase of the trial.

**A.** I guess so.

**Q.** Are your views in support of the death penalty for the offense that you've indicated deserves the death penalty so strong that you feel you are incapable of considering the type of information I just stated you would have to consider?

**A.** I don't think so.

**THE COURT:** I'm going to allow the parties to conduct follow-up examination.  
VOIR DIRE EXAMINATION

**BY MR. CLEARY:**

**Q.** Good afternoon. My name is Robert Cleary. I'm one of the prosecutors on the case. I'm going to ask you some follow-up questions to follow up on what Judge Burrell asked you and some follow-up questions to your questionnaire.

**A.** Sure.

**Q.** Let me start with your employment situation. And I don't want to disclose in open court precisely where you work. But I just want to make sure that you would be comfortable should you be called to sit on this jury and noting that we're going to be breaking each day at 1:00 o'clock, we're not going to sit through the afternoon, that you would be comfortable for what could be up to three months looking around for a job in the afternoon. You said you wanted to seek employment; correct?

**A.** Yes.

**Q.** And would that schedule work for you so that you could be enabled to seek employment while you sat on the jury?

**A.** I guess so. That's fair.

**Q.** That's not a problem for you?

**A.** No. I guess not.

**Q.** Judge Burrell was asking you some questions about media accounts that you read of this case. And I believe you said that in your view the media was reporting that Mr. Kaczynski was the Unabomber; correct?

**A.** Yes.

**Q.** Unabomber; correct?

**A.** Yes.

**Q.** And what you were referring to when you said that was simply media accounts. You don't have any other information or any other source of information?

**A.** No.

**Q.** And you recognize that media accounts are not always correct; is that right?

**A.** That's correct.

Q. Now, I know you've never sat on a jury before; correct?

A. I was called a couple of times but I never actually served.

Q. Do you recognize, though, that in the courtroom, the only information you'll be allowed to receive and consider is the information that gets presented inside the courtroom; is that right?

A. Yes.

Q. And you are comfortable that you'll be able to do that and put out of your mind all the things you hear outside the courtroom?

A. Absolutely.

Q. I'm going to show you a copy of your questionnaire. And I'm going to ask you some questions to follow up on some of the information you provided there.

A. Sure.

Q. If you could turn to question 94, please. And that's on page 24.

A. Okay.

Q. There are two questions. Question 94 and question 95 that ask you about your opinion of mental health professionals, psychologists, psychiatrists, and the like.

A. Yes.

Q. And as to question 94, which deals with mental health professionals that testify in the courtroom, you said you don't have any opinion about that; is that right?

A. No, I don't.

Q. That's because you've never seen any psychologist or psychiatrist testify in court; is that right?

A. Yes.

Q. And I take it that based on your answer to question 94 that just as you have no experience with seeing psychologists and psychiatrists in the courtroom, you don't have any experience with them outside the courtroom either; is that correct?

A. That's right.

Q. And would I be correct in assuming then that therefore, you don't have a basis to have an opinion about psychologists or psychiatrists either inside the courtroom or outside the courtroom; is that right?

A. That's right.

Q. When you wrote the answer that you did in response to question 94, is that what you were trying to communicate, that you don't have a basis for judging the credibility or believability of mental health professionals?

A. Yes. Like I said, I never encountered any experience dealing with them whatsoever.

Q. Okay. And so the answer you gave may be a little bit misleading, so I wanted to probe on that just a little bit. The answer you gave says I don't believe them because I've never encountered the need itself. You didn't really mean you don't believe them. You just don't have a basis to believe or not believe them; is that right?

A. That's right.

**Q.** And should you run into mental health professionals at any point in your life, would you be able to fairly assess their credibility or believability just as you would any other person?

**A.** I think so. If it occurs, I think I will have an open mind.

**Q.** Is there anything about mental health professionals that would cause you not to have an open mind in judging their believability?

**A.** No. I don't know much about them.

**Q.** You're a strong proponent of the American justice system; is that correct?

**A.** Yes, I am.

**Q.** And I believe you've reflected that in your questionnaire and perhaps in some of your answers to Judge Burrell. Because of that, are you – will you be able to set aside whatever personal views you may have about this case and about what the law should be? Would you be able to set those views aside if those views differed from what Judge Burrell tells you the law is?

**A.** That's very hard to answer. The way I believe about the American system and the justice is one of the greatest ones, since I came from another country, and I think this country has a very good system and I've always believed in it. And therefore, it would be very hard for me to change my point of view. I'd be lying if I said sure. Right now I have a very strong belief in our system, so therefore I can't just change overnight.

**Q.** Okay. And in responding to my question you were responding about your view of the American justice system; correct?

**A.** Yes.

**Q.** Let me make it a little more narrow and perhaps a little more specific. Let me ask you a question having nothing to do with the facts of this case. Let's say this was a bank robbery case. I'm sorry. Let me give you a better example.

Let's say that this was some sort of white collar crime, a type of fraud, maybe a securities fraud case, and you yourself didn't believe that what the defendant did, what the law outlaws, should be a crime. You thought that what the defendant did and what the law says you can't do is perfectly normal and should be allowed. You follow me so far?

**MS. CLARKE:** Your Honor, I have to object. It's going to lead into a hypothetical that's impossible. The death penalty is an individualized judgment for each person to make. It's not a question of following the law or not following the law.

**THE COURT:** It would be more helpful to the Court that you focus on the offense at issue.

**BY MR. CLEARY:** That's what I'll do then.

**Q.** Let me ask you some questions about the death penalty. If you could turn to pages – let's start on page 26 of the questionnaire.

**A.** 26?

**Q.** Yes. And that's where the questions on the death penalty begin, and I'm going to be following up on a number of those. But before I do that, you told Judge Burrell

earlier that you believe that you always have to listen to the facts from both sides; is that correct?

A. Yes. That's because every story has two sides to it.

Q. Is that right?

A. That's right.

Q. Would you agree with me that because of that view, that it would be unfair to either side, the defendant or the government, to judge a case before you hear both sides in court; is that right?

A. I should hear both sides.

Q. And that's something that you, on page 23, you reflected as one of your philosophical beliefs; is that correct? I'm sorry. Page 23, question 92 at the very bottom.

A. Yes.

Q. That's something you believe very strongly in; is that right?

A. Yes, absolutely.

Q. You believed that for a long period of time?

A. I think that's the only way to do it. You can't make judgment on one side without listening to the other.

Q. Take a look at question 103, please. You tell us there that you believe the death penalty should be enforced; is that correct?

A. Yes.

Q. And then you go on to say in that same question that people should pay for their crimes, especially if they commit premeditated crimes; is that right?

A. Yes.

Q. I assume you had murder in mind at that point?

A. That's right.

Q. On the next page in response to question 107, you indicated that you strongly agree with a number of propositions, someone that commits a murder, someone that murders two people, an act of terrorism in which someone dies, you strongly believe that the defendant, the person responsible for that, should get the death penalty for that; is that right?

A. Yes, if he's found guilty. Yes, I do believe.

Q. Now, when you were answering those questions, you understood, did you not, that the questionnaire was asking you for your own personal belief; is that right?

A. That's right.

Q. You're not a lawyer I assume; right?

A. Oh, no.

Q. And do you know anything about the death penalty statute or the federal law that governs death penalty cases?

A. No, not really.

Q. You know nothing at all about it?

A. No, not the legal portion of it.

**Q.** Okay. If the Judge gave you information that said that in certain instances it would be inappropriate to apply the death penalty when there is premeditated murder, would you follow the Judge's instructions on the law?

**MS. CLARKE:** Your Honor, I object. That is not the instruction, as the prosecutor knows. It's an individualized decision as to whether the death penalty is appropriate or not.

**MR. CLEARY:** And I'll be moving to that point in just a minute, your Honor.

**THE COURT:** Overruled.

**THE WITNESS:** Do I need to answer that?

**MR. CLEARY:** If you could, please. Could I read back the last question, please? (The record was read.)

**THE WITNESS:** That's very hard to answer because, again, I've never been in this situation, and I really don't know how much that the Judge's jurisdiction has anything to do as far as making my own opinion about the case. So it's very hard for me to answer that.

**Q. BY MR. CLEARY:** Because you don't know what authority the Judge has in the hypothetical I gave you?

**A.** That's right. So I really can't answer.

**Q.** Okay. I'm going to move on now and I'll give you another set of circumstances. And I want you to assume, and this is, in fact, true, that as to questions of law, what the law is and what law you have to follow, there is no higher authority than Judge Burrell. He's going to tell you what the law is that applies in this case. That's the way our system works. The judge tells you what the law is and you're bound to follow that, and the jury determines what the facts are.

**A.** Okay.

**Q.** And the jury applies the law that the Judge gives them to what the facts are as the jury finds them. Do you understand that?

**A.** Yes, now I do.

**Q.** Let me give you a situation where you have a premeditated murder, a sort of murder that in your own personal belief you think the death penalty would be appropriate. Can you envision a situation where, because the defendant had a serious personal problem – let's say he's mentally retarded, and this mentally retarded defendant murdered somebody. Could you envision a situation where under those facts you would not vote for the death penalty?

**A.** No, I can't. The fact that I don't know much about disorder, so I really can't answer that.

**Q.** What about if Judge Burrell told you – I'm going to change the question slightly here. Same fact pattern. You have someone who committed a murder, but you found out during the course of the trial that that person is mentally retarded. If Judge Burrell told you that you have to consider – you must consider that background circumstance of the defendant, the fact that the defendant is mentally retarded, would you be able to consider that, whatever your own views may be, put your own views aside and

consider the fact that Judge Burrell tells you to consider, that is, that the defendant is mentally retarded in determining if it would be appropriate for the death penalty in that case?

A. After he explained to me what his job is and what he's authorized to – I don't know, what was the word you used.

Q. Instruct you on the law?

A. Yes, I believe I could.

Q. Let me give you another example. I want to make sure you and I are talking about the same thing here. We're not having a problem communicating. Same basic facts. You're sitting in judgment of somebody who committed a premeditated murder. But you found out that there were other disturbing characteristics in the person's background, the defendant's background.

Perhaps he was the product of an abused childhood, or perhaps the defendant acted under duress, somebody was forcing him or encouraging him or coaxing him to commit this crime.

And if Judge Burrell told you, again, that you have to consider those background circumstances, you would have to consider those in determining whether in this case the death penalty was appropriate or not, would you be able to follow the Judge's instructions on the law?

A. I think so.

Q. Do you have any serious doubts about your ability to follow the Judge's instruction on the law?

A. No. Not after he explained why he's up there. Because the fact that I've never been in this situation before, I really don't know much about the Judge and the different lawyers, so therefore I don't know.

Q. And before I told you a few moments ago that Judge Burrell is the highest authority in determining what the law is. He tells you what the law is, and our rules require you to follow that law, you were unaware of that fact?

A. That's right.

Q. We've talked about, in the last few minutes, a couple of circumstances involving either the defendant, the hypothetical defendant, or the crime. We mentioned an abused childhood. We mentioned mental retardation. We talked about the crime being committed under duress. And then we talked about what Judge Burrell hypothetically would tell you about those things. And you told us, I believe, that you could consider what Judge Burrell is telling you and evaluate those factors in determining whether the death penalty is appropriate or not. Is that correct?

A. Yes.

Q. Can you see, as we go through these questions, that until you hear all the evidence, including the background of the defendant and all the circumstances of the crime, as well as Judge Burrell's instructions on the law, that it is very difficult to determine what the appropriate sentence should be?

A. That's right.

**Q.** Is that a fair statement?

**A.** That is fair.

**Q.** And is it also fair to say that even given tough views and perhaps strong views that the death penalty is appropriate when there is a premeditated murder, am I correct in saying that you recognize there may be other factors and circumstances, either as to the defendant or as to the crime itself, that you would have to consider before you judge in a particular case whether the death penalty is appropriate or not?

**A.** Yes.

**Q.** And you also recognize, now that we've talked about it, that Judge Burrell will be giving you some guidance on which factors he would assess and not assess?

**A.** That's right.

**Q.** Let's assume – and this gets all the way back to where I started this line of questioning. Let's assume Judge Burrell told you hypothetically that the defendant is mentally retarded and you must consider that in determining whether a death penalty is appropriate or not. Let's assume you disagree. You personally disagree. You don't know what the law is, but you think that that's a wrong law. That's not a good law. You personally disagreed and thought that whether the defendant is mentally retarded or not should not matter.

Can you give us your assurance that you will, nonetheless, in that circumstance be able to set aside your view and apply the law as Judge Burrell gives it to you and take into account and consider the fact that the defendant is mentally retarded?

**A.** Yes.

**MR. CLEARY:** Can I have one moment, your Honor? Thank you.

Nothing further, your Honor. Thank you. Thank you.

VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

**Q.** Good afternoon.

**A.** Good afternoon.

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

**A.** Hi.

**Q.** And I had some follow-up questions, if I might, about the death penalty. I think it's important that you feel comfortable with answering the questions and not feel like we're trying to tell you what to say. Because I know this is a difficult thing for you.

**A.** Yes.

**Q.** In your questionnaire – Do you have it?

**A.** Yes.

**Q.** At page 28. Question 108 at the top.

**A.** Uh-huh.

**Q.** Now, this was when you were at Cal Expo, and I take it that you were thinking seriously about the answers that you were giving to the questions; right?

**A.** Yes.

**Q.** You marked where one person intentionally kills another person, the death penalty is always justified; right?

**A.** Yes.

**Q.** And that's a belief that you have. I mean, people feel one way or the other about the death penalty, but that happens to be your belief?

**A.** Yes, I do.

**Q.** And, in fact, you attempted to help us understand your views on the death penalty with marking on page 27 at question 107 that where anyone plans and commits a murder, you strongly agree they should get the death penalty; right?

**A.** Yes.

**Q.** And that was a belief that you have. I mean, you were telling us the truth when you marked that?

**A.** Yes.

**Q.** And anyone who deliberately murders two or more people should get the death penalty, you strongly agreed with that; is that right?

**A.** Yes. Again, any time it's premeditated. That's a big difference.

**Q.** That's the critical distinction for you, is that it's planned and premeditated?

**A.** That's right.

**Q.** So when you have a murder that is committed by someone who is able to premeditate it and you find beyond a reasonable doubt that they have premeditated it, it was intentional on their part, planned out, then the death penalty is the appropriate sentence in your opinion; right?

**A.** Yes.

**Q.** And the same thing with an act of terrorism that results in the death of someone. I take it that you would believe that that's a planned act, an act of terrorism?

**A.** Yes. Anybody who does terrorism, for some reason I can't even comprehend.

**Q.** And so the death penalty should apply in those circumstances?

**A.** If he's found guilty.

**Q.** Yes. And I think that maybe is the critical point that you're trying to tell us, is that where you're going to do your most weighing is in the determination of whether the person is guilty or not.

**A.** That's right.

**Q.** And once you've decided that the person is guilty of intentional, planned, premeditated murder, then that equals a death sentence?

**A.** Yes.

**Q.** And so when you told the Judge that you'd have a tough time getting over those feelings, you meant it?

**A.** Yes, I did.

**Q.** And when you told the Judge I just can't get over those feelings overnight, you meant that?

**A.** Yes, I did.

**Q.** So when we hypothesize to you that, well, what if somebody's mentally retarded, that really isn't something that's going to be considered in the sentence?

**A.** Again, the fact that I don't know anything – much about mental disorder or whatever, I really can't – I hear it all the time. They use mental reason for different cases. I guess I'm going by, again, the fact that I've never been involved in any – nobody in my family that had mental problems. So to me, using a mental reason is almost like a cop-out.

**Q.** So that's really not something that you want to hear about?

**A.** It's not so much not to hear about, but it's just, again, they use it so many times. It's almost like me, I could turn around and kill somebody right now and say, oh, I'm mentally –

**Q.** Sorry. I was crazy when I did it?

**A.** Yes. And to me that's such an easy way out, and for some reason I find that hard to accept.

**Q.** Have you read about the use of I was crazy, I must have been crazy, I couldn't have meant to do it? Have you read about that or heard about that in cases?

**A.** No. I just hear it all the time. They use, oh, he has mental problems, so therefore – or he was abused as a child or he was – the parents left him. I think people are responsible for their own actions.

**Q.** And should take responsibility for their own actions?

**A.** That's right.

**Q.** When you say you've heard about it a lot, where have you heard about it? Is that from friends, family, co-workers?

**A.** Mostly on the news when they say that they have a mental problem or they were abused as a child, so therefore they should be excused for their crime. For some weird reason, it's just hard for me to believe it could be that easy to get away or to get out of the crime that person deliberately done to other people. Because I guess many people just like myself, a lot of people I know, you know, you follow the law and that's about it.

**Q.** Right.

**A.** And you feel comfortable about it.

**Q.** So you don't try to excuse your conduct by saying I didn't have control of my senses or, well, look at me, I had an abused childhood or something like that?

**A.** No.

**Q.** Because even if you know that, it's still your core belief in your heart that they should take responsibility for what they've done?

**A.** That's right.

**Q.** And if what they've done is a premeditated, deliberate, intentional murder, then they need to take responsibility by paying with their life; right? I'm talking about your belief system.

**A.** Yes.

**Q.** And is that right?

A. Yes, I do.

Q. I'm not trying to change your mind. I'm just trying to understand.

A. No. I don't think you can.

Q. When you say to us that – and I think this was in your questionnaire too – that you're the kind of person that wants to hear both sides before you make a decision.

A. That's right.

Q. So what you would be listening for to hear both sides about is whether or not the murder was a deliberate, intentional murder; right?

A. That's right.

Q. And once you make that finding beyond a reasonable doubt, that equals the death penalty?

A. Yes.

Q. So the weighing both sides is to whether or not the person did commit the intentional, deliberate murder?

A. That's right.

Q. Can you envision a circumstance, you've sat on the jury and you have, along with your other jurors, found beyond a reasonable doubt that there was an intentional, deliberate, planned murder.

A. Uh-huh.

Q. You've made that finding.

A. Yes.

Q. Can you think of a time that you would ever sentence to other than death?

A. I think if – I believe there would be 12 jurors. I think you have to talk it over and you have to let everybody know how you feel about it, what you feel and what you find, again, after weighing both sides. And that's why there's no one juror should make a decision. You should talk it over with the group and let them know exactly how you feel about it.

Q. Right. And how you would feel about it is that the only appropriate penalty for those kinds of circumstances is a sentence of death because of the person taking responsibility for themselves?

A. Yes. Also for the horrendous crime that they have done.

Q. That's how you feel about it?

A. That's how I feel, yes.

Q. There will not be a time that a judge will ever tell you to change how you feel about it?

A. Is he allowed to tell me this, to change how I feel about it?

Q. What the Judge will tell you is that you've got to listen to your other jurors, you've got to listen to what the government says and what the defense says, and then you've got to make up your own mind.

**THE COURT:** Well, I'd also instruct her on the law.

**Q. BY MS. CLARKE:** Absolutely. So the Judge will tell you that you must consider what we call aggravating factors. And in the case we're talking about, it would be substantial planning, deliberation, intentional murder.

**A.** Uh-huh.

**Q.** And that you would consider it against what we call mitigating circumstances, like the person's background. That's what you would consider. But then you'd look inside your heart and decide what was the appropriate sentence. And what I'm hearing you say is that the – what the appropriate –

**THE COURT:** That's too long of a question. I'm sorry. You need to break it down.

**Q. BY MS. CLARKE:** Were you present with me?

**A.** Yes.

**THE COURT:** No. I think you need to start again. It needs to be a simpler question I think.

**Q. BY MS. CLARKE:** The Judge will tell you to consider what the government says are aggravating circumstances. Are you with me?

**A.** When you say aggravating, what does that mean exactly?

**Q.** Planning, premeditation, intentional murder.

**A.** Yes.

**Q.** Risk of danger to others.

**A.** Yes.

**Q.** Lack of remorse by the defendant; that is, those types of things. That's what you will be told to consider on behalf of the prosecution.

**A.** Okay.

**Q.** And you could consider that?

**A.** Yes.

**Q.** And then you would be told to consider whatever the defense may argue to you, for example, the defendant's background; is that right?

**A.** Can I ask you why does background have anything to do with it?

**Q.** That's what I want to ask you. In your opinion background has nothing to do with it once you've made the finding –

**A.** No, not necessarily. If you're going to tell me his background because he was abused as a child, I think that's not even acceptable. Because people could move on to become a good citizen whether they have a bad childhood. Not everybody has a good childhood, but it's up to the individual to decide for themselves how they're going to turn out.

**Q.** And take individual responsibility for themselves?

**A.** That's right. That's right.

**Q.** So their childhood would not be an excuse in your mind?

**A.** Not to me.

**Q.** And their saying, well, I had something wrong with my mind, that wouldn't be an excuse in your mind?

**A.** Yes.

**Q.** So what we come down to is that what's the most significant to you to consider is the crime itself?

**A.** Yes.

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

**THE COURT:** Yes.

**MS. CLARKE:** I thank you very much.

**PROSPECTIVE JUROR NO. 72:** Thank you.

**MR. CLEARY:** Your Honor, can I follow up on the question of weighing of both sides after a determination of guilt?

**THE COURT:** Yes.

**MR. CLEARY:** Thank you. I'll be fast.

VOIR DIRE EXAMINATION

**BY MR. CLEARY:**

**Q.** Hi.

**A.** Hi.

**Q.** Ms. Clarke was asking you a couple of questions about your view, your personal view, of what the appropriate sentence should be and your evaluation of both sides in reaching that determination; correct?

**A.** That's right.

**Q.** And I believe you said that you would, in terms of determination whether the defendant is guilty or not, you would evaluate and weigh both sides of the argument; is that correct?

**A.** That's right.

**Q.** And then you would reach a determination of guilt or not guilty; correct?

**A.** That's right.

**Q.** And let's assume you determined that the person was guilty of the premeditated murder.

**A.** Okay.

**Q.** And it was the type of premeditated murder that you personally felt warranted the death penalty.

**A.** Okay.

**Q.** What would happen in court then is both sides would be allowed to give you – you would come back, you would render a verdict, you would say guilty, all the jury would, and then both sides would then be allowed, not required, but allowed to put on evidence. The government would be allowed to put on evidence, what we call aggravators, reasons that we would argue the defendant should be put to death. The defendant would be allowed, doesn't have to, but would be allowed to put on evidence in mitigation, evidence that they would argue should suggest the defendant should not be put to death. So you would get, again, two sides to the argument.

Are you with me so far?

**A.** Yes.

**Q.** And then Judge Burrell would instruct you and would tell you what parts of those arguments you, as a matter of law, would have to consider and evaluate, which parts of the aggravators that the government would be arguing and which parts of the mitigators that the defense would be arguing you would have to consider. Do you understand how that's going to work?

**A.** Yes.

**MS. CLARKE:** Your Honor, I object. That really is inappropriate. This juror gets to make an individualized judgment as to the appropriateness of a sentence of death. The Court will never instruct the juror that the juror must find a particular sentence, and that's the inference from the question.

**THE COURT:** I didn't understand that the question had that thrust.

**MR. CLEARY:** It wasn't intended to, your Honor.

**THE COURT:** Clarify it in a follow-up.

**Q. BY MR. CLEARY:** Let's start at the point where you've returned your verdict of guilty; correct?

**A.** Yes.

**Q.** Of premeditated murder. Then both sides, the government and the defense, would be allowed to put on additional evidence and make additional arguments. The government would put on evidence of aggravation, reasons we think the defendant should be sentenced to death. The defendant would be permitted to put on mitigating evidence, evidence that they believe should be a reason that the defendant would not be put to death. And Judge Burrell will give you some instructions. He'll tell you how to evaluate aggravating evidence presented by the government and mitigating evidence presented by the defense. In essence, the two sides of the story.

**A.** Yes.

**MS. CLARKE:** Your Honor, again, I object. The Court is not going to tell the juror how to consider aggravating and mitigating circumstances. The Court is not going to tell the juror specific mitigation or specific aggravation they must consider. These questions are designed, I think, to mislead this juror when in reality we have a full sense of her views on the death penalty.

**MR. CLEARY:** Judge, I'm not trying to mislead the juror. That's crazy. What I'm trying to do is get –

**THE COURT:** I don't need argument.

It's overruled. I will be the one that ultimately gives you instructions on the law. What I say is what you have to follow. What counsel tell you is not law. I'm going to allow the question.

**BY MR. CLEARY:** Thank you.

**Q.** So you've already determined guilt. You're in here in the courtroom again. We've put on aggravating evidence, the defense has put on mitigating evidence, the Judge will instruct you on that evidence. You'll have both sides of the story again. Maybe a different story, but you'll have both sides of the story.

**MS. CLARKE:** I'm sorry, your Honor, but that's assuming the defense has a burden to go forward. I've made that clear throughout my questioning, your Honor, there is no burden, but that the parties can put that evidence on.

**THE COURT:** That's true. I told you that in the instructions. The defendant is presumed innocent and never has to present evidence.

**Q. BY MR. CLEARY:** Thank you. I'm going to get to the end of this in just a minute.

So you remember where we are at this point?

**A.** Uh-huh.

**Q.** And the Judge will instruct you on that evidence, both sides, if both sides are presented, and how you would evaluate them. At that stage, after you've already returned a verdict of guilty, guilty of premeditated murder, you've heard two sides of the story concerning what the appropriate sentence should be, which is a different question – you understand that; right?

**A.** Yes.

**Q.** And you've heard Judge Burrell's instructions on the law concerning sentencing, would you in that instance be able to evaluate and hear and listen and consider both sides of the argument, the government's side and the defense's side of the argument, concerning what the proper sentence should be?

**A.** Yes.

**Q.** And would you follow the Judge's instructions on the law concerning how you evaluate evidence and how you would go about rendering a decision?

**A.** Yes.

**Q.** No question in your mind about that?

**A.** No, not after he explained what he is up there for.

**Q.** What the Judge does you mean, what his role is?

**A.** Yes.

**MR. CLEARY:** Thank you.

**PROSPECTIVE JUROR NO. 72:** Thank you.

**THE COURT:** Please escort the juror to the adjacent room and bring in the next juror.

(Juror number 72 left the courtroom.)

(Juror number 73 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You are the 73rd randomly selected juror. I'm going to ask you a few questions. When you respond to my questions, I would appreciate it if you would use the microphone as you respond and speak to the parties at counsel table so I can be assured that they hear your responses.

**A.** Okay.

**Q.** I know that it's typical for people to look at each other when they communicate. You need not look at me. You can use the microphone. Is there any reason why you cannot fulfill your civic responsibility and serve as a member of the jury?

**A.** No, not that I can think of.

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

**A.** No, I have not.

**Q.** Have you discussed the case with anyone since that time?

**A.** No.

**Q.** What information did you receive about this case before you appeared at Cal Expo?

**A.** Just a little bit of what I've heard before I came in to Cal Expo. And that wasn't very much. I do know that letters or something were being mailed to people, bombs were mailed to people, but other than that, not a whole lot.

**Q.** Okay. We don't expect jurors to be unaware of allegations surrounding a case before they come into a courtroom. One reason I'm conducting individual voir dire is to provide jurors with an opportunity to tell us what they've heard, because the law, in my opinion, requires me to do that when we have as much publicity surrounding a case as we have with this one. Tell us a little bit more about what you've heard.

**A.** That's about it, other than I know that somebody was sending bombs through the mail that were killing and hurting people. I don't normally follow the news or read the newspaper, so not a whole lot other than that.

**Q.** Has any information you have received about the case from any source affected your ability to serve as a fair and impartial juror?

**A.** No.

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

**A.** No, I don't.

**Q.** If you were to be selected as a juror in this case, do we have your assurance that Mr. Kaczynski will start this trial, from your perspective, on a clean slate?

**A.** Yes.

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

**A.** Yes.

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

**A.** I don't believe in the death penalty.

**Q.** The parties are not necessarily looking for a juror that believes in the death penalty. But the parties and the Court are looking for a juror who would at least consider the death penalty amongst the options I told you about when I made comments to you when you were with the other jurors.

Would you consider imposing the death penalty under any circumstances?

**A.** I'm not too sure if I understand what you're – would I be able to –

**Q.** I can ask you, hopefully, a more concise question.

**A.** Okay.

**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.** I don't believe so.

**THE COURT:** The parties may conduct voir dire.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Good afternoon. I'm Quin Denvir. I'm one of the attorneys for Mr. Kaczynski, and I'd like to ask you a few questions if I can.

**A.** Sure.

**MR. DENVIR:** Your Honor, do you have the original of the questionnaire?

**THE COURT:** Is this your questionnaire?

**PROSPECTIVE JUROR NO. 73:** Yes.

**Q. BY MR. DENVIR:** If you could turn to page 10, and question 40. Can you tell me what you – what you were thinking about there when you were asked about that?

**A.** I'm afraid that if this gets out in public or if I'm known publicly, that somebody might come after me or my family.

**THE COURT:** I'm sorry. I want to see the question.

**MR. DENVIR:** I'm sorry, your Honor. I can read it if you'd like.

**THE COURT:** I'm going to take her copy. What did you direct her attention to?

**MR. DENVIR:** Page 10, number 40.

**THE COURT:** I don't understand what you meant by your answer. I want to talk to her at the sidebar.

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

**Q. BY MR. DENVIR:** Why don't I just ask you a few more questions.

**A.** Okay.

**Q.** Can we go back to that question?

**A.** Sure.

**Q.** You were asked whether you had any political, social, or philosophical beliefs that might affect your service, and you said you don't think it's right to put a person in a position that can be unsafe for them or their families.

Do you have some reason to feel that it would be unsafe for you or your family if you were to serve as a juror in this case?

**A.** If it were to become public who I am and who my family might be, then I would be –

**THE COURT:** Maybe you're going to follow up on –

**MR. DENVIR:** I was going to follow up on it.

**THE COURT:** Go ahead.

**Q. BY MR. DENVIR:** First of all, you understand that Judge Burrell has entered an order that there will be a partially anonymous jury so that your name, your identity,

and your address is not disclosed to the public and that's why I don't call you by name, we call you by numbers?

A. Right.

Q. That's the first thing you should know. The second thing you should know is that the reason that Judge Burrell did that was to protect your privacy, not because of any concerns about your physical safety or your family's. You might have thought that was the reason but that's not the reason.

A. Okay.

Q. Was it the fact of the anonymous jury that made you think that maybe there was some threat to your safety or your family's?

A. No. It's just like cases that have happened before. People get threatened in the mail on really big cases.

Q. You served on a jury before, I guess, in a murder case?

A. Uh-huh.

Q. And you didn't have any repercussions from that, did you?

A. No. No problems.

Q. And if you were assured that there's nothing about this case that indicates it would be any different from the case you were on before in terms of your physical safety and that the anonymous jury is just to respect your privacy, would that relieve your concerns in that regard?

A. Yes.

Q. I think you'd also said – and maybe this is the same kind of concern you had. If you could go to page 28, question 109, when you were asked about what you remembered about the case, you said something about only that the witness was threatened. Can you remember when you read that what made you think that a witness was threatened? Is it, again, the anonymous jury order?

A. Somebody had mentioned it to me.

Q. Somebody had told that you a witness was threatened in this case?

A. Yeah.

Q. Did they say anything further about that?

A. No.

Q. Or where they heard that?

A. No.

Q. Is that something that concerns you? I mean, that someone said that, whether they knew anything about it, whether it was true or not?

A. No, not really, because to me it's hearsay, so I really couldn't say whether it's true or not.

Q. So that isn't a concern of yours?

A. No.

Q. Because you had expressed a concern about safety.

You did serve on a jury previously. As I understand it, that was a murder case?

A. Yes, it was.

Q. And the jury reached a verdict?

A. Yes, I did.

Q. And you felt that was a fairly – it was a generally positive experience, you didn't have any bad feelings about it?

A. No, it was very good.

Q. Was that a case in which one of the penalties was the death penalty?

A. At this time I don't really remember.

Q. Did you just decide the question of guilt and innocence when you had a verdict? Did you just find the person guilty or not guilty?

A. Totally innocent.

Q. Did you? Okay. So you didn't have to find any sentencing in that?

A. They gave us three different sentences that they wanted to go by. We had to eliminate it. I think it was like manslaughter or first degree murder, or something like that, down to innocent.

Q. But what you were really finding, you were given – I'm just trying to clarify this.

A. Right.

Q. You were given a choice of three types of crimes that the person was guilty of, not the sentence that they would receive?

A. No. Actually it was three different sentences, if I remember right, that they were going by, and we had to eliminate them. I think it was like the manslaughter, first degree murder, and then something else. I can't remember exactly what it was.

Q. In that case, as far as you know, the death penalty was not involved?

A. No.

Q. You never had to do anything with that?

A. No.

Q. And there were not two phases of that trial, there was just one phase?

A. Right.

Q. You also – if you'd look at page 22, question 84, you said that you had seen a mobile home catch on fire and blow up, is that correct, at some point?

A. Uh-huh.

Q. Do you understand the charges against Mr. Kaczynski involved the mailing of an explosive or the placing of an explosive and with intent to kill, perhaps resulting in death?

Would your experience with that mobile home have any effect on your sitting as a juror in this case?

A. No, I don't think so, because this was neglect by the people who were living there. Totally different circumstances.

Q. Kind of like a leaking gas or something like that?

A. Uh-huh.

**Q.** Let me ask you if I can – I’m going to talk to you a little bit about your views on the death penalty. And I think you said that you didn’t believe in the death penalty. So you’re not a supporter of it?

**A.** Right.

**Q.** And you understand that when we pick a jury in a case, a capital case where there’s death penalty as one of the possible punishments, we want to get a cross-section of people with differing views. We wouldn’t want everybody feeling one way or another, either all totally for the death penalty or all totally against the death penalty. We want people who have different views about that as a general matter.

**A.** Right.

**Q.** I mean, if you were the defendant in a capital case, you’d want to make sure that there were some differing views about the death penalty?

**A.** Right.

**Q.** And there’s a distinction between what you might believe about the death penalty in terms of whether you think it’s something that we should have in terms of like whether you would vote to have a death penalty in California or if you were a congressman whether you would vote to have a death penalty on the federal level. That’s one question. And I take it at that level you don’t believe in the death penalty and you wouldn’t vote for it?

**A.** No.

**Q.** There’s a different place where it comes in, and that’s where once society has spoken, whether it’s the voters or Congress – in this case Congress has decided that there will be a death penalty and that it will be one of the options in a case like this particular case involving the mailing of an explosive with an intent to kill resulting in a death. And then the question is whether your views on how you would vote on the death penalty as a general matter would prevent you from sitting as a juror, applying the law that’s been passed by Congress. Do you see the difference between those?

**A.** Yes, I do.

**Q.** And so in this particular instance, two of the charges against Mr. Kaczynski, which are mailing a – delivering an explosive with intent to kill which resulted in death, carry alternative penalties. And Congress has determined that one of them could be the death penalty if the jury selects it and the other one could be life without possibility of release. Life imprisonment without possibility of release because there’s no parole in the federal system. And it provides those two penalties and even lesser penalties.

The question that you have to ask yourself and be able to tell us is whether you could sit as a juror and consider the different penalties that are provided by Congress and by the law for those kinds of offenses.

**A.** I feel I could.

**Q.** I noticed that you were asked some other questions on this. And if you go over to page 27, you said that – you were asked to express your agreement – this is the question 107. You were asked to express your agreement with certain statements. And one of them was that anybody who plans and commits a murder should get the death

penalty. And on that you said you disagreed somewhat. You didn't say you strongly disagreed with it.

A. Right.

Q. And then you were asked the question of anyone who deliberately murders two or more people should get the death penalty, and you said you agreed somewhat with that?

A. Uh-huh.

Q. Not strongly agree or strongly disagree. Again, any person who commits an act of terrorism in which someone dies should get the death penalty; you agreed somewhat with that?

A. Right.

Q. And then you said on the question, a person's background does not matter when it comes to whether or not he should be sentenced to the death penalty, you said you strongly disagree with that.

So let me see if I can ask you this: If you take the first question, do you believe that there are some people who plan and commit a murder should get the death penalty, it depends on the person and the case?

A. On the circumstances, yes.

Q. And I take it you would feel the same way if someone deliberately murdered two or more people. Again, it could either be life or death in that situation?

A. Right.

Q. And also with an act of terrorism?

A. Right.

Q. And when you're speaking of an act of terrorism, what did that bring to mind to you as – it's not a real clear word. What were you thinking of when you read that?

A. Well, if somebody hijacks an airplane full of people, takes them to another country.

Q. Something like that?

A. Yes.

Q. Did you think anything about whether that would encompass anything like mailing a bomb?

A. It hadn't crossed my mind, no.

Q. Now, but even for an act of terrorism, you feel that you could impose the death penalty or you could impose life depending on the case. Is that what I understand that to be?

A. Right.

Q. Now, on the question of a person's background does not matter, I take it – does not matter when it comes to whether or not they should be sentenced to death for murder, and you said you disagreed with that. Does that mean that you would be willing to listen to evidence about a person's background to decide between life and death for that person if they were convicted of that crime?

A. Yes. Yes.

**Q.** And then on question 108, the next page you were asked where one person intentionally kills another person, you said the death penalty may or may not be justified depending on the circumstances of the case.

**A.** Right.

**Q.** Is that pretty much what your feeling is on this?

**A.** Yes.

**Q.** That although you don't think maybe we should have a death penalty, as long as we have it, then you should look at the individual case and decide it?

**A.** Yes.

**Q.** Do you understand that in this type of case, because it is a death penalty case, the first part of it is like the case you sat on before. And you would decide whether the government had proved beyond a reasonable doubt whether Mr. Kaczynski was guilty of the charges that were brought against him?

**A.** Uh-huh.

**Q.** And that's just like the case you were on before?

**A.** Uh-huh.

**Q.** If you found beyond a reasonable doubt, you and your 11 other jurors, that he was guilty of that offense which would be mailing or delivering a bomb with an intent to kill someone that resulted in the death of someone, then there would be a totally separate kind of trial with Judge Burrell. It's called a sentencing trial or phase or penalty phase or trial. And at that point the jury would be faced with a different question.

Having found that he was guilty of mailing a bomb with intent to kill and killing someone, you would then be asked to decide what should the punishment be for that among the ones provided by law. And that could be death, he could be executed, it could be life imprisonment without release, and there's a possibility also of a lesser sentence. And the government would put on evidence, what we call it here is aggravating evidence. It's a legal term.

What it means, whatever the government thinks is evidence that points to death instead of life. The defense then could put on mitigating evidence, another word we're not used to, but it means any evidence the defense thinks points to life instead of death. And then the jury is asked to listen to all of that, to hear the instructions of the Judge which gives the jury great leeway in deciding penalty, and then each juror has to make their own call as to what the proper penalty should be based on what they've heard in court.

Do you feel that you could perform that role?

**A.** Yes, I do.

**Q.** Do you have any problem with that?

**A.** No.

**Q.** I mean, I don't mean it's an easy thing to do but –

**A.** No, I don't think I would.

**MR. DENVIR:** Thank you.

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

**Q.** Good afternoon.

**A.** Good afternoon.

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

**A.** Yes, I do.

**Q.** Good. I wanted to ask you first, you said in your questionnaire that you run a large department and you need to be there. I take it that problem has been taken care of?

**A.** I hope so, yeah.

**Q.** Is there any doubt in your mind about that?

**A.** No.

**Q.** You also said in your questionnaire your boss told you to try to get out of jury service. You don't want to get out of jury service. You're going to go for it?

**A.** If that's the way it goes, yes.

**Q.** Okay. We were talking about your answer to question number 40. Could you turn to that.

**A.** What page is that?

**Q.** That's page 10. Do you remember the discussion we had over at sidebar?

**A.** Uh-huh.

**Q.** You indicated over there that your answer had something to do with your feelings about the death penalty.

**A.** Right.

**Q.** Would you explain that.

**A.** I've never had any bad – something bad happen to me so I – it's kind of hard to explain. I really have a hard time putting someone to death for a crime they committed, but I think a lot of that is I've never had anything bad happen to me. So I can't experience what it would be like to have something really bad happen to you to where you would want somebody else to be killed for it. And I don't believe in an eye-for-an-eye-type thing either. So that's the only reason I really have a hard time with the death penalty.

**Q.** Okay. I'm still a little confused. Help me out here with your answer. The question was: Do you have any political, social, or philosophical beliefs that –

**A.** Well, religiouswise, you know.

**Q.** Let me finish.

**A.** Okay.

**Q.** Any political, social, or philosophical beliefs that may affect your service as a juror in this case. And you said yes. And then you said: I do not feel it is right to put a person in a position that can be unsafe for them and their families. And I'm trying to understand how that answer affects or involves your views on the death penalty.

A. Okay. I think maybe I kind of misunderstood the question. But I feel a little bit better about it now that I'm explained that this is going to be kept under privacy, all the jurors. And that was my concern, just being that publicly they would find out who I was and my family was, and it was a big trial. That's my big concern.

Q. Okay. So now that you know that the jury is going to be anonymous, you feel better about it?

A. Totally. A lot better, yes.

Q. Turn, if you will, to page 26, and specifically question 103. You were asked to state your opinions and beliefs about the death penalty. And you said no one has a right to take another life. Is that a pretty strong view of yours?

A. Yes, it is.

Q. And when you said that, you were referring not to a murderer, but to the death penalty?

A. No. Murderer or death penalty.

Q. So it's wrong for a murderer to take a life, of course?

A. Uh-huh.

Q. But you don't feel that the government should take a life either in retaliation for that?

A. I have a real hard time answering that because I strongly believe that we shouldn't kill people for whatever reason.

Q. Is that a pretty strong belief of yours?

A. Yes, but I feel that if enough evidence was proven or given to where I was absolutely positive that the person did it, I could probably live with the death penalty if it came down to that.

Q. That's all we're looking for. We're looking for a person who is open to the possibility of invoking the death penalty if necessary.

Now, in your answer to number 104, the question was: What does your religion, philosophy or spiritual training teach about the death penalty. And again you said: We do not have the right to take another life. Correct?

A. Right.

Q. Was that based on religion, philosophy, or spiritual training?

A. Religious.

Q. Religious. Then the question is, how would you feel if you were put into a position of voting whether someone should get the death penalty or not?

A. I would have to definitely know for sure, have all the evidence that this person was definitely guilty beyond a belief before I would be able to sentence him to death.

Q. So you'd want to be convinced?

A. Totally convinced that he is guilty.

Q. And if you were totally convinced that he was guilty and that the death penalty was appropriate under the facts and circumstances of the case, would that create any conflict between you and your religion?

A. I don't think so. I really can't answer that.

**Q.** You're not sure about that?

**A.** Yeah, I'm not real sure how I would feel about it. I don't think so.

**Q.** Are you actively involved in your church?

**A.** No, not really.

**Q.** Would you have trouble wrestling with your conscience in deciding whether or not you should give a death penalty even if you thought it was appropriate?

**A.** Again, I really can't answer that. I don't think so. If there was totally proof beyond a shadow of a doubt or whatever that he was guilty, then I don't think I would have a problem with it.

**Q.** That's the next thing I wanted to ask you about. The law doesn't require that the government put on proof beyond a shadow of a doubt or beyond all doubt. The government is only required to prove its case beyond a reasonable doubt. Do you think you could follow that or are your views about the death penalty so strong that you would want to be totally convinced beyond a shadow of a doubt?

**A.** I feel that I could take all the evidence and put it together and come up with a decision or come up with a sentence or whatever that needed to be done.

**Q.** Okay. You could follow the law?

**A.** Yes.

**Q.** Would you, given your strong views about the death penalty and given your knowledge that one of the options that you would have before you is a life sentence without possibility of release, do you think you would always kind of default to that position rather than have to invoke the death penalty?

**A.** Very good possibility, yeah.

**Q.** So you think it might mean a case where you would get into the jury room, start talking about the case, listening to the various factors, but you still might say – still might vote for a life sentence regardless of what the facts and circumstances show?

**A.** I might lean more toward it than the death penalty, yes.

**Q.** Do you understand what you're going to be asked to do is weigh these factors, and these factors, on the one hand, are going to be all the reasons why the parties or the government thinks that the defendant should get the death penalty, and the factors over here, if there are any other factors, why the defense thinks the defendant should not get the death penalty. Do you think you would always tend to think that a life sentence is just good enough without even doing that weighing?

**A.** No, no, I wouldn't.

**Q.** Do you think you could do the weighing, honestly in your heart?

**A.** Yes.

**Q.** Do you think – let's take a situation where there were aggravating factors that you felt had been demonstrated, but there were no mitigating factors. Do you think in a circumstance like that you would still be inclined to vote for a life sentence?

**A.** I'm not too sure if I understand that exact question.

**Q.** Okay. Do you understand there's going to be a first phase of the trial where you determine whether or not the defendant is guilty or not guilty?

A. Okay.

Q. And if you determine that he's guilty, then you move on to the second phase in which further evidence will be put on of an aggravating nature and possibly of a mitigating nature. And you'll be required to weigh those two sides. And the Judge will instruct you that if you find that the aggravating factors outweigh the mitigating factors, then you can return a verdict of death.

A. Uh-huh.

Q. Do you think, given your strong views about the death penalty, that you might find that the aggravating factors outweigh the mitigating factors but you would still return –

A. No, I don't think so.

Q. – return a sentence of life without release?

A. No. I think I would – I think I would be able to look at all the evidence and weigh them fairly and come up with the way I feel it should be taken, whether death or life in prison.

Q. All right.

MR. LAPHAM: That's all I have.

THE COURT: Let's bring in the next juror please. Escort this juror to the adjacent room.

(Prospective juror number 73 left the courtroom.)

(Prospective juror number 74 entered the courtroom.)

THE COURT: You can take a seat, sir.

PROSPECTIVE JUROR NO. 74: Okay. Thank you.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 74th randomly selected juror. I'll be referring to you periodically, perhaps, by that number.

A. Okay.

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

A. No, no reason.

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

A. In the paper briefly, on the radio, television. Brief updates as to what was happening that day. Didn't necessarily pay any attention to them.

Q. Did you gain any information from that exposure about the case?

A. Very broad or general activities that was going on.

Q. Tell me what you remember.

A. Well, most recently, obviously, the setting-up across the street from the courthouse. I work downtown, and I had no inclination to come down and check it out at all, but I knew that that was going on over there.

In the past weeks or something, regarding testing I guess, a testing procedure that was denied or chose not to partake in or something. I don't even know what the outcome of that was, but I just heard brief statements about that occurring.

I think something regarding the cabin in which there was a question about whether the selected jurors would be transported back to the location or whether the cabin was going to be transported here or something. Some questions regarding the contents of that cabin. They had a partial list or something.

But that's basically what I've heard.

**Q.** What about the contents of the cabin? What information do you have about that?

**A.** Statements made, that I had overheard being made, about how the quantity would be able to fit into the size of the cabin. In terms of specifics, I have no idea. Might be some transcripts or paperwork, some books, I think I heard, but I don't know exactly what the contents were.

**Q.** Since you appeared at Cal Expo, have you discussed the subject matter of the case with anyone?

**A.** Other than telling my supervisor or my subordinates who I supervised that I was coming here this afternoon, the reason why I'm going to be absent from work, no.

**Q.** When I asked you about information that you received concerning the case, I limited my inquiry to information you have received after you went to Cal Expo. I want to broaden the question now. What information did you receive about the case prior to going to Cal Expo?

**A.** Just news events or reporting on the television. I did not necessarily follow or read in depth or thoroughly any of the newspaper reporting. I may have read partial paragraphs of newspaper articles.

**Q.** We don't expect jurors to be unaware of the allegations concerning a case before they come into the courtroom, but one of the reasons I'm conducting this type of questioning is so m

that we can just find out what type of information you have been exposed to. Can you give me the details on any of the information you've been exposed to concerning the case?

**A.** As I said, I don't really follow the details a whole lot. And my information might be very inaccurate. The details regarding, I believe, it was two people that were killed regarding some bombings. One of the bombings took place very close to where I work so I was very much aware of the media being there at that scene. Some of the investigators there, the print experts, the police department, I associate with and I have not really discussed anything with them, but I was aware of the fact that they were there.

I don't know really, you know, go beyond that. There were several people injured. I understand that he was a Berkeley professor. I believe it was math. He lived a very isolated, stoic life in the mountains, I believe Montana. It went on for many years. He

had the – I don't recall the exact wording, but the manuscript that he wanted to have published. Very general information.

**Q.** You indicated that, I believe, one of the bombing events occurred near your work?

**A.** Yes.

**Q.** Can you tell me how you know that, what type of exposure you had to that event?

**A.** Well, at the time it occurred, I was in the office and heard the explosion go off. Several of my co-workers did go out and tried to find out what was going on. The information they received and brought back to the workplace was that there was a bomb that had exploded. Later on in the media, they started tying it in I guess with the Unabomber case.

**Q.** Do you think that experience could affect your ability to serve as a fair and impartial juror in this case?

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

**Q.** Has information you received about this case from any source whatsoever, is it information that could affect your ability to serve as a fair and impartial?

**A.** I don't think so because, one, I don't know if that's factual. Statements of the news media, I mean, that's subject to some ramification, and how accurate it is, you have to hold that in the context of which it was given. So you don't know how accurate that is, the information that I have received.

**Q.** I didn't indicate to you earlier when I began my questioning that you should use that microphone and speak to the parties at counsel table.

**A.** Okay.

**Q.** I was having this communication with you, and I just realized that I'm not certain that your voice is being carried through the amplified system.

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

**A.** No, I haven't. I think it's a very unique case, and whether or not he did it is yet to be determined.

**Q.** You've been exposed to a lot of – well, maybe not a lot, but you've been exposed to some information about the case. That information hasn't caused to you reach an opinion on that topic?

**A.** No. I'm very open in terms of resolution on this. Again, you know, you hear parts and pieces. And how accurate that information is, you really don't know. I might tend to think, well, shoot, he probably did it because they found all this evidence. But, again, I'm not definite in that opinion because I don't know the facts.

**Q.** Do you have that opinion in your mind though?

**A.** Oh, perhaps in the back of my mind if I were to sway one way or the other, do you think he's innocent or do you think he's guilty, I might lean toward the fact that he most likely did it or had –

**Q.** I cut you off. I'm sorry.

A. Or had the potential to do it because of maybe some of the evidence that was gathered.

Q. Would you set that opinion aside if you were selected as a juror in this case and just forget it, leave it outside this courtroom?

A. I think I could.

Q. You have to do that. Would you be able to do that?

A. Easily.

Q. Do I have your assurance that you'll set that opinion aside and that whatever information you receive about this case you will receive in this courtroom and allow Mr. Kaczynski to begin 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. I think I could approach it from that aspect, yes.

Q. I don't mean to embarrass you, but I'm going to ask you a question. You paused just a little bit. Tell me about the pause.

A. Self-reflecting, I guess. Could I be that cut-clean, I guess, and I think I could do that.

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

A. Proponent.

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 could.

**THE COURT:** The parties may conduct voir dire.

**VOIR DIRE EXAMINATION**

**BY MR. FRECCERO:**

Q. Good afternoon, sir.

A. Good afternoon.

Q. My name is Stephen Freccero. I'm one of the prosecutors in this case. If I could just follow up on a few things. The bombing incident that you were referring to that took place near your office –

A. Uh-huh.

Q. – that was a while back?

A. Yes, it was.

Q. When that occurred, did you personally go out to the location where what you had been told was a bombing event?

A. No, I did not.

Q. So you didn't see any of the activity there, you personally?

A. No, I did not.

Q. Is there anything about that experience that you think that you could honestly tell us would make it difficult for you to hear about those events? In other words, would

you have any kind of reaction if you heard that testimony that you think would be a problem for you?

A. I don't think I would be affected by that, no.

Q. Did you personally know anybody who was in the office where this explosion took place?

A. No, I did not.

Q. And you mentioned that you had talked to some co-workers who went out there to find out what had happened. Did they come back and relay to you any specific information about the circumstances of that explosion?

A. As I recall, the information brought back was just that there was a bombing down the street, that it was the noise we heard, and that there were a large amount of people gathering in the corner of the intersection that we had our building located on.

Q. All right. Did you understand that any of those people who came back and told you about what had occurred, whether they had personally actually gone into the building to see what had happened?

A. I don't believe any of the people I talked with did go inside the building.

Q. Let me show you the questionnaire you filled out. Is that yours?

A. Yes, it is.

Q. I'm just going to ask you some questions regarding that. If you could look at page 34, question 129, at the top there.

A. Okay.

Q. Can you give us a better idea as to when that was that you made that – was it a phone call?

A. Yes, it was. I really can't give you a better idea of when it was. I mean, it was just in the past. And I'm not even sure how far prior to the arrest. But just one day shortly in that general vicinity, within months I guess, I had witnessed some people getting on the same commuter train that I was on, and I had not been thinking about any posters or fliers or anything related to the case at all, but when these two gentlemen came on, one of them appeared very much like the fliers that had been broadcast on the television.

Q. And based on that you called that 800 number?

A. Correct.

Q. And I take it you spoke to someone on the other end?

A. Yes, I did.

Q. You relayed whatever information you had?

A. Right.

Q. Did that result in anybody coming out and actually talking to you in person?

A. No.

Q. When you made that phone call and after you gave the information to these people you saw, did the person that you called, did they give you any specific information about this case?

A. I don't recall that happening at all. There was quite a delay, and I'm assuming it was maybe checking my name or whatever. But when they came back on, they took my information and thanked me very much, and that was basically it.

Q. Okay. And you didn't hear from them again?

A. No.

Q. Anything about that incident you think that could affect your ability to fairly consider the evidence in this case?

A. I don't think there is anything that would affect me.

Q. All right. Sir, did I understand from your questionnaire that you were formerly a police officer?

A. Yes.

Q. You no longer are?

A. Correct.

Q. And when did your work as a police officer finish?

A. At approximately in 1989.

Q. And at any time while you were a police officer, were you called to investigate anything, at least as far as you know, that pertained to this particular case?

A. No. There was nothing.

Q. Okay. And, again, as far as you know, do you know as you sit here, and I realize it's possible you don't know, but as you sit here are you personally acquainted with any police officer that you think might be involved in this case?

A. No, I'm not.

Q. When you were a police officer, did you have contact with the FBI?

A. If I did, it was very briefly, just in passing.

Q. So you never investigated a particular case in which FBI agents were assisting you?

A. No, I didn't.

Q. Did you – well, let me just ask you: Is there anything about the fact that you had contact with the FBI in the past that you think in any way would cause you to favor one side or the other?

A. No.

Q. Is there anything about the fact that you were formerly a law enforcement officer that you think would prevent you from being fair in this case?

A. No.

Q. Can you honestly tell us that you won't hold – you won't look at a law enforcement officer and either judge their credibility more severely or give them more credence than you would some other person?

A. I don't believe so, no.

Q. If I could ask you to look at page 11, question 41. I just want to follow up quickly on something. You mentioned that there was no reason that you couldn't serve as a juror in this case, and you said that you'd talked to your supervisor that you'd been summonsed as a juror?

A. Uh-huh.

Q. And I take it from that you're set with your current employment. If you were called as a juror, you would be taken care of?

A. Yes.

Q. No problems with that?

A. No problems.

Q. And also without divulging the name of your current employer or what you do, can you tell us does your current employment have anything to do with the FBI or any federal law enforcement agency?

A. No, it does not.

Q. If you could look at page 28, question 108. In that question you were asked to give a response. And it says "where one person intentionally kills another person," you marked a response "the death penalty may or may not be justified depending on the circumstances of the case."

Can you explain to us what you were thinking about when you marked that?

A. Well, a person who intentionally acts on something, you have no idea what led him to that point. And based on what those circumstances were, it may or may not apply.

Q. So are you willing to consider factors not being about the crime itself, but about the background or character of the person who commits a crime?

A. Yes.

Q. Before making that determination?

A. Yes.

Q. In your view, the question of the death penalty is not an automatic decision for any crime?

A. No.

**MR. FRECCERO:** No more questions. Thank you, sir.

**THE WITNESS:** Thank you.

**THE COURT:** We'll take the afternoon recess. Court will be in recess until a quarter of 4:00.

(Recess taken.)

—oOo—

**THE COURT:** Let the record reflect all participants are present except for the juror who's going to be questioned by defense counsel in just a moment.

My deputy clerk went to get the juror.

(Pause in the proceeding.)

(Prospective juror number 74 entered the courtroom.)

**VOIR DIRE EXAMINATION**

**BY MS. CLARKE:**

Q. Good afternoon.

A. Good afternoon.

**Q.** My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I had a couple of questions about your present job and I was trying to figure out exactly where it falls. You're appointed by a particular governmental official or hired by a governmental official to do the job that you do?

**A.** A group of people, yes.

**Q.** And you have some enforcement powers?

**A.** Yes.

**Q.** So you can issue citations and have – you have arrest authority, do you?

**A.** Yes.

**Q.** Have you been advised that that makes you fall within a police department or something like that? I mean, I was a little confused about how that works.

**A.** It's a civilian position –

**Q.** But it's a civilian –

**A.** – with citation/arrest authority. The inference there is that the misdemeanor citation is, in fact, an arrest. We would not necessarily take people into custody.

**Q.** Would you have the power to do that if you felt it was appropriate in a given circumstance?

**A.** It would be equivalent, basically, to a citizen's arrest, with calling the assistance of a police officer.

**Q.** But some governmental entity gives you that authority to issue the citation and, if necessary, arrest an individual, with the assistance of other police officers?

**A.** Yes.

**Q.** So it's kind of a quasi-police position?

**A.** Correct.

**Q.** So if you see somebody doing something in violation of the laws that you're designed to enforce, you would issue a citation –

**A.** Correct.

**Q.** – for that?

**A.** You could.

**Q.** And that would result in that person having to come to court?

**A.** Yes.

**Q.** And repeated violations, I take it, would result in an arrest?

**A.** Basically, the – we have the citation authority, but that is not the focus of the job. The job would entail mostly notification and compliance. Citation is a tool that we could use, but –

**Q.** To force –

**A.** – but typically it does not get to that point.

**Q.** But you can use that tool to force compliance, basically?

**A.** Well, yes.

**Q.** Am I correct in understanding that the Penal Code authorizes you to have arrest powers?

**A.** Penal Code; and the [reference to source of authority redacted] code.

Q. The [reference to source of authority redacted] code?

A. Well, resolution – county resolution – [reference to source of authority redacted] code resolution.

Q. Okay. You were also a police officer with the Sacramento Police Department at a period in your career?

A. That's correct.

Q. For about a year or two-year period?

A. About a year; yes.

Q. What was it that made you leave the police department?

A. I was not able to finish probation period within the time frame.

Q. Okay. And so you decided to go off and seek other employment, change of career?

A. Correct.

Q. Is that when you went to where you are now?

A. No, I stayed within the police department as a civilian employee in the property section there. And then I moved to my current department.

Q. So you've had a goal of staying in some kind of law enforcement job?

A. I wouldn't necessarily call it a goal, but stay within the city employment.

Q. City employment?

A. Yes.

Q. Governmental kind of employment?

A. Yes.

Q. Have you maintained your relationships with the folks that you met when you were in the police academy and worked with for that period of time?

A. Not to any specific degree, no.

Q. Do you have some friends in the police department –

A. Yes, I do.

Q. – that you have some regular contact with?

A. No. I would not say it's regular contact.

Q. What kind of contact?

A. Very sporadic. Year, two years. Three months. Just whenever we cross – I do have contact with some of the officers in the field. When I'm investigating one of my cases, we will come across each other.

Q. Each other. And do you – I take it you talk with them?

A. Not on a regular basis, no.

Q. Have you talked to any of your friends in the police department about possible service as a juror in this case?

A. No.

Q. Just didn't come up?

A. (Shakes head from side to side.) Never came up. Never saw anybody, and it was not a specific point.

Q. Okay. When you indicated on your questionnaire – I don't know; do you have it?

A. I don't have it, no.

Q. You may recall that occasionally you have testified in a court; is that right?

A. Yes.

Q. And I think you mentioned that the testifying could either be satisfying or very embarrassing?

A. Correct.

Q. Could you tell us a little bit about that?

A. Well, obviously if someone is going to make a specific point and if you don't have your facts correct or there's a slight error in what you've stated or presented, then people can seek that error out and cause you to be very embarrassed.

Q. And you don't want that to happen again?

A. Well, of course not. I don't think anybody wants to go through that.

Q. Was that the lawyer that would bring that out, the error or the inaccuracy?

A. Oh, it could be anything from either side. I'm not referring to any specific example that happened to me. Just in –

Q. Just generally?

A. Generally speaking, you don't want that to happen to you, so you try to be as prepared as you can when you testify.

Q. How do you think those experiences as a testifying witness – if the defense in this case took on a police officer, challenged the credibility of a police officer's testimony, how do you think that would make you feel?

A. Well, I could probably certainly relate to his being up there and maybe what he's going through, to some degree. I don't know that it would sway me either way because of his maybe being inaccurate or embarrassed. I don't think that would have any effect on me at all.

Q. How do you think it would make you feel about the defense lawyer doing it?

A. Probably have a pretty positive attitude toward them for finding that out.

Q. You'd think at least it happened to somebody else, not me?

A. Definitely.

Q. If you sit as a juror in this case and you reach a verdict in the case of not guilty, how do you think you would explain that to the police officers you encounter or the judges, the court, kind of officials that you encounter on a regular basis?

A. Well, I don't know that it would necessarily come up. It would have to be volunteered by myself. And if I chose to bring it out after the facts, tell them why I based – what facts I based that on, and so be it. If they have a problem or an issue with that, that's certainly their opinion.

Q. How about if you, as a juror, reached a conclusion with your other jurors or you decided yourself that the appropriate sentence for the Unabomber was a life sentence, life in prison. Would you feel like you'd have to explain that –

A. No.

Q. – to those police officers?

A. No, not after going through all the evidence and testimony, if that's what it dictated, I'd have no problem with that.

Q. You mentioned that when the bomb went off at California Forestry Association, I think your questionnaire said that you heard it and you felt the blast?

A. Mm-hmm.

Q. So you were actually at work at the time that that bomb blast went off?

A. Correct.

Q. And that several folks that you know went over and looked at the scene, I guess.

A. They went outside, at the corner of our building, which was about a half a block away. I don't know that anybody went down to the scene.

Q. Did you go out and watch too?

A. No, I did not.

Q. And when they came back in, what did they say they saw?

A. A lot of people – apparently there was a bomb that went off in one of the office buildings down there. Just very general statements of that fact.

Q. Did they tell you that they heard that someone had been killed in that blast?

A. I don't recall anybody saying that at that time, no.

Q. When did you first hear that somebody was killed in that blast?

A. Probably that evening in the news.

Q. From the TV, not from somebody who went down to see the scene?

A. Correct. If I recall correctly, yes.

Q. Are you having trouble with that? Are you thinking maybe somebody said something?

A. No, it's – trying to think back if there was somebody specifically that came back and stated that, but I don't recall anybody doing that.

Q. I can imagine there'd be sort of a constant chatter about a bomb went off just a block away. I mean, that would be –

A. Several of them went outside and stayed outside for quite a while to watch, see what happens, what the response was. I just stayed in the office and got to work.

Q. Did they express their thoughts about what had happened, what they had seen?

A. No.

Q. I think you indicated to the judge or to the prosecutor that you knew some folks that had actually investigated that bombing, some of the police officers involved?

A. I recall from a picture in the newspaper one of the I.D. techs that I had – that I know.

Q. Did you ever have a chance to talk to him about his role in that investigation?

A. It was a female, and no.

Q. Her role; I'm sorry?

A. I did not.

Q. Anybody else?

A. Not that I recall.

**Q.** How about any of the other what we think of as the Unabom events in Sacramento? Did you know any of the officers that investigated those?

**A.** No.

**Q.** I think you came onto the police force in the late '80s?

**A.** Late '88, yes.

**Q.** And one of the charges in this case is a 1985 death of a fellow named Hugh Scrutton. Did you know anybody who investigated that bombing?

**A.** No.

**Q.** I think you indicated in your questionnaire – and if you would like to look, it's at page 28 – some of the information that you knew about – that you know about this case. I think you indicated that you knew about Mr. Kaczynski moving and the paper reported it had to do with the noise level at the jail. What did you think? What did you know about that and what did you think about that?

**A.** Basically it was just a very general statement he was being moved apparently because he was being bothered with his sleep by the noise level in the jail. What did I think about that?

**Q.** Yeah.

**A.** Well, I can relate to maybe being disturbed by some of the noise and chatter, but I also thought gee, too bad. That seems kind of ridiculous to be moved at great caution and people involved because you're disturbed at night.

**Q.** What does that make you kind of think about him right now since he, according to the press, he was accommodated in his request to be moved? How does that make you feel about him?

**A.** Well, he's got some definite strong opinions of his – maybe his comfort level or something; I don't know. No strong opinion either way. Just that particular incident, I could not really relate to making such a deal about having disturbed sleep.

**Q.** Did you think maybe he should not have been accommodated?

**A.** Yes. I thought that.

**Q.** And I think you also indicated that you saw a picture of Mr. Kaczynski when he was arrested and he was handcuffed?

**A.** Correct.

**Q.** Can you recall the description of what he looked like at the time?

**A.** I believe he had a beige sweater on, handcuffs in the front, walking down some steps accompanied by several officers or gentlemen in suits, walking downstairs.

**Q.** Did you have any particular impressions when you saw that arrest picture?

**A.** Other than being handcuffed in the front – it just stuck out because I had been trained to handcuff in the back.

**Q.** Handcuffed in the back?

**A.** Correct. That's about the – but I was impressed with how well dressed he appeared.

**Q.** And then I guess that was after he'd been actually taken into custody?

A. Correct. And there may have been a time, I think it was in an orange suit or something that I may have seen a film clip on also when he was being arrested. I don't really recall clearly where that was or the place.

Q. How about, you mentioned that you saw scenes of the cabin and – in Montana?

A. I saw a photo of that in a newspaper, yes.

Q. And I think you indicated to the judge that you were aware that there was a substantial amount of evidence seized from the cabin?

A. Correct.

Q. Can you help us, if you can remember some of the items that were found?

A. I believe there was a list printed up. I did not read the list printed up just in case something were to come up with my being a potential juror, something about a manifesto, several books – there might have been something related to bombs or a pipe bomb or something in there or bomb equipment. I don't know.

Q. Well, some of this may have come out in the press well before you got your summons to go to Cal Expo.

A. It did.

Q. And I take it that that knowledge of what you understand was found in the cabin makes you lean towards finding Mr. Kaczynski guilty?

A. It certainly would indicate that he has a potential of being guilty; yes.

Q. And I understand it when you say, "I can be fair; I can set that aside." Do you know what process you'll go through to actually sort of remove from your mind what you know and set it aside?

A. Well, establish whether or not these were taken from his possession or his area of involvement, either they were or they were not. That would be presented to court. And based on that type of information, certainly you start with a clean slate, build on that.

Q. Does it make you sort of think as you go into the trial if you're a juror in this case that maybe the government's got one leg up because you already know something about the case from the media?

A. Not necessarily. I mean, in the evidence gathering there's several, many, many pitfalls in gathering of evidence that can be, you know, dismissed. Certainly they have a challenge ahead of them. I don't know that it would really put them up one, as you say.

Q. Do you think the defense is maybe down one?

A. I'd probably approach it on –

Q. Or down two?

A. – an even thing. You have your side; you have the other side; let's see what you have.

Q. Okay. If I could take just a moment and ask you a little bit about your views of the death penalty. You indicated in your questionnaire that the death penalty should be used more often?

A. More often than it is being used now; yes.

**Q.** And then you also indicated that your religion teaches forgive and turn the other cheek?

**A.** Correct.

**Q.** What religion is that?

**A.** Protestant.

**Q.** Can you square those two for me?

**A.** Well, when I said it should be used more than it is currently, I was referring in my mind thinking about how many executions we've had of people on death row. If the people are going to be on death row, they have been sentenced; they've appealed, and it's gone through that process that is set up for them, and they still find themselves on death row. I would be of the persuasion to carry out the finality. Let's resolve this, with so many people on death row, why isn't the process, maybe, more . . . have – producing more executions. Not that I'm for executing, but if this is where they find themselves, then let's complete the process.

**Q.** So you're not necessarily talking about using the death penalty more often; you're talking about –

**A.** Resolution of the cases.

**Q.** – when the death penalty is imposed, get it over with?

**A.** Let's resolve it. Obviously after the appeals.

**Q.** Does the fact that – after what?

**A.** After the appeal process. I mean, you can beat that on the ground. If there's an appeal, hear it and get it resolved in a reasonable amount of time and not after 20, you know, 20 years.

**Q.** Well, does the fact that it takes so long in your mind actually to execute an individual, would that make you feel that the decision to impose the death sentence is any lighter decision?

**A.** The length?

**Q.** Right. The fact that there are appeals and reviews, do you think that that takes any of the responsibility off your shoulders?

**A.** No, not necessarily. Not at all. The appeals and stuff has nothing to do with whether or not I feel the imposition of death penalty applies.

**Q.** And the level of severity – you know, in life we make a lot of decisions or avoid making a lot of decisions but oftentimes we have to make decisions. And on the level of decision making, how do you view the decision to impose the death penalty?

**A.** Very, very hard.

**Q.** Would it be at the top of the severity of decisions that you have to make?

**A.** I would say yes.

**Q.** When you checked in – if you could look at page 27, question 107, at the bottom of the page – 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 disagree somewhat. Could you tell us what you were thinking, what you meant.

**A.** (Examines document.)

When you are raised, we obviously experience many different things and many things have an impact on us, how we formulate our opinions, socioeconomic, cultural backgrounds, whatever. It all has an effect, a lasting impact on us, and our behavior. What a person does with that, I guess, would dictate the actions that he takes and the results of that action, he chooses to take would be – I guess what I'm referring to here, there are some circumstances where something could maybe be justified in why he did what he did or why she did, why she behaved this particular way. That would certainly have to be taken into account in maybe justifying that action. That's perhaps the thought process on answering it.

**Q.** So you're thinking that the background of the person that they went through to get where they are may be what, psychiatric problems they have, that affects you in deciding what sentence to impose?

**A.** It could.

**Q.** If you find, as the judge asked, a person guilty – you're on the jury and you find the person guilty beyond a reasonable doubt of a premeditated, intentional, deliberate murder of another person, is there anything that you would want to know in imposing the sentence, or would that dictate the sentence?

**A.** If we reached that point, that would be pretty much it. I mean, I don't know if there would be any other information, if we reached that verdict, that would have impact on that.

**Q.** So what would that mean? That would mean that if you find a deliberate, premeditated, intentional killing of another person –

**A.** Mm-hmm.

**Q.** – does that finding control your sentence?

**A.** It would.

**Q.** Is there anything such as the person's background, psychiatric state, outside – and we're not talking about something that excused the crime itself; you still find premeditation, deliberation, intentional murder – is there anything about the background that would make you think differently about the sentence?

**A.** I'm sorry; I'm not sure I understand exactly what you're asking. If, in the evidence or the testimony, an issue came up regarding the background, the psychiatric or whatever, and I have – we had as a jury already established –

**Q.** – premeditation, deliberation, intentional murder.

**A.** Mm-hmm.

**Q.** You've already decided that.

**A.** With all that already understood and taken into account?

**Q.** Yes.

**A.** Okay. There would be nothing else that I would necessarily take into my decision.

**Q.** So you'd have to impose the death sentence if you made those factual findings about the crime?

**A.** Yes.

**Q.** There would be nothing that could move you off of that?

**A.** I don't believe so.

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

**THE COURT:** Yes.

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

**MS. CLARKE:** I thank you very much.

**PROSPECTIVE JUROR NO. 74:** Thank you.

**MR. FRECCERO:** Your Honor, could I have just a couple of follow-up questions on that last point?

**THE COURT:** Okay.

VOIR DIRE EXAMINATION

**BY MR. FRECCERO:**

**Q.** Sir, just to follow up on that last point, after you had deliberated with your group and you had found the individual guilty as charged, if you received instructions from the Court that at the time after you had already decided that the person is guilty as charged that you were to consider factors including the background of the defendant or any circumstances pertaining to the crime, that you were given those instructions, at that point could you fairly evaluate them in deciding between alternatives of punishment?

**A.** Yes, I could.

**Q.** All right. So even though you had already reached a decision that the defendant was guilty, when you went to the next phase, do you think you'd be open to listen to whatever information and you would not have already decided what the penalty should be?

**A.** Correct. I would be able to take those into consideration as per the instructions.

**Q.** All right.

**MR. FRECCERO:** Thank you.

**MS. CLARKE:** May I just have a follow-up, Your Honor?

**THE COURT:** Yes.

VOIR DIRE EXAMINATION

**BY MS. CLARKE:**

**Q.** Can you help me understand the difference when I asked you if the jury found premeditated, intentional, deliberate murder –

**A.** Mm-hmm.

**Q.** – and you said that the person's background at that point, once you made those findings, wouldn't matter, can you help me understand the difference –

**A.** Yes.

**Q.** – between the answers to his questions and mine?

**A.** Yes, I can. I'm sorry about the confusion. If I was instructed and we've reached that point to go ahead and enter in and weigh the background of various aspects of a person, yes, I would definitely be able to take those aspects into consideration at that point. That's probably contradictory to what I answered your question prior, but I was confused in –

**Q.** I don't think it's contradictory. Let me ask you this.

A. Sure.

Q. You say, "Of course I can weigh, I can consider, because the judge has told me I can do that."

A. That's right.

Q. But I guess what I'm trying to get to is, I mean, we all like to say of course we can be fair, I'll weigh everything that comes my way. But in your heart of hearts, if you find a premeditated, deliberate, intentional murder, what I'm hearing you say is that, in essence, is the end of the ball game?

A. That's probably an incorrect statement. I do not want to necessarily give you that inference. I can reach that conclusion, but then if I were to be able to take the background and was able to do so at that point, yes, I can take that into consideration.

Q. Would you want to take the background into consideration once you've made those findings beyond a reasonable doubt? Would you want to take the person's background into consideration or would it, in your mind, kind of – it's done?

A. Well, I believe we would have to.

Q. Have to what?

A. Take the aspects of his background, things that happened to him or things that were brought out –

Q. Even if those things –

A. – that may have affected his – his actions.

Q. Even if those things didn't diminish the fact that it was an intentional, premeditated, deliberate murder? Even if those things did not diminish those factors?

A. I would still take them into consideration.

Q. And you'd want to take them into consideration?

A. Yes, I would.

Q. That would be important to you to do?

A. Yes.

Q. And different from the decision as to the guilt of the premeditated murder?

A. Correct.

MS. CLARKE: Thank you.

THE COURT: Please escort the juror to the adjacent room and bring in another juror.

Oh, I'm going to – the portion of the record that mentions this juror's employer shall be redacted under the authority of my anonymous juror order. And I hope that those present who heard it will ignore what they heard.

(Prospective juror number 74 left the courtroom.)

(Prospective juror number 76 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 76th randomly selected juror. I will probably reference you by that juror number. Let me ask you if this is your jury questionnaire.

A. (Examines document.) Yes, mm-hmm.

**Q.** You mentioned financial hardship reasons that could possibly interfere with your ability to fulfill your civic responsibility in this case. I'm wondering if the trial schedule I indicated I plan on using, would that alleviate those concerns?

**A.** Well, I work two afternoons and two days. And . . . so . . .

**Q.** When you respond to me, would you use the microphone that's there so I can make sure the parties at the counsel table hear your response?

**A.** Uh-huh. Okay. I work two afternoons and two day shifts. So that's from 9:00 until 5:00. And two afternoon shifts, one day from 5:00 till 10:00, and one day from 4:00 till 10:00 in the evening.

**Q.** So the service on this case would interfere with the morning shifts only?

**A.** Mm-hmm. Yes, the morning shifts.

**Q.** Two of them?

**A.** Right.

**Q.** Is your employer flexible enough –

**A.** She might.

**Q.** – to allow –

**A.** She might, yes.

**Q.** She might?

**A.** Mm-hmm.

**Q.** Is there any other problem we have to be concerned about that could interfere with your service on this case?

**A.** No.

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

**A.** Yes. I heard a little. Things out of the newspaper.

**Q.** I'm going to ask you questions from the podium so I can be ensured that your voice is heard by the other parties.

What did you hear?

**A.** About Ted Kaczynski not wanting to see a psychiatrist and things like that. And that was probably more or less it.

**Q.** Okay. One reason why we are here just talking to you individually is because I do want to know what type of – what's called pretrial publicity concerning this case.

**A.** Right. Yes. Just the normal things that are in the newspaper like The Sacramento Bee. I get it delivered every day, so whatever's in there, I've seen that.

**Q.** We don't expect jurors to be unaware of the allegations surrounding a case, but it's important that we understand what allegations a juror's heard. Can you give me more specifics about what you actually heard since Cal Expo?

**A.** That was just about it. I can't think of anything else right now. Just about a psychiatrist, you know. Can't even remember what it was right now.

**Q.** Okay. What was the source of that information?

**A.** Just The Sacramento Bee. And when I listen to the news.

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

**A.** No, I haven't.

**Q.** Any discussions about it at all?

**A.** No, I'd just say about my family, and my employer knows, but we haven't discussed it.

**Q.** Prior to appearing at Cal Expo, did you receive any information about the case?

**A.** No.

**Q.** Did you read news articles about the case?

**A.** Yes. I heard about it when they had the drawings of the Unabomber, you know, but I just never paid much attention to it. I wasn't really that interested in it. So I . .

**Q.** Did you hear anything about a cabin?

**A.** Oh, yes. Yeah, I heard about the cabin. Yes, mm-hmm.

**Q.** Can you tell me what you heard about the cabin?

**A.** That it was a very small cabin. In Montana.

**Q.** Anything else?

**A.** That he was living there in Montana. That's just about it.

**Q.** Can you tell me anything else that may have left an impression on you concerning information about the case?

**A.** Yes. It was a small cabin and they found – I've seen a drawing in the Sacramento newspaper that it was a small cabin and they found lots of evidence in there, so that was the only thing that left an impression, that it was – it seemed it was too small but they have found lots of evidence in there.

**Q.** Do you have a memory of the alleged evidence found at the cabin?

**A.** No. (Shakes head from side to side.) I have – just notes maybe. I have no idea what they found in there.

**Q.** Okay. Has any information you received about this case from any source whatsoever affected your ability to serve as a fair and impartial juror in this case?

**A.** No. No. I really don't know anything about it very much to affect me one way or the other.

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

**A.** No.

**Q.** Do I have your assurance that if you are selected as a juror in this case that Mr. Kaczynski will begin this trial in your eyes on what I'm referencing as a clean slate, which means that you will forget everything you heard outside the courtroom?

**A.** Yes.

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

**A.** Yes.

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

A. I'm against the death penalty.

Q. Okay. We're not necessarily looking for prospective jurors that are for the death penalty. But are you willing to consider the death penalty as a sentencing option along with a possible sentence of life in prison without release –

A. Yes.

Q. – or some lesser sentence?

A. Yes. Yes. Yes.

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. (Pause.) I don't know. I haven't really thought about it that much. But I don't know.

Q. Okay. Thank you.

**THE COURT:** The parties may conduct questions.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

Q. Good afternoon.

A. Good afternoon.

Q. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. Do you have your questionnaire there, or I don't know if you –

**THE COURT:** I may not have given it to her.

**PROSPECTIVE JUROR NO. 76:** (Accepts document.)

**MR. DENVIR:** Q. Could you turn to page 11, please. And that's question 41, when you were asked what you think or feel when you received your jury summons for this case, and you said, "Fear." Could you tell me what you were thinking at the time?

A. Well, that was, you know, all the things you're hearing on the news, oh, what do you call it – I just – I don't like being . . . I don't know how to say, the – in the newspaper or, you know.

Q. Kind of fear of losing your privacy?

A. Yeah. Losing my privacy, yes. Yes, yes.

Q. And you understand that Judge Burrell has ordered that the jury be treated partially anonymous, so that who you are and where you work and everything is not released to the public and the media and everything?

A. Right.

Q. And that's to ensure your privacy as much as you can?

A. Right.

Q. When you said fear, was it mainly fear, like, invasion of privacy? You weren't afraid of physical safety?

A. No, no. And the thought of driving. I don't drive very far, and I have to drive down here, and I don't know my way around very well so that was more or less it.

Q. Okay. And do you feel more comfortable about it now that you've made it here?

A. Right. I found it. Yes.

**Q.** And you answered somewhere on your questionnaire – I don't think it's very important where – that your husband actually works with explosives and that you and he have some organization that's been involved with explosives in some way.

**A.** Right.

**Q.** That, do you think that would affect you in any way sitting as a juror in a case where the charge is mailing or delivering bombs with intent to kill, with death resulting?

**A.** No, I don't know anything about explosives. My husband, he belongs to the Society of Explosives Engineers, and I just go there for the dinners and things like that.

**Q.** Okay. So that wouldn't have anything to do with your being a juror in this case.

**A.** No. No.

**Q.** Now, you indicated that you had read the paper and, I guess, listened to TV a little bit and knew something about the case, which is not unusual.

**A.** Yes.

**Q.** And no one is asking you to say that you can't sit on the jury just because you had some knowledge about the case because it was publicized.

**A.** Right.

**Q.** And you were asked whether at some point what the effect of that was on you, and I think you said that you didn't have any opinion about the case. Is that right?

**A.** I have no opinion – no. I don't know what to think of it. This is the first time I've ever been in a courthouse for anything. So I really don't know what to think of it.

**Q.** Well, based on –

**A.** It's a little confusing.

**Q.** It is kind of confusing you say?

**A.** Right, right. And it scares me.

**Q.** Well, if I'm confusing, you can ask me to clarify it, okay?

**A.** Okay.

**Q.** If it scares you, I don't know what I can do about that.

But let me ask you, you understand that the judge will instruct you, and I think he's already instructed you, that the nature of our system is that the jurors can only act upon and consider evidence that's presented in court and that they, that the jurors who have been exposed to any outside information outside the Court really have to put that out of their mind and not let it into their consideration of the case, their deliberations.

Do you think you'd be able to do that? Is that something –

**A.** Yes.

**Q.** You think whatever you know about the case you could just put aside and say, "I'm just looking at what happens here"?

**A.** Yes. I always think I can't believe everything I read in the newspaper anyway, so . . .

**Q.** Let me ask you, you said that you are against the death penalty?

A. Mm-hmm.

Q. And you understand the death penalty – there's two different parts where the death penalty could come in. One is the question of whether you think that our society, our state, our federal government should have a death penalty or not and whether you would vote for it if you could vote for it at the polls or if you were a congressman or legislator you would select it. And I take it you don't –

A. That's the part, yeah.

Q. You wouldn't vote for a death penalty. You don't think we need it.

A. No. No. I don't think we need it, no.

Q. But you understand that there's a second part, which is that Congress has decided otherwise and has provided that, for the crime of mailing or delivering an explosive with an intent to kill that results in the death of a person, that one of the penalties can be execution –

A. Mm-hmm.

Q. – and has also provided an alternative penalty of life in prison without possibility of release. There's no parole in the federal system, so that would be no possibility of release.

If you were selected as a juror in this case, you would have to be able to consider either of the two alternative penalties that are provided by law by Congress. Could you do that, in spite of whether you would have voted to have a death penalty or not?

A. I probably could, yes.

Q. Now, you've never sat as a juror before?

A. No, I haven't, no.

Q. So it's hard to ask you what you would do in these hypothetical, "what if" kind of things. But, essentially, what happens in a case like this where there's a capital charge is that the jury – first there's a trial on the question of guilt or not guilt of the charges that were brought by the Government. And 12 jurors sit and determine, based on the evidence that they hear and the instructions from Judge Burrell, whether Mr. Kaczynski is guilty of those charges, whether the Government has proved them beyond a reasonable doubt by their evidence. That's the normal trial we would have.

Because two of the charges, both involving the death of a man by the name of Mr. Murray, Gilbert Murray, are capital offenses, if the jury were to convict Mr. Kaczynski of those offenses, then there would be, in effect, a second trial.

A. Oh.

Q. And it would be like the other trial, and I'm trying to explain it to you. The same jurors who had found Mr. Kaczynski guilty beyond a reasonable doubt of mailing or delivering a bomb with the intent to kill and killing Mr. Murray would then be asked to decide what should be the penalty, the sentence that Mr. Kaczynski would serve for that.

And the judge will tell you that the law provides choices for the jurors to make. They would choose between death or life without possibility of release or even a lesser sentence. Those would all be possibilities.

Then, at that second trial, just like the first trial, the prosecution would present evidence that we call aggravating evidence. That's a legal term. What it really means is evidence that the prosecutors think points towards death as the appropriate sentence for Mr. Kaczynski or whoever the defendant was.

A. Mm-hmm.

Q. And that could be any kind of evidence about him or about those crimes.

Then the defense can present what we call mitigating evidence, and that is any evidence that the defense thinks points to life as the proper penalty –

A. Mm-hmm.

Q. – instead of death. And that, again, could be anything about Mr. Kaczynski or about the crimes.

And then Judge Burrell would give some instructions to the jury and would pretty well then say to each of the jurors, "You must decide for yourself which of these penalties, both of which are provided by law, should be imposed in this case."

Now, would you be able to do that, do you believe?

A. I think I would, yeah.

Q. Would you be able to consider the evidence that the Government says should point towards – points towards death and what the defense says points toward life and then make your own decision as to who's right on that in your view?

A. Yes. I think I would be able do that.

Q. And in doing that, would you be able to put aside whether you think we should have a death penalty or not if you were a legislator?

A. Yeah. I think I would.

Q. I know it's hard to imagine all this, but we have to ask you. I mean, you know yourself best whether you can follow the law and be a juror.

A. Right. Yes.

Q. And I think you said, if you could turn to page – if I can find it – you said – you were asked on page 28, if you could look there, and you'll see question number 108 – you were asked, where one person intentionally kills another – you had three choices, and you chose the death penalty may or may not be justified depending on the circumstances of the case.

A. Right.

Q. And is that how you feel now that you've heard it explained?

A. Right. That's how I feel.

Q. You could look at all the evidence and then make your own?

A. Make my own decision, yes.

Q. And doing that, whatever your feelings might be otherwise about the death penalty, you could follow what the judge said and listen to the evidence?

A. Yes. Mm-hmm.

MR. DENVIR: Thank you.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Ma'am, good afternoon.

A. Hello.

Q. My name is Steve Lapham. I'm one of the prosecutors in this case. I just want to ask you a few follow-up questions about your views on the death penalty.

Do you still have your questionnaire in front of you?

A. Mm-hmm.

Q. I think you're already on or close to the question. 103. It's on page 26.

A. 103? Mm-hmm.

Q. You've already told us that you don't believe in the death penalty. And I believe that's a position you've held all your adult life?

A. Right.

Q. You haven't wavered in that belief?

A. No.

Q. And that belief is – you consider that a strong belief of yours?

A. (Pause.) Yes, I think so, yes.

Q. That's based partly on your religion?

A. Yes.

Q. And it's usually – with most people, religion is kind of a core principle with them; it's part of their being. Would you agree with that –

A. Yes.

Q. – with respect to your views on the death penalty?

A. Yes. It's because of my religion; yeah.

Q. You said in question 103 that you allowed that it might be appropriate in perhaps extreme cases. Do you see that in your answer?

A. Yes, I see. Yes, I did.

Q. What were you thinking about there?

A. I was thinking about – oh, I forgot the person that killed Polly Klaas. I was thinking about him. I would think he would deserve to die.

Q. You may want to bring the microphone a little closer.

A. Okay. (Complies.) Yes, I was thinking about him.

Q. And that was a case of rape and –

A. Right.

Q. – abduction and rape and killing of a child?

A. Right. Mm-hmm.

Q. Are there any other situations where you would feel that the death penalty was appropriate?

A. I can't think of anything right now. I can't think of anything right now. That was the only thing I was thinking at the time.

Q. Okay.

A. That was the only one that I was thinking about.

Q. I realize that's what you said weeks ago at Cal Expo.

A. Mm-hmm.

**Q.** As you sit here today, are there any other cases, other than the killing of a child, the raping and killing of a child, where you think the death penalty would be appropriate?

**A.** (Pause.) I would think it depends on the circumstances, you know, after I have listened to the case and seen.

**Q.** Okay. Now, help me understand your views. We talked about, kind of, the death penalty in the abstract, if you were a legislator and you were voting on the death penalty.

**A.** Right.

**Q.** But at some point, if you're selected as a member of the jury, you're going to be asked to –

**A.** Right.

**Q.** – actually vote whether the death penalty should be imposed. And as I understand your answer to question 103, you say, "My feeling is that I do not have the right to give anybody the death penalty."

**A.** Right. That's just – that's just how I feel, yeah.

**Q.** You don't feel you have the right?

**A.** I just don't think that it should be up to me, you know, to give anybody the death penalty.

**Q.** And is that because it's part of your core values that – taught to you by your religion in part?

**A.** That's right.

**Q.** That you don't feel it's appropriate for you?

**A.** To kill.

**Q.** To kill. You would feel yourself to be a killer if you were to do that?

**A.** (Pause.) I don't know. I don't know how I would feel if I would actually – I can't tell you.

**Q.** And that's another thing I wanted to ask you about.

You said, in answer to some of Mr. Denvir's questions – he asked you whether when you actually got into the jury room and had to make that decision – this is assuming you'd already convicted the defendant and you were now considering what punishment to render, you said that you could – you possibly could vote for the death penalty.

**A.** I possibly could; yes.

**Q.** Do you have some doubt about that?

**A.** No.

**Q.** You don't have any doubt about it?

**A.** No. I would think after I listened to everything and, you know – I don't know. I don't think I would go into – I would – I could go vote for it, yeah.

**Q.** All right. Now, you've already told us that you don't feel like you have the right to –

**A.** Kill anybody.

**Q.** To kill anybody or to vote for the death penalty?

A. Right.

Q. So how is it that you can be so sure that you could go into the jury room and vote for the death penalty?

A. I don't know.

MR. DENVIR: Your Honor, I object. I think that misstates what the juror said. She did not say – she said she didn't feel she had the right to kill. She didn't say she didn't have the right to vote for the death penalty. I think that's a misstatement.

THE COURT: Well, why don't you rephrase it.

MR. LAPHAM: Q. Did I misstate that?

A. No, I understand what you say. Yes, I –

Q. Did you state earlier that you didn't feel that you –

A. That's right. Mm-hmm. Yes, I did.

Q. – that you didn't feel that you had the right to vote for the death penalty or impose the death penalty?

A. (Pause.) Yes. More or less, yeah.

Q. Okay. So my question is, having made that statement –

A. Right. Right.

Q. – how can you be so certain that you could go into the jury room and vote for the death penalty?

A. I don't know. I tell you truth – I have no idea, I mean, I know I wouldn't, you know –

Q. I know it's a difficult –

THE COURT: She wasn't finished with her response.

MR. LAPHAM: Q. I'm sorry.

A. I would do my duty, you know, I would – if that's what everybody else would agree upon, I wouldn't be against it.

Q. Well, we don't want you to go along with it just because everybody else is going to go along with it. The question is, you have to make an independent judgment –

A. Right.

Q. – of your own. And you have to do that, presumably, without violating your own personal principles.

A. Yes.

Q. So the question is, are you saying that you really won't know whether you could vote for the death penalty until you actually get into that jury room and find out?

A. (Pause.) Yes, more or less that's what I'm saying, yeah. Until I go through the trial, and, you know, see what actually is happening or what's going on.

Q. Now, I want to go back to this again. You've said that your religion teaches that it's not right to kill.

A. Correct.

Q. And you've said that your core principles teach you that you do not have the right to impose the death penalty.

A. Mm-hmm. Right.

**Q.** Wouldn't it violate –

**A.** Yes.

**Q.** – some innate conviction of yours to vote for the death penalty?

**A.** It would. Yes, it would.

**Q.** And you'd have a very difficult time –

**A.** I would have a difficult time.

**Q.** – ever doing that?

**A.** Yes. I wouldn't do it easily.

**Q.** I'm sorry?

**A.** I would not do it very easy. It would be very hard on me.

**Q.** Well, could you ever do it?

**A.** I don't know. I . . . I don't know if I could or not.

**Q.** You've said that you strongly disagree with the proposition – if you look at question 107 on page 27 – you strongly disagree with the idea that someone who commits a murder should get the death penalty.

**MR. DENVIR:** Objection, Your Honor. That is not what the question says. It does not say "someone." It says "anyone."

**THE COURT:** I can't see the question. Can you rephrase it if he's correct?

**MR. LAPHAM:** I'm not sure I understand the distinction, but I'll read the question verbatim. "Anyone who plans and commits a murder should get the death penalty," and you strongly –

**A.** I disagree.

**Q.** You strongly disagreed with that?

**A.** Right.

**Q.** And the next question is: "Anyone who deliberately murders two or more people should get the death penalty," and you strongly disagreed with that?

**A.** Yes.

**Q.** Okay. And then the next category is: "Any person who commits an act of terrorism in which someone dies should get the death penalty," and you strongly disagreed with that as well?

**A.** Mm-hmm.

**Q.** Now, you filled those answers out several weeks ago?

**A.** Right.

**Q.** As you sit here today –

**A.** I haven't changed.

**Q.** – you haven't changed your mind on those?

**A.** No. No.

**MR. LAPHAM:** I have nothing further.

**MR. DENVIR:** Your Honor, could I have a follow-up question or two?

**THE COURT:** It's got to be brief. We've got two other jurors.

**MR. DENVIR:** I'll make it very brief.

VOIR DIRE EXAMINATION

**BY MR. DENVIR:**

**Q.** Ma'am, let me see if I can ask you this.

You've indicated you have some religious beliefs about the death penalty that go one way. And if you were a juror here you would have to – what you would have to do is you would have to swear that you would follow the law as you get it from Judge Burrell.

**A.** Yes, I would.

**Q.** What Judge Burrell would tell you is that you would have to be willing, and mean it in your heart, to consider that as a possible punishment if you reached that point.

**A.** I understand that, yes.

**Q.** And could you then put aside your personal beliefs and live up to that oath and actually consider it as something you might do if you felt it was the right –

**A.** Yes, I could. I think I could, yes.

**MR. DENVIR:** I have no other questions. Thank you.

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** When you say, "I think I could," can you tell me what you mean by that, because that doesn't sound positive.

**A.** Yes, I could – I could put away my feelings and . . .

**Q.** Okay.

**A.** For the death penalty.

**THE COURT:** Okay. Please escort the juror back to the room from which she came and bring in another juror.

(Prospective juror number 76 left the courtroom.)

(Prospective juror number 79 enters the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** You're the 79th randomly selected juror. We're going to ask you some questions. There's a microphone we'd like you to use when you answer the questions and act as though you were being addressed by the parties at counsel table so they can hear your responses.

Sorry for keeping you in the other room so long. Typically the process moves a little quicker than it has, but sometimes things happen. And I want you to know that we were mindful of your time and did not mean to waste it and generally we are better budgeters of time. So I apologize for keeping you waiting.

Is there any reason why we should not consider you as a potential juror on this case?

**A.** Actually, I'd like to be a juror on this case, but I take care of my mom and she's got, you know, health problems, and it's a long trip back and forth to Susanville. It was, like, a little bit of snow last night; it took extra time too, getting down here.

**Q.** I know an individual that is close to you would be on your mind. Is there – and I hate to ask this, but I need to ask this question, because the parties are entitled to a fair cross-section of the community from which to select potential jurors – is there any other arrangement that could be made for your mom during this trial?

**A.** I could possibly bring her down here with me. My godmother lives here, right down here in Hurley, and actually I was born here but I haven't been here in 10 years. But there's a possibility I could bring her down here with me, have somebody else watch her during the day.

**Q.** Only you know your circumstances.

**A.** Yeah.

**Q.** Would that work for you, sir?

**A.** Sometimes – you never know. Her health can change from day to day. She's got rheumatoid arthritis, and you never know what it's going to do. I mean, some – she has good days and bad days.

**THE COURT:** Would the parties like to confer or –

(Discussion off the record among Ms. Clarke, Mr. Denvir, and Mr. Lapham.)

**MS. CLARKE:** Your Honor, we're happy to excuse the juror.

**MR. LAPHAM:** Your Honor, I think it requires a little probing, since he says he would like to serve –

**THE COURT:** You can probe.

**MR. LAPHAM:** – and could maybe work things out.

VOIR DIRE EXAMINATION

**BY MR. LAPHAM:**

**Q.** Sir, my name is Steve Lapham. I'm one of the prosecutors on the case. You did indicate you'd like to serve?

**A.** Yeah. I've been really interested in this. I think it would be kind of interesting, yeah. But it's just I have a hard time staying. With Susanville so far away and everything, it's like I couldn't be gone more than a couple days at a time.

**Q.** Well, only you could answer this. The Court is going to sit five days a week 8:00 to 1:00. That would require you, because of the distance, to live here in Sacramento for those five days. Only you can answer whether you'd be willing to do that or not and whether you could make the arrangements to do that.

**A.** Well, are we going to be sequestered or are we going to be let go? Because I'd have to go home a couple days a week at least.

**Q.** Well, the Court would recess at 1:00 o'clock on Fridays, so you could go home on the weekends. But you would be required to come back Sunday night.

**A.** Yeah, if I could bring my mother down here and take care of her too. I just need somebody to watch here while I'm here.

**Q.** I guess what we need to know is, is that a realistic possibility that you could do that?

**A.** Probably not. Not really. I mean, I'd like to do this, but it's like— I've got called for jury duty before but never been picked. And, you know, I have wanted to do this and I didn't want to do it just because I hate to be away from home for that long.

**Q.** You're saying you wouldn't be willing to do that?

**A.** It would be really hard on me.

**MR. LAPHAM:** Okay. I have nothing further.

**THE COURT:** Meaning that you join the defense?

**MR. LAPHAM:** Yes.

**THE COURT:** Okay. Because of what you've shared, sir, we're going to excuse you from further service on this case.

**PROSPECTIVE JUROR NO. 79:** All right. Thank you.

(Prospective juror number 79 left the courtroom.)

(Prospective juror number 80 entered the courtroom.)

VOIR DIRE EXAMINATION

**BY THE COURT:**

**Q.** Thank you for joining us. You're the 80th randomly selected juror. Sorry for keeping you waiting. We are mindful of your time and questions. Just the process took a little bit longer than expected, and I'm sorry about that.

**A.** No problem.

**Q.** Okay. Have you had any problems hearing any aspect of the proceeding that you've been involved in?

**A.** Not as yet, no.

**Q.** Okay. Do you have any medical condition that would interfere with your ability to serve as a juror?

**A.** I don't believe so. I have high blood pressure and I have allergies. I'm allergic to everything in Sacramento, but I take medication for that.

**Q.** Can you think of any reason why we shouldn't continue to consider you as a prospective juror in this case?

**A.** Not as long as you speak up.

**Q.** During the trial, witnesses will be using the seat you're now in. And there's a microphone available for witnesses, and if at any time during the proceeding you failed to hear something, you could indicate that fact by raising your hand and I would endeavor to correct the situation.

Given that understanding, do you think you'd have any problems sitting as a juror in this case?

**A.** No. I don't believe so.

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

**A.** Anytime something's come on, I've tried to walk out of the room or — I have not read anything on it.

**Q.** Have you had any discussions with anyone about the case since that time?

**A.** No.

**Q.** Focus on the time period before Cal Expo. Can you tell me what information you received about the case?

**A.** I read some articles on it. I'd heard some news reports on it on TV and on the radio. Specifics? Do you need specifics?

**Q.** And I'll tell you why. The law does not expect jurors to walk into this courtroom unaware of allegations surrounding the case if there's been a lot of publicity about a case. That's not expected. But the law does expect the judge and allows the parties to ask questions about what a juror has heard about a case.

At some point we do expect you to forget everything you heard if you were selected as a juror in this case. But we do probe to see what you heard, because we want to know if it has had any effect on you, and we want to make that determination ourselves too and we have to hear that from you.

So what have you heard about the case?

**A.** Oh, I heard that Mr. Kaczynski had been arrested, that he was suspected of being the Unabomber. I heard about the – his home in Montana, the number of bombings that are attributed or supposedly attributed to him. Jeez – I don't remember everything that I heard.

**Q.** Can you tell me anything else that you heard about the home in Montana?

**A.** There – no. Just that there was a lot of evidence there, and I never really paid that much attention to it.

**Q.** Is there any item of alleged evidence that was there that you have a memory of?

**A.** Not specifically.

**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.** I don't believe so.

**Q.** When you say, "I don't believe so," it sounds as though you're not absolute in your response. Can you explain why you're not?

**A.** Well, I believe that I'm normal. I believe that I have an opinion and that – I mean, that I'm – it's a possibility that the defense or the prosecution either way could change my opinion. But I don't know for sure.

**Q.** I appreciate that candidness, and I want to know what your opinion is.

**A.** Honestly, I believe that Mr. Kaczynski is guilty.

**Q.** What's the basis of that opinion?

**A.** Just from the information that I have heard and have read on the news and in the newspaper.

**Q.** How strongly are you committed to that opinion?

**A.** I think – not that strongly. I believe that he is, but like I say, I believe that I could be swayed one way or the other.

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

**A.** I believe I could.

**Q.** Do I have your assurance that if you were selected as a juror in this case you will, in fact, set that opinion aside and you will allow Mr. Kaczynski to start this trial on a clean slate?

**A.** Yes.

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

**A.** Yes.

**Q.** Do you consider yourself a proponent or an 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.** Yes.

**THE COURT:** The parties may conduct examination.

**VOIR DIRE EXAMINATION**

**BY MR. DENVIR:**

**Q.** Afternoon. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions, if I can.

**A.** Okay.

**Q.** I guess I'd like to go back to your exposure to information about the case, which is not unusual, given that it's been pretty highly publicized. As I understand it, you've read articles about it and seen things on TV and heard things on radio, all of those?

**A.** Yes.

**Q.** And since Cal Expo, since you went and filled out your questionnaire, have you read any articles or heard any TV or radio about it?

**A.** Yes. I've heard bits but have tried to – anytime it came on the radio, I changed the radio station. If it was on TV I walked out of the room. And I have not read any newspaper articles at all.

**Q.** Do you remember anything that you heard during that time period from those bits at all, any particulars?

**A.** No. Just bits and pieces where they said that this was something about the Unabomber trial, and I turned it off or walked out of the room at the time.

**Q.** But let me ask you, you did indicate you have some kind of problem with hearing or some difficulty?

**A.** Yes.

**Q.** Do you think that will be any problem in this case, listening, being able to hear what goes on?

**A.** Well, I hope not. I have my hearing tested every six months and they tell me that my hearing is questionable for communication purposes.

**Q.** "Questionable for communication purposes." Do you know what that means?

A. The way I understand it, I have problems hearing what people say, for the most part, unless they speak up. I'm not having any problem with what you're saying right now.

Q. I don't recall; have you sat on a jury before?

A. Yes. But it's been a number of years.

Q. So that doesn't give us a very good indicator, I guess. Has your hearing changed over time probably?

A. It's gotten worse; yes.

Q. And do you have problems sometimes in hearing, you know, when you're in your regular work?

A. Yes.

Q. And I guess you saw some expert on that, an audiologist or I don't know what it's called, and when they say "questionable for communication purposes," does it mean that you would have enough hearing problem that you can't be sure whether you've heard the communications?

A. That's correct. If I have a problem and I don't understand something, I have to ask someone to repeat it.

Q. And I guess that's the question. Are you aware when you can't hear things?

A. Yes.

Q. Yes. Okay. So you think that for purposes of the trial – you're the best judge of this – that in spite of what the audiologist said, that you feel you could hear what goes on in the courtroom generally and –

A. I believe so, but my only problem was I might have to ask someone to repeat things more often than most people.

Q. And you would do that if you felt it was necessary?

A. If I don't hear it, I'm going to ask.

Q. Okay. That's good.

You said when you were talking to Judge Burrell, and I think you said in your questionnaire – I wonder if you have your questionnaire.

**THE COURT:** That's your questionnaire, I think, sir.

**PROSPECTIVE JUROR NO. 80:** (Accepts document.)

**MR. DENVIR:** Q. If you could turn to page 32.

A. (Complies.)

Q. You were asked the question back at Cal Expo, if you look at question 123 down there, "Is there any particular reason that you would not like to be a juror in this case?" And you replied yes. And then you were asked to explain, you said, "With all the evidence that I have heard, I don't believe he is innocent." Is that right?

A. Yes.

Q. And that was based on the evidence that you had heard on either radio, TV, or in the newspapers?

A. Yes.

**Q.** And then you were asked – if you turn to the next page, question 124 – "As a result of any experience described in any of the previous questions, is there anything that would cause you to favor or disfavor either the prosecution or the defendant in this case?" And you honestly – you said yes, and then you candidly said, "I think he is guilty." Is that right?

**A.** Yes.

**Q.** And that's still your view at this point?

**A.** Well, I believe I told the judge that I – if the trial started now, that I would do my best to start it off with a clean slate.

**Q.** Well, I understand that you would do your best. Let me ask you this: when you wrote that and as you sit here now, how certain do you feel as to his guilt? Is it 10 percent, 20 percent, 70 percent, 90 percent?

**THE COURT:** Wait a minute. What was it – what was that? I think it's a compound question – as he wrote it and as he sits here now.

**MR. DENVIR:** **Q.** I'll make it as he sits here – have your feelings as to Mr. Kaczynski's guilt become less or stronger since you filled out this questionnaire?

**A.** About the same.

**Q.** That's what I'd like to ask you. What percentage of certainty as to his guilt do you have, as you sit here?

**A.** I don't know if I could put a percentage on it. I just – that is my belief.

**Q.** Is it a strong belief would you describe it as?

**A.** I believe so, yes.

**Q.** And if you were selected as a juror and you were sitting in the jury box and the judge were to – and there were no evidence at all and the judge were to instruct you now you had to determine whether he was guilty or innocent, how would you find? You heard no evidence at all?

**A.** If there was no evidence at all?

**Q.** Right.

**A.** Then I would have to find him not guilty.

**Q.** Now, do you feel, with your strong feeling that he is guilty, that there will be a burden on the defense to sway you? I think you said you thought you could be swayed.

**A.** I believe I said I could probably be swayed either way, by the defense or the prosecution.

**Q.** Right. But at this point, as I understand it, you said you have a strong belief that he's guilty. The prosecution wouldn't have to sway you very far. I want to know if you think the defense would have to sway you.

**A.** I believe that I, if I'm chosen for this, that I will come in here with an open mind.

**Q.** And put aside that strong belief in guilt?

**A.** Yes.

**Q.** Only you know that, sir.

**A.** Yes. I believe so.

**Q.** Okay. If you'd look at page 32, question 120, you were asked before coming in here today – this was at Cal Expo – what were your thoughts and opinions about this case, and you stated candidly, and we appreciate your candor: "If found guilty, he should get the death penalty." Is that your view today?

**A.** Yes.

**Q.** And how strong is that belief?

**A.** Very strong.

**Q.** What percentage?

**A.** Hundred percent.

**Q.** Hundred percent certainty he should get the death penalty?

Now, did you know that the so-called Unabom bombing incidents occurred over a fairly long period of time? Did you keep track of them or kind of read about them as they went on?

**A.** No. I didn't keep close track of them.

**Q.** But did you read the accounts as they occurred, the media accounts?

**A.** No. For the most part I didn't.

**Q.** When did you start kind of paying attention to those, if at all?

**A.** Just – more than anything it was news reports that – on the TV that I would see or on the radio. I read some on it, but very little.

**Q.** And did you start hearing the TV and radio and news reports back a while ago, as I say?

**A.** They started back 20 years ago, I believe, or something like that.

**Q.** And did you somewhat follow them over the years as they occurred, as they were reported in the press?

**A.** Yes.

**Q.** And then when Mr. Kaczynski was arrested in April of '96, did you pay more attention or less attention after that do you think?

**A.** No, I think it was about the same.

**Q.** About the same. And I think you said when you were asked about your knowledge of the case – this is on page 31, just so you can check it – "How would you describe your knowledge of the case?" and you said you were "somewhat knowledgeable."

**A.** I think I probably should have marked "not very knowledgeable."

**Q.** So in thinking back on it now, you think you're not – oh, you'd say "somewhat knowledgeable" was an overstatement?

**A.** Yes.

**Q.** And you're not very knowledgeable?

**A.** Yes.

**Q.** What makes you think – the difference, the change?

**A.** Well, because I didn't – thinking about it, I didn't follow it that closely for all those years. I've heard more about it in the last year and read some and heard some on the news, but I don't believe that I – I don't believe I answered that one correctly.

**Q.** Okay. Now, you said that you're a hundred percent certain that if Mr. Kaczynski's found guilty he should get the death penalty; is that right?

**A.** Yes.

**Q.** And that's based on what you know about the crimes from what you've heard over the years?

**A.** That, based on my belief that if the – if he is found guilty of this crime and there were people that died in it, that I believe that he should get the death penalty.

**Q.** Well, just so you understand, he is charged here with, in essence, four of these so-called Unabom events.

**A.** Mm-hmm.

**Q.** And one of them is a capital offense. There's actually two charges. He is charged with either mailing or delivering, I guess the word is "transporting," actually, a bomb with an intent to kill someone and that it resulted in the death of Gilbert Murray. And that's the capital offense.

And as I understand it, you feel that if he is found guilty of that, then in your opinion you would vote for the death penalty for that?

**A.** Yes.

**Q.** And can you think of anything that would change your mind about that, based on what you know?

**A.** No.

**Q.** And is that pretty much in line with your general views on the death penalty?

**A.** Yes.

**Q.** And as I understand it – if you turn to page 26 so you know what I'm referring to –

**A.** (Complies.)

**Q.** If you look at number 104, you said your religion or philosophy or spiritual training teaches an eye for an eye. So that your view is that if Mr. Kaczynski were convicted of the – of intentionally causing the death by a bomb of Mr. Murray, then he should forfeit his life for that?

**A.** Yes.

**Q.** That's what it's based on, to a great degree?

**A.** Yes.

**Q.** And you've given some thought to this, it appears?

**A.** Yes.

**Q.** And have you thought about it since you first made that statement as to what your views were out at the Expo? Has it come up again at all?

**A.** Not specifically about this. It's the way I've felt for years.

**Q.** Now, the procedures in a case like this are that there is a first a trial, because this is a capital case, a death penalty case. It's different than other cases. There's a trial. That's what Judge Burrell's referred to as the guilt or not guilt part of the trial. That's like any other trial. The Government has the burden of proving beyond a reasonable doubt that Mr. Kaczynski committed the crimes he's charged with. The jury hears

evidence from both sides, if it's presented, is instructed by the judge, goes out to deliberate, and then determines whether they unanimously agree that he committed those crimes. As I said, two of those are the ones involving the transporting or mailing a bomb that resulted in the death of Gilbert Murray the capital offense.

And if you were a juror on that and they – and Mr. Kaczynski was found guilty of those charges, then there would be a second trial, which is unusual because it's a capital case. And that's another trial where – I think the judge has referred to it as a sentencing or penalty phase or penalty trial. And, at that, the question would be for the jurors to determine what the penalty should be. And the penalties provided by law for those offenses are death, life imprisonment without possibility of release because there's no parole anymore, or a lesser sentence.

And what would happen then is that the Government could present any additional evidence it wanted to present, what is referred to as aggravating evidence – that's evidence that they believe supports the death penalty, that it should be imposed. And then the defense would present any evidence that they wanted to present of mitigating evidence. Mitigating evidence just means evidence that the defense believes points to life as the proper sentence or a lesser sentence. And then the jury would be instructed pretty much that each juror should then make their decision as to the proper penalty and go out and deliberate just as they would before.

Am I correct that if you were on the jury and you found Mr. Kaczynski guilty of those two offenses, the mailing or transporting of the bomb with intent to kill that killed Mr. Murray, that you would impose the death penalty after the end of the second sentence [sic]?

**A.** Yes.

**Q.** And given your feelings about it – I have to tell you, sir, we do appreciate your candor on this because, as I say, only you know, just as on the question of hearing, we don't know what somebody's thinking, and we want to, we need to know that to determine whether this is the kind of trial that you should sit on or not – am I correct that if you heard all the evidence as to guilt or innocence and found him guilty of these two crimes, the mailing or transporting of a bomb with intent to kill, killing Mr. Murray, that you could not give any consideration to any penalty for him other than death because it's an eye for an eye?

**A.** I believe that's correct.

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

**THE COURT:** Yes.

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

**MR. DENVIR:** Thank you. I have no other questions.

**VOIR DIRE EXAMINATION**

**BY MR. FRECCERO:**

**Q.** Good afternoon, sir. My name's Stephen Freccero. I'm one of the prosecutors in this case. I just have a few brief questions too.

The judge asked you if you could put aside matters that you have heard outside the court and offer – and if you were sworn as a juror, and give the defendant, have him start out on a clean slate. Do you remember that?

**A.** Yes.

**Q.** And my question is simply, as to whatever punishment in this case applies, after he's been convicted, would you be open to any alternative other than the death sentence based on the evidence presented to you?

**A.** Probably not.

**Q.** Would it make a difference if the judge told you, you must consider both the Government's evidence and the defendant's evidence and you must consider the alternatives? Would that make any difference to you?

**A.** (Pause.) I would consider it. But if found guilty, I would probably vote for the death penalty.

**Q.** Okay. There's – so in your mind, no matter what the instructions are, you would vote for the death penalty?

**A.** (Nods head up and down.)

**Q.** Is that your answer, sir?

**A.** Yes.

**MR. FRECCERO:** All right. Thank you, sir. No more questions.

**THE COURT:** You can take the juror to the waiting room.

(Prospective juror number 80 left the courtroom.)

**THE COURT:** I'm going to excuse the juror for cause.

**MR. DENVIR:** Thank you, Your Honor.

**THE COURT:** Anything further to cover?

**MR. DENVIR:** No, Your Honor.

**MR. LAPHAM:** No, Your Honor.

**THE COURT:** Thank you.

(Time noted: 5:16 p.m.) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

– oOo –

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

– oOo –

UNITED STATES OF AMERICA, ) ) Plaintiff, ) ) vs. ) No. Cr. S-96-259 GEB )  
THEODORE JOHN KACZYNSKI, ) ) Defendant. ) -----

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REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 5, pp. 823-1016  
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– oOo –

Reported by: SUSAN VAUGHAN, CSR No. 9673 DENNIS McKINNON, CSR No. 2223 KELLY O'HALLORAN, CSR No. 6660

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