

Jury Selection Day 8

Nov. 24, 1997

SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 24TH, 1997, 9:00 A.M.

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THE CLERK: You may remain seated.

Court is now in session.

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

Are you ready to proceed?

MR. DENVIR: Your Honor, I wonder if we may approach sidebar for a second.

THE COURT: Okay.

(Whereupon, a bench conference was had but not herein transcribed.)

(Proceedings continued in open court.)

THE COURT: Are you ready?

I directed my deputy clerk to bring in the prospective jurors.

(Brief pause.)

(Prospective jurors entered and were seated in the jury box.)

THE COURT: Let the record reflect that the prospective jurors have joined us.

I would like my deputy clerk to please administer the oath to the prospective jurors.

THE CLERK: Please, stand and raise your right hand.

(Whereupon, the oath administered to the prospective jurors.)

THE CLERK: Thank you. You may be seated.

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 courtroom clerk. Her name is Shani Furstenau. On the same platform with Ms. Furstenau is a certified shorthand reporter who will assist the court in administering this case. I trust that you will fulfill your civic duty during this voir dire questioning process.

I thank each of you both for your presence and for your anticipated cooperation. You are performing an important function in our legal system. Under the principles of our justice system, the parties in this case are entitled to a fair and impartial jury. That concept would be meaningless without citizens such as yourselves making themselves available to serve as jurors in a case such as this one.

The voir dire questioning process is an essential way of ensuring that a fair 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 of prospective jurors individually, which will commence after I question you first as a group. After a number of jurors are questioned in this manner, some prospective jurors will be accepted for further

questioning. Those required to participate in that group questioning will receive notice when that will occur.

Our purpose is to obtain jurors that will judge this case based upon the evidence that is received here in this courtroom and the law on which I will instruct you 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 can sit on this particular case as a juror.

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 –

(Whereupon, a discussion held between the Reporter and the Court.)

(Brief interruption.)

THE COURT: 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 on this type of a case, please indicate that fact by raising your hand now.

There is no response.

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

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

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

An aggravating factor is a fact or circumstance that 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 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, as I informed you in a previous communication, to protect your privacy.

Now I will give you a jury instruction.

I will now say a few words about your conduct as jurors.

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

Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been excused as jurors. "Anyone else" includes 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 and 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 those reasons, you should avoid reading or listening to future news accounts during the time period in which you are involved with this case. Justice requires strict adherence to this prohibition.

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

The trial schedule I contemplate having will be from

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

Please raise your hand if this poses a problem.

There is no response.

I contemplate observing the holiday season as follows:

We will not hold court December 24th, 25th or 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.

There is no response.

Please raise your hand if you do not understand the following:

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

There is no response.

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 the alternative sentences the jury would be asked to consider. Evidence would be presented, and the Court would provide the jury further instructions on the law.

The law requires each juror to carefully consider all the facts and circumstances presented. The government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks.

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

Does any juror not understand that?

There is no response.

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

There is no response.

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

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

PROSPECTIVE JUROR NO. 100: (Raises hand.)

THE COURT: I'm going to give you a chance to respond later, but you are the 100th randomly selected juror.

If you conclude that any question unduly pries into your private affairs, and you therefore wish to discuss it privately, please let me know of that request.

While I'm authorized under law to protect your legitimate privacy, I may ask some questions in the area that you indicate a desire to discuss in private to determine whether we can discuss aspects of the matter in open court without disclosing what you desire to keep private.

If this can't occur, let me know so I can determine whether we should cover the matter in a more private setting.

This approach is taken because the trial should be open unless I have a legitimate reason to close an aspect of it.

If I have no legitimate reason to close an aspect of the trial, then I shouldn't close it under the law.

I now will have my deputy clerk to escort all but the earliest randomly selected juror to another room, and I will like her to place the remaining juror in the witness stand.

(Brief pause.)

(Prospective juror number 44 took the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. You are the 44th randomly selected juror.

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 jury questionnaire at Cal Expo, have you heard of or read anything about the case?

A Things on the news – not watching the news, but just things on TV when you're obviously watching television, they talk about the news, whatever. You know, what's on at 11:00 regarding the Unabomber case.

Q I think I want to have your voice amplified a little bit more than it is.

Thank you for making the adjustment.

You can also grab the microphone and pull it and make an adjustment to it too if you want.

What type of things have you heard?

A I can't even think of anything off the top of my head right now. Just basic things. I can't think of anything off the top of my head right now.

Q Have you discussed the case with anyone since your appearance at Cal Expo?

A Employees at work have – One of my – the employees – Well, the employees at my work know of one of the wives that her husband was killed by the – by one of the bombs. So – And they know I'm serving on the jury – on the case. So it's, of course – it's kind of like it's brought up at work due to the fact they know I've been chosen as one of the jurors. You know, possible selected juror.

And that one of the teachers – I'm a teacher. She did her student teaching at my place of employment so . . .

Q What type of discussions have you been involved in?

A Well, they just – They just realize that I'm on the case, and so her name was brought up. And the fact that she – you know, she actually did her student teaching at my place of my school that I'm at.

I mean, she lives across the street from one of the teachers that I work with. So – But nothing in detail. Just basically she actually worked – did her student teaching there so she is known. And they know I'm going to be possibly serving on the case.

Q Okay. I'm going to ask you some additional questions about what type of publicity you've been exposed to about this case even before Cal Expo. I just want to know what you have been exposed to.

I'll tell you the purpose for asking the question.

A Okay.

Q We don't expect jurors that come into this courtroom to be unaware of the publicity surrounding a case such as this, but we do expect to gain an understanding of what publicity jurors have been exposed to.

We will be asking you, subjectively speaking, how that publicity has affected you. And we need to be in the position to evaluate objectively speaking how you have been affected by the publicity.

Can you tell me all the publicity that you have been exposed to, what you can remember?

A I remember the cases in Sacramento when, you know, he – a bomb was mailed and a man was murdered. And that was the husband of the wife my staff knows, which I didn't know at the time because I wasn't working there. But – So I've known that.

I've known locations of when he was found in Montana. Just the basics. That he was a teacher, college professor at one time. And I've seen the photos, you know, the sketch drawings of him. And when he was – they found him out in the, whatever, in Montana, some cabin, very secluded. And they found evidence in the cabin of some sort that they – that – of making bombs as evidence towards him.

And I know they brought him to Sacramento and kept him in Sacramento. And that – I pretty much – I can't really think of anything else off the top of my head. Just the real basics of the case.

Q Based upon the information you received about the case, have you formed any opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A I know they've talked about him being mentally unstable and the fact that – I mean, if this is the case, this is the person who has done it, obviously he is very – you know, I've formed an opinion this man is obviously mentally unstable for the fact he is going to send a bomb to somebody to kill them for the pure pleasure of it and continued to do it.

And for the fact, I guess, after the bombing in Oklahoma that, you know, he had sent a bomb after that regarding the fact that maybe he wasn't getting enough attention. So therefore, he is obviously seeking some publicity due to this.

And so I've pretty much formed the opinion that this person is obviously mentally unstable, you know, and should not be obviously out in society.

Q How strongly are you committed to that opinion?

A Very. I very strongly believe that may be the case.

I mean, obviously somebody is not stable that would do something like that.

Q Could you set that opinion aside if you were selected as a juror in this case and render a decision solely on the evidence presented in this courtroom and the law that I instruct you on at the conclusion of the trial?

A I probably have to say I don't know due to the fact I have never served on a jury before. I have never been in this sort of, you know, situation like this.

So you know, I know I would probably go in with these beliefs, but what I hear may change my belief, may not. I don't know. I have never been put in a situation like this.

Q Okay. Under the laws of our system, you can understand that an individual would not want to be judged by publicity that occurs outside of the courtroom.

A Right.

Q An individual has a right to be found guilty or innocent based upon actual evidence presented in the courtroom itself?

A Right.

Q And I understand that I'm asking you questions that may cause you to think of things you haven't been forced to think about before, and I also appreciate the fact that you are responding honestly.

But is it possible for you to provide Mr. Kaczynski with the assurance that you will, in fact, set aside the information you received about this case before you walked into this courtroom, and you will allow him to be judged solely on the evidence that is presented in this courtroom and the law that I instruct you on later during the trial?

A I would obviously respect the law and follow your requests, obviously. But due to the fact – I mean, I'm assuming – I really don't know. I mean, I just don't know. I have never been put in a situation like this. And I don't know.

I realize it's the law, and he's obviously, you know, innocent until proven guilty. I know that is the law, but as part of society, you know, you can't help but know, hear, or you know, listen on the radio, listen to the news, see it. You're surrounded by it for years now.

And then randomly I get chosen for this, never expecting to ever have to deal with this. And then to be put on a jury and be expected to – And you know, everything is obviously negative you hear on the – through the media. It's never – No one is ever defending him. It's always the negative aspects of it.

So this is just what – I live in society and just – So I don't – I really do not know.

Q Okay. I appreciate your answer, and I'm sure the parties appreciate your answer. I think you are telling me what is in your heart.

A Uh-huh.

Q That's all I want you to tell me.

A Okay.

Q There is a constitutional principle that an individual is presumed innocent –

A Uh-huh.

Q – until proven guilty.

Mr. Kaczynski has to be afforded that constitutional principle. He has to be cloaked with the presumption of innocence. In order to cloak him with the presumption of

innocence, you would in fact have to leave outside this courtroom the information you received about this case.

You would have to allow Mr. Kaczynski to start this trial with a clean slate, without anything against him whatsoever.

If you were to render a judgment at this very moment, because of that constitutional principle, you would have to find in favor of Mr. Kaczynski.

He has no obligation to present any evidence. He can rest just on that constitutional principle.

Would you be in a position – and I understand that this is requiring you to think before you respond, and you will be given an opportunity to do that – but you would be required to assure Mr. Kaczynski that in your eyes you will be able to cloak him with the principle that he is presumed innocent.

Does he have that assurance from you?

A Once again, I don't know. I really feel like I've been brain-washed probably by the media.

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

A Proponent.

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

A Okay. Can you repeat that one more time. I'm sorry.

Q Yes. If the jury should convict Mr. Kaczynski of the offense of deliberate, intentional, and premeditated murder of another human being –

A Okay.

Q – would you still be able to consider voting for a sentence less than death?

A Probably not.

Q Could you explain your answer?

A I believe if he was found guilty, and he has taking the life of somebody else, then his life should be taken. He will – If not, he'll be sitting in jail, taxpayers paying money – paying for him to live there, to die in jail for the rest of his life, if that's his sentence.

But I feel that – that we – that the death penalty is – you know, California is – I don't know what the right word is, but we believe in the death penalty and so forth. That it – That if that is the case in California, that should – it should be used. It should be utilized more rather than people sitting in jail and the taxpayers paying for it.

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

Do you understand you would be obligated to do that as a juror?

A No. I wasn't aware of that because I have never done anything like this before so –

Q Okay.

A – I would – I didn't know. I don't really know the background of the – of actually accusing him or sentencing him for the death penalty.

Q That is – That is the law.

A Okay. I wasn't aware of it. I don't know the background. I just – of it. I'm not answering the answer correctly.

Q Now that I've told you that –

A Uh-huh.

Q – would you be able to wait until you received such information with an open mind before you make up your mind about what sentence would be appropriate, that would be a sentence of death, life imprisonment without possibility of release, or a lesser sentence?

A Probably.

Q Okay.

THE COURT: Parties may conduct follow-up examination.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q Good morning. 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?

A Okay.

Q When you were answering some of Judge Burrell's questions towards the end, I think you said at one point something about "Am I answering the question correctly."

Can you tell me what you were thinking at the time?

A Just by his reaction on his face. I wasn't sure if I was – if I understood the question and was answering it to what he was actually looking for.

Q Okay. Let me explain to you that when we ask, there are no correct answers to any of these questions.

A I understand.

Q Well, a lot of people think there is. And I think it's important that you – that you tell us exactly what you feel on this. Because a lot of these things only you know whether you'll be able to follow the law or whether you'll be able to put aside, you know, your preconceived thoughts about the case and things like that. So there really are no correct answers, other than what you really believe.

There is a sense that, oh, yeah, I ought to be able to put this aside, I ought to do all that, but we don't ask you to do anything other than just tell us exactly how you feel about it.

Okay?

A Okay.

Q Let me start off by asking you –

MR. DENVIR: Your Honor, is the juror's questionnaire –

THE COURT: Is this your questionnaire, ma'am?

(Document shown to prospective juror.)

PROSPECTIVE JUROR NO. 44: No.

THE COURT: Is this your questionnaire?

(Document shown to prospective juror.)

PROSPECTIVE JUROR NO. 44: Yes.

THE COURT: Okay.

BY MR. DENVIR:

Q If you would, turn to page 34 and question 134?

A Page 34?

Q Yes. Question 134?

A Okay.

Q This case is estimated to take somewhere between two or four months, five days a week. You heard from the judge you'll report at 7:00, be released about 1:30 or something like that.

In light of what you said there, do you think you would have any problem sitting as a juror and also given what the case is about and what is at stake?

A I think I would be able to handle it. Is that the question?

Q Yes. Will you be able to handle it? That's not a problem?

A Well, I mean, I don't know. I mean, I just – I really don't know. This is a situation I have never been put in.

I don't know. I don't really handle stress very well. You know, my job can be very stressful, and like I said, eventually it leads to getting sick, you know, because I'm just overwhelmed with things, and I just sometimes can't handle stress real well. So depending on the stress of the case, maybe not.

Q Well, I guess you know what – what has stressed you out in the past?

A Uh-huh.

Q You know, caused problems, you know, in terms of that, and we all go through those?

A Right.

Q You understand that here you're dealing with, you know, with this particular case, the charges against Mr. Kaczynski, which are basically mailing or transporting bombs with the intent to kill and resulting in death in two instances.

If we – If he were found guilty of those charges, there would be a second phase where the jury would have to make the decision as to the sentence, besides having previously found the question of guilt or innocence.

Compared to things in the past, what do you –

A That would probably be the most severe thing I have ever had to deal with, but

–

Q But you feel you could do it?

A I guess.

Q Let me ask you about your exposure to information about the case.

As I understand it, since you were out at Cal Expo, what have you heard, read or seen about the case?

What media – type of media?

A I know that he's pleading not guilty.

Q Uh-huh?

A And that he refuses to take a test, a psychological test, to that extent. And that's pretty much all that I can think of off the top of my head right now.

Q And does that come from the newspaper, radio, TV? What type of –

A TV. I mean, you just have the TV on, and you – Constantly on. Something on probably daily. Or something on Good Morning America. I mean, you know, just having the TV on, doing things around the house, you can't help but –

Q So it's TV as opposed to newspapers or radio?

A Yeah. TV.

Q What did you think when you heard on the TV, I guess, about you heard something about refusing to take a test?

A Well, I guess – I don't know. I think that his refusing to take a test due to his psychological status, that he is in fear of it coming out proving him not to be emotionally unstable. First thing I thought.

Q And do you recall anything else that you have heard since Cal Expo? Just –

A No. I can't think of anything more off the top of my head.

Q Now, since Cal Expo you evidently have talked to a few people at work; is that right?

A Yeah. Just – Yeah. They know I'm serving. That I have been going through this process. I'm obviously the only one at my work having to go through this so . . .

Q As I understand it, you're a teacher at a school where Mrs. Murray, who is the wife of one of the people who was killed in Sacramento, formerly taught; is that right?

A She was doing her student teaching. She did her student teaching at my school. And then later on is when her husband was killed. And so the whole staff knew her very well due to that situation. And a couple of teachers she went through the credentialing program with. So I guess it was a real emotional thing for the school so . . .

Q Was she actually teaching as that school – practice student teaching when the death occurred?

A No. No.

Q Okay. And can you tell me – So two of your fellow teachers went through a credentialing program with her at one of the universities, I take it?

A Yes.

Q There is two of them?

A There is one that I'm aware of. There is one she went to the credentialing program with that is employed with me, and then the other one is just one she did her actual student teaching with her in that – in her classroom.

Q So she taught actually in the classroom?

A Yeah. Student teaching.

Q With this co-worker of yours?

A Right.

Q All right. And do you know – Has anybody else talked to you about her, you know, working with her, knowing her?

A Yeah. My team teacher, my lead teacher lives across the street from her.

Q You're in a teaching position where you have a team teacher?

A Yeah.

Q At this point –

A A grade level. Of the grade level.

Q I see. Like –

A The grade level.

Q All of this grade level she's the leader of it?

A Yeah. Yeah.

Q And she actually lives across the street; is that right?

A Yes.

Q Now, have any of these people told you about how she is doing or what her family is doing, anything like that?

A She just said after – after her husband was murdered, you know, she doesn't really see her very much. Just kind of keeps herself secluded. And that they put bars up, like, on the windows and the doors of her home. But she doesn't see her very much any more.

Q The neighbor is the one who told you that?

A Yeah. Yeah. My – Yeah.

Q Did any of the other employees at work tell you anything further about her or about how she – how she – her background, how she reacted to her husband's death? Anything how the family is doing?

A No.

Q And you have never met her?

A No.

Q Now, as I understand it, you – Let me ask you this.

Because of what you know about Mrs. Murray through your friends and colleagues, would – if Mrs. Murray were to testify at this trial, would her testimony carry kind of a greater impact and weight with you because of –

A Probably just because I know people that really know her and cared about her when this happened. And I know it was just a very traumatic situation for the school, even though I wasn't employed there, but they are my co-workers, you know. And that – the sense that, you know, they actually had some personal contact with the school thing is – You know, I just don't know anybody else who had any contact with this case whatsoever. Then it seems at the school I'm working at has some personal contact with someone that was a victim.

Q So you have kind of seen their emotional reaction to what happened to her husband and to her, and you have picked up some of that yourself?

A Well, obviously. I mean, they're my friends and co-workers. So if they were – felt – You know, they were obviously really thrown by this whole thing. You know, when it hits home, it really affects you differently so . . .

Q Well, do you – do you feel kind of an emotional reaction just thinking you'll be sitting on the jury that – involving the death of this gentleman and what you know about the family and what people thought of her and how it affected her?

A To an extent, probably.

Q Will it make it difficult to sit there and just –

A It will be difficult to sit there, but – I mean, of course it is in back of my mind. You can't help but think about it. Something I've been exposed to through work.

Q And do you think that if we were to reach a sentencing phase of this trial, you know where you, if you were a juror, along with eleven other people, would have to determine the sentence, that that knowledge, that connection you have, that's unusual for a juror, would that be in the back of your head and kind of influence you?

A I would have to say it would be in the back of my head. But whether or not it would influence me, I don't know.

Q You said that you had followed the – the case with interest, I believe, in the questionnaire. I think that's on page 26.

I'll try to – Let's see if I can find it.

At page – It's Question 102. I think you said you followed this case with interest?

A It's been a big deal. It's been on the media. Everybody talks about it. Just like I said earlier, you're part of society, you watch television or even read the papers, you can't help but hear about it. I mean, unless you're totally a hermit.

Q Do you have some sense from your – from your contact with the media as to what evidence you think there is against Mr. Kaczynski or –

A All I know is what is from the media.

Q I understand that.

A Okay. You want – Can you ask me the question.

Q I guess I want to know what evidence you believe there is against Mr. Kaczynski based on, you know, your media contacts.

I understand that is your only contact.

A So what evidence do I believe is against him?

Q Yeah. Do you remember reading about evidence?

A I never read anything on it. I just listened to the news.

Q Television?

A Right. So what evidence do I think is against him; is that the question?

Q Do you have any recollection of any particular evidence in the case?

A Well, the fact where they found him, like I said earlier, in Montana. And they found evidence of – of makings of bombs. And he was secluded in a – very secluded

in a shack. I mean, I have seen, you know, on television what it looked like. And you know, so they found evidence there.

Q Do you remember what evidence?

Do you remember hearing about what they found there, what particular type?

A Makings of bombs. I don't really know what is entailed in making a bomb.

Q Do you – As I understand it too, based on what you – following the case with interest and what you have heard about it, you believe that he is – he is probably guilty; is that correct?

A Yes.

Q Is it more than that? Do you believe he is guilty?

A I believe from what I've heard on the media and everything, you know, that's been brought up against him, and for the fact he won't take a psychology examination, I feel that he would – probably is guilty.

Q So the fact that you read he wouldn't take a psychological exam –

A Things that led up. I mean, things that have led up to it. And this is just the newest thing in the news, obviously, due to the fact that he is actually being – going through the process right now.

Yes. In my mind right now, probably everything seems to be against him.

Q And as I understand that, you have said I think before you have a very strong opinion that he is guilty; is that correct?

A I guess. I mean, I just – I haven't really sat down to think about this seriously to be honest with you. I just –

Q Well, let me ask you. From what you read and from following the case, do you have an opinion as to what the – what the sentence should be if he were found guilty of this crime?

A I said that earlier I do believe in the death penalty, but as which I don't know what is entailed in actually accusing someone of the death penalty.

Q Yeah. I understand that. But as you sit there, from what you have read about the case and everything, you do have an opinion that he is guilty, a strong opinion.

Do you have an opinion as to what the sentence should be if he is found guilty?

Have you thought about that?

A No.

Q So you have no opinion one way or another?

A I just thought I would – I thought if he was found guilty, therefore, I thought I would voice that he would – that I believe that a sentence would be possibly the death penalty due to the fact that I feel like he has taken lives; and therefore, his life should be taken.

Q Now, is that based on your following the case?

I mean, you followed the case. You kind of know what happened. Is it based on that that you feel –

A I'm just saying, if – He is guilty. He has murdered people. Therefore, I feel that he has murdered people, and instead of sitting in jail for eternity until he dies, all I'm saying is that I believe that his life should be taken.

Q The judge has told you that you'll be given instructions that if you sit on the jury you have to consider two alternatives, life without the possibility of release or death.

And, again, everybody is expected to follow the law if they can, but we don't ask people to do something they can't do.

And, again, you sound like you feel fairly strongly that –

A I'll follow the law, though. Obviously, I'm not going to be the only person serving on the jury. So it would have to be a unanimous decision.

Q Right. But you would have to make your own determination. And what I need to know is, can you actually consider life without the possibility of release as an alternate sentence for the Unabomber crimes? Actually think of that as something you could vote for?

A If I only have two choices, then obviously that would be another choice that I would have – be able to choose. But in this case, I mean, I really have never done this before. I do not know.

Q It's very difficult. And I just have to ask you one more time, though, could you actually consider voting for life in prison?

The way you've talked about just having him sitting there at the taxpayers expense for the rest of his life, could you actually consider voting for that as the penalty to the crimes that you have read about?

I mean, really consider like, yeah, I'll look at both of them, and I could really see myself doing that?

A It's hard to make a judgment when you are not put in the situation. I just don't think I can make that call.

Q Okay. Let me ask you this question then. If you were to sit on this jury and heard all of the evidence and determined that Mr. Kaczynski was not guilty, could you go back and see your friends at school and tell them that you found Mr. Kaczynski not guilty of the death of Mr. Murray?

A Could I do that?

Q Yeah?

A Well, I would have no choice.

Q How about if you found – if the jury found that the sentence – you found him guilty, but the sentence should be life. Would you be able to go back and tell folks that?

A Well, yeah. I would have no choice. That would be just what it – how it ended up. And obviously, I'm not the only person on the – serving against, you know, on the juror – on the jury. I mean whatever the case, I will be able to – I will deal with it, whatever the sentence is.

Q Let me ask you one other question then.

Would you feel, when you are determining either guilt or penalty, some reluctance to come up with a verdict that you feel would maybe make your friends feel sad and maybe make Mrs. Murray feel sad based on what you know about her?

A I'm not going to make a decision based upon my employees. Is that what you are asking?

Q Yeah. I want to know whether that would have any effect on having to go back and tell them what you did?

A No. No.

MR. DENVIR: Your Honor, one moment.

(Brief pause.)

MR. DENVIR: Thank you.

THE COURT: Government?

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q Good morning, ma'am. My name is Stephen Freccero. I'm one of the prosecutors in this case.

Let me ask you a few brief follow-up questions.

One of the issues that I think we're getting at here is would you, yourself, feel any pressure, because you have co-workers who know Mrs. Murray, would you feel some pressure to force you to vote a certain way or the other in the trial?

A No.

Q Do you feel confident that whatever decision you make you could make it based on the evidence and the law as given to you by the judge?

A Yes.

Q Nothing about the fact that other people you know know Mrs. Murray is going to influence you?

A No. I don't think so.

Q Okay. But can you give the Court that assurance?

I mean, you know yourself, and as Mr. Denvir said, only you really know yourself. Do you think that if you came and sat as a juror in the case, and you were told, look, it's the Government's obligation to prove beyond a reasonable doubt that Mr. Kaczynski is guilty, and you sit through the trial, and you think, "I don't think he did that," is the fact that you know people that know Mrs. Murray, is that going to make you say that I can't vote not guilty because how will I be able to face those people?

I think that's really the question we're asking you?

A It's an awkward situation due to the fact that I'll have to – You know, of course I'll be bombarded, I'm sure, by employers with – after the case is over, and you know, I go back to work. But I don't think that I would base a decision on my, you know, employers.

I mean, I know that they're, you know, they're close to her. And it's something that, you know, affects me, obviously, due to the fact they know them – know her and have a connection with her, but my decision is my decision.

Q All right. Because I think the point is that justice requires that you can do that. And we have to make sure that you would be able to follow the law and consider the evidence and not base a decision on anything else.

And you think you can do that?

A This is really hard for me to answer all these questions.

Q I know. I realize that.

A I don't really know.

Q We appreciate your honesty. I think that's the issue before us today. And it's part of public service. And that's why you're on the spot being asked these questions.

But they're important questions, and we just need to know the best answer you can give us as fair and honestly as you can.

THE COURT: I think she gave it to you. She said she doesn't know.

BY MR. FRECCERO:

Q With reference to the second phase that the judge talked about in terms of whatever punishment, you will get instructions from the Court that you must consider alternatives.

And so I simply just want to ask the same question to you as to that phase. Anything about your relationship with people who know Mrs. Murray that would affect your ability to follow those instructions to choose between the alternatives?

A Is that basically the same question you just asked?

I don't –

Q Okay. I'm just trying – I'm separating out the decision as to guilt versus not guilty. And if you were part of a jury that found guilty, there would be a second phase. And I'm simply asking about that second phase.

Is there any –

A Second phase which would be in his conviction. Is that what you mean by the second phase?

THE COURT: You need to clarify.

It does appear to be the same question asked in a different way.

BY MR. FRECCERO:

Q Okay. I apologize.

There will be two different phases. And I guess I would just ask you – There are two issues. One would be guilt or not guilty.

A Okay.

Q A separate issue would be only if you were to find guilt. And that would be what would be the appropriate punishment.

Is there any difference between those two issues in terms of your personal feelings?

I mean, you told us what you thought as to the first phase. Does the issue of punishment make any difference to you?

A I have an opinion of what the punishment should be. I expressed that, too.

Q And could you – Could you set that aside and follow the court's instructions if you were a juror in this case?

Could you set your own personal opinion aside?

A Probably not.

Q All right.

MR. FRECCERO: Thank you.

THE COURT: Thank you.

I'm going to have my deputy clerk to bring in the next juror.

(Prospective juror number 44 exits the courtroom.)

(Brief pause.)

MR. DENVIR: Your Honor, I believe the parties would stipulate to excuse that last juror.

MR. FRECCERO: So stipulated.

THE COURT: The juror is excused.

MR. DENVIR: Yes, Your Honor.

(Prospective juror number 97 enters the courtroom and takes the witness stand.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us.

You are the 97th randomly selected juror. I may reference you by that number during this questioning.

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

A No.

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

A Very little.

Q Share what information you received?

A Mostly just about the jury selection. And just other things that other people have been saying at work, which is – nothing really. Just what they've read in papers. Mainly about the jury selection.

Q Tell me about the information you received at work.

A Just, like, the other day one of the jurors that knew about making bombs, that was brought up at work. And I heard that.

And about that there was just 30-something jurors selected, and 27 of them were still potential. That's just about all.

Q Well, since Cal Expo have you had any discussions with anyone about this case?

A No.

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

A None.

Q There has been a lot of publicity about the case. Haven't you been exposed to some of that publicity?

A Not really. Didn't interest me at all.

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

A Yes, I do.

Q What do you know about the allegations?

A Just what you have read this morning.

Q Okay. Prior to hearing me provide you with that information, had you heard about the allegations involved in the case?

A Yes.

Q What did you hear?

A Just whatever I read about that was in the newspapers or –

Q I'm asking a question. I have a purpose for asking this question.

A Okay.

Q It's two-fold.

One reason is because I want to know what you heard so that the Court and the parties are in a position to objectively evaluate how that possibly has an effect on you. And I also want to know so that I can find out subjectively how you believe it affects you.

And so tell me what information you have actually received about the case at any time?

A Oh, just what I know about the case?

Q Precisely.

A All I know is just that Mr. Kaczynski mailed bombs – or made bombs, mailed them, and people got killed or hurt.

That's all I know. I don't really know that much about the case.

Q Have you received any information about a cabin?

A Just whatever that was in the papers or that was in the news media.

Q What information did you receive about a cabin?

A Just that he lived in a cabin.

Q Did you receive any information concerning alleged evidence that perhaps was taken from that cabin?

A No.

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

A No.

Q What effect do you believe that the information you received about the allegations involving this case, what effect do you believe that information has on your thinking about Mr. Kaczynski's guilt or innocence?

A None. Because I will – I will hear all the evidence.

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

A Yes.

Q Do I have your assurance that Mr. Kaczynski will begin this trial, in your eyes, cloaked with the presumption of innocence?

A Yes.

Q Do you consider yourself a proponent or opponent of the death penalty?
Are you for or against the death penalty?

A I'm not against it, no.

Q What are your views on the death penalty?

A I know it has to be used. But I'm not against it.

Q What – Do you have a philosophy with regard to the death penalty?

A No, I don't.

Q Have you considered the death penalty as a possible sentence in connection with this case?

A No. Not until I hear all the evidence and stuff.

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

A Yes.

BY THE COURT: Parties may conduct examination.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q Morning.

A Morning.

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

Let me just get something out of the way first.

You indicated in your questionnaire that you didn't feel you had time to serve?

A Right.

Q And I notice you have a four-year-old at home.

Is that going to cause you any problems?

A No. Not since he said the time of the trial.

Q So the trial schedule takes care of that?

A It's fine.

Q Okay.

A Uh-huh.

Q In looking at your questionnaire, I was a little confused about your views on the death penalty. You indicated that you felt the death penalty is never justified.

In fact, I think your questionnaire is right on the ledge.

THE COURT: I'm not sure.

Is this your questionnaire?

(Document shown to prospective juror.)

PROSPECTIVE JUROR NO. 97: Yes.

BY MR. LAPHAM:

Q Let me direct your attention to page 28.

And it would be question 108 at the top of the page.

A Uh-huh.

What I meant by that is for me, for the death penalty, it has to be just – not just somebody killing somebody. I mean, it just has to be downright out bad.

Q Okay. So –

A I'm not opposed to the death penalty, no.

Q Okay.

A In certain circumstances, yes, it can be the sentencing. But it just has to be really bad.

Q Okay. So it would have to be a murder plus something else?

A Yeah.

Q Okay. The box right above the one you checked said, "The death penalty may or may not be justified depending upon the circumstances of the case."

A That would probably fit better, yes.

Q That's what you meant to check?

A Yes. Yes.

Q Okay. When I read your questionnaire, I got the impression that you felt that the death penalty was useful in our society, but you could never bring yourself to vote for it.

Was I incorrect on that?

A Well, like I said, it has to be very traumatic. It just has to be very bad for me to say, "Yes, death penalty."

Q Okay. Now, let me ask you about that.

The judge is going to instruct you, he's going to give you guidance –

A Right.

Q – on what circumstances or in what circumstances the death penalty is appropriate. So you are not going to be out there on your own.

A Uh-huh.

Q And the question I'm going to ultimately ask you is would you be able to follow those instructions?

A Yes, I will.

Q I want to give you some background to that first.

As the judge instructed you, when you were sitting over here in the jury box, the trial is going to be in two phases. And the first phase will be the guilty or not guilty phase.

And at the conclusion of that phase, if you have convicted the defendant of the crimes that the judge specified, that would mean that you have found him guilty of essentially committing a deliberate and intentional murder of another human being.

You understand that?

A Yes, I do.

Q So you're going to move on to a second phase, at that point, in which additional evidence is going to be presented about the circumstances of those crimes and also about the circumstances and the background of the defendant himself.

And so you're going to be starting on a fresh slate again at that point solely for the purpose of determining what the appropriate punishment is.

Are you with me so far?

A Uh-huh.

Q Okay. And the Government is going to present to you what the judge has characterized as "aggravating circumstances," those reasons why we believe the crime is aggravated and should merit the death penalty.

And the defendant will present evidence of a mitigating nature to all those reasons, whatever they may be, of why the death penalty should not be imposed.

And the question is: Would you be able, with an open mind, to listen to both sides of those before rendering your decision?

A Yes, I will.

Q And now the next question is: Because of your views about the death penalty that it should be used only in – I'm not sure of the phraseology you used –

A Right.

Q – but in the most aggravated cases, the question is: Would you impose a higher standard on the Government than the judge tells you should be imposed?

Is that clear?

A Yeah. I don't know. Maybe I might.

Q Because the point is here that the law has now been settled. As you know, there is a great debate in our society about the death penalty, whether it should or not be imposed in certain cases.

But for the purpose of this trial, that debate has been settled. There – You'll get the law on when the death penalty is or is not appropriate. And you'll be asked to apply that law. And it would be improper to apply some other standard, some personal standard that you may bring into the courtroom with you.

Are you following me so far?

A Uh-huh.

Q So the question that we're concerned about is whether or not your personal views about the death penalty being appropriate in certain aggravating cases would interfere with your ability to follow the judge's law as he instructs you?

MS. CLARKE: Your Honor, I think that is a little misleading –

THE WITNESS: Yes.

MS. CLARKE: I don't know, maybe she answered.

I think it is a little misleading to say the judge is going to tell her where the death penalty applies and when it doesn't. That simply isn't the way it goes.

THE COURT: Response?

MR. LAPHAM: I can rephrase the question.

THE COURT: All right.

BY MR. LAPHAM:

Q Ma'am, what I meant to say is that the judge will give you the law that you should apply to this case.

A Right.

Q And he'll give you instructions on how to weigh the aggravating and mitigating factors and to come up with your ultimate conclusion.

And what we are getting – What we are trying to get at is whether or not you would be able to follow that, or would you let your personal views about when the death penalty is appropriate interfere with that judgment?

MS. CLARKE: Your Honor, same objection.

The Court is not going to tell any juror how to weigh aggravating and mitigating circumstances.

THE COURT: You seem to indicate that in the question.

MR. LAPHAM: Well, it certainly will give her guidance on how to go about the weighing process, in the same way the Court instructs on how to weigh credibility.

THE COURT: It seems that you could achieve your objective without getting into an area that is going to be debated. And I would prefer that you take a different approach.

MR. LAPHAM: Thank you, Your Honor.

BY MR. LAPHAM:

Q The Court is going to give you guidance on how to do your job and how to come up with your decision. And you'll be weighing aggravating and mitigating factors.

And the question is: In that weighing process, do you think your personal views about the death penalty would interfere in your ability to follow the Court's instructions?

A No. I feel like I can set my personal views aside. And – No. I'll be able to set them aside.

Q Okay. Can I ask you what – You sound like you have given some thought to this.

What are your views about what kind of cases would be appropriate for the death penalty?

A Something like mass murders.

Q "Mass murders," meaning like Oklahoma City, for instance?

A Yeah. Right.

Q What else?

MS. CLARKE: Your Honor, I think this may be an inappropriate line of question to asking the juror to prejudge.

THE COURT: I don't think so. I think at some point counsel could cross the line, but at this juncture I don't think he's crossed it.

BY MR. LAPHAM:

Q Could you explain what you mean?

And, again, I can't remember the word you used, but you felt it should be only used in aggravated circumstances. And, in fact, that's what the law itself says, so you're not mistaken about that.

I just want to make sure we're not talking about real extreme cases, like only where there is mass murder.

Are there other cases?

A No.

Q There are no other cases?

A Well, just when a person just goes out and just – just gruesome murder.

Q Okay.

A That thing.

Q So a murder committed in some gruesome fashion?

A Malice. Yeah.

Q Okay. So you can envision – I mean, in some sense, murder is murder because the ultimate result is somebody dies. But you can envision certain circumstances that are more aggravated – some murders that are more aggravated than other murders?

A Yes.

Q Okay. And the other side of the coin is mitigating factors, the background of the defendant.

You can – You can envision some defendants who commit crimes, and because of their background should get the death penalty, and others, who because of their background should not get the death penalty?

You can make that distinction?

A Yes.

Q And by "background," I know that's a vague term, by background we're not talking about whether they're rich or poor, black or white?

A Right.

Q We're talking about any characteristic in their background that might provide insight about their personality, why they committed the crime or the circumstances of the crime itself.

A I don't understand the question.

Q Actually, there wasn't a question.

A Okay.

Q So there is nothing for you to misunderstand.

You think you could listen to those kinds of factors, if they were presented to you, and put them into the mix in considering whether or not to impose the death penalty?

A Yes.

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

THE COURT: Yes.

(Brief pause.)

MR. LAPHAM: Thank you, very much.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q Good morning.

A Good morning.

Q If I could talk with you briefly about your views on the death penalty.

I think what everybody is saying to you is that it's important that you be open to considering all alternatives for sentencing?

A Right.

Q And what I'm hearing you say is that you are?

A Uh-huh.

Q Yes?

A Yes.

Q And so if the Government presented evidence to you of future danger, in other words, a person would kill again if they got released –

A Uh-huh.

Q – you would consider that?

A Yes.

Q And that would be a factor that you would weigh in terms of determining whether the murder was aggravated or not?

A Yes.

Q You would consider, I take it, whether or not there was some high level of planning and premeditation that went into the murder?

A Yes.

Q Right. And that would be a factor that you would weigh in determining whether a death or life sentence was appropriate?

A Right.

Q So you're not closed down to both options, you would consider them both?

A Right.

Q And at the same time you would also consider whatever might be presented to you that would mitigate against a death sentence, right?

A Right.

Q Do you have your questionnaire nearby?

A Uh-huh.

Q At page 24, question number 95; are you with me?

A Uh-huh.

Q Regarding mental-health professionals who testify in court, you said you have no opinion. "As I said before, they have a job to do."

What did you mean by that?

A I don't have an opinion on them. They all do their job. They do it well.

Q Some do it better than others?

A Correct.

Q Sort of that sort of feeling?

A Yeah.

Q Okay.

A I don't have – There is no specific opinion about them.

Q Okay. And one of your earlier employments was a – you know what I'm talking about – with a family support office?

A Uh-huh.

Q Did you ever encounter mental-health professionals debating issues?

A No.

Q That just wasn't part of –

A That wasn't part of my job.

Q – part of the work?

You mentioned in your questionnaire at page 11, top of the page, No. 41, "What did you think or feel when you received your summons?"

And you said, "I was a little upset."

Have you kind of worked through that or –

A The reason why is because of the time involved.

Q Uh-huh. But you feel pretty good about that now?

A Yeah. Now is fine.

Q Given the hours the judge has said?

A Right.

Q Okay.

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

THE COURT: Yes.

(Brief pause.)

MS. CLARKE: Thank you, very much.

PROSPECTIVE JUROR NO. 97: Uh-huh.

THE COURT: I want to excuse you so you can return to the room that you came out of.

You can leave that with me.

Thank you.

PROSPECTIVE JUROR NO. 97: Thank you.

(Prospective juror number 97 exits the courtroom.)

THE COURT: We're going to take the morning recess at this time.

Court will be in recess until 10:35.

(Recess taken at 10:20 a.m.)

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

I want to cover some matters before I call in the next juror. Juror 41 was required to tell us whether her employer would make an adjustment. He will not, and she has to be excused for hardship reasons.

I called juror 93's employer. He is a physician that's a sole practitioner. If she sits on this case she will lose her job. He explained in general terms the financial hardship it would cause him personally, and she would lose her job. So we have to excuse juror 93 for hardship reasons.

I didn't rule on juror 62 on Friday because I was uncertain whether my notes accurately reflected my ruling. I'm now going to rule. Kaczynski moves to excuse juror 62 for cause, arguing that some of her answers revealed that her general assurances of impartiality do not apply to certain criminal acts. Since I'm left with the definite

impression that the juror's views on these matters would prevent or substantially impair the performance of her duties as a juror, the motion is granted.

We can call in the next juror.

(Prospective Juror No. 99 entered the courtroom.) / / /

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 99th randomly selected juror. I may refer to you periodically by that number. Is there any reason why we shouldn't continue to consider you for service on this case?

A. Not a good one that I can come up with.

Q. I'm sorry?

A. No, not at the present time.

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

A. Truthfully, yes. Well, I saw a news flash on TV and radio.

Q. What memory do you have of the things you saw or heard on the radio?

A. I can't come up with – it was some specific one radio talk show on my radio on my way to work, and it was saying that for about 14 years he eluded the FBI agents, and things like that, something of that nature.

Q. I'm going to ask you to make an adjustment so that your voice is amplified a bit more than it is now.

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

A. No. I have not.

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

A. It was in all the TV stations, radios and taboos when he first was apprehended, and then I read a lot about it, and then listened to some of the talk shows and things like that.

Q. What information do you recall receiving about it?

I'm asking this question with the understanding jurors aren't necessarily excluded from being considered for jury service on this case simply because they have been exposed to pretrial publicity, but we need to know what pretrial publicity you've been exposed to so that we can objectively consider how it affects you. And we want to know from your perspective how you believe it affects you, but I need to know what information you have. Give me some specifics if you can.

A. Before I had any idea I was going to get a letter to come down to Cal Expo, I done some reading and listened at the talk shows, and I came up completely myself, with the information that I read in the taboos and all that, that it's about 99.5 percent possibly that this was the person that did send letters and bombs through the mail, the person that did elude our FBI agents for approximately 14 years without being caught. And it's a good chance that his family knew something about this incident before they made their decision to turn him in. And I concluded, like I said, possibly 99.5 percent to myself that I concluded that yes, he is guilty.

Q. Was there any particular information that you considered weighing when you reached the opinion you just shared?

A. I didn't follow you on that.

Q. I'm trying to determine whether you received particular information that caused you to reach the opinion you just gave me.

A. No particular information. I didn't – just sitting there with thoughts going through my mind and just thinking to myself as I read the articles and listened to the talk shows and things like that, and didn't put too much value on it. Because I never thought it would be of great interest to me.

Q. How strongly are you committed to the opinion you just shared?

A. Very strong. I don't think that anything – I wouldn't say, "anything". I'm open to suggestion, but I have my mind pretty well made up no matter which way it goes that he would be guilty, the person is guilty.

Q. Is that an opinion that you could separate yourself from for purposes of this trial, that you could leave that opinion so that it doesn't enter into any phase of this trial, and you allow Mr. Kaczynski to start this trial on what is generally known as a clean slate?

A. You ask me if I could start out with a clean slate? I think that may be impossible to me because I remember many times things have been said, and then I heard the jury should disregard it. And it's not something that you can pull down the shade and erase out of your mind and say it never happened, because back in my mind that thought is still going to remain there.

Q. Okay. I'm going to ask you that question another way. I'm sorry for forcing you to respond again. I just want to make sure.

You can understand that an individual charged with serious criminal offenses would not want to have a juror to consider him guilty before he even has an opportunity to have a trial. Is there any possibility that you could put the pretrial publicity that you have received about this case out of your mind so that you can in fact allow Mr. Kaczynski to begin this trial clothed with what's called the presumption of innocence, and on what I've already told you would be a clean slate, and you would make a determination of his guilt or innocence based upon the evidence as presented here in this courtroom. Could you do that?

A. I would like to be truthful. I don't think it would be possible for me to say, "a clean slate", and just pretend I never even heard of that information before that day.

THE COURT: Thank you, sir.

MR. LAPHAM: One moment, your Honor.

THE COURT: Okay.

MR. CLEARY: We agree that he be excused, your Honor.

MR. DENVIR: He can be excused, your Honor.

THE COURT: Thank you for your frank answers, sir. We are going to excuse you from further participation on this case. You can't leave yet. We are going to take you back to the waiting room. Thank you.

(Prospective Juror No. 100 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 100th randomly selected juror. I may reference you by that number during this questioning. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. Well, I've been thinking about this ever since I got the summons. I'm a practicing Catholic, and my church doesn't believe in the death sentence; and I don't either. I have no qualms with – if a person is guilty, locking him up and keeping him out of society, but to put another person to death is extremely hard.

Q. I didn't hear the last portion of your answer. Did you say, "extremely hard"?

A. Yes. It would be extremely hard. I don't think I could do that.

Q. Our purpose is to find jurors who, based on the evidence presented, will consider the sentence of death, should there be a conviction, as just one of the possible sentencing options. The other options would be a sentence of life in prison without the possibility of release or lesser sentence.

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

Q. You believe that you would be able to consider death as one of those options?

A. No. I don't think I could consider death as one of those options.

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

A. Yes, I believe so. Yes.

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

A. Yes.

Q. Yes means that you would not be able to do that?

A. That's correct. Yes.

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

A. That's correct.

THE COURT: Lawyers, do you want to question?

MS. CLARKE: If I may, your Honor.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski, and I just have a few questions about your feelings on the death penalty, if I may.

A. Okay.

Q. As I looked at your questionnaire – and could he borrow the –

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 100: Yes. It is.

Q. BY MS. CLARKE: If I could take you to page 27. You see the checkoff questions under 107?

A. Yes.

Q. And I take it that this is probably an issue that you may not have dealt with publicly before, is your feelings about the death penalty; would I be right?

A. Yes.

Q. That it really isn't something where you've been in front of a lot of folks and had to think through out loud?

A. That's correct.

Q. And when you filled out your questionnaire, you must have at least been starting to think about your feelings about the death penalty; would I be correct in assuming that?

A. Yes. That's true.

Q. So when you filled out page 27 and you thought about the statement, and I know this is difficult because it's just sort of a blanket statement, "Anyone who plans and commits a murder should get the death penalty," and you said, "I agree somewhat." So I mean, it was in your mind that it was a possible sentencing option in certain circumstances; would you agree? I understand that the options were limited.

A. I'm trying to think of what was going through my mind at the time. I find it hard for myself to look at this gentleman, or any gentleman, or let me say person better yet, in the eye and say yes, we are going to give you the death penalty for the crimes that you committed. I just don't think I can do that. I thought about it since the questionnaire. I thought about it long and hard because it's not an easy decision, and I came to the conclusion that I don't think I could do that.

Q. And it's apparent to me watching you that this has been an evolving process for you.

A. It is.

Q. This is probably the first time you had to put down in black and white how you thought.

A. Exactly. You just don't start writing things and say, yes. I agree with it. If you are in a crowd you could probably say, yes. I would do this because he murdered X number of people. But when you get down and you're serious about it, and you've got to think about it and reach down within you and come up with the answer that's best for yourself yourself.

Q. It's just not that simple when you have to say, "I'm responsible for it."

A. Exactly.

Q. Well, I certainly appreciate your feeling about the death penalty, and I don't mean to stand here and attempt to change your mind.

A. Okay.

Q. But could I ask you, do you agree with me that it's the duty of people with citizenship, if they can, to sit as jurors?

A. Yes.

Q. And it's a very important function that we all serve as citizens, that we give judges and parties an opportunity to evaluate whether we can sit as jurors?

A. Yes.

Q. And as the duty of a citizen, it's kind of like voting or paying taxes, it's just something that you feel like you have an obligation to your country to do?

A. That's correct.

Q. And that it would be important if you were being judged, or if someone you love is being judged, that you would have on the jury people with different views?

A. Yes.

Q. That you not have all like-minded folks sitting on a jury?

A. Well, you are not going to get that anyway, but yes.

Q. I guess we should be happy for that.

A. That's true.

Q. But in a capital case where you're judging somebody's life and making a decision whether somebody should get the death penalty or life in prison without release, would you agree with me that it would be important to have people that both favored and disfavored the death penalty on the jury?

A. Yes.

Q. That it would be very difficult to be sitting there as a defendant knowing that everybody on the jury favored the death penalty?

A. If everybody favored the death penalty the person on trial wouldn't have a chance.

Q. Right. So it would be important then to have a mixture of views on the death penalty sitting on the jury?

A. Yes.

Q. And that the only critical thing that any judge or any lawyer ever asks a juror to do is to not go into the jury room with their arms folded; right?

A. That's true.

Q. With their minds made up?

A. That's true.

Q. And that you simply be open to both sides' views?

A. That's true.

Q. Let me ask you, because I know that you are struggling with the question, and I really do appreciate that. If you were sitting on a jury, and your fellow jurors – you had a case before you, and your fellow jurors argued to you if this person is ever permitted to get out of prison, if we don't impose the death penalty and this person ever has a chance to get out of prison, this person will kill again. Would that be something that you would be open to considering before making a decision?

A. I'm not sure I understand the question. Are you asking me if there was no – if there was a possibility of parole or possibility of him being released from prison or being put to death?

Q. Or escaping?

A. Or escaping.

Q. If your fellow jurors took the position with you and argued to you, if this person does not get the death penalty, he or she will kill again, and you became persuaded of that, would you be open to considering the option of a death sentence?

MR. LAPHAM: Your Honor, I'm going to object to that question. I think this is the same type of hypothetical that you ruled against the other day. It's also an improper hypothetical because simply being able to vote for it in some extreme case –

THE COURT: I know you are correct under law, and I don't recall my ruling the other day. But I think it would be easier to allow the question than to have extended debate over this matter.

MR. LAPHAM: Very well.

Q. BY MS. CLARKE: Do you have it in mind?

A. I think I would stay with my belief and say, no. Let's keep him in prison. I couldn't vote for the death penalty sentence under that. I believe in the way our prison system works and the justice system, that they would be able to keep him incarcerated successfully.

Q. Can you think of a circumstance, a kind of case so bad, a kind of crime so horrible, a kind of person so bad that you could consider the sentence of death?

A. There are a lot of crimes that I know are so bad, what you are trying to imply, that you could think about, yes, that person should be put to death because he did this horrible thing. But you also have got to give that person time to repent for whatever crimes he done, regardless of how horrible it is. If you put a person to death you might be, in my own thoughts, as bad as that person. You're condemning a person to death for whatever horrible crimes he did or she did, and you're putting yourself down to his or her level.

Q. So that would be something you could not do?

A. No. Something I could not do, and I don't want to do.

MS. CLARKE: I thank you.

PROSPECTIVE JUROR NO. 100: Thank you.

MS. CLARKE: We'd stipulate, your Honor.

MR. LAPHAM: Yes, your Honor.

THE COURT: All right. Thank you, sir. I'm going to excuse you. You can return to the room where you have been, and you will be excused from further participation. (Prospective Juror No. 101 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 101st randomly selected juror. It's possible we could refer to you by that number during this questioning.

Let me ask you this question as a preliminary question first. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. No. There is not.

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

A. I have avoided doing so.

Q. Have you been completely successful in that effort?

A. Not completely, but I have not read anything about it. And every time it comes up as a topic, I'll shift the topic, or if it comes on television, I'll shift the channel.

Q. I appreciate what you have been doing. That's exactly what I had hoped a prospective juror would do, and that's consistent with the order that I gave the jurors in connection with the Cal Expo summons.

Despite your efforts, have you heard things about it?

A. I remember hearing something about his brother, but I didn't listen long enough to find out exactly what that was. And I know you were doing some pretrial motions, but I don't know the contents.

Q. Have you had any discussions with anyone concerning the case, or have you overheard any discussions about the case since Cal Expo?

A. No.

Q. I'm going to direct your attention now to the time period before Cal Expo. Can you tell me what information you have received about the case prior to Cal Expo?

A. I just remember seeing in the – not the paper, but the television, the standard news reports with a passing interest, nothing special.

Q. I'm asking this question with two things in mind. We need to know what information you actually received so that we can objectively evaluate how that information could possibly have an effect on you, and then I'm going to be asking you how the information affects you. So on the one hand we are looking for information that will allow us to make an objective determination, and then we are going to be asking you to tell us what's in your heart about how the information could have affected you.

A. Okay.

Q. Can you share any details about the information you've received concerning the allegations in the case that you can recall?

A. I remember Mr. Kaczynski's arrest. I know a little bit, just probably average, about what the Unabomber is accused of doing. I live in Sacramento. I was here. I remember at least one of the bombs that was attributed to the Unabomber. So I'm aware of that.

Q. Tell me more about what you are aware of.

A. Just a news report that the bomb happened. It was attributed to the Unabomber at some point in time, and I do remember Mr. Kaczynski's arrest, and that he was accused of being the Unabomber.

Q. Do you know the location of the bomb that you're referencing?

A. Downtown Sacramento.

Q. Have you received any allegations about evidence that could possibly be introduced in the case?

A. No.

Q. Did you read anything about a cabin?

A. I remember seeing a picture of it on the news.

Q. Were you exposed to any allegations concerning anything to do with the cabin?

A. I remember vaguely where it was. I don't remember if they found anything in the cabin, or it seems to me that they said he lived there quite a long time. And presumably, perhaps, that some of the activity constructing the bombs may have occurred there.

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

A. No.

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

A. Yes.

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

A. Yes.

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

A. Neither.

Q. What are your views on the death penalty?

A. I don't know that I can say it's particularly effective as a crime deterrent, but I don't have a moral problem with the death penalty.

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

A. Yes.

Q. Would you automatically vote against the death penalty in this case regardless of the facts or circumstances?

A. No.

THE COURT: The parties may conduct questioning.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning. My name is Stephen Freccero. I'm one of the prosecutors in this case. I just want to ask you a few quick follow-up questions. Is this your questionnaire here?

A. Yes.

Q. Okay. Maybe I could ask you a couple questions about that. If you could turn to page 26 and look at question 105, it was a question about the death penalty, and you wrote, "I'm not sure it does anything as currently employed". And I was just wondering if you could explain what you were thinking about when you wrote that answer?

A. Just as a social system, I'm not sure it serves as an effective crime deterrent.

Q. Do you think that view in any way would affect your ability to listen to the instructions if you were a juror in this case?

A. No.

Q. All right. Whatever personal views you have, would you be able to put them aside and listen to the evidence in this case and follow the instructions?

A. I'd follow the instructions. Yes.

Q. In regards to you were asked a number of questions about some of the things you heard or saw before you went to Cal Expo about events that might pertain to this case. Do you feel confident that if you were called as a juror in this case you would be able to differentiate between the evidence that you actually saw in court versus something you had heard outside of court?

A. Yeah.

Q. Do you feel confident that you could put aside any impression you might have formed prior to becoming a juror and concentrate simply on the evidence presented here?

A. Yes.

MR. FRECCERO: All right. No further questions. Thank you.

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 if I could too. Do you have your questionnaire there?

A. Yes.

Q. I think if you to turn to page 11, I think this is what I want. In question 41 you talk about getting your initial questionnaire last year.

A. Uh-huh.

Q. It was last year you got the first questionnaire?

A. It was either a week or two after we found out the trial was going to be in Sacramento that I got an initial potential jury for the Federal Court, and I just assumed because of the timing that this was probably – I may be a potential juror on this case.

Q. So you actually tried to avoid the publicity since way back maybe June or July a year ago?

A. Yes. I have.

Q. I thought that was what you were saying, but I didn't know when those questionnaires went out. Well, based on your knowledge about the case, whatever exposure you either had prior to that time or inadvertently since that time, do you have any preconceived opinion as to whether Mr. Kaczynski is guilty or not?

A. No. I don't.

Q. Do you have any preconceived opinion as to what is the proper sentence for the Unabomber?

A. No. I don't.

Q. You're open-minded on that also?

A. Uh-huh.

Q. If you could look at page 21, question 82, is that incident going to have any effect on your ability to sit as a juror in this type of case?

A. I don't think so.

Q. And as I understand it, you have – you were a juror in a civil action back in – a while back?

A. Yes.

Q. You understand in a criminal action a higher standard of proof is imposed on the Government than you applied there?

A. Yes. I do.

Q. And you will have no problems following the judge's instructions?

A. No. If I get good instructions I'll be fine.

Q. Okay. You'll get good instructions. Let me just ask you, this case is different than other criminal cases in some ways because it's a capital case involving potentially the death penalty. So I think Judge Burrell has explained to you that there would be a trial at the beginning, what he has referred to as the guilt or not guilty part of the trial, and the prosecution would present their evidence showing guilt, or what they think will show guilt. Defense can present evidence. It's not required to.

Judge Burrell would instruct the jury, and then the jury would go and deliberate on guilt or innocence of the charges against Mr. Kaczynski. There is 10 of them. Two of those charges – and the jury then would determine whether the prosecution had met their burden of proof beyond a reasonable doubt as to those charges. Two of those charges carry the potential penalty of the death penalty, of execution, and those charges involved either mailing or transporting a bomb with intent to kill, resulting in the death of a gentleman by the name of Gilbert Murray.

If the jury were to find beyond a reasonable doubt that Mr. Kaczynski were guilty of either or both of those charges, there would be a second trial, what Judge Burrell has referred to as either a sentencing or penalty phase of the trial. Now, at that point the same jury that had determined guilt beyond a reasonable doubt would have to select the punishment to be imposed for those offenses, and the judge would instruct the jurors that the possible sentences are execution, the death penalty, or life in prison without possibility of release. And that means what it says, because in the Federal system there is no parole, or a lesser sentence.

At that second trial, that penalty phase of the trial, the prosecution would present what we call aggravating evidence. And what that is is a legal term that encompasses any evidence about the crimes or Mr. Kaczynski that the Government feels points to death as the proper sentence.

Then the defense can present what we call mitigating evidence. That's the reverse side, which is anything about Mr. Kaczynski or the crimes that would point to life as the proper sentence, something less than death. And then the judge would give you instructions, but would pretty well tell you that it is the decision of the jurors between those two sentences.

Can I ask you, if you sat on a jury that found Mr. Kaczynski guilty in the first phase beyond a reasonable doubt of these crimes, of mailing or transporting a bomb

with intent to kill resulting in death, would you enter the second phase with any preconceived thought as to what the penalty would be?

A. Assuming I would get, again, instructions on how to apply the aggravated or mitigating circumstances.

Q. I'm just talking about when you just go in, You found him guilty before it starts. Would you go into that before you have heard anything with any preconceived opinions as to what the penalty should be?

A. I don't think so. I don't know because I haven't seen the trial and the evidence, but I don't think so. If the criteria is different, I would apply a different criteria.

Q. Okay. Then do you think you would have any difficulty in listening to whatever the prosecution presents in this nature of aggravating pro-death evidence, and what the defense would present in the nature of mitigating anti-death, pro-life evidence, and then listen to the judge's instructions in making your own determination on that?

A. I think so.

Q. You don't see any problem with that?

A. No.

MR. DENVIR: Thank you.

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

(Prospective Juror No. 140 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 140th randomly selected juror. We may refer to you by that number periodically throughout this questioning.

Is there any reason why we shouldn't continue to consider you as a possible juror for service on this case?

A. Well, I personally don't think I would be a very good witness because I don't know anything about this case. I don't particularly care to know anything about it, and I don't see how I could help.

Q. Well, we actually prefer to have individuals that don't know a lot of information about the case, because it is our preference that the defendant be judged by evidence that's presented here in this courtroom.

Have you been exposed to any information about the case at all?

A. Not very much, just what I've learned coming over here and on the letter, that he is called the Unabomber. I don't read the newspapers because I don't believe in what they have to print. I don't watch television, and I certainly don't listen to the radio. So I am sorry. I'm a reader. I don't know that much about what's going on here, but I certainly don't want to.

Q. I have an objective that I'm going to try to accomplish, and I'm going to tell you the objective so that you can be mindful of it. One thing I'm required to determine as a judge is whether a prospective juror has been exposed to pretrial publicity that surrounds a case. This case has received considerable pretrial publicity, and I feel that

I'm obligated under the law to ask you questions. So despite your answer I'm still going to probe a little bit. I just want you to understand why I'm probing.

I'm obligated to ask you questions so that I can unearth any information that you have about the specifics involving the case, or even if it's not specific, generally about the case, so that I can independently make a determination as to the nature of your exposure and how it could possibly have affected you. And what you have related thus far, I interpret as being your subjective opinion about your exposure to information and how it has affected you.

What do you know about the allegations concerning this case?

A. Just what you said today, and also that he is called the Unabomber. I don't know that much.

Q. Had you heard about the so-called Unabomber before you received my letter that accompanied a summons requiring you to appear at Cal Expo?

A. Actually, no. I hadn't.

Q. Can you search your memory bank and tell me if there are any other things that you have heard about the case, other than what you have told me to this point?

A. I can't help because I don't know that much. I mean, what I know is what you just told us and on the letter. So I'm not very much help.

Q. Is the bases of the information you have about this case the information I gave you about the case?

A. Yes, just earlier, just what you read off.

Q. You don't have information – I'm sorry. I cut you off. I didn't mean to do that.

A. I really don't know anything about him, so I can't tell you anything. I don't know anything.

Q. Okay.

A. And I don't know anything, I don't know anything.

Q. You've never discussed any of the allegations concerning this case or the so-called Unabomber with any of your friends or overheard discussions about it?

A. It's not of interest. No.

Q. Okay.

A. I'm not interested. What can I say?

Q. If you are selected as a juror in this case, do I have your assurance that Mr. Kaczynski will start this case, in your eyes, on a clean slate? Meaning that it sounds like you haven't heard anything so you have to start this case on a clean slate; right?

A. Yes.

Q. Good. And there is a doctrine called the presumption of innocence. Could you give Mr. Kaczynski the benefit of that doctrine if you are a juror on this case? You would presume that he is innocent until evidence is presented that shows you otherwise?

A. Yes. I thought we were all presumed innocent.

Q. That is a basic fundamental principle of our nation, and you're right. Do you consider yourself a proponent or opponent of the death penalty?

A. I voted for the death penalty.

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

A. I'd have to hear – I'd have to hear what it was. I voted for the death penalty because I believe that it's necessary to have it there if it comes down to being needed. But I don't particularly say that everyone has to have that happen if they are guilty. So I don't know. I would just have to wait and see.

Q. Okay.

A. I'd have to hear the whole thing, but I don't want to hear anything. So I just – I don't want to be here.

THE COURT: All right. I'll let the parties question.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good morning.

A. Good morning. I'm glad you're smiling.

Q. And I certainly understand your feelings about not wanting to be here. My name is Judy Clarke. I'm one of the lawyers for Mr. Kaczynski. It sounds like from your questionnaire that you're self-employed?

A. Yes.

Q. That you sort of run your own hours?

A. Yes.

Q. And you make your money if you are out there being able to do what you do?

A. Uh-hum.

Q. Would that cause you any problem with this case?

A. No. Because I do what I do on a voluntary basis anyway. I make my money because I help other people improve their health. So my husband takes care of us.

Q. So the fact that the case may take somewhere between two and four months, five days a week –

A. Now I know I don't want to be here.

Q. Does that cause a problem? I think the judge mentioned to you when you were sitting here, of course –

A. It doesn't, but I think it would be a waste of my time.

Q. Could you help us understand that?

A. Well, because this is my time of the year to travel, and I want to travel. I don't want to be sitting in a courtroom with anybody. I know you guys are out there smiling, but it's true. This is the holiday season.

Q. Did you hear the holiday schedule that the judge –

A. Yes, I did. I did.

Q. Would that be a problem for you?

A. No.

Q. Other than that you would rather not be here?

A. Yes. I'd rather not be here.

Q. I've heard you say that several times. Do you think that feeling might make you a little distracted as you were here? Do you think you would hold that against somebody somewhere?

A. No, that I wouldn't. I wouldn't hold it against them or you or anyone else for that matter. It's just that there are a lot more positive things to be doing than sitting in a courtroom.

Q. I've heard a lot of people say that before. I'm hearing what you say. Do you want to ask the judge to be excused, or can you bear with us and go through a few more?

A. I can answer some questions if you want.

Q. You are here today?

A. Uh-huh.

Q. The judge asked you quite a few questions about what you heard about this case, and it sounds like you really hadn't heard or read much of anything.

A. No. I haven't.

Q. Do you recall when Mr. Kaczynski was arrested?

A. I don't even know him. No. I don't.

Q. That just didn't come across your screen on the T.V.?

A. I don't watch television. I know this sounds nuts, but I do not watch television. And I do not listen to the radio, and I do not take a newspaper. I don't do it. It's my choice, and I don't want the knowledge, the garbage. I mean, it's just garbage that's on television, and it's garbage that's coming through the newspapers and the radio. They have so many advertisements, I don't listen to any of that stuff. Sorry.

Q. I think you were pretty clear about it in here, garbage in, garbage out?

A. Exactly. I mean when we drove up across the street, I mean, that's just a fiasco over there. I mean, why in the world – who is this guy? What has he done?

Q. Does that make you think anything particularly about him?

A. Well, I'm just curious as to exactly who is he, and what he has done. But I don't dare ask because I don't want any more –

Q. Because you don't want to know?

A. No. I don't want to know. I just don't want to know.

Q. You are kind of curious about it but really don't want to know?

A. Yes. I'll just wait until everything is over with, and down the line somewhere somebody will say something.

Q. And you'll have to listen?

A. It will come across the table topic or something, who knows.

Q. Do you think the way you're feeling about this right now you would really just sort of say, let me out of here right now. I don't want anything do with this?

A. Well, sure. Wouldn't you? I mean, seriously.

Q. Maybe we should switch these roles a little.

A. I mean seriously, wouldn't you?

Q. Is it such an aggravation for you that you think, I'm just not willing to sit still for this right now?

A. No, not really. No. It's okay.

Q. If I could, let me ask you, you served as a juror before?

A. Yes.

Q. How was that experience?

A. Interesting. We made some good friendships out of the jurors. It was good.

Q. When you went into that jury service, did you feel like you're feeling now about this possible jury service?

A. Yes.

Q. But you were able to go through it and actually sit as a juror?

A. Yes.

Q. And it felt like the experience was a positive one for you?

A. Yes. It was.

Q. Does that sort of affect you as you're thinking about about the potential for sitting here?

A. Well, I'm sure there will be some positive things that come out of it, yes, if I'm chosen, which I really don't think you want me. I really don't think you need me. There were 600 people back there at that Cal Expo thing. I really don't think you need me.

Q. It's simply a numbers thing?

A. Yes.

Q. It's not anything in particular that you're thinking or feeling?

A. No.

Q. If I could take a moment and ask you about your feelings about the death penalty, you said that you voted for it as a in California?

A. Uh-huh.

Q. Yes?

A. Yes. I did.

Q. And basically your reason was that you felt like it should be there if it were needed?

A. Yes.

Q. Can you help us understand when you believed that it might be needed?

A. Well, the courts would decide whatever is necessary.

Q. Actually, that becomes an individual juror decision when there is a case that is eligible for the death penalty. The judge will tell the jurors to weigh what the Government says and weigh what the defendant says.

A. But what are the facts? You know, you have to deal with the facts. What are the facts, and let the facts weigh.

Q. I guess what I was wondering is what was going through your mind when you were thinking, I'll vote for the death penalty because it should be there if it's needed. What sort of circumstances were you thinking about when it might be needed?

A. Well, I actually didn't think of any certain circumstances. I just think it would be as a deterrent. They will only do it once. They are not going to come back and do it again.

Q. A deterrent for, what kind of crimes were you thinking about?

A. I just wanted it as a deterrent, you know, like a reprimand. You're going to have time out, or you are going to get spanked, one of the two, you know, for a child. There is going to be a reprimand.

Q. Right.

A. Well, for an adult, they should know better, so in turn there should be some type of reprimand. What can I say? I thought it was a good thing to have. I don't necessarily mean that everybody that comes through has to have it happen, but let the facts decide.

Q. And I guess what I'm sort of probing with you is, what kind of facts are there that you would want to look at to help you make that decision?

A. I hadn't thought about it. I really hadn't thought about it.

MS. CLARKE: Your Honor, could I ask if the juror can have her questionnaire?

THE COURT: It's next to her on the right. I think that's hers.

Is that your questionnaire?

PROSPECTIVE JUROR NO. 140: Yes.

Q. BY MS. CLARKE: Could you go to page 27?

A. Okay.

Q. Question 107, do you see the checklist of questions?

A. On 27?

Q. On page 27, question number 107.

A. Yes.

Q. Do you see that list of checkoffs? Are you with me? And the first one said, "Anyone who plans and commits a murder should get the death penalty," and your comment was, "It depends on the reasons," and you put in parentheses, "self-protection".

A. Well, if someone committed a murder in order to protect their own life, why should they get the death penalty when they are just protecting themselves?

Q. Are you thinking when it's self-defense, if you are attacking me and I take you out, I kill you, then that's self-defense?

A. Yes.

Q. So they may not be guilty of a murder?

A. Exactly.

Q. So you wouldn't impose the death penalty?

A. No.

Q. If they weren't guilty of a crime basically?

A. No. I wouldn't, but yet that could be construed as being a crime because a person has died. So that's why I say it just depends on the facts.

Q. What about the second one down, "Anyone who deliberately murders two or more people should get the death penalty," and you again say, "What are the facts behind these questions"; right?

A. Right.

Q. What are you thinking when you say that?

A. Okay. Say for instance that a person is driving, and there is a car accident. And in turn they murder someone because of their drunk driving. Does that necessarily make them murderers?

I mean, they purposely went out and they drank, but does that mean that they should get the death penalty because those two people or three people or four people that were in the car died? I'd have to have all the facts on it.

Q. I see. And on the third one where it says, "Any person who commits an act of terrorism in which someone dies should get the death penalty," you marked, "strongly agree". And then you have the question, "What are the facts?"

What were you thinking when you marked, "Strongly agree," and the question about the facts?

A. Okay. Say, for instance, somebody was going to be – what would be an example?

Okay. Say, for instance, someone wanted to do something in particular that was considered terrorist to some people, but it wasn't terrorist to the person that was doing it. What are the facts?

Q. Can you give me an example of what you're thinking about?

A. Say, for instance, a person was going to hijack a plane, and they hadn't intentionally – I know this is just grabbing stuff out of the air, because I never thought about even having to answer this kind of stuff. Say they were on a plane, and all of a sudden they got this emergency where they had to have the plane turned around or something of that nature. And they weren't going to turn it around, so then they hijack the plane.

Okay. If there was a life and death situation then they would have to turn that plane around. I mean, if they took the responsibility of saying, "I have to take the leadership role," and then they just took over the plane, what could I say? But if it were a group of terrorists from another country, or our country, that said that they were going to purposely plan this all out, I'd have to say yes, if they killed people. I'd have to say yes if they purposely did it, but, I mean, if somebody hadn't planned to take over – I tell you I'm nervous about being here.

Q. I can understand that. Where would you put mailing bombs through the mail with an intent to kill or injure? Would that be a terrorist act?

A. I would think so.

Q. Can you think of a reason that might excuse that kind of conduct?

A. I don't think so. But the bombs, are they prepared? Are they – I mean –

Q. A bomb is built, sent to a person through the mail with the intent to kill or injure that person.

A. With an intent to kill?

Q. Sure.

A. Oh, hon, I'd have to say I'm strongly against it, definitely against it.

Q. Against what?

A. Against –

Q. Against doing that?

A. Yes.

Q. What do you think the appropriate penalty is for that?

A. Someone got hurt?

Q. Killed.

A. I would have to say I am definitely in favor of the death penalty.

Q. And if you were on a jury –

A. If they purposely took – I mean, is that what you've done?

I mean, is that what he did or supposedly have done? I mean, is that what he is –

Q. The allegations in this case are that a bomb was mailed to the California Forestry Association with the intent to kill or injure, and it was opened by a man name Gilbert Murray. And it killed him.

MR. FRECCERO: Your Honor, the Government interposes an objection as to fact specific questions.

THE COURT: Sustained.

Q. BY MS. CLARKE: If you were on a jury, or you were being asked to make a decision on the death penalty, and you made a finding that the person planned and intended a murder and carried that out – are you with me?

A. Yes.

MR. FRECCERO: Your Honor, the Government would object as to the word, "planned". That was not part of any charge in this case.

MS. CLARKE: I'm certainly not asking to prejudge –

THE COURT: How do you reconcile that objection with your other objection? The other objection was that it was fact specific, and now you're telling me that it's a fact that's not involved in the case. That would seem to be an appropriate question based upon your other objection.

MR. FRECCERO: My objection would be that planning, substantial planning is one of the statutory aggravating factors that the Government has listed, and therefore that would be an issue as to the penalty phase.

THE COURT: I don't understand your objection. Therefore it's overruled.

Q. BY MS. CLARKE: If you made a finding of a premeditated, planned, deliberate, intentional murder, that's what you made your finding, that the person was guilty beyond a reasonable doubt of that, what would be the appropriate penalty?

A. Well, there were three options.

Weren't there just three options? Didn't you offer three options?

THE COURT: She is supposed to be asking the questions. I did tell you there were three options.

Q. BY MS. CLARKE: What I'm asking you is to kind of look inside your heart and tell us what you think would be the appropriate penalty for that conduct.

A. And we had facts and that was the end, bottom line that had been done?

Q. Yes.

A. I don't know. At this point I don't know what I would do. I really don't know what I would do.

Q. Can I ask you to look at question 106? Are you still on page 27? Are you with me?

A. Yes.

Q. It's sort of a question about what books, movies, television programs have you read about, and you mention the book of Matthew.

A. Yes, the bible.

Q. What is the story that you are referring to in Matthew?

A. Oh, I had just finished reading about Jesus. So that was it.

Q. And what was the story in Matthew that made you reflect on the death penalty?

A. Well, Jesus was kind, and he was giving. And he gives us a second chance. We can do things that are wrong, but he gives us a second chance. We can change our lives.

Q. Was the story, "Let he who is without sin cast the first stone"? Is that the story?

A. Well, part of it.

Q. How does that make you reflect on the imposition of the death penalty?

A. That's why I said I don't know what I would do at this point in time. I'd have to know all the facts. I'd have to know what is what. But just to tell you exactly what I would do, I don't know. I really don't. That's why I said I don't want to be on this case. I don't really know anything about it, and I don't want to know anything about it.

Q. Do you think those feelings, given the concern you would have about having to make this life and death decision, would make it very difficult for you to serve?

A. No. I could say no to that.

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

THE COURT: Yes.

Q. BY MS. CLARKE: Just a couple more questions. Could I ask you what church you belong to? Not what specific church, but what religious affiliation you have?

A. Christian, Protestant.

Q. A particular type of Protestant religion?

A. Why?

Q. Well, I want to explore a little bit with you –

THE COURT: Answer the why question.

PROSPECTIVE JUROR NO. 140: What does my –

THE COURT: Let me take over.

MS. CLARKE: I think I'll go on to another question. Thank you, your Honor.

PROSPECTIVE JUROR NUMBER 140: Thank you.

Q. BY MS. CLARKE: I don't want to obviously ever put you in a position of having to reveal something you really don't want to.

A. If I say exactly where I'm at, then the news media, if there is anybody in here, would know. So, excuse me.

Q. I don't want to do that to you. Have you had any sermons at your church or any discussions during the Sunday services about the death penalty?

A. About the death penalty?

Q. Uh-huh.

A. No. I don't think so.

Q. Do you know your church's position on the death penalty?

A. No.

Q. Have you ever talked about it in the context of your religious activities?

A. No.

Q. Other than you're reading of the book of Matthew?

A. No. That's my personal – no. That's politics. No. I don't, and I really don't think it's anybody else's business.

Q. Any of my business, and I'm sorry for inquiring.

A. No. I mean anybody's business, what my political or my religious ideas are.

MS. CLARKE: Thank you.

VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Good morning, ma'am.

A. Let's make it a good morning.

Q. My name is Stephen Freccero, and I'm one of the prosecutors in this case. I just have a few brief questions.

If you were chosen as a juror in this case, and you found the defendant guilty, there would then be a second phase where you would consider alternatives as to punishment. Do you have any personal belief that you think would interfere with your ability to listen to the instructions of the judge and consider the facts presented?

A. No.

Q. Do you think you could keep an open mind until you had heard all the evidence presented and listened to the instructions before deciding what punishment should be imposed in a case?

A. Yes.

MR. FRECCERO: No further questions. Thank you.

PROSPECTIVE JUROR NO. 140: That was fast.

THE COURT: You can take the juror to the adjacent room.

PROSPECTIVE JUROR NO. 140: Thank you.

THE COURT: We have just covered all jurors summoned for this morning. You wanted to cover another matter. Do you want to do that now?

MR. DENVIR: Yes, your Honor, if we could at side-bar.

THE COURT: Okay.

(Whereupon a bench conference was had but not herein transcribed.)

THE COURT: I know I said we were going to cover a matter in public that I thought could be discussed in public, but before we do that I just received a note from one of our jurors. It's juror 44.

The note reads, "Judge Burrell, I would like to speak to you about a personnel matter regarding me serving time on this case." That's juror number 44.

MS. CLARKE: She's been excused, your Honor, by stipulation.

THE COURT: Is that right?

MR. DENVIR: I think we already agreed.

MR. FRECCERO: Yes, your Honor. I stipulated.

THE COURT: Thank you for reminding me of that. I will tell the juror through my deputy clerk that she has been excused.

MS. CLARKE: Your Honor, regarding that other matter, if I could raise that at a later time, I'd prefer to.

MR. LAPHAM: Your Honor, if we have a few minutes I do have an issue on voir dire that I'd like to raise with the Court's permission.

THE COURT: Okay.

MR. LAPHAM: Your Honor, we have now had a number of people, so-called anti-death penalty people, who the defense has attempted to rehabilitate with a line of questioning that goes something like this: You understand that we need to represent all view points –

THE COURT: You don't have to remind me of the questioning. I've been sitting through it.

MR. LAPHAM: Right. There is no specific question that is objectionable that I think we could stand up and interpose an objection to, but the whole line of questioning, I think, is misleading. And it's misleading for this reason. We have to remember that these jurors know nothing about the law, and what counsel appears to be telling them is that it's okay if you have a view diametrically opposed to the death penalty, and you would automatically vote against the death penalty. But it's okay to sit as a juror.

That's not okay. That's not what the law states Witherspoon and Witt both say you're disqualified if you would automatically vote against the death penalty, or even if your views would impair voting for the death penalty. I believe it was juror 100, in your questioning specifically said he would automatically vote against the death penalty and never thought it was justified. And still counsel attempted to rehabilitate him by getting him to agree that it would be important for people like him with his views to be on the jury.

First of all, I think that's an unfair line of questioning. Second of all, it's time-consuming because that then requires the Government to again advise that prospective juror what the real law is, which is that if you can't obey the law and the instructions of the judge, you're simply not qualified to sit. So I just would pose a general objection to that line of questioning. I think it's time-consuming, and it ultimately gets us nowhere.

THE COURT: Okay. Response?

MR. DENVIR: Well, your Honor, I think it's a legitimate line of questioning. The fact that someone expresses an opinion against the death penalty is not dispositive under either Witherspoon or Witt. We should have an opportunity, and I don't think it's excessively time-consuming, to explain to a juror that you don't have to be a proponent of the death penalty.

In fact, at one time I believe the Court was going to advise them that you don't have to be in favor of the death penalty to be on the jury, and that's all those questions lead to. There never has been any statement there that – something along the line that you can be on the jury against the death penalty and unwilling to vote for it. These are when we are exploring their general attitudes as to the death penalty before we get into the question of and how those would affect their ability to serve as a juror.

I don't see where there is anything illegitimate. They don't take a long time. They don't mislead the jury, and we would ask the Court to allow us those questions. I think it's important so we can find out whether their opinions are such that they undoubtedly have strong opinions about the death penalty. But as we said, sometimes those are more of a legislative nature, and they may not impact their ability to serve as a juror once they realize that the law provides for that penalty. So I don't know if it addresses the Court's concerns.

THE COURT: I didn't express concern. It's the Government.

MR. DENVIR: Well, I don't know if it addresses their concern.

MR. LAPHAM: Your Honor, do you want me to respond to that?

THE COURT: If you want to.

MR. LAPHAM: Your Honor, the only point I would make is that these are done by leading questions, and the jurors don't know what the law is. And before they know it, they are agreeing to what sounds like a quite reasonable proposition, that, yes, we want all views reflected on the jury. And really, that's not the issue at all. The issue – you are correct, and the defense is correct, that it's not a disqualification to be anti-death penalty. But it is a disqualification if that's going to interfere – that view is going to interfere with your service as a juror.

So ultimately these questions to get the juror to come around to agreeing to the idea that anti-death penalty views should be represented on the jury, ultimately they don't get us anywhere. Because the point is whether or not that particular juror would have a problem imposing the death penalty or doing his duty as you instruct him.

That's all I would add. It's the leading nature of the questions that is most troublesome as well as the proposition of law that's being stated.

THE COURT: I recognize a leading question, typically, when I hear one, and I understand that sometimes leading questions suggest the response counsel hope to receive. And it's probably true that there are situations where, if such a response is in fact the product of the question, that may very well affect the manner in which the Court credits the answer, but it may not.

I think what is at issue is the type of probing a lawyer should be allowed to conduct in order to determine whether what appears to be the opinion of a juror is in fact that

juror's opinion. I think we are engaged in a difficult process here. It's obvious that serious charges are involved.

I'm reluctant to interfere with counsel's attempt to determine whether the citizens who have given responses truly understand the nature of their opinions, and I think that's what the probing is seeking to unearth. Just as it's in the Government's interest, perhaps, to determine whether a polled death juror opines that the death sentence would automatically be imposed without real consideration of the alternative sentences, it seems to me that the defense should be given leeway to determine whether an anti-death response truly reflects the innermost thinking of the juror.

And that's what we are seeking to search for, is the innermost thinking of the jurors, whether jurors have strongly held beliefs of such a nature that they are closed-minded to anything that clashes with those beliefs. It's probably difficult to develop an approach in questioning that unearths what appears to be a belief, but I don't think I should tell defense counsel that it's inappropriate to do such probing. I think it's obvious by the example we have today when defense counsel conducted with that probing as to the beliefs of one juror, it didn't work.

The defense, I believe, eventually stipulated that because of the responses given by that juror, the juror should be excused for cause. Although I'm open to your views on this issue, at this juncture, based upon the arguments presented, I do not see a reason for the Court to curtail the questioning, and so I choose not to.

Is there anything further to cover?

MS. CLARKE: No, your Honor.

MR. DENVIR: No, your Honor.

MR. LAPHAM: No, your Honor.

THE COURT: Thank you. We are adjourned.

(Whereupon the luncheon recess was taken.)

SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 24, 1997, 1:30 P.M.

—oOo—

THE COURT: Let the record reflect all participants are present. Are you ready for me to have my deputy clerk to bring in the prospective jurors?

MR. DENVIR: Yes, Your Honor.

MS. CLARKE: Yes, Your Honor.

MR. LAPHAM: Yes, Your Honor.

MR. CLEARY: Yes, Your Honor.

(The prospective jurors entered the courtroom.)

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

(The prospective jurors were sworn.)

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

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

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

The voir dire 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 opinion.

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 of the prospective jurors will be assembled later for further questioning as a group. Those required to participate in that group questioning will receive notice as to when it will occur. Our objective is to obtain impartial jurors that will make a determination as to the guilt or the innocence of the defendant based upon the evidence that is presented here in this courtroom and the instructions I will give you on the law.

I've decided to do individual questioning or 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 the possibility of release, or a lesser sentence. This determination is made at the second phase of the trial, referenced as the sentencing phase.

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

PROSPECTIVE JUROR NO. 104: (Raises hand.)

THE COURT: Okay. The record will reflect that juror number 104 raised his hand. And we'll give you a chance to respond further later, sir.

PROSPECTIVE JUROR NO. 104: (Nods head up and down.)

THE COURT: The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur just 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 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 will then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask 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 in order to protect your privacy, as I stated in a previous communication to you.

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

Second, do not talk with anyone else about this case or anyone who has anything to do with it until the trial has ended and you've 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 else about the case until you've been excused by me.

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

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

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

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

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

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

The trial schedule I contemplate having will be from

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

PROSPECTIVE JUROR NO. 108: (Raises hand.)

THE COURT: Juror number 108 raised her hand. We'll discuss it later.

I contemplate observing the holiday season as follows. We will not hold 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 any problem.

There is no response.

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

There's no response.

If you find Mr. Kaczynski guilty of the charges that I told you about in my opening comments to you, then we would proceed to a sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury will be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The Government may focus on certain aggravating factors, things it will urge the jury to find supports the sentence it seeks.

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

Does any juror not understand that?

There's no response.

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

PROSPECTIVE JUROR NO 104: (Raises hand.)

THE COURT: There was one response. It was juror number 104. We will discuss that later.

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

to you in my instructions, whether you agree with that law or not. Do you have any belief that will interfere with your obligation to do that? If so, raise your hand.

PROSPECTIVE JUROR NO. 104: (Raises hand.)

THE COURT: Juror number 104 raised his hand in regard to that question as well.

PROSPECTIVE JUROR NO. 108: (Raises hand.)

THE COURT: And juror 108.

During the questioning process, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under law to protect your legitimate privacy, I may ask some questions in the area that you've 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.

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

(Prospective juror number 104 takes the witness stand.)

(The other prospective jurors left the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you, juror 104, for remaining with us. I'll be referencing you by that number. Did you provide my deputy clerk with this note from the doctor (indicating)?

A. I did.

Q. Okay. Can you tell me the last word on the note?

A. (Examines document.) "Medical problems."

THE COURT: Approach the bench, please, counsel.

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

THE COURT: Sir, we're going to thank and excuse you from further participation in this case. You can return to the room you were in previously. My deputy clerk will help you find the way.

PROSPECTIVE JUROR NO. 104: Thank you.

(Prospective juror number 104 left the courtroom.)

(Pause in the proceeding.)

(Prospective juror number 105 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You can take a seat right there, sir.

A. (Complies.)

Q. You're the 105th randomly selected juror. I may reference you as that number during this process. 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 anything about this case?

A. No.

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

A. I haven't discussed the case. No.

Q. Have you overheard any discussions about the case?

A. Yes.

Q. What?

A. I turn away and walk away. I don't want to know.

Q. Okay. Without telling me the name of the place where those discussions were made, can you tell me where you were located when you heard people discussing the case?

A. A convenience store.

Q. Prior to your appearance at Cal Expo, did you receive any information about the case? Were you exposed to publicity?

A. No.

Q. Pretrial publicity?

A. No, no.

Q. You were exposed to some of the allegations about the case prior to Cal Expo, right?

A. I heard there was a suspect in custody, that's all.

Q. Did you have any ideas of why that suspect was in custody, what the allegations were surrounding that apprehension?

A. No. I didn't know what it involved. (Shakes head from side to side.)

Q. My purpose in questioning you about pretrial publicity is because, as a judge, my understanding of the law that I'm supposed to discharge, follow, it requires me to see what publicity a juror has been exposed to and to determine how the juror, him or herself, believes that he or she has been affected by that publicity. It allows me to – so that's a subjective inquiry. And it also allows me and the parties to understand, objectively speaking, how you were affected by the publicity. And so I want you to search your mind and tell me what you can recall hearing about the case just – ever.

A. I don't know. I've heard somebody called themselves the Unabomber and they were sending packages in the mail, and that's all I really know about it. And that's – then I heard that they had a suspect. And that was all.

Q. What do you know about the packages that were sent in the mail?

A. I don't know nothing. Nothing at all.

Q. Have you received any information that any of the packages contained explosive materials?

A. Could you repeat that again. I'm sorry.

Q. Have you received any information that any of the packages allegedly contained explosive materials?

A. I – that's what I heard. I haven't received anything about it.

Q. I'm trying to find out what you heard.

A. No, no, I'm pretty – I don't know anything about it.

Q. No, but you heard that, right?

A. I heard, yes, that there was a bomb, a certain thing yeah, a certain thing, there was a bomb in a package that blew up.

Q. Have you heard or did you read anything about a cabin associated with the allegations involved in this case?

A. I heard that Mr. Kaczynski was picked up in a cabin somewhere in the hills somewhere. I don't know where. That's all.

Q. Did you receive any information concerning any items that were allegedly taken from that cabin?

A. No. Nothing.

Q. Anything else you can tell me about what you heard or read about the case?

A. I haven't heard or read anything about it. Just what I have heard, gossip, that's it.

Q. Gossip?

A. Just the gossip I heard in the convenience store; that's it.

Q. I want to hear the gossip.

A. Someone was saying they got the guy, they got the so-called suspect for the Unabomber. But that's all I heard, and well, I never made it an issue for myself to keep up on it, that's all.

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

A. No. I don't – I don't believe any of it until I hear the case, I don't – he's just another person, as far as I'm concerned.

Q. From your perspective, will Mr. Kaczynski start this case on a clean slate?

A. Yeah. I – yeah. I don't know the man. I don't know anything about it.

Q. Does he begin this trial, in your eyes, cloaked in the presumption of innocent?

A. Yes. He's innocent until proven guilty.

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

A. (Pause.) I think I would have to hear out the case before I could make a decision like that.

Q. What are your views on the death penalty?

A. I really don't have very much views on the death penalty. I never really heard of anybody getting executed from the death penalty, and I don't know – I – I really don't have any desire to really know that much about it, but I mean, if that's – if we have to make a decision –

Q. You're not against the death penalty?

A. No.

Q. You're not necessarily for the death penalty?

A. Not necessarily, no.

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

A. (Pause.) Yeah. I could consider less than death. Like I said, I don't know unless I hear it. I don't know what I'm dealing with.

Q. I may have the wrong impression when I make the statement I'm about to make. I thought you sort of paused before you answered that question. Am I wrong about that, or did you sort of pause?

A. I just was trying to make sure I'm understanding your questions properly.

THE COURT: Okay. That's all. I'm going to allow the parties to ask you some questions.

VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon. My name is Robert Cleary. I'm one of the prosecutors in the case, and I want to follow up on some of the questions that Judge Burrell was asking you.

First, on the issue of publicity. Like – let me do this. Let me give you a copy of your questionnaire.

A. Okay. (Accepts document.)

Q. Ask you to turn to page – well, it's question 29. I'm not sure what page it's on. It's page 7.

A. Yeah.

Q. And you were asked some questions there about the extent to which you followed the media. Am I correct that you don't really read the newspaper that often?

A. No. If I read the newspaper, I'm looking in the classified; that's basically it.

Q. And how about the TV news? How often do you watch the TV news?

A. Very rarely. I sometimes watch the weather a little bit, because I'm a farmer by trade, and I have to watch the weather to see if we're going to have to spray or things to farm my crops.

Q. That's because you spend so little time reading the newspapers or watching the news that you don't have those as a source of publicity about the case; am I correct?

A. Yeah. I don't listen to too much news. If I listen to anything in the news it's just the weather and, like I said, the papers, just strictly the classified.

Q. And you're self-employed, I take it?

A. Yes.

Q. Is that going to be a problem at all for you in terms of sitting five days a week 8:00 to 1:00?

A. I don't believe – this is my slow time of the year. So I think it'll be okay.

Q. So you'll be able to do that, then, correct?

A. Yeah.

Q. Turn to question 45, please. Which is on page 12.

A. (Complies.)

Q. Are you having a little trouble finding that?

A. I've got it.

Q. You've got it?

A. Yeah.

Q. You indicated in response to that question that you have some respect for law enforcement officers; is that right?

A. That's correct.

Q. Okay. Do you know any, personally know any F.B.I. agents or postal inspectors?

A. No.

Q. You realize that each person, if you sit as a juror, you're going to have to judge the credibility or believability of each person who testifies from the witness stand; you realize that, correct?

A. Yes.

Q. And you realize it, I take it, that every case, every case in which you would sit in judgment as a juror has to be decided on its own facts, the evidence presented in that case, right?

A. That's correct.

Q. And you recognize that, as in any profession, there can be good law enforcement officers and bad law enforcement officers?

A. Yes.

Q. Would you be able to sit in judgment and fairly assess the credibility and believability of any law enforcement officer that testified in court here?

A. Could you – ask that question one more time.

Q. Sure. Let me rephrase it, because I don't think it was a very good question. Would you be able to assess or judge the believability of any law enforcement officer that testified before you if you were sitting as a juror in this case?

A. Sure. I wouldn't let that render a decision for me regardless whether he was a peace officer or not.

Q. And is there anything about the fact that there may be a number of federal law enforcement officers and perhaps local law enforcement officers testifying for the prosecution side in this case, the fact that that testimony is presented, would that cause you to believe those witnesses more than any other witness?

A. No, I, whatever – like I say I'm going to judge by who they are. You can't really judge somebody that way.

Q. And if Judge Burrell were to instruct you that the law enforcement officers that testify in this case are entitled to no greater weight and no greater credibility or believability than any other witness as in any other profession, would you follow that instruction?

A. Yes.

Q. I want to ask you some questions now about your views on the death penalty.

A. Okay.

Q. If you could turn to question 108, please, which is on page 28. Are you with me?

A. Yeah.

Q. You indicated in response to that question that the death penalty may or may not be used depending on the circumstances presented; is that right?

A. Yes.

Q. Now, I take it you don't know anything about the federal death penalty statute, the law governing death penalty cases in federal courts?

A. No.

Q. This was your own personal view, that it may depend on the facts and circumstances of the case, right?

A. Correct.

Q. If Judge Burrell told you what facts and circumstances you should consider, would you be able to follow his instructions on that?

A. Yes.

Q. If Judge Burrell's instructions to you on what facts and circumstances to consider in judging the question of whether the defendant should be sentenced to death or not – those instructions differed with your personal view, would you be able to set your personal view aside and follow Judge Burrell's instructions on the law?

A. Yes. I'd have to follow his instructions.

Q. And you feel confident you can do that?

A. Yes.

Q. Turn to the prior page, please, question 107.

A. (Complies.)

Q. You indicate there that you strongly agree with a number of the propositions set forth, correct?

A. Yes – on the first one, I, I mean, I would have to think about that but, yeah, I wrote everything "strongly agree." Oh, except for the last one, "agree somewhat."

Q. Focusing on the top three ones where you say you "strongly agree," can you envision situations where because of the unique facts, particular facts of the murder or the act of terrorism, whatever it may be, because of the unique or specific facts of the case, that perhaps the death penalty would not be appropriate in that case?

A. Could you repeat that question. I lost it.

Q. Sure. Let me try it this way. You recognize, don't you, that there are certain – there can be certain more aggravated murders and certain less aggravated murders, correct?

A. Correct.

Q. Can you envision situations where you would have a murder of one person or a murder of two people or an act of terrorism that caused the death of an individual where the facts were less aggravated, or there were other particular circumstances

involved in that crime that would cause you to believe that the death penalty would not be appropriate in that particular case?

A. Yes. I mean, I mean, I would have to listen to the facts before I could make the judgment.

Q. And if there were facts or certain circumstances about the defendant who had committed murder or double murder or an act of terrorism resulting in the death of someone, can you envision a situation where there would be certain unique circumstances about that defendant, for example, he was mentally retarded, in which you would consider it inappropriate to sentence him to death?

A. Yes.

Q. And so too, if the defendant acted under duress, he was being forced either literally or figuratively, someone was holding a gun to his head to cause him to commit the murder or the act of terrorism, would that be another situation in which you would consider not voting for the death penalty?

A. Yes.

Q. So, too, if the defendant had, was the product of an abused childhood and an abused life, might you judge him differently than someone who did not have that unfortunate circumstance in his background?

A. I would have to think about that, I believe.

Q. You would have to think about the circumstances of an abused childhood?

A. Yes.

Q. As we go through that, can there be other examples for you in which you would distinguish between a person who committed murder – in some instances it may, in your view, warrant the death penalty and in some instances it may not warrant the death penalty?

A. I can't think of anything at this time.

Q. As you mentioned a few moments ago, you would have to wait to hear all the facts and circumstances; is that correct?

A. That's correct.

Q. Is that because in your view it would be inappropriate to determine the punishment, the proper sentence until you've heard all the evidence?

A. That's correct.

Q. And is that because there may be what we call mitigating circumstances – mental retardation is an example or duress is an example of mitigating circumstances – that you would not know until you've heard all the evidence; is that correct?

A. That's correct.

Q. And if Judge Burrell told you what certain mitigating circumstances were, would you be able to follow the judge's instructions on the law and consider those mitigation, that mitigation, those mitigating circumstances, in determining whether to vote for the death penalty in a particular case you were sitting?

A. Yes.

Q. On the last part of that question, question 107, you say that you "agree somewhat" that a person's background does not matter. What did you take the question to mean? And in particular I'm focusing on the word "background." What did you understand the word "background" to mean?

A. Well, I just – you know, that's just . . . I got to judge everybody fairly, evenly.

Q. Mm-hmm.

A. Regardless where they came from.

Q. Can you tell me a little bit more? I had a little difficult time understanding what you're talking about, and again in particular I'm asking about that last part of 107 and what you were referring to when you answered the question about "background."

A. (Pause.) Well, I think the question – I don't think anybody's up and above the law. I think I just try and treat everybody fairly.

Q. Were you thinking about questions of people's economic status, their race, their religions? Was that the sort of background you were thinking of?

A. Oh – yeah.

Q. One of the reasons I ask you that is a moment ago you told me that if a defendant was, for example, mentally retarded, that would be the sort of factor you would want to evaluate to determine whether the death penalty was appropriate or not in that case, correct?

A. Right. Yeah.

Q. That's not the sort of background, mental retardation was not the sort of background you were thinking of when you answered the last part of 107; is that right?

A. No. I was thinking more of – a background to me seems more of what they've done or – in the past. Is what I take background to be used there.

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

THE COURT: Yes.

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

MR. CLEARY: No further questions. Thank you, Your Honor. Thank you.

VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Hi.

A. Hi.

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

I was interested to follow up with you, if I could, for a moment on what you've heard about the case. And you indicated to the judge that you really hadn't heard very much at all but that you knew a little bit about where Mr. Kaczynski was arrested.

A. Yes. I heard that he was – I didn't see anything on the news or anything, but someone was talking that they found a suspect in a cabin up in the hills.

Q. Was that a close friend, a co-worker, who – what class of person was that?

A. Actually, my – my – my father owns a convenience store, and I happened to be in there, and they – my dad said something that, you know, I was coming down here. So someone said that to me.

Q. Oh, so that was after somebody knew that you were coming down, one of the customers made a comment?

A. Yeah. Made a comment to me because they knew that I was coming this way.

Q. Was your dad working in the store?

A. No, no, no. No, no. He just stops there frequently and I do so also.

Q. So what else did the person say to you? I guess it was kind of exciting.

A. I told him I didn't want to –

Q. You said, "Don't talk to me"?

A. "Don't talk to me; I don't want to hear it."

Q. What did they get out before you were able to say that?

A. That's basically all I've heard. I've heard a couple of different people actually said a couple things, you know, in terms of the Unabomber, they had a suspect for the Unabomber, as I said before, and they had found him in a cabin up in the hills somewhere. And that's all I've – and I tell everybody "I don't want to talk about that."

Q. "Don't talk to me."

A. Yeah.

Q. So when they were talking to you, did they say anything about what was found in the cabin?

A. No, I don't – no.

Q. Did they mention anything to you about any physical items they found in the cabin?

A. No, I don't even know if anything was found in the cabin.

Q. Any writings?

A. No.

Q. Has anybody mentioned any writings that –

A. No.

Q. All right. And this is before you received your summons or after you received your summons, either way?

A. I haven't been – I haven't really heard anything. I mean, I've been over at a friend's house and something came on the news and I just said, "Turn that off. I don't want to listen to it, be impartial."

Q. And did you tell the friend why you had to turn that off?

A. Yeah. I just left the room.

Q. The friend know you were coming down for –

A. Yeah.

Q. Did the friend say anything to you about the case?

A. No, they said they wouldn't say anything just because of the fact that I was coming.

Q. You said that people have said the Unabomber suspect got caught. What do you think of when you hear Unabomber?

A. Well, I hear Unabomber, I think of – when I hear Unabomber, what I attach it to, somebody that sends mail bombs or whatever, yeah, bombs in the mail.

Q. Are you aware from what you've read or heard about how many bombs were supposedly sent in the mail?

A. I don't even have any idea of how many there were.

Q. You attach Unabomber to sending bombs in the mail. Do you have any clue –

A. I don't have any clue on it on how many was sent, no.

Q. Do you remember hearing about any sent here in Sacramento?

A. No.

Q. Did anybody say anything to you about some of the events might have happened here?

A. No.

Q. Now, I think – do you have your questionnaire nearby?

A. Yeah.

Q. At page 30, if you could flip to that with me.

A. (Complies.)

Q. I think that – 113, do you see that question at the top of the page?

A. Yes.

Q. You indicated that you saw something about the case or heard something about the case on the television; is that right?

A. Yes.

Q. Does that jog your memory as to anything else that you might know about the case?

A. No. No. Well, I wrote it down there, something about his family reported him.

Q. So you actually saw – heard something on the television yourself rather than from somebody in the convenience store?

A. Yeah. I walked into my family's house one day, in fact, when they had this interview with his family or something, and I just caught bits and pieces of it, and I was just visiting so I didn't pay any attention.

Q. Do you remember anything about the bits and pieces that you caught?

A. No. No. Just that I think his family was there, upset, and I remember that, and I just turned that off; I don't want to know anything about that. I try to keep things positive in my life.

Q. So that was before you got the summons?

A. That was before, yeah.

Q. Okay. You also, if you look at page 28 with me, I'm just trying to see if we can jog your memory some.

A. (Complies.)

Q. Question 109. It's the second question down.

A. Yes.

Q. And you had heard there was an article in the Appeal Democrat.

A. Oh, yes. Yeah, that was my parents said something to me about – that the case, you know, something about the case was going on here locally, and, you know, and

something about the jury selection or something. And that was before I went down here at the Cal Expo meeting.

Q. They had read about the jury selection, the folks going to Cal Expo to fill out?

A. Yeah. Right, right.

Q. And at that time did they know that you were –

A. Yeah. Yeah, my family – they're my neighbors.

Q. Well, it sounds like you have a fairly close relationship with your family.

A. Yeah.

Q. Did they say anything to you about what they thought about the articles in the paper?

A. No.

Q. Did they know that you just didn't want to know much about it?

A. No. I, no – they just – we don't really discuss this much.

Q. You indicated to the prosecutor, and I think it's in your questionnaire, that you have the utmost respect for peace officers.

A. Yes.

Q. And that several of them you have a fairly good relationship with; is that right?

A. Yes.

Q. What sort of interaction do you have with these peace officers?

A. Oh, I just stop in. We talk. I mean, I don't know. I'm from a small town, so it's like Mayberry.

Q. Right.

A. They come up and say hi and everybody pretty much knows everybody.

Q. So it's just sort of on the street corner, at the store or something?

A. Yeah. Small community, yeah.

Q. Would it be at the convenience store?

A. Well, maybe.

Q. Do any of those folks know you came down for a jury summons?

THE COURT: "Those folks" referencing?

MS. CLARKE: The peace officers. I'm sorry, your Honor.

PROSPECTIVE JUROR NO. 105: No, I don't believe so.

MS. CLARKE: Q. You didn't happen to mention that in passing?

A. No. (Pause.) No.

Q. Were you thinking about that, or –

A. No. No, not at all. No, I haven't – in fact, I haven't said anything to anybody like that; no.

Q. And I take it that what you've said anything to is your parents?

A. Yes.

Q. Okay. Your questionnaire at page 17, down at the bottom of the page, number 64, when it's asking your opinion of how the system works, can you tell me what you were thinking about when you wrote you don't understand when a person is proven guilty, they walk?

A. Well, you know, it's kind of hard to make – make that opinion. I don't know, you know, when I came in to fill this questionnaire out, I don't know what I was thinking here, but what I wrote there – I believe the system works. I mean, I think sometimes there are possibilities out there that – probably –

Q. Were you thinking about any particular case or cases or class of cases?

A. No, I just – I really haven't. I've just heard some things of people in different situations and I – you know, I don't know. I don't know the answer to that. I just, it's kind of sometimes I've seen people that have got, you know, that had . . . I don't know. I guess I . . . when they're proven guilty, that's where I just don't understand if somebody had been proven guilty and then, like, you know, they're out in, you know, a short period of time, back out in society creating problems again. And I wasn't really relating that to anything, just in general.

Q. Is that based on what you read about, heard about on TV, talked with your mom and dad about?

A. Yeah. Just heard basically.

Q. Were you thinking of any specific case?

A. No. I – not really, I don't think, you know. Yeah, I think there was a case that I was pertaining to in that statement. It was about a child molester that got to walk free and went out and did the same thing again, and I just didn't understand that sometimes.

Q. Sure. I guess that would be hard.

Do you – those kinds of feelings, do you think they'd carry over to this case at all?

A. No. I don't know what this case is about other than –

Q. Other than the –

A. – than bombs and packages that were sent in the mail.

Q. If I could take just a moment and talk to you about your opinions on – about the death penalty.

I think you indicated to the judge when asked whether you were a proponent or opponent – if I'm getting this mixed up, please help me out – that you basically said I'd have to hear the case first –

A. Right.

Q. – before you could decide whether you were a proponent or an opponent of the death penalty?

A. Right.

Q. But generally, as I understand it, you were in favor of the death penalty; am I right?

A. Mmm – I don't know if I want to go there. Like I said, I really couldn't make that decision right now. That would be a judgment call that would have to be made on the basis of what I heard in evidence.

Q. Well, you answered – if we could go to page 27. That's that checklist.

A. Yes.

Q. You there with me?

A. Yes.

Q. Something was going through your mind when you answered anyone who plans and commits a murder should get the death penalty, and you said I "strongly agree." What was going through your mind then?

A. Well, you know – actually I know this question very well, because it's the last one that I answered out of this whole sheet. And I went back and I wasn't sure what they meant by the death penalty, because I really haven't heard anybody getting executed. So I don't know if death penalty actually means like life sentence in prison or – because I just haven't heard of anybody being executed.

Q. Do you have some kind of a sense then that if you sat on a jury that voted for the death penalty that it would not be a real penalty?

A. Well, I didn't know what – I didn't know what to write or put on there. I guess actually the question is, is, to me, is I don't know what the death penalty actually means, as far as – I mean, yeah, it says death penalty, does it mean by death? I haven't heard of anybody dying.

Q. So you're saying –

A. That's just where I'm at with that situation. I mean, I don't – you know, years ago, when I was young and I heard the death penalty, it was like I thought somebody died right after that. But I haven't heard of anybody dying. So I don't know how to –

Q. I'm just trying to probe with you, is it your sense that it's hard for you to make a judgment about the death penalty because you don't think it's a real penalty?

A. Well, I think – you know, I thought about this question for a while and I just don't know – I mean, the death penalty – yes, it is death and . . . sometimes I don't know if, you know, what constitutes the death penalty.

Q. Execution? If I told you that it's execution?

A. I don't know the circumstances of the question. I don't know where it's at. Anyone who plans and commits a murder should get the death penalty – I think I need more to go on there.

Q. So you aren't sure exactly what you were thinking about when you wrote that?

A. Well, yeah, I think that I probably should have checked "agree somewhat" on the question.

Q. How about on the second one, anyone who deliberately murders two or more people should get the death penalty – was that the same situation?

A. I don't know the circumstances on that. I was taking this question, is this person – and just – I don't know. I guess I really don't know what I wrote or why I wrote that down either because I don't know the situation to actually put "strongly agree." I mean, this falls back to the question, what were the circumstances? I mean, deliberately commits or deliberately murders two or more people – you know, I don't know if that was under duress or – it doesn't really explain that. It's kind of – maybe I'm looking too far into it. I don't know.

Q. How about the third one, with the act of terrorism?

A. Well, . . . terrorism is, to me, seems, it's just a bad word altogether, and what it actually means to me, it's oh, he . . . I like to think of myself being safe, and I'd like for the people around me to be the same also. So I really don't . . . I'm back to the same situation; I don't know what the act of terrorism is and, I mean, I couldn't really render a judgment on a question like that unless I knew the circumstances.

Q. Can you define what you thought terrorism meant when you read the question?

A. Terrorism, to me, would be like somebody holding the President hostage or something. That's – and I don't think that would be a good thing. That's how I read the question. You know, if someone dies, I was thinking like terrorism of the President and he should get the death penalty if someone shoots our President, or he should die, I guess I should say.

Q. And that's what you think of as the death penalty, a jury should render a verdict of death?

A. Yeah. I think so. I think so. I mean, if the someone was the President – I guess I think that death penalty, I would pretty much agree with that.

Q. What if someone were sending bombs through the mail with the intent to kill or injure and a death resulted? Is that terrorism?

A. I don't really know the circumstances to answer that question.

Q. What would you want to know?

A. Why – why would someone want to do that to begin with. And that would probably be – before I could make a judgment, why they would do that.

Q. Prosecutor asked you about the last question, person's background does not matter, where you said "agree somewhat." Can you help me understand what you were thinking about with "background"?

A. Well, "background," to me, I mean where they're from, where they came from. That's what "background" means to me. I don't think that I should judge somebody because of their family, or, say, you know, I can't, you know, I can't – I can't pick and choose. None of us can pick and choose our family. That's just the way it is. That's where I'm looking at background. And, I mean, there's good people out there and there's bad people out there.

Q. I guess what the bottom line question on background is, there's a decision that a jury makes first: whether or not the person is guilty of the crimes charged. And that decision can mean that you go on to a second phase of the trial and determine the penalty for the person.

A. Mm-hmm.

Q. And if a person is – you're sitting on a jury and a person is found guilty of a planned, premeditated, deliberate, intentional murder – that's it. What does that mean for you in terms of the penalty that's appropriate for the person?

A. (Pause.) What are my choices on the penalty?

Q. Death or life in prison without parole or some lesser sentence.

MR. CLEARY: Your Honor, I'm going to object to the form of question because it includes a statutory aggravator in the question.

THE COURT: Sustained.

MS. CLARKE: Q. You're on a jury, and you've made a determination that a person is guilty of a deliberate, intentional murder. Beyond a reasonable doubt, the jury has unanimously agreed that it was a deliberate, intentional murder.

And now you have the decision to make regarding the penalty. What is the appropriate penalty? And I'm just asking you for your opinion.

A. I'd have to think about that. I don't know.

Q. What would you be wanting to weigh?

A. Pardon me?

Q. What would you be wanting to think about?

A. Well, I'd have to think more about the circumstances that appeared in the case before I could even go there. I just – I don't really know – I'd have – I don't know. I don't really know where I would go with that. I don't think that . . . I just couldn't be fair to give a judgment that quick.

Q. Would you want to know more about the crime itself or the person who committed the crime?

MR. CLEARY: Your Honor, I'm going to object, because it's not the juror's job to determine as he sits here what aggravators and mitigators are. The question is whether he can fairly and accurately evaluate the aggravators and mitigators.

THE COURT: Sustained.

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

THE COURT: Yes.

(Discussion off the record among defense team.)

MS. CLARKE: Thank you very much.

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

(Prospective juror number 105 left the courtroom.)

(Prospective juror number 106 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 106th randomly selected juror. You may be referenced by that number during the jury selection process.

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

A. The only reason I could think of is I do work for the United States Postal Service and just the things I've learned from work.

Q. Actually, we're trying to keep information about your exact employer confidential pursuant to my order.

A. I'm sorry.

Q. I hope that all who heard it will ignore it.

But tell me why you said that. What type of information is involved with your thinking that should cause us not to consider you for a position as a juror?

A. As far – just – well, we’ve learned from our work, you know – kind of hard to say – we’ve been instructed on how to look for different things about the case, not the case in general, but about how the Unabomber, special packages, how to look for them, what – we’ve just been – had so much – not so much media as more or less instructions on how we’re supposed to, you know, go about things. And to this day still at work we’re still handling packages at a way where – due to into the case part of it.

Q. I don’t know what that means, ”into the case.”

A. We can’t accept parcels with stamps on them up to – that are over five pounds, if – you know, it has to be done at a postal meter. We can’t just pick up a box from a special customer, any customer unless it has meters – reading.

Q. My interpretation of what you have stated is that you are using special precautions of some type?

A. Correct. They’ve instructed us what to look for on, you know, special packages, what might be considered a bomb due to the wrapping, the postage, anything. We’ve had a little training on that.

Q. As we talk now, the employees at your place of employment are still operating under those special instructions?

A. Yes, we are.

Q. Is there anything about the allegations involved in this case that cause you to conclude that those special instructions have something to do with this case?

A. As far as – has to do –

Q. Let me – you’ve indicated that you have received information in connection with your job –

A. Mm-hmm.

Q. – that should cause the Court to believe you shouldn’t sit as a juror in this case. And I’m trying to determine why that information should prevent you from sitting as a juror on this case.

A. My only reason, like I said, we’ve had a lot of information about the Unabomber, what to look for, and just mainly everything I’ve heard. I was even given a pamphlet last week by somebody showing me how to look for a Unabomber package and what to look for, which I already knew. But I just don’t know if I could give a fair shake to anybody, knowing everything I’ve known, that myself and also my fellow workers have been – lives put in jeopardy by these packages. I just don’t know if I could be in the right frame of mind to do it.

Q. That seems to introduce a different issue. You are indicating that because of the heightened awareness that you’ve been caused to have –

A. I guess that’s the way you could say it.

Q. Because of the allegations involved in this case, that it causes you special concern?

A. I believe so. I just don’t know – like I said, I don’t know if I could give the defendant a fair shake, just – everything I’ve learned about it.

THE COURT: Thank you, sir.
I'll let the parties probe this area.
VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Afternoon, sir. My name's Quin Denvir, and I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions, if I can.

A. Okay.

Q. As I understand, because of the nature of your work, you have a kind of a different approach to this case than somebody who worked in a totally different area? Is that basically what you're saying?

A. Yes, I think so.

Q. And as I understand it, it's because you felt that you were exposed to danger from the mailing of these bombs that kind of gives you an emotional feel about the case and it makes you really wonder whether you should be sitting as a juror on the case?

A. Correct.

Q. And do you have your questionnaire there? I wonder if you –
(Pause in the proceeding.)

THE COURT: Is this your questionnaire, sir?

PROSPECTIVE JUROR NO. 106: Yes, it is.

MR. DENVIR: **Q.** If you turn to page 32 and 33, when you were filling this out at Cal Expo, and obviously you knew what the case was from the nature of the questions and I guess from a previous communication from the judge, you were asked, was there any particular reason that you would not like to be a juror? And you said you worked for your employer, and that he – meaning the Unabomber – sent items through the mail which put yourself and your fellow workers in danger; is that right?

A. Correct.

Q. And that's what you feel right now is that you and the people you worked with were endangered by whoever sent those through there?

A. Correct.

Q. And you've worked with the Postal Service for how long?

A. Since 1986. That would be 11 years.

Q. And then you were asked if you would, on the next page, on page 33, question 124, you were asked, "As a result of any experience described in any of the previous questions in the questionnaire was there anything that would cause you to favor or disfavor either the prosecution or the defendant in this case? " And you said yes, and you said disfavor on grounds that I don't know if I could be impartial juror with everything that has gone on at your work pertaining to Unabomber.

A. Right.

Q. And we do appreciate, you know, your being candid with the Court and with the parties as to how you feel, because we need to know whether that's something – and as I understand it, have you given further thought to this whole issue since you

were at Cal Expo and before coming here today? Have you kind of thought more about how you feel about sitting, possibly sitting, on this case where the Unabomber crimes are alleged?

A. Being honest with you there, I just, because of where I work, I was wondering, you know I didn't think I'd be called, just – I would figure they'd want somebody that wouldn't work for the Postal Service.

Q. Now, did anybody at work know you were coming here, that you were summoned as a potential juror? Did that –

A. At work? Just my supervisors.

THE COURT: He didn't answer your question.

He wants to know right now whether you have reconsidered the thoughts he just shared with you in that questionnaire. Do you have those same thoughts?

PROSPECTIVE JUROR NO. 106: Yes, I do.

THE COURT: Okay.

MR. DENVIR: Q. And as I understand it, you just don't know whether you're in the right frame of mind to sit on this case?

A. Right. I just don't know if I could be impartial enough.

Q. And you also don't feel like maybe you could give Mr. Kaczynski a fair shake?

A. Correct.

MR. DENVIR: Thank you, sir.

VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Sir, I just want to ask you a few questions about the issues we've been discussing. My name is Steven Lapham. I'm one of the prosecutors in the case.

I'm having a little trouble understanding exactly what you're saying. This information that you got through your employment –

A. Correct.

Q. – that's general information about the Unabomber, correct?

A. General as to the public?

Q. Correct.

A. I wouldn't say so.

Q. Well, this is –

THE COURT: You may be talking about two different things.

PROSPECTIVE JUROR NO. 106: Yes. Thank you.

THE COURT: He doesn't – I don't think counsel meant to ask you whether you received information that was generally disseminated to the public. Is that how you interpreted his question?

PROSPECTIVE JUROR NO. 106: Correct.

THE COURT: He's trying to ask you whether the information you received generally pertained to the so-called Unabomber.

PROSPECTIVE JUROR NO. 106: The information we received – yes, it pertained to the Unabomber.

THE COURT: Did the information mention the so-called Unabomber by that designation?

PROSPECTIVE JUROR NO. 106: Yes.

THE COURT: Okay. Thank you.

MR. LAPHAM: Q. So when the Unabomber mailed a bomb, you would get fliers about that or periodically you would get fliers?

A. No, generally I heard about that from television, but as – no, they wouldn't send us any fliers as pertaining to – a bomb going off.

Q. Okay. Periodically, you would get information about what some of these Unabomber devices looked like?

A. Correct.

Q. And how much they weighed?

A. It was more generally – more generally on us looking out – things to look out for – special packages to look out for.

Q. Okay. So just general security?

A. The way the Unabomber might mail it.

Q. General security precautions –

A. Correct.

Q. – that you should take in your profession?

A. Correct.

Q. None of that information had anything to do with a particular suspect; is that correct?

A. Correct.

Q. Okay. And least of all the one who's sitting here in court today (indicating), correct?

A. Correct.

Q. Okay. Now, you've said in your questionnaire that you feel you know very little about the case. You've said that at –

THE COURT: Excuse me, sir.

I don't understand your last answer. You indicated that none of the information had anything to do with a particular suspect. I thought you told me that some of the information discussed the so-called Unabomber.

PROSPECTIVE JUROR NO. 106: I did. That's right. I just –

THE COURT: Why don't you consider so-called Unabomber a particular suspect?

PROSPECTIVE JUROR NO. 106: All I meant – I thought the meaning of "suspect" meaning Mr. Kaczynski.

THE COURT: I see.

PROSPECTIVE JUROR NO. 106: All of it in general was just on the Unabomber, not – nobody in particular, just, you know –

THE COURT: But whoever the Unabomber it.

PROSPECTIVE JUROR NO. 106: Correct. But they weren't alleging anybody.

THE COURT: But they mentioned the name Unabomber.

PROSPECTIVE JUROR NO. 106: Yes, but not any specific name.

THE COURT: Other than the name Unabomber.

PROSPECTIVE JUROR NO. 106: Correct, correct. Right.

MR. LAPHAM: Q. And this was before the arrest of Mr. Kaczynski?

A. Yes.

Q. Okay. Now, you've said in your questionnaire – do you have your questionnaire there –

A. Yes, I do.

Q. – with you? It's question number 115, and that's on page 30. Did you find it?

A. Yes.

Q. Okay. You said there that you feel that you know little about the case and then, in parentheses, what that means is basically you've just heard about it, correct?

A. Mm-hmm.

Q. And then the very next page, on question 119 –

THE COURT: I think you should focus, counsel, on what he told the defense counsel. He's indicated to the defense counsel that he could develop some type of an emotional response to this case because of concerns that were generated at his job.

MR. LAPHAM: Your Honor, I'm one question away from asking that very question, if you'll permit.

THE COURT: All right.

MR. LAPHAM: Q. At question 119 you said that you're "somewhat knowledgeable"; you feel you're somewhat knowledgeable about the case, correct?

A. Correct.

Q. Now, is that "somewhat knowledgeable" answer as a result of the information you've received in your employment?

A. A little bit on employment, but most of it just from television and newspaper. I don't really . . .

Q. Okay. My question is now this, and it's what I think the judge is talking about. If you know little about this case, this precise defendant, what is it that makes you emotional about this case or what would make it emotional for you to sit in judgment of this particular defendant? Was that clear?

A. I thought I'd answered that already. I work for the Postal Service and I said, just from what I've heard, even since the questionnaire, and the Unabomber, no matter who it might be, I just, you know, feel that I don't know if I can give a fair shake just from what I –

Q. By that answer do you mean to say that any mail bomber you think you'd have problems sitting in judgment on?

A. Any mail – I couldn't answer that because I'm not sure how I'd react to being that – some other – another mail bomber shows up, I may not – the media might not cover it as much as it did on this one.

Q. Well, I'm talking about your emotional state now. Some mail bombers you develop an emotional problem with and other mail bombers you wouldn't?

A. I can't say, because I wouldn't know unless it happened.

Q. What is it about this particular case that makes you develop an emotional attachment?

A. The fact that my life was put in danger, along with my co-workers. I just feel –

Q. But that would be –

THE COURT: Let him finish, sir.

MR. LAPHAM: I'm sorry.

PROSPECTIVE JUROR NO. 106: I mean, I just – my and my co-workers were put in danger by the Unabomber and, just like I said, everything's happened at work that they've shown us. And I just don't know if I could be fair and impartial. Just, you know, it might, you know, some other – you never know what would happen. I just – due to everything in this case, I just don't know if I could be impartial.

MR. LAPHAM: Q. Wouldn't that be true with any person who mails bombs?

A. I guess so; yes.

THE COURT: I think we're done.

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

THE COURT: All right. Thank you.

Thank you, sir. We're going to excuse you, so you can return to the room where you came from. Thank you very much for your candid responses.

(Prospective juror number 106 left the courtroom.)

MR. LAPHAM: Your Honor, excuse me. Is the record clear that he was excused for cause?

THE COURT: I thought it was clear. Is there any doubt about it?

MR. DENVIR: No doubt in my mind.

MR. LAPHAM: I didn't know if it was in the record.

THE COURT: I don't know if my reporter noted the defense position, but it's noted now.

MR. LAPHAM: Thank you.

(Prospective juror number 107 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. We didn't have that microphone securely in place. That's why it fell.

A. Oh, is that right?

Q. Right. You're the 107th randomly selected juror, and I and the parties, we may reference you by that number during this questioning process.

Have you had any difficulty hearing any aspect of this proceeding since you've been in my courtroom?

A. No.

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

A. No.

Q. Since you appeared at Cal Expo and filled out a juror questionnaire, have you heard of or received any information – read any information about this case?

A. Very little.

Q. Okay. What information have you received since that time?

A. You mean like on TV and stuff like that or –

Q. Every place since Cal Expo. I mean, every source.

A. Every source – just the news about what's going on here.

Q. Tell me – well, let me tell you why I'm asking the question. I have an obligation as a judge to ascertain what information a prospective juror has been exposed to. Telling us the answer doesn't jeopardize whether or not you will be on this case or not. We don't expect jurors to be unaware of pretrial publicity. But we need to probe to find out what pretrial publicity jurors have been exposed to so that we can make an objective determination as to how you could possibly be affected by it and we also get your own interpretation as to how you have been affected by it.

A. Well, I've just heard that they're bringing the cabin here. That's about it. And what's going on here, how I would be coming in here and going to Cal Expo, being picked up. That's about it. Not much, really.

Q. Have you had any discussion with anyone about the case since Cal Expo or have you overheard anyone discussing the case since Cal Expo?

A. The case itself, no.

Q. Anything about the allegations in the case?

A. Well, I have since then found out that the man that was killed on Ethan was – sponsored my wife's softball team. The one over there on – by Howe Avenue.

Q. How does that affect you?

A. Well, I don't think she knew him personally so I – it doesn't really affect me.

Q. Okay. Can you elaborate on what contact you believe she had with him?

A. That I don't know. Just that he sponsored her softball team.

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

A. You mean as far as the news?

Q. Correct.

A. Quite a bit, yeah.

Q. Could you give me some specifics as to what information you were exposed to?

A. Before Cal Expo? (Pause.) Well, that he was caught, of course, right?

Q. Right.

A. And they're bringing the cabin here. And they found stuff at the cabin that was – could be used to make bombs. . . . the manifesto, I read just part of that, but I don't recall what I read.

Q. Based upon the information you've received about the case, have you formed an opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. (Pause.) Yeah. You know, everything points to him being guilty, to me, from what I've read.

Q. How strongly are you committed to that opinion?

A. (Pause.) That's hard to say. Pretty committed to that, I mean, from what I read and all that. And the brother turning him in, his brother, you know.

Q. Is that an opinion that you believe you have the capability of setting aside, leaving outside this courtroom, if you were selected as a juror?

A. I can't – I don't know. It's hard to say.

Q. Okay. You can understand that under our system of justice an individual is not supposed to be tried by information that is received outside the courtroom; an individual's only supposed to be tried based on information received in this courtroom and on the instructions that I give jurors.

A. Right.

Q. Do you think that you could provide Mr. Kaczynski with the assurance that he will be tried solely on the information received in this courtroom and on the instructions that I give you during the trial?

A. (Pause.) I don't know. I hope I could, but I don't know.

Q. This is a very important matter, and I do appreciate your candidness.

A. Yes.

Q. But it's important to know whether you can or cannot, because they're serious charges, and I need to know.

A. I don't think I could.

Q. You don't know?

A. No, I don't think – I think he's guilty.

Q. Okay.

A. Yeah.

Q. And do you think that you will continue to hold that opinion; you won't be able to set that opinion aside?

A. (Pause.) I think I could, but I –

Q. You don't know?

A. I really don't know, you know? I always felt that you're innocent, but –

Q. It's okay. I appreciate your responses.

(Discussion off the record among counsel.)

MS. CLARKE: We stipulate, Your Honor.

MR. DENVIR: Parties stipulate.

MR. CLEARY: Stipulate.

THE COURT: Thank you, sir. We're going to excuse you from further participation in this case, but you'll have to wait a while.

PROSPECTIVE JUROR NO. 107: Okay.

Oh. Here?

THE COURT: You don't have to wait in this witness stand, but you'll have to wait in the other room.

PROSPECTIVE JUROR NO. 107: Oh, okay. No, no problem.

(Prospective juror number 107 left the courtroom.)

(Prospective juror number 108 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. You're the 108th randomly selected juror. I may reference you by that number during this questioning process.

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

A. I don't think so.

Q. Okay. I think you raised your hand a couple times when I was making opening statements to the jury.

A. Mm-hmm.

Q. There's a microphone there. You may have to make an adjustment so that your voice is amplified a little bit more than it is.

A. (Complies.) Well, the one was regarding the time.

Q. The schedule?

A. Yeah. And I didn't know, because next week I have doctors' appointments, and I didn't know how soon we'd be brought back if we were brought back.

Q. It won't be next week.

A. Oh, okay. So that was the problem with the time.

Q. Okay. Does that take care of that problem?

A. Yeah.

Q. Okay.

A. And the other one, I don't know if I understood right or not, but I took it to mean, we could decide either way, and I can't decide on death penalty. And I didn't know if that pertained, so I thought I'd better raise my hand just in case.

Q. Okay. We are not looking for jurors who necessarily believe in the death penalty, who are – or I should say it another way – who are against the death penalty or who are for the death penalty. We're looking for jurors who are capable of considering the death penalty as a sentencing option, along with a possible sentence of life imprisonment without possibility of release or some lesser sentence.

Could you consider the death penalty as a sentencing option?

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. Yes.

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

A. Yes.

Q. So you're telling me that no matter what the facts or evidence are, you would never vote for a sentence of death?

A. Right.

VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon, ma'am. My name is Quin Denvir, and I'm one of the attorneys for Mr. Kaczynski.

I'd like to explore, if I could, a little bit about your feelings about the death penalty and serving as a juror on this case. As Judge Burrell told you, in order to serve as a juror in a case where the death penalty is one of the options. You do not have to be a supporter of it; in fact, you could be an opponent of it. You understand that?

A. Mm-hmm.

Q. And in selecting a jury, we're trying to get a wide range of opinions on the death penalty. That's what they – we don't – you can imagine if you were charged with that kind of crime, you wouldn't want a jury that was all for the death penalty or all against the death penalty; you want a range of views.

So the fact that you may have views about the death penalty doesn't disqualify you in any way.

A. Mm-hmm.

Q. It's a question of whether you can put aside those views and abide by the law that's given to you by the judge.

A. It would be very difficult.

Q. Okay. Let me see if I can just explain to you what the process is, and maybe you can tell me how you feel about it.

Because this is a death penalty case potentially, there are two phases to the trial. The first phase is a trial like any other trial, where it's just a question of guilt or innocence. Twelve jurors would hear evidence put on by the prosecution, would hear any evidence the defense put on, would be instructed by Judge Burrell and then would go on and determine whether the prosecution had met their burden of proving beyond a reasonable doubt that Mr. Kaczynski was guilty of those charges. That's the normal kind of trial.

A. Mm-hmm.

Q. Two of the charges in this case involve the mailing or transporting of a bomb with the intent to kill which resulted in the death of a gentleman by the name of Gilbert Murray. Those are the two charges that carry a potential penalty of death, of execution.

If the jury were to find the defendant guilty of those charges beyond a reasonable doubt, then and only then it would go into a second phase of the trial.

And at the second phase of the trial, it would be the jurors, the 12 jurors sitting there, who would decide among the different penalties that are provided by law for that offense. And that could be the death penalty; it could be life in prison without possibility of release – and that means that, because there’s no parole in the federal system; or it could be a lesser sentence.

What happens is the Government would present what they call aggravating evidence, which is the legal term for any evidence that the prosecutors feel point towards death as the proper sentence for those crimes. The defense would present mitigating evidence, which is the legal term for any evidence that we believed would point to something other than death for those crimes. The judge would instruct you as to the law. But he would pretty much tell you that it is your decision now between those two penalties. And you, if you were in that position, would deliberate have to go deliberate with your other jurors, listen to their views and then make your own decision.

And I guess the big question there is, can you perform that role? Could you, if you went into the second phase of that trial, having found Mr. Kaczynski guilty beyond a reasonable doubt of mailing or transporting a bomb with intent to kill resulting in death, could you consider both the penalties that are provided by law?

A. I wouldn’t feel comfortable with deciding someone’s life or death.

Q. And I understand that and, believe me, the law does not say you have to be comfortable about these decisions, because they’re very hard decisions.

I guess the question, though, is could you actually abide by the judge’s instructions which would say that you would have to really give consideration as a possible sentence to either one of those two penalties. And only you know whether you could. You’re not there, so you can’t do it, but –

A. Right now I feel like I could not sentence someone to death.

MR. DENVIR: We’ll stipulate.

Thank you.

THE COURT: Okay. We’re going to excuse you from responding to further questions. Thank you.

PROSPECTIVE JUROR NO. 108: Okay.

(Prospective juror number 108 left the courtroom.)

THE COURT: The defense stipulated that that juror could be excused for cause, and I’ve excused her for cause.

I think we will take the afternoon recess at this point. Court will be in recess until 3:20.

(A recess was taken.)

(Back on the record at 3:25 p.m.)

THE CLERK: You may remain seated.

Court is again in session.

THE COURT: All right. All participants are present.

Please bring in the next juror.

(Brief pause.)

(Prospective juror number 109 enters and takes the witness stand.)

VOIR EXAMINATION DIRE

BY THE COURT:

Q Thank you for joining us. You're the 109th randomly selected juror. I may reference you by that number during this questioning process.

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

A No, I don't believe so.

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

A Yes, I have.

Q Explain your response. What have you heard or read?

A Basically, in order for me to appear at court, I needed to tell my boss that I was selected for a jury. And he questioned me about which case it was. And I showed him your letter so I could actually appear. And then he continued to comment about that to our ex-DVP, or ex-district vice-president, and they were kind of joking with me about it.

Q Okay. Other than that discussion that you had with your boss and what occurred during that, what –

A Basically, all of my co-workers heard and have been joking with me about it, about different scenarios. About, you know, how to either go – get out of it, or how to make sure I get on the case. And –

Q Can you share some of that information?

A One of the things that they said is, "Well, if you want to get off, just go in with a closed mind that he is guilty, and you'll get off."

Q That probably will work.

Anything else?

A That's basically all that I remember from those conversations, jokes. Again, I took them lightly. And I know I wasn't supposed to be around that kind of thing. So I kind of made myself unavailable to hear the rest of the conversations.

Q Other than the information you received at your work place, since Cal Expo have you heard or received information from any other source or any other place?

A Not that I remember now.

Q Other than the information you just related, have you discussed the case with anyone or overheard discussions since Cal Expo?

A With my employer. My boss and the district vice-president – or the ex-district vice-president of our company. And I discussed this with my parents. Basically, that's it.

Q What type of discussions?

A I guess I jokingly said, "Guess what I got called for," and showed them the letter. And basically whatever was in the letter is what we discussed.

Q Prior to appearing at Cal Expo, what information did you receive about the case from any source whatsoever?

A Well, I remember seeing where – hearing about the manifesto. I never actually saw or read it. I remember hearing all kinds of little jokes about, "Be careful with your mail," and stuff like that. And I'm really not sure what else I remember before Cal Expo.

Q Do you have an understanding as to the general allegations involved in this case?

A Yes, I do.

Q What is your understanding?

A Basically, that he was putting together these bombs, enclosing them in packages, and using the U.S. Postmaster to deliver these boxes and have them go off on whoever is opening the package.

Q Have you received any information about a cabin?

A I remember hearing something on, like, the evening news about that's where he was apprehended. But I wasn't too involved in that at the time.

Like when he was – When even like O.J. Simpson, the jury was going on about all this deliberation, just like I didn't want to hear about it.

Q Okay. Do you have any idea as to what evidence the media or any news source has reported could possibly be introduced in this trial?

A I'm trying to remember. I don't believe I have heard any specific evidence that they are thinking about introducing.

Q Do you know anything about allegations concerning the evidence that may be involved?

A No, I don't.

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

A In the back of my mind I think I do, but I am – I think I would be able to render a fair verdict.

Q Okay. We are here in part to find out what is in your mind, even if it is in the back of your mind.

What opinion is back there?

A From everything that I've heard, I've formed the verdict, I guess, that he might be guilty. If he is guilty, then he should be put to death.

Q How strongly are you committed to those opinions?

A I guess, like I said, I believe I could be a fair juror.

Q You believe you could set both of those opinions aside if you were selected as a juror in this case and render a verdict based solely on the evidence that is presented at this trial and on the instructions I give you during the trial?

A I believe so, yes.

Q Do I have your assurance that if you are selected as a juror in this case, you will set aside whatever information you received about the case outside the courtroom, and you will allow Mr. Kaczynski to start this trial on a clean slate?

A Well, everyone is going to have some form of bias one way or another. I believe I could be a fair juror. I don't know whether I could start with a clean slate or not.

Q Mr. Kaczynski desires jurors that should have the same type of mind set as the judge. I shouldn't start this trial with any type of bias. I should start this trial believing that he's entitled to the presumption of innocence, which is a constitutional principle of paramount importance in our nation. And he would want you to start the trial with the same type of mind set.

Do you think you could do what is necessary to provide him with that type of assurance?

A In all honesty, I believe I can. But I – In all honesty, I'm not sure I would be able to.

Q I appreciate your honest response.

Can you tell me what things you are thinking about when you indicate that you think you can, but you're not sure?

What is it that is interfering with your ability to give me an absolute assurance that you can, in fact, do it?

A I have some distant friends that are friends of friends of friends that were affected by – I just recently found this out – that were affected by the Unabomber's – I don't know what you would call it – what was alleged against him, Mr. Kaczynski.

Q How were they affected?

A One of them was – I guess he was – had a bomb go off in his house. And it's, like I said, a very distant relationship. I didn't find out about this until just, like, three weeks ago.

Q How do you know that's connected to the so-called Unabomber?

A Well, I'm not sure exactly whether it is connected or not. But having this to happen, I don't know whether it was, like, just a prank, kids lighting off, like, I guess the larger firecrackers, or whether this is actually a Unabomber action.

Q You're indicating it's possible that something about that event could interfere with your ability to be a fair and impartial juror in this case to both sides?

A I want to be a fair and impartial juror, but I don't believe this would allow me to do that.

Q That's not a clear answer. I'm not being critical of your answer because it indicates that you – you say "I don't believe." But there appears to be room for you to grow in a belief, or is there room?

And the type of belief I'm trying to determine is whether you have the capability of putting that information aside, allowing Mr. Kaczynski to begin this trial with a clean slate?

A I don't know if I could set aside the incident and give him – The more I think about this, I want to be a fair juror, but I don't know if I can be a fair juror at this point the way you are questioning me about this.

Q When you say, "at this point," does that indicate that it is possible, it's just that at this very moment as I communicate with you, you can't give me the absolute assurance I'm seeking?

A Well, the more you're questioning me about it, the more I'm remembering about what I was told happened to this distant friend of mine.

And with that information, remembering back a little bit more about what I have heard and stuff, I don't know if that would allow me to be a fair juror.

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

A I believe it has its uses. I don't know whether it would be – if it's used enough.

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

A I don't believe so, no.

Q If this case reaches the sentencing phase, would you automatically vote to select the death penalty no matter what mitigating evidence is presented?

A I believe that if he is found guilty, he should be put to death.

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

A I do understand that. But I don't think that with what I have heard that Mr. Kaczynski is accused of, whether he actually deserves any other consideration if found guilty.

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

A No, I don't.

Q "No, I don't" means what?

A If found guilty, Mr. Kaczynski should be put to death.

Q Okay.

THE COURT: Okay. Fine.

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

MS. CLARKE: We will too, Your Honor.

THE COURT: Thank you, sir, for your responses. I'm going to excuse you from further service on the case.

PROSPECTIVE JUROR NO. 109: Okay.

(Prospective juror number 109 exits the courtroom.)

THE COURT: We just covered all the jurors I called for the afternoon session. Is there anything that we can cover from your perspective during this time period?

MR. LAPHAM: No, Your Honor.

MS. CLARKE: May I have just one moment.

(Brief pause.)

MS. CLARKE: Does the Court want to set any kind of briefing schedule for cause challenges?

THE COURT: I do. Do you have a proposal?

MR. CLEARY: Your Honor, we were going to ask if we could put the briefing off until after the holidays so that Monday all the briefs would get filed. That would be for the jurors for last Wednesday, Thursday, and the jurors for this Monday, Tuesday, Wednesday.

THE COURT: Let me have you crystallize what you just said – let me tell you what I believe I heard you say.

You want to wait until this coming Monday to file a For Cause Brief that concerns the jurors who were questioned last Wednesday and Thursday, and all the jurors that are to be questioned this week?

MR. CLEARY: That's correct, Your Honor.

THE COURT: Okay.

The defense?

MS. CLARKE: Whatever is most convenient for the court. We could be prepared to file tomorrow the last Wednesday, Thursday, if the court would like, but it's really up to the court.

THE COURT: That's my preference. Because I can work on that over the holidays. I would prefer to receive your input. I don't want to fix it so that you don't enjoy the holidays, but I would prefer, if I can do this short of interrupting your holiday plans –

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

THE COURT: That would be fine?

MR. CLEARY: Sure.

THE COURT: Okay. Then can you propose a briefing schedule. We're only talking about Wednesday and Thursday of last week now.

MS. CLARKE: Does the Court want it before the end of the day Wednesday?

Would the Court like these briefs tomorrow afternoon or Wednesday morning?

What would be convenient for the Court?

THE COURT: I won't be able to work on the briefs until Thursday or the holidays. So it's up to you.

MS. CLARKE: Then perhaps we can file it on Wednesday midday, if that's okay with the Court?

THE COURT: That's opening brief?

MS. CLARKE: That's right. We need a reply.

Maybe we could file an open brief tomorrow afternoon and a reply by the end of the day on Wednesday.

I assume that means the parties could perhaps exchange phone calls tonight about who they're interested in challenging for cause?

THE COURT: I appreciate that.

MR. CLEARY: Your Honor, I wonder if we can get a sense of how many they're moving against, not which particular ones, so we can get a sense of how much time we're going to need to get our responses ready.

MS. CLARKE: Your Honor, we don't have the list, but it's two or three. We'll be happy to call the Government tonight after court.

MR. CLEARY: I'm sorry. The plan would be to file the opening briefs tomorrow?

THE COURT: By noon.

MR. CLEARY: By noon tomorrow, and close of business for responses on Wednesday.

THE COURT: Right. I think close of business means 4:30.

MR. CLEARY: Right.

MS. CLARKE: Yes.

MR. DENVIR: I wonder if the Government knows how many they plan on?

MR. CLEARY: Just one. If any, it will be one.

THE COURT: Okay. Maybe we should cover – Go ahead.

MR. CLEARY: I was just going to say that would be fine. The schedule proposed would be fine with us, Your Honor.

THE COURT: All right. That will be the schedule.

How about for the jurors that will be questioned this week? Do you want to propose a schedule at this point?

MS. CLARKE: Your Honor, maybe we could file by Tuesday this entire week's challenges. That would give one day after the end of the Thanksgiving day weekend to prepare that brief and file it on Tuesday, if that would be good?

THE COURT: Is that all right?

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

THE COURT: By a particular time on Tuesday?

MS. CLARKE: Close of business, unless the court likes it earlier.

THE COURT: Close of business is fine. Be 4:30.

MR. CLEARY: Responses on Thursday, close of business, 4:30 Thursday?

THE COURT: That's fine. I won't be able to look at it before then.

MR. CLEARY: Thank you, Your Honor.

THE COURT: Let's schedule a hearing for those matters – I may not need a hearing, but we should have one scheduled just in case I need one.

Do you have a time on Friday?

(Court and Clerk confer.)

THE COURT: How about 1:30 next Friday for hearing?

MR. DENVIR: This Friday coming up after Thanksgiving or a week?

MS. CLARKE: It would be the 5th.

THE COURT: It's a week from this Friday.

MS. CLARKE: Fine, Your Honor.

THE COURT: We won't schedule a hearing for the matters that you're going to file this week. If I need a hearing on any of those matters, it will occur at the same time I'm going to hear the other matters.

MS. CLARKE: That's fine, Your Honor.

MR. CLEARY: Hearing, Your Honor, for the 5th is just for Wednesday and Thursday of last week, those jurors?

THE COURT: It's for all jurors to be covered this week and for Wednesday and Thursday of last week.

MR. CLEARY: Okay. So the whole kit and caboodle.

THE COURT: Right.

MR. CLEARY: Got you.

MR. DENVIR: Your Honor, the other thing, if the Court felt it was convenient to the Court, I'm sure the parties would be prepared to argue those earlier at some point at the end of the day, if the Court felt it was necessary to. With any kind of notice, I'm sure we could deal with any cause challenges at the end of the day.

THE COURT: I gave you precise notice, I believe, last time. If I give you that type of notice through my staff, will that be okay.

MS. CLARKE: That's very helpful.

MR. CLEARY: Fine, Your Honor.

THE COURT: All right. I'm going to cover another matter.

I have two matters pending. One matter I believe you are working on. That matter involves the guilt phase examination and the sanction issue. What I'm about to state doesn't affect what are you doing in regard to that matter.

Last Friday the Government argued that notice was not required before ordering Kaczynski to submit to a mental examination by the Government's experts pursuant to the Court's inherent authority. The notice I'm now referencing and the examination I'm now referencing concerns the sentencing phase issues, and alternatively, that Kaczynski had given sufficient notice through representations made during proceedings before Magistrate Judge Hollows.

Because the parties did not fully address the issues relating to sentencing phase notice, they are now directed to file supplemental briefs addressing the following three issues in light of the referenced authorities that I will cite and the other authorities that the parties deem are relevant.

First: Whether the court may order Kaczynski to submit to a mental examination by Government experts for the penalty phase without requiring him to first provide notice of his intent to offer mental health expert testimony in the penalty phase.

See *United States versus Haworth*, 942 F. Supp. 1406, 1408, 1996 District Court opinion, where the court states, "The Government will not be entitled to a court ordered examination unless and until the defendants' give notice that they intend to introduce psychiatric evidence at the penalty phase."

See *United States versus Beckford*, 962 F. Supp. 748, 761, Eastern District of Virginia, 1997, appears to stand for the same proposition; *United States versus Vest*,

905, F. Supp. 651, 653, 1995 District Court opinion, which appears to state the same proposition.

Second: If notice is a prerequisite to ordering an examination, has Kaczynski provided sufficient notice through representations made in proceedings before Magistrate Judge Hollows.

I think this issue potentially raises the judicial admission doctrine.

Third: Does the absence of reciprocal notice obligations in Section 3593 prohibit by negative implication the Court's inherent authority to compel Kaczynski to provide notice of his use of expert testimony concerning a mental defect or condition in the sentencing phase if he is found guilty.

MR. DENVIR: Your Honor, I wonder if you could read that last question, just to make sure we've got it right.

THE COURT: I will.

Does the absence of reciprocal notice obligations in Section 3593 prohibit by negative implication the Court's inherent authority to compel Kaczynski to provide notice of his use of expert testimony concerning a mental defect or condition in the sentencing phase of the trial if he is found guilty.

MR. DENVIR: Thank you, Your Honor.

THE COURT: What I would like you to do is to consider those issues, meet and confer, and propose a briefing schedule.

We can discuss it tomorrow.

MR. DENVIR: We will.

THE COURT: All right. Thank you.

MR. DENVIR: Thank you, Your Honor.

MR. CLEARY: Thank you, Your Honor.

(Off the record at 3:55 p.m.)

—o0o— 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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MONDAY, NOVEMBER 24, 1997

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Reported by: MARGARET McNAMARA, CSR No. 6729 CATHERINE E.F. BODENE, CSR No. 6926 SUSAN VAUGHAN, CSR No. 9673

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