

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

_____)	
THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	NO. OCR-9319
)	
KEVIN COOPER,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT
September 20, 1984

APPEARANCES:

For the People:	DENNIS KOTTMEIER District Attorney BY: JOHN P. KOCHIS Deputy District Attorney 1540 Mountain Avenue Ontario, California 91762
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For the Defendant:	DAVID L. MCKENNA Public Defender BY: DAVID E. NEGUS Deputy Public Defender 1060 West Sixth Street Ontario, California 91762
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Official Reporters

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1 1 SAN DIEGO, CALIFORNIA, THURSDAY, SEPTEMBER 20, 1984, 9:20 A.M.

2 --ooOoo--

3
4 THE COURT: Okay, bring them in.

5 THE BAILIFF: First one is Catherine Lopez.

6 THE COURT: Just start down the list and you bring them
7 in in order, if you can, otherwise go ahead and deviate.

8 THE BAILIFF: This is Catherine Lopez.

9
10 CATHERINE LOPEZ, UJ

11 called as a prospective juror, having been previously sworn,
12 testified as follows:

13
14 EXAMINATION

15 BY THE COURT:

16 Q. On behalf of everybody, good morning.

17 A. Morning.

18 Q. Is it Miss or Mrs.?

19 A. Miss.

20 Q. Miss Lopez, has anything happened to you since you
21 were in court before that would prevent you from being able to
22 serve on the case?

23 A. No.

24 Q. All right. My first real question: If we do get
25 to a penalty phase, will you be able to fairly consider both
26 possible penalties, death and live imprisonment without the
27 possibility of parole?

28 A. Yes.

1 Q. Would you be able to personally vote for whichever
2 one seemed most appropriate depending on the circumstances?

3 A. Yes.

4 Q. You remember I told you when I was on the bench
5 that in the guilt phase jurors are not supposed to consider
6 penalty or punishment, you will be admonished against that. Do
7 you think nevertheless that you might be so concerned with the
8 possible penalty that you would let that concern influence your
9 decision in the guilt phase.

10 A. No.

11 THE COURT: Mr. Negus, please.

12

13

EXAMINATION

14 BY MR. NEGUS:

15 Q. Hi. The Judge has decided to let us ask most of
16 the questions.

17 A. Okay.

18 Q. As I'm going first I will probably be asking more
19 than Mr. Kochis. That's the way it usually works out. Some of
20 the questions are going to be about your attitude on the death
21 penalty. Just because we are asking questions, that doesn't
22 mean that we necessarily believe you would even have to get to
23 that, that I believe that the death penalty is really an issue
24 in this case. Do you understand what we're doing?

25 A. (No audible response.)

26 Q. You indicated in the questionnaire you filled out
27 that you remembered something about the Chino Hills murders, can
28 you tell me what you do remember?

1 A. Well, as I also wrote, I didn't really read in the
2 paper, I heard the name. My boyfriend called me up and told me
3 to lock my door. That's basically most of what I remember, just
4 that there were a lot of people that were scared all of a
5 sudden, and we should be all the time probably.

6 Q. Okay. Did you hear -- what did you hear about
7 Kevin Cooper?

8 A. I heard that -- that they thought he had done it
9 and that he had escaped and that they thought he was in San
10 Diego; and that's why I, you know, why my boyfriend called. And
11 after that I really didn't hear much about it until -- then I
12 heard that they had arrested him on a boat, or something like
13 that.

14 Q. Did you hear any of the circumstances of the arrest
15 or did you watch that on the television?

16 A. No.

17 Q. Did you hear anything about the case as it
18 progressed through the courts?

19 A. No. I did hear that they were trying to move it
20 from San Diego, that's the only other thing.

21 Q. When -- when the stories appeared about the search
22 for Mr. Cooper in the border area, you say you felt some fear at
23 that point in time?

24 A. Well, no. I just -- I mentioned that my boy friend
25 called me and told me to keep the door closed.

26 Q. All right.

27 A. Which he does if ever there's anything doing about.
28 I always keep it closed anyway.

1 Q. Okay. Well, do you feel any particular
2 apprehension about this particular case because of the publicity
3 or the nature of the charges?

4 A. I do not.

5 Q. What was your -- what was your reaction when you
6 found out that you were a prospective juror in this particular
7 case?

8 A. Well, I was kind of surprised, cause when I did
9 hear they were trying to move it from San Diego was on my way
10 down here on the first day of jury duty, and I turned the radio
11 on and it had just come up, you know, filping the stations
12 around. I thought, no, I couldn't be on that because mine
13 doesn't say Superior Court. I thought it would be like company
14 against company or something. So when I found out I was I
15 thought, wait, I had thoughts of that, but that's all.

16 Q. Based on the limited things that you have heard,
17 what is your opinion about Mr. Cooper's guilt or innocence; do
18 you have any?

19 A. I don't know the facts.

20 Q. Okay. You haven't come to any conclusions at this
21 present time?

22 A. (No audible response.)

23 Q. Did -- your main source of information was just
24 what you heard from your boyfriend on and the little bit you
25 heard on the radio coming up?

26 A. (No audible response.)

27 Q. You have to say yes or no.

28 A. Yes. I'm sorry.

1 Q. What is your opinion about the death penalty?

2 A. I've never really thought about it that much
3 before. I would have to know -- I would have to feel that
4 someone was guilty in order -- and also the crimes be worthy of
5 something like that. I don't have -- you know, I've never sat
6 down and thought about it. I would never say no to a death
7 penalty or I'd say yes in all cases or something like that.
8 I --

9 Q. Do you have -- do you have some thought in your
10 mind that some cases are particularly deserving of the death
11 penalty as opposed to others?

12 A. Well, I have to be honest with you, I do have some,
13 and that is probably just a personal thing, and that's child
14 abuse and stuff like that; but then that's a personal --
15 probably if there was a case of that, I'd have to excuse myself
16 right now, or ask to be excused.

17 Q. Okay. The charges in this particular case involve
18 charges of murder of two children and a very serious assault on
19 another child; do you think that that would affect your feelings
20 in this case? It's not the classic child abuse situation
21 where --

22 A. Well, if it were the number of -- if they were
23 adults, say, and they were all adults that this happened to, I
24 think it would be just as deserving if that were the case had
25 they all be children, I mean, you are killing a human being --

26 Q. So you don't --

27 A. -- whether it's an old person or a young person.

28 Q. What's your opinion about the penalty of life

1 imprisonment without the possibility of parole?

2 A. I don't know if I have an opinion.

3 Q. You haven't thought about that either?

4 A. No. I guess could you say I've never really
5 thought of these type of things before. I'm really kind of a
6 day-to-day person.

7 Q. Yeah, I appreciate that. And I suppose the reason
8 we're asking you is so that you can think about them a little
9 bit so that we will know if you have any particular -- any
10 particular feelings about it that may be important for us -- for
11 us to know.

12 In this -- in this case given what you do know
13 about this particular case, if you were to find, you know, if
14 there were to be a guilty verdict in a case like this, then
15 that's the only time these questions of penalty would come up.

16 A. Uh-huh.

17 Q. Given what you know about this particular case, if
18 you got to that stage do you think that you would automatically
19 pick one penalty over the other in this particular case?

20 A. Automatically?

21 Q. Right.

22 A. No.

23 Q. That is I mean, do you have a feeling --

24 A. No; huh-uh.

25 Q. -- this is the kind of case that has to be a death
26 penalty or this is the kind of case that has to be life
27 imprisonment without parole?

28 A. No. I'd have to weigh the facts.

1 Q. And you don't have any particular -- any particular
2 strong opinions of your own as to which facts you would you
3 weigh more heavily than others in this particular case?

4 A. Well, my feeling of -- Well, no.

5 Q. Okay. I guess what I'm asking you is do you have
6 an open mind on that issue?

7 A. Yes.

8 Q. Do you belong to an organized religion?

9 MR. KOCHIS: I would object.

10 THE COURT: I don't find anything wrong with the question
11 so far. Overruled.

12 PROSPECTIVE JUROR: I do not belong. I'm a Catholic but,
13 you know, I was baptized but I don't go to church.

14 BY MR. NEGUS:

15 Q. Did -- did any of your religious training or
16 upbringing influence your opinion on the death penalty in any
17 way?

18 A. No.

19 Q. Anything about the fact that we're asking you
20 questions before we even start about penalty make you sort of
21 feel that -- that for some reason that Mr. Cooper must be guilty
22 of these charges because we're talking to you about penalty
23 before we get there?

24 A. I hope not.

25 Q. So, you have an open mind on that question as well?

26 A. Right. I don't think that you are trying to make
27 me feel used by asking this.

28 Q. Thank you very much.

1

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EXAMINATION

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BY MR. KOCHIS:

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Q. Miss Lopez, I have to ask you a few questions, too. I'm not trying to pry into your background but there's certain information you try to find out at this point to help us make decisions what type of jurors we want to hear the case at a later time.

9

10

11

12

13

There was a period in California in the '70's, '76 or '77, when there was a death penalty issue placed on the ballot and there was some debate and controversy about it at that time. Were you involved in that campaign at all, circulating petitions?

14

15

16

A. That was in '76?

17

18

Q. Or '77.

MR. NEGUS: I believe it was '78.

19

20

21

22

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PROSPECTIVE JUROR: I don't believe. I believe I was in Hawaii at the time.

BY MR. KOCHIS:

Q. You weren't living in California?

A. No.

Q. You've had at least almost a week to think about the fact that you may be a juror in a potential death penalty case, and appreciating what you said to Mr. Negus about living day-to-day and not really sitting down and thinking about the issue, we happen to have the death penalty as a potential punishment in California; how do you feel about the fact that we have that on the books: Do you have any feelings one way or the

1 other? Have I confused you with the question?

2 A. How do I feel that they are on the books?

3 Q. Let me give you some alternatives and see if any
4 one of these fits your feelings: That it's an appropriate
5 penalty in some cases and it's necessary that we have it; that
6 it's unfortunate that we have it; that we shouldn't have it at
7 all; either one of the three of those fit your views?

8 A. Hopefully it went to great issues before it was put
9 on the books, but there must have been a need for it. I don't
10 think California is one of the harsher states.

11 Q. Getting practical for a moment, moving away from
12 theory, you may have to, if we get to the penalty phase, make a
13 decision on either one of the consequences, you will have to
14 make a decision that is very serious; how do you feel about
15 being put in a position where potentially you'd have to make a
16 decision of that magnitude, whether the defendant spend the rest
17 of his life in prison or whether he be executed?

18 A. Well, I believe it would probably be very hard on
19 everybody and it would probably be very stressful for me and
20 hopefully I will weigh all of the information that's put before
21 me and do it correctly.

22 Q. Okay. Let me ask this question: Sometimes people
23 who don't confront an issue when they're actually confronted
24 with the decision decide at that point that it's a decision they
25 simply can't make one way or the other; do you see any potential
26 that that may happen to you, for example, at the end of the
27 trial if we get to the penalty phase when you sit down and
28 think, now I actually have to deal with this issue, it's one

1 I've never thought about and the responsibility is so great I
2 don't feel comfortable accepting it and I can't make the
3 decision one way or the other?

4 A. No.

5 Q. Okay. Along that line, whenever there's a verdict
6 in a courtroom to make sure there's no mistake the Judge polls
7 the jurors, he goes down the line and asks each juror in open
8 court if the verdict which is read is their verdict and they
9 either answer yes or no; would you have any problem doing that
10 in open court?

11 A. No.

12 Q. Likewise if the jury elects you as the foreperson,
13 the foreperson has to sign and date the verdict form, and if in
14 this case the jury determined that the death penalty was the
15 appropriate verdict would you have any problem signing and
16 dating that verdict form if you were the foreperson?

17 A. No.

18 Q. Thank you.

19 I have no further questions.

20 THE COURT: Thank you very much for coming in today.

21 PROSPECTIVE JUROR: I would like to let you know
22 something though. I don't feel that it would sway my judgment
23 at all, but I was -- about two years ago my car was stolen, I
24 was pulled out of my car. And I know a lot of people, like my
25 friends and stuff, think that I have some type of prejudice
26 because Mr. Cooper is black. I don't. I have been -- I live in
27 Ocean Beach. I've run into all sorts of people. I have been
28 assaulted by different nationalities, in fact, probably all of

1 them, so I don't feel it is, but I thought maybe you should know
2 of that.

3 THE COURT: Did it go the ultimate distance, so to speak,
4 were you personally violated?

5 PROSPECTIVE JUROR: No. I was a little shaken and
6 scared, but that was all.

7 THE COURT: Those kind of questions we are going to for
8 the most part save until later on when we have everybody here --

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: -- without trying to embarrass you, but we do
11 appreciate the information.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: If you would wait outside for just a moment
14 till we get a chance to discuss it.

15 MR. NEGUS: Could I inquire if Miss Lopez would be more
16 comfortable talking about those issues in private?

17 PROSPECTIVE JUROR: No. I just felt it was somtehing
18 because it is in my past.

19 THE COURT: The bailiff may give you a slip of paper with
20 an appointed time to return, but give us a chance to discuss it
21 first, and that is once again --

22 Have you already given him the appointment slip or
23 does he have --

24 THE CLERK: He has the appointment slips.

25 THE COURT: He has them there, okay.

26 Gentlemen, shall we have her back?

27 MR. NEGUS: No objection.

28 MR. KOCHIS: No objection.

1 MR. NEGUS: Just one point, the Briggs initiative, if
2 that's what Mr. Kochis is asking about, was in November of 1978.
3 I think it confuses people to tell them the wrong date.

4 THE COURT: I may be confused myself. I thought before
5 that that we had the death penalty which was declared
6 unconstitutional.

7 MR. NEGUS: Had two.

8 THE COURT: Pardon?

9 MR. NEGUS: There's been two. In 1970 -- in 1972 In Re
10 Anderson, the old death penalty statute was declared
11 unconstitutional by the Supreme Court of California. In 1974
12 there was an initiative placed on the ballot to restore the
13 death penalty. They put on the ballot a mandatory death penalty
14 type thing based upon what people were reading, Fermin vs.
15 Georgia. In 1976 after the Greg line of cases, Rockwell vs,
16 Superior Court was decided, death penalty was again declared
17 unconstitutional because of its mandatory nature.

18 MR. KOCHIS: Stop for a minute. Then was 1977 when
19 everyone voted?

20 MR. NEGUS: No.

21 MR. KOCHIS: I mean 1974.

22 MR. NEGUS: 1974 everybody voted pro or con the death
23 penalty. 1978 after there had been a death penalty
24 reestablished by the Legislature, the death penalty initiative
25 was again placed on the ballot and -- but the issue was an
26 expansion of the death penalty that already existed.

27 THE COURT: Okay. So it was not a completely new law.

28 MR. NEGUS: It was not a new law, but it was on the

1 ballot in 1978.

2 MR. KOCHIS: And '74.

3 MR. NEGUS: It was on the ballot in 1974.

4 MR. KOCHIS: I will get the dates straight. May be a
5 matter that doesn't even require a date if we cover it being an
6 issue.

7 THE COURT: That's all right. That was for my own
8 edification.

9 MR. NEGUS: Mr. Kochis is giving wrong dates and I just
10 think that it would confuse people.

11 THE COURT: It's not a mortal sin.

12 MR. NEGUS: No, I didn't do that.

13 THE COURT: Give her an appointment time to return and
14 bring in the next one please.

15 THE BAILIFF: Okay. The next one is Delores Joseph.

16 THE COURT: Thank you. She did show up.

17 THE BAILIFF: This is Delores Joseph.

18 THE COURT: Please have a seat, and good morning.

19 PROSPECTIVE JUROR: Hi.

20

21

DELORES JOSEPH,

22 called as a prospective juror, having been sworn, testified as
23 follows:

24

25

EXAMINATION

26

BY THE COURT:

27

Q. I have arranged us here down at the counsel table.

28

This is kind of an informal atmosphere: Hopefully you will be

1 able to relax and converse and be candid with us.

2 Is it Miss, Mrs.?

3 A. Ms.

4 Q. M-s or M-i-s-s?

5 A. M-i-s-s or M-s.

6 Q. Okay: All right. Ms. Joseph, has anything
7 happened to you since you were last in court --

8 A. Yes.

9 Q. -- you are in a hurry to tell me about?

10 A. Actually I am in a hurry to tell you about it. I
11 talked with my employer and they are not willing to pay for a
12 long-term case.

13 Q. For whom do you work?

14 A. Vista Hill Hospital.

15 Q. What's your job?

16 A. I'm a nurse there.

17 Q. Are you an RN?

18 A. An LVN.

19 Q. I'm hesitating. I appreciate the financial
20 sacrifice; on the other hand I dislike excusing people for
21 financial reasons, particularly black people, which you appear
22 to be. There's no way -- are you -- Well, you are not married
23 so are you the sole support?

24 A. Exactly.

25 Q. And it just would be an insurmountable financial
26 hardship?

27 A. There is no way I could make it.

28 THE COURT: Counsel, if you wish to inquire you may.

1 MR. NEGUS: No.

2 MR. KOCHIS: No.

3 THE COURT: Is there any objection if I excuse her or do
4 you want -- I will send her outside.

5 Why don't you go outside and wait for a minute,
6 give us a chance to discuss this.

7 PROSPECTIVE JUROR: Sure.

8 THE COURT: Thank you for coming in.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Don't bring in anybody for a minute.

11 THE COURT: All right. She is out of the courtroom.

12 Is there an objection?

13 MR. NEGUS: Yes.

14 MR. KOCHIS: No.

15 THE COURT: That's the extent of your objection, I guess.

16 MR. NEGUS: I mean, I would object. As you noted she
17 is -- Ms. Joseph is a black person and I don't think that Mr.
18 Cooper's right to a representative cross-section of his jury
19 should be sacrificed because the County won't pay her any money.

20 THE COURT: Okay. I will overrule your objection. We
21 will excuse her for cause, not because in any way she is black,
22 because it just appears there is no way financially she can make
23 it otherwise.

24 All right. Would you go out and excuse her,
25 please, and tell her to go back to the jury assembly room; and
26 then bring in another juror please.

27 THE BAILIFF: The next juror is Juan Cube.

28 THE COURT: Thank you.

1 THE BAILIFF: Juan Cube.

2

3 JUAN CUBE

4 Called as a prospective juror, having been duly sworn, testified
5 as follows:

6

7 EXAMINATION

8

9 BY THE COURT:

10

Q. Good morning, sir.

11

A. Morning.

12

Q. Is that pronounced Cube?

13

A. Yes.

14

Q. Mr. Cube, has anything happened to you since we saw
15 you last which would prevent you from being able to serve on the
16 jury?

17

A. The only thing that would prevent me is just more
18 or less on my end of employment. I checked with them, and so
19 far they can't come out with the word that they would compensate
20 me.

21

Q. Who do you work for?

22

A. For Convair.

23

Q. They haven't given you a yea or nay?

24

A. According to the latest rules of the IBW, which I
25 fall under, it is 25 days and 25 additional. If it was agreed
26 upon between here and there, I guess.

27

Q. Are you saying then it would be 50 days?

28

A. Right. Maximum.

1 Q. Comes pretty close. Counting a four day week,
2 that's about three and a half months roughly of four day trial
3 days, and we're not going to start until October or so.

4 I think that you are coming pretty close, I hate to
5 excuse you. So, why don't we keep that issue open when we're
6 going to have you all back once again and we will put the twelve
7 people in the jury box, and at that point we can perhaps go into
8 it a little more if anything has developed. Right at this stage
9 I am still trying to hold on to people if I can.

10 A. Yes.

11 Q. Remember I told you that there could be two
12 possible phases to this trial.

13 The first question to you is: If we do get to a
14 penalty phase, will you be able to fairly consider both of the
15 possible penalties, death and life imprisonment without the
16 possibility of parole?

17 A. Yes, I can; personally can.

18 Q. Would you be able to personally vote for whichever
19 one seems most appropriate depending upon the circumstances??

20 A. I can, sir. The answer is yes.

21 Q. If I told you, as before, that in the guilt phase
22 jurors are prohibited from considering or assessing penalty or
23 punishment, nevertheless, do you think that your concern about
24 having to make a heavy decision of death or life imprisonment,
25 so to speak, that you would let that concern influence your
26 decision in the guilt phase?

27 A. No, sir.

28 THE COURT: Mr. Negus.

EXAMINATION

1

2 BY MR. NEGUS:

3 Q. Mr. Cube.

4 A. Yes, sir.

5 Q. The judge has let us lawyers ask most of the
6 questions, and as I go first I probably am going to be asking
7 more than Mr. Kochis. Because we're asking questions about the
8 death penalty, that is only in the eventually of what would
9 happen after a decision was made on guilt or innocence. Of
10 course my hope is we never get to that.

11 You won't sort of assume that because we're asking
12 you these questions that we're necessarily going to have to make
13 this kind of decision.

14 A. That's correct.

15 Q. Okay. What have you heard about this particular
16 case before you came to court? What did you hear about the
17 Chino Hills murders?

18 A. Well, as I have answered in my questionnaire, that
19 I do watch TV, and I read newspapers. I have -- what I saw on
20 TV and I read in the newspapers.

21 Q. What do you remember about that? What facts do you
22 remember about the case?

23 A. That there is so many people that were killed at
24 that time. I don't remember all the names. The only one I
25 remember about, I guess, is Joshua that lived.

26 Q. Have you heard any stories about Joshua since the
27 crime took place?

28 A. No, sir.

1 Q. What did you hear about my client, Mr. Cooper?

2 A. What I read in the paper, that he did escape from
3 prison, from the detention facility.

4 Q. That fact is not going to be before you in this
5 particular, in the particular hearing. Do you think that would
6 influence you one way or the other on the issue of guilt or
7 innocence?

8 A. No, sir, I don't think so. I would have to, you
9 know, weigh everything out, what the evidence are and so forth.

10 Q. Have you heard anything about the progress of the
11 case that has been in the court system?

12 A. No, sir. I -- only just briefly on TV, that
13 they're choosing jurors. That's about it.

14 Q. Did you know that it was coming to San Diego before
15 you got in here?

16 A. It was mentioned it was coming to San Diego.
17 Whether it was going to be here or not -- I was chosen to be on
18 the jury.

19 Q. What was your reaction when you found out that you
20 were going to be a prospective juror in this particular case?

21 A. I really hadn't thought about it. I was just
22 thinking about it. This is my first time to serve.

23 I said, well, you know, I have to do the best I can
24 if I am chosen. That is all I have.

25 Q. Do you have any opinion as to, right now as to
26 whether or not Mr. Cooper is guilty or innocent?

27 A. No, sir, I do not.

28

1 Q. Do you have any opinion right now as to what the
2 appropriate penalty for this particular case is?

3 A. No, sir, I don't.

4 Q. Do you belong to an organized religion?

5 A. No, I'm a Catholic, but I -- I guess you might say
6 I am not a very good one, because I don't go to church that
7 often.

8 Q. Has your religion in any way influenced your
9 opinions about the death penalty or life imprisonment without
10 the possibility of parole?

11 A. No, sir.

12 Q. Anything that you know about, from your own
13 knowledge of what you've heard about the case before you came to
14 court, that would make it difficult for you to be fair based on
15 something somebody's told you?

16 A. No, sir,

17 MR. NEGUS: Thank you. I have nothing further.

18

19

EXAMINATION

20 BY MR. KOCHIS:

21 Q. Mr. Cube, one of the questions we have been asking
22 everybody that comes in here is what their opinion is of the
23 death penalty, so let me ask you if you have an opinion about
24 the death penalty.

25 A. Well, personally, I think, you know, there for
26 awhile the death penalty was done away with. Personally, I
27 personally feel that I think it should be there. But, again,
28 you know, it is depending on the circumstances, the situation

1 whether that would come about or not. Whether it would weigh
2 anything on my part.

3 Q. You mentioned that at one time it was done away
4 with and two times apparently in the 70's it was. There was
5 something placed on the ballot about the death penalty, death
6 penalty issue.

7 Were you involved in either one of these campaigns
8 circulating petitions?

9 A. No, I was not.

10 Q. Did you take a position on the death penalty at
11 that time, back in the 70's, one way or the other?

12 A. No, I don't think I voted until the late 70's is
13 the first time I voted.

14 Q. Getting practical for a moment. If we get to the
15 penalty phase you will have to make a decision where either one
16 of the alternatives is very serious.

17 How do you feel about being put in a position where
18 you have to make that type of decision?

19 A. Oh, I think I can persevere through that
20 personally. Like I said, as I stated earlier, I would have to
21 weigh everything, whatever the evidence are and so forth.

22 Q. At the end of every trial, to make sure there is no
23 mistake, the judge polls the jury; he asks each one of them if
24 the verdict the clerk has just read is in fact their verdict,
25 the way they voted, and they answer yes or no in open court.

26 If the jury returned a death verdict in this case,
27 would you have any problem answering outloud in court that that
28 was your verdict?

1 A. No, sir.

2 Q. If the jury elected you as the foreperson, the
3 foreperson has to sign and date the verdict form.

4 If the jury felt that in this case, after Mr.
5 Cooper was convicted, the appropriate penalty was the death
6 penalty, would you have any problem signing and dating that
7 verdict form?

8 A. No, sir.

9 MR. KOCHIS: Thank you. I have nothing further.

10 THE COURT: I am noting your employer, so to speak, with
11 reference to the moment. I would like to keep you on at this
12 least at stage. And I suggest at some point if they are at all
13 equivocal about that I will be happy to write a letter to them
14 kind of urging that you be reimbursed in some manner. That
15 might have some effect.

16 If you wait outside for a minute the bailiff will
17 give you further instructions as to where to return and it will
18 give us a chance to discuss it.

19 I appreciate your coming in.

20 Any objection, gentlemen?

21 MR. NEGUS: No challenge.

22 MR. KOCHIS: No.

23 THE COURT: All right. Give him the appointment slip,
24 please, and have him return, and bring in the next juror.

25 THE BAILIFF: Brenda Gentle.

26

27

BRENDA GENTLE

28 Called as a prospective juror, having been duly sworn, testified

1 as follows:

2

3

EXAMINATION

4 BY THE COURT:

5 Q. Good morning. Have a seat.

6 Do you pronounce your name Gen-teel?

7 A. Gentle.

8 Q. Gentle?

9 A. Uh-huh.

10 Q. Is it Mrs?

11 A. Miss.

12 Q. Miss Gentle, has anything happened to you since you
13 were last in court that would prevent you from being able to
14 serve on this case?

15 A. No.

16 Q. I have arranged the proceedings here very informal,
17 informally in hopes that would make you relax a little bit more.
18 If you will just sit back and relax.

19 The first question that I have, if we do get to a
20 penalty phase there could be two phases. If we do get to a
21 penalty phase, will you be able to fairly consider both of the
22 possible penalties: Death and life imprisonment without the
23 possibility of parole?

24

25 A. Um, I'm not sure about that. I am really not sure,
26 because my feelings on the death penalty are pretty strong.
27 They changed over the years.

28 Now, I feel that if someone is found to be guilty

1 of a crime, such as taking someone else's life, and that they're
2 not insane, if they are not found to be insane, then I feel very
3 strongly that their life should also be taken.

4 Q. You do understand, first, that we have various
5 classes of murder in California.

6 A. Uh-huh.

7 Q. We have murder in the first degree, murder in the
8 second degree. And that even in murder of the first degree
9 cases, the law in California is that the penalty is not
10 automatic, that there would be a separate phase: Circumstances
11 in aggravation and circumstances in mitigation would be
12 presented in evidence for the jurors consideration, and then the
13 jurors would have to determine which of the two penalties is
14 appropriate in that particular case.

15 You would consider a person's background, a
16 person's past record, if any, their state of sobriety,
17 provocation. A number of factors, such as criminal activities,
18 their prior actions for involving force or violence, their
19 character, mental and physical condition, things such as that
20 and the jurors would have to make a decision. And you may not
21 have known that.

22 A. Uh-huh. That happens to be true.

23 Q. But if I tell you that now, would that change your
24 position somewhat?

25 A. Somewhat.

26 Q. Where even if a person, even if Mr. Cooper is found
27 guilty by the jury there is nothing automatic about the sentence
28 and you would have to still deliberate and determine whether one

1 of the other was most appropriate in the jurors considered
2 opinion. Do you understand that?

3 A. Uh-huh.

4 Q. Say yes or no.

5 A. Yes.

6 Q. Under some circumstances, even if a person is found
7 guilty of multiple murders, would you be able to vote for life
8 imprisonment without the possibility of parole without voting
9 for the death penalty?

10 A. Under some circumstances, yes.

11 THE COURT: All right. Thank you, Mr. Negus, you may
12 inquire.

13

14

EXAMINATION

15 BY MR. NEGUS:

16 Q. Miss Gentle, the judge is leaving most of the
17 questioning to us lawyers.

18 A. Uh-huh.

19 Q. And just because we're asking questions about
20 penalty doesn't mean you will have to ever decide that.

21 A. Yes, I realize that.

22 Q. Just because we are asking the questions doesn't
23 mean that we will necessarily ever get back to the question of
24 guilt or innocence. Do you understand that as well?

25 A. Of course.

26 Q. As the judge explained to you, the law may be
27 somewhat -- what the law requires that a juror do maybe somewhat
28 different than your own personal beliefs.

1 A. Uh-huh. True, yes.

2 Q. Do you think that you could set aside your personal
3 beliefs sitting as a juror on this case, and do what the law
4 requires, or would your own personal belief require you to
5 always vote for the death penalty if you found somebody guilty?

6 A. I don't think that I could allow myself to do that.
7 I realize that it is a very big responsibility being on this
8 type of jury.

9 Q. Do you think that -- some people just feel that
10 they don't -- their personal beliefs are such that they can't,
11 they can't do what the law requires.

12 So, I guess what I am asking is: Do you think that
13 if the law is asking us to do something different than you
14 believe in, that you could do what the law requires rather than
15 follow your own beliefs?

16 A. I would follow the law.

17 Q. What have you heard about the case before you came
18 to court?

19 A. Um, I heard in the newspaper various news accounts
20 in the newspaper.

21 Q. What facts do you remember about it?

22 A. Um, I remember when they found them, and from that
23 point on I don't remember reading anything else.

24

25 Q. Okay. When Mr. Cooper was arrested, do you
26 remember the details of that?

27 A. Just vaguely.

28 Q. What do you remember?

1 A. That he was living on a boat with some people.

2 Q. And did you -- had you heard about Mr. Cooper
3 before his arrest?

4 A. Just that they thought that he might be the one
5 that's all.

6 Q. Had you heard anything about his background or
7 anything of that nature?

8 A. No.

9 Q. What had you had heard about the nature of the
10 actual crime itself?

11 A. Just that there were, there was a family that was
12 murdered, and in a house, that is it.

13 Q. Did you know the case was coming down to San Diego?

14 A. No.

15 Q. What was your reaction when you walked into court
16 and found out that you were a potential juror in this particular
17 case?

18 A. I was surprised, and uneasiness.

19 Q. What you made you uneasy?

20 A. Um, well, I was expecting a small case. I've never
21 done jury duty before, that's -- I wasn't expecting it. This is
22 my first time ever.

23 Q. Did that -- you say it made you uneasy. I mean,
24 did you not want the responsibility or didn't you want to have
25 to sit this long, or --

26 A. I thought it was a very long time to do this, jury
27 duty. Everybody talks being -- about as being two weeks.

28 Q. Do you have any -- have you -- what opinion -- let

1 me try this again. It's hard start to that question.

2 What opinion do you have about Mr. Cooper's guilt
3 or innocence at the present time?

4 A. Well, I'm trying not to form any opinion in case
5 I'm chosen.

6 Q. Have you had -- prior to your coming to court, had
7 you formed any opinion?

8 A. Just the only thing I can go to is what I read in
9 the newspapers.

10 A. Did that lead you to have an opinion one way or the
11 other?

12 A. Well, when you are not really involved in it you
13 don't really think one way or the other, you know.

14 Q. Would it be fair to say you haven't made up your
15 mind?

16 A. I hadn't -- I didn't have all the facts. I
17 couldn't makeup my mind. I just read little bits and pieces
18 here and there.

19 Q. Do you belong to an organized religion?

20 A. No.

21 Q. Did -- does the fact that there are kids involved
22 in the case, that is, two of the victims were young kids, two
23 people that died --

24 A. Uh-huh.

25 Q. -- and there's a young boy that survived, he was
26 also very seriously attacked, do you think that that fact would
27 influence you in your penalty selection so that because there
28 were kids involved you'd automatically vote for the death

1 penalty.

2 A. No.

3 Q. If you have to decide the penalty, do you feel you
4 can be a fair judge of the appropriateness of the penalty based
5 on the balancing of evidence rather than on your own philosophy?

6 A. I feel that I'd have to, yes.

7 MR. NEGUS: Okay. Thank you very much.

8

9

EXAMINATION

10 BY MR. KOCHIS:

11 Q. I have one or two questions.

12 You mentioned that there has been a shift or change
13 in recent years in your position on the death penalty.

14 A. Uh-huh.

15 Q. I take it that means at one time you were
16 philosophically and morally opposed to the death penalty?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes.

20 Q. He can't pick up the other type of comments.

21 Was there any particular experience that caused you
22 to change your opinion?

23 A. No. I just think that I was a lot younger, and
24 maybe a little more naive, and the way that they used to have
25 the death penalty was a little more barbaric than they are now.
26 I've just -- you know, there's been -- since that time I've read
27 about and known about more and more killings, and I think that's
28 what changed my mind.

1 Q. Okay. Getting practical for a moment. If we get
2 to the penalty phase, you and eleven other people will have to
3 make a decision, and either one of the decisions you make has
4 very serious consequences.

5 How do you feel about being placed in the position
6 where you have to make a decision of that magnitude?

7 A. Well, I feel like somebody has to make it, and I'm
8 a real responsible person. I just have to try to do my best
9 like anybody else.

10 MR. KOCHIS: Fine. Thank you.

11 I have nothing further, your Honor.

12 THE COURT: Would you kindly wait outside for a few
13 moments so we can discuss it, then we will give you further
14 instructions.

15 Any objection, counsel?

16 MR. NEGUS: No challenge.

17 MR. KOCHIS: No challenge.

18 THE COURT: All right. Would you give her an appointment
19 slip. I thought that we'd have time for a recess.

20 MR. KOCHIS: Your Honor, my reading of the schedule is we
21 don't have anything else for 45 minutes.

22 THE COURT: Right.

23 MR. KOCHIS: Could we be excused to return at quarter
24 til?

25 THE COURT: Certainly.

26 THE COURT: All right. If everybody is ready, let's go.

27 THE BAILIFF: We will have Cynthia Bell.

28 Cynthia Bell.

1 THE COURT: Good morning.

2 PROSPECTIVE JUROR: Hello.

3

4

CYNTHIA BELL,

5 called as a prospective juror, having been previously sworn,
6 testified as follows:

7

8

EXAMINATION

9 BY THE COURT:

10 Q. We've arranged things here in kind of an informal
11 way in hopes that you will settle back and relax and be more
12 conducive to you being candid with us, okay?

13 A. Okay.

14 Q. Has anything happened in the intervening period of
15 time since we saw you last that would prevent you from being
16 able to serve on the case?

17 A. Yes. I would like to be excused from being on the
18 jury duty for this time. It pertains to my job. I'd be losing
19 money for that length of time.

20 Q. For whom do you work?

21 A. San Diego Trust and Savings Bank.

22 Q. I'm sorry?

23 A. San Diego Trust and Savings Bank.

24 Q. And you've discussed it with your superiors or
25 boss?

26 A. Yes, I have. They wouldn't be able to replace me.

27 Q. What is your job?

28 A. I'm in New Accounts.

1 Q. So, in effect you would lose your job, is that what
2 you're telling us?

3 A. No. I would lose money. I get incentive pay, and
4 the time that I'd be here I'd be losing money, during the course
5 I would calculate around eighteen hundred dollars is what I'd be
6 losing in incentive pay. I went through a 14-week course,
7 extensive course and training, for my position, and we learn
8 certain techniques in my job that normally if I'm not performing
9 them daily I may lose those techniques that I've learned during
10 the course of those 14 weeks.

11 Q. And working one day a week just isn't going to hack
12 it, huh?

13 A. Yes.

14 Q. Are you married?

15 A. Yes, I am.

16 Q. Children?

17 A. Yes, I have one.

18 Q. Husband also work?

19 A. Yes, he does.

20 Q. What does he do?

21 A. He's a retail manager for Jackman Wheels.

22 There's also another situation I'm involved in with
23 right now. My daughter, she has gone to this preschool for the
24 last year and a half, and I found some interesting information
25 on the preschool and I pulled my daughter out. They are
26 currently under investigation right now, and I'm kind of
27 involved in thinking about that, too.

28 THE COURT: Counsel, do either of you have any questions?

1 You may ask them on that subject alone.

2 MR. KOCHIS: I don't.

3 MR. NEGUS: No, I have no questions.

4 THE COURT: Let us discuss it privately. I have some
5 constraints here, so give us a chance to discuss it and the
6 bailiff will instruct you whether to come back in or whether you
7 can be excused. In any event, we want to thank you for your
8 courtesy in coming so far.

9 PROSPECTIVE JUROR: Okay. Thank you, sir.

10 THE COURT: Thank you. Wait outside, please.

11 Any challenges, Gentlemen?

12 MR. KOCHIS: We are not challenging at this point. I'm
13 not going to object to her being excused for cause.

14 THE COURT: That's what I meant. I'm thinking that there
15 is good cause having been shown. All right.

16 MR. KOCHIS: Could I get some audible response from Mr.
17 Negus one way or the other?

18 THE COURT: Counsel, there has been no objection. That's
19 the same as -- that can be construed in the law. I'm not going
20 to insist upon it if he doesn't have anything to say. All
21 right.

22 The Court finds good cause existing to excuse her
23 and I will do so.

24 Would you so instruct her, Bailiff, and then bring
25 in the next juror for us, please.

26 THE BAILIFF: Next juror will be Marilyn Bradley.

27 THE BAILIFF: This is Marilyn Bradley.

28

UJ
MARILYN BRADLEY,

1
2 called as a prospective juror, having been previously sworn,
3 testified as follows:

4
5 EXAMINATION

6 BY THE COURT:

7 Q. Come over, please, and have a seat. Good morning
8 to you.

9 A. Good morning.

10 Q. I'm down here at the counsel table with counsel and
11 the participants here in an informal manner. Sit back and relax
12 and be candid in your responses, please.

13 First, has there been anything that's happened to
14 you perhaps since you were last here that would prevent you from
15 being able to serve?

16 A. No.

17 Q. There could be two possible phases to this trial.

18 Question No. 1: If we do get to a penalty phase
19 will you be able to fairly consider both possible penalties,
20 death and life imprisonment without the possibility of parole?

21 A. Yes.

22 Q. Two, would you be able to personally vote for
23 whichever one seemed most appropriate, depending upon the
24 circumstances?

25 A. Yes.

26 Q. You you might recall that I also told you from the
27 bench earlier that in the guilt phase, or the first phase, the
28 jurors will be instructed to not consider nor discuss penalty or

1 punishment, that would only become applicable if we do get to
2 the second phase. In spite of that admonition, however, do you
3 have any such strong feelings about possible penalties in this
4 case that that might effect the way you would vote in the guilt
5 phase?

6 A. No.

7 Q. Thank you, Ma'am.

8 THE COURT: Mr. Negus.

9

10

EXAMINATION

11 BY MR. NEGUS:

12 Q. Good afternoon -- Good morning. The Judge is
13 leaving most of the questions to Mr. Kochis and myself, and as I
14 go first I usually ask probably more questions of you than he
15 will.

16 Because we're asking questions about the death
17 penalty you wouldn't assume that you're necessarily ever going
18 to have to decide that or that I'm conceding that that's an
19 issue in this case or anything like that? Do you understand --

20 A. Yes.

21 Q. -- that we are just required to do this --

22 A. Right.

23 Q. -- before we get to the guilt phase.

24 What did you hear when you -- before you came to
25 court about this -- about the Chino Hills murders? You
26 indicated that you had heard some facts about it.

27 A. You mean originally?

28 Q. Yeah.

1 A. You mean last summer?

2 Q. Right.

3 A. Well, I have a real hazy recollection of the whole
4 thing because I was real preoccupied at the time.

5 Q. So, you weren't paying much attention then?

6 A. Correct.

7 Q. Did you form any opinion about the case at the
8 time?

9 A. No.

10 Q. Did you hear anything that to do with Mr. Cooper?

11 A. In general or specifically?

12 Q. Right, in general, in general.

13 A. In general, the name.

14 Q. Do you remember any details about his background or
15 anything of that nature?

16 A. Not at all, no.

17 Q. There is a mention of an escape charge; were you
18 aware of that escape charge?

19 A. Yes, uh-huh.

20 Q. Did you hear anything about the case after it got
21 into court?

22 A. Yes.

23 Q. Did you follow that at all?

24 A. I saw an article in the paper.

25 Q. Was that the Tribune?

26 A. The evening -- yes.

27 Q. What are -- what do you remember about that
28 article?

1 A. I believe it briefly mentioned about what was
2 alleged to have happened.

3 Q. Okay. Do you remember like any of the details
4 about the way the crime was committed or anything of that
5 nature?

6 A. The only recollection, strong recollection is of a
7 little boy that survived.

8 Q. Have you followed the stories about him in the
9 paper since the crime?

10 A. Not really. I kind of lost track of what happened
11 with him.

12 Q. Did you form any opinions about the case based on
13 what you had heard before you came to court?

14 A. Not really. I wasn't too aware of very many of the
15 details.

16 Q. What was your reaction when you found out that you
17 were a potential juror for this particular case?

18 A. I was a little -- well, I wasn't really surprised
19 because I had read that they were picking for the jury, so I
20 really wasn't too surprised.

21 Q. Did you have any feeling, you know, I don't want to
22 sit on this case?

23 A. Not particularly.

24 Q. I hope I sit on this case?

25 A. Not particularly, no.

26 Q. What opinion do you have about the death penalty?

27 A. I don't have any strong opinion one way or the
28 other really. I'm not that familiar with the law to be

1 perfectly honest.

2 Q. Do you have any personal opinions about what the
3 law should be?

4 A. I don't think so. I don't see anything wrong with
5 the law.

6 Q. Do you have any personal opinions as to when the
7 law should be applied, when the death penalty should be applied
8 as opposed to when some other penalty should be applied?

9 A. I really don't know that I'm qualified to make that
10 decision.

11 Q. I'm not really asking you, I'm not asking you
12 whether know what the law is. It's not like a quiz or anything.

13 A. Right.

14 Q. I'm just asking if you have any opinions of your
15 own, I mean your, own personal opinions about that.

16 A. I think so.

17 Q. What is your --

18 A. Well, I -- there are certain cases that I feel
19 would be -- the person maybe should have the death penalty more
20 so than other cases.

21 Q. How would you distinguish those which you think
22 they should and when they shouldn't?

23 A. Well, I think there's cases where in the heat of
24 the moment someone will get killed, and that's one case; and in
25 a case where it's coldblooded strangers for no apparent reason,
26 I think that it would be also all right to impose the death
27 penalty.

28 Q. In this particular case we have a family with a

1 bunch of kids.

2 A. Uh-huh.

3 Q. And would you feel that you would in this case
4 automatically vote for the death penalty if you -- if somebody
5 was convicted of the crime?

6 A. Well, I kind of want to know a little more about
7 the case; but I certainly think that if it was just a
8 coldblooded stranger walking in and killing for no apparent
9 reason, then I could go along with it.

10 Q. Assuming that you found out all the facts about the
11 case, and would there be any sort of situation where you had
12 strangers being killed where you would not impose the death
13 penalty?

14 A. That's really difficult to answer. It's a --

15 Q. I know we're asking you --

16 A. I realize, you know, without knowing what happened
17 and the background and the circumstances, it's really difficult
18 to say yes or no. It's kind of a gray area with me. It seems
19 to me like it should be a case-by-case situation. I hate to
20 say, yes, everybody on this side of the line and, no, to
21 everybody on this side of the line. I mean, it just seems to me
22 it should be on a case-by-case situation. I don't know what
23 else today.

24 Q. I'm -- Like I say, I'm not trying to put you on the
25 spot or ask you, you know, questions which have right or wrong
26 answers, but I'm really just interested in, and I think Mr.
27 Kochis is, is your particular opinions.

28 A. Uh-huh.

1 Q. And how they're going to effect your deliberation
2 in the case, and we're not mind readers. You are the only one
3 that knows.

4 A. Right. I don't know what to tell you. It's the
5 first time I have ever served on a jury. I've never really
6 thought too much about it. It seems to me it should be done on
7 a case-by-case basis. I can't see making a flat statement that
8 everybody should something, or you know.

9 Q. Do you belong to an organized religion?

10 A. No, I don't.

11 Q. And basically you haven't really thought much about
12 the death penalty as a social issue before you got to here --

13 A. No, I haven't.

14 Q. -- and we started asking these questions?

15 A. Hu-huh.

16 Q. Thank you very much.

17 A. You're welcome.

18

19

EXAMINATION

20 BY MR. KOCHIS:

21 Q. Mrs. Bradley, I have a few questions as well. I'm
22 not trying to pry into your background. Unless we ask the
23 questions we don't get the information.

24 Getting practical for a moment, if we get to the
25 place where you and eleven other people are going to have to
26 make a decision as to which of two penalties to choose, both of
27 them have rather serious consequences; how do you feel about
28 being put in a position where you might have to make a decision

1 of that magnitude?

2 A. I see no problem.

3 Q. Okay. Now you mentioned that over the past perhaps
4 because it's something you weren't confronted with you haven't
5 sat down and thought about your feelings about the death penalty
6 one way or the other.

7 A. Uh-huh.

8 Q. Some people when they're actually confronted with
9 that type of decision-making process realize for the first time
10 that that's a decision they're not comfortable making one way or
11 the other; do you see any problem like that arising in you?

12 A. I'm sorry, no.

13 Q. I have to pay attention to that. At the end of
14 every criminal case to make sure that there's no mistake the
15 Judge polls the jury. He will ask each one of the jurors if the
16 verdict that's been read into court is in fact their verdict.
17 They either answer yes or no. If in this case the jury felt
18 that the death penalty was the appropriate verdict, would you
19 have any problem indicating that out loud in the courtroom?

20 A. No.

21 Q. Likewise the law requires that the foreperson sign
22 and date the verdict form; if the jury felt in this case that
23 the death penalty was the appropriate verdict and you were
24 elected the foreperson would you have any trouble signing and
25 dating that verdict form?

26 A. No.

27 Q. Thank you.

28 MR. KOCHIS: I have nothing else, your Honor.

1 THE COURT: Thank you for coming in, Mrs. Bradley. Would
2 you wait outside for a moment. Let us discuss it and the
3 bailiff will give you further instructions.

4 PROSPECTIVE JUROR: Uh-huh, yes.

5 THE COURT: Thank you very much.

6 PROSPECTIVE JUROR: Your welcome.

7 THE COURT: She has departed.

8 Any challenges, Gentlemen?

9 MR. KOCHIS: Not from the People.

10 MR. NEGUS: No.

11 THE COURT: All right.

12 You can give her an appointment slip, please, and
13 bring in the other prospective juror.

14 THE BAILIFF: Frances Peel.

15

16

FRANCES PEEL,

17 called as a prospective juror, having been previously sworn,
18 testified as follows:

19

20

EXAMINATION

21 BY THE COURT:

22 Q. Would you come in have a seat, please. Good
23 morning, Mrs. Peel.

24 A. Morning.

25 Q. I've gotten off of the bench down here to the
26 counsel table in hopes that the more informal arrangement would
27 make it easier for you to relax a little bit and answer our
28 questions.

1 A. All right.

2 Q. The first question is: Has anything happened in
3 the intervening time since we last saw you that might prevent
4 you from being able to serve on this case?

5 A. Well, only that I would like to have next Thursday
6 and Friday off to attend a 50th high school reunion.

7 Q. That's no problem at all.

8 A. No problem, then there's nothing else.

9 Q. All right. You remember I told you when I was up
10 there that there could be two possible phases to this trial, the
11 guilt phase and the penalty phase. Question 1, if we do get to
12 a penalty phase will you be able to fairly consider both of the
13 possible penalties, death and life imprisonment without the
14 possibility of parole?

15 A. Yes.

16 Q. Two would you be able to personally vote for
17 whichever one seemed most appropriate depending on the
18 circumstances?

19 A. Yes.

20 Q. You remember I also told you that at the guilt
21 phase the jurors are not to consider nor discuss penalty or
22 punishment. That would only become applicable if we do get into
23 the penalty phase. So Question No. 3, do you think that you
24 might be so concerned nevertheless with the possible
25 penalty-type decision that you would let that concern influence
26 your decision in the guilt phase?

27 A. No.

28 Q. Thank you.

1 THE COURT: Mr. Negus.

2

3 BY MR. NEGUS:

4 Q. Ms. Peel, the Judge has decided to leave most of
5 the questioning to Mr. Kochis and myself.

6 A. All right.

7 Q. And I will be asking you some questions about your
8 views about the death penalty. By asking you those questions I
9 don't mean to imply that we're ever going to get to that
10 particular stage of the proceedings.

11 A. I understand.

12 Q. Let me ask you this: You indicated in your
13 questionnaire that you had remembered vaguely some stories about
14 the the Chino Hills murders?

15 A. Yes. One does.

16 Q. Okay. What details do you remember about that?

17 A. It's very hazy because I hear all these cases and
18 they get all jumbled up and I really don't pursue them. If I
19 did, then I would remember more.

20 Q. Okay. So you don't have a real clear memory of
21 this?

22 A. No, I don't.

23 Q. Do you remember any details about -- about Mr.
24 Cooper, my client?

25 A. Not any. I tried -- I tried desperately but I
26 couldn't remember a thing.

27 Q. Obviously these cases are not necessarily as
28 important to everybody else as they are to us, at least in terms

1 of remembering.

2 A. That's true.

3 Q. The Judge mentioned to you when you were last in
4 court that there was a charge at one point in time of escape
5 involved; had you heard anything about that before you came to
6 court?

7 A. About what?

8 Q. Mr. Cooper was charged with escaping from a prison.

9 A. No. I don't -- I don't remember clearly anything
10 about that.

11 Q. What was -- what was your reaction when you found
12 out that you were going to be sitting on a case of this type
13 perhaps as a juror?

14 A. I didn't know what I would get. I was willing to
15 take whatever it was because I had been asked three other times
16 to serve on a jury and I never was able because I was teaching
17 or I had a job where I could not, for instance, my children were
18 very small at one time and I couldn't, but this time I decided
19 that I had really better do my duty.

20 Q. Okay. What is your opinion about the death
21 penalty? Do you have an opinion about it?

22 A. No opinion particularly, no.

23 Q. I mean have you ever -- have you ever considered it
24 before having to come into court and sit on a potential death
25 penalty case?

26 A. Not really, never had to do that, no.

27 Q. Do you have any religious beliefs which might
28 influence your view --

1 A. No.

2 Q. -- of the death penalty?

3 A. I know that I put down on my paper that I read the
4 Christian Science Monitor, but that was a gift to me. That is
5 not my religion, incidentally.

6 Q. I read the Christian Sinus Monitor; it's not mine
7 either.

8 MR. KOCHIS: It's a good newspaper.

9 THE COURT: It's an excellent paper.

10 BY MR. NEGUS:

11 Q. Well, just in general then is there anything about
12 your beliefs about the death penalty about this case that would
13 cause you to have any sort of preconceived notions as to the
14 outcome of this particular case?

15 A. No conceived -- no preconceived notions, no.

16 Q. Fine. Thank you very much.

17

18

EXAMINATION

19 BY MR. KOCHIS:

20 Q. Mrs. Peel.

21 A. Yes.

22 Q. I have to ask you a few questions as well.

23 A. Yes.

24 Q. Like Mr. Negus we are not trying to pry, but if we
25 don't ask questions we don't get the information.

26 A. That's right, you don't.

27 Q. I take it from a few things you've said that at one
28 time you taught school?

1 A. Yes, I did.

2 Q. Was the death penalty ever a topic of conversation
3 in any of the classes that you taught?

4 A. No. I taught largely remedial reading, and that
5 question did not come up, no.

6 Q. Okay.

7 A. The children were small and they didn't think about
8 it.

9 Q. We happen to have the death penalty on the books
10 here in California; what do you think about the fact that we
11 have that has a possible punishment? Is it something you feel
12 is necessary or you feel we shouldn't have to have or do you
13 have any thoughts along those lines?

14 A. Well, I really don't have too much feeling about
15 it. Perhaps if it's necessary, it would depend on many factors.

16 Q. Okay. How do you feel about possibly being placed
17 in the position where you might have to make a decision as to
18 which of two penalties to give in this particular case, if we
19 get to the penalty phase.

20 A. No feeling because as a teacher I had to make
21 decisions all the time.

22 Q. Okay. Thank you.

23 I have nothing else.

24 THE COURT: Thank you for coming in this morning. Would
25 you kindly wait outside and the bailiff --

26 PROSPECTIVE JUROR: Yes, I will.

27 THE COURT: -- will give you further instructions after
28 we have had a chance to discuss it, please. Thank you. Mrs.

1 Peel.

2 PROSPECTIVE JUROR: All right. Reading about Lincoln.

3 THE COURT: She has departed. Any challenges?

4 MR. NEGUS: No.

5 MR. KOCHIS: No.

6 THE COURT: Give her the appointment slip and bring in
7 the next please.

8 THE BAILIFF: Sewell Hall.

9

10 SEWELL HALL

11 Called as a prospective juror, having been duly sworn, testified
12 as follows:

13

14 EXAMINATION

15 BY THE COURT:

16 Q. Would you sit at the end of the table, please.

17 Mr. Hall, we have arranged the tables here and
18 seats around in kind of an informal way in hopes that you will
19 relax a little bit and be candid in your responses to our
20 questions.

21 The first is: Has anything happened since you were
22 last here that would prevent you from being able to serve on
23 this case?

24 A. Yeah. I think --

25 Q. That's why I asked that question first.

26 I see you have a letter addressed to me.

27 "Dear Judge Garner:

28 "I have been notified that Mr. Sewell W. Hall,

1 an employee at Mesa Vista Hospital, has been
2 called to serve on a jury panel and may be
3 involved in an extended court case. The potential
4 period of time being as long as six months, we
5 are requesting that Mr. Hall be excused from this
6 duty at this time because of the hardship that
7 would be created for both the hospital and Mr.
8 Hall.

9 "Mr. Hall is presently employed in our operations
10 department as the only carpenter in this
11 organization. The services rendered by him are
12 unique and important to the operation of the
13 hospital."

14 It was written by Donald K. Allen, Assistant
15 Administrator.

16 How many beds is your hospital?

17 A. 150, I think. That is in the main building. In
18 the child adolescent building there are I think 60.

19 Q. You work in the maintenance department?

20 A. Plant operation.

21 Q. How many people are in that department or division?

22 A. One painter, two repairmen, me, and a carpenter,
23 and a gardener.

24 Q. How long have you been working for them?

25 A. Going on six years.

26 Q. What type of things does the carpenter do at a
27 hospital?

28 A. I am taking all the desks out of all of the offices

1 and putting in countertops, built-in, so more people can get in
2 smaller offices.

3 Then along with -- I was hired as a maintenance
4 repairmen, and then when the carpenter retired I took his
5 position. So, I still help out when they get an overflow of --

6 Q. You know, I don't doubt for a moment but it will be
7 substantially difficult for everybody concerned for you to
8 serve. On the other hand, I have some constraints on me as well
9 and I can't easily excuse you.

10 You know, I don't mind people getting mad at me,
11 I'm paid for that responsibility, I suppose, and you could blame
12 me for being a mean old judge if I denied to excuse you.

13 Now, if I denied to excuse you in this case,
14 somehow they would survive, and you could work -- can you work
15 one day a week for them? You have to answer outloud please.

16 A. Oh, yeah, I guess so.

17 Q. Where is the hospital? How far from here?

18 A. It is about seven miles, 163 and Genesee.

19 Q. Freeway all the way there. I know where that
20 hospital is.

21 A. Right beside Sharp's.

22 Q. Right next to the freeway, basically.

23 A. Yeah.

24 Q. So it would take you approximately --

25 A. Five minutes.

26 Q. Short time from my house. I live over in North
27 Park.

28 Q. From here it would take you about 15 minutes.

1 A. No. May be ten, because 163 is just up off
2 Twelfth.

3 Q. What are your normal hours?

4 A. 7 to 3:30.

5 Q. Until 3:30. Do you have a family?

6 A. Yes.

7 Q. Children?

8 A. Yes. Two.

9 Q. The hospital is open however 24 hours, I suppose.

10 A. Uh-huh.

11 Q. And if you started later in the day, so to speak,
12 instead of going to work at 7:00, if you came here at 9:30 then
13 were finished at 4:00, you could put in an hour or so, I
14 suppose, if you really got jammed.

15 A. Sure. If it is okay with the supervisors, it is
16 fine with me.

17 Q. Any reason why it wouldn't be okay, that you know
18 of?

19 A. No. They didn't used to like anybody being there
20 after hours, but it was -- you know, I guess if everybody knew
21 that I was going to be there at that time, it would be all
22 right.

23 Q. It is kind of a, Mr. Hall, if I denied, deny this,
24 am I going to make you horribly mad at me?

25 A. No. I think it would be an experience. They're
26 the ones that, you know, feel that it would be difficult. He
27 said that they would still have to pay me the wages, that I
28 wouldn't be working, but I wouldn't necessarily have my job when

1 I got back.

2 Q. I don't remember you saying that.

3 A. No, my boss.

4 Q. That is what your boss said?

5 A. Yes.

6 Q. Let me educate you just a little bit, and you can
7 in turn tell him.

8 The labor code, I don't have the section before me,
9 I think I will dig it out in case it comes up again,
10 specifically provides that it is unlawful for an employee to be
11 discriminated against or be terminated because of jury service.
12 They can't legally do it. The labor commissioner would assist
13 you if you had any difficulty with them on that. I know the law
14 is there.

15 A. I don't think he said terminated, just my position.

16 Q. I am saying, discriminated against or terminated.
17 You can't be demoted, for instance, because of it.

18 Let me do it this way.

19 A. That's the only thing I was worried about, because
20 I have a hard enough time making it on whatever I do now. There
21 are four people in my family.

22 Q. Why should you be any different, I suppose.

23 Let me do it this way, Mr. Hall. You have an
24 excellent chance of lucking out and never having to serve on the
25 case because we're going to be interviewing some 200 people
26 almost, from which we will select about 16.

27 A. Uh-huh.

28 Q. So, you might get lucky. On the other hand, I

1 don't lightly excuse any of those 200 people.

2 So, we will, if you stay with us, and pass the test
3 this morning, so to speak, we will have you back again in the
4 jury box, along with other people, and at that time, let's see
5 how you feel by then, see if something else has happened and we
6 will give you a chance at that time to say, hey, judge it hasn't
7 gotten any better, something like that. Okay?

8 A. That is the only thing I can see that's going to --

9 Q. You can put the blame on me if you want to.

10 Let me get to another few questions here. Remember
11 I told you that the case could have two possible phases, the
12 guilt phase and that could be the end of it, or we could go into
13 a penalty phase. If we do get to a penalty phase, will you be
14 able to fairly consider both the possible penalties: Death or
15 life imprisonment without the possibility of parole?

16 A. Yeah.

17 Q. Will you be able to personally vote for whichever
18 one seems most appropriate depending upon the circumstances at
19 that time?

20 A. I suppose so.

21 Q. Are you hesitating for some reason right now?

22 A. I have a strong decision to make.

23 Q. Nobody is promising you a rose garden.

24 A. I know.

25 Q. This is going to be a tough case.

26 A. Yes.

27 Q. All right. Remember I also told you that in the
28 penalty phase the jurors are not to discuss nor consider penalty

1 or punishment, that that would be only if we do get to that
2 second phase. But, nevertheless, in spite of that instruction
3 to you, do you think that your concern about having to make that
4 equivocal decision of life or death, so to speak, later on, that
5 you might let that concern influence the way you would vote in
6 the guilt phase?

7 A. No.

8 THE COURT: Thank you, Mr. Hall. Mr. Negus.

9

10 EXAMINATION

11 BY MR. NEGUS:

12 Q. Mr. Hall, because we're asking you these questions
13 about the death penalty now, I hope you don't assume that we're
14 necessarily going to have to make that decision. It is putting
15 the cart before the horse.

16 Before we get to that you will have to decide
17 whether or not Mr. Cooper is guilty or innocent. Do you
18 understand that?

19 A. Yes.

20 Q. You indicated in your questionnaire that you filled
21 out for us that you had a fairly good recollection about the
22 facts of this particular case from the publicity that you were
23 exposed.

24 A. Yes.

25 Q. You have to say yes or no.

26 A. Oh, yes.

27 Q. This gentleman has to take it all down, and your
28 uh-huh's are hard to interpret.

1 What do you remember about the actual crime itself?

2 What do you remember from what you were asked?

3 A. About the Ryens?

4 Q. Right.

5 A. That from what I read, three people had escaped
6 from a prison minimum security, or something, nearby there, and
7 that at this Arabian horse ranch, the breeders, this family, had
8 been killed, and his wife and the father, and the daughter and
9 the little boy spending the night over, were there, and then I
10 think his son had his throat cut and they found some clothes,
11 and I think something that might have been used with blood on it
12 in an empty like farm house, or something, abandoned shack,
13 close to there.

14 Q. What was your reaction when you heard that?

15 A. You see it in the paper everyday. It was just
16 another murder.

17 Q. What do you remember reading about my client, Mr.
18 Cooper, or having seen on television?

19 A. That they had caught two of the people, and Mr.
20 Cooper was still at large, and they had thought first he might
21 have went to Mexico, then up towards San Bernardino, and later
22 caught him trying to swim or, I think, in a little dingy rowing
23 from a sailboat somewhere. I forgotten where, what part.

24 Q. Did you read anything about his background or
25 about, anything about him before he was in the news?

26 A. Um, I think they said something about a psychiatric
27 problem or something, and there was a mix-up where he was put in
28 a minimum security, where he should have been a little higher

1 watched.

2 Q. Did that leave you with the impression that Mr.
3 Cooper was somehow a dangerous fellow?

4 A. Well, they paint everybody, I guess, a suspect as a
5 black sheep. But it is hard to say unless you see all the
6 evidence yourself.

7

8 Q. Well, based on -- let me ask you another. Have you
9 followed the case as it's gone through the courts? Have you
10 read anything or seen anything about the case?

11 A. Not since he told us not to.

12 Q. I'm talking about though where we have been in
13 court for a fair amount of time before we got to San Diego. Did
14 you read anything about the stories about that?

15 A. None other than when he was first charged. If I've
16 read it, they have been small captions and I didn't pay that much
17 attention.

18 Q. So, you haven't really followed it.

19 A. Not the court, right.

20 Q. Did you, when you heard the publicity last summer,
21 did you come to an opinion as to whether or not Mr. Cooper was
22 guilty or innocent?

23 A. No.

24 Q. Do you think you'd have any difficulty keeping an
25 open mind on that subject based on the publicity?

26 A. Nope.

27 Q. The fact that Mr. Cooper was in some way labeled as
28 either having mental problems or dangerous, do you take that as

1 sort of something that is proven already, or would you wait to
2 hear whatever evidence there is on it?

3 A. You have to wait to hear the evidence.

4 Q. You wouldn't assume because of that publicity
5 that's he's more likely to have committed a crime?

6 A. More likely than --

7 Q. Than not.

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

9 Q. Basically you know what we want in a criminal case,
10 I suppose, is not somebody whose isolated themselves from the
11 news, but somebody who will evaluate the case just based on the
12 evidence that they hear in the courtroom.

13 A. Right.

14 Q. And if the prosecution doesn't prove the case
15 beyond a reasonable doubt, could you vote not guilty, despite
16 what you read in the newspapers? Do you think you could do
17 that?

18 A. Yes.

19 Q. What was your reaction when you first heard that
20 this was the case that you were being called to sit on as a
21 juror?

22 A. Shock.

23 Q. And in what way did it shock you?

24 A. Well, I was told by everybody when I first said I
25 was going on jury duty, they were telling me they're on cases,
26 traffic, and stuff like that. The biggest one I think was my
27 boss' armed robbery. Nobody ever thought this. I never
28 considered it myself, you know, sitting here on this trial.

1 Q. Do you mean frightened, it upset you, or anything,
2 or just surprise?

3 A. No, surprise.

4 Q. Do you have any feelings, as you sit there right
5 now, that if somebody is convicted of this particular crime that
6 they ought to receive some particular penalty?

7 A. Definitely.

8

9 Q. Okay. Have you made up your mind between the
10 penalty of life without possibility of parole versus death?

11 A. No.

12 Q. Do you think that anything that you've heard in the
13 publicity, or any other feelings that you might have would make
14 you have a preconceived notion as to what should be done in this
15 particular case?

16 A. As far as those two you were talking about?

17 Q. Right.

18 A. No. I think Judge Garner said he was going to, if
19 it got to that, he would explain it.

20 Q. Okay. You feel you could follow whatever
21 explanation that the judge gives you?

22 A. Right.

23 Q. Do the fact that kids are involved as victims in
24 this case, does that in any way, do you think, affect your
25 ability to be fair and impartial in the case?

26 A. No.

27 MR. NEGUS: All right. Thank you very much

28

EXAMINATION

1

2 BY MR. KOCHIS:

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Q. Mr Hall- one of the questions we have asked everyone whose came back here to talk to us was what their opinion of the death penalty. So. let me ask you that question.

A. I accept it. I don't know what you --

Q. Okay the let me elaborate further. perhaps.

During the 70's. two separate times. there was an initiative that the death penalty issues were on the ballot. and there was some controversv at that time and discussions about it. and people voted on the issues.

Did you take an active part in those campaigns either in '74 or '78 circulating petitions. getting involved in that type of thing?

A. I'm not involved in anything like that.

Q. We happen to have the death penalty on the books in California as a possible penalty.

Do you feel that something. that it is necessary in certain cases. or that it is something that we shouldn't have on the books. or how do you feel about it?

A. No I think it should be.

Q. Practically speaking. how do you feel about possibly being placed in a position where if we get to the penalty phase you are going to have to make a decision one way or the other. and each possible decision carries a very serious consequence. How do you feel about making a decision of that magnitude?

A. After seeing the evidence. and you know. it is

1 fair.

2 Q. I think what I am trying to get at is some people
3 who don't have a feeling or position one way or the other on the
4 death penalty at this point. when they are actually confronted
5 with the decision for the first time realize it is something
6 they don't feel like they want to be responsible for and they
7 freeze or they balk. Do you see that potential in you?

8 A. No

9 Q. At the end of every criminal case. to make sure
10 there is no mistake. the judge in open court polls the jury. he
11 will ask each member of the jury. is that your verdict; if the
12 verdict which has just been read is in fact their verdict. They
13 simply answer yes or no

14 If in this case the jury feels the appropriate
15 verdict in the penalty phase is death and the judge polls you in
16 open court. would you have any problem indicating whether or not
17 that was your verdict?

18 A. No

19 Q. The law also requires that the foreperson sign and
20 date the verdict form. If the jury in this case elected you as
21 the foreperson. and felt that in the penalty phase the
22 appropriate verdict was death. would you have any problem
23 signing and dating that verdict form?

24 A. No.

25 MR. KOCHTS: Thank you. I have nothing further. your
26 Honor.

27 THE COURT: Nor do I. Would you kindly wait outside just
28 a moment. Mr Hall. and let us discuss it then the bailiff will

1 give you further instructions.

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Keep your boss passified until we can discuss
4 it with you again.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: Challenge. gentlemen?

7 MR. NEGUS: No.

8 MR KOCHIS: No

9 THE COURT: Give him an appointment slip to return.
10 please.

11 Counsel. we finished early today. Let's return at
12 1:30 this afternoon. Simply file the letter and keep it on
13 file

14 ---oo0oo---

15

16 (Noon recess)

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1 1 SAN DIEGO, CALIFORNIA, THURSDAY, SEPTEMBER 20, 1984, 1:33 P.M.

2
3 THE COURT: All right. We are all collected. Let's have
4 the next one.

5 THE BAILIFF: Mary Weissflog.

6 This is Mary Weissflog.

7 Just have a seat over there.

8 THE COURT: Thank you.

9

10

MARY WEISSFLOG,

11 called as a prospective juror, having been previously sworn,
12 testified as follows.

13

14

EXAMINATION

15

BY THE COURT:

16

Q. Good afternoon.

17

A. Hi.

18

19 Q. I tried to make arrangements informally this
20 afternoon in hopes that you will relax a little bit and be
21 candid in your responses.

22

A. Okay.

23

24 Q. First, has anything happened since we last saw you
25 that might prevent you from being able to serve on the case?

26

A. I guess decisions in my personal life.

27

28 Q. We're not trying to pry or embarrass in any way,
but can you tell us?

29

A. A possible separation and maybe a divorce.

30

Q. Sorry to hear that. You know -- let's see if we

1 have her back.

2 When are we scheduling them for now?

3 THE CLERK: October 17th is her date.

4 BY THE COURT:

5 Q. So you're going to have close to a month if we have
6 you back, so if can we get a few minutes of concentration maybe
7 things will work out by the time we have you back. Would that
8 be all right?

9 A. What was I going to mention, do you know any full
10 name? I was wondering if this was going to --

11 Q. I'm sorry?

12 A. It's Mary Beth Cooper Weissflog is my full name. I
13 was just wondering if that was --

14 Q. Well, you are obviously not related in any way.

15 A. No.

16 Q. Do you think that that would have any bearing?

17 A. I don't know, maybe -- I don't know. I'm not sure.

18 Q. You mean the fact that you have the same name --
19 had at the time, of the defendant, do you think subconsciously
20 in any way would affect your?

21 A. I guess maybe if the press were to find out.

22 Q. I really can't see a problem there myself.

23 A. Okay.

24 Q. Unless there's a problem in your own mind, I really
25 don't see it. I'm going to go ahead and hope that you can
26 overcome those two concerns in some manner. And if you do get
27 past today's hearing there will be another time where you will
28 be back along with everybody else and we will put people in the

1 jury box; if we put you in the jury box if there is still a
2 problem with either of those two areas, then let us know, if you
3 would.

4 A. Okay.

5 Q. Do you remember when you I spoke to you before I
6 told you that there would be two possible phases to this case, a
7 guilty phase and a penalty phase. We don't know if we're going
8 to get to the penalty phase, but if we do, would you then be
9 able to fairly consider both of the possible penalties, namely,
10 death and life imprisonment without the possibility of parole,
11 could you consider both alternatives?

12 A. No.

13 Q. Tell me about why not.

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

15 Q. Do you think that that would prevent you from ever
16 imposing a death penalty?

17 A. Yes.

18 Q. Let me put it to you in a very formal manner.
19 Listen very carefully to the question, and consider the extreme
20 type of cases perhaps even: Do you have such a conscientious
21 opinion regarding the death penalty that such opinion would make
22 it impossible for you to vote for the death penalty in any case
23 under any circumstances and regardless of the nature of the
24 evidence introduced during the trial?

25 A. Yes, it would make it impossible.

26 Q. All right. You can't conceive of any circumstance
27 then where you would be able to vote for the death penalty?

28 A. No.

1 THE COURT: Any questions, Counsel?

2 MR. NEGUS: Yes.

3

4

EXAMINATION

5 BY MR. NEGUS:

6 Q. Would your opinions on the death penalty in any way
7 effect the issue of guilt or innocence --

8 A. Would you state that again.

9 Q. -- if -- if you were asked just to decide guilt or
10 innocence --

11 A. Uh-huh.

12 Q. -- without having to affix a penalty?

13 A. Uh-huh.

14 Q. Knowing that a guilty verdict could bring upon the
15 death penalty could you still just decide the issue of guilt or
16 innocence if you didn't have to decide the issue of penalty?

17 A. If I knew that the guilty penalty would require a
18 death sentence, then --

19 Q. No. The way it works is if -- on guilt or
20 innocence, the guilty requires a choice between death and life
21 without possibility of parole.

22 A. Uh-huh.

23 Q. What I'm asking you is, could you decide the
24 question of guilt or innocence fairly if you -- if you were not
25 involved in the decision-making process on death versus life
26 without possibility of parole?

27 THE COURT: If you didn't have to serve on the penalty
28 phase, would you be able to be impartial in the guilt phase?

1 PROSPECTIVE JUROR: Oh, yes.

2 MR. NEGUS: Thank you. That's all I have.

3

4

EXAMINATION

5 BY MR. KOCHIS:

6 Q. Mrs. Weissflog, let's turn to this case. In this
7 case the same jury is going to hear both phases if we have the
8 second phase. You are going to here the guilt phase and if Mr.
9 Cooper is convicted they are going to hear the penalty phase.

10 A. Uh-huh.

11 Q. Let's say, say you were selected as a juror in the
12 guilt phase, you are not even those supposed to consider
13 penalty, you have heard all the argument and you have all the
14 evidence and you feel based on the laws, based on the evidence
15 Mr. Cooper is guilty, but if I vote that way then we are going
16 to be in the penalty phase, then I'm going to have to decide
17 whether or not he is going to receive the death penalty; knowing
18 that, would that affect your ability in the guilt phase to
19 listen to the evidence and base your decision on the law?

20 A. No.

21 MR. KOCHIS: I have no further questions.

22 THE COURT: Would you kindly wait outside for further
23 instructions. Thank you for coming in.

24 THE COURT: Counsel, I think she has exhibited grounds
25 for a challenge for cause. Anybody wish to be heard?

26 MR. NEGUS: I object. I don't think that that's true.
27 She can be fair on the issue of guilt or innocence. It's quite
28 possible we won't even get to penalty. I don't think it's fair

1 to Mr. Cooper to have a juror that can be fair on the issue of
2 guilt or innocence taken off the jury where the only real issue
3 is going to be guilt or innocence.

4 THE COURT: I don't think there's any case so far to
5 support your position in that, Mr. Negus, do you know of any?
6 You are suggesting of making a new law now, aren't you?

7 MR. NEGUS: I'm suggesting that I object to having her --
8 you asked whether there is any objection, and there is, because
9 I believe that -- I would note that she is 32 years old, one of
10 our younger jurors. She lives in a zip code which is in the
11 bottom 30 percent in terms of ranking of median incomes. And so
12 we started out with a jury that represented apparently a
13 cross-section of San Diego, but we're, through the process of
14 dismissals for cause, losing it and I object to that.

15 THE COURT: Okay. I don't accept your premise, number
16 one. I think that probably 50 percent of the jurors that have
17 been passed so far are younger than she. And I simply haven't
18 researched the rest of your statements, but I don't accept them.
19 It doesn't appear to be correct.

20 MR. NEGUS: I can provide you with the -- with it.

21 THE COURT: I don't think it makes any different as far
22 as this challenge is concerned. You've made a record but
23 obviously I'm duty bound to excuse her.

24 Mr. Kochis, do you wish to be heard?

25 MR. KOCHIS: No.

26 THE COURT: Are you requesting that she be excused?

27 MR. KOCHIS: I have a challenge for cause.

28 THE COURT: I will grant your challenge.

1 Would you tell her she is excused, please, and have
2 her report back to the jury assembly room and call another
3 juror.

4 THE BAILIFF: We have Frank Nugent.

5 THE COURT: Thank you.

6 THE BAILIFF: Frank Nugent.

7

8

FRANK NUGENT, *UJ*

9

10 called as a prospective juror, having been previously sworn,
11 testified as follows.

12

13

EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon, Mr. Nugent.

16 A. Good afternoon.

17 Q. I've got name tags here for the various people at
18 the table. We met you once before in a large group of people.
19 Has anything happened since then that we should know about that
20 might affect your ability to serve?

21 A. No.

22 Q. Remember, Mr. Nugent, when I was on the bench
23 before I told you that there were two possible phases to this
24 case, a guilty phase and then if it would go beyond that it
25 would go to a penalty phase, but we don't know if we will ever
26 get to that or not.

27 A. Yes.

28 Q. My first question to you is, if we do get to a

1 penalty phase, would you be able to fairly consider both
2 possible penalties death and life imprisonment without the
3 possibility of parole?

4 A. Yes.

5 Q. Would you be able -- No. 2. Would you be able to
6 personally vote for whichever one seemed most appropriate
7 depending upon the circumstances?

8 A. Yes.

9 Q. Do you recall that I also told you that in the
10 first phase, the guilt phase and perhaps final phase, that the
11 jurors are not to consider penalty or punishment; that would
12 only become applicable for your consideration if we get to the
13 penalty phase. In spite of that admonition, however, do you
14 think that you might have such a strong concern about having to
15 make that death or life type of decision that you would let that
16 concern interfere with your ability to judge fairly in the guilt
17 phase?

18 A. No.

19 THE COURT: Mr. Negus, you may inquire.

20

21 EXAMINATION

22 BY MR. NEGUS:

23 Q. Mr. Nugent.

24 A. Yes.

25 Q. The Judge is allowing us lawyers to ask most of the
26 questions. As I go first I usually end up asking more than
27 anybody else. By asking you questions about the death penalty I
28 hope you won't take it that I'm inferring that the death penalty

1 is likely to be an issue in this case or that we will ever get
2 past the guilt or innocence.

3 A. Certainly.

4 Q. What have you heard about this particular crime
5 before you first came to court?

6 A. Very little, only from TV, I think on TV.

7 Q. Do you know -- do you remember any details?

8 A. No, not really. I remember the name and that was
9 it. I turn it off when I hear things like; but, no, I don't
10 remember any details.

11 Q. The story wasn't of particular interest to you?

12 A. Yes, it was major, and I'm sure I listened to it
13 some months back on TV, but I certainly didn't follow it up in
14 the papers or anything like that.

15 Q. Do you -- did you recall hearing anything about my
16 client?

17 A. By name I believe I have, yes.

18 Q. Did you hear any details about his past or his
19 background or anything of that nature?

20 A. Only one that I can recall is that he was
21 supposedly escaped from prison, and this was a big thing on the
22 TV.

23 Q. Did you hear any of the follow-up stories about the
24 investigation of the prison or anything of that nature?

25 A. If I did I don't recall at all.

26 Q. Have you heard, do you remember having heard
27 anything about the -- about this particular thing while it's
28 been in the courts, that is, the case that we have been pursuing

1 through the courts?

2 A. No. Well, the Judge said that we shouldn't be
3 following it in the paper, so I haven't --

4 Q. I was thinking before we got to San Diego. Did you
5 know the case was coming here or anything?

6 A. I don't believe so. If I did it was in the back of
7 my mind, and I was quite surprised when I was put on the panel;
8 but I don't believe that --

9 Q. Did you have any other reaction when you found out
10 that this was the case that you were being asked to serve on?

11 A. No.

12 Q. During the course of, you know, whatever you did
13 hear about the case prior to coming here, did you form any
14 opinion as to Mr. Cooper's guilt or innocence?

15 A. No.

16 Q. What is your own personal opinion about the death
17 penalty?

18 A. I believe that the death penalty should be used for
19 deterrent type of a situation. I don't believe it should be for
20 an eye for an eye, if that's philosophical, I don't know. But
21 it is a question that I really, you know, think about or thought
22 about, and I think, yes, the death penalty is there. If it
23 deters other people and protects our officers and, you know,
24 state prisons and, you know, of this nature, but not to just to
25 use it for the sake of an eye for an eye. I don't believe in
26 that.

27 Q. Do you have -- do you have an opinion as to what
28 circumstances justify the imposition of the death penalty as

1 opposed to other penalties?

2 A. No, I don't.

3 Q. What do you think about the penalty of life
4 imprisonment without the possibility of parole?

5 A. Very harsh penalty.

6 Q. Do you have any particular opinion as to what
7 circumstances justify imposition of that penalty, imposing that
8 penalty?

9 A. Certainly is the most extreme according to law that
10 we could mete out or give out.

11 Q. In this particular -- in this particular case the
12 charges involved a murder of some young children and an attack
13 on another young boy who survived the attack; do you feel that
14 that particular type of crime is such that the person that did
15 it should automatically receive the death penalty?

16 A. Oh, no.

17 Q. It would just depend on the circumstances or --

18 A. Well, yes. I'm trying to say it, as I'm not a
19 lawyer and I don't know what the legal requirements of the death
20 penalty is.

21 Q. I'm really asking just about your opinion.

22 A. Yes, my opinion. I would think again if it deters,
23 can be shown to deter other people from committing other crimes,
24 then I'm certainly for this. It's hard to say because I don't
25 think I really have sat down and thought in my mind how to
26 answer this question, and if I did think about it I don't know
27 what the -- it's a very deep question, but it's a very serious,
28 you know, fact that you would have to consider. No, I couldn't

1 put down whether one life, two lives, three lives, four lives,
2 five lives involved or anything compared to one, I don't think I
3 would put a number figure on it, whether it would receive a
4 death penalty or not.

5 Q. Thank you very much.

6

7

EXAMINATION

8 BY MR. KOCHIS:

9 Q. Mr. Nugent, I have a few questions.

10 A. Sure.

11 Q. Turning to the practicality of this case, if you
12 are selected as a trial juror and we get to the penalty phase,
13 you and eleven other people are going to have a decision to make
14 and either alternative carries some very serious consequences;
15 how do you feel personally about being placed in a situation
16 where you have to make decisions of that magnitude?

17 A. Oh, it would be uncomfortable but it is certainly a
18 responsibility that I believe that I have and other citizens
19 have to do, and I don't think that we should be able to shirk
20 it.

21 Q. In the penalty phase both sides would have a right
22 to offer certain types of evidence. The Judge would instruct
23 you on what rules of law to consider in determining which would
24 be the appropriate penalty. And could you follow the rules that
25 the Judge would give you and apply it to the evidence in the
26 penalty phase to reach a decision in that phase?

27 A. Oh, for sure, yes.

28 Q. And if, for example, there was no evidence in the

1 penalty phase, for example, we didn't have any expert come in
2 and talk about whether or not the death penalty is or is not a
3 deterrence, could you still reach a decision as to what would be
4 appropriate in this case?

5 A. Yes, I believe so, with the panel the eleven, yes.

6 Q. The law requires that the foreperson sign and date
7 a verdict form in a criminal case. If the jurors selected you
8 as the foreperson and the jury as a group felt in this case that
9 the appropriate penalty was the death penalty, would you have
10 any problem signing and dating that verdict form?

11 A. No.

12 Q. Thank you.

13 I have no further questions.

14 THE COURT: Nor do I. We want to thank you for coming in
15 today. Would you wait outside till we can discuss it privately
16 and the bailiff may give you a slip to return on another
17 occasion. Thank you very much?

18 PROSPECTIVE JUROR: Sure.

19 THE COURT: Any challenge, Gentlemen?

20 MR. NEGUS: No.

21 MR. KOCHIS: No.

22 THE COURT: All right.

23 Give him an appointment slip, please, and have
24 another juror could in.

25 THE BAILIFF: Dora Wahba.

26

27

DORA WAHBA

28 Called as a prospective juror, having been duly sworn, testified

1 as follows:

2

3

EXAMINATION

4 BY THE COURT:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Mrs. Wahba, my first question of you is: Has
8 anything happened since we last saw you that would prohibit you
9 from sitting in any way?

10 A. No.

11 Q. You may recall when I had the robe on sitting at
12 the bench, I told you there could be two possible phases to this
13 case: A guilt phase and then if there were a conviction in a
14 certain manner, we would go into a penalty phase. We don't know
15 if we're going to get to the second phase.

16 Firstly, if we do get to a penalty phase, would you
17 be able to fairly consider both of the possible penalties:
18 Death and life imprisonment without the possibility of parole?

19 A. Yes.

20 Q. Would you be able to personally vote for whichever
21 one seemed most appropriate depending upon the circumstances?

22 A. Yes.

23 Q. Do you recall also that I told the prospective
24 jurors that at the guilt phase the jurors are not supposed to
25 consider penalties or punishment, that would only happen if we
26 get to the second phase.

27 In spite of that admonition, however, do you have
28 such strong feelings about having to make that, perhaps that

1 life and death decision down the road, that that concern or
2 feelings would affect the way you decide guilt or innocence in
3 the guilt phase?

4 A. No, they wouldn't.

5 THE COURT: Thank you, ma'am. Counsel?
6

7

EXAMINATION

8

BY MR. NEGUS:

9

10 Q. Mrs. Wahba, Mr. Kochis and I are being given the
11 task by the judge of asking most of the questions to you, and I
12 will probably be asking more than Mr. Kochis. By mentioning the
13 death penalty, and asking you questions about that, I hope you
14 won't take it that that's any indication by any of us that you
15 necessarily have to make that decision or that we will ever get
16 past the issue of guilt or innocence.

17 A. I understand.

18 Q. What, if anything -- you heard nothing about this
19 case before you came to court; is that correct?

20 A. No.

21 Q. Did anything that was said in court refresh your
22 recollection?

23 A. Just slightly, uh-huh.

24 Q. Do you remember what you had heard?

25 A. No, huh-uh.

26 Q. Just a story or something.

27 A. No, I don't remember that.

28 Q. So, I take it then that you don't have any
particular opinions one way or the other about this particular

1 case.

2 A. Right.

3 Q. Are the nature of these particulars charges, where
4 the allegations involved multiple murder and murder of children,
5 do you have any particular reaction to those kinds of charges?

6 A. No.

7 Q. What was your reaction when you came into court and
8 found out that you were going to be a prospective juror on this
9 kind of case?

10 A. Oh, I just didn't think I'd probably serve. I
11 don't know, I didn't think --

12 Q. Why not?

13 A. Oh, I don't know. It just didn't seem important to
14 my little world.

15 Q. Okay. Do you have an opinion about the death
16 penalty?

17 A. No.

18 Q. Have you ever thought about it before?

19 A. No, huh-uh, not seriously.

20 Q. Do you have any feeling at the present time if the
21 person, that if the person that was responsible for these crimes
22 were to be convicted, that person should automatically get the
23 death penalty?

24 A. Well, I'd have to hear the evidence and hear
25 whatever everybody had to say.

26 Q. Well, what I am asking, I suppose, is: After the
27 stage of the trial in which guilt or innocence was determined,
28 then you get to another stage in which penalty is determined.

1 Do you find these charges to be such that if a
2 person is convicted of these particular charges that you believe
3 that that person should automatically get the death penalty?

4 A. No, not automatically.

5 Q. Do you have any personal opinions as to what, as to
6 how you should, you should pick one or the other: The death
7 penalty or life without possibility of parole?

8 A. No.

9 Q. Do you belong to any organized religion?

10 A. No, not now.

11 MR. NEGUS: Thank you very much.

12

13

EXAMINATION

14 BY MR. KOCHIS:

15 Q. I have one or two questions. I won't keep you very
16 long.

17 Recognizing that you don't have any strong feelings
18 one way or the other about the death penalty, it is a possible
19 punishment that we have on the books here in California, do you
20 feel that that is something that we should have; that it is
21 necessary in some cases or that it is something that we really
22 shouldn't have on the books. Do you have any feelings?

23 A. I just never have thought about it, to tell you the
24 truth. I just never --

25 Q. Okay. How do you feel about having to make a
26 decision, if you are selected as a juror in this case when we
27 get to the penalty phase of which life without the possibility
28 of parole or death would be appropriate in this case.

1 A. Well, it seems like I'd have to hear, hear
2 everything, hear all the evidence and hear everything before I
3 could make any kind of decision.

4 Q. Are you relatively comfortable with the fact that
5 if you heard all the evidence that you could make the decision
6 one way or the other?

7 A. Yes, I'd be comfortable.

8 Q. In a criminal case, in every criminal case, to make
9 sure there is no mistake the judge at the end of the trial polls
10 the jurors in open court. By that I mean, he goes down the line
11 and asks each one of them if the verdict the clerk has just read
12 is in fact their verdict.

2
13 In this case if the appropriate verdict in the
14 penalty phase was death, would you have any problem announcing
15 that in open court?

16 A. No, I wouldn't.

17 Q. And likewise the law requires that one person, the
18 foreperson, sign and date the verdict form.

19 If you were selected as a foreperson in this case,
20 and yourself and the other eleven jurors felt that in the
21 penalty phase the appropriate punishment would be death, would
22 you have any problem signing and dating that verdict form?

23 A. No.

24 MR. NEGUS: I have nothing further.

25 THE COURT: Nor do I. We'd appreciate it if you'd wait
26 outside, then the bailiff may give your appointment slip for the
27 next time. Thank you, ma'am.

28 Any challenges, gentleman?

1 MR. KOCHIS: No.

2 MR. NEGUS: Nope.

3 THE COURT: All right. Would you give her her
4 appointment slip to return, please.

5 Counsel, by way of a point of information only,
6 looking at her questionnaire, which daily newspapers does she
7 read, puts down the La Jolla Light. It asks about the daily La
8 Jolla light. It usually comes out on Thursday only.

9 Okay, let's take a recess and we will resume at
10 2:45 or whenever we get them earlier.

11 MR. KOCHIS: Could we reappear at 2:30, because I notice
12 the other gentlemen have been showing up about 15 minutes early.

13 THE COURT: I will be ready any time when we get the cast
14 together.

15

16 (Recess)

17 THE COURT: Bring in the next one.

18 THE BAILIFF: Mr. Malavenda has been here since 2:00
19 o'clock; want me to bring him in?

20 THE COURT: Yes.

21 THE BAILIFF: Okay. Philip Malvenda.

22 Philip Malvenda.

23 PROSPECTIVE JUROR: Malvenda.

24 THE BAILIFF: Malvenda.

25

26

PHILIP MALVENDA,

27 called as a prospective juror, having been previously sworn,
28 testified as follows:

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EXAMINATION

BY THE COURT:

Q. Good afternoon.

A. Good afternoon, your Honor.

Q. Has anything happened to you in your life since we last saw you that would keep you from serving in this case?

A. No.

Q. I'm going to ask about three questions and then the attorneys will get a chance to ask questions of you.

First, do you recall that when I talked to you from the bench I told you that there could be two possible phases to this trial, the guilt phase and then depending upon the outcome of that we would go into a penalty phase.

My first question to you is, if we do get to a penalty phase will you be able to fairly consider both of the possible penalties, death or life imprisonment without the possibility of parole?

A. Yes.

Q. No. 2, would you be able to personally vote for whichever one seemed most appropriate depending upon the circumstances?

A. Yes.

Q. Do you recall also that I told you that the jurors are not supposed to consider penalty or punishment in the guilt phase, that that would only be for them to consider if we ever get to a penalty phase; nevertheless, and regardless of that admonition, do you think that you might be so concerned with

1 having to make the tough decision of life or death later on that
2 you might let that concern effect the way you would vote in the
3 guilt phase?

4 A. Well, there's only one thing that I feel that there
5 is guilt, this guilt or the penalty, death, I don't know of
6 course if that's the law, why that's the law, but --

7 Q. No, it's not the law that a person shall receive
8 the death penalty even if they get convicted. Even if there is
9 a conviction and we do get into the penalty phase the jurors
10 would have to weigh other circumstances and other evidence would
11 be presented concerning background, any other violence that may
12 or may not have been involved. I'm just mentioning the things
13 that the law does say that you would consider, circumstances of
14 the offense, any prior convictions, if any, past criminal
15 activity, if any, involving force or violence, character,
16 background, history, mental and physical condition, all of those
17 things you would also consider before you decide whether to vote
18 for one or the other. I'm simply asking you would you be able
19 to disregard anything about penalty during the guilt phase and
20 just decide guilt or innocence at that phase?

21 A. Yes.

22 Q. Thank you, Mr. Negus.

23

24 EXAMINATION

25 BY MR. NEGUS:

26 Q. Mr. Malvenda, Mr. Kochis and I will be asking you
27 most of the questions.

28 A. Yes.

1 Q. And I just want to -- We're asking now questions
2 about the death penalty which is something which might or might
3 not happen at the end of the case, but just because we are
4 asking them doesn't mean that we expect we are going to actually
5 get to that. You wouldn't take it the fact that we are asking
6 these questions is somehow an indication that we're going to
7 skip over the guilt part of the case and get to the end, okay?

8 A. Uh-huh.

9 Q. You read a few stories about this case before you
10 ever came to court; do you remember any details from those
11 stories?

12 A. Well, it was a long time ago when it first broke in
13 the news.

14 Q. Uh-huh.

15 A. I read the, you know, in the newspaper, and then it
16 just, I just felt sorry for the victims and one of those things
17 that's all I never read any more about it.

18 Q. That was in the Union?

19 A. That was in the Union. We take the Union. Morning
20 Union paper.

21 Q. Did you ever read anything about Mr. Cooper, my
22 client?

23 A. Mr. Cooper, oh.

24 Q. That's Mr. Cooper right here.

25 A. No. It was mentioned there the name, but that's --
26 that's all in the paper.

27 Q. Okay. Had you -- Did you know like, for example,
28 that the case was down here in San Diego?

1 A. No, I didn't know. According to the paper I think
2 it was up in San Bernadino somewhere, Chico, that's all I heard.

3 Q. What was your reaction when you found out that you
4 were a prospective juror in a case of this type?

5 A. What was my reaction?

6 Q. Right.

7 A. Well, we have to do our duty and we -- then we have
8 to use our own best conscience and so forth to determine guilt
9 or not, that's all.

10 Q. Okay. Do you have any opinion right now as to
11 whether or not my client, Mr. Cooper.

12 A. No, no. I have no opinion.

13 Q. Do you have a personal opinion about the death
14 penalty?

15 A. Personal opinion about the death penalty. Can you
16 explain that further, please.

17 Q. Well, I mean, like are you personally, do you think
18 that there should be a death penalty in California or there
19 should not?

20 A. Well, I've always heard that Thou shalt not kill,
21 and I don't feel that I should vote in favor of somebody else
22 doing the killing or anything like -- if the individual is
23 guilty, you know, I believe that -- if there is any guilt there
24 by the evidence presented and everything like that, why, then
25 maybe, I don't know that should be penalty of time,
26 incarceration or something like that. If that's the --

27 Q. Do you think there are some situations when the
28 death penalty is justified?

1 A. No.

2 Q. In this particular case though do you think that
3 you would have any difficulty in following the law which would
4 require you at the end of the case if somebody were found guilty
5 of this particular crime to weigh evidence in favor of life
6 without possibility of parole against evidence in favor of the
7 death penalty and come up with appropriate penalty based on the
8 evidence?

9 A. Depending upon what the appropriate penalty on
10 evidence was.

11 Q. You could follow the Judge's instructions you
12 think?

13 A. Yes.

14 Q. Thank you.

15 I have nothing further.

16 THE COURT: Mr. Kochis.

17

18 EXAMINATION

19 BY MR. KOCHIS:

20 Q. Do you pronounce that Malvenda?

21 A. Malvenda.

22 Q. If we get to the penalty phase there is only going
23 to be two choices, you are either going to vote for life without
24 the possibility of parole or the death penalty; that's clear?

25 A. I see.

26 Q. Now, you have expressed an opinion to Mr. Negus
27 that you don't feel the death penalty is a proper punishment for
28 your belief.

1 A. No, I don't believe so.

2 Q. Does that mean in every case that you sat in where
3 there was a penalty phase and you had only two choices, to vote
4 for death or for life without the possibility of parole, that
5 you would always vote for life without the possibility of
6 parole?

7 A. Yes.

8 Q. I want you to listen to what I'm going to say
9 because I don't want to put words in your mouth. Are you saying
10 then that in no case would you ever vote to impose the death
11 penalty?

12 A. That's right.

13 Q. And that would be no matter what the evidence was,
14 you would always vote for life without the possibility of parole
15 and never death?

16 A. Right.

17 MR. KOCHIS: Your Honor, does the Court want to inquire?

18 THE COURT: Yes.

19

20

EXAMINATION

21 BY THE COURT:

22 Q. Perhaps you misunderstood my first question. One
23 of the first questions I asked you was that if we do get to the
24 penalty phase will you be able to consider both of the two
25 possible alternatives; I thought you told me that you would be
26 able to consider --

27 A. I'm sorry. I'm sorry.

28 Q. No. It's all right. I just want to make sure that

1 we are communicating properly.

2 A. Yes.

3 Q. When I asked you if you could consider both of
4 them, that means that you are going to have to balance one
5 against the other and determine which is the most appropriate.

6 A. Yeah.

7 Q. Are you telling us now, sir, that you cannot do
8 that and that you are locked into one?

9 A. Yeah, I wouldn't, I wouldn't vote for the death
10 penalty.

11 Q. All right. Listen very carefully. I'm going to
12 put the question to you very formally. Now are you saying that
13 you do have such a conscientious opinion regarding the death
14 penalty that such opinion would make it impossible for you to
15 vote for the death penalty in any case under any circumstances
16 and regardless of the nature of the evidence introduced during
17 the trial?

18 A. Yes, I understand, yes.

19 Q. You can't see yourself ever voting for the death
20 penalty?

21 A. No, sir.

22 THE COURT: All right.

23 Anything else, Counsel?

24 BY MR. NEGUS:

25 Q. Mr. Malvenda, would your attitude about the death
26 penalty affect your voting on guilt or innocence, that is, could
27 you be fair deciding whether or not Mr. Cooper is guilty or
28 innocent even realizing --

1 A. Well, based on the evidence if it was heavy on that
2 side, well, yes, I would vote in favor of the --

3 Q. Of guilty?

4 A. Of guilty.

5 Q. Even realizing that could bring about the death
6 penalty?

7 A. Oh, yes. I -- yeah, I guess so. I would have to.

8 Q. Do you think you could do that?

9 A. Yeah.

10 Q. Similarly, when we got to the -- when we got to the
11 penalty phase if you just -- if it was a question of balancing
12 off evidence, evidence what they call evidence in aggravation
13 versus evidence in mitigation, and the Judge told you about
14 that, and one of them had the consequences that the Judge could
15 impose the death penalty and the other one had the possibility
16 that he could impose life without possibility of parole, could
17 you vote for the appropriate penalty based on the evidence that
18 is not given your personal opinion but just make a vote based on
19 the evidence with the appropriate penalty?

20 A. Yes.

21 MR. NEGUS: Thank you.

22 BY MR. KOCHIS:

23 Q. Mr. Malvenda, I'm a little confused now. Let's
24 start with the last phase first, this penalty phase when you and
25 I spoke last a few moments ago if I understood you correctly you
26 told me that because you don't approve of the death penalty, in
27 every case you would automatically vote for life without the
28 possibility of parole and you would never vote for the death

1 penalty; is that your feeling or not?

2 A. Yes, the life imprisonment but not the death.

3 Q. Right. What happens if we get to the second phase
4 is both sides present certain evidence; you are allowed to
5 consider the evidence that was introduced in the first trial;
6 the Judge instructs you on the law; and then you have to make a
7 decision one way or the other, either to vote for life without
8 the possibility of parole or for death. Because of your belief
9 against the death penalty, would you vote for life without the
10 possibility of parole every time no matter what the evidence
11 was?

12 A. Yes.

13 Q. Let's go to the first trial that's going to start
14 sometime in October, what we call the guilt phase where all we
15 determine is whether or not this defendant did the crime or not,
16 okay? We don't consider penalty. Do you understand that?

17 A. Yes, yes.

18 Q. Now, let's say you've heard all the evidence from
19 both sides; you've heard Judge Garner instruct you on the law;
20 and you've heard both sides argue the case. You go back to
21 deliberate with the other jurors and you feel based on the
22 evidence that this defendant did it, that he's guilty, and
23 that's what you'd be inclined to vote for but you think, you say
24 to yourself, if I vote for guilty I'm then going to go into the
25 second trial, this penalty trial, and I'm going to have to deal
26 with this death penalty concept and that's something that I
27 don't approve of and I don't want to deal with; could your
28 feelings effect your decision in the first trial on the guilt?

1 Is that possible?

2 A. Well, there would be two phases of this?

3 Q. Yes.

4 A. Well, if the first phase he is found guilty.

5 Q. Right.

6 A. Then the second phase then would show that because
7 of the guilt he would face the death penalty.

8 Q. Yes.

9 A. How would I vote for that?

10 Q. No. Perhaps I've confused you. I apologize for
11 that.

12 Let's say we get to the end of the first phase and
13 the only decision you have to make is whether or not this
14 defendant did the murders or not and you listen to the evidence
15 and you listen to the other jurors and you think, in my mind
16 based on the evidence I'm convinced beyond a reasonable doubt
17 that he did it but then you stop and you think, if I vote for
18 guilty we're going to have this other trial and I'm going to
19 have to consider the death penalty, and I don't believe in the
20 death penalty so maybe I'll vote not guilty just so I won't have
21 to deal with the death penalty; is that something you might do?
22 Or have I confused you?

23 A. Well, if I vote not guilty in one phase about the
24 guilt portion, then the second, I'd have to go -- if the law
25 said the man would be, or the person rather, would be guilty and
26 would be punishable by death, then I'd would have to vote no.

27 Q. Are you saying --

28 THE COURT: He is saying he could not vote for the death

1 penalty as I hear him.

2 Is that what you're saying?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Mr. Kochis, I will grant your challenge if
5 you make it.

6 MR. KOCHIS: I don't think Mr. Negus is done questioning,
7 your Honor.

8 MR. NEGUS: Won't do any good now.

9 THE COURT: Well, regardless of what he does, let's don't
10 belabor the point.

11 MR. NEGUS: Could Mr. Malvenda please step outside,
12 Judge?

13 THE COURT: Yes.

14 Would you step outside? We will have further
15 instructions for you.

16 MR. KOCHIS: Could I have ten seconds with my
17 co-counsel?

18 THE COURT: Sure.

19 MR. KOCHIS: Thank you. I've had enough time.

20 THE COURT: Do you wish to be heard.

21 MR. NEGUS: Yes. First of all I'd like to just interpose
22 an objection to the Court stating what the juror believes in the
23 leading fashion the Court did. I think that -- that that is
24 unfairly putting into the record a certainty in Mr. Malvenda's
25 answers which wasn't there when he was actually giving it, and I
26 object to that.

27 And I would also object to any sustaining of a
28 challenge for cause. Mr. Kochis' questions were very artfull

1 and he asked them -- he asked a lot of questions about what do
2 you feel about the voting for the death penalty, and he felt
3 against it. But he also testified clearly that he could follow
4 the law an ballance off and there was a difference in his
5 answers between the questions when they were put to him in terms
6 of following the law and in terms of, put to him in terms of his
7 feelings. And so I don't think that there is an unequivocal
8 statement before the Court put the words in his mouth that he
9 couldn't follow the law.

10 THE COURT: Okay. Is there a challenge?

11 MR. KOCHIS: By the People, yes.

12 THE COURT: Yes, I will grant the challenge.

13 First I thought it was unequivocal not once but
14 several times. And secondly, I don't think the gentlemen would
15 base a decision upon the evidence. He was simply not a -- not
16 following. He was not understanding. His answers were not
17 responsive. For both grounds I will grant the challenge. He
18 will be excused.

19 As far as my putting word in his mouth, I thought
20 it was unmistakably clear at that point, and I maintain it was,
21 and no point in belaboring when you get to that kind of a point.

22 MR. NEGUS: I just would like to enter my objection.

23 THE COURT: Yes. You have.

24 Tell him he is excused with our thanks and refer
25 him to the jury assembly room, and call in the next one please.

26 THE BAILIFF: Philip Brown.

27 THE BAILIFF: Philip Brown.

28 MR. NEGUS: He said Philip Brown, I think he meant Daniel

1 Brown.

2 THE COURT: Yes. Okay.

3 THE BAILIFF: Daniel Brown.

4

5

DANIEL BROWN

6 Called as a prospective juror, having been duly sworn, testified
7 as follows:

8

9

EXAMINATION

10 BY THE COURT:

11 Q. Mr. Brown, would you please sit at the end of the
12 table for us, please. Good afternoon.

13 A. Good afternoon.

14 Q. First, I want to ask you, has anything happened in
15 intervening time since we last saw you that would affect your
16 ability to serve on this case?

17 A. Um, other than I -- the only thing I might have is
18 a personal problem at home that could develop over a long time
19 period.

20 Q. You want to tell us about that, please.

21 A. Yes. I have a 96 year old father whose living with
22 me, and he's up and around and agile and in good health and
23 that. However, he's frail, and he's also 96 going on 97. I'm
24 his only child, so he's living with me.

25 Up until this little bit ago, this was, would have
26 been all right except that my wife is also an only parent, only
27 child, and her mother is slowly dying from diabetes and is now
28 blind, and her father, who is 84, and the mother is 81.

1 Q. That was your wife's father?

2 A. Yes. Right my mother died last year, that's why my
3 father is living with me. And so he recently is having heart
4 problems in taking care of my mother-in-law, so there is not an
5 insoluble problem, I just have to -- if something should happen
6 to my father I need to make arrangements to get someone to sit
7 with my father.

8 Q. How many people in your family?

9 A. Two.

10 Q. Just you and your wife?

11 A. Right.

12 Q. You know, we're not completely insensitive. If
13 something came up during the course of the trial, we could take
14 recesses, knock off early, if necessary, excuse you, pull in an
15 alternate, a number of possibilities are there.

16 So, we're not going to say regardless of what may
17 happen in that regard that we're going to hold you here all the
18 time. We may get lucky, and on the other hand we may not.

19 A. No, there is no problem. As I say, there is no
20 problem at this moment, it is only a long-term contingency --

21 Q. Mr. Brown --

22 A. -- that I am preparing for regardless.

23 Q. The next time that we would have you back in, if
24 you stay with us beyond this, is approximately a month from now.

25 A. Uh-huh.

26 Q. For the third week of October now, the middle of
27 October.

28 MR. KOCHIS: Your Honor, I can tell you that

1 statistically it is virtually impossible that we would ever get
2 to Mr. Brown. He's going to be the 187th person called in the
3 order, so the chances of him sitting at a juror simply where he
4 came out of the lottery are slim.

5 THE COURT: Well, let's go ahead, however, and make him
6 part of the pool. We never know how things can turnout then.
7 So what I am going to say, it is going to be sometime before we
8 call you, so we're going to bring in people in groups of 60.
9 Apparently you are going to be in the third group, which is the
10 luck of the draw, so to speak.

11 So, I'd like to go ahead and proceed, otherwise
12 have you stay with us, then when and if we do see you again, at
13 that point you could expound on this and tell us what has
14 developed.

15 A. You realize that I also have to make arrangements
16 for a contingency again whether I am on a jury or not.

17 Q. Yes.

18 A. So --

19 Q. Let's go ahead?

20 A. It is just one of those things. That's the only,
21 the only thing.

22 Q. Mr. Brown, I told you that there could be two
23 possible phases to this case, and we could get into a penalty
24 phase.

25 I will ask you now, if we do get into a penalty
26 phase, would you be able to fairly consider at that point both
27 of the two possible penalties, namely, death on the one hand
28 and/or life without the possibility of parole on the other?

1 A. Yes, I would.

2 Q. Would you be able to then personally vote for
3 whichever one seems most appropriate, depending upon the
4 circumstances?

5 A. Yes, I would.

6 Q. At the penalty phase, excuse me, at the guilt phase
7 the jurors are not supposed to consider penalty or punishment,
8 we're just covering that contingency also.

9 Nevertheless, even though you are not then supposed
10 to consider it, do you think that your concern about the death
11 penalty, or making the hard decision down the road, might effect
12 the way you would vote in the guilt phase of it?

13 A. I doubt it. I sit through facts all the time.

14 THE COURT: Okay. Mr. Negus.

15

16

EXAMINATION

17 BY MR. NEGUS:

18 Q. Mr. Brown, I just want you to remember we are just
19 talking about a contingency situation here. And even though
20 we're asking you questions about the death penalty that doesn't
21 necessarily mean we are ever going to get there.

22 A. Right. I understand.

23 Q. You had heard something about this case, I guess,
24 in the media before you came to court. What do you remember
25 hearing about the actual crimes?

26 A. Well, actually very little. There is -- so many of
27 these things are reported in the papers, I just -- it is there
28 and I go onto other things. It is -- they just don't interest

1 me.

2 Q. Do you remember hearing anything about Mr. Cooper
3 in the paper?

4 A. Just the name. I mean, I mean, he was accused of
5 murdering people and, okay, that's somebody else doing
6 something. As I said, these are the sort of things that I just
7 shuffle onto the next page because there are things of more
8 interest to me.

9 Q. You just look at the headlines, you don't actually
10 read the story?

11 A. That's right.

12 Q. Did you ever see anything about it on the
13 television?

14 A. Just I got back from vacation and it said that Mr.
15 Cooper was being brought down here.

16 Q. Okay. That is the first you knew he was coming
17 down to --

18 A. That's it.

19 Q. What was your reaction when you found out that you
20 were going to be a prospective juror in a case like this?

21 A. Well, only -- well, now what do I do. This is a
22 new game to me. It is just -- well, something new and
23 different.

24 Q. Do you have any opinions right now about whether
25 Mr. Cooper is guilty or innocent?

26 A. No. I haven't seen the facts. There is -- I know
27 from personal experience that things one reads in the paper and
28 hears on TV have so much to be desired. I have been misquoted

1 in the papers numerous times, so I always withhold judgment.

2 Q. I know that you are feeling you will not -- you
3 don't have any preconceptions about this particular case?

4 A. No.

5 Q. What is your opinion about the death penalty?

6 A. I am not against it. I have no -- I'm not -- I
7 just have a feeling that some people who just totally cannot
8 cope with their own emotions and things like that. I suppose it
9 would depend upon the circumstances as to whether they should be
10 terminated or be put away.

11 Q. Do you have your own opinions, do you have any
12 particular circumstances that you think justify the death
13 penalty?

14 A. Well, the problem is I have never, never really
15 gave it a heck a lot of thought one way or the other. It is --
16 I suppose if someone killed one of my relatives I would be very
17 upset about it, and, you know, kind of a thing. But otherwise I
18 don't have any real strong feelings one way or the other.

19 It is a matter of, I would say, circumstance, and I
20 really can't say at this time what those circumstances would be.
21 What levels or what -- I just don't know. I think the
22 circumstances have a lot of bearing on that decision and I don't
23 know what that decision would be right now.

24 Q. Do you belong to an organized religion?

25 A. No.

26 Q. Is the fact that the charges here involved
27 children, the murder of young children, would that affect your
28 judgment in the case?

1 the circumstances and the conditions warrant, or I feel that
2 they warrant this sort of thing, then that is the way I would
3 vote.

4 Q. In a criminal case it is required that the
5 foreperson date and sign what we call a verdict form, a piece of
6 paper with a verdict on it.

7 If the jury elected you as the foreman, and the
8 jury felt that the appropriate penalty in this case was the
9 death penalty, would you have any problem dating and signing
10 that verdict form?

11 A. No. I mean, again, it is a matter of I would say
12 of evidence, of the circumstances.

13 MR. KOCHIS: Thank you. I have nothing further.

14 PROSPECTIVE JUROR: Presumably you will reveal all this
15 to me at a point in the future.

16 MR. KOCHIS: That is true.

17 I have nothing further, your Honor.

18 THE COURT: We wish you well, as far as continued
19 longevity of your parents, you and your wife. You may want you
20 back, sir. I would like to discuss it privately with counsel.

21 So, if you'd wait outside for further instructions
22 from the bailiff, please. Thank you.

23 THE COURT: Anything, gentlemen?

24 MR. KOCHIS: Not from the People.

25 MR. NEGUS: No.

26 THE COURT: All right. Would you give him a return date,
27 please, bailiff, and bring in the next prospective juror.

28 THE BAILIFF: Tamera Loftis.

3
1 THE COURT: You know, since we are going to individually
2 voir dire all of the panels, I think we have to basically treat
3 them all the same even if they were No. 1 or 90.

4
5 TAMERA LOFTIS

CAJ

6 Called as a prospective juror, having been duly sworn, testified
7 as follows:

8
9 EXAMINATION

10 BY THE COURT:

11 Q. Good afternoon. Please join us at the table. I
12 have tried to arrange things kind of informally so you can sit
13 back and relax and be candid in your responses. Okay?

14 A. Okay.

15 Q. First, has anything happened since we saw you last
16 that would prevent you from serving on the case?

17 A. No. I asked my employer and she said no problem at
18 all.

19 Q. Wonderful. All right. My first formal question
20 then is: If we do get to a penalty phase, will you be able to
21 fairly consider both of the two possible alternatives: Death on
22 the one hand or life without the possibilities of parole on the
23 other?

24 A. Yes. Other than after I have listened to both
25 sides I would make a decision, yeah.

26 Q. All right. But, some people may be locked in one
27 way or the other so they could never vote for the death penalty
28 or they could never vote for life. You would be able to fairly

1 consider both of them. Could you do that?

2 A. Yes.

3 Q. Would you be then able to personally vote for
4 whichever one seemed the most appropriate, depending upon the
5 circumstances?

6 A. Yes.

7 Q. You may recall that I told you before, and I had
8 the robe on at the bench, that at the guilt phase, the first
9 phase of the trial, you are not supposed to consider penalty or
10 punishment or be worried about that at all.

11 A. Right.

12 Q. Nevertheless, some jurors may feel so strong about
13 having to make a tough decision, if we ever do get to the
14 penalty phase, that they let their feelings affect the way they
15 would decide the guilt phase.

16 Do you think you would have trouble in that regard?

17 A. No.

18 Q. You would take it one step at a time?

19 A. Right.

20 THE COURT: All right, good, Mr. Negus.

21

22

EXAMINATION

23 BY MR. NEGUS:

24 Q. The judge is letting us lawyers ask most of the
25 questions, and as I go first, I usually end up asking more than
26 anybody else. A lot of them have to do with the death penalty.

27 I just want to make sure you understand that by
28 asking you these questions about the death penalty, nobody is

1 suggesting in anyway that that issue will even come up, it is
2 just the nature of the charges require us to go through this
3 particular type of questioning.

4 You won't take that as a sign that Mr. Cooper is in
5 any way guilty that we're asking these questions.

6 A. No.

7 Q. On your questionnaire, when we asked you about how
8 well do you remember what Kevin Cooper, what you heard about
9 Kevin Cooper, you have put in parenthesis "today" and a question
10 mark.

11 Do you remember doing that?

12 A. Yes. Because when we were downstairs in the
13 waiting room, someone briefly showed me the newspaper, and said,
14 what if we get this case. And I said, I have never heard of it
15 before, like I didn't even read the article or anything. That's
16 what I briefly heard. I didn't even knowing anything about
17 this. I don't listen to the news, I don't have enough time to
18 listen to the news. I'm just not one to listen to the news.

19 Q. So --

20 A. That is why I wrote that because you said to be
21 honest on the questionnaire, and someone had mentioned it to me
22 downstairs so I said, well, write it down.

23 Q. That's the only time you ever heard about it?

24 A. Yep. Yep.

25 Q. What was your reaction when you found out what kind
26 of a case it was that you were a prospective juror for?

27 A. I really didn't have any reaction. I just kind of
28 went, wow, I actually did get picked, you know, for this case.

1 Other than that, there is no reaction.

2 Q. Do you have any -- I am not sure whether it was
3 clear from a reading of the Information, but the charges in this
4 case involve, amongst other things, the murder of two children
5 and the attempted murder, very serious injuries to a third boy
6 that survived.

7 Would you have any particular difficulty in sitting
8 on a case of that particular nature?

9 A. No.

10 Q. Do you belong to an organized religion?

11 A. Yes. Well, I don't know if you want to call it an
12 organized religion, I am a Christian, I believe in the word of
13 Jesus Christ.

14 Q. Does your beliefs in any way influence your
15 opinions about the death penalty?

16 A. No.

17 Q. What is your opinion about the death penalty?

18 A. I really don't have an opinion. You know, after I
19 hear the, you know, both sides, I believe that if the person's
20 guilty they should have the death penalty. But, if, you know,
21 I'm not going to say that this person needs to have the death
22 penalty right off because I don't know if he's guilty or
23 innocent at this time without any information.

24 Q. Well, do you think that if the -- if you had a
25 trial and the person that committed the crime were then found
26 guilty --

27 A. Uh-huh.

28 Q. -- that this particular crime automatically

1 deserves the death penalty?

2 A. No, because you don't know what he's guilty of.

3 Q. Assume he's guilty of four counts of murder.

4 A. It depends upon the information. I mean, that is a
5 sticky question. I mean, you know, I don't know. I don't know
6 until the situation would come up. I don't know want to make
7 that decision right now. I'd want to hear the information, I
8 guess.

9 Q. I guess what I am asking you is not to make a
10 decision until you have heard the information. But do you think
11 that like the murder of children, or the murder of a family, or
12 multiple murder is the kind of crime that if a person is in fact
13 guilty of it that person deserves the death penalty no matter
14 what?

15 A. Yes, I think so.

16 Q. Okay. In your -- let me just go one step further.

17 If we had this two step process. First, you were
18 to sit on a jury, you found somebody guilty of a multiple murder
19 of a family, then they had a second trial in which they
20 presented to you evidence about the background of the person
21 that you'd already found guilty, and then you were allowed to
22 consider evidence of the crime, all those sorts of things, and
23 you were given a choice of two penalties: Life without parole
24 or the death penalty. Would you automatically choose the death
25 penalty in that particular situation because of the nature of
26 the crime?

27 A. I don't know. I don't know. I can't --
28 depending -- to me, it depends upon the information that I am

1 given. You know, I mean if he has a good -- for instance, if he
2 had a good background before, you know, he never did it before,
3 maybe I'd say life sentence. But depending upon the background.
4 I don't know.

5 THE COURT: Well, even after, by way of the jurors
6 finding him guilty there would be the second phase of the trial
7 where the juror would receive further information maybe, and one
8 of them would be background. Another one would be mental and
9 physician condition, history, character, past criminal
10 activities for force and violence, if any, prior convictions, if
11 any, circumstances of the offense, all these other factors in
12 mitigation, in aggravation would be displayed, and you should
13 consider those as well before you makeup your mind. Could you
14 do that?

15 PROSPECTIVE JUROR: Yeah, I could.

16 ~~MR. NEGUS:~~ *THE COURT:* Go ahead.

17 BY MR. NEGUS:

18 Q. What do you think about the penalty of life
19 imprisonment without the possibility of parole?

20 A. I think it is fair for some. You know, why I think
21 of the two differences is, I'm not -- I don't know too much
22 about jail for sentence or anything like that. You know, I
23 think maybe if they're dangerous to even be in jail to hurt
24 other people that are serving their sentence, I don't think that
25 he should be, you know, in the prison for life because they
26 might hurt another inmate. You know, that kind of situation. I
27 don't know if that's true or anything, but that is why I would
28 maybe consider it. But that would be after I heard everything.

1 MR. NEGUS: I have no further questions.

2

3

EXAMINATION

4 BY MR. KOCHIS:

5 Q. I have one or two, Mrs. Loftis.

6 We have talked to you a little bit about your
7 philosophical feelings on the death penalty. But to get
8 practical for a moment, how do you feel about having to make
9 that type of decision if you are one of the jurors, and we get
10 to the penalty phase, you will have to make a decision one way
11 or the other which carries some pretty serious consequences.
12 How do you feel about that?

13 A. No feeling at all.

14 Q. You feel comfortable that that's the type of
15 decision you could make?

16 A. Yeah.

17 Q. To make sure that there is no mistakes, in a
18 criminal case, after a verdict, the judge polls all the jurors
19 in the courtroom.

20 A. Uh-huh.

21 Q. He simply goes down the line and asks each juror if
22 the verdict the clerk has read is the way they voted their
23 verdict.

24 If this jury got to a penalty phase and decided
25 that the appropriate punishment was the death penalty, and you
26 were on the jury, would you have any trouble saying in open
27 court that that was your verdict?

28 A. No.

1 MR. KOCHIS: Thank you. Nothing further, your Honor.

2 THE COURT: We will have further instructions for you.
3 Give us a chance to discuss it privately. Thank you for coming
4 in. The bailiff will let you know. Thank you very much.

5 She's outside.

6 MR. NEGUS: Yes, your Honor. I wish to object to the
7 court interrupting my questioning. Um, I have no objection to
8 you telling them whatever is legal before I ask questions, but I
9 do object to being interrupted just as I am developing thoughts.

10 THE COURT: Mr. Negus, maybe that is what I will do.

11 Let me explain to you, counsel. I'm just as aware
12 as you are that I did interrupt. But when you don't mention the
13 factors in aggravation or mitigation, as I normally do from the
14 bench to the jurors, but you simply asked, do you believe that
15 somebody that is convicted of multiple murders of a family and
16 little children, that that is the type of thing that you might
17 think the death penalty is appropriate, that's misleading to the
18 prospective jurors and they don't know enough about the subject
19 itself to naturally elicit the type of answers that you got
20 there. You have got to be more fair in your questions. If you
21 don't, I feel an obligation to do so.

22 MR. NEGUS: I don't think it is an unfair question. I
23 think that jurors will often, if told the answer, pare it back,
24 what you tell them to do, and I object to the Court essentially
25 telling them what the right answers to the questions are. I
26 think we need to know what their opinions are candidly without
27 them being, without them being told by the Court, and I make my
28 objection on the basis of that because I don't think I was

1 permitted to develop whether there was cause or not.

2 I would make a motion to challenge Mrs. Loftis for
3 cause.

4 THE COURT: Okay.

5 MR. KOCHIS: I would oppose that motion.

6 THE COURT: Yes. The record will reflect that I was not
7 in any way unfair, I don't believe I was. I will deny your
8 motion to challenge for cause.

9 All right, give her another appointment slip,
10 please, and have her back and bring in the next juror.

11 THE COURT: We both have obligations, Mr. Negus. You do
12 yours and I will do mine. They don't always seem to be the same
13 thing.

14 MR. NEGUS: I object when I think that you're
15 interfering with Mr. Cooper's right, and that's what I did.

16 THE COURT: Sure.

17 What is the Times Advocate? Is that a local paper?

18 MR. FORBUSH: The Times Advocate, I'm not certain. There
19 are a number of papers in the various different towns around
20 here.

21

22 THE BAILIFF: Neva Lamb.

23

24

NEVA LAMB,

25 called as a prospective juror, having been previously sworn,
26 testified as follows:

27

28

EXAMINATION

1 BY THE COURT:

2 Q. Good afternoon, Ma'am.

3 A. Good afternoon.

4 Q. Are you Neva Lamb?

5 A. Yes, I am.

6 Q. We've arranged things here kind of informally
7 around the table in hopes that you will relax a little bit more
8 and be candid in your responses to our questions.

9 The first question is, has anything happened since
10 we saw you last that would conflict with our process here in any
11 way?

12 A. Not that I know of.

13 Q. Next, Mrs. Lamb, I remind you that I told the
14 jurors that there could be two possible phases, a guilty phase,
15 and then if certain results were reached there then we would get
16 into a penalty phase; but if we do go into a penalty phase, will
17 you be able to fairly consider both of the possible penalties,
18 death and life imprisonment without the possibility of parole?

19 A. Yes, I think I could.

20 Q. Would you be able to personally vote for either one
21 of them, depending upon the circumstances that are brought out
22 in the evidence?

23 A. I believe I could.

24 Q. You're not supposed, you or the other jurors will
25 be ordered not to consider penalty or punishment in the guilt
26 phase; but nevertheless even though I would tell you not to do
27 you think you might be so concerned with having to make a tough
28 decision in a penalty phase of death or life, so to speak, that

1 that concern would influence the way you would vote in the guilt
2 phase?

3 A. No, I don't believe I would.

4 Q. All right. Thank you.

5 Mr. Negus, please.

6

7

EXAMINATION

8 BY MR. NEGUS:

9 Q. Mrs. Lamb, you've heard quite a bit about this case
10 before you came to court I think.

11 A. Yes, I have.

12 Q. Can you tell me, just breaking it down a little
13 bit, what you remember about the actual crime itself that you've
14 heard in the press?

15 A. Well, I've heard of the being an escapee, the
16 murders, and the other woman involved. I guess you would say
17 she harbored him, took him in.

18 Q. By "him" you mean Mr. Cooper, my client?

19 A. Yes.

20 Q. When you heard about Mr. Cooper's escape, did
21 you -- did you form any opinion as to whether or not he
22 committed the crimes of murder?

23 A. Well now, not exactly until I heard more of the
24 details on the radio and TV.

25 Q. When did you hear more of the details on the radio
26 and TV what opinion did you come to?

27 A. That he had done it.

28 Q. Is that your opinion right now?

1 A. Yes.

2 Q. Do you think that you could -- having -- I take it
3 you followed the case fairly closely?

4 A. Until you told me not to.

5 Q. So, for over a year you've been listening to it?

6 A. And reading it in the papers.

7 Q. Having -- having had all that particular exposure
8 to this particular case, do you think that you could set that
9 out of your mind, as it were, and start with a fresh slate and
10 only decide the case on what you heard in court?

11 A. Well, I think I could, but I wouldn't be positive.

12 Q. Well, so you'd have a lingering doubt as to whether
13 you could be --

14 A. I might.

15 Q. Did you hear anything else about -- like Mr.
16 Cooper's background when you were reading the papers?

17 A. Not recalling, I can't.

18 Q. Did you hear anything about the the circumstances
19 of his arrest?

20 A. Well, I can't recall. I read about it in the
21 paper, but I can't recall too much.

22 Q. What about -- what facts that you were told in the
23 media convinced you that he was guilty?

24 A. Well, it just seemed like everything that they said
25 and wrote about, different witnesses made me think so.

26 Q. Did you follow the case when it's been in the court
27 system in San Bernadino before we got down here to San Diego?

28 A. Yes, I did, and that did confuse me, I will be

1 truthful.

2 Q. Well, if -- if you -- you know, there's no right or
3 wrong answers to these questions I'm asking. I really
4 appreciate your candor, but I'd like to ask you sort of the next
5 logical question, to me anyway.

6 If you were to sit on this particular case you
7 would have to take an oath to well and truly try the case, and
8 that would mean that you would have to be able to decide it only
9 on the evidence in the court without reference to any publicity.
10 There may have been something that you heard in the paper that
11 doesn't come out in court or may come out differently in the
12 papers than it came out in court or just a whole bunch of
13 different things; given your lingering doubts and the fact that
14 you have made up your mind, do you think that could you follow
15 that oath or would you have to have reservations about it like
16 you've expressed here?

17 A. Well, now that is an answer I really couldn't say.
18 I don't know. I think I could, but I wouldn't be positive.

19 Q. Again, you know, I'm not -- I'm not a mind reader
20 and, you know, I have to try and find -- if you had to say,
21 judge, your ability to be fair in this particular case as
22 opposed to one you hadn't already come to an opinion on, do you
23 think that you would be able to be -- you would be more
24 confident of your ability to be fair in some other case than
25 this one?

26 A. Let me give you an example. I have always tried
27 not to judge until I get all the facts. Even sometimes when I
28 have judged my judgment has been changed after I get the facts.

1 Now I don't know if that answers your question or not.

2 Q. Partly I suppose it does. Right now according to
3 the law Mr. Cooper is presumed to be -- presumed to be innocent.
4 And, you know, unless and until he is proven contrary, that's
5 the way -- that's the way -- that's the way it supposed to stay.
6 And do you think that you could put aside what you know about
7 the case and presume him innocent now or are you going to have a
8 lingering feeling that you feel he is guilty?

9 A. Well, I think I'd have a doubt. I might as well be
10 truthful. I think I would have a doubt.

11 Q. Based on the publicity in this particular case that
12 in the situation in a court it's your duty as a juror if you
13 think, for example, that he is probably guilty, but you're not
14 convinced beyond a reasonable doubt, it's your duty as a juror
15 to vote not guilty?

16 A. That's right.

17 Q. And you apparently have taken an interest in this
18 particular case. Do you think that could you do that if you
19 thought the evidence showed probably he is guilty but it wasn't
20 proved to you beyond a reasonable doubt?

21 A. I believe I could, but I'm not sure.

22 MR. NEGUS: Thank you.

23 I have nothing further.

24 THE COURT: Mr. Kochis.

25 BY MR. KOCHIS:

26 Q. Mrs. Lamb, we appreciate you being honest with us.

27 A. I try to be.

28 Q. It helps make our job easier?

1 A. Sometimes I don't understand what you mean, but I
2 try to answer.

3 Q. That's a good point and would you stop me if I tend
4 to confuse you because I do that sometimes.

5 We don't try people in the newspapers, as you are
6 aware. In this society we bring people into a court of law such
7 as this and we have a trial. We need a group of people, twelve
8 people who will base their decision only on what they hear in
9 the courtroom from the witnesses, from Judge Garner in terms of
10 what law is, and perhaps listen to the attorneys when they
11 argue. If we selected you as a juror could you base your
12 decision just on what you hear in this courtroom or may your
13 decision be affected by things you've already heard?

14 A. Well, I would try not to. That's the only way I
15 can answer you.

16 Q. Okay. Without putting some words in your mouth do
17 you feel there's a possibility that you may be effected by what
18 you've already heard?

19 A. Yes, I'm afraid I might.

20 Q. Thank you.

21 I don't have any other questions and I would be
22 prepared to stipulate.

23 MR. NEGUS: Likewise.

24 THE COURT: It takes a stipulation, otherwise I was going
25 to keep Mrs. Lamb because I don't think that -- we never know
26 until you are actually faced with it. All right.

27 We will excuse you. Would you kindly go back to
28 the large jury assembly room to see if they have any further

1 instructions, and thank you very much. We appreciate your
2 responses.

3 I think that exhausts the panel. So we shall
4 resume, I believe, Wednesday next, looking at the calendar here.
5 I'm driving tonight to northern California and I will be at a
6 conference up there on the 24th and the 25th, and be back to
7 work here on the 26th of September at 9:15, and I shall see you
8 all then.

9 (Adjournment.)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

_____)	
THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	NO. OCR-9319
)	
KEVIN COOPER,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT
September 26, 1984

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Official Reporters

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1 1 SAN DIEGO, CALIFORNIA, WEDNESDAY, SEPTEMBER 26 9:15 A.M..

2 --oo0oo--

3
4 THE COURT: Good morning. Mr. Cooper and all three
5 counsel are present.

6 Are you ready to proceed with the continued
7 sequestered voir dire?

8 Would you bring in the next juror.

9 THE BAILIFF: Elmer Lopez.

10
11 ELMER LOPEZ

12 Called as a prospective juror, having been previously sworn,
13 testified as follows:

14
15 EXAMINATION

16 BY THE COURT:

17 Q. Good morning, sir.

18 A. Morning.

19 Q. Mr. Lopez, we saw you once before. And has
20 anything happened since then that would prevent you from serving
21 in this case?

22 A. Yes. It is just too long. I talked to my employer
23 about it, and I work in a small shop, I am the supervisor, and I
24 have seven people working for me. I do all the ordering,
25 materials and so forth.

26 Q. Did you mention that to us --

27 A. I should have, I should have. I'm sorry I let it
28 get this far. I should have known better. I work in an

1 electronics shop.

2 Q. How many employees there?

3 A. I think there was about 100 people in the whole
4 production and so forth.

5 Q. And you are a foreman?

6 A. Yes, I am the foreman there in the shop.

7 Q. How many shifts do they work?

8 A. One.

9 Q. How many foremen are there?

10 A. I am the supervisor of the shop. I have a boss,
11 yes, but I am the supervisor of the shop.

12 Q. And if you were gone, how would they manage?

13 A. Well, it would be very hard. It would be very hard
14 because I -- like I said, I shouldn't -- I should have said
15 something earlier. You know, I didn't realize that I'd be here,
16 to tell to you the truth.

17 Q. What did your employer have to say?

18 A. Well, it is too long. They don't object to the
19 jury duty, they want us to be on jury duty, it is just the
20 length of the trial; it would be too long for me to be away.

21 Q. Why? I have to ask these questions. Why?

22 A. Because of the size of the shop. You know, I have
23 seven people working for me, you know, in the shop area.

24 Now, my boss doesn't really know what my job is.
25 He's in management. I run the shop, I order materials. You
26 know, if a machine breaks down I call for to get it fixed and so
27 forth, and so on. You know.

28 Q. Where is your shop from here? How far away?

1 A. It is on Market Street. Euclid and Market.

2 Q. Fifteen minutes?

3 A. Probably.

4 Q. What are your normal hours?

5 A. 7:00 to 3:30.

6 Q. At 3:30 your shop simply closes down for the day?

7 A. There are people working the front office there.

8 They're still people there until 5:00 o'clock, I believe.

9 THE COURT: Counsel, I will permit you to ask questions,
10 if you have any, and then we will excuse Mr. Lopez for a moment.

11 MR. NEGUS: No.

12 THE COURT: Mr. Kochis?

13 MR. KOCHIS: No.

14 THE COURT: Would you step outside and wait a minute and
15 wait for the instruction.

16 Thank you for coming in.

17 THE WITNESS: I should have said something earlier, I'm
18 sorry.

19 THE COURT: Counsel, I think that there has been good
20 cause. Any objection?

21 MR. NEGUS: Yes.

22 THE COURT: You do object?

23 MR. NEGUS: Yes. Mr. Kochis.

24 MR. KOCHIS: I have no objection.

25 THE COURT: Well, you care to articulate it, Mr. Negus.

26 MR. NEGUS: Well, that's not one of the statutory good
27 causes, hardship of the employment.

28

1 THE COURT: Well, bring him back in then. Tell him that
2 he must serve. So, the employer is unhappy, but he hasn't had
3 any personal hardship. That is what you are saying. Is that
4 correct?

5 MR. NEGUS: Yes. I mean, there was some Mr. Kochis
6 objected to who were in the same boat that you didn't excuse
7 that would at least demographically be better for the
8 prosecution. I don't think it is quite fair to keep the ones
9 that would be demographically apparently better for the
10 prosecution and to excuse -- to excuse the ones that Mr. Kochis
11 objects to.

12 THE COURT: All right, bring him back in.

13

14 FURTHER EXAMINATION

15 BY THE COURT:

16 Q. I am not trying to be particularly difficult, Mr.
17 Lopez, but there are certain restraints from easily excusing
18 prospective jurors.

19 So, what you are telling us basically is that it
20 would be difficult on your employer but you haven't indicated
21 any particular personal hardship for you.

22 A. Well, I don't -- I really don't -- I haven't -- I
23 didn't ask him anything. I don't know what their policy is. I
24 don't know. Do they have to pay me as long as I am gone? I
25 don't know if I am getting paid,

26 Q. You don't know that one way or the other.

27 A. No, I don't. I know they pay for, you know, like
28 jury duty, like a regular ten day case, whatever you serve, you

1 know, for two weeks or something, they wouldn't have any
2 objection to it. It is just the length of the trial I would not
3 be paid. You know, you can't live without money.

4 Q. You don't know that.

5 A. Well, I don't know, no. I don't have -- I would
6 have to ask.

7 Q. Actually, we will be selecting some 16 people out
8 of approximately 200, and so the odds might be with you as far
9 as pure percentages go. But right now, sir, I am going to go
10 ahead and ask you some questions and have you back on another
11 occasion, and if you have more information at that time, you can
12 tell us then.

13 A. As far as my employer paying me and so forth.

14 Q. Whatever.

15 A. Okay.

16 Q. I want you to serve if we can get you to serve. I
17 want a broad cross-section of the community, and under the law
18 I'm simply prohibited, from the information you have given me,
19 from excusing you for cause.

20 Let me get to the questions that we have with
21 reference to the death penalty and publicity.

22 If you remember, I told you before we do have two
23 phases to this lawsuit, the guilt phase and the penalty phase,
24 and we do get to a penalty phase, can you then fairly consider
25 both of the possible penalties: Death and life imprisonment
26 without the possibility of parole?

27 A. Yes.

28

1 Q. Would you be able to serve, sir, and to personally
2 vote for whichever one then seemed most appropriate to you based
3 upon the evidence?

4 A. Yes.

5 Q. Remember, I also told you that in the guilt phase
6 jurors are not supposed to consider nor discuss penalty or
7 punishment. It only becomes relevant if we do get to that
8 penalty phase.

9 But, nevertheless, do you think that you might be
10 so concerned having to make that heavy decision down the road,
11 if we get to a penalty phase, you might let that concern
12 influence you that you would not vote in the penalty phase?

13 A. No.

14 THE COURT: Mr. Negus.

15

16

EXAMINATION

17 BY MR. NEGUS:

18 Q. Mr. Lopez, the judge is leaving most of the
19 questioning to Mr. Kochis and myself. And I'm not trying to pry
20 or embarrass you by the questions, and there is really no right
21 or wrong answers at this point in time. You don't have to be
22 partial at this point, I'm just trying to get your personal
23 opinions.

24 What did you hear about this case when you, when
25 you heard about it in the media?

26 A. Well, I heard that there was a family killed in the
27 Riverside or area or Pomona, whatever.

28 Q. Okay. Did you hear any details about -- do you

1 remember any details?

2 A. Not really. I've read it in the paper, you know.
3 Something like that, of course, naturally catches your
4 attention. I read it but I can't remember exactly what I read
5 then. You know, I read the sports and stuff like that.

6 Q. Okay. Do you, do you remember reading anything
7 about my client, Mr. Cooper?

8 A. Yeah. He was a suspect or --

9 Q. Did you read anything about his arrest?

10 A. No. I can't recall. I probably did, but I don't
11 remember.

12 Q. Do you recall having heard anything about the case
13 when it got in court up in San Bernardino?

14 A. No.

15 Q. Did you know the case was coming to San Diego?

16 A. I might have heard something, might of, you know,
17 sitting down watching the news I might have heard something that
18 it was coming.

19 Q. What was your reaction when you heard that you were
20 going to be a prospective juror in this particular case?

21 A. I really didn't give it too much thought, to tell
22 you the truth, honestly.

23 Q. What was your impression of Mr. Cooper from what
24 you heard on the media?

25 A. Well, like he was a suspect. That's the only, you
26 know, that's -- I don't know, just what you read in the paper.
27 I didn't really, didn't, you know, you can believe what you can
28 read or, you know, I don't know.

1 Q. Did you make any opinions one way or the other
2 yourself as to the truth or not truth of what you read?

3 A. Well, I don't know. I am the type of person that,
4 you know, you read something in the paper and, I don't know, I
5 guess they're guilty until they're proven innocent. I am the
6 opposite way, you know.

7 Q. Uh-huh. Is that your opinion right now that Mr.
8 Cooper is guilty unless I can prove him innocent to you?

9 A. Well, I mean, this, you know, this is -- when you
10 read something, you just read it in the paper you, well, you
11 know, this guy is accused of doing something.

12 Q. I understand. But right now you are a person, I
13 understand, that's different, and your ability to be fair is
14 based on your personal opinion about his guilt or innocence. Do
15 you think he's guilty?

16 A. Yeah, probably.

17 Q. What do you -- what -- when you heard about the
18 case, did you think that whoever did it should have received any
19 particular penalty for it? Did you have an opinion at that
20 point in time on what penalty was appropriate?

21 A. I really didn't --

22 Q. Didn't think about it?

23 A. Didn't think about it. Just like I say, I am the
24 type of person, you read something and say, well, it's got to be
25 proven as far as I am concerned.

26 Q. Well, if your boss was able to pay you for sitting
27 here, and you were able to sit on the jury, do you think that
28 you could put that opinion out of your mind in hearing the

1 evidence in the case?

2 A. Yes. Certainly.

3 Q. You wouldn't have any trouble putting aside your
4 personal opinion and requiring the prosecution to prove Mr.
5 Cooper guilty before you were to vote that way; is that right?

6 A. I would -- I would be -- I would put that out of my
7 mind, yes.

8 Q. What is your general opinion about the death
9 penalty?

10 A. I believe that if the evidence, if the man is
11 proven guilty or woman, or whatever, if it merits it, yes.

12 Q. By asking these questions about the death penalty
13 we don't want you to suggest that we will ever get beyond the
14 stage of guilt or innocence, but the law requires us to ask
15 these questions, sort of putting the cart before the horse.

16 Do you have any opinion, your own personal opinion
17 as to what merits the death penalty and what doesn't?

18 A. Well, I guess the crime itself; what type of crime
19 it was.

20 Q. Do you have any idea in your mind of particular
21 types of crimes that merit the death penalty?

22 A. Yes. From what I read in the paper this type of
23 crime would possibly merit.

24 Q. Okay. What do you think about life imprisonment
25 without possibilities of parole?

26 A. Like I said, if the -- if it merits it I would vote
27 for that.

28

1 Q. Do you think that under certain circumstances that
2 life without possibilities of parole would be an appropriate
3 penalty for whoever committed these particular crimes?

4 A. Yes. If the evidence shows that, or if it is --
5 the case.

6 Q. Leaving aside the question of what the law is, do
7 you have any personal opinions as to what sort of thing would
8 tilt you towards death or what sort of thing would tilt you
9 towards life without the possibility of parole?

10 A. I don't really have an opinion as far as -- you
11 know, I haen't given it any thought or I haven't formed an
12 opinion in that area.

13 Q. Do you belong to any organized religion?

14 A. I'm Catholic.

15 Q. Do you think that the position of the Catholic
16 church would in any way influence your particular opinion on the
17 death penalty?

18 A. No. I'm kind of a "dead bed Catholic", I guess to
19 be honest with you.

20 Q. So, it is based on your own conscious and not on
21 anything that you have from religion.

22 A. Right.

23 MR. NEGUS: Thank you very much.

24

25 EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mr. Lopez, I have less questions than Mr. Negus has
28 because he's covered some of the area that both sides are

1 interested in. But I have one or two questions.

2 Practically speaking, how do you feel being placed
3 in a position where you might have to make a decision of this
4 magnitude. If we get to the penalty phase, you are only going
5 to have one of two choices, and both carry serious consequences.
6 How do you feel about that?

7 A. Well, it is kind of hard to say because you -- I
8 guess you'd really have to be -- I would have to sit there and
9 listen to, hear all this before you could really form an opinion
10 one way or the other.

11 Q. But you don't see within yourself any problem, once
12 you have heard all the evidence, and heard the law, reaching a
13 decision one way or the other in the penalty phase, if we get
14 there.

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

16 Q. To make sure that there is no mistake, at the end
17 of a criminal case the judge polls each of the jurors, he simply
18 asks them in open court if the verdict the clerk has just read
19 is in fact their verdict, the way they voted.

20 A. Uh-huh.

21 Q. If we get to the penalty phase, and the jury
22 determines that the death penalty is appropriate punishment,
23 would you have any problem answering outloud in court that that
24 was your verdict?

25 A. No.

26 Q. Likewise, the law requires that the foreman date
27 and sign the verdict form, the piece of paper which records the
28 jury's verdict.

1 If the jury chose you as the foreman, would you
2 have any problem dating and signing a death penalty verdict?

3 A. No.

4 MR. KOCHIS: Thank you. I have nothing else, your Honor.

5 THE COURT: Mr. Lopez, I want you to wait outside for
6 further instructions and give us a chance to discuss it further.
7 But if you do have to come back, you can discuss this matter
8 with your employer again, remember that you would be able to at
9 least touch bases at the shop between the hours of say 7:00 and
10 9:00, because you wouldn't start here until 9:30; we would break
11 for lunch, as I told you before, at 12:00, then you wouldn't
12 have to be back here until 1:30, so that would give you time to
13 touch base and go do some things. It would be kind of hard, but
14 it would be possible, and then we're going to break here at the
15 end of the day at 4:00, and you wouldn't be working with this
16 case at all Friday's, so you could work all day Friday, and then
17 touch bases during the week.

18 Please forgive us if I lean on you a little bit.

19 PROSPECTIVE JUROR: But the problem, your Honor, is that
20 like I said, getting paid, you know,

21 THE COURT: I don't know, we will have to discuss that
22 later on when you find out one way or another.

23 Would you wait outside for further instructions.
24 Thank you very much for coming in.

25 I don't know whether you like his answers or not,
26 gentlemen, but I would accept the stipulation to excuse;
27 otherwise, we will have him back.

28 Mr. Negus, has your positioned changed?

1 MR. NEGUS: Let me just think about it. Yes.

2 THE COURT: That is, you would stipulate?

3 MR. NEGUS: Yes.

4 THE COURT: Mr. Kochis.

5 MR. KOCHIS: My position has changed now that we have
6 heard his answers. I can tell you what my position is going to
7 be. If we have a juror that indicates a problem, most probably
8 I will be stipulating. once we examine the juror, and Mr. Negus
9 can appreciate the fact that he must have a defense juror,
10 rather than a prosecution juror, then I am not going to be
11 willing to stipulate.

12 THE COURT: I don't know. Would you give him an
13 appointment slip to return, please. I don't see why that should
14 change your position.

15 Would you bring in the next juror.

16 Let's try and avoid getting into game playing,
17 gentlemen. I appreciate you, each of your sides, but let's
18 don't make it a tug of war when one says, yes, the other one
19 automatically says no.

20

21 JOE FRYE

22 Called as a prospective juror, having been previously sworn,
23 testified as follows:

24

25 EXAMINATION

26 BY THE COURT:

27 Q. Good morning, Mr. Frye.

28 A. Morning.

1 Q. Mr. Frye, it's been sometime since we last saw you.
2 Has anything happened since then that would make it --

3 A. Nope. Not that I know of, no.

4 Q. Good. So I have a few questions to ask you, then
5 each of the attorneys may ask you some questions.

6 Do you recall that I told you before, when I had
7 the robe on up there, that there could be two possible phases to
8 this trial: A guilt phase and then the penalty phase.

9 Question one: If we to get to a penalty phase,
10 will you be able to personally consider both of the possible
11 alternatives, one death, the other life imprisonment without the
12 possibility of parole?

13 A. Yes, I would.

14 Q. Would you be able to personally vote for whichever
15 one seemed most appropriate then, depending upon the
16 circumstances brought out in the evidence?

17 A. Yep.

18 Q. I told you that in the guilt phase jurors are not
19 supposed to consider penalty or punishment.

20 Do you think, however, that you might be influenced
21 to vote in a certain way in the guilt phase out of your concern
22 for what you might have to do in the penalty phase, if we got to
23 that?

24 A. No.

25 THE COURT: Mr. Negus.

26

27

EXAMINATION

28 BY MR. NEGUS:

1 Q. Mr. Frye, the judge is letting the lawyers ask most
2 of the questions, and so I'll be asking you probably more than
3 Mr. Kochis because I go first. I'm not trying to pry or
4 embarrass you, but I just need to get your honest opinions about
5 things.

6 A. Uh-huh.

7 Q. What did you hear about the murders when the case
8 first came up?

9 A. I heard quite a bit. I do read the paper and I
10 also watch TV quite a bit.

11 Q. What do you remember about the murders?

12 A. I remember practically everything. Reading about
13 the people being murdered, I guess, with screwdrivers, axe or
14 hatchet, whatever, and I read parts of where a person was
15 running down, supposedly running down to Tijuana or Mexico, they
16 were trying to get the person from running into Mexico. And I
17 also read at the time that he was arrested where he was arrested
18 on a boat, or something like that, with two other people, I
19 guess. I don't recall the names though.

20 Q. Did you hear, did you read about or watch on
21 television anything about the case after it got into the courts
22 when we were up in San Bernardino?

23 A. Nothing -- not that I recall there. I mostly read
24 the paper, nothing on TV. I don't watch TV as much as I do read
25 the paper.

26 Q. So that was in the Union then?

27 A. Yes.

28 Q. Did you read any stories in the Union about the

1 case coming down here?

2 A. I recall hearing that it might be switched down
3 here because of controversy up there, yes.

4 Q. What was your impression of Mr. Cooper from what
5 you read in the paper?

6 A. Well, I didn't like what I heard, but you cannot
7 convict somebody by what you hear, is the way I feel about it.

8 Q. What did you hear that you didn't like?

9 A. Everything.

10 Q. What do you remember?

11 A. Practically everything that I heard any person
12 wouldn't have liked.

13 Q. What was --

14 A. That was everything about the murders, how they
15 were done and like that.

16 Q. Anything about Mr. Cooper personally that you heard
17 that you didn't like?

18 A. No. Just of what was done is what I didn't like.

19 Q. Did -- did you form -- did you come to any opinion,
20 from what you read in the paper, as to whether or not Mr. Cooper
21 was guilty or innocent?

22 A. No.

23 Q. Do you think that there was anything that you read
24 in the paper as to this particular crime that predisposes you
25 towards one side or the other in this particular case?

26 A. No, because I don't believe in that. I believe in
27 a person's guilty if they're proven guilty. You can't just go
28 by what you hear.

1 Q. So you would wait until -- in this particular case
2 you would wait until you hear the evidence and --

3 A. Right.

4 Q. If there wasn't proof you wouldn't vote for guilty
5 just because it was a nasty --

6 A. I would go by the evidence that I heard.

7 Q. What was your reaction when you found out that you
8 were a prospective juror in this particular case?

9 A. A long time, was the first thought I had. But I
10 was a little shaky, you know, being in a situation like that. I
11 have never been a juror before, and I didn't expect to be in one
12 that was as big as this one.

13 Q. Do you feel that it would be any problem for you
14 now that have had a chance to think about it?

15 A. Not really, no; except like I said, I have a
16 common-law wife that is about to have a baby in November. That
17 is the only problem.

18 Q. In asking these questions about the death penalty,
19 we're not even presuming that we're going to get there. But the
20 law requires us to put the cart before the horse in asking these
21 questions.

22 First, what is your general opinion about the death
23 penalty?

24 A. My opinion about the death penalty is for a person
25 to take the life of a child, or someone like that, to take the
26 life of more than one person, I feel that they should be put to
27 death.

28 Now, if they are proven innocent, I do not believe

1 in that. If they are proven insane, life imprisonment --

2 Q. What about the penalty about life?

3 A. -- imprisonment possibility of parole.

4 Q. What's your general opinion about that then?

5 A. Actually I just feel like, you know, for something
6 like that, I don't hope life imprisonment without parole is a
7 good thing. But it's not that good -- I don't really have a
8 good excuse for that one, no. I don't know what to say about
9 that.

10 Q. You don't have an opinion on it?

11 A. No.

12 Q. The way that the law works in this, in any
13 particular case, is that if you do get to the decision about
14 penalty, it is only after you found somebody guilty of the
15 crimes that are charged, and then you are given a bunch of
16 additional information, and you are supposed to balance out that
17 which would be just about the person that's been convicted of
18 the crime, then you are supposed to balance off that information
19 in addition to what you already heard at the trial that is
20 favorable to the person against that which is unfavorable to the
21 person, and then based upon which way the balance goes, choose
22 one, the penalty of death or life without possibility of parole.

23 Do you think that you could do that in this
24 particular case?

25 A. What is that -- what's the question again?

26 Q. It is hard. If you get to -- if the person that's
27 responsible for this particular crime were to be convicted --

28 A. Right.

1 Q. -- then you'd have a separate phase which they call
2 the penalty phase, and the only decision you make then is do you
3 give the person death or do you give them life without the
4 possibility of parole.

5 And you get additional evidence which you consider
6 in addition to the evidence you've already heard, and you are
7 supposed to balance off the favorable evidence to the defendant
8 versus the unfavorable evidence to the defendant on that issue,
9 on the issue of the appropriate penalty, and if one, if it
10 weighs one way, you vote for life without the possibility of
11 parole, if it weighs the other way, you vote for death.

12 Do you think that you could do that in this
13 particular case?

14 A. Yes, I could.

15 Q. Is there some circumstances, even though that a
16 child is killed, where you would, could vote for life without
17 parole?

18 A. Like I said, I would have to go by what I heard as
19 far as evidence which, you know, which is proven.

20 Q. What the judge instructed you?

21 A. Right.

22 Q. Do you belong to an organized religion?

23 A. I don't.

24 Q. So, your views about the death penalty are based on
25 your personal conscience or some other source.

26 A. I would say my personal conscience, yeah.

27 Q. Just because we're asking you these questions about
28 the death penalty, does that lessen in any way the presumption

1 of innocence for you as far as Mr. Cooper is concerned?

2 A. What was that again?

3 Q. We're asking you these questions about the death
4 penalty. That penalty only happens if he is guilty.

5 So, I am asking you, just this process of us asking
6 you questions about the death penalty, does that make you less
7 willing to presume that Mr. Cooper is innocent?

8 A. No.

9 MR. NEGUS: Thank you. Nothing further.

10

11

EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mr. Frye, I get to ask you one or two questions
14 before you leave.

15 Practically speaking, when we get to the penalty
16 phase, assuming we get there, you are going to have a decision
17 to make, you have only one of two alternatives: You vote for
18 death or life without the possibility of parole.

19 A. Right.

20 Q. How do you feel personally about being put in a
21 position where you to have make a decision of that magnitude?

22 A. I probably feel a little shaky about it, but I
23 think I could make it.

24 Like, I say after I heard the evidence. But it
25 wouldn't be easy, no. I'm sure it wouldn't be easy on anyone to
26 go through something like that.

27 Q. You don't see yourself as the type of person, if we
28 get to the penalty phase, that may at that point decide this is

1 so serious you don't feel comfortable making a decision one way
2 or the other.

3 A. That's debatable. I can't really say that. I
4 can't really say that I wouldn't feel that way at that time.

5 Q. Okay. Well, let's assume that you had some of
6 these feelings when you got to the penalty phase. Would you
7 still be able to listen to all the evidence, evaluate it, listen
8 to the law and make a decision?

9 A. Uh-huh. I feel I would be able to do that, yes.

10 Q. In a criminal case, to make sure there is no
11 mistake, we poll the jury. At the end of a case the judge
12 simply goes down the line and asks each one of the jurors if the
13 decision that the clerk has just read is the way they voted.

14 If the jury returned a verdict in this case, would
15 you have any problem in open court announcing that that was your
16 verdict?

17 A. No.

18 Q. Likewise, in every criminal case one person is
19 elected a foreperson, the foreman, and that person must date and
20 sign a verdict, period.

21 A. Which paper?

22 Q. If you were elected as the foreperson, the foreman,
23 would you have any problem dating and signing a death verdict?

24 A. I think I would, yes.

25 Q. Okay. Let's talk about that for a minute.

26 If the jury elected you as the foreman, you are in
27 the penalty phase, and the twelve of you vote, and including
28 yourself, and you decide that in this case, based upon all the

1 evidence, that the appropriate penalty is death, the law
2 requires that the jury foreman date and sign a verdict form
3 indicating that that is the way the jury voted.

4 You wouldn't be able to do that?

5 A. I wouldn't be able to sign it, no. As far as
6 voting, yes. Signing something like that, no.

7 MR. KOCHIS: Thank you. I have nothing further else,
8 your Honor.

9 THE COURT: For there to be a verdict at all in either
10 phase, requires proof beyond a reasonable doubt, or at least in
11 the guilt phase, and it requires a unanimous verdict, all twelve
12 jurors would have to agree in any case to find the defendant
13 guilty, all twelve of them.

14 So, if they return a verdict form, you know, all
15 the world will know that he is guilty; at that time all twelve
16 of them will have to vote on it, so putting your signature there
17 doesn't make it more certain in any way.

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Think about it in the meantime, would you
20 please. It really adds nothing, it is just simply a formality,
21 that we have to have a foreman to preside over the deliberations
22 of the jury, and that foreman simply is a representative of the
23 rest of the panel, must sign the form. It really adds nothing
24 to make the cheese more binding.

25 We appreciate your candor, Mr. Frye. Would you
26 wait outside and the bailiff will give you further instructions?

27 Anything further?

28 MR. KOCHIS: Not from the People.

1 MR. NEGUS: No.

2 THE COURT: All right. Please give him an appointment
3 slip to return and bring in the next possible juror, please.

4 THE BAILIFF: James Burleson.

5

6 JAMES BURLESON,
7 called as a prospective juror, having been previously sworn,
8 testified as follows:

9

10 EXAMINATION

11 BY THE COURT:

12 Q. Are you James Burleson?

13 A. Yes, sir.

14 Q. Have a seat, please. Good morning.

15 A. Good morning, sir.

16 Q. Mr. Burleson, since we last saw you, has anything
17 happened to prevent you from being able to serve in this case?

18 A. Yes, sir. May I make a statement, please?

19 Q. Sure.

20 A. Approximately two years ago I had a heart attack.
21 I visited my cardiologist Friday; and after the visit I told him
22 that I had been selected on a jury, prospective juror, and he
23 suggested that I be removed from this case for health reasons.
24 He said -- I told him the length of the case would probably run
25 approximately six months, and he said he didn't think I should
26 be subjected to that pressure that long.

27 To add to that a fact, just before I left this
28 morning I received a call from Alabama, elderly aunt who is

1 about 69 -- 96 years old is in a convalescent home. This person
2 that called me has kind of been watching after her, said her
3 money was running out and that she had asked for help from
4 Medicaid, and she had been informed that her home would have to
5 be sold. She has no living children, and I have one other
6 cousin back in Alabame that I've got to get in touch with to see
7 how to dispose of her property and what have you.

8 And under these circumstances I would request to be
9 dismissed if possible, sir.

10 Q. The part with your aunt is simply added
11 responsibility, is that what you're saying?

12 A. Yes, added responsibility. She has no children.
13 When my mother died passed away, when I was three years old, she
14 kept me for awhile, and -- but she has no children of her own
15 and there is one other cousin living in the area. I would have
16 to get in touch with him to see what process, you know, to be
17 done.

18 Q. Okay. Well, that sounds like it could perhaps be
19 overcome, but I'm concerned with your health, of course, and is
20 it your opinion that this might conceivably put a strain on your
21 heart that might --

22 A. Yes, sir yes, sir.

23 Q. And apparently you and I are about the same age.
24 Are you 58 now?

25 A. Yes, sir 58.

26 Q. Born in the same month, in fact.

27 Counsel, any questions before I have him wait
28 outside for a minute?

1 MR. NEGUS: No.

2 MR. KOCHIS: No.

3 THE COURT: Would you wait outside for a minute; we will
4 have to discuss it and the bailiff will give you further
5 instructions.

6 MR. KOCHIS: Thank you, sir.

7 THE COURT: Thank you, and good luck to you.

8 Counsel, it appears to me it would be obvious good
9 cause. Any objection?

10 MR. NEGUS: No.

11 THE COURT: Would you tell him that he is excused with
12 our thanks and appreciation and call in the next juror. He is
13 excused for cause.

14 THE BAILIFF: Ron Helm.

15

16 RON HELM,
17 called as a prospective juror, having been previously sworn,
18 testified as follows:

19

20 EXAMINATION

21 BY THE COURT:

22 Q. You must be Ron Helm?

23 A. Yes, I am.

24 Q. Good morning, Mr. Helm.

25 A. Morning.

26 Q. Has anything happened since we last saw you that
27 would add to the difficulties of your being able to serve on
28 this case?

1 A. I don't believe so.

2 Q. I have a few questions that I'm going to ask you,
3 sir, about your opinion relating to the death penalty and then
4 counsel is going to go into that a little bit as well as
5 publicity.

6 First, remember I told you that there could be two
7 possible phases to this trial; one is the guilt phase in which
8 you are not to consider penalty or punishment, the second is the
9 penalty phase. If we do get to a penalty phase will you be able
10 to fairly consider both of the possible penalties, namely, death
11 and life imprisonment without the possibility of parole?

12 A. I think I could consider life without possibility
13 of parole, but I think I would have a difficult time with the
14 death penalty. I honestly don't know what I would do in the
15 situation.

16 Q. Okay. I suspect everybody is going to have a
17 difficult time. It will be a difficult case. It will be a
18 difficult decision to make. But do you have strong
19 conscientious opinions about the death penalty that you think
20 would make it particularly difficult for you?

21 A. I think it would be, yes.

22 Q. Do you think that there may be some cases, however,
23 where you might be able to consider that it might be appropriate
24 for the death penalty?

25 A. I know what you're trying to get at and I
26 appreciate it, but I've had -- I've thought about it for the
27 last two weeks and I have not been able to resolve the issue
28 myself to give you a straight answer on it. All I can say is

1 that would be extremely difficult for me to come to the
2 conclusion that the death penalty should be enforced, whether I
3 could --

4 Q. Is there any particular source for your concern
5 about the death penalty, or is it just something that you formed
6 over the years?

7 A. I'm not certain how much good it does. I'm not
8 certain I want to be put in the position where I have to take
9 somebody's life in a premeditated way. I have been in the
10 service. I have been in the situation where I had to react to a
11 threat. But as far as to sit down and think about it, and make
12 that decision, like I say, I think I would find it very
13 difficult.

14 Q. If we do get to a penalty phase there would be
15 other evidence brought out in addition perhaps about the
16 circumstances of the offense, prior convictions, if any, of the
17 defendant, past criminal activity, if any, involving force or
18 violence, the defendant's character, background, history, mental
19 and physical condition at the time of the alleged offense, if we
20 ever get to a penalty phase, and then after hearing all of that,
21 assuming now we've got past the guilt phase, after hearing that
22 additional evidence the jurors would then be faced with only the
23 two possible alternatives; it's at that point that you feel, I
24 take it then, that you would have some difficulty; is that
25 correct?

26 A. Correct.

27 Q. All right. Now listen very carefully, Mr. Helm, to
28 this question if you would. Do you have such a conscientious

1 opinion regarding the death penalty that such opinion would make
2 it impossible for you to vote for the death penalty in any case
3 under any circumstances and regardless of the nature of the
4 evidence introduced during the trial?

5 A. I believe it may.

6 Q. I dislike having to put pressure on you, sir, but
7 I'm going to repeat the question again, and you can fancy any
8 set of circumstances in your mind that you wish, but I insist
9 upon an unequivocal answer.

10 MR. NEGUS: Objection, your Honor. That's not required
11 under the law.

12 THE COURT: Well, I'm going to urge it, let's put it that
13 way.

14 MR. NEGUS: I object to that, too.

15 THE COURT: Thank you. Overruled.

16 MR. KOCHIS: Your Honor, the additional objection I would
17 have is under People vs. Fields. The fact that he could
18 consider the death penalty in some unrelated case is not
19 relevant. Fields make it clear that he must be able to consider
20 the death penalty in this case --

21 MR. NEGUS: I don't think that's so.

22 MR. KOCHIS: -- and not in some imaginary case, and we
23 can look it up and read it.

24 THE COURT: Let's not do it right now.

25 I'm going to ask the question of you again. Rather
26 than tell me "may," if you can think about it, see if you can be
27 more certain if you can.

28 Do you have such a conscientious opinion regarding

1 the death penalty that such opinion would make it impossible for
2 you to vote for the death penalty in any case under any
3 circumstances and regardless of the nature of the evidence
4 introduced during the trial? Now if you can't be certain, by
5 all means don't try to so indicate.

6 A. I cannot be certain. I've tried to give you the
7 best answer I can. I have never been put in that position. I
8 am not happy with it. And looking into myself, the best thing I
9 can say is I would have extreme difficulty making that decision.
10 Whether I could never make that decision I don't know.

11 Q. All right. Do you think, even though I tell that
12 you you're not to consider penalty or punishment during the
13 guilt phase, do you think your concern about that heavy decision
14 that we have been discussing might cause or influence you to
15 vote a certain way in the guilt phase?

16 A. Well, the first phase of the hearing --

17 Q. Yes.

18 A. -- of the trial, I think I would be objective
19 during the first phase, yes.

20 Q. Okay.

21 Mr. Negus.

22

23

EXAMINATION

24 BY MR. NEGUS:

25 Q. Mr. Helm, you heard quite a bit about the case
26 before you came to court; what do you remember hearing about the
27 crime?

28 A. I've seen -- I haven't tried to follow it in the

1 paper necessarily, but I've seen quite a bit in the year
2 preceeding this. I know that he is charged with killing, I
3 believe it was four people and attempted murder on a child. I
4 know that was in connection with -- thought to be in connection
5 with a jail break from prison up there. And that I believe
6 there was an episode on a boat or something where he was
7 captured where he was involved with some other charges there.

8 Q. Do you remember what those other charges were?

9 A. I think it was rape and a few others, assault and
10 battery.

11 Q. Did you form any opinion as to the truth of those
12 other charges?

13 A. Not at the time.

14 Q. Have you now?

15 A. No, I don't believe so.

16 Q. Those other charges will not come into this case
17 whatsoever and this case has to be decided on its own merits; do
18 you think that could you put out of your mind whatever you heard
19 about the -- about the other charges and decide this case solely
20 on its own facts?

21 A. I believe I could.

22 Q. Would -- Have you formed any opinion about this
23 particular case as to whether or not Mr. Cooper is guilty or
24 innocent?

25 A. Not necessarily about guilt or innocence. I think
26 I formed an opinion about how the trial is going to go.

27 Q. What do you mean?

28 A. I suspect that if most of the testimony is riding

1 on the testimony of one child, I suspect that testimony will be
2 pretty much torn down in court and I suspect that what's left
3 will probably be evidence trying to link the person to the
4 location; and I have a feeling that it will end up being
5 probably impossible beyond a reasonable doubt to put the person
6 in the vicinity. That's just based on what's in the paper. Now
7 what's brought up in the trial I'm open to as well.

8 Q. Okay. You've heard stories in the paper about the
9 course of the preliminary hearing and things of that nature?

10 A. No. Just the only thing I saw about this in the
11 paper was the jury trial selection when I saw everybody marching
12 into the courtroom but nothing else.

13 Q. Did you see anything -- Have you seen anything
14 about Josh Ryen, the young boy who survived, and what -- and any
15 statements he may have made in the paper?

16 A. From -- from some time ago I heard that his first
17 testimony, I think was that he had thought there was a white man
18 that was involved, and I haven't heard -- I heard later he
19 recovered, and I haven't heard anything since.

20 Q. Do you think that you have any preconception about
21 the evidence that is -- you have -- Let me try and back up and
22 do this other way.

23 You have an idea what the course of the trial is
24 going to be. At the time if the trial turns out to be somewhat
25 different from that, do you think that you would keep an open
26 mind about it and still judge the case objectively?

27 A. I believe so.

28 Q. If your prediction turns out in certain ways to be

1 true, could you also judge the case objectively?

2 A. I believe so.

3 Q. Your opinions on the death penalty, are they based
4 on personal conscience or religion or what?

5 A. More personal conscience than religion. It's an
6 issue, frankly, I've never really had to think about until this
7 episode came up, and I have spent some time thinking about it.
8 I see it as similar to -- Well, I see it as a premeditated act
9 on my part and I'm not certain how much I can deal with that.
10 It's when you are to defend yourself or somebody is being
11 violent towards you, I have no qualms. I think it's to sit down
12 and make a distinction whether somebody is going to live or die.

13 MR. NEGUS: Thank you. I appreciate your candor.

14 THE COURT: Mr. Kochis.

15

16

EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mr. Helm, starting for a minute with the first
19 phase, this guilt phase, assume you're one of the jurors and
20 you're back there deliberating with the other eleven, and based
21 on the evidence you've heard and the law that you've heard you
22 are convinced beyond a reasonable doubt that this defendant did
23 it; do you think there would be any tendency on your part to sit
24 back and think, if I vote for guilt in this case I'm then going
25 to go into the second phase, the penalty phase, and I'm going to
26 be confronted with with a decision I don't want to make and,
27 therefore, I may change my vote in the guilt phase so I don't
28 reach the second phase and the uncomfortable decision?

1 A. I think if I make it -- if I go through the first
2 phase I'll vote according to the evidence.

3 Q. You mentioned something about the way that you
4 thought the trial would go, is that based on anything you've
5 heard in the media?

6 A. No. It's based on my own analysis or my own
7 thoughts on what I've heard.

8 Q. When you chose the term "vicinity" in terms of
9 putting this defendant in a particular location, what did you
10 have in mind?

11 A. Evidence that would relate to the person being at
12 the scene of the crime.

13 Q. The house where everyone died?

14 A. Yeah.

15 Q. If you get to the second phase, the penalty phase,
16 where you and eleven other people have to decide what is the
17 appropriate punishment in this case, if you heard all the
18 evidence, heard the law, the factors in mitigation, the factors
19 in aggravation and in your own mind if you followed the law the
20 appropriate penalty in this case was the death penalty, could
21 you follow the law?

22 A. I don't know. I would try, but I don't know if I
23 could.

24 Q. So in your own mind, at least at this point, you
25 would have a problem following the oath that you would take as a
26 trial juror which would be to base your decision on the evidence
27 and the law, that would create some problem for you?

28 A. Put like that, yes.

1 Q. Do you in any way see an analogy between the death
2 penalty in certain cases and an act by society of self defense?

3 A. In a sense, yes, I can -- you can debate the
4 philosophical side of it, but as a personal matter it becomes a
5 very hard decision.

6 Q. Thank you.

7 I don't have anything else, your Honor.

8 THE COURT: Nor do I. Would you kindly wait outside, let
9 us discuss it privately then we will have further instructions.
10 Thank you very much for coming in.

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Anybody wish to be heard?

13 MR. KOCHIS: The People don't.

14 MR. NEGUS: Not as to the issue of -- I have no
15 challenge.

16 THE COURT: All right. Would you give him an appointment
17 slip, please, to return.

18 I believe that's the last of the first four, isn't
19 it?

20 All right. As to any other issue, Mr. Negus.

21 MR. NEGUS: Yes, your Honor. I just wish to articulate
22 an objection to the Court listing by name various factors in
23 aggravation or mitigation. I believe it's reversible error to
24 instruct jurors on factors which are not shown by the evidence.
25 And as we don't know what the evidence is yet, I don't think we
26 can instruct them on individual factors in aggravation or
27 mitigation, which you do with Mr. Helm.

28 THE COURT: I mentioned no particular factor as an

1 evidentiary matter but only as a general class.

2 MR. NEGUS: You mentioned "prior convictions".

3 THE COURT: "If any".

4 MR. NEGUS: And "mental and physical condition", a bunch
5 of things which may not even come into evidence, and so I object
6 to that.

7 THE COURT: Okay. You've expressed your objection. I
8 will continue to do so because even mental and physical
9 condition impliedly will come into evidence one way or another.

10 MR. NEGUS: I don't necessarily think that's true, and by
11 selecting out a few, I mean --

12 THE COURT: I think I've listed everything the Code
13 mentions.

14 MR. NEGUS: Well, you couldn't have cause there's ten.

15 THE COURT: I took them right out of the Code, Mr. Negus,
16 if I missed anything --

17 MR. NEGUS: I think you did three. And if you -- I don't
18 believe -- I'm just saying that it's possible to instruct on
19 that issue without committing. What I'm claiming is error by
20 not enumerating what the factors in aggravation and mitigation
21 are, and I object to --

22 THE COURT: Perhaps if you do it a little differently I
23 will be restrained and not mention them to them, but I'm not
24 going to hesitate to do so when you don't mention factors in
25 aggravation, you don't mention anything to give the jurors some
26 understanding what your question is pointing toward.

27 MR. NEGUS: My question again is pointing toward their
28 personal opinion, and I made it have clear and everybody so far

1 this morning has had no difficulty in understanding the
2 difference between their personal opinion and balancing off
3 factors in aggravation and mitigation. Several of the people
4 have indicated what their personal opinion is and said that when
5 I asked them about factors in aggravation and mitigation they
6 could do that -- they could follow that just by their personal
7 opinion. I don't think I'm tricking them. There is no
8 misleading going on. I'm just objecting that it's error to do
9 what you're doing.

10 THE COURT: Well, I disagree; however, I won't do it
11 unless I feel that there is a necessity for it, as I did this
12 morning. Anything else?

13 MR. NEGUS: Secondly, there's nothing in the law which
14 requires people to be able to answer questions, the Witherspoon
15 questions.

16 THE COURT: That's a good point. I accept that.

17 MR. NEGUS: Okay.

18 THE COURT: Mr. Kochis, I think I better reread Fields,
19 too. I don't see how they could base their opinion just on this
20 case because they don't know what this case really is yet.

21 MR. NEGUS: When do you --

22 MR. KOCHIS: I'm aware of that, but the example that's
23 typically used I believe is people say something like, in the
24 case of Adolph Hitler, someone who killed four million persons,
25 certainly the death penalty may be appropriate in that case.

26 MR. NEGUS: What Field held is that to rehabilitate a
27 juror the defense can't use an off-the-wall-type example which
28 has nothing to do with the facts of the particular case you're

1 talking about if you're just talking in general and the juror
2 has so far indicated no personal knowledge of the case. It gets
3 more complicated when the juror, as in this particular case,
4 knows the facts of the case, and if you -- the important parts
5 of Fields to read on that issue are --

6 THE COURT: Give me the citation if you would.

7 MR. NEGUS: It's 35 Cal.3d 329.

8 THE COURT: I will read it. I know I've read it before
9 some time ago.

10 MR. NEGUS: Okay.

11 THE COURT: Anything further?

12 MR. NEGUS: No.

13 THE COURT: Take a recess.

14 (Recess.)

15 THE COURT: I understand, it's past 10:45, that we have
16 at least two of the four here, let's go ahead get started.

17 THE BAILIFF: The first one is going to be Donna
18 Merchant.

19

20

DONNA MERCHANT, 

21 called as a prospective juror, having been previously sworn,
22 testified as follows:

23

24

EXAMINATION

25 BY THE COURT:

26 Q. Good morning.

27 A. Hi.

28 Q. Is it Mershant?

1 A. Merchant.

2 Q. Ms. Merchant, has anything happened to you since we
3 last saw you that would make it more difficult or impossible for
4 you to serve on this case?

5 A. No.

6 Q. I have a few questions and then the attorneys are
7 going to ask most of the questions.

8 You remember first that I told you that there would
9 be two possible phases of the trial, the first would be the
10 guilt phase of which you are not to consider penalty or
11 punishment; the second would be the penalty phase. If we do get
12 to a penalty phase would you be able to fairly consider both of
13 the possible penalties, death and life imprisonment without the
14 possibility of parole?

15 A. I think so.

16 Q. Secondly, would you be able to personally vote for
17 whichever one then seemed most appropriate depending upon the
18 evidence and the circumstances?

19 A. Yes.

20 Q. Even though I tell you that the jurors in the guilt
21 phase are not to consider penalty or punishment, do you have by
22 chance such a strong opinion on the death penalty perhaps or
23 life imprisonment without the possibility of parole that you
24 might let that concern influence the way you would vote in the
25 guilt phase?

26 A. No.

27 Q. All right. Thank you.

28 Mr. Negus.

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EXAMINATION

BY MR. NEGUS:

Q. As the Judge indicated, he's letting us lawyers ask you most of the questions, and as I go first I usually ask more than Mr. Kochis does. We're not trying to pry into your personal affairs or anything, but we're just trying to get your personal opinions at this point in time. So what we really is want is just your honest opinion. There is no right or wrong answers involved.

You hadn't heard of this case at all when you came into court?

A. Huh-uh.

Q. You have to say yes or no --

A. No.

Q. -- because she is taking it all down.

A. No, I hadn't.

Q. What was your reaction when you found out what kind of case it was that you were a prospective juror on?

A. What was my reaction?

Q. Yeah, how did you feel?

A. I felt a little concerned that, you know, it might be a long case and that someone's life might be involved and, you know, that type was my reaction basically.

Q. We're asking you questions now about the death penalty.

A. Uh-huh.

Q. Which is not to say that we'll ever get to that,

1 but we have to put the cart before the horse and the law
2 requires us to ask these questions before we start.

3 A. I understand.

4 Q. What do you think about the death penalty?

5 A. You know, I tried to think about that when we were
6 in here before, and I really -- I can honestly say I can't make
7 a decision one way or the other. I don't know. In one respect
8 I feel like it's not really -- it's not really a decision that
9 can be made for one human to take another human, and yet I can
10 see where, you know, in some cases that would have to be decided
11 upon. Do you know what I mean?

12 Q. Okay. So you feel that if -- let me try it -- see
13 if I understand. Is it that you don't want to do it but it's
14 something that basically society has to do, or am I misstating
15 what you're saying?

16 A. Well, I'm not really talking about society as much
17 as I'm talking about myself. You know, if I was forced to make
18 a decision I would make a decision, but I don't think that -- I
19 can't really tell you what I would decide at this point without
20 being faced with it.

21 Q. Whatever we're doing, we're not asking you to --

22 A. Oh, I know.

23 Q. -- to make up your mind in advance.

24 A. I know.

25 Q. I guess what we are really trying to do is to find
26 out just that can you wait till you hear everything?

27 A. I would have to hear everything. I can't tell you
28 right now whether I, you know, would go for it or not go for it.

1 I just can't tell you because I haven't been faced with that.

2 Q. Have you ever thought about life without
3 possibility of parole as a penalty before you came in here?

4 A. Well, I think so, yes, because that's always how,
5 you know, it's basically been.

6 Q. And what -- what do you think about that?

7 A. If I felt that it would keep someone from harming
8 somebody else, then I would, yes, I would agree with that.

9 Q. You could agree with that?

10 A. If I thought the chance of them getting out and
11 doing -- repeating, yes, I can agree with that.

12 Q. So essentially to protect society you could go
13 along with that?

14 A. Yes.

15 Q. Do you belong to an organized religion?

16 A. No. I don't go to church, is that what you mean?
17 I believe in God, but I don't go to church.

18 Q. Actually what I was getting at was to find out
19 whether your views about crime and punishment had been affected
20 in any way.

21 A. Probably. I was baptized Catholic but, you know, I
22 haven't practiced the Catholic religion in my adult life.

23 Q. So, do you think that basically it's your personal
24 conscience which forms your views or something from your
25 experience and catechism and what have you?

26 A. It's probably a combination of both.

27 Q. Because we're asking these questions about penalty
28 I'd like to ask this last question. Do you think that because

2 1 we're going through this process right now that that in any way
2 changes like the presumption of innocence that Mr. Cooper is
3 supposed to enjoy at the beginning of the case?

4 A. Would you repeat that?

5 Q. Do you think that because we're asking you
6 questions about penalty or punishment that that means --

7 A. Oh, no.

8 Q. -- that Mr. Cooper must be guilty of something?

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

10 Q. Thank you very much.

11 A. Your welcome.

12
13 EXAMINATION

14 BY MR. KOCHIS:

15 Q. Mrs. Merchant, I have a few questions. I was
16 wondering if you could expand for me just a little on the one
17 side of your views that you expressed to Mr. Negus when you
18 said, personally I'm not sure one human being has the right to
19 judge and make a decision whether to take the life of another
20 human being.

21 A. Okay. Well, the way I look at it is that I don't
22 really believe that it's right for a human to take another's
23 life, okay, but like if like I was in a situation where someone
24 was hurting my daughter or I felt that they were going to kill
25 my daughter, I would not hesitate to kill them.

26 Q. I understand.

27 A. Does that explain a little more?

28 Q. Okay. Getting away from the very personal

1 self-defense situation --

2 A. Okay.

3 Q. -- what are your thoughts on being put in a
4 position in this case where if we get to the penalty phase you
5 might have to make a decision what to do with this defendant,
6 would you vote for death or life without the possibility of
7 parole?

8 A. See, that's what I really can't tell you because I
9 don't know. Until the situation is real, until I'm, you know,
10 would actually be in that situation, I can't -- I can't really
11 make a decision.

12 Q. Okay. So I don't confuse you, we're not at this
13 point trying to program you --

14 A. I know.

15 Q. -- to vote one way or the other but what we're
16 trying to do in the screening process is, many people don't
17 think about a decision until they are confronted with it,
18 otherwise it's somewhat of a waste of time.

19 A. See, I did try to think about it but I still
20 couldn't come up with one.

21 Q. Okay. Let me ask you this question: Do see
22 yourself as the type of person who might if you got to the
23 penalty phase and really thought about it, because you are
24 confronted with it decide at that point this is the type of
25 decision that's so serious, so heavy, I can't make the decision
26 one way or the other, I just couldn't vote?

27 A. Are you trying -- are you saying that if I was in
28 in that position then I wouldn't be -- do I feel like I wouldn't

1 be able to make up my mind?

2 Q. Yes.

3 A. Oh, no. I think that could I make up my mind.

4 Q. Okay.

5 A. I think a lot of it would weigh on what was brought
6 out and, you know, what I -- as you call it evidence or
7 whatever, you know.

8 Q. Okay.

9 A. That type of thing.

10 Q. Twice in the past decade in the '70s, once I
11 believe in '74 and once in about '78, there were issues placed
12 on the ballot that involved the death penalty; did you take an
13 active part in either one of those elections, circulate
14 petitions or anything?

15 A. I didn't vote on that.

16 Q. At the end of every criminal case to make sure
17 there's no mistake we poll the jurors. The Judge simply goes
18 down the line and asks each of the twelve persons if the verdict
19 the clerk has read is in fact the way they voted, and you simply
20 answer yes or no; if we got to the penalty phase in this case
21 and the jury decided that the appropriate penalty was death,
22 would you have any problem indicating in open court that
23 decision?

24 A. No.

25 Q. Likewise in every criminal case the jury elects a
26 foreperson who will sign and date the verdict form and the clerk
27 reads it; if the jury elected you, for example, as the
28 foreperson in this case, and the jury then, including yourself,

1 determined that the appropriate penalty in this case was death,
2 would you have any problem dating and signing that verdict form?

3 A. No, not if that was the decision.

4 Q. Thank you.

5 I have nothing further, your Honor.

6 THE COURT: Nor do I.

7 Would you wait outside, let us discuss it privately
8 and the bailiff will give you further instructions. Thank you
9 for coming in this morning.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Anything, Gentlemen?

12 MR. NEGUS: No.

13 MR. KOCHIS: No, your Honor.

14 THE COURT: All right. We will give her an appointment
15 to return, please, and you will call in the next juror.

16 THE BAILIFF: Daniel Novack.

17

18 DANIEL NOVACK,
19 called as a prospective juror, having been previously sworn,
20 testified as follows:

21

22 EXAMINATION

23 BY THE COURT:

24 Q. Good morning, sir.

25 A. Morning.

26 Q. Are you Daniel Novack?

27 A. Yes, sir, I am.

28 Q. Mr. Novack, has anything happened since we last saw

1 you that we should know about?

2 A. Yes, sir. I have done some research with the place
3 where I work, and we've estimated this trial to be six to seven
4 months, consequently I researched the union contract, I only get
5 paid for 30 days of this in one calendar year. I do have a copy
6 of the agreement and I underlined the section about payments.

7 Q. I will take your word for it, Mr. Novack. You've
8 looked at it and I don't need to see it in writing. So you
9 would get paid for 30 days that you're away from work but not
10 beyond that?

11 A. Yes, sir. In one calendar year that's all I'm
12 entitled to.

13 Q. What do you do?

14 A. I'm a tool and dye maker at Convair.

15 Q. So, you people make lots of money, don't you?

16 A. Well, occasionally we do.

17 Q. Let's see, we're talking about 30 days.

18 MR. KOCHIS: As I understand it it may be 60 days. He
19 gets 30 per calendar year I think.

20 PROSPECTIVE JUROR: Yes, in one calendar year.

21 BY THE COURT:

22 Q. So, this case would undoubtedly go into next year.
23 You see if you get 30 days. At a four-day week, that would be,
24 oh, seven and a half weeks and seven and a half would be, what,
25 15 weeks, so we are only serving in effect three weeks out of a
26 month, so we're talking about over an extended period of about
27 five months right there. This case is not going to go much
28 beyond that, if at all. In other words, it wouldn't be an awful

1 lot for you to have to absorb without pay.

2 Do you have a family sir?

3 A. Yes, sir, I do.

4 Q. Your wife work outside the home?

5 A. Yes, she does.

6 Q. You know, I have some restraints. It's not just a
7 matter of me being a mean guy or something like that, there are
8 some restraints placed upon us in this type of case. You are
9 coming close enough to where I don't think I'm going to
10 automatically excuse you at all. Counsel may see fit to excuse
11 you or you may get lucky, but I think I better ask to you hang
12 on with us, sir. Okay?

13 A. Okay.

14 Q. So, I will go to some the questions that I have and
15 each of the attorneys may ask you questions as well.

16 Remember first that I told you that there could be
17 two possible phases to this trial, a guilty phase and perhaps a
18 penalty phase. Question one, if we do get to a penalty phase
19 will you be able to fairly consider both of the possible
20 alternatives death and life imprisonment without the possibility
21 of parole?

22 A. Yes, sir.

23 Q. Would you be able to personally vote for whichever
24 one then seemed most appropriate depending upon the
25 circumstances brought out by the evidence?

26 A. Yes, sir, I could.

27 Q. Do you have any strong feeling about the death
28 penalty perhaps that would be so strong in you that even though

1 you're not supposed to consider penalty or punishment in the
2 guilt phase you might let that concern effect the way you would
3 vote in the guilt phase?

4 A. No, sir.

5 Q. Thank you.

6 Counsel.

7

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EXAMINATION

9 BY MR. NEGUS:

10 Q. Mr. Novack, the Judge has allowed us lawyers to ask
11 you most of the questions. As I go first I'm probably going to
12 be asking more than Mr. Kochis; not trying to pry, just trying
13 to get your honest opinions about certain things.

14 You heard quite a bit about this case before you
15 came to court?

16 A. Yes, sir, that's correct.

17 Q. What do you remember hearing about the actual crime
18 itself?

19 A. Pretty much everything that was printed. I
20 followed the whole case since it was first brought out in the
21 newspaper.

22 Q. Was it of particular interest to you or --

23 A. To some respect, yes, because I used to be in with
24 a bunch of horse people and it kind of got my interest because
25 of that.

26 Q. What kind of horses were you involved with?

27 A. We had Aradians and quarterhorses.

28 Q. Did you know any of the people involved?

1 A. No, sir, I didn't.

2 Q. Was there anything about the nature of the crime
3 that caught your interest or just the fact that they were horse
4 people?

5 A. Just the fact that they were horse people and an
6 out of town area because I used to live in the back country
7 also.

8 Q. In North County?

9 A. No, I was out in East County.

10 Q. Did -- do you remember reading anything about Mr.
11 Cooper?

12 A. Just that he had been in some trouble back East,
13 and when he was brought out here under somewhat confusion when
14 he was arrested out here.

15 Q. Do you remember what the trouble was back East or
16 anything like that?

17 A. I believe it was a robbery.

18 Q. Do you -- that may or may not come out in the
19 course of this trial. If it doesn't, would you speculate on
20 that or let that influence you in any way in this particular
21 trial?

22 A. To to me that's irrelevant, it has nothing to do
23 with this case.

24 Q. Did you come to any opinion based on the publicity
25 as to whether or not Mr. Cooper was guilty?

26 A. Yes, sir, I have.

27 Q. What was that?

28 A. I think I lean toward the guilt.

1 Q. What makes you think that?

2 A. Well, possibly just what was printed, you know,
3 it's following the man's background, the way things happened,
4 the apprehension and everything. I just had, you know, leaning
5 toward the guilty side.

6 Q. When -- When we get to court there may be things
7 which are -- which are quite -- quite different than what you'd
8 expect or maybe different evidence, maybe the same, do you think
9 that whatever, whatever you do that you'd be able to put aside
10 your opinion as to his guilt or innocence and decide the case
11 fairly or do you think that your opinion would carry over?

12 A. That's really hard to say. It would take quite a
13 bit to sway me, I think, but I haven't heard your side of the
14 case either.

15 Q. So you are saying -- Well, in a criminal case the
16 defendant is presumed to be innocent?

17 A. I realize this.

18 Q. Can you presume Mr. Cooper is innocent?

19 A. That is really hard to answer because I have
20 predetermined his guilt, so it would be more or less in my case
21 it would be convincing me that the man isn't guilty.

22 Q. So what you're telling me is you couldn't presume
23 him innocent then?

24 A. Not at this time, no.

25 Q. Are you sure in your own mind that -- well, do you
26 think there's anything during the trial that could make you go
27 to that particular -- that particular conclusion?

28 A. You mean to --

1 Q. Yeah. To change your mind would I have to sort of
2 like -- to, you know, prove beyond a reasonable doubt that he
3 was innocent?

4 A. Oh, yes. I could be swayed, you know, with the
5 overwhelming evidence, shall we say.

6 Q. Okay. Well, the law is that if you are just
7 leaning towards guilty, I mean even as you're -- as you've
8 expressed your opinion now and the prosecution hasn't proved it
9 beyond a reasonable doubt, then you're supposed to vote not
10 guilty; do you think you could do that?

11 A. No, I don't think I could honestly.

12 Q. I appreciate your honest opinion, and I thank you
13 very much.

14

15

EXAMINATION

16 BY MR. KOCHIS:

17 Q. Mr. Novack, I have a couple questions.

18 A. Yes.

19 Q. You recognize that everybody in the country that's
20 accused of a crime, for example, has a right to have a jury
21 trial?

22 A. Yes, sir, I do.

23 Q. And we require jurors to base their decision in a
24 courtroom only on what they hear in the courtroom, what we call
25 evidence, and what law they are told to follow by the Judge;
26 could you do that if you are a juror in this case?

27 A. I believe so, yes.

28 Q. And if the evidence that you hear in court, the

1 hard facts, differs from what you may have recalled reading in a
2 newspaper article, could you base your decision on the evidence
3 in court and not something that you hear in the news?

4 A. Yes, sir.

5 Q. Now the law also operates on a couple of
6 principles, and one of them as Mr. Negus has referred to is
7 called the presumption of innocence. And, for example, I assume
8 most people assume that the prosecutors just don't pull people's
9 name out of a telephone book and bring them in here for a trial,
10 there's some reason that we're here. But the fact that we've
11 brought Mr. Cooper to trial is not to be taken as evidence
12 against him. The only evidence is the testimony that you hear
13 from the witness stand and from various exhibits. Could you
14 base your decision only on what is produced in the courtroom and
15 not the fact that he happens to be here charged with the crime?

16 A. Yes, I believe I could.

17 Q. And if, for example, the prosecution doesn't prove
18 to you with evidence, with testimony here in court that Mr.
19 Cooper is the one that did the homicides, would you be able to
20 follow the law and if you are not convinced that he did it, for
21 example, vote not guilty?

22 A. Yes, sir, I could.

23 MR. KOCHIS: I don't have any questions on this area, I
24 have further questions.

25 THE COURT: Want to go back to that, Mr. Negus?

26 MR. NEGUS: No.

27 THE COURT: Would you have any further questions at all
28 then?

1 MR. NEGUS: I don't.

2 THE COURT: Mr. Kochis?

3 MR. KOCHIS: Not on this limited area of publicity.

4 THE COURT: Go ahead on any areas.

5 BY MR. KOCHIS:

6 Q. One of the things we have been asking every juror
7 that comes back here, Mr. Novack, is what their thoughts are on
8 the death penalty, so I will ask you that. Do you have an
9 opinion one way or the other about it?

10 A. No. It -- well, basically if the crime is severe
11 enough, which of course murder is, there are extenuating
12 circumstances to murder. If in my opinion -- if my opinion if
13 it's premeditated in any way or -- the individual actually knew
14 what he was doing, I'm in favor of the death penalty in that
15 case.

16 Q. The way it works in our society is there are
17 certain cases -- there are certain crimes that you have to
18 commit before you're even eligible for the death penalty. For
19 example, you can't get the death penalty for petty theft or rape
20 or burglary. As a matter of fact you can't get it for most
21 murder. There has to be a special circumstance involved, as
22 there is in this case, multiple victims; but even in a special
23 circumstance case the law doesn't require that each and every
24 person convicted of a special circumstance case be put to death,
25 they leave the decision to the jury whether the person get life
26 without the possibility of parole or the death penalty, even if
27 it's a planned murder and there's more than one person.

28 So we have the first trial, the guilt trial. And

1 if you determine that Mr. Cooper is guilty, then you'll have a
2 second trial in which both sides will introduce evidence, there
3 will be additional instructions on the law and there will be an
4 argument. Could you base your decision if we get to the penalty
5 phase on which penalty is the appropriate penalty depending on
6 what evidence is introduced at that trial?

7 A. Yes, sir, I could.

8 Q. And at this point you're not predisposed as to what
9 would be the best punishment in this case?

10 A. No, sir, I'm not.

11 MR. KOCHIS: I don't have any other questions along that
12 line either.

13 THE COURT: Let me go back.

14 Mr. Novack, our system of justice does not
15 determine somebody's guilt based upon what comes out on TV or
16 what's in the newspaper; newspapers and television media are not
17 bound by the rules of evidence that have developed over two
18 hundred years in this country, okay?

19 A. Yes, sir.

20 Q. So, if a person be found guilty it must be based
21 upon the evidence in court. And the jurors have to take an oath
22 that they will base their decision only on what they hear in
23 court. When the trial commences I will give each juror a note
24 pad which will be your private note pad throughout the course of
25 the trial, and you may take notes of what comes out in evidence
26 and I will in effect tell you to wipe the slate clean and
27 disregard anything that you heard outside of court. If I do
28 that will you be able to disregard and not consider when you get

1 ready to vote on this case anything that you may have read in
2 the paper but base your decision on what you hear in court?

3 A. I can truthfully say I will try to do that. To
4 give you an out and out answer whether I could, you know, if I
5 can just erase it I'm not sure if I could or not.

6 Q. Well, number one, when you get back into the jury
7 room and the jurors are discussing it, if you mentioned
8 something that wasn't brought out in the evidence one of the
9 other jurors will probably say, hey, I didn't have a note of
10 that, I don't remember them saying anything about that so you
11 can't consider that. Do you understand what I'm saying?

12 A. Yes, sir.

13 Q. What's the nature of your job, Mr. Novack?

14 A. Building tools for KC-10, Atlas, Centaur, all the
15 military contracts.

16 Q. Do you consider yourself a fair-minded person?

17 A. Yes, sir.

18 Q. When you make decisions do you generally try to get
19 all the information you can on it before you make a decision on
20 it?

21 A. Yes, sir, I do.

22 Q. If it's an important one would you do your best
23 then to put aside any feelings that you indicated you had before
24 and base a decision based upon the evidence received in trial if
25 you stay with us?

26 A. Yes, sir. Like I said before, I can try to do
27 this.

28 Q. All right. Would you care to change any of your

1 answers then about the presumption of innocence? Will you at
2 this time then presume the defendant is innocent and find him so
3 unless the prosecution proves his guilt beyond a reasonable
4 doubt?

5 A. Yes, sir.

6 THE COURT: All right.

7 Mr. Negus, anything else?

8 MR. NEGUS: No.

9 THE COURT: Would you wait outside, sir, for further
10 instructions?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Thank you very much.

13 THE COURT: He is departed, Counsel.

14 MR. NEGUS: Challenge for cause.

15 Penal Code Section 1076 says that if a person has
16 formed an opinion, which he has, it must appear that he can and
17 will, notwithstanding such an opinion, act impartially. He
18 can't say that he can and will. That's cause.

19 THE COURT: Read that again, or are you quoting exact
20 language?

21 MR. NEGUS: Yes. Penal Code Section 1076 is the section
22 which deals with disqualification for opinion formed or
23 expressed. It says that you can't disqualify a juror because
24 he's formed an opinion --

25 "... provided, it appears to the court, upon his
26 declaration, under oath or otherwise, that he can and
27 will, notwithstanding such an opinion, act impartially
28 and fairly upon the matter to be submitted to him."

1 He can't say that.

2 THE COURT: Look, doesn't it say unless it appears to the
3 court that he can and will?

4 MR. NEGUS: "... upon his declaration, under oath or
5 otherwise," so he declared under oath that he would try, but --

6 THE COURT: Let me see it please.

7 MR. NEGUS: He didn't say that he could, and he's formed
8 an opinion.

9 THE COURT: Mr. Kochis.

10 MR. KOCHIS: My recollection of his answers were he would
11 base his decision only on the evidence he heard here in the
12 courtroom. If he was not convinced by the prosecution beyond a
13 reasonable doubt of this defendant's guilt he would vote not
14 guilty. He told the Court he presumed Mr. Cooper not guilty
15 until the contrary was proven by evidence in a court of law. It
16 would seem to me, therefore, he is qualified as a juror.

17 I think the confusion may have arisen in that you
18 can't erase something from someone's mind, and I think he was
19 groping with how can he erase from his mind something he may
20 have read. But I think he said he would base his decision on
21 what took place in the courtroom and not what he heard in the
22 newspaper.

23 MR. NEGUS: You can have it read back, the answer. He
24 answered twice the Court's own question he said he would try,
25 but he couldn't say that he would and he said the same thing to
26 me. He also said -- he did not say that he would -- he would --
27 he would -- he would -- it would depend upon proof beyond a
28 reasonable doubt. He never said he could follow the standard of

1 proof beyond a reasonable doubt. He said that if he was leaning
2 towards the guilt, he would vote guilty even if it wasn't proof
3 beyond a reasonable doubt. Mr. Kochis never asked him a
4 question using the phrase "beyond a reasonable doubt".

5 THE COURT: Is that from the Penal Code?

6 MR. NEGUS: 1070, whatever it says there. You have a
7 Xeroxed book?

8 THE COURT: What -- I want to look it up, yes. I see the
9 language of the code section, I want to look at the annotation.

10 Does he have to personally believe that? He's
11 indicated that he can and will, but I want to review the record
12 to indicate that he didn't say.

13 MR. NEGUS: He didn't say he can.

14 THE COURT: So I am wondering.

15 MR. NEGUS: He wasn't sure.

16 THE COURT: I am wondering what my obligation is when I
17 believe that he can based upon his conflicting answer about -- I
18 am certain he didn't so state.

19 MR. KOCHIS: Your Honor, it was my recollection that his
20 last answer to the Court's question included the reasonable
21 doubt phrase and he so indicated that he would follow that law.

22 THE COURT: He didn't say that he could set aside his
23 leanings at this time. The cases seemed to state that even
24 though he's indicated various cases, even though the prospective
25 juror indicates that he has a tendency for later on during the
26 voir dire, he indicates that he can, and will set it aside --

27 MR. NEGUS: He didn't.

28 THE COURT: -- that is not a ground for challenge for

1 cause. I suspect upon further research the law would be that
2 based upon all his declarations the court would have to find
3 that he can and will set it aside. It is a close question in
4 this case. I am going to grant the challenge.

5 So, would you tell him that he's been excused for
6 cause and thank you very much and let's call in another juror.

7

8

COLLEEN HEATH

9 Called as a prospective juror, having been previously sworn,
10 testified as follows:

11

12

EXAMINATION

13

BY THE COURT:

14

Q. Would you take a seat at the end of the table for
15 us, please. It looks like you have got a cast on.

16

A. I broke it last night.

17

Q. You did what?

18

A. Broke it last night.

19

Q. Oh, you could have call in?

20

A. It is not really hurting now that they have
21 immobilized it. It was before they got the cast on, it hurt.

22

Q. Has the doctor indicated it would be all right for
23 you to be here?

24

A. I told him where I would be and he said it would be
25 fine, just keep it up last night. A generous doctor.

26

Q. I am sure we are all very sorry that you had an
27 accident in some way.

28

A. No problem.

1 Q. Has anything happened since we last talked that
2 would complicate matters at all?

3 A. No.

4 Q. You are Colleen Heath?

5 A. Yes.

6 Q. Mrs. Heath?

7 A. Miss.

8 Q. Miss Heath, a few questions that I will have, then
9 Mr. Negus and Mr. Kochis will follow-up with their own
10 questions.

11 First, do you remember that I told you that we
12 could have two possible phases to this trial. First we have
13 have to determine the question of guilt or innocence. If we get
14 over that, we could come to the second phase.

15 Question one. If we do get to a penalty phase, the
16 second phase, will you be able to fairly consider both of the
17 possible penalties, namely, death or life imprisonment without
18 the possibility of parole?

19 A. Yes, I think I could.

20 Q. Two, would you be able to personally vote for
21 whichever one of those that appeared to be most appropriate
22 based upon the evidence and the circumstances brought out in the
23 the trial?

24 A. Yes, I could.

25 Q. You are not supposed to consider penalty or
26 punishment in the guilt phase, it is not relevant, I would so
27 instruct the jury.

28 But, nevertheless, even though I so tell you, do

1 you think that you might have some concern about having to make
2 that life or death type of decision down the road that you would
3 let that concern influence the way you would vote in the guilt
4 phase?

5 A. No, I don't think it would.

6 THE COURT: Counsel.

7

8

EXAMINATION

9 BY MR. NEGUS:

10 Q. Morning.

11 A. Morning.

12 Q. The lawyers are being allowed by the judge to ask
13 most of the questions, and I always go first, and so I am going
14 to ask more than Mr. Kochis. I am not trying to pry or
15 embarrass you, but only to get your honest opinion of the case.

16 What did you hear about this case before you came
17 to court.

18 A. Well, basically I hadn't heard anything until -- I
19 was out of state at the time; in June, I was in New York, and I
20 had heard somebody say that he had been arrested, that he had
21 been returned to Chino prison. That's all.

22 I basically recall some killings that had taken
23 place up there, but not until I came in here.

24 Q. Did you know that the case was coming to San Diego?

25 A. No, I didn't.

26 Q. Did you get that information from the television

27 or --

28 A. From my sister who was here. We just got to

1 talking about the things that had taken place. I was out of
2 state, she mentioned something about it.

3 Q. The judge mentioned an escape. Apparently you knew
4 that there was something involved with Chino prison involved.
5 Did you have any opinion about?

6 A. No, not particularly.

7 Q. Did you form any opinion or have any impressions of
8 Mr. Cooper based upon what you heard?

9 A. Not particularly.

10 Q. Did -- have you formed any opinion as to his guilt
11 or innocence or --

12 A. No.

13 Q. What was your reaction when you found out that you
14 were a potential juror in this particular case?

15 A. Mainly how it would effect the length of time, how
16 it would effect my home life, working. But as far as the case
17 would go, if didn't effect me as far as the notariety or
18 whatever that would go along with it.

19 Q. We're asking some questions about the death
20 penalty. That's not because we will ever necessarily get to
21 that, but the law requires us to ask these questions just in
22 case, as it were.

23 What is your opinion about the death penalty?

24 A. I think it basically would depend as far as -- you
25 mean as far as deciding if that would be the eventual outcome
26 would be?

27 Q. No, I am not asking you how you are going to vote.
28 We're not trying to, you know, tell you how to vote one way or

1 the other, but we're just trying to get a general impression if
2 you are for it or against it.

3 A. I think it depends on the crime, the severity of
4 the crime. If all the circumstances surrounding the crime are
5 found to be, you know, to be true, then I don't think I would
6 hesitate.

7 Q. Do you have -- you say you think it depends on the
8 crime. What do you mean by that?

9 A. Well, I think the severity of the crime and if the
10 person is found guilty. I mean, if everything comes true that
11 is in fact, you know, he's the person that did it and
12 everything, that they're stating that he supposedly had done,
13 then I don't think I would hesitate. I am not against the death
14 penalty, I suppose I should phrase it that way.

15 Q. What is your opinion about life imprisonment
16 without the possibilities of parole?

17 A. I don't know. I suppose that if I had my druthers,
18 if I had my choice between the two, I think I would probably go
19 for life imprisonment.

20 Q. Why is that?

21 A. Well, I'm a nurse, and I tend to think life is
22 pretty precious and --

23 Q. Well, the way that these cases work is first you
24 are asked to decide the question of guilt or innocence without
25 regard to penalty, which may become difficult, but we're asking
26 you to do that. Then if the person that is responsible for the
27 crime is convicted, then you have a separate phase in which you
28 consider what the penalty should be.

1 A. Uh-huh.

2 Q. And that's based on all the evidence that you heard
3 at the, heard on the issue of guilt or innocence, plus
4 additional evidence which has to do with, normally with the
5 person whose been convicted himself --

6 A. Uh-huh.

7 Q. -- and then you have to try and balance the
8 favorable and unfavorable evidence, and if the evidence is more
9 favorable than not, vote for life without possibility of parole,
10 if it is more unfavorable then vote for the death penalty.

11 Do you think you could do that?

12 A. Yes, I believe I could.

13 Q. In this particular case, three of the victims, two
14 of the people died and one boy that survived are all kids.

15 Do you have any particular feelings that because
16 there is kids involved the death penalty should be like
17 automatic without taking into account favorable versus
18 unfavorable I was talking to you about?

19 A. I think that would affect my decision, yes.

20 Q. Okay. Not that it can't effect your decision, but
21 I guess the key word there is "automatic". Then do you think
22 you automatically would vote for the death penalty?

23 A. No.

24 Q. You could take into account all the different
25 factors involved in this whole case in coming in with a proper
26 opinion?

27 A. Yes.

28 Q. Do you belong to an organized religion?

1 A. Yes.

2 Q. What one?

3 A. I am Catholic.

4 Q. Does your participation in the Catholic church, the
5 doctrines of the Catholic church, in anyway influence your
6 opinions about the crime or punishment of the death penalty?

7 A. No.

8 Q. So, this is based on your own personal conviction
9 rather than the church.

10 A. Yes.

11 Q. As you, as you sit there right now, based upon what
12 you have heard, and just the fact that we have been talking
13 about the death penalty, do you have any hesitation in giving
14 Mr. Cooper at this time the presumption of innocence to which
15 he's entitled?

16 A. Do I have any hesitation in that?

17 A. No.

18 MR. NEGUS: Thank you.

19

20 EXAMINATION

21 BY MR. KOCHIS:

22 Q. Miss Heath, I have a few questions as well.

23 I want to talk you just a bit about a comment that
24 you made. You said "because I am a nurse, I consider life
25 precious. If I had my druthers, I would be inclined to consider
26 life without the possibilities of parole as opposed to death."

27 A. Uh-huh.

28 Q. And most everybody has an opinion about the death

1 penalty. What we try to find out at this stage is if their
2 opinions will in any way influence their ability to follow the
3 law.

4 A. Uh-huh.

5 Q. As Mr. Negus explained, in the penalty phase, the
6 second phase, we present additional evidence and we don't get
7 there unless the defendant's already convicted. The judge will
8 instruct you on some additional law, and then with the facts and
9 the law you and eleven other people will reach a decision as to
10 what you should do with the defendant in this case.

11 A. Uh-huh.

12 Q. Do you think your personal preferences, as it were,
13 for life without the possibility of parole over the death
14 penalty would because you any difficulty in following the law in
15 this case?

16 A. No.

17 Q. How do you feel about being put in a position where
18 you have to make a decision of that magnitude?

19 A. I am in a job that I make decisions of great
20 magnitude ever day. I don't think it affects me or anything.

21 Q. There was two occasions, there were two occasions
22 in the 70's, '74 and again I guess in 78, in which death penalty
23 related issues were placed on the ballot, and there was some
24 controversy at that time about the death penalty, people engaged
25 in debates and discussions.

26 Were you active in either one of these campaigns
27 circulating petitions?

28 A. No. In '74 I was too young to vote, and I don't

1 think I voted in '78.

2 Q. In a criminal case, at the end of every criminal
3 case, to make sure there is no mistake, the judge polls jurors
4 at the end of trial; they will do that also at the penalty
5 phase. In this case we will ask the clerk to read to the jury
6 if this was their verdict as read, in fact the way they voted.

7 If the jury in this case determines that the death
8 penalty is the appropriate punishment, would you have any
9 trouble indicating that in open court?

10 A. No.

11 Q. And, likewise, the law requires that the foreperson
12 sign and date a verdict form.

13 If the jury elected you as the foreperson in this
14 case, and you and eleven other people decided that it the
15 appropriate punishment in this case was a death penalty, would
16 you have any trouble signing and dating that verdict?

17 A. No.

18 MR. KOCHIS: Thank you. I have no further questions.

19 THE COURT: We would like to have you remain you outside
20 just a minute to give us a chance to discuss it in private. The
21 bailiff will give you further instructions. Be very careful.
22 Thank you for the extra effort to come in.

23 Anything, gentlemen?

24 MR. NEGUS: No.

25 MR. KOCHIS: No.

26 THE COURT: All right, Mr. Bailiff. You can give her the
27 next appointment date to return, and then bring in Beverly
28 Gordinier.

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BEVERLY GORDINIER

Called as a prospective juror, having been previously sworn,
testified as follows:

EXAMINATION

BY THE COURT:

Q. Good morning, apparently we made you last out of
the four people. You came early and stepped in the courtroom.
Is that right?

A. It was my mistake.

Q. It is all right, no problem. But I am just
apologizing for keeping you waiting all this time.

Are you Beverly Gordinier?

A. Right.

Q. Has anything happened since we last saw you to
complicate our lives, so to speak?

A. No, not regarding this.

Q. So, I have a few questions I want to ask you, then
each of the attorneys will ask you a few questions. So, relax
and we will -- the first question I will preface by saying that
you remember that I told you that there could be two phases,
first the guilt phase and then a phase you are not to suppose to
consider, penalty or punishment depending upon on how you vote,
guilty or not guilty, we could go to the second phase. Remember
I told you that?

A. Yes.

Q. Question one, if we do get to a penalty phase, will

1 you be able to fairly consider both of the possible penalties,
2 death and life imprisonment without the possibility of parole?

3 A. Yes.

4 Q. Would you be able to personally vote for whichever
5 one seemed most appropriate depending upon the circumstances at
6 that time?

7 A. No.

8 Q. Are you telling us that you could vote one way, but
9 not the other?

10 A. Right.

11 Q. Regardless of the circumstances?

12 A. Right.

13 Q. Do you feel, ma'am, that you have an irrevocable
14 position at this time that will not change regardless of what
15 evidence might be produced at the trial?

16 A. Right.

17 Q. What's the problem?

18 A. I don't believe in capital punishment.

19 Q. Do you have a real strong opinion about it?

20 A. I find it illogical.

21 Q. Let me ask you very formally.

22 Do you have such a conscientious opinion regarding
23 the death penalty that such an opinion would make it impossible
24 for you to vote for the death penalty in any case under any
25 circumstances and regardless of the nature of the evidence
26 introduced during the trial?

27 A. Yes.

28 THE COURT: Counsel, do you have any questions?

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EXAMINATION

BY MR. NEGUS:

Q. If we had a two-stage trial and the first issue you had to vote on was guilt or innocence, would your views on the death penalty affect your ability to decide the question of guilt or innocence.

A. No.

Q. You could find somebody guilty of a capital crime if they were guilty, as long as as you didn't have to make a personal decision as to what the penalty should be?

A. Right.

THE COURT: Thank you. I have nothing further.

EXAMINATION

BY MR. KOCHIS:

Q. I do, Mrs. Gordinier.

The way the system works, for example in this case, the same jury is going to sit in both phases: Both the penalty ✓ phase, and if there is a conviction, excuse me, if there is a penalty phase. Do you understand that?

A. Yes.

Q. And you apparently have some rather strong feelings against the death penalty; is that true?

A. That is true.

Q. If you were selected as a juror, and we finish the guilt phase, and you were back with eleven other people evaluating the evidence and listening to their opinions of the

1 evidence, and you sat down and you thought that based on the
2 evidence and the law, if I have to vote, I have to vote that
3 this defendant is guilty, if it would end here, and then you
4 think if I vote he's guilty then it is going to put me in the
5 second trial where I will go to determine whether to take his
6 life or not.

7 Knowing that if you voted guilty you would get to
8 the second trial and have to make that decision, would that
9 effect your vote in the guilt phase?

10 A. That is a long question.

11 Q. I'm sorry. Do you want me to try to shorten it?

12 A. Please.

13 Q. There maybe a tendency on the part of some people
14 who have strong feelings against the death penalty to say,
15 because I don't want to reach that decision, I would find the
16 defendant not guilty, regardless of what the evidence is, so I
17 don't have to be put in the position where I have to make that
18 decision.

19 Do you have feelings along that line?

20 A. No.

21 MR. KOCHIS: I have nothing further.

22 THE COURT: Would you please wait outside just a moment.
23 We may excuse you. If we do, I want to thank you very much for
24 coming. We may not. We will have further instructions for you.

25 Counsel.

26 MR. KOCHIS: Challenge by the People.

27 MR. NEGUS: Objection, she said she can be fair as to
28 guilt, which is the only statutory challenge.

1 I also note that she's from zip code 92104, which
2 is North Park, which is one of the lowest per capita income zip
3 codes in the County. We appear to be losing our fair
4 representative cross-section of the jury through the process of
5 Witherspoon.

6 THE COURT: Well, I think, No. 1, the Supreme Court in
7 Fields held, even though they could be fair in the guilt phase,
8 if they cannot be impartial in the penalty phase, that it simply
9 is not unconscionably improper to excuse them; that the law so
10 favors the single jury that that is good public grounds for
11 excusing them at that point.

12 MR. NEGUS: But the Field's case --

13 THE COURT: I don't know why you are laying that
14 foundation.

15 MR. NEGUS: The penal codes indicates that the only
16 challenge for cause in the penal code, that's listed in the
17 penal code is if they can't be fair on guilt or innocence, and
18 the Fields case left open the issue of whether or not
19 Witherspooning could be, could deprive the defendant of a
20 representative cross-section, as we're losing minorities and
21 poor people primarily in this particular process. I would
22 submit that it is depriving them.

23 THE COURT: Throughout this voir dire selection, I'm not
24 necessarily agreeing with your determination that this is a
25 minority or a poor person, I am not analyzing the zip codes,
26 things of that nature, so I want the record to reflect that I am
27 not agreeing by acquiescing to the classification of poor people.

28 I will overrule your challenge. However, I think

1 the Fields case does decide that point. In any event, it is
2 overruled. She's excused for cause. I want her to report back
3 to the jury room.

4 All right. I need to talk to the prosecution, and
5 it may be public, it may require it to be private. You gave me
6 an order to bring several witnesses from out of state. One of
7 them I feel that I need some further information to establish
8 good cause.

9 Are you able to do that in front of Mr. Negus?

10 MR. KOCHIS: I would think so. Is that Mr. Newbury from
11 Massachusetts.

12 THE COURT: I believe that is the one.

13 MR. KOCHIS: I believe I talked to Mr. Negus about this,
14 and he has a copy of the tape recording of a telephonic
15 interview that took place between the Sheriff's office and Mr.
16 Newbury. He's a representative of the Pro Keds tennis shoes and
17 would be able to testify that the black Pro Keds tennis shoes,
18 the "Dude" type that Mr. Taylor testified at the preliminary he
19 gave to Mr. Cooper, is not sold over the counter anywhere west
20 of the Mississippi; that if you get a pair of those tennis shoes
21 you have to get them from a penal institution, and that they
22 have a distinctive sole impression pattern which is consistent
23 with the pattern that was happens found inside the lease home
24 and blood on the Ryen bedsheet.

25 THE COURT: All right. There is also one of them you
26 didn't sign in your declaration. I will bring them back to the
27 clerk and you can do that.

28 Anything else before we break for lunch?

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MR. KOCHIS: No.

THE COURT: See you at 1:30.

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(Noon recess)

1 SAN DIEGO, CALIFORNIA, WEDNESDAY, SEPTEMBER 26, 1984, 1:30 P.M.

2

3 THE COURT: Counsel, you are all very prompt and I
4 appreciate that.

5 Robert Brent is that the next one?

6 THE BAILIFF: Robert Brent is the next one.

7 THE COURT: Bring him right in, please.

8

9

ROBERT BRENT,

10 called as a prospective juror, having been previously sworn,
11 testified as follows:

12

13

EXAMINATION

14

BY THE COURT:

15

Q. Mr. Brent, would you take the chair at the end,
16 please. Good afternoon.

17

A. Hello.

18

Q. Since we last saw you has anything drastic happened
19 to you that might complicate things for us?

20

A. Well, no. But while we are on that subject of
21 complications, I was one of the persons who presented a certain
22 amount of reasons why I didn't think I should be called upon to
23 serve in this case, and I'm not sure exactly what happened but I
24 was still selected past the first round. I was rather surprised
25 by it because --

26

Q. I've forgotten, Mr. Brent, what did you tell me at
27 the time?

28

A. That I'm customer service supervisor for a company

1 here in town, a manufacturing firm, and that having me serve on
2 this case for what, three to six months, would not only present
3 a large financial burden on me, it would also present the same
4 type of burden on my company, and to be honest about it I don't
5 see how either of us could afford it. I know I couldn't. My
6 company would flat have to replace me to maintain the operation
7 of the customer service facility.

8 Q. Maybe it just didn't come through in the same
9 fashion the last time, I can't recall. What company could you
10 do you work for?

11 A. I work for Powermark Division of Topaz. They are a
12 local manufacturer of computer peripheral equipment.

13 Q. They will pay you for some jury service?

14 A. They would pay me for up to 30 working days, beyond
15 that point the financial burden is mine.

16 Q. Isn't that per year, sir, so you get paid for 30
17 days this year and 30 days next year?

18 A. I'm not sure on that. I could check. It might be
19 that way, yes.

20 Q. We've had others -- Are you under an union
21 contract?

22 A. No, there's no union contract. It's a non-union
23 organization.

24 Q. When it comes that way, if it's 30 in 1984 and 30
25 in 1985, we're not going to be going too far beyond that since
26 we're on a four-day week of trial, there will be holidays and
27 other time off between now and the end of the year and even
28 subsequent to that.

1 A. Right.

2 Q. So, where it sounded like it was only going to be
3 maybe three weeks of sacrifice, or something like that, at the
4 outside, and I've required others to go ahead and eat that
5 additional time considering the severity of the case. As far as
6 the company is concerned are you really irreplaceable?

7 A. Absolutely. I'm the best technical expert they
8 have. It would -- it would flat fall on somebody else with
9 capable hands to do it. To do that they'd have to go outside
10 the company to get it.

11 Q. They would have to simply replace you?

12 A. Yes. See, every day I have to make decisions on
13 how to handle service in New York City or service in Atlanta,
14 service in Sacramento, plus maintain the work flow inside the --
15 inside the company. They send material back all the time for us
16 to work on. And it's more than a full time job for one person,
17 so it could not --

18 Q. How far are you travelwise from this location to
19 your work?

20 A. Approximately 12 miles, I think.

21 Q. You're merely checking in periodically at work.
22 For instance, we don't start here till 9:30 and you have an hour
23 and a half off for lunch; you are through here at 4:00 at the
24 latest on this trial; and that's -- those brief periods before
25 and after court, so to speak, would not enable you to hang on to
26 things and keep it going?

27 A. Well, like I said, it's more than a full time job
28 for one person. I'm struggling as it is. I'm new at the job.

1 I have been there six months, not fully established in it, plus
2 we have many, many changes coming down the pipe, new warranty
3 programs, new service needs, new product lines that are coming
4 out.

5 Q. Sir, I don't doubt for a moment your sincerity nor
6 the importance of your job, it's just that I have an important
7 job, too, you see, and we need you.

8 A. I understand that, Judge. What I'm trying to tell
9 you is that those are just some of the influences on me. I also
10 have -- I also have school at night. I attend college at night
11 and I have a second job that I do on a random time basis as the
12 need arises.

13 Q. Does your wife work outside the home?

14 A. No, she doesn't. She is a housewife and very proud
15 of it, and I don't mind it at all. It puts the entire load on
16 me and I can carry it, but I don't think I'm -- given the facts
17 of my amount of time involved in employment and gainful
18 employment, I don't think I would be a good candidate for this
19 case.

20 MR. KOCHIS: Could we have Mr. Brent step outside for
21 just a moment?

22 THE COURT: Would you mind let us talk about it privately
23 for a moment please thank you?

24 PROSPECTIVE JUROR: Okay.

25 MR. KOCHIS: I'm prepared to stipulate that he be
26 excused.

27 MR. NEGUS: As am I, ~~as~~ I was before.

28 THE COURT: You will do so as well.

1 MR. NEGUS: Mr. Kochis objected last time. I -- I agree
2 to stipulate, yes.

3 THE COURT: Okay then, all right. I just want to make
4 sure I understand you. If you have some way, some code of
5 communication, Counsel, to where you can let each other know
6 when there might be a stipulation, it would --

7 MR. KOCHIS: We can work on that.

8 THE COURT: Okay.

9 MR. NEGUS: Just -- just for future jurors I think that
10 you may be under a misapprehension on the 30-day thing because
11 there's not 30 days of court that we're lucky to have in 1984,
12 and the bulk of the testimony -- bulk of the jurors'
13 participation in the case would be in 1985, and I doubt if 30
14 days would get them into the middle of February.

15 THE COURT: I haven't actually counted it but I would
16 expect that we would have a jury certainly by November, then
17 that would give us 30 days out of two months just about,
18 wouldn't it?

19 MR. NEGUS: But the problem is that you're going to be
20 gone 12 days in the first part of November. There's
21 Thanksgiving Christmas and New Years holidays all in there, so I
22 don't think -- I believe Mr. Kochis has calculated there was
23 something like 20 court days -- How many?

24 MR. KOCHIS: Even if we start opening statements as late
25 as October the 29th I think between the 29th and the 31st there
26 is approximately 28 to 31 court days, in that area.

27 MR. NEGUS: But the --

28 THE COURT: And then I'm gone some of those.

1 MR. KOCHIS: That's taking into account that you are
2 gone.

3 THE COURT: Well, that's pretty close to 30 days.

4 MR. NEGUS: But the point I'm making is that -- that 30
5 court days will be like the end of February, something like
6 that, and we're telling people that they have to be ready to
7 serve until, and there's two months that you are talking about
8 pay. I think that's a miscalculation.

9 MR. KOCHIS: It's not going to arise that often, Judge.
10 There aren't many people that get paid 30 days for each calendar
11 year. I'm sure people are going to fall outside of that or
12 inside of that.

13 THE COURT: I wouldn't be surprised but what that's a
14 fairly standard rule of many employers.

15 THE COURT: All right.

16 Would you tell Mr. Brent thanks but we don't need
17 him any more, please, check in downstairs for further
18 instructions.

19 THE BAILIFF: The next one will be Sharon Proctor.

20 SHARON PROCTOR,
21 called as a prospective juror, having been previously sworn,
22 testified as follows:

23

24

EXAMINATION

25 BY THE COURT:

26 Q. If you would sit at the other end of the table and
27 preside with me, please. Are you Sharon Proctor?

28 A. Yes, I am.

1 Q. Ms. Proctor, has anything happened in your life
2 since we last saw you that would complicate your service in this
3 case?

4 A. No, it hasn't.

5 Q. Okay. I have about three questions to ask of you
6 and then each of the attorneys have some questions, so would you
7 relax a minute, please. That's why we've gathered around in
8 this particular fashion, so that you can relax a little bit.

9 You remember I told you that there could be two
10 possible phases, the guilt phase first and then depending upon
11 the outcome, a penalty phase. In the first phase, the guilt
12 phase, you are not to consider penalty or punishment but only in
13 the second phase. If we do get to a penalty phase would you be
14 able to fairly consider both possible penalties, death and life
15 imprisonment without the possibility of parole?

16 A. I think so.

17 Q. Would you be able to personally vote for either one
18 of them and would you make that choice depending upon the
19 circumstances existing as brought out by the evidence?

20 A. Yes.

21 Q. Do you think you might be so concerned with having
22 to make a real weighty decision later on possibly in a penalty
23 phase that that concern might affect the way you would vote in
24 the guilt phase even though you are not supposed to consider
25 penalty in the guilt phase? That's kind of complicated. Do you
26 understand that?

27 A. That I would be overly concerned about the penalty
28 phase that it would weigh on my diagnosis in the guilt phase?

1 Q. In the guilt phase, yes. Do you think you might
2 consciously or unconsciously do that?

3 A. I hope not. I don't think so.

4 Q. Okay. Mr. Negus, please.

5

6

EXAMINATION

7

BY MR. NEGUS:

8

Q. Mrs. Proctor, the lawyers are asking most of the
9 questions in these proceedings, and as I go first I usually ask
10 more. I'm not trying to pry or anything, I'm just trying to
11 bring out what your honest opinions are.

12

A. Uh-huh.

13

Q. What had you heard about this case before you first
14 came to court?

15

A. I had -- when the crime was committed I think I saw
16 it on the news that night, and then I had heard that someone was
17 picked up, something about on a boat in Ensenada or Tijuana --
18 no, in Ensenada. I think that's what it was, I'm not sure. And
19 that I had heard that the trial was going to be changed to San
20 Diego.

21

And then I was called for jury duty and I knew that
22 the trial was going to be -- that the jury selection was going
23 to start Wednesday; and I was called back Wednesday and I
24 assumed that that was -- I kinds of put the two and two
25 together. And I don't watch much TV, but I have kind of
26 followed along in the paper.

27

Q. Has the case been of more interest to you than
28 other crime news?

1 A. Probably not, no. I couldn't say it was any -- you
2 know, not any more than what the rest of the items that I read
3 in the paper, the article.

4 Q. What was your impression of Mr. Cooper from the
5 stuff that you read in the paper?

6 A. I don't think I got an impression from reading the
7 paper of him as a person. I think I got more of an impression
8 the first time I saw it on TV.

9 Q. What impression was that?

10 A. That he was wilder looking than he appears here,
11 and I think that was my only impression.

12 Q. Did you have any -- did you have any belief as to
13 whether or not he was guilty or innocent?

14 A. Probably when he was picked up it was presented to
15 me like he was the person that had committed the crime.

16 Q. Do you still feel that way?

17 A. I don't know.

18 Q. Do you -- were there any sort of like facts from
19 which you faced that or was that just the impression that
20 somebody new something?

21 A. No, it wasn't probably from the facts because I
22 don't remember the facts. It was probably the presentation of
23 the newscasts saying we've got the person, you know, that's
24 committed the crime.

25 Q. How much credence or belief do you normally give to
26 that sort of information? Do you think that's reliable
27 information that would stick with you or what?

28 A. I don't always -- I've always been of the opinion

1 that that's kind of convicting the person before the trial, and
2 I've talked about that several times with different people and I
3 kind of feel that sometimes the news media has that tendency, or
4 it appears to me that they have that tendency, of convicting the
5 person that's picked up for a crime before the trial has taken
6 place, so I don't think, to answer your question, I always put a
7 lot of credence into that.

8 Q. In this particular case do you think that if you
9 were to sit on this particular jury you could avoid doing that?

10 A. I think I could.

11 Q. So, you could -- whatever opinion you have you
12 could put aside and decide this case based upon the actual
13 evidence that comes out in the courtroom rather than some
14 newspaper person's opinion, or television person?

15 A. Yes; yes, I could.

16 Q. How did you feel about being selected as a
17 prospective juror in this particular case?

18 A. I felt very nervous. I feel very nervous now. I
19 feel very nervous about being part of anything of this
20 magnitude.

21 Q. Is that out of concern for your safety or just --

22 A. No; no.

23 Q. -- not wanting to be on television?

24 A. No, I -- I've tried to analyze my feelings, I can't
25 really say. I don't fear for my own safety. I -- I fear for
26 making -- if I was put in this position to making a fair
27 judgment.

28 Q. Is there anything about what you know about the

1 case that leads you to believe that you couldn't do that?

2 A. No; no.

3 Q. Your -- when the -- when the Judge asked you the
4 question about the -- the first question he asked you about the
5 death penalty you sort of paused and then said, "I think so."
6 Now I'm never sure whether that's because of the nature of the
7 questions we are asking you or -- did you have any hesitation in
8 answering the question or did you just try to make sure you
9 understood what it was?

10 A. I wanted to make sure I understood the question.
11 And I also -- it's very hard for me to say, yes, you know, I
12 could -- I could do that without knowing the background or
13 knowing all the evidence that leads up to that question. I
14 can't just -- it's hard for me to say, yes, I believe in the
15 death sentence without saying. Yes, I believe in the death
16 sentence because of this, this and this.

17 Q. So, what you're saying is if we're asking you to
18 predict how you're going to vote you can't really say that at
19 this point in time?

20 A. Yes, that's what I'm saying.

21 Q. Okay. What is your -- what is your opinion about
22 the death penalty in general? I mean do you have a particular
23 philosophical or other opinion on it?

24 A. I have never up until this point in time in my life
25 had an opinion on the death penalty. I'm not -- I cannot make
26 an opinion on the death penalty unless I had all of the facts.
27 I would have to be sure of my facts in my own mind. I don't
28 know if I could go through a scenario and decide, yes, this is

1 what, you know, has to happen to this. I've tried to do that.
2 I think I could. I think I would have to have the evidence
3 presented to me before I can make that decision.

4 Q. What -- what do you think about the penalty of life
5 imprisonment without the possibility of parole? Do you have any
6 particular feelings on that?

7 A. I feel like, you know, that -- that's also a just
8 penalty for certain things, you know. But I would also have to
9 judge that in my mind. You know, I feel like life imprisonment
10 with no possibility of parole is just -- I don't have any strong
11 feelings, yes, you know, or, no, that no one should serve a life
12 in prison. I feel like if the crime fits that, then that's the
13 way it should be.

14 Q. Do you have any preconceptions about this
15 particular case in that, for example, it involves children being
16 killed or in that a whole family was killed, that just without
17 going through all the different circumstances which you
18 mentioned that automatically this particular crime deserves a
19 particular penalty?

20 A. No, I don't think this -- no, not in my own mind, I
21 don't have a sentence already tacked on to it.

22 Q. That's basically what we wanted. I like that.

23 A. Yeah, uh-huh, yeah.

24 Q. Okay. Fine. Thank you very much.

25 THE COURT: Mr. Kochis.

26

27

EXAMINATION

28 BY MR. KOCHIS:

1 Q. I have a few questions. I'd like to talk to you a
2 little bit first in general terms about the the death penalty
3 recognizing that you don't have any hard and fast feelings about
4 it one way or the other. As you can tell, this is somewhat of a
5 screening process.

6 A. Right.

7 Q. And we talk to people about their views generally
8 and then we talk to them somewhat specifically about their views
9 in this case. Some people, for example, to give you the two
10 extremes feel, that in any case where there is more than one
11 person killed they would vote for the death penalty in every
12 case and never consider the possibility of a sentence of life
13 without the possibility of parole; do you happen to be one of
14 those people?

15 A. No.

16 Q. On the other extreme or the other viewpoint perhaps
17 are people who for whatever reason philosophical, religious,
18 some life experience they've had they feel that no one has a
19 right to make a decision whether another person lives or dies
20 and they would always vote for life without the possibility of
21 parole no matter how horrible the crime, no matter what the
22 evidence is, and they could never vote for the death penalty;
23 under any circumstances do you fall into that category?

24 A. No.

25 Q. You mentioned that you are a little nervous with
26 dealing with the decisions and I believe the word you used was
27 "of this magnitude"; how do you feel about making decisions of
28 this magnitude, other than being a little nervous about it?

1 A. I am nervous about making decisions about this, but
2 I -- I don't think that I would have a problem making a decision
3 if the evidence pointed one way or the other to me.

4 Q. Okay. Let me get to the -- perhaps the point in
5 question I was going to ask you.

6 A. Okay.

7 Q. A number of people who don't have a position one
8 way or the other about the death penalty have never had to deal
9 with it, so therefore they've never spent the time thinking
10 about it. Some of those people when they get in a trial setting
11 and for the first time are placed in a position where they have
12 to make the decision one way or the other, for example, that's a
13 decision when we get to the penalty you will have to make, they
14 at that point come to grips there, they say I can't make the
15 decision, it's just too heavy for me, I won't take part in it;
16 do you see any type of problem existing like that in you?

17 A. I don't think so. I -- I think after I got to that
18 point that I would be able to make a decision.

19 Q. Okay. So do I take it that, let's assume we get
20 beyond the guilt phase, we've already had the trial and you and
21 eleven other people determine that the evidence shows Mr. Cooper
22 is guilty beyond a reasonable doubt. We move into the penalty
23 phase, there will be a lot of other types of evidence that will
24 be admitted. You will hear a number of things. The Judge will
25 instruct you on what factors you can consider in determining
26 whether to vote for life or death. Do you feel comfortable
27 within yourself that although it would be difficult you could
28 listen to the evidence, listen to the law, and vote one way or

1 the other?

2 A. Yes.

3 Q. The law requires, to make sure there's no mistake,
4 that we poll jurors at the end of a case, every criminal case,
5 the Judge goes down the line and asks each juror --

6 A. Uh-huh.

7 Q. Sounds like you've done it before perhaps.

8 A. I've read about it and, you know, probably watched
9 it on a movie --

10 Q. If the jury in this case felt that the appropriate
11 punishment was death and the Judge polled all the jurors, would
12 you have any problem answering in open court that that was your
13 decision as well?

14 A. I think I would have problems with it. I mean, I
15 can't imagine anybody not -- I think I could probably do it, but
16 it would be a real problem.

17 Q. Okay. Likewise -- Well, let me ask you this:
18 Would that in any way -- let's say you're back in the jury room
19 during the penalty phase and you're evaluating the evidence and
20 the law with the other eleven jurors and you're deciding what
21 the evidence has shown you is the appropriate punishment, death
22 or life, would your concern about being polled in open court in
23 answering yes that was my verdict, would that influence your
24 decision do you think? For example, you might say, gee, I don't
25 want to announce in open court that that's the way I voted, and
26 therefore I would vote for life without --

27 A. My concern about standing up there and saying how I
28 voted would influence my decision?

1 Q. Would it?

2 A. Would it?

3 Q. Yes.

4 A. No.

5 Q. Likewise as part of the courtroom process, the law
6 requires that the foreperson, the person who is elected the
7 foreperson, date and sign a jury form; if the jury elected you
8 as the foreperson and they determined that the appropriate
9 punishment in this case was death, would you be able to sign the
10 death verdict?

11 A. Yes.

12 Q. Thank you.

13 I have no further questions.

14 THE COURT: Nor do I.

15 Would you kindly wait outside for a few minutes,
16 give us a chance to discuss it privately? The bailiff will
17 instruct you further. Thank you for coming in this afternoon.

18 PROSPECTIVE JUROR: Sure.

19 THE COURT: Counsel, any challenges?

20 MR. NEGUS: No.

21 MR. KOCHIS: No.

22 THE COURT: You can instruct her then when to return the
23 next time.

24 Before you call in another juror, the reporter from
25 the Associated Press, I haven't personally seen it in print
26 anywhere, but I was told by another judge that the names of the
27 jurors has come out in the paper?

28 THE REPORTER: I can't hear you.

1 THE COURT: She said she did not do that.

2 MS. TONTINI: I did not give them any names at all.

3 THE COURT: Thank you very, very much. I may be wrong.

4 MR. KOCHIS: I can tell the Court that the article I read
5 in San Diego did not contain the first nor last name of any
6 juror.

7 THE COURT: This was a judge in Ontario that told me that
8 he had thought that he had seen the names of jurors.

9 MR. NEGUS: The article in the Daily Report in Ontario
10 which was taken from the Associated Press named -- mentioned the
11 jurors by occupation only.

12 THE COURT: Good. Thank you very much for the
13 cooperation.

14 Bring in the next juror, please.

15 THE COURT: Bring in the next juror.

16 THE BAILIFF: Mr. Fabian.

17

18 PAUL FABIAN

19 Called as a prospective juror, having been previously sworn,
20 testified as follows:

21

22 EXAMINATION

23 BY THE COURT:

24 Q. Good afternoon, sir.

25 A. Good afternoon, judge.

26 Q. Are you Paul Fabian?

27 A. Yes, sir, I am.

28 Q. Mr. Fabian, since the last time we saw you here in

1 court, has anything happened to you, your life, to complicate
2 our selection process in any way?

3 A. No, sir.

4 Q. I have just a few questions myself, then each of
5 the attorneys have a few questions for you. And I have gathered
6 you in a round table kind of informal way in hopes that you will
7 sit back and relax a little bit.

8 A. Yes, sir.

9 Q. Remember I told you before that there could be two
10 possible phases, first would be the guilt phase, then as the
11 jurors determined that in a certain way, then we would go to the
12 penalty phase. But we don't know if we're going to get there.

13 If, however, we do get to the penalty phase, will
14 you be able to fairly consider both of the two possible
15 penalties: Death and life imprisonment without the possibility
16 of parole?

17 A. I would.

18 Q. Is that yes?

19 A. I do. *see 525*

20 Q. Would you be able to personally vote for either one
21 of them, and if you would, make that decision depending upon the
22 circumstances brought out by the evidence?

23 A. Yes, sir. *⊗*

24 Q. In the guilt phase the jurors are not supposed to
25 even think about discussing or considering the question of
26 penalty. But do you think you -- do you have such a concern for
27 having to make perhaps that heavy decision down the road that
28 that would affect the way you might vote in the guilt phase?

1 A. No.

2 THE COURT: That is all I have, sir.

3 Mr. Negus.

4

5

EXAMINATION

6 BY MR. NEGUS:

7 Q. Mr. Fabian, the judge has allowed the lawyers to
8 ask most of the questions. I usually go first and ask most of
9 the questions. We're not trying to pry or embarrass you in any
10 way. The law requires us to get your honest opinions about this
11 before we can proceed any further.

12 What had you heard about this case before you came
13 in court?

14 A. Well, sir, I saw it on TV and read it in the
15 newspaper.

16 Q. Do you remember what you heard on the TV or the
17 newspaper?

18 A. Well, it is about a murder.

19 Q. Do you remember any of the details of the case?

20 A. No.

21 Q. Did you hear anything about Mr. Cooper, my client?

22 A. Well, I just heard the name Kevin Cooper is all.

23 Q. Did you hear anything about his background?

24 A. No.

25 Q. What impression did you have from the television?

26 A. Beg your pardon?

27 Q. What impression did you have of Mr. Cooper from the
28 television?

1 A. Well, just like what I said, what I read in the
2 paper. Golly, that is all I said.

3 Q. Did you have any opinion as to whether or not he
4 did the crime?

5 A. Well, that I don't know, because I just saw it on
6 the TV, I did read some part in the newspaper, and that's it.

7 Q. What was your, what was your reaction when you
8 found out that you were a prospective juror in this particular
9 case?

10 A. Nothing.

11 Q. In asking you these questions about the death
12 penalty, we're asking you questions which would only come up if
13 in fact somebody was convicted of these particular crimes. The
14 fact that we're asking these questions doesn't suggest to you
15 that Mr. Cooper must be guilty of anything; is that correct?

16 A. Yes.

17 Q. So, you weren't -- you would be willing to presume
18 him innocent even though we're asking questions now because the
19 the law requires us to talk about a possible penalty.

20 A. That's right.

21 Q. What do you think about the death penalty? What's
22 your personal opinion?

23 A. Beg your pardon?

24 Q. What is your personal opinion about the death
25 penalty?

26 A. Well, to my understanding the penalty is that you
27 get to prove the guy is really guilty, but you just can't punish
28 a guy; he's not proven guilty.

1 Q. Do you think it is a good idea to have a death
2 penalty?

3 A. Well, I am not suggesting any death penalty.

4 Q. No, I understand. I am not asking you to tell me
5 what you are going to do in this particular case if we ever get
6 there, we're just trying to get some idea what your personal
7 beliefs are.

8 So, leaving aside the question of what happens in
9 court, do you have a personal belief for or against the death
10 penalty?

11 A. I'm against the death penalty.

12 Q. In what way? Why are you against it?

13 A. Well, to my understanding all California right now,
14 we don't have any death penalty.

15 Q. Are you against it because we don't have the it?
16 Would you like to see it?

17 A. No, I don't. *see 525*

18 Q. Do -- do you have an opinion about the penalty of
19 life imprisonment without the possibilities of parole?

20 A. Well, as for me I'd rather go with that life
21 imprisonment than to have the death penalty.

22 Q. Do you belong to an organized religion?

23 A. Yes, I am a Catholic.

24 Q. Does the tenets of your religion in any way
25 influence your opinion about the death penalty?

26 A. I didn't quite understand what you are saying.

27 Q. Does your religious beliefs influence your opinion
28 about the death penalty?

1 A. Yes, sir.

2 Q. If, at the end of a case, you were to be sitting on
3 a jury which had, which had to vote based upon evidence and
4 instructions of law for death on the one hand as a penalty
5 versus life without the possibility of parole on the other, you
6 had to make that decision based on the law, could you do that?

7 A. Oh, yes.

8 Q. If death were the appropriate penalty, could you
9 vote for death?

10 A. No.

11 Q. Why not?

12 A. Well, just like what I said, that it is against my
13 religion, and I am not going to vote for no death penalty.

14 Q. Even if it were required under the law?

15 A. Yes.

16 Q. If you were to have to make a decision on somebody,
17 as to whether or not they were guilty or innocent, would your,
18 would you be able to do that, vote for whichever one it was?

19 A. Yes.

20 Q. Even if there was a death penalty at the time?

21 A. Yes, I would.

22 Q. Are there any cases in which it would be possible
23 for you to vote for the death penalty?

24 A. I guess I do. *see 525*

25 Q. What kind of case would that be?

26 A. Well, as I said in the first place, that my
27 religion, that the guy or the person is found guilty, unless
28 there is some way in which we couldn't solve the problem instead

1 of the death penalty. It would be just like what you said, he
2 could give him the life imprisonment.

3 MR. NEGUS: Thank you. I have nothing further.

4

5

EXAMINATION

6 BY MR. KOCHIS:

7 Q. I have some questions, Mr. Fabian.

8 A. Yes, sir.

9 Q. If I understand your answers to Mr. Negus, you are
10 opposed to the death penalty.

11 A. Yes, I do. see 525

12 Q. And that's in part because of your religious
13 beliefs?

14 A. Uh-huh.

15 Q. Does that mean that in this case, no matter what
16 the evidence was, you'd never vote for the death penalty?

17 A. No, I don't. see 525

18 Q. And I asked the question perhaps the wrong way.
19 Does that mean in this case you'd vote for life without the
20 possibility of parole everytime and never vote for the death
21 penalty?

22 A. Well, this is the first case I would vote for
23 death, between the death penalty and imprisonment without
24 parole.

25 Q. I recognize you have never had to sit on this type
26 of case.

27 A. No. I have been in court in Chula Vista four
28 times. This is my fifth time. These were things about

1 drunk-driving.

2 Q. Misdemeanor type cases?

3 A. Yes, sir.

4 Q. But, let me make myself clear. Your feeling, you
5 apparently have some strong feelings against the death penalty;
6 is that true?

7 A. Yes, I do.

8 Q. And that would -- would these feelings prevent you
9 for voting for the death penalty in this case?

10 A. I do. *see 525*

11 THE COURT: I'm sorry, what was your answer? Would your
12 feelings prevent you from sitting for the death penalty?

13 BY MR. KOCHIS: Let me see if I can ask the question again.

14 The feelings that you have against the death
15 penalty, would those feelings prevent you for voting for the
16 death penalty in this case?

17 A. I do.

18 Q. When you say "I do", does that mean yes? *★*

19 A. I am against.

20 Q. The death penalty?

21 A. Yes.

22 Q. And you wouldn't be able to vote for the death
23 penalty?

24 A. No, I don't.

25 Q. And that would be no matter what the evidence was?

26 A. That's right, I don't.

27 Q. Would you, because of these strong feelings that
28 you have, would you be opposed to taking part in any proceeding

1 that was a step toward the death penalty?

2 A. No, I don't.

3 MR. KOCHIS: I don't think that was a good question.

4 I don't have any further questions on this issue
5 for this jury.

6 PROSPECTIVE JUROR: Besides one thing. As I said, I am
7 against capitalized punishment.

8 BY MR. KOCHIS:

9 Q. By that, you mean the death penalty?

10 A. Yeah.

11 MR. KOCHIS: Fine.

12

13

FURTHER EXAMINATION

14 BY MR. NEGUS:

15 Q. Let me just clarify one point in my mind.

16 If you sat as a juror and had to choose between the
17 death penalty and life without the possibility of parole based
18 upon the law and the evidence --

19 A. Uh-huh.

20 Q. -- and the law and the evidence required you, as a
21 juror, to select the death penalty as the appropriate
22 punishment, could you follow the law?

23 A. Yes. But I wouldn't vote for death penalty.

24 Q. When you say "vote", are you talking about as a
25 juror or as a citizen?

26 A. As a citizen.

27 Q. But as a juror if you are required to impose the
28 death penalty you could.

1 A. No, I won't.

2 Q. Could you, if you are sitting as a juror and the
3 law were such that you were required as a juror to impose the
4 death penalty as a juror?

5 A. Uh-huh.

6 Q. Not what you like the law to be. But if the law
7 was, said you did, would you impose the death --

8 A. I am opposed.

9 Q. You will oppose it or impose?

10 A. Oppose it.

11 MR. NEGUS: Nothing further.

12 THE COURT: Are you saying, sir, that you could never
13 vote for the death penalty regardless of the evidence?

14 PROSPECTIVE JUROR: No, sir, I don't.

15 THE COURT: When you say no, sir, you are not really
16 answering the question. Answer the question, if you can, yes or
17 no.

18 Can you ever vote for the death penalty depending
19 upon the evidence?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Would you mind waiting outside
22 for further instructions and let us discuss it privately and the
23 bailiff will tell you what to do next. Thank you very much.

24 Gentlemen, I am considering a challenge excusing
25 for cause. Do you wish to be heard?

26 MR. KOCHIS: I will make the challenge on behalf of the
27 People.

28 MR. NEGUS: He said he would be fair on guilty and I

1 think that is what is important. I'm not sure that his answers
2 were unequivocal on the death penalty, because he seemed to have
3 problems with the word vote we kept going back -- he said a
4 couple of times he could follow the law, even if it was opposed
5 to him. He also took the word "to vote" to mean something you
6 did as a citizen. I am not really sure exactly that he's
7 unequivocally opposed to the death penalty.

8 THE COURT: There was some area of uncertainty there, I
9 admit that. But he never lost an opportunity to indicate his
10 opposition. He seemed to say when I put the simplest question
11 as I possibly could. I will grant the challenge and excuse this
12 defendant for cause. Please so inform him and bring in the next
13 juror.

14 THE BAILIFF: Mrs. Eiffe.

15

16

KATHRYN EIFFE

17 Called as a prospective juror, having been previously sworn,
18 testified as follows:

19

20

EXAMINATION

21 BY THE COURT:

22 Q. Good afternoon, ma'am. Please be seated.

23 Are you Kathryn Eiffe?

24 A. Eiffe.

25 Q. Eiffe. Thank you very much.

26 A. Right. Like beef.

27 Q. Oh, no, something -- like something else.

28 Mrs. Eiffe, has anything happened to you since you

1 were last in court that would complicate your ability to serve
2 on this case?

3 A. No.

4 Q. I have just a very few questions, about three
5 perhaps, to ask you, then the attorneys will, each have some
6 questions of you. It is not going going to take too long, so
7 relax a moment if you would, please.

8 First, do you remember that I told you that we
9 could have two possible phases, we're not sure if we will ever
10 get to the second phase, but if the guilt phase turns out a
11 certain way, then we would go into the penalty phase.

12 Question one: If we do get to a penalty phase, can
13 you fairly consider both possible penalties: Death and life
14 imprisonment without the possibility of parole. Can you be able
15 to consider both of those?

16 A. I would be able to consider both.

17 Q. Would you be able to personally vote for both of
18 them and make the decision depending upon the evidence and the
19 circumstances?

20 A. Strictly on the evidence.

21 Q. But you would be able to so vote for the death
22 penalty if you found it a certain way or life imprisonment
23 without the possibility of parole, if you found the
24 circumstances another way?

25 A. Yes.

26 Q. Do you think you might be so concerned with having
27 to make that heavy decision in the penalty phase that that would
28 influence the way you would vote in the guilt phase?

1 A. No.

2 THE COURT: Thank you. Mrs. Eiffe.

3 Mr. Negus.

4

5

EXAMINATION

6 BY MR. NEGUS:

7 Q. Mrs. Eiffe, Mr. Kochis and I are being allowed to
8 ask you most of the questions. As I go first, I usually ask
9 more than he does. I am not trying to pry or embarrass you, but
10 we would like to have your honest opinions on these matters if
11 we could.

12 You had heard nothing about the case prior to your
13 filling out the questionnaire. Did the proceedings in court
14 remind you of anything after that?

15 A. No.

16 Q. What was your reaction when you found out that you
17 were called as a prospective juror in a case of this nature?

18 A. I had none, really.

19 Q. Well, I am not going to ask -- we're asking
20 questions about the death penalty and we haven't actually got to
21 that stage yet, and we may never get to it, but the law requires
22 us to do it; we're doing it backwards, and so we hve to ask you
23 these questions.

24 Now, you don't take the fact that we are asking you
25 questions about penalty as any indication that you are supposed
26 to find Mr. Cooper guilty or anything of that nature.

27 A. No.

28 Q. You are willing to give him the presumption of

1 innocence now and until such time as he's proven guilty, if that
2 ever happens?

3 A. Absolutely.

4 Q. What is your opinion in general on the death
5 penalty?

6 A. There have been so few of those that have been
7 condemned, that ever go, that honestly it just doesn't make
8 sense to me. I mean, they sit there for years and years and
9 years and years.

10 Q. Do you think that's some something that should be
11 remedied?

12 A. Yes, I do.

13 Q. Do you -- what do you think about the penalty of
14 life imprisonment without the possibility of parole?

15 A. If the case warranted it I am in favor of it.

16 Q. Are there any particular criteria that you
17 personally believe should be used to choose those penalties,
18 those people who receive death as opposed to those people who
19 receive life without parole?

20 A. Until I heard the facts it would be hard to say.

21 Q. In this particular case the allegations involve
22 three of the victims being children, two children who died and
23 one child who was very, very seriously injured but survived.

24 Is there anything about the nature of that
25 particular type of charge which would lead you to automatically
26 apply the death penalty in this particular case rather than do
27 the balancing on the basis of the evidence which you spoke of?

28 A. No, it would be the evidence.

1 Q. Do you have any particular predisposition right now
2 towards either one penalty or the other in this particular case?

3 A. No.

4 Q. Do you belong to any organized religion?

5 A. Yes.

6 Q. Which one?

7 A. Catholic.

8 Q. Do the views of your church in any way effect your
9 particular opinions on the death penalty, or is that a matter of
10 your individual conscience?

11 A. Rather of the individual, right.

12 MR. NEGUS: Thank you very much.

13 PROSPECTIVE JUROR: You're welcome.

14 EXAMINATION

15 BY MR. KOCHIS:

16 Q. Mrs. Eiffe, I have a few questions.

17 There was a period in time during the last decade,
18 during the 70's, on two separate occasions, I believe, sometime
19 in 1974 and then again possibly in 1978, where we had death
20 penalty-related issues on the ballot and people may have voted
21 on them.

22 Do you recall those issues being on the ballot and
23 some discussion or controversy about them on either occasion?

24 A. I remember that it seems to me that it was supposed
25 to be allowed in California, it had been not allowed for a
26 number of years.

27 Q. Okay.

28 A. I don't know whether it was right or wrong, but it

1 seems to me I do have a vague recollection of that, yes.

2 Q. Well, you are right on point. Let me get to the
3 next question.

4 If at the time that there was some issues involving
5 it that we voted on, did you become involved in that issue; did
6 you circulate petitions to get it on the ballot?

7 A. No, no.

8 Q. The feelings that you have about the death penalty,
9 are they feelings that you have had for some period of time, or
10 have your views on that topic changed over the last four or five
11 years or not?

12 A. Frankly I have never thought of them.

13 Q. Until now.

14 A. Until now.

15 Q. How do you feel about being put in a position where
16 we will require you to make a decision of this magnitude if we
17 get to the penalty phase?

18 A. I would just simply do the best I could.

19 Q. Do you see, within yourself, any problem with
20 hearing all the evidence, hearing the law, and making a decision
21 one way or the other in the penalty phase, if we get that far?

22 A. No.

23 Q. To make sure there is no mistakes, the judge polls
24 all the jurors at the end of the criminal case, he simply asks
25 them, usually while they're seated, if the verdict the clerk has
26 read is in fact the way they voted.

27 If the jury in this case, in the penalty phase,
28 determined that the appropriate punishment was death, would you

1 have any indicating that in court? Would you have any problem
2 saying that in open court?

3 A. No.

4 Q. And likewise the law requires that a foreperson
5 sign and date a verdict form.

6 If you were selected as a foreperson in this
7 particular case, and you and the eleven other jurors determined
8 in the penalty phase that the appropriate punishment should be
9 death, would you have any problem dating and signing that
10 verdict form?

11 A. No.

12 MR. KOCHIS: Thank you. I have no further questions,
13 your Honor.

14 THE COURT: Nor do I. Would you kindly wait outside for
15 a minute and let us discuss it privately and then the bailiff
16 will tell you further instructions.

17 Any challenges, gentlemen?

18 MR. NEGUS: No.

19 MR. KOCHIS: No.

20 THE COURT: All right. Give her the next appointed date,
21 please. Take a recess.

22 (Recess)

23

24 THE COURT: Next.

25 THE BAILIFF: Be Harrison Downs.

26

27

HARRISON DOWNS,

28 called as a prospective juror, having been previously sworn,

1 testified as follows:

2

3

EXAMINATION

4 BY THE COURT:

5 Q. Good afternoon, Mr. Downs.

6 A. Good afternoon, sir.

7 Q. Mr. Downs, I've arranged things around the table
8 here in hopes that you will relax a little bit under more
9 informal surroundings, okay?

10 A. Thank you, sir.

11 Q. Has anything happened since we last saw you that
12 might complicate your ability to serve in this case?

13 A. No. I went back to my job and told them that I --
14 what was transpiring, and asked if it would in any way interfere
15 and they said no.

16 Q. I believe I saw a hearing aid that you have.

17 A. Yes, I do have.

18 Q. With that aid are you able to hear and understand
19 the proceedings in court, all right?

20 A. Yes, sir.

21 Q. Okay. I have just a few questions of you, and
22 following that each of the attorneys will have some questions of
23 you.

24 First, do you recall that I told you that we could
25 have two possible phases, the first being a guilty phase, and
26 then if we do get to it we would have a penalty phase; if we get
27 to the penalty phase the jurors would have to make a decision
28 between death on the one hand or life imprisonment without the

1 possibility of parole on the other; remember that?

2 A. Yes, sir.

3 Q. Question number one, if we do get to a penalty
4 phase can you fairly consider both of the possible penalties,,
5 death and life imprisonment without the possibility of parole?

6 A. Yes, your Honor.

7 Q. Number two, would you be able to personally vote
8 for either one of them, depending upon the evidence and the
9 circumstances brought out at the trial?

10 A. Yes, your Honor, I have no moral consciousness
11 against voting.

12 Q. All right. Some people get very, very concerned
13 about having to make a heavy decision between life and death, so
14 to speak.

15 In the guilt phase you're not supposed to consider
16 penalty or punishment, but nevertheless, would you have such a
17 concern for having to possibly make that heavy decision down the
18 road that that decision might effect the way you would vote in
19 the guilt phase?

20 A. No, sir. The evidence as presented would be the
21 only thing I would consider at all.

22 Q. Okay.

23 Mr. Negus, please.

24

25

EXAMINATION

26 BY MR. NEGUS:

27 Q. Mr. Downs, you indicated in the questionnaire that
28 you did for us that you vaguely remember something about the

1 crime; what facts do you remember about it?

2 A. Well, sir, I really don't remember anything about
3 the crime.

4 Q. Okay.

5 A. I remember nothing at all. There's been so many of
6 the cases that it -- you know, it gets a little confusing, and I
7 just don't listen to them on TV.

8 Q. What was your reaction when you found out that you
9 were a potential juror in a case of this particular type?

10 A. If I was selected to serve I would serve, that was
11 my only --

12 Q. You didn't have any particular feeling about this
13 kind of case versus any other kind of case?

14 A. No, sir, I have none whatever.

15 Q. What's your own personal feeling about the death
16 penalty? Do you have an opinion on it one way or the other?

17 A. No, sir, I'm not against the death penalty.

18 Q. Okay. Why are you for it?

19 A. Well, this would, I think I'd have to go back to my
20 Christian training and back to the laws of Moses, that would be
21 no -- I would have no pangs of conscience against a death
22 sentence.

23 Q. Well, you mean the reason you're for it is like an
24 eye for an eye?

25 A. No; no; no; no; no; no.

26 Q. That's --

27 A. I believe there has to be some latitude for mercy
28 and justice, but I don't -- I don't have any preconceived

1 opinions.

2 Q. Well, as a matter of social policies the death
3 penalty has been on the initiative process a couple of times in
4 the last eleven or twelve years; did you take a position on it
5 when it was in the public forum?

6 A. No, sir, I didn't take a position on it.

7 Q. What do you think about the punishment of life
8 imprisonment without the possibility of parole?

9 A. Well, I think in a way it is -- if the evidence so
10 warrants either one of the two, I would prefer the -- for my own
11 self if it were me that was being tried, I would prefer to die
12 rather than serve that long.

13 Q. Do you think that that would -- that would
14 influence your judgment in a particular case?

15 A. No, sir. It's another man's life not mine.

16 Q. Do you think you have any feeling one way or
17 t'other between those two particular penalties, I mean, in other
18 words, do you prefer one over the other?

19 A. No.

20 Q. You mentioned your Christian training, do you
21 belong to an organized church?

22 A. Yes, sir.

23 Q. Which church do you belong to?

24 A. I'm from the Calgary Baptist Church, which is
25 Southern Baptist.

26 Q. Does that church have a position on the death
27 penalty as a matter of social policy?

28 A. Not that I've heard anyone express.

1 Q. So, in the influence that your Christian training
2 has on your beliefs about the death penalty, that's a matter
3 that you worked out through your individual conscience rather
4 than something that's a formal tenet of your church?

5 A. Yes, sir.

6 Q. Thank you, sir. I have nothing further.

7

8

EXAMINATION

9

BY MR. KOCHIS:

10 Q. Mr. Downs?

11 A. Yes, sir.

12 Q. If we get to the second phase, the penalty trial,
13 you and eleven other jurors are going to have a limited number
14 of options to vote for, you're either going to vote for the
15 death penalty or for life without the possibility of parole;
16 how. Do you feel about being put in a position where you have
17 to make decisions of that magnitude?

18 A. Well, I've never had to make a decision of that
19 magnitude, before but I have had to make some pretty stiff
20 decisions in my 22 years in the Navy so I really don't feel any
21 great strain about having to make the decision.

22 Q. Then you are confident in your own mind that once
23 you hear all the facts, you hear the law, you can make the
24 decision one way or another?

25 A. Yes, sir.

26 Q. To make sure that there's no mistake in a criminal
27 case the law requires that the judge, in this case Judge Garner,
28 at the end of the case poll the jurors in open court he simply

1 goes down the roll and asks each juror if the verdict that the
2 clerk has read is in fact the way they voted; if in this case
3 the jury determined that the appropriate penalty in the penalty
4 phase was death, would you have any problems saying in open
5 court that that was your verdict?

6 A. No, sir, none whatever.

7 Q. Likewise I've -- I'm sorry. I cut you off.

8 A. None whatever.

9 Q. Likewise the law requires that one person be
10 elected as a foreman, foreperson, and that person date and sign
11 what's called a verdict form; if the jury selected you as the
12 foreman and the jury, the eleven other people and you yourself,
13 determine that in this case the appropriate punishment was
14 death, would you have any problem dating and signing that
15 verdict form?

16 A. No, sir, none whatever.

17 Q. Thank you.

18 I have nothing further, your Honor.

19 THE COURT: Mr. Downs, I'd like to have you remain
20 outside just a minute, let us briefly discuss it and then the
21 bailiff will give you further instruction.

22 PROSPECTIVE JUROR: Thank you very much, your Honor.

23 Thank you, Gentlemen.

24 THE COURT: Thank you for coming in.

25 Anything, Gentlemen?

26 MR. NEGUS: No.

27 MR. KOCHIS: No, your Honor.

28 THE COURT: All right.

1 Give him an appointment slip to return again.
2 Bring in the next juror when you get time.

3 THE BAILIFF: The next juror is Sharon Kay.

4

5 SHARON KAY,
6 called as a prospective juror, having been previously sworn,
7 testified as follows:

8

9 EXAMINATION

10 BY THE COURT:

11 Q. Good afternoon ma'am.

12 A. Hi.

13 Q. Is it Mrs. Kay?

14 A. Yes.

15 Q. Mrs. Kay, has anything happened to you since we
16 last saw you that might complicate your ability to be able to
17 serve in this case?

18 A. No.

19 Q. I have just about three questions to ask of you and
20 then each of the attorneys will have a few for you, so relax a
21 minute if you would, please.

22 Before I ask the questions I remind you of what I
23 told you before when I was sitting on the bench to the effect
24 that there may be two possible phases to the trial; first is the
25 guilt phase, and then depending upon how about that turns out we
26 could go to the second phase or the penalty phase; remember
27 that?

28 A. Uh-huh.

1 Q. Question number one, if we do get to a penalty
2 phase will you be able to fairly consider both of the two
3 possible alternatives, death and life imprisonment without the
4 possibility of parole?

5 A. I could consider it. I'm not sure I'd want to be
6 responsible for an opinion like that, but I do believe in the
7 punishment.

8 Q. Would you be able to personally vote for either one
9 of them and that you would make that decision based upon the
10 evidence and the circumstances brought out at the trial?

11 A. I think it would be difficult to do.

12 Q. Nobody's promising a rose garden.

13 A. I know.

14 Q. It would be difficult, true?

15 A. It would be difficult.

16 Q. But the difficulty notwithstanding, would you be
17 able to bring yourself to vote for one or the other depending
18 upon the evidence?

19 A. Yes.

20 Q. Do you think you might be so concerned in the guilt
21 phase about having to make that weighty decision down the road
22 possibly that that would influence the way you would vote in the
23 guilt phase?

24 A. No.

25 THE COURT: Mr. Negus, you may inquire.

26

27

EXAMINATION

28 BY MR. NEGUS:

1 Q. Mrs. Kay, as I go first I usually get to ask more
2 questions than Mr. Kochis does. I'm not trying to pry or
3 embarrass you in any way.

4 A. Uh-huh.

5 Q. But we have to try and get your honest opinions in
6 this particular process. When you filled out the questionnaire
7 you hadn't heard anything about the case. After you heard more
8 about it from the Judge, did that ring any bells in your mind?

9 A. I probably did see it on the news. Because it
10 wasn't local I just didn't pay any attention to it.

11 Q. So, you had no particular preconceptions.

12 A. No, other than the fact on the morning coming down
13 here I asked my husband what it was about, because someone had
14 mentioned it to me, and he just said in one brief sentence what
15 it was about.

16 Q. What did he tell you?

17 A. That he had allegedly murdered four people and
18 escaped from a mental institution, which I think is wrong
19 because I think Chino is not mental. I'm not sure.

20 Q. What was your reaction when your husband told
21 you --

22 A. I don't remember.

23 Q. What's your reaction?

24 A. Other than that it would be a long and difficult
25 trial.

26 Q. Do you have any reaction now towards sitting on a
27 case of this type?

28 A. Nervous.

1 Q. Is that like nervous out of fear or out of the
2 process of having to go through this questioning?

3 A. Fear of the unknown, just never having done
4 anything like this.

5 Q. We're asking some questions about the death
6 penalty. Now, you understand that we never may -- we may never
7 get to that particular stage; do you understand that?

8 A. Uh-huh.

9 Q. You have to say yes or no.

10 A. Yes.

11 Q. And just the fact that we're asking these questions
12 is no indication whatsoever that Mr. Cooper is guilty or will be
13 found guilty; do you understand that too?

14 A. Yes.

15 Q. You said that you believed in the punishment of
16 death; --

17 A. Uh-huh.

18 Q. -- is that correct?

19 A. Yes.

20 Q. Why do you do so?

21 A. Because as a Christian I believe in God's word and
22 I think it's scripturally backed.

23 Q. What religion -- Do you belong to an organized
24 church?

25 A. Just a Christian.

26 Q. Would -- if you were to sit as a juror in this
27 particular case, I'm not sure whether the law of the State of
28 California is the same as scriptural law; if they differ do you

1 think that you could follow the law of California?

2 A. Well, I don't really see how they would differ.

3 Q. Okay. What do, according to your understanding of
4 the Bible, what -- what is it that justifies imposing capital
5 punishment?

6 A. If one man kills another man.

7 Q. Do you think that that's true in every case in
8 which a murder takes place?

9 A. Oh, no, because there are, you know, some people
10 are insane. I mean there's different circumstances. Maybe it's
11 self-defense.

12 Q. Okay. Well, if it were not self-defense or
13 insanity, neither of which is involved in this particular case,
14 do you think that all other -- all other homicides, what would
15 be called a murder, where a person is actually guilty of the
16 crime of murder would justify the death penalty?

17 A. I think that would depend on the circumstances and
18 the evidence.

19 Q. Do you have, not wishing to make you have opinions
20 you don't have, but do you have any personal opinions as to what
21 set of circumstances would be required?

22 A. Oh, premeditated, really gory and senseless, you
23 know, things -- mutilation, things like that.

24 Q. As you sit there right now knowing the little that
25 you do know about this particular case, if someone were to be
26 convicted of this particular crime do you believe that any
27 particular penalty is appropriate?

28 A. I've been thinking about that a lot. I mean,

1 either -- even life in prison to me would be a horrible
2 probably, maybe even worse than the other. I mean it's
3 difficult to decide.

4 Q. So, I guess then the answer would be that you
5 haven't -- you don't -- haven't made up your mind.

6 A. No.

7 Q. I will be frank with you, the thing that -- the
8 thing that I'm concerned about in one of your answers was that
9 in California there's nothing automatic, as the Judge has
10 explained to you, about the death penalty?

11 A. Uh-huh.

12 Q. And the law is that even if a person is guilty of
13 multiple murder of children the death penalty is not automatic.
14 So I'm concerned to find out whether you feel that in your own
15 beliefs that it would in a situation like this always vote for
16 the death penalty if somebody was convicted of these crimes?

17 A. No.

18 Q. Do you -- anything about the fact that we're
19 dealing with a crime involving victims being three young kids,
20 two of which who died and one of which was very, very seriously
21 injured but survived, cause you any difficulty in sitting on
22 this particular case as opposed to another?

23 A. I haven't really thought about it. I do have
24 children of my own. I don't know if it would be or not.

25 Q. Perhaps you could think about that over the -- we
26 will be seeing you again. Anything about the -- just, you know,
27 what we're going through now that in any way sort of diminishes
28 in your mind the presumption of innocence that Mr. Cooper is

1 entitled to?

2 A. No.

3 Q. Fine. Thank you very much.

4 Pass.

5

6

EXAMINATION

7

BY MR. KOCHIS:

8

Q. Mrs. Kay, I have a few questions I'd like to you.

9

Putting aside for a moment your religious
10 convictions and your knowledge of scripture and how certain
11 passages may conform with the fact that we have the death
12 penalty in this society, your own personal feelings, do you have
13 any personal feelings about the fact that we have a death
14 penalty here in California?

15

A. No. I'm just not sure I'd want to be responsible
16 for saying, you know, put someone to death.

17

Q. Let me break that down for a moment. Then if I
18 understand, philosophically in terms of your thought process you
19 feel that it's appropriate that we have the death penalty in
20 this society?

21

A. Yes.

22

Q. And you draw on your religious background to
23 support that?

24

A. Yes.

25

Q. But when it comes to actually making a decision
26 and, for example, pushing the button, you would not want to be
27 that person?

28

A. I think I would have a hard time.

1 Q. Well, let's get practical for a moment because
2 although this is a screening process, when we start the trial
3 we're not going to be debating people's personal philosophies,
4 we're going to be dealing with the evidence and the law.

5 Let's assume that the first trial is over and that
6 you've been convinced beyond a reasonable doubt that this
7 defendant did the murders and so have eleven other people, and
8 you therefore find yourself in the penalty phase at which point
9 there will be -- additional witnesses will be called. There
10 will be additional testimony. Judge Garner is going to give you
11 some additional instructions on the law. The lawyers will argue
12 again. And then you will go back in the jury deliberation room
13 with eleven other people to consider which penalty is the proper
14 one in this case, and you're going to have limited options.
15 It's going to be life or death. Do you think you can take the
16 facts and apply them to the law and reach a decision in that
17 second phase even though it's going to be unpleasant for you?

4
18 A. It would be difficult, but if I had to do it I
19 would, yes.

20 Q. Do you -- some people when they are actually
21 confronted with the decision they freeze or they balk, and they
22 say this is such a heavy decision, there's so much
23 responsibility here that I simply can't decide one way or the
24 other; do you see any problem like that arising in yourself?

25 A. I'd probably have trouble. I might tend to go
26 along with everyone else.

27 Q. Okay. In a jury system, although there's some room
28 to get lost in the shuffle, as it were, in that you vote and

1 there's one verdict form, we still require everyone to give
2 their individual opinion and their individual vote; could you do
3 that in the penalty phase as well as the guilt phase?

4 A. If I had to, I'd have to.

5 Q. There was a time in the '70s on two separate
6 occasions perhaps at which death penalty related issues were
7 placed on the ballot and it created some controversy. There was
8 a lot of debate about whether we should have it or not. Did you
9 become involved in either campaign circulating petitions or
10 discussing it?

11 A. No.

12 Q. Do you recall taking a firm stand one way or the
13 other at that time?

14 A. No.

15 Q. The law requires that at the end of every criminal
16 trial we poll the jury to make sure there's no mistake. The
17 Judge simply goes down the list and he asks each juror if the
18 verdict the clerk has read is in fact the way they voted. If we
19 got to the penalty phase in this case and you and eleven other
20 people determined that the appropriate punishment was death and
21 the Judge went down the line and polled you all, would you have
22 any trouble indicating in open court that that was your verdict?

23 A. No.

24 Q. Likewise one person is elected as the foreperson in
25 every jury and that person is required by law to date and sign
26 the verdict form. In the penalty phase the two verdict forms
27 would be life without the possibility of parole and death, if
28 you were elected the foreperson and you and the eleven other

1 jurors determined that the appropriate punishment was death,
2 would you be able to sign and date the verdict form?

3 A. I wouldn't want to, but if I had to --

4 Q. Okay.

5 A. I mean it's a matter of duty, too.

6 Q. Fine. Thank you.

7 I have no further questions.

8 MR. NEGUS: Can I ask just one?

9 THE COURT: Sure.

10 BY MR. NEGUS:

11 Q. Something that Mr. Kochis -- you said to Mr. Kochis
12 I'd just like to ask you about.

13 Both sides in any lawsuit are entitled to the
14 individual opinion of each juror on -- on each of the issues
15 which are presented to the jury. Realizing that that -- the
16 question of the proper penalty is a difficult one, that's --
17 that's still true, that everybody is entitled to have twelve
18 people, not eleven persons, and one going along, as it were,
19 making up, do you think that you could -- if you were selected
20 as a juror and took an oath to well and truly try the case that
21 you could give your individual opinion and change it only if the
22 arguments of the jurors convinced you rationally, not just sort
23 of as a matter of probably.

24 A. I mean, just I -- it's hard to picture myself in
25 the position because it is difficult position.

26 Q. I understand. But you know what we're trying to --
27 you know, basically, you know the law doesn't require you to
28 be -- now hardheaded, you know, and unyielding, but it does ask

1 that you be convinced by whatever standard of proof is
2 appropriate at that time that you're doing the appropriate thing
3 according to the law, and people sometimes differ, sometimes
4 they agree, there's nothing in the law that favors one over the
5 t'other.

6 A. Uh-huh.

7 Q. So, do you think that you could avoid whatever
8 temptation it is?

9 A. I think I probably would weigh the evidence quite
10 heavily.

11 Q. And not just the opinions of your fellow jurors?

12 A. Well, no. I mean, you know, I couldn't stand out
13 for a week or two weeks if I was the only one that went one way.
14 I would probably give it a lot of thought.

15 Q. I guess, you know, what I'm asking is if you
16 were -- is if you were convinced that the other eleven were
17 wrong, do you think you could stand out?

18 A. If I was totally convinced, yes.

19 Q. Thank you.

20 I have nothing further.

21 THE COURT: Mrs. Kay, we would like to have you wait
22 outside for a minute and give us a chance to discuss it
23 properly. Thank you for coming in. The bailiff will give you
24 further instructions.

25 Counsel wish to be heard?

26 MR. NEGUS: I don't think that she ever said that she
27 could -- I mean she sounds like she will, from what she said on
28 the issue of penalty, go along with the other eleven jurors

1 if -- if it gets sticky, and I don't think that that qualifies.
2 Challenge for cause.

3 THE COURT: Is that a challenge, Mr. Negus?

4 MR. NEGUS: Yes.

5 THE COURT: Mr. Kochis.

6 MR. KOCHIS: I would oppose the challenge. I don't
7 recall it being that way.

8 THE COURT: Yes. There's not sufficient grounds for me
9 to excuse her. I will deny the challenge based upon the
10 evidence.

11 Give her an appointment slip to return, please, and
12 called another juror.

13 THE BAILIFF: Next juror will be Geneva Bennett.

14 GENEVA BENNETT

15 Called as a prospective juror, having been previously sworn,
16 testified as follows:

17

18 EXAMINATION

19 BY THE COURT:

20 Q. Good afternoon, ma'am.

21 A. Good afternoon.

22 Q. Is it Mrs. Geneva Bennett?

23 A. I am a widower.

24 Q. Okay. Still Mrs.

25 A. Yes.

26 Q. All right. We have arranged things to sit around
27 the counsel table, so to speak, as informal as possible in the
28 hope that will relax you just a little bit and be more candid in

1 response to our questions.

2 A. Okay.

3 Q. Has anything happened since we last saw you that
4 would complicate it for you to serve in this case?

5 A. No.

6 Q. Now, I have about three questions here, and then
7 each of the attorneys will have some questions of you.

8 Before I ask the first question, I remind you that
9 I told you before that there could be two phases to this case.
10 First would be the guilt phase and there you are not supposed to
11 even think about penalty, and then if you, after you determine
12 that, then you could get to that penalty phase, or the second
13 phase.

14 Question No. 1. If we do get to a penalty phase,
15 will you be able to fairly consider both of the two possible
16 penalties, namely, death, and secondly, life imprisonment
17 without the possibility of parole?

18 A. Yes.

19 Q. Would you be able to personally vote for either one
20 of them and make that decision based upon the evidence and the
21 circumstances brought out at the trial?

22 A. Yes.

23 Q. Do you think you might be so concerned, Mrs.
24 Bennett, about having to make such a heavy decision, a life or
25 death decision, so to speak, in a penalty phase, that would
26 affect the way you'd vote in the guilt phase?

27 A. No.

28 THE COURT: Thank you very much.

1 Mr. Negus.

2

3

EXAMINATION

4 BY MR. NEGUS:

5 Q. Mrs. Bennett, the lawyers are being permitted to
6 ask most of the questions of the jurors, and as I go first I
7 usually ask more than he does. So, I'm not trying to pry or
8 embarrass you in any way, but we do need to have your honest
9 opinions on these matters.

10 When you filled out the questionnaire apparently
11 you didn't remember anything about the case. After you heard a
12 little bit more about it in court, did anything, you know,
13 strike you that you did remember having heard about it before?

14 A. No.

15 Q. So you have no information about the case from the
16 press or any other place else.

17 A. No.

18 Q. What was your reaction when you found out that you
19 were going to be on a case of this particular type?

20 A. I didn't have a reaction, you know, of it. I just
21 didn't have a reaction to it.

22 Q. Do you have any reaction now?

23 A. No.

24 Q. We're asking you questions about the death penalty,
25 but that is just -- we're going about things backwards and
26 asking last things first. You know, you may never have to make
27 that decision if you find Mr. Cooper is not guilty of the
28 crimes. Do you understand that?

1 A. Yes.

2 Q. What is your opinion in general about the death
3 penalty?

4 A. I don't like it.

5 Q. Do you think you could vote for it if the facts
6 warranted it?

7 A. Yes.

8 Q. So, whatever your personal opinions on it are you
9 are willing to do your duty as a citizen and sit on the jury?

10 A. Yes.

11 Q. Do you have any feelings, as you sit there now,
12 that whoever is responsible for the particular crimes that were
13 charged in the information, deserves any particular penalty of a
14 different kind, the different penalties that may be appropriate?

15 A. Could you repeat that again.

16 Q. Have you made up your mind in advance about what
17 penalty --

18 A. Oh, no. No.

19 Q. So, as you sit there now you have a completely open
20 mind about this particular thing.

21 A. Yes.

22 MR. NEGUS: Thank you. That's all I have.

23

24 EXAMINATION

25 BY MR. KOCHIS:

26 Q. I have a few questions, Mrs. Bennett.

27 You mentioned to Mr. Negus, if I understood you
28 correctly, you are somewhat opposed to the death penalty. Is

1 that correct?

2 A. Yes.

3 Q. Is there a particular reason why?

4 A. I just don't -- I don't believe in hurting no one.

5 Q. Okay. Is that based on a religious belief you
6 have, or is it a personal belief that you have, or how would
7 you --

8 A. No, it is just my own personal belief.

9 Q. Within you. Is that a strong belief or a weak
10 belief?

11 A. No, it is a strong belief.

12 Q. Do you think that belief would cause you any
13 problems in sitting in this type of case where that may be in
14 issue?

15 A. No.

16 Q. If we get to the penalty phase, when you evaluate
17 the evidence and the law, would you be able to put your belief
18 that the death penalty is wrong aside when you look at the
19 evidence?

20 A. Yes.

21 Q. If you felt that it was appropriate in this case
22 that the proper punishment was the death penalty, could you vote
23 for the death penalty?

24 A. Yes.

25 Q. The judge, at the end of the criminal case, as in
26 all criminal cases, polls the jury. He simply goes down the
27 line and asks each of the jurors if their verdict that has been
28 read in open court is the way they voted.

1 If there was a penalty phase in this particular
2 case, and the other eleven jurors and yourself voted for the
3 death penalty, would you have any problems in open court
4 indicating that that's the way that you voted?

5 A. No.

6 Q. In your own mind do you have any type of a case in
7 which you feel the death penalty would be an appropriate
8 punishment for?

9 A. No, I don't.

10 MR. KOCHIS: Thank you. I have no further questions,
11 your Honor.

12 THE COURT: Nor do I at this time. We'd like to discuss
13 it privately. I would ask you to step outside for a minute and
14 the bailiff will give you further instructions momentarily.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Thank you.

17 Either counsel wish to be heard?

18 MR. KOCHIS: No.

19 MR. NEGUS: No.

20 THE COURT: Give her the next appointment date and bring
21 in another.

22 THE BAILIFF: Ernest Candelaria is the last one.

23

24

ERNEST CANDELARIA

25 Called as a prospective juror, having been previously sworn,
26 testified as follows:

27

28

EXAMINATION

1 BY THE COURT:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. Is that a portable radio.

5 A. Yes, sir, but it is not plugged in.

6 Q. Has anything happened to you since we last saw you
7 that complicates your ability to be able to serve?

8 A. I think so. I have some conferences to go to in
9 Washington in November.

10 Q. What's your job.

11 A. I am an electronics technician. I work for the
12 Naval Electronics Engineering Center. I am currently employed
13 by Krypto Recovery Facility.

14 Q. You are a civilian but you work for the navy.

15 A. Yes, sir. At 32nd Street.

16 Q. These are conferences for you people?

17 A. We have to work on special Krypto automatic test
18 equipment station and we have our yearly ATE users conference
19 and I am in charge of the Krypto system.

20 Q. When are you scheduled to be there?

21 A. It is from the week of the 5th of November.

22 Q. How long will you be there?

23 A. The whole week.

24 Q. That's a good time. That happens to be the week
25 that I am on vacation.

26 A. Good.

27 Q. In case you were hoping to -- I am going to be in
28 Puerto Vallarta while you are in Washington, apparently. That's

1 been planned for a long time.

2 Is that really the only problem that you have?

3 A. I believe so.

4 Q. Good. That is wonderful. Okay. Before I have to
5 ask you about three questions, myself, I'd like to remind you
6 that when you were in before I told you that there could be
7 possibly two phases to this trial, namely, the guilt phase,
8 where you are not to supposed to even consider penalty, we're
9 going to be asking mostly about penalty here, and the penalty
10 phase wherein the jurors would make a choice between life or
11 death, so to speak.

12 Question No. 1: If we do get to a penalty phase,
13 would you be able to fairly consider both of the possible
14 penalties, namely, death and life imprisonment without the
15 possibility of parole?

16 A. I believe so.

17 Q. Why not?

18 A. I believe I would.

19 Q. You believe you would. Okay, would you be able to
20 personally vote for either one of them and make that decision
21 based upon the evidence and the circumstances brought out at the
22 trial?

23 A. Yes, sir.

24 Q. Do you think, Mr. Candelaria, that you might be so
25 concerned with having to make a heavy life or death type of
26 decision down the road, perhaps, that that concern would affect
27 the way you'd vote on the guilt phase?

28 A. No, I don't believe so.

1 THE COURT: Thank you sir.

2 Mr. Negus.

3

4

EXAMINATION

5 BY MR. NEGUS:

6 Q. Mr. Candelaria, right now the lawyers are going to
7 be asking most of the questions, and as I go first, I usually
8 ask more than Mr. Kochis does. But the law requires us to get
9 your -- we're trying to get your honest opinions about some of
10 the issues.

11 You indicated to us that you vaguely remember some
12 of the details about this particular crime. What details do you
13 remember?

14 A. There was a -- other than the fact that a house was
15 broken into and there was a murder or a group of murders
16 committed, that would be a about it.

17 Like I also indicated, I don't read the newspapers,
18 that's not my idea of news, or watch the television, as far as
19 that type of news. I'm just not interested in that type of
20 thing.

21 Q. Do you recall having heard anything about my
22 client, Kevin Cooper?

23 A. Just very vaguely. Mostly the capture, I believe,
24 at Catalina Island. That was about it.

25 Q. What do you remember about that?

26 A. The suspect was captured in Catalina Island. I
27 believe that was about it.

28 Q. Had you heard anything about the case when it was

1 up in court in San Bernardino?

2 A. No.

3 Q. Did you know it was coming down here?

4 A. No, sir.

5 Q. What was your reaction when you found out that you
6 were called as a potential juror in this particular case?

7 A. I didn't find out anything about it until I was
8 sitting right out here.

9 Q. How did you feel when you were right out there?

10 A. I don't know. I'm here, what can I do.

11 Q. We're asking some questions about the death
12 penalty, but you understand that that doesn't mean that we will
13 ever get to that particular part.

14 A. No, sir.

15 Q. The question of guilt or innocence actually comes
16 first, even though we're doing it backwards in terms of the
17 questioning.

18 What is your -- do you have a particular feeling
19 yourself about the death penalty as a matter of public policy?

20 A. I believe that there should be one if the crime is
21 such, as a source of punishment.

22 Q. Do you believe that there is any particular type of
23 crimes or situations or something that justifies the death
24 penalty?

25 A. Well, yes. Say a murder, a planned murder, or
26 something like that as opposed to a possible one that was --
27 just happens as a result of a fight or something.

28 Q. Do you have any feelings that there is some sort of

1 situations where the death penalty is always justified as
2 opposed to deciding on a case by case basis?

3 A. I believe it is a case, really. There is always
4 something or a group of things involved in every case.

5 Q. What do you think about life without the possibility
6 of parole as a punishment?

7 A. It may suit some crimes, but not all.

8 Q. If you get in this situation where you had to
9 decide on the basis of a crime, of this particular crime, which
10 of those two penalties were required by the evidence, do you
11 have any particular predisposition to one or the t'other as you
12 sit here now.

13 A. No.

14 Q. You consider both of them equally.

15 A. I believe so, depending on the instructions. If
16 the instructions would be different. I don't know.

17 Q. Okay. Whatever the instructions are there is
18 nothing about your particular individual opinions that would
19 cause you to be one way or the t'other.

20 A. No.

21 Q. Do the fact that some of the victims in this case
22 are kids, two kids died and one was very seriously injured,
23 anything about that which would make it difficult for you to
24 choose, you know, rationally between the penalties depending on
25 the evidence?

26 A. I hope not. I have two children of my own. I
27 would be thinking about them, probably.

28 Q. Do you think that would?

1 A. They're supposed to be just adults. Children are
2 special to me.

3 Q. That makes it harder. Do you think that would
4 cause sort of an emotion to enter into your decision as opposed
5 to just balancing evidence and making a rational decision?

6 A. No, I don't really think so because there were more
7 than one crime committed at the time. It would be really hard
8 to say.

9 Q. As you sit there right now, do you have any reason
10 not to give Mr. Cooper the benefit of the presumption of
11 innocence?

12 A. No, sir.

13 Q. Do you belong to an organized religion?

14 A. I am Catholic.

15 Q. Has your religion in any way influenced your views
16 about penalty or punishment or the death penalty?

17 A. No, sir.

18 MR. NEGUS: Thank you. I have nothing further.

19

20

EXAMINATION

21 BY MR. KOCHIS:

22 Q. Mr. Candelaria, back in the 70's, on two occasions
23 we had death penalty-related issues on the ballot, and it caused
24 considerable controversy. The people talked about it, it was a
25 topic of discussion, people got involved and circulated
26 petitions and voted.

27 Did you get involved in either one of those in
28 terms of circulating petitions?

1 A. No, sir.

2 Q. Is the attitude you have about the death penalty
3 today the attitude you've had for sometime?

4 A. I believe so.

5 Q. How do you feel practically about putting, being
6 put in a position where if we get to a penalty phase you'd have
7 to make a decision of this magnitude?

8 A. I don't really think it would bother me as my life
9 went on. I hope I would -- could make a just decision

10 Q. The judge polls all the jurors at the end of every
11 criminal case to make sure there is no mistake, simply goes down
12 the row and asks each juror if the verdict the clerk has read is
13 the way they voted.

14 If we got to the penalty phase in this case, and
15 you and other the eleven jurors determined that the appropriate
16 punishment was death, would you have any problem in indicating
17 that in open court?

18 A. No, sir.

19 Q. Likewise, the law requires that one of the jurors
20 be elected as the foreperson, and that that person date and sign
21 the verdict form.

22 If the jury, the other eleven jurors chose you as
23 that foreman, and we got to the penalty phase, and the twelve of
24 you determined that the appropriate punishment was death, would
25 you have any problem dating and signing that verdict form?

26 A. No, sir.

27 MR. KOCHIS: Thank you. I have no further questions,
28 your Honor.

1 THE COURT: We'd like to have you remain outside to give
2 us a chance to discuss it privately, briefly. The bailiff will
3 give you further instructions. Thank you very much for coming
4 in.

5 Anything, gentlemen?

6 MR. NEGUS: No.

7 MR. KOCHIS: No, your Honor.

8 THE COURT: All right. If you'd give him the appointment
9 slip for his next time to return.

10 You might check that 1076 challenge ground more
11 closely, Mr. Negus. But I did look at the annotations just in
12 the book there and it says on the word on his declaration, it
13 requires prospective jurors to say regardless of my leanings I
14 could be fair and impartial, in effect, later on. All the cases
15 seem to so say that. That's hardly an exhaustive research.

16 All right, we will adjourn until the hour of 9:30
17 in the morning. We're going three days, Friday of this week.

18 --oo0oo--

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20 (Adjournment)

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