

Jury Selection Day 14

Dec. 4, 1997

SACRAMENTO, CALIFORNIA
THURSDAY, DECEMBER 4TH, 1997 - 9:03 A.M.

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THE CLERK: You may remain seated. Court is again in session. Let the record reflect all participants are present. Are you ready to proceed?

MR. CLEARY: We are, Your Honor.

MR. DENVIR: Yes, Your Honor.

THE COURT: I appreciate the telephone call my chambers received this morning from the defense regarding it's willingness to stipulate to excusing jurors 192 and 197 for financial hardship reasons. After receiving the call, I had my secretary call the Government. And it's my understanding that the Government is also willing to excuse 192, but you believe 197 needs to come in so we can question him.

MR. LAPHAM: Yes, Your Honor.

THE COURT: All right. We're in the process of trying to reach 192. 192 has to travel a considerable distance to reach the courthouse. And hopefully, we will be able to reach that juror. I think this procedure recognizes the fact that we shouldn't interfere with the regular activities of citizens if we don't have to. So I really appreciate your cooperation in this endeavor. I do want to ask some questions though concerning 197. I called the employer for 197. I spoke to the director of operations, and the individual told me that 197 does have a hardship claim. That his spouse is a homemaker. He is the only person that is generating income for the family. That he will, in fact, lose money if he is a juror on the trial. The company does not pay for jury service. He is an hourly paid employee. And the typical work hours for the business are between 7:00 and 5:00. And so he will lose substantial money if he comes in. And so I assume that when he appears in the courtroom, he will tell us what I've already told you.

MR. LAPHAM: Your Honor, the only question for us is whether he could have met the 8:00 to 1:00 trial schedule and not lose money. If you have already made that determination, that's fine with us.

THE COURT: Well, when you state it that way, I have made the determination to the extent that I just related what his employer told me through the director of operations.

MR. LAPHAM: That's sufficient for us.

THE COURT: Okay. Then I can excuse him?

MR. LAPHAM: Yes.

THE COURT: All right. Bring in the jurors. (Brief pause.) (Whereupon, the prospective jurors were escorted in and seated in the jury box.)

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

THE CLERK: Please, stand and raise your right hands. (Whereupon, the oath was administered to the prospective jurors.)

THE CLERK: Thank you. You may be seated.

THE COURT: Good morning and welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenu. Next to her on the same platform is the certified shorthand reporter who will assist the court in administering this trial. I trust that you will fulfill your civic duty during this voir dire or questioning process. I thank you both for your presence and anticipated cooperation. You are performing a function that is of the utmost importance to our justice 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 you making themselves available to serve as jurors. The voir dire questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his or her own opinion. The parties value your opinions. The voir dire process will involve questioning prospective jurors individually, which will commence after I question you as a group. After a number of jurors are questioned in this manner, some of the prospective jurors will be invited back for further questioning as a group. Those required to participate in that process will be notified as to when it will occur. Our objective is to obtain a fair and impartial jury that will decide the case based upon the evidence that is presented here in this courtroom and on the law which I will instruct you on during the trial. I have decided to do individual questioning, in part, because the parties have requested it, and also because there has been some publicity about this case. During the individual questioning, 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 – and in the federal system, life in prison without the possibility of release means just that; if you're sentenced to prison under the federal system for life you are given life – Or whether the defendant should receive a lesser sentence than life in prison. This determination is made at the second phase of the trial referenced as the sentencing phase. If there is anything about the charges that causes you to prefer not being a juror in this type of a case, please indicate that fact by raising your hand now. There is no response. The first part of this trial, which will be referred to as the guilty or not guilty phase, will occur like any other criminal trial in federal court. The Government will present its case first. The Government has the burden of proving every element of the crimes charged beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict. The charges are not evidence. They are simply accusations. Nothing more. Mr. Kaczynski is presumed to be innocent and does not have to testify or present any evidence to prove his innocence. During the sentencing

phase, additional evidence may be presented by the Government or the defendant. At the sentencing phase, the jury will be called upon to decide whether certain aggravating factors exist, and, if so, whether those aggravating factors sufficiently outweigh all the mitigating factor or factors found to exist, or, in the absence of any mitigating factors, whether the aggravating factors alone are sufficient to justify a sentence of death. An aggravating factor is a fact or circumstance which might indicate or tend to indicate that the defendant should be sentenced to death. A mitigating factor is any aspect of a defendant's character or background, any circumstance of the offenses, or any other relevant fact or circumstance which might indicate or tend to indicate that the defendant should not be sentenced to death. At the conclusion of that hearing, the jury would then deliberate again as to the appropriate penalty. Since one of the options to be considered at the sentencing phase of the trial includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask questions in additional areas too. During this questioning, we will refer to you by your randomly selected number as a juror rather than your name. This is because I have decided to use an anonymous jury in this case in order to protect jury privacy, as I've stated to you in a previous communication. Now I will give you 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 you have been excused from jury service in this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended or you have been excused as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about 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, 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, Miss Furstenau, 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 – Counsel, we just changed that yesterday, didn't we?

MR. FRECCERO: That's correct, Your Honor.

THE COURT: What's the calendar. It's the whole week of the 24th. Let's see. (Court and Clerk confer.)

THE COURT: In accordance with what we decided yesterday, there will be no court December 22, 23 – during the whole week of December 22nd.

MR. CLEARY: That's correct.

THE COURT: We will not hold court during the week of December 22. That's 22, 23, 24, 25, nor on the 26th. Nor would we hold court January 1 or 2. I contemplate holding court December 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 the sentencing phase of the trial. At the sentencing phase, a sentence of death would be among alternative sentences the jury would be asked to consider. Evidence would be presented and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The Government may focus on certain aggravating factors, things that it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context, or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some other lesser sentence. Raise your hand if you do not understand this. 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 in this courtroom and by applying the law as I will give it to you in my instructions whether you agree with that law or not. If you have any belief that would interfere with your obligation to do this, please indicate that fact by raising your hand. There is no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs, and you therefore wish to discuss it privately, let me know of that request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions in the area that you have indicated a desire to keep private so I can determine whether aspects of the matter can be discussed 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'm now going to have my deputy clerk to escort all but the earliest randomly selected juror to another room and to place the remaining juror in the witness stand. (Whereupon, the prospective jurors were escorted out of the courtroom.) (Whereupon, Prospective Juror Number 48 was seated on the witness stand.)

THE COURT: You can take a seat. I'm going to see if this is your juror questionnaire. Is this your juror questionnaire?

PROSPECTIVE JUROR NO. 48: Yes.

THE COURT: Okay. You're the 48th randomly selected juror. I'm going to ask you questions from the podium. I'll do that in just a moment. VOIR DIRE EXAMINATION

BY THE COURT:

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

A No.

Q There is a microphone there. You can make an adjustment so we can be assured that your voice is amplified. Did you appear at Cal Expo to fill out the questionnaire I just showed you?

A No.

Q When did you fill it out?

A Yesterday.

Q Okay. Did you receive any communications from me about the time the other jurors appeared at Cal Expo concerning appearing at Cal Expo?

A No. The address was incorrect.

Q It was incorrect?

A Yeah.

Q Okay. I'm going to ask you a question concerning the information, if any – I'm sure you probably have received some information about this case – but I want you to tell me, if you can, all of the information you can recall receiving about the case, and I want you to give me as many details as possible. And I'll tell you why I'm asking the question so you don't have to be thinking about why is he asking that particular question. I'm asking the question because under the law I'm required to find out what a prospective juror knows about the case. That doesn't eliminate a prospective juror from being considered for jury service, but it would provide the court, myself, and the parties, with information so that we can objectively ascertain how that information could possibly affect you. And we will also give you an opportunity to later to tell us how you believe it has affected you, if at all. So can you give me as many details as you can about everything that you believe pertains to this case?

A Well, I actually haven't seen or heard very much. I don't listen to the radio in my car or at work. So I didn't get much information there. I have only seen local news. I watch the local news when I get off work. Just about an arrest. And I vaguely remember a few things about some things that have happened here in Sacramento connected to it.

Q What information, if any, have you received about the so-called Unabomber?

A Only on the local news about an arrest.

Q Are there any activities that you associate with the so-called Unabomber?

A No. Not that I can recall.

Q What do you think this trial is going to be about?

A A person arrested and accused of bombing certain areas of the United States. Different places.

Q Where did you receive that information that you just told me about?

A Local news.

Q Do you know anything about a cabin associated with the –

A I remember seeing on the local news about a cabin.

Q You have?

A Yes.

Q What did you see about a cabin?

A Recently, maybe about a few days ago, I remember seeing something about it is not going to be moved to Sacramento for a trial. That physical cabin will not be removed. That's all I remember.

Q Did you receive any information concerning things allegedly located inside the cabin?

A No.

Q You give me the impression you don't know a lot about this case?

A No.

Q You did indicate, though, that you became aware of alleged bombs associated with the case?

A Yes.

Q Can you give me more specifics about that information?

A I can remember that there was an incident here in town that I recall because I'm from Sacramento so I remember that. And I remember an employee was killed. I believe it was an employee of the Federal Government. I don't remember where.

Q Have you had any discussions with other people or overheard other people discussing the case?

A No.

Q Has any of the information you have received about the this case resulted in your formation of an opinion or any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A No.

Q You have no opinion at all?

A None.

Q I mean on that issue?

A Not really.

Q Not really? That seems to indicate you may have an opinion.

A Well, I haven't thought about his guilt or innocence.

Q Do you have any suspicions in that regard?

A I believe someone is innocent until proven guilty according to the law.

Q If you were selected to be on the jury, do I have your assurance that you would allow Mr. Kaczynski to start this trial on a clean slate?

A Yes.

Q What does that mean to you?

A He is innocent until he's been proven guilty in a Court of Law.

Q Okay. That – That is telling me that in your eyes Mr. Kaczynski is cloaked with the presumption of innocence.

A Yes.

Q You understand that that doctrine means that Mr. Kaczynski would be protected by that doctrine until and unless the Government proves every element of the offenses charged against him beyond a reasonable doubt. Do you understand that?

A Yes.

Q Do you understand that Mr. Kaczynski has no obligation to present any evidence whatsoever in defense of himself?

A Yes.

Q Does that bother you?

A No.

Q Is there anything you can think of that would interfere with your ability to be fair and impartial to both sides?

A No.

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

A My decision on that is kind of – it's not concrete.

Q Are you –

A It's mixed.

Q Okay. What are your views on the death penalty?

A I think the only thing that would make me uncomfortable would be if it had anything to do with my children. Otherwise – And it has more of an emotional than a morale or legal issue.

Q Is there anything about your personal beliefs concerning the death penalty that would interfere with your ability should this case reach the sentencing phase?

A No.

Q I'm going to have you to join me in a hypothetical. I want you to assume that you were, in fact, selected to be a member of the jury, and that you and your fellow jurors sat through the guilt and not guilty phase of the trial, you went back to the jury deliberation room, waded through all of the evidence, then to Mr. Kaczynski's disappointment, all of the jurors convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification. Are you with me to this point?

A Yes.

Q You would only go to the sentencing phase of the trial if you would make that type of a finding.

A All right.

Q Then at the sentencing phase of the trial, you would hear aggravating evidence, which would be evidence that the Government would argue points towards a sentence of death. And you could hear mitigating evidence, which would be evidence that points

toward life. Is there anything about your belief system that would interfere with your ability to have an open mind despite the finding that Mr. Kaczynski was found guilty of intentional murder of another human being? Do you have an open mind about sentencing options?

A Yes. Yes.

Q Would you be able to meaningfully consider voting for all sentencing options, which would be death, life in prison without the possibility of parole, or some lesser sentence?

A Yes.

THE COURT: The parties may conduct examination. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q Good morning, ma'am. My name is Robert Cleary. I'm one of the prosecutors on the case. I'm going to give you a copy of your questionnaire and ask you to turn to page 12. I'm going to ask you some follow-up questions to some of the information that you provided in the questionnaire. In response to questions 44 and 46, you indicate some connection with law enforcement, either through your family or a job that you previously had. Do you see where I'm referring to?

A Uh-huh. Yes.

Q Would either of these relationships, the job that you refer to in question 46, or your family member in question 44, would either one of those situations cause you to either favor or disfavor the Government, the prosecution in this case?

A No.

Q Okay. One of the things you would be asked to do, should you be chosen as a juror, is to sit and judge the credibility or believability of law enforcement officers. Is there anything about the information you disclosed in questions 44 and 46 that would impair or interfere with your ability to assess the believability of law enforcement officers?

A No.

Q Now, you have attended law school or are currently attending?

A Attended.

Q Currently?

A No. Not currently.

Q In the past you did?

A Yes.

Q Did you take criminal law when you went to law school?

A Yes.

Q You realize here in court that Judge Burrell will tell you what law applies in this case, right?

A Yes.

Q If what Judge Burrell tells you conflicts with – is different with what you learned in law school, will you be able to set aside what you learned in law school and follow and apply Judge Burrell's instructions on the law?

A Yes.

Q You don't think that will present any problem for you?

A No.

Q Could you tell us – You worked at a legal clinic. Did that have anything do to with criminal law?

A No.

Q Other than the legal clinic, did you ever do any work in the legal field?

A No.

Q You also indicate that you know some people in the legal community. Lawyers and, I guess, a judge or two. Anything about those relationships which would interfere with your ability to assess the evidence and the law in this case?

A No.

Q Turn, if you could, to page 19. And in particular to question 69 and the answer you provided there. I don't want to go into the details of that, but I take it that that was a fairly emotional experience for you?

A No.

Q Okay. Nothing about that event that would cause you to well up some emotions in you if you were to hear in this case evidence about people – officers' homes being sent bombs and bombs exploding at those locations?

A No.

Q Turn, if you would, please, to page 21. At the very bottom, question 82, you provided an answer at the bottom of the page, and your answer continues over to the top of page 22. Again, I don't want to reveal the details of that event, but obviously that was a tragedy in your life, correct?

A Yes.

Q How long ago did that event take place?

A Twenty years.

Q Was it a close friend?

A Yes.

Q And I take it that too was an emotional experience?

A Yes.

Q Is there anything about that emotional feeling you had that you think will be resurrected during the course of listening to the evidence in this case involving allegations of people being maimed, injured and killed?

A No.

Q You feel confident you'll be able to set that event in your life, set that aside, and just listen to the evidence and decide this case on the evidence presented in court?

A Yes.

Q Let me ask you now about your views on the death penalty. Turn, if you would, to page 26, question 103. You tell us there that you're for the death penalty in some cases, but not in others. And in a later question you say you believe the death penalty

is justified in some instances and not in others. Could you tell us in your view when the death penalty is justified?

A I'm not sure if I can answer that. I don't know – I don't know of an instance that I can recall.

Q Where it would be justified?

A I think that the struggle that I'm having is I think I can look at it from a legal standpoint and make a decision based on legal facts, but I think that I struggle when it comes to if it's something personal.

Q What do you mean by that, you struggle when it comes to something personal?

A Like if someone were to ask me if they'd harm one of my children if I would want the death penalty, and I would have to say yes.

Q What about if the crime you were sitting in judgment on did not involve harm to your family?

A I wouldn't have a problem at all deciding whether – based on the facts and the law, I would decide based on that.

Q And do you believe you could decide that the death penalty in a given set of facts, not involving your family, that the death penalty would be appropriate?

A Yes.

Q Okay. Let's focus on that now. Leaving your family aside, under which circumstances in your view would the death penalty be appropriate or justified?

A I think in cases of murder and death to a human being.

Q And are there particular types of murders or instances in which people are killed that you believe more appropriately warrant the death penalty than other instances of murder or homicide?

A I think there are some cases that would alleviate the death penalty.

Q That would?

A That would – would render it not usable.

Q Depending on the type of homicide and the character of the defendant, would those be things you would evaluate in making that decision?

A Yes.

Q Let me make this a little more concrete. I have been asking you questions about your view on the death penalty. Should you be sitting as a juror, you're not going to be deciding death penalty decisions in the abstract. Your decision ultimately would decide the life or death of the defendant in the case in which you sit in judgment. Recognizing that, is there anything about the death penalty, the fact that you would be asked to vote on the death penalty, to send – possibly send someone to their death that would cause you to be unable to do that?

A No.

Q And you still have question 103 in front of you, page 26?

A Yeah.

Q Okay. The second part of that question you said you would be, I think – is that "more likely"?

A Yes.

Q "More likely to want the death sentence for anyone who deliberately harmed your children." Is that correct?

A Yes.

Q And what we've been talking about now is a situation where your children were not the victims. And I take it your – your opinion, your view, is that it would be more difficult for you to vote for the death penalty in such a case, but there are circumstances under which you could vote for it?

A Yes.

Q And you go on to say at the bottom of the page, in question 105, that you're not sure that it's right for our society. What do you mean by that?

A Well, I think that it's – it's an issue that I have never really had to think about very – very often, but it seems to vary in our society whether it is taken upon or not. And I don't know if – if that is something that is right for our society.

Q And what did you mean when you say "it varies in our society whether it is taken or not"?

A Some places it is law, and some places it isn't. The death penalty is opposed to in some places, and other places it is not.

Q And I take it you see a certain unfairness with that?

A Yes.

Q In the federal courts – in these courts that you are currently sitting, there is a single death penalty statute that applies in all federal courts. Knowing that, is there anything about your view that there is an unfairness in the way maybe different states treat the death penalty, not federal courts, but state courts treat the death penalty, that will interfere with your ability to judge the evidence and base it on the law that the Judge gives you and make a decision on the death penalty in this case?

A No. I don't think there would be an issue.

Q In question 107 on page 27, you're presented a number of propositions. And you agree somewhat with the first three propositions. Can you tell us what you were thinking about when you answered that question?

A I think the reason why I said "agree somewhat" is because there is no specifics. It's a very general statement. And that's why.

Q In each instance it's a very general statement?

A Right.

Q And does that mean you would want to know more facts and circumstances about the crime and the defendant?

A Yes.

Q What sort of facts and circumstances would you like to know in order to make you feel more comfortable answering these questions in number 107?

A The evidence. I would need evidence.

Q What type of evidence would you be looking for?

A I think that evidence – material evidence. Eyewitnessing. Film. Video. Confession would be good.

Q And all of that goes to give you a level of certainty that the defendant committed the crime that's listed in 107, correct?

A Yes.

Q Earlier you had told us that you would distinguish between certain types of crimes, certain types of homicides, and certain types of defendants in evaluating whether the death penalty would be appropriate in that case.

A Yes.

Q Is that correct? So let's – I'm going to try to move you now past the question of "how sure is the evidence that the person committed the crime," and ask you what other circumstances about the crime or the defendant would you be looking for to make that decision as to whether the person should live or die?

A If the person was proven guilty, then I would look at the instructions by the Court to make a decision.

Q And that was actually something I was going to ask you next, but let me just stick with where I was going for the moment. You will be asked to – obviously instructed to follow the Judge's instructions on the law. But I'm trying to get a little bit better fix on where you personally feel about the death penalty. And you have been telling me that there are certain facts and circumstances you would want to know before making a death penalty decision, one of which, of course, you would want to know that the defendant is guilty of, in this case, a homicide of some sort. And I'm now following up and moving beyond that to ask you what facts and circumstances would be important to know so that you would distinguish between one homicide where you might decide the death penalty is not appropriate, and another homicide committed by another defendant where you would decide the death penalty would be appropriate?

A I guess it would have to be something that is heinous, something very with – maybe with anger. Preplanned. Violent.

Q All of which would be characteristics or factors about the crime itself, the type of homicide, correct?

A Yes.

Q What about the defendant? You also said the background or character of the defendant would be something you would want to evaluate. What about the background or character of the defendant would be important to you?

A I don't know.

Q Now, I want to go to something you mentioned a moment ago, that you would follow the Judge's instructions on the law. The Judge will give you guidance on deciding the death penalty issue in this case. If the Judge told you that certain factors were important, and you had to consider them in evaluating whether the death penalty is appropriate or not, and you disagreed with what Judge Burrell told, you – you thought, "Well, that's not really important, that's not a background circumstance that I find personally important," would you nonetheless be able to set your personal view aside

and follow Judge Burrell's instruction on the law and consider the factors that he tells you to consider?

A Yes.

MR. DENVIR: I object. I think the Court would merely instruct the witness to consider them. They could then consider them to be unimportant. And I don't think that's a correct statement of the law.

THE COURT: You are saying the same thing. You're both focused on the word "consider". So you can bear his objection in mind, and you can answer the question.

PROSPECTIVE JUROR NO. 48: Can you ask it again.

MR. CLEARY: Probably be safer if we can have it read back.

THE COURT: And you can read his objection back so she can understand the latitude she has as a juror. (Whereupon, the record was read as requested.)

PROSPECTIVE JUROR NO. 48: Yes.

BY MR. CLEARY:

Q Just so I make sure I can follow all this, including my own question, you would be able to set your own personal views aside and follow the law as Judge Burrell gives it to you?

A Yes.

Q Even if there is a conflict between the two; is that correct?

A Yes.

MR. CLEARY: Can I have one moment, Your Honor. (Brief pause.)

MR. CLEARY: I have 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 would like to ask you a few questions too, if I could. You do have the questionnaire in front of you, I think. If you could look at page 19. That's – particularly question 69 that you have been asked about before.

A Yes.

Q Was someone injured as a result of that, or is that just property damage?

A Just property.

Q And that – You don't feel that experience or your being a witness regarding it would affect you in any way in sitting in this case?

A No.

Q If you look at page 30 – or page 14, question 50, the second part. Do you know if that agency was a federal agency or a state agency?

A State.

Q State agency?

A Uh-huh.

Q If you could, turn to page 33, question 125. Is that someone whose presently employed in one of those three agencies? Is there somebody –

A Yes.

Q Okay. And can you tell me which of the three it is; the first, the second, or the third?

A U.S. Attorney.

Q Okay. That may be something we have to discuss at sidebar, Your Honor. Is that – is that a – like a friend or just –

A Just an acquaintance.

Q An acquaintance. Do you ever discuss – Is it an attorney or what type of position?

A An attorney.

Q Do you know on which side of that office, whether civil or criminal?

A No.

Q Is it someone you see very often?

A No.

Q You don't discuss their work – his or her work with them at all?

A No. I don't see that person any more.

Q Okay.

THE COURT: Can I ask a question. Is it a local office? Is it here in Sacramento?

PROSPECTIVE JUROR NO. 48: Yes.

THE COURT: When's the last time you saw the person?

PROSPECTIVE JUROR NO. 48: About a month ago.

THE COURT: And what type of setting did you see the person in?

PROSPECTIVE JUROR NO. 48: Just an acquaintance. Just –

THE COURT: Where were you when you saw the person?

PROSPECTIVE JUROR NO. 48: We met for coffee.

THE COURT: Okay.

BY MR. DENVIR:

Q Okay. As I understand it, that based on what you know about this case from the media, you don't have any preconceived notions as to whether Mr. Kaczynski is guilty or not, right?

A He's innocent until proven guilty, right.

Q Right. And based on what you know about the case, do you have any preconceived notions or thoughts or opinions as to what would be the proper penalty for whoever is convicted of the Unabomber crimes?

A No. I don't have any preconceived.

Q You have no opinion in that regard –

A No.

Q – at all? I want to ask, if I can, a couple of questions about your – your opinions on the death penalty. As I understand it, you – this is not something that you spend a lot of time thinking about?

A Not at all.

Q And you don't feel like you have any real – real strong opinions one way or another; is that kind of the gist of your –

A I think that would be a true statement.

Q Okay. And I'll make this quick as I can. You understand that the – two of the charges against Mr. Kaczynski are – carry this – three different penalties; execution, life in prison without possibility of release, which means what it says, there is no parole in the federal system, or a lesser sentence. And – and since – I want you to understand this is an unusual case because if he – if he were convicted of that in the normal criminal trial, the same jury that found him guilty of that would then hear a second trial, and they would actually impose the sentence, as opposed to the judge doing the sentencing as you would have in most cases. And I guess the question I want to ask you was, the charges are – are – that he's been charged with is mailing a bomb to someone with intent to kill and actually killing someone when the bomb went off. Those – That's the capital charge. Another one is transporting with the same intent and having the same result. If you sat on a jury in the first phase, and you heard all of the evidence and weighed it and listened to the Judge's instructions and found beyond a reasonable doubt he had committed that crime, and then as you went into the second trial, would you – do you think at that point you would be leaning one way or another among the possible sentences that you could choose?

A You're asking based on the first trial would I have a –

Q Yeah. The evidence – Having heard evidence that made you convinced beyond a reasonable doubt that he had done that, mailed the bomb intending to kill some, it went off and killed someone, as you started a second trial, based on what you just heard, would you be leaning, do you think, one way or another as you started the second trial?

A No.

Q Okay. And you understand that then in the second trial the Government would present this aggravating evidence. Anything that they thought about either the crime that they hadn't already presented, or about the defendant that they thought meant that the jury should sentence him to death. And then the defense could present any evidence, either about the crime or about the defendant, that would be a reason for not sentencing him to death, choosing something other than death. Then Judge Burrell would tell you you would have to weigh both of those and consider them, and then pretty well make up your own mind about among the three possibilities. And as I understand it, you don't feel that you would have any difficulties in doing that and carrying out these instructions?

A No. I wouldn't have any difficulty.

MR. DENVIR: If I could just have one moment, Your Honor. (Brief pause.)

MR. DENVIR: Your Honor, I just have maybe a question or two on this, and then perhaps we could pursue at sidebar the question about that – the acquaintance in the agency.

THE COURT: Okay.

MR. DENVIR: Just so we knew who that was and if there was some involvement.

BY MR. DENVIR:

Q If I could ask you again about that – when you were a witness to that event in 1980. Evidently, were you – did you actually testify at a trial?

A Yes.

Q And that was – Someone was charged with committing that crime?

A Yes.

Q And as a witness, was it because you were at the scene or knew about the scene or because you knew about the defendant?

A Because I knew the defendant.

Q And was there anything involved – anything about being a witness in a case like that, for whatever side, that would affect you in any way in sitting as a juror in this case?

A No.

Q And you have not sat as a juror before, as I recall?

A No.

MR. DENVIR: Could we just explore that, just ask a question and make sure.

THE COURT: We're going to invite you over to the right-hand-side of my bench. // (Whereupon, the following discussion was held at sidebar between the Court, counsel and Prospective Juror No. 48.)

MR. DENVIR: I just wanted to ask you who the acquaintance was in the U.S. Attorney's Office?

PROSPECTIVE JUROR NO. 48: (Name redacted.)

MR. DENVIR: He's one of the attorneys on the criminal side, as I recall. Did he have any involvement in this case or in the investigation or –

MR. LAPHAM: None.

MR. DENVIR: Would not be appearing evidently?

MR. LAPHAM: No.

MR. DENVIR: And he never discussed this case with you at all?

PROSPECTIVE JUROR NO. 48: No.

MR. DENVIR: And I assume if you sat as a juror, you would avoid discussing it if you ran into him?

PROSPECTIVE JUROR NO. 48: Correct.

MR. DENVIR: That's all. Thank you.

THE COURT: Satisfied?

MR. DENVIR: Yes.

THE COURT: Thank you. You're now excused. (Whereupon, the sidebar was concluded.)

THE COURT: Ma'am, when I said I would excuse you now, I didn't mean you were excused as a juror. We're just letting you leave the courtroom.

PROSPECTIVE JUROR NO. 48: Okay. (Whereupon, Prospective Juror Number 48 was escorted from the courtroom.) (Brief pause.) (Whereupon, Prospective Juror Number 179 was seated on the witness stand.) VOIR DIRE EXAMINATION

BY THE COURT:

Q Thank you for joining us. Let me show you your questionnaire. You can take a seat. I'm going to ask questions from the podium. Is this your questionnaire.

A Yes, sir.

Q Okay. You're the 179th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A Nope.

Q Okay. Did you appear at Cal Expo and fill out the questionnaire I just showed you?

A On October 6th.

Q Okay. Since that appearance have you been exposed to information concerning this case?

A No, sir. I have made a concerted effort to avoid it.

Q I appreciate that. And have you avoided everything, or despite your efforts have you been exposed to anything?

A No. I pretty much avoided everything.

Q Did you get exposed to any headlines or anything?

A No.

Q Okay. Since that time have you discussed the case with anyone or overheard other people discussing the case?

A No, sir.

Q I'm going to tell you why I'm asking you the next question so you don't have to ponder why is he asking me that question. I'm going to ask you a question that I believe I should ask you under law. Under the law, when there is a lot of publicity surrounding a case, a judge is obliged to determine what publicity a particular juror has been exposed to. That does not eliminate the juror from being considered for jury service, but it provides the Court and the parties with information that allows the parties and the Court to make a determination as to how the juror possibly was affected by the information. That's an objective determination we make. And we will also provide you with the opportunity to tell us from your own subjective prospective whether you believe you have been affected at all by the information, and if so, in what manner. I want you to now focus on the time period before Cal Expo and think about the information you have received about what you believe to be allegations that will be involved in the case, about the so-called Unabomber, about those type of things, and tell me as much detail as you possibly can about all the information you have become aware of.

A Actually, I don't have a lot of free time, so most of the information that I was exposed to was bits and pieces of news articles on the television. I did not read in particular any newspaper articles regarding the case. Possibly because it was not too closely a concern to my area. I knew that there was an arrest in another state and a big investigation and a lot of helicopters and motorcades that came through town. But I have not – I didn't read any of the particulars in the case. And I just – I come from a very small town, and I just didn't have very much exposure to media involvement.

Q Did you receive any information whatsoever about a bombing?

A I do remember on the news article on the television, you know, about there being a bombing here in town. But I can't tell you the agency that was involved or the name of the individuals involved in particular.

Q Did you receive any information concerning how that bomb was transmitted?

A I believe it was through the mail service.

Q Have you received any information about a cabin?

A I do remember quite a story about the actual removing of the cabin from its place.

Q Did you receive any other information about the cabin, other than its removal?

A Just that there was a lot of stuff that they took away from it – out of it, and then they actually physically removed it from its – where it was.

Q Do you have any memory of any of the items that you have indicated – or you have characterized as "stuff being removed", do you have any memory of what stuff?

A No. I just remember boxes being carried out by law enforcement people.

Q Has any of the information you received resulted in your formation of an opinion, a preconceived notion, any suspicion as to the guilt or innocence of Mr. Kaczynski?

A No.

Q Do you have the personal capability to leave the information you have received about this case from news media sources outside this courtroom?

A Yes.

Q If you are selected as a juror in this case, will you allow Mr. Kaczynski to start this trial on a clean slate?

A Certainly.

Q What does that mean to you?

A No assumption of guilt or innocence.

Q I do want you to have an assumption of innocence, though. It will be more than an assumption of innocence. I want you – I will instruct you later, I want you to presume that Mr. Kaczynski is innocent. Is there anything in your belief system that would interfere with your ability to, in fact, presume Mr. Kaczynski is innocent of all of the charges against him?

A No, sir.

Q Under our laws, that doctrine means that Mr. Kaczynski is presumed innocent. Doesn't have to present any evidence whatsoever in his defense. And he has the benefit of that presumption unless or until the Government proves every element of the offenses against him beyond a reasonable doubt. Is there anything about your belief system that would interfere with your obligation to afford Mr. Kaczynski that presumption?

A No, sir.

Q Is there anything you can think of that would interfere with your ability to be a fair and impartial juror to both sides in this case?

A No, sir.

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

A I voted for it the year I turned 18.

Q What are your views now?

A I believe the punishment should suit the crime.

Q I'm going to have you to join me in a hypothetical. It's going to be a long hypothetical, and I may stop periodically to make sure we are together in understanding what I'm trying to ask you. I want you to assume for the purposes of this hypothetical that you became a juror. And that you and your fellow jurors sat through the guilt and not guilty phase of the trial. You heard all of the evidence, and you went back in the jury deliberation room, waded through all of the evidence, and you made the determination, to Mr. Kaczynski's disappointment, that he is, in fact, guilty of the offense of intentional murder of another human being without justification. In light of that finding, would you still be able to consider during the sentencing phase of the trial voting for a sentence less than death?

A I could consider all of the possible penalties.

THE COURT: The parties may conduct examination. VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q Good morning.

A Good morning.

Q My name is Judy Clarke. I'm one of Mr. Kaczynski's lawyers. And I have some follow-up questions, if that's okay?

A Certainly.

Q I note – Do you have your questionnaire? It's close by. (Questionnaire handed to prospective juror.)

A Yes, I do.

Q And actually, you probably won't need it to remember it, but you tell us at page 21 – 20 or 21 that you served on an earlier jury. Do you remember that?

A Oh, yes. I do.

Q And it was a little bit frustrating because it was thrown out on a technicality. Can you tell us what you – what the experience was?

A Well, it was in Superior Court in the county in which I live. And it was an alleged mistreatment of an aged family member. And after serving two and a half, almost three days, the defense made a motion that something hadn't been proved. And I really didn't understand exactly what the motion was, and the judge agreed and dismissed the case. And it was just over.

Q And did the court explain to the jury what had happened?

A Not entirely, no. He just said that we were excused and thanked us for our, you know, time. And not really in very much detail.

Q He didn't say, "I threw it out on a technicality, go about your business"?

A No.

Q What was your sense why it was a technicality that it was thrown out on?

A Because they made some kind of – some point was not proven or made, you know, to the satisfaction of the judge. And he agreed, and that was dismissed upon some, you know – Well, for some reason. I'm not sure.

Q Did that give you any sense that the system doesn't work well? I mean, the use of the word "technicality" makes me think that maybe you had a little disappointment in how the system worked there.

A No. I was not disappointed in the system. I was disappointed because we didn't get to complete our obligation. But I understand, you know, that that's part of the system. That, you know, you have to prove your point in order to get it across.

Q At page 11 you give us your reaction to receiving the summons in this case. The top of the page?

A Uh-huh.

Q "Proud and anxious, nervous and unsure." Can you tell us what those flood of thoughts were?

A Well, first of all, it's the first time I've ever been involved in a federal court system. And I consider it an honor to be chosen or picked or whatever the lottery service says. Then there is also the emotions of not knowing what to expect, the – just the unsurety, I guess, of treading in unfamiliar waters.

Q Because it's federal court or because it's a high publicity case or –

A Both.

Q And does anything about the publicity concern you about the case or make you more interested, less interested in being involved?

A No. Everybody has a job to do – including the newspaper people and news media and publicity people.

Q Sure. I should have asked you, actually, at the beginning, I notice that you live a distance out – I don't want to say where – and that you have a couple of school aged kids. Is that any problem for you given the schedule?

A No. I work close to this location. So I am already a commuter.

Q So you're already coming this far?

A Yes, ma'am.

Q Is there any problem with your work as a result?

A None at all.

Q You mentioned at page 25, question 99, there is a question: "Have you taken any steps to protect yourself or your loved ones from terrorism?" And you indicate you wear an ID badge at work. How is that? Is that because of concerns of terrorism?

A Well, I'm assuming so. I work for an agency that deals with money. And people tend to be a little excited about their finances. And actually, prior to my being transferred to this location, there was a case of – of a gentleman who obtained entrance to the building and was – had a weapon and was threatening and actually was physically removed by the SWAT team. Now, that was before I came here, and before they instigated a lot of the security – new security systems that they have. But I – It was very eye-opening to me to come here and be exposed to that level of security. Because

the office I came from, you walked in off the street and you dealt with us across the counter. There is none of that here.

Q A little more –

A Yes.

Q – security involved? How does that make you feel about your job? Are you concerned about the threats to your safety?

A No.

Q Regularly?

A No.

Q You – The Judge talked to you some about your knowledge of this case. And I think you recall seeing boxes carried out of a cabin. Remember that?

A Yes, ma'am.

Q In your questionnaire you mentioned that it was a – you recalled a magnitude of evidence mentioned. Could you tell us what you were thinking about when you were talking about "magnitude of evidence"?

A The physical removing of a house, a home, a cabin from some place to another, was pretty astounding to me. I don't remember ever hearing about that type of thing happening before.

Q So the fact of the removal of the cabin had you sort of –

A Well, yeah.

Q – curious?

A Well, that sort of surprised me that, you know, would happen.

Q But what about the magnitude of the evidence that they mentioned?

A Well, I'm not familiar with the magnitude. I just remember there being pictures of several gentleman carrying boxes, you know, out to vans. But as far as like tonnage, I don't remember any kind of mention of number of boxes, pounds of evidence, or anything of that particular.

Q Just looked like a lot of stuff being hauled away?

A Well, yeah. But if they hauled it out of my house, they would haul a lot of stuff out too.

Q Did that give you any thoughts about whether or not Mr. Kaczynski was guilty or innocent?

A No.

Q Just hauling stuff away?

A Well, yeah.

Q You also mentioned when you were asked questions on the questionnaire about your knowledge of the case, that you thought it would be a costly trial. Do you remember that?

A Yes.

Q Can you tell us what you were thinking about there? How does that make you feel one way or the other about the case?

A One way or the other about the case?

Q Uh-huh.

A It doesn't really pertain. As a taxpayer, it seems like a pretty costly ordeal. I mean, if you think about the amount of people we're dealing with here just in the jury selection and the time that's involved, it does seem to be rather – I'm sure it is quite a costly deal. But you know, that's – I don't know the amounts.

Q Do you have a suggestion as to an alternative?

A As to what?

Q To an alternative?

A Nope. I think it's about the only system that works.

Q You also mentioned when you – when you indicated what you knew about the case that you thought it was mailing of bombs to Government agencies. Where was the source of that information?

A The television. Synops (sic.) that they, you know, put out.

Q Did that make you fearful, given the security kind of setup at your work, that maybe you or people at your work could be at risk?

A Working for an agency that handles money, you're always going to be an at risk person. Personally, I feel like I deal very fairly with my clientele, and I don't have fear for myself. But I don't control, you know, everybody in that building. As far as fear for my own safety, I come to work every day. And if I –

Q I guess that says something.

A That's right.

Q But the thought that whoever the Unabomber was was mailing to Government agencies, does that make you feel like maybe you were at risk to the Unabomber?

A No. As a matter of fact, it never really entered my mind.

Q Sorry I suggested it.

A Yeah. Thank you.

Q If I could ask you a little bit about your opinions on the death penalty, and if you could turn with me to page 28. And I think actually you told the Judge you voted for the death penalty when you were 18. I didn't realize it was quite that long ago.

A Oh, well, thanks a lot.

Q I guess I shouldn't say that.

A Yeah. Really.

Q It was just a couple of years ago, quite frankly.

A That's right.

Q And you also indicated that the punishment should fit the crime?

A Yes, ma'am.

Q On page 28, you said: "Where one person intentionally kills another person, the death penalty may or may not be justified." Now, don't raise your glasses like that, you're going to give more away.

A Well, they're for distance. Uh-huh.

Q Can you tell us what you're thinking about when you say that the penalty – the punishment should suit the crime, and it depends on the circumstances? What is going through your mind?

A Well, basically I – I think about the way my children behave. If my kids intentionally break something or damage something or hurt the other one, then they should be dealt with in a rather severe manner. Only because I don't want them breaking my stuff, and I don't feel like they should go around breaking other people's things. Okay. I also want them to have a respect and responsibility for their actions. And that's basically how I view the raising of my children and the way I deal with my own life.

Q Sure. It's a real philosophy of life. I can appreciate that.

A Yes, ma'am.

Q Can you carry it one step forward with me to how it applies in consideration of the death penalty. Does it mean if someone kills, they should be killed? I mean, is it – is it that concept, or can you help me with that a little bit?

A Well, no. I don't believe that, you know, if – Accidents happen. I do believe that. But I do believe that there is a matter of intent and the motivation behind the intent. And given those circumstances, and you know – that's where you would have to decide what punishment suited the crime.

Q So it's kind of an equivalency concept for you?

A I guess so, basically.

Q That's kind of what I'm hearing. The judge asked a hypothetical, and if I could put it in somewhat the same words: If you're sitting on a jury, and you convict the defendant of a premeditated, intentional, deliberate murder, one without justification, that's the proof beyond a reasonable doubt you and your fellow jurors have found, what does that mean to you the appropriate penalty is?

A The smoking gun thing; is that what you are talking about? Would the death penalty be one of the –

Q And the death penalty is an option. Your options are death, life in prison without release, or some lesser sentence. You're in the frame of mind of having convicted beyond a reasonable doubt the person of an intentional, premeditated, deliberate murder, one without justification, one that was not an accident, one that was not the result of provocation.

A There is an awful lot of facts that, you know, you can't give in your possible synopsis (sic.) here, but if what you are asking me is if I could vote for a death penalty in that type of case, yes, I could. But it would be based on viewing of all of the circumstances and facts involved.

Q What more would you want to know?

A Does he want to do it again.

Q All right.

A Is he or she remorseful. Is there a possible recurrence. I mean, I can't think of any particular piece of evidence or fact about someone that, you know, would sway – you know, switch me one way or the other.

Q So you would be looking at other factors, other than just the crime itself?

A Well, involving someone's life, I would hope someone would do that for me.

Q That's what – you know, that's what this process is all about, is to find if that is you –

A Yes, ma'am.

Q – is to say if that's you or not. You mention at page 27 that you saw an expose on a death row inmate in Louisiana. Do you see that?

A Oh, yes, I did.

Q Can you tell us what you thought of that? I know you have a few comments underneath, but can you tell us how – Did that affect you one way or the other? I know you say it didn't, but did it – what did you think of it?

A I thought it was a very well done program. It showed a lot of the human factors involved as far as the warden and the inmate and the victim's relatives, and also the inmate's family also. The reason that I don't think it affected me emotionally or internally was because he, himself, was pretty set, satisfied and at ease with the – the fact that he was going to die. He had come to grips, you know, with that and accepted that, and that made it pretty easy for me to accept that.

Q Since he had come to grips with it?

A Correct.

Q Had he not, do you think that would have caused –

A I don't think they would have done an expose on him.

Q Okay. All right.

MS. CLARKE: May I have just one moment, Your Honor. (Brief pause.)

MS. CLARKE: Thanks very much.

PROSPECTIVE JUROR NO. 179: Thank you.

THE COURT: Government? VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q Morning, ma'am?

A Good morning.

Q My name is Stephen Freccero. I'm one of the prosecutors in this case. In reference to – in reference to anything you may have seen on TV or heard about this particular case, if you were chosen as a juror to actually be a part or actually sit in judgment in this case, you would have to commit and swear an oath that whatever your decision is, you would base it solely on the evidence introduced here in court. Do you think you would have any problem following that instruction?

A No, sir. I do it every day of my job.

MR. FRECCERO: Thank you. No further questions.

THE COURT: We're going to take the morning recess. Court will be in recess until 10:45. (Off the record at 10:30 a.m.)

THE COURT: Let the record reflect all participants are present. I'm about to have my deputy clerk bring in the next juror. She just gave me some information about juror 159. I have no memory of juror 159, but when she left the courtroom, she

was directed to communicate with my deputy clerk as to whether she could work part time and reduce the financial hardship that she indicated she would experience if she serves as a juror. In any case, she basically told my deputy clerk that she will lose her home and her automobile and it would be a complete crisis for her.

MR. DENVIR: We'll stipulate.

MR. CLEARY: So will we, Your Honor.

THE COURT: Thank you. (Prospective juror number 180 enters courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you. Thank you for joining us. Let's see. Is this is your juror questionnaire?

A. Yes.

Q. You're the one 180th randomly selected juror. Is there any reason we shouldn't continue to consider you for jury service on this case?

A. I just started a new job Monday.

Q. Okay. Tell me about it. Will that interfere with your service?

A. I'm not sure. I won't be compensated at all during the trial.

Q. You don't know?

A. I know I will not be.

Q. You know you will not be?

A. Correct.

Q. What are the typical working hours of that position?

A. There are no strict hours, it's – it's a construction management position.

Q. Is that something that you would be able to do once you are released at the end of the trial day?

A. I don't – what do you mean, as far as continuing the position?

Q. Right. Let me try to crystallize the question. You will only be involved with the jury service during this trial between the hours of 7:00 and 1:00, and then it's going to consume some additional time because the marshals would take you to a location and you would probably end up at that location between 1:15 and 1:30 which, means you could be free –

A. Feasibly, yes.

Q. – to go to work at 2:00. I'm trying to –

A. That's possible.

Q. It's possible you can go to work at 2:00?

A. Uh-huh.

Q. If that occurs, would that reduce the hardship, do you think, you would experience?

A. It would greatly reduce it, yeah.

Q. Can you serve?

A. Yes, sir.

Q. Okay. You're not just telling me that because I'm a judge and asking you the question?

A. If you're allowed to work after the trial during the trial period.

Q. Correct?

A. Then, yes, I could serve.

Q. Okay. Did you go to Cal Expo to fill out your jury questionnaire I just showed you?

A. Yes.

Q. Since you filled it out, have you been exposed to any information on the case?

A. The typical news flash or whatever.

Q. Share the contents of the exposure.

A. I guess yesterday morning when I got up I heard a thing on the radio that the cabin or whatever was being moved to Sacramento. Beyond that, just that type of a headline flash. I haven't specifically listened to an article or read an article.

Q. Okay. I appreciate that because we don't want you doing that. But despite these efforts, are there other matters that you have been exposed to that you can recall?

A. Not specifically.

Q. Okay. Since Cal Expo, have you discussed the case with anyone or heard other people discussing the case?

A. Not in detail. Just that the trial is going on.

Q. Anything else that you can recall?

A. No.

Q. I am going to direct your attention to the information you were exposed to before Cal Expo and I'm going to explain why I'm going to ask the question because I don't want you to think about my reason I'm asking the question. I want you to think about the information you were exposed to. I am required in a case that involves a lot of publicity to determine how much publicity a prospective juror has been exposed to. Being exposed to pretrial publicity doesn't necessarily cause a juror not to be considered for jury service, but we have to know the nature of the exposure so we're in a position to objectively evaluate how the exposure can possibly affect you as a juror. And then I will also give you the opportunity later to tell me from your own personal viewpoint how you believe it has subjectively affected you. To the best of your ability, I want you to provide as much information as you possibly can concerning what you believe you know about the allegations involved in the case.

A. Only the allegations?

Q. Everything you think you know, everything.

A. I'm aware of who the defendant is; I'm aware that he lived in a cabin in Montana. There are two or three people that were killed in explosions. One or two of them was here in Sacramento and I believe one or two was in Chicago or in the Midwest somewhere. I know there was a lot of material removed from the cabin. I know there was a live bomb in the cabin. That's pretty much it.

Q. Okay. Based on the information you've been exposed to, have you formed an opinion or do you have any preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. Do you have any suspicions in that regard?

A. No.

Q. The bomb doesn't give you any suspicions that you just referenced?

A. I think a lot of people have bombs we don't know about.

Q. If you are selected as a juror in this case, knowing yourself the way you do, are you capable of leaving outside this courtroom the information you received about this case outside the courtroom?

A. I believe so.

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

A. Yes, sir.

Q. What does that mean to you?

A. It means that everything that I've heard about or read about is thrown out the window.

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

A. Yes.

Q. What does that mean to you?

A. No prejudgment. Presumption of innocence.

Q. There's another aspect to the definition. Under that doctrine Mr. Kaczynski is presumed innocent. He need not present any evidence whatsoever in his own defense. He has the benefit of that presumption until or unless the government proves every element of the offenses against him beyond a reasonable doubt. If the government fails in that endeavor, you would have to enter a not guilty verdict in favor of Mr. Kaczynski. Anything about your personal belief system that would prevent you from doing just that?

A. No.

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

A. I don't know. I have mixed emotions about it.

Q. All right. Can you share them?

A. I believe that we have a society that's supposed to live under certain guidelines, and if we don't, then there's some sort of punishment or debt to pay whether that's, you know, death or life imprisonment, and that on the other hand there's moral questions whether it's right to take a life, where there's other lives that have been taken.

Q. Is there anything about your belief system concerning the death penalty that would interfere with your ability to meaningfully consider the death penalty as one of the three sentencing options I told you about in my opening comments to you?

A. No.

Q. No means there's nothing about your belief system that would stop you from considering all three?

A. I believe I would consider it without question.

Q. I'm going to have you join me in a hypothetical. It's a long hypothetical so I may stop to make sure we're on the same path. Assuming you were in fact selected to be a member of the jury, you and other members of the jury had sat through the guilt and not guilty phase of the trial, heard all the evidence, you received my instructions on the law, and you went back to the jury deliberation room, and to Mr. Kaczynski's disappointment you found him guilty of the offense of intentional murder of another human being without justification. That finding would then require you to go to the sentencing phase of the trial. Do you recall my comments about the sentencing phase of the trial?

A. Vaguely, yeah.

Q. I'm going to repeat them. At the sentencing phase of the trial, which you would have after such a finding, a jury would then receive evidence, the government would present aggravating – what they would characterize as aggravating-type evidence, and that would be evidence that the government thinks should cause the jury to vote for the death penalty. And there would be mitigating evidence which would be evidence that points toward life. Is there anything that would interfere with your ability to have an open mind, after making the finding I just told you you made during the guilt and not guilty phase of the trial, to have an open mind as to all three sentencing options that I told you about? I'll repeat them. Death, life imprisonment without possibility of release, or a lesser amount of time in prison.

A. Do I have any –

Q. I'm trying to see whether or not after having made the finding that Mr. Kaczynski intentionally murdered another human being without justification, whether that finding would interfere with your ability to have an open mind so that you would with an open mind consider all the aggravating and mitigating evidence and then make a decision as to what penalty should be imposed.

A. I believe I have an open mind.

Q. You would consider all three sentences that I told you about?

A. Yes.

THE COURT: The parties may conduct examination. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good morning, sir.

A. How are you?

Q. Good. Thanks. My name is Robert Cleary. I'm one of the prosecutors in the case. Let me hand you a copy of your questionnaire and ask you to turn open to page 12. I want to ask you some follow-up questions to the information you provided there, in particular your answers to question 44 and 45. You with me there?

A. Yes.

Q. You indicate some connection or association with people in the law enforcement community. Are those people that you're close with?

A. They're neighbors.

Q. Do you see them on a regular basis?

A. I wouldn't call it regular, no.

Q. Do you discuss their jobs or any of the cases that they worked on?

A. Just seeing them outside on a weekend or taking trash out.

Q. Never discuss the facts of this case?

A. No.

Q. I take it there's nothing about your relationship with your neighbors which would interfere with your ability to judge the credibility or believability of law enforcement officers that would testify in this case?

A. No.

Q. Let me turn to the death penalty and ask you some questions about that and ask you to turn to page 26, please. In response to question 103, you say that you believe in the death penalty, but you're not sure if it deters criminal behavior, and at a later point in the questionnaire you tell us that you believe the death penalty is justified in some circumstances but not in others. Could you tell us, in your view, when you believe the death penalty is justified?

A. I think in out and out cold-blooded murder.

Q. When you use the phrase cold-blooded, what are you referring to?

A. Premeditated act.

Q. Are there other factors you would look for to determine whether a particular killing would warrant a death penalty as opposed to a killing that would not warrant the death penalty?

A. I really don't know.

Q. Okay. You described the cold-blooded killing. Is that in your mind a reference to the act itself as opposed to the character of the defendant?

A. Yeah, I don't think it matters who it is that performs the act. I think it's the act itself.

Q. Now, you said in question 103 that you're not sure that the death penalty deters criminal behavior. Do you think the death penalty would be appropriate in circumstances in which you concluded that it would not deter criminal behavior?

A. Do I think it's applicable?

Q. Uh-huh.

A. I think just because of the society we live in that there's laws and rules that we have to live under.

Q. Some of those rules make the death penalty appropriate in certain circumstances?

A. Uh-huh.

Q. Correct?

A. Yes.

Q. Those rules do not compel any juror to vote for the death penalty. They don't mandate that under certain facts you must vote for the death penalty. With that in mind, let me ask you a slightly different question. I've been asking you about your views of the death penalty, your personal views of the death penalty. Should you be sitting in judgment in this case, sitting as a juror in this case, the question becomes much more concrete for you, and that is, at the end of the trial, could you vote for the death penalty, could you vote to send someone to die? Would you be able to do that under the appropriate circumstances?

A. I believe so.

Q. And those circumstances would be certain types of aggravated or depraved or particularly heinous murders?

A. Yes.

Q. Are there types of murders for which you think the death penalty would be inappropriate?

A. I think where there's serious question when – even though you have a guilty verdict, where there's serious question as to the circumstances or the evidence.

Q. You might harbor some doubts about whether the person committed the killing?

A. I think once I made up my mind based on the evidence, if it was a guilty verdict, I wouldn't have any doubt depending on the seriousness of the, you know, how complicated the case was. If it was just out and out brutal murder, if I felt the person was guilty, I wouldn't have any question about the death penalty.

Q. Okay. And let me try to focus this in a little bit, focus my questions in a little bit. The way the process will work is, as Judge Burrell explained to you, you sit first in judgment of the question of the guilt or not guilty. And if the jury was to find the defendant guilty on certain of the crimes charged in the case, then we would have a second phase, presentation of evidence and deliberations by the jury, what we call the sentencing or penalty phase. So in order to get to that sentencing or penalty phase to be weighing the question of whether the defendant lives or dies, you will have already determined, a jury will have already determined unanimously that the defendant committed the act. And in this case, what that act is, charged act that would bring you into the penalty or sentencing phase is a mailing of a bomb with the intent to kill somebody that in fact killed a person. So you will have decided that unanimously, you will have decided those facts. And then we're in the penalty phase. Are you with me so far on the procedure?

A. Yes.

Q. Then when we're in the penalty phase, there will be a new presentation of evidence, and on the Government's side we would prove up or hope to prove up to your satisfaction what we call aggravating circumstances, some circumstances that we would argue to the jury would make the death penalty appropriate in the particular case, that would make it, for example, more depraved or more heinous than a different type of killing. In that same proceeding, the defendant could, doesn't have to, but could present mitigating circumstances. For example – I'm taking you away from the

facts of this case. A defendant on trial along the lines I'm outlining for you may prove in the penalty phase that he was mentally retarded or committed the crime, the killing, under duress, where somebody was either literally or figuratively holding a gun to his, the defendant's, head. And those circumstances would be presented to you in that second penalty or sentencing phase. Would that understanding – let me come back to the question I asked previously. Are there certain circumstances in which you would be sitting in judgment in a penalty phase, having already decided guilt beyond a reasonable doubt, that you think a killing would not warrant the death penalty?

A. No.

Q. Do you think in all instances when a person, a defendant, intentionally kills an individual, that he should be sentenced to death?

A. No.

Q. So under what circumstances in your mind – and I know these are very difficult questions to be asking you. Under what circumstances in your mind would you have a defendant that you found intentionally killed somebody that, in your view, the death penalty would be inappropriate?

A. That's just a hard question. I don't know that I can answer it. I believe my personal beliefs are that you can't just put a blanket over it and say that you're going to put someone to death even though you found them guilty. I – I don't know.

Q. Without asking you what the circumstances are, to try to make this a little easier for you, could you envision that there would be circumstances under which someone, a defendant, who killed a person, would not warrant the death penalty in your view?

A. I don't know.

Q. A few moments ago I was suggesting some hypothetical facts to you in which the killer, the defendant, would have been suffering from mental retardation, and I believe I mentioned duress, was compelled by others to commit the crime. Are those the types of circumstances, as examples, that you would evaluate to determine whether in that case in which the killer was mentally retarded or was under duress, whether in that case the death penalty would be appropriate?

A. I would say that's where the question comes into play is we have to live under certain rules, and it's really easy to sit around the kitchen table talking about the death penalty and say that for whatever reason somebody murdered someone that, you know, you just put them to death. But when you get into the courtroom, and you see someone sitting in front of you that's a real person, not somebody on the news or in a newspaper, that's a hard question to answer.

Q. Makes it a little more difficult, doesn't it?

A. Very difficult.

Q. That's the –

A. That's the crux of the moral question.

Q. That's the position, unfortunately, I'm trying to put you in right now to try to tell us, to make it concrete for you that this is not an abstract notion but rather a question that should you sit as a juror will be confronting you in literally a life

and death situation. And with that frame of reference, that's why I'm asking you so many questions about this, to see what your real view is about the death penalty and whether if there's a killing, you would always vote for the death penalty, or are there other circumstances of the killing or of the defendant which would cause you to believe that the death penalty is inappropriate?

A. I think that there would be circumstances, but I mean sitting right here right now, I don't know what they would be. I'm not that involved with –

Q. I am going to try to make this a little easier now. The judge will instruct you on certain laws to apply in the penalty phase, in that sentencing phase, should we get there. And Judge Burrell will tell you that certain factors have to be considered and evaluated by the jurors in making the determination whether the defendant lives or dies. And the judge may at that time – I don't know everything Judge Burrell is going to tell you of course, but he may tell you at that time that there are certain factors you must consider. And in a hypothetical case, maybe he would say you have to consider that this defendant is mentally retarded in making the decision as to whether this defendant that you found killed somebody, whether he should be sentenced to death. Do you think when you get to that point you would be able to accept and follow Judge Burrell's instructions on the law and give real meaningful consideration to the factors the judge tells you to consider?

A. I would consider them.

Q. In a meaningful way?

A. Without question.

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

THE COURT: Yes.

MR. CLEARY: Thank you. Nothing further, Your Honor. Thank you. VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good morning, sir. My name is Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I would like to ask you a few questions too. You're in the hot seat. Let me just ask you, I want to go back because I know you just changed your employment. And as I understand it, you wouldn't be compensated except when you worked; am I correct?

A. Pardon?

Q. You would not be compensated while you're on jury service unless you actually worked during that day?

A. Correct.

Q. Is that right? And the judge's schedule is Monday to Friday from 8:00 to 1:00, with reporting at probably at

7:00 o'clock in the morning, and then being released probably about 1:15 to 1:30. The trial would probably start at the end of December and would continue for two to four months. As I understand it, what you would do in your new job is you would be able to work after you're recessed at 1:30, let's say.

A. I personally believe that I would be able to. I mean, I would have to be approved.

Q. Is that new employment here or do you have to travel to get to it?

A. A lot of it is in the Sacramento area.

Q. And then would you have to put in eight hours of work after that in order to earn your –

A. I don't have to be anywhere specific during that time. I mean it can be done by phone or computer.

Q. Okay. I guess the only thing I want to just explore, and you know better than I, is if – you'll have to get up at whatever time it takes you to get where you're going by 7:00, you'll be released at 1:30 and work whatever amount of time you're going to work. You have to work in order to get paid. Are you going to be able to do that for two to four months and be able to concentrate on what's going on here and, you know, carry out your duties? I have no idea what it takes.

A. I believe so.

Q. Good. Let me ask you if I can. This whole area of the death penalty is obviously a very important one, and you may not have given it a huge amount of thought previously. I'm sure you haven't discussed it in front of 90 or 100 people. But we do need to find out two things. One whatever feelings or opinions you have about the death penalty, and then whether – how they relate to or interfere with your ability to sit as a juror potentially in a death penalty case. That's what we're trying to do. If you could go to page 26. I want to ask you a few questions, if I can, just about your opinions. You know, however you feel about it, maybe you can just tell me about it. If you look at your answer to 105. In your opinion, what purpose does the death penalty serve. It's eliminates the wicked from society. What were you thinking about at that time? Was it eliminating somebody from society so they can't reoffend or eliminating them from society because that's what they deserve for what they did at that point or both?

A. Possibly a combination of both.

Q. So part of it is just retribution for what they did and part of it is so they wouldn't do it again?

A. I think so. Whatever the crime was, it wasn't repeated. But also as I said earlier that I believe some murder cases are so gross that that should be the penalty.

Q. Just as the penalty by itself?

A. Right.

Q. And as I understand it, when you think about the death penalty, you don't consider it particularly effective in deterring other people. In other words, you don't – execute this person. You don't see it as particularly going to deter these other people from doing the same thing, or do you have some question about that?

A. I personally don't see that it deters anyone when you see people sitting on death row for nine or ten years.

Q. So you don't see it then serving that much of a purpose of deterring other people in society?

A. No.

Q. But you see it more as either making sure someone who's committed some crime doesn't commit it again?

A. I think the possibility is there that it would.

Q. And you also see some cases it may be just necessary to punish that person for certain kinds of crimes?

A. Yeah, depending on the crime itself.

Q. I understand that. Let me ask you, as far as the kind of crimes that you think merit the death penalty, I mean, if you were making – not saying as a juror, but if you were passing a law, you said – and I want to see exactly what you mean – you referred to an out and out cold-blooded, premeditated murder.

A. Uh-huh.

Q. Do you feel that the very nature of premeditated, cold-blooded murder means the person should get the death penalty just to punish him?

A. I guess you've got to look at all the circumstances.

Q. Would you want to see more maybe about who the person was also besides what they did in determining how you would sentence them?

A. I want to look at all the circumstances.

Q. But I guess what I want to know is whether, if you're deciding a penalty for a certain person, would you want to find out something about the person besides what they did, or –

A. Like their background.

Q. Anything.

A. I would think so.

Q. It wouldn't be just the mere act itself that would decide the penalty for you; your mind would be willing to look also at who the person was that you're imposing a penalty?

A. I would consider it.

Q. Because you could have the same act done by two totally different types of people, right, and you might think that the different penalties would be based on who those people were?

A. I think depending on the circumstances.

Q. The crime here that's charged that you would have to consider is mailing a bomb, planning, put together, mailing a bomb to somebody intending to kill them and actually having it go off and kill them. I take it that is something you would consider to be premeditated murder?

A. I would.

Q. And if you were to find that defendant guilty of that crime, convinced beyond a reasonable doubt by the evidence you seen in the first phase of the trial, you and your cojurors, you found that the person had done that beyond a reasonable doubt, when you started to go into the second phase would you be leaning towards one of the penalties that are available, death, life without possibility of release, or lesser sentence, would you be leaning towards death automatically?

A. No. I mean, I would consider whatever the judge had instructed the jury to consider.

Q. Well, let's talk about that. In the second part of the trial, after you found someone guilty of this premeditated, intentional murder, this mailing a bomb intending to kill someone, having it go off and kill someone, the judge would basically tell you that the – as the prosecutor told you, the prosecutor would try to give you more information maybe about that crime, or about the defendant, that they thought was a good reason to kill him. The defense would try to give information about the crime and/or the defendant that may be a reason to spare his life, to sentence him to life without parole. And you understand in the federal system that's what it means, there's no parole in the federal system?

A. Yes.

Q. That's different than the state?

A. Yeah.

Q. It is a big thing. Then you would be told you had to consider all that evidence, and you had to weigh all that evidence and then you have to consider the three penalties. Then you would pretty well be told you had your choice among those penalties, your own personal choice. You wouldn't be told you had to find one or the other. That's the jury's decision. I guess I would like to know would you be able to do that?

A. To make a choice?

Q. To make the choice among those?

A. Yeah, I would be able to make a choice.

Q. And you won't be leaning towards death right away because of the nature of the crime?

A. No,.

Q. Let me ask you again because I need to understand this, and I hate to keep probing into it but it's important. At one point you said that you felt, at least as your own personal beliefs, that it could be the act of cold-blooded, premeditated murder in itself, it is the act itself that requires the death penalty or merits it or earns it, or whatever you want to do. And I thought you said it didn't make any difference who committed it.

A. I think it depends on the circumstances.

Q. But would part of it be the circumstances of who did it and who that person was, or would it be just the circumstances of the act?

A. I think the circumstances of the person. I don't know how to explain that.

Q. It's very difficult, and it's difficult for us to frame the questions; it's difficult for you to respond to them. I guess I just want your assurance that if you were ever to sit as a juror, you feel that you could give Mr. Kaczynski your assurance that you would be impartial as to what the – and open-minded as to what the sentence would be should you find him guilty of the crimes that are charged.

A. I believe I would come in with an open mind, start from scratch.

Q. And if you were in the same position he is, you would feel comfortable with a juror with your frame of mind sitting on that jury?

A. I believe so.

MR. DENVIR: Thank you.

THE COURT: Bring in another juror, please. (Prospective juror number 180 leaves the courtroom.) (Prospective juror number 182 enters the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. I left a document on the ledge right next to you. Is that part of your jury questionnaire?

A. Yes, it is.

Q. Okay. You're the 182nd randomly selected juror. I didn't leave it there for you to analyze it. I got the full package here and I just wanted to make sure it was yours. Is there any reason why we shouldn't continue to consider you for jury service in this case?

A. Well, my job pays me for 30 days of jury leave, and after that I'm not paid.

Q. Okay. What are the normal working hours of your job?

A. I work a .7 three days one week and four days the next for a –

Q. You said .7?

A. That's 70 percent time. It's part-time.

Q. What hours do you typically work?

A. 7:00 to 3:00.

Q. What hours is the business typically open?

A. 24 hours. It's a hospital.

Q. Is it conceivable that your employer could make an adjustment so that you can work a different shift?

A. I don't know. I been in this position for 20 years.

Q. Working the hours you work you're indicating?

A. (Indicates in the affirmative.)

Q. Can you think of any reason why your employer wouldn't consider doing that and allowing you to work a different shift?

A. They usually have to post the position for you to change. I never considered alternative hours, to tell you the truth. I don't know if they could make arrangements like that.

Q. Assume hypothetically speaking that such arrangement could be made. Would that create a hardship for you?

A. Other than so many hours out of the day, I would be working more.

Q. It would adjust your schedule. You would be involved with jury service commencing as early as 7:00 o'clock in the morning. You would have to drive someplace and be picked up at 7:00 o'clock in the morning at a particular location, and then you would be brought to the courthouse, and I would release you from the courtroom at 1:00 o'clock. But you wouldn't be taken back to the location where you were picked

up until about between 1:15 or 1:30. But you should be able to leave that location at least by 1:30. To report to work.

A. There's three shifts. 7:00 to 3:00. 3:00 to 11:00 and 11:00 to 7:00. It would be hard to get there by

3:00 o'clock. And if I got there at 11:00 o'clock, I couldn't be back at 7:00.

Q. All right.

A. If you can figure it out, let me know.

Q. I have to ask these questions.

A. Okay.

Q. The parties are entitled to a what's called a fair cross-section of the community from which to select prospective jurors. And if I eliminate certain jurors without asking these type of questions, I could be eliminating a whole strata of society. That's why I'm asking the questions. You don't think this will work for you then; even if you were to change shifts, you don't think you would be able to get there in a timely manner?

A. I'm not sure they'll allow me to change shifts. I never heard of anyone doing that. I could ask.

THE COURT: What do the parties desire the Court to do?

MS. CLARKE: We stipulate, Your Honor. Sounds like it is an impossible situation.

MR. FRECCERO: Your Honor, we would again recommend at least perhaps a follow-up call from the Court to see if it's possible to – if that alternative was even available. If not, we certainly stipulate – the alternative of a different shift.

THE COURT: She just said it's not going to work, she's not going to get there.

MR. FRECCERO: Very well then, Your Honor, the government would stipulate.

THE COURT: Thank you. We're going to excuse you from further service in the case. (Prospective juror number 182 leaves the courtroom.) (Prospective juror number 183 enters the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Let me see if this is your jury questionnaire. Is that your juror questionnaire?

A. Yes.

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

A. After you read my questionnaire, no, I guess not.

Q. I am going to ask you some questions from the podium concerning what you stated and I'll let you know why I'm asking.

A. Okay.

Q. I know that in your questionnaire, from your perspective, you have set forth what you consider to be compelling reasons as to why you shouldn't be considered for jury service in this case. I am required to assist the parties in having available for jury service what is characterized as a fair cross-section of the community, and that means that people from all parts of the community should be considered for jury service. And

if we exclude certain individuals because of their occupation, then a whole strata of society could be excluded. I think our founders had in mind, I'm guessing when I say this I know, but I think our founders had in mind when they devised that concept if that you have individuals from a cross-section like that judging the facts, then you would have individuals that would have a different perspective on how to look at a situation. And that probably would help the jury find the truth, which is what we're searching for here. Only you can tell us whether what you have indicated should override the considerations I must ponder and I must uphold. If you have reasons as to why you would not be able to concentrate on the trial if you were selected or if you have other hardship reasons, you'll have to express them. But you're here despite what you told us because I've got other considerations and I've got to make balancing determinations, and I would need additional input.

A. Okay.

Q. What do you think?

A. I think what I wrote down what I felt was valid. If you don't feel that that was something that would, you know, stop me from serving, then I guess I would come.

Q. Let me take just a moment and refresh my memory about some things you said, because I need to see if I should probe further.

A. Okay.

MR. DENVIR: Your Honor, you might want to look at question 134 on page 34 and question 120 on page 32.

THE COURT: 134 on 34 and 120.

MR. DENVIR: On 32. And 136 on 5. I think that is what the juror is referring to.

THE COURT: You seem more familiar with the questionnaire than me. I'm going to let you ask the questions.

MR. DENVIR: I was just trying to help out.

THE COURT: Would you like to ask the questions?

MR. DENVIR: Not at all.

THE COURT: I was serious.

Q. When I looked at your juror qualification questionnaire, I didn't have in mind what counsel just showed me on page 35. That information does not appear to be on the jury qualification questionnaire. I'm going to have to ask you questions about that.

MR. CLEARY: Your Honor, we have an extra copy of the questionnaire. You want us to hand it to the juror?

THE COURT: I appreciate that. Thank you.

MR. CLEARY: That is your questionnaire; right?

PROSPECTIVE JUROR NO. 183: Yes, it is.

MR. CLEARY: Thanks.

Q. BY THE COURT: I think one of the matters could be somewhat private. But I'm going to discuss it in a general way, if that's possible, in public. I'm first going to direct your attention to the matter on page 35, your response to question 136.

A. Yeah.

Q. How old is the child that's involved?

A. She's 12.

Q. Okay. Would my schedule interfere with your ability to take care of the child?

A. No, because you said that we would be ending at approximately 1:00 o'clock, that would not.

Q. Okay. I'm going to now direct your attention to page 34, question 134. Will that condition interfere with your ability to sit as a juror?

A. It depends on the situation at the time.

Q. I don't know how to –

A. It's stress related.

Q. – ask you questions about that.

A. I know it's stress related. It just depends on the amount of stress that I'm able to handle.

Q. You have an idea about the allegations that will be involved in this trial?

A. Yes.

Q. You also know that the death penalty is one of the sentencing alternatives that the jury will be asked to consider?

A. Yes.

Q. Is there anything about the allegations that you think would produce the type of stress that's referenced in the response to the question?

A. Not that I can foresee knowing what I know now. But –

Q. Okay.

A. You know, if there was something to arise, it would be like –

Q. Let's look at the worst case scenario.

A. Okay.

Q. I plan on giving jurors – this is not in concrete, but I plan on giving jurors about a 20-minute break after about an hour and a half of testimony, and then you would take another 15- or 20-minute break after another hour and maybe 15 minutes to hour and a half of testimony. Would that be enough time to take care of the problem if it did arise?

A. I would think it would be.

Q. Okay. I'm now looking at page 32, question 120. That basically indicates that this would cause additional complications in your life. I know that's probably true. Could you live with those complications?

A. I would have to probably get out of some obligations that I'm already in.

Q. Is the hardship that jury service on this case will cause you such that, in your mind, I shouldn't force you to do it?

A. I guess not. I don't know.

Q. Can you help me? I need to – it appears that it's going to cause you some problems. I know jury service, it interferes with the lives of citizens. When I was a lawyer, I worked for the United States Attorney's Office in a supervisory capacity,

supervised two offices, one in Sacramento and the other in Fresno. The state system called me for jury service. I didn't think they would pick me, but they did. And I actually served and it complicated my life. I had to still do my work, I had to. I was not just a supervisor, I was a trial lawyer. So I had to continue to do my work. As a judge here I have been called for state jury service. Congress hasn't exempted us for some reason. I'm not being critical of Congress, though I would prefer to be exempted, that's true. But I filled out the initial questionnaire that you filled out. I basically explained my plight, what kind of difficulties it would cause me, they didn't call me back. I was happy about that, but one of my colleagues who is district judge actually went over there and responded to questions just like you're responding to. I know it complicated his life and it would complicate my life if they called me over. I wouldn't go at this very moment because of this trial. But if they did not accept my excuses and they called me over at another time when my docket is not as congested as it is now, I would go, and it would really complicate things. So the question is whether you would be able to serve despite the complications, and whether the things that are bothering you would be things that you could put aside and you could give your full attention to this case. That's really the question and only you can answer that question.

A. I guess I could.

Q. Did you fill out your juror questionnaire at Cal Expo?

A. No.

Q. Did you receive any communication from me concerning going to Cal Expo?

A. Yes.

Q. Okay. And since the time you received that communication, have you been exposed to any information about the case?

A. I just read an article in the Reader's Digest that came in December.

Q. What were the contents of it?

A. It was about someone that had received one of the bombs from the Unabomber, and how his life had changed.

Q. Did that have any effect on you?

A. It kind of put succinctly into words some feelings that I had.

Q. I need you to have your voice elevated or amplified a bit more.

A. Sorry.

Q. You said put in words some of the feelings you had?

A. Yes.

Q. Can you express those feelings?

A. Well, just the feeling that sometimes we're so concerned with not saying something is right or not saying something is wrong that we won't take a stand, and people get hurt from not taking a stand.

Q. Any of those feelings pour over into this trial in a way that will affect your ability to be a fair and impartial juror to both sides?

A. I always felt that way, so I just put into words what I always felt.

Q. Since I sent you the communication about Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. No.

Q. All right. As a judge, I'm required to find out how much information a potential juror has received about a case in a situation such as this one where there's been a lot of publicity about allegations surrounding the case. And the reason I'm required to probe such information is because I have to place myself and the parties in a position so we can objectively evaluate the possible effect such information could have on the potential juror. And we also provide the prospective juror the opportunity to tell us subjectively speaking how he or she feels about the impact if any of the information. Bearing in mind my goal, I want you to tell me everything you possibly can that you remember hearing that relates to this case and the individual who is known as the so-called Unabomber.

A. Well, it's not very much because I don't – we don't subscribe to a newspaper. And I watch TV, the news on TV, but not like religiously every night, so just kind of a smatter here and there. Of course, when it's in Sacramento, we heard about, you know, the Department of Forestry, someone received a mail bomb, and also, when they found the cabin, you know, they found this cabin in Montana, I heard about that. And of course, when they had the suspect in custody. And that was it. Not very much.

Q. Let's focus on the cabin. You recall any other information concerning the cabin?

A. Just a diary, something about a diary was found or something.

Q. You receive any information about anything else being found in the cabin?

A. Things to make a bomb. That's all I heard. Not specific items.

Q. Has the information you have been exposed to concerning allegations surrounding the case or about the case resulted in your formation of an opinion as to Mr. Kaczynski's guilt or innocence?

A. Not really.

Q. Has it caused you to suspect that Mr. Kaczynski is guilty or innocent?

A. It's made me think that someone else must think he's guilty or they wouldn't have picked him up.

Q. Does that opinion concerning what you believe someone else thinks cause you to have an opinion that's similar to what you think someone else thinks?

A. No.

Q. If you are selected as a juror in this case, do you have the personal capacity to leave outside the courtroom the information you heard about the case outside the courtroom?

A. So that I wouldn't be talking tomorrow with anybody about it?

Q. I would want you to disregard all the information.

A. That had been heard?

Q. Correct.

A. Thought about anything.

Q. Could you do that?

A. I would hope I could.

Q. Okay. And I appreciate your response because it's obvious that you're giving me an honest response.

A. You want yes or no.

Q. Well, if you can give yes or no, yes, I would want yes or no, but I want you to tell me honestly what your response is. If you have just given me the best response you can possibly give me, then that's the response we'll have to live with. But I do want to know whether there's anything that would stop you from giving a categorical response. You can understand why an individual on trial wouldn't want to have to defend himself against news reports.

A. Exactly.

Q. Right. So that's what I'm trying to determine is whether you can ensure Mr. Kaczynski that he doesn't have to worry about defending himself against any type of news report.

A. No, he wouldn't, not from me.

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

A. Yes.

Q. What does that mean to you?

A. That would mean that I would have to listen to everything that was said by one side and then everything that was brought forth by another side, and in my mind I would make a determination from the evidence that was presented.

Q. And it also means that Mr. Kaczynski's guilt or innocence will be determined solely by evidence presented in this courtroom.

A. Exactly, not things that you hear from outside sources.

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

A. Yes, he should.

Q. What does that mean to you?

A. That no one serving on a jury should have an opinion if he's guilty or innocent until the whole case has been presented.

Q. The doctrine, it does presume something, it does presume that Mr. Kaczynski is innocent. And based upon that presumption, Mr. Kaczynski is not required to present any evidence at all. In fact, if no evidence is presented, since he is presumed innocent, you immediately have to enter a not guilty verdict if no evidence was presented.

A. Okay.

Q. It also protects Mr. Kaczynski until or unless the government proves every element of the offenses charged against him beyond a reasonable doubt. If the government fails to do that, you would have to enter a not guilty verdict in favor of Mr. Kaczynski. Is there anything about your belief system that would interfere with your ability to allow Mr. Kaczynski the benefit of the presumption of innocence doctrine?

A. Not if the other side was unable to prove that he was guilty.

Q. Beyond a reasonable doubt?

A. Exactly.

Q. Okay. Can you think of any reason why you couldn't be fair and impartial as a juror in this case?

A. No.

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

A. Opponent or proponent?

Q. Right.

A. I would say I'm pretty much a proponent.

Q. A proponent?

A. Uh-huh.

Q. I'm going to have you join me in a hypothetical. It's a long hypothetical so I'll be stopping to make sure we're on the same path. Assuming you were in fact selected to be on the jury, you and your fellow jurors sat through the guilt and not guilty phase of the trial, you heard all the evidence, I gave you instructions and went back to the jury deliberation room and you decided the case, to Mr. Kaczynski's disappointment, that he is, in fact, guilty of the offense of intentional murder of another human being without justification. That type of a finding would then take us to the sentencing phase of the trial. Are you with me at this point?

A. I believe I am.

Q. Okay. At the sentencing phase of the trial, the government would present what's called aggravating type of evidence, aggravating factors that would be evidence that the government thinks should cause the jury to vote for a sentence of death. Also, you will be presented with mitigating evidence, mitigating factors that will be evidence that points toward life, either life imprisonment without possibility of release or some lesser amount of time in prison. Remember the finding that I indicated the jury made during the guilt and not guilty phase of the trial?

A. Uh-huh.

Q. Is there anything about that finding that would interfere with your ability to consider all three sentencing options during the sentencing phase of the proceeding?

A. No.

THE COURT: The parties may conduct 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 could. Do you have your questionnaire there?

A. Yes.

Q. Good. If you could turn to page 5, question 20.

A. Yes.

Q. And that's how your husband is currently employed?

A. Yes.

Q. How long has he been employed in that type of position?

A. About six years.

Q. And have you talked about this case at all with him?

A. Just what we've – you know, what little we do know, you know, just can you believe, you know, you got called up for that. I never been on jury duty in my life.

Q. Do you remember what your conversation was with him about the case or about the defendant at all?

A. No, because we really don't talk about – we haven't really talked about it that much.

Q. In his position do you worry at all about his safety?

A. I really don't, because there's never been an incident that would make me worry.

Q. He's never had any incident where he was in danger?

A. Where they had to blow the whistle or anything where he's been involved, maybe he heard a whistle and ran to help somebody, but never where he's been.

Q. Has he ever talked to you about incidents where other people have been in danger, other people in his job?

A. No, he doesn't really talk too much about his job, kind of leaves it at work.

Q. Do you think that in evaluating – if you sat as a juror and you were vacillating between the sentence of imprisonment versus execution for a crime that allowed either one of the penalties, the fact of your husband's employment might make you lean towards execution? Away from imprisonment?

A. Wouldn't if it was imprisonment forever.

Q. But you wouldn't have any concerns about sending someone to prison and they might hurt somebody there based on your experience and his experiences?

A. Not really.

Q. If you could turn to page 11, question 41. By the way, you marked that with, I just note, with an asterisk. Is that something you did not want to discuss in public?

A. Right.

Q. I didn't realize that until just then. Your Honor, I – is that the only question, by the way, you marked with an asterisk, do you recall?

A. I can't remember; I think so. I did this quite a while back. At the beginning of November I think.

Q. Or maybe the beginning of October. Did you do this out at Cal Expo?

A. No, I didn't.

Q. You did it at some point afterwards?

A. At the court building.

Q. Looks like maybe it's dated October 31st, I guess?

A. Okay. That was a while back.

Q. Is that something that you would want to not discuss in public?

A. Right, but I just – it was that thing of, gosh, what am I going to do.

MR. DENVIR: Is that something, Your Honor, that I should discuss in the question of 41, the first part of it?

THE COURT: Do you have any problems? Let's – the first part would be everything before the word because; right?

MR. DENVIR: I'm more interested in the because.

THE COURT: That's the second part.

MR. DENVIR: I meant the second question.

THE COURT: Okay. We can discuss that in private. (Sidebar.) (Discussion relating to vacation plans redacted.) (Discussion concerning juror's characterization of reaction to jury summons redacted.) (Open court.)

Q. MR. DENVIR: What we were talking about at sidebar, that second part about after "because," is that view of the matter going to interfere with your ability to give Mr. Kaczynski the full presumption of innocence?

A. No, I don't think so.

Q. Don't think it will affect it at all?

A. No.

Q. Let me ask you, if you turn to, I think page 5. It must be – well, in addition to your husband being in law enforcement, as I understand it, you have two brothers that are now or have been in the past involved in law enforcement, is that right?

A. That's correct.

Q. You think that that's going to affect you at all in your ability to sit as a juror in this case?

A. No. My brothers are not – we're not in real close contact.

Q. Let me ask you, both as to your husband and your brothers, do you think that if you were to sit as a juror in this case and, say, you thought the government hadn't proved its case and you had to find Mr. Kaczynski not guilty, or if you did find him guilty and you decided that it should be a penalty less than death, would you feel like you had to kind of justify yourself to your husband and your brothers because of their work?

A. No. I wouldn't even talk about it with them.

Q. Even afterwards you wouldn't feel –

A. You mean after the whole thing was done?

Q. Yes.

A. I would say that's what we all decided.

Q. If you'll go to page 32, you were asked what your thoughts and opinions were about Mr. Kaczynski before coming to fill out the questionnaire, and you put in that he is a smart weirdo. What did you mean by that?

A. Well, I heard that he gone to school. I don't even know where. But he was very bright, very, very smart, but that he lived so away from everybody else, didn't have anything to do with anybody really, he lived in that little cabin in Montana to me is kind of antisocial. I think that's kind of weird.

Q. It was –

A. That's my opinion.

Q. It was those two matters only, the fact that he had been very bright and educated and was living in a cabin?

A. That he's kind of away from society, uh-huh.

Q. And that's what you meant by the smart weirdo?

A. Uh-huh.

Q. I want to, if I can, go back to your situation if you were to sit as a juror on the case. As I understand it, you understand the judge's schedule – let me ask you. How far do you live from this area, from Sacramento, approximately?

A. Well, I think I only live about 20 miles.

Q. How long did it take you to drive?

A. The traffic, I didn't realize how bad it was in the morning. I was late.

Q. Do you know how long it took you to drive at that time in the morning?

A. Well, I left my home around 7:00, about 7:25, and I arrived at 8:05 where I was supposed to be picked up.

Q. Now, you understand that the schedule, the court schedule will be from 8:00 to 1:00, but you would have to report at 7:00 o'clock, so you would have to leave about 6:15 in the morning or 6:20, somewhere around there to be there?

A. Yes.

Q. Is that right?

A. That would be kind of hard for me.

Q. I want to put this together because I want to make sure that you feel comfortable sitting in the trial, both for yourself and for the sake of the parties. So you would have to leave at, sounds like somewhere around 6:15 to come there, and then you would be released from the staging point somewhere maybe around 1:30 and would probably be home about 2:00 to 2:15. As I understand it, as far as your job is concerned, you would get paid while you're on jury duty, so that's not a problem?

A. That's correct.

Q. Would you have any ongoing responsibilities you would feel or obligations to take care of after you got home as far as your job was concerned?

A. Yes, I would, especially – Your Honor, do they have days when they don't have – when we don't come into work, or do you always, you know, hear court Monday through Friday?

THE COURT: We will be going straight through every day during those hours with the exception of one week in January.

PROSPECTIVE JUROR NO. 183: So there wouldn't like Fridays off?

THE COURT: No.

PROSPECTIVE JUROR NO. 183: That's what my concern was, because – well, it's our school district's policy if you're, you know, excused for one day of court, you of course have to come back to work, and then, you know, you're going to have all that pile of –

Q. BY MR. DENVER: I see. Let me tell you what the dates are. It is expected the trial would start maybe the 29th of this month and could last two to four months.

That's the expectation with that schedule, with the only break being then. As far as your school is concerned, they will pay you, is that right, but they also expect you to work when you're out of court?

A. Right.

Q. On that day?

A. Right. It's hard to come back. You probably don't realize it, but it's hard to come back and catch up on all the work that's been done, then plan again for the amount of time you were going to be out. That's why I was wondering. I heard some cases would be Monday, Tuesday, Wednesday, half of Thursday, and you're expected to show up at school the other half of Thursday and all day Friday and get everything ready for the next week. But this would be Monday through Friday, so they would have to get somebody temporarily. Another thing that kind of worries me, every morning I have to take my daughter to school. Like seven 7:00 is the earliest she can be dropped off. That would be hard.

THE COURT: Can you make that adjustment?

PROSPECTIVE JUROR NO. 183: I would have to see if I can pay somebody to come take her, you know, because we live far enough away that –

Q. BY MR. DENVER: Let me ask you one other thing, if we can go back to it. If you go back to question – page 32, question 120, when you were asked about your thoughts and opinions about the case. You said you didn't want to be picked because it would make your life more complicated than it already was and you couldn't imagine juggling another thing. Is that right; is that still your view on it?

A. Well, I feel like – I feel like it's really going to be hard.

Q. Do you feel it's going to be stressful for you?

A. Very.

Q. As far as what you put over on page 134 – sorry, page 34, question 134, is that something that's affected by stress or is that something that causes you more problem when you're stressed out?

A. Yes.

Q. And then as far as your daughter who's at home, do you have to sometimes be with her, take care of her because of her medical condition?

A. You know, diabetes, you can have emergencies arise, and she has had some. It's just you never know. I mean, you know, you try to keep control of everything but –

Q. Are you nearby when you're working, near to where she is?

A. I can get there between 10 or 15 minutes.

Q. I guess the question I have for you is, as Judge Burrell explained, we would like to have people serve on the jury from a wide range of places, and to serve on a jury of any kind, in particular this case because of its length, is a hardship. At the same time, we want people serving on the jury to be able to give their full attention to what's happening here without being concerned by worries or other things going on in their life where they're worrying about that. Only you know. Do we have a real worry there, or do you have a real worry there about whether you're going to be able to keep your

concentration on, you know, your work and daughter and your own medical condition and her medical condition and other things?

A. It would be hard.

Q. Do you think this is a case – that you would be better off serving on a different case maybe of a lesser duration with a different type of scheduling than this one?

A. That would be easier.

Q. I guess you have to tell us. Is this going to be a hardship on you that perhaps the parties are going to have to worry about your ability to really kind of be a full-time juror spending time only working on this case?

A. Well, I can only answer I would hope not. I can't – I never served on a jury before.

Q. You think you can assure us you won't have any problems in that regard, or are you concerned about it?

A. I feel like I would be okay. But, I mean, I can't give you a, you know, ironclad, you know, nothing is going to affect me.

Q. Are you going to be able to resolve your daughter going to school?

A. That would be a concern. I mean, I would have to get that taken care of before I could ever do anything.

THE COURT: What are the prospects of getting that resolved?

PROSPECTIVE JUROR NO. 183: We have someone in our neighborhood I can ask. I don't – I hate putting that on somebody else too from month to month. I don't know. I've got to find out what's going on.

THE COURT: Do you have a relationship with the individual you're referencing that would allow you to comfortably ask the question?

PROSPECTIVE JUROR NO. 183: I could ask her. She is the only person I know I could ask. I hope she – I could get her to do it, you know, to be responsible.

THE COURT: All right. The government.

MR. CLEARY: Can I ask a couple questions on that score, Your Honor?

THE COURT: Yes. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon. My name is Robert Cleary. I'm one of the prosecutors on the case. I just want to ask you a couple questions about the problem with getting your child to school. Is your husband available to do that?

A. He leaves at quarter to 5:00.

Q. And your child has to be at school by, what, 6:30, you said?

A. 7:45 class starts.

Q. Okay. Are there other mothers in the neighborhood, or fathers, for that matter, in the neighborhood, in your neighborhood whose children go to the same school at the same time?

A. She's the only one I feel comfortable with that I know, and she's is a friend. But her child is often late to school.

Q. Her child – I'm sorry?

A. Is often late to school. So I have to –

Q. Is that the same person you were just talking to Judge Burrell about you would be comfortable asking to take on this duty?

A. Yes. I –

MR. CLEARY: Thank you.

THE COURT: We're going to take a moment. I want to talk to the marshals. (Short discussion off the record.)

THE COURT: I'm going to have my deputy clerk take the juror to the next room. We're going to interfere with your workday a little longer than we thought. There's another juror that we need to talk to. We're going to feed you, and then we're going to call you back in at 1:30.

PROSPECTIVE JUROR NO. 183: Okay.

THE COURT: Is that all right? Okay. (Prospective juror 183 leaves courtroom.)

THE COURT: I allowed the questions, at least some of the questions, to get into what I consider to be the preemptory challenge-type area. This is really supposed to be for cause examination. I didn't stop you because I felt that it might save time later on when we have the full group. Perhaps I should have stopped you, because now we didn't complete the examination of the jurors as planned. But we only have four jurors coming in this afternoon, so we'll actually have six jurors to examine this afternoon. We'll complete the examination of that juror, and then there's another juror that is going to be examined too. So we will allow you to examine that other juror too. They won't be in when I speak to the four and give them general information. I'll give the four the general information and then we will call that juror back. So that will be the sequence of the examination. I assume there's nothing to cover, and I also assume you want to go to lunch, so we will be in recess until 1:30.

MR. CLEARY: Thank you.

MR. DENVIR: Thank you, Your Honor. (Luncheon recess taken.) SACRAMENTO, CALIFORNIA THURSDAY, DECEMBER 4, 1997, 1:30 P.M. —oOo—

THE COURT: Ready to proceed. Let the record reflect that all the participants are present. Juror 191 didn't show up at the meeting place. I'm going to have my deputy clerk bring in the other jurors for this afternoon. (The prospective jurors entered the courtroom.)

THE COURT: Good afternoon. I'd like my deputy clerk to please administer the oath to the prospective jurors. (The prospective jurors were administered the oath.)

THE COURT: Welcome to the United States District Court for the Eastern District of California. My name is Judge Burrell. I will preside over this trial. The person who just administered the oath to you is my courtroom deputy clerk. Her name is Shani Furstenau. On the platform with her is the certified shorthand reporter who will assist the Court in administering the trial. I trust you that will fulfill your civic duty during this questioning process. I thank you both for your presence and your anticipated cooperation. You are performing an important function in our justice system. Under the principles of our Constitutional democracy the parties are entitled to a

fair and impartial jury. That right would be meaningless without citizens such as you making themselves available to serve as jurors. The questioning process is an essential way of ensuring that such a jury is obtained. Please answer the questions as honestly as possible. Please don't be concerned about someone else's view of your answers. Each prospective juror is entitled to his own opinion. The parties value your opinions. The questioning process will involve questioning prospective jurors individually, which will commence after I question you as a group. Actually, there are two other jurors that I'm going to question first, and then I will question you individually. After a number of jurors are questioned in this individual process we will call certain jurors back later to be questioned again as a group, and I will notify those who are involved in that process when that occurs. Our objective is to obtain a fair and impartial jury that will decide this case based upon the evidence that is presented here in this courtroom and on the instructions that I will give you in the trial. I've decided to do individual questioning, in part because the parties have requested it, and because there has been some publicity about the case. During the individual questioning we will cover the publicity area and other matters that tell us whether you can sit as a juror on this type of a case. The defendant has been charged with transporting and mailing explosive devices with the intent to kill or injure others. The law of the United States provides that if the jury finds the defendant guilty of either of these offenses and that a death resulted from the defendant's commission of the offense, it will be the responsibility of the jury to determine whether the defendant should be sentenced to death, life in prison 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 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 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 all the 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 would then deliberate again as to the appropriate penalty.

Since one of the options to be considered at the sentencing phase includes the death penalty, you will be asked questions during voir dire about your views on the death penalty. We may ask additional questions in other areas too. During this questioning we will refer to you by your randomly selected number as a juror rather than by your name. This is because I've decided to use an anonymous jury in this case to protect your privacy, as I stated to you in a previous communication. Now I will give you a jury instruction. I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone who has anything do with it until after you have been excused from service on this case. Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended, or you have been excused as jurors. Anyone else includes member 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've been excused by me. Third, do not let anyone talk to you about the case or about anyone who has anything do with it. If someone should attempt to talk to you please report it to me immediately. Fourth, do not read any news stories or articles or listen to any radio or television reports or access any Internet stories or comments on the Internet about the case or about anyone who has anything to do with it. Statements contained in news accounts may be inaccurate or exaggerated, and it would be unfair to the defendant, as well as to the Government, to permit such information to influence your decision in this case. It would also be unfair to your fellow jurors to base your decision in part on information which they may not have heard and which they have had no opportunity to discuss. For these reasons you should avoid reading and listening to future news accounts during the time period for which you are involved in this case. Justice requires strict adherence to this prohibition. Fifth, if you need to communicate with me simply give a signed note to my deputy clerk to give to me. The trial schedule I contemplate having will be from

8:00 a.m. to 1:00 p.m. Monday through Friday. This would mean that the jury would assemble by 7:00 a.m. to be brought to the courthouse. Please raise your hand if this poses a problem. There's no response. I contemplate observing the holiday season as follows: We will not hold court during the week of December 22nd, which is the Christmas week, nor on January 1 or 2. I contemplate holding court December 29, the 30th and 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 will 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 alternative sentences the jurors would be asked to consider. Evidence would be presented, and the Court would provide the jury further instructions on the law. The law requires each juror to carefully consider all the facts and circumstances presented. The Government may focus on certain aggravating

factors, things it will urge the jury to find supports the sentence it seeks. You will also have to listen carefully and weigh any mitigating factors, meaning anything that might explain the crime or put it in context, or anything that might suggest Mr. Kaczynski deserves a sentence of life in prison without release or some lesser sentence. Raise your hand if you do not understand this. Life in prison under the Federal system means just that. You are imprisoned for life. Raise your hand if you will be unable to reserve your judgment on the sentence you believe should be imposed until you have heard all the mitigating and aggravating evidence. There 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 by applying the law that I will give to you in my instructions whether you agree with that law or not. If you have any belief that will interfere with your obligation to do this please indicate that fact by raising your hand. There is no response. During the individual questioning, if you conclude that any question unduly pries into your private affairs and you therefore wish to discuss it in private, let me know of that request. While I'm authorized under law to protect your legitimate privacy interests, I may ask some questions concerning the area you've asked to keep private in order to decide whether we can discuss aspects of the question here in open court. If this can occur, let me know so I can determine whether the matter should be immediately handled in private. This approach is taken because the trial should be open unless I have a legitimate reason for closing any aspect of it. I'm now going to have my deputy clerk escort the jurors to the adjacent room and to bring in Juror Number 183. You can examine Juror 183.

MR. DENVIR: Thank you, your Honor. (The prospective jurors left the courtroom.) (Prospective Juror No. 183 took the stand.)

THE COURT: Thank you for joining us again. Here is your questionnaire. / VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Good afternoon.

A. Hi.

Q. You didn't have a chance to check about that child care matter over lunch by any chance; did you?

A. No.

Q. If you could turn to page 11, number 41?

A. Uh-huh.

Q. The second question under that number asked you what kind of things did you say to others regarding possible jury service in this case, and you said that you would probably not be chosen because of your husband's job and how you feel about criminals.

A. Right.

Q. What did you mean by that?

A. His job is a law and property officer at the institution he works at, and because of his job he is – has to provide law books and all sorts of things. And a lot of times

the people that he provides them for have gone through the system several times, and it's just like they keep retrying, retrying, retrying. And it's just, I feel like once they have gone through it, how many different times do you get to keep appealing, and how much it costs and just all those things.

Q. But you thought you wouldn't be chosen because he had that job?

A. I just thought that when you had family that was involved with law enforcement that you were excused.

Q. I see. What about how you feel about criminals, what were you thinking about when you wrote that, or what do you mean?

A. Well, I feel that when someone has been tried by a jury and found to be guilty, there it is.

Q. Why would you not be selected for the jury if you believe that?

A. Because I don't think that they should just get to keep going back and keep trying to appeal, appeal, appeal.

Q. So when you wrote how you feel about criminals, you were thinking about people appealing; is that what it was?

A. Yeah.

Q. Or was it reoffending?

A. No, the ones that have already been found guilty by a jury, and they are serving time. And they keep getting more and more books out trying to appeal the decision.

Q. If you were called as a juror and you made a decision as to guilt or as to sentence, would you feel that that was something that probably wouldn't happen because of the appeal process?

PROSPECTIVE JUROR NO. 183: I assume from what you said that there would be three possible judgments. Was I wrong in thinking that?

THE COURT: There are three alternative sentences that the jury would consider in the sentencing phase if Mr. Kaczynski was unfortunate enough to be found guilty of the offense of murder.

PROSPECTIVE JUROR NO. 183: Okay.

THE COURT: Did you want to ask me something else?

PROSPECTIVE JUROR NO. 183: I think what I was thinking was if I found – whatever the finding is, that should be the end of that. And I think that's what he was saying.

Q. BY MR. DENVIR: I was wondering if you were sitting as a juror and you had to select one of those penalties, would you be worried or say it doesn't make much difference because it's going to be appealed anyway?

A. No.

Q. Okay. Could you turn to page 31, please? You were asked what event or events you remember hearing about that were attributed to the Unabomber, and you said an explosion of the U.S. Forestry Department in Sacramento. Do you remember when that occurred?

A. I don't remember at all.

Q. But evidently you were downtown when it happened?

A. My friend and I, she lives in Sacramento, we were downtown that day, and I remember hearing – I just remember hearing a pop. And the only reason it sticks in my mind is because the next day – or that evening in the news it had said that, and I thought, I wonder if that was it.

Q. So the noise you heard you think was the bomb going off?

A. No. I had no idea. I thought it might be. I called my friend and said, "Do you think that's what that was?"

Q. Do you remember where you were when you heard that noise?

A. No, somewhere downtown, one of these side streets like 10th, 9th, somewhere around there.

Q. Was it near this forestry building?

A. No. It wasn't too close, but it was a little ways away.

Q. What did you think when you thought that you might have heard or been close enough to hear the explosion?

A. I thought, that's weird. Can you believe it?

Q. Did it make you nervous or scared?

A. No. It was surprising.

Q. It wasn't a very emotional thing for you?

A. No. I was like, maybe that's what it was. It was just kind of a surprise thing.

Q. And as I understand, you went – sometime after that particular bomb went off, you went back with a friend to see where it went off?

A. Right.

Q. How long after was that?

A. It was probably – it must have been like a week or two later.

Q. And was this the same friend you had been with earlier?

A. Right.

Q. Why did you go back again?

A. Because it was weird, just kind of curiosity.

Q. Did you actually find the place where it happened?

A. I don't really remember. I just remember we went down the street. I don't remember if we actually drove by it or just pointed.

Q. How did you remember where it was? Did you look up the address?

A. No, from hearing it on the news on such and such street, and I don't even remember what street it was on.

Q. Did you go by the building?

A. No. I don't actually remember going by it. I just remember saying it was on that street.

Q. Did you find – did you try to find it when you were driving?

A. I didn't drive by it and say, "Let's go look for the building." I just remember thinking it's on this street, just kind of a curiosity thing.

Q. Did you come into town to see if you could find it?

A. No. We were just downtown.

Q. Did you have the address and go look for it?

A. No. It was just like passing down the street.

Q. But you didn't actually go in front of it and stop?

A. No. We didn't stop there.

Q. If you could, on page 10 you were asked, "Do you have any political, social or philosophical beliefs that may affect your service as a juror in this case?" And you replied yes. And it says, "If yes, please explain your answer." You said, "I'm very conservative. Hearing some of the things that go on in prison concerning the rights of convicts is upsetting to me, and I feel it's unfair to the victims and their families." Is that right?

A. Yeah.

Q. Is that still true that some of the things going on in prison concerning the rights of convicts upsets you?

A. Sometimes, yeah. It does.

Q. And you think it's unfair to the victims and their families?

A. Sometimes.

Q. And what exactly do you hear that goes on in prison concerning the rights of convicts that makes you feel that way?

A. When people have been tried and found guilty, and they go out, and they come back. And they are constantly seeking the appeals process, and people have been victimized by them. That makes me angry.

Q. So when you say the rights of convicts, is the question whether they can appeal or not, or how many times they can appeal?

A. Yeah.

Q. It doesn't have anything to do with their rights in the prison itself?

A. No. It's their right to appeal once they have been found guilty.

Q. Why do you feel those beliefs might affect your service as a juror in this case?

A. Because I probably thought that the defense probably wouldn't want someone like that.

Q. Could you turn to page 26? I'd like to ask you a few questions, if I can, about the death penalty. As I understand –

A. I'm sorry. What page?

Q. I'm sorry. Page 26.

A. I thought you said 36.

Q. No, 26, question 103.

A. Okay.

Q. You said that at one time you had believed that the – you said you wanted them dead, you thought that people that committed certain crimes, you thought they should get the death penalty. Tell me what is your present view now about the death penalty?

A. I don't think I said that.

Q. I know. That's why I'm going to ask you what it is. I'm not going to try and paraphrase.

A. I don't think you are saying it right. I think that once – I think everyone has a right to choose what they want to do in their life, and they have the right to follow the law or break the law or do whatever they want. And I think once they have broken the law then they don't have the right to choose the consequences that will follow, and that's my feeling. And so if the consequences be death, they are death. If it's life in prison, then they are life in prison. But I feel that the consequences shouldn't be something that that person then has a say over, especially if they have chosen to kill people.

Q. How would a person have a say over what the consequences were?

A. Well, I think that – I don't know. I think a lot of times that the system is worried about, not so much justice, but more or less the letter of the law and manipulating it.

Q. Can you tell me a little more about what you think about the system?

A. The legal system.

Q. Tell me more what you're thinking. I didn't understand.

A. I think that the legal system uses the law and follows the law but manipulates the law and sometimes works around the law, so that there is not always justice done maybe.

Q. Is there something you're thinking of in particular when you say that the system manipulates the law? Is there some case or experience you've had?

A. No, not really.

Q. You were asked the question of whether your opinions or beliefs had changed over time, and you said, yes. Before you had just wanted them dead.

A. I don't see where you are reading that.

Q. I think you've got it in a box there right above the 104.

A. Okay.

Q. In the 103.

A. Right.

Q. So can you tell me what evolved in you're attitudes about the death penalty or your opinions or beliefs?

A. I just think that if they are in prison for life, it's the same thing. I mean they are not going to be out hurting anyone else again.

Q. So now you pretty well treat the death penalty and life in prison without parole as the same in your mind?

A. Pretty much.

Q. You said that, "Once they have killed they have no right to the consequences. I think if they live in a hole of a prison on bread and H2O for the rest of their lives then they are paying what small price they can for destroying another." Do you feel that if the prison isn't basically a hole and bread and water that it isn't a sufficient punishment to sentence someone to life without possibility of release?

A. I feel like that's what my feeling is, and it asked my feelings. And that's what I wrote.

Q. If you were asked to pick between two penalties for a crime like the ones here, and one of them was death and one was life in prison without the possibility of release, but it might not involve living in a little hole on bread and water –

A. Then that's what I would abide by. I am not in charge of that; am I?

Q. I guess I'm asking, would you think life in prison without release is not a sufficient penalty?

A. I'm not really in charge of that.

Q. I know you are not in charge of that. But if you were a juror in the case, as Judge Burrell told you, you might, if you found Mr. Kaczynski guilty of certain crimes, have to chose between those two penalties.

A. Right. And that's the choice that I would have to make.

Q. And if you found a defendant guilty of mailing a bomb with the intent to kill someone and actually have it explode and kill someone, you would have to choose – you found that beyond a reasonable doubt, you would have to choose between life without parole or release and death.

A. I would choose between those two.

Q. You are not concerned that life without parole would be too soft?

A. I may feel that in my heart, but I'm not really responsible for that outcome. No.

MR. DENVIR: May I have a moment, your Honor? Thank you. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon, ma'am. I'm going to reintroduce myself. I'm one of the prosecutors on the case. I wanted to just go back to your situation where you work. I don't want to reveal what you do, but I want to make sure I've got the facts right. You will get paid if you sit on jury service; correct?

A. I believe so.

Q. And you expressed some concern that if you were to miss – in a normal situation, if you were to miss a day or two of work you would have to – there would be someone taking your position that day, and you would have to come back and prepare for the next day; correct?

A. Uh-huh.

Q. If you were sitting as a juror in this case you wouldn't have to worry about preparing your work for the next day; correct, because they would have a semipermanent substitute for you?

A. Right, hopefully.

Q. Turn, if you could, to page 16 of the questionnaire, and directing your attention to your answer to question 59. You don't have to reveal, if you don't want to, what you wrote there, but I want to ask you some follow-up questions about that. Would your feelings as articulated in your response to question 59, would that cause you to

judge the prosecution, the Government in this case, more harshly than you would the defense?

A. Did you see what I wrote on the side?

Q. Right. And 59 – maybe I’m missing that. In 59 you’re writing your opinions of prosecutors; correct?

A. Right – no. I may have been mixed up on this.

THE COURT: I couldn’t hear you. I need you to use the microphone.

PROSPECTIVE JUROR NO. 183: Okay. I might have been mixed up on this. They are the defense?

Q. BY MR. CLEARY: The people that represent Mr. Kaczynski are the defense.

A. Right. Okay.

Q. And the people that are at the other table, which is the Government, are the prosecutors.

A. Right. Okay. No. I have it right.

Q. Right. And so your answer to 59, you changed the word to people that prosecute people, attorneys that prosecute people. The statement you make there is with respect to the Government, the prosecutors; correct?

A. Uh-huh.

Q. And my question is: Because you have those feelings, would that cause you to judge the prosecution and the Government in this case more harshly than you would, or to a higher standard than you would to the defense?

A. I don’t know if it would make me hold them to a higher standard. I’ve never served on a jury before.

Q. Judge Burrell will instruct you at some point during the trial that there is a certain level of proof the Government would have to satisfy. Backing up a little bit, the Government, the prosecutors, have the obligation to prove each crime that they charge, and each crime has certain parts to them, what we call elements. And Judge Burrell is going to tell that you that the Government has to prove each of those elements, each part of each crime, beyond a reasonable doubt. That’s the standard that the Government has to meet, and that’s what Judge Burrell is going to tell you. Because of your feelings about attorneys who prosecute people, are you going to hold the Government to a higher standard than that?

A. I don’t think so.

Q. Okay. You think you will be able to follow the judge’s instructions on the law concerning what the Government, the prosecutors have to do?

A. What you have to do to prove it, yes.

Q. You could follow that and set your own personal feelings about prosecutors – you could set that aside?

A. Yeah. Because I –

Q. I’m sorry?

A. I said, yes. I could. Because I kind of feel that way about the law, just the way the lawyers – it’s their job to do a certain things.

Q. Turn to page 15 – I’ll tell you what. Let me move on to the questions about the death penalty. If you start on page 20 – I’m looking for question 103, page 26, please.

A. Okay.

Q. You tell us there in one part of your answer that you don’t know if you could kill them, meaning the defendant. What did you mean by that?

A. I meant just – if it was just put up to me to go and do it, I couldn’t do it. Okay.

Q. Meaning if you – there were no laws, nothing for you to follow, no Judge Burrell telling you what law to follow, and you wouldn’t be sitting as a juror, is that what you mean?

A. No. I couldn’t have that job in the prison. I couldn’t do that.

Q. You could not be the executioner?

A. Right. I could not do that.

Q. You’ve been asked a lot of questions about your own personal view on the death penalty, and I’m going to follow up on a couple of those. Let me just start with a general question first. Is it your view that under certain circumstances involving the killing of another human being the death penalty is appropriate, and in other circumstances involving the killing of a human being the death penalty is not appropriate?

A. I agree with that.

Q. And could you give us some sense of what distinction you make, how you draw that distinction, what sort of cases involving the killing of a human being is appropriate to you for the death penalty, and when is it not?

A. In my mind it would be if there is intent to kill versus somebody that accidentally kills. I think we’ve got people that might have been maybe driving and didn’t see somebody, and maybe hit them and killed them.

Q. What other sort of situations do you have in mind?

A. That would be about it.

Q. Okay. Have you ever thought about the circumstances of the defendant – a defendant who is on trial because he killed somebody in which, because of the circumstances of that defendant, you would choose not to – in your opinion, it would be inappropriate to have the death sentence?

A. Probably.

Q. Let me try to help out a little bit and give you a little more of an idea of what I’m talking about. If you had a defendant charged with killing somebody, but you found out during the course of the trial that the defendant was mentally retarded, is that the sort of factor that you would consider in determining whether or not that defendant, that you felt that the death penalty was appropriate?

A. Yes.

Q. And in your view are certain defendants, certain people charged with killing certain people more reprehensible than others?

A. They are to me, in my opinion.

Q. Some types of murderers are worse than other types of murderers?

A. In my mind.

Q. And would you distinguish – do you draw a distinction between those two groups of murderers as to which one the death penalty is appropriate for and as to which one the death penalty is not appropriate for?

A. I probably would.

Q. So I've just been asking about you the defendant himself, the person who committed the murder. Now let me talk to you about circumstances of the crime, the circumstances of the killing. Could you envision situations where the type of killing that was done is more aggravated than another sort of killing?

A. Can you give me an example?

Q. Sure. In fact that's probably the best way to do this. In your view is it a worse situation, a more aggravated situation if there is a murder committed in cold blood with no remorse involving torture of the victim, and then the killing takes place. I want to ask you to contrast that on the one hand with a killing in which the killing is the result of a crime of passion or emotion. A woman comes home and finds her husband cheating on her, and reacting to that emotion she kills her husband. Do you view one of those situations as more aggravated than the other?

A. Yes.

Q. And I take it the first one is more aggravating?

A. Yes.

Q. In determining whether the death penalty is appropriate for you, would you consider those sort of circumstances as examples in determining when to impose the death penalty and when not to impose the death penalty?

A. Yes.

Q. And with those as just some examples, can you envision situations where you would have a killing, and you would decide the death penalty is appropriate, and you would have another killing where you would decide the death penalty is not appropriate?

A. Yes. I could.

Q. And the way the trial is going to operate, as Judge Burrell explained to you, is in the first phase of the trial the jury will be sitting in judgment of whether the defendant committed the crimes, guilt or not guilt. If the jury decides unanimously that the defendant committed certain of the crimes involving killing of people with bombs, then the jury will come back in and be asked to decide the question of whether the defendant should live or die. Do you understand generally how that process is going to work?

A. Yes.

Q. And in that second phase, we call that the sentencing or the penalty phase. In that second phase the Government will be offering additional proof, not proof that the defendant killed the person. Because you would have already decided that; right? You would have decided that in finding him guilty; correct?

A. Right.

Q. The proof would be the aggravating circumstances.

A. Right.

Q. And hypothetically, unrelated to this case, maybe it would involve torture of the victim. Maybe it would involve the fact that the defendant has killed a slew of people previously, those sorts of aggravating circumstances. The defense then in that second phase could, but they don't have to, present and prove out certain, what we call mitigating factors. Hypothetically, that the defendant was mentally retarded, or that he committed the crime under duress, literally under duress because someone was holding a gun to his head, figuratively. So that's how the system works. Do you understand that process? I know it's confusing, but my question now is: Understanding that process, would you be able to, in that second phase, sit back and evaluate both the aggravating evidence that the Government puts on and any evidence – mitigating evidence that the defense would choose to put on, and reserve your judgment as to whether the defendant should be sentenced to death or not until the conclusion of that second phase?

A. I would hope so. That's the whole process; isn't it?

Q. And do you have a degree of confidence – because that is the process, do you have a degree of confidence that you would be able to do that, keep an open mind through that second phase and listen to all the evidence, and based on that evidence decide whether death is appropriate or not?

A. I would hope so.

Q. You mentioned earlier in response to Mr. Denvir's question your views that – you were talking to him, something about life in prison, and I want to follow up with a couple of questions on that. In the Federal system, and I believe Judge Burrell told you, that a life sentence means a life sentence. You spend your life in jail.

A. Right.

Q. Knowing that, and knowing that therefore the defendant – it would be difficult for the defendant to hurt people outside the prison walls, would you automatically at the end of the second phase of the trial, the penalty or sentencing phase, would you automatically vote for life imprisonment?

A. I wouldn't automatically vote for it. No.

Q. You would again listen to all the factors and make a decision?

A. I would have to think about how I felt after I had heard everything that I heard.

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

THE COURT: Yes.

MR. CLEARY: Thank you. Nothing further. VOIR DIRE EXAMINATION
(Cont'd.)

BY THE COURT:

Q. If the case reaches the sentencing phase would you automatically vote to select the death penalty no matter what the mitigating evidence?

A. No. I can't say that I would automatically do that.

Q. The prosecutor asked you a question, and I'm going to try to paraphrase that question. I think the prosecutor was trying to determine whether you would be able

to go into the sentencing phase with an open mind, and I believe you said I hope so. Is that the exchange you recall having with the prosecutor?

A. I can't remember because they have asked so many questions.

Q. Let's start again then. I'll ask you. If you made the murder finding during the guilt and not guilty phase of the trial, which means you would have found that the defendant intentionally murdered another individual without justification, in light of that finding do you know whether you would be able to go into the sentencing phase with an open mind, not having prejudged the sentence that should be imposed?

A. I see what you are saying.

Q. I'm going to go to the podium so that when you talk you use the microphone, and the parties can hear it too. But I do want you to answer that question.

A. You want me to answer now?

Q. Yes. You can use the microphone. I can hear you as I walk to the podium.

A. You are saying if I came to the conclusion that the person is guilty then what we would do is, would I be able to have an open mind and say, well, this person deserves this, or this person deserves that. I would feel I would have to listen to all the – not just the aggravated, but the mitigating factors before I could make a decision in my mind.

Q. A decision as to which of the alternative sentences should be imposed?

A. That's correct.

THE COURT: Okay. Thank you. You can bring in another juror. (Prospective Juror No. 183 left the courtroom.) (Prospective Juror No. 184 entered the courtroom.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. I know we kept you here longer than I had hoped, and I'm sorry. Sometimes the questions and the responses cause things to last longer than anticipated. It was not designed to occur like that, but we were doing our best to have an expedited proceeding and didn't mean to unduly interfere with your time.

A. That's okay.

Q. You're the 184th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. No, sir.

Q. Okay. Did you appear at Cal Expo and fill out a juror questionnaire?

A. Yes.

Q. I'm going to ask you to use the microphone so your voice is amplified a bit more than it has been. Since you appeared at Cal Expo have you been exposed to any information about the case?

A. I've been trying to keep the TV channels off and the radio off.

Q. I appreciate that. That is what I hope all prospective jurors do. Despite that effort have you still heard some things?

A. Oh, yeah. Walking through the house you hear blurbs on the news, but as soon as it comes on I turn it, change the channel.

Q. Do you recall any of the information that you were exposed to despite your efforts?

A. Well, yeah. I heard the cabin was coming in.

Q. Have you had any discussions with other people about the case since Cal Expo or overheard other people discussing the case?

A. No, sir.

Q. I'm now going to ask you a question. I'm going to tell you why I'm asking the question so you don't focus on, why is he asking me that question, and you spend time focusing on the question rather than what I'm going to ask you. Under the law I, as a judge, am required to find out – when a case has been exposed to a lot of publicity before trial, I'm required to determine how much publicity a potential juror has been exposed to. Being exposed to publicity doesn't mean you can't sit as a juror in this case, but we have to know what you have been exposed to so we can make a determination, objectively speaking, as to how that information could possibly affect you. And I will also give you an opportunity to tell me from your own perspective how you believe it has affected you, if at all. I want you to search your mind and tell me as many details as you possibly can – this is going back even before Cal Expo. I want you to tell me as many details as you possibly can about all the information you received concerning the allegations involved in this case and the so-called Unabomber.

A. Well, not a whole lot. I don't get the newspaper or anything, but I remember hearing in the news here in Sacramento about the package or a letter bomb years ago. It's very vague for me. I remember when the sketches came out, and – not a whole lot. I mean, I heard about the cabin, but I really didn't hear that much. Like I said, I don't get the newspaper, and I'm just not that focused on it. It wasn't something that was affecting me at that time in my life. It was a while ago.

Q. You don't take a newspaper?

A. No. I don't. I can't stand the feel of ink.

Q. Have you ever taken the newspaper?

A. No, sir.

Q. What information did you receive about the cabin?

A. Like I heard that they were moving it on the freeway. It was coming up I-5 out of Utah, I think, is what I heard.

Q. Other than that?

A. That's all I've heard.

Q. Has any of the information you received about the case resulted in your formation of an opinion or any preconceived idea about Mr. Kaczynski's guilt or innocence?

A. No.

Q. Can you explain your no answer.

A. I don't have enough information to have an opinion about it.

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

A. Yes.

Q. What does that mean to you?

A. To take the facts and process them on my own to form my own opinion based on that.

Q. And it would be the facts that you would receive here in the courtroom only?

A. Yeah. Like I said, I don't have that many other facts concerning this.

Q. Okay. But even if you are sitting through the trial, and something happens during the trial that causes you to jog your memory, and then all of a sudden you have a refreshed recollection about something you may have been exposed to outside the courtroom, would you have the capacity to leave that information outside the courtroom and make a determination on Mr. Kaczynski's guilt or innocence based solely on the information that you received in this trial?

A. I think so.

Q. Any doubt in your mind that you would be capable of doing that?

A. I don't think so. No. I think I would go by what I was presented here.

Q. I'm going to ask you another question about that because you are not giving me an absolute answer, but I only want you to give me the answer you can give me. Is there any reason why you aren't able to give an absolute answer on that issue?

A. Only because I don't know what it might jog. I mean, if there is something I can't think of right now, it might jog something that might affect my judgment. But I can't think of what because I don't remember the case, the information from all the past years.

Q. Is there anything about what you know about yourself that would interfere with your ability to stop whatever is jogged from affecting your judgment?

A. I don't think so.

Q. Does Mr. Kaczynski begin this trial, in your eyes if you were a juror, cloaked with the presumption of innocence?

A. Yes.

Q. What does that mean to you?

A. I don't think he is guilty because I don't have any facts to think that he would be guilty.

Q. That doctrine, under our judicial system, means that you would have to presume that Mr. Kaczynski is innocent, and he has the benefit of that presumption all the way through trial unless or until the Government proves every element of the offenses charged against him beyond a reasonable doubt, should it be able to do that. And if the Government cannot meet that burden, you would have to enter a not guilty verdict in favor of Mr. Kaczynski. Is there anything that would interfere with your ability to allow Mr. Kaczynski the benefit of that doctrine, the presumption of innocence?

A. No, sir.

Q. Can you think of anything that could interfere with your ability to be a fair and impartial juror in this case to both sides?

A. No.

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

A. I voted for the death penalty.

Q. Can you tell me your views on the death penalty? Have you had an opportunity to think about that?

A. I have. I was on a trial not too long ago, and it was death penalty or life, was the penalty phase. So, yeah. I've thought about it a lot, and I think for some people that's the only alternative. I think for other people that there should be a chance to rehabilitate them or understand that there are circumstances that shouldn't make it definite that they would die for their crime.

Q. Okay. If you were in fact on a jury in this case, and this is a hypothetical, and the jury should convict Mr. Kaczynski of the offense of intentional murder of another human being without justification during the guilt and not guilty phase of the trial, in the face of that finding would you still be able to consider voting for a sentence less than death?

A. If I thought the facts warranted it, yes.

THE COURT: The parties may examine the juror. VOIR DIRE EXAMINATION BY MR. LAPHAM:

Q. Good afternoon. My name is Steve Lapham. I'm one of prosecutors in the case. And let me just ask you first, in your questionnaire you had indicated – and I don't want to reveal where you are employed, but you indicated that going into the Christmas season this is the peak season for your type of business, and you were worried about possible loss of overtime. Knowing that if you are selected as a juror this trial will start after Christmas on December 29th, does that resolve that problem for you?

A. Yeah. Actually, when the judge said earlier about that one week we would be out, that's the heaviest part of my workload. So I was pleased to hear about that.

Q. Because you did indicate that the peak season extends into January.

A. Well, in certain aspects of my job it does. Yes. I'm in a new position, and my peak season is a little bit different.

Q. Okay. So that won't present a problem to you?

A. No, sir.

Q. Okay. Let me ask you, you were – you did serve on a previous jury, that was a State jury?

A. Yes.

Q. And that was a murder case?

A. Yes.

Q. And that involved the death penalty?

A. Yes.

Q. You understand – and I don't know that much about State death penalty law, but you understand that the State and Federal system is different?

A. Yes.

Q. So what you learned in that case about what the law is may be different than what you're going to learn about the death penalty while on this case?

A. Uh-huh.

Q. So what we want to know is if you would be able to follow that law and keep an open mind?

A. Yes, sir.

Q. Okay. And let me just explain a little bit about how the law in the Federal Court works. The judge has already explained it once, and I want to go over it in a little more detail. Should you be selected as a juror in this case, and should you find the defendant guilty of the offenses that the judge has mentioned, we would move into that second phase of the trial, the penalty phase. And you would be asked to consider additional evidence regarding the crime as well as regarding the defendant. And the judge has characterized those as aggravating factors and mitigating factors. Aggravating factors being those that the Government believes warrant a death penalty, and mitigating factors being those that the defense believes warrants some sentence less than death. Do you follow me so far?

A. Yes.

Q. Because I think that's different than the State system.

A. A little bit.

Q. All right. And you would be asked to take all of those factors, weigh them and decide whether the aggravating factors outweigh the mitigating factors, and that's what you would be asked to do. Okay?

A. Yes.

Q. You indicated that one reason you believe in the death penalty is that you believe it's appropriate when people cannot be rehabilitated.

A. Yes.

Q. Okay. Rehabilitation or potential for rehabilitation would be one of those mitigating factors, and on the other hand, being unable to be rehabilitated might be an aggravating factor too. But that's only one factor. There are other factors that you might be presented. Would your view about the death penalty being appropriate where people can't be rehabilitated, do you think that would create any problem for you in weighing other potential factors that you're presented?

A. If I'm understanding you correctly, I don't think that everything might lead to the death penalty. Maybe he might not be able to be rehabilitated but might not deserve the death penalty either.

Q. For some other reasons?

A. Right.

Q. Okay. So even though you came to a conclusion that he couldn't be rehabilitated, you might find that there are other reasons that would justify not imposing the death penalty?

A. Yes.

Q. Okay. And on the other hand, if you were to find some – well, if you were to find that he could be rehabilitated, would you still have an open mind with regard to aggravating factors that you might be presented that might warrant the death penalty?

A. Could you say that again, please?

Q. Yeah. If you were to find, on the other hand, that he could be rehabilitated, would you still keep an open mind as to the aggravating factors that the Government might present to you that might override that mitigating factor, the rehabilitation?

A. Yes.

Q. Now, you indicated also one of your reasons for believing in the death penalty is that some people just can't function in normal society. Can you tell me what you meant by that?

A. People that I just believe are born evil, people that like to hurt people.

Q. Is that another way of saying rehabilitation, that they can or cannot be rehabilitated?

A. I think what I'm talking about is a circumstance that someone has had a history of problems, even since childhood, of just doing cruel things, things that I hear, like children that torture animals and then move on to worse things. I think if you've got a history of doing what I feel are bad things then I don't know if that person could be rehabilitated or not. It's part of their makeup.

Q. And how would that weigh in your thinking on the appropriate penalty?

A. Well, I definitely wouldn't want him back on the street to do harm to people again. I can't say right off the top of my head whether I would want the death penalty or not because it's hypothetical.

Q. And you would want to know more of the facts?

A. Yes.

Q. Because you will get more of the facts in that second phase. You will hear a lot about the crimes in that first phase, but in the second phase you will hear more evidence about the crimes and how they were committed. And you will hear additional evidence about the background and character of the defendant. So after you finish the first phase you're only half done. You still have more evidence to listen to before you make your decision. Do you understand that?

A. Yes.

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

A. No.

Q. You wouldn't automatically – just because the defendant has been convicted of an intentional, deliberate murder, you wouldn't automatically vote for the death penalty?

A. Well, it depends upon the circumstances of why we found him guilty for a certain crime. It would depend upon what evidence was presented. I may have already formed an opinion at that point. I would hope that I would be able to stay open-minded, but I don't know about the evidence. I don't know.

Q. Right. You will have learned a lot about the crime up until that point, but you understand that there is more evidence still to come?

A. Yes.

Q. So you may be in the process of developing an opinion?

A. Yes.

Q. But you'll keep an open mind as to the final result?

A. Yes, sir.

Q. Okay. Because the law distinguishes between different types of murder. There can be murder that's committed in a very heinous fashion, a very cruel murder that's planned and carried out over a long period of time. There can be murders that can be committed in an instant, in a heat of passion. Do you understand that?

A. Yes.

Q. So the law also distinguishes between the types of defendants. There are some defendants who have a long history of criminal behavior, and there are others who have no history of criminal behavior. There are some criminal defendants who have remorse for their crime and some defendants who have no remorse. So that's the type of evidence that might appear in the second phase of the trial that you would be asked to consider. Do you understand?

A. Yes.

Q. Let me just ask you one other question. This jury that you were on actually did not reach a verdict?

A. No.

Q. On the – that was on the guilt phase?

A. No. He was found guilty. We were in the penalty phase.

Q. I see. So the jury was unable to agree on the penalty phase?

A. Yes, sir.

Q. Did that cause you any frustration?

A. Yes.

Q. Do you think that frustration would affect your ability to be a fair and impartial juror in this case?

A. No. No.

Q. You can give that assurance to the Court and to the defendant?

A. Yes.

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

THE COURT: Yes.

MR. LAPHAM: Thank you. No further questions. VOIR DIRE EXAMINATION BY MS. CLARKE:

Q. Good afternoon.

A. Hello.

Q. My name is Judy Clarke. I'm one of Mr. Kaczynski's lawyers, and I have a few follow-up questions, if I could, if you can hang in with us.

A. Sure.

Q. I wanted to ask you a little bit about your job situation. Just to make sure that we are all clear, you already sat on a jury this year?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And does the employer pay all jury days off, or do you have a limited number?

A. No. They pay all days.

Q. So you are okay?

A. Yes.

Q. They just think it's remarkable that you've now been summoned two times?

A. Yes.

Q. You were talking to the prosecutor about your last experience in a capital case, and you said it was somewhat frustrating. How do you feel about that potential service given a second service on a capital case?

A. I was not frustrated being on the jury. I was actually frustrated with a juror.

Q. With a juror?

A. Yes.

Q. That's a very intense process, I would take it, for a jury?

A. Yeah. I don't think it would affect me this time. It was a personality issue.

Q. Now that's gone and done?

A. Yes.

Q. Do you have any feeling sort of inside yourself, because only you know, I mean, having been through the experience once, and now looking at another potential experience here on a capital case, do you think there is anything about that experience that you would say, "I've done my duty, guys. Let me out of here"?

A. No.

Q. You talked with the judge a little bit, I think, about what you knew about the Unabom events and this particular case and the arrest and that stuff. Do you remember that?

A. I remember seeing a picture. Like I said, I do work long hours. I don't watch news. I listen to the weather every morning before I go to work, and I don't get the newspapers. So I hear blurbs on the car radio.

Q. I think in your questionnaire you mentioned that you were aware from news reports also – do you have your questionnaire nearby?

A. No. I don't.

THE COURT: Is this it?

PROSPECTIVE JUROR NO. 184: Yes.

Q. BY MS. CLARKE: If you'll look with me at page 29 at the bottom of the page, the second half of 112, do you see that?

A. Uh-huh.

Q. That tells what you were hearing about the case on the radio news reports, talk shows, that he had a cabin full of journals and letters.

A. In Montana. I actually remember that because my mom is from there, but I do remember that.

Q. Do you remember hearing anything about what the contents of the journals and letters were?

A. I remember hearing about the manifesto. I didn't read it. That's all that I can remember about it.

Q. The manifesto as received by the newspapers or a manifesto found in the cabin?

A. In the newspapers.

Q. When you talk about the journals and letters found in the cabin, did you know anything about the content of those?

A. No. I heard that there was a lot of letters in the cabin and pretty much nothing else. It's real vague. I don't remember too much about it. It was a while ago.

Q. I just don't know if you were talking – I didn't know whether something would pop into your mind that you couldn't recall right now, and I thought maybe thinking about the journals and letters, you might.

A. Yeah. I apparently remembered it at that time, but at this point it still doesn't stick in my mind. I must have heard something about it right before I filled out the questionnaire.

Q. And nothing comes back to mind about the content?

A. No.

Q. Any other items come to mind about what was found in the cabin?

A. I think I heard there was a stove of some sort and a cot, I think, is what I heard. I don't remember hearing about any weapons or anything. I just remember it was very rustic, is all I remember hearing.

Q. Nothing else comes to mind about what was taken from the cabin?

A. No.

Q. You mention – at page 24 you were asked a couple of questions about mental health professionals, and you said about those who testify in court, no opinion. Did you encounter that in this last case that you sat on?

A. I thought that the gentleman that was there was arrogant, but other than that he had good facts. I didn't form an opinion about him either way. He presented the facts of what we needed.

Q. So there was a mental health professional that testified that you had to evaluate his credibility?

A. Yes.

Q. Did you have any problem thinking well, yes, I can listen to him, he is a professional, or I can't?

A. No.

Q. Nothing came to mind that would cause you any problem one way or the other?

A. No.

Q. When you were asked about – if I could ask you a few questions about the death penalty. When you were asked about it, you were asked something about when could you give the death penalty, and you said if the facts warranted it. What were you thinking when you said that?

A. Well, if the facts showed that it was a malicious act, a vicious act against an innocent person, and I would think that that would warrant the death penalty if it

was just a blatant act. I mean, if it were extenuating circumstances, that might not call for the death penalty. It just may call for some type of a rehabilitation.

Q. When you talk about extenuating circumstances, can you tell us what you mean?

A. What comes to my mind is a woman being hurt by a man continually over and over. I can understand a woman acting out to defend herself or her children, something like that where you commit a crime, but it's in self-preservation. That's usually what I think about.

Q. If you had a situation where you convicted – you're sitting on a jury and you convict the defendant of an intentional, premeditated, deliberate murder, a murder with no justification, no provocation, no excuse, you've made that finding beyond a reasonable doubt, and you've entered a conviction, do you have a notion as to what the appropriate penalty would be for that set of facts?

A. Hypothetically, without knowing anything about this, if it was a malicious, intended act to harm people I would automatically think of the death penalty. But if there was a reason that this person acted this way, I may just say life in prison, life in prison.

Q. You were asked a question, I think, when you were talking with the prosecutor, or maybe it was with the judge. And you said well, I may have formed an opinion going into that second phase of the case. Do you remember that?

A. Uh-huh.

Q. That discussion? What do you mean when you say, well, I've listened to the facts in the guilt/not guilty phase. I may well have formed an opinion going into the penalty phase. Can you help me understand what you were thinking when you said that?

A. Again, if it was something that was so blatant, so malicious, I may think, as a human being, this is terrible. This should not be happening. This person doesn't deserve to live. And if something came up in the evidence that was that vicious, I may automatically think this person should not be here.

Q. So there could be a circumstance of a crime so bad that there may not be mitigation that could overcome it; is that what you are saying?

A. No. That's not what I'm saying. If there were other facts that showed me the background of why that occurred, why that crime occurred, then I may be able to go for life in prison, but I'm being honest. As a human being, if I see something that vicious I'm going to say, "Oh, my God. That person does not deserve to live." But then as you get more facts you may change your opinion about that.

Q. I guess the question is, could you go into that second phase of the trial without that notion as to, oh my God, the death penalty is appropriate?

A. It may still be in the back of my mind, but I would still listen to the facts.

Q. What would you do – I mean, you know how you think. That's the unusual thing about this process, is only you know the answers to these questions. If it's in the back of your mind do you think you could get it out?

A. Yes.

Q. What process would you go through to do that?

A. I deal a lot with that in my job, listening to information, getting bits of information from here and there, and you will change your opinion from the beginning of the project to the end of the project, depending upon the information that you gather throughout that project. So it could very well be that I would turn completely around, depending upon which information that was provided.

Q. So if it was a question of changing your opinion, something has to come forward to make you change your opinion?

A. I wouldn't necessarily change it, just add to my information. I may still feel that way, but I would still listen to the facts and come to my end conclusion just like I do my job. Sometimes there are things that are going on that I don't agree with, but I've got the facts right here. And this is what I have to do.

Q. Could you look at page 27 with me for a moment? Do you remember that series of checkoff questions about the death penalty?

A. Uh-huh.

Q. The second one, "Anyone who deliberately murders two or more people should get the death penalty," and you say you strongly agree with that.

A. Uh-huh.

Q. What were you thinking?

A. If I would see a trend, if someone killed more than one person then they are able to do it again and again.

Q. Are you talking two or more people before arrest, or between or after an arrest?

A. I'm sorry, before.

Q. When it says two or more people, are you talking about if you kill two or more people before you're arrested, or kill one then get arrested and kill again after you have had a chance?

A. It doesn't make any difference to me. If you can kill twice, you know, it's wrong. And then if you can kill twice or a third time or a number of times, that's terribly wrong.

Q. Does that mean an automatic death penalty?

A. No.

Q. Could you see yourself in a situation where there was two or more murders ever signing a life sentence as opposed to the death sentence?

A. Depending upon the circumstances, yes.

Q. And again, those circumstances are why the crime occurred?

A. Right, what led up to it, what's the chemistry.

Q. Do you see the third one down, "Anyone who commits an act of terrorism in which someone dies should get the death penalty"?

A. Uh-huh.

Q. Same thing?

A. Yes.

Q. What were you thinking of as an act of terrorism?

A. At that point I was thinking of the Oklahoma bombing, a lot of innocent people being hurt so someone can get attention for their group, hurting innocent people.

Q. Do you place the mailing of a bomb to a person with the intent to kill or injure as terrorism?

A. No, not terrorism. No.

Q. So you distinguish that kind of a bombing from the bombing of a large building or a lot of people?

A. What I consider terrorism is a group. I don't consider an individual as part of terrorism. Maybe that's wrong.

Q. It's your definition that we are considering.

A. Yes.

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

THE COURT: Yes.

Q. BY MS. CLARKE: Just one more question, if I may. Given your knowledge about this particular case, what you know about it, the Unabom case, do you have any leanings as to penalty in this case as you sit here now?

A. No. (Prospective Juror No. 184 left the courtroom.) (Prospective Juror No. 186 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Is your questionnaire?

A. That's me.

Q. Okay. Thank you. You're the 186th randomly selected juror. Is there any reason why we can't continue to consider you for jury service in this case?

A. No.

Q. Did you fill out this questionnaire at Cal Expo?

A. Yes.

Q. Since that time have you been exposed to any information about the case?

A. Bits and pieces.

Q. Can you share the content of the bits and pieces?

A. I heard there was a cabin coming down from Idaho or someplace. I can't think of any other specifics.

Q. Since Cal Expo have you discussed the case with anyone or overheard other people discussing the case?

A. Not in detail. I discussed with my manager that I was called in selection, and my – a couple co-workers that I work around that I wouldn't be around today, for example. But that's about it.

Q. Okay. As a judge I'm required to find out, when a case has been highly publicized such as this one, what type of publicity a juror has been exposed to. That's the next question I'm going to ask you, and the reason why I'm telling you that is I want you to understand why I'm asking the question and what type of searching efforts I want you to make when I ask the question. The purpose is to allow the Court and the parties to be in a position to objectively assess the possible effect the information that the juror

has been exposed to could have on the juror. It doesn't exclude anyone from jury service necessarily. It simply provides us with a basis for making an objective assessment, and then I will also provide you with the opportunity to tell me, subjectively speaking, what effect you believe the information has had on you. I want you to tell me everything you can remember receiving about this case, what you think this case is about, and in as much detail as you possibly can.

A. Well, that's going to be a long answer. As I understand it, letters were sent out and packages. People opened these packages. Some were killed, and some were injured. The brother of the defendant, for whatever reasons, talked to the police, and he was subsequently arrested; and an amazing amount of searching went on at his cabin. Large amounts of evidence, I think, even down to like nails and whatever, out of the cabin, were bundled up and trucked off to somewhere. I remember flipping through the news and seeing his arrival into Sacramento. Actually – let me see. I am actually kind of surprised there is not more publicity about it. Usually the media tends to look for something to flash on the news, and I'm actually surprised there is as little media about this as there is. Then I heard something last night about the cabin being trucked down. That's about it.

Q. Directing your attention to the cabin, do you have a memory of what was allegedly found in the cabin other than what you've related?

A. I think there were – my recollection could be wrong, handwritten copies of letters that were received. I think I heard something about parts of a handmade bomb. I think that's about it.

Q. Has the information you've received about this case resulted in your formation of an opinion or a preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. I would hope I could keep an open mind about it, but from what little I know it sounds to me like he is guilty.

Q. I'm going to ask you about whether you could keep an open mind about certain things, but I just want to focus on the opinion you've just expressed. How strongly are you committed to that opinion?

A. By trade I'm an engineer. I'm supposed to look at things logically. So I think I could do a good job of listening to the arguments.

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

A. Yes, assuming that I was given a set of facts. If the facts showed that Mr. Kaczynski was, you know, alive and well in Hong Kong for the past 20 years and has never been to a post office, then yeah. I could say everything I've ever read is wrong.

Q. A criminal defendant wouldn't want to be tried based upon reports in the news media. You can understand that?

A. I would.

Q. A criminal defendant would only want to be tried based upon evidence that is actually presented in the courtroom. Otherwise it would be very difficult to defend yourself, because you don't know what the potential juror knows about the case. Is

there anything about your exposure to information concerning this case that would prevent you from leaving that knowledge outside the courtroom, and you make a determination of Mr. Kaczynski's guilt or innocence based solely on the information that you received during this trial?

A. Yeah. I would do that. Yes.

Q. Assuming you were selected as a juror in this case and you received evidence concerning a matter that you had also read about in the newspaper, or that you heard about from some other media source, would you have the capacity to leave the information that you receive outside the courtroom outside the courtroom, and you would basically use tunnel-type vision and only focus on the evidence received in this case?

A. Yeah. Up until this point I haven't been really interested in this case, and I haven't delved very much into the details. I would be much more concerned about some new road coming in through my house than this case, but I could leave that behind very easily.

Q. If you are selected as a juror in this case does Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Yes.

Q. What does that mean to you?

A. That the prosecution has to show me he was guilty. The prosecution has to show me all the steps why there is no doubt in my mind that he is the one.

Q. What you have just indicated reflects components of the doctrine. The doctrine, in fact, presumes a criminal defendant innocent. The criminal defendant has no obligation whatsoever to present any evidence in defense of himself, and the criminal defendant can rely on that presumption unless and until the prosecution proves every element of the offenses charged against the defendant beyond a reasonable doubt. If the prosecution fails to do that you must enter a not guilty verdict in favor of the defendant. Is there anything about your personal beliefs that would interfere with your ability to allow Mr. Kaczynski the benefit of that doctrine?

A. No. I like that.

Q. Is there anything you can think of that would interfere with your ability to be fair and impartial to both sides?

A. No. I think I could be impartial on this.

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

A. Well, in my mind it's not a black and white issue, but I think if I was to generalize, I would say in general I'm in favor of the death penalty. I would have to look at it on a case-by-case basis, but I am not on the other side of the fence that says in all cases we should not use it – or we should never use it, I should say. I think there are cases that justify it.

Q. If you were in fact selected to be on the jury, and if you and your fellow jurors sat through the guilt and not guilty phase of the trial, heard all the evidence, went back to the deliberation room, you discussed the evidence and then ultimately decided,

to Mr. Kaczynski's dissatisfaction, that – or disappointment, that he was guilty of the offense of intentional murder of another human being without justification, if you were to make that finding as a jury, that would take us to the sentencing phase of the trial. You understand that at the sentencing phase you would receive other evidence. In light of that finding in the guilt and not guilty phase of the trial would you still be able to consider voting for a sentence less than death?

A. So you're asking me whether or not – I'm not quite sure what you're asking here. If I listen to all the evidence, and in my mind I think this should not have a death penalty associated with it?

Q. Let me ask it a different way.

A. Yes, please.

Q. The finding I just told you about, the murder finding, that finding would result in there being two phases of the trial. You would then go to the sentencing phase of the trial. There are three alternative penalties to consider at the sentencing phase of the trial. The sentence of death, life imprisonment without the possibility of release or some lesser amount of time in prison. What I'm trying to see is whether you would be able to meaningfully consider all three of those sentences despite the murder finding you would have made in the guilt/not guilty phase of the trial.

A. I think if someone convinced me that he was guilty of these crimes, this crime, I think in my mind it would be between life or death. And the one short of that, I would have to have a lot of convincing to understand that option.

THE COURT: The parties may conduct examination. VOIR DIRE EXAMINATION

BY MR. CLEARY:

Q. Good afternoon, sir. My name is Robert Cleary. I'm one of the prosecutors in the case. I was going to ask you several questions about some of the answer you had on your questionnaire, which I'll give you a copy of. Could you for starters turn to page 28, please, question 109?

A. Yeah.

Q. You tell us there that you were aware from the media accounts that there was some incriminating evidence found in the cabin.

A. I believe that's correct.

Q. And I think you told Judge Burrell generally what some of that information was, and I'm going to have a follow-up question on that in just a second. Turn to page 32, please, question 120.

A. 120?

Q. Page 32, question 120.

A. Right.

Q. Okay. And you indicated that you thought one of the issues in the case might be the defendant's state of mind. I take it both answers that we just looked at come from your reading of media accounts or seeing media accounts on TV; correct?

A. And on the Internet and on the radio.

Q. And you are aware; are you not, that media accounts are not always correct?

A. I know that they are not always correct.

Q. And you are aware that our justice system here is based upon – the criminal justice system is based upon people coming from different walks of life with maybe different experiences and different states of knowledge coming to court, setting aside what they learned outside and deciding the case based solely on the evidence presented?

A. Yes. I understand that.

Q. And do you also understand that the evidence presented in court is going to be that evidence which Judge Burrell determines is proper and appropriate for you to hear?

A. Yes.

Q. And nothing else?

A. I understand that. Yes.

Q. And can you appreciate that that is really the only fair way to conduct a trial?

A. I agree with that. If it was myself on trial that's what I would want also.

Q. And what we are going to do –

A. I'm glad I don't live in France.

Q. What we are going to ask you to do is participate in a fairly straightforward exercise, should you be selected as a juror, which would be listen to the evidence presented in court, make certain factual determinations based on that evidence, apply those facts to the law as Judge Burrell gives it to you and render a verdict based on that and that alone. Can you give us your assurance that you will be able to do that?

A. Yes.

Q. And you'll be able to set aside whatever media accounts and Internet accounts you've read or heard about the case, and base your decision solely on what we discuss here in court?

A. Yes.

Q. And you feel confident that you can do that?

A. Yes.

Q. The way the system is going to operate, I believe Judge Burrell indicated this to you earlier, is that the Government has the burden of proving the crimes that are charged, and each crime has certain parts or elements to them. And Judge Burrell will tell you that it's the Government's obligation to prove each element beyond a reasonable doubt. You understand that; correct?

A. I understand that. Yes, sir.

Q. And what that means is that if the Government was unable to prove a certain crime that you would be instructed to return a not guilty verdict on that crime. I want to now, with that understanding, focus you in on your statement that you think that the issue would revolve around the defendant's mental state. If the defendant were to present no evidence about his mental state in this case, but you nonetheless found that the Government did not meet its burden of proof, did not prove certain elements of the crime, would you return a not guilty verdict in that situation?

A. If you don't present the evidence, your team doesn't present the evidence to convince me, then he walks away.

Q. I'm going to ask you a couple of questions about the defense now. Turn, if you could, to question 103.

A. What page is that?

Q. I'm sorry, page 26. And you tell us there that in your view the death penalty should be imposed in selected situations; is that right?

A. Yeah.

Q. Do you distinguish – in making that statement, do you distinguish between, let's deal with the killing of a human being? Do you consider certain killing of human beings to be more aggravated and more egregious and hence warranting the death penalty?

A. Yes. Our legal system, I think, does that. A serial killer that goes out and hunts people down and kills them is viewed differently than someone that is reckless on the highway and runs over someone. In both cases people are dead, and people are responsible, but we have different penalties for that.

Q. And that's – you were talking about what the law is. Is that a view you share in terms of your own personal view of when the death penalty is appropriate; that would be a line of demarcation for you?

A. Yeah. That's why I said in my feeling – in my opinion there is – the death penalty is warranted in certain cases.

Q. Could you envision situations where there were two intentional killings, but one was more aggravated and hence warranted the death penalty. And the other killing, although intentional, had certain mitigating or minimizing consequences to it in which you would conclude that the death penalty is not appropriate?

A. What's your question?

Q. What I'm trying to get at is how you draw a distinction between when, in a case involving the killing of a human being, whether the death penalty is appropriate, and when it's not. Let me try it this way.

A. Maybe I can cut through this. In the case of two murders, if one justified the death penalty that would be enough in my mind.

Q. Justified it under the law?

A. Yes.

Q. Is that what you mean?

A. Yes. Well, we are talking about my opinion. If the jury decides Mr. Kaczynski is guilty, and we get to the sentencing phase, and there is a set of evidence where at that point the jury must decide on the sentencing, if in my mind the worse of the two justifies the death penalty, then in my mind the death penalty is warranted.

Q. I'm going to come at it from another direction now. If you envision a situation where because of certain mitigating circumstances perhaps – I want to take it away from this case. Perhaps the defendant is mentally retarded, and the crime is – rather than being cold-blooded, was committed in the heat of passion. Can you envision

situations like that in which the – there was a killing, but that you would conclude that the death penalty is not appropriate?

A. Yeah. I think so. Those are pretty horrendous things. I mean, to me any killing is pretty horrendous, but you know, I can see two hot-tempered guys at some bar. And they get in an argument, and one guy – I don't know, takes a club and hits the other one and kills him. I think that guy ought to serve a lot of time, but I can't see the death penalty for that.

Q. Because there are certain, what we would call mitigating circumstances there; correct?

A. And I think you have to take – in my mind you have to take into account, is this a loose cannon that is going to be out killing again, or is this the only isolated incident. That would be, in my mind, some of the mitigating factors.

Q. And that would go more towards the character of the defendant; correct?

A. I would say history and projection.

Q. Turn to the next page please, page 27. Question 107 asks you different permutations about a situation in which someone gets killed, and whether you agree with the proposition that the death penalty would be appropriate. And your answers range from disagree somewhat to agree somewhat to strongly agree.

A. Uh-huh.

Q. Can you tell us what the basis for the distinction is that you drew there?

A. I would say – I love these answers. Well, anyone that – it kind of gets back to the last answer I have to the second question, whether anyone who deliberately murders two or more people should get the death penalty. I think at that point you're showing a pattern. You're showing a threat to others. You're showing no remorse on the murder, et cetera, et cetera. All of that, to me, tends to increase the reasons for the death penalty. Planning a murder, I probably would disagree with my answer here. If planning and intent is involved, to me that's more serious. The person is likely to do it again. This person has worked at it. There is something wrong here.

Q. By planning, you mean something that takes place over a period of time; correct?

A. Yeah, something that's not done without thinking. Something – you know, I can see some people can't control themselves. They get in fights. They get in arguments, et cetera, and unfortunately sometimes people get hurt, you know, when they get in a fight or whatever. However, someone who plans a murder has had time to think about it yet went through with it anyway, plans and commits a murder. So that's the basis of my answer there.

Q. How about the one on terrorists, what were you thinking about there when you strongly agreed with that proposition?

A. In my mind terrorism is a planned murder on a large – more than one. A group of people who are basically innocent and uninvolved, and their human worth has been relegated down to the same as furniture.

MR. CLEARY: May I have one minute, your Honor?

THE COURT: Yes.

MR. CLEARY: Nothing further. Thank you. VOIR DIRE EXAMINATION
BY MR. DENVIR:

Q. Good afternoon, sir. 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 can. Let me follow up on the question of terrorism that you were asked. I think it's on page 27 or 28 – 27. I understand you were given these statements, and you were asked to check one of the four boxes and then to reflect what your views were. But you did say any person who commits an act of terrorism in which someone dies should get the death penalty, and you strongly agreed with that. When you're thinking of an act of terrorism did you have in mind the mailing of a bomb to someone and having it intentionally killing them and actually killing them?

A. I was thinking about that New York bombing actually.

Q. Let me ask you, your training, and I guess your employment, is in the area of computers; right?

A. Yes, sir.

Q. And as I understand, your father was an airline pilot. As you may be aware from your knowledge of the Unabomber case those were considered to be potential target areas, computer people or airlines. How do you feel about that?

A. How do I feel? You mean was I nervous about it?

Q. Yeah. Were you nervous at any time?

A. No.

Q. Does that draw any emotional response in you that your father and yourself might have kind of been in a potential class of –

A. No. I would be as outraged if it were farmers and store clerks.

Q. You don't feel any personal connection with it?

A. No.

Q. If I can ask you, my impression is that your opinion on the death penalty is that there are a number of crimes which may merit the death penalty in your mind, but that you don't have the feeling that there are any crimes that you automatically say have to have the death penalty?

A. Well, I would say that in my mind I think there are some crimes that warrant the death penalty. I can think of things to children, you know, some of these horrendous kidnap, murders of children. To me, I feel deeply about that, and I think that's a candidate. I think – well, I can think of some terrorist activities, but then that would have to be defining somewhat what a terrorist activity is. That is, in my mind, a planned murder of more than one person that had no association with the terrorists. To me that is a pretty terrible thing, and I could see that that might be an automatic death penalty case.

Q. So at least in those two examples you feel if someone was convicted of that particular crime, if the death penalty were available, they should get it?

A. I think so. Yes.

Q. I appreciate that, and people have widely varying views about the use of the death penalty and when it's appropriate or not, or maybe never, or maybe always. And we need to explore it with you, because obviously this is the kind of case that could involve those kinds of decisions. Let me ask you, you had said that based on what you knew about this case, this defendant, up to now from the media, that you basically said it sounds like he is guilty based on what you know?

A. Yes.

Q. But you do feel that you could put that aside and you could judge the case based just on what you hear here?

A. Yes. I believe so.

Q. Let me ask you, based on what you know about the case do you have an opinion or preconceived notion as to what would be the proper penalty for someone convicted of the Unabomber's crimes?

MR. CLEARY: Object to case specific voir dire.

THE COURT: Just a moment. Isn't he simply asking the juror whether he already has formed an opinion?

MR. CLEARY: Of someone who would be convicted of the crimes in this case. That's the problem that I have.

THE COURT: I don't have a problem with that question.

MR. DENVIR: Thank you.

Q. Did you understand the question?

A. I've lost the question.

Q. Let me try it again. Based on what you know about the case, which obviously is through the media or from talking to people?

A. Right.

Q. You said that you did have kind of a preconceived notion as to whether Mr. Kaczynski was guilty or not which you could put aside.

A. Yes.

Q. What I want to know is the same thing. Based on what you know about the case from any other area or about Mr. Kaczynski, do you have any preconceived notion or opinion as to what would be the proper penalty for someone convicted of the Unabomber crimes?

A. In my mind there is a number of possible defenses, or in my mind sanity is an issue. And at that point I don't know what that means. I'm not a doctor, and I'm not a lawyer. And both of those things enter in. So at that point I would need guidance as to what being sane in this courtroom is, or sane for committing a crime means, whether or not that's justification for anything or if that has no bearing at all. If someone would let me know that, then I would form an opinion.

Q. I guess the question I had is whether you had an opinion. You may have no opinion or preconceived notion now from what you read as to what would be the right penalty for someone convicted of those crimes, which would mean if they were convicted of it they couldn't be insane.

A. Okay.

Q. I mean that sounds to me like –

A. That’s something I’m not aware of.

MR. CLEARY: Your Honor. I’m going to object because we are getting into the area of mitigating circumstances.

THE COURT: Sustained.

Q. BY MR. DENVER: Based on what you know as you sit there now, just about the crimes that were charged, the types of crimes and what occurred, do you have any opinion at all, a preconceived notion as to what would be the proper penalty for someone who was convicted in the first phase as to those?

A. That’s a – either way it’s a pretty serious thing, and no. I don’t have an opinion. I need more information.

Q. If you could turn to page 26, question 105, you were asked in your opinion what purpose does the death penalty serve in our society, and you said closure – excuse me. And you said, ”Closure that justice has been done, a feeling given to society that criminals do not escape the law.” Is that correct?

A. Yes.

Q. So are you saying there that that’s why you think the death penalty should be imposed in certain cases?

A. That’s not my only reason. In a few lines that was the best I could come up with, but I think there is an element of that, that if a horrendous crime has been committed, someone blows up a building in Oklahoma, and children and parents and whatever are killed, if that type of situation happens where there is innocent people and a horrendous crime is done, and the defendant is in jail and is being supported by the State, he gets food, he gets – however minimal and whatever he gets, some sort of living for a long time, which is more so than the people that went through that, I think the survivors suffer because of that. They anguish over the fact that their children, their daughters, their fathers, their mothers are dead, and yet this person is still walking around, even though he may be confined in a prison. And in some cases they think well, gee, maybe he has got the possibility of coming out. Maybe he can be paroled for ten years for whatever reason, or somebody comes out with new evidence. He is in that situation which is better off than his victims. And how is this justice?

Q. I can understand those feelings. Let me ask you, but would you feel that’s true about any intentional, premeditated murder where there was no justification, and it wasn’t incidental? Would you feel that you needed the closure, the death penalty that you described?

A. Premeditated murder of one person to me is a candidate for the death penalty. Perhaps again it gets back to, is this a child that grew up for his entire life and was beaten by his parents, and he planned the death of his parents? Is that person going to go out and kill the grocer and my son and your daughter? Is this a one-time act for that person? Maybe the death penalty is not justified in my mind.

Q. Okay. And I guess just as far as this closure aspect that you saw the death penalty serving in some cases, could you see life imprisonment without possibility of release playing the same closure role in other cases of intentional, premeditated murders like the one you maybe described?

A. No. I think most of society, at least I do not pay attention to murder convictions for street brawls in downtown San Francisco or out in Colusa County some place, or whatever. But for the high profile cases, a terrorist act where a lot of public is made aware of the case, I think there is a feeling for closure for the victims, the survivors of the victims. And in that situation I think a death penalty might be justified.

Q. Okay. In this particular case if you are to sit as a juror – and I’ll make this brief because I think you understand. And the first phase of the trial is like any other criminal trial in determining guilt or innocence. Two of the charges involving the one man carry this death penalty. So the sentencing would not be like in another case where the judge would determine it, but the same jury that found guilt would then determine sentence. If you were to sit in a case of that type and find someone guilty of an intentional, premeditated murder without justification, mailing a bomb intended to kill someone, and killing them by having them blow up, as you and eleven other jurors said that was proved beyond a reasonable doubt that he did that, as you went into the second phase where the law allows death or life in prison without possibility of release as the two legal options, would you be leaning towards one or the other, you think, as you sit there?

A. I would be leaning towards the death penalty.

Q. And do you think that it might be difficult for you to come out with any verdict other than death because of that, because of your feelings about the crime itself?

A. Yeah. I think so. Again we’re talking about a case that’s widely known. We’re talking about multiple survivors of victims. We are talking about all the things that I said justified in my mind the death penalty, and if all those things get laid out, and given the supposition you are giving me, then yeah. I think the death penalty would be justified in lieu of life imprisonment.

Q. And would it be hard for you – and I know you’re just doing this hypothetically, but only you know. Would it be hard for you to even consider anything less than death, letting somebody off with life, if all those other parts were true?

A. Yeah. It would be hard for me letting him off with life.

MR. DENVIR: Thank you.

MR. CLEARY: Your Honor, can I follow-up with a few questions?

THE COURT: Okay.

MR. CLEARY: Thank you. VOIR DIRE EXAMINATION (CONT.)

BY MR. CLEARY:

Q. I want to go back to a statement you made earlier about terrorism, and you defined terrorism as it’s defined to yourself, as a planned murder of more than one person in which there is no connection between the defendant and the victim; correct?

A. Right.

Q. And I believe you said in that circumstance that you believe the death penalty would be appropriate; is that right?

A. Yes.

Q. What would happen in this case is you would be presented in the second phase with aggravating circumstances and perhaps mitigating circumstances. Despite your view in the terrorism case you just described, despite your view that the death penalty would be appropriate, would you be able to keep an open mind until you heard all the aggravating circumstances and whether there are mitigating circumstances, and put those in the mix to make the determination as to whether the death penalty is appropriate?

A. I think if – well, in my mind it would be difficult to. Now, if someone is convicted of a terrorist act, which I just defined what terrorism is to me, I think that would justify the death penalty. And it would – I can't think of what a mitigating circumstance would be that – to go for life imprisonment.

Q. What if the defendant was mentally retarded?

A. I thought I heard that if he was mentally retarded then he might not be convicted of the murder. It might be something else.

Q. He might not be, but he might also be. And that's what I'm asking you. If you convicted him of a terrorist act and someone dies, and the defendant is mentally retarded –

MR. DENVIR: I think that Mr. Cleary is asking about particular mitigating factors.

THE COURT: Overruled.

PROSPECTIVE JUROR NO. 186: That's a tough one. That might be a possibility, but I don't know.

Q. BY MR. CLEARY: If the judge instructed you that that was – in this hypothetical case that that was a mitigating factor that you must consider, should you find it, that you must consider it, would you be able to follow the judge's instructions and really, truly evaluate that factor, the mental retardation of the defendant, in determining in that particular case whether that defendant deserved the death penalty?

A. I guess I don't understand what information the instructions mean. If the judge tells me that that precludes the death penalty, is that what you are saying?

Q. The judge would tell you something along the lines of that is a mitigating factor, mental retardation.

A. That I should just consider it?

Q. But really give it credence. It's easy to just consider something and then put it out of your mind very quickly, but really balance that mitigating factor against whatever aggravating factors that the Government presented.

MR. DENVIR: Your Honor, I would object. I do not believe the Court would be instructing the jury as to what a mitigating factor is. I think it might instruct on the nature of the mitigating factor, but not a particular mitigating factor.

THE COURT: Do you want to rephrase it so we don't have to go through it again?

MR. CLEARY: Certainly.

Q. If the death penalty statute lists certain mitigating factors, and if you found them you would have to consider them and give them real consideration, and if Judge Burrell told you one of those factors listed in the statute has to do with the mental capacity, mental state of the defendant, whether he had an impaired capacity or a mental disturbance he was operating under, would you be able to follow that instruction and then fairly consider the mental retardation of the defendant?

A. Yeah. I think so. It's a tough call.

Q. Do you have serious doubts about your ability to do that?

A. Yeah. I think I could consider it.

Q. In a meaningful way?

A. Yes.

Q. Now I'm going to ask you the same question with respect to the very last thing you discussed with Mr. Denvir, and that is a case in which there is a brutal killing, which I gather was a hypothetical, widely known, multiple surviving victims. And again, if Judge Burrell told you that the death penalty statute lists certain mitigating factors, and you found that the evidence in this case fits within those categories, could you fairly and fully consider those mitigating factors and balance them against the aggravating factors before making your death penalty decision?

A. Yeah. I imagine I could. Again, that's a difficult one. Is an IQ of 75 retarded? Is an IQ of 45 retarded? That's a gray area.

Q. Would you do that sort of evaluation under that sort of hypothetical? Would you sit there and say where, for me, is mental retardation? Would you evaluate that?

A. That's the only way I could think to do it.

Q. And if to you, without any further guidance, mental retardation meant an IQ below 45, and you found that the defendant had an IQ below 45 and hence, to you, was mentally retarded, would you give full consideration to that mitigating circumstance in determining whether the defendant should live or die?

A. Well, if the IQ was below 45 and that meant that mental retardation is very obvious, to me that would be a mitigating circumstance. If the IQ is 75, and that would be considered just a little slow in society, is that mental retardation? That's a gray area to me, and to me I don't know if that, in my mind, could be a mitigating factor.

Q. Right. But you would make that evaluation to determine first whether it's mental retardation?

A. Yeah. Right.

Q. And then when you've made that determination you would factor it into the analysis of whether the defendant lives or dies?

A. Right.

Q. Just one last permutation on this. In that very last hypothetical that you discussed with Mr. Denvir in which it was a widely known case with multiple victims, and you felt the death penalty was quite appropriate in that case, Judge Burrell will tell you that in the second phase, the penalty or sentencing phase, the obligation is going to be on the Government to prove at least one aggravating circumstance. And unless the Government can do that, you must return a verdict – you cannot return a verdict of the death penalty. Are you with me so far?

A. That you have to show one aggravating circumstance?

Q. At least one, that's correct. And if the Government does not show an aggravating circumstance you cannot return a death penalty verdict – are you with me so far?

A. Yeah.

MR. DENVIR: I'm going to object. You would have to give the instruction. There is no way the juror can understand what an aggravating circumstance is in that situation, that is, if he uses just what you defined earlier – as you defined it. Mr. Cleary is asking about a legal term that the juror can't understand.

THE COURT: Do you understand his objection?

MR. CLEARY: Yeah. But I think you'll see with my next question we can get around the objection.

THE COURT: Why don't we start with the next question then so we don't have to start with the objection?

MR. CLEARY: Sure.

Q. If at the end of the trial, at the end of the penalty phase you still found the circumstances that in your gut would warrant the death penalty, but you found that the Government failed in its burden to prove an aggravating circumstance, a circumstance they are required to prove, would you in that case follow the judge's instructions and not vote for the death penalty?

MR. DENVIR: Again, your Honor, I'm going to object to the use of aggravating circumstances as the judge instructed. It is different than you have instructed for purposes of voir dire, and I think it's a misleading question.

THE COURT: Sustained.

MR. CLEARY: Nothing further.

MR. DENVIR: Could I just ask one question, your Honor? It's very limited.

THE COURT: Very well. VOIR DIRE EXAMINATION

BY MR. DENVIR:

Q. Sir, I just want to ask you one question. It usually ends up being two, to be honest with you. You said one reason that you thought the death penalty might be justified would be to give closure to society, and particularly in a highly visible case where society was looking at it in terms of society's own closure. Do you feel that the death penalty is more appropriate in that type of case because society is looking for closure than a case that's not publicized?

A. Perhaps, but I'm not sure that you can – publicity – the two tend to go together. That is, a small crime gets small publicity. A more horrendous crime will get more

publicity. It's kind of a fact of life. Not always the same ratio, but it is hard to pull one away from the other.

Q. But I guess what I'm asking you is, you seem to think that where a case gets more publicity there may be more need for society to have closure.

A. I don't know so much if it's publicity. I think it's more like the number of survivors. The more of society that's involved, publicity tends to get more involved. You know, your neighbors get involved because they hear about it, et cetera. That's where I was going with that.

Q. So it's not merely the high visibility that people are looking – society is looking at to see how their laws are enforced?

A. I would say the impact on society, the death of a single well-known, well-liked person that has a lot of community involvement in friends and family, et cetera, would impact society a lot more than the death of an unknown person with no family and lives by himself away from the community and is not involved. I think the amount of society affected influences that.

MR. DENVIR: Thank you.

MR. CLEARY: Your Honor, I know time is running on. Can I take one last run on that last question I tried that the Court sustained the objection to?

THE COURT: Okay.

MR. CLEARY: I'll be very fast. VOIR DIRE EXAMINATION (CONT.)

BY MR. CLEARY:

Q. Sir, you – at the end of Mr. Denvir's last set of questions you were talking about a widely known series of murders where there are multiple victims, and you felt that the death penalty would be appropriate in that case; correct?

A. Uh-hum.

Q. If the judge told you that it was the Government's burden to prove certain things – I'm not going to put a legal label on them. He said the Government has to prove in the penalty phase certain things, and the Government did not prove those things, even though you had the circumstances that you felt warranted the death penalty, would you be able to follow the judge's instructions in that circumstance and refuse to vote for the death penalty?

Q. Yes.

MR. DENVIR: Again, your Honor, I would object to that question. Because of the nature of the Federal death penalty statute, it is a meaningless answer. / / /

THE COURT: Well, I could evaluate it if it was me. We are going to adjourn for the afternoon break. Court will be in recess until five minutes to four. (Whereupon the mid-afternoon was taken.)

THE COURT: Let the record reflect all participants are present. Please bring in the next juror. (Prospective juror number 188 entered the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. Let me see if this is your questionnaire.

A. (Examines document.) Yes. That's it.

Q. Okay. You're the 188th randomly selected juror. Is there any reason why we shouldn't continue to consider you for possible jury service on this case?

A. Not that I'm aware of.

Q. Okay. There's a microphone there that would amplify your voice.

A. Okay.

Q. Did you fill out your juror questionnaire at Cal Expo?

A. Yes.

Q. Okay. Since appearing at Cal Expo, have you been exposed to any information about the case?

A. No, other than maybe seeing headlines on the news or something like that. Not reading anything.

Q. What headlines do you recall seeing?

A. Oh, I remember hearing like recently that the cabin is being moved here, just light stuff, you know.

Q. Can you share additional information?

A. Really, there's not – I can't think of anything else.

Q. Okay. All right. Since that time at Cal Expo, have you discussed the case with anyone or overheard other people discussing the case?

A. No.

Q. As a jurist I'm required under law when there's a case that involves as much publicity as this one to make a determination as to how much publicity a juror has been exposed to. So I'm going to be asking you a question in just a moment but I don't want you to be speculating as to why I'm asking the question. I'm going to tell you why I'm asking the question.

A. Sure.

Q. Being exposed to publicity doesn't necessarily mean you won't be able to sit on this case.

A. Mm-hmm.

Q. But we have to know what publicity you've been exposed to so we can evaluate, objectively speaking, what effect it could possibly have had on you.

A. Sure.

Q. And we will give you an opportunity later, I will, to tell us, subjectively speaking, what effect, if any, you believe it has had on you.

A. Mm-hmm.

Q. I want you to search your memory bank and tell me to the best of your ability all the information you believe you have received pertaining to what you believe this case is about, and if you can provide detail, I want you to provide as much detail as possible.

A. Okay. The things that I can recall about what I've heard or seen, read on this case, the accused has been accused of mail bombs, killing people here in Sacramento. He was – his brother was the one that indicated that he may be the one responsible

for the Unabomber cases. I recall that he was located in Montana and brought here. Other than that, I really have not studied into it or researched it or tried to research it. Like I said, I've seen headlines. I'm a [occupation deleted]. I see the headlines; I don't read the articles, as you've instructed us. But, you know, it's difficult to miss headlines or blurbs on TV or something like that.

Q. Okay. You don't have to share your occupation, but I appreciate you – we'll redact that until my anonymous jury order is overturned, if it's overturned. We're going to have an anonymous jury. As far as – that includes the occupations. How about the cabin, did you receive any information about the cabin?

A. No, other than it's being moved. That's the only thing I know about the cabin.

Q. Has the information you've received resulted in the formation of your opinion or any preconceived idea as to Mr. Kaczynski's guilt or innocence?

A. No.

Q. Do you have any suspicions in that regard?

A. No.

Q. If you are selected to be a juror on this case, would Mr. Kaczynski start the trial, in your eyes, on a clean slate?

A. Sure.

Q. What does that mean to you?

A. That means that he's innocent until proven guilty.

Q. Do I have your assurance that if you are selected as a juror in this case Mr. Kaczynski will begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Yes.

Q. What does that mean to you?

A. That means that these gentlemen across the way here (indicating) have to prove to me that he's guilty.

Q. You're right. That is what it means. It means that Mr. Kaczynski has the benefit of that presumption. He need not present any evidence whatsoever in his defense.

A. That's right.

Q. And he has the benefit of that presumption until or unless the Government proves every element of the offenses charged against him beyond a reasonable doubt, and if they fail to do that, you must return a not guilty verdict in favor of Mr. Kaczynski.

A. Yes.

Q. Can you think of any reason why you couldn't be a fair and impartial juror to both sides?

A. No. I can't think of any reason.

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

A. I . . . I – I think that there are cases when the death penalty is just. That's – that's, I guess, best my feelings about that.

Q. You remember when I made opening comments to you, I mentioned two phases of the trial?

A. Mm-hmm.

Q. I'm going to ask you a question, and assume that I don't have to repeat any of those comments, but if I do, I will.

A. Sure.

Q. If you were in fact selected to be a member of the jury and then the jury should convict Mr. Kaczynski of the offense of intentional murder of another human being without justification, that type of a conviction would take us to the second phase of the trial.

A. Sure.

Q. In light of that conviction, would you still be able to consider voting for a sentence less than death?

A. (Pause.) I think I could.

Q. Okay. You paused, and it's appropriate to pause, and we invite pauses so that we can make sure we receive your honest answers. What were you thinking about when you paused?

A. I was thinking that to come up with that type of a sentence I feel that – that the sentence has to go along with the intent or what was – oh, how should I say it? – how serious it was. It has to do more with the evidence that was provided, I think. The evidence would have to be sufficient to either say he has a life sentence or death.

THE COURT: The parties may examine the juror. VOIR DIRE EXAMINATION BY MR. FRECCERO:

Q. Good afternoon, sir. My name's Stephen Freccero. I'm one of the prosecutors in this case. Let me show you – is this the questionnaire you filled out?

A. (Examines document.) Yes.

Q. Let me see. Did you fill that out at Cal Expo?

A. Yes, I did.

Q. If you could look at page 12 of your questionnaire.

A. Okay.

Q. Question 45.

A. Okay.

Q. You note there that you have acquaintances and friends in the police and sheriff departments?

A. Yes.

Q. Is there anything about having those friendships or acquaintances that you feel would lead you to be partial to one side or the other in a criminal case?

A. I don't think so; no. That just happens to be their occupation.

Q. Have you discussed the fact that you were summoned to be a juror in this case with those people?

A. No.

Q. All right. Do you feel confident that if you were actually called to be a juror, the fact that you had friends in law enforcement wouldn't make you feel like you've got to side with one side of the criminal case or the other?

A. No.

Q. And – okay. Fair enough. If I could ask you – first of all, let me just follow up on what you mentioned earlier and I don't want to repeat it, so why don't you look at page 6, question 23. And you mentioned that you and your wife both are involved with that occupation.

A. Yes.

Q. And I just want to make sure, do you think if you were called as a juror you'd be able to put aside anything you might encounter having to do with any media and just concentrate solely on the evidence presented in the courtroom?

A. Within the courtroom? I think so.

Q. Okay. And so if you, even you happen to glance at something –

A. Right.

Q. – that had to do with this particular case, you'd have to block that out of your mind?

A. Yes.

Q. You realize that?

A. Yes.

Q. And you think you'd be able to do that?

A. Yes.

Q. All right.

A. Yes.

Q. I'd like to ask a few questions about your views on the death penalty. But first let me ask you, are you acquainted with the law that governs federal death penalty proceedings?

A. Probably not.

Q. So would it be fair to say that the instructions, the general instruction that the judge gave you today, that was the first time –

A. Yeah.

Q. – you really heard the legal parameters of this type of case?

A. Yes, mm-hmm.

Q. If you could turn to page 28, please. In question 108 you were asked to check boxes that most accurately state your views about the death penalty.

A. Mm-hmm.

Q. There it says where one person intentionally kills another person – you marked the box that said this: the death penalty may or may not be justified, depending on the circumstances of the case.

A. Yes.

Q. Can you just explain for us a bit what you were thinking about, why you chose that particular box?

A. I don't know. I think – I think it's hard and wrong to say that it's always justified. And I think that's what I had a problem with on the first one there, "always justified."

Q. Okay. If you were selected to be a juror, one of the things, in addition to considering only evidence in the courtroom, one of the things you'd have to take an oath to do would be to follow the law as given to you by the judge in this case –

A. Sure.

Q. – by Judge Burrell.

A. Mm-hmm.

Q. Now, that would apply to whether or not you agree with that particular law.

A. That's true.

Q. Do you have any doubts that you'd be able to do that?

A. No. No problem.

Q. If you could turn to the page before –

A. 27?

Q. Page 27, and look at question 107.

A. Mm-hmm.

Q. And that's, again, a series of statements and you're asked to explain – to check the box that you most –

A. Sure.

Q. – agree with.

A. Mm-hmm.

Q. If you could look at the very last one, the question is: A person's background does not matter when it comes to whether or not he should be sentenced to death for a murder. And you checked the box that said "strongly agree."

A. Yeah.

Q. Can you give us an idea of what the word "background" to you meant?

A. I struggled with this question a little bit when I answered it. What I was thinking was his social background, his type of employment, whatever that background there – I don't think that has much to do with whether I could come up with, you know, the death – death sentence on him.

Q. Okay. For instance, in your view, it shouldn't matter whether a man were rich or poor?

A. Exactly.

Q. The reason I mention that is that, were you to be selected as a juror and, again, as the judge told you in a case that potentially carries the death penalty, there could potentially be two separate proceedings.

A. Mm-hmm.

Q. So the first proceeding would always be to just determine whether or not, as you said, the Government had actually proved that the defendant was guilty –

A. Yes.

Q. – as charged. If you found the defendant guilty of the particular crime, let's say a deliberate, intentional murder without justification, were you to find the defendant guilty in that case, then there would be a second phase.

A. Yes.

Q. Okay.

A. I understand.

Q. And at that phase additional evidence would be given to you, and you'd get additional instructions from the Court. Now, you would be asked to consider among a number of things, not only circumstances of the crime, okay – you would have already heard something about the crime.

A. Right.

Q. But there could be additional information brought to you. But you might be asked to consider things about the person who actually committed the crime.

A. Mm-hmm.

Q. For instance, you might be asked to consider what led that person to commit the crime.

A. Mm-hmm.

Q. Or whether the person had done anything like that before.

A. Mm-hmm.

Q. Now, do you have any personal belief that would interfere with your ability, in that second phase, from considering not only the crime itself but anything about the person who committed it before you made the determination of what penalty, which among the alternative penalties were appropriate?

A. I don't think so.

Q. Okay. And – because you will hear that in a federal death penalty case, the law never says that the punishment of death is automatic for the crime. Do you understand that?

A. Sure.

Q. The jury will always be asked, will be told that they must consider not only the death penalty, but also life imprisonment without parole?

A. Right.

Q. And any other lesser sentence.

A. Mm-hmm.

Q. Now, do you have any personal belief that would prevent you, were you a juror in that second phase, from waiting till you heard whatever evidence presented by the Government, what the judge called aggravating, or any evidence that the defendant chose to but didn't have to put forward, mitigating, before you yourself made that ultimate determination? Do you have any personal belief that's going to prevent you from waiting till you hear all that before you make your determination?

A. No. I would wait to hear it.

MR. FRECCERO: If I could have a moment, Your Honor.

THE COURT: Okay. (Discussion off the record among the Government's attorneys.)

MR. FRECCERO: No further questions. Thank you, sir. VOIR DIRE EXAMINATION

BY MS. CLARKE:

Q. Good afternoon.

A. Hello.

Q. My name's Judy Clarke. I'm one of the lawyers for Mr. Kaczynski and I have a few follow-up questions –

A. Sure.

Q. – if you can keep going with us. Do you have your questionnaire there?

A. Yes.

Q. At page 11, up at the top – actually let me ask you something before we get into that. I notice you have a couple of occupations.

A. Yes.

Q. And I wonder if the schedule that the judge told you about is any problem to one of those.

A. Well, I will have to agree I was somewhat concerned about the – the occupation I'm not supposed to mention because of the – it's early in the morning, and it would – it could be a problem. I'm supposed to be done with that job by 6:30, so I should be able to be here on time, by 7:00.

Q. So that shouldn't cause you a problem?

A. I don't think so.

Q. Do you need to think about that, check with anybody, or –

A. Well, I think it would be all right.

Q. Just come all night and then come in and work all day?

A. Well, it's only like three or four hours.

Q. Is there any problem with your other?

A. Other job's no problem.

Q. And they'll pay the entire time you're on jury service?

A. Yes.

Q. No limitation on the number of days?

A. No.

Q. So it's just a question of the scheduling on the first one?

A. Right. And I don't foresee that as a problem.

Q. Page 11, the top question, 41, what did you think about the summons and you said, "Not surprised." How come?

A. The reason I wasn't surprised was back in February I got a questionnaire about my citizenship and stuff. When I got that, I figured it was for this trial. I don't know why, but I just had that feeling.

Q. You figured that was signing you up for federal jury service?

A. Well, yeah. Kind of seeing whether I was even eligible to be considered. So when I saw the first questionnaire or summons, I wasn't surprised.

Q. Because you kind of had an idea that you were on the list for federal court?

A. I felt that it was possible.

Q. Okay.

A. I didn't really presume that I was on the list, but that's the only reason why I answered that that way.

Q. Well, I guess then when you got the thing in February, did you have any thoughts about this case?

A. No. No thoughts. I just – by then they said that it was going to be here in Sacramento. Obviously, you know, you've got to go and poll a lot of people.

Q. Sure. The next question, did anybody saying anything to you or did you say anything to anybody else, and you said not much – can you recall what was said to you, what kind of comments were made or what you might have said?

A. Not really. You know, I just mentioned to my wife about it, you know, getting this after getting the previous thing, and, you know, just stating, like I said in the question 41, I wasn't really surprised that I got it.

Q. Anybody say anything to you about, oh, my goodness, that's about this –

A. No.

Q. – or you're going to have to grapple with these things or anything like that?

A. No. No. Nothing like that.

Q. When you – I think at page – let me look. I might be wrong on the page. But when you were asked about what knowledge you had about the case, you said something about there were many items in the cabin much like those found in the bombs. Do you recall that?

A. No, I – I don't recall if I –

Q. I think I can find it for you. Page 28.

A. Sure. (Examines document.)

Q. See that in the middle of 109?

A. Yes. Must have been something in the news right prior to this thing, and that was just what the news – and I agree with the judge that the news is not dependable, I mean, as far as having the facts. I feel that if I were a juror on the jury here, that I could isolate anything that I'd heard in the past and just go by what is presented here.

Q. Certainly. I can understand that. I'm just trying to – because sometimes you can sit, as a person listening to evidence, and then go, gosh, I remember something about that, you know, kind of unaware of it until it happens to you. So some of this process is just probing a little bit with you about –

A. Sure.

Q. – you know, what's in there, so you can get rid of it, I guess.

A. Right.

Q. And the question would be, can you recall that information coming to you, and can you struggle back and think about what that was, and –

A. I can't remember other than maybe hearing something on the news or seeing something on the TV. That's the only thing I can think of.

Q. Can you think of what that made you think? When you heard that items found in the cabin were items very much like the bombs that were found?

A. Well, I can tell you what the media wanted me to think.

Q. Okay. I guess that would be one.

A. The media would want me to think that well, if the items in the bomb and the items in the cabin, his cabin, were the same, they want me to think that the bomb was made in that cabin or from those ingredients. But I say they've (indicating) got the big job to prove that to me.

Q. Well, did you actually think anything, though, whether you felt like somebody wanted you to think something or not?

A. Not until just right now.

THE COURT: Just a moment. I want the record to reflect that when he said they have "the big job the prove that" –

MS. CLARKE: He pointed to the prosecution.

THE COURT: – he was pointing to the prosecutor's table.

PROSPECTIVE JUROR NO. 188: Yes.

THE COURT: He wasn't talking about the media.

PROSPECTIVE JUROR NO. 188: Yes.

MS. CLARKE: Nor the defense table.

PROSPECTIVE JUROR NO. 188: Right. Right.

MS. CLARKE: Q. But you had a thought now about what that meant to you.

A. Well, the thought that they, the media, may have been trying to influence whether this gentleman is guilty or not.

Q. On the other hand, they may have been doing what they perceived their jobs to be, reporting what they – what information they may receive.

A. True.

Q. And the question would be not them but sort of what was in your mind and what did that make you think, regardless of what they may have intended?

A. I don't think it made me think that he was guilty. These components could come from anywhere. I think – I really think that it's going to be a big job for the prosecution to prove to me or whoever the jurors are that this man did this.

Q. And when you say "prove to me," I take it –

A. "Prove to me" if I were a juror.

Q. Sure. Very quick one question, and then I want to ask you a few questions about the death penalty. At page 17 you were asked the question about, what's your opinion about the effectiveness of the criminal justice system? Do you remember that?

A. Yeah.

Q. Down at the bottom?

A. Yeah.

Q. And you said it's not working well, it's too slow?

A. Yeah. I think, and this is just a personal feeling, that I think the judicial system is very slow. I think that time needs to be taken to prove a case, but a lot of time it takes years and years before the case is even brought to a jury. I think it's too slow.

Q. Did you have any particular case in mind when –

A. No.

Q. – when you thought about that?

A. No. Just in general. Nothing in mind.

Q. Anything that you'd read or heard or talked about?

A. No. No.

Q. Just sort of a general sense?

A. General feeling; that's all.

Q. Did you apply that general feeling to this case?

A. To this case? No.

Q. Do you have that feeling at all about this case?

A. No. No.

Q. When you were asked some questions – if I could talk to you about the death penalty and your feelings about that.

A. Sure. Mm-hmm.

Q. I think when the judge asked you some questions, you said there are cases where the death penalty is justified.

A. I think so.

Q. Can you give us a sense of your own personal feelings about when, what those cases are, when that is.

A. I don't think it can be just like a cut-and-dried just – specifically like the questionnaire said: Always. I don't know. I feel that you have to weigh each case and the evidence provided and – to make that type of a determination. I mean, you're talking about somebody's life.

Q. Sure.

A. And – and – I can see the need for the death penalty. I don't want to give the impression that I don't think that it's never the case. But when you're talking about somebody's life, I think you have to consider all the facts that are given to you.

Q. And I guess –

A. Along with the instructions.

Q. Certainly. And I guess what my question really sort of hits at, and if you could help us with it, would be – I understand that you need to see all the facts –

A. Mm-hmm.

Q. – but I guess I'm trying to ask what's important to you. When you say there are cases where it's justified, what are you thinking about?

A. (Pause.) I'm not sure. I think it's more of a feeling than something that you can just say, "This is it." Obviously if there's a threat, a future threat involved, that is definitely a consideration. With a sentence like life without parole, I don't see a big threat there. But I don't know. It's hard to say, you know. I've never been on a case like this or, you know, even on a jury before. And I just have to weigh the facts.

Q. I think you hit on a word that made me think of a question.

A. Okay.

Q. When you were talking about it's hard to say that it's always justified, I mean, that was – you remember thinking that?

A. Yes. Yes.

Q. Are there circumstances in your mind where it's most of the time justified, where there would be – you would find it very difficult, knowing you, to sign off on anything other than a death sentence?

A. (Pause.) I don't know. I think what I would be weighing the most – I think that's what you might be looking for – is the intent, maybe. That's the area that I'm thinking that would weigh the most in my mind is – is – the intent, you know, if he was found guilty, what his intent was. If it was proven that his intent was to murder somebody, to hurt somebody, to – no regard to anybody else's safety.

Q. Let me ask you about intent. If you had a situation where you were on the jury and, as a member of that jury, the entire jury found the defendant guilty beyond a reasonable doubt – because that's the standard, right? –

A. Right.

Q. – of an intentional, deliberate, premeditated, murder, a murder with no justification, no provocation – are you with me?

A. Mm-hmm.

Q. Knowing how you feel about the death penalty, would that set of circumstances result in a sentence of death for you?

A. I would answer that in – very likely but not absolutely.

Q. Knowing how you feel about the death penalty, because it's only your opinion –

A. Right.

Q. – that counts in this question –

A. Right.

Q. – knowing how you feel about the death penalty, would you feel that it would be very difficult for you to impose a sentence other than death in those circumstances?

A. (Pause.) Probably.

Q. Could you look with me at page 27. You see that series of checkoffs? Remember that?

A. Yes.

Q. And I guess the first one is sort of reflective of what we were just talking about, anyone who plans and commits a murder should get the death penalty, and you say you strongly agree.

A. Right.

Q. Is that what you were thinking?

A. Yes. And this is in absence of that "always."

Q. Right. But it meets, for you, the very difficult standard.

A. Yes.

Q. In other words, it would be very difficult to do anything other than a death sentence in that circumstance?

A. I think so.

Q. And the same thing with the second one down: anyone who deliberately murders two or more should get the death penalty. Is that – would I be correct?

A. Yes.

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

THE COURT: Yes. (Discussion off the record among the defense attorneys.)

MS. CLARKE: Could I ask a few more questions, Your Honor? I understand I probably shouldn't ask you that question.

THE COURT: Well, we have another juror. I am becoming concerned. When you said "a few more questions," you don't mean to say – generally when counsel asks permission to ask one question, that means a few questions.

MS. CLARKE: Well, I thought I'd try the honesty standard.

THE COURT: How many questions do you really want to ask? Because we do have another juror, and I am becoming concerned.

MS. CLARKE: I'll wait and see if the prosecution has any follow-up.

THE COURT: All right.

MS. CLARKE: I intimidate easily.

THE COURT: I wasn't trying to do that. Are we done?

MR. FRECCERO: I would like to ask a couple of follow-up questions.

THE COURT: You can ask two questions.

MR. FRECCERO: Okay. VOIR DIRE EXAMINATION

BY MR. FRECCERO:

Q. Sir, irrespective of your personal views, would you be willing to openly deliberate with your fellow jurors before you reached the decision of whatever penalty should be imposed in a particular case?

A. Yes.

Q. Would you be able to consider any information openly and honestly before you made that decision?

A. Yes.

MR. FRECCERO: Thank you.

MS. CLARKE: And Your Honor, I apologize. I didn't mean to say I was intimidated. I thank the Court for the opportunity.

THE COURT: I know. It's all right. I'm going to bring in another juror.

MR. CLEARY: Your Honor, if I may – nothing to do with this juror – our opposition to the defendant's challenges to jurors is due at 4:30. I was just wondering if we could have two more hours to get back out and make our final changes to it and submit it to the court about 6:30?

THE COURT: I think we can – I'm not going to hold you to that schedule in light of everything we're doing. We'll talk about that –

MR. DENVER: We have no problem with that, Your Honor.

THE COURT: Okay. After we cover the next juror. (Prospective juror number 188 left the courtroom.) (Prospective juror number 190 came into the courtroom.) VOIR DIRE EXAMINATION

BY THE COURT:

Q. Thank you for joining us. I'm going to show you a questionnaire to see if this is your questionnaire. Is this your questionnaire?

A. (Examines document.) Yes.

Q. I'm going to ask you some questions. But I'm going to do it from the podium. It will just take me a moment to move down there? You're the 190th randomly selected juror. Is there any reason why we shouldn't continue to consider you for jury service on this case?

A. No, uh-uh.

Q. Did you fill out this questionnaire at Cal Expo?

A. Yes, I did.

Q. And since that time have you been exposed to any information about the case?

A. No. Uh-uh. Just superficially, just headlines in newspapers or magazines. But never read anything in detail.

Q. Have any memory of the content of the information you were exposed to that you just referenced?

A. Just the fact that, as I was going to work, I heard on the radio that they were moving the cabin. That type of stuff. Incidental stuff.

Q. Well, since Cal Expo, have you had any discussions with anyone about the case or overheard other people discussing the case?

A. No. I haven't discussed it with anybody.

Q. As a jurist, I'm required to ask a potential juror a question which I'm going to ask you in a moment, and I'm going to let you know why I'm asking the question so you can do your best to give me the best possible answer to the question. I'm required to determine, when there's a case that involves substantial publicity such as this one whether the juror has been exposed to that publicity and the extent of that exposure, so that the Court and the parties are in a position to objectively determine how that exposure could possibly have an effect on the potential juror. And I also later will give you an opportunity to tell me how you believe the exposure affected you, if it has at all. And being exposed to publicity doesn't necessarily mean you will not be considered for service in this case. I want you to search your memory bank to the best of your ability and tell me everything you can remember hearing about the things you believe are involved in this case, and I want you to go back as far as you possibly can and provide me with as many details as you can.

A. As far back as I can remember?

Q. As far back as you can remember.

A. I think prior to the arrest of Mr. Kaczynski – I think for about a year prior to that time is when I got more involved because of my work. We had stand-up meetings, detailing what to look for as far as explosive devices in the mail, object packages and identifying features that we were to look for. And since that, a year prior to the arrest of Mr. Kaczynski, I did read some articles and I don't remember the content because I wasn't really that interested in it, never felt threatened by it. But – just the fact

that they had such a hard time catching him and the only reason that he was arrested was a family member provided the authorities with the information they needed. And that's basically about all I know about the case, except I did read one time where an explosive device injured or killed a Forest Service official in Sacramento. And that was pretty close to home, so I kind of just read that article superficially, never really getting into the details. And my knowledge of this case is basically within the last couple years. And I was mainly concerned about the packages and what to look for as far as the packages are concerned. As far as anything else, I'm not too familiar. I didn't pay too much attention to it.

Q. The information you received that you've referenced as having received at stand-up meetings concerning what type of packages to look for, will that exposure to information have any bearing on your ability to be a fair and impartial juror?

A. I don't think so, because while the identifying features of the package were tied to the Unabomber, they never identified who it was. So as far as I was concerned, it could have been anyone. So I was just looking for the bomb. But I don't think it would influence my decision either way as far as guilt or innocence.

Q. That type of a meeting where you receive that type of information, did that cause you to have any type of heightened concern about packages?

A. Well, it increased my awareness, but it wasn't – it didn't make me uncomfortable or nervous because apparently this had been going on for a number of years and it never was close to home. So I wasn't really concerned about it. So no, it – I was more aware of what to look for. We were made aware. And that's about it. I – personally I was never concerned.

Q. Did you receive any other information about a cabin other than what you've related?

A. No, I don't believe so. Except maybe relative to the size of it and the location in Montana. That's about it.

Q. Did you ever hear about a search of the cabin?

A. Yeah, I did. That the F.B.I. had searched the cabin for some time after entering the cabin, I guess. I did hear about that.

Q. Can you tell me whether you received any information about the results of the search?

A. No. No information.

Q. Has the information you've received resulted in your formation of an opinion or a preconceived notion as to Mr. Kaczynski's guilt or innocence?

A. No. Uh-uh. No.

Q. Has it caused you to perhaps have a suspicion about Mr. Kaczynski's guilt or innocence?

A. Well, perhaps in a way, seeing that the information that was found at that location – I mean, you know, the materials and stuff.

Q. I'm going to characterize that what you just told me as a suspicion of –

A. – of guilt.

Q. – guilt.

A. Yes.

Q. And I'm also going to characterize it as an opinion so I can ask you the next question. How strongly are you committed to that opinion?

A. Not very strongly. In light of everything that's happened in the last couple years, I'm really not that strong – I don't have that much of a strong opinion of the investigative portion of this whole thing.

Q. Is that an opinion that you are capable of setting aside if you are selected as a juror in this case?

A. I believe so, yeah.

Q. If you are 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. What does that mean to you?

A. That means he's not guilty until proven so, that he's innocent as of this moment.

Q. You can imagine that a criminal defendant would not want to have to defend himself against allegations or information that a juror receives outside the courtroom.

A. Yes.

Q. So do you have the personal capacity to leave outside the courtroom the information you've received about the case and to allow Mr. Kaczynski to have his guilt or innocence determined solely on the information presented in this courtroom?

A. Yes. Right.

Q. Are you sure?

A. Yes, sir.

Q. If you were a juror and you heard evidence in this case that jogged your memory about something you read outside the case or heard outside the case, can you tell me what you would do to keep that information from interfering with your judgment as to Mr. Kaczynski's guilt or innocence based solely on the facts in this case?

A. Yeah. I would apply the information to the Unabomber. Not necessarily Mr. Kaczynski, unless they proved he was the Unabomber.

Q. I probably asked you a very awkward question. I'm trying to determine whether hearing evidence in this case as a juror could possibly jog your memory about something you received outside the case, and then whether you would then have a refreshed memory of something you were exposed to outside the case and then bring that inside the case and Mr. Kaczynski would have to worry about not only the evidence presented in the courtroom but what you have on your mind that you received outside the case.

A. Yeah. No, I don't believe so. I think that the information I had was superficial prior to a year ago, a year before his arrest. So I really wasn't too aware of the Unabomber except that he'd been doing this a long time and they had trouble catching him. I never read any specifics about any of the bombings or so-called bombings. I didn't know any information about that. So I could really – anything that happens,

would – any information I find here I don't think would necessarily force me to come up to a certain judgment. I could make a fair judgment, I believe.

Q. If you are selected as a juror, does Mr. Kaczynski begin this trial, in your eyes, cloaked with the presumption of innocence?

A. Yes.

Q. What does that mean to you?

A. That means that the evidence has to prove that he is the Unabomber. The evidence has to be overwhelming that he is the Unabomber.

Q. That is a component of the definition. Mr. Kaczynski has no obligation to prove anything.

A. Right.

Q. The presumption of innocence doctrine would protect Mr. Kaczynski unless and until the Government proves every element of the offenses charged against him beyond a reasonable doubt, and if the Government cannot sustain that burden, you would have to enter a not guilty verdict in favor of Mr. Kaczynski. Is there anything about your belief system that would interfere with your ability to afford Mr. Kaczynski that doctrine?

A. No. Uh-uh.

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

A. I believe the death penalty – I believe in the death penalty in certain cases or circumstances; yes.

Q. If you were in fact selected to sit on the jury, and you and your fellow jurors, during the guilt/not guilty phase of the trial, convicted Mr. Kaczynski of the offense of intentional murder of another human being without justification – and it would take that type of a conviction for us to go to the sentencing phase of the trial – going into the sentencing phase of the trial, in light of that conviction, would you still be able to consider voting for a sentence less than death?

A. (Pause.) Yes.

THE COURT: The parties may conduct examination. VOIR DIRE EXAMINATION

BY MR. LAPHAM:

Q. Good afternoon.

A. Afternoon.

Q. Sir, my name is Steven Lapham. I'm one of the prosecutors in the case. Do you have your questionnaire in front of you?

A. No.

THE COURT: (Indicates.)

PROSPECTIVE JUROR NO. 190: (Accepts document.)

MR. LAPHAM: **Q.** Let me just ask you first to turn to page 12, if you would. You understand that the judge has in place a jury anonymity order and so we're going to try to protect your identity. I want to ask you a few questions about your occupation, but I don't want you to reveal what your occupation is, and I think we can do that

without revealing the occupation. Referring to question 45, you indicated that you met with a certain individual with respect to an employee-related matter. Do you, as a result of your occupation, do you routinely meet with people of that job description?

A. In rare instances. I met with him twice in –

Q. Over the course of your –

A. A period of time, yeah.

Q. Over the course of your employment?

A. Over the course of my employment.

Q. Okay. And you've been employed there for quite a number of years?

A. Right. Thirty-one, 32 years.

Q. So you don't routinely meet with –

A. No.

Q. – these types of individuals?

A. No.

Q. Do you think anything having to do with your occupation would affect your performance as a juror in this case?

A. No.

Q. Would it make you more favorable or less favorable to the prosecution?

A. No, I don't think so; no.

Q. Let me just ask you a few questions about your views on the death penalty. When the judge was asking you questions about your exposure to pretrial publicity, the point of those questions was whether or not you could leave any of those views aside if you were to be seated as a juror. And when we talk about questions involving the death penalty, we're going to be asking you about your personal views about the death penalty, but ultimately it's the same question: whatever your personal views about the death penalty are, would you be able to set those aside and follow the instructions of the Court?

A. Yes, mm-hmm.

Q. Okay. Let me ask you first – you indicated that the death penalty is a necessary evil.

A. Right.

Q. That's what you said in your questionnaire. Could you explain what you meant by that?

A. Well, I mean it doesn't necessarily have to be applied in every situation in which someone is killed or injured. The circumstances of the case would dictate the severity of the penalty, whether death or life in prison or whatever sentence is appropriate.

Q. And that's actually what the law provides, that the death penalty is never automatic. And that – so before you came to that momentous conclusion, you would want to know something more about the facts and circumstances of the crime?

A. That's right.

Q. And the law also provides that the background of the defendant and the characteristics of the defendant are important to that consideration also?

A. Right.

Q. Would you have any problem with that concept?

A. No, uh-uh.

Q. You noted on your questionnaire that your religion teaches that it's wrong to take another person's life. I wasn't sure if that was directed toward your views on the death penalty or your views toward murder.

A. The way I understand it, that's the position of my – the religion I was brought up in, and it applies to murder or death penalty. Personally, it is – that's not my view, but that's the position of the organized religion I was brought up in.

Q. I see. So personally, if you were seated as a juror, you would have no religiously-based objection to imposing the death penalty?

A. No.

Q. Now, another thing the law provides is that, just as the death penalty is not automatic for any crime, any other sentence is not automatic – for instance, life without possibility of release. You would be able to follow that admonition?

A. Yes.

Q. Because what you're going to be asked to do is weigh various aggravating and mitigating factors and that's how you're going to come up with your determination of what the appropriate punishment is. And aggravating factors, just in the most general sense, are those that the Government believes merit the death penalty; mitigating factors are those which the defense believes merit something less than the death penalty.

A. Right.

Q. And the trial's going to proceed in two phases. First phase is the determination of whether the defendant is guilty or not guilty. And at the conclusion of that phase, if you find the defendant guilty of the crimes that the charge has talked about, then and only then would you proceed on to the second phase where you would determine the appropriate punishment. Now, at the end of that first phase, you, if you were going to move on to the second phase, you would have determined that the defendant is guilty of murder. And the question is, even though you had already made that finding, would you be able to keep an open mind and listen to the evidence yet to come about what the appropriate penalty would be?

A. Yes, I would.

Q. Okay. So you don't believe that the death penalty is automatically required for all murders?

A. No, uh-uh.

Q. Some of the information that you might hear would pertain – in the penalty phase, that is – would pertain to how heinous the murder was, whether it was committed under aggravated circumstances, whether there was a lot of planning involved, whether the defendant had remorse or didn't have remorse. You might hear evidence about the background and characteristics of the defendant which might make it more sympathetic – make him more sympathetic and merit a lesser sentence. You would be open to all those possibilities?

A. I would keep an open mind; yes.

Q. I notice one of the last three movies you've seen is "Twelve Angry Men"?

A. Right. That was a coincidence. It was recommended by one of my co-workers.

Q. It's a very interesting coincidence. Does that kind of pump you up for – and help you approach your duties as a prospective juror?

A. Well, you know, I thought it might, but I didn't like the movie.

MR. LAPHAM: Thank you very much. VOIR DIRE EXAMINATION
BY MR. DENVIR:

Q. Afternoon, sir. My name's Quin Denvir. I'm one of the attorneys for Mr. Kaczynski. I'd like to ask you a few questions, if I could. About how far do you live – without mentioning the place, how far away do you live, in terms of driving, from Sacramento?

A. It's about 95 miles.

Q. And you understand that – I want to make sure you understand the time, the court schedule. Evidently we would start trial about the 29th of this month. We'd go five days a week. The trial would go from 8:00 to 1:00. Jurors have to report at 7:00 o'clock to someplace and would be released from that place probably about 1:30. Would that cause you any problems? Or would you go back and forth every day or . . .

A. It would all depend on weather conditions. It gets foggy here in the valley, and if it wasn't safe, I would probably stay in Sacramento. And sometimes I would commute. It would depend.

Q. But it wouldn't cause you hardship?

A. It wouldn't cause me any hardship.

Q. Okay. I want to ask you a little bit about your employment. And you've been doing that type of work for about 31 years, as I understand?

A. (Nods head up and down.)

Q. Can you tell us when you first heard about these Unabomber crimes, what have been referred to as the Unabomber crimes, about how long ago when you first heard of them; they came . . .

A. It was some time ago in the paper. Like I said, I never paid too much attention to it, just the fact that the Unabomber – another bomb had injured someone and it was placed on the Unabomber's shoulders, and I never really was that interested in it. I never paid too much attention. I never followed it till recently.

Q. Okay. And when you first heard about it – I guess it was a few years back – you heard about it from the media, not through your employment?

A. That's right. Through the media.

Q. And you were aware that this involved the mailing of bombs when you heard it?

A. Yes. Yes.

Q. And then did you continue to kind of hear things about it after that, about the crimes as they occurred or as they were reported?

A. Well, they happened, to my way of thinking, so infrequently – there was a long lapse between each one – that I never followed it. And It was never a big – you know, thing with me.

Q. And when was it first addressed at your work? When did the work people first talk with you about it?

A. I would think it really got serious and I really started to focus on it probably about a year before they arrested Mr. Kaczynski, but it may be two years ago or so, when they really started to emphasize the fact that certain items should be looked at, on packages, to determine whether that was a Unabomber package, to identify it. And that's when I really got into it, I guess; I was made more aware of it, as was everybody else.

Q. Right. When that was done, did they give you any information about the previous crimes that were considered Unabomber crimes?

A. No, uh-uh.

Q. This was just information as to things to watch for in terms of packages and –

A. To look for, to identify specific packages that were mailed by the Unabomber.

Q. Okay. And can you tell me about how many times – were these stand-up meetings, is that before you go out on duty, kind of?

A. Right.

Q. And how long would these meetings be?

A. Well, generally, depending on the topics, they don't last too long, maybe 10 minutes or so.

Q. And can you recall about how many times at stand-up meetings they talked about these Unabomber crimes?

A. Two – twice, if I remember. Twice. And they told us that these were briefings from the F.B.I. that were being passed along to us to be aware, because they had at that time identified – can I say all this? – they had identified the wrappings and the way things were done by the Unabomber.

Q. Okay.

A. They could tie that to the Unabomber. So that's when they made us aware of it.

Q. Now, from what you knew of these Unabomber crimes, either through the media or through work, and knew that they were using the mails, you said you had increased awareness of that fact, kind of, but I think you said you didn't feel uncomfortable or nervous at all or jeopardized in any way?

A. No, I never felt threatened or jeopardized, because we were away from the major centers where these things were happening and personally we never felt threatened in the office. It was not something that we were afraid of. We were aware of it, but we weren't, you know, concerned about it.

Q. And when the one that you referred to that occurred down here that was a mail bomb, did that feel like it was close to home at all or –

A. Well, that one hit closer because it was here. Closer to home. It was – that’s when I was more aware that they came through the mail. I mean, prior to that time I wasn’t that aware, didn’t pay that much attention. This one grabbed my attention.

Q. Did any of your fellow workers talk about being uncomfortable or nervous or being a little nervous about this?

A. Not that I’m aware of.

Q. They never talked about it with you, then?

A. No.

Q. Did you ever feel any kind of a resentment that the mails were being used for these kind of things and that you and your fellow workers, or fellow workers might have been jeopardized by them?

A. Not so – no, not per se. I never took it that way. I never thought that we were – I always felt that these individuals had been targeted, for whatever the reason, and that the rest of us – there was, if we weren’t involved in any of it, we weren’t in danger. It didn’t apply to us.

Q. Let me ask you a question I need to know. If you sat as a juror in this case and you happened to find Mr. Kaczynski guilty beyond a reasonable doubt and you were sitting determining penalty, do you think the fact of your employment and the time you spent there, the people you’ve worked with and the fact that these crimes, some of them involved the mails, could affect you in any way about how you’d look at penalty compared to somebody who didn’t have your experience, your friendships and everything?

A. No. I don’t think so.

Q. Okay. And based on what you know about the Unabomber crimes, you know, either from work or from media, do you have any particular penalty – excuse me, any particular opinion or preconceived notion or thoughts as to what the proper penalty would be for someone convicted of those crimes?

A. I’d have to know more about it. I guess I’d have to know why these people were targeted, the reason behind it. I’d have to know more.

Q. So as of now, you just don’t have any particular feeling that, well, if someone’s convicted of those crimes they ought to get death or life or something else?

A. I’d have to listen to the whole case to make a decision on it.

Q. I’d like to ask you a couple questions, if I could, about your questionnaire. If you could turn to page 26, I think that’s where the beginning of those questions are. First of all, as I understand it, that your religion teaches that it’s wrong to take another man’s life, which, as I understood what you said, is essentially that – is that an anti-death penalty position?

A. Yes.

Q. But you yourself feel that it is – I think you called it a necessary evil?

A. Right.

Q. And you were asked why you thought it was a necessary evil, and you said it was an appropriate punishment in some cases. And I guess I’d like to get some sense,

if you could, if you could give us, if you could share it with us, what types of cases you think that the death penalty is the appropriate punishment because it, you know, it makes it a necessary evil.

A. Well, it's probably difficult to give examples. I would think the murder of innocent people who are unable to defend themselves, maybe children who are innocent victims of murder. Someone who was – really formed the intent to kill someone and has planned this with the intent of killing this person – it's hard to – it would depend on the circumstances, how it came out. But I would think probably if a person was completely innocent and was murdered, I would take a harder stance than, for example, a killing between gang members or Mafia or whatever. I mean, it would depend.

Q. Let me follow up on what you said there. And you know, we do appreciate your sharing your opinions on this, and it's something we need to explore because of the nature of the charges here. And what I guess I want to know is, if, is your feeling that if someone is convicted of an intentional, premeditated, planned, cold-blooded murder – you know, no justification – and they're guilty beyond a reasonable doubt, do you feel that that's the kind of crime that requires the death penalty in every instance?

A. I would say in most instances, unless there's some circumstances here that prove incapacity to – to form a judgment about the consequences of the fact. I mean, I'm not sure – if all the statement – if the statement is as you mentioned, yeah, that would apply in most of the cases, the way I think. But there are situations where it might change.

Q. Well, let me ask you this. If the charges that are in this case are mailing or transporting a bomb with intent to kill and having the bomb go off and kill someone, and you understand – I think we've been through this – there would be two trials, in effect, or could be two trials. The first trial is, is the defendant guilty of that, proven beyond a reasonable doubt, of committing that crime under the facts and the law. Then the second part of it, if the capital charges were found, instead of the normal criminal case where you have a judge sentence, you have a jury sentence. And the sentences are death and life in prison without possibility of release, and I think the point may have been made that means what it says. In the federal system there is no parole, a life sentence is a life sentence. And if you were to sit as a juror in that type of case and to find someone guilty, you and 11 other people found beyond a reasonable doubt that the defendant committed that crime, which would take planning and premeditation, intentional mailing of a bomb, intending to kill someone for no justification, do you think that the sentence that follows from that crime should be the death penalty, just because of the crime?

MR. LAPHAM: Objection, Your Honor. He's asking for a pre-judgment on this case, without showing any mitigators.

THE COURT: Isn't that what you're doing?

MR. DENVIR: Your Honor, I thought it was the same question you asked, is whether the person feels that having made that finding, that the death penalty is required. I thought that was essentially the same question.

THE COURT: You've added some adjectives I didn't use.

BY MR. DENVIR: Should I drop them out?

MR. DENVIR: Q. What I want to know is, if you sat on a jury that found someone guilty, beyond a reasonable doubt, guilty of an intentional, premeditated murder with no justification beyond a reasonable doubt, would you feel that the death penalty is the proper sentence for that person because of the nature of the crime kind of across the board?

A. I would think so, yes. Generally I would say yes, if it was premeditated and planned and carried out and – yeah, I would think so.

Q. Now, can I ask you that if you had made that finding of that kind of crime we just talked about, would it be difficult for you to consider sentencing someone to less than death, in other words, let him off with life without parole?

A. It could be, yeah. It could. I could, yeah.

Q. And –

THE COURT: I don't understand his answer. What does your answer mean, sir?

PROSPECTIVE JUROR NO. 190: Well, I think he's asking two questions. If, for example, there's mitigating circumstances, I could probably go for life in, you know, in prison.

THE COURT: Okay.

MR. DENVIR: Q. Okay. So you said it would be difficult to go for life in prison, but you would be willing to listen to any of the evidence that might be presented and make your own judgment between those two, even though you found the person guilty of that kind of a crime?

A. Yeah. I think so. Yeah. Sure. If you're asking just for yes or no, yeah, I think so.

Q. Well, here's what I'm asking you to know – and we really need to know; this is a critical point – is, is only you know, kind of, what your feelings are or your opinions on the death penalty and what kind of crimes it fits. And what we need is an assurance, you know, that you could give Mr. Kaczynski that if you were to convict him of that kind of crime you wouldn't automatically vote for the death penalty but would consider the possibility of life without parole?

A. Yeah, I would consider that, sure.

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

THE COURT: Okay. (Discussion off the record among the defense attorneys.)

MR. DENVIR: Thank you, Your Honor.

THE COURT: Okay. You can tell the marshals they can take the jurors back.

PROSPECTIVE JUROR NO. 190: You want this?

THE COURT: Oh, yes. Thank you. (Accepts document.) (Prospective juror number 190 leaves the courtroom.)

THE COURT: We need to discuss the hearing tomorrow. We have scheduled a hearing on the "for cause" challenges. Was that the sole purpose for the hearing, from the parties' perspectives?

MR. CLEARY: That's correct, Your Honor.

MR. DENVIR: I think it was, Your Honor. I think you set it as kind of an "if you needed it" time just to have a hearing.

THE COURT: Okay. What time does the Government contemplate getting in the response to the "for cause" challenges of the defendant?

MR. CLEARY: We're hoping to do that within an hour, hour and a half, Your Honor.

THE COURT: Okay. We shouldn't have the hearing, then, because I do have a criminal calendar tomorrow, and I do have to do some work to be prepared for the criminal calendar. And frankly, I'm not sure that we need to set the hearings on Fridays, because – Go ahead.

MR. DENVIR: If you like, Your Honor, I think the parties had a proposal on that which would be that there not be a hearing tomorrow. I think in the past you have only indicated you wanted argument on one out of a number of challenges and have really decided on the pleadings. And I think what we had suggested was no hearing tomorrow and it could be heard next week if you feel you needed input from the parties; otherwise you could rule on the papers, if you feel that would be good.

THE COURT: I think that's how we should proceed, because what I have to do is make credibility determinations. And I'm taking what I consider to be very cogent notes, and I believe that I can make the credibility determination. I think that the parties should endeavor to bring to my attention matters that you believe have a bearing on that. And I will make a ruling. And since we've only had one matter that I thought required argument, and I thought that it required argument because in my opinion it was a legal question, but once I heard argument I was convinced that it was not a legal issue; it was a factual issue, and had I realized it was a factual issue I wouldn't even have invited argument on that matter. So if I need argument, we will cover it next week. I'm not going to be able to look at the Government's response until noon tomorrow. I will be occupied with other things until noon. So unless the defense has a problem, I won't expect the Government's response until noon tomorrow.

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

MR. CLEARY: Thank you, Your Honor.

THE COURT: Okay. It's adjourned.

MS. CLARKE: Thank you, Your Honor. (Time noted: 5:11 p.m.) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

– oOo –

UNITED STATES OF AMERICA,)) Plaintiff,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) _____

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Reported by: CATHERINE E.F. BODENE, CSR No. 6926 DENNIS McKINNON, CSR No. 2223 MARGARET McNAMARA, CSR No. 6729 SUSAN VAUGHAN, CSR No. 9673

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