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SUPREME COURT - STATE OF CALIFORNIA

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 THE PEOPLE OF THE )  
 STATE OF CALIFORNIA, )  
 )  
 Plaintiff-Respondent, )  
 )  
 vs. )  
 )  
 KEVIN COOPER, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_)

SUPREME COURT NO. Crim 24552  
 FROM SAN DIEGO COUNTY  
 HON. RICHARD C. GARNER,  
 JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 78

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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

<hr/>		)
THE PEOPLE OF THE STATE		)
OF CALIFORNIA,		)
		)
Plaintiff,		)
		)
vs.		)
		)
KEVIN COOPER,		)
		)
Defendant.		)
<hr/>		)

NO. OCR-9319

REPORTER'S TRANSCRIPT  
September 27, 1984

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INDEX OF PROSPECTIVE JURORS

	Examination
WALKER, MARY	566
AVALOS, GARY	588
BLAKE-GLENN, KRISTINA	593
LEPAGE, SHIRLEY	599
CARLIN, JAMES	609
HERNANDEZ, MARTIN	615
GILLOGLY, SHIRLEY	618
LEWIS, GERALDINE	628
BLACK, CAROL	650
LISTER, RITA	659
COSBY, JACQUELINE	665
HORTON, DARLENE	672
BROWN, ANNIE MAE	681
CAVANAUGH, BLANCHI	688
FRIE, CHRISTOPHER	701
JONES, D	711

1           1       SAN DIEGO, CALIFORNIA THURSDAY, SEPTEMBER 27, 1984, 9:28 A.M.

2                               --ooOoo--

3  
4           THE COURT: Good morning.

5           MR. KOTTMEIER: Good morning.

6           THE COURT: Mr. Cooper, all three counsel are present.

7                       Call the first prospective juror.

8           THE BAILIFF: Mary Walker.

9  
10                           MARY WALKER,

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

13  
14                           EXAMINATION

15       BY THE COURT:

16           Q.     Have a seat, please.

17           A.     Uh-huh.

18           Q.     Good morning.

19           A.     Morning.

20           Q.     You are Mary Walker?

21           A.     Yes.

22           Q.     Mrs. Walker, has anything happened since we last  
23       saw you that would complicate your ability to be able to serve  
24       here?

25           A.     No.

26           Q.     I have about three questions to ask of you and then  
27       each of the attorneys will ask some questions. And we've  
28       arranged things informally in hopes that you will relax a little

1 bit and be more candid in your responses, okay?

2 A. Okay.

3 Q. Remember I told you earlier when you were with  
4 everybody else that there would be two possible phases to this  
5 trial, first a guilty phase, and then if that turns out a  
6 certain way then we would go into the penalty phase and the  
7 jurors would have two choices, a vote for death or vote for life  
8 imprisonment without the possibility of parole?

9 A. Right.

10 Q. My first question to you is, if we do get to a  
11 penalty phase will you be able to fairly consider both of the  
12 possible penalties, death and life imprisonment without the  
13 possibility of parole?

14 A. I feel I would.

15 Q. Secondly, would you be able to personally vote for  
16 either one of them and you would base that decision based upon  
17 the evidence and the circumstances brought out at the trial?

18 A. Yes.

19 Q. In the guilt phase, as I told you, the jurors are  
20 not to consider penalty or punishment, that would only be  
21 considered by you if we get to a penalty phase.

22 A. Right.

23 Q. But do you think that nevertheless in spite of that  
24 admonition that you might be so concerned with having to make  
25 that heavy diagnosis possibly down the road that that would  
26 influence the way would you vote in the guilt phase?

27 A. No.

28 Q. Thank you, Mrs. Walker.

1 Mr. Negus.

2

3

EXAMINATION

4 BY MR. NEGUS:

5 Q. The Judge has given us the assignment, Mr. Kochis  
6 and myself, of asking you most of the questions.

7 A. Yes.

8 Q. I'm not trying to pry or embarrass you, but we need  
9 to have your honest opinions about things in order to go ahead  
10 with this particular proceeding. What had you heard about the  
11 actual crime involved in this particular case on the media  
12 before you came to court?

13 A. Well, naturally I heard that it happened.

14 Q. Uh-huh.

15 A. And where it was and what happened, you know.

16 Q. What do you remember about what happened?

17 A. That this family, they found the family that was --  
18 were dead in the morning and one little boy was still alive and  
19 a neighbor boy had spent the night there.

20 Q. Did you hear any of the stories that concerned my  
21 client, Kevin Cooper?

22 A. I heard that he had escaped from jail after it came  
23 out about him, and that he was suspected of doing it.

24 Q. Did you -- what impression did you form of Mr.  
25 Cooper from what you heard on the media?

26 A. Naturally that there was an awful crime committed.  
27 Hard to believe that someone would do it.

28 Q. Well, did you form an impression of Mr. Cooper

1 personally from the media? Did they give you any impression of  
2 what kind of person he was?

3 A. I don't recall, you know, any particular impression  
4 at that time, other than that he was an escaped criminal.

5 Q. Did -- did you hear any stores or follow anything  
6 after the case got to court in San Bernadino County? Did you  
7 hear any progress about the progress through the courts up  
8 there?

9 A. No, I haven't. I don't even remember that part of  
10 it.

11 Q. Did you know that the case was coming to San Diego  
12 before you came down here and sat on the jury?

13 A. Only the night before I heard on the news that it  
14 was going to be tried. You know, they are going to start  
15 selecting the jury. I didn't remember that before that.

16 Q. From the publicity that you had did you form any  
17 opinion as to whether or not Mr. Cooper was guilty or innocent  
18 of the crime?

19 A. Well, I suppose that he was accused of it, he was  
20 possibly guilty, yeah.

21 Q. Was that your opinion or was that based on what you  
22 heard in the newspaper or do you feel that in general?

23 A. I don't know. Based on what I had heard I suppose,  
24 you know, and after being captured that -- I don't know. I  
25 probably felt that he was then, but I don't know any of the  
26 circumstances that, you know, that, why he was accused. I  
27 assumed that because he was that probably he was. That's --

28 Q. Did you hear any -- did you hear any stories about

1 the circumstances of his arrest?

2 A. Yes.

3 Q. What did you hear?

4 A. That he had been on a boat for couple months, or  
5 however long. I don't know how long now. I don't remember how  
6 long he was. And that -- as I recall it seems like he had  
7 attempted to approach some woman and she recognized who he was  
8 and told the police and they captured him. That's what I recall  
9 about it.

10 Q. In this particular case you won't hear any evidence  
11 one way or the other about that particular --

12 A. Uh-huh.

13 Q. -- about that particular occurrence.

14 A. No.

15 Q. So, you would be asked as a juror to simply ignore  
16 anything you heard and assume that anything you haven't heard in  
17 court didn't happen.

18 A. Uh-huh.

19 Q. And likewise not to communicate anything to your  
20 fellow jurors.

21 A. Uh-huh.

22 Q. Having heard it do you think you could put it out  
23 of your mind?

24 A. I think I could.

25 Q. Do you have an opinion as to -- as to Mr. Cooper's  
26 guilt or innocence right now?

27 A. No more than what I would have in the beginning. I  
28 mean, I don't know. I assume that I would hear all the evidence



1 if I were on the jury and decide from that. I don't know if  
2 he's guilty; no, I don't know if he's guilty.

3 Q. Do you think that you have any sort of  
4 predisposition or feeling like you're -- based on what you've  
5 heard before that you will find him guilty in this particular  
6 trial?

7 A. Well, since I have been called to this jury --  
8 since I have been called last, you know, two weeks ago I  
9 thought, I'm not going to decide whether he is guilty or not  
10 guilty until I would hear the evidence, so at this time I'm  
11 neutral. This is all I can say on it because I -- at the time  
12 when I heard it, naturally I thought, well, he must be guilty.  
13 Since then I haven't even given it any thought until, you know,  
14 I was brought down here.

15 Q. So, you think you could put out of your mind your  
16 original thoughts on the case?

17 A. I feel I could, but -- I feel I could.

18 Q. What was your reaction when you -- when you found  
19 out that you were going to be a juror on this particular case?

20 A. The main thing was the length of time involved,  
21 mainly. I mean, not that I wouldn't want to be on the jury, but  
22 that I -- it would be a long time involved, and that was my main  
23 reaction to it.

24 Q. We're asking some questions about the death penalty  
25 and that's sort of putting things backwards.

26 A. Uh-huh.

27 Q. If we don't -- if Mr. Cooper is found not guilty we  
28 will never even get to those particular charges.

1 A. That's right.

2 Q. You don't assume from the fact that the law  
3 requires to us to ask these questions first that we will -- that  
4 that is any indication --

5 A. That's right.

6 Q. -- it will ever get there, is that right?

7 A. That's right. I understood what the Judge said  
8 about that, yes.

9 Q. Okay; fine. What is your opinion about the death  
10 penalty?

11 A. My opinion?

12 Q. Yes.

13 A. I believe in the death penalty.

14 Q. Why?

15 A. What?

16 Q. Why?

17 A. Why?

18 Q. Yes.

19 A. Well, I believe if someone does a crime that  
20 deserves the death penalty, then I feel that they should -- it  
21 should have the death penalty. If they take somebody's life,  
22 they should be -- well, an eye for an eye, I guess is what you  
23 call it.

24 Q. Do you belong to an organized religion?

25 A. No.

26 Q. I mean, is that just based on your own individual  
27 conscience?

28 A. Right. It's no religious thing, no.

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

3 A. I just feel life imprisonment, somehow so many of  
4 them get out that should not be out on the streets, even though  
5 it says without possibilities, I don't know if that's a true  
6 thing.

7 Q. Well, does that mean that you would be reluctant to  
8 give somebody that's convicted after serious crime that  
9 particular penalty?

10 A. If it was explained to me clearly that they would  
11 not be getting out, I could vote for it if that was really  
12 explained that they are not going to get out. I don't know how  
13 sure that is at this point.

14 Q. Well, if there was any doubt in your mind about  
15 that, could you -- could you then vote for the penalty in a  
16 serious case if there was testimony given about commutation by  
17 governors and things of that nature?

18 A. I don't know at this point. I mean, I'd have to  
19 know more about it.

20 Q. This particular charge involves the murder of two  
21 small children and very serious assault with serious injuries on  
22 at boy who survived.

23 A. Uh-huh.

24 Q. Do you have any particular feelings about that  
25 particular crime that would -- well, let me back up a minute.

26 As the Judge explained, if -- if we get to a  
27 penalty phase and the person that's responsible for these crimes  
28 were to be -- you'd have to select a penalty, a juror would have

1 to have an open mind for that penalty phase between the two  
2 possible penalties --

3 A. Uh-huh.

4 Q. -- death penalty and life imprisonment without  
5 possibility of parole.

6 A. Uh-huh.

7 Q. In a case involving small children do you think  
8 that you would be able to keep an open mind about those two  
9 penalties or would you favor automatically the death penalty,  
10 for example, in a case involving small kids?

11 A. Well, it doesn't matter to me whether they were  
12 small children or adults as long you know if the murder was  
13 committed, you know.

14 Q. Would you favor the death penalty automatically  
15 between those two penalties in any case where there was a  
16 serious murder involved?

17 A. Like I said, I don't know until I would hear -- if  
18 I would definitely know that it was life imprisonment without  
19 any way that they're going to get back out, I could vote for  
20 that, sure, but once I was assured of that.

21 Q. But if the Judge were to instruct you that there's  
22 possibilities of commutations by the Governor and --

23 MR. KOCHIS: Your Honor, I'm going to object because I  
24 think he is getting into areas that jurors are not going to be  
25 instructed on.

26 THE COURT: I think that's correct, Mr. Negus.

27 MR. NEGUS: That's not the way I read the latest U.S.  
28 Supreme Court decision, California vs. --

1 THE COURT: It used to be that we instructed on that. We  
2 do not any more in view of that decision, so the jurors are not  
3 going to be told so.

4 MR. NEGUS: My understanding of California vs. Ramos,  
5 your Honor, is that they are told and that it's part of the  
6 constitution that they shall be told.

7 THE COURT: I think it's just backward. We will have to  
8 review that later.

9 MR. NEGUS: Well --

10 THE COURT: If I tell you the that life imprisonment  
11 without the possibility of parole means that they shall never be  
12 patrolled, it means what it says --

13 PROSPECTIVE JUROR: Well, if I was to understand that,  
14 then I could probably vote either way after I hear the case.

15 MR. NEGUS: Could Mrs. Walker step outside a minute, your  
16 Honor? I'd like to --

17 THE COURT: Yes.

18 Why don't you do that.

19 (The following proceedings were had without the  
20 presence of Prospective Juror Walker.)

21 MR. NEGUS: Do you have the U.S. Supreme Court reports?

22 THE COURT: We do not here.

23 MR. KOCHIS: There has been a new decision on Ramos. I'm  
24 not certain it mandates that the jurors have to be instructed if  
25 the prosecution doesn't want it in view of the California  
26 Supreme Court's position in reversing death penalties in the  
27 recent years in which it was given. I think the newest Ramos  
28 case said it is not error to instruct.

1 MR. NEGUS: But it would probably be error to instruct  
2 them that life imprisonment without parole means what it says  
3 because it really doesn't.

4 THE COURT: Let's get together on what they are going to  
5 be told then. Is it your understanding that the jurors will be  
6 told that life imprisonment without the possibility of parole  
7 means no parole, in effect, and the only possible way they are  
8 going to get out is with commutation of the sentence by the  
9 governor?

10 MR. KOCHIS: I think Ramos says that instruction is not  
11 in error to give it.

12 THE COURT: I would be inclined to come right out front  
13 and give it if the law permits it. I think the jurors need that  
14 clarification.

15 MR. NEGUS: Then -- that's what -- she's giving me --

16 MR. KOCHIS: But that's the nature of the problem, your  
17 Honor, because once the jurors are told that then we get into  
18 Mr. Negus's area in that the jurors can speculate life without  
19 does not mean life without, this guy's going to get out some  
20 day, the Governor is going to commute his sentence --

21 THE COURT: That's something you are going to have to  
22 live with. On the other hand that's arguable, you can argue how  
23 often the Governnor has done that.

24 MR. KOCHIS: The additional problem, your Honor, is the  
25 last Supreme Court to speak is the U.S. Supreme Court. The  
26 California Supreme Court reversed a number of person's death  
27 convictions because they were instructed that the governor had  
28 the power to commute and they felt that that deprived the

1 defendant of a fair trial in the penalty phase in which the  
2 jurors assumed that life without does not mean life without.

3 I'm not sure that the California Supreme Court might not  
4 continue to reverse on independent state grounds, and that's the  
5 dilemma I'm in.

6 THE COURT: Even if Mr. Negus is the one that wants to  
7 bring it to out?

8 MR. KOCHIS: It wouldn't make a difference. It would  
9 simply be an additional something on grounds if he asked for the  
10 instruction.

11 THE COURT: I think we are in for more trouble if I don't  
12 give it.

13 MR. KOCHIS: Before we get to that I think we need to  
14 read the latest Ramos decision. I know I would.

15 THE COURT: Do you have a citation?

16 MR. NEGUS: If you have the -- I have it in my apartment.  
17 If you have the U.S. Supreme Court Reporter I can find it very  
18 quickly.

19 THE COURT: We don't have it.

20 MR. NEGUS: I mean, there is none in the building?

21 THE COURT: Well, Counsel, we have a law library, I'm  
22 certain, but we don't have it right here where we can lay our  
23 hands on it immediately. Isn't there some way we can proceed  
24 on, we've gone through about three days without having this  
25 bother us at this time, and then we can all research it during  
26 the noon period or during the next recess.

27 MR. NEGUS: I think Mr. Kochis concedes that the law is  
28 as I stated it, that that instruction can be given to a jury

1 according to the U.S. Supreme Court, which is the latest case to  
2 speak on the issue. The earlier Ramos case where the -- where  
3 the instruction was held to be error was based on the United  
4 States Constitution and was not based on independent state  
5 grounds. So the current state of the law is that the  
6 Constitution of the State of California says that instruction  
7 shall be -- I'm not sure. We can look up and see what it says,  
8 shall or may, if we can just look at the Penal Code a second.

1  
9 THE COURT: Behind the bench, Counsel, up the third row  
10 down.

11 We have the annotated ones on the bench.

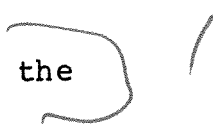
12 MR. NEGUS: It says, "shall".

13 THE COURT: It's in mandatory language, but then the  
14 California Supreme Court previously held that --

15 MR. NEGUS: It violated the United States Constitution.  
16 The United States Supreme Court said, no, it didn't.

17 MR. KOCHIS: And that's the problem. What they left open  
18 was the issue of whether it violated the California  
19 Constitution. And what's going to happen is, if we give it  
20 they're going to reverse it on that ground, that it violates the  
21 California Constitution.

22 MR. NEGUS: The --

23 MR. KOCHIS: They specifically refused to answer the  
24 question to create the loophole. 

25 MR. NEGUS: The practical problem, however, is what --  
26 what is cause as far as a juror is concerned. And you can't  
27 tell Mrs. Walker that life without possibility of parole means  
28 just that because it doesn't. And, you know, they are even



1 supposed to be told that if she can't consider life without  
2 possibility of parole with a Briggs instruction or with her own,  
3 you know, what is common knowledge that it doesn't mean it.

4 THE COURT: It would seem to be to the advantage of the  
5 defendant if we ever get to a penalty phase to have as many  
6 jurors as possible be able to fairly consider the life sentence  
7 as opposed to the death.

8 MR. NEGUS: That's what I'm trying to say. She can't --


9 THE COURT: So it is to your benefit it seems to me, Mr.  
10 Cooper's and the defense's, to have it mentioned, if we mention  
11 it now. In view of that, I think it would be -- and they are  
12 the ones to do it, Mr. Kochis, I think that the Court would be  
13 hard put to find a way to reverse it.

14 MR. KOCHIS: That's a separate issue. The issue in front  
15 front of us now, your Honor, is he is going to try to get Mrs.  
16 Walker excused for cause when he tells her that life without  
17 doesn't mean life without and she's going to go, therefore, I  
18 would vote for the death penalty every time. We can resolve  
19 that with questioning her.

20 THE COURT: I don't see that at all. If we tell Mrs.  
21 Walker that -- that life without possibility of parole means  
22 that he stays in prison the rest of his life unless the Governor  
23 commutes the sentence, and it takes a specific act of  
24 commutation from the Governor, then she is going to say, well  
25 then, I can consider life as opposed to death and then he is  
26 going to have no cause.

27 MR. KOCHIS: I think the record is clear, but if it's  
28 not -- I assume Mr. Negus is specifically asking that at this

1 point we in paraphrase form instruct the juror on that  
2 particular issue.

3 MR. NEGUS: Yeah, I think that would be good. 

4 MR. KOCHIS: Let's do it.

5 THE COURT: All right so bring her back in please.

6 (The following proceedings were had with the  
7 presence of the prospective juror.)  
8

9 EXAMINATION

10 BY THE COURT:

11 Q. We've kind of hashed out the law so we can tell  
12 you, --

13 A. Yes.

14 Q. -- Mrs. Walker, that life imprisonment without the  
15 possibility of parole means that the person is sentenced to  
16 state prison for the rest of his natural life without any  
17 possibility of getting parole, and the only way he would get out  
18 would be a specific act of commutation of sentence by the  
19 Governor of the State of California, --

20 A. Uh-huh.

21 Q. -- and that is not provided for in any certain  
22 number of years. The Governor himself would have to do that.  
23 So we can't say he could never get out. There is that  
24 possibility of him getting out.

25 A. It would have to be a very good reason. Okay.

26 THE COURT: Go ahead, Mr. Negus, please.  
27

28 EXAMINATION

1 BY MR. NEGUS:

2 Q. Getting -- Getting back to what I was asking you,  
3 do you think then if the -- you could consider the possibility  
4 of life imprisonment without parole if, in fact, a person could  
5 get out when the Governor commuted their sentence?

6 A. Probably I could if I -- after hearing the case and  
7 everything I possibly could. I don't know. I've never been  
8 asked that. I don't know.

9 Q. These are hard questions and, you know, we're not,  
10 as I say, trying to put you on the spot and there's no sort of  
11 right or wrong, you don't get a prize.

12 A. I have never been put in that spot before so I  
13 really, I don't know at this moment what my feeling on that is.

14 Q. The reason we are asking the questions is we are  
15 not mind readers, okay, and you know your mind and we don't and  
16 so, you know, that's --

17 A. And also I'm not supposed to have my mind made up  
18 to all this yet.

19 Q. Well, there is no duty to be impartial at this  
20 point in time. What we need is not what you are supposed to be,  
21 but what you really think. That's why we are asking you the  
22 questions now.

23 A. Oh, okay.

24 Q. And, you know --

25 A. What if I say I don't know at this point because I  
26 don't?

27 Q. If you don't know, that's the best --

28 A. All right. I don't know.

1 Q. That's the best answer.

2 A. Let's put it that way.

3 Q. Okay. In this particular case a based on what you  
4 heard do you have --

5 A. Right.

6 Q. -- do you have any idea in your mind now that if  
7 whoever is responsible for this particular crime --

8 A. Yes.

9 Q. -- leaving aside who that is --

10 A. Yes.

11 Q. -- but whoever is responsible for this crime should  
12 get a certain penalty?

13 A. What do I say? I don't know. I haven't made up my  
14 mind to that.

15 Q. Okay.

16 A. I don't believe he should be on the street to do it  
17 again, definitely. I have not made up my mind to the  
18 punishment, no, that's what I think I think at this point.

19 Q. If -- if -- Well, would it be difficult for you do  
20 you think to give a person the penalty of life in prison without  
21 parole for this particular crime?

22 A. I don't know. I've never been faced with that. I  
23 don't know.

24 Q. If you were selected as a trial juror in this  
25 particular case you would have to take an oath to well and truly  
26 try the case --

27 A. Yes.

28 Q. -- which would mean that you would have to promise

1 under oath to consider fairly both possible penalties if you  
2 ever got to the --

3 A. Yes. That's why I don't know what I would do.

4 Q. Can you take that oath?

5 A. Yes, I'm sure I could, because I don't have my mind  
6 made up.

7 Q. So, you're sure then that you would be able if the  
8 case was a appropriate to give the penalty of life imprisonment  
9 without parole?

10 A. I could. Is that what you want me to say? I  
11 mean --

12 Q. No. Please, I don't -- I don't want you to say  
13 really anything.

14 A. Okay.

15 Q. I have -- there's no right or wrong answers. As I  
16 say --

17 A. Right.

18 Q. -- it's not like a quiz.

19 A. Okay. I feel that I could be fair and do whatever  
20 I think at that point would be best. I don't know what I would  
21 say now, I haven't heard any of the evidence or anything. I  
22 don't -- I've never been faced with that. I think I could.  
23 That's all I can say.

24 Q. Okay. The fact that we're dwelling again on  
25 this -- the penalty aspect --

26 A. Penalty phase.

27 Q. -- which, you know, may never come to pass or may  
28 not be a significant part of the case --

1 A. Right right.

2 Q. -- if it does, does that in any way diminish for  
3 you the presumption of innocence that Mr. Cooper is entitled to  
4 under our law?

5 A. No, it does not diminish that.

6 Q. Do you feel as you sit there now that you can  
7 presume that Mr. Cooper is innocent?

8 A. I can until I hear all the evidence, yes.

9 Q. And if the evidence in the case is like perhaps  
10 he's guilty, probably he is guilty, but not beyond a reasonable  
11 doubt, do you think you could vote not guilty?

12 A. Isn't that what we are structured to?

13 Q. Right.

14 A. If I was -- if it was proven to me -- let's see.

15 THE COURT: Just answer the question. Most of these can  
16 be answered yes or no if you just listen and try to answer that  
17 specific question.

18 PROSPECTIVE JUROR: Okay. Ask me again.

19 BY MR. NEGUS:

20 Q. If the evidence were such that either perhaps he  
21 was guilty, probably he is guilty, but it was not proven to you  
22 beyond a reasonable doubt, could you in that case vote not  
23 guilty?

24 A. Yes, if that was the case, yes.

25 Q. You could vote not guilty even if probably but it  
26 wasn't proven beyond a reasonable doubt?

27 A. Yes.

28 MR. NEGUS: Fine. Thank you.

1                   That's all I have.

2           THE COURT: Mr. Kochis.

3

4

EXAMINATION

5 BY MR. KOCHIS:

6           Q.     Mrs. Walker, I have a few questions --

7           A.     Yes.

8           Q.     -- as well. The difficulty we lawyers have in the  
9 screening processes is we come very close to getting you to  
10 speculate as to what your decision may be unfairly because you  
11 haven't heard anything.

12          A.     Right.

13          Q.     What we try to find out though, and I think you've  
14 answered the question, is some people for whatever reason, for  
15 example, they feel they are so opposed to the death penalty for  
16 a religious reason, they feel they don't care what the crime is,  
17 what the defendant is, what the victims are, they could never  
18 vote for it, and you are not in that category..

19          A.     No, I'm not.

20          Q.     Other people, for whatever reason, their life  
21 experience or their general philosophy, they are the other way,  
22 if there's a person in court charged with the crime they are  
23 going to convict that person --

24          A.     Uh-huh.

25          Q.     -- really, no matter what the evidence is, and they  
26 are going to give that person the death penalty each and every  
27 time, and you are not in that category either.

28          A.     No, I don't feel I am.

1 Q. Could you wait until you hear all the evidence and  
2 the law before you make a decision?

3 A. Yes.

4 Q. Let's get to the the mechanics of the process  
5 itself. How do you feel about being put in a position where  
6 you're going to have to make decisions of this magnitude?

7 A. I feel I'm capable.

8 Q. Okay. The reason we ask that is some people wait  
9 until all the evidence is in, they've heard the law, and at that  
10 point they become concerned with how serious their decision is  
11 going to be and they freeze and they just tell us they can't  
12 make the decision one way or the other; do you see any problem  
13 like that arising in you?

14 A. No.

15 Q. To make sure there's no mistake, in every criminal  
16 case we poll the jury at the end.

17 A. Uh-huh.

18 Q. The Judge simply goes down the line, he asks each  
19 juror if the verdict the clerk has just read is in fact the way  
20 they voted.

21 A. Uh-huh.

22 Q. In this case if the jury determined that the  
23 appropriate punishment in the penalty phase was death, would you  
24 have any problem indicating in open court that you voted that  
25 way?

26 A. No.

27 Q. Okay. The law also provides somewhat as a  
28 formality that one person be elected as the foreperson and that



1 person dates and signs the verdict form; if you're chosen as  
2 that foreperson and you and the eleven other jurors determined  
3 that in this case the appropriate punishment is death, would you  
4 have any problem signing and dating the verdict form?

5 A. No, not if I was the foreperson.

6 Q. Okay.

7 MR. KOCHIS: I have nothing further.

8 THE COURT: We'd like to you wait outside once again  
9 while we discuss it privately and then the bailiff will give you  
10 further instructions. Thank you for coming down this morning.

11 PROSPECTIVE JUROR: Okay. Thank you.

12 THE COURT: Challenge for cause?

13 MR. NEGUS: Yes. I would challenge for cause. She at  
14 one point in time had made up her mind. She knows about the  
15 rape charges in Santa Barbara, which many courts have found to  
16 be -- to be the sort of thing which is almost reversible error  
17 per se if the juror were to be given evidence of that. And she  
18 has a strong predisposition against life without possibility of  
19 parole. I think taken all together those things constitute  
20 cause.

21 MR. KOCHIS: I would oppose the challenge. Rape, as Mr.  
22 Negus's recollection of the facts, is not this juror. She  
23 recalled him approaching some woman in Santa Barbara, that woman  
24 recognizing him and contacting the police. I don't think she  
25 ever even mentioned that the woman was assaulted or raped or  
26 whatever. I think she made it clear that she could make her  
27 decision based on what she heard in court. She had not made her  
28 mind up either on the issue of guilt, that she presumed Mr.

1 Cooper innocent, at this point would until the contrary was  
2 proven. And on the issue of penalty she would have to hear all  
3 the evidence before she could decide what was the appropriate  
4 punishment in this case.

5 THE COURT: Like many of the jurors she has been  
6 subjected to some of the publicity about it, but I gathered from  
7 her answers that she can put that aside and that she will be  
8 fair and impartial. She indicated that several times. Rape  
9 itself, even if that were brought out, which I don't believe it  
10 was, is fairly insignificant in comparison with the other  
11 charges here. I don't think that's really going to sway a juror  
12 to vote for first degree murder, multiple murder, even if a  
13 person had been involved in a rape, and it's not going to come  
14 out for other reasons as well, Mr. Negus.

15 I think that she be can be a fair and impartial  
16 juror. I will deny your challenge.

17 Give her an appointment to return and bring in the  
18 next juror, please.

19 THE BAILIFF: Gary Avalos.

20

21 GARY AVALOS

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

24

25 EXAMINATION

26 BY THE COURT:

27 Q. Good morning, sir.

28 A. Morning.

1 Q. Are you Mr. Gary Avalos?

2 A. Yes, sir.

3 Q. We have arranged things kind of informally in hopes  
4 that you will relax a little bit more and be candid in your  
5 responses.

6 A. Thank you.

7 Q. Has anything happened since we last saw you to make  
8 it more difficult in any way for you to serve here?

9 A. No, not that I know of.

10 Q. I have about three questions that I am going to ask  
11 you, then the attorneys will have some questions of you as well.

12 You remember I told you that we could get into two  
13 possible phases, if the guilt phase turns out a certain way,  
14 then we would get to be concerned with the penalty phase.

15 A. Uh-huh.

16 Q. My first question to you is, if we do get to a  
17 penalty phase, will you be able to fairly consider both the  
18 possible penalties, death and life imprisonment without the  
19 possibility of parole?

20 A. Yes.

21 Q. Would you be able to personally vote for either one  
22 of those, depending upon the evidence and circumstances brought  
23 out at the trial?

24 A. Yes, sir.

25 Q. You are not supposed to consider penalty or  
26 punishment in the guilt phase.

27 Even with that admonition do you think you might be  
28 so concerned with having to make that heavy decision down the

1 road, that that concern would affect the way you would vote in  
2 the guilt phase?

3 A. Will you -- would you repeat that question again,  
4 please.

5 Q. Some jurors might be afraid of having to make a  
6 life or death decision in the penalty phase that they might let  
7 that fear affect the way they would vote in the guilt phase.

8 A. I see.

9 Q. Kind of a cop out in some manner. Do you think  
10 that you would be of such bent?

11 A. No.

12 THE COURT: Mr. Negus.

13

14

#### EXAMINATION

15 BY MR. NEGUS:

16 Q. Mr. Avalos, the judge has allowed the lawyers to  
17 ask most of the questions of you. And we're not trying to pry  
18 or embarrass you in any way, but we like to have your honest  
19 opinion. There are no right or wrong answers at this particular  
20 point in the proceedings.

21 When you filled out the questionnaire for us you  
22 indicated that you didn't remember anything about the case. Did  
23 anything happen afterwards that would refresh your recollection  
24 so you recall having heard anything about it?

25 A. No. No. It's been -- I read the paper. I read it  
26 rather real quick through -- I hardly read any particular  
27 articles, you know.

28 Q. What was your reaction when you found out you were

1 going to be on a case of this particular type?

2 A. None.

3 Q. No particular -- we're asking you questions about  
4 the death penalty, but we may never get to the death penalty.  
5 You understand the law requires us to ask these questions first  
6 even though it may never occur.

7 A. Uh-huh.

8 Q. You understand though that doesn't in any way  
9 diminish the presumption of innocence that Mr. Cooper has right  
10 now.

11 A. Yes.

12 Q. What do you think about the death penalty?

13 A. Well, I really can't tell you at this point. What  
14 I am trying to say -- I haven't given it too much thought one  
15 way or the other.

16 Q. Do you have any particular opinions about the  
17 penalty of life imprisonment without parole?

18 A. No.

19 Q. Do you have any particular feelings that you'd pick  
20 one or the t'other in any particular situation?

21 A. No.

22 Q. Do you belong to an organized religion?

23 A. Catholic.

24 Q. Has the -- has tenets of the Catholic church in any  
25 way influenced your views on crime and punishment?

26 A. Well, to tell you the truth I don't follow that  
27 religion very close, so I don't know exactly what would be the  
28 beliefs or not.

1 Q. Whatever opinions you might have are your own  
2 opinions?

3 A. That's true.

4 MR. NEGUS: Thank you. That is all I have.

5

6

EXAMINATION

7

BY MR. KOCHIS:

8

Q. Mr. Avalos, I have just a few questions.

9

A. Yes, sir.

10

Q. Recognizing that you don't have any detailed  
11 opinions of the death penalty, some people are opposed to it,  
12 for some reason they feel, for example, only God has the right  
13 to take another person's life, they could never, no matter what  
14 the crime is, like vote for the death penalty. Are you that  
15 type of person?

16

A. No.

17

Q. You could wait until you hear all the evidence  
18 before you decide?

19

A. That's right.

20

Q. How do you feel about making serious decisions like  
21 the type of decisions that would have to be made in a penalty  
22 phase in this case.

23

A. Please repeat the question.

24

Q. Okay. If we get to the penalty phase, you and  
25 eleven other people are only going to have two choices: You are  
26 going to vote for life without the possibility of parole or  
27 death. Both of those are serious alternatives.

28

Do you feel confident that when you hear all the

1 evidence you can make a decision one way or the other?

2 A. Oh, yes.

3 MR. KOCHIS: Thank you. I have no further questions.

4 THE COURT: We'd like to have you wait outside briefly  
5 for further instructions to give us a chance to discuss it  
6 privately.

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Thank you very much for coming down. The  
9 bailiff will tell you in a minute.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Anything, gentlemen?

12 MR. NEGUS: No.

13 MR. KOCHIS: No, your Honor.

14 THE COURT: Yes. Please give him a return date and bring  
15 in the next one for us, please.

16 THE BAILIFF: The next juror is Kristina Blake-Glenn.

17

18 KRISTINA BLAKE-GLENN

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.

25 A. Good morning.

26 Q. Thank you very much for coming down today.

27 A. Yes.

28 Q. We have kind of arranged things informally. We

1 hope it will be a little bit more relaxing and you will be more  
2 candid in your responses to our questions.

3 Has anything happened since we last saw you that  
4 would complicate our ability to use you on this case?

5 A. Yeah. I was very close to Officer Toomey -- excuse  
6 me -- to Officer Rupe. He was slain in Balboa Park.

7 I will tell you up front, those two homicide cases  
8 were on my desk when I returned to work at the San Diego Police  
9 Department on tuesday.

10 Q. Are you working at the police department?

11 A. Yes.

12 Q. What is your job there?

13 A. I am the clerk analyst and handle homicide cases as  
14 as well as crime case corrections, crime case legality.

15 Q. I have had active police officers serve on criminal  
16 cases. That doesn't necessarily disqualify you.

17 A. Yeah. I want you -- in case that did disqualify  
18 me, I want to get it out front so our time won't be wasted

19 Q. That shouldn't disqualify you, this is a different  
20 case.

21 A. I don't know. I guess because I run across -- I  
22 don't know, of course, what kind of evidence, testimony you all  
23 have, but because I do handle the evidence and --

24 Q. But you are not going to handle the evidence in  
25 this case.

26 A. No. I meant, in terms of it coming across my desk,  
27 I am familiar.

28 Q. It just depends on what's in your mind, that is not



1 your job.

2 A. Yes.

3 Q. If you serve on this case, you would have to  
4 promise us not to discuss it with anybody, including your people  
5 down at the office.

6 A. Oh, yeah.

7 Q. And they may not want you on the case, I don't  
8 know. But as far as disqualifying you simply because of your  
9 job, it is more depending on what is in your head.

10 A. No. I think probably impartiality would still be  
11 there. I have had co-workers who, because of, or people who had  
12 my job before me who got right off, so I though I would both  
13 save your time and my time. But I don't think that it would do  
14 anything one way or the other in terms of automatically assuming  
15 on the one hand one was not guilty or automatically assuming on  
16 the other hand that one was guilty.

17 Q. Have you made up your mind in the case which way  
18 the verdict should be in any way?

19 A. Huh-uh. I probably tend more towards the guilty  
20 end of it just because of what I read in the papers months ago.

21 Q. Do you think you have the ability to put that aside  
22 actually and take your notepad and make notes of what evidence  
23 actually comes out in the trial and base your decision upon the  
24 trial evidence and not what you read in the paper?

25 A. Uh-huh. Yeah.

26 Q. If we do get to a penalty phase --

27 A. Uh-huh.

28 Q. -- will you then be able to fairly consider both of

1 the two possible penalties: Death and life imprisonment without  
2 the possibility of parole?

3 A. My personal opinion --

4 Q. I am not asking what your personal opinion is,  
5 counsel may ask you that.

6 Do you feel like you could look at one or the  
7 other. Would you be able to consider both of them?

8 A. I would like to think that I would be able to  
9 consider both of them. I don't know if I could say honestly  
10 whether I was locked one way or the other. But --

11 Q. Remember I told you that there is nothing  
12 automatic --

13 A. Yeah.

14 Q. -- that the jurors have to consider the evidence  
15 and weigh the factors in aggravation and mitigation in a penalty  
16 phase and then make up the decision one way or other.

17 A. Yeah.

18 Q. In order to be able to consider both of them, we  
19 need jurors that are fair-minded about the two possibilities.

20 A. No.

21 Q. That is no, you can't?

22 A. I don't think so.

23 Q. What's the problem?

24 A. Um, I guess just, you know, the issues of the jails  
25 overcrowding, expense, et cetera. I have been exposed to San  
26 Diego County's ACLU lawsuit with the overcrowding of the jails  
27 and that kind of thing.

28 Q. All right. I am not trying to talk you out of it,

1 your state of mind.

2 Are you telling us then that no, judge, I can't  
3 give a fair shot at life imprisonment without the possibility of  
4 parole and I am probably going to vote for the death penalty if  
5 the defendant is found guilty?

6 A. That is what I would say.

7 THE COURT: Either of you have any questions?

8 MR. NEGUS: No.

9 THE COURT: Mr. Kochis?

10

11

EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mrs. Glenn, just so that there is no confusion in  
14 anyone's mind, what we need is a promise from jurors.

15 A. Uh-huh.

16 THE COURT: Would you say no, yes or nothing at all. If  
17 you are going to say something, would you answer orally please.

18 PROSPECTIVE JUROR: Yes. Okay.

19 BY MR. KOCHIS:

20 Q. He can't take it down.

21 A. Uh-huh. Yes.

22 Q. He cannot take down uh-huh. You understand that?

23 A. Okay.

24 Q. We need a promise from jurors that on the guilt  
25 phase, for example, the first trial, they would not make their  
26 mind up until they heard all the evidence, all the law, the  
27 arguments of the lawyers and went back and deliberated with the  
28 other eleven people in this case.

1                    Could you give us that promise?

2                    A.     Yes.

3                    Q.     Depending on the verdict in the first phase we may  
4 get to a second phase of a penalty phase. You understand that?  
5 Yes? I can tell you are nodding your head. So, your answer is  
6 yes.

7                    A.     In the penalty phase we need the same promise, we  
8 need a promise from each juror that they could wait until they  
9 heard all the evidence that was offered by both sides at the  
10 penalty phase, heard additional law, the additional arguments,  
11 and then once they got back in the jury deliberation room with  
12 the other eleven jurors, at that time they could discuss and  
13 decide what penalty in this case is appropriate: Life without  
14 the possibility of parole or death. Could you do that?

15                   A.     No.

16                   MR. KOCHIS: I don't have anything else.

17                   THE COURT: You are saying that you have such a  
18 conscientious opinion about the death penalty, that if there  
19 were convictions of multiple counts of first degree murder in  
20 this case, that you would automatically vote for a penalty of  
21 death, and under no circumstances would you vote for a verdict  
22 of life imprisonment without the possibilities of parole.

23                   Is that what you are saying?

24                   PROSPECTIVE JUROR: It sounds so extreme, but yeah.

25                   THE COURT: Anything else, gentlemen?

26                   MR. KOCHIS: No, your Honor.

27                   MR. NEGUS: No.

28                   THE COURT: Thank you very much. Would you wait outside

1 just a second for further instructions, please.

2 MR. NEGUS: Challenge.

3 MR. KOCHIS: Joined.

4 THE COURT: Yes. Granted. She was candid with us,  
5 anyhow. Send her back to the jury room.

6

7

SHIRLEY LEPAGE

8 Called as a prospective juror, having been previously sworn,  
9 testified as follows:

10

11

EXAMINATION

12

BY THE COURT:

13

Q. Good morning, ma'am.

14

A. Good morning.

15

Q. You are Shirley LePage?

16

A. That's correct.

17

18 Q. Mrs. LePage, we have kind of arranged things  
19 informally here in hopes that you will relax just a little bit  
more.

20

A. Oh, can I?

21

22 Q. And be candid in your responses to the questions,  
please.

23

A. Okay.

24

25 Q. First, has anything happened since we last saw you  
that would complicate our selection process?

26

A. No.

27

28 Q. I am going to ask you about three or four  
questions, then the attorneys may have a number of questions of

1 you.

2 First, you remember I told you that there could be  
3 possibly two phases of the trial.

4 A. Yes.

5 Q. First is the guilt phase, and there you are not to  
6 consider penalty at all, but just determine whether he is guilty  
7 or not guilty. And then if that turns out a certain way then we  
8 would go into the penalty phase, then the jurors will have to  
9 make a decision as to whether the verdict or penalty would be  
10 life or death, so to speak.

11 Question 1. If we do get to a penalty phase in  
12 this case, would you be able to fairly consider both of the  
13 possible penalties: Death and life imprisonment without the  
14 possibilities of parole?

15 A. Yes.

16 Q. Would you be able to personally vote for either one  
17 of them, and base your decision upon the evidence received in  
18 the trial and the circumstances?

19 A. Yes, I believe so.

20 Q. Do you think you might be so concerned with having  
21 to make that hard decision in the possible penalty phase that  
22 that concern would affect the way you would vote in the guilt  
23 phase?

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

25 THE COURT: Thank you, ma'am. Mr. Negus.

26

27

EXAMINATION

28 BY MR. NEGUS:

1           Q.     Mrs. LePage, the judge has decided to leave most of  
2 the questions to you from us, the lawyers. We're not trying to  
3 pry or embarrass you in any way, but we, the law requires that  
4 we get your honest opinions about these things.

5                     You recall, according to your questionnaire, some  
6 things about the this particular case that you had heard before  
7 you came to court.

8                     What do you remember about the actual crime itself?

9           A.     Um, more or less just the surface things, not any  
10 of the deep details.

11                    I remember about, about the escape from Chino, and  
12 I remember about finding the bodies, and the one little boy. I  
13 remember about finding Mr. Cooper on the boat, and the  
14 circumstances surrounding that particular phase of it, and that  
15 is about it.

16           Q.     What do you remember about the circumstances  
17 surrounding the arrest on the boat?

18           A.     That there was a woman involved, and that the  
19 husband had called the police, I believe, and had him arrested.

20           Q.     The particular facts of that particular incident  
21 are not going to be introduced in this particular --

22           A.     I understand that.


23           Q.     -- case, and so, neither side will have an  
24 opportunity to introduce evidence as to their version of what  
25 happened there.

26           A.     Uh-huh.

27           Q.     Therefore you are required under the law not to  
28 even consider that. Do you think you could do that?

1 A. Oh, yes.

2 Q. Did you form any particular impression about Mr.  
3 Cooper based on what you heard in the media?

4 A. Probably that he was guilty, I would say. 

5 Q. Why did you come to that conclusion?

6 A. I think Mr. -- it was because what the papers said  
7 about the little boy.

8 Q. What was that?

9 A. I have -- just that he was hurt so badly, I guess.

10 Q. Do you still think that's true?

11 A. Not necessarily.

12 Q. What's happened to change?

13 A. If I remember correctly there were was something in  
14 the paper about the little boy testifying that it wasn't Mr.  
15 Cooper.

16 Q. So -- I noticed that you read both the Union and  
17 watch Channel 8. Do you remember which of the two --

18 A. No.

19 Q. -- was the main source of of your information?

20 A. Probably TV.

21 Q. Probably the TV.

22 A. Uh-huh.

23 Q. As you sit there right now, we're going to, you  
24 know, if you were to sit on the jury we would ask you to makeup  
25 your mind solely on the basis of the evidence in court and not  
26 on anything that came over the media.

27 Do you think you could do that?

28 A. I believe so.



1 Q. And, you know, Mr. Cooper is presumed to be  
2 innocent. Newspapers don't always give him that presumption.

3 A. That is -- that's correct.

4 Q. Do you think that you could, as a juror, give him  
5 that presumption right now?

6 A. I think so, because I was on another case about  
7 four years ago, not quite as terrible as this, but we based it  
8 on fact; on testimony.

9 Q. When -- did you have any particular impression from  
10 the newspapers about Mr. Cooper's personality or character or  
11 something.

12 A. No, I didn't.

13 Q. We have to ask you these questions about the death  
14 penalty because the law requires us to do it first rather than  
15 when we get to that, and that's no indication by us asking the  
16 questions that we think we're going to get there or anything of  
17 that nature. You understand?

18 A. Yes.

19 Q. What generally is your opinion about the death  
20 penalty?

21 A. It would have to -- I think I would have to feel  
22 that it was warranted very strongly.

23 Q. What do you mean by that?

24 A. That it would have to be undoubtedly a very  
25 viscious premeditated situation.

26 Q. In this particular case, if you -- whoever was  
27 responsible for that were convicted and you had to choose the  
28 penalty, have you made your mind up in advance as to what the

1 penalty should be?

2 A. No.

3 Q. Do you think that given the attack on the young  
4 kids and Joshua, who survived, that you could vote for the life  
5 without possibility of parole in this particular case?

6 A. Yes, I think so.

7 Q. What do you think about the penalty of life  
8 imprisonment without the possibility of parole in general?

9 A. How do I feel about that? I think in some respects  
10 it's probably worse than the death penalty.

11 Q. Do you believe in imposing that if the  
12 circumstances justify?

13 A. Oh, yes.

14 Q. Do you belong to an organized religion?

15 A. I belong to what is called the Alanon Fellowship.

16 Q. Has that particular organization's views influenced  
17 your views on crime and punishment or the death penalty?

18 A. No, I don't believe so. It is a spiritual  
19 fellowship, but I don't believe so.

20 Q. So your views on crime and punishment are  
21 essentially based on your own conscience?

22 A. Yes.

23 MR. NEGUS: I think that's all I have.

24

25 EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mrs. LePage, I'm not familiar with the Alanon  
28 Fellowship. Do they even take an established position on the

1 death penalty one way or the other?

2 A. No, no, it is a growth for the individual.

3 Q. Okay. Some religious organizations have a belief  
4 that this type of decision should only be made by God, in that  
5 human beings should not make decisions on another human being.

6 Do you have any beliefs along that line?

7 A. Well, there is that, that "Vengeance is mine, sayeth  
8 the Lord". But then again, with the Alanon Fellowship I believe  
9 that it is up to the individual and how they feel, because they  
10 feel like, more or less like like God works through other  
11 people, you know, more or less for the individual. And I think  
12 it would have to be up to the individual, how they felt.

13 Q. Okay. In this case, if we get to the penalty  
14 phase, the law requires that the decision be made by twelve  
15 ordinary people.

16 A. Yes.

17 Q. How do you feel about being one of those twelve  
18 people in making a decision of this magnitude?

19 A. I think I could handle it very well.

20 Q. And is it fair to say at this point you have an  
21 open mind, you'd have to hear all the evidence and all the facts  
22 first of all to determine if the defendant was guilty?

23 A. Yes.

24 Q. And then you'd have to hear all the additional  
25 evidence that we introduced in the penalty phase and argument to  
26 determine in this case what was the proper punishment.

27 A. Yes.

28 Q. Now, the way it works in this country is we try

1 people in a court in law and not in the newspaper.

2 A. Right.

3 Q. You have apparently heard things that cut both ways  
4 in this case on the newspaper, some that were unfavorable to Mr.  
5 Cooper and some that were favorable to Mr. Cooper.

6 A. Yes.

7 Q. Would you put both sides out of your mind when you  
8 evaluate the evidence in this case?

9 A. I'd like to I believe I could.

10 Q. Okay. Well, we can't have you erase it from your  
11 mind, obviously, but you you could base your decision on what  
12 happened in court as opposed to what you read.

13 A. Yes, I think so, because I found from the other  
14 case, from what I had heard, after our other case that was the  
15 papers, sometimes it is very, not very right. They leave out a  
16 lot of the stuff.

17 Q. That wasn't a death penalty type case, was it?

18 A. Not in our case. It was -- it was a case that had  
19 also been transferred to San Diego from San Bernardino, and it  
20 was attempted murder and rape.

21 MR. KOCHIS: Okay.

22 THE COURT: How long ago was that?

23 PROSPECTIVE JUROR: About four years ago.

24 THE COURT: I doubt if it came from San Bernardino.

25 PROSPECTIVE JUROR: Well, let's see. It happened in  
26 Hemet, Hemet mountains.

27 THE COURT: That's Riverside.

28 BY MR. KOCHIS:

1 Q. That is Riverside, another far away place.

2 A. Alcala was the defendant's name.

3 Q. Alcala?

4 A. Yes.

5 Q. And I take it you arrived at a verdict in that  
6 case.

7 A. Yes, we did.

8 THE COURT: Don't tell us --

9 PROSPECTIVE JUROR: Sorry.

10 BY MR. KOCHIS:

11 Q. Will you require us -- to make sure there is no  
12 mistake, we poll the jurors at the end of the trial. You know  
13 that, you have gone through it.

14 A. Yes.

15 Q. If we get to the penalty phase in this case, and  
16 the jury decides that the appropriate punishment would be death,  
17 would you have any problem in open court indicating what the  
18 clerk read is the way you in fact voted?

19 A. No.

20 Q. And, likewise, you know from your past experience  
21 that one person is elected the foreperson, that person dates and  
22 signs each verdict form.

23 If we got to a penalty phase in this case, and you  
24 and eleven other jurors decide that the appropriate punishment  
25 was death, and you were the foreperson, would you have any  
26 trouble dating and signing that verdict form?

27 A. I don't believe so.

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

1 THE COURT: We would like to discuss it privately, and  
2 you have to wait outside briefly, and the bailiff will give you  
3 further instructions. Thank you for coming in.

4 PROSPECTIVE JUROR: Thank you.

5 THE COURT: Anything, counsel?

6 MR. KOCHIS: No, your Honor.

7 MR. NEGUS: No challenge.

8 THE COURT: All right, give her the appointment to  
9 return. Do you have something you want --

10 MR. NEGUS: I would just -- um, I didn't think it would  
11 come up this early, I will be making a request with some jurors,  
12 who had jury duty, under People versus Williams, which I will  
13 have to get you the precise cite on, but it is basically the  
14 case that gives you the right to voir dire for preemptory  
15 purposes as well as cause; to ask jurors what their verdicts  
16 were in prior cases. There is no -- there's a tradition that we  
17 tell them not to do it, but I have never been able to find it.

18 THE COURT: Bring it down, counsel.

19 MR. NEGUS: Okay.

20 THE COURT: Purely an aside. You may continue to  
21 practice it, if you wish, but you preface most of your questions  
22 by the judge has decided to leave questions, most of the  
23 questions to the attorney. The decision was made long before me  
24 and long before this case.

25 I had lunch yesterday with some federal district  
26 judges, as well as other judges, and one of them said, hey, I  
27 get a jury in the morning, the same type of case that it takes  
28 you judges a couple of months to do.



1 really --

2 Q. They live a long time in Scotland.

3 A. Well, I hope she does.

4 Q. Well, we're certainly not inviting anybody to be  
5 excused from the jury once we pick them, but we do intend to  
6 select four alternates on this case to where if something did  
7 happen, why, we do our best to accommodate.

8 I have about three questions to ask of you, then  
9 the attorneys will each have some questions. So, I remind you  
10 first that when you were in before, I told you that there could  
11 be two phases, first the guilt phase where you don't even  
12 consider penalty or punishment; secondly, if you get to the  
13 penalty phase, where the jurors would have to make a decision  
14 based upon other evidence on death by execution or life  
15 imprisonment without the possibilities of parole.

16 My first question to you is, if we do get to a  
17 penalty phase, will you be able to fairly consider both of the  
18 possible death and life imprisonment without the possibility of  
19 parole.

20 A. Yes.

21 Q. Mr. Carlin, would you be able to personally vote  
22 for whichever one seemed most appropriate to you then depending  
23 upon the evidence and the circumstances.

24 A. Yes.

25 Q. Do you think you might be so concerned with having  
26 to make that possible very heavy decision of life or death, so  
27 to speak, that that concern would affect the way you would vote  
28 in the guilt phase?



1           A.     No.

2           THE COURT: Thank you, counsel.

3

4

EXAMINATION

5 BY MR. NEGUS:

6           Q.     Mr. Carlin, the judge is leaving the questioning of  
7 you mostly to Mr. Kochis and myself. We're not trying to pry or  
8 embarrass you, but we do have to get your honest opinions on  
9 certain subjects.

10                   What had you heard about the crime then before you  
11 came to court?

12           A.     I was vaguely acquainted with it. I think I have  
13 it mixed up with another case. It is kind of mixed up. So,  
14 really I am not really up on it. I had heard of it, but that  
15 is -- I think the case I have it mixed up with was the gentleman  
16 that was arrested or killed in the border of Canada.

17           Q.     Okay. Do you remember having heard anything about  
18 my client, Mr. Cooper; anything about him personally?

19           A.     Personally? No. I just heard the name. I knew  
20 the name because of the relation to the case. What I had  
21 vaguely heard about it, or read on the newspaper, the name was  
22 familiar.

23           Q.     Did you hear enough to come to any conclusions in  
24 your own mind as to whether or not he was guilty or innocent?

25           A.     No.

26           Q.     What was your reaction when you found out that this  
27 was the kind of case that you were a prospective juror for?

28           A.     Well, I mean, nobody feels good about this kind of

1 thing. If I am picked, if I am picked I have to do what I have  
2 to do. That is the way I feel about it.

3 Q. We're asking you questions about the death penalty  
4 now because the law requires we do that first. But, we may  
5 never get to the death penalty. Do you understand that?

6 A. Yes.

7 Q. And the fact we're asking these questions, does  
8 that in anyway diminish for you the presumption of innocence Mr.  
9 Cooper has?

10 A. No, none whatsoever.

11 Q. What is your own personal opinion about the death  
12 penalty?

13 A. It is required in certain circumstances, that is  
14 the way I feel about it.

15 Q. What do you think about the penalty of life  
16 imprisonment without possibilities of parole?

17 A. Same thing.

18 Q. Do you have a set of circumstances in your mind  
19 where you think it is required as opposed to where you don't?

20 A. I don't have anything built into my mind, nothing  
21 built in. I would listen to whatever is said, was presented,  
22 and base it on that.

23 Q. Given the particular charges in this particular  
24 case, and the fact that there is children who are victims, do  
25 you think that this particular case deserves a particular  
26 penalty?

27 A. I wouldn't really know until I heard the facts.

28 Q. Do you -- you haven't made up your mind at all at

1 this point in time about what penalty should be imposed?

2 A. No.

3 Q. Do you belong to an organized religion?

4 A. Yes.

5 Q. What religion is that?

6 A. Protestant, Presbyterian.

7 Q. Have the views of your church in any way influenced  
8 your own views on the issue of crime and punishment or the death  
9 penalty?

10 A. Views of my church? No.

11 Q. Your views on those issues are formed by your own  
12 individual conscious.

13 A. Yes.

14 Q. And do you have any particular reaction to the fact  
15 that the particular charges in this case involve the killing of  
16 two children and the serious injury of another?

17 A. I knew there was a -- all I have known so far is  
18 there was a serious injury to one. This is --

19 Q. Well, if you found out two of the other victims  
20 were children, would that influence you as a witness to be fair  
21 in this case in any way?

22 A. No.

23 MR. NEGUS: Thank you very much. I have nothing further.

24

25

EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mr. Carlin, I have a couple questions as well.

28 The issue of the death penalty has been on the

1 ballot twice in the last ten or fifteen years. Once I believe  
2 in '74 and once in '78.

3 Did you become involved in any either one of these  
4 campaigns circulating petitions to get it on?

5 A. No.

6 Q. How do you feel about being put in a position where  
7 you have to make decisions of this magnitude if we get to the  
8 penalty phase?

9 A. I certainly don't feel good about it. I would do  
10 it if I have to do it, but I don't feel good about it.

11 Q. Do you see any problem in not being able to make a  
12 decision after you have heard all the evidence?

13 A. I wouldn't know that until I heard the evidence.  
14 No, really no problem, I don't think, after I heard the  
15 evidence.

16 Q. Recognizing that it is not that pleasant decision  
17 to have to make, do you feel confident, after you heard all the  
18 evidence, heard all the law, that you can make the decision one  
19 way or the other?

20 A. I would assume, yes.

21 Q. We require, in every case, that one person be  
22 elected the foreperson of a jury. That person signs and dates  
23 the verdict form.

24 If the jury elected you foreperson, foreman, for  
25 example, and you and the other eleven jurors decided in this  
26 case the appropriate punishment was death, would you have any  
27 problem dating and signing that verdict form?

28 A. No. I wouldn't like it, but I wouldn't have any

1 problem. I still don't like it.

2 Q. You mentioned a couple of times that you wouldn't  
3 like to do this or like to do that.

4 If you took an oath and certain duties were imposed  
5 upon you, would you have any problem following those duties?

6 A. Not if I took an oath, no.

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

8 THE COURT: Mr. Carlin, we would like to discuss it  
9 privately just briefly. We would ask you to step outside until  
10 the bailiff gives you further instructions.

11 I still like a Scottish brogue.

12 Anything, gentlemen..

13 MR. NEGUS: No.

14 MR. KOCHIS: No, your Honor.

15 THE COURT: Give him his appointment slip and send in the  
16 next one.

17 THE BAILIFF: Martin Hernandez is next.

18

19 MARTIN HERNANDEZ

20 Called as a prospective juror, having been previously sworn,  
21 testified as follows:

22

23 EXAMINATION

24 BY THE COURT:

25 Q. Good morning, sir.

26 A. Oh, good morning, sir.

27 Q. You are Martin Hernandez?

28 A. Yes, sir.

1           Q.     Mr. Hernandez, I have got all of us around the  
2 table here in an informal way in hopes that you will relax just  
3 a bit and be candid in your responses to our questions.

4           First, has anything happened to you since we last  
5 saw you that might affect your ability to serve on this case?

6           A.     No, sir.

7           Q.     I have about three questions to ask, then each of  
8 the attorneys will have a few questions for you.

9           I will remind you first that I told you there could  
10 possibly be two phases. First will be the guilt phase, which  
11 the jurors don't even think about penalty or punishment, but if  
12 it gets to the second phase, depending upon how you vote in the  
13 first phase, and it turns out then the jurors would have to make  
14 a decision as to the appropriate punishment would be: Death or  
15 life imprisonment without the possibility of parole.

16           So, my first question to you is, if we do get to a  
17 penalty phase, will you be able to fairly consider both of the  
18 possible penalties: death and life imprisonment without the  
19 possibility of parole?

20          A.     I guess so.

21          Q.     Is there some hesitancy on your part?

22          A.     Can I make one statement clear that will save a lot  
23 of people a lot of time.

24                 I believe if someone murders somebody, other than  
25 self-defense, straight to the gas chamber or electric chair.

26          Q.     Well, you don't make the laws in California.

27          A.     Yes, I know.

28          Q.     That is not the state of the law at this time. Do

1 you think you'd be able to put aside your personal feelings.

2 A. No, I can't. I mean, it was drilled in my head if  
3 you murder someone, you are going to get the full penalty of the  
4 law. My own my father said, if you ever murder anybody, rape  
5 someone, or did child molesting, I am going -- I am going to  
6 come after you, and unfortunately after 20, 21 years of that  
7 drilled in my head, that is the way -- I believe there is no way  
8 I can change. I know that some -- I know that some people may  
9 not think that's right, but that is the way it is set in my  
10 mind.

11 Q. Of course we're bound here not by what each of us  
12 think individually is right or wrong, what we think the law  
13 should be, we're bound to follow the state of the law as given  
14 to us by our legislators of Sacramento.

15 Let me ask this question. Listen to it very  
16 carefully. Do you have such a conscientious opinion regarding  
17 the death penalty that you would automatically and in every  
18 permitted case vote for a verdict of death, and under no  
19 circumstances would you vote for a verdict of life imprisonment  
20 without the possibility of parole?

21 A. Yes, I would.

22 THE COURT: Any questions, counsel.

23 MR. KOCHIS: No.

24 MR. NEGUS: No.

25 THE COURT: All right, would you step outside briefly  
26 please and the bailiff will give you further instructions after  
27 we discuss it. Challenges?

28 MR. NEGUS: Yes.

1 MR. KOCHIS: No objection.

2 THE COURT: All right, the challenge will be granted.  
3 Please instruct him to report back to the jury room and bring in  
4 the next juror.

5 THE BAILIFF: This is Shirley Gillogly. Have a seat  
6 right there.

7  
8 SHIRLEY GILLOGLY,  
9 called as a prospective juror, having been previously sworn,  
10 testified as follows:

11  
12 EXAMINATION

13 BY THE COURT: Please have a seat. We wish you good morning.

14 A. Hello.

15 Q. How do you pronounce that again?

16 A. Gillogly.

17 Q. Gillogly?

18 A. Uh-huh.

19 Q. First, has anything happened to you since we last  
20 saw you that would make it more difficult for you to serve in  
21 any way?

22 A. Not really.

23 Q. Okay. I'm going to ask you just a few questions  
24 and then the attorneys will have some questions of you. Before  
25 I commence I would remind you that I told you that there could  
26 be two possible phases, first is the guilt phase, and we're not  
27 even there concerned with penalty or punishment, but if it gets  
28 to the second phase then that would be what we would be



1 concerned with and that the jurors would have to determine  
2 whether the appropriate penalty should be death by execution or  
3 life imprisonment without the possibility of parole.

4 A. Uh-huh.

5 Q. So, with that, my first question to you is if we do  
6 get to a penalty phase will you be able to fairly consider both  
7 of the possible penalties, death and life imprisonment without  
8 the possibility of parole?

9 A. Yes.

10 Q. Will you be able to personally vote for either one  
11 based upon the evidence and the circumstances in the trial?

12 A. Yes.

13 Q. Is there any hesitancy about your being able to  
14 vote for either one of them?

15 A. No.

16 Q. Okay. Some jurors might be so concerned with  
17 having to make such a heavy decision that they would let that  
18 concern effect the way they would vote in the guilt phase, do  
19 you think you might be such a person?

20 A. No.

21 Q. Thank you, ma'am.

22 Mr. Negus.

23

24

#### EXAMINATION

25 BY MR. NEGUS:

26 Q. Mrs. Gillogly, the Judge is leaving most of the  
27 questioning to Mr. Kochis and myself and we're not trying to pry  
28 or embarrass you in any way --

1 A. Uh-huh.

2 Q. -- but we need to have your honest opinions about  
3 certain things. What had you heard from the newspapers about  
4 this case before you came to court?

5 A. I heard all the details.

6 Q. What details?

7 A. Well, the description of the murder and who they  
8 were and where they were and the defendant.

9 Q. What did you haer about the defendant?

10 A. Well, that he was a prisoner at Chino, and I think  
11 I had heard that he had been a mental patient in New York or  
12 something like that. I thought that's what I heard.

13 Q. Did you -- did you hear anything about his arrest?

14 A. Yes.

15 Q. What was that?

16 A. He was on a boat or something?

17 Q. Did you hear anything else?

18 A. That he had supposedly raped the woman who had  
19 taken him on the boat.

20 Q. Did you hear anything about the case after it got  
21 to court in San Bernadino?

22 A. No.

23 Q. Did you know the case was coming to San Diego  
24 before you showed up?

25 A. Huh-uh.

26 Q. You have to say yes or no.

27 A. No. Sorry.

28 Q. In this particular case there's not going to be any

1 evidence presented as to what occurred in Santa Barbara, so you  
2 will not be able to hear the two sides of that particular  
3 incident.

4 A. You mean about the boat --

5 Q. Yes.

6 A. -- and the yacht or whatever?

7 Q. The alleged rape on the boat.

8 A. Uh-huh.

9 Q. Therefore, as a juror in this case it would be  
10 improper to consider that in any way or to discuss it with your  
11 fellow jurors. Having those details in mind, in your own mind  
12 do you think you could do that?

13 A. Yes, I do.

14 Q. Did you when you -- what was your impression of Mr.  
15 Cooper that you had from what you read in the papers?

16 A. I'm not sure I had any impression actually.

17 Q. Did you have an opinion as to whether he was guilty  
18 or innocent?

19 A. I suppose I thought he was a mental patient and was  
20 crazy.

21 Q. I don't believe there will be any evidence to that  
22 effect either in this particular case.

23 A. Oh, uh-huh.

24 Q. If there isn't, do you think you can likewise put  
25 that out of your mind?

26 A. Yes.

27 Q. Not speculate or discuss that with the other  
28 jurors?

1 A. No.

2 Q. When you say that you suppose you thought he was a  
3 mental patient, does that mean that you also supposed that he  
4 was guilty?

5 A. At the time I suppose I did, uh-huh.

6 Q. Do you still feel that way?

7 A. Well, you never know, do you?

8 Q. Okay. But I mean, I'm asking you what is your  
9 feeling, you know, we're just -- we are not mind readers here;  
10 we have to have you tell us what you think, that's the only way  
11 we'll know.

12 A. I don't know. I don't know.

13 Q. Do you think that if you had to decide Mr. Cooper's  
14 guilt or innocence that you would be able to presume him  
15 innocent and not change your mind unless and until the  
16 prosecution was able -- presented evidence that proved that  
17 guilt beyond a reasonable doubt?

18 A. I'd just look at the evidence and go from there.

19 Q. Well, I know. Okay. Maybe -- What I'm saying  
20 though, do you think that that, the fact that you at least at  
21 one point in time came to an opinion about his guilt, would  
22 lessen the amount of proof that the prosecution would have to  
23 present in order to convince you beyond a reasonable doubt of  
24 his guilt?

25 A. No.

26 Q. Which of the -- do you -- which of any of the two  
27 newspapers that you read, the Times or the Union, did you get  
28 most of the information about this case?

1 A. The Union. I didn't take the Times at the time.

2 Q. Do you -- Do you put a lot of credence in what you  
3 read in the Union do you think?

4 A. No.

5 Q. We're asking some questions about the death  
6 penalty, but that doesn't mean that, as the Judge explained,  
7 that we'll ever get to that particular stage, it's that the law  
8 requires us to ask these questions beforehand and it's a  
9 backwards manner.

10 A. Uh-huh.

11 Q. You won't take it the fact that we're asking these  
12 questions about the death penalty as any indication by the Court  
13 or anybody that we should ever get to that particular decision,  
14 is that true?

15 A. Would you repeat that, please.

16 Q. The fact that we're asking you now about the death  
17 penalty, we're doing it because the law requires it because of  
18 the nature of the charges --

19 A. Uh-huh.

20 Q. -- the questions are no indication that Mr. Cooper  
21 is guilty; can you not let this questioning process influence  
22 you in your decision as to guilt or innocence??

23 A. No.

24 Q. By that you mean, I take it, that they will not  
25 influence you.

26 A. No, they won't influence me.

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

28 A. I think in some cases it's applicable.

1 Q. What is your opinion about life imprisonment  
2 without parole?

3 A. The same.

4 Q. Do you have in your own mind any list, as it were,  
5 or set of criterion that you use for choosing which are more  
6 appropriate?

7 A. No. I can't see myself doing that. You know, I'd  
8 have to -- it would have to be specific circumstances presented  
9 to me before I could decide which would be what.

10 Q. Do you have a particular feeling about this  
11 particular case that whoever was responsible for this crime  
12 should receive a certain penalty?

13 A. Well, I suppose I do, uh-huh.

14 Q. What is that opinion?

15 A. Well, the least should be without possibility of  
16 parole. That should be the least.

17 Q. Okay. That's what the law says, that it's either  
18 death or life without possibility of parole. If the person --  
19 if -- Now if you catch the right person, do you have any  
20 particular opinion in this particular case between those two  
21 penalties?

22 A. I don't know. It's easy to say the death penalty,  
23 but on the other hand I don't know. I'd have to have the  
24 circumstance.

25 Q. Okay. So you haven't made up your mind in advance  
26 then?

27 A. No.

28 Q. Do you belong to an organized religion?

1 A. Yes.

2 Q. What religion?

3 A. Baptist.

4 Q. Has the views of the Baptist Church in any way  
5 influenced your views on the death penalty?

6 A. No.

7 Q. These views are just your own individual opinions?

8 A. Yes.

9 Q. There was one thing on your questionnaire -- did  
10 you see anything about this -- I take it you probably wouldn't  
11 have done it willingly, but did you see anything about this  
12 particular case on the television?

13 A. Fleeting glimpses, maybe.

14 Q. While somebody else in the family is watching it?

15 A. Uh-huh.

16 Q. You have to say yes.

17 A. Yes. I'm sorry.

18 Q. But you yourself didn't pay any attention to the  
19 television news story?

20 A. Not much, huh-uh.

21 Q. I have nothing further.

22

23 EXAMINATION

24 BY MR. KOCHIS:

25 Q. I have a few questions and then you are free to  
26 leave.

27 A. Okay.

28 Q. You said something that I didn't completely

1 understand, perhaps you could help me clarify it in my mind.

2 A. Uh-huh.

3 Q. Mr. Negus asked you some questions about the death  
4 penalty and you mentioned that you couldn't see yourself doing  
5 that; did you mean that you couldn't see yourself forming a list  
6 of things that would automatically get the death penalty?

7 A. Uh-huh, yes.

8 Q. Then I take it in terms of making the decision one  
9 way or the other, you don't have a problem with listening to all  
10 the evidence, listening to the law, and then with eleven other  
11 people deciding which penalty the defendant should get in this  
12 case if we get that far?

13 A. No, I don't.

14 Q. The reason we ask that is some people wait until we  
15 get to the end, until they are faced with the decision and then  
16 they find the decision so serious that they can't make it one  
17 way or the other and they just freeze. Do you see any problem  
18 like that in yourself?

19 A. No; no, I don't.

20 Q. How do you feel personally about being placed in  
21 the position by us where if you're selected as a juror you'll  
22 have to make decisions of this magnitude?

23 A. It doesn't bother me.

24 Q. There were two occasions in the last decade, once  
25 in the middle '70s and once later in about '78, in which death  
26 penalty related issues were placed on the ballot and people  
27 circulated petitions, there was a lot of discussion about it,  
28 people got involved and they voted. Did you get involved in



1 either of those campaigns in circulating petitions?

2 A. No.

3 Q. Were you involved in any of the controversy  
4 surrounding that? Did you discuss it a lot or was it just one  
5 of many issues in your life?

6 A. Just one of many.

7 Q. The law requires, to make sure that there's no  
8 mistake, that we poll the jurors at the end of every criminal  
9 case. Judge Garner will go down the row and he'll ask each  
10 juror if the verdict that's been read is the way they voted. If  
11 in this case the jury determined that the death penalty is the  
12 appropriate punishment, would you have any problem indicating in  
13 open court that that was your verdict?

14 A. No.

15 Q. Thank you.

16 I have no further questions.

17 THE COURT: We'd like to have you wait outside briefly so  
18 we can discuss it privately and then the bailiff will let you  
19 know. Thank you very much for coming down.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Anything, Counsel?

22 MR. KOCHIS: No.

23 MR. NEGUS: Yes. I would challenge for cause. She has  
24 knowledge of the rape. She also has knowledge that Mr. Cooper  
25 allegedly is a former mental patient. Neither of those will be  
26 brought into evidence. The former mental patient is prejudicial  
27 under the Corona vs. Superior Court case. If a person is crazy  
28 it provides a motive for an otherwise motiveless crime,

1 according to the prosecution's theory and a feeling that --  
2 based on the newspapers that he had committed a rape is the kind  
3 of thing that a juror cannot put out of -- out of their mind and  
4 forget.

5 The harmless error cases with respect to -- with  
6 respect to evidence priors, I think make that clear. This is  
7 the same sort of thing. It's not the sort of thing a juror can  
8 put out of her mind no matter what they say.

9 THE COURT: Mr. Kochis.

10 MR. KOCHIS: I believed her answers were that she could  
11 base her decision on the evidence introduced at the trial. I  
12 think Mr. Negus had to lead and push her somewhat to get her to  
13 say that she probably had an opinion at the time that she read  
14 the newspaper articles about Mr. Cooper's guilt or innocence,  
15 and she doesn't put a lot of credence in what she reads in the  
16 newspaper.

17 THE COURT: I think she cured it very nicely, Counsel. I  
18 believe she can be fair and impartial. I don't think the law at  
19 all requires me to excuse her here, nor should it. The  
20 challenge is denied.

21 Next juror please.

22

23 GERALDINE LEWIS,  
24 called as a prospective juror, having been previously sworn,  
25 testified as follows:

26

27

EXAMINATION

28 BY THE COURT:

1 Q. Come in please and have a seat. Good morning.

2 A. Morning.

3 Q. You are Geraldine Lewis?

4 A. Right.

5 Q. Mrs. Lewis, I've arranged the table here and the  
6 surroundings in a kind of an informal way in hopes that you will  
7 relax a little bit and be more candid in your responses to our  
8 questions, okay. I have a very few questions, and then each  
9 attorney has a chance to ask questions of you.

10 Before I commence I'd like to remember mind you  
11 about the two possible phases that I mentioned before. The  
12 first phase of the trial, and perhaps the final one, would be  
13 the guilt phase. And there the jurors are not to even be  
14 concerned with, discuss nor consider the subject of penalty.  
15 That only becomes applicable if you do get to the second phase.  
16 But nevertheless, we are asking the questions about it.

17 So my first question to you is, if we do get to a  
18 penalty phase will you be able to fairly consider both possible  
19 penalties, death and life imprisonment without the possibility  
20 of parole?

21 A. Yes.

22 Q. I should have first asked you, has anything  
23 happened to you since we last saw you that would make it more  
24 difficult for you to be able to serve on this case?

25 A. No.

26 Q. Would you be able to personally vote for whichever  
27 one of the two possible penalties would be most appropriate, or  
28 seem to you to be most appropriate, based upon the evidence and

1 the circumstances brought out at the trial?

2 A. Yes.

3 Q. And you could vote for either one of them then?

4 A. Yes.

5 Q. Some jurors would find the burden very heavy to the  
6 extent that their concern about having to make that very  
7 difficult life or death type of decision in the possible penalty  
8 phase would affect the way they would vote in the guilt phase  
9 even though it's not supposed to. Do you think you might  
10 involuntarily have that type of concern?

11 A. I don't believe so.

12 Q. Okay.

13 Counsel.

14

15

EXAMINATION

16 BY MR. NEGUS:

17 Q. Mrs. Lewis, the Judge is allowing the lawyers, Mr.  
18 Kochis and myself, to ask you most of the questions. We're not  
19 trying to pry or embarrass you in any way, but we need to have  
20 your honest opinions in order to proceed with this particular  
21 phase.

22 What had you heard about this case before you came  
23 to court?

24 A. Well, I work nights and I really don't know any, or  
25 very few, details about it because I don't watch the news and I  
26 don't read the paper every night, but I did hear about it and I  
27 guess a lot of people did hear about it, but I really don't know  
28 any of the details on it.

1 Q. Did you form any impression of my client, Mr.  
2 Cooper, from what you read -- heard in the papers or on the TV?

3 A. Oh, that they were looking for him. And I had to  
4 drive home alone at night and they didn't know where he was and  
5 that upset me.

6 Q. Did you hear anything about his capture or anything  
7 of that nature?

8 A. Yes, I did hear that they had captured him up north  
9 somewhere.

10 Q. Did you hear any of the details of that?

11 A. Very few.

12 Q. What do you remember?

13 A. Supposedly had raped a woman on a boat and he was  
14 captured.

15 Q. Did you hear anything about the -- about the case  
16 after it was in the courts in San Bernadino?

17 A. No.

18 Q. Did you know it was coming to San Diego County  
19 before you got here for jury duty?

20 A. No, I didn't.

21 Q. What was your reaction when -- when you found out  
22 that you would be sitting on a -- on this particular jury,  
23 perhaps?

24 A. Well, I -- I can't really say what my reactions  
25 were. I mean, I'm doing my duty by being here is all I can say.

26 Q. When -- when you were upset about -- about -- about  
27 I guess Mr. Cooper being at large, is that what was upsetting  
28 you?

1           A.     He was escaped they said he has escaped and they  
2 didn't know where he was at.

3           Q.     Do you think that that fear you felt of Mr. Cooper  
4 lingers on?

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

6           Q.     The alleged rape in Santa Barbara, there's not  
7 going to be any evidence presented of that at this particular  
8 hearing, so you won't hear either side of that particular story;  
9 so as a juror you wouldn't be supposed to consider that at all?

10          A.     Uh-huh.

11          Q.     The fact that you know about it, do you think you  
12 would be able to not consider it?

13          A.     Well, I don't know if he's been found guilty or not  
14 on it.

15          THE COURT: There's been no charges brought.

16          PROSPECTIVE JUROR: Yeah.

17          THE COURT: It's irrelevant to these proceedings.

18          BY MR. NEGUS:

19          Q.     You would also -- you are not even supposed to  
20 discuss it with your fellow jurors; do you think you could do  
21 that?

22          A.     True.

23          Q.     When we're asking questions about the death penalty  
24 we're not trying to suggest to you that you will ever have to  
25 decide that issue. That would only be an issue if Mr. Cooper  
26 were found guilty. I take it you understand that?

27          A.     If somebody is found guilty of that, I believe I  
28 could, yes.

1 Q. But the fact that we're asking you these questions  
2 now before you even hear any evidence in the case, does that  
3 suggest to you at all that Mr. Cooper's is guilty of these  
4 charges or anything?

5 A. I -- I don't know that he is guilty. Somebody is  
6 guilty, but I've heard there was whites that escaped at the same  
7 time so I don't know. I don't have any idea about the evidence  
8 and I wouldn't know until I saw evidence.

9 Q. Okay. So you haven't -- you haven't sort of --  
10 there's nothing about the fact that we are asking all these  
11 questions here in court that would diminish the presumption of  
12 innocence for you in any way; is that right?

13 A. Beg your pardon?

14 Q. It's a legalese question. Mr. Cooper is presumed  
15 to be innocent --

16 A. I know.

17 Q. -- until proven guilty. The fact that we're  
18 sitting here in court asking you questions about penalty, which  
19 is something that happens at the end of the case, that wouldn't  
20 diminish the presumption of innocence for you, would it?

21 A. No; no; no; no.

22 Q. You indicated that you thought the death penalty  
23 was appropriate in certain cases; what about life without  
24 possibility of parole, what do you think about that penalty?

25 A. Well that I believe, too, if they are sure they  
26 would never get a parole.

27 Q. What if you were instructed that this sentence can  
28 be commuted by the Governor under certain circumstances; would

1 that change your opinion at all?

2 A. You mean that later on they might be ~~patrolled~~ or  
3 something, is that what you're getting at?

4 Q. It's the same thing, released by commutation by the  
5 Governor.

6 A. I don't believe in that. I think if they say life  
7 in prison it should be life in prison without parole.

8 Q. If you were instructed as part -- they told you  
9 that life imprisonment meant life without parole but the  
10 Governor has the power to commute the sentence to let the person  
11 out, could you vote for that penalty under that circumstance?

12 A. No.

13 Q. If that were -- if that were the instructions and  
14 that were your options, if you found somebody guilty of this  
15 particular crime then would you always vote for the death  
16 penalty?

17 A. If there was a chance that he would get out later,  
18 yes, I would vote for the death penalty.

19 Q. Fine, thank you. I appreciate your candor.

20

21 EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mrs. Lewis, I would like to talk you for a minute  
24 about the last topic we just left. You appreciate that if we  
25 get to the penalty phase there's only two possible punishments,  
26 one is death and one is life without the possibility of parole?

27 A. Uh-huh.

28 Q. You have to say yes or no --



1 A. Yes. Sorry.

2 Q. -- or she won't know.

3 A. Okay. Right.

4 Q. And what Mr. Negus has referred to is an issue that  
5 deals with the life without the possibility of parole sentence,  
6 so I'd like to talk to you about that for just a moment.

7 Judge Garner may instruct you that if a person is  
8 sentenced to life without the possibility of parole that person  
9 spends the rest of their life locked up unless there's a  
10 specific act that takes place by the Governor. There's nothing  
11 automatic about it. It has to be something out of the ordinary  
12 as it were.

13 Appreciating that and also appreciating -- do you  
14 have any opinion about the fact that we don't carry out the  
15 death penalty in California, or at least we haven't in the last  
16 ten years? } A

17 A. Well, I think if it's the death penalty I think  
18 then if it's that bad then they should be put to death.

19 Q. Here's the question I probably should have asked.  
20 Some people feel that although we have the death penalty on the  
21 books in California because no one is has been executed in  
22 longer than 10 or 15 years that it's really not that serious of  
23 a decision; they can vote for the death penalty recognizing that  
24 no one in the past -- in the recent past has been executed and  
25 therefore it may not be that serious of a decision. But in this  
26 case if you vote that way you have to almost assume that some  
27 day he maybe executed; do you understand that?

28 A. Yes.

1 Q. And there's a lot of things that would take place  
2 before that happened. So nothing is completely certain is what  
3 Mr. Negus --

4 MR. NEGUS: Objection. There is not a question, your  
5 Honor.

6 THE COURT: It's becoming somewhat argumentative, Mr.  
7 Kochis.

8 MR. KOCHIS: Okay.

9 Q. Life without the possibility of parole, as Judge  
10 Garner is going to tell you, means that unless there is a  
11 specific act that takes place by the Governor, knowing that,  
12 knowing that it takes that special effort and it's not something  
13 that's automatic, nor is it granted in the majority of cases,  
14 certainly not in every case, certainly not in the large portion  
15 of cases, could you consider that as a possible punishment, for  
16 example, in this case?

17 A. Oh, yes, I could.

18 Q. And knowing that there is a chance, however slight,  
19 that some day someone could -- some governor could commute this  
20 defendant sentence if we gave him life without the possibility  
21 of parole, would you still be able to vote for that punishment  
22 if you thought it was appropriate?

23 MR. NEGUS: Object. The way the question was formed was  
24 argumentative.

25 THE COURT: I think it's all right. Overruled.

26 PROSPECTIVE JUROR: Yes, I could.

27 BY MR. KOCHIS:

28 Q. So, do I understand you that in this case -- first

1 of all, you would wait until you heard all the facts, all the  
2 law before you decided whether or not this defendant was guilty?

3 A. Correct.

4 Q. And you realize that we have to try every defendant  
5 in the courtroom and not in the newspaper?

6 A. That's absolutely true.

7 Q. And as Mr. Negus pointed out, none of the evidence  
8 involving the other woman in Santa Barbara is going to be  
9 touched on in this trial, so would you be able to put that aside  
10 when you make your decision in this case?

11 A. Yes.

12 Q. And you'd be able to base your decision in this  
13 case not on what was printed in the newspaper but what we did  
14 hear in the courtroom?

15 A. Correct.

16 Q. Now, assume we got beyond the first phase, there  
17 was a conviction, and we get into this penalty phase, which as  
18 Judge Garner and Mr. Negus has pointed out, we may not get to,  
19 but let's assume for our purpose that we're there, you would  
20 then be able to, depending on what the evidence was, vote for  
21 life without the possibility of parole or the death penalty,  
22 depending on what punishment you thought would fit this  
23 particular crime is that true?

24 A. Correct.

25 Q. You don't have your mind made up at this time one  
26 way or the other?

27 A. No.

28 Q. And even if Judge Garner told you that somewhere

1 down the line some day it is possible that a governor could  
2 commute the life without possibility of sentence to straight  
3 life, you could still vote that way if you thought it was  
4 appropriate you could still vote for life without?

5 A. Yes. I'd feel I had done my part, that's all I  
6 could do.

7 MR. KOCHIS: Thank you.

8 THE COURT: Would you have further questions, Mr. Negus?

9 MR. NEGUS: No.

10 THE COURT: Would you wait outside, please, for further  
11 instructions.

12 THE COURT: Mr. Negus.

13 MR. NEGUS: Challenge for cause, two grounds: She knows  
14 about the rape; and secondly, I believe that -- that Mr. Kochis'  
15 long oration to her and her sort of submission to authority  
16 after that long oration was not properly rehabilitative to her.  
17 Mr. Kochis talked to her about five minutes, included arguments  
18 about slight possibilities, which is not part of the  
19 instruction, and in his presentation essentially made an  
20 argument not based on the instructions and the evidence, and I  
21 don't think he properly rehabilitated.

22 THE COURT: Mr. Kochis.

23 MR. KOCHIS: I oppose the challenge. I believe she said  
24 on the issue of guilt she could base her decision not on what  
25 was in the newspaper but what was presented in the courtroom,  
26 and she could put aside specifically the Santa Barbara rape  
27 information.

28 On the issue of penalty I think her last comment

1 went right to the point, and she said if she felt life without  
2 the possibility of parole was appropriate she could vote that  
3 way, she had done her part, and the implication was if persons  
4 later down the road wants to commute Mr. Cooper's sentence they  
5 could do that. She said she could still consider that, not have  
6 her mind made up, would not decide what the appropriate penalty  
7 was until the conclusion of the penalty phase.

8 MR. NEGUS: I have an additional grounds for making the  
9 motion. I just happened to think of it when Mr. Kochis was  
10 doing it. It's error for the prosecutor to argue in final  
11 argument that there's not much likelihood of the death penalty  
12 ever being imposed because of the hiatus. It is -- it is error  
13 under old -- old -- long line of old cases because it diminishes  
14 the juror's personal responsibility in making a decision. Mr.  
15 Kochis has already made that argument to Mrs. Lewis and in his  
16 five minute oration about the lack of likelihood of the death  
17 penalty ever being imposed, and I would submit that's an  
18 additional grounds for dismissal.

19 MR. KOCHIS: I made the exact opposite argument.

20 THE COURT: I don't need anything further. I'm not at  
21 all sure that that's the result of his questioning.

22 Counsel, this makes two people that we have gone  
23 into this commutation question, and in each of them, Mr. Negus,  
24 you have been the one to bring it to up and it was brought up  
25 over the prosecutor's objection.

26 I think she indicated, sir, that she could be a  
27 fair juror.

28 I'm going to spend the lunch period reading the

1 Ramos case and the Haskett cases again and we may eventually  
2 exclude both of those, I don't know.

3 MR. NEGUS: She, you know, she brought it up. I only  
4 went into that question when I asked her -- a general question,  
5 what do you think about life without the possibility of parole,  
6 and then she volunteered the information. That's the only  
7 people that I've gone into that question with, people who have  
8 volunteered the information that they don't believe in the  
9 penalty.

10 THE COURT: The challenge is denied.

11 All right we will resume at 1:30.

12 (Noon recess.)

1 SAN DIEGO, CALIFORNIA, THURSDAY, SEPTEMBER 27, 1984, 1:35 P.M.

2  
3 THE COURT: Counsel, we are all again together.

4 MR. NEGUS: I'm sorry, your Honor, I didn't realize you  
5 were coming in, could I have about two more minutes? I'm a  
6 little slow.

7 THE COURT: Want me to leave?

8 MR. NEGUS: Well, I don't care. Before we call in the  
9 jurors I'm asking, that's all.

10 THE COURT: No, I'm not going to call the jurors right  
11 away. I want to get this Briggs amendment-type of thing out of  
12 the way first at some point, so if you need more time I'll step  
13 out.

14 MR. NEGUS: Thank you. It will be just a couple minutes.

15 (Recess.)

16  
17 THE COURT: Yes. Back to the question of whether or not  
18 we should tell the jurors that the Governor has the power to  
19 pardon or commute a sentence, in looking at the authorities it  
20 appears first that indeed the People vs. Ramos in California was  
21 based upon federal grounds. It was said so basically by the  
22 California Supreme Court as well as by the United States Supreme  
23 Court's construction of that.

24 In California vs. Ramos, U.S. Supreme Court, they  
25 held that it was all right, that it was not violative of the  
26 Federal Constitution. They also indicated that it didn't  
27 particularly bring back the neutrality of the situation by  
28 mentioning that the Governor also has the power to commute a

1 death sentence. But it would seem to me that if you do one, you  
2 should do the other, and that that's the way to go for various  
3 reasons.

4 Have you, Gentlemen, researched and have opinions  
5 on it?

6 MR. KOCHIS: I've read Ramos. I've read Haskett. I have  
7 opinions on it. They are not in line with what the Court has in  
8 mind, however. My concern is as follows: The California  
9 Supreme Court specifically left open the issue of whether the  
10 instruction violates the California Constitution.

11 THE COURT: Well, it didn't specifically. I don't  
12 remember them mentioning whether or not the court could base it  
13 on the State ground. They just didn't say anything about it.

14 MR. KOCHIS: They left it open. And the United States  
15 Supreme Court I think recognized that when they remanded it to  
16 the California Supreme Court for consideration as to whether or  
17 not the instruction violates the California State Constitution.

18 I can tell the Court that I took the liberty of  
19 calling the Attorney General's office over the lunch hour, spoke  
20 to Jay Bloom, who is the Deputy Attorney General who recently  
21 reargued Ramos the first week of September, approximately two or  
22 three weeks ago in front of the California Supreme Court on that  
23 very point. The California Supreme Court has not decided.  
24 Based on the comments that were made to him by the justices  
25 during oral argument he feels that the Ramos decision is not  
26 going to pass constitutional muster based on the California  
27 Constitution, and he is recommending that I not request the  
28 instruction be given at the end of the trial. And I can tell



1 the Court at this point that at the conclusion of this case I am  
2 not going to ask that the jurors be instructed that the Governor  
3 had the power to commute a life without possibility of parole  
4 sentence to a straight life and that Mr. Cooper can get out.

5 I further don't see how that instruction benefits  
6 in any way the defendant; I think it can only potentially harm  
7 him, and I can't imagine Mr. Negus asking the Court to so  
8 instruct. In fact, I would urge the Court not to instruct the  
9 jury that the Governor has that power. I think we create an  
10 additional problem if we voir dire the jurors on the instruction  
11 that may not get given.

12 And as a practical matter, the Supreme Court of  
13 this state could very well resolve the issue between now and  
14 April. If we have 16 people in the jury box, any number of whom  
15 we have voir dired on a rule of law that the California Supreme  
16 Court finds unconstitutional, we are then going to have a  
17 problem with the jury we had when we run the potential of having  
18 a mistrial in November, December, January, or February, wherever  
19 we are in the case, if the Ramos case is overturned. That's my  
20 thoughts.

21 THE COURT: Thank you.

22 Mr. Negus.

23 MR. NEGUS: On the other hand, as we are death qualifying  
24 the jurors and everybody knows basically that in fact life  
25 without possibility of parole doesn't mean that, and when a  
26 juror spontaneously without any prompting brings that concern  
27 up, then I would submit that the law at this present time is  
28 that you shall instruct as it's set it out, and that is that the

1 Governor has the power to grant a reprieve, pardon, or  
2 commutation of sentence following the conviction of a crime, and  
3 he can commute a life imprisonment to something that would  
4 include the possibility of parole. That's the state of the law  
5 at the present time. We are voir diring the jurors on their  
6 ability to fairly apply both penalties under the state of the  
7 law as it exists at the present time.

8 I haven't asked that question of most jurors; only  
9 asked the questions about it of jurors who indicated a remember  
10 reluctance to follow the law as it exists at the present time.

11 I think that -- I don't see how you can get around  
12 voir diring people -- you can't tell them -- you cannot tell  
13 people that the Governor can't commute a death penalty or that  
14 life without possibility of parole means that because it  
15 doesn't.

16 THE COURT: But that's what we're saying every time we  
17 say the word.

18 MR. NEGUS: But it doesn't -- but the Briggs people put  
19 the thing into the statute. To tell people it doesn't mean that  
20 and everybody knows it doesn't mean it, and we can't lie to them  
21 and tell them that it does. And if they say I would -- I don't  
22 believe in life without possibility of parole because it doesn't  
23 mean that and I wouldn't apply it because it doesn't mean that,  
24 I submit that that's cause. And, you know, it has only come up  
25 with a couple of people that volunteered it; but when they  
26 volunteer it, I think that you have -- that's a proper -- proper  
27 inquiry and we can't lie to them.

28 THE COURT: What do you suggest we do, Mr. Kochis, when

1 the jurors do volunteer it in effect?

2 MR. KOCHIS: Instruct the jurors, as they have been  
3 instructed in many capital cases in the past, that they must  
4 assume for purposes of their deliberation that life without  
5 means life without.

6 THE COURT: That's a deliberate falsehood.

7 MR. KOCHIS: Well, your Honor, it's not. I mean if you  
8 accept Mr. Negus's argument, there's no death penalty in  
9 California, no one gets executed, death doesn't mean death, you  
10 can set aside a death verdict.

11 THE COURT: The Supreme Court says it's inaccurate to use  
12 this word, call it a falsehood, call it an inaccuracy, it is not  
13 the state of the law nor the state of facts. It is not final.  
14 Death penalty is not final. Life without the possibility of  
15 parole is not final. It does not mean that.

16 MR. KOCHIS: But we create problems in that you can set  
17 aside a death verdict, but to tell that to the juror is going to  
18 cause them to feel, why take it seriously, the Governor can, if  
19 Mr. Cooper gets death, he can be out on the streets some day.  
20 It's that simple. No matter what the jury does, some day he  
21 could be out. His penalty could be set aside by the California  
22 Supreme Court. His sentence can be commuted and he can be out,  
23 but we don't have to tell the juror that.

24 THE COURT: I've always been in favor, when I get in  
25 difficulty, of coming out front with the truth as far as we know  
26 it, and when we get into trouble we, witnesses, law officers,  
27 whomever, we get in trouble when we try to hide the truth or we  
28 try to figure out ways around it. That's what you are

1 suggesting we do. That's what perhaps the United States Supreme  
2 Court has suggested that we do.

3 Mr. Negus, what's your position as far as going the  
4 other half a loaf and tell them that the Governor can likewise  
5 commute a death sentence?

6 MR. NEGUS: Well, that hasn't <sup>come</sup> could up in the context  
7 that we've dealt with so far.

8 THE COURT: It's comes up to the extent that the logical  
9 thing would be for Mr. Kochis to come back and when you voir  
10 dire on the Governor's power to commute one for him to do the  
11 same on the other.

12 MR. NEGUS: Well, if you had somebody that would state  
13 that, "I wouldn't apply the death penalty because there is no  
14 death penalty," then I assume that he could voir dire on it.

15 What I objected to when he did it was to -- was  
16 to -- was to volunteer and argue that information to them  
17 because it was something that didn't come from the juror but it  
18 rather was Mr. Kochis' way of trying to convince the lady to  
19 change her mind so that he could rehabilitate her.

20 THE COURT: Let's try to rise above the individual voir  
21 dire we have been going through here.

22 I find an inconsistency in any way advising the  
23 jurors as to the state of the law on voir dire and not being  
24 able to do the same thing to all the jurors in final jury  
25 instructions at some point. And if I tell them right now that  
26 the Governor can modify a life sentence and/or a death  
27 sentence,, then I think that I should likewise do that at the  
28 conclusion of the penalty phase.

1 MR. NEGUS: I think that -- I have the same problems as  
2 Mr. Kochis on that, I don't know what the state of the law is  
3 going to be.

4 THE COURT: Well, of course, if it's changed in the  
5 meantime, but at the present state of the law that to me seems  
6 to be logical.

7 MR. KOTTMEIER: Your Honor, one of the difficulties I  
8 think we're having is that the conversations we hear from the  
9 prospective jurors is more a perception of the system as opposed  
10 to dealing with the specific of life without possibility of  
11 parole.

12 They have seen some cases where the person has been  
13 sentenced to life and have formed in their own mind that this  
14 person should never get out of jail, and then they hear about  
15 the person getting out of jail. If we talk in terms of how many  
16 times the Governor has ever commuted a sentence of life without  
17 possibility of parole we are virtually dealing with a nullity.

18 THE COURT: That's what the Supreme Court, the Federal  
19 Supreme Court mentions, that the parties should be allowed to  
20 present evidence on that and argue it to a jury.

21 MR. NEGUS: But what we're dealing with here now is just  
22 a question, a simple question of voir dire. And I would submit  
23 that in the limited -- only in the limited context in which it's  
24 come up the questioning is proper. And I mean, you -- the --  
25 it's clear the law is what the law says it is. It is up in the  
26 air as to whether the Supreme Court will overrule it, but as of  
27 this moment the law is that the jurors shall be instructed on  
28 life without possibility of parole, and there's no -- there's no

1 grounds in our law at the present time for instructing them that  
2 the death penalty can be commuted. I mean, that's just the way,  
3 that's the state of the law, there is an imperative to tell them  
4 about life without parole.

5 THE COURT: But if I'm concerned about the California  
6 Supreme Court reversing on that ground, I would remove one of  
7 the major arguments that it made in the first Ramos case if I  
8 likewise told them about the death.

9 MR. NEGUS: The thing is I don't think the California  
10 Supreme Court hasn't got to that particular -- that particular  
11 issue yet, and there is something to balance off against it  
12 which is another line of California cases. See, the California  
13 Supreme Court didn't have to resolve that problem in Ramos, one  
14 or the -- you know, the original Ramos California decision  
15 because they were just saying that we don't tell them anything  
16 and that's basically an easy way out.

17 But there are countervailing considerations. When  
18 you start telling people that the Governor has the power to  
19 commute the death sentence, that's a different -- that's really  
20 a different psychological issue that you're dealing with, and  
21 there's a bunch of old cases which -- you know, I'm somewhat at  
22 are a loss for how to organize library facilities so I can get  
23 research quickly -- but there's a bunch of old cases that say  
24 that arguing that the Governor can commute a death sentence is  
25 error. And I think it's -- I think the case is Morse, but I  
26 forget -- there is a whole series of cases out of the '60s and  
27 '70s that say that, you know, you get -- you're -- you are  
28 having to walk a tightrope.

1           So what I'm suggesting is that as far as this  
2 particular proceeding is concerned, it's only come up with two  
3 out of, what is it, 48 people so far --

4           THE COURT: We may be premature. Well, Mr. Kochis  
5 objects to you doing it now.

6           Is that correct, sir, to explaining the power of  
7 commutation of a life sentence?

8           MR. KOCHIS: Yes. I can tell the Court that regardless  
9 of how you rule on his ability to go into the commutation of  
10 life, the case he referred to was Morse. It's a 1964 California  
11 Supreme Court case. And it held that instructing the jury that  
12 the Governor can commute a death sentence was error. And I'm  
13 not going to go through into that issue and I would not urge the  
14 Court to. Even though to do so maybe fair, I would as soon not  
15 have that issue on appeal.

16           THE COURT: Well, we don't have to, I guess, make a  
17 decision at this time. Perhaps the California Supremem Court  
18 will act and we will have more intelligence at the time we have  
19 to draft jury instructions. But for purposes of voir dire,  
20 apparently you are not going to go into it unless a juror gets  
21 hung up on it, and at that point just talk about the power of --

22           MR. NEGUS: What I'm asking them is, if you were  
23 instructed, as Briggs says that you should be instructed, and I  
24 have the statute in front of me now so that I don't misquote  
25 it --

26           THE COURT: I've got it. I've got the instruction.

27           MR. NEGUS: Right.

28           -- so, you know, could you follow the law. And I

1 think that's a fair question under --

2 THE COURT: Well, if I've got to make the decision all by  
3 myself, I will probably put the death part in, but I will  
4 certainly want to read Morse first.

5 Bring the next juror in.

6 THE COURT: The first juror is Carol Black.

7 MR. KOCHIS: Your Honor, it is 60 Cal. 2d 631, and it is  
8 discussed on Page 1187 of California versus Ramos of the Supreme  
9 Court recent deposition.

10

11 CAROL JEAN BLACK,  
12 called as a prospective juror, having been previously sworn,  
13 testified as follows:

14

15

EXAMINATION

16

BY THE COURT:

17

Q. Come in and have a seat, please.

18

State your name for us, please.

19

A. It is Carol Jean Black.

20

Q. Mrs. Black?

21

A. Ms.

22

Q. Ms. Black.

23

A. Uh-huh.

24

Q. Ms. Black, we have arranged things kind of

25

informally in hopes that you all won't be nervous here and you

26

will relax a little bit more and be candid in your responses.

27

Okay?

28

A. Yes.



1 Q. Secondly, I want to ask you, has anything happened  
2 since we last saw you that would complicate your ability to  
3 serve in this case?

4 A. Not that I know of today.

5 Q. You are keeping your fingers crossed about  
6 something?

7 A. Since this won't leave this courtroom, I presently  
8 work for PSA, and I work in the security department as a  
9 security representative. If our company, if the unions, the  
10 Teamsters fail to, you know, get our contract with the fifteen  
11 percent paycut, then the company is going to strike.

12 So, when they do, they're going to call everybody  
13 in from security to secure the aircraft and our facilities, and  
14 at that time I think this would conflict with one another.

15 Q. All right. Fair enough. Right now we're going  
16 through this process of talking to jurors individually about the  
17 death penalty and publicity only. Later we're going to have a  
18 lot of other questions of you, but we're going to do that with a  
19 group when I have about 60 people in the courtroom at one time.  
20 So, that's sometime down the road, and we'll wait and see then  
21 if there is anything new on the strike situation, so to speak.

22 A. Okay.

23 Q. Do you remember when you were in here with the  
24 other prospective jurors, however, that I told you that there  
25 could be two phases to this trial, a guilt phase and a penalty  
26 phase?

27 A. Yes.

28 Q. Right now we're talking primarily about your

1 attitude towards the penalty phase, never knowing if we're  
2 going, ever going to get there.

3 But if we do get to a penalty phase, will you be  
4 able to fairly consider both of the possible penalties: A death  
5 verdict or life imprisonment without the possibility of parole  
6 verdict?

7 A. Both.

8 Q. Would you be able to personally vote for one or the  
9 other, or both of them, whichever one seemed most appropriate  
10 depending upon the evidence and the circumstances?

11 A. Depending on the evidence and the circumstances.

12 Q. Some people would fear greatly having to make that  
13 life or death type of decision, so to speak, and they may let  
14 that concern affect the way they would vote in the guilt phase,  
15 which would be improper, but nevertheless I suppose a human  
16 thing to do.

17 Do you think that would happen to you?

18 A. I don't believe it would.

19 THE COURT: That you.

20 Mr. Negus, you may inquire.

21

22

#### EXAMINATION

23 BY MR. NEGUS:

24 Q. Ms. Black, the Judge has allowed Mr. Kochis and I  
25 to ask most of the questions.

26 A. Thank you.

27 Q. As I go first I usually end up asking more.

28 A. Okay.

1 Q. We're not trying to pry and embarrass you in any  
2 way, we need to have your honest opinion on the matter.

3 When you filled out the questionnaire you said, "I  
4 don't remember anything about this case."

5 Has anything happened since then to refresh your  
6 recollection of anything you may have heard before you came to  
7 court?

8 A. No, I have heard nothing of the case.

9 Q. What was your reaction when you found out you were  
10 going to be a prospective juror on a case of this particular  
11 type?

12 A. The length of time involved.

13 Q. No, namely about the crimes.

14 A. I don't know. I never really -- I guess I had  
15 thought about it. I really don't know how to answer.

16 Q. You have no strong feelings?

17 A. No, I just think that it is a privilege to serve on  
18 a jury.

19 Q. We're asking you questions now about the death  
20 penalty, but you understand that doesn't mean you will ever have  
21 to actually make that particular decision?

22 A. Yes, I understand that.

23 Q. And the fact that we're asking you these questions  
24 now, that wouldn't in any way diminish the presumption of  
25 innocence which Mr. Cooper is entitled to; is that correct?

26 A. Correct.

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

28 A. Oh, I would be for the death penalty if the

1 circumstances related to the case, it was of a very violent  
2 nature and would warrant that type of punishment.

3 Q. Why are you in favor of the death penalty?

4 A. I never really thought about it. I have never been  
5 asked that. I would say primarily because I'm not really for  
6 the death penalty or against the death penalty. I should say  
7 that I would sometimes vote in favor of it versus not in favor.

8 I would feel if the circumstances were very  
9 violent, it was -- somebody was murdered, children butchered,  
10 something that was premeditated, circumstances that were planned  
11 out, plotted, I don't see why we should put a person in jail to  
12 rehabilitate them, because that is what the program is for, to  
13 rehabilitate them, or life imprisonment is just putting them  
14 there for the burden of the taxpayers to continue paying room  
15 and board.

16 Q. The situation you've talked about, with children  
17 being butchered, and the various aspects of planning about the  
18 case probably describe the crime in this particular case.

19 Do you think that the person that's responsible for  
20 this crime, leaving aside the question of who that is,  
21 automatically deserves the death penalty, or could you,  
22 depending upon facts and circumstances about whoever the culprit  
23 or culprits were, vote for life without possibility of parole in  
24 some instances in a case like this?

25 A. Once again, to me it would go back to the  
26 circumstances. I could vote either way. Even though the crime  
27 that was committed may have been the things that I just now  
28 explained, it would be how that person was thinking at the time

1 the crimes were committed. It still involves the circumstances  
2 of the case.

3 Q. So, you don't have any particular feeling in this  
4 particular case right now, without having heard the evidence,  
5 that one penalty is justified as opposed to the other?

6 A. No, I wouldn't.

7 Q. You indicated that life imprisonment was something  
8 perhaps of a problem for you because of the expense to the  
9 taxpayers, that is, a penalty where the person would be kept in  
10 prison for the rest of their life without being released back  
11 into society.

12 Do you think that given that reservation that you  
13 could fairly apply that particular penalty if that were called  
14 for?

15 A. If I -- feel like I could if it was a person who  
16 wasn't harm -- well, I don't know how to explain that. You are  
17 asking me things I have never really thought about.

18 Q. I understand.

19 A. I wouldn't say that I could not agree with other  
20 jurors or make a decision on my own that life imprisonment was,  
21 you know -- I could never agree to that, because I could. I'm  
22 trying to think of circumstances that would lead me to believe  
23 that, and the only thing I could say is, I agree the death  
24 penalty should be given if something is premeditated, a very  
25 violent act, there is no way of rehabilitating them, probably  
26 life imprisonment if it was a violent act where there was no  
27 rehabilitation for the person, again. But it would depend on  
28 how much thought was given to the crime.

1 Q. Let me -- I don't want to confuse you, I appreciate  
2 your opinions.

3 Let me just go to a different situation, and asking  
4 if you could follow a certain law. The law in California  
5 basically is that not all multiple murders are supposed to get  
6 the death penalty.

7 A. Uh-huh.

8 Q. And finding somebody guilty of multiple murders,  
9 which normally involves premeditation, would require a juror to  
10 then impartially choose, based upon a larger amount of evidence,  
11 which of the two penalties were appropriate, death in some cases  
12 and life without the possibility of parole in others.

13 Do you think that you could do that?

14 A. Yes.

15 Q. Do you belong to any sort of organized religion?

16 A. Not per se organized religion. I go to church as a  
17 Baptist.

18 Q. I suppose that is what I meant by organized  
19 religion.

20 Have the views of your church in any way influenced  
21 your views on crime and punishment or on the death penalty?

22 A. No.

23 Q. In your work as security at PSA, are you involved  
24 in the business of -- what basically does that entail?

25 A. I monitor our security throughout our system as far  
26 as the screening services at the airport, and that's to assure  
27 we're not in conflict with all the Federal Aviation Regulations  
28 and Department of Health Regulations.

1 Q. Are you actually involved in the business of  
2 ferreting out people who are bringing weapons or contraband on  
3 the airplane yourself?

4 A. That's the FAA.

5 Q. So you don't ever like catch people and go to court  
6 or anything like that?

7 A. No.

8 Q. Is there anything about your particular line of  
9 work which has given you any particular feelings one way or the  
10 other on the death penalty?

11 A. No.

12 MR. NEGUS: Thank you very much.

13 THE COURT: Mr. Kochis.

14

15

EXAMINATION

16 BY MR. KOCHIS:

17 Q. Ms. Black, both sides get to ask you questions.

18 A. Okay.

19 Q. I am probably going to ask you a few questions  
20 dealing with an issue you haven't thought about a lot, so if you  
21 need a few moments to think about it you can take your time.

22 How do you feel about being placed in a position  
23 where you might have to make decisions of this magnitude?

24 A. I don't feel awkward. It is not, you know, a  
25 common thing, but I don't feel awkward; I don't feel it is a  
26 decision that I would be incapable of making.

27 Q. Are you confident that after you hear all the  
28 evidence, hear the law, hear the lawyers argue, that you can

1 make whichever decision in your own mind is an appropriate  
2 decision one way or other?

3 A. Yes, I do.

4 Q. There were periods during the last decade, I  
5 believe in the 70's, sometime about 1974, then again in 1978, in  
6 which issues relating to the death penalty were placed on the  
7 ballot, people circulated petitions, they voted, it was a topic  
8 of conversation.

9 Were you involved in either one of those campaigns  
10 in terms of circulating petitions, getting signatures to put it  
11 back on the ballot?

12 A. No, I didn't vote that year.

13 Q. Did you take, in terms of discussions, a strong  
14 position one way or the other on the death penalty back at that  
15 time?

16 A. No, I didn't.

17 Q. To make sure that there aren't mistakes, in a  
18 criminal action Judge Garner will poll the jury at the end of  
19 the trial. They do it in every criminal case. They go down the  
20 jurors in open court and they simply ask them if the verdict the  
21 clerk has read is in fact the way they voted.

22 If we have a penalty phase in this case and you and  
23 the other eleven jurors determine that the death penalty is the  
24 appropriate punishment, would you have any problem in indicating  
25 in open court that that's the way you voted?

26 A. No, I wouldn't.

27 Q. Likewise, you may know from TV that one person is  
28 elected as the foreperson, that person presides over the jury's



1 deliberations, they date and sign what's called a verdict form.

2 If the jury selected you as that person, the  
3 foreperson, and the twelve of you agreed that the appropriate  
4 punishment in this case was the death penalty, would you have  
5 any problem dating and signing that verdict form?

6 A. No, I wouldn't.

7 MR. KOCHIS: Thank you. No further questions.

8 THE COURT: We'd like to discuss it privately just  
9 briefly. Would you wait outside. The bailiff will give you  
10 further instructions. Thank you for coming in.

11 Anything, gentlemen?

12 MR. NEGUS: No.

13 MR. KOCHIS: No.

14 THE COURT: Yes. Bailiff, if you'd give her an  
15 appointment slip and bring in the next one, please.

16 THE BAILIFF: The next juror is Rita Lister.

17

18 RITA LISTER VJ

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.

25 A. Good afternoon.

26 Q. Rita Lister?

27 A. Yes.

28 Q. Mrs. Lister, I have arranged things kind of

1 informally in hopes that you will better be able to relax and be  
2 candid in your responses to the questions that we're going to  
3 put to you. Okay?

4 A. Thank you.

5 Q. Has anything happened to you since we last saw you  
6 that might complicate your ability to serve in this case?

7 A. No, sir.

8 Q. Now, I am going to ask about three questions, then  
9 each of the attorneys will have the bulk of the questions.

10 But before I ask, I remind you that I told you  
11 before that there could be two phases in this case. First would  
12 be the guilt phase, in that you don't even consider penalty. If  
13 you get verdicts in a certain way, then you would go to the  
14 penalty phase, and there the jurors would determine which is the  
15 appropriate penalty, death by execution, or life imprisonment  
16 without the possibility of parole.

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

21 A. Yes, I would. I believe so.

22 Q. Would you be able to personally vote for either one  
23 of them depending upon the evidence and the circumstances  
24 brought out at the trial?

25 A. Yes.

26 Q. Some jurors have a great concern for making that  
27 heavy type of decision, voting for a life or death type of  
28 decision, and we're concerned that they might be so concerned

1 that that would affect their ability to be impartial in voting  
2 on the guilt phase.

3 Do you think you'd have any problem with that?

4 A. No, I don't.

5 THE COURT: Thank you very much. Mr. Negus.

6

7

EXAMINATION

8 BY MR. NEGUS:

9 Q. Mrs. Lister, the Judge has allowed the lawyers to  
10 ask most of the questions, and since I am going first I will  
11 probably be asking more than Mr. Kochis. I am not trying to pry  
12 into your personal affairs, or embarrass you, but the law  
13 requires that we get certain answers from you before we proceed  
14 any further.

15 You have heard nothing about this case whatsoever?

16 A. No, I haven't.

17 Q. What was your reaction when you first found out  
18 that you were possibly going to be a juror on a case such as  
19 this one?

20 A. Well, I was a little excited.

21 Q. What do you mean by --

22 A. I thought I would make a good juror. I thought I  
23 would be able to serve.

24 Q. Why did you think you'd make a good juror?

25 A. Well, I think I am intelligent, I think I am  
26 objective.

27 Q. We're asking you questions now about the death  
28 penalty. That doesn't necessarily mean that, as I am sure you

1 understand, that we will ever get to that particular stage.

2 The question I have is, Mr. Cooper is entitled to  
3 the presumption of innocence at all stages unless he's proven  
4 guilty.

5 The fact we're talking about penalty, does that in  
6 any way lessen that presumption of innocence for you?

7 A. No.

8 Q. What do you think about the death penalty?

9 A. I think that in some cases it is necessary.

10 Q. Why do you think that?

11 A. Why?

12 Q. Yes.

13 A. Well, I don't know, exactly, for several reasons.

14 I think, first of all, because in a case where someone has taken  
15 another life, I think the State has the right to take the life  
16 of that person.

17 Q. What do you think about life imprisonment without  
18 parole?

19 A. Without possibility of parole?

20 Q. Yes.

21 A. I think that's a good punishment as well.

22 Q. If you were -- you said in some cases you think  
23 that the State has a right to take the life of somebody who  
24 takes somebody else's life.

25 Do you have any set idea yourself of what those  
26 cases are?

27 A. No.

28 Q. In this particular case, there is an allegation

4  
1 that two young children were murdered and another young child  
2 was very seriously injured, although he survived.

3 Do you have any particular feelings because of the  
4 nature of the crime involving young children that the death  
5 penalty should be automatic for the person responsible for this  
6 particular crime?

7 A. No, especially not knowing any of the  
8 circumstances.

9 Q. Do you belong to an organized religion?

10 A. Yes, I do.

11 Q. What religion.

12 A. I am Roman Catholic.

13 Q. Have tenets of the church in any way influence your  
14 opinion on crime and punishment or the death penalty?

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

16 MR. NEGUS: Thank you very much.

17  
18 EXAMINATION

19 BY MR. KOCHIS:

20 Q. I have a few questions, Mrs. Lister.

21 Starting with the death penalty. There were two  
22 periods, two separate occasions in the last decade, once in  
23 about '74 and again in 1978, in which issues relating to the  
24 death penalty were placed on the ballot, people circulated  
25 petitions, they gathered signatures. There was some debate  
26 about it, and controversy at that time.

27 Did you become involved in either one of those  
28 campaigns in circulating petitions?

1 A. No. I didn't, and I don't remember them.

2 Q. Do you -- was your position on the death penalty at  
3 that time essentially the same as it is now?

4 A. Ten years ago?

5 Q. If you recall.

6 A. I don't recall.

7 Q. If we get to the penalty phase, you and eleven  
8 other people are going to be placed in a position where you are  
9 going to have a limited number of options, you have only two  
10 penalties to choose from, both of which have rather serious  
11 consequences.

12 How do you feel about being put in a position where  
13 you have to make decisions of that magnitude?

14 A. I think I can make a decision like that.

15 Q. To make sure there is no mistake, a Judge polls the  
16 jury at the end of every criminal case. Judge Garner will do  
17 that at the end of this case. He simply goes down the row and  
18 asks each juror if the verdict the clerk has read is in fact the  
19 way you voted.

20 If in this case you determine that the appropriate  
21 punishment in the penalty phase is death, would you have any  
22 problem indicating that in open court?

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

24 Q. And, likewise, the law requires that one person be  
25 elected as the foreperson, and that person signs and dates the  
26 verdict form.

27 If the jury selected you as the foreperson, and you  
28 and the other eleven jurors determined that the death penalty

1 was the appropriate punishment in this case, would you have any  
2 problem signing and dating that verdict form?

3 A. No.

4 Q. Knowing that this is what we call a capital case,  
5 potentially a death penalty case, are you still eager, as it  
6 were, to serve on the jury?

7 A. Yes.

8 MR. KOCHIS: Thank you. I have no further questions.

9 THE COURT: Nor do I. Give us a chance to discuss it  
10 briefly privately then the bailiff will give you further  
11 instructions. Okay?

12 Anything, counsel?

13 MR. NEGUS: No.

14 MR. KOCHIS: No.

15 THE COURT: Bailiff, please give her a return date and  
16 bring in the next one.

17 THE BAILIFF: Jacqueline Cosby.

18

19 JACQUELINE COSBY

20 Called as a prospective juror, having been duly sworn, testified  
21 as follows:

22

23 EXAMINATION

24 BY THE COURT:

25 Q. Good afternoon. Are you Jacqueline Cosby?

26 A. Yes.

27 Q. Can we address you as Miss, Ms., Mrs.?

28 A. Ms. M-s.

1 Q. Ms. Cosby, first, has anything happened to you  
2 since we last saw you that might complicate your ability to  
3 serve in this case?

4 A. No.

5 Q. I'm going to ask you just a few questions, then  
6 each of the attorneys will ask you some questions. Before I do  
7 I want to remind you of something of the things that I said when  
8 we all were in here with the other jurors.

9 First, I told you that there could be two possible  
10 phases to the case. Do you remember that?

11 A. Yes.

12 Q. The guilt phase, and then if certain facts are  
13 rendered, then we can be concerned with the penalty or  
14 punishment.

15 My first question is, if we do get to the penalty  
16 phase, will you be able to fairly consider both possible  
17 penalties: Death and life imprisonment without the possibility  
18 of parole?

19 A. Yes.

20 Q. Do you feel you would be able to personally vote  
21 for either one of those, and that you would make that decision  
22 based upon the evidence and the circumstances brought out at the  
23 trial?

24 A. Yes, I do.

25 Q. Some people have a fear of making that very heavy  
26 decision about life or death, so to speak.

27 Do you think that you might have such a concern  
28 about that type of a decision in the penalty phase that you



1 would let that concern affect the way you would vote in the  
2 guilt phase?

3 A. Would you repeat that, please.

4 Q. Some jurors might say, Gee, if I don't find him not  
5 guilty, or I find certain types of verdicts here as opposed to  
6 others, then I will never have to worry about a death sentence  
7 or life without the possibility of parole, and that will finish  
8 it right here and now, and so they could rationalize a cop out,  
9 so to speak, avoid ever having to get to the penalty phase.

10 Do you understand what I'm saying?

11 A. Yes.

12 Q. That is, they would avoid having to make the hard  
13 decision, that hard decision that would come at the end of the  
14 penalty phase.

15 Do you think that you might be inclined to do that?

16 A. No.

17 THE COURT: Thank you, ma'am. Counsel.

18

19

EXAMINATION

20 BY MR. NEGUS:

21 Q. Ms. Cosby, the Judge has allowed Mr. Kochis and I  
22 to ask most of the questions. As I go first I usually end up  
23 asking more than he does. We're not trying to pry or embarrass  
24 you in any way, but the law requires that we do find out what  
25 your personal beliefs on certain things are.

26 A. Okay.

27 Q. What had you heard about this case before you came  
28 to court?

1           A.     Well, very little. I really hadn't paid that much  
2 attention. It was more or less brought to my attention more  
3 when the paper was given to me for -- the questionnaire was  
4 given to me. That's when it first more or less came to my  
5 attention.

6           Q.     Okay. Did you -- before you came to court and we  
7 gave that you questionnaire, did you have any impression of my  
8 client, Mr. Cooper?

9           A.     No.

10          Q.     What was your reaction when you found out that you  
11 were going to be on a case such as this?

12          A.     Well, I'm more or less interested in serving as a  
13 juror --

14          Q.     Why is that?

15          A.     -- in a case. Just because I have never done it  
16 before. It seems like it would be something interesting. Not  
17 particularly this case, but just to serve as a juror.

18          Q.     Do you have any preconceptions about this  
19 particular, this particular case? Do you have any feelings that  
20 because Mr. Cooper is charged with something he must be guilty?

21          A.     No.

22          Q.     We're asking some questions about the death  
23 penalty. That doesn't necessarily mean, as the Judge says,  
24 we're ever going to get to that position.

25                   If you find Mr. Cooper not guilty then we don't  
26 even get to that. But the law requires us to ask the questions  
27 sort of backwards, as it were.

28                   What is your opinion about the death penalty?

1           A.     I am not really sure what my opinion is about the  
2 death penalty. I guess it would be more or less in a case of  
3 maybe premeditated murder, if that were -- I guess that would be  
4 more likely a case for a death penalty. I don't -- I don't  
5 really know. I suppose you'd just really have to -- it'd just  
6 really have to be involved, or I know what actually happened in  
7 order to come up with some sort of conclusion about that.

8           Q.     What about the life imprisonment without parole?  
9 What do you think of that penalty?

10          A.     Well, as I said, either case. If it would be a  
11 person deserved -- if they feel they deserved this, then he  
12 would give that.

13          Q.     You don't have any preconceptions though about what  
14 type of cases a person you feel would deserve it as opposed to  
15 others?

16          A.     Not right offhand. You know, I'd have to think  
17 about it for awhile to say, well, this case deserves it, this  
18 case didn't.

19          Q.     Do you think that you could keep an open mind and  
20 follow whatever instructions the Judge were to give you on that  
21 issue if you did have to make that decision?

22          A.     Yes.

23          Q.     Do you belong to an organized religion?

24          A.     No.

25          Q.     Have your views on crime or punishment been  
26 influenced by any church or are they just your own individual  
27 personal beliefs?

28          A.     My own individual person beliefs.

1 MR. NEGUS: Thank you very much.

2

3

EXAMINATION

4 BY MR. KOCHIS:

5 Q. Ms. Cosby, I have a few questions. Recognizing  
6 that you don't have any set of beliefs on the death penalty one  
7 way or the other, we happen to live in a society where we have  
8 it as a possible punishment.

9 Do you believe that it is unfortunate that we even  
10 have to have it at all, or it is something that is appropriate  
11 in certain cases in terms of a punishment. Do you have feelings  
12 one way or another?

13 A. I feel that it is appropriate in certain cases more  
14 than likely.

15 Q. Some people haven't thought the issue out, because  
16 they have never been confronted with it, the death penalty  
17 issue, when they get to that phase and they get confronted with  
18 the decisions they realize for the first time that to them the  
19 decision is so serious they don't feel comfortable making it one  
20 way or the other, and they freeze, they balk.

21 Do you see that type of problem existing in you at  
22 all?

23 A. No.

24 Q. Are you relatively confident that once you hear all  
25 the facts and hear the law and hear the argument of the  
26 attorneys, if we get to the penalty phase, you can make the  
27 decision one way or the other depending on what you feel the  
28 appropriate punishment is?

1 A. Yes.

2 Q. There was -- there were two periods during the  
3 70's, once in about 1974 and then again in 1978, in which death  
4 penalty issues were placed on the ballot. Many people  
5 circulated petitions, they gathered signatures, and they voted  
6 on it, it caused some controversy, there was a lot of  
7 discussions.

8 Were you involved in either one of those campaigns  
9 and circulating petitions?

10 A. No.

11 Q. The law requires, to make sure there is no mistake,  
12 that we poll the jury at the end of every criminal case. Judge  
13 Garner will go down the list of all the jurors and he will  
14 preliminarily ask if that was the way you voted, if the way you  
15 voted is consistent with what the clerk has read in terms of the  
16 verdict.

17 If you are selected as a juror and you and the  
18 other eleven jurors determine that in this case the appropriate  
19 punishment would be death, would you have any problem indicating  
20 in open court that that's the way you voted?

21 A. No.

22 Q. Likewise, the law requires that the jurors select  
23 one person to be the foreperson, and that person signs and dates  
24 what is called the verdict form.

25 If the jury selected you as the foreperson, and you  
26 and the eleven other jurors determined that the death penalty  
27 was the appropriate punishment in this case, would you have any  
28 problem dating and signing that verdict form?

1 A. No.

2 MR. KOCHIS: Thank you. I have nothing else.

3 THE COURT: We'd like to have you wait outside just  
4 briefly for further instructions and let us discuss it  
5 privately. Thank you very much.

6 Any challenges?

7 MR. KOCHIS: No.

8 MR. NEGUS: No. Ask her to return then, please, and  
9 bring in Darlene Horton.

10 MR. NEGUS: There are people from the press other than  
11 the Associated Press here, if you didn't know that.

12 THE COURT: All right. Thank you.

13

14 DARLENE HORTON

15 Called as a prospective juror, having been duly sworn, testified  
16 as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. Are you Darlene Horton?

20 A. Yes. Hi.

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. We have arranged things kind of informally in the  
24 hopes that you will relax a little bit more and be able to  
25 respond easier to our questions. Okay?

26 A. Okay.

27 Q. First, has anything happened to you since we last  
28 saw you that would complicate your ability to serve here?

1 A. You don't want to hear it.

2 Q. Oh, really you have problems.

3 A. Yes. I am -- like I told you before, I am a single  
4 parent and I have been at this place for three and a half years,  
5 and the new owner just took over two months ago, and he wants me  
6 out. He took me to court on one, but my lease is up October  
7 31st so I am in the process of trying to find somewhere to move,  
8 because he don't want me there.

9 Q. Is this an apartment or --

10 A. Well, I got the whole -- it is two apartments  
11 upstairs, and I have the whole bottom floor. He told the judge  
12 he wanted me out so he could move in with his father, but he is  
13 sending people to my house, even though I paid my monthly rent,  
14 to look at my place. Three people have been -- I'm aggravated  
15 by him. He took me to court, and even though I won, I still  
16 didn't won. It is just -- October 31st is still a month to go.  
17 I been looking -- I have three children. They don't want  
18 children, or the rent's too high, and so I'm having a problem  
19 right there trying to find a place.

20 Q. If we have you back -- when would be the next time  
21 for her to return?

22 A. Everyday I'm at --

23 Q. So, we would let you go away until about the 16th  
24 of October, which is a month away; three weeks away --

25 A. Yeah.

26 Q. -- before we have you back. And then even when you  
27 do come back, we won't be working on this case on Friday,  
28 Saturday or Sunday, so we hate to lose you. Even though you are

1 having problems, we can sympathize with that, particularly since  
2 we have got some three weeks through which to solve those  
3 problems between now and then.

4 A. Nobody wants me. Everywhere I go they say I have  
5 too many children or the rent's too high.

6 Q. I have got problems too, I can't solve yours right  
7 now.

8 A. No.

9 Q. So, why don't you go ahead on that basis and  
10 continue working with your housing problem, and then the next  
11 time we have you back on the 16th of October, if we do, if we  
12 get through this process all right, then we can inquire further.  
13 If you are still having difficulty we can reconsider based upon  
14 the information we have then.

15 A. Okay. I got some prospects. I got to go see  
16 something at 4:00 today, so hopefully that will work for me.  
17 The guy understands my situation and he might give it to me.

18 Q. All right. Let's get down to the questions. I  
19 have about three questions and then each of the attorneys will  
20 have a few questions of you.

21 Do you remember I told you that there could be two  
22 possible phases to this trial? First would be the guilt phase  
23 and there all we're concerned with is whether he is guilty or  
24 not guilty. Even if he is guilty, of what.

25 And then in the penalty phase the jurors would have  
26 to determine, based upon other evidence brought before you, have  
27 to determine which is the appropriate punishment: Death by  
28 execution or life imprisonment without the possibility of



1 parole. Do you understand that?

2 A. Yes.

3 Q. Question No. 1: If we do get to the penalty phase,  
4 would you be able to fairly consider both possible penalties:  
5 Death and life imprisonment without the possibility of parole?

6 A. That's tough.

7 Q. They're all tough. In other words, do you feel you  
8 have a closed mind as to one of those right now or would you be  
9 able to fairly consider both of them?

10 A. I might not, because I don't believe in death. I  
11 know the person committed that crime or not, even though what  
12 they did probably was wrong, but I don't think somebody should  
13 take their life for it, so I don't believe in that. I'm --

14 Q. You are not alone in that opinion. Many people  
15 feel that way. But let me push you a little to find out how  
16 strong that feelings is.

17 What would have to happen, if we ever get to a  
18 penalty phase there would be other evidence presented to the  
19 jury, circumstances in aggravation, in mitigation, pointing for  
20 and against the death penalty, and then the jurors are supposed  
21 to exercise discretion. If they find more factors in favor of  
22 the death penalty, then they should vote for one; if they find  
23 more against it, then they should vote the other way.

24 Are you telling us that you could not make that  
25 balance?

26 A. I'd probably have nightmares, and that's serious.  
27 I don't know if I could do that to someone. If they put away  
28 that, if they put away for us as far as taking any life, well, I

1 don't know if I would be able to handle it afterwards. I might  
2 go through some personal problems thinking that it was upon me  
3 to set this to go forward. I don't know if I could deal with  
4 it.

5 Q. You know, I suppose most everybody here doesn't  
6 know how they're going to react until the moment comes, I  
7 suppose, so we're asking you to speculate.

8 But right now, considered in the abstract, you  
9 know, do you feel that you would be able to vote for the death  
10 penalty in some circumstances?

11 A. I don't believe in killing a fly. I let my flies  
12 out; I won't kill them. I don't like killing nothing, so I  
13 don't believe in it.

14 Q. What's the answer to my question?

15 A. I don't think I could.

16 Q. Could you vote for the death penalty in some  
17 circumstances?

18 A. I don't know. I really don't know. I don't know.  
19 It is hard for me to say.

20 Q. Well, we can't look inside your head so we depend  
21 upon your answers.

22 Let me ask you this in a rather formal way. Listen  
23 carefully to this and see if you can answer it, please.

24 Do you have such a conscientious opinion regarding  
25 the death penalty that such opinion would make it impossible for  
26 you to vote for the death penalty in any case under any  
27 circumstances and regardless of the nature of the evidence  
28 introduced during the trial? Now if you can, answer it yes or

1 no.

2 A. No, I don't think I can.

3 Q. You don't feel you could ever vote for the death  
4 penalty?

5 A. No.

6 THE COURT: All right. Counsel have any questions?

7

8

EXAMINATION

9 BY MR. KOCHIS:

10 Q. I have some. I don't know if Mr. Negus wants to be  
11 first.

12 Mrs. Horton, we appreciate you being honest with  
13 us. It appears that this is something that you have thought  
14 about; is that correct?

15 A. Yes, I have.

16 Q. You have definite feelings against the death  
17 penalty; is that true?

18 A. Yes.

19 Q. And it sounds like that is something that you have  
20 had for some period of time; is that correct?

21 A. Yes.

22 Q. So, it is not something that just popped up  
23 overnight?

24 A. No.

25 Q. Then are you saying that in this case, no matter  
26 what the evidence is, no matter what the law was, because of  
27 your personal feelings you would not be able to vote for the  
28 death penalty?

4

1 A. I don't think I want to be involved in it.

2 Q. Well, we don't have many people that volunteer to  
3 be involved in those things. But let me stop for a moment. It  
4 sounds like these feelings that you have would cause you to vote  
5 a certain way --

6 A. Right.

7 Q. -- no matter what the evidence was. Is that true?

8 A. No. But I don't want to be -- I don't -- just  
9 don't want to be involved because -- I just don't want to be  
10 involved in it.

11 Q. Let me ask you this: The feeling that you have  
12 that you don't want to be involved, is that somewhat a strong  
13 feeling with you?

14 A. I can't -- I don't -- I never been through nothing  
15 like this, and I had a few dreams about it, I woke up in the  
16 middle of the night, and I felt that something happened. Like I  
17 said, the death penalty might bother me for a long while. I  
18 don't want to go through the emotions. I'm trying to get over  
19 the changes myself, and I don't want to go through no other  
20 changes. But I think -- it is best if I don't be involved.

21 Q. You feel because of your makeup, because of what  
22 you feel inside that you couldn't be fair in this case?

23 A. I could be fair, but I feel that I don't want to be  
24 involved in it at all.

25 THE COURT: Do you understand -- I have to interrupt you  
26 at this point and tell you that I cannot give you your druthers,  
27 ma'am. We're engaged in serious business, and I can't let you  
28 make the decision just on your desires and dislikes.

1           PROSPECTIVE JUROR: That is where I don't want to be  
2 involved because I know it is serious. I don't want to be  
3 involved in it.

4           THE COURT: But you can't make that kind of decision in  
5 that manner, so you are involved at the moment. Continue  
6 answering questions, please.

7 BY MR. KOCHIS:

8           Q. That means I get to talk to you for a little  
9 longer.

10           Being fair would mean you have to base your  
11 decision on what the evidence is and what the law is and put  
12 your personal feelings aside. Do you understand that?

13           A. Yes.

14           Q. So, if you heard the evidence, and you heard the  
15 law, and you thought under the law and under the evidence this  
16 defendant should get the death penalty, would you be able to  
17 vote for the death penalty?

18           A. I feel you should be punished if you are wrong, but  
19 I don't know if you should die behind it. You know.

20           Q. Okay. Let me -- well, there is nothing wrong with  
21 you having whatever feelings you have. But what we have to be  
22 certain about at this point is if that feeling that you have,  
23 that apparently is very strong, would prevent you from imposing  
24 the death penalty. And would it?

25           A. It might, because I don't want to -- that's just --  
26 I don't know if I could go through with this trial, because if  
27 something come up and I think I'm having dreams about it, it  
28 would bother me, it would effect me personally. I don't want to

1 go through them changes. I'm having my own personal problems.

2 MR. KOCHIS: I don't have any further questions.

3 MR. NEGUS: Nor do I.

4 THE COURT: Would you wait outside and give us a chance  
5 to discuss it. Don't leave for a minute, please.

6 Anything, gentlemen?

7 MR. KOCHIS: No.

8 MR. NEGUS: No.

9 MR. KOTTMEIER: Your Honor, maybe I just noticed your  
10 expression.

11 THE COURT: You know, the lady is going to have to be  
12 excused at some point.

13 MR. KOTTMEIER: The difficulty is that this is People  
14 versus Lamphear all over again; that is, she doesn't want to be  
15 involved. But as far as saying that she can't be fair or she  
16 won't follow the law, it is I don't think so, I think I will  
17 have bad dreams. But it is not a definite statement.

18 THE COURT: I have no problem with calling her back, if  
19 there can't be a stipulation. It just seems like counsel could  
20 agree in this case.

21 MR. KOCHIS: I am willing to stipulate if Mr. Negus wants  
22 to stipulate, but I don't want to challenge her over his  
23 objection and create an issue on appeal.

24 THE COURT: That's fine.

25 MR. NEGUS: I don't wish to stipulate.

26 THE COURT: Have her back.

27 Weve got a few minutes before we call the last  
28 group. Let's take a brief recess.

1 (Recess)

2

3 THE COURT: Ready, Gentlemen?

4 MR. NEGUS: I reckon.

5 THE COURT: Let's bring in the next juror.

6 THE BAILIFF: We have Annie Mae Brown.

7

8 ANNIE MAE BROWN,

9 called as a prospective juror, having been previously sworn,  
10 testified as follows:

11

12 EXAMINATION

13 BYTHE COURT:

14 Q. Good afternoon, Mrs. Brown. Sit here. I am down  
15 here.

16 Are you Annie Mae Brown?

17 A. Yes, I am.

18 Q. You had your is handkerchief out; we haven't made  
19 you cry already, have we?

20 A. No, I'm sweating from running.

21 Q. Have you got something in your hand that you wanted  
22 to show us?

23 A. Yes, I have.

24 THE COURT: Bailiff, would you hand it to me, please.

25 It's a letter from her employer Solar Turbines  
26 Incorporated.

27 "Production requirements in our manufacturing floor  
28 are now at a very high level and continued participation

1 by Annie May Brown on jury duty will create a hardship  
2 within her unit. Consideration for postponement of her  
3 jury duty responsibilities would be greatly appreciated.

4 Give her her jury notice back.

5 Q. What is your job there?

6 A. Assembler.

7 Q. How many people do they have?

8 A. They are short of help, very few. I'm the top  
9 seniority. They are bringing parts to me to do when they don't  
10 bring to no one else because. They can't do the job.

11 Q. What happens if you got sick?

12 A. Well, they -- that's a different story. That would  
13 be their problem then.

14 Q. Will things improve in the next two or three if  
15 weeks?

16 A. Well, I really don't know because they are way  
17 behind.

18 Q. You see, we wouldn't have been to have you back,  
19 Mrs. brown, until about the 16th of October?

20 A. Uh-huh.

21 Q. And hopefully by then things might be a little bit  
22 better for you. I hate to excuse you. It's not the usual type  
23 of key-employee type of excuse to where they say, "Hey, we're  
24 going to all close up if that person isn't there."

25 I think that what I'd better do is to hang on to  
26 you for awhile at this time, and when you do come back if you  
27 still have continued problems we will talk to you again about  
28 it, but right now stay with us. If you do come back we won't



1 have to have you back until about the 16th of October.

2 A. And another thing, I have a breathing problem, too.

3 Q. A what?

4 A. A breathing problem.

5 Q. Is that some ailment that you have to live with?

6 A. Yes, uh-huh.

7 Q. Can you live with it all right?

8 A. I hope I can.

9 Q. It doesn't take a lot of exertion to sit in a jury  
10 box normally. Would that incapacitate you in some way or  
11 prevent you from serving?

12 A. Well, my doctor had asked me to stay out of big  
13 crowds if possibly, you know, where I wouldn't get all upset and  
14 everything.

15 Q. Do your emotions have an affect upon your  
16 breathing?

17 A. Yes, uh-huh, that's the reason why I'm blowing so  
18 now. I'm very short of breath.

19 Q. Were you waiting outside or did you hurry to get  
20 here.

21 A. Well, I were waiting. I were rushing to get here  
22 and then when he came out I had been there about five minutes, I  
23 guess, waiting for him to come out an call me.

24 Q. Do you see your doctor regularly?

25 A. Every two weeks.

26 Q. It's not that I can't make decisions, but I hate to  
27 lose you and I really haven't got good grounds to excuse you  
28 yet, so if you think that you've got a medical problem that

1 prevents you from serving in this case and your Doctor agrees  
2 with you, then would you bring a letter with him from you next  
3 time that you come, please, --

4 A. Okay.

5 Q. -- on the 16th of October?

6 A. Okay, I sure will.

7 Q. Let me go ahead with the few questions that we have  
8 and let's see if we can otherwise have you serve on the case.

9 You remember, Ma'am, that I told you that there  
10 could be two possible phases to this case, a guilty phase, and  
11 then if we get over the guilt phase then we would be concerned  
12 with a penalty phase, and there the jurors would make a decision  
13 between two possible penalties, death by execution on the one  
14 hand and life imprisonment without the possibility of parole on  
15 the other; remember I told you that when you were in with the  
16 other jurors?

17 A. Yes, uh-huh.

18 Q. Question number one, if we do get to a penalty  
19 phase will you be able to fairly consider both possible  
20 penalties, death and life imprisonment without the possibility  
21 of parole?

22 A. That would be kind of a hard pill to swallow.

23 Q. What are you saying, that you couldn't consider  
24 both of them?

25 A. No, I couldn't.

26 Q. What couldn't you consider?

27 A. Well, I just don't believe in the penalty no way  
28 like that.

1 Q. You don't believe in the death penalty?

2 A. No, I do not.

3 Q. Are you saying that there may be some cases where  
4 you could possibly vote for the death penalty, but not usually?  
5 How strong are your convictions?

6 A. I wouldn't go have death for no one. I wouldn't go  
7 for it for no one.

8 Q. Do you have such a conscientious opinion regarding  
9 the death penalty that you would never be able to vote for the  
10 death penalty in any case under any circumstances and regardless  
11 of the nature of the evidence introduced during the trial?

12 A. I didn't get that question. Sorry.

13 Q. Do you have such a strong opinion about the death  
14 penalty that that 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.

19 Q. You just could no way in any way vote for the death  
20 penalty; is that correct?

21 A. No, no way. No way.

22 THE COURT: Counsel, any questions.

23

24

EXAMINATION

25 BY MR. NEGUS:

26 Q. Mrs. Brown, would you be fair as to just guilty vs.  
27 not guilty? If you didn't have to decide the penalty could you  
28 be fair as to guilty versus not guilty?

1 A. Would I be fair?

2 Q. On that issue, yeah?

3 A. Yes, I would be fair.

4 MR. NEGUS: Thank you.

5 I have nothing further.

6

7

EXAMINATION

8 BY MR. KOCHIS:

9 Q. Mrs. Brown, I have one or two questions. If the  
10 defendants is found guilty we're going to get to the penalty  
11 phase, the death penalty issue, do you understand that?

12 A. (No audible response.)

13 Q. I need an answer one way or the other. Do you  
14 understand that if we get past the first phase there will be the  
15 penalty trial?

16 A. Get past the --

17 Q. Judge Garner told you that there would be two  
18 possible trials; do you understand that?

19 A. Uh-huh; right; uh-huh.

20 Q. The first trial would just determine whether this  
21 defendant did the murders or not; do you understand that?

22 A. Yes.

23 Q. And if you find -- if the jury finds that he did  
24 the murders, then you have to consider whether to give him the  
25 death penalty or not.

26 A. No, I still say no.

27 Q. I know you can't do it.

28 Let me ask you this are your feelings about that so

1 strong that in the guilt phase you would find him not guilty  
2 just so you wouldn't get to the penalty phase, is that possible  
3 with you?

4 A. Right.

5 MR. KOCHIS: I don't have anything else.

6 THE COURT: Would you wait outside and let us discuss it  
7 privately? Thank you. Take care of yourself, Ma'am.

8 PROSPECTIVE JUROR: Thank you.

9 THE COURT: We will have further instructions for you  
10 shortly.

11 Anybody?

12 MR. KOCHIS: Challenge for cause.

13 MR. NEGUS: Objection. Again as -- as the evidence that  
14 I presented to you back in Ontario indicates, when you qualify  
15 people who could be fair on guilt or innocence and make them  
16 make decisions as to -- as to the death penalty, then you lose a  
17 disproportionate number of women, poor people, and blacks. And  
18 Mrs. Brown is black and she's a woman, and that's what we're  
19 losing and it's depriving Mr. Cooper of a representative  
20 cross-section of the community under both California and U.S.  
21 Constitutions.

22 THE COURT: A challenge has been upheld but not perhaps  
23 expressly on the grounds that you mentioned, so you may make  
24 some new law Mr. Negus.

25 I will grant the challenge. She will be excused  
26 for cause.

27 Would you so inform her, please. Send her back to  
28 the jury assembly room and bring in another juror.

1 THE BAILIFF: Next juror is Blanche Cavanaugh.

2 THE COURT: Thank you.

3

1  
4 BLANCHE CAVANAUGH,  
5 called as a prospective juror, having been previously sworn,  
6 testified as follows.

7

8

EXAMINATION

9

BY THE COURT:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. You are Blanche Cavanaugh?

13 A. That's right.

14 Q. Ms. Cavanaugh, I've arranged things kind of  
15 informally in hopes that you will relax a little bit more and be  
16 more candid in in your responses to our questions, okay?

17 A. Surely.

18 Q. First, has anything happened to you since we last  
19 saw you that would affect your ability to serve in this case?

20 A. No.

21 Q. I'm going to ask you about three questions  
22 eventually, and then each of the attorneys will ask some  
23 questions of you.

24 First I remind you as I told you before that there  
25 could be two possible phases. The first phase we are concerned  
26 only with guilt or innocence. The second phase, if we get over  
27 the first, would be what's the appropriate penalty, death or  
28 life in prison without the possibility of parole.

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

5                   A.     Yes.

6                   Q.     Would you be able to personally vote for whichever  
7 one of them seemed most appropriate, depending upon the evidence  
8 and the circumstances?

9                   A.     Yes.

10                  Q.     Do you think you might want to take the easy way  
11 out and decide the guilt phase in a certain way knowing that if  
12 you did that you'd never have to make a hard decision later on?

13                  A.     No.

14                  Q.     Okay. Thank you.

15                             Counsel.

16

17

EXAMINATION

18 BY MR. NEGUS:

19                  Q.     Mrs. Cavanaugh, the Judge is allowing the lawyers,  
20 Mr. Kochis and myself, to ask most of the questions at this  
21 particular stage, and as I go first I usually ask more than Mr.  
22 Kochis does. I'm not trying to pry or embarrass are you in any  
23 way, but we are just trying to get your honest opinions in this.

24                  A.     Sure.

25                  Q.     What do you remember having heard about the case  
26 before you came to court and filled out our little  
27 questionnaire?

28                  A.     I didn't remember all of the specifics of it, like

1 I didn't remember how many people had been murdered or actually  
2 I wasn't really sure of the murder weapon; but I knew the  
3 district around Chino and I remember, oh, the people like  
4 mothers taking their children to school and meeting the school  
5 bus because of the fearfulness of the situation afterwards.

6 Q. Did you yourself suffer any of that fear?

7 A. No.

8 Q. Do you remember having heard anything about my  
9 client, Kevin Cooper?

10 A. Well, it seems to me that he had escaped, is this  
11 not true?

12 Q. Okay.

13 A. From the Chino Correctional Institution.

14 Q. Did you hear anything more about him than that?

15 A. Just when he was picked.

16 Q. What did you hear at that point in time?

17 A. That he was picked up on a boat.

18 Q. Do you remember any other details of that?

19 A. Well, I think the reason he was picked up was  
20 because of raping someone on the boat.

21 Q. Did you hear anything about the case after it got  
22 into -- after it got into court in San Bernadino before it came  
23 down here?

24 A. No; no, I didn't.

25 Q. Did you know the case was coming to San Diego  
26 before you appeared.

27 A. No; no.

28 Q. In this particular set of circumstances the



1 incident that happened in Santa Barbara you will not hear either  
2 in the prosecution's side of the case or the in the defense side  
3 of the case or anybody's side of the cause because that's not  
4 going to be part of our evidence.

5 A. I understand.

6 Q. The jurors are not allowed to even consider that.

7 A. Oh.

8 Q. I mean normally a juror wouldn't even know it. Do  
9 you think you could put that out of your mind?

10 A. Oh, yes. I wouldn't have responded except I  
11 thought you were asking me that question.

12 Q. I'm not trying to trick you.

13 A. No; no; uh-huh.

14 Q. We need to know what you know, then whether what  
15 you know will effect you I suppose. Do you have any opinion  
16 right now as to whether or not Mr. Cooper is guilty or innocent?

17 A. No.

18 Q. Did you ever have such an opinion?

19 A. No. I mean, I don't think one can prejudge until  
20 you know the facts.

21 Q. What was your reaction when you found out that this  
22 was the case that you were a potential juror on? How did you  
23 feel?

24 A. Well, I guess maybe I wished that I wouldn't be  
25 chosen. I really can't tell you why, but I guess I would be  
26 qualified but --

27 Q. I didn't -- you spoke very softly?

28 A. I said I think perhaps maybe I wished I wouldn't be

1 chosen although I thought I would be qualified. I mean, I  
2 didn't mean that to imply --

3 Q. Okay.

4 A. -- that I felt one way or the other or that I had a  
5 predisposition for one -- for anything. It was -- I don't know,  
6 just --

7 Q. Was that just because of the stress involved in  
8 this kind of case or the time involved?

9 A. I think all of it, yes, and the weightiness of it,  
10 the seriousness of it.

11 Q. There -- we've talked about the death penalty and  
12 the law requires us to ask you questions about the death  
13 penalty --

14 A. Surely.

15 Q. -- before we actually start the trial. I hope you  
16 don't think that that means that anybody is prejudging the case  
17 and presuming --?

18 A. No, I know that.

19 Q. -- that Mr. Cooper is guilty?

20 A. Uh-huh.

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

22 A. I believe in it under certain conditions.

23 Q. Why?

24 A. Why, because I don't feel that -- that they should  
25 continue to imprison someone for as long as they live if their  
26 crime is so heinous that they should be put to death for it.

27 Q. Do you think that the penalty of life imprisonment  
28 without possibility of parole is ever appropriate in a case of

1 this magnitude?

2 A. I couldn't say that now because I don't know the  
3 magnitude of the case, frankly.

4 Q. Well, basically from what you've heard about four  
5 people being killed, another boy being attacked and seriously  
6 injured, two of the people being killed being children.

7 A. If the facts in that were proven as true, yes, I  
8 would think that would be a justifiable case for that.

9 Q. Okay. But I guess what I'm asking you is, is that  
10 in a situation like that where you have four people dead and a  
11 little boy very, very seriously hurt, do you think that you  
12 automatically should give whoever is responsible for that the  
13 death penalty? If the person is guilty do you think he deserves  
14 the death penalty so that you would just reject life without  
15 possibility of parole for that particular person?

16 A. Well, in a true hypothetical situation without any  
17 other extraneous facts I would say, yes; but I think that I -- I  
18 wouldn't say yes under the circumstances of a specific case  
19 until I had heard the facts.

20 Q. Okay. I understand -- we are -- I understand you  
21 are grappling with our questions and we're trying to grapple too  
22 because we -- we don't want you to prejudge this particular  
23 case?

24 A. I understand that. I won't.

25 Q. But we have to ask the questions basically in the  
26 abstract?

27 A. Surely.

28 Q. And so I guess what I'm trying to ask is the

1 question, do you think -- do you think all cases in which  
2 children are murdered and there's a multiple murder involved  
3 that all of those cases should -- the person punished should get  
4 the death penalty or do you think there's something --

5 A. I would think perhaps, yes.

6 Q. So that I guess the type of thing that -- that  
7 comes up sometimes is if the person that did it it was from a  
8 deprived background or had some sort of family problems, had a  
9 whole series of things which might mitigate their particular  
10 character, do you think any of that kind of evidence would make  
11 you change your mind if that was presented to you?

12 A. No; no, not deprived -- not deprivation and that  
13 type of thing, huh-uh.

14 Q. Can you think of any type of evidence that would  
15 make you vote for a lesser penalty in a multiple murder  
16 involving kids?

17 A. Not really.

18 Q. I really appreciate your candor. Thank you very  
19 much.

20 A. Uh-huh.

21

22

#### EXAMINATION

23 BY MR. KOCHIS:

24 Q. Mrs. Cavanaugh, let me start with where he left  
25 off. First we'll have one trial when we will -- in which we  
26 will determine whether or not this defendant did the murders;  
27 and if we get beyond that, if the jury convicts him we will then  
28 go to this penalty phase.

1 A. Uh-huh.

2 Q. Could you wait until both sides present all the  
3 evidence to determine what the appropriate penalty would be, if  
4 we get that far, with whether it would be life without the  
5 possibility of parole or death?

6 A. Well, wouldn't you have to wait? I mean, wouldn't  
7 that be the normal sequence?

8 Q. Well, for the sake of argument I would say yes, but  
9 for purposes of our discussion, in effect didn't you just tell  
10 Mr. Negus -- do you realize that you may have told him that that  
11 would be hard for you to do?

12 A. That it would be hard for me to do what?

13 Q. To wait until the end to make your decision up.

14 MR. NEGUS: Object. I think that he is putting words  
15 that she didn't say in her mouth.

16 MR. KOCHIS: Let me --

17 THE COURT: Counsel, overruled.

18 PROSPECTIVE JUROR: Well, what you're saying I said was  
19 in a hypothetical situation and he injected the word children,  
20 multiple deaths and children involved, that I would feel that  
21 the death penalty would be a righteous judgment. And I  
22 hesitated because I think that there are so many circumstantial  
23 things that one must consider that you couldn't just arbitrarily  
24 say yes or no, though I think if that be -- if someone had done  
25 that, I think that would certainly be in my opinion now just as  
26 a true hypothetical case, yes, that would be --

27 BY MR. KOCHIS:

28 Q. Let me see if I can make myself clear because I

1 realize I'm not. I don't know if it's the hour of the day or  
2 what. But the law in a sense agrees with you in that you have  
3 to commit a certain type of crime to even be eligible for the  
4 death penalty. For example, you can't get the death penalty for  
5 a rape or for petty theft or for burglary; in fact, you can't  
6 get the death penalty for most murders.

7 This is a special circumstance case because there's  
8 more than one victim. We have four people who died on the same  
9 night. But the law takes it a step further, and they say even  
10 though in this case you have four victims, you don't  
11 automatically have to give the defendant the death penalty, you  
12 don't automatically give the defendant life without the  
13 possibility of parole, you leave that decision up to 12 people.  
14 They hear the guilt phase first. Then if there's a conviction  
15 they hear evidence in what we call the penalty phase, and it  
16 includes a number of things that may deal with the defendant,  
17 his past, the crime, and a number of other things. The Judge  
18 will give you a long list of factors that you consider that are  
19 called circumstances in aggravation and circumstances in  
20 mitigation and rather than take his job away from him I'll let  
21 Judge Garner explain that to you at a later time. And the  
22 lawyers will decide, Mr. Negus will decide what evidence he  
23 would want to introduce on behalf of his client. Mr. Kottmeier  
24 and myself will decide what type of evidence we want to do, and  
25 then the twelve jurors would decide what penalty to impose.

26 Would you keep an open mind and wait until all that  
27 took place before you decided what punishment this defendant  
28 should get if we got to the penalty phase?

1 A. Yes; yes.

2 Q. Some people have a strong feeling, folks, they feel  
3 only God can take another person's life and they come in and  
4 tell us, I don't care what the evidence is I could never vote  
5 for the death penalty; you are not that type of person?

6 A. No; no.

7 Q. On the other side of the coin are the other  
8 extremists who come in and they say, if a murder is committed I  
9 believe that defendant should die each and every time; I don't  
10 care what the case is like, what defendant's background is like;  
11 are you that type of person?

12 A. No; no.

13 Q. So, let's just talk about this case. In this case  
14 where this defendant is charged if you thought the proper  
15 punishment after all the evidence was life without the  
16 possibility of parole, you could vote that way?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes. I'm sorry. It's a yes.

20 Q. And likewise if after you've heard all the evidence  
21 and heard the law if you thought the punishment for this case  
22 should be death, you could vote for the death penalty?

23 A. Yes, I could.

24 Q. But this is certainly one of the crimes because  
25 children were involved and because there was more than one  
26 victim that you think it would be appropriate to consider the  
27 death penalty in?

28 A. In -- to consider it, yes.

1 Q. But your mind is not made up.

2 A. No, it isn't, but to consider it would certainly be  
3 appropriate in my mind.

4 MR. KOCHIS: I don't have any further questions.

5 THE COURT: Would you kindly wait outside. Let us  
6 discuss it privately, then we will give you further  
7 instructions. Thank you, Ma'am.

8

9 (The following proceedings were had out of the  
10 presence of the prospective juror.)

11 MR. KOCHIS: Your Honor, I'm sorry I completely neglected  
12 the publicity issue and I'm confident there's going to be a  
13 challenge on that grounds as well.

14 THE COURT: No, she remembered -- Well oh, no, she  
15 remembered some things, didn't she?

16 THE COURT: Let's here if there are any challenges at  
17 this point.

18 MR. NEGUS: There are.

19 THE COURT: Okay, Mr. Negus, I'm just -- I have been  
20 thinking about it all the time, and there are cases in  
21 connection with it. I'm simply going to deny your challenge.

22 MR. NEGUS: Could I state my grounds.

23 THE COURT: Yes. You don't have to keep going over the  
24 same thing, but go ahead.

25 MR. NEGUS: I feel I do because I have been lectured on  
26 it enough times by people who practice in the federal courts, so  
27 feel I have to articulate. I'm sorry, but it doesn't take that  
28 long.



1           First off she said she would reject evidence about  
2 the defendant's past, evidence in mitigation of the standard  
3 type which People vs. -- excuse me which Locket vs. Ohio  
4 requires jurors to consider.

5           Secondly, she said that a case involving multiple  
6 murders with children involved she would impose the death  
7 penalty.

8           Mr. Kochis got her to say she would keep an open  
9 mind till she heard all that evidence, but the fact remained  
10 still, when she heard all that evidence she said she would  
11 impose the death penalty.

12           And finally, she has heard about evidence which is  
13 inadmissible before the jury which is clearly prejudicial, and I  
14 don't think that she -- that it's fair to Mr. Cooper to have a  
15 juror that is quite aware of highly prejudicial charges, which  
16 have never been adjudicated, deciding his guilt or innocence.

17           Especially when you take all those things in  
18 combination I don't believe she is qualified.

19           THE COURT: All right. We can have her back in. You can  
20 go into publicity, if you wish, but I'm going to overrule your  
21 objection.

22           You accused Mr. Kochis of asking leading questions,  
23 Counsel. You did it first and you did require some education to  
24 straighten. You lead her right down the primrose path that I  
25 talked about before.

26           Would you like her back in, Mr. Kochis?

27           MR. KOCHIS: To ask her limited questions on the issue of  
28 publicity.

1

2

(The following proceedings were had in the presence  
of the prospective juror.)

3

4

THE COURT: Would you like to amend that any further?

5

MR. NEGUS: It depends on what he says.

6

THE COURT: Would you like to expand?

7

8

We got sidetracked, there is a couple of more  
questions. Would you have a seat, please.

9

10

FURTHER EXAMINATION

11

BY MR. KOCHIS:

12

13

14

Q. Mrs. Cavanaugh, I apologize, I neglected to talk to  
you about publicity in the newspapers you read before you came  
to court.

15

16

17

You told Mr. Negus that you recalled some of the  
circumstances that surrounded the defendant's arrest in Santa  
Barbara on the boat. Do you remember reading those things?

18

19

A. No, I don't think I read it, I think I heard that  
over the news, or the radio. I really don't recall reading it.

20

21

Q. My mistake then. We try people in court and not on  
the radio or TV.

22

A. I understand.

23

24

25

26

Q. So what we need is your promise that if you are  
selected in this case you would base your decision only on the  
evidence that you hear in court and put aside the information  
you may have heard on the radio, or the TV. Could you do that?

27

A. Oh, surely.

28

MR. KOCHIS: I have no further questions.

1 THE COURT: Anything, counsel?

2 MR. NEGUS: No.

3 THE COURT: Thank you once again. Would you wait outside  
4 once more, please.

5 Anything further?

6 MR. NEGUS: My position hasn't changed.

7 THE COURT: Yes. All right, ask her back and give her an  
8 appointment slip, please.

9 THE BAILIFF: Christopher Frie is the next juror.

10 THE COURT: You know, I would hope the press wouldn't  
11 mention things in the papers that where a juror is -- that is  
12 when I stepped outside the room.

13 MS. TONTINI: Say that begin.

14 THE COURT: Where a juror would -- we will talk about it  
15 later on.

16 MS. TONTINI: Okay.

17

18 CHRISTOPHER FRIE

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.

26 Q. Sorry we kept you waiting.

27 A. That is okay.

28 Q. We have arranged things kind of informally in hopes

1 you will relax a little bit and it help you answer the heavy  
2 questions we're going to put to you now.

3 A. Okay.

4 Q. Each counsel has an opportunity to ask you a few  
5 questions. First, I remind you that this case, as I told you  
6 before, could be made up of two phases. First, a guilty phase,  
7 then when we get over that, so to speak, then we go into the  
8 penalty phase. Do you remember that?

9 A. Yes.

10 Q. In the first phase we don't consider penalty or  
11 punishment at all, we only get involved with life or death  
12 sentence if we do get to that second phase. Do you understand  
13 that, sir?

14 The first question is: If we do get to the second  
15 phase or to a penalty phase, will you be able to fairly consider  
16 both of the possible penalties, death by execution on the one  
17 hand, and life imprisonment without the possibility of parole on  
18 the other?

19 A. I'm sorry, could you restate that again.

20 Q. My question is, if we do get to a penalty phase,  
21 will you personally be able to consider both of the two possible  
22 penalties?

23 A. Perhaps.

24 Q. Are you Christopher Free?

25 A. Frie.

26 Q. Your answer seems to indicate some question in your  
27 mind about your ability to do that. Is that correct?

28 A. Yes.

1           Q.     Do you feel that you are, mostly your head is made  
2 up right now, if we ever do get to that phase, what the penalty  
3 would be?

4           A.     No, that is why I'm uncertain.

5           Q.     Our law requires that if we ever do get to a  
6 penalty phase then we in effect would present further evidence,  
7 each side can call witnesses, present documentary evidence and  
8 whatever, give you what are known as circumstances in aggravaton  
9 and mitigation; some of the factors would point toward the death  
10 penalty, some towards perhaps to life imprisonment without the  
11 possibility of parole.

12                     If you serve on this case, you should be able to  
13 keep an open mind until that point and then fairly consider all  
14 those factors and the two possible alternatives. Can you do  
15 that?

16           A.     Yes.

17           Q.     What were you uncertain about before?

18           A.     Well, I'm -- it was just completely a  
19 misunderstanding. I wasn't really sure of what you were  
20 stating.

21           Q.     All right. This is a case involving alleged  
22 multiple murders, some of them children.

23                     Do you feel locked in one way or another at this  
24 time to a particular type of penalty, if there is a conviction  
25 to those crimes?

26           A.     Sorry, I'm -- I don't understand what you are  
27 getting at.

28           Q.     I think I will skip that and let counsel ask that

1 question. Let me go to the next question.

2 Mr. Frie, if you do get to a penalty phase, and you  
3 are sitting on a jury panel, do you feel in your own mind now  
4 that you'd be able to personally vote for death or life  
5 imprisonment without the possibility of parole depending upon  
6 the circumstances and the evidence brought out at the trial?

7 A. No.

8 Q. Why wouldn't you?

9 A. Because I -- it is hard for me to, just to come to  
10 the point to something like this. You know, I'm unfamiliar with  
11 everything, personally.

12 Q. Well, before we ever got to that point you'd be  
13 very familiar with it. We're going to spend a long time in  
14 trial, as you know.

15 A. Yes.

16 Q. Do you have strong feelings perhaps about the  
17 penalty question?

18 A. No.

19 Q. You do not have strong feelings one way or another  
20 about the death penalty?

21 A. No.

22 Q. Well, hypothetically, now, I have to ask you to  
23 picture yourself sitting in the jury box, or in the jury  
24 deliberation room after the jurors have already found somebody  
25 guilty, just hypothetically now, we're trying to determine which  
26 of the two penalties is appropriate. Can you for a moment  
27 consider that possibility?

28 A. Yes.

1 Q. Now, at that point the jurors are faced with a  
2 choice of rendering a verdict in favor of the death penalty or  
3 rendering another verdict in favor of life imprisonment without  
4 the possibility of parole? Can you consider both of those  
5 alternatives?

6 A. Uh-huh.

7 Q. Is that yes?

8 A. Yes.

9 Q. And do you feel that you would be able to  
10 personally vote for one or the other depending upon the  
11 persuasion of the evidence and the circumstances?

12 A. Yes.

13 Q. Are you horribly concerned about the responsibility  
14 that you would have to play in this case in some way?

15 A. No.

16 Q. Okay. Do you think that you'd be so concerned  
17 about having to make a penalty type of decision that it would  
18 effect the way you'd vote in the guilt phase?

19 A. I am -- could you explain that, please.

20 Q. Some jurors feel that, hey, I don't want to make  
21 that life or death type of decision, you know, if we ever get to  
22 a penalty phase, and they perhaps indicate that consciously or  
23 unconsciously, judge, I am going to perhaps let that concern  
24 effect me, I might try to avoid the penalty phase by rendering a  
25 certain type of a verdict in the guilt phase. Kind of copping  
26 out, so to speak; taking the easy way.

27 Do you understand what I mean, Mr. Frie?

28 A. Yes.

1 Q. Would you be inclined to do that, sir?

2 A. No.

3 Q. Is there anything else that is bothering you? You  
4 seem to be -- I am not sure whether you are hesitant or whether  
5 you are just deliberative. Is there anything that's  
6 particularly bothering you?

7 A. Well, I don't understand by what you mean by  
8 "deliberative"?

9 Q. Taking time to reflect upon your answers? You just  
10 look to me like you are really contemplating, studying before  
11 you are answering. Am I correct in that?

12 A. Yes.

13 THE COURT: Mr. Negus, you may examine.

14

15

EXAMINATION

16 BY MR. NEGUS:

17 Q. Did you say your name was Free or Frie?

18 A. Frie.

19 Q. Mr. Frie, Mr. Kochis and I have been allowed by the  
20 judge to ask most of the questions.

21 A. Uh-huh.

22 Q. And we're not trying to pry or embarrass you by  
23 these questions, but we just need your honest opinions on these  
24 matters.

25 Your answer to one of the questions on the little  
26 questionnaire you did for us was -- I didn't quite understand.  
27 You indicated that you read nothing, perhaps, about the Chino  
28 Hills murders. What did you mean by that?



1           A.     I have had quite sometime to reflect on this prior  
2 moment.

3           Q.     Okay.

4           A.     And I do remember the perhaps. I do account for a  
5 moment in the past that I saw on TV, something about somewhere  
6 in north, or around L.A. on -- somewhere around there, they were  
7 talking about a break-in to a house that had a large gate about  
8 it or whatever, you know. It was very -- perhaps it is a  
9 completely different news or circumstance, but I do remember  
10 that.

11          Q.     Okay. Did you ever hear or see on television or  
12 anything my client before, Kevin Cooper?

13          A.     No.

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

16          A.     I was stunned.

17          Q.     Why?

18          A.     Because I never thought I would ever have the --  
19 ever have it hit me in the face like this, you know, or you  
20 know, just give me this opportunity. I never thought I would  
21 have the opportunity of witnessing or being a juror, you know.  
22 I just -- something you only see on TV.

23          Q.     Do you have any feelings as to whether or not that  
24 would be a task that you'd feel you'd be qualified to go ahead  
25 and do?

26          A.     Well, all I can do is my best. What is expected.

27          Q.     We're asking you questions about the death penalty.  
28 But as you may or may not realize, that doesn't mean you will

1 have to ever make that decision. That decision only comes up if  
2 Mr. Cooper is convicted of something and that hasn't happened  
3 yet, and may never happen, so I hope you don't take it we're  
4 asking you questions about the death penalty as in any way  
5 indicating that you are supposed to find him guilty if you were  
6 to sit as a juror. Do you understand that?

7 A. Yes.

8 Q. What basically is your opinion about the death  
9 penalty?

10 A. Well, as it states in the Old Testament, that meant  
11 an eye for an eye, and a tooth for a tooth. We're in the times  
12 of the New Testament, and Jesus said, love your enemies, you  
13 know.

14 Q. So, does that that mean that you are for it in  
15 certain circumstances?

16 A. No. I believe that if the one who is, or -- let's  
17 say if he's proven guilty, a person is proven guilty by what  
18 he's done, by what crimes he's committed, if it is that serious,  
19 you know, it will most likely call for a serious retaliation,  
20 should I say. If it is not a serious, it won't because it  
21 doesn't call for a serious retaliation

22 Q. What's your opinion about life imprisonment without  
23 the possibility of parole?

24 A. I think it is okay. You know, I don't know anyone  
25 in prison, I've never been in prison, thank God, and what can I  
26 say about life in prison, you know.

27 Q. As a juror the person that's responsible for these  
28 particular crimes, if you were called upon to give a punishment

1 for them, do you think that you could weigh back and forth life  
2 imprisonment without parole versus the death penalty, depending  
3 upon the facts and circumstances of the case, or would you  
4 automatically choose one over the t'other?

5 A. Could you say that again?

6 Q. If you were asked to be a juror and decide the  
7 punishment for a case of multiple murders, like we have here,  
8 involving children, would you be able to balance between the  
9 death and life without possibility of parole, depending on the  
10 evidence, or would you automatically choose one penalty over the  
11 other in this particular case?

12 A. I would take the balancing.

13 Q. The balancing?

14 A. Yes.

15 Q. From something you said I take it that your  
16 religious views have influenced your views on death.

17 A. Yes.

18 Q. And on crime and punishment.

19 A. Yes.

20 Q. Do you belong to an organized religion?

21 A. Such as?

22 Q. Church. Formal. Any organization?

23 A. Organization? I'm Catholic.

24 Q. Are your ideas about the death penalty ideas which  
25 have been communicated to you through the church, or are they  
26 your own individual conscience trying to interpret the dictates  
27 of your religion?

28 A. It was my -- inside my own head. It's God's will.

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

2

3

EXAMINATION.

4 BY MR. KOCHIS:

5 Q. Is it Frie or Free?

6 A. Frie.

7 Q. Frie: Mr. Frie, when Mr. Negus asked you about  
8 your opinion on the death penalty, you paraphrased two quotes  
9 from the scripture, and eye for an eye, and the New Testament,  
10 turn the other cheek, or love your enemy.

11 A. Yes.

12 Q. Which one is your personal philosophy of the two?

13 A. I have none. They are both. You know, they're  
14 both from the the same book; they're both use in this world, the  
15 Old and the New. There is a call for the old and a call for the  
16 new.

17 Q. If you thought the appropriate punishment in this  
18 case was the death penalty, could you vote that way?

19 A. Depending on the evidence.

20 MR. KOCHIS: Thank you. I have no further questions.

21 THE COURT: Nor do I. Would you wait outside for a  
22 minute while we discuss it.

23 Anything, gentlemen?

24 MR. KOCHIS: Yes. There would be a stipulation that he  
25 be excused.

26 MR. NEGUS: So stipulated.

27 THE COURT: All right, I will accept that. Would you  
28 tell him to report back to the jury room, please.

1           My concern was, I was thinking that, you know, when  
2 we have our discussion after a juror walks out, if the  
3 reporter's writing where the jurors might recognize we were  
4 talking about them. But since you are not turning in the names,  
5 I don't see the problem.

6  
7                           D JONES

8           Called as a prospective juror, having been previously sworn,  
9 testified as follows:

10  
11                           EXAMINATION

12           BY THE COURT:

13           Q.     Have a seat, please.

14                     You are Mr. Jones?

15           A.     Yes, sir.

16           Q.     What is the "D"?

17           A.     That's my first name, sir. Initial "D".

18           Q.     Just the letter "D"?

19           A.     Yes, sir.

20           Q.     Has anything happened to you, Mr. Jones, since we  
21 last saw you that would complicate your ability to serve here?

22           A.     Well, my boss asked me to tell you that it would  
23 create a hardship.

24           Q.     Tell us about it. For whom do you work?

25           A.     I work for the Boys Club in El Cajon and I am the  
26 janitor, the only one they have, and we have about 200, 250 kids  
27 every night, coming in at night to play. He says it would be  
28 pretty tough.

1 Q. Do you work full-time?

2 A. Just a part-time job is all it is. I just work  
3 four hours a day, in the morning. 8:00 to 12:00.

4 Q. Your total membership is 200?

5 A. Pardon me?

6 Q. Your membership of boys is about 00

7 A. No. The membership is about 2,000, but roughly  
8 about 200 boys a night down there.

9 Q. This is recreational facilities?

10 A. Yes, sir.

11 Q. And the meeting hall, things of that nature?

12 A. Yes, sir.

13 Q. You have to cleanup after all those boys?

14 A. Yes, sir.

15 Q. I used to be the director of such a club at one  
16 time. Do you work for wages there, I assume?

17 A. Yes, sir. I just work for wages and I am retired  
18 from the navy.

19 Q. You know, your hours here, as I told you before,  
20 would be from about 9:30 until 4:00, and to that extent they are  
21 not too strenuous on you. You get an hour and a half off for  
22 lunch.

23 A. Uh-huh.

24 Q. I really don't think, according to the law, the  
25 problem that your boss is having is good grounds for me to  
26 excuse you at this time.

27 I would suggest that if you continue to qualify to  
28 serve here, that you discuss it with him more and see if perhaps

1 you can enlist the assistance of some of the men or some young  
2 men or something like that to help you. But I can't excuse you  
3 yet, Mr. Jones, based upon what you have told me.

4 A. No problem on my part.

5 Q. Well, you know, I don't mind you at all blaming it  
6 on the mean old judge. That's what -- I get paid for that.

7 I have a few questions of you then the attorneys  
8 will have a few, each of them.

9 Do you remember that I told you that there could be  
10 two phases to this case?

11 A. Yes, sir.

12 Q. If we do get to the penalty phase, which we may  
13 never get to, but if we do get to it, then you would have only  
14 two choices: A death verdict or a life imprisonment without the  
15 possibility of parole verdict. If we do get to that, you would  
16 have to make that kind of decision.

17 Would you be able to fairly consider both of those  
18 two possibilities?

19 A. I don't think I'd have any problem with it.

20 Q. Do you think you would be able to personally vote  
21 for either one of them, depending upon the evidence and the  
22 circumstances brought out at the trial?

23 A. No, I don't have any trouble with it at all.

24 Q. Do you think you might be inclined to take the easy  
25 way out and perhaps look for a verdict that wouldn't require you  
26 to get involved with death or life, so to speak, later on?

27 A. No, I couldn't -- I wouldn't think that it would in  
28 any way bother me personally.

1 THE COURT: Thank you, sir. Mr. Negus.

2

3

EXAMINATION

4 BY MR. NEGUS:

5 Q. Mr. Jones, the lawyers are being allowed by the  
6 judge to ask you most of the questions, and as I go first, I  
7 usually ask more than Mr. Kochis. I hope you don't think I am  
8 trying to pry or embarrass you, but we have to have your honest  
9 opinion on these matters.

10 What did you hear about this case before you came  
11 to court?

12 A. I read in the newspaper when it first happened and  
13 they told about a family being killed.

14 Q. Okay.

15 A. And then I read later where they picked up the man  
16 they thought that had done it. That's about all I know.

17 Q. Do you remember anything about the circumstances of  
18 the arrest?

19 A. Seemed like it was on a boat.

20 Q. Anything else? Any other details?

21 A. That is about it.

22 Q. That's about it. Did anything -- did you get an  
23 impression of my client, Mr. Cooper, from what you heard in the  
24 newspaper about it?

25 A. Well, like I say, when I read a newspaper, I just  
26 read parts, three, four paragraphs usually tell the whole story,  
27 and unless it is something that interests me, I really don't go  
28 back and read any of the details of it.



1 Q. You really didn't get that much of an impression  
2 one way or the other?

3 A. No.

4 Q. Did you get an impression one way or the other as  
5 to whether or not he was guilty or innocent?

6 A. No.

7 Q. What was your reaction when you heard that you  
8 might be a juror in a case like this?

9 A. When I got out in the hall is when I found out  
10 about it. That is the first -- I never even thought about it.

11 Q. You didn't have much reaction at all?

12 A. No, I didn't have any idea what it was all about  
13 until I got out in the hall and somebody told me whose trial it  
14 was. I said, I seem to remember something about it.

15 Q. What is your reaction now? How do you feel now?

16 A. It doesn't matter to me one way or the other. You  
17 heard my reasons for wanting to get off, it was just my boss.  
18 It doesn't matter to me, I have never shunted my duty.

19 Q. If he can get somebody else to do his duty, you'd  
20 be just as happy being here?

21 A. Doesn't make any difference to me.

22 Q. We're asking you some questions about penalty, but  
23 you understand that doesn't mean we will ever get to that  
24 particular phase.

25 A. I understand that.

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

27 A. Mine? I think we should have it. If it will deter  
28 such crimes I think we should have it.

1 Q. What do you think about life without possibility of  
2 parole as a penalty?

3 A. I never gave that much thought, but I would imagine  
4 one would be just as bad as the other.

5 Q. In a case such as this, if you are asked to pick  
6 and choose between those two penalties, do you think you'd have  
7 any predispositions for one or the t'other?

8 A. I don't believe I would.

9 Q. Do you belong to an organized religion?

10 A. I belong to the Lutheran church.

11 Q. Has the views of the Lutheran church in any way  
12 influenced your opinions about crime and punishment or the death  
13 penalty?

14 A. I don't believe I have discussed it with any pastor  
15 or anybody in the church.

16 Q. Your views are based on your own individual  
17 conscience, not any other organization.

18 A. Yes, sir.

19 MR. NEGUS: Thank you very much.

20

21

EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mr. Jones, how do you feel about potentially being  
24 put in that position where you have would make this type of  
25 decision with eleven other people?

26 A. Well, I would make my decision, and what other  
27 people did would be up to them.

28 Q. You don't see any problem with you listening to all

1 the evidence, listening to the law and making then a decision  
2 one way or other?

3 A. I have to base it on the law.

4 Q. Okay. To make sure there is no mistake, in  
5 criminal cases we poll the jurors at the end of the trial. The  
6 judge simply goes down the row and asks each juror if what the  
7 clerk has read in the form of the verdict is the way they voted.

8 If in this case the jury determined that the  
9 appropriate punishment was death, would you have any problem  
10 indicating that in open court that is the way you voted?

11 A. No, sir.

12 MR. KOCHIS: I have nothing further.

13 THE COURT: Would you wait outside and let us discuss it  
14 privately, please. Thank you for coming in today.

15 Anything, gentlemen?

16 MR. NEGUS: Nope.

17 MR. KOCHIS: No.

18 THE COURT: Mr. bailiff, if you would give him the  
19 appointment slip for the next date, please.

20 We will resume at 9:15 tomorrow morning.

21 --oo0oo--

22

23 (Adjournment)

24

25

26

27

28



## INDEX OF PROSPECTIVE JURORS

	Examination
GRIFFIN, FRANCES	718
MEREDITH, FRANK	726
GERMAN, LANTZ	734
RONNING, RICHARD	742
ROBBINS, KATHY	751
MICHAELSON, DAN	753
CARTER, CANDY	757
GRIFFIN, SANTOS	762
KELLEY, SANDA	771
METZ, HAROLD	779
DELOSRIOS, CATHERINE	785
CARL, PETER	794
FANELLI, MARIE	820
THOMAS, LEE	826
TAXER, CAROLYN	835
MITCHELL, WILLIAM	847

1 SAN DIEGO, CALIFORNIA, FRIDAY, SEPTEMBER 28, 1984 9:20 A.M..

2 --oo0oo--

3  
4 THE COURT: Good morning.

5 MR. KOCHIS: Morning.

6 THE COURT: We're all again collected. I left my script  
7 in chambers.

8 When we do break, like the other times, if we have  
9 five minutes, why I would like to discuss something with you.  
10 And if there is media people I would like to discuss it in  
11 chambers. So, if you will give me five more minutes after.

12 All right, bring in the first prospective juror  
13 this morning.

14 THE BAILIFF: Frances Griffin.

15  
16 FRANCES GRIFFIN

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

19  
20 EXAMINATION

21 BY THE COURT:

22 Q. Good morning, ma'am.

23 A. Good morning.

24 Q. Are you Frances Griffin?

25 A. Yes.

26 Q. Mrs. Griffin, we have arranged things around the  
27 conference table here in a kind of informal manner hoping to put  
28 you a little more at ease so you can relax and answer the heavy

1 questions we're going to put to you.

2 A. Okay.

3 Q. The first question I have, and I will ask a few and  
4 each of the attorneys will ask you a few, the first question I  
5 have is, has anything happened to you since we last saw you that  
6 would complicate your ability to serve in this case?

7 A. No.

8 Q. The machine can't take a nod of the head.

9 A. Okay.

10 Q. Remember I told you before, when I was on the  
11 bench, that there could be two possible phases to this case, a  
12 guilt phase, and then if we get to it, that far, a penalty  
13 phase. In the penalty phase the jurors would have to make a  
14 decision after the receipt of further evidence and  
15 circumstances, would have to make a decision as to whether the  
16 appropriate penalty should be death by execution or life  
17 imprisonment without the possibility of parole.

18 So, my first to you now is: If we do get to a  
19 penalty phase, would you, will you be able to fairly consider  
20 both the possible penalties penalties, death and life  
21 imprisonment without the possibility of parole?

22 A. Yes.

23 Q. Would you be able to personally vote for either one  
24 and make that decision based upon the evidence and the  
25 circumstances brought out at the trial?

26 A. Yes.

27 Q. In the guilt phase the jurors are not supposed to  
28 consider penalty or punishment. Nevertheless, some jurors are

1 so concerned with having to make that life or death decision  
2 down the road that they indicate that perhaps would affect the  
3 way they would decide the guilt phase.

4 Do you think that you might be so inclined?

5 A. Yes.

6 Q. I'm sorry.

7 A. Yes.

8 Q. Are you understanding me all right now?

9 A. Perhaps not. Um --

10 Q. That's kind of a difficult question, but let's make  
11 sure, maybe your answer is responsive.

12 Some jurors feel very strongly about the death  
13 penalty, perhaps, and about having to make very responsible  
14 decisions, and so they say, hey, judge, I would worry a lot  
15 about having to make that kind of decision; they wouldn't be  
16 comfortable at all in having to make that decision, I'm afraid I  
17 might cop out, or I might try and find some type of verdict,  
18 maybe not guilty or some lesser offense back in the guilt phase,  
19 knowing that if I do that I will never have to make that heavy  
20 decision in the penalty phase. Do you understand me?

21 A. Yes.

22 Q. Do you you think that you may be such a person to  
23 do that?

24 A. No.

25 THE COURT: Mr. Negus.

26

27

EXAMINATION

28 BY MR. NEGUS:



1           Q.     Mrs. Griffin, the judge has let Mr. Kochis and  
2 myself ask most of the questions, and as I go first I usually  
3 ask more. I'm not trying to pry or embarrass you in any way,  
4 but the law requires us to try and get your honest opinions on  
5 some of these issues.

6                     What had you heard about this case before you came  
7 to court?

8           A.     I had read about it in the newspaper.

9           Q.     What had you read?

10          A.     Well, stories that appeared in the San Diego Union.

11          Q.     Do you remember what they were about?

12          A.     About the accused person had broken out of Chino  
13 Prison and murdered three people and slit the throat of a boy  
14 who was visiting, I think.

15          Q.     Did you -- did you read any stories after the crime  
16 first occurred? That is, for example, when Mr. Cooper was  
17 arrested?

18          A.     I may have, I don't recall.

19          Q.     What was your impression of Mr. Cooper from the  
20 newspapers?

21          A.     That he was probably a criminal.

22          Q.     Did you think that he was guilty of this particular  
23 crime?

24          A.     Probably.

25          Q.     Did you read anything about the progress of the  
26 case through the courts up in San Bernardino before it came  
27 here?

28          A.     No.

1 Q. Were you aware that the case was being transferred  
2 to San Diego County?

3 A. Yes, I saw that in the San Diego Union.

4 Q. Just before you came to court?

5 A. Yes.

6 Q. Do you still think that Mr. Cooper is probably  
7 guilty?

8 A. I would lean that way.

9 Q. Do you think that if you were asked to sit on a  
10 jury you could put aside your leanings and decide the case not  
11 on the basis of your predisposition but on the basis of whatever  
12 evidence is presented?

13 A. I don't really know.

14 Q. Do you feel then that there is at least some doubt  
15 in your mind that, as to your ability to be fair on the issue of  
16 guilt or innocence?

17 A. Yes.

18 Q. I suppose if you are asked to be a juror in this  
19 particular case you'd have to take an oath to well and truly try  
20 the case.

21 Do you think you could do that?

22 A. I could take an oath that I would try.

23 Q. Okay. But we have -- I guess what I am asking you  
24 is, I'm not very good on mind reading, and you express a doubt  
25 as to your ability to be fair, but you are not sure, and I guess  
26 I was pressing you a little more about, to see if you are  
27 getting a little surer, and I guess you just don't know.

28 A. That's right.

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

2 A. I do not object to the death penalty.

3 Q. Why not?

4 A. Because there are some cases in which people cannot  
5 be rehabilitated and some cases their crime is so great that if  
6 receive the death penalty, I think it is just.

7 Q. What do you think about life imprisonment without  
8 parole?

9 A. I think that would be worse than the death penalty.

10 Q. Would you be able to impose that penalty if the  
11 circumstances called for it?

12 A. Yes.

13 Q. The law, at least the way the las is set up is that  
14 the death penalty is supposed to be for the most extreme cases,  
15 then the life imprisonment without parole for the next most  
16 extreme penalty, and perhaps it would be different than your  
17 evaluation of it.

18 Do you think that you could sort of apply the laws  
19 and make the death penalty for worse cases and life without for  
20 the less worse cases?

21 A. I could vote for either one.

22 Q. Okay. In this particular case, have you, have you  
23 made up your mind as to what penalty you think would be  
24 appropriate for whoever did this particular crime?

25 A. I have not thought about this case since I was here  
26 two weeks ago.

27 Q. So, at any point in time did you ever come to the  
28 opinion that whoever did that crime should receive a particular

1 penalty?

2 A. No, I did not consider the penalty.

3 Q. Do you belong to an organized religion?

4 A. Yes.

5 Q. Which one?

6 A. Presbyterian.

7 Q. Have the views of the Presbyterian church in any  
8 way influenced your own views on crime and punishment or the  
9 death penalty?

10 A. No.

11 Q. So, those that have been formed have been formed by  
12 by your individual conscience rather than the organization.

13 A. Yes.

14 MR. NEGUS: Thank you.

15

16

EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mrs. Griffin, I have questions in the same two  
19 areas that Mr. Negus asked, but the first would be publicity.

20 Do you recall any of the evidence that linked Mr.  
21 Cooper to the the crime from the newspaper or the television?

22 A. I do not recall.

23 Q. So, is it fair to say that your opinion as to  
24 whether or not he may have been responsible is limited to the  
25 fact that he was a suspect and he was arrested?

26 A. Based on -- I think my opinion was formed at that  
27 time that he was probably guilty, and then I have not thought  
28 about the case. I prefer not to read stories of crime, nor to

1 watch them on television. I do not get any intellectual  
2 pleasure out of that kind of thing.

3 Q. Okay. So if I understand you correctly you didn't  
4 pay close attention to the coverage.

5 A. No.

6 Q. You don't recall what the newspapers said may have  
7 been the evidence against him or not?

8 A. No, I do not.

9 Q. What we need in this trial is a group of twelve  
10 people that would base their decision as to guilt or innocence  
11 based only on the evidence they hear in the courtroom and not  
12 from any other source.

13 Could you do that?

14 A. I don't think so.

15 Q. Is there a reason why you couldn't?

16 A. I -- um, no. But having made the decision at that  
17 time that I thought that he was a criminal, it was a terrible  
18 crime, I don't think I could be dispassionate. I may have been  
19 contradicting myself, I don't know, but as you are asking me  
20 questions, I do not think I could be dispassionate and judge  
21 this on the basis of law, evidence.

22 Q. You have already made up your mind?

23 A. I have made up my mind.

24 MR. KOCHIS: Thank you. I haven't any further questions,  
25 nor am I going to have an objection to a challenge.

26 THE COURT: Would you kindly wait outside for a minute  
27 for further instructions. Thank you, Mrs. Griffin.

28 I can never anticipate what Mr. Negus will do

1 sometimes.

2 MR. NEGUS: I would make a challenge.

3 THE COURT: All right. Then the challenge will be  
4 granted.

5 Would you tell her to report back to the jury  
6 assembly room and call in the next juror.

7

8 MEREDITH FRANK

9 Called as a prospective juror, having been previously sworn,  
10 testified as follows:

11

12 EXAMINATION

13 BY THE COURT:

14 Q. Good morning.

15 A. Good morning.

16 Q. You are Meredith Frank?

17 A. Yes, sir.

18 Q. Thank you. I have a few questions of you and then  
19 the attorneys are going to ask a few questions of you, and I am  
20 sitting here at the counsel table informally with the rest of  
21 you in hopes that this will relax you a little bit and you will  
22 better be able to answer the heavy questions. Okay?

23 First, has anything happened to you since we last  
24 saw you a couple weeks ago to complicate your ability to serve  
25 in this case?

26 A. No.

27 Q. I remind you of what I told the large panel of  
28 jurors when you were in here that there could be two phases to

1 this trial. Do you remember? The guilt phase in which we don't  
2 even consider penalty, and then the penalty phase if we get that  
3 far, wherein the choice would be between two possible verdicts:  
4 One, a death verdict and the other one, life imprisonment  
5 without possibility of parole.

6 Do you recall that?

7 A. Yes, sir.

8 Q. My first question to you is, if we do get to that  
9 penalty phase, can you fairly consider both of those possible  
10 penalties, death and life imprisonment without the possibility  
11 of parole.

12 A. Yes, sir.

13 Q. Would you be able to personally vote for either one  
14 of them, making that decision upon the evidence and the  
15 circumstances brought out at trial?

16 A. Yes, sir.

17 Q. Do you think you might be inclined to try to avoid  
18 having to make any decision in the penalty phase by making the  
19 guilt phase turnout a certain way and thus not even having to  
20 bother with that big heavy decision later?

21 A. I am not sure I understand that. Would you  
22 please --

23 Q. I am not sure -- I ask that question different  
24 ways.

25 In the guilt phase the jurors are not supposed to  
26 consider penalty or punishment. Some jurors, nevertheless, have  
27 such a great concern for a death penalty, or having to make a  
28 decision about it that they might try to cop out or to avoid the

1 subject entirely, and they know they could do that by finding  
2 perhaps a not guilty verdict back at the guilt phase, or finding  
3 some lesser offense there as opposed to first degree murder,  
4 knowing that if they do that way we never have to get to a  
5 second phase, so there they would be making a decision not on  
6 the evidence, perhaps, but upon concern for the death penalty  
7 later on.

8 Do you think you might be inclined to do that?

9 A. No. I don't have any kind of pre-guidelines how I  
10 would make a decision.

11 THE COURT: Let's have the attorneys inquire about that.

12 Mr. Negus.

13

14

EXAMINATION

15 BY MR. NEGUS:

16 Q. The judge does let us ask most of the questions,  
17 Mr. Kochis and myself. We're not trying to pry or embarrass  
18 you, but just to get your opinions as you are about to give.

19 What were you about to say?

20 A. Well, I was just going to say, I don't, in my  
21 consciousness right now feel that I have a kind of criteria that  
22 I would make a decision. I just feel open to the truth. I  
23 don't have any guidelines, any --

24 Q. So you have no -- you are willing to impose the  
25 death penalty?

26 A. I don't have any -- I can't say, well, it has to be  
27 this way or it has to be -- I don't know. You know, I don't  
28 know. I feel for me it would matter on the evidence.



1           Q.     If you were -- maybe I misread you, but you were, I  
2 think, about to say something when the judge asked you about any  
3 problems that had come up maybe after you gave your first  
4 answer. I think you were about to add something more or not?

5           A.     No.

6           Q.     Okay. What had you heard about this case before  
7 you came to court?

8           A.     I read in the paper the first day when it -- when  
9 it happened.

10          Q.     Okay. Did you read any stories after that? You  
11 have to say --

12          A.     No. No, I didn't.

13          Q.     Did you know the case was coming to San Diego  
14 before you got here in court?

15          A.     No, I didn't.

16          Q.     What was your reaction when you found out that you  
17 might be a juror in this particular case?

18          A.     It frightened me at first, I have to be honest, the  
19 seriousness of it, and the responsibility and the commitment,  
20 because I had never really -- I had never been on a jury. It  
21 was like a deep commitment you have to have to really hear the  
22 truth. That is what --

23          Q.     Do you feel frightened now?

24          A.     No, not a whole lot. You mean -- not frightened  
25 like frightened, itself. Just thinking about it I could be  
26 open, and I feel that I could.

27          Q.     So when you said frightened what you were talking  
28 about was concerned about the responsibility that you had been

1 undertaking rather than any like a feeling of danger to  
2 yourself.

3 A. No, no. Just -- well, you are talking about  
4 another human being here, and --

5 Q. So, based on --

6 A. -- their life, you know, and it is a big commitment  
7 really for me like hear the truth and be able to be fair.

8 Q. Do you belong to an organized religion?

9 A. Yes, I do, sir.

10 Q. Which one is that?

11 A. I am a Catholic.

12 Q. Has the views of the church in any way influenced  
13 your own views on the death penalty or crime and punishment?

14 A. I called several priests and, you know, I really  
15 haven't thought about it very much, seriously, you know, what my  
16 strong conviction was, and I had to really look at both sides  
17 from a spiritual point for myself, and I feel clear now that for  
18 me the church has pretty much left it up to me, and like I say I  
19 don't have any, you know, well, in this instance it should be  
20 this way or this instance you go this way. I don't know. I  
21 don't know.

22 Q. So, you are willing to just do it on whatever the  
23 law and the facts of this particular case are.

24 A. Yes, sir.

25 Q. You have no predisposition one way or the  
26 t'other.

27 A. No, I don't.

28 MR. NEGUS: Thank you very much.

1

2

## EXAMINATION

3

BY MR. KOCHIS:

4

Q. Ms. Frank, I have a few questions. I will start where Mr. Negus left off, with the death penalty.

5

6

Putting aside for a moment a case by case analysis, just the concept itself of the death penalty, it is one of the possible punishments we have here in California.

7

8

Do you have any feelings about that particular punishment?

9

10

11

A. No.

12

Q. Let me give you -- I'm sorry, go ahead.

13

14

A. You know, nothing comes to me right now when you ask me that question.

15

16

Q. Okay. Let me suggest some categories to you to see if you fit in one of these categories.

17

18

Some people feel that it is a type of decision that only God can make, for example, and they would never be able to vote for the death penalty in any case.

19

20

Are you that type of person?

21

A. No.

22

23

Q. Other people feel that if you take a life your life should be taken in every case, and they would, in every murder case and every special circumstance case, vote for the death penalty.

24

25

26

Are you in that class of people?

27

A. No.

28

Q. Some people feel that it is a possible punishment

1 that should be applied in some cases depending on what the  
2 evidence is, and in other cases the appropriate punishment would  
3 be life without the possibility of parole.

4 Do you see yourself roughly in that class?

5 A. Could you say that again.

6 Q. Okay.

7 A. Would you please.

8 Q. I'll try. Let me approach it from another way.

9 You have obviously spent sometime thinking about this.

10 A. Yes, I have.

11 Q. And if I understand you correctly, did you call  
12 several priests between the last time you were here.

13 A. Yes, I did.

14 Q. Did those people share their personal views with  
15 you on the topic.

16 A. No, they shared the church's stand.

17 Q. That essentially was it is a matter of individual  
18 conscience.

19 A. Yes.

20 Q. Not like abortion where they have taken a stand.

21 A. No.

22 Q. And I also understand that although you thought  
23 about it, you've come to virtually no conclusion as to how you  
24 feel about it; is that true?

25 A. Yes. I don't like -- I don't have like -- well, I  
26 know that I am going to be this way or I -- I'm open for the  
27 truth. I feel my conscious and I could do that.

28 Q. Let me ask this question.

1           Some people who don't have a view would be one way  
2 or the other if they're put in a position where they have to  
3 make, actually make the decision. Let's say, three months down  
4 the line at the end of the trial when they examine their  
5 feelings at that time they feel the decision is so important, so  
6 serious, that they can't make it one way or the other, and they  
7 balk, or they freeze.

8           Do you see yourself as that type of person?

9           A.    No.

10          Q.    Do you feel confident that if we get to the penalty  
11 phase, once you hear all the evidence and you hear the law, you  
12 can make the decision whether to vote for life or death one way  
13 or the other?

14          A.    Yes, sir.

15          Q.    In the last decade, in the 70's on two separate  
16 occasions death penalty-related issues were placed on the  
17 ballot. People circulated petitions, they gathered signatures,  
18 it was the subject of some debate, controversy.

19                Were you involved in either one of those elections?

20          A.    No. Oh, I'm sorry, I have never voted.

21          Q.    Okay. How do you feel about making decisions of  
22 this magnitude?

23          A.    Well, I take it very seriously. I don't take it  
24 lightly.

25          Q.    To make sure that there is not a mistake, at the  
26 end of every criminal case the judge polls the jury, he goes  
27 down the aisle and asks each juror if the verdict the clerk has  
28 read is in fact the way they voted.

1                   If we got to the penalty phase in this case, and  
2 you and eleven other people determine that the appropriate  
3 punishment was death, would you have any problem indicating that  
4 in open court that that is the way you voted?

5           A.     No.

6           MR. KOCHIS: Thank you. I have no further questions.

7           THE COURT: I don't either. We would like to have you  
8 wait outside for a moment so we can discuss it privately. The  
9 bailiff will then instruct you further. Thank you for coming  
10 in.

11           PROSPECTIVE JUROR: Okay.

12           THE COURT: What do you think, counsel?

13           MR. NEGUS: No.

14           MR. KOCHIS: No.

15           THE COURT: Give her an appointment slip to return and  
16 bring in the next one, please.

17           THE BAILIFF: Lantz German.

18  
19                                   LANTZ GERMAN,  
20 called as a prospective juror, having been previously sworn,  
21 testified as follows:

22

23                                   EXAMINATION

24 BY THE COURT:

25           Q.     Good morning, sir.

26           A.     Good morning.

27           Q.     You are Mr. German?

28           A.     Yes, I am.

1           Q.     Mr. German, we've arranged things around the table  
2     in kind of an informal manner in hopes that each of the  
3     prospective jurors will relax a little bit more than usual to  
4     answer our heavy questions.   Okay?

5           A.     Okay.

6           Q.     First, I want to ask you, has anything happened to  
7     you since you were last in a couple weeks ago that would  
8     complicate your ability to serve in this case?

9           A.     No; no.

10          Q.     Secondly, I want to remind you that -- of what I  
11     told you before when I said there would be two possible phases  
12     to this case.   The first is a guilty phase where the jurors will  
13     simply determine whether he's guilty or not guilty of the  
14     various charges.

15          A.     Uh-huh.

16          Q.     Depending upon how that turns out we would then  
17     have a penalty phase.   If we get to a penalty phase there would  
18     only be two choices, and the jurors would have to determine  
19     which of the two penalties is most appropriate, death or life  
20     imprisonment without the possibility of parole.

21                   So my first real question to you is:  If we do get  
22     to penalty phase, will you be able to fairly consider both of  
23     those possible penalties, death and life imprisonment without  
24     the possibility of parole?

25          A.     Yes; yes.

26          Q.     Is there a reason for your hesitation?

27          A.     Well, no, not -- not really because, you know -- no  
28     reason, no.

1           Q.     All right. The second question: Would you be able  
2 to personally vote for either one or the other, making your  
3 decision upon the evidence and the circumstances brought out at  
4 the trial?

5           A.     Yes; yes, I could.

6           Q.     Some jurors feel that they would just simply not  
7 want to make that kind of a decision, a life or death type of  
8 decision, and they tell us that perhaps they would try to avoid  
9 having to make that decision in the penalty phase by trying to  
10 make the case turn out a certain way in the guilt phase; --

11          A.     Uh-huh.

12          Q.     -- do you think you might be inclined to do that?

13          A.     No, you know, just that justice is -- is served,  
14 you know.

15          Q.     Well, that's what we hope for.

16                   Mr. Negus, please.

17

18                                   EXAMINATION

19       BY MR. NEGUS:

20           Q.     Mr. German, the Judge lets the lawyers, Mr. Kochis  
21 and myself, ask most of the questions to you. We're not trying  
22 to pry or embarrass you but just get at what your opinions are  
23 so we can proceed with this particular stage.

24                   What did you hear about this case before you came  
25 to court?

26           A.     Well, I just heard, you know, that -- that Mr.  
27 Cooper, you know, he escaped, you know, and, you know, and, you  
28 know, he was, you know, loose for approximately, you know, four



1 or five months or so.

2 Q. Did you -- did you hear anything about the actual  
3 crime which he is accused of? That is, he pled guilty to  
4 escape, that's not before you. But as to the murder charges,  
5 did you hear -- did you hear anything about that crime?

6 A. Yes, I did.

7 Q. Can you remember if you heard a lot of details  
8 or -- or what did you hear?

9 A. Oh, I heard that, you know, that there was a family  
10 of about four or, you know, or five people, you know, that, you  
11 know, was supposedly murdered, you know, by Mr. Cooper there.

12 Q. Did you -- did you hear anything about the case  
13 after it got to court in San Bernadino?

14 A. No, I did not.

15 Q. Did you know that the case was coming to San Diego  
16 before you arrived here in the courtroom?

17 A. No, I did not.

18 Q. What was your reaction when you found out that you  
19 were a potential juror in this kind of case?

20 A. Oh, none really, you know just that, you know, you  
21 know, I just, you know, thought that, you know, that, you know  
22 that he can, that the case, you know, would be kind of  
23 interesting.

24 Q. Have you, based on the publicity or what you've  
25 heard before, formed any opinions yet as to Mr. Cooper's guilt  
26 or innocence?

27 A. No.

28 Q. Do you think that you could keep an open mind on

1 that issue all the the way through the trial?

2 A. Yes.

3 Q. What is your views about the death penalty?

4 A. Well, if a -- if a person, what I mean, you know,  
5 you know, you know, you know, has committed a heinous crime,  
6 what I mean, you know, of, you know, deliberate murdering  
7 people, I, you know, then I think what I mean, you know, that  
8 justice, you know, should be served in every way possible.

9 Q. In this particular case if whoever is responsible  
10 for it, if you had to sentence that particular person under the  
11 law, the law would require you to hear evidence and follow  
12 certain instructions chosing between the death penalty and life  
13 imprisonment without parole, it's the two possible penalties for  
14 this particular type of crime.

15 A. Uh-huh.

16 Q. Do you think that you could, depending upon the  
17 evidence chose either penalty or would you be inclined just to  
18 impose one particular penalty for this crime?

19 A. Well, I would, you know, I could chose either, you  
20 know, either one.

21 Q. Depending on the circumstances?

22 A. Yes.

23 Q. Do you belong to an organized religion?

24 A. Do I, you know -- you mean church like?

25 Q. Right.

26 A. Yes.

27 Q. Which one?

28 A. Baptist.

1 Q. Has the views of your church in any way influenced  
2 your opinions on crime and punishment and the death penalty?

3 A. No.

4 Q. These are matters of your own individual  
5 conscience?

6 A. Yes. Just that justice is served. I mean, you  
7 know.

8 Q. That's fine. Thank you.

9

10

EXAMINATION

11 BY MR. KOCHIS:

12 Q. Mr. German, I have some questions along the same  
13 lines of Mr. Negus.

14 A. Yes.

15 Q. The first is publicity. What you read or heard  
16 about the case, did any of that involve Mr. Cooper's capture?

17 A. No.

18 Q. Did you hear anything about the circumstances of  
19 the evidence that linked him to the crime?

20 A. No. It's a -- it's, you know, sketchy like.

21 Q. Okay. You don't have any problem in this case  
22 basing your decision just on what you hear in the courtroom?

23 A. Right.

24 Q. Your views on the death penalty, taking it in the  
25 abstract in general for a moment.

26 A. Uh-huh.

27 Q. What are your thoughts about the fact that we have  
28 a death penalty here in California? Are you for it? Are you

1 against it? Are you somewhere in between? What do you think  
2 about it?

3 A. Well, I'm -- you know, I'm -- you know, in between.

4 Q. Are there cases in which you would see yourself  
5 voting for the death penalty?

6 A. Possibly.

7 Q. By possibly does that mean you're not sure one way  
8 or the other or --

9 A. Well, you know, according to the circumstance, you  
10 know, you know, you know, I could go, you know, either way.

11 Q. Okay. So, for example, in this case if you heard  
12 all the evidence and you heard the law in the penalty phase and  
13 you felt that the appropriate punishment was death, you could  
14 vote that way?

15 A. Yes.

16 Q. Likewise, if you thought the appropriate punishment  
17 in this case was life without the possibility of parole, you  
18 could vote that way?

19 A. Yes.

20 Q. There was a period in the '70s in two separate  
21 occasions, about 1974 and again in 1978, in which death penalty  
22 issues were placed on the ballot. People voted on it. They  
23 circulated petitions. They gathered signatures. Were you  
24 involved in either one of those campaigns in gathering  
25 signatures or circulating petitions?

26 A. No, I was not, no.

27 Q. At the end of every criminal case the Judge polls  
28 the jury. To make sure there's no mistake he goes down the row

1 and he asks each juror if the verdict the clerk has just read is  
2 the way they voted.

3 If in this case in the penalty phase the jury  
4 determined that the appropriate punishment was death, would you  
5 have any problem indicating that in open court?

6 A. No, I would not.

7 Q. And likewise, the law requires that one person be  
8 elected as the foreman and sign and date the verdict form.

9 If the jury picked you as the foreperson, the  
10 foreman, and in the penalty phase you and eleven other jurors  
11 felt that the appropriate punishment was death, would you have  
12 any problem signing and dating that verdict form?

13 A. Yes, I might.

14 Q. Is there a reason why?

15 A. No, no reason. You know, I just might, you know,  
16 have -- well, you know, some kind of reservation, you know.

17 Q. Reluctance to do that?

18 A. Yes.

19 Q. How do you feel about being put in a position where  
20 you have to make this type of decision, what to do with another  
21 person's life if he's found guilty?

22 A. Well, like I said, justice, what I mean, you know,  
23 must be served, you know; as, you know, as long as justice, you  
24 know, comes out.

25 Q. Okay. Thank you.

26 I have no further questions.

27 THE COURT: Nor do I.

28 Mr. German, give us a chance to discuss it

1 privately among ourselves. If you would wait outside for a  
2 minute the bailiff will give you further instructions. Thank  
3 you for coming in.

4 Anything, Counsel?

5 MR. NEGUS: No.

6 MR. KOCHIS: No, your Honor.

7 THE COURT: Please give him and appointment slip.

8 Some of the jurors seem to think that justice or  
9 the truth is going to be handed to them on golden tablets and it  
10 will be very obvious.

11 MR. NEGUS: They just have to listen to me, I'll tell  
12 them.

13

14

15 RICHARD RONNING,  
16 called as a prospective juror, having been previously sworn,  
17 testified as follows.

18

19

EXAMINATION

20 BY THE COURT:

21 Q. Good morning.

22 A. Hello.

23 Q. Are you Richard Ronning?

24 A. I am.

25 Q. Mr. Ronning, we are all gathered around the table  
26 in an informal manner hoping that informality will make it  
27 easier for you to relax a little and answer our heavy questions.  
28 Okay?

A. Okay.

1           Q.     First, has anything happened to you since we last  
2 saw you that would complicate your ability to serve in this  
3 case?

4           A.     No, nothing has changed except the employer tells  
5 me I get two weeks pay and that's it.

6           Q.     I'm sorry?

7           A.     I say, I'm covered by two weeks pay on jury duty;  
8 after that I go on my own.

9           Q.     What do you do for a living?

10          A.     I work at San Diego Glass and Paint, inventory  
11 control.

12          Q.     They have a place down on Mission Boulevard, do  
13 they?

14          A.     Uh-huh, one of 17.

15          Q.     That's just one of 17?

16          A.     Yes.

17          Q.     Do you work out of a central warehouse?

18          A.     Yes. I work in the central office right here in  
19 the Torrey Pines Plaza, things like that, for stories.

20          Q.     In our area, Gentlemen, I suppose that's more akin  
21 to something like Builders Emporium or Hardware Glass, that sort  
22 of thing.

23          A.     That's correct.

24          Q.     Well, it doesn't sounds like you've an extremely  
25 wealthy man. You work --

26          A.     No.

27          Q.     -- for pay checks like the rest of us?

28          A.     That's right.

1 Q. Does your wife also work?

2 A. Part time, City Schools, cafeteria.

3 Q. I'm forbidden from excusing for slight reasons, it  
4 just depends upon the gravity of it.

5 Now if you do have a lot of money and you would  
6 like to serve or could serve in this case I'm going to keep you  
7 on.

8 If you tell me, Judge, there is just no way I could  
9 financially get by, we could consider excusing you, so you tell  
10 me the depth of your problems.

11 A. The way to get by would be dipping into my savings  
12 to pay our monthly bills. I make twelve hundred dollars a  
13 month, my wife works; that makes sixteen hundred dollars. By  
14 the time you take the tax off the top of that, I get what's  
15 left. I got a \$153 dollar car payument. I'm almost on a  
16 check-to-check basis, I put some away, since I had a heart  
17 attack and surgery, I'm not making the pay I used to make.

18 Q. Are you asking to be excused?

19 A. I'm not asking to be excused, no. If they say  
20 serve, I serve. I'd gamble one way or another. I've been  
21 excused three times in the past because of medical reasons.

22 Q. Is there a medical problem now?

23 A. Well, I had open heart surgery, but that's three  
24 years ago, that's gone by the board.

25 Previous times it was because I was at the funny  
26 farm. I had withdrawal from medications that they gave me. I  
27 was up at Mesa Vista for 13 electric shock treatments, that sort  
28 of stuff, but I'm still holding a job, so --



1 Q. Have you discussed with your doctor the possibility  
2 of serving on this case?

3 A. No, I haven't. I go up to Scripps Hospital twice a  
4 week for -- for --

5 THE COURT: Counsel, would you stipulate?

6 MR. NEGUS: Yes.

7 MR. KOCHIS: Yes.

8 THE COURT: Okay. We sure appreciate your coming down  
9 today, and your willingness to sacrifice is very admirable, sir.  
10 I appreciate that. We hate to put burdens on people but we do  
11 necessarily. We have some restraints. You understand I can't  
12 excuse you permanently. They are going to ask you to go back  
13 down to the large room, see if they have a shorter case for you.  
14 Thank you very much.

15 PROSPECTIVE JUROR: Thank you very much.

16 MR. KOTTMEIER: He certainly was very candid about it.

17 THE COURT: Yeah, "I have been to the funny farm."

18 Gentlemen, I just have a few things that it is my  
19 custom that since they effect you I would like to discuss with  
20 you. There doesn't appear to be any media around.

21 Some restraints on extended coverage I'm  
22 contemplating: One, Josh Ryen, I'm concerned with the impact  
23 that a battery of cameras would have on that boy. I would think  
24 from the media point of view that if and when he testifies that  
25 that would be the most sought after testimony and the most  
26 highly covered of anything in the trial.

27 There's two ways: No. 1, I hear from the news that  
28 there was a bill signed yesterday by Governor Deukmejian,

1 probably prompted by the McMartin preschool case to where  
2 witnesses can testify from an adjoining room. It's emergency  
3 legislation, has gone into effect immediately. I don't know  
4 what it is. I thought that I would -- in fact, I have the  
5 secretary getting me a copy of it now through the senator's  
6 office.

7           And secondly -- that's one possible way, and I  
8 haven't made up my mind how to do this.

9           Secondly, I can simply restrain the media from  
10 taking any pictures of Josh Ryen when he testifies in court.  
11 That wouldn't prevent him from sustaining the impact of a  
12 confrontation with not only the media but with Mr. Cooper, for  
13 whatever effect, if any, that would have on him, but that would  
14 be very easily accomplished and I'm sure that I could do that  
15 without much difficulty. I don't have to make a decision on  
16 these things right now I simply want to discuss them with you  
17 while we have a moment.

18           Secondly, I think that there's not much doubt but  
19 what I will order the media not to take picture of the victims'  
20 photographs, closeup pictures.

21           Thirdly, even though Rule 980 is one of the  
22 prohibitive things that the extended coverage will not have  
23 closeup pictures of jurors, I think I would extend that and say  
24 no pictures of jurors period, in court or out of court, too and  
25 I think that would probably be appropriate.

26           Do you want to just sit on this for awhile and at  
27 another time when we have a minute we can discuss it? It was  
28 just three housekeeping things that I wanted to discuss with

1 you.

2 MR. NEGUS: Judge Merriam had a rule basically with any  
3 witness that objected to being on the television and on the  
4 extended coverage, he would stop the extended coverage for.  
5 And --

6 THE COURT: Did you have many takers?

7 MR. NEGUS: Yes. And I am not opposed to that rule as  
8 long as it applies to both the prosecution and the defense  
9 witnesses. I think that there are -- the prosecution has  
10 witnesses who I think will object to being on television, and  
11 I'm not trying to embarrass them. There are maybe some defense  
12 witnesses that feel the same.

13 There's nothing automatic about extended coverage  
14 and I feel that witnesses who would be made nervous by the  
15 cameras, that's a miscarriage of justice if we force them to  
16 testify in front of -- in that sort of situation.

17 So I would, in addition to my general objection to  
18 extended coverage, I would certainly hope that the Court would  
19 follow that rule.

20 MR. KOCHIS: It's provided for in the Rules of Court that  
21 a witness may object to extended coverage.

22 MR. KOTTMEIER: One of the things in Muni Court, though,  
23 that made the difference is we did not raise the issue for a  
24 witness to take advantage of it. It really required the witness  
25 on their own initiative to say, "I would really prefer."

26 THE COURT: That's the only thing that concerns me. I  
27 think that most adult witnesses, they don't perhaps realize the  
28 inconspicuous nature of the cameras, really. The camera is

1 there. There is not a big hullabaloo. There is no lights and  
2 things. And they are going to understand that. I understand  
3 that.

4 You don't want it to be extended coverage at all,  
5 Mr. Negus, and I don't think that the witnesses should be heard  
6 to have the cameras turned off, that's the only thing, because a  
7 lot of people out there I think have a legitimate right to view  
8 these proceedings.

9 On the other hand, there's -- you know, they can  
10 read about it in the newspaper. We're not keeping them away  
11 from -- from hearing what happened or closing the courtroom, and  
12 there's no right to extended coverage, I mean, that's -- it's a  
13 discretionary thing. And in my discretion I think that the  
14 print media as well as the televised media are somewhat on an  
15 equal footing. In my discretion at least I'm leaning toward  
16 openness of trial, and I don't want to restrict it unduly.

17 MR. NEGUS: But it's not unduly, I think, if witnesses --

18 THE COURT: Tell me what we're talking about -- well,  
19 depends on how they object to it, as I indicated.

20 How many are we talking about, if you know? You  
21 had most of them testify at the preliminary hearing. How many  
22 were there?

23 MR. KOCHIS: Percentagewise it was incredibly small. The  
24 most emphatic witness is a witness that's not going to testify  
25 in these proceedings. It was the woman who allegedly was  
26 attacked in Santa Barbara. There maybe --

27 Beyond that what would I would like to do is take  
28 advantage of the Court's suggestion, think about it, reread the

1 Rules of Court, perhaps go over the witness list. And the  
2 prosecution's position and Mr. Negus's position may not be that  
3 far apart when we have had time to think about it.

4 THE COURT: That was my only purpose in bringing it up  
5 right now. There is no rush on this at all.

6 Your large picture, Mr. Kottmeier, of Peggy Ryen,  
7 Chris Hughes, Jessica in the background, I've ruled that that  
8 can come in before the jury; but I told you before, even without  
9 considering media coverage that I didn't want that displayed  
10 throughout the trial.

11 You see, I can do this several ways. I can  
12 actually make a formal order distributed to the media leaving it  
13 absolutely clear to what they are prohibited from doing or we  
14 can just kind of handle it informally by not giving them the  
15 opportunity of taking that kind of a picture.

16 So think about it and we will, at sometime when the  
17 two of you would like to discuss it and we have time, let me  
18 know.

19 MR. KOTTMEIER: My immediate reaction, your Honor, is  
20 that as far as the death scene pictures, I would prefer an order  
21 not allowing photographing of them just because of the position  
22 that Peggy Ryen is in. Even with the modified picture where we  
23 have attempted to cover her privates, still she is in --

24 THE COURT: Yes, it's -- it's obscene. And common  
25 decency and dignity and sensibilities of the viewing public, I  
26 can't really conceive of the media throwing that out on the  
27 public airways. And yet I don't know at this point. I can't  
28 anticipate.

1 MR. KOTTMEIER: One slight difficulty we're having that  
2 relates to Josh Ryen is he -- you may be aware that Judge  
3 Schaefer continued the custody hearing.

4 THE COURT: I didn't know that.

5 MR. KOTTMEIER: Yes. And for sure, all parties  
6 concerned --

7 THE COURT: Well, it was set over to November, as I  
8 recall before. Maybe I am aware of it. Is that when it was  
9 scheduled?

10 MR. KOTTMEIER: It originally was supposed to be the same  
11 week as the judges' conference, and at the last minute it was  
12 discovered that there was a conflict with the judges' conference  
13 so Josh was sent back East and it was continued for two weeks.

14 MR. KOCHIS: Right.

15 MR. KOTTMEIER: So I guess what I'm offering --

16 THE COURT: Coming up pretty soon then.

17 MR. NEGUS: Well, I guess it's the week of the 9th.

18 MR. KOCHIS: That's what it's tentatively set for.

19 THE COURT: Of November -- of October.

20 MR. NEGUS: But I think it's hard to count on it.

21 MR. KOTTMEIER: We can't express to Judge Schaefer our  
22 concern, which is basically, I would really be disappointed --  
23 I've kind of done that in a nonsoliciting way was just to ask  
24 him at one time between chambers when -- when, if ever, do you  
25 expect to have Josh in the area because we may also want to put  
26 him on, and that's about as far as it went. And at that time he  
27 told me when he was tentatively set for, but I didn't get into  
28 the case or anything else.

1 MR. NEGUS: It was in November is what he told you.

2 THE COURT: I'm not absolutely sure of that.

3 MR. NEGUS: Okay.

4 THE COURT: That just kind of stuck in my mind.

5 MR. KOTTMEIER: I guess my concern is a little bit  
6 different, your Honor, in that I'm concerned that he's liable to  
7 have a custody decision come down at virtually the same time  
8 that we will put the demands on Josh to testify and not have any  
9 point in time for Josh to get adjusted to whatever the custody  
10 decision is, or at least have the custody decision so far off  
11 that it doesn't bother him.

12 THE COURT: Legitimate concern. I don't know the answer  
13 to it.

14 MR. KOTTMEIER: You've read the same material we read as  
15 to how significant that decision is to Josh. And I don't know  
16 what effect it will have on him in his ability to handle the  
17 stress or the problems --

18 THE COURT: Well, you've got a lot of leeway in this  
19 case, however, as far as time is concerned, weeks if not months  
20 when you can call the boy. Okay.

21 Let's take a recess. We will consider it later.

22 (Recess taken.)

23 THE COURT: All right, bring in the next one, please.

24 THE BAILIFF: It is going to be Kathy Robbins.

25

26

KATHY ROBBINS

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

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## EXAMINATION

BY THE COURT:

Q. Good morning.

A. Good morning.

Q. You are Kathy Robbins.

A. Yes.

Q. Ms. Robbins, we have arranged things in an informal manner hoping to put you a little bit more at ease, to relax and then answer the heavy questions for us, please.

First, I want to ask you, has anything happened to you since we last saw you that would complicate your ability to serve in this case?

A. Um, I am completely out of a job.

Q. Sorry to hear that. Were you working at the time two weeks ago?

A. Yeah. But then I'm completely out, and stuff. I don't have a job at all, and --

Q. What do you normally do?

A. I am a retail person. I work for the retail stores and right now I am trying to get into shoes and I haven't had any luck yet.

Q. Are you looking?

A. Uh-huh.

Q. How big is your family?

A. I am -- I am the only daughter and then it is my mom and my dad.

Q. Oh, yes. This is the one that -- you are the



1 person that called me, my clerk reminded me now, and I do  
2 recall.

3 Did you go to the labor commission at all?

4 A. Yeah, but I got the run around. I just said forget  
5 it, it is no use.

6 Q. Is that right --

7 MR. NEGUS: Judge, I think --

8 THE COURT: Will you stipulate, gentlemen?

9 MR. KOCHIS: Yes.

10 MR. NEGUS: Yes.

11 THE COURT: Okay. Then we will excuse you and wish you  
12 well in getting a job. I'm sorry, that's about all I can say.  
13 Okay. Thank you so much?

14 PROSPECTIVE JUROR: All right.

15 THE BAILIFF: The next juror is going to be Dan  
16 Michaelsen.

17 THE COURT: When I talked to her on the phone, as I  
18 indicated to counsel before, she said that she was being fired  
19 because of this case, I told her on the phone the labor code  
20 prohibits anybody being discriminated against or terminated  
21 because of jury service, and the labor commission would help her  
22 to enforce that right if she had an unknowledgable or  
23 recalcitrant employer. I'm sorry the labor commission was not  
24 so fit to do so.

25

26

DAN MICHAELSEN

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

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## EXAMINATION

BY THE COURT:

Q. Good morning, sir?

A. Good morning.

Q. Dan Michaelson?

A. Yes.

Q. Mr. Michaelson, you are dressed appropriately for the informal proceedings we're having this morning, and it is all right. But when we do start, would you dress more appropriately for the dignity of normal court when I have a robe and other jurors are here. Okay?

A. Yes.

Q. We're being particularly informal this morning in hopes that you will be able to relax a little bit more and answer the questions that we're now going to put to you.

My first question of you is, has anything happened to you since we last saw you that would complicate your ability to serve in this case?

A. Well, other than I am a contractor, and it is a -- well, we have a company.

Q. Did you tell us that --

A. No, I did not tell you about that.

Q. What kind of a contractor are you?

A. General contractor.

Q. You have a going business at all times?

A. Yeah.

Q. How many people do you have working for you?

1           A.     We don't have very many people working for us, we  
2 just do supervision.

3           Q.     You have a corporation --

4           A.     Uh-huh.

5           Q.     -- at this time? And are you an officer of the  
6 corporation.

7           A.     Yeah. Sole. Sole ownership.

8           Q.     Have you incorporated?

9           A.     Uh-huh, yes.

10          Q.     You are the president, I assume, of the  
11 corporation?

12          A.     Yeah.

13          Q.     Normally in a corporation you have to have a  
14 president, a vice-president and a secretary-treasurer.

15          A.     Yes.

16          Q.     If you serve on this case, and you were just kind  
17 of a supervisor part-time in hopes that it somehow struggles  
18 through --

19          A.     That would be it. The hardest point is because we  
20 have another job coming up in Santa Barbara, it is my brother  
21 and myself and my father, and really my father retired. So, it  
22 is really my brother and myself.

23          Q.     What kind of work do you do? Just house-building,  
24 remodelling?

25          A.     Commercial work, as in retirement centers and other  
26 office buildings.

27          Q.     Do you build buildings? Are you a general  
28 contractor?

1 A. Yes.

2 Q. Do you sub-let out a lot of the work?

3 A. All of it.

4 Q. All of the work?

5 A. All the work except for supervison.

6 Q. All right, I see. Is your brother older or  
7 younger?

8 A. Older.

9 Q. More experienced or less experienced?

10 A. Four years more experienced.

11 Q. You are a young, intelligent man, sir. I hate to  
12 excuse you if I could possibly avoid it. You may luck out, but  
13 it is not up to me. Like you have other family members that  
14 somehow struggle through.

15 We're not going to keep you from your affairs, at  
16 least perhaps Friday and Saturday to assist at some extent.

17 Anything else you want to say in that regard?

18 A. No, that is all I can say.

19 Q. Well, we're also engaged in very serious business  
20 and I have some restraints on my ability to excuse you under the  
21 laws, so bear with us if you would, please.

22 MR. KOCHIS: Could I just ask one or two questions?

23 EXAMINATION

24 BY MR. KOCHIS:

25 Q. Do you have a family of your own, a wife and  
26 children?

27 A. Yes.

28 Q. Do you -- would this create a financial hardship on

1 you if you weren't working and making money?

2 A. Well, yeah -- my biggest problem is that we have a  
3 job that is probably going to start up in Santa Barbara. Right  
4 now we're in the midst of contemplating a move to Santa Barbara.

5 Q. Your home.

6 A. Yeah.

7 Q. And if you accept the job, would you be moving to  
8 Santa Barbara?

9 A. It could be.

10 MR. KOCHIS: I'm prepared.

11 MR. NEGUS: Likewise.

12 THE COURT: If counsel will stipulate, that would make it  
13 easier for me to excuse you.

14 Are you asking to be excused?

15 PROSPECTIVE JUROR: Sure.

16 THE COURT: All right. Would you go back downstairs then  
17 for further instructions from the jury and tell them you have  
18 been excused from this case. And they may have a short one for  
19 you. Thank you very much.

20 THE BAILIFF: Candy Carter.

21

22 CANDY CARTER

23 Called as a prospective juror, having been previously sworn,  
24 testified as follows:

25

26 EXAMINATION

27 BY THE COURT:

28 Q. Good morning.

1 A. Morning.

2 Q. Are you Candy Carter?

3 A. Yes.

4 Q. How do you prefer to be addressed, Miss?

5 A. Just -- yeah.

6 Q. Miss Carter, we've arranged things informally  
7 around the table in hopes that you'll settle back and relax an  
8 little bit and answer the questions we're going to put to you.  
9 You seem a little and apprehensive, nervous. Are  
10 you?

11 A. Very.

12 Q. Tell us if it gets uncontrollable in some way.

13 Has anything happened to you since we last saw you  
14 that would prevent the way you might serve here?

15 A. No. I just don't really want to serve.

16 Q. I see bumper stickers on cars that say, "I'd rather  
17 be fishing" or something like that, you know.

18 Do you have obligations. Why would you not like to  
19 serve in this case?

20 A. Well, I know me, I'm a very nervous person. I  
21 mean, this interview is scaring me to death. I'm going to be  
22 that way the whole time.

23 Q. There is nothing to be embarrassed about. It  
24 affects some people that way. Are you normally a nervous,  
25 sensitive type person?

26 Generally, once the first blush of the initial  
27 confrontations of the court procedure is over, then everybody  
28 kind of settles back and gets into a kind of hum-drum affair.

1 Don't you think that would happen to you?

2 A. No.

3 Q. For a number of reasons we would like to have you  
4 serve. You are young, apparently intelligent, you are a black  
5 person and we're concerned with that cross-section as well.

6 Let me go ahead and then the attorneys will ask you  
7 some questions, and we will see -- let's see how it goes and  
8 then we will keep that in mind.

9 I told you that we might have a penalty phase in  
10 this case in addition to a guilt phase, if we get to the penalty  
11 phase; we don't know if we will.

12 If we do get that far in the case, then the jurors  
13 will have to determine whether there should be a verdict for  
14 death by execution or whether the verdict should be one of life  
15 without the possibility of parole.

16 If we do get there, and if you do serve in this  
17 case, will you be able to fairly consider both of those two  
18 possible alternatives?

19 A. I can't be making that decision.

20 Q. You have trouble making decisions or something  
21 about that particular one?

22 A. Just that one. I can't make that decision.

23 Q. Period? You have trouble making decisions in your  
24 everyday --

25 A. No, I don't.

26 Q. Are you saying then that the life or death nature  
27 of it makes it difficult for you?

28 A. Yeah.

1 THE COURT: Counsel, I will let you inquire for a minute.  
2 MR. KOCHIS: I was going to let Mr. Negus go first, he  
3 usually does.

4  
5 EXAMINATION

6 BY MR. NEGUS:

7 Q. What I would -- I am not trying to make you feel  
8 embarrassed or anything, but what I would like to know is  
9 apparently you had heard something about this case before you  
10 came to court.

11 What do you remember having heard?

12 A. Well, in the beginning I dind't remember anything,  
13 but then I remembered this Chino, Chino, and I do remember  
14 murder.

15 Q. Do you remember any of the details about it?

16 A. No, I don't.

17 Q. Do you remember reading about Mr. Cooper at all?

18 A. No.

19 Q. Had you ever heard of him prior to your coming to  
20 court?

21 A. No. I just remember Chino.

22 Q. When you had heard about it, was that from the  
23 newspaper or television?

24 A. Television.

25 Q. When you first heard about it, did the nature of  
26 the case make you upset, or is it you just don't want to have to  
27 make a decision about life or --

28 A. The nature of the case upsets me.



1 Q. Can you give me a little -- a little reason why it  
2 does; try to tell me a little bit more why it upsets you?

3 A. Well, murder.

4 Q. You -- just any type of murder just gets you so --  
5 you don't want to hear about it, you get angry?

6 A. Well, it doesn't make me angry. I don't like to  
7 hear about it.

8 Q. If you were in a situation like this, do you know  
9 of any reason why you could not be -- you couldn't fairly makeup  
10 your mind as to what happened in a case, in a murder case?

11 A. I don't understand.

12 Q. Is there anything about -- I mean, do you have any  
13 particular feelings that Mr. Cooper must be guilty or innocent,  
14 or is there any reason why you couldn't be fair, just for  
15 example, just in deciding on your own whether or not he  
16 committed the crime or not?

17 A. Well, I can tell you, when I walked in here I was  
18 thinking of guilty.

19 Q. Why is that?

20 A. I don't really know. Maybe because of what I heard  
21 a long time ago I was thinking of guilty then.

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

23 MR. KOCHIS: I have no questions.

24 THE COURT: Would you wait outside for a minute and let  
25 us discuss it privately. Thank you for coming in. We may have  
26 you back in here shortly.

27 Counsel, anything?

28 MR. NEGUS: I would challenge for cause.

1 MR. KOCHIS: No objection.

2 THE COURT: I will grant the challenge. When she  
3 testified she had downcast eyes and an extremely hesitant  
4 manner, and apparently is really emotionally upset by the  
5 experience.

6 All right, the next person.

7

8 SANTOS GRIFFIN

9 Called as a prospective juror, having been previously sworn,  
10 testified as follows:

11

12 EXAMINATION

13 BY THE COURT:

14 Q. Good morning.

15 A. Good morning.

16 Q. Mrs. Griffin?

17 A. Yes.

18 Q. You are the last of the group of four. I think you  
19 came in late, later than the others.

20 A. Two minutes late.

21 Q. Are you Frances Griffin?

22 A. Yes.

23 Q. We have kind of arranged things in an informal  
24 manner here in the courtroom in hopes that you will relax a  
25 little bit to answer the hard questions that we're going to put  
26 to you.

27 First, Mrs. Griffin, has anything happened to you  
28 since we last saw you to complicate your ability to serve in

1 this case?

2 A. Well, I work -- I work for a doctor and he, up to  
3 now we have gotten paid, but he's the boss now and we're going  
4 into a computer starting October 1st and we may not get paid for  
5 jury duty. That would be the only difference.

6 Q. You are not sure one way --

7 A. I won't get paid for jury duty. I mean, I had  
8 understood up to now he's been paying me everytime.

9 Q. We haven't scratched the surface yet.

10 A. Right.

11 Q. We --

12 A. That's the only thing he brought to my attention,  
13 he would not pay me from October on.

14 Q. How long have you been with him?

15 A. Twelve years. I work part-time.

16 Q. For the -- naturally you are independently wealthy.

17 A. No.

18 Q. Do you have a family?

19 A. I have three children and a husband.

20 A. Yes.

21 Q. Does he have a wealt-paying job in some ways to  
22 where you could struggle through and make the sacrifice?

23 A. Well, not really. We make ends meet.

24 Q. How many hours do you normally work a week?

25 A. I work about 20, 25.

26 Q. How do you spread that out, normally?

27 A. Well, my father, I go over to him one day, another  
28 two days I spend around the house, whatever I can do around the

1 house.

2 Q. What -- is the doctor that you work for, is that  
3 your father?

4 A. No, no. My father is bedridden. I spend one day  
5 with him of the days that I don't work. The other I have two  
6 free days.

7 Q. Do you take care of him?

8 A. He has a housekeeper, a live-in lady that helps  
9 him, but I help do the chores. I run to the store and buy him  
10 groceries and pay his bills.

11 Q. How many days do you work at the doctor's office?

12 A. Two.

13 Q. What days a week?

14 A. Monday and Wednesday, or Monday and Thursday. It  
15 depends on what the schedule is.

16 Q. We will be closed to Friday. Could you substitute  
17 a Friday for one of those days?

18 A. I have to speak with him, because I work the days  
19 that -- there are two doctors there. I work the days that  
20 there's doctors available. That is how come I moved my days  
21 when they move their days.

22 Q. What is your job, particularly?

23 A. Medical assistant and collection.

24 Q. Do you mean you do billing and bookwork or --

25 A. I do the collecting.

26 Q. Well, that is done at a desk on a telephone and  
27 correspondence as opposed to fully directly assisting the  
28 doctor. What difference does it make when you work?

1           A.     Because they assign the space for us girls.  
2     Desk-wise there is no room.

3           Q.     How far away, time-wise, is your office from here?

4           A.     Chula Vista Medical Center.  That's how far?

5           Q.     That is quite aways.

6                     How long will it take you to drive it?

7           A.     15, 20 minutes.

8           Q.     You know, I have some restraint, I can't just  
9     exercise complete discretion and excuse you if I want to, or not  
10    excuse you if I don't want to.  So, you could work probably.  We  
11    don't know for sure, but you probably could continue to work one  
12    day a week for your doctor.  You could perhaps put an hour's  
13    work in each morning on the way to court depending upon what  
14    time the doctor's office opened.

15                    For instance, if you left there at 9:00 o'clock,  
16    you'd be here by 9:30.  That would help you some.  And then you  
17    would make some sacrifices.  But apparently it is not that  
18    critical for you and your family.

19                    Can I defer making that decision until you explore  
20    those further possibilities and then if you still have a major  
21    problem when you do come back with the other jurors, mention it  
22    and we will go over it again.  Okay?

23           A.     Okay.

24           Q.     Going to other hard questions, I suppose.

25                    Do you remember I told you that there could be two  
26    phases to this trial, a guilt phase and then it depends on how  
27    that turns out, we could go into a penalty phase, and at that  
28    time, the penalty phase, we would be concerned only with one of

1 two, we'd be concerned with which way the jurors would vote,  
2 vote for a death sentence or to vote for life imprisonment  
3 without the possibility of parole.

4 I'm telling you that because if we do get to that  
5 penalty phase, would you be able to consider both of those two  
6 possibilities, to fairly consider them and to vote for one or  
7 the other?

8 A. I lost you.

9 Q. Okay. Some jurors feel when they walk in here,  
10 they're locked into voting one way or the other before they even  
11 hear the case or the evidence.

12 I'm asking, would you be able to fairly consider  
13 both of the two possible alternatives, voting for death or  
14 voting for life imprisonment without the possibility of parole?

15 A. That was in regards to Mr. Cooper, right?

16 Q. Yes. We're talking about the Cooper case. Yes,  
17 ma'am.

18 A. I hadn't thought about it.

19 Q. I'm sorry?

20 A. I had not thought about it. You know, you told us  
21 not to think about it all.

22 Q. Well, I don't know. Do you have strong feelings  
23 about the death penalty, perhaps that is what is troubling you?

24 A. If I found someone guilty, is that what you are  
25 saying?

26 Q. Not only would the jurors have to find that he was  
27 guilty to get us past the first phase, but once we get to the  
28 penalty phase you would consider other evidence, circumstances

1 in aggravation, which would indicate the death penalty would be  
2 appropriate, circumstances in mitigation which would indicate  
3 that a life sentence would be more appropriate.

4 I'm just asking you, is your mind open and could  
5 you consider both of those two possibilities?

6 A. The death sentence would just frighten me. It is a  
7 possibility we'd have to make that choice. I don't know if I  
8 could make that choice.

9 Q. Why?

10 A. Because it would be taking his life.

11 Q. That's the law in California. The jurors make that  
12 kind of a decision in certain circumstances. Could you be such  
13 a juror?

14 MR. KOCHIS: Your Honor, I didn't get an audible answer.

15 THE COURT: She shook her head.

16 PROSPECTIVE JUROR: No.

17 BY THE COURT:

18 Q. Let me ask you in an informal way. You haven't  
19 heard the case nor the evidence at all.

20 Are you telling us that you have such a  
21 conscientious opinion regarding the death penalty that your  
22 opinion would make it impossible for you to vote for the death  
23 penalty in any case under any circumstances and regardless of  
24 the nature of the evidence introduced during the trial?

25 A. I think -- I don't think I could handle all that.  
26 I think it would just frighten mean, because I would be seeing  
27 him everyday, making, forming an opinion or what I hear. Just  
28 that one day when I did see him, Mr. Cooper --

1 Q. Did it upset you some way?

2 A. Well, I know after I hear the evidence and  
3 everything, it would be very hard to for me.

4 Q. How do you feel about the death penalty generally.

5 A. It would frighten me, it would, because I have to  
6 make that choice. It would be my putting him to the chair or  
7 whatever.

8 Q. Apart from your participation in the process, do  
9 you believe that the death penalty is a good law or bad law?  
10 Should we have it or shouldn't we have it?

11 A. I have always said if it ever happened to my kids I  
12 probably would want it. No, I don't think we should have it.

13 Q. What do you base that opinion?

14 A. Because I'm -- I have a choice whether to terminate  
15 a man's life. I feel there should be punishment, but I don't  
16 think we should terminate his life.

17 Q. Are there any circumstances or evidence that we  
18 could bring out to where you would say a death penalty is the  
19 appropriate punishment and I can so vote?

20 A. No.

21 THE COURT: Counsel, do you have any questions? Mr.  
22 Negus, first.

23 MR. NEGUS: No.

24 THE COURT: Mr. Kochis.

25 MR. KOCHIS: I think I may have one or two.

26 THE COURT: Sure.

27

28

EXAMINATION



1 BY MR. KOCHIS:

2 Q. Mrs. Griffin, I take it from your answers that you  
3 are opposed to the death penalty; is that correct?

4 A. Yes.

5 Q. And in this case then no matter what the evidence  
6 was you could never vote for the death penalty; is that true?

7 A. I believe so, yes.

8 MR. KOCHIS: I don't have anything else.

9 THE COURT: Would you step outside and give us a chance  
10 to confer privately, please. I'm sorry if we've upset you.

11 Counsel, anything.

12 MR. KOCHIS: First, I would be willing to stipulate that  
13 she be excused.

14 THE COURT: Mr. Negus?

15 MR. NEGUS: No.

16 MR. KOCHIS: Then I would challenge her for cause  
17 pursuant to Witherspoon. I know the record didn't reflect, but  
18 she got very upset emotionally, she was crying, started to cry  
19 and did in fact cry, had to wipe her eyes. I think she could  
20 not vote for the death penalty in any case, she doesn't believe  
21 in it.

22 THE COURT: Do you wish to be heard?

23 MR. NEGUS: Just to point to out that she a  
24 Mexican-American, and if we continue to use Witherspoon to do  
25 this, we're again depriving Mr. Cooper of a representative  
26 cross-section of the community on his jury and is a violation of  
27 the U.S. and California constitutions.

28 THE COURT: She doesn't appear to be of Latin background.

1 MR. NEGUS: It says Mexican-American on her -- she  
2 apparently has made or has an Anglo name, but her first name is  
3 Spanish.

4 THE COURT: Yes. All right. Thank you. But I believe  
5 that the challenge is well taken. I will grant the challenge.

6 Inform her she's excused and send her back to the  
7 large room.

8 Well, as far as any prospective jurors, we didn't  
9 fair too well in that session.

10 Let's take the noon recess.

11 --oo0oo--

12

13 (Noon recess)

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1 SAN DIEGO, CALIFORNIA, FRIDAY, SEPTEMBER 28, 1984, 1:33 P.M.

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4

THE COURT: All right. Who is next?

5

THE BAILIFF: The first juror is Sandra Kelley.

6

THE COURT: Thank you.

7

Counsel, may I have a stipulation that Mr. Cooper  
8 will be deemed present at all of our sessions unless it's  
9 otherwise noted on the record?

10

MR. NEGUS: Yes.

11

MR. KOCHIS: Yes.

12

THE COURT: Mr. Negus?

13

MR. NEGUS: Yes.

14

THE COURT: Thank you.

15

16

SANDRA KELLEY,

17

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

19

20

EXAMINATION

21

BY THE COURT:

22

Q. Come in, have a chair please.

23

Are you Sandra Kelley?

24

A. Uh-huh.

25

Q. Good afternoon.

26

A. Hello.

27

Q. We've kind of gathered around the table informally

28

in an effort to make it easier for you to relax and to answer

1 the hard questions that we're going to put to you, so if you  
2 would do so, please.

3 Has anything happened to you since we last saw you  
4 that complicates your ability to serve in this case?

5 A. (No audible response.)

6 Q. You have to answer out loud.

7 A. No. Sorry.

8 Q. The machine can't pick up a nod of the head.

9 You recall that I told you before when you were  
10 here with everybody else that we could have two phases to this  
11 trial, a guilty phase, and then if certain results are reached  
12 then we go into the penalty phase.

13 If we do go into the penalty phase the jurors will  
14 have only two choices. Based upon the evidence brought out they  
15 would have to determine whether the appropriate penalty is death  
16 by execution or life imprisonment without the possibility of  
17 parole.

18 My first question to you, Mrs. Kelley, is: If we  
19 do get to a penalty phase, will you be able to fairly consider  
20 both possible penalties, death and life in prison without the  
21 possibility of parole?

22 A. Yes.

23 Q. Would you be able to personally vote, considering  
24 your state of mind at this time, would you be able to personally  
25 vote for one or the other depending on the evidence and the  
26 circumstances brought out at the trial?

27 A. Yes.

28 Q. Do you think you might try to avoid making a hard

1 decision such as that by copping out at the guilt phase or  
2 finding some inappropriate verdict in order to do that?

3 A. No, sir.

4 Q. Thank you.

5 Mr. Negus, please.

6

7

EXAMINATION

8 BY MR. NEGUS:

9 Q. Mrs. Kelley, the Judge is letting the lawyers ask  
10 you most of the questions. As I go first I usually ask more  
11 than Mr. Kochis does. We're not trying to pry or embarrass you,  
12 but we need to have your honest opinions on the questions we ask  
13 you.

14 What did you hear with this particular case before  
15 you first came to court?

16 A. Basically the only thing I remember is San  
17 Bernadino. I spent a very lovely summer as a teenager in San  
18 Bernadino, and that's what triggered my memory back to it.

19 Q. Did you remember any of the details of the crime or  
20 the victims?

21 A. I remember there were some murders.

22 Q. Did you remember anything about Mr. Cooper?

23 A. No.

24 Q. Did you hear anything about him?

25 A. They didn't -- I didn't catch anything really other  
26 than he -- there is -- somebody said somebody had escaped.

27 Q. Did you have -- had you formed any opinion as to  
28 whether he was guilty or innocent before you came into court?

1 A. No.

2 Q. What was your reaction when you first heard that  
3 you were a potential juror in a case of this type?

4 A. It's very important and it's very serious, and I  
5 was apprehensive.

6 Q. Why are you apprehensive?

7 A. Well, because -- probably because I have never been  
8 faced with anything like that before and I had never considered  
9 it. Even after I got the notice for jury duty, to me it would  
10 be like somebody running a stop sign right. That's how far my  
11 mind went.

12 Q. You've had a chance to consider it for a couple  
13 weeks now.

14 A. Yeah.

15 Q. Do you still feel apprehensive?

16 A. No. Serious.

17 Q. Do you think that you could -- could you handle the  
18 business of making a decision in this particular case?

19 A. Yeah. I would rather be home. To tell you the  
20 truth, I would rather be home with my five cats, my two dogs, my  
21 husband, and grandkids.

22 Q. Me too, I think you would probably get a quarum  
23 here on that. I understand that that's -- that that's a reason.

24 A. Went without saying.

25 Q. Yeah. We're asking you questions about the death  
26 penalty, but understand that just by doing that the law requires  
27 us to do that before we determine Mr. Cooper's guilt or  
28 innocence?

1           A.     I had thought about that quite a bit since I was  
2 here the 12th.

3           Q.     Okay. But what I'm asking is, you won't take it  
4 the fact we're asking you questions about the death penalty  
5 doesn't mean Mr. Cooper is guilty, do you?

6           A.     No; no.

7           Q.     I take it from your last response that you feel you  
8 can keep an open mind on his guilt or innocence?

9           A.     I think so.

10          Q.     What's your opinion about the death penalty?

11          A.     I voted for it quite sometime ago.

12          Q.     Uh-huh.

13          A.     And I -- I feel like sometimes, rarely, under  
14 certain circumstances there's a reason for it.

15          Q.     What do you think about life imprisonment without  
16 the possibility of parole?

17          A.     I think there's a reason for that under some  
18 circumstances also.

19          Q.     Do you have -- have you sort of -- do you have an  
20 idea of what circumstances you think one should be -- one  
21 penalty is appropriate over the other?

22          A.     Not -- not really. Not really. The only thing --  
23 I don't have any background. I'm out of my element.

24          Q.     I'm not asking -- I'm not asking you like, you  
25 know, like a legal quiz. I was just asking if you had any  
26 personal opinions on --

27          A.     I think so. Sometimes somebody might do something  
28 that you -- you don't want them back out in society, but you

1 don't want to kill them either.

2 Q. So, that would lead you to life without parole?

3 A. Uh-huh.

4 Q. You have to say yes.

5 A. Yes.

6 Q. Do you -- in this particular case there are  
7 allegations involving children being killed and one young boy  
8 being very seriously injured; do you think that that particular  
9 type of crime automatically deserves the penalty of death?

10 A. No.

11 Q. Again you could just -- it would depend upon all  
12 the circumstances of the case?

13 A. Uh-huh.

14 Q. You have to say --

15 A. Yes.

16 Q. You're -- you're going into posterity here and they  
17 have to have -- uh-huh's get us in big trouble.

18 Thank you very much.

19 I have nothing further.

20

21 EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mrs. Kelley, I have a few questions.

24 When you voted for the death penalty some years  
25 back, was that something you thought about before you decided  
26 which way to cast your vote?

27 A. Yeah.

28 Q. Did you spend some time weighing the process and



1 the consequence?

2 A. Yeah, like there was unlimited possibilities as to  
3 why you would do what you did.

4 Q. Okay. And is there a particular reason you came to  
5 the decision one way or the other?

6 A. Because I thought under some circumstances it  
7 probably would be the thing to do.

8 Q. Okay. How do you feel about personally making that  
9 type of decision, for example, in this case?

10 A. I feel like it would be very hard but it could be  
11 done.

12 Q. Just looking into yourself for a moment, I don't  
13 think anybody would take pleasure in making the decision; but  
14 some people when they're actually confronted with that type of  
15 decision freeze and they don't want to take the responsibility  
16 one way or the other. Do you see any problem like that with  
17 yourself?

18 A. No. I would cry a lot, but I would do what I felt  
19 should be done.

20 Q. Okay. We ask people -- we ask people when they're  
21 jurors to be objective and to be somewhat antiseptic and to be  
22 objective and not be emotionally involved when they evaluate the  
23 fact; could you --

24 You mentioned crying are you an emotional person?

25 A. I'm an emotional person that is basically under  
26 control. I cry my share of tears but I have learned a long time  
27 ago, I designate when to cry. Do you understand that?

28 Q. I think so.

1           A.     I'm sorry. I'm not supposed to ask you a question  
2 I'm sure.

3                     Yeah, I'm emotional, but I can be emotional with  
4 some control.

5           Q.     So, in this case do you think you would be able  
6 to --

7                     Some of the evidence in this case may have an  
8 emotional impact on jurors, photographs, possibly testimony of a  
9 young person; could you be objective when you evaluate that type  
10 of testimony do you think?

11          A.     Yeah, with evidence that is before me, yeah.

12          Q.     The law requires, to make sure that there's no  
13 mistake, we poll the jury at the end of every criminal case.  
14 The Judge would go down the row of jurors and ask them if the  
15 verdict that the clerk has read is in fact the way they voted.

16                     Either -- Let's say, for example, we get to the  
17 penalty phase and you and eleven other people determine that the  
18 appropriate penalty in this case is death; would you have any  
19 problem indicating your vote in open court?

20          A.     No.

21          Q.     Likewise, the law requires that one person be  
22 selected as the foreperson and they preside over the jury  
23 deliberations and they sign and date the verdict form. If you  
24 were selected as the foreperson and the jury determined that  
25 this was an appropriate case for the death penalty, would you  
26 have any problems signing and dating that verdict form?

27          A.     No.

28          Q.     Thank you.

1 I have no further questions.

2 THE COURT: Nor do I.

3 Would you wait outside just a minute and let us  
4 discuss it. Then the bailiff will give you further  
5 instructions.

6 PROSPECTIVE JUROR: Okay; sure.

7 THE COURT: Thank you for coming in.

8 PROSPECTIVE JUROR: Your welcome.

9 THE COURT: Anything, Counsel?

10 MR. NEGUS: No.

11 MR. KOCHIS: No.

12 THE COURT: Yes. Would you give her an appointment slip  
13 and bring me 15 more jurors like Mrs. Kelley, please.

14 THE BAILIFF: Next juror is Harold Metz.

15

1

16

17

HAROLD METZ,

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

20

21

EXAMINATION

22 BY THE COURT:

23 Q. Good afternoon, sir?

24 A. Good afternoon.

25 Q. Are you Mr. Metz?

26 A. Mr. Metz, yes.

27 Q. Mr. Metz we've gathered around the table informally  
28 in an effort to get you to relax a little bit more than if I was

1 sitting up there with a black robe on.

2 A. Okay; fine.

3 Q. First, has anything happened to you since we last  
4 saw you that would complicate our jury selection of you?

5 A. No, nothing.

6 Q. Before I ask questions myself, I want to remind you  
7 of what I told you before about the two possible phases of this  
8 case. We are going to be primarily asking about a possible  
9 second phase, even though we don't know if he's going to be  
10 found guilty in the first phase.

11 If we do, however, get to a penalty phase, Mr.  
12 Metz, will you be able to fairly consider both of the possible  
13 penalties, namely, dealt and life in prison without the  
14 possibility of parole?

15 A. Yes; no problem.

16 Q. Would you be able to personally vote for one or the  
17 other, depending upon the circumstances and the evidence brought  
18 out at the trial?

19 A. Yes.

20 Q. Do you think you might be so concerned with having  
21 to make that hard decision in a possible penalty phase that that  
22 concern would effect the way you would vote in the guilt phase?

23 A. No.

24 Q. That's all I have at the moment.

25 Mr. Negus please.

26

27

EXAMINATION

28 BY MR. NEGUS:

1           Q.     The Judge is allowing us to ask most of the  
2 questions, and as I go first I usually ask more than Mr. Kochis  
3 does.

4           A.     Okay.

5           Q.     I'm not trying to pry or anything like that, but we  
6 do like to have your honest opinions on these things.

7                     What had you heard about the case before you came  
8 to court?

9           A.     Just what I read in the newspaper several years  
10 ago.

11          Q.     Okay. What was that?

12          A.     I just heard of someone escaping and there was a  
13 murder take place some place in the San Bernadino area.

14          Q.     Do you remember hearing anything about Mr. Cooper's  
15 background or anything about Mr. Cooper?

16          A.     Just that he had been in prison at one time.

17          Q.     Did -- on the basis of what you heard did you form  
18 an impression as to whether or not he was guilty of the murder  
19 is?

20          A.     No.

21          Q.     Did -- did you hear anything about his arrest or  
22 the Court case in San Bernadino County?

23          A.     No, just what I heard on the San Diego news.

24          Q.     Did you know that the case was -- had been  
25 transferred down hear when you came to court?

26          A.     The day I was called on jury duty I had heard it  
27 the night before on the news, that it was going to be  
28 transferred here.

1 Q. What was your reaction when you walked in and found  
2 out that you were a prospective juror on this case?

3 A. Well, the night before I was called in I figured it  
4 was a possibility I could be on that case.

5 Q. What did you feel about that?

6 A. No feel one way or the other; felt it was my civil  
7 duty to come in here and do the best I can.

8 Q. We are asking you questions about the death  
9 penalty, as the Judge indicated, but I hope you won't take that  
10 as any -- as any sign that anybody here thinks that we feel  
11 necessarily ever have to have that particular decision made, I  
12 mean, it's no indication of Mr. Cooper's guilt that we're asking  
13 these questions.

14 A. I understand that.

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

16 A. I have no opinion. I go by -- if the Court so  
17 desired I would go along with it. If they desired the other way  
18 I would go along with it, whatever the Court would desire.

19 Q. You don't have a particular opinion yourself?

20 A. One way or the other, no.

21 Q. What do you think about life imprisonment without  
22 the possibility of parole?

23 A. There again it depends on the Court. If they so  
24 recommend it and the jury's find it that way, I will go along  
25 with them if I feel it the appropriate penalty.

26 Q. In this particular case basically if you were to  
27 sit as a juror it would be your duty to make up your own mind  
28 about -- about which penalty was appropriate based on the

1 evidence and some instructions of the law, but basically the  
2 determination would have to be done by yourself. Do you feel  
3 that you could carry out that task?

4 A. I could go either way depending after the whole  
5 trial how I feel and the evidence and everything presented if I  
6 would recommend death or if I would go along with life in prison  
7 without parole.

8 MR. NEGUS: Thank you very much.

9

10 EXAMINATION

11 BY MR. KOCHIS:

12 Q. Mr. Metz, to pick up where Mr. Negus left off, so  
13 there is no misunderstanding you, you mentioned a couple times  
14 you could go along with what the Court recommended, what the  
15 Court felt was appropriate.

16 A. Right.

17 Q. In this case Judge Garner won't make any  
18 recommendation. He will read you an instruction on the law that  
19 will give you some guidelines on what type of evidence you can  
20 consider in the penalty phase, and the lawyers will decide what  
21 type of evidence to present, but the jury, each and every one of  
22 you will make the decision based on the evidence and the law and  
23 your own conscience which penalty is appropriate, without any  
24 input from the Court really in terms of a suggestion. Are you  
25 comfortable with making that type of decision?

26 A. Yes, I would be.

27 Q. How do you feel about the fact that we have the  
28 death penalty on the books here in California? Is it something

1 that you feel is necessary in some cases, that we shouldn't have  
2 to have it, do you have any feelings on it?

3 A. No. I feel that it is necessary to have it and a  
4 versatility of having, the flexibility of using it or not using  
5 it.

6 Q. Do you -- along that line that it's a good  
7 alternative or a possible alternative, do you see any purpose  
8 that it serves in terms of deterrence or anything along those  
9 lines?

10 A. Well, in my own personal opinion?

11 Q. Yes.

12 A. Yes, I do think that having it on the books is a  
13 deterrent of certain cases, that it might reflect something in  
14 the future for someone thinking twice about something.

15 Q. Okay. There were two periods in time during the  
16 last decade, I believe in '74 and again in '78, in which we had  
17 death penalty related issues on the ballot. People circulated  
18 petitions. They gathered signatures. It was the subject of  
19 debate and controversy. Were you involved in either one of  
20 those elections in terms of gathering signatures or circulating  
21 petitions?

22 A. No, not gathering, no.

23 Q. Were you involved in some fashion?

24 A. I was voting on it. That's what I thought you were  
25 going to ask me.

26 Q. Did you take a position on it one way or the other  
27 at the time?

28 A. Yes, I did.



1 Q. That the same position that you have today?

2 A. Yes, it is.

3 Q. The law requires that one of the jury is elected as  
4 the foreperson, the foreman, and that person signs and dates  
5 what is called the verdict form.

6 If the jury elected you as the foreman and in this  
7 case decided that the appropriate punishment was death, would  
8 you have any problem signing and dating the verdict form?

9 A. No, not at all.

10 Q. Thank you.

11 I have no further questions.

12 THE COURT: We'd like to have you wait outside just a  
13 minute, give us a chance to discuss it privately. The bailiff  
14 then will inform you further. Thank you, Mr. Metz.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Anything, Gentlemen?

17 MR. NEGUS: No.

18 MR. KOCHIS: No.

19 THE COURT: If you would give him an appointment slip.

20 THE BAILIFF: Catherine Delosrios is the next juror.

21

22

CATHERINE DELOSRIOS,

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

25

26

EXAMINATION

27 BY THE COURT:

28 Q. Good afternoon.

1 A. Hello.

2 Q. First, I want to explain the unusual circumstances  
3 here. We're gathered around the table informally so hopefully  
4 you will be a little bit more at ease to answer the heavy  
5 questions we're going to put to you. Okay?

6 Are you apprehensive in some manner?

7 A. Yes. I'm nervous, I will be honest.

8 Q. All right. That's what we want you to be. Try and  
9 relax though as best you can.

10 Has anything happened to you since --

11 You are Catherine Delosrios?

12 A. Correct.

13 Q. Has anything happened to you since we last saw you  
14 that would complicate your ability to serve in this case?

15 A. No, but may I say something?

16 Q. Sure.

17 A. I don't think I clarified myself when I spoke last  
18 time.

19 Q. I don't remember what you said last time.

20 A. I said that being six months involved in this trial  
21 would cause a hardship for me. Number one, because I said I was  
22 a primary support of my family.

23 But what I am -- I didn't want to air my dirty  
24 laundry in front of the entire people here, but I am separated  
25 and my husband gives me a small amount of money, but it's not  
26 enough to support myself and my daughter.

27 And I have a temporary position and I'm vying for a  
28 permanent position now, and I feel it would be detrimental to

1 tell my employer that I will be gone for six months. My chances  
2 of getting a job would be nill.

3 So I feel -- I don't think I would honestly be a  
4 very comfortable juror in that situation. I don't know if you  
5 would want me to be on a trial in that particular circumstance.

6 Q. You speak very well.

7 A. Thank you.

8 Q. And understandably so.

9 How old is your daughter?

10 A. She's five, kindergarten. She's going to a private  
11 school.

12 Q. You live in a separate residence from your husband?

13 A. Yes, uh-huh. I do pay the majority of the bills.  
14 We have a house payment. We own a home.

15 Q. This other position that you're looking for is with  
16 a different employer?

17 A. No, it's with the same employer right now. But  
18 even if I were not to get that job I will be out of a job come  
19 the end of October, and if I went to any employer I feel -- I  
20 don't know about you, but I wouldn't want to hire me if I  
21 weren't going to come to work for six months.

22 Q. Yes. Is that the only thing, when you say we  
23 wouldn't want you perhaps, is that the only thing you're  
24 thinking of because that would so upset you in some way without  
25 the money?

26 A. It would make any me feel uncomfortable.

27 And another thing, too, regardless of the  
28 situation, I'm going to be perfectly honest, I've read a great

1 deal about this trial and I don't know how objective I really  
2 could be.

3 Q. We wil take the other financial hardship before we  
4 get to that.

5 Counsel, would you care to question her before I  
6 send her outside briefly?

7 MR. NEGUS: No; no.

8 THE COURT: Mr. Kochis.

9 MR. KOCHIS: Yes. I had one or two questions.

10

11

EXAMINATION

12 BY MR. KOCHIS:

13 Q. I take it in the beginning of October you're going  
14 to start looking for a job.

15 A. No. It would be the end of the October.

16 Like I said, I'm vying for two positions where I am  
17 currently employed, and those will be coming up at the beginning  
18 of November. But if I were not to get those two jobs I would  
19 have to, you know, be looking with another employer because this  
20 was a temporary position that I was hired in in the first place.  
21 In fact, they even extended it for me because they were hoping  
22 for these positions to open up sooner but they didn't so they  
23 made an extension so I could stay on longer.

24 Q. Do you know what their position is in reimbursing  
25 temporary employees for jury duty?

26 A. That I do not know. Permanent employees, it's for  
27 the State, they would pay, but a temporary I do not know. I'd  
28 have to investigate that.

1 MR. KOCHIS: I don't have any further questions.

2

3

FURTHER EXAMINATION

4

BY THE COURT:

5

q. What's your particular job?

6

A. It's Administrative Assistant I in the Academic  
7 Personnel Department.

8

9 What we do is set up ad hoc committees and so forth  
10 to review the professors on campus to see if they are eligible  
11 for promotions, also we take care of the financial aspects too.

11

Q. How long have you been working for the State?

12

A. Since June.

13

Q. What job are you seeking?

14

A. Well, there was an Administrative Assistant II  
15 position which, as I said before, it is for more money. It  
16 would be basically the same type of work only more  
17 responsibilities. And the other one is what I am now primarily.  
18 They are trying to make that a permanent position, so my chances  
19 for that job are excellent.

20

Q. Do you mind telling me, is your husband paying  
21 formal child support.

22

A. No. We are not legally separated; we just have an  
23 agreement. But what I'm being -- you know, what I'm being paid  
24 is not enough to support myself or my child and pay a house  
25 payment and so forth.

26

Q. So, you absolutely have to be employed --

27

A. Yes.

28

Q. -- in order to make ends meet?

1 A. Uh-huh.

2 Q. Would you wait outside kindly for a minute, please.

3 Let us discuss it and then the bailiff will let you know.

4 Thank you for coming in.

5 PROSPECTIVE JUROR: Uh-huh.

6 (The following proceedings were had without the  
7 presence of the prospective juror.)

8 THE COURT: Mr. Negus, is that one of your \$50 type  
9 jurors?

10 MR. NEGUS: Yes.

11 THE COURT: Mr. Kochis, do you challenge?

12 MR. KOCHIS: No. If he's prepared to stipulate, I will  
13 stipulate. I don't have a grounds to challenge her on at this  
14 point.

15 THE COURT: Well, she asked to be excused. I'm prepared  
16 to excuse her for cause.

17 Mr. Negus, did you indicate that you would  
18 stipulate?

19 MR. NEGUS: No. I said this is one of the \$50 due  
20 process objections.

21 THE COURT: So he's not going to stipulate.

22 Do you wish to be heard further, Mr. Kochis?

23 MR. KOCHIS: Yes. I suggest we voir dire her because  
24 that may solve the problem.

25 THE COURT: What else can we get from her?

26 MR. KOCHIS: I would anticipate that because she's read  
27 many stories about the case --

28 THE COURT: Counsel, just a minute. You can still excuse

1 for hardship. She has indicated simply she cannot make it  
2 without a job and that her job is definitely in jeopardy. I  
3 don't see any alternative but to excuse her under the  
4 circumstances.

5 MR. KOCHIS: I have nothing to say.

6 THE COURT: Do you want me to bring her back in, Mr.  
7 Kochis? If I'm overlooking something I will be happy to bring  
8 her back.

9 MR. KOTTMEIER: I think all we are looking for, your  
10 Honor, is if there is a multiple basis for excluding her for  
11 cause we would rather take five minutes now and pick --

12 THE COURT: I don't mind the time, Mr. Kottmeier.  
13 Bring her back.

14 (The following proceedings were had with the  
15 presence of the prospective juror.)

16

17 FURTHER EXAMINAION

18 BY THE COURT:

19 Q. Bear with us a little longer if you would, please.

20 A. Uh-huh.

21 Q. You indicated you had read a great deal. I see  
22 from your questionnaire, you say you remember much, you remember  
23 well; what do you remember?

24 A. I remember where it was located, the people's  
25 names, how many people were involved.

26 Q. Do you remember the names?

27 A. I remember their family name, Ryen, uh-huh, and  
28 that it was mother and father and a daughter and a neighbor that

1 were killed, and that the little boy survived and his throat was  
2 slashed, and I believe his name was Jake could be, or Joshua --  
3 that's it Joshua.

4 Q. What do you remember about Mr. Cooper?

5 A. Mr. Cooper? Very little. I checked that I  
6 remembered a lot, but then I realized what was written about him  
7 was really not very much.

8 Q. On this point you can put vaguely?

9 A. Yeah, because -- I erased it because I thought --  
10 when I thought back on that I really --

11 Q. Do you remember the circumstances of his arrest?

12 A. Not in that, but I remember that he had escaped  
13 from prison.

14 Q. Do you know where he was arrested from the papers?

15 A. Not where he was. I know he escaped from Chino  
16 State, right.

17 Q. Because of what you've read have you formed an  
18 opinion or did you form an opinion as to his guilt or innocence  
19 of this crime -- these crimes?

20 A. I think I may have.

21 Q. And what is that?

22 A. I feel hard -- it's very difficult for me to say  
23 that. I don't -- the information looks bad for the defendant in  
24 my opinion, but that's -- that doesn't mean anything.

25 Q. Well, it means something now because we're  
26 inquiring into your state of mind at this moment. So have you  
27 formed an impression that he is guilty or not?

28 A. Well, my tendencies would be towards guilt rather



1 than innocence.

2 Q. Recognizing the fact, of course, that you've heard  
3 absolutely no legal evidence in the case --

4 A. Correct uh-huh.

5 Q. -- still some people have a difficulty to unring  
6 the bell. Do you think that you would be able to put aside that  
7 tendency or feeling, impression that you've had and fairly and  
8 impartially determine his guilt or innocence from the evidence  
9 presented in court.

10 A. I might be but I couldn't guarantee it.

11 Q. What do you think? Do you think you can or not?

12 A. I don't know what the information is so how can I  
13 really answer that. It's a difficult question to answer because  
14 I don't -- I don't know what the facts are really. I know what  
15 the newspaper says, and I know that's -- can be hearsay in some  
16 respects.

17 Q. But you know your own lifetime experience --

18 A. Uh-huh.

19 Q. -- on being able to judge circumstances, being able  
20 to perhaps weigh in a fair and impartial manner when your little  
21 five year old gets into trouble or something like that, and to  
22 form judgments about various things, which I'm sure you do all  
23 the time, so if I give you a note pad and tell you at the  
24 beginning of trial to make notes if you wish, and later when you  
25 go back in the jury room decide the case on what occurred only  
26 in court, can you do that or are you going to want to remember  
27 some of the things that came out in the newspapers that you  
28 haven't otherwise heard?

1 A. I really don't know.

2 Q. Fine.

3 Any questions, Counsel?

4 MR. NEGUS: I have no questions.

5 THE COURT: Mr. Kochis.

6 MR. KOCHIS: Nor have I.

7 THE COURT: All right. You may step out again, please.

8 I don't know if we've added a great deal. She has  
9 formed an opinion that he is probably guilty and she has not  
10 been able to state by her own declarations that she can put it  
11 aside. Am I correct?

12 MR. KOCHIS: Yes, that's what I heard.

13 THE COURT: Anything else.

14 MR. NEGUS: I'm not challenging her for cause.

15 MR. KOCHIS: And at this point I have no objection if the  
16 Court excuses her based on her hardship.

17 THE COURT: She's asked the Court for an excuse. She has  
18 cried for it in effect. I will grant the excuse. I will excuse  
19 her for cause. Objection is overruled.

20 Would you send her back down please and bring in  
21 the next juror.

22

23

PETER CARL

24 Called as a prospective juror, having been previously sworn,  
25 testified as follows:

26

27

EXAMINATION

28 BY THE COURT:

1 Q. Please have a seat.

2 Are you Peter Carl?

3 A. Yes, sir.

4 Q. You have got two first names, have you?

5 A. I've been plagued with that all my life.

6 Q. Mr. Carl, we have gathered informally around the  
7 table in the hope that you will be a little bit more at ease and  
8 be candid to my questions.

9 Do you remember I told you before when you were in  
10 a couple of weeks ago that there is two possible phases to the  
11 trial, the first phase is simply whether he's guilty or not  
12 guilty of certain crimes, and in the second phase, if we get  
13 there, the jurors would be concerned with whether one penalty or  
14 the other should be imposed. That is, should they vote for  
15 death by execution or life imprisonment without the possibility  
16 of parole.

17 My first question to you is, basically, if we do  
18 get to that penalty phase, will you be able to fairly consider  
19 both of those two possible penalties?

20 A. Yes, sir, I think I could fairly do that.

21 Q. Incidentally, has anything happened to you since you  
22 were last in court that would make it more difficult for you to  
23 serve or complicate your service in any way?

24 A. No, sir.

25 Q. So, if we do get to a penalty phase, will you be  
26 able to personally vote for whichever one of those two  
27 alternatives then seem most appropriate based upon the evidence  
28 and the circumstances brought out at trial?

1           A.     Yes, sir.

2           Q.     Do you think you might try to cop out or avoid  
3     having to make that hard decision by finding an inappropriate  
4     sentence or, excuse me, inappropriate verdict back in the guilt  
5     phase, so that you'd never even get to a penalty phase?

6           A.     Inappropriate? Could you explain what you mean.

7           Q.     We are having trouble with that question.

8                     Some jurors might say, hey, I'm so worried about  
9     possibly having to make a life or death decision in a penalty  
10    phase that I'm going to find an inappropriate verdict back here  
11    in the guilt phase, knowing that if I do, I will never have to  
12    get to the second phase.

13          A.     Yes, sir. I don't think that I have any trouble  
14    with that.

15          Q.     You wouldn't?

16          A.     I don't think that I would form that verdict. That  
17    would be a cop out so that I wouldn't have to make a decision  
18    down the line.

19                 THE COURT: Thank you, Mr. Carl.

20

21

EXAMINATION

22    BY MR. NEGUS:

23                 Q.     Mr. Carl, the judge is allowing Mr. Kochis and  
24    myself to ask you most of the questions. We're not trying to  
25    pry or embarrass you in any way, but we need to have your honest  
26    opinions on what you know about the case or death penalty in  
27    order to help us --

28                 A.     Okay.

1           Q.     -- for the jury selection.  What had you heard  
2 about the case prior to coming in today?

3           A.     What have I heard about the case, you mean?

4           Q.     First, what did you hear about the crime.

5           A.     Okay.  I just heard things, mostly through the  
6 television media.  Initially when the event first happened I  
7 read the articles about it several times until I felt like I was  
8 saturated with it, and I didn't want to just keep going into it  
9 just to read the same thing over and over again.

10          Q.     What do you remember about the crime?

11          A.     I remember -- what I remember is that several  
12 people I thought escaped from a prison or an institution and  
13 they allegedly broke into this home at night, or whatever, and  
14 the crimes were committed, it was found out either the next day  
15 or several days later, and everybody escaped.

16                     And then I remember reading some articles later  
17 after they were looking for Mr. Cooper here about how they  
18 thought he went down to Mexico, or he was involved with some  
19 sort of a sailboat type of venture or something before they got  
20 him.

21          Q.     Do you remember reading anything about the  
22 circumstances of his arrest?

23          A.     No, not in vivid detail.

24          Q.     Do you remember having heard about the case when it  
25 was up in court up in San Bernardino, that is, proceedings  
26 before trial?

27          A.     No.

28          Q.     Did you know it was coming to San Diego before you

1 walked in here?

2 A. No.

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

5 A. I found it interesting of sorts, in a way. I know  
6 I'm going to give up a lot of my time if I was chosen for this  
7 jury, so in that sense that doesn't get me real excited. My job  
8 will pay me to come in here, I work for the fire department, and  
9 so it is my leisure time that I am giving up, it is not my work  
10 time.

11 Q. When we're asking questions about the death  
12 penalty, we're not trying to suggest to you in any way that you  
13 will ever have to make that particular decision, you understand  
14 that? The law just requires we go at backwards, as it were.

15 A. Okay.

16 Q. What do you think about the death penalty?

17 A. I think that it is a just punishment for some  
18 crimes.

19 Q. What do you think about life without the  
20 possibility of parole?

21 A. Well, you know, sometimes you read about all these  
22 cases where I was under the impression that people were going to  
23 be in prison for life, then it turns out that they release them  
24 after 20 some years, and that type of thing. That makes me have  
25 my doubts sometimes about -- I don't understand some of the  
26 terminology when they say 20 years to life and that type of  
27 thing.

28 THE COURT: Perhaps you could explain the difference

1 between a regular life sentence and a life without the  
2 possibility.

3 BY MR. NEGUS:

4 Q. There are, there are sentences -- 25 to life tends  
5 to mean that a person becomes eligible for parole after 18  
6 years, I believe it is, or 17 years, I forgot the exact figure.

7 Life without the possibility of parole means that  
8 the person is not ever eligible for parole unless the governor  
9 acts to reduce the sentence in some way. The governor has the  
10 power to reduce the sentence, something which makes the person  
11 eligible for parole. But that is what it takes.

12 A. Is that after a minimum of 17 years or something  
13 similar?

14 Q. Practically. I imagine it is, but there is nothing  
15 in the law which puts any minimum on when the governor can act.

16 A. Uh-huh.

17 Q. Given that scenario, do you think that you could --  
18 if somebody was found guilty of a particular crime of multiple  
19 murder, that you could vote for life without possibility of  
20 parole if on the evidence, factors in aggravation and mitigation  
21 being balanced out, that that was the appropriate penalty?

22 A. You know, I feel that in a multiple murder type of  
23 situation like that, I feel like the person who committed the  
24 crime has hurt so many people, by hurting, I mean by giving the  
25 people fear of breaking into their home, that type, I think I  
26 would have to lean towards having the death penalty in that  
27 situation. I would not feel any qualms about giving that  
28 verdict.

1           Q.     Well, the law in California is that not all murders  
2 require the death penalty, and not even all multiple murders.  
3 The multiple murder is just a sort of a thing that makes the  
4 person eligible for either of the two most serious penalties:  
5 Either life without parole or the death penalty.

6           A.     Uh-huh.

7           Q.     Are you telling me that in this kind of case that  
8 if the person who was responsible for these crimes were to come  
9 before you for your vote on sentencing you would automatically  
10 vote for the death penalty in this particular case?

11          A.     I think I would tend towards that, yes. I can't  
12 picture a circumstance where a person could commit, kill five  
13 people, or four people, or whatever, and I just don't see the  
14 point of putting them away for life; having society support them  
15 for life. I just --

16          Q.     So, no matter what evidence would be brought out in  
17 mitigation, as it were, you'd still vote for the death penalty?

18          A.     I think that if there was a tendency to try to go  
19 for an insanity type of plea, or something like that, I would  
20 still be inclined to think towards the death penalty.

21          Q.     Well, insanity is a separate, would be a separate  
22 trial, and there is no plea of insanity in this particular case  
23 so you wouldn't have to --

24          A.     Okay.

25          Q.     -- make that particular decision. But there's  
26 various kinds of evidence in mitigation that can be introduced.

27                   Without trying to enumerate that or anything, is it  
28 your opinion that no matter what evidence in mitigation was



1 introduced that you would still vote for the death penalty?

2 A. Well, I couldn't say no matter what, I think I  
3 would fairly weigh the evidence, though I think like in a case  
4 of multiple murder I would have a tendency towards the death  
5 penalty. But I think that I would be fair within my own mind on  
6 evaluating the evidence.

7 Q. Okay. I thought I heard you to say that you felt  
8 that you would vote for the death penalty no matter what.

9 THE COURT: He never did say that.

10 PROSPECTIVE JUROR: No, I didn't say that, I said I would  
11 be inclined towards that.

12 BY MR. NEGUS:

13 Q. Okay. Would you think that as you sit here now, as  
14 I say, not all, not all multiple murders, or the law says that  
15 not all multiple murders deserve the death penalty.

16 Do you think that you could follow the law which  
17 apparently is somewhat at variance with your own views?

18 A. I think I could just -- what the person's frame of  
19 mind was that committed these crimes -- I would imagine, like,  
20 for instance, if a person was involved in a fight with people,  
21 and in the heat of the fight he killed several people, that  
22 would be different than if a person came into a home and then  
23 these innocent people, they were slaughtered, which is -- that  
24 would be different.

25 I think that in the one hand I would say, well,  
26 maybe life imprisonment would be fair for this one person, but  
27 on the other hand if there were just innocent people that were,  
28 really couldn't defend themselves, that were gunned down, or

1 whatever, I would feel that a death penalty would be appropriate  
2 for that.

3 Q. Well, let me just focus then on this particular  
4 case.

5 From what -- now, from everything you've read about  
6 it in the paper, and the other sources you had, do you think  
7 that whoever is responsible for this particular crime, where  
8 self-defense would not appear to be involved, should  
9 automatically receive the death penalty?

10 A. I would -- my inclinations are definitely that way  
11 a lot. Because I know that there is some children and a woman,  
12 and I just can't picture -- I would picture that the whole  
13 group. I have got a picture in my mind of the horror of the  
14 situation, like what it would be like, and just trembling while  
15 somebody is killing them. So, that makes me -- I just don't see  
16 why that the person that did the crime would have a right to  
17 live any longer.

18 Q. So, in this particular case your mind is pretty  
19 much made up from what you know, that death is an appropriate  
20 penalty.

21 A. If a person was found guilty, yes, of the crime. I  
22 think I feel like I am vacillating back and forth a little bit,  
23 but if all the evidence pointed out that the person had  
24 committed the crime and they committed the crime in the way that  
25 I have already got a preconception how it was done, just from  
26 the media, that type of thing, then I think the death penalty  
27 would be appropriate.

28 MR. NEGUS: Thank you very much. I appreciate your

1 candor.

2

3

EXAMINATION

4 BY MR. KOCHIS:

5 Q. Mr. Carl, I have a few questions, because there is  
6 a difference between -- let's see -- in your mind there is a  
7 difference between feeling a particular punishment would be  
8 appropriate and having your mind so made up that you wouldn't  
9 listen to the evidence and in every case you would vote one way  
10 or the other. Can we go from that framework?

11 A. Yes.

12 Q. Or have I confused you.

13 A. Um, in every case -- I'm sorry. Like for every  
14 count of the --

15 Q. Let me start at the beginning.

16 A. Okay.

17 Q. Judge Garner has told you we have two, really two  
18 separate trials in this case, and you understand that.

19 A. Right.

20 Q. The first trial is did this defendant do the  
21 murders, or is there someone out there that is still running  
22 around. Do you still understand?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Okay, that's a yes.

26 Q. The court reporter has to take down a yes or no.

27 A. You don't give guttural sounds?

28 Q. No. So, in that phase we need people who will base

1 their own decision only on what they hear in the courtroom, the  
2 evidence, the law, and put aside things they may have heard in  
3 the news. Could you do that?

4 A. Yes.

5 Q. Then we come to the second phase. If there is a  
6 conviction, and the two options go to the jury, as in this case,  
7 should the defendant receive life without the possibility of  
8 parole, or should he receive the death penalty, and again the  
9 decision is supposed to be made only on the evidence and the  
10 law. Do you think you could do that?

11 A. I think that I would be tending towards the death  
12 penalty if they did find him guilty of the crime.

13 Q. Okay. What we need to know, for example, in this  
14 case, the evidence is going to show that four people died, and  
15 of those people two were children.

16 Would you, in every case where they're multiple  
17 victims, impose the death penalty and never, under any  
18 circumstances, vote for the life without the possibility of  
19 parole?

20 A. In this case like, when you go down the line for  
21 each victim that was murdered. Is that what you are --

22 Q. Well, what happens is if we get to the penalty  
23 phase, you, the jury, will already have found Mr. Cooper guilty  
24 of more than one murder. If they find him guilty of even two,  
25 that automatically puts us in a penalty phase situation.

26 Then there is other evidence that is offered and  
27 the judge will give you an instruction that will tell you what  
28 type of evidence that you can consider, and you even paraphrased

1 some of the types of evidence that may be considered in the  
2 penalty phase, okay, and would be evidence in addition to the  
3 factors surrounding the crime, the commission of the crime and  
4 we get into some other areas as well.

5           Could you keep an open mind and listen to all that  
6 evidence before you decided whether you should vote for death or  
7 life in this case?

8           A.     I think I'd have trouble doing that. I think I  
9 would be inclined to go for the death penalty.

10          Q.     In every case? I mean everytime in this case?

11          A.     I would have that in the back of my mind, I feel.

12          Q.     Well, appreciating that it is in the back of your  
13 mind. For example, Mr. Negus if we get to the penalty phase  
14 will offer evidence in what's called mitigation on behalf of his  
15 client.

16                 Would you be able to listen to that evidence and  
17 evaluate it?

18          A.     Yes.

19          Q.     And Mr. Kottmeier and myself would introduce what  
20 is called evidence in aggravation. And would you be able to  
21 listen to that?

22          A.     Yes, I'd be able to listen.

23          Q.     After all the evidence was in, would you be able to  
24 consider both the possible penalties, to weigh the evidence as  
25 to what would be the appropriate penalty in this case, should I  
26 vote for life or death?

27          A.     Yes, I think I could do that.

28          Q.     If you felt it was appropriate, could you vote for

1 the death penalty?

2 A. Yes.

3 Q. If you thought in this case, based on all the  
4 evidence, that the appropriate punishment would be to lock this  
5 defendant up for the rest of his life, throw away the key, would  
6 you be able to vote for that?

7 A. Yes; except that Mr. Negus here has already said  
8 that the governor could release a person, and in that sense the  
9 key could never be thrown away. But, yes, I'd do that, too.

10 Q. Knowing it is possible within the realm of  
11 speculation of some day, some governor may release, you could  
12 vote for the death penalty in this case if you thought it was  
13 appropriate.

14 A. Yes.

15 Q. I don't have any further questions.

16 THE COURT: Mr. Negus, do you wish to inquire?

17 MR. NEGUS: No, I haven't --

18 MR. KOCHIS: I'm sorry, I did misspeak myself.

19 Q. Knowing that even though the governor or someone  
20 some day may release this defendant, you could still vote for  
21 the life without the possibility of parole if you thought it was  
22 the appropriate punishment in this case.

23 A. Yes.

24

25 FURTHER EXAMINATION

26 BY MR. NEGUS:

27 Q. I do have a question then.

28 My understanding, however, is that what you told me

1 is that you do not believe that life without parole is the  
2 appropriate penalty in this particular case. Or am I misstating  
3 you?

4 A. See, like I haven't heard the case. Like I haven't  
5 had the opportunity to listen to your side and why you think  
6 that it should be if the person was convicted, life without the  
7 possibility of parole, or hear their side of why it should be  
8 the death sentence, if that was what they were going after at  
9 that point.

10 Just sitting here thinking of arbitrarily without  
11 hearing a lot of the reasons why the death penalty shouldn't be  
12 instilled in this case, I would have a tendency to think, well,  
13 yes, it should be the death penalty. But I haven't heard any  
14 reasons why it should go the other way.

15 Q. Can you think of any reasons?

16 A. Not offhand.

17 Q. Is it still your basic opinion that at least<sup>e</sup> as far  
18 as you know, in your mind, unless something were to come up that  
19 you haven't considered, that any defendant who is convicted of  
20 these particular crimes, no matter what his background or what  
21 you could say nice about him, would deserve the death penalty?

22 A. I think that a person's background on that type of  
23 thing should have nothing to do with it. If you take a bunch of  
24 innocent peoples lives, especially ruthlessly, then I think you  
25 should get your due.

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

27

28

FURTHER EXAMINATION

1 BY MR. KOCHIS:

2 Q. Mr. Carl, if you were instructed, for example, that  
3 one of the things you were to consider is a person's past  
4 history, would you be able to do that if the judge told you that  
5 in a penalty phase you must consider these factors, and one of  
6 them may be his past history. Could you consider it?

7 A. I could consider it. Like -- but I can't picture  
8 how a person's history would really affect if they were guilty,  
9 and they had a history of who knows what, that should have  
10 nothing to do with the act that was done, in my opinion.

11 Q. Let me ask you this. Do you see a difference in  
12 the -- the difficulty is, it appears we're trying to get you to  
13 speculate on what your verdict would be without letting you hear  
14 the case.

15 But do you see a difference in terms of what the  
16 appropriate punishment would be with an individual who has been  
17 convicted in the past, let's say, of ten murders and then gets  
18 convicted of this case, and that's Individual A; Individual B  
19 has never even gotten a traffic ticket and this is his first  
20 time he's brought to court.

21 Do you see a difference between the appropriate  
22 punishment for those two people?

23 A. The only difference is I think that the person  
24 might have got off the hook in the previous case, in his case,  
25 A; whereas case B, each did the same thing, and so I feel  
26 that -- I don't see a difference between the two cases. I feel  
27 like the one guy was lucky in the first few cases that he got  
28 off, and he was out on the street again where he could commit



1 more crimes.

2 Q. I didn't make myself clear. What I meant to say  
3 is, two individuals, perhaps one individual who had committed  
4 ten murders in the past --

5 A. I think I understand what you mean.

6 Q. -- another individual has not broken any law  
7 whatsoever.

8 A. Right. And they both committed in each case the  
9 same crime, multiple murder, or -- you didn't state that, but a  
10 murder -- I think that the trial is based on that case, you  
11 committed a murder. I don't think the history of one person  
12 committing more than the other should really affect my decision.

13 Q. If the judge told you to take that type of evidence  
14 into consideration, could you?

15 A. Well, I could weigh it in my mind. I feel like I  
16 am kind of predisposed. Obviously I'm stating a bias right now.

17 Q. Everyone has a bias. Could you still listen to  
18 both sides in the penalty phase?

19 A. Yes, I could listen to it.

20 Q. If you thought that in this case the appropriate  
21 thing to do with Mr. Cooper is to sentence him to life  
22 imprisonment, could you do that?

23 A. Yes, I think I could do that.

24 MR. KOCHIS: I don't have any further questions.

25 THE COURT: Would you kindly wait outside for a minute  
26 and let us discuss it briefly, please. Thank you for coming.

27 Gentlemen?

28 MR. NEGUS: Challenge for cause.

1 THE COURT: Mr. Kochis.

2 MR. KOCHIS: My position is he's in line with the typical  
3 Lamphear juror in that he says that he thinks this is certainly  
4 an appropriate case for the death penalty but I could consider  
5 sentencing Mr. Cooper to life without the possibility of parole.  
6 I recognize that Mr. Negus asked him to put forth the evidence  
7 that would cause him to vote that way, but he, as a lay juror, a  
8 layman, he's not aware of what the factors of mitigation are or  
9 the factor in aggravation.

10 THE COURT: Mr. Negus did that again, which leads us down  
11 the primrose path. But regardless of that omission, he's  
12 indicated enough predisposition to where I don't think he could  
13 be an impartial juror.

14 MR. NEGUS: I don't know that I am leading anyone down  
15 the primrose path. I have tried to ask them questions in a  
16 nonleading way, they have volunteered the information.

17 THE COURT: You don't give them any of the circumstances  
18 in aggravation or mitigation, you just make them look at the  
19 antiseptic fact that four people were attacked or five were  
20 attacked, do they think it is appropriate, without even implying  
21 for a minute that there are circumstances in mitigation, some of  
22 these facts. I think I better start going over these factors  
23 right off the bat if you don't.

24 MR. NEGUS: I had another objection. Mr. Kochis came up  
25 with a hypothetical in which he imagined a person had no prior  
26 record.

27 THE COURT: I am going to go into it myself, Mr. Negus.  
28 I will grant your challenge, but hereafter I am going to simply

1 preface all my remarks with jurors, with these circumstances in  
2 aggravation and mitigation, which you refuse to even admit to  
3 the jurors that they exist, and they are led down the primrose  
4 path. We're losing good jurors.

5 MR. NEGUS: The people we are losing, as it were -- I  
6 don't see why the Court has a predisposition to keep jurors that  
7 say they have their mind made up on what the penalty should be.  
8 Both you and Mr. Kochis --

9 THE COURT: I am not going to listen to you, Mr. Negus,  
10 because now you are just making a speech at me. I don't have to  
11 listen to that. sir.

12 I have suggested to you a better way, a more fair  
13 way of indoctrinating jurors to find out about any bias' or  
14 prejudices that do exist. In the meantime I will grant the  
15 challenges as they come up, I am going to educate the jurors  
16 enough to where they can fairly answer a question, which you do  
17 not permit them to do.

18 We will be in recess, Mr. Negus. I will hear you  
19 at the the end of the day, I will not listen to you further.

20 MR. NEGUS: Before you say anything more to the jurors

21 THE COURT: Court is in recess.

22 (Recess)

23

24 MR. NEGUS: your Honor. I would like, if I could --

25 THE COURT: Mr. Negus. Mr. Negus, I am holding up my  
26 hand because I am trying to let you be quiet for a minute while  
27 I make some remarks today, then I will give you an opportunity  
28 to make whatever record you wish. But there is one person that

1 should be in charge of this courtroom and that has to be the  
2 judge. Please grant me that prerogative to have control of the  
3 proceedings in court, and if I speak, please do not speak. If I  
4 hold up my hand, as I just did, and you recognize it finally,  
5 then stop speaking. I promise you I will give you an  
6 opportunity within which to speak, but it may not be the time  
7 you desire.

8 Now, you don't have to explain or justify, but I  
9 understand that you wish to be heard on the last point. But  
10 there are many reasons why I may wish to delay that point to  
11 another time and you can conceive of them as well I can.

12 But whenever I do, please indicate in some manner  
13 for you to stop talking, just grant me that courtesy and I will  
14 try and reciprocate for you. That is all I have to say on that,  
15 and I will let you be heard.

16 MR. NEGUS: All I wish to do was if you are going to give  
17 an instruction to the jurors about aggravation or mitigation,  
18 mitigating circumstances, if you name them by name I wish to  
19 enter an objection because the issue of instructing jurors to  
20 aggravating or mitigating circumstances which are not shown by  
21 the evidence in a particular case is currently before the  
22 California Supreme Court in numerous cases, and there are  
23 numerous and extensive briefs which have been argued and  
24 decisions are expected soon that that is error, and before you  
25 did that I wish to object, because I believe it is error to  
26 instruct jurors on aggravating and mitigating circumstances  
27 which are not shown by the evidence.

28 THE COURT: When we use the aggravation and mitigation,

1 these are words not in everybody's everyday language; jurors  
2 don't understand. I will be happy to leave out the things that  
3 will kind of -- that are not going to be mentioned in the  
4 penalty phase, if we ever get to that.

5 In fact, I have written in my notes what factors,  
6 among others, perhaps, could be mentioned to jurors just to  
7 illustrate the type of thing we're talking about. Even one or  
8 two would be helpful and actually give them some idea that there  
9 are some other things that they are to consider other than the  
10 bare facts of an aggravated multiple killing, that is what we  
11 have got, than simply to tell them they have to keep an open  
12 mind until they finish the guilt phase, and some things are  
13 presented, they have no conception.

14 So, do you have any suggestions of any factors at  
15 all that can be mentioned as what would be brought out?

16 MR. NEGUS: The only one that I am really sure that will  
17 be brought out would be a lingering doubt as to guilt.

18 THE COURT: That's not one of the factors mentioned.

19 MR. NEGUS: No, but it is mentioned, it is mentioned  
20 in -- well. Lockett says any mitigating factor can be  
21 considered, even though -- which are not enumerated, and the  
22 jurors have to be told that. I think that is at the end of  
23 whatever CALJIC instructions there is.

24 And Fields specifically makes a point that that  
25 is -- supposedly that is the reason why the single jury is  
26 beneficial to the defense is so that the jurors can consider a  
27 lingering doubt as to guilt.

28 THE COURT: Mr. Kochis, you probably would bring out --

1 MR. KOCHIS: I can tell the Court the factors under the  
2 rules I am confident there will be evidence about at the penalty  
3 phase.

4 (a) The circumstances of the crime.

5 (b) Presence of criminal activity by the defendant  
6 which involved the use or attempted use of  
7 force and violence.

8 And I imagine Mr. Negus could potentially argue that  
9 there is some absence of that activity and that it is only this  
10 case and one other case.

11 (c) The presence of prior felony convictions.

12 Again, I imagine Mr. Negus could fashion an argument that  
13 there is an absence of those outside of California.

14 (i) The defendant's age.

15 The People intend to produce that.

16 (j) Whether or not the defendant was an accomplice  
17 or played a minor part in the offense.

18 (k). I'm sure that the court has to give (k), that Mr.  
19 Negus will make some argument about any other circumstance which  
20 extenuates the gravity of the crime, even though it is not in --

21 THE COURT: You are mentioning all circumstances  
22 primarily in aggravation, which help me not at all. As far as  
23 you know, if I am going to mention one, I have got to mention  
24 something in mitigation and also point out, that don't mention  
25 factors one way or the other that are not going to be brought  
26 out by the evidence.

27 MR. NEGUS: I think that you can't tell them about the  
28 charges in Pennsylvania because that would be erroneous as far

2  
1 as is guilt phase is concerned.

2 THE COURT: We haven't covered that point yet, really.

3 MR. NEGUS: You ruled that it doesn't come in unless they  
4 come up with some theories as to why it becomes relevant if it  
5 is excluded.

6 THE COURT: One or two that I did previously bring out  
7 before. I mentioned prior convictions, if any; past criminal  
8 activity involving force and violence, if any; defendant's  
9 character. These are the things that can be mentioned in the  
10 abstract. Background history, mental and physical condition.

11 MR. NEGUS: But if I don't choose to put Mr. Cooper's  
12 character at issue at the penalty phase, I don't think that they  
13 can bring it in as a circumstance in aggravation. That is just  
14 going to make it worse for me. See, that is the reason for the  
15 argument.

16 THE COURT: Counsel, you have convinced me, basically.  
17 But we have got to explain to the jurors early on, in some  
18 manner, that there may be other evidence which the law would  
19 require them to consider before they make up their mind, and you  
20 can go on from there. And if they have already made up their  
21 mind, we can excuse them for cause.

22 MR. NEGUS: I have no problem with telling them. What I  
23 am saying is I think that I have -- in each individual case I  
24 think that I have explained that at great lengths.

25 THE COURT: Without illustrations in aggravation and in  
26 mitigation.

27 MR. NEGUS: I don't even use those words. I think with  
28 Mr. Carl he, quite frankly he was telling us that he

1 automatically would apply the death penalty. That was not what  
2 you would call an off the wall strange position. Most people  
3 would think that this particular crime automatically should get  
4 the death penalty. I -- you know, I certainly can't say that  
5 there is -- somebody is wrong or crazy for having taken that  
6 particular position when we have to go -- it should be expected  
7 that we're going to find people with that position. Mr. Kochis  
8 predicted it when he --

9 THE COURT: I am not saying that there won't, that we  
10 won't excuse them. But some of the jurors you can trap into  
11 that position as well by the manner in which you lead and  
12 suggest, and I don't know, I thought this Mr. Ckarl, when he got  
13 around to getting educated a little bit, became -- he indicated  
14 to Mr. -- said to Mr. Kochis, yes, I can keep an open mind, even  
15 though he hadn't been really educated on these various points.

16 So, you are basically telling them with this kind  
17 of case that is all you know about it, do you feel a death  
18 penalty is appropriate, and he says, yes.

19 MR. NEGUS: I said, is there -- I don't think I said that  
20 because I'm not sure that would be necessary because what I said  
21 was, that in this kind of case could you ever conceive of a  
22 circumstance where you wouldn't, and that's where he said he  
23 didn't think so. And, you know, what more can you do. You let  
24 him think of any circumstances in mitigation that he could  
25 possibly think of and if he still would apply the death penalty,  
26 I mean, that's reason for cause. That is not an unusual  
27 position. I suspect that some people aren't being candid; there  
28 are a lot more people than that.



1           THE COURT: I thought this would be going a little  
2 differently. But what you are telling me in effect is, I'm not  
3 sure that I will put on a defense in the penalty phase, an  
4 affirmative defense, and, judge, therefore don't mention  
5 circumstances in mitigation and set the jurors up. That is  
6 probably a fair argument.

7           All right. Refer to them as much as you can to  
8 stir up there gray matter to get them thinking they should  
9 consider other evidence and then I will have to back off a  
10 little bit on that, maybe.

11          MR. KOCHIS: Your Honor, my only request would be Mr.  
12 Negus ask the jurors to articulate reasons or evidence that  
13 could cause them to vote for the life without possibility of  
14 parole. I think that confuses some of them. Not being law  
15 students, being laymen, they're not sure if there is an answer,  
16 if they are guessing.

17          I prefer at some point the Court would interfere  
18 and say, if we get to the penalty phase, if Mr. Negus puts on  
19 evidence on behalf of Mr. Cooper, could you consider it; could  
20 you keep an open mind and not shoot the penalty until both sides  
21 have argued.

22          THE COURT: It appears that would be legally correct.

23          He could tell us right now, Mr. Negus could say,  
24 judge, flatly, I don't expect, I am not going to prepare any  
25 affirmative evidence in the penalty phase, I am going to stand  
26 before those jurors and argue proportionally; I am going to  
27 argue emotion, sympathy, any number of other things that would  
28 be legitimate for him to argue, and he could get up and do that

1 and the jurors would have to listen to that.

2 MR. KOCHIS: Then tell him that if he gets up, if they  
3 keep an open mind, if they can consider sympathy, and apparently  
4 they can, not for the victim but for the defendant, then they're  
5 going to be allowed to consider that, you should also tell them  
6 they keep an open mind until that is argued.

7 THE COURT: I am not going to tell them that is possible.  
8 I don't think so, sir. Let's muddle on this at another time. I  
9 really don't want to get too restrictive.

10 MR. KOTTMEIER: One other thing that seems to be  
11 overlooked each time is the fact that you are the one that's  
12 going to give them the law of the standards and the  
13 instructions.

14 THE COURT: I will do it based on evidence that has been  
15 presented at some time.

16 MR. KOTTMEIER: You would have a standard which to make  
17 that evaluation. What is happening is that we're being trapped  
18 into a situation where they are asked to give certain opinions  
19 and ideas without the structure that you will be giving them and  
20 the end of the case.

21 THE COURT: Well, can I keep going back to structure by  
22 asking them to refer specifically, as he can to, and in  
23 understandable language, if possible, to circumstances in  
24 aggravation and mitigation. That is basically the only  
25 structure, until waiting until that phase is upon us.

26 MR. KOTTMEIER: I guess what I am saying is Mr. Negus is  
27 giving us an item of evidence that will make a difference. That  
28 is not the whole issue. The issue is give us an item of

1 evidence when placed within the structure of the law that will  
2 be given to you by the court would make a difference, and they  
3 can't know that until they get, until they get to the end of the  
4 case.

5 THE COURT: You make your objection at the appropriate  
6 time if you wish. I don't want to do that now, sort of advise  
7 also.

8 But, Mr. Negus, you have got the three of us  
9 apparently now saying that you are trapping the jurors. I don't  
10 know why you are in the minority here and can't see that.

11 MR. NEGUS: I disagree, judge, and I don't think I am  
12 trapping anybody. I am asking open-ended questions. I don't do  
13 any leading questions. I think I have done less fewer leading  
14 questions than anybody else in the room.

15 THE COURT: Maybe the harm is in asking them out of the  
16 blue to tell you what circumstances would cause you to vote for  
17 life.

18 MR. NEGUS: The problem is that there is -- you are  
19 telling me that you believe in educating the jurors, but what  
20 were trying not to do is not educate them, that is not really  
21 what voir dire is, but rather to speak, to find out what their  
22 opinions are. I would submit that I am doing what judges are  
23 always telling defense lawyers to do, ask questions about -- to  
24 find out about the juror, if they have opinions, then I don't  
25 see that we should try and stifle those opinions.

26 THE COURT: I don't wish to do that. I don't wish -- it  
27 almost seems as if you are cross-examining the jurors  
28 deliberately to find grounds to disqualify them in the early

1 stages. I can see you doing it later on to make the cheese  
2 binding, but in the early stages as you go progressively to that  
3 point, the jurors don't know what in the world is coming off.

4 All right, let's go ahead. I don't know what --  
5 we've gone over this several times now. Call in the next juror.

6

7

MARIE FANELLI,

8 called as a prospective juror, having been previously sworn,  
9 testified as follows:

10

11

EXAMINATION

12 BY THE COURT:

13 Q. Good afternoon. Miss, Ms.?

14 A. Miss.

15 Q. Miss Fanelli?

16 A. Uh-huh.

17 Q. First, when I have you give an answer, just say yes  
18 or no as opposed to uh-huh and the machine will pick it up a lot  
19 easier. All right?

20 A. Okay.

21 Q. Secondly, has anything happened you to you since we  
22 last saw you that would prevent you from serving in this case?

23 A. No.

24 Q. Thirdly, I want to remind you of some of the things  
25 I told you when we were all here before. I want to explain why  
26 we are gathered around in an informal manner here. This whole  
27 setting now is designed to be informal, to put you more relaxed  
28 and perhaps to be candid in your responses and not to struggle

1 so much with hard questions we're about to put to you.

2 If we do get to the penalty phase, and we may never  
3 get there, we may never get over the guilt phase, but if we do  
4 get to a penalty phase will you be able to fairly consider both  
5 of the two possibility penalties, namely, death and life in  
6 prison without the possibility of parole?

7 A. No.

8 Q. You've got your mind made up already?

9 A. Uh-huh, yes.

10 Q. In what manner?

11 A. Well, I feel like you do something against someone  
12 you should be -- if you kill someone I feel you should be killed  
13 too.

14 Q. You are giving us the Fanelli law, that's not  
15 California law; you understand that?

16 A. No, it's my law.

17 Q. Our law in the State of California is to decide the  
18 case on the evidence in court and not out of emotionalism that  
19 you're expressing now, and to not make a decision as to the  
20 appropriate penalty until we've put on the penalty phase and  
21 perhaps heard circumstances in aggravation or circumstances in  
22 mitigation, factors that would tend to indicate death, perhaps  
23 other factors to indicate that something less than a death  
24 penalty should be imposed. Can't you wait till you get to that  
25 sstage before you make up your mind?

26 A. Oh, I was just saying in general. I didn't say  
27 this case. I thought you meant in general how I feel about the  
28 two.

1           Q.     What in general do you feel about the death  
2 penalty?

3           A.     Well, I feel if you kill someone you should be  
4 killed too, but I'm not saying that I -- I already predicted  
5 that he did it. I'm just saying if someone kills someone.

6           Q.     I'm asking you now to assume for a minute that  
7 we're already past the who did it stage.

8           A.     Oh, okay.

9           Q.     I'm not implying at all that Mr. Cooper is guilty,  
10 but because there could be two phases to this trial I have to  
11 ask you about the second phase before we ever determine if he is  
12 guilty or not guilty because the same jury is going to decide  
13 both phases. Do you understand what I'm saying?

14          A.     Okay.

15          Q.     So, assume for a minute that he is found guilty --

16          A.     Uh-huh.

17          Q.     -- of committing four murders, two of whom are  
18 children, one is a woman, and another one her husband, so we've  
19 got four people. If you assume that, and then we get into the  
20 penalty phase and the same jury is sitting there, and each side  
21 then will present, if they wish, further evidence. The District  
22 Attorney may present evidence to aggravate things and try and  
23 show you to give him the death penalty; the defense may, if they  
24 wish, present other evidence to mitigate it or to make it less  
25 bad or to make it more understandable to show you that the  
26 appropriate penalty is not death but a life sentence. Do you  
27 understand what I'm telling you?

28          A.     Uh-huh.

1 Q. Yes or no; say yes or no.

2 A. Yes.

3 Q. So, assuming that we are now in that penalty phase  
4 and he did it, that is, he took somebody else's life, I'm asking  
5 you to assume for a minute, with that type of assumption can you  
6 still be fair and determine whether you would vote for life or  
7 death?

8 A. No. I feel I would vote for death.

9 Q. Are you saying, Miss Fanelli, that you have such a  
10 conscientious opinion about the the death penalty that that  
11 opinion would make it impossible for you to ever vote for live  
12 imprisonment, and that you would vote for the death sentence in  
13 every case under all circumstances and without -- and never vote  
14 for life without the possibility of parole?

15 A. No. It depends on the case.

16 Q. You told me a minute ago that you would always vote  
17 for the death sentence.

18 A. Well, it depends on what type of case. If a  
19 husband -- just like a machine. Okay, if there is a machine of  
20 illness and the husband unplugs the plug and the lady dies, I  
21 don't feel that he should get the death penalty for that.

22 Q. You recall quite a bit about this case.

23 A. I know some.

24 Q. Tell us what you remember, please.

25 A. That someone went into a home and killed the  
26 children and the husband and wife, and fingerprints were left in  
27 the home, and they used the phone to make long distance phone  
28 calls.

1 Q. What do you know about any connection with Mr.  
2 Cooper?

3 A. Just what the newspaper said.

4 Q. What did it say?

5 A. That the fingerprints were in the home and he  
6 escaped from a prison before. That's all I know.

7 Q. So you understand that his fingerprints are found  
8 in the home where the people were killed?

9 A. That's what I've read, uh-huh.

10 Q. And you've formed an opinion already that he is  
11 guilty then?

12 A. Yes.

13 Q. Do you think you'd be able to set that opinion  
14 aside and wait till we present evidence in court and not try him  
15 in the newspapers or television?

16 A. I really don't feel I could handle this type of  
17 situation.

18 Q. What are you telling me now?

19 A. I don't feel like I would be a good juror because I  
20 do -- I do feel that if fingerprints are in the home, I do  
21 already have any opinion, and that's --

22 THE COURT: Counsel, I think you could stipulate to her  
23 right now that there's no such evidence. I know of no such  
24 evidence.

25 Q. I don't know what you got that from. No  
26 fingerprints were left in the home, Ma'am.

27 A. Well, that's what I've -- what I've read.

28 Q. I'm telling you right now that that's not going to



1 come out in evidence in trial. See, newspapers don't always  
2 prints the truth. and they're not bound by rules of evidence  
3 that we are, a number of procedural matters that they are not  
4 bound with.

5 So I have to ask jurors, and I ask every one of  
6 them here who have read about this case, can they put that aside  
7 and disregard it and take notes in court of evidence that will  
8 come out at trial and make a decision based upon the evidence  
9 that you hear in court. Can you do that?

10 A. I really don't think so.

11 Q. I'm leaning on you some. I'm sorry for that, but  
12 it's important business that we're about here.

13 A. I know.

14 THE COURT: Counsel, we're shifting gears. I should go  
15 back perhaps to the -

16 MR. KOCHIS: Your Honor, we may agree on something.

17 THE COURT: Please, if you have some agreement you can  
18 state, you can do that right now.

19 MR. NEGUS: We do agree.

20 MR. KOCHIS: To stipulate that she be excused.

21 THE COURT: All right. Please understand, Miss Fanelli,  
22 that I'm bound by certain restrictions. I can't just  
23 arbitrarily, until I really make it binding I can't excuse you.  
24 So I've labored it a little bit till counsel stipulated. So  
25 thank you for being patient with us. Thank you for coming in.

26 MR. KOCHIS: Your Honor, I wonder if you would mind my  
27 making one comment before she leaves to make sure that she's not  
28 losing her mind?

1           There was some inaccurate newspaper and television  
2 coverage that I saw that does not accurately portray what the  
3 evidence will be, so it wasn't your imagination.

4           THE COURT: Okay. Maybe you saw something that I didn't  
5 see. Okay?

6           PROSPECTIVE JUROR: Okay.

7           THE COURT: Make sure you don't talk to other jurors  
8 outside, too.

9           PROSPECTIVE JUROR: I won't.

10          THE COURT: Then I think he is going to send you  
11 downstairs to the large room again. Thank you very much. You  
12 are excused.

13          PROSPECTIVE JUROR: Okay.

14          THE BAILIFF: The next juror will be Lee Thomas.

15                 (The following proceedings were had without the  
16 presence of any prospective juror.)

17          THE COURT: Did that come out?

18          MR. NEGUS: Oh, it was after the prelim.

19          MR. KOCHIS: It was on television. They claimed Mr.  
20 Cooper's fingerprint in blood were found.

21          MR. NEGUS: Dave Lopez of CBS, one of our greater  
22 reporters reported that several times.

23          THE COURT: Oh, great.

24                 (The following proceedings were had with the  
25 presence of the prospective juror.)

26

27                         LEE THOMAS,

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?

6

A. Hi, how are you.

7

Q. Fine. Your full name, please.

8

A. I'm Lee Thomas.

9

Q. Mr. Thomas, to explain to you the informality here, this is simply designed to set you more at ease to where you can be more responsive and candid in your responses.

12

A. Uh-huh.

13

Q. First, has anything happened to you since you were in a couple weeks ago that would complicate your ability to serve in this case?

16

A. No, not a bit.

17

Q. And before I ask you about three questions myself, I want to remind you of some of the things I said before when you were here.

20

There will be two or there can be two possible phases of this case. We don't know if we will every get to the second phase, but we are asking you questions about the death penalty and you don't even consider that in the first phase, the guilt phase.

25

But if we do get to a penalty phase, sir, will you be able to fairly consider both of the two possible penalties, death and life imprisonment without the possibility of parole?

28

A. Yes, I could.

1 Q. Would you be able to personally vote for either one  
2 of them. depending upon the persuasion of the circumstances and  
3 evidence brought out at the trial?

4 A. Yes, I could, either one.

5 Q. Do you think you might improperly in some manner  
6 find an inappropriate verdict perhaps in the guilt phase just so  
7 that you wouldn't have to make a hard decision later on in a  
8 possible penalty phase?

9 A. Well, my decision would be based on my own moral  
10 judgments.

11 Q. And the law and the evidence I hope.

12 A. And of course the law and the evidence that was  
13 presented.

14 Q. And you wouldn't cop out by, say, perhaps finding a  
15 not guilty or a second degree or something like that just to  
16 avoid ever having to get to a penalty phase?

17 A. Not if the evidence didn't supports it I wouldn't.

18 Q. That's fine.

19 Mr. Negus.

20

21

ECMINATION

22 BY MR. NEGUS:

23 Q. Mr. Thomas, the Judge is letting the lawyers, Mr.  
24 Kochis and myself, ask you you most of the questions. We are  
25 not trying to pry or embarrass you in any manner, but we need to  
26 have your honest opinions; and there's no right or wrong answers  
27 to these questions, just what you honestly believe at this point  
28 in time.

3  
1                   What had you heard about the case before you --  
2 before you came to court?

3           A.       Well, I had read the initial articles in the paper  
4 when it first happened, I guess approximately a year ago, June I  
5 guess it was.

6           Q.       That was in the Tribune?

7           A.       The Tribune. And I possibly saw it in the L.A.  
8 Times, I occasionally read that, at least the front pages. And  
9 I did hear versions of it on the news, evening news. And I  
10 hadn't really kept track of what happened. I just heard  
11 initially what a brutal crime it was, and I do remember it based  
12 on that. When I did see something in the paper I would read  
13 about it.

14          Q.       Did you read anything about Mr. Cooper or hear  
15 anything about him?

16          A.       His name was mentioned. I didn't read any articles  
17 specifically about Mr. Cooper, but his name was mentioned in  
18 some of the news article.

19          Q.       Did you hear anything about his background or  
20 anything of that nature?

21          A.       Not really. except that he was supposedly a  
22 fugitive from the East Coast, but nothing about his upbringing  
23 or background.

24          Q.       Did you hear any of the details as to why he was  
25 supposedly a fugitive from the East Coast?

26          A.       I really can't recall. I thought it was another  
27 murder charge that he was wanted for. I remember reading that  
28 he was in minimum security prison when he should have been

1 actually in maximum security because of a foulup in the  
2 paperwork.

3 Q. What kind of impression of him did you have from  
4 reading that?

5 A. I really didn't make any judgment as to Mr. Cooper  
6 at all. At that time there wasn't any evidence pointing one  
7 direction or the other. Everything seemed to be undecided.

8 Q. Did you ever form an opinion as to whether or not  
9 he is guilty or innocent?

10 A. No.

11 Q. Did you hear anything about -- about his arrest?

12 A. I read the news report where he was arrested, I  
13 believe in Santa Barbara, someplace up the coast.

14 Q. Do you remember any of the details of that?

15 A. I know it involved attempted rape, or something  
16 that of that sort.

17 Q. Did you hear anything about the progress of the  
18 case through the courts in San Bernadino?

19 A. No, I don't know what your status is.

20 Q. Did you know that the case was coming to San Diego  
21 before we got here?

22 A. I had heard that there was a change of venue  
23 requested based on prejudice in the Chino area, Orange County  
24 area. but I didn't -- the only time I actually knew the case was  
25 here was when I heard about it in the jury lounge.

26 Q. What was your reaction when you heard that you were  
27 a prospective juror in this particular case?

28 A. Well, when I first was called for jury duty I

1 didn't want to really get on a case that would be this lengthy.  
2 I preferred something shorter. really. because it will interfere  
3 with my work, nothing that I can't overcome. But of course, I  
4 think I would have preferred something of a shorter duration.

5 Q. Did you have any reaction to the type of case it  
6 was or the crime or anything of that nature other than just the  
7 length?

8 A. Not really. no.

9 Q. You mentioned reading something about an attempted  
10 rape. No details of that particular incident will be coming  
11 forth as part of the -- as part of this particular case, neither  
12 evidence from -- by the prosecution or by the defense on that  
13 issue, and so any juror who would be sitting on the case would  
14 be -- would be not supposed to consider that as anything which  
15 had to do with Mr. Cooper's guilt or innocence of the -- of the  
16 murders. Do you think you could do that?

17 A. Well. that's in another jurisdiction, in other  
18 words, or -- this San Bernadino incident?

19 THE COURT: For whatever reason, it's not going to come  
20 out in trial and/or be considered by the jurors here.

21 PROSPECTIVE JUROR: I wouldn't have any problem with  
22 that.

23 BY MR. NEGUS:

24 Q. You wouldn't use that as indication of his guilt in  
25 this case?

26 A. There is no evidence to support it, no.

27 THE COURT: I think it's also safe to tell Mr. Thomas  
28 that there was no fugitive for murder certainly, too, so you've

1 got some bad information.

2 PROSPECTIVE JUROR: It's bad or misinterpreted. There  
3 was articles saying different things at the time.

4

5 BY MR. NEGUS:

6 Q. We are asking some questions about penalty but I  
7 think you understand that we're not necessarily ever going to  
8 get to that particular -- that particular phase, and the law  
9 just requires us to ask you these questions before we even start  
10 the trial just in that eventuality. Do you understand that?

11 A. Uh-huh.

12 Q. You don't take the fact that we are asking  
13 questions about penalty as any indication that Mr. Cooper is  
14 guilty?

15 A. No.

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

17 A. I believe in the death penalty, if that's --

18 Q. Why?

19 A. I think it's a deterrent to crime. I think if  
20 someone takes somebody's life deliberately they should forfeit  
21 their own life.

22 Q. What do you think about life without possibility of  
23 parole?

24 A. Well, if the circumstances warrant it. But  
25 personally, as things are this day and age, with all the inmates  
26 on death row, I think a lot of this is unwarranted. I think  
27 they should be put to death.

28 Q. In this particular case the charges are multiple



1 counts of premeditated murder.

2 A. Uh-huh.

3 Q. And the law of California is that even multiple  
4 counts of premeditated murder does not necessarily involve the  
5 imposition of the death penalty. There's supposed to be a  
6 further proceeding where the jurors balance evidence which  
7 they're instructed favors the death penalty against other  
8 evidence which they are instructed favors life without  
9 possibility of parole, and based upon the respective weight of  
10 the evidence make a decision between those two penalties.

11 It sounds like perhaps your views are somewhat  
12 different than the laws. Do you think that you could put aside  
13 your views if you sat as a juror and vote for life without  
14 possibility of parole if that was the verdict that was supported  
15 by the evidence?

16 A. If it was supported by the evidence I could.

17 Q. Even if it -- even in a case of multiple murder?

18 A. Yeah.

19 Q. Do you belong to an organized religion?

20 A. I'm a Methodist.

21 Q. Have the views of your church in any way influenced  
22 your opinions on crime and punishment or capital punishment?

23 A. No, not at all.

24 Q. Are they based on those of any other group or are  
25 they just your individual opinion?

26 A. Individual opinion.

27 Q. Thank you very much.

28

## EXMAINATION

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BY MR. KOCHIS:

Q. Mr. Thomas, if I understand correctly you could consider both possible punishments and you could vote for whichever one is supported by the evidence and the law in this case?

A. Yes.

MR. KOCHIS: I don't have anything else.

THE COURT: Sir, would you kindly wait outside. Let us discuss it privately. And the bailiff will inform you. Thank you very much.

Anything, Gentlemen?

MR. NEGUS: Challenge for cause. He has been tainted by the publicity. He has heard about other crimes, evidence which would not come into court.

THE COURT: Mr. Kochis, I may have been inattentive there. Did he indicate that he could overcome that?

MR. KOCHIS: Yes. That's what he expressly said on the record, that he could put that aside.

THE COURT: Anything else?

MR. NEGUS: Well, I just -- because -- because of the large amount of publicity in this particular county, I feel that by having these type of jurors on there that has been exposed to this type of publicity Mr. Cooper is going to be deprived of a fair trial.

There's two remedies: One is a change of venue; the other is dismissing jurors.

It seems dismissing jurors is less drastic than a

1 change of venue.

2 THE COURT: No. I will deny your challenge for cause.

3 So would you ask him to come back and bring in  
4 another juror. please.

5 THE BAILIFF: Carolyn Taxer.

6

7

CAROLYN TAXER.

8 called as a prospective juror, having been previously sworn,  
9 testified as follows:

10

11

EXAMINATION

12

BY THE COURT:

13

Q. Good afternoon.

14

A. Hi.

15

Q. Do you carry two purses with you?

16

A. No, it's a knitting purse.

17

Q. We have kind of gathered around informally here in  
18 hopes that you will settle down a little bit and relax a little  
19 more and candidly answer our questions that we are going to put  
20 to you.

21

You are Carolyn Taxer?

22

A. Huh.

23

Q. Has anything happened to you since we last saw you  
24 that would complicate your ability to serve in this case?

25

A. I've just started a small part-time job at the  
26 local -- at my elementary school two days a week which would go  
27 if I was on the jury. but, no, that's the only thing.

28

Q. What two days?

1 A. Pardon me?

2 Q. What two days?

3 A. Oh, it's every day for a couple hours.

4 Q. What hours?

5 A. And hour in the morning and an hour in the  
6 afternoon.

7 Q. What time -- I see. My goodness, you are really  
8 breaking it up.

9 A. Yes. It's kind of an assistant aid type of job in  
10 the morning and afternoon.

11 Q. Do you get paid for that?

12 A. Uh-huh.

13 Q. Are you a teacher?

14 A. No. I'm like the guidance aid and help with  
15 different things that they need.

16 Q. Is the income from that critical to you?

17 A. Not critical.

18 Q. Helpful but not critical?

19 A. Right; right.

20 Q. There's one day a week, a Friday, that you wouldn't  
21 be on trial that we give you off and, of course, Saturday, but  
22 they don't go to school on Saturdays.

23 I don't know if you will serve or not, Mrs. Taxer.  
24 but can you overcome the financial hardship if we require you to  
25 serve in this case?

26 A. I guess so.

27 Q. I lean on a lot of people you know.

28 A. I know.

1 Q. Let me go down to the other questions please.

2 Remember. I told you that we may or may not get to  
3 a second phase or a penalty phase of this trial.

4 If he is found guilty of multiple murders in the  
5 first degree then we would get to a penalty phase, but we don't  
6 know at this time. but we are asking questions about it  
7 nevertheless because the same jurors will determine both phases.

8 My first question to you is: If we do get to a  
9 penalty phase, will you be able to fairly consider both of the  
10 two possible penalties, namely, death by execution on the one  
11 hand, life in prison without the possibility of parole on the  
12 other?

13 A. Yes, I could.

14 Q. Will you be able to personally vote for whichever  
15 one of those penalties appeared to be appropriate based upon the  
16 evidence and the circumstances brought out at the trial?

17 A. I think so.

18 Q. Do you have a big concern about having to make that  
19 kind of a decision?

20 A. Yes, it wouldn't be easy.

21 Q. But do you think you could do it?

22 A. I think I could, yes.

23 Q. Some jurors have confessed that they have such an  
24 abhorrence perhaps or would fear so much having to make a life  
25 or death decision that I might want to cop out or find an easy  
26 way out back in the guilt phase to abort or to avoid ever  
27 getting to that second phase; if I find a certain type of  
28 verdict back hear in the guilt phase, then we'll never ever go

1 to phase two.

2 Do you think you might be inclined to do that?

3 A. I'm just not sure. Capital punishment or the  
4 other, that's a really hard one for me to do; but -- and to make  
5 a decision about people's life is really difficult.

6 Q. Sure.

7 A. I really don't want to be involved in that.

8 Q. Of course, that's the beauty of our jury system is  
9 to take people out of the community to make some of these hard  
10 decisions.

11 A. I know.

12 Q. At least that's the way we've got our laws  
13 structured at this time, so we have to work with those.

14 And you've never been in this position before so  
15 you are candidly saying, Judge, I don't know, is that what  
16 you're saying?

17 A. Right.

18 Q. But knowing that you're part of the society for  
19 which those laws are designed to serve, if you're unfortunately  
20 placed in that position, even though with your druthers you'd  
21 rather be at the school or something like that, could you take  
22 that responsibility and make a fair and impartial decision?

23 A. I would try.

24 Q. You can see better inside your mind than I can. Do  
25 you think you can?

26 A. I think I'm fair. I could do that.

27 Q. In this case you think you can do it?

28 A. I think so.

1 Q. Okay. Thank you.

2 Mr. Negus.

3

4

EXAMINATION

5 BY MR. NEGUS:

6 Q. Mrs. Taxer, generally the lawyers, myself and Mr.  
7 Kochis, ask both most of the questions in the proceeding. We  
8 are not trying to pry or embarrass you, but the law requires us  
9 to get your opinions on this issue.

10 Now you told us in the questionnaire that you  
11 hadn't heard anything about the case before you came to court.  
12 After you heard the charges read in court did that bring  
13 anything back to you about it you may have heard?

14 A. Not really. Someone had -- the only thing I had  
15 heard about it was before we even came in here someone said  
16 something in the jury room or else I wouldn't have known that I  
17 remembered about it.

18 Q. You don't remember hearing about the case or the  
19 crimes in the newspaper or anything like that?

20 A. (No audible response.)

21 Q. What was your reaction when you found --

22 THE COURT: She didn't give an oral answer to that last  
23 question. She shook her head negatively.

24 You don't remember hearing anything about it before  
25 you came into the jury room?

26 PROSPECTIVE JUROR: Only in the jury downstairs. You  
27 asked about the news media, that kind of thing, I didn't  
28 remember any of that.

1 BY MR. NEGUS:

2 Q. What was your reaction when you found out that this  
3 was the type of case that you were going to be on?

4 A. I wanted to get off as fast as possible. It was  
5 horrible. I did not want to be involved.

6 Q. Is that because of the type of responsibility  
7 that's involved or the time?

8 A. A lot of it, and the time. And I've never been on  
9 a jury at all before and so this was my first time to be called.  
10 and so the whole area is new. And I'm not -- it's a difficult  
11 thing to be involved in.

12 Q. We don't require experienced people.

13 A. I know. I know.

14 Q. We're asking you questions about the death penalty.  
15 You're not going to take it the fact that we are asking these  
16 questions is any indication that Mr. Cooper is guilty?

17 A. No, I know you have to in case.

18 Q. What do you think about the death penalty?

19 A. I think it's the last possibility. I am not for  
20 all capital punishment. I've struggled a lot with that. But  
21 I've decided in some cases it may, but it's a very heavy and a  
22 big alternative, but I think in rare cases it may have to be an  
23 option to consider.

24 Q. What about life without possibility of parole?

25 A. Yes.

26 Q. Do you believe in that as well?

27 A. I believe in that, yes.

28 Q. Do you have any preconceptions about what are the



1 rare cases? That is, have you had your mind made up that some  
2 cases call for the death penalty and other cases don't, any  
3 particular type?

4 A. I would say things -- this kind of case of more  
5 than one murder or people being killed would be considered as  
6 opposed --

7 THE COURT: Would you say that. Mrs. Taxer --

8 MR. NEGUS: Judge. could I object?

9 THE COURT: No, you may not. Just a minute.

10 MR. NEGUS: I --

11

12 FURTHER EXAMINATIN

13 BY THE COURT:

14 Q. Would you say that. Ma'am, even if there is  
15 multiple murders before we ever get to the penalty phase and  
16 before you know anything about the circumstances in aggravation  
17 or mitigation?

18 A. Would I say that that would be a death penalty?

19 Q. Yes, ma'am.

20 A. Well. I would have to hear what went on and what  
21 what was the whole case before I would make a judgment on it.

22 Q. Are you saying in every case of multiple murders  
23 that --

24 Let me make sure you understand that, what I've  
25 told you before, that there's no case in California where the  
26 death penalty is automatic?

27 A. Right.

28 O. Every case where the death penalty is even possible

1 requires a penalty phase. At the penalty phase then each side  
2 has an opportunity to present circumstances in aggravation and  
3 mitigation. Do you understand what I'm saying there?

4 A. Right.

5 Q. Do you feel that you're locked into one way or  
6 another before you ever hear those facts and circumstances?

7 A. No, I don't think I'm locked in. He was asking is  
8 there one or a certain case or types of cases.

9 THE COURT: All right.

10 Do you have any further questions, Mr. Negus?

11 MR. NEGUS: Yes.

12 THE COURT: Go ahead, please.

13

14 FURTHER EXAMINATION

15 BY MR. NEGUS:

16 Q. In coming to your opinions on crime or punishment  
17 has the views of any group influenced you or has it been a  
18 matter of personal conscience?

19 A. It's been more of a personal conscience.

20 Q. Is it a social position? Does religion enter into  
21 it?

22 A. I would say religious influence has been a big  
23 help.

24 Q. Do belong to an organized religion or church?

25 A. I'm a Christian. I work as a Christian educator in  
26 a local church. My husband is a pastor in a local church. I  
27 have been in the church all my life.

28 Q. Is that a protestant denomination?

1 A. Uh-huh.

2 Q. Which one?

3 A. Presbyterian.

4 Q. Presbyterian?

5 A. Uh-huh.

6 Q. Do you have any -- have you made up your mind as to  
7 what penalty is required in this particular case?

8 A. No, I haven't -- I don't know enough about the  
9 case. I don't know what it would be.

10 Q. So, just the charges itself are not going to -- are  
11 not going to -- you're not -- if somebody is guilty of this  
12 crime you're not going to come up with a particular penalty just  
13 based on the charges themselves?

14 A. No.

15 Q. Thank you.

16 That's all.

17

18 EXAMINATION

19 BY MR. KOCHIS:

20 Q. Mrs. Taxer. I have a few questions.

21 You mentined that your position on the death  
22 penalty may be effected by your religious beliefs. Has your  
23 church taken a position one way or the other on the death  
24 penalty?

25 A. It has been stronger against it, against the  
26 penalty.

27 Q. And is that something that your husband would be  
28 involved in in terms of educating his parishoners?

1           A.     We have done, years past, some of it, but he does  
2 not say, "This is how you have to believe," or he doesn't just  
3 overall say he is against it or just follow that.

4           Q.     Have you adopted and incorporated some of those  
5 beliefs as your own personal beliefs related to the death  
6 penalty?

7           A.     I think so. It makes it very difficult to consider  
8 it or to -- but I do -- It's hard to verbalize it.

9           Q.     If I understand then, between the two in a  
10 vacuum --

11          A.     Uh-huh.

12          Q.     -- would you prefer life without the possibility of  
13 parole as opposed to the death penalty?

14          A.     Right. Most of my life I've just really resisted  
15 that as an option. The last few years I'm not as totally strong  
16 on it as I used to be.

17          Q.     So, all things being equal, it would be easier for  
18 you to vote for life without the possibility of parole as  
19 opposed to the death penalty?

20          A.     It is would be easier, yes.

21          Q.     Would it be hard for to you vote for the death  
22 penalty in a case like this do you think?

23          A.     I don't know. It just depends on what the facts in  
24 the case were and what had happened and the individual case. I  
25 just wouldn't know.

26          Q.     I think you mentioned in the beginning in response  
27 to Judge Garner, and correct me if I'm wrong, that it's somewhat  
28 hard for to you make decisions. Do you recall --

1 THE COURT: I don't recall that.

2 PROSPECTIVE JUROR: I would say making a decision of the  
3 death penalty wouldn't be easy. I believe I said that.

4

5

FURTHER EXAMINATION

6

BY MR. KOCHIS:

7 Q. Okay. How about in the first phase, what is called  
8 the guilt phase where you and eleven other people are going to  
9 decide whether this defendant committed the crimes or whether it  
10 was someone else, do you think you'd have any problem arriving  
11 at a decision one way or the other in that phase?

12 A. No. I would try to base it on the facts, not just  
13 on the penalty. That would be hard. I would try to look at the  
14 facts as what they were. It's really hard to know if you're not  
15 involved in --

16 Q. To make sure there's not a mistake. In a criminal  
17 case the Judge polls all the jurors. At the end of the trial he  
18 will go down the row and he will ask each juror if the verdict  
19 the clerk has read is in fact the way they voted. If in this  
20 case the jury returned a death verdict, would you have any  
21 problem indicating in open court that that's the way you voted?

22 A. If that's the way I voted, no. I would have to if  
23 that's the way I voted.

24 Q. Thank you.

25 I have no further questions.

26 THE COURT: Nor do I.

27 Would you kindly wait outside for a minute, please.  
28 Thank you for coming in.

1                   Anything, Gentlemen?

2           MR. NEGUS: I have no challenge for cause.

3                   I wish to object on the record to being interrupted  
4 in the course of examination. Penal Code Section 1078 provides  
5 that counsel be allowed to orally and directly examine jurors.  
6 I believe that interruption by the Court in taking over the  
7 questioning is a violation of that particular statute.

8                   And in this particular case, I think from her  
9 earlier answers that it was obvious that I was not about to try  
10 and get the lady excused for cause, and no matter what she says  
11 I probably wouldn't have submitted a challenge.

12                   And I think that if the Court wishes to question  
13 jurors about their views, I would request that you do it  
14 beforehand. I have no objection to you asking any question that  
15 you want --

16           THE COURT: Thank you.

17           MR. NEGUS: -- beforehand, and I haven't so done it. But  
18 I really object to you interrupting in the middle of my  
19 examination because I think it deprives me of the opportunity to  
20 follow up on the questions. And I think that's -- that's a  
21 denial of my right to directly examine the jurors.

22           THE COURT: Counsel, I dislike interrupting myself.  
23 We've gone over this several times. I have indicated to you  
24 that I will do so, and I will continue to do so, when I feel the  
25 jurors are being misled and misinformed and being trapped into  
26 an unthinking answer.

27           MR. NEGUS: Well. I would submit that obviously she was  
28 not being trapped in this particular case because, obviously,

1 given her early answers she was the last person I'd ever  
2 challenge for cause.

3 THE COURT: You made your objection.

4 Mr. Kochis, nothing?

5 MR. KOCHIS: No.

6 THE COURT: All right. Give her her appointment slip to  
7 return.

8 Bring in the next one please.

9

10 WILLIAM MITCHELL.

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, sir.

17 A. Afternoon, sir.

18 Q. You are William Mitchell?

19 A. Yes, that's correct.

20 Q. Mr. Mitchell. we are gathered around informally in  
21 an atmosphere hopefully more conducive to your being able to  
22 relax and respond to our heavy questions. Okay?

23 A. Okay.

24 Q. First, has anything happened to you since we saw  
25 you two weeks ago that would complicate your ability to serve in  
26 this case?

27 A. No, not at all.

28 Q. Secondly, I remind you of what I said when I had

1 the robe on up at the bench, that there could be two phases of  
2 this trial. We don't know if we will ever get down to a penalty  
3 phase. We don't know if he will ever be found guilty of  
4 multiple murders. But if he is and we do get to the penalty  
5 phase, then the jurors will have to make a further decision  
6 based upon additional evidence, perhaps, of circumstances that  
7 might point towards the death penalty and other circumstances  
8 that might point towards life imprisonment without the  
9 possibility of parole.

10 Finally, now my question to you is, if we do get to  
11 that second phase, will you be able to fairly consider both of  
12 those two possible penalties?

13 A. Yes, I could.

14 Q. Do you feel that you would be able to vote for both  
15 of them, or either of them, depending upon the evidence and the  
16 circumstances brought out at the trial?

17 A. I could vote on one of them.

18 Q. What's the problem, Mr. Mitchell?

19 A. Well, the problem is the death penalty, I do not  
20 believe in it.

21 Q. Do you think that you might be able to vote for it  
22 in some circumstances?

23 A. I don't think so, sir.

24 Q. You feel real strong about that, sir?

25 A. I do.

26 Q. You are not alone. But let me make sure that you  
27 understand me.

28 Do you feel that 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 do.

6 Q. So you just can't conceive of being able to vote  
7 for it, no way, no how; is that correct?

8 A. That is correct.

9 Q. Okay.

10 Counsel, any questions.

11

12

EXAMINATION

13 BY MR. NEGUS:

14 Q. Mr. Mitchell, if you just had to decide guilt or  
15 innocence without having to decide the penalty, could you be  
16 fair on that?

17 A. Yes, I could be fair on that.

18 Q. Thank you.

19 That's all I have.

20

21

EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mr. Mitchell, along the line Mr. Negus just touched  
24 on, you apparently have some strong feelings about the death  
25 penalty; is that correct?

26 A. It is.

27 Q. And you've had those feelings I take it for some  
28 period of time?

1 A. That's correct.

2 Q. Would you then object to taking part in any  
3 proceeding that could eventually lead to the death penalty?

4 A. As long as I do not have to vote on it.

5 Q. For example, in the first trial when you were back  
6 there deciding whether or not this defendant did it or not and  
7 you looked at the evidence and the law, would you be thinking in  
8 the back of your mind, well, if I find him guilty I might have  
9 to get to that penalty phase and that's somewhere I don't want  
10 to be?

11 A. In that case I would say, no, to your answer -- to  
12 your question.

13 Q. Okay. I'm not -- I'm not sure. What I'm trying to  
14 say is, would the fact that you might get to the penalty phase  
15 effect the way you look at the evidence in the guilt phase?

16 A. In the way I get to the fact -- after listening to  
17 all the evidence within my mind if it -- if I see it's leading  
18 to the death penalty, no, I would not vote for it; but if it's  
19 not leading to the death penalty I could vote for it.

20 Q. Thank you.

21 I don't have any further questions.

22 THE COURT: Would you mind waiting outside for a moment.  
23 Let us discuss it briefly. please Thank you for coming in, sir.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Gentlemen?

26 MR. KOCHIS: I have a challenge for cause, Witherspoon.

27 MR. NEGUS: Objection. Mr. Mitchell is black. He  
28 apparently is perhaps -- even a black person could take a

1 leadership role. He seems -- reads two newspapers, lives in an  
2 upper -- one of the higher income areas, so he would be more  
3 likely to be able to exert some sort of leadership.

4           Everybody that Mr. Kochis is challenging seems to  
5 be either women or black and we're going to end up with and all  
6 white jury.

7           THE COURT: No. We have cleared several black people so  
8 far.

9           MR. NEGUS: Not very many. Kicked off half of that.

10          MR. KOCHIS: So there is no mistake for the record, until  
11 this afternoon's session 24 people have been discussed, 16 of  
12 those people have been challenged by Mr. Negus or he has  
13 stipulated to their cause, and the woman that has been  
14 challenged for Witherspoon grounds, many of them have been  
15 challenged by Mr. Negus.

16          THE COURT: You know, really I don't think that adds a  
17 great deal to the record, it can all be computed from the record  
18 at a later time, and apparently not meant to influence me. I  
19 don't know why we are taking up the words with it.

20                 All right. I will overrule the objection. It  
21 appears appropriate and necessary that we do excuse him so we  
22 can get an unified jury to act in both phases. So I will  
23 overrule your objection, Mr. Negus.

24                 Please excuse Mr. Mitchell.

25                 That exhausts our sequestered voir dire of the  
26 jurors for the day. Gentlemen, we will resume Monday morning at  
27 9:15. Hope you have an enjoyable weekend.

28                 (Adjournment.)