



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

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

REPORTER'S TRANSCRIPT  
October 1, 1984

APPEARANCES:

For the People:	DENNIS KOTTMEIER District Attorney BY: JOHN P. KOCHIS Deputy District Attorney 1540 Mountain Avenue Ontario, California 91762
-----------------	--

For the Defendant:	DAVID L. MCKENNA Public Defender BY: DAVID E. NEGUS Deputy Public Defender 1060 West Sixth Street Ontario, California 91762
--------------------	--

ROBERT L. ROACH, CSR #1727  
DONNA D. BEARD, CSR #1874  
Official Reporters

INDEX OF PROSPECTIVE JURORS

	Examination
DUHAMEL, NORMAND	852
MARTIN, RALPH	854
TRAGER, HARRY	861
HANSEN, SANDRA	867
RAMIREZ, CLEMENTE	895
STESIENKO, FRANK	879 ✓
FAVERO, JANET	888 ✓
HANSON, C. JOYCE	886 ✓
REYNOLDS, LEONE	905
JOHNSON, WILMA	906
FLEENER, GRANT	915
SHEPHERD, TREENA	924
LUKSHIS, ALEXANDER	930
CILEU, MARY	938
SHICK, JULIA	949
MALONEY, WILLIAM	956 ✓

1           1           SAN DIEGO, CALIFORNIA, MONDAY, OCTOBER 1, 1984 9:25 A.M..

2                               --oo0oo--

3

4           THE COURT: Good morning.

5           MR. KOTTMEIER: Morning.

6           THE COURT: Gentleman, I have a letter from the employer  
7 of one of our jurors, Roberta Jacobson.

8                               Has she been examined already individually?

9           THE CLERK: No, that's the day that she's supposed to  
10 come in.

11           THE COURT: She's set to come in on the 10th of October,  
12 and I will let you read this and we will discuss it at the next  
13 recess then.

14                               Are we ready to bring in the first one?

15           THE BAILIFF: Normand Duhamel.

16

17

NORMAN DUHAMEL

18 Called as a prospective juror, having been previously sworn,  
19 testified as follows:

20

21

EXAMINATION

22 BY THE COURT:

23           Q. Good morning.

24           A. Morning.

25           Q. Your name is Normand Duhamel?

26           A. Duhamel, right.

27           Q. Mr. Duhamel, has anything happened to you --  
28 apparently it has -- since we last saw you?

1           A.     Well, in that sense but I didn't have a letter  
2     then.

3           Q.     This is apparently from Dr. Cary Wilkins, a  
4     chiropractor.

5                     "Due to a severe chronic back condition, and the  
6                     severe pain of intervertebral discs and muscle  
7                     spasms, prolonged sitting would be  
8                     contra-indicated. Under doctor's care."

9                     He asks for a jury waiver for 90 days.

10                    This is not anything that's going to be cleared up  
11     right away.

12           A.     No, it is a seven week program right now. It is my  
13     last resort. I have been trying for two years to get somebody  
14     to help me.

15                    THE COURT: Counsel, would you like to discuss it  
16     privately for a minute?

17                    Would you step outside for a moment, sir, to give  
18     us a chance to look over the letter and discuss it.

19                    Here is the letter. Not a particularly auspicious  
20     beginning. Frankly it seems like good cause to me.

21                    Any objection if I excuse the gentleman?

22           MR. KOCHIS: No.

23           MR. NEGUS: No.

24           THE COURT: Mr. Kochis.

25           MR. KOCHIS: No, your Honor, I do not.

26           THE COURT: Would you tell him that he is excused for  
27     cause and then tell him that I have notified the jury room and  
28     he need not go back there. There's the slip for the employer.

1 He will be called when the computer picks him up. Okay.

2 THE BAILIFF: Ralph Martin.

3 He wants to know if he can take the letter down  
4 with him.

5 THE COURT: I guess he can.

6

7

RALPH MARTIN

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.

14 A. Good morning.

15 Q. You are Ralph Martin.

16 A. Yes, I am.

17 Q. Mr. Martin, before I commence with you and get into  
18 the questions, I will ask you if anything has happened to you  
19 since we last saw you that would complicate your service in this  
20 case.

21 A. No.

22 Q. Okay. I am going to have a few questions of you  
23 and then the attorneys will inquire fairly brief of you. I  
24 explain these arrangements because we have got you here in an  
25 air of informality in hopes that we will put you at ease and it  
26 will make it a little bit more to easier answer the questions  
27 we're going to put to you.

28 Do you remember I told you that there are two

1 possible phases, the guilt phase and the penalty phase.

2 If we do get to a penalty phase, will you be able  
3 to fairly consider both of the two possible penalties: Death  
4 and life imprisonment without the possibility of parole?

5 A. Yes, I could.

6 Q. Would you be able to personally vote, Mr. Martin,  
7 for either one of them, depending upon the persuasion of the  
8 evidence and circumstances brought out at the trial?

9 A. I think so.

10 Q. Do you think you might be so concerned with having  
11 to make a hard life or death type of decision in the penalty  
12 phase that you would let that concern affect the way you would  
13 vote in the guilt phase when you are not supposed to consider  
14 penalty?

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

16 THE COURT: All right, Mr. Negus, you may inquire.

17

18

#### EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Martin, the judge has let Mr. Kochis and myself  
21 ask most of the questions. We're not trying to pry or embarrass  
22 you, but the law requires that we get your honest opinions on  
23 these matters before my going any further.

24 What have you heard about this particular case  
25 before you came to court?

26 A. I read newspaper accounts at the time that it was  
27 happening.

28 Q. Do you remember the accounts about the crime

1     itself?

2             A.     Well. I read whatever the paper had to say about it  
3     at the time.

4             Q.     Okay. What do you recall now?

5             A.     Oh, I just recall that there were a mother, father,  
6     a couple children and a neighbor involved in the crime, that  
7     were victims.

8             Q.     Did you read anything about Mr. Cooper?

9             A.     Yes.

10            Q.     What did you read about him?

11            A.     I read that he was an escaped person from the  
12     nearby prison; that he might be a mental patient. I also read  
13     something to the effect that there was some question about why  
14     he was in that particular institution based upon his previous  
15     record.

16            Q.     Did you read anything about the circumstance of his  
17     arrest?

18            A.     I think he was arrested in Santa Barbara after  
19     being on a boat or something.

20            Q.     Do you remember any of the details about that?

21            A.     Not much about that.

22            Q.     Did you read any of the stories that covered the  
23     cases as it was in court up in San Bernardino?

24            A.     No, I don't remember much about that.

25            Q.     Did you know that the case was coming to San Diego  
26     before you walked in here and heard the case?

27            A.     No. you didn't.

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



2

1 were a prospective juror in this particular case?

2 A. Oh. I was interested in the case, I think. No  
3 particular feeling about it.

4 Q. In this particular case I doubt seriously if there  
5 will be any evidence presented to you as to the truth or untruth  
6 of the reports in the paper about Mr. Cooper being a mental  
7 patient. So, that will not be -- probably not something that  
8 will be presented by the evidence at all.

9 Do you think that, in sitting as a juror, that you  
10 could put that evidence out of your mind and not consider it or  
11 discuss it with your fellows jurors if you were to sit?

12 A. Oh, I think I could.

13 Q. When you were -- hearing the publicity or reading  
14 the publicity about the case, what was your impression of Mr.  
15 Cooper?

16 A. Well, I didn't have any impression of Mr. Cooper.

17 Q. Did you form any opinion as to whether he was  
18 guilty or innocent of the charges?

19 A. No.

20 Q. We're asking you some questions about the death  
21 penalty. That doesn't necessarily mean that you will ever have  
22 to decide that question, just that the law requires that when we  
23 have these charges to ask those questions before, even before we  
24 get into the question of guilt or innocence.

25 Just because we're asking these questions, you  
26 don't consider that fact as any indication that Mr. Cooper is  
27 guilty, do you?

28 A. No.

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

2 A. I think the death penalty should be used at certain  
3 times.

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

6 A. I think that it has its place.

7 Q. Do you have your own opinion as to under what  
8 situations or circumstances the death penalty should be applied  
9 as opposed to life without parole?

10 A. No, I don't have a personal opinion.

11 Q. In this particular case, have you come to any  
12 opinion that the person who is responsible for this particular  
13 crime deserves a certain penalty?

14 A. Well. I would think that a crime of this nature,  
15 after hearing more about the person who perhaps committed the  
16 crime, might be a death penalty crime.

17 Q. Okay. But you haven't made up your mind right now  
18 before you hear all the circumstances about whoever is  
19 responsible, would it?

20 A. No.

21 Q. Do you belong to an organized religion?

22 A. No.

23 Q. Has the views of any organization, other than your  
24 personal conscious, done anything to help form your views on  
25 crime or punishment or the death penalty?

26 A. I am not sure I understand it.

27 Q. Are your views on the death penalty those that you  
28 have sort of formed by your own individual conscience, or have

1 you ever belonged to any group which has influenced you in those  
2 views?

3 A. No, I have never belonged to any group.

4 MR. NEGUS: Thank you very much.

5

6

EXAMINATION

7 BY MR. KOCHIS:

8 Q. Mr. Martin, when Judge Garner asked you the three  
9 short questions that he did, on the second question he asked you  
10 if you could vote for either possible punishment, life or death,  
11 depending on what the evidence showed, and your answer, the  
12 words you used were "I think so."

13 Did that indicate any reluctance on your part to  
14 vote one way or the other, or just you would wait until you  
15 would hear all the evidence?

16 A. I think I would have to hear what the evidence was  
17 before I could decide.

18 Q. In the 70's, in two separate occasions, I believe  
19 in 1974 and again in 1978 there were two death penalty-related  
20 issues placed on the ballot. People circulated petitions, they  
21 gathered signatures, there was lot of debate about the death  
22 penalty at that time.

23 Were you involved in either one of those elections  
24 and in circulating petitions or gathering signatures?

25 A. No.

26 Q. Did you take a position on the death penalty one  
27 way or the other at that time?

28 A. Yes, I voted.

1           Q.     Is your position today essentially the same  
2 position you had back then in the 70's, do you recall?

3           A.     Yeah, I think so.

4           Q.     How do you feel personally about being put in a  
5 position where you might have, to where you would have to make a  
6 decision of the magnitude?

7           A.     Well, I find it a little uneasy.

8           Q.     Are you confident within yourself that if you heard  
9 all the evidence and heard the law you could make a decision one  
10 way or the other?

11          A.     Oh, I think I could make a decision.

12          Q.     The law requires that the judge poll the jurors at  
13 the end of every criminal case to make sure there is no mistake.

14                 If the judge polled the jury in this case and the  
15 jury had determined that the appropriate punishment was death,  
16 would you have any problem indicating in open court that that  
17 was the way you had voted?

18          A.     No.

19          Q.     Likewise, the law requires that one person be  
20 selected as the foreman, he presides over the jury deliberation,  
21 that the person date and sign the verdict form.

22                 If the jury selected you as the foreman, and you  
23 and eleven other jurors determined in this case that the  
24 appropriate punishment should be death, would you have any  
25 problem dating and signing the verdict form?

26          A.     No.

27          MR. KOCHIS: Thank you, I have no further questions.

28          THE COURT: We'd like to discuss it privately very

1 briefly. So, if you'd wait outside the bailiff will give you  
2 further instructions. Thank you, Mr. Martin.

3 Okay, gentlemen. Anything?

4 MR. KOCHIS: No, your Honor.

5 MR. NEGUS: No.

6 THE COURT: Please give him the return date.  
7

8 HARRY TRAGER

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, sir.

15 Mr. Trager, before I commence asking questions of  
16 you, I will inquire if there is anything that's happened to you  
17 since we last saw you which would complicate your ability to  
18 serve on this case.

19 A. No.

20 Q. The reason for the informality of the seating  
21 arrangements here is to put you a little bit more at ease so  
22 that you can relax and answer the hard question we're going to  
23 put to you now.

24 Do you remember when I was sitting on the bench,  
25 when we were in before, I told you that there could be two  
26 possible phases to this trial. The first phase was the guilt  
27 phase and then depending on how that turns out, we could go into  
28 a penalty phase.

1                   So, my first question to you basically is, if we do  
2 get to a penalty phase, will you be able to fairly consider both  
3 of the two possible penalties: Death and life imprisonment  
4 without the possibility of parole?

5           A.     Yes.

6           Q.     Would you be able to personally vote for either one  
7 of those and be persuaded to vote one way or the other depending  
8 upon the evidence and the circumstances brought out at the  
9 trial?

10          A.     Yes.

11          Q.     Some jurors have an abhorrence, so to speak, of  
12 making that hard life or death type decision.

13                   Do you think that you might be so concerned with  
14 having to make that hard decision down in the penalty phase that  
15 that concern would make it difficult for you to vote in the  
16 guilt phase?

17          A.     No.

18          THE COURT: Thank you, sir. Mr. Negus.

19

20

EXAMINATION

21 BY MR. NEGUS:

22          Q.     Mr. Trager, the judge is letting Mr. Kochis and I  
23 ask most of the questions. We're not trying to pry or embarrass  
24 you in any way, the law requires that we get your honest  
25 opinions on these things before we go any further.

26                   What had you heard about this case before you came  
27 to court?

28          A.     Just what was in the papers. Something about him

1 being on a boat, because I had a boat. That's the only thing I  
2 remember.

3 Q. Do you remember any details about the boat or --

4 A. No, until the judge said what the case was about.

5 Q. Okay. When you heard -- did you know about the  
6 crime when it occurred, that is, the killings?

7 A. Vaguely. I didn't -- I didn't really pay  
8 attention. Just about the boat part.

9 Q. Okay. Did you form any impression of Mr. Cooper  
10 from what you heard about the incident around his arrest?

11 A. No.

12 Q. Did you ever form any opinion as to his guilt or  
13 innocence?

14 A. No. When I read it, no.

15 Q. Do you have one now.

16 A. No.

17 Q. What was your reaction when you found out that this  
18 was the type of case that you were being asked to be a  
19 prospective juror for?

20 A. Would you say that again.

21 Q. How did you feel when you walked into court and  
22 found out that you were a prospective juror for this particular  
23 case?

24 A. Surprised, because I didn't know, you know, what I  
25 was going to be on.

26 Q. Did you have any feelings towards sitting on this  
27 case as opposed to any other?

28 A. No.

1           Q.     We're asking you questions about the death penalty  
2 because the law requires that those questions be asked before we  
3 ever get to the issue of guilt or innocence.

4           You won't take it that we're asking those questions  
5 as any indication that we're every going to get to the fact that  
6 Mr. Cooper is guilty; is that correct?

7           A.     Right.

8           Q.     What is your feeling about the death penalty?

9           A.     It depends on what happened.

10          Q.     You are for it in certain circumstances?

11          A.     Right. And certain, no.

12          Q.     What do you think about life imprisonment without  
13 the possibility of parole?

14          A.     That's the same thing. I don't know what happened.  
15 You know, it depends on what -- some of them I don't believe in  
16 and some I do. I'm on what the guy did or what the person did.

17          Q.     Have you made up your own mind, as opposed to  
18 whatever the law says, as to certain cases automatically deserve  
19 the death penalty and other cases automatically deserve life  
20 with parole?

21          A.     No.

22          Q.     There's charges in this particular case that two  
23 kids were killed, and another kid was very seriously injured.

24                 Anything about that fact that we're dealing with  
25 kids that make you favor one penalty automatically over the  
26 other?

27          A.     No.

28          Q.     Do you belong to an organized religion?



1 A. No. I'm protestant, but I don't go --

2 Q. Have your religious beliefs in any way influenced  
3 your feelings about the death penalty or are those based on your  
4 own.

5 A. No, I don't believe in religion more or less, as I  
6 was taught.

7 Q. Okay. So, your ideas on the death penalty are  
8 basically your own.

9 A. Yes.

10 MR. NEGUS: Thank you very much.

11

12 EXAMINATION

13 BY MR. KOCHIS:

14 Q. Mr. Trager, there were two periods back in the  
15 70's, I guess in '74 and perhaps again in 1978, in which death  
16 penalty-related issues were placed on the ballot, the people  
17 gathered signatures, they circulated petitions, it was a subject  
18 of some controversy; people debated about it.

19 Were you involved in either one of those elections  
20 circulating petitions or --

21 A. No.

22 Q. -- gathering signatures? Did you take a position,  
23 a strong position on the death penalty one way or the other back  
24 at that time?

25 A. I don't remember that I did, no.

26 Q. How do you feel about being put in a position where  
27 you have to make decisions of this magnitude, responsibility?

28 A. It is a responsibility.

1           Q.     Do you feel confident within yourself that if you  
2     hear all the evidence and Judge Garner instructs you on the  
3     appropriate rules of law that you could make a decision based on  
4     the law and the facts one way or the other?

5           A.     Yes.

6           Q.     You don't see any tendency down the road to perhaps  
7     freeze or balk at making a decision because it is so serious?

8           A.     No.

9           Q.     To make sure there is no mistake, in every criminal  
10    case the judge polls the jurors at the end of the trial. He  
11    simply goes down the row and asks each juror if the verdict the  
12    clerk has just read is in fact the way they voted.

13                    If we got to a penalty phase in this case, and you  
14    and eleven other people determined that the appropriate  
15    punishment was death, would you have any problem indicating that  
16    in open court?

17           A.     No.

18           Q.     Likewise, the law requires that one person be  
19    elected as the foreperson, that person dates and signs a verdict  
20    form.

21                    If the jury elected you as the foreman, and you and  
22    eleven other people determined in the penalty phase that the  
23    appropriate punishment was death, would you have any problem  
24    dating and signing that verdict form?

25           A.     No.

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

27           THE COURT: We'd like to discuss it. So, if you'd wait  
28    outside the bailiff will shortly give you further instructions.

1 Thank you for coming in this morning.

2 Anything?

3 MR. NEGUS: No.

4 MR. KOCHIS: No.

5 THE COURT: Give him a return date

6

7

SANDRA HANSEN.

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?

14

A. Morning.

15

Q. Are you Sandra Hansen?

16

A. Yes, I am.

17

Q. We've arranged things kind of informally in hopes

18

that you will be a little bit more at ease to answer the hard

19

questions we are going to put to you.

20

First, has anything happened to you since we last

21

saw you a little over two weeks ago that would complicate your

22

ability to serve in this case?

23

A. No.

24

Q. I remind you now of what I said when I was sitting

25

on the bench and you were in before when I told you that there

26

could be two possible phases of this trial. First, is a guilty

27

phase. And then if we get over that hurdle, so to speak, we

28

could possibly have a penalty phase.

1           In the penalty phase there would only be two  
2 choices: One death by execution; the other life in prison  
3 without the possibility of parole.

4           My first question is: If we do get to a penalty  
5 feephase, will you be able to personally consider both of those  
6 two alternatives, death and life in prison without the  
7 possibility of parole?

8           A.     Yes.

9           Q.     Would you be able to personally vote for either one  
10 of them and be persuaded as to which way you'd vote upon the  
11 evidence and the circumstances brought out at the trial?

12          A.     Be persuaded?

13          Q.     Yes, one way or another that the evidence and the  
14 circumstances influence the way would you vote --

15          A.     Yeah.

16          Q.     -- as opposed to having your mind made up already.  
17 That's what I'm trying to say.

18                 Do you have any particular bent or favor at this  
19 time one way or the other?

20          A.     No, I don't.

21          Q.     Then you would make your decision based upon the  
22 evidence and the circumstances?

23          A.     Yes, for sure.

24          Q.     That's what I was trying to get at.

25          A.     Oh.

26          Q.     Some jurors feel very, very strong about having to  
27 make that hard type of decision possibly, that is, about death  
28 or life, so to speak, and they tell us that they would let that

1 concern perhaps influence them in the way they would decide the  
2 guilt phase even though they're not supposed to consider penalty  
3 or punishment. Do you think you might be such a person?

4 A. No.

5 Q. That's all I have at the moment.  
6 Counsel.

7

8

EXAMINATION

9

BY MR. NEGUS:

10 Q. Mrs. Hansen, the Judge is letting Mr. Kochis and I  
11 ask most of the questions. And we're not trying to pry or  
12 embarrass you in any way, but the law requires that we try and  
13 get your honest opinions on things before we go any further.

14 You had just heard vague things about the case  
15 before you came to court?

16 A. Just from when it all came about, just from the  
17 news, basically. I don't listen to the news very often.

18 Q. What do you remember about what you heard?

19 A. The only thing I remember is when -- when it  
20 happened everybody at work talked about it at the time, and it's  
21 been so long that nothing -- I just didn't think about it any  
22 more after I had heard what happened.

23 Q. Did you hear any -- you indicated you didn't hear  
24 anything about Mr. Cooper. You don't recall having heard that  
25 he was charged with the crime or anything?

26 A. No. I remember when the Chino was mentioned about  
27 his escaping from Chino because we had driven through there.  
28 That's why that had stuck in my mind. But, no, I put on there

1 that I do get the paper. I have only been getting the paper for  
2 the last three months.

3 Q. Based on what people were saying at work did you  
4 form any opinion as to the case?

5 A. No, no, not at all, just listened.

6 Q. Did have any -- what was your impression of Mr.  
7 Cooper from what people were saying?

8 A. I didn't have any impression of him. I just  
9 listened. I don't discuss things like that. I can't -- I don't  
10 believe a lot of things that I read. I never have. I don't  
11 know anybody unless -- I don't make snap decisions or judgments  
12 on anybody.

13 Q. So, you haven't in any way made up your mind about  
14 this particular case?

15 A. No, not at all.

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

18 A. Very surprised.

19 Q. Did you have any feelings about sitting on the case  
20 one way or the other?

21 A. No.

22 Q. We're asking you questions, some questions about  
23 the death penalty. You understand that that doesn't mean you  
24 you'll ever have to make that decision, but the law requires to  
25 us ask those questions even before we get to the issue of guilt  
26 or innocence.

27 What do you think about the death penalty?

28 A. My feelings are, if beyond the reason of a doubt if

1 a person is found guilty beyond the reason of any doubt, I feel  
2 it should be enforced. I'm force it.

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

5 A. That's fine. I would be for that, too. It just it  
6 just would depend.

7 Q. In your particular mind would it depend on any  
8 particular type of thing or, you know, what do you mean by it  
9 would depend?

10 A. My feeling -- the only feeling I have is if a  
11 person is found guilty without any possibility that they are  
12 of -- you know, of it happening, I'm for the death penalty. I  
13 don't know what else to say about life imprisonment without  
14 parole. If that's what it came down to, that would be a  
15 decision too.

16 Q. I guess what I'm -- what I'm asking in a not very  
17 direct way is: Do you feel like in every case in which somebody  
18 is convicted of murder and it's certain that they did the crime  
19 that the death penalty should be imposed?

20 A. Yes, I do.

21 Q. Would you ever be willing to consider life  
22 imprisonment without possibility of parole as a sentence to be  
23 imposed in such a case?

24 A. If it's a murder, life imprisonment without  
25 possibility of parole, but if you take someone else's life I  
26 feel like your life should be taken, too, if there is no doubt  
27 that that person is guilty, if there is no doubt at all.

28 Q. Would there be any sort of circumstances which

1 might -- which might lead you to be otherwise? If there is  
2 something about the defendant's background, he had a deprived  
3 childhood, or something of that nature?

4 A. No. If he killed someone, if it was proven --

5 Q. In this particular situation we have the charges of  
6 multiple murder involving two kids as being victims and another  
7 kid who survived, received however very, very serious injuries.

8 If the law says in California that their opinion --  
9 the law is somewhat different than your personal opinion, so now  
10 the questions I'm going to ask you is whether or not, given your  
11 personal opinions, you could apply the law as it exists in  
12 California.

13 In California what the law requires is that, first  
14 of all, most murders are not -- not subject to the death  
15 penalty, only a few are. In this particular case the fact which  
16 would make the person responsible for this crime subject to the  
17 death penalty would be -- would be the fact that there are  
18 multiple murders involved, more than one person killed at the  
19 same time. The law then goes further to say that even amongst  
20 multiple murders not all of them are -- require the death  
21 penalty, that you -- when somebody is found guilty of a multiple  
22 murder then you have to balance off evidence which makes the  
23 crime more serious versus evidence which somehow mitigates the  
24 crime, makes it less serious, that's normally evidence about the  
25 character and nature of the defendant, and then decide if the  
26 evidence that's towards making that one of the less serious  
27 multiple murders is stronger, then you vote for life in prison  
28 without parole. If the evidence that's toward making it a more



1 serious multiple murder is stronger, you vote toward the death  
2 penalty.

3 If we had evidence that makes this one of the less  
4 serious multiple murders, do you think you could vote for life  
5 without parole?

6 Do you follow me and that was a long one?

7 A. That was a long question. Possibly, yes.

8 Q. Why do you say possibly?

9 A. I just feel confused.

10 Q. Okay.

11 A. I just feel very strongly that if a life is  
12 taken -- I don't know how else to say it. If a life was taken,  
13 by someone else --

14 Q. I guess -- let me put it -- let me try and put it  
15 to you another way.

16 If you -- if you found for sure beyond a reasonable  
17 doubt that the person responsible for this particular crime in  
18 which four lives were taken --

19 A. Yes.

20 Q. -- you knew that person, would you automatically  
21 vote for the death penalty in this case?

22 A. Yes, I would.

23 Q. And that would be -- there wouldn't be any sort of  
24 evidence about the defendant, his orphaned childhood, anything  
25 of that nature which would convince you otherwise?

26 A. No, not if he was found guilty beyond reason of a  
27 doubt.

28 MR. NEGUS: Thank you.

1 I have nothing further.

2 THE COURT: Mr. Kochis.

3

4

EXAMINATION

5 BY MR. KOCHIS:

6 Q. Mrs. Hansen, I have a few questions. This is  
7 somewhat of a confusing process because we're asking some very  
8 technical questions of people that don't have a lot of  
9 background in this area of the law, so I want to make sure  
10 there's no confusion on your part.

11 In California there are very few crimes for which  
12 you can potentially get the death penalty. For example, most  
13 murders you are not even eligible for the death penalty. Do you  
14 understand that, or if I tell you --

15 A. Just by listening, yeah.

16 Q. Okay. We have what is called special circumstance  
17 cases in which if a person commits a crime that falls into what  
18 we call a special circumstance category they are potentially  
19 eligible for the death penalty, but that doesn't mean they get  
20 the death penalty in every case. Do you understand that?

21 A. Yes.

22 Q. Somewhat like years ago was there was a draft and  
23 if you happened to be a male in this country over 18 you could  
24 be drafted, but not every male was drafted.

25 What happens when we have a special circumstance  
26 case, however, is that we let a jury decide whether the  
27 defendant should be locked up for the rest of his life or  
28 whether he should be sentenced to death, and that's the

1 procedure that we would follow in this case. Do you understand  
2 that?

3 A. Okay.

4 Q. So, to get to the penalty phase, we wouldn't get to  
5 the penalty phase unless you and eleven other people have been  
6 convinced beyond a reasonable doubt that this defendant did the  
7 murders, and then we would be in that second trial.

8 A. Right.

9 Q. Then what happens in the second trial is we  
10 somewhat start from scratch. Both sides are given the  
11 opportunity to present additional evidence, the Judge will give  
12 you some additional instructions, and the lawyers will then  
13 argue their respective positions. And then the jury deliberates  
14 and they decide in this case what's the appropriate punishment.  
15 Do you understand that?

16 A. (No audible response.)

17 Q. Is that a yes? She has to take it down?

18 A. Oh, yes. I'm sorry.

19 Q. And this is a screening process somewhat, our  
20 conversation with you, in that there are some people who perhaps  
21 because of philosophical reasons or religious reason they feel  
22 only God has a right to take another person's life and they  
23 could never, no matter what the crime is like vote for the death  
24 penalty under any circumstance and they have a bias, they can't  
25 put that bias aside. You apparently are not that type of  
26 person.

27 A. No.

28 Q. Likewise, some people feel that if you take more

1 than one life, for example, in this case the evidence is going  
2 to show that four people were killed, that they don't care what  
3 the evidence in the penalty phase is they would, without  
4 listening to the evidence, in every case vote for the death  
5 penalty and never vote for life without the possibility of  
6 parole. Is that your mental framework?

7 A. No. I'd have to listen to all the evidence and  
8 know in my mind for sure that the person was guilty.

9 Q. Well, you've opened up three possible questions I  
10 have.

11 One of those is: We don't get to this penalty  
12 phase unless the guilt has already been resolved. Do you  
13 understand that?

14 A. Yeah.

15 Q. So, if we get to the penalty phase you would have  
16 already found Mr. Cooper guilty beyond a reasonable doubt, not  
17 beyond all possible doubt, but Judge Garner is going to give you  
18 an instruction that I think differs with your own personal  
19 opinion of what doubt is, and could you follow Judge Garner's  
20 instruction as to what a reasonable doubt is, first of all?

21 A. Yes.

22 Q. Okay. And then we would be in the penalty phase  
23 and you would again have to listen to some evidence and some  
24 law. Could you keep an open mind through that process and, for  
25 example, if at the end of the penalty phase if Mr. Cooper was  
26 found guilty of killing four people, you found that based on  
27 your personal feeling or some evidence or the law that what  
28 should happen to him to this defendant is that he be locked up

1 for the lest of his life, could you vote that way?

2 A. Yes.

3 Q. Now, that brings me to the third question, and you  
4 have to help me somewhat with this because as I understood your  
5 answers to Mr. Negus a moment ago, you said, "I'd automatically  
6 vote for the death penalty every time."

7 A. Oh, no, not every --

8 Q. So, did I misunderstand you?

9 A. I hope so, yes.

10 Q. So, you would not automatically vote for the death  
11 penalty even in a case like this where there were four people  
12 killed? Am I confusing you?

13 A. Yes, you are.

14 Q. Okay.

15 A. I only stated that beyond a reasonable doubt if it  
16 got to the second phase, that we had to, if there was no doubt  
17 with all the evidence and, yes, I would be for it, but if we  
18 never got to that phase --

19 Q. Let me see if I can -- if I can explain it to my  
20 own satisfaction. I'm not very good at this all the time.

21 There's actually two decisions you have to make.  
22 The first one is beyond a reasonable doubt did this defendant do  
23 the murders. That's what we call the guilt trial. Do you  
24 understand that?

25 A. Okay. Yes.

26 Q. So, let's assume for the sake of argument that that  
27 has come and gone and Mr. Cooper has been convicted and we are  
28 then in the second phase of what penalty should we imposed.

1 Okay?

2 A. Okay.

3 Q. There's additional evidence, additional law, and  
4 then you and eleven other people have to make a second decision.  
5 In spite of the fact that Mr. Cooper has been found guilty, the  
6 decision to be made is what's the appropriate penalty in this  
7 case: Do we vote for life imprisonment or do we vote for death,  
8 and that's another decision you have to make based on the law,  
9 based on the evidence, and to some extent the argument by the  
10 defense attorney perhaps.

11 If you're convinced at the end of the second trial  
12 that even though Mr. Cooper did the murders that in this case  
13 what should happen to him is to be locked up for the rest of his  
14 life could you vote that way?

15 A. No.

16 Q. You'd vote for death every time?

17 A. Yes.

18 Q. Okay. Now I understand you. Are you --

19 There's another gentleman on the panel who has the  
20 same surname that you have, spells it the same way, he lives the  
21 same distance from the courthouse; are you related?

22 A. No.

23 MR. KOCHIS: I have no further questions.

24 THE COURT: Thank you very much for coming in. Would you  
25 wait outside, let us discuss it privately and the bailiff will  
26 instruct you further.

27 And the female of the species is more definite than  
28 the man, Counsel.

1 MR. NEGUS: Challenge.

2 THE COURT: Yes, I will grant the challenge. She will be  
3 excused so notify her please.

4 MR. NEGUS: I don't hav emy notes on Mrs. Jacobsen here.  
5 Can we pass that till tomorrow and I will bring it in?

6 THE COURT: Certainly. Would the clerk remind us  
7 tomorrow?

8 All right. We will take a recess.


9 (Recess.)

10 THE COURT: All right. Next.

11 THE BAILIFF: Frank Stesienko.

12

13

FRANK STESIENKO, 

14 called as a prospective juror, having been previously sworn.  
15 testified as follows:

16

17

EXAMINATION

18 BY THE COURT:

19 Q. Good morning.

20 A. Good morning.

21 Q. Have a seat, please. You are Frank Stesienko?

22 A. Yes, sir.

23 Q. Mr. Stesienko, has anything happened to you since  
24 we last saw you that would make it more difficult for you to  
25 serve?

26 A. Not a thing; no, sir.

27 Q. Before I commence asking questions I want to remind  
28 you of what I said before, and that is that there could be two

1 phases to this trial. Okay?

2 A. Yes, sir.

3 Q. We have arranged this in an effort to make it more  
4 informal and thus get you to relax a little bit more, so just  
5 settle back and relax a little if you would, please.

6 There could be two possible phases. We don't know  
7 if we will every get to the second phase because we don't know  
8 how the guilt phase will turn out, but if we do get to a second  
9 phase then the jurors will have only two possible choices,  
10 namely, to vote for death by execution or to vote for life in  
11 prison would you tell the possibility of parole.

12 Do you remember I told you that?

13 A. Yes, sir.

14 Q. I want to find out now if you can go either way, so  
15 to speak. If we do get to a penalty phase will you be able to  
16 fairly consider both of those two alternatives?

17 A. I think so, yes, sir.

18 Q. Do you think that you could bring yourself to vote  
19 for one or the other, depending upon the evidence and the  
20 circumstances brought out at trial?

21 A. Yes, sir, I think so.

22 Q. Do you think you might be so concerned with having  
23 to make a life or death type of decision that you would let that  
24 concern effect the way you would vote in the guilt phase even  
25 though you're not supposed to consider penalty there?

26 That's a tough question.

27 A. Yes, it is.

28 Q. Kind of complicated. Some jurors, prospective



1 jurors, feel the weight of having to make that hard decision  
2 down the road, gee, I'd hate to ever have to make that kind of a  
3 decision, and they let that great concern cause them to say,  
4 well, gee maybe that would effect the way would I vote back in  
5 the guilt phase, and in the guilt phase you are not supposed to  
6 consider penalty or punishment.

7 A. Yes.

8 Q. So, could you forget about penalty and punishment  
9 in the first phase and decide guilt or innocence --

10 A. Yes, sir.

11 Q. -- simply based upon the facts there?

12 A. Yes, sir.

13 Q. Can you do that?

14 Mr. Negus, you would you inquire.

15

16 EXAMINATION

17 BY MR. NEGUS:

18 Q. Is it Stensienko?

19 A. Stessienko.

20 Q. Mr. Stensienko, the Judge is letting Mr. Kochis and  
21 I ask most of the questions. We are not trying to pry or  
22 embarass you, but the law requires we get your opinions on  
23 certain matters before we go any further.

24 You indicated on your questionnaire that you had  
25 heard some vague information about this case?

26 A. Well, what I heard was about the murder in Chino,  
27 and that's as far as I heard and I never paid any more attention

28 Q. You never heard about Mr. Cooper before you got to

1 court?

2 A. No, huh-uh.

3 Q. So, you never formed any impression of him?

4 A. No.

5 Q. Did you hear any details about the murder or  
6 just --

7 A. No, I just, you know, on TV, and then I read in the  
8 paper there was a murder. That's as far as I went. I figured,  
9 well, it happened in San Bernadino so it doesn't concern in my  
10 territory or anything, so I didn't pay any more attention to it.

11 Q. You didn't know the case was coming down here for  
12 court?

13 A. No, I didn't know. Only time I heard the case was  
14 coming down here, on TV they mention that San Bernadino, that  
15 the address, it would be transferred down to -- and stuff.  
16 That's all I heard about it.

17 Q. What was your reaction when you found out you were  
18 being a potential juror in this kind of case?

19 A. It kind of surprised me.

20 Q. Why did it surprise you?

21 A. Well, I -- this is my first time on jury duty. I'm  
22 75 years old. I have never been on jury duty, so it kind of  
23 surprised me. I figured, well, it would be mine for detail and  
24 stuff. They said it would be ten days out of the year I would  
25 serve on jury duty. I figured, well, since I'm retired -- I was  
26 appointed one time before but I couldn't get off my job, so then  
27 I was excused before that.

28 Q. We're asking you questions about the death penalty.

1 Okay?

2 A. Uh-huh.

3 Q. But you understand that the law requires us to ask  
4 these questions before we even decide guilt or innocence?

5 A. Uh-huh.

6 Q. And the fact that we are asking questions about the  
7 death penalty doesn't mean that we will ever get that.

8 A. That's right.

9 Q. What's your opinion about the death penalty?

10 A. Well, I figure that if a person takes somebody  
11 else's life it should be -- they should be punished by the death  
12 penalty.

13 Q. What do you think about life imprisonment without  
14 the possibility of parole?

15 A. Well, I guess if it goes that way I'd vote that way  
16 for it.

17 Q. Okay. Do you have any -- do you have any opinions  
18 in your own mind as opposed to whatever the law is that it  
19 should go one way or the other on any particular case?

20 A. No.

21 Q. This particular case involves a multiple murder,  
22 including the murder of kids. Do you have any particular  
23 feeling that automatically one of those two penalties should be  
24 applied in this particular case no matter what other evidence  
25 there is about the nature of the individual that's responsible?

26 A. Yes, I do.

27 Q. Okay. What's that opinion?

28 A. Well, I think it -- death penalty, I'd go that way.

1           Q.     In -- in a situation like this where you have  
2 multiple murders, the law in the State of California is, and I'm  
3 going to ask you a question, it's going to be a long question  
4 and I apologize, but it's more about the law than about your own  
5 personal opinions.

6           The law in the State of California is that not all  
7 murders receive the death penalty, and not even all multiple  
8 murders. When you find somebody guilty of a multiple murder,  
9 then you have to take evidence about that person which makes it  
10 one of the more serious multiple murders and weigh that against  
11 evidence which makes it a less serious multiple murder, and on  
12 the base of whether it's more serious or less is serious vote  
13 either for the death penalty or life without parole.

14           If there was evidence to show that this was one of  
15 the less serious of multiple murders, do you think that you  
16 could vote for life imprisonment without parole?

17           A.     Yes, I would.

18           Q.     So, you would not let your own individual opinions  
19 interfere with the --

20           A.     No.

21           Q.     -- your legal --

22           A.     No.

23           Q.     -- your legal duty as a juror?

24           What about the fact that kids are involved, could  
25 you vote, if it was one of the less serious multiple murders  
26 even though kids, could you vote for life imprisonment --

27           A.     Yes, sir.

28           Q.     -- if that's what the evidence showed?

1 A. If the evidence showed it, yes, uh-huh.

2 Q. Do you have any -- your mind made up as to any  
3 particular type of evidence which -- which you would just not  
4 consider as far as evidence which might make it one of the less  
5 serious crimes?

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

7 Q. So, if the Judge were to instruct you that you  
8 should consider evidence about the defendant's, you know,  
9 deprived childhood, or something like that, you could -- you  
10 could consider that evidence along with everything else?

11 A. That's right, uh-huh.

12 Q. Do you belong to an organized religion?

13 A. No. I didn't -- I'm a Greek Orthodox, my religion  
14 is.

15 Q. But you're -- Okay. Well, that's sort of a lead-in  
16 question actually. What I'm really concerned about is have  
17 the -- have your religious views in any way influenced your  
18 views on crime and punishment or the death penalty?

19 A. No.

20 Q. Thank you very much.

21

22

EXAMINATION

23 BY MR. KOCHIS:

24 Q. I have a few questions --

25 A. Okay.

26 Q. -- and we are almost done.

27 Mr. Negus talked to you in theory about your  
28 feelings about the death penalty.

1 A. Uh-huh.

2 Q. How do you feel about being put in a position where  
3 you might have to make this type of decision?

4 A. Well. if the evidence showed it that way I'd vote  
5 for the guilty -- guilty part of it.

6 Q. So you don't see any problem with listening to all  
7 the evidence --

8 A. No.

9 Q. -- listening to the law and making a decision one  
10 way or the other?

11 A. No.

12 MR. KOCHIS: I have nothing further, your Honor.

13 THE COURT: Would you wait outside, let us discuss it  
14 privately. The bailiff will give you further instructions.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Thank you for coming in.

17 Anybody?

18 MR. NEGUS: No.

19 MR. KOCHIS: No.

20 THE COURT: Yes. Give him a return date, please, and  
21 bring in another juror.

22 THE BAILIFF: Next juror would be Joyce Hanson.

23

24

JOYCE HANSON,

25 called as a prospective juror, having been previously sworn,  
26 testified as follows:

27

28

EXAMINATION

1 BY THE COURT:

2 Q. Good morning, Ma'am?

3 A. Good morning.

4 Q. Please have a seat, Mrs. Hanson. I've arranged  
5 people around the table here in an informal way in hopes that  
6 you will be a little bit more relaxed to answer the hard  
7 questions put to you. Okay?

8 First, has anything happened to you since we last  
9 saw you that would complicate your ability to serve in this  
10 case?

11 A. The only problem that I've come up with, we were  
12 supposed to go to Maryland to deliver some furniture to my  
13 mother at Christmas time, of course weather permitting, but that  
14 would be two weeks time, and I don't --

15 Q. We won't be in Christmas recess that long. Can you  
16 get around that somehow and deliver it at a different time or  
17 have somebody else take it, or whatever?

18 A. We could not go. My mother would be heart broken,  
19 but we --

20 Q. Of course, there will be other times.

21 A. Right.

22 Q. When you could --

23 A. Uh-huh.

24 Q. You may get lucky, you know, so to speak, because  
25 we're going to select about 16 jurors.

26 Unless Counsel want to consider a stipulation in  
27 this case.

28 MR. KOCHIS: I would.

1 MR. NEGUS: Yes.

2 THE COURT: You may magnanamously say let her go. We  
3 will get by without you. I couldn't do it without a stipulation  
4 for that kind of a reason. So would you perhaps go back  
5 downstairs and see if they have a shorter case, hopefully, for  
6 you to serve on. And thank you very much for your cooperation  
7 thus far.


8 PROSPECTIVE JUROR: Thank you.

9 THE COURT: Thank you, Ma'am.

10 THE BAILIFF: Janet Favero.

11

12

JANET FAVERO, 

13 called as a prospective juror, having been previously sworn,  
14 testified as follows:

15

16

EXAMINATION

17

BY THE COURT:

18

Q. Good morning.

19

A. Hello.

20

Q. You are Janet Favero?

21

A. Yes.

22

23 Q. Mrs. Favero, we've arranged things informally in  
24 hopes that you will be a little bit more relaxed to answer the  
25 hard questions we are going to put to you.

25

26 Has anything happened since we last saw you that  
27 would complicate your ability to serve?

27

A. No.

28

Q. I'm going to have about or two or three questions



1 to ask you, then I will quickly turn it over to the attorneys to  
2 ask some questions of you.

3  
4 Before I commence asking those questions I want to  
5 remind you that I told you this case could be made up of two  
6 phases. The first is to consider only guilt or innocence, and  
7 then if we get over that hurdle, so to speak, then we go into a  
8 penalty phase. I'm going to ask you about that possible phase  
9 now.

10 If we do get to a penalty phase will you be able to  
11 fairly consider both of the two possible penalties, namely,  
12 death by execution or life in prison without the possibility of  
13 parole?

14 A. Yes, I believe so.

15 Q. Do you think that you would then be able to make up  
16 your mind and vote for one or the other depending upon the  
17 evidence and the circumstances brought out at the trial?

18 A. Yes.

19 Q. Would you have such an abhorrence or fear of making  
20 that hard decision that you might be swayed unduly in deciding  
21 the guilt phase?

22 A. No.

23 Q. That is, you wouldn't cop out and try to find an  
24 inappropriate verdict in the guilt phase just so you wouldn't  
25 have to make that hard decision down the road?

26 A. No.

27 Q. Thank you, Ma'am.

28 Mr. Negus.

## EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BY MR. NEGUS:

Q. Mrs. Favero, the Judge is allowing Mr. Kochis and I to ask most of the questions. We are not trying to pry or embarrass you, but the law requires us to get your opinions about certain things before we go any further.

What had you heard about this particular crime before you came to court?

A. Actually I didn't remember too much of what I had read in the papers.

Q. Did you follow the case when it first came out in the papers?

A. Not really. I mean other, than reading of the newspaper which is sometimes daily, sometimes not.

Q. You didn't have any -- you didn't watch it on television or anything of that nature?

A. I don't watch television too much.

Q. Did you hear anything about -- did you have any knowledge about Mr. Cooper before you came to court?

A. No.

Q. Did you have any impression of him one way or the other?

A. No.

Q. And you haven't made up your mind then I take it about his guilt or innocence?

A. (No audible response.)

Q. You have to say yes or no.

A. Oh. No. I'm sorry.

1           Q.     When -- when you heard that this was the type of  
2 case that you were going to be a prospective juror for, what was  
3 your reaction?

4           A.     Well, I don't know. It was -- I just thought it  
5 would be a really probably -- something I wasn't expecting,  
6 let's put it that way.

7           Q.     Did you have any feelings pro or con this case  
8 versus any other case you might have been asked to sit as a  
9 juror on?

10          A.     Any feelings?

11          Q.     Yeah. Did you say, oh, I don't want that, or that  
12 sounds interesting, or any sort of reaction?

13          A.     Well, it was actually kind of a surprise, maybe a  
14 surprise feeling. This was the first time I had been called.  
15 It was sort of like not speeding tickets, that type of reaction.

16          Q.     We're asking you questions about the death penalty.  
17 I hope you won't take it that that is any indication we are ever  
18 going to get to that particular phase, but the law requires us  
19 to ask you questions about your feeling about penalty before you  
20 even decide issues of guilt or innocence.

21                     You wouldn't hold it against Mr. Cooper or assume  
22 that he is guilty just because we're asking these questions  
23 about penalty now, would you?

24          A.     No.

25          Q.     What is your opinion basically about the death  
26 penalty?

27          A.     Well, I believe in the death penalty.

28          Q.     Why?

1 A. Why?

2 Q. Uh-huh.

3 A. Oh, just throughout my life I just feel like  
4 it's -- if someone, let's say, is, you know, proven guilty of  
5 killing someone, it's just not something a citizen should do.

6 Q. What do you think about the penalty of life  
7 imprisonment without parole?

8 A. Well, I think that's a good -- I mean, I believe in  
9 that, too. I -- I guess you would just have to sit through a,  
10 you know, just have to decide what the courtroom is, but I think  
11 that without parole is excellent also because if somebody has  
12 done something really drastic I don't think they should be on  
13 the street with the, you know, the citizens.

14 Q. If you were asked to sit as a juror the Judge would  
15 give you instructions as to if you had to make that decision how  
16 to chose between death penalty and life without parole. Do you  
17 have any personal opinions as to when one is appropriate as  
18 opposed to the other?

19 A. No.

20 Q. This particular charge, this particular case  
21 involves two children who are murdered and another little boy  
22 that was very, very seriously injured. Do you have any  
23 particular feeling as to that one of those two penalties is  
24 particularly appropriate. or automatically appropriate I suppose  
25 I should say, for that particular crime, or could you again  
26 depend upon what the instruction and the evidence were?

27 A. I think it would have to depend. I don't think it  
28 would be automatic.

1 Q. Do you belong to an organized religion?

2 A. No.

3 Q. Have your views on the death penalty and crime and  
4 punishment in general come from your own individual conscience  
5 or are they something that you've adopted as being part of an  
6 organization of some sort?

7 A. I think conscience.

8 Q. Thank you.

9 I have nothing further, Mr. Kochis.

10

11

EXAMINATION

12 BY MR. KOCHIS:

13 Q. I get a chance to ask you a few.

14 There were two periods in the last decade in the  
15 '70s in which death penalty related issues were on the ballot  
16 and people circulated petitions, they gathered signatures, it  
17 was the topic of debate and conversation. Were you involved in  
18 either one of those campaigns in terms of gathering signatures  
19 or signing petitions, things of that nature?

20 A. No.

21 Q. Did you take a position at that time one way or the  
22 other on the death penalty?

23 A. No.

24 Q. If we get to the penalty phase you and eleven other  
25 people are going to have a limited number of options to vote  
26 for, either life or death. How do you feel personally about  
27 being put in a position where you have to make decisions of that  
28 magnitude?

1           A.     Well, personally I would feel if I was chosen that  
2 that would be my citizen's duty to try to make the right  
3 decision.

4           Q.     Okay. You don't see any potential within yourself  
5 of getting to the penalty phase and perhaps freezing or balking,  
6 not wanting to make the decision one way or the other?

7           A.     No.

8           Q.     To make sure there is no mistake, in a criminal  
9 case Judge Garner will poll the jury at the end of the trial.  
10 He simply goes down the row and asks each juror if the verdict  
11 the clerk has just read is in fact the way they voted.

12                     If in the penalty phase in this case the jury  
13 determines that the appropriate punishment is death, would you  
14 have any problem indicating that in open court?

15          A.     No.

16          Q.     And likewise the law requires that one person be  
17 elected as the foreperson and that persons signs and dated the  
18 verdict form. If the jury selected you as the foreperson and  
19 the jury determined that the appropriate punishment was death,  
20 would you have any problem dating and signing that verdict form?

21          A.     No.

22          Q.     Thank you. I have nothing further, your Honor.

23                     THE COURT: Give us a chance to discuss it briefly in  
24 private, so if you would wait outside the bailiff will give you  
25 further instructions. Thank you for driving in this morning

26                             Anything, Counsel?

27          MR. NEGUS: No.

28          MR. KOCHIS: No, your Honor.

1 THE COURT: Bring in the next one.

2 I note on the next one, Mr. Ramirez, that question  
3 No. 5 he said that -- he circles Asian/Indian, and then on No. 6  
4 Mexican/American. Maybe that's the closest he can come in his  
5 mind.

6

7

CLEMENTE RAMIREZ

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

10

11

EXAMINATION

12 BY THE COURT:

13 Q. Come in. Have a seat, please.

14 Are you Clemente Ramirez?

15 A. Yes, I am.

16 Q. Good morning, sir?

17 A. Good morning.

18 Q. Mr. Ramirez, we have made some changes so that you  
19 are seated in an informal manner around the counsel table, in  
20 hopes that you will be a little bit more relaxed in answering  
21 the hard questions put to you.

22 Initially, I wanted to ask you, has anything  
23 happened since we last saw you that --

24 A. Nope.

25 Q. -- would complicate --

26 A. Just back to work.

27 Q. Before I commence asking you a very few questions,  
28 I want to remind you that I told you before that the case could

1 be in two phases. The first phase would be concerned only with  
2 guilt or innocence. Then if you found him guilty of multiple  
3 murders, then we would go into the second phase of evidence  
4 further. we would determine whether the appropriate penalty  
5 should be death or life imprisonment without the possibilities  
6 of parole, just the two possible alternatives.

7 So, my first question to you is, if we do get to a  
8 penalty phase, will you be able to fairly consider both of those  
9 two possible penalties?

10 A. Sure.

11 Q. Do you think you would be able to makeup your mind  
12 to vote one way or another depending upon the evidence and the  
13 circumstances brought out at the trial?

14 A. Yeah.

15 Q. Are you hesitating for some reason?

16 A. You really -- I have never been in a case before so  
17 I really wouldn't know if I could determine that depending upon  
18 the facts.

19 Q. Not a thing wrong with hesitating, and thinking  
20 about the questions, because some of them are going to be hard  
21 questions. On the other hand, if something is of some concern  
22 to you, why you tell us so we can go into detail at this time a  
23 little bit.

24 Some jurors feel particularly concerned about ever  
25 having to make a life or death type of verdict, and so they tell  
26 us that they might be affected to vote inappropriately in the  
27 guilt phase so that they would never ever have to make a death  
28 penalty type of verdict later on.



1 Do you think that you would --

2 A. No.

3 Q. -- have the courage to vote, depending upon the  
4 evidence or the law without regard to the the penalty phase  
5 unless and until you get to a penalty phase?

6 A. Yes.

7 Q. Is that correct?

8 A. Yeah.

9 THE COURT: Okay. Thank you. Mr. Negus.

10

11

EXAMINATION

12 BY MR. NEGUS:

13 Q. Mr. Ramirez, the judge is letting Mr. Kochis and I  
14 ask most of the questions. We're not trying to pry or embarrass  
15 you in any way, but the law requires that we get your personal  
16 opinions on certain things before we go any further.

17 What had you heard about the case before you came  
18 to court?

19 A. I don't remember much. It is very vague. Just  
20 that apparently he had broken out of jail, stayed at a home,  
21 broke into a home, whatever, killed these four people and then  
22 one little kid survived. Something like that.

23 Q. Did you have an opinion, based on what you heard,  
24 as to whether or not -- as to Mr. Cooper's guilt or innocence?

25 A. Not really. Taking everything that I hear and --

26 Q. Did you hear anything about the circumstances of  
27 Mr. Cooper's arrest?

28 A. No.

1 Q. Did you hear anything about the fact that the case  
2 had gone through the court up in San Bernardino County before it  
3 came down here?

4 A. Yes.

5 Q. What sort of things did you hear?

6 A. Just that it was asked to be moved because of the  
7 publicity or something.

8 Q. So you knew it was coming down before you got to  
9 court.

10 A. Yes, I did.

11 Q. What was your reaction when you walked in and found  
12 out that you were a potential juror on this particular case?

13 A. Um, not much other than the fact that I knew it  
14 would be a long case and the burden that would be on my family.  
15 That's about it.

16 Q. In asking you these questions we're asking  
17 questions about the death penalty, that is because the law  
18 requires us to ask these questions before we even get to the  
19 issue of guilt or innocence.

20 You won't take the fact that we're asking questions  
21 about penalty as any indication that anybody has made up their  
22 mind as to guilt or innocence. Is that correct?

23 A. Right.

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

25 A. Well, I really haven't gave it much thought other  
26 than -- sometimes I think it should be enforced.

27 Q. What do you think about life imprisonment without  
28 parole?

1           A.     It is -- I think it should be enforced, too, in a  
2 situation where he's found guilty.

3           Q.     In this particular case, do you have any particular  
4 feelings one way or the other that whoever is responsible for  
5 the crime should receive one of those penalties as opposed to  
6 another or could you do it on the basis of evidence?

7           A.     Probably on the evidence.

8           Q.     Anything about the fact that kids are involved in  
9 this particular case which would make it difficult for you to  
10 choose one of those two penalties?

11          A.     No.

12          Q.     Do you belong to an organized religion?

13          A.     Not necessarily. We go to church, but it is not --  
14 we're not really involved. We attend about once every couple  
15 years.

16          Q.     What church do you go to?

17          A.     It is the Latter Day Saints on University.

18          Q.     Has the views of your church in any way influenced  
19 your own particular feelings on the death penalty or on crime  
20 and punishment?

21          A.     No.

22          Q.     Those are your own particular opinions?

23          A.     Yes.

24          MR. NEGUS: Thank you very much.

25

26

EXAMINATION

27 BY MR. KOCHIS:

28          Q.     Mr. Ramirez, you mentioned that the one thought you

1 had about sitting on a case of this length is the hardship on  
2 yourself and your family.

3 I assume your employer is going to pay you while  
4 you sit on the case.

5 A. Yes, they would. But most likely I will lose my  
6 job, because of being away that long they have to find a  
7 replacement for me. I wouldn't go back to that same job. I  
8 have to see whatever is open at the time.

9 Q. But you'd still be employed by the company?

10 A. Hopefully.

11 Q. You've had a week to think about the fact that you  
12 may be called to sit on a potential death penalty case.

13 First of all, how do you feel about being put in a  
14 position where you have to make decisions of that magnitude?

15 A. Kind of uncomfortable. I really haven't gave it  
16 much thought. I didn't sit down and really think about it.

17 Q. One of the issues we try to resolve at this point,  
18 as you can tell this is somewhat of a screening process, some  
19 people who don't have a definite feeling one way or the other  
20 about the death penalty have not really sat down and ironed out  
21 their feelings about it, and when they're placed in a position  
22 some months down the road that they actually have to make  
23 decisions as to life or death, they at that time find the  
24 decision is so serious that they can't make it one way or the  
25 other. they don't want to.

26 Do you see any possibility of that problem arrising  
27 in you.

28 A. Maybe, yeah.

1 Q. Is that something that you feel when you think  
2 about it long enough you may have a problem voting one way or  
3 the other? Is that what you are saying?

4 A. I am not sure. I'd have to really think about it,  
5 and I have never -- just haven't thought about it, you know,  
6 seriously.

7 Q. Okay. If you are selected as a juror, you and the  
8 other, there are going to be fifteen of you, counting the  
9 alternates, are going to take an oath that you would in effect  
10 base your decision on the facts and the law.

11 Could you follow that oath. for example?

12 A. Yes.

13 Q. And if we got to the penalty phase, and your  
14 evaluation of the evidence and the law was this was an  
15 appropriate case for the death penalty, could you vote that way?

16 A. Yes, I think I could.

17 Q. Do you see -- you hesitate somewhat. Do you see  
18 any problem with that?

19 A. Not really. I just need to learn about the laws.

20 Q. Okay. To make sure there is no mistake, in a  
21 criminal case the law requires that the judge poll the jury. At  
22 the end of the trial he goes down the row and he asks each juror  
23 if the verdict the clerk has read is in fact that which they  
24 voted.

25 If there is a penalty case in this trial and the  
26 jury determines that the appropriate punishment is death, would  
27 you have any problem indicating in open court that that is the  
28 way you voted?

1 A. No.

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

4 Do you have any particular feeling about that that  
5 it is a good alternative, or we shouldn't have to have it on the  
6 books, or it is unfortunate we even have to consider it.

7 Do you any feelings along those lines?

8 A. From what I have thought about it I do feel it  
9 should be enforced a little more.

10 MR. KOCHIS: Thank you.

11 I have nothing further, your Honor.

12 THE COURT: For whom do you work?

13 PROSPECTIVE JUROR: Cox Cable TV.

14 THE COURT: How long have you worked there?

15 PROSPECTIVE JUROR: Four years.

16 THE COURT: What is your particular job?

17 PROSPECTIVE JUROR: I am a construction coordinator.

18 THE COURT: What do you do. Tell me.

19 PROSPECTIVE JUROR: I coordinate all public works  
20 projects, construction. We are -- there are four planners that  
21 handle different areas of construction, housing development. I  
22 handle business developments and the public works projects,  
23 coordinate through engineering, do construction.

24 THE COURT: Well, if you had to serve on this case,  
25 what -- amplify a little bit on your concern about that job. Is  
26 that a big problem in your mind?

27 PROSPECTIVE JUROR: Yeah, I think it would because they'd  
28 have to find somebody to fill in for me, and they have to learn

1 the job, and I believe, I was told that they'd probably replace  
2 me, and then when I did come back I'd apply for whatever options  
3 there were.

4 THE COURT: You understand that you'd be working one day  
5 a week anyway; we're only going four days a week.

6 PROSPECTIVE JUROR: Yes. I thought possibly working in  
7 the evening, morning or evenings and on Friday, and possibly  
8 keeping up with my job.

9 THE COURT: So it is possible that you might not be  
10 replaced, that you might be --

11 PROSPECTIVE JUROR: Right. We'd have to see.

12 THE COURT: In any event, if you had to, you are going to  
13 lose a job entirely, all you would do is lose a particular job.

14 PROSPECTIVE JUROR: Right. A position.

15 THE COURT: And if you did have -- if they did replace  
16 you, later on do you feel that you'd be able to work back up to  
17 it or work into some other job?

18 PROSPECTIVE JUROR: Yes. Probably could.

19 THE COURT: Okay. Let us discuss it privately for a  
20 minute, Mr. Ramirez. I appreciate your attitude greatly. Thank  
21 you for coming in this morning.

22 It doesn't sound all that serious as far as the job  
23 is concerned. Anything, gentlemen?

24 MR. NEGUS: No.

25 MR. KOCHIS: No.

26 THE COURT: Yes. Ask him to come back, please.

27 I think that exhausts this panel. We'll resume at  
28 1:30.

1                    You know, we could perhaps reschedule and add a  
2 couple more to the panel. You might also discuss that. I am  
3 sure the clerk could telephone the ones at the end of our  
4 sequestered voir dire schedule and move them up to where we  
5 could handle one more or two more a session. Talk about it.

6                    Be in recess.

7    --oo0oo--

8

9                    (Noon recess)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1 SAN DIEGO, CALIFORNIA, MONDAY, OCTOBER 1, 1984 1:30 P.M..

2 --oo0oo--

3

4 THE BAILIFF: Leone Reynolds will be the first one.

5

6 LEONE REYNOLDS

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

9

10 EXAMINATION

11 BY THE COURT:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Are you Mrs. Reynolds?

15 A. I am.

16 Q. We have arranged things kind of informally around  
17 the table in hopes you'll be little more comfortable and can  
18 more easily answer the questions.

19 First, has anything happened to you, ma'am, since  
20 we last saw you to complicate your ability to serve in this  
21 case?

22 A. Well. I have done a lot of crying.

23 Q. Well, I'm sorry for that. Has it upset you that  
24 much?

25 A. Yes. I have been doctored for gastrointestinal  
26 problems for about 40 years. It is aggravated by tension, and  
27 as a result I have diarrhea and I do cry.

28 Q. Well, we have kept you pretty much emotionally

1 upset since you were last here a couple weeks ago; is that  
2 correct?

3 A. Yes.

4 Q. What does your doctor thing about the possibility?

5 A. I saw him last week for a physical and he said he  
6 would write you a letter if you wanted it.

7 Q. I don't know, we will discuss it privately in a  
8 second. But you would expect this tension to continue then in  
9 your condition and you would not feel any better.

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

11 THE COURT: Okay. Would you mind waiting outside for a  
12 moment then and let us discuss it privately.

13 MR. NEGUS: Stipulate.

14 MR. KOCHIS: So would the People.

15 THE COURT: Stipulate that she might be excused. All  
16 right. Excused for cause pursuant to stipulation.

17 Would you so inform her and bring in the next one.

18 THE BAILIFF: Wilma Johnson is the next juror.

19

20

WILMA JOHNSON

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

23

24

EXAMINATION

25 BY THE COURT:

26 Q. Good afternoon, ma'am.

27 You are Wilma Johnson?

28 A. Yes.

1           Q.     Mrs. Johnson, we've kind of gathered around the  
2 table informally in hopes it will put you a little more at ease  
3 to answer the tough questions, so to speak.

4           Has anything happened to you since we last saw you  
5 that would complicate your ability to serve in this case?

6           A.     No.

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

9           Before I commence I would like to remind you that I  
10 told you this case could have two phases, the first is the  
11 so-called guilt phase where we just determine guilt or  
12 innocence. If he's found guilty of multiple murders, then we  
13 would go into a second phase where the jurors would determine  
14 which was the appropriate penalty, death or life imprisonment  
15 without parole.

16           Do you recall that?

17           A.     Yes.

18           Q.     My question first to you now is, if we do get to a  
19 penalty phase, will you be able to fairly consider both of those  
20 two possible penalties?

21           A.     I suppose so.

22           Q.     Is there some question in your mind?

23           A.     No.

24           Q.     Some hesitation?

25           A.     No.

26           Q.     Would you be able to vote for one or the other and  
27 not makeup your mind until you have heard the evidence and the  
28 circumstances brought out in the trial?

1 A. Yes.

2 Q. Do you think, Mrs. Johnson, that you might be so  
3 concerned with having to make a life or death type of decision  
4 in the penalty phase that you would let that concern influence  
5 you in the way that you vote in the guilt phase?

6 A. I don't believe so.

7 Q. Do you have a great concern right now over the  
8 question of the death penalty?

9 A. Well, I hadn't thought very much about it.

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

11

12

EXAMINATION

13 BY MR. NEGUS:

14 Q. Mrs. Johnson, the judge is letting Mr. Kochis and  
15 myself ask most of the questions. We're not trying to pry or  
16 embarrass you, but the law requires we get your honest opinions  
17 on certain matters.

18 Before you came to court, what, what do you  
19 remember having heard about this particular case?

20 A. What do I remember?

21 Q. Right. Having heard on the television and the  
22 papers.

23 A. Well, I -- I don't know if it was in the newspaper  
24 or on the television when we heard about it first, and, I  
25 wondered why it took so long for them to find a suspect. But I  
26 don't, I don't know that -- it is hard to say. I don't remember  
27 too awfully much, but I do remember seeing from time to time  
28 something in the papers.

1 Q. Do you remember the basic details of what happened  
2 during the crime?

3 A. Yes.

4 Q. Do you remember hearing anything about Mr. Cooper?

5 A. Yes.

6 Q. What do you remember about Mr. Cooper?

7 A. When he was on the boat.

8 Q. What do you remember about that?

9 A. Well, it is hard to say. That he was there with  
10 other people, and I don't remember whether they tried to kill  
11 somebody on the boat or whether somebody -- or whether they  
12 found out who it was.

13 Q. That particular incident, did that give you a  
14 particular impression of Mr. Cooper?

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

16 Q. Did you hear anything about the case when it was in  
17 court up in San Bernardino?

18 A. No, not especially.

19 Q. Did you know the case was coming to San Diego  
20 before you got here?

21 A. Yes.

22 Q. What was your -- what was your reaction when you  
23 found out that you were a prospective juror in this particular  
24 case?

25 A. Well. I thought maybe they would have more jurors  
26 than -- that I wouldn't be on this case.

27 Q. Is there any particular reason why you wanted not  
28 to be on this case?

1           A.     Not really, except four years ago I was on a jury  
2 for a criminal case.

3           Q.     Why does -- what difference does that make?

4           A.     Not really any, except that it makes some longer.  
5 I'm a nurse, retired nurse, and I have seen lots of sickness and  
6 sorrow, and accident cases, and stabbings, and sometimes you  
7 think maybe that that's enough.

8           Q.     Do you think that that particular feeling would  
9 influence your ability to be fair and impartial in this case?

10          A.     No.

11          Q.     Have you formed an opinion as to whether or not Mr.  
12 Cooper is guilty or not?

13          A.     I don't know the facts.

14          Q.     We're asking you some questions about the death  
15 penalty. You understand that the law requires us to ask these  
16 questions before guilt or innocence is even, you even hear any  
17 evidence on guilt or innocence.

18                    You won't take the fact that we're required to do  
19 that as any evidence Mr. Cooper is guilty, would you?

20          A.     No.

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

22          A.     What do I think about it?

23          Q.     Uh-huh.

24          A.     Well, sometimes I wonder about the death penalty  
25 when a person kills one person and they get the death penalty,  
26 then sometimes somebody does -- well, I don't know. It is kind  
27 of hard to say.

28                    Sometimes you wonder how the decision is arrived

1 whether a person gets the death penalty or not.

2 Q. Well. do you think that the death penalty should be  
3 imposed more, or more consistently, or what?

4 A. Probably.

5 Q. More often?

6 A. Well -- yeah. It is just --

7 Q. What do you think about life imprisonment without  
8 parole?

9 A. Life imprisonment without parole is not really life  
10 imprisonment without parole an awfully lot of times.

11 Q. Does that make you disvalue that particular  
12 penalty?

13 A. No.

14 Q. Do you think that you'd have any -- would have any  
15 reluctance in imposing that penalty for a serious murder, if  
16 that's what the law that was given to you suggested was the  
17 appropriate penalty?

18 A. No, I think I would be honest and fair.

19 Q. In this particular case if the person responsible  
20 for the crimes were to be convicted, then you would have to  
21 decide at another hearing between two penalties: Life without  
22 parole or the death penalty, and that would be based on a new  
23 series of evidence as to whether or not based on the background  
24 of the person or persons involved, the nature of the crime, that  
25 sort of thing, this ranked as a more serious or a less serious  
26 multiple murder; a more serious murder then the death penalty is  
27 required under the law, less serious, then life without parole  
28 is required under the law.

1                   Do you think you could choose either death or life  
2 without parole in this particular case based on that type of  
3 evidence?

4           A.     Yes.

5           Q.     You wouldn't favor one or the other going in?

6           A.     No.

7           Q.     You haven't formed an opinion now in your own mind  
8 as to what penalty is appropriate?

9           A.     No.

10          Q.     Do you belong to an organized religion?

11          A.     Yes.

12          Q.     Which one?

13          A.     Adventist.

14          Q.     Has the holdings of your church in any way  
15 influenced your views on crime and punishment or the death  
16 penalty?

17          A.     No.

18          Q.     It is based on your own individual conscience?

19          A.     Yes. I'm sorry.

20          MR. NEGUS: Thank you very much.

21                   I have nothing further.

22

23

EXAMINATION

24 BY MR. KOCHIS:

25          Q.     Mrs. Johnson, a few questions.

26                   Mr. Negus asked you what you thought about the  
27 death penalty, and one of your responses was you wondered  
28 sometimes the mechanics of how it was actually applied.



1 A. Uh-huh.

2 Q. Put that aside for a moment and just talking about  
3 in the abstract about the penalty. We have it on the books in  
4 California as a possible penalty.

5 Is that something that you are personally against  
6 or you feel it is appropriate in some cases? Do you have any  
7 feelings about the death penalty in terms of pros or cons?

8 A. Well, no. I don't think any feelings about -- as I  
9 said, I wonder how it is -- how the decision -- of course if it  
10 is a jury decision then, well, I can understand or the reasons  
11 sometimes, but not always.

12 Q. Okay. Well, in this case it is going to be a jury  
13 decision. And if you were one of the people selected you would  
14 be one of the people making the decision.

15 I take it in the past as a nurse you have had to  
16 make some decisions of rather serious consequences. Would that  
17 be correct?

18 A. Yes.

19 Q. How about if you were put in a position where you  
20 would have to make this type of serious decision whether to vote  
21 for life without the possibility of parole or death?

22 A. I think it wouldn't bother me anymore than other  
23 decisions that I have had to make.

24 Q. Okay. Some people, for religious reasons or  
25 philosophical reasons, they feel only God has the right to take  
26 another person's life. They don't feel comfortable in  
27 considering the possibility of sentencing someone to death.

28 Do you have any feelings like that in your

1 background?

2 A. No.

3 Q. On the other hand, or the other extreme, there are  
4 people who feel everytime you take the life of another human  
5 being you should be sentenced to death.

6 Do you fall in that category?

7 A. No.

8 Q. Okay. At the end of every criminal case, to make  
9 sure there is no mistake, we poll the jurors. The judge simply  
10 goes down the aisle. You know that, you sat four years ago.

11 A. I know, I was there.

12 Q. You were polled at that time?

13 A. Yes.

14 Q. I take it that wasn't a death penalty case or was  
15 it?

16 A. It wasn't a death penalty, but he was guilty. The  
17 judge though made the final decision.

18 Q. As to what his sentence would be.

19 A. Uh-huh.

20 Q. In this case, if we got to the penalty phase, you  
21 and eleven other jurors determined that the appropriate  
22 punishment would be death, would you have any problem indicating  
23 that in court when you were polled?

24 A. Could I what?

25 Q. Have any problem saying that was your verdict when  
26 you were polled in open court?

27 A. No.

28 Q. And, likewise, you know from your past experience

1 that one of the twelve people is elected foreperson, they sign  
2 and date the verdict form.

3 If you were selected as the foreperson in this  
4 case, and the jurors determined that the appropriate punishment  
5 was death, would you have any problem signing and dating that  
6 verdict form?

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

8 MR. KOCHIS: Okay. Thank you.

9 I have nothing further.

10 THE COURT: Nor do I. We would like to discuss it  
11 privately briefly. So, if you will wait outside the bailiff  
12 will give you further instructions. Thank you for coming in  
13 this afternoon.

14 Counsel, anything?

15 MR. NEGUS: No.

16 MR. KOCHIS: No.

17 THE COURT: Please have her back and bring in the next  
18 one.

19 THE BAILIFF: Mr. Fleener is next.

20

21

GRANT FLEENER

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

24

25

EXAMINATION

26 BY THE COURT:

27 Q. Good afternoon, sir.

28 A. Good afternoon.

1

1 Q. Are you Grant Fleener?

2 A. Yes.

3 Q. Mr. Fleener, first I want to explain the reason why  
4 we're gathered around in this fashion so that it is a little  
5 easier for everybody to relax and be informal and be candid in  
6 your responses to us.

7 Secondly, has anything happened to you since we saw  
8 you a couple a weeks ago that would complicate youu ability to  
9 serve in this case?

10 A. No.

11 Q. Thirdly, I want to remind you that I told you  
12 before when I was on the bench, that in this case there could be  
13 two possible phases. The first phase, of course, would be guilt  
14 or innocence.

15 If he's found guilty of multiple murders, then we  
16 would go into the second phase which would be the penalty phase,  
17 and in that second phase the jurors would only have two choices:  
18 One is bring back a verdict of death, the other one of life  
19 imprisonment without parole.

20 Now, the next question to you is, if we do get to  
21 that penalty phase, will you be able to fairly consider both of  
22 those two alternatives?

23 A. I think I would have difficulty with that. I might  
24 have difficulty with that.

25 Q. What's your problem?

26 A. Just the responsibility of doing something like  
27 that seems very weighty to me.

28 Q. Well, that's true. It would be a difficult

1 decision for everybody. But our law provides that that decision  
2 shall be made by some twelve people.

3 After you hear all of this evidence, maybe it gets  
4 easier for you along the way, maybe not, I don't know. Do you  
5 have any trouble normally making decisions?

6 A. No.

7 Q. Is there some particular concern with this service  
8 that concerns you; a particular problem?

9 A. No.

10 Q. Do you have real strong feelings one way or another  
11 about the death penalty?

12 A. I have actually waivered. I used to be very  
13 strongly against it and I think I'm moving toward it, in favor  
14 of it.

15 Q. All right. Recognizing, sir, that it would be a  
16 very weighty decision, one that's not easily made, nor should it  
17 be, still in all, with the operation of the trial, after hearing  
18 all the weeks of evidence and discussion, instructions from the  
19 Court, argument of counsel, discussion with your fellow jurors,  
20 do you think you could make that decision?

21 A. Yes.

22 Q. Do you feel that you would be able to weigh the  
23 evidence, pro and con, one way or the other, and then vote for  
24 either one of them depending upon the evidence and the  
25 circumstances brought out at the trial?

26 A. Uh-huh.

27 Q. You have to say yes or no.

28 A. Yes, sir.

1 Q. Do you think -- one final question on my part, Mr.  
2 Fleener -- you might be so concerned with having to make that  
3 weighty decision down the road in the penalty phase, that you  
4 would let that concern affect you in the guilt phase and maybe  
5 cop out by finding an appropriate verdict so that you'd never  
6 have to face it down the road?

7 A. Perhaps.

8 Q. Would you do your best to avoid it?

9 A. Of course.

10 THE COURT: Mr. Negus.

11

12

EXAMINATION

13 BY MR. NEGUS:

14 Q. Mr. Fleener, the judge has allowed Mr. Kochis and I  
15 to ask most of the questions, and we're not trying to pry or  
16 embarrass you, but the law requires that we get your honest  
17 opinions about these things.

18 Before you came to court at all, what had you heard  
19 about this particular crime?

20 A. I think it happened in San Bernardino, I think  
21 there was four people that were killed, and who whoever did  
22 it -- well, the suspect was accosted and somehow gotten a job  
23 with some people.

24 Q. Do you remember hearing anything about Mr. Cooper,  
25 my client, any details about his background or personality or --

26 A. Other than having escaped from prison, no.

27 Q. Did you hear any details about that particular  
28 escape, how he escaped?

1 A. Huh-uh.

2 Q. You have to say --

3 A. No.

4 Q. Did you hear anything about the circumstances of  
5 his arrest?

6 A. No.

7 Q. While the case was being -- in its early stages up  
8 in San Bernardino, did you read any stories about the  
9 proceedings in court?

10 A. I don't think so. I remember some things in the  
11 Union and on the news, but I think it was just about the arrest.  
12 A little background.

13 Q. Did you know the case was coming to San Diego  
14 before it got here?

15 A. No.

16 Q. When you found out that this was the case for which  
17 you were a prospective juror, what was your reaction?

18 A. Um, fear and fascination. Afraid of being stuck  
19 here, and it look likes an interesting trial.

20 Q. We're asking you questions about the death penalty,  
21 but you understand that the law requires us to ask those  
22 questions before guilt or innocence is even decided, and this is  
23 no indication Mr. Cooper will ever be found guilty that we're  
24 asking the questions. You understand that?

25 A. Yes, I understand.

26 Q. You say that one time you were opposed to the death  
27 penalty but now you are moving in favor of it.

28 What -- what factors do you think caused you to

1 move in favor of it?

2 A. Different things, like the usual stories about  
3 people that are released and, you know, do these things again.

4 Q. What do you think about the penalty of life  
5 imprisonment without parole.

6 A. Sounds a lot safer for everyone involved.

7 Q. Between the death penalty and life without parole,  
8 do you have any bias' one way or the other? The law requires  
9 you, based on certain kinds of questions, choose one or the  
10 other.

11 Do you think you could do that fairly following the  
12 law?

13 A. My first reaction when you said it was a bias  
14 toward life without parole.

15 Q. Well, let me give you a little bit more background.

16 What would happen is if somebody is convicted of a  
17 capital crime, as in this particular case, a multiple murder,  
18 then there is a second trial on the issue of penalty, and there  
19 is evidence which is introduced which makes it a more serious  
20 multiple murder, and evidence introduced which makes it a less  
21 serious multiple murder. You are to decide what weight to give  
22 the evidence if it is a more serious multiple murder or less  
23 serious multiple murder.

24 Now, if it is a more serious multiple murder, you  
25 vote for death; if it is a less serious one, you vote for life  
26 without parole. Basically there's an instruction in the law you  
27 have to makeup your mind how to apply the evidence, the law to  
28 the evidence. But basically it is somewhat of a structured



1 decision for you.

2 Do you think you could do that?

3 A. I think I would have trouble, I really do.

4 Q. If the case were appropriate, do you think you  
5 could vote for the the death penalty?

6 A. Perhaps.

7 MR. NEGUS: I appreciate your candor. Thank you.

8

9

EXAMINATION

10 BY MR. NEGUS:

11 Q. Mr. Fleener, the second to the last question Mr.  
12 Negus asked you you said you would have, might have trouble  
13 applying the evidence to the law in reaching the decision.

14 Do you recall that question and answer?

15 A. Uh-huh. In regards to applying a death penalty,  
16 you mean?

17 Q. Yes.

18 A. Right.

19 Q. Could you explain that for me.

20 A. Well, I have heard of cases, I am sure we all have,  
21 that they found out later that the person who was executed was  
22 innocent. That seems rather terminal, you know what I mean?  
23 Like -- if it had been life imprisonment, things would have been  
24 a lot better.

25 Q. You mentioned that initially you were opposed to  
26 the death penalty. Is there more than one reason you have just  
27 expressed that you were opposed?

28 A. No.

1 Q. And are you at the position where you are somewhat  
2 moving from that position toward considering the death penalty  
3 as an appropriate punishment in some cases, or not?

4 A. Well, it sounds like that description because I  
5 said I was moving in that one direction. Now I am saying that  
6 it sounds so final. That's about it.

7 Q. The feeling that you have expressed, is that a  
8 feeling you have had for some period of time, this concern about  
9 if someone is incorrectly convicted and executed it is something  
10 we can't undo?

11 A. Uh-huh. Yes.

12 Q. In the first phase your decision or your job is  
13 going to be to decide with the eleven other people whether or  
14 not this defendant is guilty. You are going to listen to the  
15 facts and law make a decision one way or the other.

16 Do you understand that?

17 A. Yes, sir.

18 Q. Do you think you might have a tendency at the end  
19 of that trial, when you are back there deciding whether this  
20 defendant did the murders, to say if I follow the law, I believe  
21 he's guilty, but I'm concerned that somewhere along the line he  
22 might not be guilty therefore I will vote not guilty just so I  
23 won't have to worry about it in the future just so we wouldn't  
24 get to the penalty phase?

25 A. I wouldn't want to do that, of course. It could be  
26 possible.

27 Q. For you?

28 A. Uh-huh.

1 Q. Is that a yes or no. I'm sorry he doesn't take --

2 THE COURT: I am not sure he can answer yes or no.

3 PROSPECTIVE JUROR: Thank you. That's a difficult one to  
4 say.

5 BY MR. KOCHIS:

6 Q. It is at least a possibility?

7 A. You know, circumstances right now are a lot easier  
8 than it would be then, and it is difficult for me to decide now.  
9 I think it would be rough then.

10 Q. Some people, when they're actually confronted with  
11 the decision, if we get to the penalty phase at that time, they  
12 realize for themselves it is so serious they can't make a  
13 decision one way or the other because both of the consequences  
14 are so serious.

15 Do you see yourself having those type of thoughts?

16 A. Yes.

17 Q. And do you think it is possible that those types of  
18 thoughts may make it difficult for you to follow the law in this  
19 case in that you would have to take the facts, apply the law and  
20 reach a decision?

21 A. Yes.

22 MR. KOCHIS: I don't have anything else, your Honor.

23 THE COURT: Are you telling us, sir, that you are  
24 uncertain as to your ability to follow the law and to vote  
25 impartially but that you would try to do so. Is that the gist  
26 of it?

27 PROSPECTIVE JUROR: Good estimation, yes.

28 THE COURT: Would you wait outside and let us discuss it

1 privately. The bailiff will instruct you further.

2 Anything, gentlemen?

3 MR. KOCHIS: No.

4 THE COURT: Mr. Negus.

5 MR. NEGUS: No.

6 THE COURT: Yes. Ask him to come back and bring in the  
7 next juror.

8

9

TREENA SHEPHERD,

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

12

13

EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon.

16 A. Hi.

17 Q. First, I want to explain why we're gathered in  
18 court around the table like this, and that's simply to be a  
19 little more informal in hopes that you will be a little more  
20 relaxed and that you can be a little more candid in your  
21 response to our questions.

22 A. Okay.

23 Q. Okay?

24 A. Okay.

25 Q. This is a faster way to do it than if I'm very  
26 formal up on the bench.

27 You are Treena Shepherd, I take it.

28 A. Right.

1 Q. Has anything happened to you since we last saw you  
2 that would make it more difficult for you to serve or complicate  
3 our problem?

4 A. No.

5 Q. Secondly, and before I get to the meat of the  
6 questions here, I want to remind you that told you before that  
7 we could have two phases to the trial. The first is guilt or  
8 innocence;; second would be penalty.

9 A. Uh-huh.

10 Q. If we do get to the penalty phase then the jurors  
11 would have only two choices: One, they could vote for death,  
12 secondly. they could vote for life without the possibility of  
13 parole. Do you remember that?

14 A. Yeah.

15 Q. Good. Okay.

16 Question one: If we do get to a penalty phase will  
17 you be able to fairly consider both of those two possible  
18 penalties?

19 A. I would.

20 Q. Would you be able to personally vote for either one  
21 of them, and you would make up your mind based upon the evidence  
22 in the trial and the circumstances brought out by the evidence?

23 A. Uh-huh.

24 Q. Is that yes?

25 A. Yes.

26 Q. The machine has trouble with those other sounds.

27 A. Oh, okay, no more uh-huh.

28 Q. Some jurors, Ma'am. have told us that they are so

1 concerned with having to make a life or death type of decision  
2 that they might improperly let that concern effect the way they  
3 would even determine the guilt phase of the trial. Do you think  
4 that you would be inclined to do that?

5 A. No.

6 THE COURT: Mr. Negus, please.

7

8

EXAMINATION

9 BY MR. NEGUS:

10 Q. Mrs. Shepherd, the Judge has let Mr. Kochis and  
11 myself ask most of the questions. We are not trying to pry or  
12 embarrass you, but the law requires that we get your honest  
13 opinions.

14 A. That's fine.

15 Q. You never heard anything about this case before you  
16 walked into court?

17 A. No, I haven't.

18 Q. Okay. What was your reaction when you found out  
19 that you were a prospective juror on a case of this sort?

20 A. I was a little shocked, but more interested.

21 Q. Why were you interested?

22 A. Just to see how -- I've never been in a court or  
23 anything like that, and it would just be interesting to me  
24 cause, to see how it was run and how it goes.

25 Q. We are asking you questions now about the death  
26 penalty even though there's not been a decision as to guilt or  
27 innocence.

28 A. Uh-huh.

1           Q.     The law requires to us do it backwards like that.  
2 I hope you don't take that as any sign that Mr. Cooper is guilty  
3 that we're asking these questions beforehand.

4           A.     No.

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

6           A.     My opinion is, well, I would have to do a lot of  
7 thinking on it, you know, it wouldn't come very easy for a  
8 decision.

9                     What do I think about it, huh, I don't -- really I  
10 think if -- if it came down to that I can make a proper  
11 decision, but right now I don't really -- wouldn't really think  
12 about it.

13          Q.     You don't have any knowledge or background?

14          A.     Right. I wouldn't -- yeah.

15          Q.     Do you think -- let me just ask you a more general  
16 question.

17                    Do you think that there should be a death penalty  
18 in the State of California?

19          A.     Yes.

20          Q.     Why?

21          A.     Well. for like mass murderers and people who -- who  
22 just go out and murder without even caring about other people.  
23 It just seems like it would be better for them and the society  
24 if, you know, they are put away instead of, you know long terms  
25 and jail for the rest of their lives growing -- growing that  
26 way.

27          Q.     Well, do you believe in the penalty of life  
28 imprisonment without parole as well? Do you think that's

1 appropriate in some cases?

2 A. Yes, in some cases.

3 Q. Realizing you haven't thought anything about it,  
4 but have you come up with you any opinions of your own as to  
5 which, you know, which sort of circumstances deserve the death  
6 penalty as opposed to life without parole?

7 A. Yes. I think a death penalty would be for someone  
8 who is -- I don't know what the proper word is -- but whacked  
9 out and that's all they know is murder, murder, murder. Like 30  
10 people, or I read that there was a guy who killed 30 people, you  
11 know, along highways and people like that, who don't -- who  
12 don't -- who should know better but they have no sense of  
13 anything else, just killing.

14 Q. So, you would make the penalty for somebody  
15 depending upon the nature of the person that did the crime?

16 A. Right. It just would depend on the person and the  
17 circumstances and the case.

18 Q. Do you belong to an organized religion?

19 A. No.

20 Q. Have your views on the death penalty and crime and  
21 punishment, are they basically your own personal conviction?

22 A. Yeah. yeah.

23 Q. They are not formed from any group or anything like  
24 that?

25 A. No.

26 Q. Okay. Fine. Thank you.

27

28

EXAMINATION



1 BY MR. KOCHIS:

2 Q. Ms. Shepherd, how do you feel about being placed in  
3 a position by us where you might have to make decisions of this  
4 magnitude?

5 A. It wouldn't -- I'd just use my best judgment. It  
6 wouldn't really bother me in any way.

7 Q. The reason we ask that, the reason I ask that is  
8 some people who haven't thought a lot about their feelings on  
9 the death penalty, when they're actually put in the position  
10 where they have to decide --

11 A. Right.

12 Q. -- they can't do it.

13 A. Uh-huh.

14 Q. Do you see yourself being one of those people?

15 A. No.

16 Q. We poll the jury at the end of every criminal case.  
17 The Judge goes down the row, asks each juror if the verdict the  
18 clerk has just read is in fact the way they voted.

19 If we get to the penalty phase in this case and the  
20 jury determines that the punishment should be death, would you  
21 have any problem saying in open court that's the way you voted?

22 A. No.

23 MR. KOCHIS: I don't have anything else. Your Honor.

24 THE COURT: Give us a chance to discuss it privately for  
25 a minute. The bailiff will shortly let you know.

26 PROSPECTIVE JUROR: Okay.

27 THE COURT: Thank you for coming in.

28 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Anything, Counsel?

2 MR. NEGUS: No.

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

5 We will be in recess until the next one comes.

6 THE COURT: All right. Who is next?

7 THE BAILIFF: Alexander Lukshis.

8

9 ALEXANDER LUKSHIS,

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

12

13 EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon?

16 A. Afternoon.

17 Q. Alexander Lukshis?

18 A. That's right.

19 Q. To explain, the reason why we're gathered around  
20 the table it's just a more informal way of gathering in order to  
21 maybe put you at ease a little bit to answer the hard questions  
22 we are going to put to you.

23 Has anything happened to you, sir, since we last  
24 saw you that would complicate your ability to serve in this  
25 case?

26 A. No, not that I know of.

27 Q. I'm going to have a very few questions and each of  
28 the attorneys have some questions of you.

1                   Before I commence with those, I remind you that I  
2 said that there could be two phases to this trial, a guilty  
3 phase, and then if we get to it, a penalty phase.

4                   In the penalty phase there would only be two  
5 possible choices: One, a verdict of death; two, a verdict of  
6 life imprisonment without the possibility of parole.

7                   Do you recall that?

8                   A.     Right, I do.

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

13                  A.     I think so.

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

17                  A.     I think so.

18                  Q.     Do you think you may be so concerned with having to  
19 make that heavy decision in a penalty phase that you might try  
20 to avoid ever getting there by perhaps finding an inappropriate  
21 verdict in the guilt phase?

22                  A.     No.

23                  Q.     Thank you, sir.

24                  THE COURT: Mr. Negus.

25

26

EXAMINATION

27 BY MR. NEGUS:

28                  Q.     Mr. Lukshis, the Judge is letting Mr. Kochis and

1 myself ask most of the questions. We are not trying to pry into  
2 your affairs or embarrass you, but we need to know your personal  
3 opinions about some of these matters before we can go any  
4 further.

5                   What had you heard about this case before you came  
6 to court?

7           A.     The only thing I've heard is what I've -- a little  
8 bit in the papers.

9           Q.     That was in the Times?

10          A.     In the Times.

11          Q.     What do you remember about the circumstances of the  
12 offense?

13          A.     Not too much. At the time this was probably really  
14 interesting subject, but then it has just been passed over and  
15 nothing has really stuck.

16          Q.     Do you remember ever hearing anything about Mr.  
17 Cooper or his background?

18          A.     No.

19          Q.     Did you read about his arrest?

20          A.     Yes.

21          Q.     What do you remember about that?

22          A.     The only thing I remember is when he was -- caught  
23 up -- apprehended off a ship.

24          Q.     What do you recall about those events?

25          A.     That's about all I can recall.

26          Q.     There were some stories about the case in the Times  
27 as the -- when we were in San Bernadino in court. Do you  
28 remember reading any of those stories?

1 A. No.

2 Q. Did you ever read any stories about young Joshua,  
3 the surviving victim of the case?

4 A. No.

5 Q. And did you know the case was coming to San Diego  
6 before you came to court?

7 A. Yes.

8 Q. How did you learn that, in the paper?

9 A. It was announced in the papers.

10 Q. What was your reaction when you found out that you  
11 were, you were a prospective juror -- that you were a  
12 prospective juror in a case such as this?

13 A. What was that?

14 Q. Try it again?

15 A. Just the first part.

16 Q. What was your reaction when you learned that?

17 A. Well, I didn't really have any reaction. It was  
18 just kind of a -- just no reaction I can think of.

19 Q. We're --

20 A. That's it.

21 Q. We're asking you questions about the death penalty.  
22 That's because the law requires to us ask those questions before  
23 anybody determines the guilt or innocence. I hope you  
24 understand that just by asking these questions nobody is  
25 suggesting to you Mr. Cooper is guilty of anything.

26 Do you understand that?

27 A. Right.

28 Q. What is your general opinion about the death

1 penalty?

2 A. Well, in some cases I think it's probably a good  
3 idea; in others I don't.

4 Q. Why do you think it's a gods idea?

5 A. Well it depends upon the circumstances. I think it  
6 is a burding (sic) on the government and on the people  
7 themselves, like the guards, and where they have to be extra  
8 cautious; and because you read or you hear about criminals, they  
9 don't -- they don't care, I mean, that's it, and no matter what  
10 they do as nothing else could happen to them.

11 Q. What is your opinion about life imprisonment  
12 without parole?

13 A. Well, it all depends on the circumstances too. I  
14 think, probably in some cases it's a good idea.

15 Q. Do you have your mind made up as to which cases  
16 deserve the death penalty --

17 A. No.

18 Q. -- as opposed to life?

19 A. No.

20 Q. From what you got out of the paper did you -- did  
21 you come to any opinion as to whether or not Mr. Cooper was  
22 guilty or innocence of this particular case?

23 A. No. I think --

24 Q. Did you come to any opinion as to what was the  
25 appropriate penalty for this particular case?

26 A. None; none. I don't know what the -- what the  
27 circumstances is.

28 Q. Okay. That's what we're trying to find out. Some

1 people we find have, so we just have to ask you what your  
2 opinions are.

3 A. Right.

4 Q. Do you belong to an organized religion?

5 A. No.

6 Q. Have your opinions on the death penalty or crime  
7 and punishment in general, are they basically your own view or  
8 do you sort of belong to a group which has some sort of --

9 A. No.

10 Q. They are basically your own?

11 A. Right.

12 Q. Thank you.

13 I have nothing further.

14

15

EXAMINATION

16 BY MR. KOCHIS:

17 Q. I have are one or two questions.

18 Practically speaking, how do you feel about being  
19 put in a position where you might have to make these types of  
20 decisions?

21 A. I think personally I kind of feel sometime like  
22 very uncomfortable.

23 Q. What we're trying to learn at this point is some  
24 people wait until they are actually put in a position where they  
25 have to decide whether to vote for life or death, for example,  
26 in a penalty phase.

27 A. Right.

28 Q. At that point they feel the decision is so serious

1 they can't make it one way or the other. Do you see any problem  
2 like that arising in yourself?

3 A. I don't think so. Not at the present time I don't.

4 Q. Okay. So without speculating you feel comfortable  
5 that once you hear all the evidence and the law you could make  
6 the decision one way or the other?

7 A. I think so. Right at the present time I'd say yes,  
8 but --

9 Q. Okay. There were two periods in the last decade,  
10 in the '70s, once in '74, once in '78, in which death penalty  
11 related issues were on the ballot. People circulated petitions.  
12 They gathered signatures. There was a lot of controversy and  
13 discussion about the death penalty at that time. Were you  
14 involved in either --

15 A. No.

16 Q. -- signing petitions for --

17 Did you take a strong position at that time on the  
18 death penalty?

19 A. No.

20 Q. When you talked to Mr. Negus about your current  
21 feelings on the death penalty, you mentioned something about.  
22 And I wasn't sure I heard you, did you say keeping people in  
23 prison puts a burden on the government and the guards?

24 A. Well, on circumstances, I mean, certain things  
25 that, say, a violent criminal, you put them back in the prison  
26 on, say, on a -- for life, he's going to come back out and say,  
27 well, I don't care, you know, they can't do anything more to me.  
28 So in some of those cases I would think it would be -- say a



1 death penalty would be in order.

2 Q. Okay.

3 Q. At the end of every criminal case we poll the jury.  
4 The Judge will go down the row of the jurors and ask each one of  
5 them in open court if the verdict the clerk has just read is in  
6 fact the way they voted.

7 If in this case we got to the penalty phase and the  
8 jury determined that the appropriate punishment was death, would  
9 you have any problem saying in open court that that's the way  
10 you voted?

11 A. Thinking of it right now, I don't think so.

12 Q. Also, the law requires that one person be elected  
13 as the foreman. That person dates and sign the verdict form.

14 If the jury selected you as the foreman and you and  
15 the other eleven people decided that the appropriate punishment  
16 was death, would you have any problem dating and signing that  
17 verdict form?

18 A. No.

19 Q. Thank you.

20 I have nothing.

21 THE COURT: Nor do I.

22 Would you wait outside, please, let us discuss it  
23 privately, then the bailiff will let you know. Thank you for  
24 coming in today.

25 Anything, gentlemen?

26 MR. NEGUS: No.

27 MR. KOCHIS: No.

28 THE COURT: Yes. Give him a return date and bring in the

1 next, please.

2 THE BAILIFF: Mary Cileu.

3 PROSPECTIVE JUROR: Good afternoon everyone.

4

5

MARY CILEU.

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

8

9

EXAMINATION

10 BY THE COURT:

11 Q. Good afternoon to you. Is that pronounced Cileu?

12 A. Cileu uh-huh.

13 Q. Mrs. Cileu, I'm Judge Garner. We are gathered  
14 around this table in an informal manner in order to put you at  
15 ease.

16 A. I'm still nervous.

17 Q. You are still nervous. We do what we can in any  
18 event.

19 A. Okay.

20 Q. First question I have is to inquire if anything has  
21 happened to you since we last saw you that would complicate your  
22 ability to serve in this case?

23 A. I don't think so.

24 Q. The second thing I want to do is to remind you of  
25 some of the things that I said before; namely, that there could  
26 be two phases to this trial. We don't know if we will every get  
27 to the second phase, it would depend on how the first phase is  
28 determined. And the first phase is the guilt or innocence.

1           If he is found not guilty or certain verdicts are  
2 not returned, then we will never worry about the second phase.

3           If we do get to a second phase, however, the jurors  
4 will be faced with only two possible, namely, death by execution  
5 or secondly, life in prison without the possibility of parole.

6           My question of you now is: If we do get to that  
7 second phase will you be able to fairly consider both of the two  
8 possible penalties?

9           A.    I believe so, yes.

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

13          A.    Yes.

14          Q.    Some jurors are so filled with concern about having  
15 to make a life or death type of decision that they admit that  
16 they may not find an impartial verdict, so to speak, in the  
17 guilt phase or they may find an inappropriate verdict in the  
18 guilt phase just to cop out or just to avoid ever having to make  
19 that hard decision down the road.

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

21          A.    I don't think so. I can give you my reason, but  
22 are you interested in hearing?

23          Q.    Sure.

24          A.    I believe that life is a precious gift, and I feel  
25 obligated to the violated and I also feel obligated to the  
26 accused to make sure that they are dealt with correctly.

27          Q.    Let me make the attorneys follow up on that.

28

## EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BY MR. NEGUS:

Q. Mrs. Cileu, the Judge is letting us, Mr. Kochis and myself, ask most of the questions.

A. Okay.

Q. And we are not trying to intrude or embarrass you, but we do, as you indicated, need to know your personal opinions about things.

A. Okay.

Q. In this particular case apparently you followed the case fairly closely in the news media before when it was on?

A. Yes.

Q. Was that primarily in the newspaper or in the television or both?

A. No TV, primarily on the newspaper, newspaper and radio.

Q. Newspaper and radio?

A. Uh-huh.

Q. What do you remember hearing and reading about the actual crime itself?

A. As far as I know the accused was arrested, not at the scene, he was arrested later on, so I really don't know. I mean, unless the evidence -- unless I was to -- of course, you can always -- you can't really depend on what you hear in the newspaper or the radio, so at this point I really don't know.

Q. What you're telling me is you haven't made up your mind one way or the other as to his guilt or innocence?

A. Correct.

1 Q. What I would like to do is inquire about what you  
2 did hear about this so we have some idea, you know, there has  
3 been information and misinformation about what you read in the  
4 paper.

5 A. As far as I know he was arrested later. There was  
6 either -- the evidence leading to the arrest had to do with  
7 either fingerprints or clothing, bloody clothing, or something  
8 that related to the accused. I heard about the murders, of  
9 course, and I did hear that he was later arrested down at the  
10 marina. He was trying to escape. And there's also rape charge  
11 or something. But I mean, I can't follow the -- I can't tell  
12 you in detail, but I'm pretty much aware of -- of the crimes.

13 Q. As far as the alleged rape, there's not going to be  
14 any --

15 A. Oh, I know, but I'm just trying to tell you what I  
16 basically remember.

17 Q. I understand; I appreciate.

18 A. Uh-huh.

19 Q. I'm not -- but there is -- that will not come up in  
20 this particular case.

21 A. I realize that.

22 Q. Okay. And there is not going to be any chance to  
23 either prosecute or defend against that charge.

24 A. Okay.

25 Q. Do you think that in deciding guilt or innocence in  
26 this particular case you can keep that out of your mind?

27 A. I think so.

28 Q. After the -- after Mr. Cooper was arrested we've

1 had several, almost a year of court proceedings since then.  
2 Have you followed those in the paper at all?

3 A. I don't understand proceedings --

4 Q. In San Bernadino County.

5 A. Relating to his -- his escape from prison?

6 Q. No. There was -- there were -- there was various  
7 activities in court on this case before we came down to San  
8 Diego up in San Bernadino, do you recall hearing anything about  
9 that at all?

10 A. Not that would be significant to the case in my  
11 viewing.

12 Q. Well, okay. Did you know that the case was coming  
13 to San Diego?

14 A. Yes, because they felt that he was not going to be  
15 dealt with fairly in San Bernadino so that's why they -- so,  
16 yes, I did, yeah.

17 Q. Do you remember hearing any of the presentation of  
18 evidence at the preliminary hearing or any of the motions that  
19 have taken place?

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

21 Q. Did you ever hear any follow-up stories about young  
22 Josh, the boy that survived?

23 A. Yes. Let me see, I think he stated that -- the  
24 only thing I can remember, there was just more than one man,, or  
25 something, more than one person involved in it, the slayings.

26 Q. We've also been asking questions about the death  
27 penalty in this particular case.

28 A. Uh-huh.

1           Q.     And the -- as the Judge explained we may never even  
2 get to that particular issue. The fact that we are required by  
3 law to ask you these questions before even guilt or innocence is  
4 decided, does that in any way give you the impression that Mr.  
5 Cooper must be guilty of anything?

6           A.     I don't think so.

7           Q.     You can presume him innocent until the prosecution  
8 proves otherwise?

9           A.     (No audible response.)

10          Q.     You have so say out loud.

11          A.     Yes.

12          Q.     Thank you. What is your personal opinion about the  
13 death penalty?

14          A.     Like I said, I think, you know, I feel almost  
15 responsible to make sure that justice is carried out. And at  
16 this point I really can tell you that I don't know if he is  
17 guilty because I haven't heard any of the evidence. And like I  
18 said, you can't always believe what you hear in the paper.

19                   And I have to be honest with you, I did see picture  
20 of Mr. Cooper, and when I did come in this room a few weeks ago  
21 I perhaps thought that -- well, this is my first time and so by  
22 looking at Mr. Cooper and again going back and remembering what  
23 I read, I really don't know. I really couldn't tell you unless  
24 I heard the evidence or, you know, followed the case I really --  
25 I really don't know.

26                   As far as the death penalty, I believe that it's  
27 also my duty that if he is innocent, I wouldn't want him to die  
28 for something he didn't do; and also for the people that died I

1 want to make sure that their death is compensated for.

2 Q. Leaving aside Mr. Cooper's guilt or innocence --

3 A. Uh-huh.

4 Q. -- for the moment, do you have any particular  
5 opinion that whoever is responsible for this particular crime  
6 should receive -- Well, let me back up a minute.

7 The penalty prescribed by law for the crime of  
8 multiple murder is either life in prison without parole or the  
9 death penalty.

10 A. Uh-huh.

11 Q. And that -- which one it is depends upon evidence  
12 presented which would make it a more serious multiple murder or  
13 less serious multiple murder.

14 A. Uh-huh.

15 Q. And then the jurors would be instructed to vote  
16 according to that evidence.

17 Do you have your mind made up, as it were, as to  
18 which of those two penalties is appropriate in this particular  
19 case?

20 A. I think punishment is deserved regardless how many  
21 people were killed. Of course, the number of murders really  
22 doesn't make any difference I. Think if you take somebody's  
23 life you have to give up your own, period, if you're guilty.

24 Q. Okay.

25 A. So far as life imprisonment or death, either way I  
26 suppose.

27 Q. Well, I guess what I'm asking is in the law now  
28 that we are talking about --



1 A. Uh-huh.

2 Q. -- what would happen if -- whoever is responsible  
3 for these crimes --

4 A. Uh-huh.

5 Q. -- were convicted, then you would have to decide  
6 the penalty. And the law wants people who can keep an open mind  
7 to sit as jurors on that particular issue, people who haven't  
8 decided that this particular crime deserves the death penalty,  
9 or haven't decided it deserves life without parole, but can keep  
10 their minds open and depending upon the evidence about the  
11 nature and background of the defendant, that sort of thing, can  
12 make -- can make a fair judgment on that.

13 Do you think that you made up your mind that  
14 because somebody was murdered that the death penalty is  
15 necessarily or automatically called for in this case?

16 A. No, not necessarily.

17 Q. Whatever the Judge instructs you as to what you're  
18 supposed to do, do you feel you would be able to carry out that  
19 duty?

20 A. Yes.

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

22 A. Yes, I do.

23 Q. What religion?

24 A. Catholic.

25 Q. Have the views of the church in any way influenced  
26 your own particular opinions on the death penalty?

27 A. No.

28 Q. Or crime and punishment.

1 A. No.

2 Q. That is, those are your own opinions?

3 A. (No audible response.)

4 Q. I don't think she got an answer to your own  
5 opinions. You have to say yes.

6 A. Yes.

7

8

EXAMINATION

9 BY MR. KOCHIS:

10 Q. Do you pronounce your last name Cileu?

11 A. Cileu, uh-huh.

12 Q. Putting this case for a moment aside and just  
13 talking about the death penalty as a possible punishment in the  
14 abstract, is that something you are opposed to, in favor of, or  
15 what are your feelings about that topic?

16 A. I'm not opposed to it, no. I am in favor. Like I  
17 said and I keep on repeating, I think if you take somebody's  
18 life you have no right to be here. you have to give up your own.  
19 And if that was what the punishment was designated by the Judge,  
20 then I think I would feel good about it, yeah.

21 Q. That brings up a couple areas. In this type of  
22 case the Judge doesn't decide.

23 A. Oh, we do, the jury does. Okay.

24 Q. So, you and eleven other people would decide which  
25 way to vote.

26 A. Uh-huh.

27 Q. You have -- Is that a yes? I don't mean to  
28 interrupt you.

1 A. I'm sorry. I didn't know she was -- go ahead.

2 Q. I've forgotten the question you responded to.

3 In this case you apparently have an idea that if  
4 you take someone's life and you're proven guilty perhaps an  
5 appropriate punishment would be death; is that correct?

6 A. (No audible response.)

7 Q. You are nodding your head at me, but she can't take  
8 that down.

9 A. Yes.

10 Q. But are you willing to keep an open mind and not  
11 decide what appropriate punishment in this case is, whether it's  
12 life without the possibility of parole or death, until you hear  
13 all the evidence?

14 A. Yes.

15 Q. And if you felt that the appropriate punishment in  
16 this case was to lock Mr. Cooper up for the rest of his life,  
17 could you vote that way?

18 A. Yes, I believe so.

19 Q. Getting practical for a minute, how do you feel  
20 about having to make serious decisions like this?

21 A. Well, like I said, it would be my very first time,  
22 but it's almost, like I said, it's almost an obligation to make  
23 sure that justice is carried out. So it would be very  
24 difficult, but I think I could live with it,

25 Q. Along that line about living with it, we poll the  
26 jury at the end of a criminal case and we ask them in court if  
27 the verdict that's just been read by the clerk is in fact the  
28 way that they voted.

1                   If a death penalty verdict was returned in this  
2 case, would you have any trouble saying in open court that  
3 that's in fact the way you voted?

4                   A.     No.

5                   Q.     Likewise, the law requires that one of the jurors  
6 be elected as the foreperson and that person is required to date  
7 and sign the verdict form.

8                   If the jury elected you as the foreperson -- You  
9 are shaking your head no?

10                  A.     No.

11                  Q.     Why are you shaking your -- is there a reason?

12                  A.     No. Go ahead. I was just ahead of myself. I was  
13 reading you.

14                  Q.     If the law elected you -- if the jury elected you  
15 as the foreperson and the jury determined that the appropriate  
16 punishment was death, would you have any problems dating and  
17 signing the verdict form?

18                  A.     No.

19                  Q.     There were two periods in time in the last decade  
20 in the '70s in which death penalty related issues were on the  
21 ballot. People circulated petitions. They gathered signatures.  
22 We had a lot of debate and controversy about it. People voted  
23 on it.

24                  Were you involved in either gathering the  
25 signatures or circulating the petition?

26                  A.     No.

27                  Q.     Did you take a strong position on it one way or the  
28 other back at that time in the '70s?

1 A. In the '70s, no, I didn't vote then.

2 Q. Fine. Thank you.

3 I have no further questions.

4 THE COURT: Nor do I.

5 Would you wait outside for a moment, please, let us  
6 discuss it privately and then the bailiff will let you know.

7 PROSPECTIVE JUROR: All right. Okay.

8 THE COURT: Thank you for coming in.

9 THE COURT: Anything, counsel?

10 MR. KOCHIS: No.

11 MR. NEGUS: No.

12 THE COURT: Mr. Negus, I didn't hear you.

13 MR. NEGUS: No; no.

14 THE COURT: Give her an appointment slip and bring in the  
15 next one.

16 THE BAILIFF: Julia Shick.

17

18 JULIA SHICK

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

21

22 EXAMINATION

23 BY THE COURT:

24 Q. Just come in and have a chair, please.

25 Good afternoon.

26 A. Good afternoon.

27 Q. You are Julia Shick?

28 A. Yes.

1           Q.     Ms. Shick, I am Judge Garner, I am going to ask you  
2 a few questions and then the attorneys are going to have a few  
3 questions. I am not going to take too long.

4                     We deliberately arranged the seating around the  
5 table in hopes that you will settle back and relax and not be  
6 too nervous or apprehensive. Okay?

7                     First, has anything happened to you since we last  
8 saw you that would complicate your ability to serve in this  
9 case?

10           A.     No.

11           Q.     Secondly, remember when I was sitting on the bench  
12 up there I told you and all the rest of the people that there  
13 could be two phases to this trial. The first phase would be the  
14 guilt phase, the jury would decide whether he's guilty or not  
15 guilty. And then if we get to a second phase the jurors would  
16 have only two choices: Namely, to determine whether to return a  
17 verdict of death by execution or a verdict of life imprisonment  
18 without the possibility of parole.

19                     I am asking you about the penalty phase, or that  
20 second part, even though we might not get to it. However, if we  
21 do get to a penalty phase, will you be able to fairly consider  
22 both of those two possible penalties: Death and life without  
23 parole?

24           A.     Yes.

25           Q.     Would you be able to vote for either one of those  
26 and make your decision based upon the evidence and the  
27 circumstances brought out in the trial?

28           A.     Yes, I'd -- like I'd try.

1 Q. Do you feel that you have your mind made up one way  
2 or the other at this time, this stage?

3 A. No.

4 Q. Some jurors have such a dread of having to make  
5 that heavy decision of life or death in a penalty phase, so to  
6 speak, they candidly have told us, gee, judge, I might be  
7 tempted at the time to bring an inappropriate verdict back in  
8 the guilt phase to avoid ever having to worry about it later on.

9 Do you think you might be inclined to do that sort  
10 of thing?

11 A. I don't know.

12 Q. Do you have any trouble making decisions generally?

13 A. I think when it came to life or death, I'd have a  
14 hard time making the decision.

15 Q. Don't misunderstand, nobody is saying that it would  
16 be easy for anybody. These are tough decisions, it is a tough  
17 case, and yet our law provides that jurors must make that  
18 decision.

19 So, if it came down to it, and you heard all the  
20 evidence and the attorneys have had a chance to comment on the  
21 evidence, and I told you what the law was, do you think -- you  
22 would then have to discuss it with your fellow jurors, do you  
23 think you would be able to make a verdict one way or another?

24 A. Yes.

25 THE COURT: Mr. Negus.

26

27

EXAMINATION

28 BY MR. NEGUS:

1           Q.     Ms. Shick, the judge has let the lawyers, Mr.  
2 Kochis and myself, ask most of the questions. We're not trying  
3 to pry or embarrass you or make you more nervous or anything,  
4 but the law requires that we get your opinions on these matters  
5 before we go any further.

6                     You had heard nothing about the case before you  
7 came to court.

8           A.     No.

9           Q.     Nothing was said that reminded you of anything that  
10 you may have heard or something.

11           A.     I am just not the type that, you know, that reads  
12 the newspapers. I just don't like to hear about stuff like  
13 that.

14           Q.     Okay. What was your reaction when you found out  
15 that you were a prospective juror on a case like this?

16           A.     Shock. Surprise.

17           Q.     Did you have any feeling about sitting on this kind  
18 of case as opposed to any other?

19           A.     No.

20           Q.     Do you think the fact that you normally dislike  
21 this sort of thing would make it hard for you to be a juror in  
22 this kind of a case?

23           A.     Possibly.

24           Q.     Why?

25           A.     It is just I have gone through like a lot of  
26 surgeries in the last year and some of the medication I am on  
27 tends to make me depressed, and I was afraid that it would kind  
28 of depress me.



1 Q. Well, do you think that's a serious enough problem  
2 that you'd want to be excused, or do you think you could  
3 overcome that?

4 A. I think I could overcome that. You know, I missed  
5 a lot last year, and I have had like four major surgeries,  
6 missed a lot of work. I am a civil service employee, they have  
7 give to me the time, but I don't know, I think -- I don't think  
8 they'd appreciate it.

9 Q. I am sure nobody appreciates this sort of thing.  
10 What we're asking you is questions about the --  
11 your feelings about the death penalty, which I think you  
12 understand doesn't mean that you will ever have to make that  
13 decision, but we are required by law to ask you these questions  
14 before guilt or innocence is determined.

15 What is your opinion about the death penalty?

16 A. I don't -- I can't say I'm for it or against it. I  
17 would have to listen to all. you know, what happened in court  
18 and whatever; weigh everything against. I just don't know.

19 Q. Do you think that the State of California should  
20 have a death penalty?

21 A. I don't -- yes.

22 Q. You haven't given it a lot of thought. You have to  
23 say no outloud.

24 A. Well, no. You -- like all your life you always  
25 hear, you know, take a life; give your life. But I'd just have  
26 to wait and listen and, you know, find out the circumstances.  
27 You know, just have to weigh all the facts and, I don't know,  
28 when it came down to you could say for it -- when it came down

1 to making that kind of a choice, I don't -- I don't think I am  
2 really for it. I don't know.

3 Q. What do you think about life imprisonment without  
4 parole? Do you think you could do that?

5 A. Yes.

6 Q. If it came down to making a decision as to the  
7 punishment for whoever is responsible for this particular crime,  
8 the judge would instruct you that there will be different kinds  
9 of evidence presented, some which make it a more serious crime,  
10 some which make it a less serious crime. And the job of the  
11 juror would be to follow that evidence and apply the law to it,  
12 then whichever was stronger to vote that particular way,  
13 somewhat of a structured decision.

14 Do you think you could do that?

15 A. Yes.

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

17

18 EXAMINATION

19 BY MR. KOCHIS:

20 Q. There is two sides. It shouldn't take long. I  
21 have less questions than Mr. Negus.

22 Again, we don't want to pry into your personal  
23 background or anything, but there is some certain information we  
24 have to evaluate. and the only way we can do it is ask  
25 questions.

26 The medication that you have taken in the past, is  
27 that something that you will have to continue to take for the  
28 next five or six months? Do you know?

1 A. For the rest of my life.

2 Q. Does it effect your ability to, for example, stay  
3 awake during the trial or does it effect that?

4 A. No.

5 Q. Does it effect your hearing or anything like that?

6 A. No.

7 Q. What I have been be able to gather from some of  
8 your answers is it would be a very hard decision if we get to  
9 the penalty phase for you to make your mind up one way or the  
10 other. Is that true?

11 A. Yes.

12 Q. Some people, when they're actually put in the  
13 position of having to decide what to do with another person's  
14 life, they freeze and they can't make the decision one way or  
15 the other.

16 Do you see that possibility arising with yourself?

17 A. Yes.

18 Q. Would you find it very hard to vote, for example,  
19 for the death penalty?

20 A. Yes.

21 Q. Do you think that feeling that you have might  
22 effect the way you would look at that type of evidence, for  
23 example, during the penalty phase?

24 A. No.

25 Q. Is it fair to say at this point you would prefer  
26 voting for life without the possibility of parole as opposed to  
27 the death penalty?

28 A. Yes.

1 Q. Would that feeling prevent you from ever voting for  
2 the death penalty?

3 A. No. I don't think so, no.

4 Q. Okay. At the end of the trial we poll the jurors,  
5 we go down the row, and we ask them in open court if the verdict  
6 that the clerk has read is in fact the way they voted.

7 If the jury in this case felt that the appropriate  
8 punishment was death, and you were a member of that jury, would  
9 you have any problem saying in open court that that was the way  
10 you voted?

11 A. No.

12 MR. KOCHIS: Thank you. I don't have anything else, your  
13 Honor.

14 THE COURT: Would you wait outside just a minute and let  
15 us discuss it privately, then the bailiff will inform you.  
16 Thank you for coming in.

17 Any challenges, gentlemen?

18 MR. NEGUS: No.

19 MR. KOCHIS: No, your Honor.

20 THE COURT: Please give her a return date.

21

22

WILLIAM MALONEY

VAJ

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, sir.

1           A.     How do you do.

2           Q.     Are you William Maloney?

3           A.     Yes.

4           Q.     Mr. Maloney, to explain the informal arrangement  
5 around the table, it was done just to put you a little more at  
6 ease to answer the hard questions we're going to put to you this  
7 afternoon.

8                     First, has anything happened to you since we last  
9 saw you that would complicate your ability to serve in this  
10 case?

11          A.     Not really.

12          Q.     Secondly, do you remember I told you when I was up  
13 there with the robe on that there could be two phases to this  
14 trial. In the first phase it is the guilt or innocence phase.  
15 Then if the jurors find him guilty of multiple murders, we could  
16 then go to a second phase or penalty phase.

17                     In the penalty phase the jurors would have to  
18 determine whether, which of the two possible alternatives is the  
19 most appropriate penalty, namely, death by execution or life  
20 imprisonment without the possibility of parole.

21                     Question. If we do get to that penalty phase, will  
22 you be able to fairly consider both of those two possible  
23 alternatives?

24          A.     I believe I can.

25          Q.     Would you be able to personally vote for one or the  
26 other depending upon the evidence and the circumstances brought  
27 out at the trial?

28          A.     Yes, I think so.

1           Q.     Some people, sir, have such a dread of having to  
2     make that hard life or death type of decision that they candidly  
3     admit to us that they are afraid that concern would affect the  
4     way they'd vote in the penalty phase, excuse me, the guilt  
5     phase; that they'd find an inappropriate verdict in the guilt  
6     phase and they would avoid ever making that decision.

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

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

9           THE COURT: Thank you. Mr. Negus.

10

11

EXAMINATION

12     BY MR. NEGUS:

13           Q.     Mr. Maloney, the judge is allowing the lawyers to  
14     ask most of the questions. We're not trying to pry or embarrass  
15     you in any way, but the law requires that we get your opinions  
16     about matters before we go any further.

17                     What had you heard about this case before you first  
18     came to court?

19           A.     I really can't say. I heard quite sometime ago of  
20     the circumstances surrounding it, and I haven't really paid too  
21     much attention to it since then because actually I wasn't very  
22     interested, frankly.

23           Q.     Did you hear anything about the search for a  
24     suspect or the accusation of Mr. Cooper?

25           A.     No. I understood they were looking for the suspect  
26     and that they hadn't found him. That's all I was aware.

27           Q.     Did you become aware of his arrest?

28           A.     Let's see, now. I think that was in the paper. I

1 believe I did become aware of his arrest.

2 Q. Did you become aware of the circumstances  
3 surrounding it?

4 A. Only that he was on a boat, that's all I remember.

5 Q. Did you hear anything about the case as it  
6 progressed through the courts in San Bernardino County before it  
7 came here?

8 A. No.

9 Q. Did you know it was coming to -- the case was  
10 coming to San Diego?

11 A. No, I did not.

12 Q. What was your source for the information, primarily  
13 the newspapers, TV, or both?

14 A. No, I think it was mostly the newspapers. The only  
15 news -- the only time I watch news on TV is at 5:00 o'clock, the  
16 local news, and they really didn't go into too much detail on  
17 anything surrounding the case. They mentioned it, I think in  
18 passing, a couple of times, that it had happened, and that's all  
19 I can remember.

20 Q. The stories were primarily in the Tribune?

21 A. In the Tribune, right.

22 Q. What was your reaction when you found out that you  
23 were a potential juror in this particular case?

24 A. Let me see. I don't really -- I don't really -- I  
25 don't think I'm able to answer that succinctly. I felt that I  
26 was -- that I was called in on jury duty, didn't know what I was  
27 called in for when I appeared up here, and the judge explained  
28 that was, that the defendant was Mr. Cooper. then that is the

1 first time I was aware of it. I had no reason to feel any  
2 differently than it would be in any other case if I was called  
3 in as a potential for juror.

4 Q. From the information that you did receive in the  
5 media, had you formed any impression or opinions as to whether  
6 or not Mr. Cooper was guilty or innocent of the crime?

7 A. No, I have not.

8 Q. We're asking you some questions about the death  
9 penalty. The law requires us to ask those questions before  
10 guilt or innocence is ever determined.

11 You understand the fact that the law requires us to  
12 do that is no indication that he's in fact guilty one way or the  
13 other.

14 A. No.

15 Q. What is your general opinion about the death  
16 penalty as a matter of public policy?

17 A. Well, I feel that if the person is guilty and has  
18 committed a crime extraordinarily enough to warrant the death  
19 penalty, then I feel he should be given it.

20 Q. What do you feel about life imprisonment without  
21 possibility of parole?

22 A. Life imprisonment without the possibility of parole  
23 is another punishment I would assume that could take, take  
24 precedence, and I feel maybe this might be more humane. I am  
25 not so sure, I have never been in prison so I can't -- can't  
26 say.

27 Q. In this particular, in this particular case, have  
28 you formed an opinion based upon what brief information that you



1 had from the newspaper as to what penalty the person whose  
2 responsible for this particular crime should receive?

3 A. No, not really, I haven't -- I can't say. I don't  
4 think he was tried in the newspapers, and I don't feel that in  
5 reading the newspaper I tried him and thought of him in terms of  
6 his -- what his penalty, punishment should be.

7 Q. You would keep an open mind on that particular  
8 issue?

9 A. I feel I can, yes. I think I have a feeling of  
10 empathy for people, and it is to me very, very important.

11 Q. Do you belong to an organized religion?

12 A. Yes. I am Catholic.

13 Q. Have the opinions or the doctrines of the church in  
14 any way influenced your particular beliefs on crime and  
15 punishment, or on the death penalty?

16 A. Not -- no, not really. I go to church to worship  
17 God, I don't go to church to establish any belief.

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

19

20

#### EXAMINATION

21 BY MR. KOCHIS:

22 Q. Mr. Maloney, recognizing that we would try this  
23 defendant in this courtroom and not in the news media, how do  
24 you feel about the serious decision such as the one you have in  
25 this case. First, in the guilt phase, whether he was guilty or  
26 not.

27 A. I believe that I could make that decision based on  
28 the evidence and testimony.

1 Q. And if we got to the penalty phase, how do you feel  
2 about being put in a position where you had to make the type of  
3 decision as to what to do with this defendant?

4 A. I feel I could make it. I am not too sure I would  
5 like to, but I feel I can make it.

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

8 Do you think that's something we should have on the  
9 books or it is something we shouldn't. Do you have any thoughts  
10 along those lines?

11 A. No, I don't. I don't have any thoughts one way or  
12 the other. It is on the books, it is on there for a reason; as  
13 far as I am concerned the reasons are satisfactory.

14 Q. Okay. There was a period of time in the last  
15 decade, on two separate occasions we had death penalty-related  
16 issues on the ballot, people circulated petitions, they gathered  
17 signatures, there was debate at that time, people took positions  
18 one way or the other.

19 Were you involved in either circulating the  
20 petitions or gathering signatures?

21 A. No.

22 Q. Did you take a strong position on the death penalty  
23 at that time one way or another?

24 A. I didn't vote on it at that time.

25 Q. The law requires that at the end of every criminal  
26 case the judge polls the jury to make there is no mistake with  
27 the verdict; we simply go down the row and ask each juror if the  
28 verdict the clerk has just read is in fact the way they voted.

1                   In this case, if we do get to the penalty phase,  
2 and the jurors determined that the appropriate punishment was  
3 death, would you have any problem indicating in open court that  
4 that was the way you voted?

5           A.     No, I don't believe so.  If there was a majority  
6 opinion of the members of the jury.

7           Q.     Okay.  Likewise, one person is elected as the  
8 foreman, that person dates and signs a verdict form.

9                   If in this case you were selected as the foreman by  
10 your fellow jurors, and the twelve of you decided that the  
11 appropriate punishment was death, would you have any problem  
12 dating and signing that verdict form?

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

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

15          MR. NEGUS:  Could I ask one additional question.

16

17                                   FURTHER EXAMINATION

18   BY MR. NEGUS:

19           Q.     You mentioned a majority opinion of the jurors.  In  
20 fact you probably would be instructed that the law requires a  
21 unanimous verdict, that is, all the jurors to agree and that all  
22 the jurors provide their own individual opinion.

23                   Would you have any difficulty, do you think, voting  
24 in your own conscience rather than just going along with what  
25 other jurors decided?

26          A.     Oh, no.  I would makeup my own mind, I would not  
27 allow anyone to influence me in a situation like that.

28          MR. NEGUS:  Thank you very much.

1 THE COURT: We'd like to discuss it very briefly in  
2 private, then the bailiff will instruct you as to what to do  
3 next. Thank you for coming in, sir.

4 PROSPECTIVE JUROR: Thank you.

5 THE COURT: Counsel, anything?

6 MR. NEGUS: No.

7 MR. KOCHIS: No, your Honor.

8 THE COURT: Yes. Have him come back, please.

9 Counsel, I have received -- we have exhausted our  
10 panel for today. I have received from the Senator Ayala's  
11 office a copy of that Senate Bill 1899 that I referred to the  
12 the other day that was signed by the Governor relating to minor  
13 children and some -- the way they testify in court. It doesn't  
14 appear to apply to Josh in this case, but children of sexual  
15 abuse. I will leave it with the clerk and all of you may take a  
16 look at it in the meantime.

17 It appears to me at this time that it would be  
18 appropriate for me to require the cameras to be turned to the  
19 wall. so to speak, when Josh testifies, to prohibit the jurors  
20 pictures from every being taken, and to similarly make an order  
21 with reference to death photos, close-ups of death photos.

22 Would you like more time to discuss those matters?  
23 I think I am going to come out with a formal order to give to  
24 the media in this case just incorporating Rule 980 and then  
25 modify it with these few circumstances peculiar to this trial,  
26 so that any newspaper or media person that comes in could be  
27 educated very likely by the bailiff.

28 MR. NEGUS: I would like the chance to present more

1 argument, and what have you, on the issue I raised last time. I  
2 feel strongly that it is a denial of due process if witnesses  
3 are discouraged from testifying because of fear of the cameras.

4 THE COURT: Counsel, I am probably ready to go along with  
5 you on that as far as that is concerned. I have been thinking  
6 about it. If some witness feels strong enough to verbalize  
7 that, I probably will make a standing rule that there is no  
8 extended coverage to that person unless indicated otherwise by  
9 the court. I don't know. We could have a hearing out of the  
10 presence of the jury if I get conflicting reports or something  
11 on it. But just as a general rule I am willing to go along with  
12 that.

13 MR. NEGUS: Okay, then, I have no problem.

14 THE COURT: Mr. Kochis, Mr. Kottmeier?

15 MR. KOCHIS: I don't have a problem with that as a  
16 general rule.

17 MR. KOTTMEIER: I don't have any problem either.

18 THE COURT: Well, as has it been my practice heretofore I  
19 will draft this in the next few days, then I will show it to  
20 you, you can look it over, whatever it may be before it is ever  
21 released, then we can discuss it further.

22 MR. KOTTMEIER: Your Honor, on an unrelated matter, which  
23 is somewhat delicate. I am sure that just from conversations  
24 with the defense we would appreciate getting some reading from  
25 Judge Schaefer as to whether he anticipates any ruling on  
26 custody soon or whether it going to be a matter that's going to  
27 be put off far enough in the future that maybe some preparation  
28 should be started through Lorna Forbes, Dr. Forbes, for his

1 testimony.

2 Our concern is that the custody pending that  
3 probably will be Josh's major concern, and it would be very  
4 difficult to get him prepared to testify for trial with that  
5 waiting in the wings.

6 THE COURT: Well, I would be happy to inquire informally  
7 when I go back to court this coming Friday, or if you wish to be  
8 on the safe side, it could be put in writing to him, either way,  
9 to see if he can give us some estimate as to -- so we can  
10 coordinate or to permit you people to go to him jointly or  
11 separately, I don't much care, on this issue.

12 MR. NEGUS: Just without getting into personalities, I  
13 wouldn't want us to go him, and I am reluctant to do anything  
14 formally.

15 I think it is -- perhaps we could make inquiries  
16 through the attorneys involved as to what they think first  
17 before anything was done with Schaefer. Just possibilities.

18 THE COURT: Okay. I can tell you that my chambers adjoin  
19 Judge Schaefer's and it is not unusual for us to meet during a  
20 recess, then have a brief comment, but I don't think if you were  
21 able to -- about various things about -- not about this case,  
22 and I think it could be done very innocently and easily in that  
23 fashion, in a manner that none of you would object to. I could  
24 get some reading on it.

25 MR. NEGUS: That's fine, as to that. I just -- again,  
26 without getting into personalities, I just wouldn't want  
27 something put in writing and make it sort of formal as if we  
28 were waiting on that decision, because that might influence how

1 quick we got it.

2 THE COURT: Any objection then if I simply try and find  
3 out what his prognosis as far as his part of it is concerned,  
4 then I report back to you next week?

5 MR. KOTTMEIER: No. We would appreciate it. The reason  
6 this comes up again is I received a phone call from Dr. Forbes  
7 after they had received our subpoena and she was expressing  
8 concern that apparently at times in the past, in cases she's  
9 had, Judge Schaefer has taken considerable periods of time to  
10 resolve these kinds of issues, and she's afraid they're going to  
11 come down at the same time, that is, custody and the testimony.

12 THE COURT: We know it as been pending for months now, a  
13 long, long time. So, I will do that. And I think as a safe  
14 matter. I won't interfere with his process, whatever it may be.

15 All right, we will see -- one other thing, perhaps.  
16 We have come closer to the estimated time on some days rather  
17 than others. I don't feel strong, but if you wanted to maybe  
18 try and squeeze in an extra day for preparation before jury  
19 starts, why something, we could advance sequestered voir dire by  
20 maybe moving up the last panel of 16 other juror and spread them  
21 over or we can leave it, as you wish.

22 MR. NEGUS: I don't feel strongly. There was a panel of  
23 five that we have on the 15th. I don't feel strongly about  
24 them, but I suspect that we will have other things to do in  
25 court after we get finished with them, and I don't think we're  
26 going to save much time.

27 THE COURT: Mr. Kochis.

28 MR. KOCHIS: We can reschedule those five or leave them

1 as they are.

2 THE COURT: They're scheduled for 15th of October.

3 MR. NEGUS: I don't think we are going to have a free day  
4 no matter what.

5 THE COURT: What can you conceive coming up on the  
6 afternoon of the 15th. I mean, do you have something definite  
7 in mind that I can prepare for?

8 MR. NEGUS: I think I am going to be concerned about the  
9 final -- I know I am going to be concerned about the final  
10 cross-section of the community that we have after  
11 Witherspooning, and depending upon on what the numbers look  
12 like, I may or may not -- I probably will have some motions.

13 THE COURT: I have never heard of motions at that stage.  
14 I thought that that issue had been laid to rest when you  
15 withdrew.

16 MR. NEGUS: Well. I --

17 THE COURT: I have just not heard of it, and you are kind  
18 of surprising me a little bit with that one. You mean --

19 MR. NEGUS: It looks like, to me, we're losing many more,  
20 a much higher percentage of the blacks than we are of the whites  
21 in this particular process, and the general cases have shown,  
22 has said that if it is not demonstrable, that that happens; if  
23 it is in fact demonstrable, then I would like, would like to  
24 make another motion.

25 THE COURT: You have got a fertile mind, Mr. Negus. I  
26 guess we will just wait and see how it turns out. We may be  
27 premature at the moment.

28 MR. NEGUS: Thank you.



1           THE COURT: All right, then take the rest of the day off.  
2 Thank you.

3

--oo0oo--

4

5

(Adjournment)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

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

REPORTER'S TRANSCRIPT  
October 2, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER  
District Attorney  
WITH: JOHN P. KOCHIS  
Deputy District Attorney  
1540 Mountain Avenue  
Ontario, California 91762

For the Defendant:

DAVID L. MCKENNA  
Public Defender  
BY: DAVID E. NEGUS  
Deputy Public Defender  
1060 West Sixth Street  
Ontario, California 91762

ROBERT L. ROACH, CSR #1727  
DONNA D. BEARD, CSR #1874  
Official Reporters

INDEX OF PROSPECTIVE JURORS

	Examination
SHARP, CARLA	970
SUBILOSKY, MARIE	973
NELSON, HERBERT	986
HANSEN, ROBERT	988
PAGE, DONALD	995
COOKE, JAMES	996
MULLIN, LOIS	1004
KUBARYCH, KENNETH	1024
GOODBODY, BARBARA	1032
O'NEIL, WILLIAM	1037
SCHALL, JOYCE	1044
SAWYER, NEVILLE	1046 ✓
FORTIER, NOEL	1059
RHUE, DORRIS "RUSSELL"	1066
WARD, EDWARD	1072

1 SAN DIEGO, CALIFORNIA, TUESDAY, OCTOBER 2, 1984 9:20 A.M..

2 --oo0oo--

3

4 THE COURT: Good morning.

5 MR. KOTTMEIER: Good morning.

6 THE COURT: All right, everybody is here, so let's  
7 proceed.

8 THE BAILIFF: Carla Sharp is the first juror.

9

10 CARLA SHARP

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

13 EXAMINATION

14 BY THE COURT:

15 Q. Good morning.

16 A. Good morning.

17 Q. Have you just married or something? Is it Beasley?

18 A. No. I was married and I -- it's been two years  
19 now. It's been awhile, but they just -- I guess the have just  
20 kind of screwed up in the course of things.

21 Q. Have you gone back to your maiden name?

22 A. No, I am Sharp.

23 Q. Sharp?

24 A. That is me.

25 Q. Okay. Fine. I'm Judge Garner, in case you don't  
26 recognize me without the robe. But we have gathered here in an  
27 informal manner in hopes that it will put you a little more  
28 relax and you can candidly respond to our questions.

1                   Since we last saw you two or three weeks ago, has  
2 anything made your life more complicated to where you couldn't  
3 serve?

4           A.     Yeah.

5           Q.     What's that?

6           A.     When I first told my employer they said it wouldn't  
7 be a problem, I work at Coldwell Bankers, and since then they  
8 found out that they can only pay me for 30 days into the course,  
9 they can't pay me for the full six months. The problem being I  
10 just came off of maternity leave, and I don't know of you know  
11 what it is like when you kind of get backed-up on bills. We  
12 kind of got backlogged. We're starting to catch up. I don't  
13 know how this would affect me financially. They said if it  
14 worked out that I was selected for the jury, that we could work  
15 out something; maybe we -- I could work weekends, come in nights  
16 and mornings, stuff like this, to make up for my extra pay.

17                   But as far as it goes for work they can only pay me  
18 for the first 30 days that I am off.

19           Q.     Is that 30 days per year to where you would get 30  
20 days in 1984 and 30 days in 1985?

21           A.     I am not really sure. I didn't fully develop that.  
22 They first said, okay, they'd go for it if you get selected.

23                   However, they found some backlogged papers from a  
24 previous event that said if, you know, if the case does occur  
25 that we are only allowed to pay for 30 days off.

26           Q.     What's your job with --

27           A.     I am a secretary. I work for Coldwell Banker.

28           Q.     Do you take dictation, do things like that?

1           A.     I take dictation. I work on a word processor,  
2 computer. I have 11 brokers that I am working with and I am  
3 their secretary alone.

4           Q.     So if you did work nights or Saturdays, for  
5 instance, you could perhaps type from tapes or something like  
6 that, right?

7           A.     If -- like I guess in the case of an emergency,  
8 there are like six secretaries for our whole office, maybe 40 to  
9 45 brokers I guess in the major. If it came up they could take  
10 it, as far as that goes.

11           THE COURT: Counsel, either of you have questions to that  
12 point? Otherwise I am considering keeping her until the next  
13 stage and having her check to see if she would get paid for the  
14 additional days off work in 1985.

15           MR. KOCHIS: I could go either way at this point without  
16 any further questions.

17           MR. NEGUS: I note that Ms. Sharp is -- Mrs. Sharp is No.  
18 188 out of 189; therefore, I think that we probably would be  
19 safe in excusing her.

20           THE COURT: Would you stipulate to that?

21           MR. NEGUS: Yes.

22           MR. KOCHIS: So would I.

23           THE COURT: Congratulations, you just avoided your  
24 responsibility, at least on this case. They may want you to  
25 serve on a shorter case. Go back to the large jury room. Best  
26 wishes to you.

27           PROSPECTIVE JUROR: Thank you, sir.

28           THE COURT: Excused for cause then.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MARIE SUBILOSKY

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

EXAMINATION

BY THE COURT:

Q. Good morning.

A. Good morning.

Q. Marie Subilosky?

A. Yes, sir. Thank's for the saying it correctly.

Q. I'm Judge Garner, and we're gathered informally  
here in hopes it puts you a little more at ease and you can  
answer our hard questions, so to speak.

A. Thank you.

Q. Has anything happened to you since we last saw you  
that would complicate your ability to serve in this case in any  
way?

A. No. I have made it a point of -- I don't watch the  
news anyhow. I'm a widow, I don't watch the news. I listen to  
KPOP.

Q. I wasn't asking that. Counsel will ask you  
questions on this.

Some people, since I last saw them, have had  
sickness or --

A. No, sir.

Q. -- child problems or something like that.

A. I am too ornery.

1 Q. Secondly, I want to remind you of some of the  
2 things that I said when I was on the bench before about the two  
3 possible phases of this trial.

4 The first phase the jurors will be concerned only  
5 with guilt or innocence and they wouldn't be concerned at all  
6 with penalty; they're forbidden to consider penalty.

7 In the second phase, if we get to it, then the  
8 jurors would have to make a decision based upon new additional  
9 evidence between death by execution for a penalty and life  
10 imprisonment without the possibilities of parole as a second  
11 alternative.

12 My first real question to you, ma'am, is, if we do  
13 get to a penalty phase, will you able to fairly consider both of  
14 those two possible alternatives?

15 A. I have gone through my mind, sir and I believe I  
16 could.

17 Q. Can you see yourself, now, then, after hearing all  
18 of that evidence and hearing the law from me, being able to vote  
19 one way or the other, or both ways, so to speak, depending upon  
20 the evidence and the circumstances brought out at the trial?

21 A. I hate to say, sir, but, yes, I think I could.

22 Q. Why do you hate to say it?

23 A. Six months out of my life. But it is the person  
24 that is on trial, it is their life, you know. I don't know how  
25 to say it.

26 Q. It is not -- it is not that bad. It is a very  
27 difficult job you have. On the other hand, you are not working  
28 real long hours during the day, you have got three days of the



1 week off, so to speak, being Friday, Saturday and Sunday, that  
2 life will go on.

3 A. Oh, yes. No. I mean my job, I'm sorry.

4 Q. What is your job?

5 A. I am in the equipment department for CalTrans, a  
6 one girl office.

7 Q. Somehow they would muddle through.

8 A. Yes, they do. I'm the only woman.

9 Q. Some jurors have such a dread of having to make a  
10 death penalty type decision one way or the other that they fear  
11 that they are going to let that concern affect the way they  
12 would vote in the guilt phase when they're not to consider the  
13 penalty.

14 Do you think that you would be such a type?

15 A. This is my second time on jury duty. Would you  
16 mind repeating that?

17 Q. That is a hard question that I ask.

18 A. Yeah.

19 Q. When the jurors get ready to vote in the guilt  
20 phase they will know if they find one type of verdict it is  
21 going to put them into a penalty phase, they're going to have to  
22 decide life or death down the road.

23 They would also be aware if they find murder in the  
24 second degree or not guilty, or something like that, that we  
25 would never ever get to that penalty phase, so jurors might be  
26 tempted to cop out or to say, hey, let's vote for this, then we  
27 wouldn't have to make that hard decision down the road.

28 Do you think you might be such a person?

1           A.     No, that is that what I thought, but I wanted to  
2     make sure.

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

4

5

EXAMINATION

6     BY THE COURT:

7           Q.     Mrs. Subilosky, the judge is letting most of the  
8     questions be done by us lawyers, and we're not trying to pry or  
9     embarrass you.

10          A.     I know, I know.

11          Q.     You had never heard anything about this case before  
12     you came to court.

13          A.     No, because, as I say, I don't watch the news. I  
14     had heard that there was a case being tried down here from  
15     north -- somewheres. I -- I don't listen to the news for the  
16     gory stuff, for the stuff that's -- I don't know, there was  
17     enough -- there was enough bad in the world. I like the music  
18     and maybe I'm ignoring some of the things, I don't know.

19          Q.     KPOP doesn't have crime news, or do they?

20          A.     They kind of give it all in one lump sum every half  
21     hour. You know, just briefly, about the things. Mainly what  
22     I'm concerned with is the things that are happening in San Diego  
23     or to special people. I'm sorry, I didn't know too much about  
24     this.

25          Q.     That is okay.

26          A.     I made a point of since then of not listening. I  
27     did see on -- I happened to turn on for the, for the sports and,  
28     you know, Ted Lietner, and I saw this young man in court. There

1 was a picture or something, he was sitting down. But that's the  
2 only time I have ever really -- I just watch the news for Ted  
3 Lietner and for the weather.

4 Q. Okay. There's nothing to apologize about.

5 A. It is embarrassing, because at my age I should be  
6 interested in --

7 Q. What was your reaction when you found out that you  
8 were a potential juror in this type of case?

9 A. I was interested.

10 Q. Why?

11 A. On whether I could actually decide anything.

12 Q. Did you come to a conclusion that you could?

13 A. Yeah, I think so.

14 Q. We're asking you questions about the death penalty  
15 now because the law requires that we have to ask these questions  
16 either before guilt or innocence is decided.

17 A. Yes.

18 Q. We're not implying Mr. Cooper is guilty. By asking  
19 these questions it is not to sort of give you an idea that he  
20 must be guilty.

21 A. Yeah, sure, I know.

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

23 A. I mean, I may not say this right, but if it is in  
24 the what you call the penalty phase, and that's one of the  
25 things that we have to decide on, I think I could because if we  
26 had to decide that he was guilty, then I guess the judge directs  
27 you or something.

28 Q. What happens is first you decide if there is guilt

1 or innocence. If a person is convicted of a crime, such as  
2 this, which is called the special circumstance crime because it  
3 is more than one person killed, then the judge asks you, as  
4 jurors, to listen to some additional evidence which would be  
5 taken into account in addition to the evidence that you heard at  
6 the guilt phase.

7 So, in addition to the evidence about the crime you  
8 would then hear evidence about the person who had been  
9 convicted, that sort of thing. What kind of person --

10 A. Yeah.

11 Q. -- the person was. And some of that evidence that  
12 is done by the prosecution would be aimed at trying to convince  
13 you that this was one of the more serious multiple murders.  
14 Other evidence would be aimed at one of the less serious  
15 multiple murders.

16 Based upon your analysis that the evidence which  
17 you thought was the heavier, the more serious or less serious,  
18 then you would either have one of two penalties: Life without  
19 parole if it is less serious, death if it is more serious.

20 So, it is sort of -- it is a structured decision.  
21 It is the only one of the new situations where jurors have to  
22 choose the penalty. But the jury chooses the penalty based on  
23 the evidence, and in the instruction that is given, but you  
24 wouldn't be told to vote this way or vote that way.

25 A. No.

26 Q. If it came down to that, do you think you would  
27 have any difficulty voting for life imprisonment if it was a  
28 less serious multiple murder or death if it was a more serious?

1 A. No.

2 Q. Either one depending on the evidence.

3 A. Yes.

4 Q. Do you have any -- just hearing the charges,  
5 recognizing you don't, really don't know very much about this  
6 case, do you have any feeling in your own mind that just on the  
7 basis of these charges one of the two penalties should  
8 automatically be imposed regardless of whatever evidence,  
9 whether it is a more serious or less serious situation that is  
10 brought out?

11 A. I'm sorry, would you repeat that.

12 Q. Do you think, for example, that the crime involving  
13 children, multiple murders, that sort of thing, automatically a  
14 person should get the death penalty if they're convicted of it,  
15 rather than go through the balance?

16 A. Isn't that decided though by the evidence?

17 Q. Well, some people feel that this type of crime, if  
18 you kill children you have multiple murders, they would not  
19 decide it on the evidence about the type of crime itself and the  
20 background of the defendant, but they just feel if you kill  
21 children automatically you should get the death penalty. I am  
22 asking if you feel that way.

23 A. No, because the evidence has to prove something.

24 Q. Okay.

25 A. I have to get something from the evidence. I mean,  
26 you can't --

27 Q. So if, for example, in that phase there was -- the  
28 judge instructed you that evidence, that the defendant may have

1 had a deprived childhood or something of that nature should be  
2 weighed towards a less serious crime, you could do that?

3 A. Well, that would be part of the evidence, wouldn't  
4 it? Yes, sir.

5 Q. Basically what we're asking now is questions about  
6 some people feel so strongly about these matters, no matter what  
7 the judge tells them they couldn't follow the law. I'm just  
8 asking you sort --

9 A. No. When you raise kids there's -- sometimes a kid  
10 needs a whipping, sometimes they need to be talked to. I don't  
11 know, maybe that's what I am saying.

12 Q. Do you belong to an organized religion?

13 A. Yes, sir, I'm Catholic. I am a practicing  
14 Catholic.

15 Q. Have the doctrines of the church in any way  
16 influenced your opinion on the death penalty or on crime and  
17 punishment?

18 A. No, sir. No, because -- well, if God allows it, if  
19 God allows penalties, then it -- I don't think that he makes us  
20 each individual person decide. I'm saying these wrong, I'm  
21 nervous.

22 Q. So, you are -- basically your views on crime and  
23 punishment are your matters of your own individual conscience  
24 rather than coming from the church.

25 A. Yes, sir, that's what I have to go by, my  
26 conscience. I have to live with my verdict.

27 Q. So, in effect, in the penalty phase if you had to  
28 choose a penalty, the law requires that each juror be convinced

1 in their own mind that either death or life without parole is  
2 the appropriate penalty. Would you have any difficulty voting  
3 your conscience no matter even if other people perhaps disagreed  
4 with you?

5 A. No, sir. It is -- I think they're told -- I think  
6 the judge tells you that without a doubt or something. That is  
7 what he -- that's what one of the judges said to me in the other  
8 when I was on jury duty before. It is without a doubt; you have  
9 got to be convinced.

10 Q. So you could follow that as you did before?

11 A. Yes.

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

13

14

#### EXAMINATION

15 BY MR. KOCHIS:

16 Q. Mrs. Subilosky, I have some questions as well.

17 Judge Garner is going to give you the standard that  
18 you are going to use in your deliberations in this case, and it  
19 will be beyond a reasonable doubt; it won't be beyond any  
20 possible doubt.

21 Could you follow the instructions that Judge Garner  
22 gives you on what reasonable doubt is?

23 A. Yes, sir.

24 Q. You mentioned to Mr. Negus that when you first  
25 heard that you might be a juror in this case you were interested  
26 in whether or not you could decide anything.

27 could you expand on that for me?

28 A. Going back to the religion a little bit, I did a

1 little heavy parrying and asked God to help me decide whether I,  
2 what I could do, and a couple things that just happened. Going  
3 to and from work you can do a lot of thinking.

4 And there was, I can't even remember when it was  
5 now, but there was a piece that came on my radio in the van, and  
6 I just seemed to decide things. I'm a kook, but the way I feel  
7 is the judge knows more things about it than I do. So, it is  
8 not what he dictates, but what he tells us that we should --  
9 like in the penalty phase or in the other, whatever we're  
10 deciding.

11 God, I'm way off base, I'm sorry, I don't how to  
12 say it. I could -- I could makeup my mind by evidence only.

13 Q. The other case you sat in, was that a death penalty  
14 case?

15 A. Yes, sir.

16 Q. You actually sat on this type of case before?

17 A. Yes, sir. It was a -- no. I beg your pardon, no,  
18 it wasn't a death penalty, it was life imprisonment but it had  
19 parole.

20 Q. It was in Superior Court then?

21 A. Yes, sir.

22 Q. What was the charge? It wasn't murder, was it, or  
23 was it?

24 A. No, I can't -- I'm sorry -- I -- I had to put it  
25 out of my mind. I don't remember too much about it. There was  
26 people involved with it, it was burglary involved or whatever  
27 you call it. It was against a person, physical crime against a  
28 person.



1 Q. Did the victim die or was the victim still alive?

2 A. Nope, it was -- it seems to me there were -- it was  
3 not -- they weren't expected to be able to live a normal life,  
4 I'm sorry.

5 Q. Was it sometime ago?

6 A. Yes, sir.

7 Q. This case is somewhat different than the previous  
8 case you sat on. You would have to decide what the punishment  
9 would be, as Mr. Negus and Judge Garner has explained to you,  
10 and although both lawyers would undoubtedly present evidence and  
11 argue, and the judge would give you a set of instructions,  
12 beyond that he wouldn't give you any guidance; he wouldn't make  
13 suggestions one way or the other, the decision would be yours  
14 alone, and the decision of the other eleven jurors.

15 How do you feel about making that type of decision?

16 A. As I said before, the evidence is what you have to  
17 go by. When you are raising kids you have to go by the evidence  
18 not what Joe said Johnny may have said.

19 I am going back and using my kids and the children  
20 I raised to back-up what I'm saying.

21 Q. I think I understood what you are saying.

22 What we're trying to determine at this point is  
23 some people, when they are fully faced with this type of  
24 decision for the first time, they don't feel comfortable making  
25 it one way or the other, and they freeze.

26 Do you see that possibility happening with you?

27 A. I don't believe so. That is what I am trying to  
28 say. I don't believe I would.

1           Q.     There were periods in the last decade, in the 70's,  
2 in which death penalty-related issues were on the ballot, people  
3 voted on it, debated on it, circulated petitions, gathered  
4 signatures.

5                     Were you involved in either one of those occasions  
6 in circulating the petitions and gathering signatures?

7           A.     No, I haven't had time. My husband was ill, and I  
8 was working and taking, for example, care of my husband's stuff  
9 like that.

10          Q.     Did you ever take a strong position on it one way  
11 or the other at that time?

12          A.     One time I wasn't able to vote because I was in the  
13 hospital. I had --

14          Q.     And absentee ballot?

15          A.     Yes. The other time, I don't remember. But I  
16 didn't I have -- I have more or less gone out for school stuff,  
17 for senior citizens stuff.

18          Q.     We have the death penalty on the books here in  
19 California. What do you think about that possible punishment?

20          A.     If the shoe fits.

21          Q.     Okay. If in the penalty phase you heard the  
22 evidence and heard the arguments and heard the law and you  
23 thought this was an appropriate case for the death penalty,  
24 could you vote that way?

25          A.     Yes, sir.

26          Q.     If you were --

27          A.     That is what I say, I have tried to ask God's help  
28 in looking into myself, because, I knew I was coming here today.

1 I knew you guys would ask me some questions.

2 Q. Well, you were right.

3 If you are polled at the end of the trial, and you  
4 will be if it was a death verdict, would you have any problem  
5 indicating in open court as to the way you voted.

6 A. No. It's my own business, but by the same token  
7 everybody would be polled. If I were asked to do something like  
8 that, there was a reason for it, I don't believe I would.

9 Q. Right now do you have -- if you hadn't heard  
10 anything further, if we were just discussing penalty phase in  
11 the abstract, do you have any preference for one penalty over  
12 another, the life without possibility of parole as opposed to  
13 the death penalty?

14 A. No, that would be determined by the -- what case  
15 are you talking about, what happened, what was done. What  
16 was -- you know.

17 Q. Fine.

18 A. -- to make the decision necessary.

19 MR. KOCHIS: Okay. Thank you. I have nothing further.

20 THE COURT: We'd like to discuss it privately briefly.  
21 So, if you'd wait outside for a minute. The bailiff will give  
22 you further instructions thank you for coming in.

23 PROSPECTIVE JUROR: Thank you very much.

24 THE COURT: Anything, gentlemen?

25 MR. KOCHIS: No.

26 MR. NEGUS: No.

27 THE COURT: Please give her a return date and bring in  
28 the next one.

1 MR. KOCHIS: Your Honor, out of curiosity, was the  
2 bailiff able to hear -- did she say something?

3 THE BAILIFF: Give me a cigarette.

4 THE COURT: She never once gave a straight responsive  
5 answer.

6

7

HERBERT NELSON

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, sir.

14 A. Good morning.

15 Q. Are you Herbert Nelson?

16 A. Yes.

17 Q. Mr. Nelson, we're arranged informally this morning  
18 in hopes you will be a little bit more at ease to answer our  
19 questions candidly, please.

20 First, has anything happened to you since we last  
21 saw you two or three weeks ago that would complicate your  
22 ability to serve in this case?

23 A. Yes. I am semi-retired and was called for  
24 consulting by the committee for the college district. I have  
25 been remodelling the Life Science Building, due to the service  
26 curriculum; remodel work. It's a rush job. I have been working  
27 one to two weeks, whenever we were off.

28 Q. When would you go to work for them?

1           A.     The day after we met the last time. I don't recall  
2 that, but it's been two weeks approximately.

3           Q.     When does the job conclude? When does it finish?

4           A.     It -- it is not going to finish, I don't believe,  
5 until sometime next -- and probably I have two other jobs also  
6 aside from this, from the same college, but this one is a rush.  
7 Remodelling the life science facilities.

8           Q.     How many hours?

9           A.     I'm working 40 hours a week on it.

10          Q.     You are saying then that you can't serve in this  
11 case.

12          A.     Well, right now I work for two weeks with them.  
13 They have educational specs they have got to develop first. I  
14 have to go back for preliminary drawings, but I have -- also  
15 have the Fourth District Student Services, I have to have to  
16 update that retirement manual. It's not a retirement manual,  
17 I'm sorry, residence manual for students with regard to out of  
18 sate residents and so forth. These are two things that have  
19 happened with regard to my work.

20                   The other thing that I have is something I have had  
21 that is chronic, I had to retire from it because --and that's  
22 when I set for any length of time, like I have for the last two  
23 weeks, my feet bother me; it is a plural nerve, I don't know  
24 what it is, but they just really burn. I do have -- it sounds  
25 strange.

26          Q.     So, you would be in considerable discomfort if you  
27 had to sit for six hours a day?

28          A.     Apparently if I walk a great deal it seems okay.

1 If I work a regular schedule, yes, it bothers me greatly.

2 Those two things just happened since we met the  
3 last time.

4 THE COURT: Counsel, I will give you an opportunity to  
5 inquire and then we can discuss this before we get into the  
6 questions.

7 Mr. Negus, do you have any questions?

8 MR. NEGUS: No.

9 THE COURT: Mr. Kochis.

10 MR. KOCHIS: No.

11 THE COURT: Would you wait outside. Thank you for coming  
12 in. Would you consider a stipulation.

13 MR. KOCHIS: Yes, I would.

14 MR. NEGUS: Yes.

15 THE COURT: All right. Accepted.

16 Please excuse for cause and so inform him, please.

17 THE BAILIFF: Robert Hansen is next.

18

19 ROBERT HANSEN

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 Robert Hansen.

28 A. Yes.

1 Q. Mr. Hansen, we have arranged around the table  
2 informally here in hopes that you will settle back and relax a  
3 little bit --

4 A. I'm a little nervous.

5 Q. -- so that you will answer the tough questions.

6 Sir, the first question is, has anything happened  
7 since we last saw you to make life more difficult for you in any  
8 way?

9 A. Not that I know of. I have checked with my  
10 immediate boss and my time keeper and they said they will pay me  
11 for the whole time.

12 Q. Wonderful. Remember when you were here before, and  
13 I was on the bench, I told everybody that there could be two  
14 phases to this trial. First, is the guilt or innocence phase,  
15 and then if we get over that hurdle, then we get into the  
16 penalty phase.

17 Now, at the penalty phase the jurors would then  
18 consider which of the two possible verdicts is the appropriate  
19 one, namely, death by execution, or life imprisonment without  
20 the possibility of parole.

21 Question. If we do get to the penalty phase, will  
22 you be able to fairly consider both of those two possible  
23 alternatives?

24 A. I believe so.

25 Q. Would you be able to personally vote for whichever  
26 one then that seemed most appropriate, depending upon the  
27 evidence and the circumstances?

28 A. I should say so.

1 Q. Do you think you might be inclined to cop out or to  
2 take the easy way out in the guilt phase just to avoid ever  
3 having to get to the penalty phase?

4 A. I don't believe so.

5 Q. Would you do your best to avoid that?

6 A. Right.

7 THE COURT: Mr. Negus,  
8

9

10

EXAMINATION

11 BY MR. NEGUS:

12 Q. Mr. Hansen, the judge is allowing Mr. Kochis and  
13 myself to ask most of the questions. We're not trying to  
14 embarrass you but the law requires that we ask these questions  
15 to get your opinions about the matter before we go any further.

16 What had you heard about the crime that was  
17 involved here before you came to court?

18 A. All I can remember is I heard about the family up  
19 there being murdered, and the one surviving. That's all I have  
20 heard about it. I didn't hear anymore about it, follow-up.

21 Q. Had you heard anything about Mr. Cooper?

22 A. Only the name. When I believe -- I don't even  
23 remember even hearing the name until this came up. I heard  
24 people talking and tried to avoid it, but I didn't remember Mr.  
25 Cooper's name at the time.

26 Q. Do you remember any details about his background or  
27 anything?

28 A. No.

Q. You hadn't heard anything about the case when it



1 was up in San Bernardino in court or anything?

2 A. I didn't really pay any attention to it, to tell  
3 you the truth.

4 Q. Did you know it was coming to San Diego before you  
5 got here?

6 A. No, I really didn't hear. There was kind of a  
7 change of venue. I didn't hear it was coming here.

8 Q. What was your reaction when you found out that you  
9 were a prospective juror in this case?

10 A. All I could think about was he said six months.

11 Q. Did you have any reaction to this particular type  
12 of case?

13 A. No.

14 Q. We're asking you questions about the death penalty.  
15 By asking these questions I hope you understand we're not trying  
16 to imply that Mr. Cooper will be found guilty, but the law  
17 requires us to ask these questions before you even get to the  
18 question of guilt or innocence.

19 A. No.

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

21 A. Well, I have always believed in the death penalty.  
22 To tell you the truth, I didn't think it was a deterrent because  
23 they never went through with anything.

24 Q. Why do you believe it?

25 A. I don't know. I think if in certain instances that  
26 it should be the death penalty rather than life imprisonment  
27 where they let them out in seven years.

28 Q. What do you think about life imprisonment without

1 parole?

2 A. I agreed with that. If they're not going to go  
3 through with the death penalty, I think that it should stand.

4 Q. In this particular situation if somebody were held  
5 to be responsible for this type of crime, then the jurors would  
6 have to decide a penalty and they would have to decide between  
7 death and life without parole. It would be a structured  
8 decision to where you'd be given evidence which would make it  
9 more serious, and evidence which would make it less serious, and  
10 you would be requested to decide the case based upon if there  
11 was more evidence of more serious, or more evidence of a less  
12 serious nature.

13 Would that give you trouble in choosing either one  
14 of those two penalties, depending upon the evidence, when you  
15 are dealing with multiple murders?

16 A. I don't think I would. I have never been on a jury  
17 before, and as of right now in my mind I wouldn't.

18 Q. You don't have a predisposition that this  
19 particular type of crime requires the death penalty or requires  
20 life without parole.

21 A. No. If the evidence -- I would think at least life  
22 without parole. If it is proved to be without a doubt --

23 Q. That is the lesser two of the penalties which could  
24 be applied in this particular case. It is either one or the  
25 other.

26 A. Yes.

27 Q. But you have no trouble choosing between those two.  
28 You have no predisposition over one towards the other.

1 A. I don't believe so.

2 Q. Do you belong to an organized religion?

3 A. I was a member of the Baptist church but I haven't  
4 been to church in years.

5 Q. Have any religious organizations influenced you or  
6 any religious beliefs influenced your beliefs on crime and  
7 punishment?

8 A. No.

9 MR. NEGUS: Thank you. Mr. Kochis.

10

11 EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mr. Hansen, I have a few questions before you  
14 leave.

15 If we get to the penalty phase, you are going to  
16 have a limited number of options, both have rather serious  
17 consequences.

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

20 A. As I say right now, I don't think I'd have any  
21 problem with it. But I have never been put in this position  
22 before, so in my mind right now, I wouldn't have any problem  
23 with it.

24 Q. At the end of the criminal case one person is  
25 elected as the foreman, they preside over the jury's  
26 deliberations, they are required to sign and date a verdict  
27 form.

28 In this case, if the jury determined that the

1 appropriate punishment was death, and you were elected foreman,  
2 would you have any problem dating and signing the verdict form?

3 A. I don't believe so.

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

5 THE COURT: Would you wait outside and let us discuss it  
6 privately and then the bailiff will tell you instructions.  
7 Thank you for coming in, sir.

8 Anything, gentlemen?

9 MR. KOCHIS: No, your Honor.

10 MR. NEGUS: No.

11 THE COURT: Give him his return date, please. That  
12 exhausts the panel we have got for this morning until 10:45.

13 Looking at this letter that I gave you yesterday,  
14 with reference to Roberta Jacobson, who is set to come in on  
15 October 10th, this Casa De Manana that she works at is not far  
16 from where I am staying here in San Diego. I go jogging by  
17 their some mornings. So, it is a large place apparently for  
18 retired people.

19 MR. NEGUS: She's 173 or something like that. I have no  
20 problem with stipulating.

21 MR. KOCHIS: Nor do I.

22 THE COURT: All right. Then I will accept the  
23 stipulation.

24 Would the clerk then contact her by phone or  
25 otherwise and tell her she's excused.

26 MR. NEGUS: 171.

27 THE COURT: Be in recess.

28 THE BAILIFF: Donald Cooke. Donald Page.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DONALD PAGE,

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

EXAMINATION

BY THE COURT:

Q. Good morning, sir.

A. Morning.

Q. Mr. Page, we are arranged informally in hopes to  
put you a little more at ease to answer the hard questions we  
are going to put to you here in a few minutes.

A. Okay.

Q. Has anything happened to you since we last saw you  
to complicate your ability to serve?

A. No, if you will recall I'm the one who is the  
space -- the space efforts future depends on, and we decided  
that I would speak with my employer and he's submitted a letter.

Q. All right.

Would you pass it down, Mr. Negus, please.

Thank you.

Well, that's the sort of thing I was inviting.  
Let's get it right off the top from General Dynamics; going to  
effect General Dynamics, Convair, and also Mr. Page's career.

MR. NEGUS: We would stipulate.

MR. KOCHIS: That's correct.

THE COURT: Apparently he is involved in very serious  
work. Okay. So counsel will stipulate that you be excused, Mr.

1 Page. We regret losing you, however, we need people like you on  
2 jury, too.

3 A. Yeah, I kind of share your feelings.

4 Q. I can't excuse from you all jury service, but I  
5 think he will direct you down to the jury assembly room. They  
6 may use you on a shorter matter. But thank you very much.

7 A. All right. Thank you.

8 THE BAILIFF: James Cooke will be the next.

9

10

JAMES COOKE,

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

13

14

EXAMINATION

15 BY THE COURT:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. State your name, please.

19 A. James Cooke, C-, double o-, k-e.

20 Q. Mr. Cooke, has anything happened to you since we  
21 last saw you, sir, which would make it more difficult for you to  
22 serve in this case?

23 A. Not -- not really, no.

24 Q. I want to remind you of some of the things that I  
25 said when you were in here before, and I want to do that before  
26 I commence asking questions to you about the death penalty and  
27 about publicity.

28 Remember I told you that there could be two

1 possible phases to this trial: The guilt phase where the juror  
2 is concerned only with guilt or innocence; then if we get over  
3 that hurdle we will go to a penalty phase wherein the jurors  
4 will receive other evidence of circumstances, and then we would  
5 ask to you make a decision as to whether the appropriate penalty  
6 should be death or life in prison without the possibility of  
7 parole.

8 Do you recall that?

9 A. Yes, sir.

10 Q. So my first question to you is: If we do get to  
11 that penalty phase will you be able to fairly consider both of  
12 those two possible penalties?

13 A. I'm sure I could, yes.

14 Q. You don't have your mind made up on one or the  
15 other at this time?

16 A. No, sir.

17 Q. Would you be able to personally vote for whichever  
18 one of them seemed appropriate depending upon the evidence and  
19 the circumstances brought out at trial?

20 A. Certainly.

21 Q. Some jurors have a big dread of ever having to face  
22 that penalty phase and every having to make a life or death type  
23 of decision so they tell us candidly that: "Judge, I'm afraid I  
24 might be tempted to cop out or to find an inappropriate verdict  
25 back in the guilt phase just to avoid ever having to go to a  
26 penalty phase and make that decision."

27 Do you think you might be such a type of juror?

28 A. No, sir.

1 Q. Thank you.

2 Mr. Negus.

3

4

EXAMINATION

5 BY MR.NEGUS:

6 Q. Mr. Cooke, the Judge is allowing Mr. Kochis and  
7 myself to ask most of the questions. We are not trying to pry  
8 or embarrass you in any way, but the law requires us to get your  
9 opinions on certain things before we go any further.

10 What had you heard about this case before you came  
11 to court?

12 A. Just the general original stuff in the papers on  
13 there, and I believe once or twice I saw something on it on  
14 television.

15 Q. Do you recall what -- what it was, what details  
16 that you saw or heard, read?

17 A. Just very, very basic, the fact that something had  
18 happened and somebody had done something and they had a suspect  
19 in custody. I haven't followed it very closely at all.

20 Q. Do you recall having -- having read anything about  
21 Mr. Cooper?

22 A. Nothing personally about him, no.

23 Q. Did you -- what kind of impression did you form of  
24 him from what was portrayed in the media?

25 A. Well, I hope he's not guilty.

26 Q. You haven't form any opinion on that question?

27 A. No, sir.

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



1 before you got in here?

2 A. No, sir.

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

5 A. I would have preferred to have been on something  
6 shorter, but due to the nature of my work and stuff.

7 Q. Other than just the time involved though,  
8 there's -- you had no particular reaction one way or the other  
9 to this type of case?

10 A. Nothing that I -- that I know of at all. I was  
11 just thinking about my work there. And if I stay away for that  
12 length of time there they might figure out that they can get  
13 along without me.

14 Q. On the other hand, you may get a promotion when  
15 they find out they can't.

16 A. The president of the corporation said, "If you are  
17 selected, you will serve and that's it."

18 Q. Okay. We're asking you questions about the death  
19 penalty. The law requires us to do that before any issue of  
20 guilt or innocence is decided.

21 You're not going to take the fact that we're asking  
22 those questions as evidence that Mr. Cooper is guilty or any  
23 indication of that?

24 A. No.

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

26 A. I'm -- really in favor of it.

27 Q. Why?

28 A. Because in many cases if a person is found guilty

1 of some of these crimes I think that's the appropriate thing to  
2 give.

3 Q. What do you think about life imprisonment without  
4 parole?

5 A. That frightens me.

6 Q. Why?

7 A. \$25,000 a year to keep people in there for the rest  
8 of their lives, taxpayers money.

9 Q. Are you opposed to that penalty?

10 A. Not necessarily. If there's any reasonable doubt,  
11 no, I wouldn't want to see a person's life taken unless it is  
12 absolutely proven; and if it was voted for, why, I would  
13 certainly go along with it.

14 Q. The way -- you haven't been given a lot of  
15 explanations about the way our system works. Basically what  
16 happens in a case like this is first there's a trial on guilt or  
17 innocence.

18 A. Yes, sir.

19 Q. And unless it's proven beyond a reasonable doubt  
20 that the person is guilty, there's no further -- there's no  
21 further proceedings, no penalty is ever imposed. So if there is  
22 a reasonable doubt in somebody's mind, then one's duty is to  
23 vote not guilty and that stops it.

24 If a person is convicted, if the person responsible  
25 is convicted by a jury, that same jury is then asked to chose a  
26 penalty, and it's only in certain murders that the penalty is  
27 chosen.

28 In this particular case the reason why this

1 particular case involves a potential of that penalty is that  
2 there's a multiple murder involved. Then after that there's  
3 additional evidence which is presented of a type, some of the  
4 evidence is the type to make the crime more serious than other  
5 multiple murders, other, what might be trying to show that it's  
6 less serious than other multiple murders. If it's a more  
7 serious multiple murder the law requires the death penalty be  
8 imposed; if it's a less serious multiple murder, the law  
9 requires that the life imprisonment without parole be imposed.

10           Given your feelings about the burden on the  
11 taxpayers, do you think if this turns out under the evidence as  
12 it's explained to you and as you hear it and the law that you  
13 would be willing to impose life imprisonment without parole?

14           A.     If I felt the circumstances warranted it, yes.

15           Q.     Well, I guess it's somewhat of a structured  
16 decision.

17           A.     Yes.

18           Q.     The Judge will give you some guidance as to  
19 balancing what they call agravating circumstances versus  
20 mitigating circumstances, or to my way of putting it, is that  
21 which makes it more serious or less serious. So if you felt  
22 that the evidence were to show that this was a less serious  
23 multiple murder you could vote for the life without parole?

24           A.     I could.

25           Q.     Do you have any feelings about the particular  
26 nature of what we have involved in this case, the fact that  
27 children were murdered, that gives you any particular feeling  
28 one way or the other about the appropriate penalty?

1           A.     Well, I think everybody has feelings about that. I  
2 certainly do have feelings about that.

3           Q.     What are your feelings?

4           A.     I think if it's true, I think it was a very heinous  
5 crime.

6           Q.     Do you have -- Well, I guess what I'm asking you is  
7 have you made up your mind now that one particular penalty fits  
8 this particular crime?

9           A.     No.

10          Q.     Do you belong to an organized religion?

11          A.     No.

12          Q.     Have your views about crime and punishment and the  
13 death penalty simply been own individual conscience, not formed  
14 by any organization or group or religion?

15          A.     My own personal feelings.

16          Q.     Thank you, sir.

17

18

EXAMINATION

19 BY MR. KOCHIS:

20          Q.     Mr. Cooke, I have a couple questions.

21                   When Mr. Negus asked what your impression I think  
22 of Mr. Cooper was, I believe your response was, "Well, I hope he  
23 is not guilty." Could you expand on that?

24          A.     Well, I would hate to sit at a table with somebody  
25 that was, that I preconceived or already figured that he was.  
26 I'm willing to listen to evidence there. If it proves it, like  
27 I say, for his sake and -- I hope he didn't do it.

28          Q.     The feeling that you had, do you think that would

1 effect your evaluation of the evidence one way or the other?

2 A. I don't believe so. I think I'm a fair-minded  
3 person.

4 Q. Are you saying by that that at this point you're  
5 willing to listen to both sides before you make a decision?

6 A. Absolutely.

7 Q. At this point, for example, you don't have an  
8 opinion that he is guilty until you hear the evidence?

9 A. No.

10 Q. There were a couple periods in the '70s in which we  
11 had death penalty issues on the ballot, people circulated  
12 petitions, they gathered signatures, there was a lot of debate  
13 about it, people voted one way or the other on it.

14 Were you involved in either one of those elections  
15 in gathering signatures or circulating petitions?

16 A. No, but I signed everyone of them that was  
17 presented to me.

18 Q. Is your feeling about the death penalty today the  
19 same as it was back then?

20 A. I think it is certainly justified in certain cases,  
21 yes.

22 Q. If you were elected as the foreman and the jury  
23 determined that this was a case in which the death penalty was  
24 imposed, the foreman is required to date and sign the verdict  
25 form.

26 Would you have any problem dating and signing a  
27 death verdict form, for example?

28 A. No.

1 Q. Thank you.

2 I have no further questions.

3 THE COURT: Would you wait outside, let us discuss it  
4 privately, then the bailiff will inform you further. Thank for  
5 coming in, sir.

6 THE COURT: Anything, counsel?

7 MR. KOCHIS: No, your Honor.

8 MR. NEGUS: No.

9 THE COURT: Yes. Give him a return slip, please, and  
10 bring in the next.

11 THE BAILIFF: We have Lois Mullin.

12 THE COURT: These courtrooms can't be individually  
13 climate controlled. It's cold in here.

14 THE BAILIFF: I think you would have to call maintenance  
15 down in the basement.

16 THE COURT: You don't have a thermostat in there.

17 THE BAILIFF: They control it down in the basement.  
18 There's one on the bench that will do it a couple degrees  
19 maximum.

20

21

LOIS MULLIN,

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

24

25

EXAMINATION

26 BY THE COURT:

27 Q. Good morning.

28 A. Good morning.

1 Q. Are you Lois Mullin?

2 A. Yes, I am.

3 Q. First, to explain we are kind of informally  
4 gathered around the table in hopes to put you a little bit more  
5 at ease to answer the hard questions we are going to put to you.  
6 Okay?

7 A. Good, because I started out bad already today.

8 Q. In what way?

9 A. My shoe came apart and Lucy down in the commissions  
10 office fixed it for me.

11 Q. O ay. At least your ambulating still?

12 A. Right.

13 Q. Has anything happened to you, Mrs. Mullin, since we  
14 last saw you to complicate your ability to serve in this case?

15 A. No.

16 Q. I want to remind you first before I commence asking  
17 you questions about what I said before, there could be two  
18 possible phases to this trial. The first phase would be the  
19 trial of guilt or innocence, and we don't know how that's going  
20 to turn out. If, however, it turns out against Mr. Cooper and  
21 he's found guilty of multiple murders, then we would go into a  
22 second phase. At the second phase the jurors would have only  
23 two possible alternative verdict forms.

24 One way we find the appropriate penalty in effect  
25 is death by execution; the other one says that we find the  
26 appropriate penalty would be life in prison without the  
27 possibility of parole.

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

1 penalty phase will you be able to fairly consider both of those  
2 two possible penalties?

3 A. Yes, I would.

4 Q. Would you be able to personally vote on one or the  
5 other, depending upon the circumstances and evidence brought out  
6 at the trial?

7 A. Yes.

8 Q. Do you have by chance such a big fear of making a  
9 life or death type of verdict down in a penalty phase that that  
10 concern might cause you to cop out or to find an inappropriate  
11 verdict back in the guilt phase just to avoid ever having to  
12 make that hard decision later?

13 A. No. It would take me quite awhile though. I mean,  
14 I could not make a judgment immediately.

15 Q. Nobody's asking for snap judgments in any way.  
16 You'll have the evidence presented and the lawyers get a chance  
17 to argue to you and the Judge instructs before or after  
18 argument, then the jurors deliberate and sometimes for a long  
19 time, so nothing's required immediately.

20 Mr. Negus, please.

21

22 EXAMINATION

23 BY MR. NEGUS:

24 Q. Mrs. Mullin, the Judge is letting Mr. Kochis and I  
25 ask most of the questions.

26 A. Uh-huh.

27 Q. We're not trying to pry or embarrass you in any  
28 way, but the law requires that we get your opinions on certain



1 matters?

2 A. I can understand that.

3 Q. What do you remember about the crimes from what you  
4 heard in the media before you came to court?

5 A. To tell you the truth, I really don't remember too  
6 much. I am vague about it because I only read it once, and  
7 after that I didn't read it any more. I would see it on TV.  
8 But to sit down and read that much that was in the newspaper, I  
9 just didn't do it.

10 Q. Well, what can you remember from what you saw on TV  
11 then?

12 A. About supposedly that Mr. Cooper went ahead and  
13 killed these people, that one child was not murdered, and that  
14 he did stay at, what was it, the cottage across the way, and  
15 that's about it.

16 Q. Do you remember -- do you remember hearing about  
17 why the authorities had decided it was Mr. Cooper that did the  
18 crime?

19 A. No, to tell you the truth I can't remember that,  
20 no.

21 Q. Did you read anything about or hear anything on  
22 television about Mr. Cooper's arrest?

23 A. Yes. I think they apprehended him on a boat.

24 Q. Do you remember any other details about it than  
25 that?

26 A. Supposedly he had raped a woman.

27 Q. Do you remember anything about the case once it got  
28 to court in San Bernadino?

1 A. No, I do not.

2 Q. Did you know that the case was coming down here  
3 before you got to the the jury room?

4 A. Yes, I did know it was coming down here, yes, I  
5 heard about that.

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

8 A. Shocked, because --

9 Q. Why?

10 A. I've never served on a jury duty before. And I  
11 thought something like this is really traumatic more or less. I  
12 mean, you can take traffic tickets and drunk drivers, et cet.,  
13 but to have to put someone's life more or less in your hands, I  
14 mean, it was traumatic, really.

15 Q. I take it from what you've said that you've thought  
16 about it and you've decided that you can handle that?

17 A. Yes, I can handle it now, but it was initial shock,  
18 let's put it that way.

19 Q. From the television did you form any particular  
20 impression about Mr. Cooper?

21 A. No, I can't because like they say, a person is  
22 innocent till proven guilty.

23 Q. And you have no problem with that?

24 A. I have no problem with that.

25 Q. The issue as to the claim that there was a rape in  
26 Santa Barbara will not be put before you. That evidence is not  
27 going to be part of this particular trial. And, in fact, you  
28 basically will be instructed not to take it into account in any

1 way.

2 Do you think that you can avoid speculating as to  
3 whether it's true or not and just put that out of your mind  
4 completely?

5 A. If I'm chosen I'll have to, yes.

6 Q. That wouldn't a problem for you you don't think?

7 A. No.

8 Q. You wouldn't assume that just because there's other  
9 charges, a whole bunch of charges, some of them must be true  
10 somewhere along the line?

11 A. I would say so, yes.

12 Q. You would think so?

13 A. I would think so.

14 Q. Does that mean that you think that he must be  
15 guilty of something as he sits here right now?

16 A. Well, like I say, he is supposed to be innocent  
17 until proven guilty.

18 Q. Okay. But what is your honest opinion about it?  
19 Do you honestly believe that?

20 A. If he is guilty?

21 Q. Yeah, do you have an honest opinion as to his guilt  
22 or innocence?

23 A. I would say he probably is, yes.

24 Q. Do you think that you're going to be able to put  
25 that out of your mind?

26 A. Yes. I know I would.

27 Q. If -- if the evidence in the case is such that it  
28 comes down to the evidence shows that he's probably guilty but

1 doesn't prove it beyond a reasonable doubt, do you think that  
2 you would have any difficulty voting not guilty?

3 A. Can you explain that a little more to me?

4 Q. The law requires that in order to find somebody  
5 guilty that you have to be convinced beyond a reasonable doubt  
6 to what's called a moral certainty of the truth of the charges.

7 A. Uh-huh.

8 Q. Okay. So that would mean that either your -- that  
9 any doubt that you would have as to the guilt would be something  
10 you could say that's unreasonable, it's just some sort of doubt  
11 or that you be absolutely certain?

12 A. No, I'd be doubtful.

13 Q. Wait a minute. Let me --

14 A. Maybe I'm not quite understanding you.

15 Q. Let's me try and explain anyway.

16 If you have a doubt though that's reasonable, if  
17 say, you say probably he did it but I have a reasonable doubt,  
18 there's a doubt in my mind even though I think he probably did  
19 it, the laws requirement is that you vote not guilty?

20 A. Oh I see what you mean yes.

21 Q. So, I'm asking you, you know given the feelings  
22 you're going in with then given that state of the evidence could  
23 you vote not guilty under that situation?

24 A. Yes I could.

25 Q. We're asking some questions about the death penalty  
26 and again the law requires us to ask those questions before we  
27 even get to that stage without even knowing whether we ever will  
28 get to that stage and the fact that we ask the questions is not

1 supposed to be taken as any indication that Mr. Cooper is  
2 guilty.

3 Do you think you could avoid doing that and  
4 assuming that there must be something to it again if we're  
5 asking these questions?

6 A. Yes.

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

8 A. I believe in it.

9 Q. Why?

10 A. In the death penalty?

11 Q. Why do you believe in the death penalty?

12 A. If the person is guilty and committed a crime, then  
13 he should pay for it with his life.

14 Q. What do you think about life imprisonment without  
15 possibility of parole?

16 A. It depends upon what crime was at the time.

17 Q. Do you think it depends on the crime or other  
18 things involved as well?

19 A. No, I think it's the crime.

20 Q. What crimes do you think deserve the death penalty?

21 A. Murder.

22 Q. All murders?

23 A. No, there are certain different circumstances  
24 involved.

25 Q. In this particular situation the way the law works  
26 is that in a situation where you have a multiple murder, that  
27 makes the crime eligible for the death penalty. Not all  
28 murders, in fact the majority of murders in California are not

1 death penalty cases. Multiple murder is a potential death  
2 penalty case, but then the law has a series of procedures  
3 whereby -- whereby evidence is presented to make it more serious  
4 multiple murder or a less serious multiple murder.

5 More serious multiple murders, the jurors are  
6 requested to -- are instructed that that's -- that that requires  
7 the death penalty; less serious multiple requires life without  
8 parole.

9 If this turned out to be a less serious multiple  
10 murder based on evidence about Mr. Cooper's background about the  
11 crime, that sort of thing, do you think that you could vote for  
12 life without parole?

13 A. You mean he would never get paroled?

14 Q. Well, unless -- you would probably be instructed  
15 that he would not be paroled unless the Governor were to commute  
16 his sentence, it would have to go to the Governor.

17 A. It wouldn't go -- something that they would say,  
18 for instance, he will be in prison for 20 years, then after 20  
19 years he is ready for parole?

20 Q. The only way he would ever be paroled under life  
21 without parole is if the Governor were to reduce the sentence to  
22 life imprisonment or something else.

23 Life without parole as a penalty means he's not  
24 eligible for parole. As long as that's the sentence the  
25 Governor has the power to reduce the sentence if he wants to  
26 after five years, 20 years, 30 years, whatever.

27 Do you basically understand that?

28 A. Basically, yes.

1 Q. Do you think if this turned out to be under all the  
2 evidence that was presented, say the prosecution presented no  
3 evidence and there was lots of evidence on behalf of the defense  
4 as to circumstances about Mr. Cooper's background which would  
5 explain what happened to make it -- make it less serious and you  
6 were instructed that that's -- that's the way you were -- that's  
7 the way you were to interpret the evidence, do you think that  
8 you could vote for life without parole in this case?

9 A. I don't think I could.

10 Q. Why not?

11 A. Well, like I said, for one thing if a person takes  
12 a life, like I say, there is always circumstances, I believe he  
13 should pay for his life. But I don't see if he is found guilty  
14 why he should be in prison for the rest of his life. Why should  
15 he?

16 Q. So no matter what the circumstances are about the  
17 person, whoever is guilty of this particular crime you think  
18 should get the death penalty?

19 A. I do.

20 Q. Thank you very much. I appreciate it.

21  
22 EXAMINATION

23 BY MR. KOCHIS:

24 Q. Mrs. Mullin, I have a few questions. Recognizing  
25 that you have this feeling, this opinion, the law has somewhat  
26 of a different approach to the problem.

27 We have special circumstance circumstance crimes,  
28 and if you are convicted of those crimes then we have a penalty

1 phase and the jury still considers evidence and decides on a  
2 case-by-case basis what to do with the defendants, do we stick  
3 them in prison for the rest of their life or do we recommend  
4 that they be executed.

5 Do you understand that?

6 A. Yes.

7 Q. So knowing that you have this preference for the  
8 death penalty, could you put that personal feeling aside and if  
9 we got to the penalty phase could you listen, for example, to  
10 any evidence Mr. Negus would have to present on behalf of his  
11 client?

12 A. Yes, I could do that.

13 Q. Could you listen to the evidence that Mr. Kottmeier  
14 and myself would present on behalf of the People?

15 A. Yes.

16 Q. Would you be able to listen to Judge Garner's  
17 instructions to you on what rules of law you should consider in  
18 determining what sentence to give this defendant?

19 A. Yes.

20 Q. And could you keep an open mind and not decide what  
21 penalty to give this defendant until all that was done?

22 A. Definitely.

23 Q. If you thought it was appropriate based on the  
24 case, the crime, and the other evidence to recommend Mr. Cooper  
25 be put to death, could you vote that way?

26 A. Yes.

27 Q. And based on what you said earlier that would be  
28 somewhat of a heavy diagnosis for you?



1 A. Yes, it would.

2 Q. How do you feel about being put in the position  
3 where you have to decide what to do with someone's life?

4 A. Very traumatic. I mean, I would hate to have it on  
5 my shoulders.

6 Q. Okay. Well, if you voted for the death penalty it  
7 would be on your shoulders, so to speak.


8 A. That's right.

9 Q. Do you think you could do that if the evidence  
10 called for it?

11 A. If I was chosen I believe I could.

12 Q. Likewise, the other decision, which I assume for  
13 some people is the easier decision to make, is life without the  
14 possibility of parole.

15 In this case, based on all the evidence the crime  
16 and the other factors which were presented during the penalty  
17 phase, if you thought the appropriate thing to do was to lock  
18 this defendant up for the rest of his life could you vote that  
19 way?

20 A. Yes, I could, provided he wouldn't get paroled. 

21 Q. Well, that's something -- we don't have a crystal  
22 ball. We can't look 20, 30, 40 years into the future and know  
23 what's going to happen. He may never get paroled, but there's  
24 always a possibility somewhere in the future. No matter how  
25 slight, that always is possible I suppose.

26 Knowing that, knowing that his initial sentence  
27 would be life without the possibility of parole, that as long as  
28 that sentence stood he could not be paroled, the Parole Board

1 couldn't parole him, no one could parole him unless the Governor  
2 performed a specific act, and that was to commute his sentence,  
3 knowing that could you vote for life without the possibility  
4 of --

5 A. Yes, then I could.

6 Q. Now correct me if I'm wrong, there may be a  
7 conflict in some of your answers and this is what I wanted to  
8 discuss with you.

9 I think you just told me that if you thought it was  
10 appropriate in this case, based on all the evidence and based on  
11 the law, you could vote to lock Mr. Cooper up for the rest of  
12 his life; is that true?

13 A. But the way you explained it to me you said he  
14 would never get paroled though, or the way I interpreted it.

15 Q. Well, okay.

16 Q. Well, you understand that the Governor can, whether  
17 it's this governor or some other governor somewhere in the  
18 future, and we can't predict what would happen, has the power to  
19 commute someone's sentence. That's the way the law at the  
20 present time happens to be.

21 Knowing that, but knowing that without a governor  
22 stepping in and reducing this defendant's sentence he just sits  
23 this till he dies; could you vote for that?

24 A. I guess so.

25 Q. Okay. I believe you said earlier in response to  
26 Mr. Negus's questions that you felt that if someone committed a  
27 murder, took another person's life and was found guilty that you  
28 would vote for the death penalty every time. Did you say that?

1           A.     I didn't say every time. I said under  
2 circumstances.

3           Q.     Okay. So in this case, let's assume just for the  
4 sake of argument because it hasn't happened yet, let's assume  
5 that it's January of 1985, this defendant has been convicted of  
6 the murders and we have the penalty phase; you would not then  
7 automatically vote for the death penalty, you'd have to hear the  
8 evidence in the penalty phase; is that true?

9           A.     I don't understand that.

10          Q.     It was a bad question. Let me see if I can  
11 simplify it.

12                   Is it your -- your position then that you could  
13 vote for either life imprisonment or the death penalty,  
14 depending on what evidence is?

15          A.     That's right.

16          Q.     And even if Mr. Cooper gets convicted, you could  
17 still have to hear the evidence in the penalty phase and the law  
18 and the arguments before you could decide whether to sentence  
19 him to life or death; is that true?

20          A.     Yes.

21          Q.     And even though it would be a very heavy decision  
22 for you to recommend the death sentence, you could do it if you  
23 thought the evidence was --

24          A.     Correct; right.

25          Q.     Some people try to short circuit the system and not  
26 get placed in a position where they have to make this type of  
27 decision. For example, some people in the guilt phase say,  
28 "Well, if I vote for guilty I know we're going to get to the

1 penalty phase. I don't want the decision on my shoulders for  
2 the rest of my life, therefore, even though under the evidence I  
3 feel this man is guilty I'm going to vote not guilty just so I  
4 don't get to the penalty phase."

5 Do you see yourself doing that?

6 A. I don't know because -- it hasn't been presented  
7 me. That I wouldn't know. I wouldn't know how I would do it.

8 Q. Well, if you are selected as a juror you're going  
9 to have to take a promise to base your decision on the facts and  
10 on the law. And in the first trial you're going to be told that  
11 you cannot consider penalty or punishment when you evaluate the  
12 evidence. That's the guilt trial.

13 Are you still with me or have I lost you?

14 A. No, you've lost me.

15 Q. Okay. I'm sorry.

16 In the guilt phase the first trial, we just decide  
17 if this defendant did the crime or if it's someone else.

18 Do you understand that?

19 A. Yes.

20 Q. We don't consider what may or may not happen in the  
21 second trial; do you understand that?

22 A. Yes.

23 Q. In the first trial could you simply base your  
24 decision as to whether this defendant committed the murders on  
25 the evidence that's presented at trial and the law as Judge  
26 Garner instructs you?

27 A. Yes.

28 Q. Thank you.

1 I have no further questions.

2 THE COURT: Would you care to inquire further?

3

4

FURTHER EXAMINATION

5 BY MR. NEGUS:

6 Q. Mrs. Mullin, let me -- I think probably lawyers  
7 interpret our questions differently than you do.

8 A. You certainly do.

9 Q. Let me just try and make it simple. If -- knowing  
10 what you know about this particular case, that there's four  
11 people killed, two of them kids, another boy seriously injured,  
12 is there any sort of -- and you were sure that a certain person  
13 did it, is there any sort of evidence about that person's  
14 background or what kind of person they were which would ever  
15 allow you to vote for life imprisonment without parole?

16 A. Wouldn't that be brought up at the trial about the  
17 background?

18 Q. Right.

19 A. Of that person.

20 Q. That would be -- that would be in a separate trial.  
21 What I'm asking you is, if given this particular  
22 crime --

23 A. Uh-huh.

24 Q. -- is there -- and you were sure you had the person  
25 that was responsible for it, is there any way that you would  
26 ever vote to give them any lesser penalty than death?

27 A. No. I think I'd give the death penalty if I was  
28 sure.

1 Q. Even if they had a deprived childhood and been  
2 beaten by their father?

3 A. But I thought you said that wasn't brought up.

4 Q. It was brought up -- let's say that -- that you  
5 had -- you had a situation where you're -- first you're sure  
6 that you had the right person.

7 A. Yes.

8 Q. Then you have a second trial and the prosecution  
9 were not -- you had a person that killed four people and you had  
10 to decide what penalty they should get for killing those four  
11 people, and so there was evidence put in by the defense that the  
12 person had a deprived childhood, this, that, and the other thing  
13 about them.

14 A. In other words, going way back and what motivated  
15 him to do this crime because of how he was treated when he was  
16 young?

17 Q. Right, that kind of evidence.

18 Under those circumstances do you think you could  
19 ever vote for any penalty other than death?

20 A. I'd have to hear the circumstances.

21 Q. Can you imagine any such circumstances?

22 A. Probably a lot of child abuse.

23 Q. If it were anything -- anything less than that  
24 could you do it?

25 A. I don't think so.

26 Q. You sort of start with a very strong predisposition  
27 towards the death penalty in a case such as this?

28 A. Pardon?

1 Q. You start with a strong feeling towards the death  
2 penalty in this particular case?

3 A. Yes, I do.

4 Q. And it would be very difficult for you to put it  
5 aside?

6 A. I believe so.

7 Q. Thank you. I appreciate just your candid opinions.  
8

9 FURTHER EXAMINATION

10 BY MR. KOCHIS:

11 Q. And now it comes back to me Mrs. Mullin.

12 I take it you don't have any background in criminal  
13 law or criminal procedure?

14 A. Nothing at all.

15 Q. So, I assume you haven't even sat down and thought,  
16 if I was a defense lawyer in this case what type of evidence  
17 would I try to introduce in a penalty phase to argue to the jury  
18 he deserves life without?

19 A. I am strictly a layman.

20 Q. That is Mr. Negus's job and my job on the other  
21 side.

22 If we produced that type of evidence at the second  
23 trial, would you be able to keep an open mind and consider it?

24 A. Yes.

25 Q. Would you be able, for example, to listen to the  
26 arguments with an open mind of both the prosecution and the  
27 defense?

28 A. Yes. But let me ask you one thing: When you are

1 at court do you use layman's language or is it all strictly  
2 lawyers.

3 Q. Unfortunately we get into other types of language,  
4 as it were, medical terms, even sometimes psychological terms,  
5 but we will talk in terms that you will be able to understand.

6 A. Well, that's what I would like to know.

7 Q. It appears you haven't had any trouble today.

8 A. Oh, I don't know. I have been nervous.

9 Q. Okay. Even though you have some leanings one way  
10 or the other toward the death penalty and they seem somewhat in  
11 conflict, you appear to have a philosophical preference for the  
12 death penalty if I understand you; is that right?

13 A. Yes, I do.

14 Q. You also have an emotional reservation about being  
15 the one who is going to pull the switch, so to speak?

16 A. Right.

17 Q. And they somewhat balance each other out I assume;  
18 isn't that true?

19 A. I hope so.

20 Q. But in this case do you think you would be able to  
21 vote for either possible penalty, either life or death,  
22 depending on what the evidence was and what the law was?

23 A. For either one or the other?

24 Q. Yes.

25 A. Yes, I'm sure I could.

26 Q. Thank you.

27 I have nothing else.

28 THE COURT: Would you wait outside for a minute. Let us



1 discuss it privately, then the bailiff will let you know. Thank  
2 you, ma'am, for coming in.

3 Mr. Negus.

4 MR. NEGUS: Challenge for cause, multiple reasons.

5 THE COURT: Mr. Kochis.

6 MR. KOCHIS: I would oppose the challenge.

7 I think she said that she could consider either  
8 life or death. She could vote for life imprisonment without the  
9 possibility of parole if it was appropriate. She mentioned a  
10 type of evidence that to her would be sufficient to return a  
11 life without possibility of parole. She is unable to articulate  
12 other reasons, but most laymen and most lawyers could not  
13 articulate the reasons because they are not aware of what the  
14 state of the law is. She said she would be able to listen to  
15 whatever Mr. Negus produced in the terms of evidence and the law  
16 that the Court instructed and waited until that time to make a  
17 decision.

18 THE COURT: She said whatever basically either of you  
19 attempted to get her to say. But taking all of her statements  
20 put together, counsel, she did not to me indicate that she could  
21 fairly consider both alternatives. I will grant the challenge.

22 Call another juror, please.

23

24

KENNETH KUBARYCH,

25 called as a prospective juror, having been previously sworn,  
26 testified as follows:

27

28

EXAMINATION

1 BY THE COURT:

2 Q. Good morning.

3 A. Morning.

4 Q. I will try. Is it Kubarych?

5 A. Kubarych.

6 Q. First, I want to explain, we are gathered around in  
7 an informal manner hopefully to make you relax a little bit  
8 easier to answer the questions.

9 Secondly, has anything happened to you, Mr.  
10 Kubarych, since we last saw you to complicate your ability to  
11 serve in this case?

12 A. Not really, no, not any more complicated than it  
13 started out at.

14 Q. Thirdly, I remind you of what I told you before,  
15 that the case could be in two phases.

16 The first phase is guilty or not guilty. The  
17 second phase would be one considering penalty only, which one  
18 would be the most appropriate, namely, death by execution on the  
19 one hand or life in prison without the possibility of parole on  
20 the other.

21 Remember I told you that before?

22 A. Uh-huh.

23 Q. You have to say yes or no, please.

24 A. Yes.

25 Q. My first question to you then is: If we do get to  
26 a penalty phase and you're on the jury, will you be able to  
27 fairly consider both of those two possible penalties?

28 A. Yes.

1 Q. Would you be able to personally vote for either one  
2 depending upon the evidence and the circumstances brought out at  
3 trial?

4 A. Yes.

5 Q. You don't have your mind made up one way or another  
6 at this time?

7 A. That's correct, I don't.

8 Q. Do you think you might be so concerned with having  
9 to make that heavy decision that you would look for an  
10 inappropriate verdict or an escape hatch, so to speak, to avoid  
11 ever getting to a penalty phase?

12 A. I don't think so, no.

13 THE COURT: Mr. Negus.

14

15

EXAMINATION

16 BY MR. NEGUS:

17 Q. Mr. Kubarych, the Judge is letting Mr. Kochis and  
18 myself ask most of the questions.

19 A. Uh-huh.

20 Q. We're not trying to pry or embarrass you in any way,  
21 but the law requires us to get your opinions before we go any  
22 further.

23 A. Uh-huh.

24 Q. You indicated that you had a fairly good memory of  
25 what you'd heard in the press about this or on the television  
26 about this particular case. What do you remember about the  
27 crime itself?

28 A. Well, the question asked did I remember what I had

1 heard clearly.

2 Q. Right.

3 A. And I -- because I heard about it like a day or  
4 two -- I've never read any articles or heard anything about it  
5 in the press because I don't -- what I heard was that he killed  
6 some people in San Bernadino, and that most of the people that I  
7 I talked to said they certainly wouldn't want to be in my  
8 position. That's essentially all.

9 I mean, I didn't know anything about this thing  
10 until I was called for jury duty, you know, like a couple days  
11 in advance.

12 Q. Okay. Then -- Well, let me -- let me -- okay.

13 You basically got your information then from the  
14 television?

15 A. From other people.

16 Q. From other people. Okay. I misinterpreted  
17 something you wrote down.

18 And other people just -- they gave you just that  
19 conclusion, that Mr. Cooper killed some people in San Bernadino,  
20 or did they give you any other details?

21 A. Because then I just told them to shut up because I  
22 wasn't supposed to be hearing them say that, so I just asked  
23 them not to tell me about it because, frankly, I didn't, you  
24 know, know anything about it at all.

25 Q. So, you had no particular recall from the  
26 television or anything like that yourself?

27 A. No recall, bought I had never saw, you know,  
28 anything on TV.

1 Q. Okay. Did the reaction you got from other people,  
2 did that give you any sort of impression that Mr. Cooper was  
3 either guilty or innocent?

4 A. Well, no, -- I mean, yeah, I mean, I could get a  
5 sense of their opinion but, you know.

6 Q. Well let's put it this way: Did you then adopt  
7 their opinion or do you still have an open mind?

8 A. No. I don't know any facts so I can't make up, you  
9 know.

10 Q. So, you haven't made up your mind one way or the  
11 other?

12 A. That's right.

13 Q. What was your reaction when you found out that this  
14 was the type of case that you were being a prospective juror on?

15 A. You know, why me. You know. It -- I've never done  
16 jury duty before, and all of a sudden I get, you know, a case of  
17 this extent is kind of like, you know, why did I get so lucky.

18 Q. Why not?

19 A. Or why don't I win the lottery instead.

20 Q. Did you have any particular feelings about being on  
21 this kind of case as opposed to any other kind of case?

22 A. I mean, it's something I would prefer not to have  
23 to do, but I'm not going to -- I don't feel that, you know, I  
24 feel that I -- I'm reasonably as good as anybody that could do  
25 it, but I honestly would prefer not to do it, but heck, if I'm  
26 going to do it, I'd do a good job.

27 Q. We are asking you questions about the death penalty  
28 because the law requires we ask these questions before there is

1 any determination of guilt or innocence, sort of backwards.

2 You understand the fact we are required to ask  
3 these questions doesn't mean anything about whether or not Mr.  
4 Cooper is guilty or innocent?

5 A. Yeah, I understand.

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

7 A. If, you know, if it's required, I mean, you know, I  
8 don't -- I think if -- if the person is -- as, you know, I don't  
9 really understand the law very well and I don't understand the  
10 determination of guilt and innocence very well, but I feel as if  
11 I'm capable of giving a verdict. Then if I'm capable -- I  
12 think -- I'm certain that I'm capable of understanding the  
13 difference between guilt and innocence. And I'm certain that  
14 I'm capable of understanding the conditions under where a person  
15 is, you know, the conditions where the death penalty should --  
16 is appropriate and when it's not appropriate. And I feel I can,  
17 you know, when I understand that I can make a fair judgment.

18 Q. Okay. Do you have any personal opinion as to  
19 whether or not there should be a penalty -- death penalty in  
20 California?

21 A. Yeah, if it's appropriate, yes.

22 Q. What about life imprisonment without parole, what  
23 is your opinion about that particular penalty?

24 A. That's -- If it's appropriate, that's okay.

25 Q. Okay. So basically you haven't made up your own  
26 mind though as to when it's appropriate and when it's not; you  
27 are just willing to follow the law?

28 A. Yeah.

1 Q. Do you belong to an organized religion?

2 A. Well, I was baptized a Catholic but I don't  
3 practice Catholic.

4 Q. Have the views in the church in any way influenced  
5 your opinions on crime or penalty or death penalty?

6 A. No.

7 Q. They are based on your own individual conscience?

8 A. Yeah.

9 Q. That's that is all I have. Mr. Kochis may have  
10 some.

11

12 EXAMINATION

13 BY MR. KOCHIS:

14 Q. I have a few questions.

15 How do you feel about being put in a position where  
16 you have to make this type of life or death decision?

17 A. I feel I could handle the responsibility  
18 effectively.

19 Q. There were two periods in the '70s, once I believe  
20 in '74 and then again in '78, in which this type of issue was on  
21 the ballot, the death penalty related issues. People circulated  
22 petitions, gathered signatures, there was a lot of debate and  
23 controversy about whether we should have the death penalty or  
24 not.

25 Were you involved either circulating the petitions  
26 or signing them or things of that nature?

27 A. Well, I was definitely not involved in circulating;  
28 whether I signed I can't remember.

1 Q. Did you take a position one way or the other about  
2 whether we should have a death penalty in California at that  
3 time?

4 A. Not really, not that I can remember, so it wasn't  
5 very strong if I did.

6 Q. The fact that we have one on the books here in  
7 California as a punishment, what do you think about that?

8 A. Well, I think, as I tried to say that I think  
9 it's -- if it's appropriate and it's necessary, you know, I  
10 think it's reasonable to have the death penalty.

11 Q. At the end of every criminal case to make sure  
12 there's no mistake the Judge polls the jurors. He simply goes  
13 down the aisle and asks each juror if the way the clerk has read  
14 the verdict form is in fact the way they voted.

15 If in this case there was a death verdict returned,  
16 would you have any problem indicating in open court that that's  
17 the way you voted?

18 A. No problem at all.

19 Q. Likewise, one person is elected as the foreman who  
20 presides over the deliberations and dates and signs the verdict  
21 forms --

22 You are shaking your head in agreement. Have you  
23 sat before?

24 A. Well, I had known that, that there was a foreman.

25 Q. If in this case you were elected as the foreman and  
26 you and eleven other people decided that the appropriate  
27 punishment was death, would you have any problem dating and  
28 signing that verdict form?



1 A. No.

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

3 THE COURT: Let us discuss it privately for a moment and  
4 then the bailiff will let you know shortly. Thank you for  
5 coming in, sir.

6 PROSPECTIVE JUROR: Your welcome.

7 THE COURT: Anything, counsel?

8 MR. KOCHIS: No.

9 MR. NEGUS: No.

10 THE COURT: Give him a return date please, bailiff.

11 Counsel, that's exhausts our prospective jurors  
12 until the hour of 1:30. We will be in adjournment till then.

13 Let's discuss this. The next one in order on our  
14 page is other Tony Mills. And he called here at 10:25 saying  
15 that he broke his ankle last night, is in a cast at home now; in  
16 three weeks will get a walking cast if mending okay; will be  
17 three months in a cast; wants release from jury duty; can't  
18 drive.

19 Do you consider that sufficient to excuse for  
20 cause, gentlemen?

21 MR. KOCHIS: People would.

22 MR. NEGUS: Yes.

23 THE COURT: All right.

24 Would you notify him of our regrets and thank him  
25 for his cooperation thus far, wish him we will.

26 Excused for cause.

27 THE COURT: Okay 1:30.

28 (Noon recess.)

1           SAN DIEGO, CALIFORNIA, TUESDAY, OCTOBER 2, 1984 1:30 P.M..

2                           --oo0oo--

3  
4           THE COURT: All right. We're ready, bring in the next  
5 one.

6  
7                           BARBARA GOODBODY

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

10  
11                           EXAMINATION

12           BY THE COURT:

13           Q.     Come in. Have a chair, please.

14           A.     Thank you.

15           Q.     Good afternoon.

16           A.     Good afternoon, judge.

17           Q.     Barbara Goodbody?

18           A.     That is correct.

19           Q.     I want to explain that we have arranged things in  
20 an informal manner so that you will settle back and relax and  
21 make it easier for you to answer our questions. Okay?

22           A.     All right.

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.     No.

26           Q.     Mrs. Goodbody, I remind you that when I was on the  
27 bench before and you were in, I told you that there could be two  
28 possible phases to this trial.

1           A.     Yes, sir, I remember.

2           Q.     The first phase is the guilt phase and there the  
3 jurors determine guilt or innocence. Then we may or may not go  
4 to a second phase, but if we do, there we will be concerned with  
5 punishment, and the punishment would only have two choices.  
6 One, to return a verdict indicating death by execution, on the  
7 one hand, and the verdict of life imprisonment without the  
8 possibility of parole on the other.

9                     My first real question to you is, then, if we do  
10 get to a penalty phase, and you are on the jury, would you be  
11 able to fairly consider both of those two possible penalties?

12          A.     Yes.

13          Q.     Do you -- you don't feel locked into one or the  
14 other at this time?

15          A.     No.

16          Q.     Were you to personally vote for either one of them,  
17 would you make your decision based upon the evidence and the  
18 circumstances brought out at the trial?

19          A.     Yes, your Honor.

20          Q.     Some jurors have indicated a weak, or a concern  
21 that they may be so concerned with having to make a hard  
22 decision in the penalty phase that they would let that concern  
23 affect the way they'd vote in the guilt phase, and perhaps  
24 deliberately find an inappropriate verdict just to avoid of  
25 having to get that down the road.

26          A.     No.

27          Q.     You wouldn't do that?

28          A.     No.

1 THE COURT: That's all I have. Mr. Negus.

2

3

EXAMINATION

4 BY MR. NEGUS:

5 Q. Mrs. Goodbody, the judge is letting Mr. Kochis and  
6 myself ask most of the questions. We're not trying to pry or  
7 embarrass you in any way, but the law requires that we get your  
8 opinions on these matters before we go any further.

9 What had you heard about the crime from I guess  
10 television or radio before you came to court?

11 A. Well, I watch some of the news everyday, so  
12 everything that was on I have heard.

13 Q. What do you remember about the actual details of  
14 the crime?

15 A. Well --

16 Q. As best you can.

17 THE COURT: He wants to see how much you can remember.

18 PROSPECTIVE JUROR: I think the young man was in a prison  
19 facility, escaped, there were four murders committed, a man, a  
20 wife and two children, and the third child had his throat cut  
21 but survived. I do not know what his condition is at this time.

22 The young man in question managed to escape, went  
23 to Mexico, I believe, was hired on a boat by a young couple, the  
24 boat returned, I believe, to Santa Barbara. What occasioned the  
25 apprehension I do not know but I believe that is where he was  
26 apprehended.

27 Q. After the case --

28 A. That's all I remember.

1 Q. After the case was, got to court in San Bernardino,  
2 did you see any of the television stories about that?

3 A. No, I don't recall any of that.

4 Q. Did you know that the case was coming to San Diego  
5 before you arrived here for jury duty?

6 A. No. I was -- I had no idea until Judge Garner  
7 informed us two weeks ago when I came back then.

8 Q. What was your reaction when you found out that you  
9 were a prospective juror in this particular case?

10 A. Shocked.

11 Q. Why?

12 A. It would be very difficult for me to serve on that  
13 jury.

14 Q. Why?

15 A. I have two small granddaughters, any injury with  
16 children affects me very deeply.

17 Q. Well, let me ask you this. Based upon what you've  
18 heard about the case so far, on television, do you have an  
19 opinion as to Mr. Cooper's guilt or innocence?

20 A. Yes.

21 Q. Do you think that in sitting upon the jury, would  
22 it be possible for you to put that opinion aside if you were to  
23 sit on this particular jury?

24 A. I doubt it.

25 Q. So what you are telling me is you don't feel in  
26 this particular case it would be possible for you to be a fair  
27 and impartial juror?

28 A. To be completely objective?

1 Q. Yes.

2 A. No, I don't think I could.

3 MR. NEGUS: I really appreciate your candor. Thank you  
4 very much.

5 PROSPECTIVE JUROR: You're very well come.

6

7

EXAMINATION

8 BY MR. KOCHIS:

9 Q. Mrs. Goodbody, I would like to ask you a few  
10 questions if it is all right.

11 Do you need a moment to compose yourself?

12 A. No.

13 Q. The way the system works in this country is we try  
14 people in a court of law and not over the TV or in the  
15 newspaper.

16 A. I appreciate that. I served on grand juries 20  
17 years ago in this same courthouse, on three or four different  
18 trials, so I understand that you are considered not guilty until  
19 determined otherwise.

20 Q. Okay. That's part of the oath all the jurors are  
21 required to take an oath to follow the law and make no opinion  
22 until all the evidence is in and to base their opinion only on  
23 the facts and the law.

24 Do you think you could do that in this case?

25 You don't think so. You have to answer outloud, he  
26 can't take --

27 A. Oh, I'm sorry, no. To be completely honest with  
28 you, no. I would be a very good juror for the prosecution but

1 not for the defense. I'm sorry.

2 MR. KOCHIS: Thank you for being so honest.

3 PROSPECTIVE JUROR: You're very well come.

4 THE COURT: Would you wait outside just a moment and let  
5 us discuss it privately. We may give you further instructions  
6 and thank you for coming.

7 PROSPECTIVE JUROR: You're welcome.

8 THE COURT: Sorry if we upset you.

9 PROSPECTIVE JUROR: Yes, I have an upset in my family. I  
10 am not very stable emotionally.

11 THE COURT: Counsel, would you stipulate she might be  
12 excused?

13 MR. NEGUS: Yes.

14 MR. KOCHIS: I won't stipulate but I know there would be  
15 a challenge.

16 THE COURT: Do you challenge, Mr. Negus?

17 MR. NEGUS: Yes.

18 THE COURT: The challenge is granted. Next juror.

19 WILLIAM O'NEIL

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

22

23 EXAMINATION

24 BY THE COURT:

25 Q. William O'Neil.

26 A. Yes.

27 Q. Mr. O'Neil, I deliberately arranged this around the  
28 table in an informal manner in the hope that it will relax you

1 a little bit, and you it will be easy for you to answer our hard  
2 questions for us.

3 Has anything happened to you since we last saw you  
4 which might complicate your ability to serve in this case?

5 A. No.

6 Q. I now want to remind you just briefly of some of  
7 the things that I said when I was on the bench.

8 Do you remember there could be two possible phases  
9 to the case. First is the guilt phase where the the jurors are  
10 concerned only with guilt or innocence. Second is a second  
11 penalty phase, if we get that far, I don't know, but if we get  
12 that far the jurors will have to make a decision as to which is  
13 the most appropriate penalty based upon the evidence and the law  
14 that I give to you, namely, death by execution or life  
15 imprisonment without the possibility of parole.

16 Do you remember that, sir?

17 A. Yes.

18 Q. Question. If we do get to a penalty phase, Mr.  
19 O'Neil, will you be able to fairly consider both of the possible  
20 penalties?

21 A. Yes.

22 Q. Would you be able to personally vote for one or the  
23 other based upon the evidence and the circumstances?

24 A. Yes.

25 Q. Do you feel that you might be so concerned with  
26 having to make that hard life or death type of decision that you  
27 would deliberately try to avoid it by finding perhaps an  
28 inappropriate verdict in the guilt phase?



1 A. No.

2 THE COURT: Mr. Negus.

3

4 EXAMINATION

5 BY MR. NEGUS:

6 Q. Mr. O'Neil, the judge is allowing Mr. Kochis and  
7 myself to ask you most of the questions. We're not trying to  
8 pry or embarrass you, but we just need to have your personal  
9 opinions on some of these matters.

10 A. Uh-huh.

11 Q. What had you heard about this particular crime  
12 before you came to court? What do you remember?

13 A. Very little, if any. Very little.

14 Q. You do remember having heard something, I take it,  
15 from your questionnaire.

16 A. The only thing I remember was something about Mr.  
17 Cooper was captured in Santa Barbara or something. That is the  
18 only real thing.

19 Q. You don't remember any of the details of the  
20 capture or anything that --

21 A. No.

22 Q. Did you ever see any news stories about the case  
23 after it got to San Bernardino in court?

24 A. No, not that I remember.

25 Q. And what was your impression of Mr. Cooper from the  
26 little bit you did see on the television?

27 A. I really had no opinion on it.

28 Q. You had no opinion on his guilt or innocence

1 either?

2 A. No.

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

5 A. I feel that -- excuse me -- due to the seriousness  
6 of the case, that it would be a very serious matter. That's  
7 about it.

8 Q. Do you feel any reluctance or whatever to handle  
9 that sort of serious business?

10 A. No.

11 Q. We're asking some questions about the death  
12 penalty, that is because the law requires us to go about this  
13 backward. We want to ask those questions before we even  
14 determine guilt or innocence.

15 You don't take it -- I take it -- well, you won't  
16 take it that that's an indication Mr. Cooper is guilty or  
17 anybody is suggesting that.

18 A. No, none at all.

19 Q. What is your feeling about the death penalty?

20 A. My feeling is if somebody was to do a crime where I  
21 felt they deserved the death penalty or the law, I felt deserved  
22 the death penalty, that it should given if the person is guilty  
23 beyond a reasonable doubt.

24 Q. What do you think about the life imprisonment  
25 without the possibility of parole?

26 A. Again, if the person were to be found guilty beyond  
27 a reasonable doubt, I think that should be -- that's fair, too.

28 Q. The law may have certain rules about which people,

1 situations merit the death penalty as opposed to life without  
2 parole.

3 Do you have any personal opinions on that?

4 A. Could you please repeat that, please.

5 Q. I will try and make it simpler.

6 Do you have any personal opinions as to which  
7 situations merit the death penalty as opposed to life  
8 imprisonment without parole?

9 A. No, I don't.

10 Q. Whatever the law is, do you feel confident that  
11 whatever the law is on that that you could follow it?

12 A. Sure.

13 Q. Do you belong to an organized religion?

14 A. Yes.

15 Q. What religion?

16 A. Catholic church.

17 Q. Have the views of the church in any way influenced  
18 your opinions on the death penalty or crime and punishment?

19 A. No.

20 MR. NEGUS: Thank you. Mr. Kochis may have some  
21 questions.

22

23

EXAMINATION

24 BY MR. KOCHIS:

25 Q. Mr. O'Neil, there were two occasions in the 70's,  
26 first I believe in '74 and again in '78, in which we had death  
27 penalty-related issues on the ballot, and people circulated  
28 petitions, they gathered signatures, there was a lot of debate

1 about it at that time, people took strong positions one way or  
2 the other, they voted for or against it.

3 Were you involved at either one of those times?

4 A. No.

5 Q. Not gathering signatures.

6 A. No, none.

7 Q. Did you take a position one way or the other?

8 A. No.

9 Q. Were you in California at that time?

10 A. No.

11 Q. Are you from the east coast?

12 A. Yes.

13 Q. We happen to have the death penalty on the books  
14 out here in California. How do you feel about that?

15 A. Again, if the law states that that's the penalty  
16 for the crime, and the person I feel is guilty, I would be  
17 willing to go along with that.

18 Q. The way it works in this state, once we get past  
19 the guilt phase, if this defendant is found guilty we have a  
20 penalty phase, we introduce additional evidence, the judge gives  
21 you some additional guidelines, but the judges makes no  
22 recommendation. You and eleven other people would make the  
23 decision as what to do with this defendant.

24 How do you feel about making that type of decision?

25 A. Again, if I felt that the defendant was guilty  
26 beyond a reasonable doubt I would go along with whatever the  
27 penalty was.

28 Q. Okay. I'm going to ask another question.

1           Just so there is no confusion in your mind and my  
2 mind, when we get to the penalty phase, he has to be found  
3 guilty, so then we still have the two alternatives, and you  
4 would have to consider some evidence within a certain framework.  
5 But, again, you won't go along with the judge or in effect go  
6 along with the certain recommendation, you'd decide --

7           A.     I have to makeup my own mind, right.

8           Q.     Although, it is not a pleasant decision you have to  
9 make, do you feel comfortable in making that type of decision?

10          A.     Yes.

11          Q.     To make sure there has been no mistake, in a  
12 criminal case the judge polls the jury at the end, he goes down  
13 the row and asks, is this your verdict the clerk has read; is  
14 this in fact the way they voted in this case.

15                 If we got to the penalty phase, and the jury  
16 determined that the appropriate punishment was death, would you  
17 have any problem indicating in open court that that's the way  
18 you voted?

19          A.     No.

20          Q.     Likewise, one person is elected as the foreman;  
21 that person, in addition to presiding over the deliberations,  
22 signs and dates a verdict form.

23                 If you were elected as the foreperson of this jury,  
24 and the jury determined that the appropriate punishment was  
25 death, would you have any problem dating and signing the form?

26          A.     No.

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

28          THE COURT: We'd like to discuss it privately. I would

1 ask that you wait outside, the bailiff will shortly give you  
2 further instructions.

3 PROSPECTIVE JUROR: Thank you. Any problem, gentlemen?

4 MR. NEGUS: No.

5 MR. KOCHIS: No, your Honor.

6 THE COURT: That you.

7 THE BAILIFF: Joyce Schall is next.

8

9

JOYCE SCHALL,

10 called as a prospective juror, having been previously sworn,

11 testified as follows:

12

13

EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon. Are you Joyce Schall?

16 A. Yes, I am.

17 Q. Mrs. Schall, I've deliberately arranged an informal

18 setting around the table in hopes that you will be more at ease

19 to answer the hard questions we are going to put to you, okay?

20 So relax, please.

21 Has anything happened to you since we last saw you

22 which would complicate your ability to serve?

23 A. Yes, it has. I -- I'm an RN at the hospital and I

24 have talked to the director of nursing and they pay you for

25 just ten days of jury duty. My husband is retiring and we are

26 depending on my income also.

27 Q. Which hospital?

28 A. Coronado.

1 Q. Is that a private hospital?

2 A. Yes.

3 Q. It is not run by the government?

4 A. No. It's a nonprofit private hospital.

5 Q. Fortunately you are independently wealthy?

6 A. That would be nice.

7 Q. That would be nice.

8 Counsel, if you have any questions you may inquire  
9 about that.

10

11

EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mrs. Schall, would this then pose a financial  
14 hardship on you because we are obviously going to go beyond two  
15 weeks?

16 A. Yes, it would, it definitely would.

17 MR. KOCHIS: I have no further questions.

18 THE COURT: Would you let us discuss it privately please.  
19 Thank you for coming in case we don't have you back, but we may,  
20 so wait outside, please. The bailiff will instruct you further.

21 THE COURT: It seems to me good cause. Do you wish to be  
22 heard anybody?

23 MR NEGUS: \$50 due process.

24 THE COURT: All right. I do find good cause to excuse  
25 her. The lady is in obvious distress to think she would have to  
26 serve. So excuse her, please.

27 We will be in recess.

28 (Recess.)

1 THE BAILIFF: We have Mr. Sawyer first.

2

3

NEVILLE SAWYER,

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

6

7

EXAMINATION

8

BY THE COURT:

9

Q. Come in, have a seat please, and good afternoon.

10

A. Good afternoon.

11

Q. Your name, please.

12

A. Neville Sawyer like in Tom Sawyer.

13

14

Q. Mr. Sawyer, has anything happened to you since we  
last saw you that would complicate your ability to serve in this  
15 case?

16

A. I don't believe so.

17

18

Q. That's the answer we're looking for. We don't  
always get it, sometimes they have sickness or accident or any  
19 number of things.

20

21

A. I have a -- I have a father that has Alzheimer's  
and in and out of convalescents and that, but it's an  
22 indeterminate case, so I can't -- I can't say if I'm going to  
23 be -- have any personal demands on me or not.

24

25

26

Q. Well, we all have concerns of one sort or another,  
but I assure you if something does happen that you need to get  
away early or something like that we will try and be considerate  
27 during the trial.

28

A. Okay.



1 Q. Next, I want to remind you of some of the things I  
2 said before when you were here two or three weeks ago.

3 I told you that this could be a two phase type of  
4 trial. The first phase the jurors would be concerned with guilt  
5 or innocence; the second phase the jurors would have to make a  
6 choice as to which is the most appropriate penalty, namely,  
7 death or life in prison without the possibility of parole.

8 My first real question to you then is: If we do  
9 get to a penalty phase, Mr. Sawyer, will you be able to fairly  
10 consider both possible penalties?

11 A. I would imagine I would. I -- I don't have any,  
12 what you would say, I don't have any preconceived ideas right  
13 now as regards this trial.

14 Q. That's specifically what we're concerned with.  
15 There will be more questions on that.

16 Will you be able to personally vote for one or the  
17 other, depending upon the evidence and the circumstances brought  
18 out at the trial?

19 A. You mean what? Vote for what?

20 Q. Either death or life imprisonment. Would you be  
21 able to vote for either one of those and make your decision  
22 based upon the evidence and the circumstances at trial?

23 A. Yes, I believe I would.

24 Q. Is there anything that's concerning you about that  
25 at the moment? Are you getting ready to volunteer something to  
26 me?

27 A. No, only that if the individual is guilty beyond --  
28 you know, within reason and then whatever the crime is, then I

1 would vote for that, whatever the penalty is for that crime.

2 Q. Well, there is no set penalty. Even if a person is  
3 found guilty and found guilty of multiple murders, then we have  
4 to have, the law provides, another phase of the trial.  
5 Additional evidence will be presented at that time. And then  
6 the Court will instruct the jurors further as to what factors  
7 you may consider in determining your penalty. But I don't tell  
8 you what the verdict should be, you would have to make that  
9 decision. Could you do it?

10 A. Oh, I estimate I could, with --

11 You mean, being told what I should do?

12 Q. Could you bring yourself to make such a hard  
13 decision?

14 A. Well, again, you're asking me can I do something  
15 that I have not already done, so I don't have any experience in  
16 this, but I believe I could.

17 Q. I think that's all I can ask of you. I can't ask  
18 for a mathematical certainty since you have to project into the  
19 future, but you can see inside your head a lot better than we  
20 can so we depend upon your answers.

21 Some jurors, however, equivocate much more than  
22 that to the extent that they say, "Hey, Judge, I feel so  
23 concerned about having to make that tough type of decision that  
24 I think that I might be inclined to cop out or to look for an  
25 easy way out back in the guilt phase so we never ever get to a  
26 penalty phase." Do you understand what I'm saying?

27 A. Uh-huh.

28 Q. Do you think --

1           A.     Well, I think we would all rather not. We would  
2 all rather not do that.

3           Q.     But you're going to have to take an oath to well  
4 and truly try the case, and that would be to return your true  
5 convictions if you were convinced of a particular verdict. Can  
6 you do that?

7           A.     Yes, I would imagine I can, yeah, yeah, I believe  
8 so.

9           Q.     Okay. Counsel has some questions.

10

11

EXAMINATION

12 BY MR. NEGUS:

13

14                   Mr. Sawyer, the Judge let's the lawyers, Mr. Kochis  
15 and myself, ask you most of the questions. We are not trying to  
16 pry or embarrass you, but the law requires that we get your  
17 opinions before we go any further.

18

19                   You indicated in the questionnaire that you filled  
20 out for us that you have some memories about this particular --  
21 about facts you heard in the media about this particular case.  
22 What facts do you remember about the case?

23

24           A.     Well, I remember what -- what I read, what I heard  
25 on the news and what I was told. Now whether I was told the  
26 truth or not, I was told that this was a multiple murder case  
27 and that it was a brutal affair and a whole number of -- of  
28 extraneous details which I don't know whether were true or not.

29

30           Q.     What kind of extraneous details were you told?

31

32           A.     Well, there was -- there was one or two or more  
33 killings. There was one individual was physically raped and

34

1 that it was a brutal affair.

2 Q. Who would -- what was the source of somebody  
3 telling you this, was that an acquaintance?

4 A. Oh, individuals that I've met outside.

5 Q. Before you came into court the first time?

6 A. Uh-huh; uh-huh.

7 THE COURT: Say yes or no.

8 BY MR. NEGUS:

9 Q. You have to say yes.

10 A. Yes.

11 Q. What can you remember from the television and the  
12 newspapers about it other than --

13 A. Oh, only I -- I frequently get the L.A. Times and I  
14 get the -- I have KNX on early in the morning, and there's such  
15 statements as the -- that this trial would not be appropriately  
16 tried in San Bernadino County so it's going to be tried here.  
17 Okay? Those are a number of things.

18 Q. Did you -- did you hear any of the evidence that  
19 come out during the motion stages, the proceedings we had before  
20 we came down hear?

21 A. I don't quite understand you.

22 Q. Did you hear anything about testimony that took  
23 place during pretrial proceedings up in San Bernadino?

24 A. No. I can't -- I can't specify anything in detail.  
25 This is, this is a thing that you hear quite casually not ever  
26 dreaming that you will be called upon to explain exactly what  
27 was it that you heard. But I do remember -- I do remember  
28 hearing it.

1 Q. I suppose we are not so interested in so much as  
2 what you heard as what you remember.

3 And then my next follow-up question to that is what  
4 impression it made on you. What impression did you have of Mr.  
5 Cooper from what you heard?

6 A. Well, I didn't know Mr. Cooper from Adam, and I  
7 still don't; but I have an impression if -- if somebody commits  
8 an unnecessarily, what shall we say --

9 THE REPORTER: I'm sorry.

10 THE COURT: Savage.

11 PROSPECTIVE JUROR: -- savage act, I don't -- I don't  
12 have much compassion under those circumstances.

13 BY MR. NEGUS:

14 Q. I suppose that's not really the question that's  
15 more of interest to me, but what concerns me is do you have an  
16 opinion as to whether or not Mr. Cooper is the person that  
17 committed the savage acts?

18 A. I don't have all that information. I can't make  
19 that decision at this time. All I can say is that there's  
20 enough evidence for this court to have convened in this manner  
21 to make it possible or even probable.

22 Q. Does that lead you to believe that probably he's  
23 guilty or --

24 A. I don't know. He could be here under  
25 circumstantial evidence. I don't know.

26 Q. Okay. So you're not -- you haven't come to any  
27 particular opinion about Mr. Cooper's guilt or innocence at this  
28 time, is that true?

1           A.     I can't right now because I don't have all of the  
2 information.

3           Q.     And do you think that you could keep an open mind  
4 about his guilt or innocence until the conclusion of the trial  
5 on that issue if you were a juror?

6           A.     Yes, I imagine I could. I believe so.

7           Q.     We're asking you some questions about penalty and  
8 we're required by law to do that before there's even been a  
9 determination of guilt or innocence, thus obviously we may never  
10 get to the issue of penalty in this particular trial. If Mr.  
11 Cooper is not found guilty then we won't have to consider it.

12                    You won't take that as any indication by the court  
13 or the legal system that he is guilty that we're asking these  
14 questions, is that true? Can you not take it as -- the fact  
15 that we're asking about penalty?

16           A.     Well, if the evidence is presented to a certain  
17 condition you have to -- you're beginning to form an opinion and  
18 you would naturally as an individual form a conclusion. I'm an  
19 engineer and I have to come up with tangible answers, and I  
20 would have to form my personal opinion of what the evidence was.  
21 Now does that indicate Mr. Cooper did this act or is he here  
22 under circumstantial evidence.

23           Q.     What I'm -- what I'm basically concerned about, and  
24 I think you've answered it, but let me just make sure I  
25 understand. You would base your decision on the testimony and  
26 tangible evidence that's presented to you in court and not on  
27 extraneous factors such as we are asking you questions about  
28 penalty before you even determine guilt or innocence; am I

1 correct?

2 A. Yes, I believe so. I believe so. I would -- in  
3 other words, I would make my -- I would form my opinion  
4 regardless of what anybody else said, in other words, somebody  
5 may say that a person ought not to be executed because of this  
6 and this and this. Now that's a purely one's own opinion.  
7 There are -- there is no doubt things that people can do where  
8 they deserve to be executed. There's things that people do not  
9 do and -- and they are executed. So I -- I feel that I have --  
10 I have an opinion about conduct.

11 Q. And you are basically interested in punishing those  
12 who did wrong but not punishing those who are not proved to have  
13 done wrong; is that fair?

14 A. Well, the proof of what's being done wrong is  
15 purely a technical factor, isn't it?

16 Q. That's right, but that's what we --

17 A. Okay. Now there's a lot of people who've done  
18 wrong that -- who -- what shall we say, are not persecuted  
19 because of a technical -- one technical aspect of the case.  
20 There are other -- there are some individuals who are persecuted  
21 because of some circumstantial evidence only.

22 THE COURT: Mr. Sawyer, I don't want to stifle your  
23 volunteering when you have a problem, but try first to answer  
24 specifically the questions asked.

25 PROSPECTIVE JUROR: Okay. I won't say any more.

26 THE COURT: You are kind of amplifying on an answer and  
27 coming up not necessarily with the answer to the question  
28 sometimes.

1 PROSPECTIVE JUROR: Okay. All right.

2 BY MR. NEGUS:

3 Q. I think I understand what you're -- you're saying.  
4 Let me just go on to the next question.

5 What do you think about the death penalty in  
6 general? You've given us some indication, but do you favor  
7 having it in the state as a penalty?

8 A. Yes, I do.

9 Q. Why?

10 A. Because there are some crimes that people need  
11 execution for.

12 Q. What do you think about the penalty of life  
13 imprisonment without parole; do you favor having that in the  
14 State of California?

15 A. Oh, I -- there is no doubt an application for that.

16 Q. Have you made up your mind as opposed to whatever  
17 the law says, but do you have a personal opinion as to what kind  
18 of cases deserve death as opposed to what type of cases deserve  
19 life without possibility of parole?

20 A. I would say I have to be honest and say that there  
21 are some crimes that I think people deserve to be executed for.

22 Q. Okay. Based on what you know about this particular  
23 crime have you made up your mind in advance as to which of the  
24 two penalties?

25 A. I have not.

26 Q. Do you belong to an organized religion?

27 A. You mean am I Christian?

28 Q. Well, we will start with that.



1           A.     Well, I'm -- I do not attend church on a regular  
2 basis. I do just from time to time.

3           Q.     Do you belong -- do you attend a particular  
4 denomination?

5           A.     Well, I have people I know who are Catholic and  
6 people I know who are Protestant, and I attend each church.

7           Q.     Have religious beliefs or religious tenets  
8 influenced your opinions about crime and punishment and the  
9 death penalty?

10          A.     No.

11          Q.     Those are based on your own individual --

12          A.     My own individual what you say code.

13          Q.     Thank you.

14                 I have nothing further.

15

16                                 EXAMINATION

17         BY MR. KOCHIS:

18           Q.     Mr. Sawyer, I have a few questions.

19           A.     I have to apologize for taking so long.

20           THE COURT: No, not at all. Hey, we are not in any rush.

21           PROSPECTIVE JUROR: Okay.

22         BY MR. KOCHIS:

23           Q.     How do you feel about being placed in the position  
24 where you might have to make decisions of this magnitude?

25           A.     Well, I'm not happy about it, that's for sure.  
26 It's a big decision to make.

27           Q.     Okay. The reason I ask that type of question is  
28 some people when they are actually confronted with the decision

1 feel that it's so serious they can't make the decision one way  
2 or the other and they freeze or they balk.

3 Do you see that potential arising within you?

4 A. I'm -- I don't think so. I've been in air raids  
5 and things like this where I have had to make graphic decisions  
6 and I'm scared, but I think I can.

7 Q. If we got to the penalty phase after you heard all  
8 the evidence, you heard Judge Garner give you the law, you heard  
9 the lawyers argue the case, do you think you could make a  
10 decision one way or the other based on the facts and the law  
11 what the appropriate penalty would be?

12 A. Yes, I estimate I could.

13 Q. There were two periods in time in the '70s, first I  
14 believe in '74 and then again in '78, in which death penalty  
15 related issues were on the the ballot, individuals circulated  
16 petitions, they gathered signatures, it was a subject of debate  
17 and controversy, and some people took strong positions on one  
18 side or the other whether or not we should have the death  
19 penalty.

20 Were you involved in, for example, circulating  
21 petitions? Do you recall signing any?

22 A. No; no. I agree with the death penalty under  
23 certain conditions, but I have not been part of any organization  
24 or anything.

25 Q. Okay. A couple of times you used the phrase  
26 "circumstantial evidence." Have you sat on the jury before?

27 A. I have not, no.

28 Q. The Judge at the end of the first trial is going to

1 give you specific instructions on direct and circumstantial  
2 evidence. Can you wait until he instructs on exactly what those  
3 two phrases mean until you determine what weight to give direct  
4 evidence and what weight to give circumstantial evidence?

5 A. Oh, I'm -- I admit very openly that I don't know  
6 anything, what's really, you know, the actual technical aspects  
7 of this. Yes, I estimate I could.

8 Q. For example, if Judge Garner at the end of the  
9 trial gave you an instruction and he told you that both direct  
10 evidence and circumstantial evidence are entitled to the same  
11 amount of weight, could you follow that instruction?

12 A. I would try to.

13 Q. Does that mean you might have some problem with it?

14 A. Yes; yes. How can I answer something I don't  
15 understand? I don't know all the details of this -- of this  
16 case.

17 Q. Okay.

18 A. Now again, I have to say you're asking me to make a  
19 decision now about what I would do then when I don't know what  
20 the evidence is.

21 Q. Let's -- Let's tackle that for a moment. First of  
22 all we're not trying at this point to get you to speculate as to  
23 whether you'd vote guilty or not guilty, or whether you'd impose  
24 the death penalty or not because as you correctly point out,  
25 there's months of testimony which you haven't heard.

26 A. Uh-huh.

27 Q. Do you understand that?

28 A. Uh-huh.

1 Q. Is that a yes?

2 A. Understood.

3 Q. But there are some people that come in, they say,  
4 "I have a personal feeling, personal opinion, and because I have  
5 that opinion I wouldn't be able to follow the law in this case  
6 if it went contrary to my personal feelings."

7 Do you see yourself as one of those individuals?

8 A. I do not, no.

9 Q. At the end of every criminal case to make sure that  
10 there is no mistake we poll the jury. The Judge simply goes  
11 down the aisle and he asks each juror if the verdict the clerk  
12 has just read is in fact the way they voted.

13 If in this case we got to the penalty phase and you  
14 and eleven other people determined that the appropriate penalty  
15 should be death, would you have any problem indicating that in  
16 open court?

17 A. Well, I've never done it before but I believe I  
18 could.

19 Q. Okay. Likewise appreciating that you've never done  
20 it before, one of the jurors is elected as the foreman. That  
21 person dates and signs the verdict form.

22 If the jury selected you as the foreman and  
23 yourself and eleven other persons determined that the  
24 appropriate punishment in this case was death, would you have  
25 any problem dating and signing the verdict form?

26 A. I'd rather not be the foreman.

27 Q. Appreciating that, if it was thrust upon you.

28 A. Well, you are going to have to thrust it pretty

1 hard. How would you thrust it upon me? Doesn't the foreman  
2 have to agree?

3 Q. I've never been on a jury.

4 A. First off he would have to be an extroverted  
5 individual. He would have to just eat it up. I don't know.

6 Q. I've never been on a jury, I don't know. You are  
7 asking me a question I can't answer.

8 Let's assume for the sake of argument you were  
9 selected as the foreman.

10 A. Uh-huh. I would attempt to do whatever I was  
11 supposed to do.

12 Q. Okay. Thank you.

13 I have nothing further.

14 THE COURT: Mr. Sawyer, we would like to discuss it  
15 privately, but only briefly. Would you wait outside till the  
16 bailiff gives you further instructions. Thank you for coming in  
17 today.

18 THE COURT: Anything, Mr. Kochis?

19 MR. KOCHIS: No, your Honor.

20 THE COURT: We are getting a good look at human  
21 character, aren't we?

22 THE COURT: All right. Call in the next one.

23

24

25 called as a prospective juror action having been previously  
26 sworn, testified as follows.

27

28

EXAMINATION

1 BY THE COURT.

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. How do you pronounce it?

5 A. Fortier.

6 Q. Fortier?

7 A. Fortier yes.

8 Q. First, Mr. Fortier, has anything happened to you  
9 since we last saw you which would complicate your ability to  
10 serve in this case?

11 A. No.

12 Q. Secondly, I will explain the informal arrangement  
13 around the table. That's designed just a little bit more to put  
14 you at ease than having a black robe look down on you, so relax  
15 and be more informal, please, then I want to explain to you our  
16 procedures.

17 As I told you before when I was on the bench, this  
18 could be a two-phased trial. The first phase the jurors are  
19 just concerned with guilt or innocence. The second phase, if we  
20 get that far and we don't know but if we get that far, the  
21 jurors would have to determine based upon the evidence and the  
22 law that I would give to you which is the most appropriate  
23 penalty in this case, namely, death or life imprisonment without  
24 the possibility of parole.

25 Do you recall I told you that before?

26 A. Uh-huh, yes.

27 Q. My first real question to you then is: If we do  
28 get to a penalty phase will you be able to fairly consider both

1 of those two alternatives?

2 A. Yes, sir.

3 Q. Do you feel that you would be able to vote for one  
4 or the other and that you would base your decision upon the  
5 evidence and the circumstances brought out at trial?

6 A. Yes, I would.

7 Q. Do you feel any great concern or abhorrence for  
8 having to make that decision if we get there?

9 A. No.

10 THE COURT: All right.

11 Mr. Negus.

12

13 EXAMINATION

14 BY MR. NEGUS:

15 Q. Mr. Fortier, the Judge is leaving Mr. Kochis and  
16 myself most of the questions to be put to you. We're not trying  
17 to pry or embarrass you in any way, but the law requires to us  
18 get your opinions about certain things before we proceed.

19 What do you -- what do you remember having heard  
20 about this case before you came to court?

21 A. Very little now. The paper, I read the sports  
22 section, that's the part I take out first, and the rest if I  
23 have time I get to it. But I really don't remember all that  
24 much about it.

25 Q. Well, do you remember anything about the crime?

26 A. I did read, I remember reading about it, but it's  
27 vague now. I can't remember all the details.

28 Q. Do you remember having heard anything about Mr.

1 Cooper?

2 A. In the paper, yes.

3 Q. What can you remember as best you can articulate?

4 A. Well, something about in the home there there was  
5 people that were killed, a man and children I believe it was.

6 Q. Do you remember reading anything about my -- the  
7 reason why the -- why the authorities blamed Mr. Cooper?

8 A. No.

9 Q. Did you ever hear anything -- read anything  
10 about -- about this case once it got to court in San Bernadino  
11 County?

12 A. No.

13 Q. Did you know it was coming to San Diego before you  
14 showed up here?

15 A. No. I had read that they might not have it here  
16 because of all the publicity, but I didn't know it was coming  
17 here, no.

18 Q. What was your reaction when you found out you were  
19 a prospective juror on this particular type of case?

20 A. Well, I -- no -- no real reaction.

21 Q. Did you feel one way or the other about sitting on  
22 this type of case as opposed to some other type of case that you  
23 might have been called to serve on?

24 A. No. I was called to serve and I will give them --  
25 whatever case they put me on, that's it.

26 Q. We're asking you questions about the death penalty  
27 now. The law requires us to ask those questions at this stage  
28 of the proceedings, and even though you may never even have to



1 decide that particular issue if you were to find Mr. Cooper  
2 guilty of these particular charges.

3           You understand the fact that the law requires us to  
4 do this is no way an indication that he is guilty of the  
5 charges?

6           A.     That's right.

7           Q.     What is your general opinion about the death  
8 penalty? Do you think we should have it in California?

9           A.     Yes.

10          Q.     Why?

11          A.     Well, if a crime is committed, then it's -- you  
12 know, it's proven that the person is guilty and you get all the  
13 facts, then if someone is, you know, I believe that the penalty  
14 is all right.

15          Q.     What do you think about life imprisonment without  
16 parole?

17          A.     Well, in some cases I guess I would -- I would  
18 think that's right.

19          Q.     If you were to have to decide a penalty in a case  
20 like this where the issue is multiple murder -- not all multiple  
21 murders under the law should get by the death penalty, some  
22 should get death, some should get life without possibility of  
23 parole.

24                 Do you have any particular feeling that this  
25 particular case deserves one of those two penalties as opposed  
26 to the other?

27          A.     No, I don't.

28          Q.     Do you have any particular feeling that because

1 some of the victims in this case were kids, two of the people  
2 that were killed were young kids, that any particular penalty is  
3 required for this particular --

4 A. No.

5 Q. Do you belong to an organized religion?

6 A. Yes, I'm Catholic.

7 Q. Have the views of the churches, the tenets of the  
8 church in any way influenced your opinions on either crime or  
9 punishment or the death penalty?

10 A. No, I don't think that my church has, you know,  
11 any -- for the death penalty -- for or against that I know of.  
12 No, that wouldn't.

13 Q. So that's based on your own individual thinking?

14 A. That's right, yes.

15 Q. Thank you.

16 I have nothing further.

17

18 EXAMINATION

19 BY MR. KOCHIS:

20 Q. I have a couple questions.

21 Start with the death penalty in general. In the  
22 '70s on two occasions it was placed on the ballot. People  
23 circulated petitions. They gathered signatures. There was a  
24 lot of debate about whether we should have it or not. People  
25 took strong positions. They voted one way or the other.

26 Were you involved, first of all, in circulating the  
27 petitions?

28 A. No.

1 Q. Did you ever sign any?

2 A. I don't think, no, I don't believe so.

3 Q. Did you take a position one way or the other at  
4 that time whether we should have the death penalty or not?

5 A. I never took a position, but I'm not against the  
6 death penalty. I never, you know, just -- very vocal about it.

7 Q. Okay. How do you feel about being put in a  
8 position where you have to make that type of decision?

9 A. If I had to, you know, either way, I --

10 Q. The reason we ask the question is some people when  
11 they are eventually placed in a position to make the decision  
12 and they think about it, they feel for some reason that it's  
13 such a serious decision they can't make it one way or the other  
14 or and they freeze or they balk.

15 A. No, I don't feel that way.

16 Q. You wouldn't do that?

17 A. No.

18 Q. We poll the jury at the end of every criminal case  
19 to make sure there's not a mistake. The Judge asks each of the  
20 jurors individually if the verdict the clerk has just read is in  
21 fact the way they voted.

22 If in this case you and eleven other people decided  
23 that the appropriate punishment was death, would you have any  
24 problem indicating in open court that that's the way you voted?

25 A. No.

26 Q. Likewise one of the jurors is selected as the  
27 foreman. That person dates and signs the verdict form.

28 If you were selected as the foreman by your fellow

1 jurors and the jury determined that the appropriate punishment  
2 is death, would you have any problem dating and signing the  
3 death penalty?

4 A. No.

5 THE COURT:

6 MR. KOCHIS: Thank you very much.

7 I have nothing further.

8 THE COURT: We'd like to discuss it privately for a  
9 second then the bailiff will instruct you further, so would you  
10 mind waiting outside. Thank you for coming in, Mr. Fortier.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Anything?

13 MR. NEGUS: No.

14 MR. KOCHIS: Not from the People.

15 THE COURT: Give him a return date please and bring in  
16 the next.

17

18

19 DORRIS "RUSSELL" RHUE

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

22

23 EXAMINATION

24 BY THE COURT:

25 Q. Good afternoon, sir. Have a seat.

26 Mr. Rhue?

27 A. Yes, sir.

28 Q. Mr. Rhue, we have arranged things in an informal

1 manner around the table in the hopes that we can put you a  
2 little bit more at ease to answer the hard questions that we're  
3 going to put to you in a few minutes. Okay?

4 Has anything happened to you since we last saw you  
5 to complicate your ability to serve in this case?

6 A. No, sir.

7 Q. I want to remind you before I commence asking you  
8 about three questions, I want to remind you that I told you  
9 before that there could be two phases to this trial.

10 First, the jurors would be concerned only with  
11 guilt or innocence. The second, if we get there, the jurors  
12 would be concerned with which of the two possible penalties is  
13 the most appropriate, death or life imprisonment without the  
14 possibility of parole.

15 My question to you now is, if we do get to a  
16 penalty phase, will you be able to fairly consider both of those  
17 two possible penalties? Do you understand?

18 A. Yes, I understand your question. I believe firmly  
19 in the death penalty I can tell you that right now.

20 Q. Do you remember also I told you when you were here  
21 before that there is nothing automatic about the death penalty  
22 in California, that is why we have two phases to the trial.

23 In any case of which the death penalty is possible  
24 there must be a second phase, further evidence would be  
25 presented, further guidelines given to the jurors, and then the  
26 juror is supposed to makeup his mind and not ahead of time.

27 Can you reserve judgment on that until the end of  
28 that phase if we get to that phase?

1 A. I don't think I can.

2 Q. Okay, fair enough. Let us ask a few more questions  
3 then, we've got to make very certain that you mean what you say.

4 Looking at your questionnaire, you didn't remember  
5 too much about this particular case.

6 A. No, sir, that's correct.

7 THE COURT: In fact, Mr. Negus, I think I will let you  
8 ask the questions on this phase. Go ahead.

9 Well, maybe I better --

10 MR. NEGUS: Go ahead.

11 BY THE COURT:

12 Q. Let me ask you.

13 Do you have in mind right now, as you sit there,  
14 certain types of cases that in your mind require the death  
15 penalty?

16 A. Yes, sir, absolutely.

17 Q. What case?

18 A. Anything that was premeditated, that it was brutal,  
19 that was deliberate, all my sympathies and everything like go  
20 with the victims, not with criminals.

21 Q. Let me explain. In the guilt phase, in order for  
22 the jurors to find a defendant guilty of first degree murder,  
23 they would have to find that it was deliberate, that it was  
24 intentional, and that it it was premeditated. They have to find  
25 all those, they have to find them beyond a reasonable doubt.

26 So, most of the things that you have mentioned  
27 already have to be found unanimously, beyond a reasonable doubt,  
28 by the jurors in the guilt phase. Then we pass onto the penalty

1 phase. There are a additional things that the jurors should  
2 consider apart from just saying who done it.

3 So, the Court would then perhaps permit other  
4 evidence to be revealed, perhaps about background, things such  
5 as that, and you are supposed to feed that into your computer  
6 and decide which is the most appropriate penalty.

7 Couldn't you do that?

8 A. I think I'd find it hard.

9 Q. Nobody is promising a rose garden. But all murder,  
10 all deliberate, premeditated murder is not punishable by death  
11 in California. In fact, it is not even sought by prosecutors in  
12 the great majority of cases.

13 What makes this case different is that it is  
14 charged with multiple murders, but even there the jury has to  
15 determine the appropriateness of a particular penalty. I am not  
16 trying to persuade you or to change your way of thinking, sir,  
17 all I am trying to do is educate you a little bit to where you  
18 can fairly consider the question. You may not have thought of  
19 it that way.

20 Do you feel that if you find the defendant guilty  
21 you would automatically vote for the death penalty?

22 A. Yes, sir.

23 Q. Let me put that in formal type language.

24 Do you have such a conscientious opinion regarding  
25 the death penalty that you would automatically and in every  
26 permitted case vote for a verdict of death and under no  
27 circumstances would you vote for a verdict of life imprisonment  
28 without the possibility of parole?

1 A. That is a tough question there.

2 Q. That is what I am asking. I asked it a different  
3 way before. You told me yes before without knowing the  
4 circumstances presumably of this case.

5 A. I still say yes.

6 Q. So, in every case you would vote for death and in  
7 no case would you vote for life imprisonment without the  
8 possibility of parole regardless of the circumstances brought  
9 out at the trial. Is that correct?

10 A. I believe I would.

11 THE COURT: Counsel, any questions?

12

13

EXAMINATION

14

BY MR. KOCHIS:

15

Q. Mr. Rhue, we need people who can keep somewhat of  
16 an open mind and not make the decision, for example, on the  
17 penalty phase, until they've heard all the evidence, after they  
18 have heard what the case is about, they have heard both sides in  
19 the penalty phase and they have heard the judge instruct on the  
20 law, then they decide whether to vote for life or death.

21

Could you do that?

22

A. Yeah, I might be able to.

23

Q. I understand you have a personal preference for the  
24 death penalty?

25

A. Oh, yeah.

26

Q. And your sympathies lie more with the victim.

27

A. Absolutely.

28

Q. In spite of those feelings though, for example, if



1 Mr. Negus presented any evidence at the penalty phase, could you  
2 listen to that evidence and evaluate it?

3 A. I just don't know.

4 Q. Well, if you are selected as a juror you take an  
5 oath, that is, a promise, and the promise that you would base  
6 your decision only on is what you hear in the courtroom, the  
7 facts and the law. Could you give us that promise?

8 A. Again, that is a difficult question, because I am  
9 taking 50 years of my life, and summing up, that up. We're  
10 coming down to basics facts. I don't think that I can separate  
11 myself from that.

12 Q. Okay. Are you saying then if you heard the  
13 evidence at the penalty phase, and under the law with the facts  
14 you would feel the appropriate punishment was to lock Mr. Cooper  
15 up for the rest of his life, throw away the key, you couldn't  
16 vote that way?

17 A. I don't know. No, I couldn't.

18 Q. You could not?

19 A. No.

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

21 THE COURT: Would you wait outside and let us discuss it  
22 privately for a moment. We thank you for coming in and for your  
23 candidness, sir.

24 Anything, gentlemen?

25 MR. NEGUS: Challenge.

26 THE COURT: Well, he gave some equivocation in answers,  
27 but he was not emphatic not knowing and not being able to. the  
28 challenge will be granted.

1                   So, inform him and bring in the next one.

2

3

EDWARD WARD

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

6

7

EXAMINATION

8       BY THE COURT:

9               Q.     Good afternoon. We have arranged things in an  
10       informal manner around the table hoping to put you a little bit  
11       more at ease, relax a little bit and answer the hard questions.

12               Has anything happened to you since we last saw you  
13       a couple weeks ago to complicate your ability to serve on this  
14       case?

15               A.     No, sir.

16               Q.     Before I ask you the next question, I want to  
17       remind you of some of the things that I said before when I was  
18       on the bench in the robe.

19               I told you that there could be, we don't know if  
20       there will be, but there could be two possible phases to the  
21       case. The first one is the guilt phase, we call it, and there  
22       the jurors would be concerned only with guilt or innocence. If  
23       certain types of verdicts were returned in this case, then we go  
24       perhaps into the penalty phase and then additional evidence  
25       would be presented, further instructions would be given to you,  
26       and the jurors then would have to determine whether the  
27       appropriate penalty is one of death, or more appropriately, one  
28       of life imprisonment without the possibility of parole.

1                   Question, Mr. Ward. If we do get to the penalty  
2 phase, will you be able to fairly consider both of those two  
3 possible penalties?

4           A.     I would be able to consider it, yes, sir.

5           Q.     Do you feel locked into one or the other --

6           A.     No, sir.

7           Q.     -- at this time before you have heard those  
8 circumstances?

9           A.     No, sir, I do not.

10          Q.     Do you have some reservations when you say I would  
11 be able to consider it, in effect kind of qualified your answer?

12          A.     I am -- yes, I do. In the respect that I am very  
13 leery of the death penalty as being some type of deterrent to  
14 crime.

15          Q.     All right. We have people that are leery of the  
16 other way as well, and still they tell us that they could  
17 consider and perhaps vote either way.

18                   Do you feel, yourself, that after hearing all of  
19 the evidence, and receiving the law from me, that you would be  
20 able to, nevertheless, be able to vote for it if you found it to  
21 be appropriate under the circumstances?

22          A.     If appropriate, yes.

23          Q.     You might be the type of person, as we found  
24 before, that might be so concerned with having to even consider  
25 the death penalty that you might look for an escape hatch back  
26 in the guilt phase to try to avoid having to make that decision  
27 at all, you could find an inappropriate verdict back in the  
28 guilt phase knowing, hey, if we find him not guilty, find him

1 guilty only of murder in the second degree, or something less  
2 than that, then we never have to face that problem down the  
3 road.

4 Do you think you might be such a person?

5 A. Yes.

6 Q. Are you telling us that you would in effect not  
7 follow the law that I tell you you are supposed to when you go  
8 to that extreme, so to speak, in order to avoid having to make a  
9 death or life decision?

10 A. No, sir, I would not say that I would not follow  
11 the law. The law would have to be obeyed.

12 Q. All right. You are saying that -- are you saying  
13 that it would be hard for you to but you could do it if you  
14 found it to be appropriate?

15 A. Yes.

16 THE COURT: All right, sir. Mr. Negus,

17

18 EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Ward, the judge is letting Mr. Kochis and  
21 myself ask most of the questions of the jurors. We're not  
22 trying to pry or embarrass you in any way, but the law requires  
23 that we try and get out what your opinions are before we go any  
24 further.

25 What had you heard about this case before you came  
26 to court?

27 A. Actually very little, until someone mentioned that  
28 they were subpoenaing something like 300 jurors over here, I

1 hadn't even -- did not know that case had been moved to this  
2 County, and that is when someone mentioned it to me in the  
3 hallway. Well, I haven't heard anything about it.

4 I do remember a few of the sketchy details but if  
5 you asked me specifics and things, I couldn't give you anything  
6 on it.

7 Q. Could you give me just some ideas that you could  
8 remember, just a general idea.

9 A. I'm probably very confused, and things of this  
10 nature, but as I remember it someone was supposed to have  
11 escaped from jail and supposed to have murdered a family or  
12 something. And I didn't follow it. I don't understand the  
13 details of the case.

14 Q. Assuming that Mr. Cooper is the someone who escaped  
15 from some prison, do you have any present opinion as to his  
16 guilt or innocence?

17 A. Not at this time, I haven't heard any evidence.

18 Q. Did you get any impression of him, what kind of  
19 person he was from what you heard in the media.

20 A. No, no one mentioned that.

21 Q. The statements about the case were statements you  
22 heard in the jury before you first came to court?

23 A. No. In the hallway they had mentioned they were  
24 subpoenaing something like 300 prospective jurors, okay? Because  
25 I thought I was going to be on a civil case when I saw the  
26 posting.

27 Q. What was your reaction when you found out this was  
28 the case you were going to be on?

1           A.     Bewilderment, as I thought -- as I say, I thought I  
2 was going to be on the civil case, whatever, and I suddenly  
3 found out it was this one, I said wow; I thought maybe I got  
4 mixed up, and I went down and checked the board to see if that  
5 was the case.

6           Q.     Did you have any particular feelings about being on  
7 this kind of case as opposed to a civil case then?

8           A.     No, not particularly. My occupation being a school  
9 teacher, and I do have obligation to my students, but I also  
10 realize that I have an obligation to the State, the County.

11          Q.     We're asking questions about penalty because the  
12 law requires that we ask those questions before we begin, and  
13 they may never even come up, that is, if Mr. Cooper is found not  
14 guilty, these questions are really irrelevant.

15                     You won't take that as any indication that the  
16 court or anything else is expressing any feelings to you what  
17 you should to do as to guilt or innocence by the fact we're  
18 asking these questions first.

19          A.     No.

20          Q.     You indicated that you have, you are leery of the  
21 death penalty.

22                     Do you have a predisposition as to whether or not  
23 the death penalty should be on the books in the State of  
24 California.

25          A.     No, no, I don't, because there are conditions and  
26 situations where the death penalty would be appropriate, and if  
27 you were to ask me, well, in this particular case would it be, I  
28 don't know. I really don't know.

1 Q. You haven't made up your mind then.

2 A. No, I haven't.

3 Q. What is your opinion about life imprisonment  
4 without parole. Do you have an opinion on that as a matter of  
5 public policy whether we should have that or not?

6 A. I -- without the possibility of parole?

7 Q. Yes.

8 A. I don't have any particular judgments to make on  
9 it. I presume that if it has been so ordered that it was with  
10 just and good cause as far as the penalty itself.

11 Q. You indicated that the decision, if you had to make  
12 a decision as to penalty, as opposed to just guilt and  
13 innocence, but also as to penalty, might be difficult for you,  
14 it is probably difficult for most people.

15 Do you have any reservations about your ability to  
16 make it based -- it'd be a structured decision based on certain  
17 kinds of evidence leading to one penalty or the other, some  
18 instructions from the Court as to how evaluate that evidence.

19 Do you have any doubt as to your ability to do  
20 that?

21 A. Not my ability to do it, but it just would have to  
22 be be a pretty strong situation before it would ever have to  
23 come to that; just take tall convincing.

24 Q. But you -- basically the law allows you to weigh  
25 and consider all different kinds of evidence in making that  
26 decision, and that is what the standard is. You are not  
27 supposed to vote one way or the other unless you are convinced.

28 Do you think you could follow that law?

1 A. Yes, I could follow the law.

2 Q. Do you belong to an organized religion?

3 A. Yes, I do.

4 Q. What religion?

5 A. Presbyterian.

6 Q. Has the views of your religion in any way  
7 influenced you, the holdings of your religion in any way  
8 influenced your views on crime and punishment or the death  
9 penalty?

10 A. No.

11 Q. They're just a matter of conscience and morality?

12 A. They're a matter of morality. But as far as when a  
13 man has the authority to speak for the society under which he's  
14 working, then I don't think that your particular morals are  
15 coming into play.

16 In other words, I would not feel guilty if I had to  
17 make the judgment because I feel like I would be speaking for a  
18 lot of my fellow men and not just me personally.

19 MR. NEGUS: Thank you. I think Mr. Kochis --

20

21 EXAMINATION

22 BY MR. KOCHIS:

23 Q. I have some questions, Mr. Ward.

24 You have a reservation about the death penalty, I  
25 take it.

26 A. Yes. I don't think it should be applied  
27 indiscriminately. I don't think it is necessarily the answer to  
28 every violent crime.



1 Q. Okay. When you were talking to Mr. Negus you  
2 mentioned that it would take tall talking to perhaps cause you  
3 and you looked at this side of the table.

4 Am I reasonable in assuming that the prosecution  
5 would have the uphill battle with you in terms of getting you to  
6 vote for the death penalty?

7 A. Definitely.

8 Q. At this point, without hearing anything, would you  
9 be inclined to vote for life without the possibility of parole?

10 A. Without hearing anything? I haven't heard  
11 anything, I guess I don't understand the question.

12 Q. Between the two penalties, life without the  
13 possibility of parole and the death penalty, do I understand you  
14 correctly that you'd prefer to go with the life without the  
15 possibility of parole as opposed to the death penalty?

16 A. I'd have to understand the nature of the case. I  
17 would have to look at the entire structure of the case and  
18 understand it all before I could feel that I could make a  
19 decision one way or the other.

20 Q. Okay. In the first phase of the trial, we just  
21 determined whether this defendant did it or not.

22 For example, if this was just a straight burglary  
23 case you'd look at the law, look at the facts, you'd make a  
24 decision one way or the other; you'd be instructed not to  
25 consider the possibilities of penalty or punishment, and if you  
26 found Mr. Cooper guilty, you'd walk out of the courtroom and  
27 Judge Garner would decide what to do with him.

28 Do you understand that?

1 A. Yes.

2 Q. In this case, however, because it is a special  
3 circumstance case, if Mr. Cooper is found guilty of more than  
4 one murder, even two of them, we automatically get to the  
5 penalty phase. You are going to have to decide whether to give  
6 him life or death.

7 If you were back there deliberating at the close of  
8 the first case, and you were convinced, based on the evidence,  
9 that Mr. Cooper did the murders, that you also recognize that if  
10 you voted for guilty you'd automatically shift into the penalty  
11 phase where you'd have to make this life or death type of  
12 decision, do you think that might affect the way you would,  
13 first of all, vote in the guilt phase?

14 A. No. I say that because I see them as two separate  
15 things, although I realize they are tied together. But I see  
16 them as one, does the evidence say that there, that the accused  
17 is guilty, and the other one is we will take them up as a  
18 separate matter, even though it is an adjunct to it.

19 Q. Okay. Let's move then to the second phase.

20 Let's say all the evidence has been presented, the  
21 lawyers have argued, the judge has told you what the rules of  
22 law are.

23 If, based on the facts and the law it appeared to  
24 you that if you followed the law this would be a case to impose  
25 the death sentence, could you vote that way?

26 A. Could I vote for the death penalty?

27 Q. In this case?

28 A. Yes.

1 Q. Would it be somewhat difficult for you?

2 A. Absolutely.

3 MR. KOCHIS: Thank you very much. I have nothing  
4 further.

5 THE COURT: We'd like to discuss it privately for a  
6 minute, then I will have the bailiff give you further  
7 instructions.

8 Thank you very much, Mr. Ward, for coming in.  
9 Counsel, anything?

10 MR. NEGUS: No.

11 MR. KOCHIS: No, your Honor.

12 THE COURT: Give him a return date, please.

13 That exhausts today's panel.

14 --oo0oo--

15

16 (Adjournment)

17

18

19

20

21

22

23

24

25

26

27

28