

Jury Selection Day 6

Nov. 20, 1997

SACRAMENTO, CALIFORNIA
THURSDAY, NOVEMBER 20, 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: Ready, your Honor.

MR. LAPHAM: Yes, your Honor.

THE COURT: Okay. Bring in the jury.
(Prospective jurors entered the courtroom.)

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

THE CLERK: Please stand and raise your right hand.
(Prospective jurors sworn.)

THE COURT: Good morning and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my deputy clerk. Her name is Shani Furstenau. Next to her on the same platform is a certified shorthand reporter who will help me administer this proceeding.

I trust that you will fulfill your civic duty here during this voir dire and 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 that 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 based on the evidence that is presented in this courtroom and on the law that I will give to them.

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

The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if

the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life imprisonment without possibility of release, or a lesser sentence.

This determination is made at the second phase of the trial referenced as the sentencing phase. If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please indicate that fact by raising your hand now.

There's no response.

The first part of the trial, which will be referenced as the guilty or not guilty phase, will occur like any other trial in Federal Court. The government will present its case first. The government has the burden of proving every element of the crimes charged 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 facts, whether the aggravating facts 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 your randomly selected number as a juror rather than by your name. This is because I've decided to use an anonymous jury, and I've indicated that to you in a previous communication.

Now I will give you a jury instruction.

I now want to say a few things 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 your friends. You may tell them that you are a juror, but don't tell them anything about this case until after you have been excused by me.

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

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

Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they had no opportunity to discuss.

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

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

The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse.

Please raise your hand if this poses a problem.

There's no response.

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

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 will be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context or anything that might

suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence.

Does any juror not understand that?

There's no response.

Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There's no response.

If you are selected to sit on this case, each of you will be required to render a verdict solely on the evidence presented at this 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 would interfere with your ability 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 interests, 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 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.

(Prospective juror number 82 remained in the courtroom.) \\\

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 82nd randomly selected juror. I'm going to ask you questions from the bench provided that I can get you to use the microphone that's on the witness stand. And when you respond to my questions, you need not look at me if that would make it difficult for using the microphone, because I want to make sure the parties hear your responses.

A. Okay.

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

A. No.

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

A. I've heard just little blurbs I think on the radio driving home. But other than that, I haven't really paid attention to it.

Q. What type of things do you remember hearing since then, Cal Expo?

A. I think as far as something about an insanity defense, that being submitted. I think that's been about it. I've been traveling a lot in my job, so I haven't been really watching much TV or reading the newspaper, and I haven't been here locally.

Q. Since you filled out your questionnaire at Cal Expo, have you had any discussions with anyone about the case?

A. No.

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

A. Just the mailer that you sent to us informing us that we were selected for the jury, the previous selection.

Q. I'm going to now direct your attention to publicity that you perhaps were exposed to before you appeared at Cal Expo concerning this case.

Can you tell me what you remember about the news stories of the case before you appeared at Cal Expo?

A. I think reading in the paper that there had been an arrest, you know, a while back, and that the decision to try it would be in Sacramento.

Q. Did you receive any information about the allegations that will be tried in this courtroom?

A. Maybe. I think I recall that there would be something to do with the use of explosives. Or I remember reading things in the Sacramento Bee about, I think, the last bomb that went off locally. But that was about it. I haven't been following it intently or really at all.

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

A. No.

Q. Do you have any opinions as you sit where you are now concerning the guilt or innocence of Mr. Kaczynski, any preconceived notion about his guilt or innocence?

A. No.

Q. Did any of the information you received about the case cause you to have such an opinion?

A. No, I don't think so.

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

A. Yes.

Q. You will forget anything you heard that you received outside this courtroom?

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 guess I never really thought about it before in those terms. I think it's – I guess I'm unsure. I don't know. I don't feel strongly either way.

Q. Can you share with me your views on the death penalty?

A. I think it's a lot easier to maybe make a decision when you are not the person who's – you know, it's easier to make judgment on a third party who is in the decision-making process versus if you're actually on the jury. I guess there may be times where it may be warranted and times where it may not.

Q. If the jury, assuming you were on 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. Can you repeat the question?

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. Is this – I guess I'd have to say – I guess it depends on the circumstances, and I guess – can you repeat it one more time?

Q. If the jury should convict Mr. Kaczynski of the offense of intentional murder, would you still be willing to consider a sentence of less than death?

A. I guess I could consider it depending upon the circumstances. And I don't know what are the legal reasons as far as where the death penalty applies and where it doesn't. I'm not educated in that area so –

THE COURT: All right. Thank you. I'm going to allow the parties to ask you some questions.

VOIR DIRE EXAMINATION BY MR. LAPHAM.

Q. Good morning.

A. Good morning.

Q. My name is Steve Lapham. I'm one of the prosecutors in the case. Let me just pick up where the judge left off. You sound like you don't have very strong views about the death penalty one way or another; is that correct?

A. Yeah.

Q. Let me ask you first, would you have any problem imposing the death penalty if that appeared appropriate under the circumstances and given the judge's instructions?

A. No.

Q. And let me ask it the other way. Would you have any problem imposing a life sentence or some lesser form of punishment if that appeared appropriate under the circumstances and given the judge's instructions?

A. No. I'm open either way. I'd want to look at all the facts before I made a decision.

Q. Okay. And that's exactly what the law says you should do. The judge advised you earlier that the trial is going to proceed in two phases. The first phase is a guilt or not guilty finding. And should you find the defendant guilty of the two charges, either of the two charges that the judge discussed, then you would move on to the second phase, and that would involve consideration of additional evidence and additional factors which would bear on the appropriate sentence.

A. Uh-huh.

Q. So you would have an open mind to listen to that additional evidence in making your determination?

A. Yes.

Q. And those additional factors would include factors about the circumstances of the crime itself.

A. Uh-huh.

Q. Do you feel that there are some murders that are more heinous or are more aggravated than other murders?

A. I guess I've never thought of it in those terms before. Yeah, I guess there could be.

Q. And one of the things you'd be asked to look at is the background of the defendant and his character and things of that nature. You'd be able to look at those factors and weigh that in your decision of whether or not to impose the death penalty or some lesser form of punishment?

A. Uh-huh.

THE COURT: Could you respond audibly?

A. Yes.

THE COURT: Thank you

Q. BY MR. LAPHAM: And basically what we're looking for is somebody who can come in and listen to the evidence, whatever it may be. Even though you can't sit here and imagine right now what aggravating circumstances there might be or what mitigating circumstances there might be, if those are provided to you and the judge tells you that it's appropriate to consider those, you'd be able to consider those?

A. Yes, I could.

Q. Okay. You said in your questionnaire that you didn't think the death penalty worked. Do you recall that answer?

A. I was frustrated by that questionnaire because I feel like I'm a middle-of-the-road person and you had to be either

A or **B**. There was no gray area.

Q. Well, here you don't have to be that way.

A. Okay. I guess because when you look at California, the history of how long it takes and the cost – I thought that the death penalty was to deter people from committing crimes, yet we seem to have a crime rate that's continuing to escalate. That's the basis of or where my comment came from.

Q. Does that view bear in any way on how you might react if you were put in the position of being asked whether to impose the death penalty or not?

A. No.

Q. You indicated also that your religion, philosophy or spiritual training teaches that we should look for forgiveness?

A. Right.

Q. Let me ask you first, is that your religion, philosophy or spiritual training, which of those three or is it a combination?

A. I think it's just something that, you know, I've heard in terms of the church I'm attending, and you should forgive people. And I know that it's oftentimes hard to do that. None of us is perfect.

Q. Now, is that going to impact on your views about the death penalty?

A. No.

Q. Do you think you'd be, if you were given a choice, for instance, between imposing the death penalty and imposing life without possibility of release, do you think your feelings on that would – your religious or philosophical feelings, makeup, automatically default to a life without possibility of release sentence?

A. No.

Q. The importance here is that – whether you believe or don't believe in the death penalty.

A. Right. You have to put those aside. I feel like I can do that.

Q. That's exactly it. You were asked in your questionnaire, 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 checked the line for you agree somewhat with that comment.

A. I guess I'd wonder what – and I don't know why this question was there, but I'm thinking what does their background have to do with it? It depends on the crime to me, the circumstances, if it's relevant to if the death penalty applies or not. That's how I was looking at that question.

Q. And at this stage we know that you're not trained in the law and you're not expected to know –

A. No, I don't.

Q. You're not expected to know all the ramifications of what that question means, but the point is that if you were selected as a juror in this case and you were given information about the defendant's background, about his character, would you be willing to listen to that and consider it in determining what the appropriate sentence would be?

A. I do this in my job everyday. I have to be objective, gather information before making a decision.

MR. LAPHAM: Okay. I have nothing further.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

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

When Judge Burrell was asking you some questions about what you had heard since you were out at Cal Expo to fill out the questionnaire, I think you said that the only thing you could recall hearing – I think you said you hadn't read the papers; am I correct?

A. Uh-huh.

Q. But you heard something on the radio about an insanity type defense being submitted. Can you tell me what you heard?

A. I think that was just a blurb that that was going to be something submitted at trial. That was it.

Q. What did you think or what were your feelings when you read that?

A. I guess I didn't really pay much attention. It didn't dawn on me that it has an impact or not. I mean, I don't know from the ramifications what does exactly that mean.

Q. So you just heard that phrase and –

A. I heard that, and it was like, okay. And that was it.

Q. And then prior to when you were at Cal Expo, evidently you followed the case somewhat but not intensely, I think you said?

A. No.

Q. Do you remember when you were following the case hearing anything about the evidence against Mr. Kaczynski, what evidence the government said there was or any reports about the evidence?

A. That they were searching in Montana in his cabin for things there. They wanted to know something, I guess, that linked him to the bombing here in Sacramento. But that's all I can remember.

Q. Do you remember at all hearing or reading anything about what was found in the search of the cabin in Montana?

A. No.

Q. Just that there was some kind of a search?

A. Yeah. That's it.

MR. DENVER: I wonder, your Honor, if the questionnaire is there.

THE COURT: It's right there.

MR. DENVER: Thank you.

Q. You have your questionnaire, I think, in front of you?

THE COURT: Well, it's not in front of her.

Q. BY MR. DENVER: I'm sorry. It's right there.

If you could turn to page 28, and if you'd look at 109. You were asked what you remember seeing or reading. And part of it, you said that he was arrested and thought to be the Unabomber. Can you tell me, do you remember – did you read something about why he was thought to be the Unabomber at that time or do you recall that?

A. No. I guess it's just that they had arrested and they had thought they had found the person that they had been following in this case for years, and that they were sending him here for trial.

Q. I mean, it was the fact of the arrest that made you think that they must have thought that they had the Unabomber or they wouldn't have arrested him? Is that kind of what it was?

A. Yeah. I mean, I would think so. They wouldn't just go arrest John Q. Public out there for any – you know, there must have been something behind it, but an arrest doesn't mean that he's guilty.

Q. But you don't remember reading anything about why he was thought to be the Unabomber, if that's what you picked up from the media?

A. Uh-huh.

THE COURT: I need her to speak up. I need counsel to help the Court and make sure her responses are audible. You just answered the last question, but what was your answer to the last question?

THE WITNESS: Can you repeat it?

THE COURT: Repeat back the last question, Reporter.

(The record was read.)

Q. BY MR. DENVIR: Do you want me to rephrase it?

A. I don't know if I remember exactly why. I think there may have been some type of evidence they felt that may have linked him to it, but exactly what it was I don't remember.

Q. And you don't have any particular opinion as to whether he is or is not guilty of the crimes?

A. No.

Q. Have you heard anybody else express their opinions about the case and about that subject, anybody talk about that at all?

A. No.

Q. If you could look at page 24.

A. Uh-huh.

Q. You were asked about your opinion about psychologists, psychiatrists or other mental health professionals. And you said you think they can offer a needed service. Unfortunately, like in our employment areas, a few unscrupulous professionals can give all in their field a bad reputation.

A. Like lawyers.

Q. Like lawyers. That wasn't the question though, was it? Not yet. But we'll follow that up later.

Were you thinking of anybody in particular when you said a few unscrupulous professionals in those areas? Was there somebody?

A. No, not that I can think of at the time when I wrote this.

Q. Is there someone you can think of now?

A. Yeah, that guy that just killed his girlfriend in Folsom and left his – it's been on the news – and left his kid in the Bay Area. They said he was a psychologist and lost his license. I mean, I heard that. I heard that on the radio.

Q. Any other ones that kind of give you that feeling of kind unscrupulous ones?

A. No, not that I can think of.

Q. If you had mental health professionals who were called as witnesses by either side, would you be able to listen to their testimony and fairly evaluate it?

A. Yeah.

Q. Look at their experience, their opinions, and things like that?

A. Yeah.

Q. So whatever your feelings about there are a few unscrupulous ones, you won't assume we'll have them here?

A. No.

Q. You won't assume the lawyers are all unscrupulous either?

A. No.

Q. Let me ask you a few questions, if I could, about your views on the death penalty. When you heard Judge Burrell talk about aggravating evidence, aggravating circumstances, can you tell me did anything come to mind when you heard that? Did that trigger anything?

A. No.

Q. Or when he said mitigating evidence, mitigating circumstances?

A. Not that I can think of.

Q. You understand that Mr. Kaczynski is charged with two offenses that are capital offenses that carry the death penalty as a possible penalty, one of the options?

A. Uh-huh.

Q. And because of those offenses there, this case is a little different than – it's tried a little differently than other criminal trials. You have not been on a jury before, as I recall?

A. I have never been selected for jury duty in my life until now.

Q. But you're willing to serve?

A. Yeah.

Q. The first part of the trial is a trial which would be like another criminal trial where the jury would hear evidence as to whether Mr. Kaczynski was guilty or not guilty of the charged offenses, would hear the law from Judge Burrell, and then would go in and deliberate and would determine whether the government had proved beyond a reasonable doubt whether he was guilty of those offenses.

Do you understand?

A. Yeah.

Q. You've seen those on television. Two of the charged offenses are capital offenses.

A. What does that mean?

Q. Capital offense means – I'm sorry. It means it carries the death penalty as a possible offense.

A. Uh-huh.

Q. It's a death penalty offense. One of the sentences could be death.

A. Uh-huh.

Q. So two of the charges, and they both involved the mailing or delivery of a bomb with an intent to kill which resulted in the death of a human being, a gentleman by the name of Gilbert Murray.

If you were to sit on the jury and were to find Mr. Kaczynski guilty of those offenses, then there would be a totally separate part, kind of a second trial. And I think Judge Burrell referred to it as a sentencing or a penalty trial.

A. Uh-huh.

Q. And at that trial, the jury would hear evidence from – aggravating evidence. That’s the term we’ve used. And that essentially is evidence presented by the government that they think points to or justifies a sentence of death.

A. Okay.

Q. Because the sentence – what the jury would have to determine is whether – the jury itself would determine what sentence should be imposed for those counts if it reached that point. And the choices would be execution, death penalty, life in prison without possibility of release, because in the federal system there’s no parole, or a lesser sentence. And the jury would make its decision among those options provided by law.

So the government would present aggravating evidence. That’s evidence that they think points towards or justifies or warrants a death penalty. That could be about the crime or it could be about Mr. Kaczynski.

And then the defense would present mitigating evidence. That’s evidence that the defense thinks points towards life or a lesser sentence away from death as the proper sentence. And that, again, could be about Mr. Kaczynski or it could be about the crime.

And then the jury would be given some instructions by the judge, and then would go in and pretty well have freedom to choose between those.

Do you think you’d have any problem with that process as I described it?

A. No.

Q. Now, you realize that at that point in time, if we reached it, you would have found Mr. Kaczynski had intentionally killed somebody by mailing a bomb with intent to kill?

A. Yeah.

Q. In other words, as the judge called it, premeditated, intentional murder.

A. Uh-huh.

Q. And I guess I wanted to make sure that if you reached the second phase, you would not have already decided that the penalty should be death?

A. No. I think that it’s going to depend upon, you know, what evidence is presented to determine if, in fact – you know, what is the appropriate sentence. And I don’t have information certainly at this point to make, you know, a determination.

Q. And you’d be willing to listen to all the evidence on both sides?

A. Yes.

Q. And then deliberate with the other jurors?

A. Uh-huh.

Q. Let me ask you this: I think – these questions are not easy to answer, but if you could turn to page 27, the last item. And I think the prosecutor asked you about that.

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 you agree somewhat with that.

What I want to ask you is, as I’ve described to you, if you were to find the defendant guilty of, in effect, a murder, mailing a bomb with an intent to kill and killing someone,

then the defense would be entitled to present evidence about the defendant, about his background, about anything that they felt would be a reason why a juror might select life instead of death. And I want to see if you would be open to that in spite of what you checked here.

A. Yes. Because when I wrote that, I mean, I was looking at – I wasn't thinking that, and I've never done this before, but I wasn't thinking that a person's background depends. You're really looking at the crimes that were committed. So I wasn't thinking of it, I guess.

Q. It's hard, and I think a lot of jurors have had a hard time understanding.

A. Yeah.

Q. But what I want to make sure is if you came into the penalty phase, as we've called it, the sentencing phase, and you heard evidence by both sides, some of the evidence would be about the crime perhaps, but some of the evidence would be about the defendant. It could be about background or it could be his history. It could be mental illness. It could be mental retardation. It could be anything about the defendant.

Would you be willing to consider that on the question of whether or not he should be sentenced to death?

A. Yes. I mean, I certainly would listen to the information that was presented.

Q. And give it whatever weight you felt it deserved on that question of the proper sentence?

A. Yes.

MR. DENVIR: Thank you.

THE COURT: Thank you. Please escort the jury to the adjacent room and bring in another juror.

(Prospective juror no. 83 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You are the 83rd randomly selected juror. I'm going to ask you some questions. When you respond to my questions, I'd appreciate it if you'd use the microphone that's at the witness stand and speak as though you were talking to the lawyers at counsel table so that I can make sure they hear your responses.

I noted when I reviewed your jury questionnaire that, at least at the time you filled it out, you thought it was possible this trial could present some financial hardship problems for you.

A. Yeah, at the time. However, after hearing the hours you're planning on running the trial, I talked to my employer, and I can make an arrangement to work in the afternoons and so it won't be a problem.

Q. Okay. Is there anything else that we need to be concerned about that could interfere with your ability to be considered as a juror in this case?

A. Not that I'm aware of.

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

A. No. I've made a great effort to avoid the newspaper and the television and the radio.

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

A. No, I haven't.

Q. I'm going to direct your attention to the time period before you appeared at Cal Expo. Can you tell me what information you received about the case during that time period from any source whatsoever?

A. I remember when the arrest was made, the news and television made a lot of coverage. Frankly, I grew weary of the attention that the news was giving it, and I didn't think it was appropriate, and I tended to ignore most of it anyway.

Q. I'm going to ask you some questions using the podium so that I can be assured that your responses are heard by the parties.

It's not required to be considered for jury service in this type of a case for a prospective juror to be ignorant of the publicity surrounding the case. What is required, though, is that the judge and the parties have the opportunity to find out what type of information the juror received about the case so that we can evaluate whether that information affects you in any way. We're going to get your opinion on whether it affects you, too, but we have to know about the information.

A. Right.

Q. Can you tell me what type of information you remember receiving about the case?

A. I've been ignoring it for quite a while. It's hard to remember. I remember seeing the news coverage of the arrest, and I remember hearing some discussion about the search of his cabin, and I remember hearing about some of the things they found, like a typewriter they thought may have been involved and some things they had – some written material that they found that they thought might be significant. Offhand, I don't recall much else.

Q. Do you recall discussion about any other items allegedly being found there in the cabin?

A. I think I recall some reference to some explosive-related materials.

Q. Go ahead.

A. But I don't – I'm not really sure. I don't really remember specifically what was said about that.

Q. Do you have memory of any other information about the case other than what you've just related?

A. Not offhand. I don't have the best memory for things that I watch on television. I tend to drop a lot of it. I'm sure if someone gave me a list of items and provided it to me, I would probably say, yes, I remember that. But just offhand, no.

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

A. I don't believe so.

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

A. No, I haven't.

Q. Does the information that you received, does it cause you to have an opinion on that topic?

A. That's a hard question to answer. I would like to think that it's up to the jury to decide, and it's certainly not – as just a person watching the news, it's not my place to decide. And when you're watching something like that on the news, an arrest is being made and searches are being made, it just doesn't – as an average person, we assume that there must be some reason for that. They must have had something that convinced them enough that they may be on the right track to go and do that.

Q. That's understandable. But I want to know what you thought. I want to know what type of an opinion you developed as a result of what you're indicating.

A. I'm not really sure. Not being there, not being involved in what's going on, I mean, I'm not sure if I would consider him guilty or not guilty just based on what I've seen on the news.

Q. Your answer indicates that you may have an opinion, but you're not sure of the strength of the opinion. That's my discern. Maybe I'm wrong. Am I correct?

A. Probably. I mean, I don't have a strong opinion about it. It's not –

Q. If you were selected as a juror in this case, would you set aside that opinion and render a decision solely on the evidence that is presented at this trial and on the instructions I give you?

A. I do believe I could do that.

Q. Do I have your assurance that if you are selected as a juror in this case, you will, in fact, set aside whatever information you've received about this case, any opinion you have about the case you will set 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, he does.

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

A. I guess I would be a proponent because I think it's appropriate in some circumstances.

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 think so, yeah.

THE COURT: The parties may conduct voir dire.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning.

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And I wanted to just take a moment to ask you a few questions if I could.

You indicated to the judge – and I really appreciate the struggle that you were having sort of trying to decide whether you had developed some opinion about Mr. Kaczynski's guilt or innocence, but as I recall what you said, you said you'd like to think that it would be up to a jury to decide and not somebody just listening to the news.

A. Uh-huh.

Q. When you say "like to think," what was going through your mind? Was that the struggle you were having?

A. No. To be honest, with the high profile trials that have been taking place recently, I tend to ignore them in the news because I think they're really not what I want to listen to on the news. I don't think that they're central to what I think television news should be about. And so I tend not to pay much attention to them. So I really don't have a lot of information regarding various trials that have taken place to form much of an opinion beforehand.

Q. It's my sense that you just think the news ought to cover the news of the world and that kind of thing and not the cases with the level of interest they do?

A. Yeah. I think it's rather sensational.

Q. When you were talking with the judge, you mentioned that you were aware from the news – and, again, I go back to the news because that's the only thing that anybody has right now – that there was a search of Mr. Kaczynski's cabin in Montana?

A. Uh-huh.

Q. And that there were various items found in the cabin. You mentioned written materials. Can you tell us what you were thinking about when you said that?

A. I seem to remember them saying that – the news saying that some typewritten material had been found that they felt were related to the long printed material that was requested to be printed in the newspapers by the Unabomber.

Q. A copy of what the media has called the manifesto?

A. Yeah.

Q. Is that what you were thinking about when you –

A. Yeah, that's what I'm thinking about. Yes.

Q. And does that have any effect on you if the government has released to the press they found a copy of this manifesto in the cabin, does that have an effect on you?

A. Yeah. I mean –

Q. And what would that be?

A. Well, I would wonder where it came from, why he had it, if it was his or if it's something he did.

Q. And how about when you add on top of that, I think you also mentioned that you had heard that there was explosive material found in the cabin?

A. Uh-huh.

Q. Do you remember what you heard about that as you sit and think about it?

A. No. I can't remember what I had heard was found specifically, just I remember hearing something about some explosive materials or parts to make bombs or something like that.

Q. When you combined the copy of the manifesto with the existence of explosive material, does that sort of make you closer to thinking the media is correct, there's a reason to believe that Mr. Kaczynski is guilty?

A. Well, yeah. I would have to agree. I mean, that's assuming the news is correct and that the information they're presenting is right. There's no guarantee of that.

Q. How strongly would you feel about that? I think that was sort of something we were trying to get at.

A. Yeah. I don't feel very strongly. I don't believe that it would impact my ability to make a decision based on the evidence presented in the courtroom.

Q. Can you help us think about what process you would go through to sort of set that knowledge aside? Because sometimes it's kind of buried deep. Can you help us understand how you'd put that aside?

A. Well, if I was selected as a juror, I would base my decision on the information that I heard as a juror, not beforehand.

Q. Okay.

A. I mean, anything beforehand would basically be irrelevant, I would think.

Q. That's fair. That's fair. You mentioned that – you were asked in the questionnaire do you have an opinion as to Mr. Kaczynski or his family.

A. Uh-huh.

Q. Do you recall that question just generally? And you said something about I don't know him or his family so I have no opinion. Do you need to see that?

A. No.

Q. Am I about right? I mean, that's sort of the sense of what you were expressing?

A. Yeah. Yeah.

Q. Has anybody else expressed an opinion to you about Mr. Kaczynski or his family?

A. No. I've pretty much been avoiding discussing it with anyone.

Q. We knew that after the Cal Expo notice; right?

A. Uh-huh.

Q. What about before? Because there were some events in Sacramento connected to the Unabomber; right?

A. Uh-huh.

Q. And then, of course, Mr. Kaczynski was arrested?

A. Right.

Q. And then you didn't get your notice from the judge until much later, sometime in September?

A. Uh-huh. So what you're asking is if I –

Q. Before that.

A. Before that if I discussed it with anyone?

Q. Did anyone just sort of volunteer an opinion to you before you knew to sort of keep yourself away?

A. I wouldn't be surprised if someone did, but offhand I don't really remember any.

Q. Can't think of what it was?

A. Yeah. I mean, it's not – it wasn't central to my life at that point in time.

Q. You indicated also that you have a neighbor that works for a sheriff's department?

A. Uh-huh.

Q. And another neighbor that works for the forestry department?

A. Right.

Q. Have either one of those folks said anything to you about the Unabomber case?

A. No, not at all. I have very little conversation with those people.

Q. Well, you know that one of the individuals that died as a result of a bomb blast was Gilbert Murray, and he worked for the California Forestry Association.

Have you ever talked to your neighbor about that?

A. Not at all.

Q. Don't know of any connection between your neighbor and Mr. Murray?

A. No, I don't.

Q. If I could ask you a little bit about your views on the death penalty. And the judge asked, and I think you said, well, basically I guess I'm a proponent of the death penalty?

A. Uh-huh.

MS. CLARKE: Your Honor, is the questionnaire available?

THE COURT: Yes. It's right next to him. I think you can reach it. Can you reach that, sir?

PROSPECTIVE JUROR NO. 83: Yes.

Q. BY MS. CLARKE: Page 26 are where some of those questions are. And under 103 when you were asked the basis for your opinion, you mentioned that you didn't believe society should be burdened or threatened with the release of individuals who are not redeemable.

Could you tell us what you mean by not redeemable?

A. I think that if, like if someone commits a crime with – commits a murder in a fit of passion or rage or whatever and it's an isolated situation, I think that that's – the death penalty is not appropriate in that case.

If someone was found guilty of a long string of events that involved death and they were quite aware of what they were doing, then it's probably a question of is society ever going to want to release that person back, let that person be free again in society, is it safe for them to do that. I guess if it's someone who would never be safe to be let loose in society again –

Q. The death penalty?

A. It could be appropriate.

Q. What if in the federal system there is no possibility of release. If someone is given a life sentence –

A. Uh-huh.

Q. – that is necessarily a sentence that is without possibility of release. There is no parole. There is no out. It's you're there for life.

A. Uh-huh.

Q. How would that play into your view of redeemable?

A. I guess it makes it less of an issue then, doesn't it?

Q. I don't know. Does it?

A. I think so, yeah. I mean, then it's a question of whether the person's just held for the rest of their life or whether they're put to death.

Q. Yes.

A. Probably doesn't really make much difference as far as society is concerned in that case.

Q. How would it make you feel about the propriety of the death penalty?

A. I guess in that case it becomes more of a vindictive action. Might not be as – it might not be quite as appropriate if it's vindictive, I think.

Q. When you answered your questionnaire, and I think we're going back to what you just talked about, you said that it would be appropriate in cases of extreme or multiple actions of death. But were you again connecting that to your fear of release?

A. Yeah, I think so. If someone has whatever makeup it takes to do that repeatedly, and if there's a chance of them being released again, and yet there's no chance of helping that person to not repeat their actions of the past, then I think that society – you know, it's a risk to society to release that person.

Q. What I'm hearing you say is it's a question of whether the legal system provides for a possibility of release.

A. I think so, yeah.

Q. Is this the first time you've really had a chance to think about that? Is that why you're –

A. Well, actually, I had no idea that the federal, you know – I mean, in the past you hear in the news about paroles and people getting out. I'm not aware of –

Q. Could you speak up just a little bit?

A. I'm not aware of the – I was not aware of what you informed me, that the in the federal case, life without parole is exactly that.

Q. Is life without parole?

A. I had not been aware of that.

Q. I take it that given your view about the death penalty, that it is a viable sentencing option, that you would be able to consider it along with a sentence of life imprisonment?

A. Yes.

Q. You could consider either option?

A. Yes.

Q. In this case there are three deaths. And I bring that to your attention because of your concern about multiple deaths.

A. Uh-huh.

Q. That are attributed to the Unabomber.

A. Uh-huh.

Q. Given that, do you have an opinion as to the penalty that you think should be imposed on the Unabomber?

A. You mean death versus life imprisonment?

Q. Yes.

A. Offhand, no. I don't have an opinion of one versus the other.

MS. CLARKE: Could you give me one second, your Honor? Thank you.

Thank you very much.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, sir. My name is Stephen Freccero. I'm one of the prosecutors in this case. I just want to ask you a few brief follow-up questions.

Do you have your questionnaire in front of you?

A. Yes.

Q. Okay. If you could just take a look at page 27, question 107. The very last part of that question says a person's background does not matter when it comes to whether or not he should be sentenced to death for a murder. And you wrote agree somewhat.

A. Uh-huh.

Q. Can you give us an idea of what you had in mind by background?

A. I think more than anything, on that answer, I was looking for sort of a neutral ground because I wasn't really sure what was being meant by background. Does it mean how they grew up, does it mean their education, friends they keep. I didn't know. And some of those things would probably be important, some of them wouldn't.

THE COURT: Just a moment. Just a moment.

MR. FRECCERO: Sure.

THE COURT: Sir, does that microphone have a cord on it that you can use to bring that device closer to yourself? Pull it a little closer to yourself, and you can adjust the chair to have your voice amplified a little bit more.

PROSPECTIVE JUROR NO. 83: I'm sorry.

THE COURT: That's okay. Thank you.

Q. BY MR. FRECCERO: Sir, I appreciate a moment earlier you mentioned that before coming here today, you didn't really understand any of the law that applied in a federal case in which the death penalty could potentially be applied; is that correct?

A. Yes.

Q. One of the things we're focussing on is we don't expect you to know that before you come here. The key part is that if you were chosen as a juror, you would get instructions from the Court as to the law that applies.

Do you understand that?

A. Yes, I understand that.

Q. And it would be your job as a juror along with your fellow jurors to apply that law to the facts that you as a juror found.

Now, with reference to the penalty, that is, that second part of the proceeding, if it arrived there, do you think that whatever your own personal views on whether the death penalty should or should not be applied, do you think you could put those aside and carefully consider the law that the judge gave you before making your determination?

A. Yes.

Q. So that if you were told, for example, that you must consider a mitigating factor pertaining to the background of the defendant even if you personally didn't agree with that, you could nonetheless follow the judge's instruction and carefully consider that?

A. Yes, I could.

Q. And by the same token, we've mentioned the term called an aggravating factor. And the judge would instruct you that if there's an aggravating factor, a lawful one, if the judge has already decided that, that the government's arguing, you must consider that as part of your overall process.

Now, if there were such a factor that you didn't personally agree with, could you nonetheless say, well, the judge has instructed me I must consider that one along with all the other information?

A. Yes, I could.

Q. And so what we're really driving at is just to see whether you have any personal belief that you hold that's so strong that you think would prevent you from fairly considering the law as the judge instructed you.

Do you have any belief that you think might prevent you from doing that?

A. No, I don't.

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

THE COURT: Thank you. Please escort the juror to the adjacent room and bring in another juror.

(Prospective juror number 84 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 84th randomly selected juror. I may reference you by that number during this communication. There's a microphone. I see you've found it. I appreciate that because I want to make sure that the parties at counsel table can hear your responses to my questions.

Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. No.

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

A. Yes, I have, sir.

Q. What information have you received since that time?

A. From The Sacramento Bee.

Q. What information did you receive from the Sacramento Bee?

A. Well, roughly, I – I didn't follow it very closely, but I heard that there have been some ongoing discussion about the mental state of the defendant.

Q. I'm going to ask you – the balance of the questions I'm going to ask you from the podium so I can make sure your voice is carried in this direction.

Have you discussed this case with anyone since you appeared at Cal Expo?

A. No, sir.

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

A. Not much. I heard a little bit about the case, but nothing in very great detail.

Q. One of the purposes for this individual questioning session is to allow the Court to understand what information you actually received about the case. That doesn't prevent you from being a juror just because you received information about the case.

A. Yes, I understand that.

Q. But I have to know, if you could help me, tell me what information you remember receiving about the case at all during any time period.

A. I remember seeing a picture of the cabin, and I remember seeing a photograph of the defendant in the paper, and I remember watching TV and seeing a picture of the defendant being led to court.

Q. Did you receive any other information concerning the cabin other than a picture?

A. I may have received some. Like I said, I can't remember it now.

Q. Do you know anything about the allegations involved in the case?

A. Yes. I believe the allegation is the defendant has mailed certain devices which have resulted in some injuries to some people. Something like that.

Q. Has any of the information you've received about the case caused you to form an opinion about the defendant's guilt or innocence?

A. I don't think I have enough information to make any opinion at this time.

Q. Has any of the information you received about this case – well, let me ask it another way. Would any of the information you have received about this case affect your ability to serve as a fair and impartial juror in this case?

A. I don't think so.

Q. You hesitated. And it's appropriate to hesitate in response to a question because sometimes you truly have to search your heart before you could respond.

Can you tell me what you were thinking about when you hesitated?

A. Because if I have to vote to convict a defendant to the death penalty, I would be very reluctant to do so because, you know, I don't like that kind of verdict. It's very painful to put somebody to death, basically.

Q. The type of jurors we're looking for in this trial are not necessarily jurors who are pro-death. We're only looking for jurors that would consider the possibility of death

among other sentencing options, such as life in prison without the possibility of release or some lesser option.

Do you have any opinion as to the propriety of sentencing an individual to death that would preclude you from considering death among the other sentencing options I just mentioned?

A. No, sir, but I would be reluctant to do so.

THE COURT: Read back the response

(The record was read.)

Q. BY THE COURT: If you are selected as a juror in this case, you would be required to disregard any information you received before walking into the courtroom and to make a determination as to Mr. Kaczynski's guilt or innocence based on information that is presented here in this courtroom only.

Do you think you could do so?

A. Yes, sir.

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

A. Yes.

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

MR. DENVIR: Thank you, your Honor.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, sir. My name is Quin Denvir, and I'm one of the attorneys for Mr. Kaczynski. And I'd like to ask you a few questions following up on the judge's questions and the questionnaire if that's okay.

A. Yes.

Q. You at one point indicated that you were a little concerned about serving on the jury because it might interfere with your job and cause you a hardship.

Is that pretty well taken care of now?

A. Yes, basically, because I understand I'll be out at 1:00 p.m.

Q. Right. You would be free and you could take care of – whatever was worrying you, you could take care of in the afternoon?

A. Yes.

Q. You said that since you were out at Cal Expo, you had heard something on the radio or – maybe I guess it was in the Bee about discussions regarding the mental state of the defendant.

Can you tell me what you recall hearing about that or reading about that?

A. I do not remember, sir.

Q. You don't remember any details at all?

A. Because I don't pay much attention to those things.

Q. Can you tell me what you thought when you read that, does it bring anything to mind?

A. I remember thinking to myself it's a very complicated process, and I don't quite understand what's going on.

Q. I see. You may have to – I talk fast sometimes, and you do, too, and we have to both slow down for the court reporter because she has to try to understand us.

A. I will.

Q. At this point – and then let me ask you – I think you'll find your questionnaire

–

THE COURT: It's right next to him.

MR. DENVIR: Right next to you.

THE COURT: On the left

Q. BY MR. DENVIR: That's the one you filled out at Cal Expo. And if you'd turn to page 28 of that. If you look at question 109. If you were asked – this is what you filled out at Cal Expo. And you were asked what you had seen or heard or read about the case prior to that time. And you said that it was a hermit who wants to get away from society, wants to get a message across drawing attention to his antisocial views.

Can you tell me what you were referring to or thinking about when you wrote the "antisocial views"?

A. Meaning somebody who wants to get away from society.

Q. I see. So it's part of being the hermit who wanted to get away from society that's the antisocial part of it that you recall?

A. That's my understanding.

Q. And you talked also about getting a message across. What were you thinking or referring to then?

A. I remember about a manifesto or something – I vaguely remember about it now – in the radio or TV.

Q. And you didn't read the manifesto, as I recall?

A. No. It's too long for me.

Q. And do you remember anything in particular about it, about what you heard about it?

A. I can't remember, sir.

Q. And as I understand it, if you were selected as a juror, you think you can put aside whatever you heard about the case about Mr. Kaczynski and just judge the case on the evidence presented in court?

A. Yes, sir. I have an open mind.

Q. Okay. If you could turn to page 26. Maybe I could ask you before we go to that, if you had to classify yourself as either a proponent, a supporter of the death penalty, or as an opponent, which would you be? Or is either one of those fair?

A. It's a gray area so I don't think you can say it's a black or white situation here. So I don't think I can classify myself as either of them.

Q. Okay. Could you tell me what your feelings are or your beliefs about the death penalty in general, about the need for it, whether we should have it, what kind of cases it should be applied in?

A. I believe it is necessary in extreme conditions.

Q. So you do believe that the death penalty should be available for extreme cases?

A. Yes, sir.

Q. And as I understand, you think that the purpose a death penalty serves is a deterrent to other people?

A. Maybe, sir.

Q. Now, I want to – you have not sat as a juror – no, you have sat as a juror before. Am I correct?

A. Yes, I have.

Q. And you understand that this is a capital trial because two of the charges against Mr. Kaczynski carry the death penalty. So the trial will be a little bit different than the one you had before. It could be, in effect, two trials. The first one is what Judge Burrell referred to as the guilt or not guilt part of the trial. And that's a part like the trial you were in before as a juror, where the government would present evidence trying to show that Mr. Kaczynski was guilty of the crimes charged against him, and then the jury would listen to the evidence, they'd be instructed as to the law, would go and deliberate and decide whether the government had met their burden of proof beyond a reasonable doubt, which you did before and you found that to be not a negative experience. Am I correct?

A. Yes, sir.

Q. Two of the charges against Mr. Kaczynski are mailing or transporting a bomb with an intent to kill someone and having that bomb result in the death of someone, in this case a gentleman by the name of Gilbert Murray. Those are capital offenses. And for those offenses, the possible penalties would be the death penalty, life in prison without release, without the possibility of release, or a lesser sentence.

If the jury were to convict Mr. Kaczynski of those offenses, then you'd have a second trial. This is different from the one you were in before. And at the second trial, the same jury who had found him guilty beyond a reasonable doubt of those offenses would then determine what the sentence should be for those.

A. Yeah.

Q. The government would present what the judge has called aggravating evidence. And that's the legal term meaning any evidence that the government has or feels it has that points to or suggests that the proper sentence would be death. That's the kind of the pro death type of evidence.

The defense then could put on and would put on whatever mitigating evidence. Mitigating evidence is another legal term. What that means is any evidence that the defense believes points to life or something else. Something other than death. At that's the antideath. And then the judge would give instructions to the jury that would tell

them they could choose among these penalties provided by law for those offenses. And the jury would go and deliberate again and come back with their verdicts.

Do you understand the process as I've described? It's kind of an unusual process and people aren't always aware of it.

A. Yes, sir.

Q. I guess what I – would you have any problem, as you've heard it, in participating in that process?

A. No, sir.

Q. And in particular, if you were on a jury that found Mr. Kaczynski guilty of one or both of the capital offenses so that there was a second trial, would you be willing as a juror to obey your oath and listen to the judge's instructions and listen to and consider and weigh both the prosecution's aggravating pro-death type evidence and the defense's mitigating pro-life evidence and then make your own decision as to whether the penalty should be life or death?

A. Yes, sir.

Q. And do you think you could fairly consider in that situation either of those penalties as something that might be appropriate?

A. Yes, sir.

Q. You wouldn't automatically say that it has to be death?

A. No, sir.

Q. And you wouldn't automatically say it has to be life?

A. No, sir.

Q. You would just sit with the other jurors and exchange your views and decide what you thought was the best thing to do?

A. Yes, certainly.

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

THE COURT: Yes

Q. BY MR. DENVIR: Sir, if you could turn to page 14 of your questionnaire. I just want to clarify something if I could.

Do you see number 51?

A. Uh-huh.

Q. You referred to somebody working for a state agency, and it wasn't clear to me. Was that you that –

A. That's me.

Q. Is that the agency you presently work for?

A. No, sir.

Q. You had applied for a job with that agency?

A. Before.

Q. And did you actually work in that agency?

A. Yes.

Q. And for how many years was that?

A. For about five years.

Q. And now you're in a different agency?

A. Yes.

Q. Would the fact that you had worked for a particular agency make you lean either one way or another, either for the prosecution or for the defense, or have any affect on your ability to serve, do you think?

A. No, sir.

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

Thank you, sir.

THE COURT: We're going to take the morning recess. Court will be in recess until 10:45.

(Recess taken.)

—oOo—

THE COURT: Let the record reflect all participants are present except the juror, and the juror will be on the stand in just a moment.

(Prospective juror number 84 entered the courtroom and resumed the stand.)

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good morning.

A. Morning.

Q. My name is Robert Cleary. I'm one of the prosecutors on the case, and I'm going to ask you several questions about your opinions on the death penalty. Let me hand you a copy of your questionnaire and direct your attention to question 103.

A. (Accepts document.)

Q. You explained to you that you believe that the death penalty is a necessary evil.

A. Yes.

Q. Can you explain in a little more detail what you meant by that?

A. Mostly I am not in favor of any penalty which impose a death on any person, because I feel very strongly about life itself. I feel very strongly about life. So I would be very reluctant to impose the death penalty. However, in extreme circumstances, it may be necessary just to prevent future occurrences.

Q. To prevent future occurrences –

A. Mm-hmm.

Q. – of whatever the crime was that the defendant was convicted of?

A. Yes.

Q. What sort of extreme cases are you referring to when you say that?

A. It's really difficult to say. But something must be very terrible. It must be very horrible, you know.

Q. Can you think of anything to give us a little better example of what you're referring to?

A. Somebody – something which is done with intentions to hurt people, something which is done – in a very cruel or uncivilized way, something like that.

Q. And when you say that, are you thinking mostly of murder cases, where someone gets murdered?

A. Yes, I think so.

Q. And when you refer to the extreme case in which you believe the death penalty would be appropriate, is it the murder itself, the fact that someone was killed that makes you think the death penalty would be appropriate? Or is there something else you're looking for in the murder that would make you believe it's an extreme case for which the death penalty would be appropriate?

A. Sir, I would look into the circumstances of the crime, any factors which may affect the crime, you know, anything which happened which may have any relevancy to the crime.

Q. Right. And I understand that. I'm actually asking you a little bit different question, and I'm probably not phrasing it very well. I'm trying to get a better understanding of what you mean when you say in an extreme case, in your view, the death penalty might be appropriate. So that's what I'm trying to focus on now. And you mentioned that murders would be in some circumstances –

A. (Nods head up and down.)

Q. – the type of case for which you think the death penalty would be appropriate?

A. Mm-hmm.

Q. Is that correct?

A. Yes, sir.

Q. And now I'm going to go one step beyond that and ask you if – ask you what is it about the murder that makes it the extreme case for which you think the death penalty should be appropriate?

A. It must be a horrible murder, you know. It could be a repeated murders, somebody doing – doing it repeatedly. Must be a very horrible murder. Must be done, you know, without regard for any life.

Q. So it would be murder plus, that what you're saying? Has to be a murder plus something else?

A. Yes, yes. That's it.

Q. And the plus something else is one of the additional facts and circumstances you said you would be looking for, correct?

A. Yes. Exactly.

Q. Now, I believe you told us that you would be very reluctant to impose the death penalty; is that correct?

A. I'd be reluctant, somewhat reluctant to do so.

Q. And I was having a little difficult time hearing you before when you were responding to Mr. Denvir's question, the defense attorney that questioned you. But did you say something about it would be painful for you, painful for you to vote for the death penalty?

A. Yes, because I don't want to take away any life at all.

Q. Okay. Would it be painful for you to vote for the death penalty even if you had one of the extreme cases you were telling us about?

A. Sir, even if it's going to be painful, then I would have to do what is right.

Q. Okay. So it would be painful even if you had the extreme case, correct?

A. Yes.

Q. But if you felt it was nonetheless right, you would vote for the death penalty?

A. Yes, sir.

Q. Would that, the fact that it's painful, I take it, would make this an uncomfortable experience for you; is that right?

A. I would say so, somewhat.

Q. Could you describe what you mean by it being an uncomfortable experience for you. Tell us the depth of your – how uncomfortable you would be.

A. Sir, it would be – it would be unpleasant. But in life sometimes you have to make some unpleasant decisions.

Q. Do you think the fact that you may be uncomfortable, the fact that you would be uncomfortable and the fact that it would be painful for you to make the death penalty decision, do you think that that would in any way impair your ability to evaluate the evidence that was presented to you?

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

Q. And why do you say that?

A. Because I have an open mind and I – in my life, you know, I have made my unpleasant decisions. So even though I know that it may be unpleasant, but I still have to do what is right.

Q. Could you vote for the death penalty – and I'm going to give you a hypothetical that has nothing to do with the facts of this case.

Could you vote for the death penalty in a case in which the – let me back up a little bit and give you a back-up fact. Let's say there was a person on trial for murder. You were sitting in judgment; you were one of the jurors. And you were told during the course of the trial that that person had been previously convicted – in other words, prior to the case you were sitting in judgment on, had been convicted of a serious drug crime, something that –

MR. DENVIR: Your Honor, I would object to that question. It's a hypothetical that has nothing to do with anything, and I think the juror said that he would follow the Court's instructions.

THE COURT: Response?

MR. CLEARY: Your Honor, I think it has to not be related to the case, and that's what I'm trying to do, probe by not using case-specific examples, and I think that's what we're instructed to do.

THE COURT: What do you think about the ruling by the Sixth Circuit in the McQueen case which states that when the death penalty is warranted, it's irrelevant? That would seem to indicate I should sustain the objection.

MR. CLEARY: I'm sorry, Your Honor. The holding of the case was that . . .

THE COURT: That's all right. The objection's sustained. You can look at that case. It's at 99 F.3d 1302 at 1330 (6th Cir. 1996).

MR. CLEARY: Q. Let me ask you – you still have your questionnaire there right?

A. Mm-hmm.

Q. Turn over to the next page, page 27, question 107.

THE COURT: I didn't finish the reference of the case, and I'm sorry. It states that the question concerning whether the death penalty is warranted is "irrelevant to the issue of whether a juror would consider penalties other than death in this case." And that's the basis of my ruling.

MR. CLEARY: Thank you, Your Honor.

MR. CLEARY: Q. Are you with me on question 107?

A. Mm-hmm.

Q. Okay. It's a multi-part question, and I'm going to direct your attention to the first three parts of it.

You say in response to the first two that you agree somewhat with the proposition that the person who – a person who commits a murder or murders two people should get the death penalty, correct?

A. Yes.

MR. DENVIR: I don't believe that accurately reflects what is stated there. Could he rephrase it?

MR. CLEARY: That's what mine says: "plans and commits a murder should get the death penalty," "deliberately murders two or more people should get the death penalty."

It's page 27, Your Honor.

THE COURT: Thank you.

MR. DENVIR: It says "anyone."

MR. CLEARY: He keeps objecting – I don't understand what the objection is. I don't understand the significance of the word "anyone" is. But that's what it says –

THE COURT: Well, if it doesn't make any difference, why don't you add the word?

MR. CLEARY: Okay. Shall I just read – you want me to just read it in?

THE COURT: That would be easier.

MR. CLEARY: Q. Okay.

The question says, "Anyone who plans or commits a murder should get the death penalty." And you say "agree somewhat"?

A. Yes, sir.

Q. And the next one is "Anyone who deliberately murders two or more people should get the death penalty." And you say "agree somewhat," correct?

A. Yes, sir.

Q. And then on the next one, it's "Any person who commits an act of terrorism in which someone dies should get the death penalty," and you "disagree somewhat" with that, correct?

A. Yes.

Q. Could you tell us, explain to us, on what basis did you make the distinction between the first two, in which you "agree somewhat," and the third one, in which you "disagree somewhat"?

A. Sir, the reason is because somebody who commits an act of terrorism may have some strongly – some strong political views and he may want to send a message. So the murder may not be – you know, may only be a by-product of his act.

Q. Murder may be –

A. – may be only a by-product, yeah.

Q. – a by-product of his action.

A. Mm-hmm.

Q. And when you say that the terrorist had "political views," what do you mean by "political views"?

A. Well, from my background, I am referring to some of the acts of terrorism which maybe he would do some – reasons, you know, which you would have some belief in, like in – you know, say, in the Middle East, you know. Somebody may act just because he has some very good and strongly he feels about independence or something, like in – in Ireland.

Q. And so when you say "political views," do you mean politics in terms of who is running the country –

A. Yes.

Q. – and who is going to run the country?

A. Yes, something like that, yes.

Q. And that's a circumstance that, to you, may suggest that the death penalty would not be appropriate?

A. That it may. (Nods head up and down.)

Q. Do you consider, when you say "political views," would you consider something to be a political view if it had something to do with the way the defendant, the person you're sitting in judgment of, wants to run his own life as opposed to the government politics, who's going to run the country? Do you understand that question?

A. Not quite, sir.

Q. Okay. You said that terrorism – you "disagree somewhat" that terrorism causing the death of a person should warrant a death penalty?

A. Mm-hmm.

Q. And you said the reason for that is the terrorist may, under certain circumstances, be operating from political motivations, correct?

A. Yes, sir.

Q. And we talked a little bit about what you meant by "political," and I believe you said, in substance, that "political" means that, kind of a fight over two different factions to control a country?

A. Yes, something like that.

Q. And now I want to ask you if, in the same context, do you consider it to be political motivation and hence a reason not to impose the death penalty if – are you with me so far?

A. Mm-hmm.

Q. Okay – if the defendant acted not because he was concerned about which party was going to be controlling his country but because he was concerned about the way he himself wanted to live his life?

MR. DENVIR: I'm going to object to that, Your Honor. First of all, I think he's asking him to prejudge the case. Secondly, the juror has said that even as to terrorism, he thought it would depend on the particular case whether he thought it should be the death penalty or not. I think that's an improper question.

THE COURT: Overruled.

THE WITNESS: I would think they are different.

MR. CLEARY: Q. I'm sorry?

A. I would think, you know, it would be different.

Q. That's not the sort of politics you're referring to when you say that a terrorist who is motivated by politics maybe should not be sentenced to death, correct?

A. Exactly.

Q. And the distinction between the two instances we were talking about, the motivations we were talking about, is the distinction that in one instance it had to do with, kind of, how the country is being run –

A. Yes.

Q. – and in the second instance it has to do with how the defendant is going to live his own personal life?

A. Yes. Exactly, sir.

MR. CLEARY: Can I have one second, Your Honor?

THE COURT: Yes.

MR. CLEARY: Thank you.

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

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

THE COURT: Thank you.

Please escort the juror out and bring in the next juror.

(Prospective juror number 84 left the courtroom.)

(Prospective juror number 85 entered the courtroom.)

PROSPECTIVE JUROR: Hi.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I thank you for joining us. You're the 85th randomly selected juror.

A. 85th.

Q. I may refer to you by that number during the questioning process. There's a microphone at the stand. I'd appreciate it if you could make an adjustment so that your voice is amplified by that microphone. I would prefer to ask questions from the bench,

but if your voice isn't amplified, I'll have to move to the podium – which wouldn't be your fault, I mean.

A. Oh, we'll try this.

Q. That works.

A. It'll work.

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

A. No, there isn't.

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

A. Just little blurbs in our local newspaper.

Q. What type of information did you receive?

A. It's just basically that they're doing jury selection.

Q. Anything else?

A. No.

Q. Have you had any discussions with anyone about the case since Cal Expo?

A. No. No.

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

A. The only information I had up to this point was that they were in search of the Unabomber and that he had been turned in by a brother and that Mr. Kaczynski had been turned in, and that's about it. I hadn't been paying too much attention to it.

Q. I'm asking these questions because my understanding of the law is that I have to determine whether a prospective juror has been exposed to publicity and how that publicity has affected the prospective juror. I have to get that from your perspective, your personal perspective, but I have to make my own judgment too –

A. Whether it's appropriate or not.

Q. Exactly. And the only way I can make a judgment is to find out how you've been exposed. And just because you've been exposed doesn't eliminate you from consideration of being a juror on this case, but can you tell me a little bit more about what you know about the allegations involved in the case and the information you've received.

A. Well, I think part of the problem is that I – this particular case hadn't created a lot of interest in me, so I didn't pay attention to a lot of the press. Basically I knew that there had been some letter bombs or package bombs that had killed a few people. And I don't know exactly who. But – and that there was a long search for who was sending the bombs. And then, as I said, I heard that there had been a paper released written by the Unabomber in, I think, the New York Times or the Post or something. And I never read that. So I don't know what the philosophy or the whys and wherefores of why the bombs were sent.

But I knew that there was a large search going on for him, for whoever did it, and that they'd gotten some information and arrested Mr. Kaczynski for the crime. So that's about where I am.

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

A. Not knowing much about the case, no, I don't. I haven't put together any.

Q. Does the fact that you were exposed to the pretrial news accounts that you told me about and then you know that Mr. Kaczynski was arrested and he's on trial, does that cause you to have an opinion concerning his –

A. No. My philosophy is that somebody has to be proven guilty before they're guilty. That's what I was raised with.

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

A. Absolutely.

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

A. Actually, I think it's more of a cloak of neutrality. I don't have that much information about it one way or another, so I haven't formed an opinion one way or another, so I would say yes, it's probably true.

Q. Okay. That's a legal doctrine, the presumption of innocence.

A. Oh.

Q. Basically Mr. Kaczynski has no obligation to say anything; he has no obligation to present evidence, and if you were to enter a judgment right now, you'd have to rule in favor of Mr. Kaczynski because he's presumed innocent. Would you be able to accept that doctrine in this case?

A. Yes.

THE COURT: Any problems with the way I described the doctrine, counsel?

MS. CLARKE: No, Your Honor.

THE COURT: Okay.

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

A. I would like to think that we're above that, at this point in our society, and I don't find it a deterrent to crime. But I also understand that we're not a perfect society, and I still am open-minded to it.

Q. What are your views on the death penalty?

A. Well, I don't think it's a deterrent to crime, as it's supposed to be. I don't think it has that much effect on crime. I don't think it scares people. I think if our society could take dangerous people and put them away for the rest of their lives and not have them back into society, I think that would be a nice replacement for it. But that doesn't happen and we can't count on things like that, and so the death penalty is still with us.

Q. Is there anything about your views on the death penalty that would prevent you from considering the death penalty, life in prison without the possibility of release or some lesser option as alternative sentences in this case?

A. With all three options, I think I could make a very clear decision one way or another on those three points.

Q. Are you in a position, based upon your belief system, to consider each of those options?

A. Yes.

THE COURT: The parties may ask questions.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, good afternoon.

A. Hi.

Q. Or good morning.

A. Yeah.

Q. My name's Steve Lapham. I'm one of the prosecutors on the case. Let me just ask you a couple preliminary questions first. And because we have an anonymous jury, I'm going to try and do this without disclosing your occupation. But you indicated in your questionnaire that your job requires daily attention?

A. (Nods head up and down.)

Q. Is this a busy time of year for you?

A. It's going to be, starting in late December and early January. The – although if I get off – I mean, if the court closes at 1:00, that gives me plenty of time to do what I need to do.

Q. Okay. That was my question. You know this case will undoubtedly run into January and perhaps even into February?

A. I assume so, yeah.

Q. And if you get off at 1:00 o'clock, you still have a ways to go to get back to your job. You'll probably be released closer to 1:30. Is that still going to give you enough time to do what you need to do?

A. I think so, yeah. Up until this point, until we said that this morning, I was going to say there would be no way I could do this. But –

Q. Well, the main thing we want to be sure of is that when you're here, you could be able to concentrate on what's going on here and you wouldn't be worrying about the things going on outside.

A. That would be no problem.

Q. Okay. Let me ask you a few questions about your views on the death penalty. You said in your questionnaire that you were neutral on the death penalty, and I think you kind of reiterated that here this morning.

A. Good.

Q. Could you explain to me a little bit more about how you came to your views or what type of thinking you've done on this issue?

A. Well, as I said earlier, I would like to think that ethically we, as a society, would not be at the point where we still have to use the death penalty, that the alternatives would be enough that we wouldn't have to have the death penalty. But as

our society goes and as reality steps in, the release from prisons and whatnot, I think with dangerous people or sociopathic people that are a deterrent to a well-organized society, I think they have to be kept out of society one way or another.

Q. Now, one of the options you're going to be given is a sentence of life without possibility of release. And in the federal system that means exactly what it says: that there would be no possibility of release. Given that as one of your options, do you think you would automatically go for that option?

A. No.

Q. Given your views?

A. Not automatically, but I would lean towards that option, probably.

Q. Given your views about the death penalty, that it isn't a deterrent and that the main purpose of the death penalty is to remove someone from the streets, one of the ways to do that would be a life sentence without possibility of release, correct?

A. Correct.

Q. So are we in a situation where you would essentially have already made up your mind as you sit here now?

A. No. I think if it unfolds and it's – I think if it's a heinous enough situation, where it's a danger to even people in prison and whatnot or the crime itself was heinous enough, then I think I would – I could go for a death penalty.

Q. Okay. And what in your mind would be a heinous enough crime?

A. I don't know. I think probably somebody with a sociopathic – you know, somebody who has no morality, has no feeling of guilt or whatnot about a crime and has created a situation where they've killed children or lots of people with absolutely no conscience.

Q. Would you limit it to just those who kill children, or could it be others?

A. Depends on the circumstances. A well-planned-out, conceived murder without conscience would make me think about it.

Q. Okay. Make you think about it. But would you actually seriously consider as one of your options imposing the death penalty in that type of situation?

A. In that type of situation I would think about it; yes.

Q. Okay. Well, what other types of situations can you envision?

A. Can't envision too many others than that. I don't think of it as a primary way of ridding society of criminals.

Q. It's a difficult question that – the death penalty, as you know, has been debated in our society for many, many years, and people can hold honest positions either way. But our society happens to have come down on the side of imposing the death penalty in appropriate circumstances. And if you were to sit on the jury, you would be asked to follow that law. Do you think you would have any problem at all doing that?

A. No.

Q. Of course, you're going to receive some guidance on that, and the guidance will come from the Court. The judge will instruct you under what circumstances or – Court will advise you what circumstances you may consider, both in aggravation and

mitigation of the crime. And this is what the judge explained to you before, that there will be certain aggravating circumstances which are simply those circumstances which the Government –

A. Dictated by law that say this particular situation, the ramifications are this and this? Is that –

Q. That – yes, that those are the circumstances which the Government maintains should warrant the death penalty.

And then you may be given other factors, mitigating factors, which are those factors that the defense will argue warrant some lesser form of punishment.

And that is the law you would be given pertaining to your decision. You would be able to follow that law?

A. Yes.

Q. Because the thing we don't want to happen is, just as we were talking to you about pretrial publicity, we don't want people bringing in their views about the case that have – that they've learned before coming into court. We also don't want people to come into court bringing their own conception of the law.

A. (Nods head up and down.)

Q. You follow that?

A. Yes.

Q. It would be unfair to both sides if you brought your views into the court and said, "I don't care what the law is. I don't care what the judge tells me. I'm going to follow my own views on the subject."

A. (Nods head up and down.) No, I think I'm neutral enough to be able to follow the law.

Q. Okay. Well, that's really what we're getting here in this inquiry, whether or not, whatever your views happen to be on the death penalty, you could follow the law and apply it in circumstances which you personally may not feel it's appropriate. Do you understand that?

A. Yes.

Q. So you may, if you're selected as a juror and you're sitting in that jury room discussing the case, having found the defendant guilty, you may be called upon to consider imposing the death penalty even if personally, before starting this case, you felt that the death penalty shouldn't apply in those types of situations?

A. (Nods head up and down.) Yeah. I think so.

Q. And you think you could do that?

A. Yeah.

MR. LAPHAM: Your Honor, may I have a minute?

THE COURT: Yes.

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

MR. LAPHAM: Nothing further. Thank you.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Hello.

A. Hi.

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

Just a few questions, if I might. Have you got your questionnaire nearby?

A. No. You guys going to hold me to that?

Q. Well, this one's an easy one.

A. Oh, good. I like easy ones.

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 85: Yes.

MS. CLARKE: **Q.** You thought you'd never have to look at that again, right?

A. No, I didn't, but –

Q. If you could go to page 24, questions 94 and 95.

A. (Complies.)

Q. And it's the two questions about – a couple of questions about mental health professionals.

A. Mm-hmm.

Q. And you indicated you're neutral. Could you help me understand what you were thinking?

A. I was raised in hospitals. My father was an administrator. So I got to know a lot of psychologists, psychiatrists, and other health professionals. They were around me all the time. So I got to know them as people, beyond their profession. And I got to understand a little more how they think and view things. And it kind of opened my mind up for – I think it's a very important field, and I became – not to think of them as infallible, that they are just like anybody else; they make mistakes, and problems arise from that, but that they have a deeper understanding of – I think it's an important field. I think it's a necessary field.

Q. So it's not something like you'd take a psychiatrist or a psychologist and throw him out?

A. Oh, no.

Q. You're open to their thoughts?

A. Yes. Yes.

Q. Even though they can make mistakes, like the rest of us?

A. Sure. Sure.

Q. Well, thank you.

I guess maybe I should be a little fearful of going on to the next one. You also indicate you have friends who are attorneys.

A. Yes.

Q. Does that make you feel one way or the other about lawyers?

A. No. No. Once again, I think there are some very good ones and . . .

Q. Have any of the lawyers that you are friends with – represent people accused of crime? Or prosecute people accused of crime?

A. Yes. I think one or two of them do.

Q. Have you learned anything from that person or those persons?

A. No. We don't generally talk about their cases in a social situation.

Q. So you haven't gotten any good or bad insight into their jobs or their work?

A. Or their philosophies; no.

Q. You mentioned that you were a juror in a civil case earlier?

A. (Nods head up and down.)

Q. Did the judge's instructions about the, you know, the burden of proof and stuff, how does that relate to what you learned in the civil case?

A. I found it very interesting. I actually took the judge's information verbatim into the jury room, and 10 out of the 12 jury people had already made up their mind by their feelings about the person who was looking – who was – had the civil case against them. And they had already made up their minds. And two of us were trying to follow the judge's –

Q. Instructions?

A. – instructions. And it was a 10 to 12 [sic] vote, three hours and some.

Q. And it stayed that way the whole way?

A. Well, they weren't willing to discuss – they had a feeling about this person, and

–

Q. That they weren't willing to move off of?

A. No.

Q. I don't guess it's a good thing to tell a judge some jurors don't follow their instructions.

A. Well, you know, it was my first jury, and I felt that was – I didn't feel it was my place, or . . .

Q. Right. Well, that connects, kind of, to this case. As the prosecutor was asking you, what I'm hearing you say with regard to the death penalty is that you would follow the judge's instructions and that you would consider with your fellow jurors all of the options?

A. Well, I think I had an out earlier on, when he asked if I would abide by the laws of the land. And I would have raised my hand if I had felt that I couldn't make a decision one way or the other.

Q. And you feel that you can?

A. I think I can.

Q. Thanks.

MS. CLARKE: Could I have just one moment.

THE COURT: Yes.

(Discussion off the record between Ms. Clarke, Mr. Denvir and Ms. de La Rue.)

MS. CLARKE: Thank you very much.

PROSPECTIVE JUROR NO. 85: Sure.

THE COURT: And thank you.

Please escort the juror to the adjacent room and bring in another juror.

(Prospective juror number 85 left the courtroom.)

(Prospective juror number 86 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 86th randomly selected juror. I may reference you by that number here in our communication.

Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. Well, other than I'm self-employed. I have nine employees, and I have an office in the Bay Area and one here, and I'm the— kind of the main thrust in my company. So — four months is a long time, from what I've heard.

Q. One reason why I've opted, at least tentatively, and it's probably going to be the actual trial schedule I use, for an 8:00 to 1:00 schedule is so that I would be able to reach out to more individuals, even people like yourself, to serve on the case. The parties are entitled to have the Court reach out for jurors that represent what could be characterized as a fair cross-section of the community, because there's a principle which recognizes that you shouldn't have jurors that are just from one stratum of society. You can understand that?

A. I understand that.

Q. Okay. And I'm hopeful that the adjustment I've made in the schedule perhaps could result in you also making adjustments so you could make yourself available. Is that feasible?

A. Well, I will do my duty, whatever that may be, yeah.

Q. I don't want to cause you to experience a hardship, but if you could make a sacrifice that doesn't impose a real hardship for you for the duration of this trial, then we could continue to consider you as a prospective juror. Is that feasible?

A. That's feasible.

Q. All right. Thank you.

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

A. Just sporadically. Not on purpose.

Q. Okay. That indicates to me that you've been trying to avoid —

A. Correct.

Q. — hearing anything.

A. It's tough.

Q. I appreciate that. What type of information did you receive nevertheless?

A. Oh . . . you know, I really don't recall. Just spotty information.

Q. Okay. I'm going to move to the podium, because I want you to use the microphone, and then I want to make sure that your voice is directed toward counsel table. They'll have an opportunity for follow-up questions when I finish questioning you, and they'll have an opportunity to hear everything you have to say.

I'm asking you about the information because we don't expect jurors to walk in — well, as far as what you heard since Cal Expo, maybe I do have expectations, frankly —

but I need to know what information you received because we're entitled to just have a general idea as to what information you were exposed to, to see if it has an effect on you at all.

A. The only thing I can say is that I don't – I haven't read the newspapers.

Q. Okay.

A. And I do listen to the radio. When the news comes on and they have something on the trial, then I turn it off, try to turn it off.

Q. Despite your efforts, which I really do appreciate, have you heard things nevertheless?

A. I just heard what the defendant was wearing the other day.

Q. Okay. Have you had any discussions with anyone since Cal Expo?

A. No.

Q. What information did you receive about the case before Cal Expo?

A. Well, I did read about it in the paper before I got my notice and saw several news clips on TV and radio and read part of the so-called manifesto, and quit reading it after a while. So . . .

Q. Can you give me some specifics as far as the nature of your exposure to information about the case?

A. Specifically . . . how much evidence was collected in the cabin, and I saw the course of the arrest when it was on the news. And . . . I just – bits and pieces.

Q. What was the news report you recall hearing about the evidence in the cabin?

A. Well, I remember them saying that they collected a great deal of evidence – bomb-making equipment and supplies, things like that.

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

A. I believe he's guilty.

Q. What is the basis of that opinion?

A. Well, apparently what I've read and seen on the TV and heard on the radio prior to the summons for jury duty of all the evidence and – that's pretty much it. I can't remember, again, specifics.

Q. How strongly –

A. I form a pretty – I form an opinion pretty easily.

Q. Okay. How strongly are you committed to that opinion?

A. Fairly strongly.

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

A. It would be tough. I can't tell you yes or no. I can say that it would be tough to set aside.

Q. I appreciate your candidness. I want to just probe what you just said. If you were required to set it aside, would you be able to go through whatever mental process would be involved to set it aside? Would that be something you could mentally do, from your perspective?

A. I think that's pretty tough to do for anybody. You can tell yourself to do things, but, you know, subliminally it's not going to work.

THE COURT: Okay.

MR. FRECCERO: Could I just ask a couple quick questions?

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, sir. My name's Stephen Freccero. I'm one of the prosecutors.

The parties very much appreciate the candor you've had. And I just want to ask a couple quick questions to follow up on that. One of the things I noticed that you wrote in your questionnaire about your own personal beliefs was that you believe that everyone is entitled to a fair trial. Is that a strongly held belief?

A. I believe that, yes.

Q. And given that belief, do you think part of having a fair trial is having people commit to an ability to base their judgment solely on evidence presented in court?

A. Yes, I do.

Q. And given the importance of the that process and your belief in a fair trial, could you commit, would you be able, given the importance of this, to set that aside, anything you've learned before trial, and come in here and honestly be able to swear that you will set it aside and judge it only on the evidence?

A. I would say that I would try to do that. I can't tell you that it would work.

Q. Okay. You doubt that it would work, I guess?

A. I doubt that it would work, to be honest with you.

MR. FRECCERO: Very well. Thank you, sir. We appreciate your honesty.

THE COURT: Thank you very much for your responses, sir. I'm going to excuse you, and we'll call in the next juror. Thank you.

(Prospective juror number 86 left the courtroom.)

THE COURT: The record doesn't reflect that the juror is excused for cause.

MR. DENVIR: So stipulated, Your Honor.

MR. FRECCERO: Yes, so stipulated.

THE COURT: All right. Thank you.

(Prospective juror number 88 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 88th randomly selected juror. I will perhaps reference you by that number during our communication.

Is there any reason – oh, before I ask you a question, there's a microphone there which I'd like you to use when you respond to my questions. And I don't mind if you look at the parties at the counsel table when you respond, because I want to make sure they hear your responses. So you may have to move a little closer to the microphone.

A. (Complies.)

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

A. No, there isn't.

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

A. Not very much, you know, just something on the radio every now and then, or something.

Q. What type of information have you received about the case since Cal Expo?
I'm going to take the podium.

A. Information, you mean, as – through the media?

Q. Yes.

A. The morning that we went for our questionnaire, my wife said that on the TV they said there was, like, 600 people or something. I said, "Yeah, I was in that line." And I guess we were on TV or something.

Q. Okay. Between the time that you appeared at Cal Expo and today's date, have you heard any news reports or heard any discussions about the case, been involved in any discussions about the case?

A. No, I haven't.

Q. Prior to going to Cal Expo, what information had you received about the case?

A. The only information that I had received about the case was just whatever was said about there had been a – arrest and stuff made, and stuff.

Q. Okay. Let me tell you my objective. We don't expect jurors to come into this courtroom unaware of publicity surrounding the case when it's a case that's highly visible in the community. But I'm asking these questions because we – we're after two things. We want to be able to make an evaluation as to the nature of the information you've been exposed to, and we also want to know how you personally believe the information has affected you. And so can you tell me what you know about the allegations involved in this case, what you heard about this case? I need to get some specifics. Do you know about the cabin? Do you know about any other allegations?

A. Yes, I do. I do know about the cabin. And – but I didn't know a lot of information about it because I think at the time there was something else going on. I think it could have been the O.J. case. I might have been listening to that more. And it seemed like at first there was the cabin thing. I remember, you know, hearing about that. And then all of a sudden it seemed like it died down, you know.

Q. What did you hear about the cabin?

A. That they were going to try to move it. I was impressed that they were going to try to move it in its own state or whatever (indicating), in its, you know, pick it up and actually bring it or, you know.

Q. Did you ever hear or read anything concerning allegations about evidence being found at the cabin?

A. No, I didn't.

Q. Before I told you about the charges, when I made opening comments to you when you were part of the six jurors in the jury box, did you know about the type of allegations involved in the case?

A. Yes, I did.

Q. Okay. Tell me what you knew or heard, what you knew.

A. I heard or I knew that there had been a, like, mail explosive bombs, something about – I remember something like – I was working in Auburn, and they at first said something about one of the forestry people, or something, lived in that area. So I . . .

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

A. No, it hasn't.

Q. If you are selected as a juror in this case, will you be able to allow Mr. Kaczynski to begin this trial with a clean slate?

A. Yes.

Q. You'll be able to forget anything you've heard about the case outside this courtroom and determine Mr. Kaczynski's guilt or innocence based upon the evidence that's presented here in the courtroom?

A. I believe so; yes.

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

A. (Pause.) Yes, if you're innocent until proven guilty, yes, I guess.

Q. Okay. When you were reflecting – because you paused before you responded to my question, when you were reflecting, tell me what you were thinking.

A. Oh, I was thinking if you're arrested, there's something – you know, I mean – I don't think being arrested – there must be something that indicates some guilt of some type.

Q. At least the arresting officers, they have that type of thought in their mind?

A. Right. That's what I was trying to – yeah.

Q. Right. But despite the fact that Mr. Kaczynski's on trial in this case, if you were to make a decision in this case, doesn't have to present any evidence whatsoever. The Government has the burden of proving its case beyond a reasonable doubt. If you were to rule right now, Mr. Kaczynski's proved innocent. Would you find him innocent?

A. Based on what I know right now?

Q. Right.

A. Would I find him innocent?

Q. Right.

A. Yes.

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

A. I really can't say. I've never really been in a situation where I had to really deal with it. I've never given it that much thought.

Q. What are your views on the death penalty?

A. My views are, I think that everything you do requires, you know, some justification or, you know, I think – like the Bible, eye for an eye, a tooth for a tooth, or, you know – there has to be some raficationed [phonetic].

Q. Okay. If the jury – assuming you were a member of this jury I’m referencing – if the jury should find Mr. Kaczynski guilty 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. Based on what I know now, I’d say yes.

THE COURT: Thank you.

Parties may conduct questioning.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, good morning.

A. Good morning.

Q. My name is Steve Lapham. I’m one of the prosecutors on the case. Just want to ask you a few questions about your questionnaire.

Let me just establish first, you work for a large company – and I don’t want you to disclose what company that is, but you work for a large company?

A. Yes, I do.

Q. And there would be no problem with your job as a result of jury service?

A. No.

Q. They would continue to pay you for your time on jury duty?

A. Yes, they would.

Q. And you indicated that in your questionnaire that you don’t feel you’re that knowledgeable about this case?

A. Yes.

Q. You indicated that, I think, you’ve just read or heard a moderate amount of news coverage, just the basics?

A. Yes.

Q. And on that basis you don’t feel you’ve formed any opinion about this case whatsoever?

A. No, I haven’t.

Q. Okay. Because you understand that you haven’t heard any evidence about the case. That’s going to be presented here in the court.

A. Yes.

Q. You served on a jury before?

A. Yes, I have.

Q. And I’ve forgotten; was that a criminal or a civil jury?

A. Civil.

Q. So the Government, if you were chosen to be a juror on this case, the Government would start at zero and would start building its case with its witnesses and its evidence in the trial, and you wouldn’t allow anything you’ve read out or heard outside the court to infect your judgment as how you would view that evidence; is that correct?

A. Yes.

Q. Okay. And you would be open to, by the same token, to listening to whatever evidence is presented by the defense?

A. Yes, I would.

Q. Let me ask you a few questions about your views on the death penalty. You've said that you really didn't have an opinion because you haven't given it very much thought. And that's, I guess, because you've never been called upon to vote on the death penalty?

A. Yes.

Q. Okay. Because in your questionnaire you, actually, you were asked that question, and you said that the punishment should fit the crime, and then you said your reason for that is an eye for an eye and a tooth for a tooth?

A. Yes. Yes, that's right.

Q. So it sounds like you are for the death penalty in certain circumstances?

A. Yes. That's . . . (Nods head up and down.)

MR. LAPHAM: Your Honor, do we have the juror's questionnaire handy?

THE COURT: It's next to him on the ledge. I think he can reach it from his location.

It's this way, sir (indicating).

PROSPECTIVE JUROR NO. 88: (Accepts document.)

MR. LAPHAM: Q. If you would, sir, just turn to page 27 in your questionnaire.

A. (Complies.) Okay.

Q. I'm going to ask you a few questions about that, but before we get there I want to cover some other ground.

The judge explained to you that the case is going to proceed in potentially two phases. And the first phase will be the guilt or not guilty phase. If you determine that the defendant is guilty, then we may move on to the second phase, which is the sentencing phase or the penalty phase. And at that phase, you'll hear additional evidence on what sentence should be appropriate or would be appropriate. You understand generally how that works?

A. Yes.

Q. Okay. So the first question is, if you were to convict the defendant of the crimes with which he is charged, would you be willing to consider additional evidence presented by both the defense and prosecution regarding the appropriate punishment?

A. Yes.

Q. Now, at that stage, the defendant would have been convicted of an intentional killing of another human being. And the thing we want to make certain is that you wouldn't accept just that fact and go ahead and vote for the death penalty; you'd listen to what other evidence there might be pertaining to that issue. Do you think you could do that?

A. Yes.

Q. Your views on the death penalty are not so strong that you would feel that simply because someone had committed an intentional killing of another human being that, for you, it would be an automatic sentence of death?

A. No, I don't think that way.

Q. Okay. The reason I asked that, and if you would look at your questionnaire now at question 107, you said –

A. 106?

Q. No, I – 107.

A. Oh, I thought you said page 27.

Q. That's correct. 106 is the first question on that page, but I want you to look down. It's the multi-part question.

A. Oh, okay.

Q. See it?

A. Yeah, I see it now.

Q. The first circumstance you're given is, "Anyone who plans and commits a murder should get the death penalty." And you strongly agreed with that proposition?

A. Yes.

Q. Okay. Despite your strong view of the death penalty in that circumstance, would you be able to listen to evidence presented that might suggest that a sentence less than death would be appropriate?

A. Yes.

Q. Okay. And you – the next situation down is "anyone who deliberately murders two or more people should get the death penalty." Again, despite your strong views about the death penalty, there will be evidence presented as to why the death penalty shouldn't be appropriate in that circumstance. You'd be able to listen to that?

A. Yes.

Q. And the same for terrorism: "Any person who commits an act of terrorism in which someone dies should get the death penalty" – again, you answered that you strongly agree with that proposition.

A. Yes.

Q. You would be able to nevertheless despite that strong view, consider whatever evidence the defense put on that might suggest that the death penalty should not apply?

A. Yes.

Q. Now, the final question asks you whether a person's background should matter when it comes to imposing a sentence of death. And the judge is going to instruct you that you should consider circumstances about the defendant's background before you impose or choose the sentence. Do you think you could follow that instruction?

A. Yes.

Q. So, for instance, if there was evidence of something in the defendant's background or character like an abusive childhood or evidence of mental retardation, things of that

nature, you'd be able to consider that in whether or not a sentence of death or some lesser form of punishment would be appropriate?

A. Yes. Depends on, you know, the weight, how much weight it would carry; yes.

Q. And really that's all we're getting at is, this is a momentous decision you would have to make. And the question is, would you be able to consider all the circumstances that you're presented with during the course of the proceedings and not just give some kind of knee-jerk response as a result of the crime itself? Do you think you could do that?

A. Yes.

Q. Okay.

MR. LAPHAM: Thank you very much.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Hello.

A. Hi.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. And I had a few follow-up questions, if I could.

I notice that you live a pretty good commute out. Is that any problem for you?

A. No.

Q. Getting back and forth, with the hours the Court has set?

A. No.

Q. And your employer, I don't think we probed that at all. Is there any financial issue for you? Are you getting paid while you're on jury duty?

A. Yes, I am.

Q. So that's not a problem for you?

A. No.

Q. When the judge was asking you about your knowledge of the case, the arrest, the cabin, you mentioned that you did know something about the cabin. Did you know anything about what was found in the cabin? Did you read anything about that or hear anything on the TV or radio?

A. The only thing I remember was that something about there was no, like, running water or stuff like that.

Q. No electricity, no running water?

A. Yeah. That seemed to stand out more than anything.

Q. What stood out about that? What did you think about that when you heard that?

A. That it –

Q. Be pretty cold up there?

A. Yeah. That's what I thought. It would be pretty – pretty rough.

Q. Did it make you have any particular thoughts about Mr. Kaczynski one way or the other?

A. No.

Q. Just kind of struck you that that would be kind of rough living?

A. (Nods head up and down.)

Q. Okay. You mentioned in your questionnaire that you had served as a juror in a case some time ago.

A. Yes, I did.

Q. And actually you were the foreman of that jury?

A. Yes, I was.

Q. What was that experience like for you?

A. It was pretty interesting to see the procedure from start to finish.

Q. How did you feel about being the foreperson in the jury?

A. It was kind of like I was given – I was elected, I guess.

Q. Were you out of the room when the election took place; is that it?

A. Well, they kind of – we passed a hat.

Q. Was that a difficult experience for you or not?

A. No, it wasn't difficult.

Q. The decision-making process, was that difficult?

A. No.

Q. Did you find that the jurors came together fairly quickly and made some decision quickly?

A. It wasn't as quick as we thought, you know. It took a while for the jurors to, you know, to finally come together, yeah.

Q. There was some debate?

A. Yes.

Q. I also noticed in your questionnaire that you saw combat experience in Vietnam?

A. Yes.

Q. Would there be any problem if I asked you a little bit about that?

A. No.

Q. I take it that you did see matters of life and death in your combat experience over there?

A. Yes.

Q. And probably had some friends and close friends not come back?

A. Yes.

Q. If I could ask you to take a moment, if it's okay, how do you think that experience would affect the sitting on a jury where you're weighing the life or death of another person?

A. (Pause.) The only thing that I would say to that is that each – I think each time something happens, you feel different every time. You know, nothing's definite. You know?

Q. I guess that would be a lesson from that. But do you think it would affect your ability to actually sit in judgment of another person's life, given that you saw those, that harsh reality of life and death?

A. I really don't know, because I've never sit over, you know, over a person's life besides my own, you know. So I can't say, you know, if by me being a Vietnam vet that it would make a difference on me sitting over, you know, because I –

Q. I don't think the question would be being a Vietnam vet. It would be a question of whether the combat experience that you saw would affect you one way or the other, I guess.

A. It would affect me as far as how I feel about my views on death? Or –

Q. Just sitting in judgment of another person's life or death.

A. I really don't know, because I've never sit and judged someone's life.

Q. It's not a real experience for you yet?

A. It's not a real experience. As far as – as far as being on a jury and as far as seeing death, it doesn't relate to me. Not the same.

Q. If I could go to your feelings about the death penalty for a moment. You indicate in your questionnaire that you do strongly agree that the death penalty is appropriate in a variety of instances, right?

A. Yes, I do.

Q. And that really comes from a belief that – your moral code, your moral beliefs are that there should be – you kill; you get killed.

A. Yes.

Q. An eye for an eye?

A. Yes.

Q. And that comes from religious background, religious training?

A. Yes.

Q. And I guess maybe that was a family value as well? Was that carried through your family?

A. (Pause.) You know, I think that's an individual type thing, you know? I couldn't say if my mother or father felt the same way. I think that's my personal feelings.

Q. That's a real personal belief?

A. Yes.

Q. And I guess what we do in this process, and it's a little awkward for us, is to sort of explore the depth of that personal belief. But that's a personal belief that came to you through your own thought process?

A. Yes.

Q. And through your own religious views and religious beliefs?

A. Yes.

Q. And I guess it wasn't a lightly drawn conclusion, support for the death penalty?

A. No, it wasn't, you know. And this questionnaire –

Q. It's hard, isn't it?

A. It's – yes. I mean, I was just trying to answer to what I thought I, you know, and . . .

Q. And we agree with that, because the important thing, and the judge mentioned it to you, is we just find out how people think about the death penalty, not that there is a right or wrong to that.

And I guess what I'm sensing from you is that that is a deeply held belief in favor of the death penalty in situations where there is a murder; you pay for your life when you take a life? Am I right?

A. Yes.

Q. Am I right, or am I putting some words into your mouth? I really don't want to do that.

A. Well, when you say that I say that my beliefs are if you take a life, you –

Q. Pay with your life?

A. – you pay for a life, I would say yes, but not if you were in a combat situation or if you were in self-defense. Then no, you don't.

Q. Excellent point. But if you are found guilty of an intentional, deliberate, premeditated murder of another human being that was not excused, then what I'm hearing you say is that the appropriate sentence for that circumstance would be the death penalty?

A. Yes.

Q. And when I listen to you talk to the prosecutor and he kept asking you, "Well, could you listen to evidence presented by the defense and listen to the evidence presented by the prosecution and weigh it?", you were struggling with that to say, "Yes, of course I can," right?

A. Yes, I was.

Q. So, I mean, what I'm hearing you say is that you're not going to be shut down to any option. You're not going to just say don't talk to me; I will consider various options, right?

A. Yes.

Q. But when you reflect on what you believe is a just punishment when a person has committed a deliberate, premeditated, intentional murder, without justification or excuse, then the appropriate penalty is death?

A. (Pause.) Yes.

Q. So when the judge says – and the law will always tell us – you've got to follow the instructions, you've got to weigh back and forth, you would, of course, say, "Of course I'll do that"?

A. Yes.

Q. But it's a question of how much weight you can give to anything else when you've made the finding beyond a reasonable doubt that the person is guilty of a premeditated, intentional, deliberate murder?

THE COURT: That's a confusing question, I think, counsel.

MS. CLARKE: I think you're right.

MS. CLARKE: Q. Once you've made that finding – let me just pose the question to you this way. Once you've made that finding beyond a reasonable doubt that the person is guilty of an unexcused murder – are you with me?

A. Yes.

Q. Deliberate, calculated, premeditated. Then the judge is going to say you've got to listen to what the defense has to say about why death should not be imposed. Right?

A. Yes.

Q. And what I'm hearing you say about your views of the death penalty is that it would be difficult for you to consider what the defense may have to say about it once you've made the finding that it was an intentional, unexcused murder?

A. No, I don't –

Q. It would be difficult?

A. No, I don't think it would be difficult.

Q. How would you evaluate that, those circumstances?

A. Well, I would listen to the instructions from the judge and by all the evidence and everything that's there, and then I would make my judgment like that.

Q. Right.

A. You know?

Q. The one thing that the judge will do is say, "Listen to the prosecutor tell you why to impose death; listen to the defense tell you why not, why to impose a life sentence." But then you don't have much instruction beyond that. It becomes a decision you make.

A. Yes.

Q. And what I'm trying to explore with you is that once you've made the decision regarding the guilt of the person, of a premeditated, intentional, deliberate murder, without excuse, that nothing much else can matter at that point. That's what I'm trying to find out. Is that right?

A. Not necessarily.

Q. What else?

A. I haven't been in that situation.

Q. Right.

A. But I think that for me to just sit here and say "yes" and "no" – there is no yes and no. I don't know what – how I would – on the surface, my feeling is eye for an eye, tooth for a tooth. But I think there's extenuating circumstances in everything, you know. And I think, you know, I can't really sit here honestly and say that yes, I'll do this, I'll do that, I'll do this, because I don't think nothing's concrete.

Q. Yes. What I'm trying to find out is, are the extenuating circumstances ones that you would be looking at that would affect your decision as to whether it was an intentional, deliberate, unexcused murder? Is that what you're looking for is extenuating circumstances that explain the murder?

A. Yes.

Q. So what I'm trying to get beyond is, if you've found the intentional premeditated deliberate murder, what does that mean for you in terms of sentence?

A. (Pause.) I think that would mean the death penalty.

Q. And that would be because of your belief in an eye for an eye?

A. No. That would be because of all the things that you said.

Q. Okay.

A. That would be with all the facts on both sides, everything.

Q. That death would then be appropriate?

A. Yes.

Q. And so when you filled out your questionnaire, page 27, question 107, and you said "strongly agree" as to all four of those circumstances – or "strongly agree" as to three circumstances, that anyone who plans and commits a murder should get death, you strongly agree?

A. Yes.

Q. That's assuming there's no extenuating circumstances as to the crime itself, right?

A. Yes, but it doesn't say that.

Q. I know.

A. And the answers that they give you are just like – I mean, if I had to weigh this here – if you noticed, I checked strongly agree on everything.

Q. Yes.

A. Everything on there, right?

Q. Right.

A. But I think there is circumstances to everything, you know, that nothing is concrete.

Q. And the circumstances relate to the kind of crime that occurred and why the crime occurred?

A. Yes.

Q. But once you get beyond why the crime occurred and into the crime I described for you and that the judge's question described for you, that means the appropriate penalty is death?

THE COURT: I don't understand that question. Rephrase it.

MS. CLARKE: **Q.** You said you strongly agree that "Anyone who plans and commits a murder should get the death penalty"?

A. Yes.

Q. You said you strongly agree that "Anyone who deliberately murders two or more people should get the death penalty"?

A. Yes.

Q. And that "Anyone who commits an act of terrorism resulting in the death of people should get the death penalty"?

A. Yes.

Q. And when you're answering the questions – I understand the difficulty that the questions pose for you – you were trying to define the penalty you would impose for a particular crime?

A. Yes. I was trying to check the one that I felt related more to me.

Q. Right?

A. As the four ones that I had to choose from, I didn't "somewhat disagree", shortly disagree [sic] – I mean, that's like standing on the top of the fence. What I was saying, either – either I would have to be – there should be only two questions there. There should be "strongly disagree" or you disagree – "strongly disagree" with it [sic].

Q. Agree or disagree?

A. Yeah. I mean, yes or no. That's all. The other two are just like – it's like being on top of a fence.

Q. And when you get to the fourth one, that a person's background does not matter, you strongly agree that the background does not matter?

A. (Examines document.) I strongly agree that out of those four answers, that's the best answer for me for that question, because I don't know the background. I don't know anything. Only thing that I'm putting here is just what I think I would feel about these questions. You see what I mean?

Q. I guess where I've gotten confused is, it sounds like to me that what you're looking for in making your own decision about your belief about the death penalty is that you look at the crime itself and not the person who committed the crime. You're looking at the crime, right? Or wrong?

A. Yes. I'd say at first I'm looking at an act, yes, not necessarily at the person. At an act, yes. At the crime, yes.

Q. Right. So if the person you found guilty of a deliberate, intentional, premeditated murder, you would say, "I'm not going to look at that person's background, because I've made the findings necessary to determine the appropriate penalty"?

A. No. I don't think that would have anything to do with how I would agree on, you know, the – if I've already found him guilty, now I think that's a whole different question; that's a whole different thing.

Q. What do you mean by that?

A. This is not the same question.

Q. What do you mean by that, then? Help me with that.

A. Well, then I think that now that I'm at this point, now it's to do something else. Then you got to, you know, weigh it again, you know, look at all the – look at all the evidence again, you know.

Q. What are you going to weigh again after you've made that finding on the crime itself?

A. All the background of the person, all the circumstances around it, all the – you know, everything that happened. You see what I mean?

Q. To make another judgment as to whether it was an intentional, unexcused murder?

A. (Pause.) I didn't quite follow you there. To make what?

Q. You've made your finding as to the crime, and now you're making your finding as to the person, right?

A. Yes.

Q. And when you're making your finding as to the person, are you trying to decide again whether the person intended the murder without excuse?

MR. LAPHAM: Your Honor, I'm going to object to this line of questioning. It's unfair because counsel is not specifying –

THE COURT: Let's not object to the whole line. We only have one question pending.

MR. LAPHAM: All right. Counsel is not specifying at about what stage –

THE COURT: Sustained.

MS. CLARKE: Q. We've gotten past the guilty phase, because you found the person guilty of that crime: premeditated, intentional, deliberate, murder, right?

A. Mm-hmm.

Q. And I guess what I'm trying to find out is, what are you going to look at in making the penalty decision?

MR. LAPHAM: Your Honor, I'm going to object to that question, because it's not the juror's job to figure out this – these things. It's the juror's job to consider what evidence is presented to him.

THE COURT: I'm having trouble with the question too, frankly. You want to rephrase it? Or ask another question.

The problem I'm having is that first you asked the juror about the questionnaire, and you seemed to try to figure out what the juror's thinking was at the time the juror filled out the questionnaire. And then you seemed to be blending that with the type of thinking the juror should have on this case. And so I'm becoming troubled by the nature of the questioning.

MS. CLARKE: And I don't want to confuse the juror. And I think he's trying to help me the best that he can, Your Honor.

MS. CLARKE: Q. You know something about this case – and let me just wrap this with this. You know something about this case?

A. Yes.

Q. You know that the charges are sending a bomb through the mail with the intent to kill or injure, and that a man died?

A. Yes.

Q. You're aware of that?

A. Yes.

Q. Based on your knowledge of the case, do you have an opinion as to the appropriate penalty for whoever the Unabomber is?

A. No, I don't.

MS. CLARKE: I have no further questions.

THE COURT: You can take the juror to the room and the jurors can all leave.

Is there anything further to cover before we adjourn until 1:30?

MR. LAPHAM: No, Your Honor.

MR. DENVIR: No, Your Honor.

THE COURT: Thank you.

(The lunch recess was taken.)

SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 20, 1997, 1:30 P.M.

—oOo—

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

Are you ready to proceed?

MR. DENVIR: Yes, Your Honor.

MR. CLEARY: Yes, Your Honor.

THE COURT: Please bring in the jury.

(Prospective jurors present.)

THE COURT: Good afternoon and welcome. You can remain standing. I will have my deputy clerk administer the oath to you.

(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 that just administered the oath to you is my courtroom deputy clerk, Shani Furstenau. And on the same platform with her is the certified shorthand reporter who will assist in administering this trial.

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

The voir dire or questioning process is an essential way of insuring 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 as a group. After a number of jurors are questioned in this manner, some prospective jurors will be assembled for further questioning as a group. Those required to participate in the further group questioning will receive notice as to when that will occur.

Our objective, as I've indicated, is to obtain a fair and impartial juror that will decide this case on the evidence that is presented here in this courtroom and on the law that I will instruct you on later. I have decided to do individual voir dire in part because the parties have requested it and because there has been some publicity about

this case. During the individual voir dire, we will cover the publicity area and other matters that tell us whether you should sit as a juror on this type of a case.

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

This determination is made at the second phase of the trial referenced as the sentencing phase. If there's anything about the charges that causes you to prefer not being a juror on this type of a case, please indicate that fact by raising your hand now.

There's no response.

The first part of the trial, which is referenced as the guilty or not guilty phase, will occur like any other trial in federal court. The government will present its case first. The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations, nothing more.

Mr. Kaczynski is presumed innocent and does not have to testify or present any evidence to prove his innocence.

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

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

At the conclusion of that hearing, 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 asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too.

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

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

Second, do not talk with anyone 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 the case until after you have been excused by me.

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

Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant as well as to the government to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they have no opportunity to discuss.

For these reasons, you should avoid reading or listening to future news accounts during the time period in which you're 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 have to assemble by 7:00 o'clock 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 be in court December 24, 25, nor the 26th; nor on January 1, or 2. I contemplate holding court December 22, 23, 29, the 30th, and the 31st. Please raise your hand if this poses a problem.

I'll talk to you about it later in the individual session.

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

There's no response.

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

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

Does any juror not understand that? Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until after you have heard all the mitigating and aggravating evidence.

There's no response.

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

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

There's no response.

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

We are seeking impartial jurors that are drawn from a fair cross-section of the community. A few of you, I don't know if you still have hardship concerns or not, but a few of you expressed hardship concerns. I'm hoping that the schedule I told you about alleviates those concerns. I want you to understand why you're still here, and I'm going to explain that.

The concept that allows the parties to draw from a fair cross-section of the community recognizes that those eligible for jury service are to be found in every stratum of society. This fact lies at the very heart of the jury system. To disregard it could be perceived as opening the door to class or distinctions which are abhorrent to the democratic ideals of trial by jury. Therefore, even though a few of you have mentioned hardships as an excuse for not serving on the jury, I will probe those hardship reasons because of the fair cross-section principle that governs various people who should be available for jury service.

My task is to determine whether your asserted hardship outweighs the important societal objective of allowing the parties to draw impartial jurors from a cross-section of the community.

I now want my deputy clerk to please 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. Thank you for joining us. You're the 87th randomly selected juror, and I may reference you by that number during this questioning. There's a microphone available which I would like you to use when I ask you a question. You can respond as though the parties at the counsel table were asking you the questions, and we can make sure they hear your response.

A. Okay.

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

A. Well, the one thing I was curious about, I think you answered it. The jury doesn't go past 1:00 o'clock.

Q. It does not go past 1:00 o'clock. But you probably will not be able – you will be transported someplace, and it will probably take until 1:30 until you're transported someplace. So if you have a destination you have to reach –

A. I just have to be home by around 3:30 for a pacemaker check one Monday a month.

Q. I don't think you have any problems.

A. That's what I was worried, because I heard that, you know, the trial went to 4:30 or 5:00. And the other – I had another operation, I'm just getting over that. I think I can change my doctor's appointments on that. It's just – you know, to the afternoon.

Q. Okay. I typically hold court during the hours you just referenced, but I decided to hold court between the hours of

8:00 and 1:00 so we can accommodate more people. So it sounds as though it will accommodate you then?

A. That will work as far as that goes.

Q. Do you have any problem that would keep you from serving?

A. No.

Q. Okay.

A. I think I can get home to take my sitz bath.

Q. Okay. That's good. Thank you. Since you answered your juror questionnaire at Cal Expo, have you heard or read anything about the case?

A. Yes, I have.

Q. What have you heard or read?

A. Well, it wasn't really anything I hadn't heard before, about the fact that, you know, his family turned him in. That was one of the main things that – I think I put that down in a few places. And the other main thing that I read or saw on television, I guess, a picture from the diary describing the incident here in Sacramento.

Q. Okay.

A. Other than that, I –

Q. I'm going to move to the podium. That way everyone can hear you respond.

A. Okay.

Q. Okay. Have you discussed the case with anyone since Cal Expo?

A. Well, not really. There's some people that I play golf with. Occasionally they talk about it once in a while. But, no, they don't talk about it that much, not a lot about it. I mean, I discussed it with my friend I live with, mainly in the sense of what I was just talking to you about, how it would affect my medical situation. That basically is what it was all about.

Q. How about the other discussions that you overheard or that you were involved in, what was the subject matter?

A. Well, it really wasn't much at all except, you know, that – you know, that I mentioned, I guess, I was, you know, going to appear for the jury hearings, and he felt sorry for me and laughed. You know, typical response.

Q. Okay. What information did you receive about this case before your appearance at Cal Expo?

A. Well, I – you know, I read once in a while in the paper – I didn't really follow it that much, you know, about the – whatever was going on up at the – in the mountains there where he was living. But I didn't really read in detail, you know, what they found and – I really didn't pay that much attention to it except, you know, I'm not much of a bomb friend, because other than that –

Q. All right. I am going to ask you some additional questions concerning what you heard before Cal Expo, and I'll explain why I'm asking the questions. I have a twofold goal.

One goal is I want to find out what you remember about the case. And the other goal is to find out how the things that you have been exposed to have affected you. We don't expect jurors to come in this courtroom in a case like this where there's been widespread publicity about allegations surrounding the case, we don't expect you to come in here without knowing anything about the case. But we do need to know what you know and how you are affected by that information. So tell me what you know about the allegations involved in the case.

A. Well, it would be that, you know, that he – I guess the one that I probably know the most about, if any, was the one in Sacramento. And I didn't realize even at the time how long ago that was until I read some of it recently. And he had sent bombs around to different people in the country, and there were some injuries. But it wasn't too specific.

I really don't watch television much. We only get the Sunday paper, so we're not, you know, going through the news and stuff too much. But it was, basically, just some of the rough parts about what did happen, but nothing really involved or, you know, any particular facts I wasn't really aware of.

Q. Have you heard any information about a cabin?

A. Well, that's – yeah, that's – I knew that they – FBI I guess it was, or was that in Montana or somewhere? Yeah, I heard a couple times about that, and they had gone up there and searched the place and took a bunch of things out. But I didn't know what it was exactly. Evidence, I think, is about the main name of everything.

Q. Do you have any memory of any of the things allegedly taken out of the cabin?

A. I couldn't say specifically. If I said anything, it would be stuff to make a bomb, you know, because of all the other little things, you know, since then. No, I really don't.

Q. Based upon the information you've received about the allegations involving this case, have you formed an opinion as to Mr. Kaczynski's guilt or innocence?

A. Well, yeah. I wrote in the papers that mainly the thing that impressed me was the fact that his own family turned him in to the authorities. And I would not assume they would do that if they didn't suspect – you know, have a pretty good knowledge about it. That impressed me more than anything.

Q. How strongly are you committed to that opinion?

A. Well, I really don't know. I mean, to me it's – it seems very important. And I do remember hearing once since that that his brother said he was sorry that he did it. And I didn't know if that was a legal – you know, legal thing, or if he meant that he was sorry that he had to do it or something like that, you know. But I don't know, I think I'm reasonably sure of – you know, what I said, that I would assume he is pretty guilty, or guilty, I guess. He can't be pretty guilty.

Q. How strongly are you committed to that opinion?

A. I guess, how do you say it, pretty much.

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

A. I think so, yeah. I mean, if I was shown that it wasn't the correct thing, I think I could, yeah. Never having gone through a thing like this, I don't know for sure, but

Q. Under our system of justice a criminal defendant wouldn't have to show you anything. He's presumed innocent. Do you think that you could put the information that you received about the case out of your mind for purposes of this trial and that you would just ignore that and allow Mr. Kaczynski to have his guilt or innocence determined in this courtroom based upon the evidence you hear in this courtroom?

A. I don't know. The part about the family turning him in, I don't know how I could put it out. I could try to do that and, you know – but I – you know, that's – that's hard to say. You know, you have thoughts that lurk in your brain for a long time. So I don't know.

Q. Okay.

A. I really couldn't tell you for sure that I could do it a hundred percent.

THE COURT: Thank you.

The parties may question for the government.

MR. CLEARY: Just on that one subject?

THE COURT: Yes. ////

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon, sir. My name is Robert Cleary. I'm one of the prosecutors on the case. You have indicated some fairly strong opinion about the guilt or innocence of the defendant in this case, correct?

A. Yeah, what we were just talking about.

Q. And the reason for that is that his family – your understanding is his family turned him in; is that right?

A. Uh-huh.

Q. When did you first form that opinion?

A. I don't remember exactly when I read it in the paper, but when it was in the paper or on the news, whenever it was first broadcast. I don't remember the –

Q. Could it have been around April of 1996, at the time when you first heard about the cabin up in Montana, about that same time?

A. I don't think it was that long ago.

Q. Okay. Was it – whatever time you heard about the cabin in Montana, is that when you first heard the reports that the defendant's family turned him in?

A. No, I don't think so.

Q. You heard the facts?

A. Seems to me I heard it later about the family.

Q. Okay. What was your –

A. I couldn't swear to that because I never even – you know, I don't – I didn't pay that much attention to the cabin, so I don't – I couldn't really connect it as far as the space of time.

Q. What was your initial impression or thoughts when you heard that the family had turned the defendant in?

A. Well, basically, that if they turned their own brother and son in, then they must be pretty sure, they know a lot of things, that he's guilty. That was basically what this thought is now.

Q. In other words, your opinion on the matter has not changed at all over time; is that correct?

A. No. Not really, no.

Q. And I appreciate your candor in answering these questions. I know we're asking you difficult questions because we're asking you to predict with some level of certainty what you might be able to do in the future. Is it your feeling that it may be difficult for you to sit in judgment in this case and make a decision on the guilt or innocence of the defendant solely on the evidence, blocking out entirely the opinion you just expressed to us?

A. It would be difficult, yes. I don't know if it's possible or impossible. Like I say, I never been confronted with a situation like that, so I don't know.

Q. Have you ever served as a juror before?

A. No. I've been on the call list, but I never got pulled out.

Q. I see.

MR. CLEARY: I have nothing further, Your Honor
VOIR DIRE EXAMINATION BY MR. DENVIR.

Q. Good afternoon, sir.

A. Hi.

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

Your Honor, is the questionnaire – you filled out a questionnaire up at Cal Expo. I want to ask you a question or two about that.

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 87: Yeah.

Q. BY MR. DENVIR: If you could turn to page 12, question 44. You said that you had a friend in the Sacramento Sheriff's Department and a friend in the Los Angeles Police Department; is that correct?

A. Uh-huh.

Q. Are these folks that you see a lot of?

A. Well, the one in Los Angeles – yeah, he's dead. He died of a heart attack a few years ago. The other one, the – I haven't seen him probably in the last year. He got into motorcycle racing, and they took over the local races that used to be in the hills, so he got into bike racing. I haven't seen him for about a year. But we used to play golf a lot together.

Q. Do you have any reason to think that he was involved in investigating these Unabomber events?

A. Oh, no. The last job that he had, he might be retired now, but he was in charge of the sheriff's department out at the Sacramento airport.

Q. Okay. And the fact that you had, I guess, this late friend and your present friend in law enforcement, that wouldn't have any effect on you in sitting on the case, would it?

A. No.

Q. If you turn to page 16. If you look at page 58 on – I'm sorry, question 58 and question 59. You were asked your opinion of attorneys who prosecute people accused of crime and who defend people accused of crime, and I think you said to both of them hard to say.

Can you tell me what you were thinking at the time?

A. Well, it's like two people on either side of a question. They all have their opinion, and, you know, they're going to argue it out. And I've – you know, I don't think you can go through life too long without hearing a lot of unkind things about attorneys. I guess that's what I meant. I didn't want to hurt anybody's feelings.

Q. Whatever unkind things you feel about attorneys, does it apply equally to prosecutors and defense attorneys, do you think?

A. I've never been prosecuted and I never had to be defended, so I couldn't say.

Q. So that doesn't give you any feeling for or against one side or the other?

A. No, it's not a feeling for or against either one. I really didn't know how to answer that question.

MR. CLEARY: Your Honor –

THE COURT: Approach the bench, please.

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

THE COURT: Okay.

Q. BY MR. DENVIR: You've been very candid with both the prosecutor and with Judge Burrell about the fact you had some exposure to information about this case, a little bit, I guess, since you went to Cal Expo and more prior to that time. And that's not unusual given the publicity. And there's no requirement, as Judge Burrell

told you, that someone who sits on the jury not have any prior knowledge at all about the case. The question is whether their prior knowledge would bias them in some way or would affect their ability to sit as a juror. Right?

A. Yeah.

Q. You understand that?

A. Yeah.

Q. Okay. And as I understand it from what you said, what you mainly remember and seem to be most struck by is the fact that you had heard that Mr. Kaczynski's brother had turned him in to the FBI or to the federal government; is that right?

A. Yeah, I guess I would have to say that's right.

Q. And what do you remember about that? I mean, do you remember any further details about that?

A. Just –

Q. Just?

A. Either read it or saw it on television. I think I read it, you know.

Q. And do you remember reading anything about why the brother turned Mr. Kaczynski in?

A. I don't think I remember specifically. Just I think it was – had to do with he – seemed maybe he had read some of the – of his – I don't know if it was that manifesto or whatever it was. He read some of that and recognized it. I think I – I don't know if I read that or somebody else said that to me. I couldn't tell you.

Q. But that's what you recall is a basis for the brother turning him in, was he read the Unabomber's manifesto and thought it was written by his brother?

A. Yeah. But I'm not sure if at the time when I read that that I was aware of that. I could have heard that from someone later too.

Q. I understand. I am trying to ask you as you sit there now what you remember. I'm not –

A. Yeah.

Q. – so worried about when you heard about it. It's the fact that the brother recognized or thought he recognized the writing in the manifesto to be Mr. Kaczynski's, that's the piece that makes you think Mr. Kaczynski is guilty?

A. The fact that he turned him in because of that.

Q. Because he turned him in because of that?

A. Yeah.

Q. Then you said that you heard something about the brother saying that he was sorry he did it.

A. Yeah. I think I read that, you know, a short time – short time later or – and I think that was after, you know, the – the defense team had formed or whatever. And it was – it just kind of struck me as either that was just, you know, a legal thing to do. But then it didn't explain – I don't remember it explaining that he was sorry that he had to do it or he did it – you know.

Q. Or that he made a mistake?

A. Or he made a mistake, yeah. I couldn't tell. It didn't really specify the meaning behind it.

Q. Or that he did it for a bad motives and then –

A. No.

Q. – regretted it later?

A. Just basically that he was sorry. And I could imagine he would be sorry if he – if he was positive. You know, you don't want to turn in a relative.

Q. Let me ask you this, if I can. I think you understand that if you were – you haven't served on a jury before?

A. No.

Q. If you were to serve on a jury, you would go into the jury box, and you would be instructed that you would have to make a decision based on the evidence that was presented in court and you couldn't rely on anything outside; you understand that?

A. Yeah.

Q. And let me ask you another question. Based on what you read at all about the Unabomber crimes or about Mr. Kaczynski, you have an opinion that he's guilty. But do you have an opinion as to what the proper sentence should be between life and death?

A. Well, that's a kind of a tough thing for me, because I – years ago I was against the death penalty. But with some of the things that's been happening over the years, and some of the results, that people just go to prison and pop out shortly and commit more crimes, I'm not at the death penalty stage exactly, but I guess it's just a frustration everyone else feels over the system.

Q. I guess what I trying to focus you on, and it may be hard to separate out, is based on what you know about this case and this defendant, do you have an opinion as you sit there as to what the proper sentence should be in this case between life without possibility of release and death?

A. I really don't know if I could say yet. I mean, I would – in this case, I would never want it to be less than no possibility of ever getting out of jail. But I know that that – I know of cases where that's been the sentence and they still got out of jail, so

–
Q. We'll get into that later. But I guess I need to know as you sit there do you have an opinion? You don't have to have an opinion one way or the other. I just want to know whether you do or not.

A. It's not definite. Let's say I don't know for sure.

Q. So you don't have an opinion on sentencing?

A. No.

Q. Okay. And as far as guilt, would you be able to wait and see if there was any evidence presented about what the brother did or did not do and why or why not he did it before you would rely on any of that on the question of guilt?

A. Well, I guess I would. I mean, if I was on the jury, I wouldn't have much choice. I would have to sit and listen to it.

Q. What we are trying to ask you, and really only you can tell us this –

A. Yeah. I don't know exactly. I can't just say yes, I would or – yes, I would try to, I guess. But I don't know how well I would succeed. Let's put it that way.

Q. I guess we have to know what your best guess is, because no one knows, since you've never sat on a jury, you don't know what's going to happen. It's kind of what do you think. Will you be able to follow the judge's instructions and sit like other jurors and decide it based on the evidence?

A. I could, you know, but I can't promise anything. I mean, I – if – if it wasn't proved, you know, like a hundred percent the other way, I wouldn't change my mind.

Q. Would you be able to hold the prosecution to a burden of proof beyond a reasonable doubt? Unless they presented evidence in this courtroom convincing you beyond a reasonable doubt of his guilt, you would have to acquit under the law. Would you be able to follow that instruction?

A. I missed something.

Q. The law is that unless the prosecution presents evidence in this courtroom before the jury that convinces the jury beyond a reasonable doubt that Mr. Kaczynski is guilty, then you have to return a verdict of not guilty. Would you have a problem with –

A. You mean if they don't?

Q. If they do not convince you beyond a reasonable doubt, could you say not guilty?

A. Yeah, I would have to.

Q. And you could do it based on the evidence that's in the courtroom?

A. Yeah. But that would include what you were talking about too.

Q. Any evidence that was presented in that regard.

Could I have just one moment, Your Honor?

THE COURT: Yes.

MR. DENVIR: Your Honor, I would like to move to another area, if I could, of cause.

THE COURT: You want to talk to me at the –

MR. DENVIR: I don't believe so. I wanted to ask some further questions, if I could, of the juror.

THE COURT: You have leave to question.

Q. BY MR. DENVIR: Let me ask you, if I could, sir, I would like to go back to what your views are on the death penalty, since we got into that subject. If you would turn to page 26 of that questionnaire you filled out.

I don't believe you were asked this, but it's been asked before. Do you consider yourself a proponent, a supporter of the death penalty, or an opponent, or somewhere in between?

A. Somewhere in between. Like I say, I've been growing away from not believing in the death penalty just because of circumstances that go on through life, I guess. And

–

Q. But as you sit here now, you wouldn't say you are either a supporter, a proponent, or an opponent?

A. No.

Q. Let me ask you this. As understand it, this case – and the reason I’m asking these questions in this case – if I go too fast here and am confusing you, let me know, because we’re moving around on this, and I know it’s hard to sit there and answer questions.

In this case, this is a case where two of the charges against Mr. Kaczynski carry the potential of a death penalty. Congress has passed a law that said for these charges, which are mailing or transporting a bomb with intent to kill someone, and killing someone, that the range of sentences include execution, the death penalty, or life in prison without possibility of release. In the federal system there’s no parole, so there’s no possibility of being released if someone is sentenced to life. That’s the federal system. It is different may be from the state. So those are the legal sentences that have been set by Congress for these types of crimes.

A. Yeah.

Q. You haven’t sat on a jury before, so let me see if I can explain to you the process that occurs here, because it’s not like other cases particularly because of the death penalty.

First, there’s a trial, and in that trial – it would be like a normal trial, normal criminal trial in federal court in the sense that the prosecution at that particular stage, which Judge Burrell calls the guilt or not guilt stage, would present evidence in an attempt to prove the charges against Mr. Kaczynski beyond a reasonable doubt. That’s their standard under the law.

And the 12 jurors who were selected for the case would listen to the evidence that was presented by the prosecution and any evidence that the defense presented, which it doesn’t have to do, and then would determine whether the prosecution had proven guilt beyond a reasonable doubt of these charges.

You understand that?

A. Yeah.

Q. And I take it you would have no particular problem being a juror carrying out those kinds of functions; is that right?

A. No, I don’t think so.

Q. Then if the jury were to find Mr. Kaczynski guilty of mailing or transporting a bomb with an intent to kill that resulted in the death of a gentleman by the name of Gilbert Murray, that’s the capital death penalty potential offense, then there’s a second trial, in effect.

In the second trial, the jury, the same jury that found him guilty of that crime beyond a reasonable doubt would then be asked to decide what should the penalty be, and they could say, the jurors could say, life – they could say death, he should be executed, or life in prison without possibility of release.

The prosecution at that point would present to those jurors, and it could include you, any evidence about the crime or about Mr. Kaczynski that they felt was aggravating

evidence. That's a legal term that means evidence that the prosecution believes points towards death as the proper penalty.

You understand what I'm saying?

A. Yeah.

Q. You could call that pro-death evidence if you wanted to. The defense then could also present what Judge Burrell has termed mitigating evidence. That's evidence that the defense believes points to a sentence of life and against death. We can call that if you want antideath evidence. The judge would then instruct the jury and would pretty much tell them that they could choose between those two different sentences that are provided by law.

I guess what I need to know is, number one, if you had found Mr. Kaczynski guilty beyond a reasonable doubt of mailing or transporting the bomb with an intent to kill that killed Mr. Murray, as you went into the second phase, the sentencing phase, would you have any preconceived idea, any opinion, as to what the proper penalty should be between those two, or would you just say I'll wait and see what the evidence is?

A. I think that would be, you know – like I say, I'm not a death penalty nut, I guess you'd call it. Or you know –

Q. You're not a life in prison nut either; is that fair?

And I guess the question then is would you be able to sit and listen to the prosecution's pro-death evidence and the defense's antideath evidence and actually consider the two penalties provided by law and then make your own conscientious decision based on that evidence you heard and the judge's instructions as to which you thought was the appropriate penalty, if we reach that stage?

A. Yeah, I'm pretty sure I could. Pretty sure I could.

Q. I know it's hard because you've never done it, but is there anything I described – because it's a different process and you might not have known about it, is there anything I described that you makes you think you couldn't do it?

A. No, I don't think so.

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

Thank you.

MR. CLEARY: The Court has not done its general voir dire. Did the Court want to question first?

THE COURT: I'm not going to do it. It's unnecessary. ////

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon.

A. It is afternoon.

Q. I just want to go back to these questions about your opinion about the guilt of the defendant in this case based upon the reports you've heard that his family has turned him in.

I believe in response to Mr. Denvir's questions, the gentleman who was just questioning you, you said that if you were in trial, you were sitting in judgment in trial,

you would try to keep an open mind and wait to hear whatever evidence the brother may present about why he turned the defendant in; is that correct?

A. Well, I said I'd – if I was on the jury, that's what I would be doing. I would be sitting there listening to the evidence.

Q. Sure. If the defendant presented no evidence from his brother, and you recognize the defendant never has an obligation to present evidence, if the defendant presented no evidence with respect to his brother, would you have a difficult time, as you told us before, putting aside the opinion about the guilt of the defendant?

A. I don't think so. I mean, I don't know if I really understood.

Q. Let me try again.

A. Yeah. I'm getting confused.

Q. These questions are not well asked on my part, so I apologize. I believe what you told us earlier is that you have a pretty strong opinion that the defendant in this case is guilty of the crimes, correct?

A. Uh-huh.

Q. And the basis for that opinion is the reports you've heard that the defendant's brother or the defendant's family turned him in, is that right?

A. That's – yeah.

Q. And I believe you also said that it would be difficult for you to put out of your mind that opinion because it's a strongly held opinion, correct?

A. Uh-huh.

Q. Am I right so far in paraphrasing what you told us?

A. Yeah. Yeah.

Q. And then if you sat in judgment in this case, and you – there was no evidence presented by the defendant, there was only evidence presented by the government, and there was no evidence presented about why the family turned in the defendant, I assume, based on what you told us, you would still have a difficult – you would have a difficult time putting out of your mind your opinion that the defendant is guilty because his family turned him in?

A. I'm sure the opinion would stay there.

Q. You feel confident in that?

A. Well, if nothing was shown to me to change my mind, it's kind of a logical conclusion.

THE COURT: Can I ask a question right there?

MR. CLEARY: Sure, Your Honor.

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Even assuming that the opinion stayed there on your mind, since I will be expecting you to make a determination of the guilt or innocence of the defendant solely on the evidence that's presented in this courtroom, would you be able to keep that opinion from interfering with your determination of his guilt or innocence?

A. That's the one that we talked about before, and I think I maybe could, I couldn't – you know, I couldn't say for sure how that would stay there. And I guess it would depend on, you know, what the evidence is, which I haven't heard or seen yet, so I don't know, I can't – I don't know if I could say absolutely yes or not.

Q. I appreciate your response. Because I feel as though you're being as honest as you can possibly be.

A. Sounds like I'm trying to answer a question in the future that I don't know, or give an answer to a question I don't know the question really yet because it's not hearing the evidence.

Q. You can understand why a defendant in a criminal case wouldn't want to have his guilt or innocence determined by information that someone heard outside the courtroom?

A. I can understand that, yes.

Q. So it would be important for you to keep that opinion from interfering with your determination of guilt or innocence in this case because you wouldn't want that to happen to you if you were unfortunate enough to be charged with a crime.

A. Yeah, that I understand. But again, I don't know how I can – I may be able to do it. I don't know. I can't just – I might. If I told you I could and I didn't, I wouldn't be telling you the truth.

THE COURT: Thank you.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Just to follow up on something Judge Burrell was asking you. If during the course of the trial you heard no evidence suggesting that your opinion was wrong, you heard no evidence suggesting your opinion was wrong or the basis for your opinion was wrong, would that make it difficult for you to set your opinion aside? To ignore your opinion?

A. You mean to change my mind about it or –

Q. Right. Would you change your mind about your opinion?

A. I – not if there was no evidence, I don't think.

MR. CLEARY: Can I move on to a more general voir dire at this point, Your Honor?

THE COURT: You can ask whatever questions you want to ask.

Q. BY MR. CLEARY: I just want to you –

THE COURT: Not whatever you want to ask.

MR. CLEARY: I know it's always within limits.

THE COURT: Okay.

Q. BY MR. CLEARY: I want to ask you a couple questions about your health, and I don't want to go into the details of at all. But I want to make sure you're healthy enough, you're not going to have any problems with sitting in court for what will be up to five hours a day.

Is that not going to be a problem for you?

A. I hope not. Because I'm sitting on one of my problems right now. I just had surgery on a rectal –

Q. Do you feel comfortable, though, that you'll be able to sit through the trial, to sit through five hours with breaks? There will be a break every two hours or so, I think.

A. As long as I can get, you know, like I talked to you before, out of here in time to get home by 3:30.

THE COURT: I don't see there's any problem, sir.

PROSPECTIVE JUROR NO. 87: The pacemaker, the battery is getting towards the end of its life.

Q. BY MR. CLEARY: How about stress, is stress going to be a problem for you at all?

A. I can handle stress pretty well so far.

Q. Do you have a copy of your questionnaire there?

A. Uh-huh.

Q. Great. Could you turn to question number 54, please. It's on page 15. Are you with me?

A. Yep.

Q. As I go through these questions, I'm going to try not reveal publicly a lot of this information, and I can just ask you questions about the specific question number, and that's what I'm going to try to do here. There's a dispute you refer to in question number 54. Was that dispute resolved to your satisfaction?

A. Part of it. The dissatisfaction wasn't really with the IRS. It was with the people I worked for. And I found out later that it was the partnerships had been rewritten, and we were informed of what was going on. And the guy I worked for pulled a lot of little tricks, and we wound up paying, I think –

Q. Let me interrupt you. There's no need to go into all the details. My concern is about your view toward the Federal Government or the government agency you were dealing with. Was there anything about that dispute that bothered you about your dealings with the federal government?

A. Well, yeah. There was two or three people that I had to deal with, or different parts of the IRS that goofed everything up, and you couldn't – you just couldn't get through to them.

And like I said in here, there was one guy down here in Sacramento that got involved, an IRS – his supervisor, and he straightened the other three groups and changed the whole money picture around – not the original one, but a second one. So I admired him.

Q. Until you got to that last fellow, you had some difficulties dealing with the IRS, I take it?

A. They weren't my favorite people.

Q. You know the IRS is part of the federal government, the same government that's going to be presenting this case you realize that, right?

A. Yes. I think most of us do.

Q. Is there anything about your experience in dealing with the IRS in that particular dispute that would cause you to favor or disfavor either party in this case knowing that the federal government is going to be presenting the case?

A. No.

Q. Now, turn to question 82, please. And, again, I'm going to try to do this without revealing the details of the event reflected there. It's question 82 on page 21. It carries over to the top of page 22.

A. Oh.

Q. You with me? Is there anything about that event that causes you to have, today as you sit here, some concerns about law enforcement officers, either local law enforcement officers or federal law enforcement officers?

A. Well, I always have some concerns, because I know there's some – a lot of good ones and a few bad ones. And this was – at that particular time, that police department down there in Culver City was a rater slipshod bunch of people. And this was a young man that got shot seven times while he was laying on the ground.

Q. That particular agency is not going to be presenting any evidence in this case.

A. I can tell one police department from another.

Q. So there's nothing about that experience that would affect your ability to judge fairly the law enforcement officers that testify in this case?

A. No.

Q. Turn to pages 17 and 18, please, question 64 which starts on the bottom.

A. 17 and 18?

Q. 17 and 18, right. Question 64, which starts on the bottom of 17 and carries over to the top of 18. You talk about your views of the effectiveness of the criminal justice system and how we could improve that. Could you tell us a little more what you were referring to in your answer?

THE COURT: Is that going toward a for cause issue? Isn't that more in the nature of a peremptory challenge?

MR. CLEARY: Possibly, Your Honor I'm going to see if there is a relationship between this – the answers to this question and his views on the death penalty. That's all I'm going to try to do, to see if there is any association between the two.

THE COURT: I think you should be more direct.

Q. BY MR. CLEARY: Why don't we do it this way. That's a good idea. Let me go right to the questions about the death penalty, which are on pages 26 and 27.

A. 26 and 27?

Q. Page 26 and page 27.

A. Yeah.

Q. You there?

A. I'm probably getting very tired here.

Q. You tell us in response to question number 104 that you don't believe in killing but –

A. Where's 104? Oh, there it is.

Q. You got it?

A. Yeah.

Q. That you don't believe in killing, but what do you do with people in a society that won't correct its ills. Can you tell us what you were referring to there?

I'm sorry. I'm reading the wrong one. 104, I attribute the vast majority of deaths to religion. Can you tell us what you were referring to?

A. The history of the world.

Q. Meaning?

A. Well, almost every country that exists was invaded at one time or another by somebody's army, then they brought in their particular religion and forced it on people, and they didn't accept it, and that was the end of their existence for a good deal. That's what I meant by that.

Q. How does that view, if at all, how would it affect your ability to sit in this case and vote, if called upon to do it, to vote for the death penalty?

A. I don't know if that would have anything to do with it. That was just an answer to what does your religion, philosophy or spiritual training teach you about the death penalty, and I don't think this has anything to do with my spiritual philosophy, which I don't have a religious philosophy.

Q. If you move up to the question immediately before that, which I started to read to you a moment ago, that you don't believe in killing, but what do you do with people in a society that won't correct its ills, what were you referring to there?

A. I was referring to the answer on number 103, which says I've never been able to come to a firm decision about the death penalty. And then it says what is the basis for that opinion. I don't believe in killing, but on the other hand, I don't really have an answer. And that was it. I don't believe in killing, but on the other hand, what do you do with people, especially in a society that won't correct its –

Q. Ills, I believe you said.

A. I run out of space to write. It's a problem. A lot of the problems that go on in this society are because we don't take care of ourselves and our people, and that's basically what I had in mind.

Q. What I'm trying to get at, and why I'm asking you these questions about your views of the death penalty, is would you be able to vote for – given the feelings you've had about the death penalty in the past – and I understand they may be changing as we move forward – would you yourself be able to vote for the death penalty in a case?

A. I really couldn't tell you. I don't know if I would or wouldn't.

Q. And so as we sit here today, you cannot give us an assurance – and I'm not trying to pressure one way or the other –

A. Well, it sounds like you're trying to get me to sentence somebody.

Q. As you sit here today, you are not able to tell us one way or the other whether at the end of the day when you're called to make a decision you would be able to vote for the death penalty, is that correct?

A. Depends on what I hear.

Q. Could it be because you don't know one way or the other, could it be that when you do get called to make that decision, you would not be able to bring yourself to vote for the death penalty; is that a possibility?

A. I guess you could call it a possibility. But there's a lot of possibilities.

MR. DENVIR: Your Honor –

Q. BY MR. CLEARY: And that's one of them, correct, that's one possibility that may turn out in this case?

A. Yeah. I would think that would depend on evidence too.

Q. Depends on the evidence. What if the Court told you – Judge Burrell told you that under the facts of the case, some hypothetical case you're sitting in judgment on, that legally the death penalty was appropriate –

MR. DENVIR: Objection, Your Honor. The Court.

THE COURT: Sustained.

MR. DENVIR: – would never say that.

Q. BY MR. CLEARY: Going back to what you said a moment ago about the death penalty, one of the possibilities may be that you could not bring yourself to vote for the death penalty when the day comes that you're asked to do that, correct?

MR. DENVIR: Your Honor, I object to that because I think the question – it would only be a problem if he were unable to vote for the death penalty where he thought it was appropriate based on the facts and the law. I think that it is confusing to ask it without that limitation. That would be the only problem for a cause challenge.

THE COURT: Don't you think Mr. Denvir is correct?

MR. CLEARY: If I can move on from that point. I think I'll come back to it to close the circle.

THE COURT: If he's correct, we don't have a point. You've got to start with a new question.

Q. BY MR. CLEARY: If you were told – if you were instructed that the case you were sitting in judgment on, the death penalty was called for by Congress, it was one of the alternative sentences Congress provided for the particular crime, and they provided for it – Congress provided for the death penalty as one of the alternative sentences under the particular facts of that crime that's presented to you, is it possible that when you're called to make the decision you would vote against the death penalty?

A. Again –

MR. DENVIR: Objection. I believe –

THE WITNESS: It would depend on the evidence.

THE COURT: Sustained.

Q. BY MR. CLEARY: Let me do it this way. In question 108 –

A. Where is that?

Q. 108 is on page 28. You say that the death penalty may or may not be justified depending on the circumstances of the case.

A. All right. Let me take my glasses off so I can read. 108. Yeah.

Q. Okay. Under what circumstances – what circumstances did you have in mind when you said there may be circumstances where the death penalty is justified?

A. Well, here you gave me three choices, and I took the one that probably is closest to my thinking. But I don't know if I had anything in particular in mind. You know, that's a multiple choice question. The other one is it's always justified or it's never justified. So I don't – I couldn't really tell you that I had some great thoughts about the death penalty or not at that particular time.

Q. As you sit here now, under what circumstances in your view is the death penalty justified?

A. I guess possibly a horrendous crime.

Q. Such as?

A. Killing a lot of people. Or, you know, like – but like – yeah, or kill a lot of people for no reason, or at least no real reason or – then it's – it may or may not be justified depending on – and I don't really know. Like I say, I don't know what – I couldn't tell you what I would do until I heard it all.

Q. Is it possible because of that, because you couldn't tell us what you would do until you heard it all, is it possible that you would be presented with a series of facts that in your own personal view the death penalty was not justified, but you found out because Judge Burrell told you that under the circumstances of the case you must fairly and openly consider the death penalty as a possibility, contrary to your own personal opinion, do you think in that situation that the fact that you had this opinion that the death penalty is not appropriate in the case, that that would substantially impair your ability to accurately assess the evidence and fairly assess it to determine whether you should vote for the death penalty?

A. But that's not –

MR. DENVIR: Your Honor, I object to that.

PROSPECTIVE JUROR NO. 87: There are two choices, aren't there?

THE COURT: Sustained. I think we're done.

MR. CLEARY: Okay.

THE COURT: Please bring in another juror. I'm going to let you go to the next room.

(Prospective Juror No. 90 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 90th randomly selected juror. I may be referring to you by that number during our communications.

Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. Well, I do have a hardship financially and –

Q. I'm going to move to the podium so that you can look at me when you speak. Otherwise, your voice won't be carried into the microphone.

You can continue.

A. Okay. I do have a financial hardship. My work provides for a certain amount of days for jury service, but I also have an elderly father that I do take care of. He's on a lifeline, and so I have to be really able to go and leave my work and go home and see if there's a problem. It's a lifeline where it's called. It's a response center. And if somebody is called, they will call me immediately. He has a lot of medications and has a lot of physical problems, and I take care of him.

And that's one of the hardships for me, because he relies on me 24 hours a day, basically. I do go to work, but I'm so close to my work, that I'm able to leave, you know, on a short notice in case of emergency or fire trucks come out or ambulances.

Q. I'm sorry to hear about your father's condition. Is there anyone that could help you with your father if you were to serve?

A. I do have a sister, but she's on disability too. So she's able to do some help, but I'm the only one that lives with him. So usually when I go to work, I – you know, I provide his lunch and I cook dinners and the breakfasts and take care of his pills. So it's usually – he usually calls me quite a bit at work so I have to come home. I usually just leave if I have to. I'm not –

Q. I'm not disregarding what you just told me. I am going to ask another question in another area. How would that pose a hardship for you given the trial hours I was talking about keeping as far as your work is concerned? Don't tell us where you work, just tell me how it would pose a hardship.

A. Well, I usually have to be there in the morning, and am usually there all day. And financially it's hard for me. It would be hard for me. That's the only thing. A certain amount of time – they only pay a certain amount of time, and that would be very hard for me to get out of work to be able to come.

Q. What are the typical work hours for you?

A. I work 8:30 to 5:30 every day.

Q. Is the business open beyond 5:30?

A. It's open till 6:00.

Q. Is it open on the weekends?

A. No, it's not open the weekends.

MS. CLARKE: We believe it is appropriate to excuse the juror.

MR. CLEARY: We stipulate, Your Honor.

THE COURT: Thank you. Thank you for coming down. I'm going to excuse you from further service in the case, but you'll have to wait for a while until we complete the process. Thank you.

(Prospective juror 93 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You can take a seat.

A. Thank you.

Q. You're the 93rd randomly selected juror, so I may be referencing you by that number during our communication.

A. Okay.

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

A. No. Well, I raised my hand when you – only because I have a vacation scheduled. My airline tickets are from December 26th to the 29th I come back. So it would be one day, the 29th, I think. You said you were going the start court on the 29th.

Q. Right.

A. And I fly back into Sacramento on the 29th.

Q. You already paid for the tickets?

A. Uh-huh.

MR. CLEARY: Your Honor, could I ask a couple question on what you just questioned about?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. I want to ask you a couple questions about your vacation, and I don't need to know where you're going. But if the reason you had to come back a day early was to serve on the jury for the case, would the airlines you bought the ticket from or the travel agent be able to adjust your schedule accordingly so you wouldn't lose any money?

A. You know, I don't know. I didn't check. I just bought the tickets through Southwest Airlines three or four months ago. I don't know if they're non-refundable tickets or what. I really don't know.

Q. Is that something you think you could find out for us?

A. Sure.

Q. And if you were able to work that out and not lose any money on the deal, would you be willing to sit as a juror in this case?

A. Uh-huh. I'm going with a married daughter and her husband and my two grandchildren and taking my two unmarried children. So they could stay with the other family and I could come home if need be.

Q. And you would be willing to do that provided you can set it up so you don't lose any money?

A. Right.

MR. DENVIR: Your Honor, I wonder if I could ask a question or two.

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I just wanted to inquire. You at one point indicated that you were concerned about sitting on this case because you would not get paid, as I understood it. You now learned you will be paid?

A. No, I haven't. I asked my employer, you know, numerous times in the past few weeks, and I don't get a straight answer. I just kind of get, well, you won't get picked. So I don't really know. I work for a small doctor's office.

Q. I had –

A. Seven to ten employees.

Q. And do you know what whether the doctor would pay you at all for this time?

A. I don't know. I know when I've done jury duty in the past locally that we get paid, and the longest anyone has ever done jury duty is two weeks in our office.

Q. And what are your hours basically working for that doctor?

A. 8:30 to 5:30 Monday through Friday.

Q. Could you work – the judge said the schedule would be essentially you report at 7:00 and be released at 1:30. Could you work afterwards and get paid for that?

A. By the time I drove back to where I live – say we got off at 1:30, probably be another hour to get to our cars, and another hour and a half, two hours back to town, and it would probably be 5:00 by then. Our office closes at –

Q. The question I have, is this going – we have to ask you now if you're selected on the jury whether you can serve on the jury. We can't decide after you're on the jury whether you can serve on the jury.

This is a financial hardship? You indicated in your questionnaire that it was, and then you hadn't raised it, and I thought maybe you resolved it by the hours or something.

This trial may go from two to four to six months, I guess. I don't think it will go six months. But say two to four months. Is it a financial hardship?

A. It would be definitely a financial hardship if I didn't get paid from my employer, yes.

Q. And you asked your employer, but they haven't really told you?

A. Right.

Q. Do you think if you told them that the judge wanted to know, I mean, they had to make a decision, that they would give you an answer?

A. I imagine he would have to.

Q. That would be my thought. The other question you indicated – I'm just going off your questionnaire that you filled out at Cal Expo – is that you had a medical condition, I think page 34, question 133, that would require you to stand or walk every hour or so, is that right? Is that better now?

A. I have herniated disks in my back and I need to get up and stretch and move. For instance in there, I just stood for about five minutes and stretched.

Q. And –

A. Then I sit back down.

Q. I guess the question is – I don't know how the judge is going to have the trial, but would it will go from 8:00 1:00 I imagine with two breaks in there. Will that be sufficient? I don't have any idea what your back condition is, but I think we need

to address that. You have to tell us whether that's going to be a problem for you to concentrate.

A. I can sit for about an hour, and then I would just need to stand up in the spot I'm in and move around for a few seconds.

Q. Stand up and kind of just stretch and everything and then sit down?

A. Right.

MR. DENVIR: Your Honor, I would suggest that we find out what the employer's policy is. It sounds like it could be a problem.

THE COURT: All right.

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

VOIR DIRE EXAMINATION

BY THE COURT:

Q. I don't think we're going to ask you all the questions we typically ask prospective jurors at this moment, because I am questioning whether your employer will pay for your jury service, and I would like to know the answer to that. I would also like to know whether or not the airline tickets you reference will be refunded to you.

I assume that if the tickets are non-refundable, you don't want to lose that money?

A. It's just Disneyland. I mean it's not that far. One way from here to L.A. and one person. I wouldn't be out that much money.

Q. So you don't mind losing that money to serve on the trial?

A. No.

Q. The only question is whether your employer will pay. I'm going to have my deputy clerk communicate with you so that you have her number, and if your employer will pay, then we'll call you back in for further questioning.

A. Is there a way the Court could call and ask?

Q. Oh, I can call.

A. Might get a more direct answer. As I said, I tried to get an answer, you know, and it's just – it's kind of one of those things where they just say it's just not going to happen so we don't want to think about it.

Q. If you give a number to my deputy clerk, I'll call.

A. Okay.

THE COURT: Thank you.

(Prospective Juror No. 94 Enters Courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You're the 94th randomly selected juror. I will perhaps reference you by that number. We won't be calling you by your name.

Is through any reason – I didn't tell you I want you to use the microphone that's there. In fact, I'll ask you questions from the podium so I can look at you and the parties can see you when I'm questioning.

Is there any reason why we shouldn't continue to consider you for service as a juror on this case?

A. No.

Q. There is no reason?

A. No.

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

A. Other than the jury selection and the dates for the trial, that's about it.

Q. Okay. You need you to make an adjustment with that microphone so your voice is amplified more than it is.

Have you discussed the case with anyone since Cal Expo?

A. My parents and some of my coworkers, but not in detail, other than the summons.

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

A. I'm not much of a newspaper reader other than the headlines. That's pretty much it. When they first arrested the defendant, that caught my eye. But other than that, that's about it.

Q. I'm asking you about information. I'll give you the reason why. We don't expect jurors to be unaware of publicity surrounding a case that is as visible in the community as this one is. We desire to know what information the jury has received for two reasons. We'll know and we can ask you whether you have been affected by that information; and it also allows us to make an independent judgment as to whether or not it had any effect on you.

A. Okay.

Q. So can you tell me to the best of your recollection the kind of specific information you recall receiving about the case; what's on your mind?

A. They caught the suspected Unabomber, and his brother was the one that, from the information that I read, provided information for his arrest, that there was the bombing incident in Sacramento and other states. But I'm not specific on that.

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

A. Not really.

Q. What type of thoughts do you have about that?

A. These so much sensationalism going on nowadays that it's just one bigger headline in the newspaper, and sometimes I tend to be a little blase about it, I guess, and just, you know, overlook, you know, the importance of it. But opinion – maybe mixed feelings but –

Q. Can you articulate those feelings?

A. Well, initially that, you know, coming from a small town, having something happen this big in Sacramento, you know, it's news, you know, and important. But other than that, you know – I don't mean to be so vague, but it's just that, like I said, coming from Sacramento, nothing – I hate to use the word "exciting," that's not a right word for it. But it get everybody's attention so –

Q. Only you can answer this question I'm going to ask.

A. Right.

Q. Do you think you're in a position to come into this courtroom if you're selected as a juror without the information you heard about the case, you could just leave that outside the courtroom and allow Mr. Kaczynski to be tried based on information you receive here in this courtroom?

A. I believe so, because I don't know that much in great detail. There's a lot of people that are, you know, real verbal about all the specifics. But, like I said, I only know certain – so many circumstances about the case, but not in great detail.

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

A. No.

Q. Okay. Why not?

A. Maybe because of the evidence that I've seen so far connecting him to it. The fact a family member was part of his arrest. And so –

Q. If I were to instruct you that he is presumed innocent, he's cloaked with the presumption of innocence, is there anything about the information you just related that would prevent you from, in fact, allowing him the benefit of that presumption?

A. Right. I mean, I wouldn't – I would give him that opportunity of being innocent until proven guilty.

Q. These questions are related to the presumption of innocence and allowing him to be tried based upon information that's received in this courtroom, because he's presumed innocent. If you were to enter a judgment right now, he has to be innocent because the presumption is that he's innocent.

A. Right.

Q. Based upon everything you know about yourself and based upon the information that you received, can you give him the benefit of that presumption?

A. Yes.

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

A. I'm against the death penalty.

Q. We're not necessarily looking for jurors that are for the death penalty. We're looking for jurors that are willing to consider the death penalty amongst other alternative sentences such as life imprisonment without the possibility of parole or a lesser sentence.

Are you in a – let me rephrase that. Do your feelings against the death penalty prevent you from being able to consider the death penalty amongst the alternative sentences?

A. No, I can't consider it.

Q. You wouldn't consider it at all?

A. No.

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

A. No.

Q. You wouldn't?

A. I wouldn't consider it, I mean, the death penalty for any circumstance.

Q. You would never vote for the death penalty?

A. No.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Hi.

A. Hi.

Q. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. I wanted to take a moment and talk to you about your feelings about the death penalty.

A. Okay.

Q. And I have to say I understand what you're saying about that, and I understand your opinions about it. So I understand, I think, how you feel about it. But would you also agree with me that it is an obligation of citizenship to be able to sit on juries?

A. Yes, it is.

Q. Kind of like voting or paying your taxes?

A. Right.

Q. Just one of those obligations that we all have as citizens?

A. Correct.

Q. And would you also agree with me that it would be best for a jury in a capital case to be made up of people that have different views about the death penalty?

A. Yes.

Q. You wouldn't want everybody sitting on a jury judging the life of another human being to be all in favor of the death penalty, right?

A. Right.

Q. Or all opposed to the death penalty, right?

A. Yes.

Q. You would want a mixture of views about the death penalty?

A. Correct.

Q. So that there could be some fair and open debate about –

A. Yes.

Q. – the appropriateness of a sentence?

A. Uh-huh.

Q. Am I right?

A. Yes.

Q. I guess that way you get people that feel different ways and you come up with a system based on the idea of coming up with the right and just result?

A. Correct.

Q. What I'm hearing you say is if you sat in the Congress or you sat in the State Legislature, or you were a citizen voting on whether or not to have the death penalty, you would say I don't want it?

A. Yes.

Q. It is not something that I believe our society should have?

A. Correct.

Q. But the Congress of the United States has authorized it in certain limited circumstances, am I right?

A. Yes.

Q. Would you agree that's the right of the Congress to authorize it?

A. Yes.

Q. Just because you and I or others might vote against it doesn't mean that it's not right for the Congress to be able to vote in favor of it?

A. Yes.

Q. Am I right?

A. Yes.

Q. So the important thing would be when you're sitting as a juror, you're sitting in a different set of shoes than you are as if you're a legislator?

A. Yes.

Q. When you get to make the laws, that's one thing, right?

A. Yes.

Q. But when you're called upon to enforce the laws or to judge the applicability of the laws, that's another thing; am I right?

A. No, because I still believe that I don't believe in the death penalty. I mean, whatever, the state or federal or whatever dictated that area or government law or whatever, I still don't believe in the death penalty.

Q. Would you agree with me that what's important about service on a jury is that you not go into the jury room with your arms folded unable to listen to other people?

A. No, I'll listen.

Q. Would you agree with me that's the important thing about service on a jury?

A. Right.

Q. Is to listen to the views of other folks on the jury?

A. Uh-huh.

Q. And not to go in and say I have a particular belief, I can't listen to yours?

A. Right. I mean, I'll listen to –

Q. And if a circumstance came that your fellow jurors or a number of your fellow jurors argued to you that the person you were to impose sentence on, if he or she were to receive a sentence of less than death, that person would again kill, would you be open to considering the views of those fellow jurors in persuading you that was the case?

A. I can't say. I wouldn't know. I don't know. I –

Q. If you were presented with a situation where you became convinced that the person you had the responsibility of judging had been in prison before for a murder and gotten out, committed a murder again, and you were charged with the responsibility of making the decision about penalty, and you believed or you were persuaded by others on the jury that if that person got anything other than the death penalty, they would

do it again and be a threat to another human being again, would you be open to considering the death penalty?

A. No, I wouldn't consider it.

Q. Is there a – what I'm concerned about is going into the jury room closed off to the other jurors. What you said is you'll listen to them?

A. I mean, everybody has a right to present their information, you know, both sides. But I'm against the death penalty regardless of what – you know, if that's an option that we have to consider, I'm totally against it.

Q. If the judge said to you the law requires you to consider aggravating circumstances presented by the government, mitigating circumstances presented by the defense, the aggravating circumstances being the government's reasons that a death sentence is appropriate, the mitigating circumstances being the defense reasons why a life sentence is appropriate, could you follow those instructions to weigh those factors?

A. No, I can't. I'm – I am opposed to the death penalty. I can't be part of taking another life regardless of what the circumstances are.

Q. Could you conceive of the ability to make that decision if your fellow jurors convinced you that that person would take another life if you didn't vote for the death penalty?

A. I mean, they can convince me, but if you are telling me convinced is change my mind, I won't change my mind. I'm totally against the death penalty.

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

THE COURT: Okay.

MS. CLARKE: Thank you very much.

THE COURT: Okay. Thank you. I'm going to excuse the juror for cause based upon the responses.

(Prospective Juror No. 95 Entered Courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 95th randomly selected juror. I'm going to move to the podium so that I can look at you and allow the parties to see you at the same time I question you.

I may reference you during this questioning as juror number 95.

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

A. My company will only pay me for two weeks jury duty, and it would be a financial hardship.

Q. The trial hours I've indicated keeping, they don't alleviate that hardship?

A. I don't think so. I have a letter from my company.

Q. You haven't presented the letter before?

A. No.

THE COURT: Will the parties approach.

(Short discussion off the record.)

THE COURT: In light of the financial hardship you've indicated this will cause you, I'm going to excuse you from further service on the case. You can rejoin the other jurors.

Let the record reflect – I don't know that you stipulated on the record.

MS. CLARKE: That's correct, Your Honor, we stipulate.

MR. FRECCERO: And the government stipulates, Your Honor.

(Prospective Juror 96 Entered the Courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Okay. Thank you for joining us. You're the 96th randomly selected juror.

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

A. The only reason that I would have at this point is my company only pays for two weeks of jury duty, and I already served a week, and this makes two days into that. So unless they were willing to pay for that, that would be difficult for me financially.

Q. Did you know the juror that just left the courtroom?

A. As a matter of fact, I do.

Q. Do you work for the same company?

A. Yes, I do.

MR. DENVIR: We would stipulate to excuse the juror for financial hardship.

MR. CLEARY: One second, Your Honor.

We stipulate, Your Honor.

THE COURT: Because of the hardship you have indicated jury service would cause you, I am going to excuse you from further service on this case.

That was the last juror. Is there any further business to cover?

MS. CLARKE: No, Your Honor.

THE COURT: I want to ask Mr. Denvir a question. Is your client going to be present at the hearing tomorrow?

MR. DENVIR: We hadn't planned on it, Your Honor. He was a waiver on file.

THE COURT: All right. I am going to cover a matter right now. Tomorrow there will be a hearing regarding sanctions for Mr. Kaczynski's failure to undergo mental examinations by government experts. In light of the significance of the potential sanctions, I think it's incumbent upon the Court to insure Mr. Kaczynski understands the possible consequences.

Mr. Kaczynski, you need not respond, but I'm going to address a question to you. You may answer this question through your counsel if you wish. But I need to know if you understand that your refusal to subject to the ordered examinations could result in precluding you from presenting any expert witnesses to support your mental status defense.

MS. CLARKE: He is aware of that, Your Honor.

THE COURT: Okay. Court's adjourned.

MR. DENVIR: Thank you, Your Honor.

(Court adjourned at 3:25.)

—oOo— IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF CALIFORNIA

– oOo –

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

– oOo –

UNITED STATES OF AMERICA,)) Plaintiff,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) -----

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INDEX OF EXAMINATIONS By Page Voir Dire Examination of Prospective Juror
No. 82 The Court 1025 Mr. Lapham 1029 Mr. Denvir 1033 Voir Dire Examination of
Prospective Juror No. 83 The Court 1044 Ms. Clarke 1049 Mr. Freccero 1058 Voir Dire
Examination of Prospective Juror No. 84 The Court 1061 Mr. Denvir 1065 Mr. Cleary
1074 Voir Dire Examination of Prospective Juror No. 85 The Court 1085 Mr. Lapham
1090 Ms. Clarke 1096 Voir Dire Examination of Prospective Juror No. 86 The Court
1100 Mr. Freccero 1105 Voir Dire Examination of Prospective Juror No. 88 The Court
1106 Mr. Lapham 1112 Ms. Clarke 1118 Voir Dire Examination of Prospective Juror
No. 87 The Court 1143 Mr. Cleary 1150 Mr. Denvir 1152 Mr. Cleary 1165 The Court
1167 Mr. Cleary 1168 Voir Dire Examination of Prospective Juror No. 90 The Court
1179 Voir Dire Examination of Prospective Juror No. 93 The Court 1182 Mr. Cleary
1183 Mr. Denvir 1184 The Court 1187 INDEX OF EXAMINATIONS (continued) Voir
Dire Examination of Prospective Juror No. 94 The Court 1188 Ms. Clarke 1193 Voir
Dire Examination of Prospective Juror No. 95 The Court 1198 Voir Dire Examination
of Prospective Juror No. 96 The Court 1199

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