

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 3, 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
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INDEX OF PROSPECTIVE JURORS

	Examination
FERGUSON, BARBARA	1082
RAINER, MARK	1099
DOXEY, JETALYN	1102 ✓
NAVALLEZ, ILDA	1112
EDWARDS, RUTH	1121
RICHARDS, TAMARA	1129
PEARSON, EDWARD	1138
RICKETTS, CATHY	1148
KLEIN-WASSINK, GARY	1159
JONES, CLYDE	1164
GREER, JULIE	1170
ANDERSON, BETH	1176
MARTINEZ, TONY	1181
HOBBS, HARRY	1183
ELMER KURBIS	1192
FRANK, WILLIAM	1202

1 1 SAN DIEGO, CALIFORNIA, WEDNESDAY, OCTOBER 3, 1984, 9:17 A.M.

2 --ooOoo--

3
4 THE COURT: Good morning.

5 MR. KOCHIS: Morning.

6 MR. NEGIS: Morning.

7 THE COURT: All right. Who is first?

8 THE BAILIFF: Barbara Ferguson.

9 THE COURT: Bring her right in, please.

10
11 BARBARA FERGUSON,

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

14
15 EXAMINATION

16 BY THE COURT:

17 Q. Good morning.

18 A. Good morning.

19 Q. You are Barbara Ferguson?

20 A. Yes.

21 Q. Mrs. Ferguson, since saw you last two or three
22 weeks ago has anything happened since then that would complicate
23 your ability to serve in this case?

24 A. No.

25 Q. I now want to -- First I'll explain to you, we're
26 gathered around the table in an informal way in hope that you
27 will relax a little bit and more easily answer the questions
28 that we are going to put to you.

1 A. Okay.

2 Q. Then I want to remind you of some of the things
3 that I said when I had the robe on.

4 I told you that this case could have two phases to
5 it. The first phase is called the guilt phase, and there the
6 jurors are only concerned with guilt or innocence.

7 The second phase, if we get do it and we don't know
8 if we will or not, but if we get to it is the penalty phase.
9 And at that stage the jurors will hear further evidence and
10 circumstances perhaps relating to the defendant, and they would
11 then have to determine which of the two possible alternatives is
12 the most appropriate penalty to impose, either death on the one
13 hand or life imprisonment without the possibility of parole on
14 the other.

15 Now that I've reminded you of all that I will ask
16 you the first question: If we do get to a penalty phase will
17 you be able to fairly consider both of the two possible
18 penalties?

19 A. Yes.

20 Q. Do you think that you would be able to personally
21 vote for whichever one at that time seemed most appropriate
22 depending upon the evidence and the circumstances brought out at
23 trial?

24 A. Yes, I think so.

25 Q. Do you feel in some way that you're locked into one
26 or the other at this stage of the proceeding?

27 A. Well, no, I guess not. I don't know. I would
28 feel -- I don't know. When in the back of your mind you feel

1 something is wrong, it's sort of hard to really answer honestly
2 that you could be really open.

3 Q. I suppose there are degrees of wrongness. In any
4 event, nothing is automatic under our law.

5 And regardless of the nature of the crime, if we do
6 get to a penalty phase the jurors would have to consider the
7 further evidence presented and then would have to at that time
8 make up their mind as to which was the most appropriate. This
9 would require some openness on your part to receive that
10 additional evidence.

11 Can you reserve judgment until that point?

12 A. I think so.

13 Q. Some jurors have such a great concern for having to
14 make a death penalty or life without parole type of decision
15 that they have indicated that they would perhaps find an
16 inappropriate verdict back at the guilt phase just to avoid ever
17 getting down the road to the penalty phase at all.

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

19 A. No.

20 Q. You would have the courage to call them as you see
21 them based upon the evidence and the law at that stage; is that
22 correct?

23 A. Uh-huh.

24 Q. And you have to say yes or no as opposed to --

25 A. Yes. I'm sorry.

26 Q. All right. That's all I have.

27 Mr. Negus, please.

28

EXAMINATION

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BY MR. NEGIS:

Q. Mrs. Ferguson, the Judge is allowing Mr. Kochis and myself to ask you most of the questions. We're not trying to pry or embarrass you in any way, but the law requires we get your personal opinions at this particular stage.

You said that you felt that something was wrong and that influenced your answer at least a little bit on whether you could vote for either penalty.

What did you mean by that?

A. Just having read what little I've read, or having heard what I've heard up to the point, all, you know, earlier, you know, months ago, that you hear things and I just think that I, probably based on my opinion now --

Q. Do you have an opinion about the case based on what you heard in the media?

A. At this point I would probably say yes.

Q. What is the opinion?

A. Guilty.

Q. Why do you say that?

A. Just from reading in the papers or hearing what you hear.

Q. Well, what have you heard?

A. The man is guilty. I don't know. Just having heard what he did, going and killing people, I don't know. That's wrong.

Q. Well, what did you -- what did you hear -- what's the basis of the -- of your conclusion that he's guilty, and did

1 you hear any evidence to back that up or is that just something
2 that you got a general impression about?

3 A. Just probably by reading. I can't tell you word
4 for word because I really don't remember what I read, just
5 picking it up from the papers and the news on TV, you know, that
6 whatever it was said at the time I have the impression he was
7 guilty.

8 Q. Do you remember anything about Mr. Cooper's
9 background?

10 A. No, I don't.

11 Q. Do you remember anything about the circumstances of
12 his arrest?

13 A. No, not of the arrest, no.

14 Q. Did you hear anything about the progress of the
15 case through the courts in San Bernadino before we came down
16 here?

17 A. Through the courts? Not really.

18 Q. You didn't hear any -- hear or read or see any
19 stories concerning the court proceedings in San Bernadino?

20 A. The Court proceedings? Not really, no, just --
21 actually all I can remember basically is what was said that he
22 had done but not really as far as what occurred in court, no.

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

25 A. Yes, I had read that.

26 Q. Was that in the Union just before you came in as a
27 juror?

28 A. Yeah, yes, that it was going to be here.

1 Q. What was your reaction when you found out that you
2 were a potential juror in this particular case?

3 A. Panic.

4 Q. Why?

5 A. Probably because I'm not -- I don't feel that I
6 really want to be a part of making a decision on someone else's
7 life.

8 Q. Do you have -- is that just not want go to -- do
9 you have any particular feelings about the death penalty or
10 something, or is it just -- is it just a general reluctance to
11 make the decision?

12 A. Basically it's a chicken's way out. But I am not
13 sure that even though I heard all the evidence that I could
14 honestly say in the end that there isn't going to be some
15 prejudice there. A little. You just heard something; in the
16 back of your mind are you going to be able to eliminate that.
17 And I'm not sure I would in all fairness. I don't know. I
18 really don't know.

19 Q. So, your reluctance is you feel that you've made up
20 your mind in advance and wouldn't be able to --

21 A. Yeah, I feel like maybe I would have, I don't know,
22 but just --

23 Q. Okay.

24 A. I don't know.

25 Q. Well, let me ask it -- the general rules in
26 criminal cases on guilt or innocence, which is what I'm
27 primarily concerned with, has to do with what's called proof
28 beyond a reasonable doubt; that is, the prosecution has to have

1 enough evidence that they can present in court to convince
2 somebody beyond a reasonable doubt that the person they've
3 accused is the person that did the crime.

4 Do you think that you're -- if the prosecution got
5 to have, for example, enough evidence that probably the person
6 they had accused was guilty but that there was still some doubt
7 about it, do you think that your particular feelings might lead
8 you to vote guilty even though they haven't met their burden? I
9 know that's a complicated question.

10 A. It would depend on how much evidence was still
11 there that was saying that maybe he wasn't guilty I guess. I
12 mean, I don't know. I guess I still would waiver. I don't
13 know. I don't really honestly know how I would feel at the
14 time.

15 Q. Okay. Well, if you had to promise that you would
16 be fair, could you do that?

17 A. That I would -- I would try to be fair, I would say
18 that. I can't promise anything that you don't know if you're
19 going to -- I'm going to promise that I would try to be, yes.

20 Q. Okay. But you cannot at this point in time say
21 that you can and will be fair?

22 A. No, I don't think I would want to promise that
23 cause I don't know that I would totally be fair. I don't know
24 that anyone is really.

25 Q. But based on having made up your mind beforehand
26 you're not sure that you could put that out of your mind?

27 A. Yeah, that's right. It's sort of back there and I
28 just don't know that I could really wipe it out totally.

1 Q. Moving to another subject for just a second, what
2 do you feel about the death penalty?

3 A. I feel that if a person is guilty, I mean totally,
4 and there again I mean you have to say the guy was caught
5 totally with no -- you know -- that, yes, I'd say, yes, death
6 penalty for sure.

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

9 A. I'm in favor of that too. I don't -- to me it's
10 either way. I'm not saying a man has to be killed, you know, if
11 he's guilty. Either way. It's whatever is decided.

12 Q. So the reaction you had from reading the paper was
13 not that a certain penalty was required in this case --

14 A. No.

15 Q. -- but just the feeling that Mr. Cooper did it?

16 A. Right.

17 Q. Thank you.

18 That's all I have.

19

20

EXAMINATION

21 BY MR. KOCHIS:

22 Q. Mrs. Ferguson, it appears that you can't recall or
23 you didn't read any articles that dealt with what the case was
24 actually about in terms of what evidence links this defendant to
25 the crime, is that true?

26 A. Not really, bits and pieces here and there. But
27 for me to sit here and be able to tell you, no, I mean if you
28 said something, I would say, oh, yeah, I remember that, but that

1 type --

2 Q. Can you remember anything about the facts of the
3 case, the number of people, where it took place, that type of
4 thing?

5 A. I just -- all I remember is that in Chino a guy
6 escaped from prison, went in and killed a man and a woman and a
7 daughter and a friend, and that's all I remember basically. I
8 don't remember all the --

9 Q. And I take it most of the newspaper articles you
10 read talked in terms of this defendant being accused of the
11 crime?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes. I'm sorry.

15 Q. In fact, I don't believe they ever used the word
16 that he was guilty of the crime or convicted?

17 A. No; no.

18 Q. In this country the way it works is we try people
19 in a court of law not in the newspaper; do you appreciate that?

20 A. Yes, I do.

21 Q. Do you think -- In this case what we need is twelve
22 people who could listen to the evidence, listen to the law, and
23 make their mind up as to whether this defendant did the murders
24 or another person based on what they hear in the courtroom and
25 their evaluation of the evidence. Could you do that?

26 A. That's where I'm not so sure because -- I say yes,
27 but there's still that little doubt there that I still lean to
28 what I just read or heard already.

1 Have I already made up my mind? I'm not totally
2 convinced that I will be able to sit here and say what I hear
3 right now is what I'm -- that's it, everything else is wiped
4 out, this is it. I'm not sure I can do that.

5 Q. Well, we don't expect anyone to erase their mind
6 when they come into the courtroom. We can understand that.

7 But what else could you base your decision on other
8 than what you hear in the courtroom?

9 A. That -- Well, at this point that would be it, other
10 than what I've already said, but there isn't anything else that
11 I would base it on, no.

12 Q. And what you've already heard, you can't recall any
13 of the evidence that links this defendant to the crime?

14 A. No, not totally, no, other than escaping from
15 prison, all that sort of thing, but all general, very general, I
16 mean --

17 Q. Well, the Judge would ask you to take a promise to
18 base your decision on what you hear in the courtroom, not on
19 prejudices you may have; for example, not on the color of this
20 defendant's skin, not on the color of your skin, not on the way
21 he wears his hair, the way he dresses, not on which side in the
22 trial dresses better.

23 Could you put those types of things aside and look
24 at what the witnesses say and what the physical evidence is and
25 make your decision?

26 A. Yes. From what you just said, from that way, yes.

27 Q. And if, for example, if you felt at the end of the
28 trial the prosecution had proved their case beyond a reasonable

1 doubt, do you think you could vote for guilty?

2 A. Yes.

3 Q. And likewise, if you felt at the end of the case
4 there was a doubt in your mind, and that doubt was a reasonable
5 doubt not just some possible doubt, do you think you could vote
6 for not guilty?

7 A. Yes.

8 Q. Then if we get by -- let's assume for the sake of
9 argument only that Mr. Cooper was convicted and we got to the
10 penalty phase, which is the second trial. Again both sides are
11 entitled to present evidence. They don't have to but they're
12 allowed to. The Judge will give you some additional
13 instructions on the law. Both sides are allowed to argue the
14 case. They don't have to but they usually do.

15 And based on what is shown at that trial could you
16 vote for either life imprisonment or the death penalty depending
17 on which sentence you thought was appropriate?

18 A. Yes; yes.

19 Q. I take it from what you said initially that that's
20 a decision you would rather not take part in?

21 A. Yeah, definitely I'd rather not be a part of that.

22 Q. Well, if we get to the second trial you and eleven
23 other people would be a part of that decision-making process.

24 Do you think once you heard all the evidence and
25 heard the law you could make the appropriate decision -- you
26 could make a decision one way or the other?

27 A. It's just hard for me to say that I'm responsible
28 for someone else's life. I'd have a real hard time with that.

1 Q. You're not alone in that field. But in this type
2 of case where the way the law is structured we have a jury make
3 the decision, not the lawyers and not the Judge, so we rely on
4 people such as yourself individually and as a group.

5 If you were placed in the position, do you think
6 you could make the decision?

7 A. I suppose so. If I was -- you know, if I have to
8 do it I would do it. If I have a choice I won't.

9 Q. The reason we ask the questions at this point is
10 it's somewhat of a screening process. Some people when they're
11 actually placed in the position of making that type of decision
12 feel the decision is so serious, and it appears you have some of
13 these feelings, that they can't make the decision one way or the
14 other, they simply freeze, they balk.

15 Do you see that happening with yourself?

16 A. No, I don't see myself freezing, you know, on that,
17 no.

18 Q. Do you think your reluctance to make that type of
19 decision might effect what you would do in the first trial, the
20 guilt trial? For example if you knew based on the evidence,
21 based on the law, I believe this defendant is guilty but if I
22 vote that way we're going to get to the penalty phase and I'm
23 going to have the real heavy decision to make and I don't want
24 to be put in that decision, so I'll vote not guilty, it's the
25 easy way out.

26 A. No.

27 Q. As you sit there now let me ask you somewhat a
28 difficult question. We ask everybody to speculate a little. We

1 ask the jurors to do things that we don't allow witnesses to do
2 in a court of law.

3 Assuming we are here in January or February and
4 you're with us and the case is over, again do you think you
5 could base your decision as to whether this man did the crime on
6 what you hear in the courtroom and what Judge Garner tells you
7 the rules of law are?

8 A. Yes.

9 Q. Thank you.

10 I have nothing.

11 THE COURT: Nor do I.

12 MR. NEGUS: Could I ask a few more questions?

13 THE COURT: Yes, you may.

14

15

FURTHER EXAMINATION

16 BY MR. NEGUS:

17 Q. You indicated to Mr. Kochis that what you had heard
18 in the paper was that a man escaped from prison and killed
19 people?

20 A. Uh-huh.

21 Q. You have to --

22 A. Yes.

23 Q. Was your opinion as to Mr. Cooper's guilt based on
24 the fact that he escaped from prison?

25 A. Partially I suppose.

26 Q. Well, the Judge I think informed you when you were
27 here before that Mr. Cooper has pled guilty to the charge of
28 escape, denied the killings.

1 Do you think that the fact that he did escape from
2 prison would lead you to believe that he did the crimes of
3 murder?

4 A. Well, not necessarily, no. I don't think that that
5 would -- well, I suppose, yes, the whole thing together is what
6 makes me believe it, not just the fact that he escaped from a
7 prison. That alone doesn't, no.

8 Q. The -- I'm still -- I guess I'm a little confused
9 as to what your opinion is as to making a promise that you can
10 and will be fair. I heard you tell me that you couldn't do that
11 and then I thought you heard telling Mr. Kochis that you could.

12 Do you think that you can and will be fair?

13 A. If I am selected and if I'm -- which let me be
14 quite honest, I really don't want to be on a jury, but if I'm
15 selected and if I have to do this, I will try to be fair, yes.

16 Q. Okay. But there's a difference between trying and
17 promising that you can and will, and do you think that you can
18 and will?

19 A. I hate making a promise when there's anything there
20 that's even just a slight doubt, but I suppose if I have to I
21 will make a promise that, yes, I will be fair.

22 Q. Okay. There's no compulsion in the law for you to
23 make the promise, and if you can't you can just say so. I mean,
24 what we really need is your honest opinion, not, you know, not
25 an opinion that you think is perhaps expected from somebody.

26 A. Well, I suppose it's that I don't -- I feel that
27 with the slight doubt I probably feel reluctant to say that,
28 yes, I would be fair totally at this point. If I say yes, maybe

1 as I hear the case and as I sit on the jury, then I suppose I
2 will be fair as it goes along. I'll listen and try to take a,
3 you know, any information that I hear.

4 Q. But you can't be sure now?

5 A. But at this point right now, no, I totally don't
6 know that I would wipe out everything I've heard. I'm hoping I
7 would, you know. If I'm sitting on the jury I'm hoping that I
8 can eliminate all that.

9 Q. Okay. Thank you.

10 THE COURT: We'd like to discuss it privately.

11 MR. KOCHIS: I had one or two questions.

12 THE COURT: All right.

13

14

FURTHER EXAMINATION

15 BY MR. KOCHIS:

16 Q. Mrs. Ferguson, is it fair to say that you'd do
17 everything within your power to be fair during the trial?

18 A. Yes.

19 Q. And part of your answer to Mr. Negus about your
20 doubt, is part of that that you can't speculate and guarantee
21 anything absolutely?

22 A. That's right.

23 Q. Along that line, at the end of the trial the Judge
24 is going to give you a reasonable doubt instruction; would you
25 be able to follow that instruction if you evaluate the evidence
26 in this case and not some other standard you think is
27 appropriate? Have I confused you?

28 A. Yes. Repeat that. I want to make sure I answered

1 it.

2 Q. Well, for example, you mentioned that in response
3 to your feelings on the death penalty, which we really didn't go
4 into, you said if someone was absolutely guilty, and an absolute
5 is a rather extreme, if Judge Garner gives you a different
6 standard than absolute when he instructs you on how you look at
7 the evidence, could you follow what Judge Garner tells you is
8 the law in that regards?

9 A. Yes; yes.

10 Q. And before we leave the one topic, the death
11 penalty, putting aside for a moment this case, in general terms
12 do you have an opinion one way or the other about the death
13 penalty, whether we should have it here in California or not?

14 A. I believe in the death penalty, yes, I do.

15 Q. Thank you.

16 I don't have anything else.

17 THE COURT: We would like to discuss it in private for a
18 minute, so I will tell the bailiff how to instruct you if you
19 will wait outside. Thank you very much for coming in.

20 Anything, counsel?

21 MR. NEGIS: Challenge.

22 MR. KOCHIS: Which I would oppose.

23 MR. NEGIS: She cannot promise that she can and will be
24 fair. She cannot take that oath. She has formed an opinion.

25 That's the one area where the Penal Code does tell
26 us what the law is. And if she can't take that oath, I don't
27 think that she is -- she can rehabilitate herself. I mean, if
28 she hadn't formed an opinion it would be a different situation,

1 but once she has formed an opinion that Mr. Cooper is guilty
2 she's not qualified unless she can take that oath, and she can't
3 promise that.

4 THE COURT: Well, at one time she did say that she could,
5 a couple times she did.

6 MR. NEGIS: But her last statement was that if you got
7 right down to it she couldn't.

8 When Mr. Kochis was asking her questions it had to
9 do with she wouldn't take into account the suits that Mr. Cooper
10 wears or the suits that he wears or I wear, or that sort of
11 thing; but he did not, was not really focusing in on her ability
12 to put aside her previously formed opinion. And she never
13 actually said it in that form to him when you came back to her
14 with the question. She answered that consistently throughout.

15 THE COURT: All right, counsel. I've listened to her and
16 the answers to all the questions, and it seems that she is
17 basing her tendency towards guilt, or did initially when she
18 came in here, on mere impressions which she cannot articulate.
19 It's very, very difficult to predict the future. But all in
20 total and considering everything I think that she has indicated
21 that she will be fair and impartial and base her opinions and
22 verdicts on the evidence in court and not upon those tendencies.
23 I really think she has done all that's humanly possible for any
24 person to do, including by her own declaration stating that she
25 could be fair.

26 I will deny the challenge. Give her a return date
27 please and bring in another juror.

28 THE BAILIFF: Mark Rainer.

1
2 MARK RAINER,
3 called as a prospective juror, having been previously sworn,
4 testified as follows.

5
6 EXAMINATION

7 BY THE COURT:

8 Q. Good morning, sir.

9 A. Morning.

10 Q. You are Mark Rainer?

11 A. Yes.

12 Q. Mr. Rainer, we have got the same people here
13 arranged a little differently, and we are gathered around the
14 table simply to hopefully put you a little bit more at ease to
15 informally answer the questions we are going to put to you now.

16 And before we commence those questions, well first
17 I want to ask you: Has anything happened to you since we last
18 saw you that might complicate your ability to serve?

19 A. I have talked with my employer and they will only
20 cover me for four weeks, so it would be very difficult for me.

21 Q. What do you do?

22 A. Sea World as an assistant photographer.

23 Q. Are you in a union?

24 A. No.

25 Q. Is it four weeks this year and four weeks next
26 year, or is it just four weeks?

27 A. Four weeks for calling me in I guess to serve.

28 Q. Are you married?

1 A. No.

2 Q. You're not independently wealthy?

3 A. I'm afraid not, no.

4 Q. How would you get by if you had to serve
5 nevertheless and they only paid you for four weeks.

6 A. Financially I don't think I would simply because in
7 July I had a traffic accident, which has created a great deal of
8 financial burden which hasn't been relieved as of yet, and this
9 other party did not have insurance so there's a possibility it
10 may never be taken care of.

11 So as far as four weeks of pay and then another
12 possible five months of no pay it would drive me under.

13 THE COURT: Counsel, any questions on hardship?

14 MR. KOCHIS: No.

15 MR. NEGIS: No.

16 THE COURT: Would you step out and let us discuss that
17 privately for a minute. In case we don't see you, I want to
18 thank you very much. The bailiff will instruct you further.

19 Counsel, it appears that to me to be due cause to
20 excuse him. Do you wish to be heard?

21 MR. NEGIS: Yes. Again the hardship is being -- the kind
22 of hardship where people don't have enough money is -- cuts only
23 a certain class, only a certain segment of the community.

24 Mr. Rainer is 28 years old. He lives in Hillcrest,
25 which is one of the lower income particular areas of the city.
26 It's also probably the only area in the city that has what might
27 be considered to be something of a counter-culture to it.

28 By allowing challenges where the Court doesn't pay

1 a little bit of money to have him on the -- have him on the jury
2 we're cutting ourselves off from a representative cross-section.

3 THE COURT: Mr. Kochis, anything?

4 MR. KOCHIS: No.

5 THE COURT: I wish I could comply, counsel, and to have
6 them serve, but as I have indicated before I don't think it is
7 up to the Court to authorize that kind of extreme reimbursement
8 for wages in order to get everybody to serve.

9 I think if any one of us had to serve without pay
10 for four or five months on a case that it would be of extreme
11 hardship. It is simply too much to ask of people. It's not
12 just a week or two.

13 MR. NEGIS: Could I articulate one other reason which I
14 forget?

15 THE COURT: Yes, you may.

16 MR. NEGIS: In this particular situation where people are
17 coming back we are now also allowing their employers to
18 determine which jurors we shall have in this particular case.
19 When they gave their -- they gave their excuses originally
20 there was no way that employers could know which case they are
21 sitting on, but now the employers do know which case they are
22 sitting on. I don't think it's fair that a particular class in
23 the community, those people who employ others to work for them,
24 should have the right to determine who our jurors are going to
25 be.

26 THE COURT: That is nonsensical to me. The employer has
27 been told how much time is required and says, "I can't pay you,"
28 that's not letting them select our jury.

1 I will excuse Mr. Rainer for cause; overrule your
2 objection.

3 You can send him back downstairs to the large room
4 and bring in another juror.

5 THE BAILIFF: Jetalyn Doxey.

6
7 JETALYN DOXEY, 
8 called as a prospective juror, having been previously sworn,
9 testified as follows.

10

11

EXAMINATION

12 BY THE COURT:

13 Q. Good morning, ma'am.

14 A. Good morning.

15 Q. Are you Jetalyn Doxey?

16 A. Yes, I am.

17 Q. We're the same people that you saw once before but
18 we're arranged a little differently now in an effort to get to
19 you to settle back and relax a little bit and more easily answer
20 the hard questions that we're going to put to you.

21 My first question of you is: Has anything happened
22 since we last saw you that might complicate your ability to
23 serve in this case?

24 A. No.

25 Q. And secondly, before I ask the next question I want
26 to remind you of some of the things I said when I was on the
27 bench to the extent that I told you that there are two possible
28 phases to a trial.

1 In the first phase, the guilt phase, the jurors are
2 to be concerned only with guilt or innocence. And then
3 depending upon the types of verdicts returned in that case we
4 may or may not go to the second phase or the penalty phase.

5 If we do go to the penalty phase further evidence
6 will be presented, circumstances, background, and a number of
7 things perhaps, and then the jurors would have only two choices
8 to make: One, whether the appropriate penalty should be death
9 by execution on the one hand, or secondly, life imprisonment
10 without the possibility of parole on the other.

11 Do you recall that?

12 A. Yes, I do.

13 Q. My first real question to you then is: If we do
14 get to a penalty phase, would you be able to fairly consider
15 both of those two possible penalties?

16 A. Yes. I do have mixed emotions on the death penalty
17 though.

18 Q. Want to amplify on that?

19 A. Well, reading papers and hearing news stories, I --
20 on some cases after all the evidence is in and I hear the jury's
21 verdict, I feel like sometimes the jury is too light; and then
22 other times I feel like it's too severe, so that's why I have
23 mixed emotions on the penalty.

24 Q. All right. Every case is different.

25 A. Right.

26 Q. Different time, places, people, circumstances. And
27 that's why every case should be judged on it's own merits or
28 demerits, I suppose, in general terms. And perhaps that's the

1 wisdom of the present law in California to the effect that in a
2 particular case if it's eligible for the death penalty, then
3 jurors have to make that decision based upon the evidence
4 brought out at the trial.

5 Can you do that?

6 A. Yes, I believe so.

7 Q. Could you vote for the death penalty?

8 A. Yes.

9 Q. Could you vote for life in prison?

10 A. Yes.

11 Q. And you would make your decision then based upon
12 the evidence and circumstances brought out at trial?

13 A. Yes.

14 Q. Some jurors have indicated that they would have
15 such a dread of having to make that, a life or death type
16 decision, that they might deliberately find an inappropriate
17 verdict back at the guilt phase just to avoid ever having to go
18 to that second phase at all.

19 Do you think you might be willing to do that sort
20 of thing?

21 A. Can you repeat that? I didn't quite get that.

22 Q. If the defendant is found not guilty we will never
23 go to a second phase. If they find convictions of something
24 other than first degree murder, we would never get to that
25 second phase.

26 Some jurors are telling me: "Judge, I think that I
27 just have such a dread of going through the penalty phase that I
28 would deliberately try to find an escape hatch back here in the

1 first phase."

2 Do you understand what I'm saying?

3 A. Yes, I do.

4 Q. Would you be inclined to do that?

5 A. No.

6 Q. That would be improper, you understand that.

7 A. (No audible response.)

8 Q. Yes or no, please, for the machine. Would you
9 answer yes or no?

10 A. No, I wouldn't do that.

11 Q. Okay. Fine. Thank you very much, Mrs. Doxey.
12 Counsel.

13

14 EXAMINATION

15 BY MR. NEGIS:

16 Q. Mrs. Doxey, the Judge is letting Mr. Kochis and
17 myself to ask most of the questions of you. We're not trying to
18 pry or embarrass you in any way but the law requires we have
19 your honest opinions before we go any further.

20 What had you heard about this case before you came
21 came to court?

22 A. Oh, well, I heard news stories, television stories,
23 that three people were killed in the Chino area and that Mr.
24 Cooper was the prime suspect and that he was at large.

25 Q. Do you recall having heard anything about his
26 background?

27 A. That's the one part that I don't recall. I don't
28 recall why he was being held to begin with.

1 Q. You heard that he escaped from the prison?

2 A. I did hear that he escaped.

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

5 A. At the time, yes, but I don't quite remember, I
6 don't remember everything. He was arrested on a boat, at a
7 dock, I'm not sure.

8 Q. That's all you can remember about the arrest?

9 A. That's all I can remember about the arrest.

10 Q. After the case was in court in San Bernadino before
11 we came down here, do you recall having read any stories or seen
12 anything on television about the court proceedings?

13 A. Vaguely about -- vaguely about that. I -- I have
14 to think for a minute. Only that they were -- only that during
15 the -- the hearing that they were going to have it in another
16 city. I don't recall anything about that.

17 Q. Did you know that it was coming to San Diego County
18 before you came to court?

19 A. Yes; yes.

20 Q. Was that based on a story you had heard just before
21 you came to court?

22 A. Just before I came to court.

23 Q. In the what, the Tribune?

24 A. Well, I don't know. I get the Evening Tribune, or
25 television, I don't recall exactly where I heard it.

26 Q. What was your reaction when you got to court and
27 found out that you were a prospective juror in this particular
28 type case?

1 A. Well, I -- Can I tell where I work? Is that okay?
2 I work add UCSD Medical Center, and this is my
3 first time being called for jury duty. Of course, a lot of
4 people said, "Oh, you might get the Kevin Cooper case."

5 Well now, but that was it. When I came here that's
6 exactly what happened.

7 Q. Did you have any feeling about being on this kind
8 of case as opposed to any other?

9 A. No; no.

10 Q. We're asking you some questions about the death
11 penalty. That doesn't, as I'm probably sure you understand,
12 doesn't mean we will have to make that decision, but the law
13 requires us to ask these questions even though there has been no
14 determination as to guilt or innocence.

15 What is your general opinion about the death
16 penalty?

17 A. Well, you know, I have kind of mixed emotions
18 simply because I have children and in life, just discussing,
19 well, I used to believe in the death penalty. Then there is
20 times I've changed and said, no, because so many people -- I
21 have read stories, so many people being, you know, in jail and
22 not being -- not being guilty. And I've said, well see, you
23 kind of -- you're kind of wishy-washy. Then I think, well, if I
24 had a child, if my child was convicted of a crime would I want
25 him to die or would I want him to get life. And in those
26 instances I say, well, I believe in the -- in life imprisonment.
27 On the other hand, then I see some cases where I believe in the
28 death penalty. So that's the way -- I just have mixed emotions

1 about it.

2 Q. So, basically as you feel right now, in some cases
3 you could give the death penalty, other cases you couldn't?

4 A. Right.

5 Q. Do you have any feelings, strong feelings about
6 life imprisonment without parole?

7 A. I believe that would be okay other than the death
8 penalty. It depends on the case and the evidence and the
9 circumstances.

10 Q. Do you belong to an organized religion?

11 A. I belong to the Baptist religion.

12 Q. Have the tenets of your religion in any way
13 influenced your opinions on crime or punishment or the death
14 penalty?

15 A. No.

16 Q. That's based on your own individual conscience?

17 A. Right.

18 Q. Thank you.

19

20 EXAMINATION

21 BY MR. KOCHIS:

22 Q. Mrs. Doxey, I have a few questions.

23 You said something that I'd like to develop a
24 little further. You mentioned that in reading about cases in
25 the newspapers sometimes you feel people are treated too
26 lightly, sometimes the sentence is too harsh.

27 Is there any particular case that stands out in
28 your mind one way or the other?

1 A. Yes. The case of the actress that was killed, the
2 one that played in, was it Poltergeist?

3 Q. I believe it was.

4 A. Uh-huh.

5 Q. And that defendant was convicted as I recall?

6 A. He was convicted but he had a very light sentence.

7 Q. Have you ever formed an opinion one way or the
8 other on a death penalty type case that's been published in the
9 newspaper?

10 A. Oh, no, I can't recall. You know, it's just going
11 through, I say, years of just reading different cases and that
12 I've just, you know, in my own mind said, I don't think that's
13 right, I think he should have been convicted, or else I think
14 that was really wrong, the sentence was severe. I have mixed
15 emotions on that. I would have to have everything in front of
16 me. I would have to really, you know, look at all the evidence.

17 Q. Okay. In the '70s there were two separate
18 occasions in which we had death penalty related issues on the
19 ballot. People circulated petitions, gathered signatures. It
20 was a subject of a lot of debate and controversy, and some
21 people took strong positions one way or the other.

22 Were you involved in either one of those? First of
23 all, in gathering the signatures?

24 A. No.

25 Q. Did you sign any of the petitions?

26 A. I don't remember.

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

1 A. I don't remember if I did or not. I really can't,
2 in the '70s, I don't recall.

3 Q. Okay. How do you feel about being put in a
4 position where you might have to make -- whether you would have
5 to make this type of decision?

6 A. Well, I -- in my job and my employment, I make
7 decisions all the time, so I think I could handle it very well.
8 I'm a supervisor.

9 Q. Okay. The reason we ask the question is some
10 people when they actually are put in the position and they have
11 to make the decision, they at that time realize that for them
12 the decision is so serious that they don't feel comfortable
13 making it one way or the other.

14 Do you see any possibility of that happening with
15 you?

16 A. Well, certainly. I couldn't say no that I wouldn't
17 feel anything. Sure, the pressure would be on and I'd have to
18 really think about it and weigh it out.

19 Q. It sounds like your feelings on the death penalty
20 have been in a position of transition over the last couple
21 years; is that fair to say?

22 A. Well, I'd say more than a couple years.

23 Q. Okay. We happen to have it on the books here in
24 California. What do you think about that, that we have that
25 type of penalty, is it something that you feel we shouldn't have
26 to have?

27 A. Oh, I think we should have it, yes.

28 Q. Are there any cases that you have in your mind that

1 it would be more appropriate than others for this type of
2 punishment?

3 A. I can't think of any cases in particular, no.

4 Q. To make sure there's no mistake, at the end of
5 every criminal case we poll the jury. We go down the aisle, the
6 Judge does, and he simply asks each juror if the verdict the
7 clerk has just read is in fact the way they voted.

8 If in this case the jury determined that the
9 appropriate punishment was death, would you have any problem
10 indicating in open court that that was in fact the way you
11 voted?

12 A. No; no problem at all.

13 Q. Like likewise one person is elected as the
14 foreperson of the jury, and that person actually dates and signs
15 the verdict form.

16 If the jury selected you as the foreperson and you
17 and eleven other people determined that the death penalty was
18 the appropriate punishment in this case, would you have any
19 trouble dating and signing the verdict form?

20 A. Well, the -- Can you repeat that? I have to --

21 Q. Sure. It was a long question. Let me see if I can
22 make it simpler.

23 A. Yeah; okay.

24 Q. When you deliberate one of the first things you'll
25 do is the twelve of you will get together and select one of you
26 as the foreperson.

27 A. Okay.

28 Q. And that person signs and dated the verdict forms.

1 If the jury picked you as the foreperson and you
2 and eleven other people felt that the appropriate punishment in
3 this case was the death penalty, could you sign and date that
4 verdict form?

5 A. Yes.

6 Q. Thank you.

7 I have no further questions.

8 THE COURT: We'd like to discuss it privately and ask you
9 to step outside for a minute. The bailiff will inform you
10 further. Thank you very much.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Anything, counsel?

13 MR. NEGIS: No.

14 MR. KOCHIS: No, your Honor.

15 THE COURT: Give her a return date and bring in the next.

16 THE BAILIFF: Ilda Navalvez.

17

18 ILDA NAVALLEZ

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

21

22

EXAMINATION

23 BY THE COURT:

24 Q. Good morning, ma'am.

25 A. Good morning.

26 Q. Ilda Navalvez?

27 A. Yes.

28 Q. We are the same people you saw once before when you

1 were in court, but we're arranged around the table in the hopes
2 it will put you a little bit more at ease, so try and settle
3 back and relax, please. We're going to be asking you a few
4 questions, a few kind of hard questions at this time.

5 My first one of you is, has anything happened to
6 you since we last saw you that would complicate your ability to
7 serve in this case?

8 A. No.

9 Q. Secondly, I want to remind you of some of the
10 things I have said when I was sitting on the bench. I told you
11 then that there were two possible phases to this trial. The
12 first phase, the guilt phase, and there the jurors are concerned
13 only with whether he is guilty or not guilty.

14 Now, depending upon the verdicts that are returned
15 then we could go to a second phase, we're not sure if we will
16 therefore get to that, but we might go to a penalty phase.

17 If we do get to that penalty phase, further
18 evidence would be presented on the circumstances of the case,
19 the background and so forth, and at that time the jurors would
20 have only two choices: To return a verdict indicating death by
21 execution, or another verdict indicating life imprisonment
22 without the possibility of parole.

23 Question. If we do get to that penalty phase, and
24 you are on the jury, will you be able to fairly consider both of
25 those two possible alternatives?

26 A. No. I just -- um, I don't know, I just get too
27 nervous with something like this. I just --

28 Q. Well, the spotlight is kind of on you now. Later

1 on when you are just one of many sitting in the jury box, things
2 would kind of settle down into what is going to be a fairly long
3 trial.

4 Don't you think you can overcome that?

5 A. I don't know -- I don't feel like I can be on
6 something like this. I don't -- I don't understand that much
7 English to be on something like this.

8 Q. Where were you born?

9 A. I was born in Mexico.

10 Q. How long have you been here?

11 A. For fifteen years, but I only went three -- I just
12 only went to high school.

13 Q. That is the beauty of our jury system. We take
14 people from all walks of life, background and degrees of
15 education, that way you get a good cross-section. We don't
16 require experience for you before you can serve on the jury, so
17 don't feel that your vote would have any less weight.

18 Do you have common sense?

19 A. Yes, I do.

20 Q. Can you make decisions? Do you have children, for
21 instance?

22 A. No, I don't; I'm single.

23 Q. Okay. You have to make a decisions, I am sure
24 everybody does, about their own daily lives and work
25 responsibility.

26 What do you do for a living?

27 A. I'm an electronic assembler?

28 Q. A what?

1 A. Electronic Assembler.

2 Q. Have you ever -- has your nervousness got to the
3 point where you've had to have medical attention for it?

4 A. Yes.

5 Q. How long ago was that?

6 A. Oh, I didn't understand, no.

7 Q. You are not under a doctor's care for nerves or
8 anything of that nature.

9 A. No.

10 Q. What we're concerned with here -- let me put it a
11 little different way. We're concerned with people that will be
12 able to fairly listen to the evidence, keep an open mind until
13 the appropriate time for you to discuss it with your fellow
14 jurors, and then have the courage of your conviction and be able
15 to vote one way or another.

16 You seem to express yourself all right. So, can
17 you take that responsibility and participate in the trial?

18 A. I also have something else. I have to support
19 myself. I -- I --

20 Q. What company do you work for?

21 A. They only pay 30 days. They've already paid two
22 days of those 30 days, and I have to pay my way in bills, and --

23 Q. Are you unionized in any way?

24 A. Yes.

25 Q. Do you know if your union -- do you know if your --

26 A. No, they won't help us on something like that.

27 Q. All right. Would your employer, pursuant perhaps
28 to a union contract, would pay you for 30 days of jury service

1 in 1984 and another 30 days for the year 1985?

2 A. Well, I have to check on that. I don't know.

3 Q. Some people have indicated that, I don't know
4 whether yours would or not, if it did then we're talking about a
5 total of 60 days compensation, for which we have now used in
6 effect two, and it will perhaps require some more time from
7 that, but not a whole lot more.

8 If that is the case, could you serve all right?

9 A. Yeah.

10 Q. Do you feel in any way locked in or have your mind
11 made up one way or another that this case deserves the death
12 penalty, or that you would vote for life imprisonment without
13 the possibility of parole, at this time?

14 A. I don't know.

15 Q. Pardon?

16 A. I would think I would say life, I guess. I don't
17 know.

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

19

20

EXAMINATION

21 BY MR. NEGUS:

22 Q. Miss Navalvez, we're not trying to pry or embarrass
23 you in any way, but the law requires we get, you know, something
24 of your opinions before we go any further.

25 You indicated that you had heard quite a lot about
26 this case --

27 A. Yes.

28 Q. -- before it came to court. Was that in the Union,

1 or was that on television, or both?

2 A. On the newspaper and the television.

3 Q. What had you heard about the crime?

4 A. Why?

5 Q. What?

6 A. What? That he escaped from jail, and went and
7 killed the man and wife, a little girl and a little boy.

8 Q. Did you hear anything about Mr. Cooper, where he
9 came from, that sort of thing?

10 A. No.

11 Q. Did you hear anything about the case when it was in
12 court in San Bernardino?

13 A. No.

14 Q. Did you know that the case was coming to San Diego
15 before you got here to court?

16 A. No.

17 Q. What was your feeling when you found out that you
18 might be a juror on this case?

19 A. Well, what was my feeling?

20 Q. Yes.

21 A. I just feel very nervous, that's all.

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

23

24

EXAMINATION

25 BY MR. KOCHIS:

26 Q. One of the questions we ask everybody who comes
27 back here to talk to us is what they think about the death
28 penalty, what their opinion about the death penalty is.

1 What is your opinion about the death penalty?

2 A. What I heard is in California it is not a death
3 penalty, is it?

4 Q. Yes, there is.

5 A. Yes, there is.

6 Q. It is on the books. We have it on the books. We
7 don't use it very often but it is on the books.

8 Do you think that's something we should have or
9 something we shouldn't have? What do you think about it?

10 A. I think when somebody kills they should be penalty
11 to death.

12 Q. If one person takes another person's life their
13 life should be taken. Is that what you mean?

14 A. Yes.

15 Q. How do you feel about making this type of decision
16 other than being a little nervous?

17 A. Well, would you repeat that.

18 Q. Sure. How do you feel about making serious
19 decisions like the ones you would have to make in this case?

20 A. How do I feel? I feel that I am nobody to call and
21 tell, you know, kill this person.

22 Q. Okay. The way the law is the judge doesn't decide
23 whether someone gets the death penalty or not, the jury makes
24 that decision.

25 If you were on the jury, could you listen to all
26 the evidence, listen to all the law, and make a decision in the
27 case?

28 A. Yes.

1 Q. And if you heard all the evidence, and you heard
2 the law, and based on the law you thought the appropriate
3 punishment, the right punishment was to vote for the death
4 penalty, could you vote for the death penalty?

5 A. I don't -- I don't think so.

6 Q. Okay. Well, we want -- we want you to be honest.
7 Do you have -- you apparently believe in the death penalty in
8 some cases; is that true?

9 A. Yes.

10 Q. But you don't personally want to be the one to do
11 it. Is that true?

12 A. Yes, sir.

13 Q. Does that mean you could never vote for the death
14 penalty?

15 A. No.

16 Q. No matter what the evidence was you could never
17 vote for it?

18 A. No.

19 Q. Not in any type of case you could vote to sentence
20 someone to die?

21 A. No.

22 MR. KOCHIS: Does the court have any further questions?

23 THE COURT: Mr. Negus.

24 MR. NEGUS: No.

25 THE COURT: Would you mind waiting outside, please, and
26 let us discuss it in private.

27 All right. Anything, gentlemen?

28 MR. KOCHIS: No.

1 MR. NEGUS: Mr. Negus.

2 MR. NEGUS: No.

3 THE COURT: All right, then, have her come back and
4 please bring in the next juror.

5 THE BAILIFF: I think that's all.

6 MR. NEGUS: One point that is not very important, but
7 I -- just pedanticism drives me to bring it up. It is not
8 required, at least according to the Attorney General's
9 interpretation of the statute, that somebody be convicted of
10 first degree murder in order to receive the death penalty under
11 special circumstances.

12 THE COURT: I stand corrected.

13 MR. NEGUS: That is disputed but the Attorney General
14 claims that --

15 THE COURT: Doesn't apply to this case.

16 MR. NEGUS: -- two second degree murders does it. *NO!*

17 MR. KOCHIS: I can tell the Court that if Mr. Cooper is
18 convicted, at least of the two counts of second degree murder,
19 our position is going to be that we have a penalty phase.

20 THE COURT: Oh, I have read about something.

21 MR. KOCHIS: That is the way the code reads, I believe.

22 MR. NEGUS: The code is a tad ambiguous, but that's
23 certainly the way the Attorney General interprets it.

24 MR. NEGUS: I don't think it is of great moment.

25 THE COURT: It doesn't appear to be in this case.

26 MR. NEGUS: But pedanticism --

27 THE COURT: I appreciate it. Let's take the recess.

28 THE CLERK: Would you like to discuss Barbara Johnson.

1 THE COURT: Thank you. Counsel, Barbara Johnson, who is
2 set to come in on the 10th of October, she telephoned this
3 morning and spoke to the clerk and told us what, please?

4 THE CLERK: Her daughter is due to have her first-born
5 and she wants to be home with her daughter. She is requesting
6 that her appointment be changed to tomorrow morning so that she
7 could have it earlier and she wouldn't have to worry about it.

8 THE COURT: Do you get the idea the birth is imminent, so
9 to speak?

10 THE CLERK: Yes.

11 THE COURT: Instead of coming in on the 10th, well,
12 apparently she feels, I assume, that if she came in tomorrow
13 then --

14 MR. KOCHIS: Your Honor, you are in December.

15 MR. NEGUS: I have no problem with that.

16 MR. KOCHIS: Nor do I.

17 THE COURT: We can work her in.

18 See if you can get her in at 9:15 tomorrow. That's
19 fine.

20 (Recess)

21

22 THE BAILIFF: Ruth Edwards is the first juror.

23

24 RUTH EDWARDS

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. Good morning.

4 Q. You are Ruth Edwards?

5 A. Yes, I am.

6 Q. Miss Edwards, we're still the same people but
7 arranged a little bit differently.

8 A. Yes.

9 Q. We're gathered informally around the table in hopes
10 that you will be more relaxed and be able to answer the
11 questions.

12 A. Okay.

13 Q. All right. Has anything happened since we last saw
14 you that would complicate your ability to serve as a juror in
15 this case?

16 A. No.

17 Q. Do you remember I told you before when you were
18 here that this is a case that could have two phases to it. The
19 first phase is called the guilt phase and there a juror is only
20 concerned with guilt or innocence.

21 If we get over that, we don't know if we will, but
22 if we do get to a second or penalty phase, the jurors then will
23 have only two choices to be made after you have heard further
24 evidence, perhaps, and those choices are to return a verdict in
25 favor of death by execution, on the one hand, or life
26 imprisonment without the possibility of parole on the other.

27 Question. If we do get to a penalty phase, will
28 you be able to fairly consider both of those two possible

1 penalties?

2 A. Yes.

3 Q. You don't feel locked into one or another at this
4 time?

5 A. No.

6 Q. Would you be able to personally makeup your mind to
7 vote for one or the other based upon the evidence received in
8 court and the circumstances brought out at the trial?

9 A. Yes.

10 Q. Some jurors feel a real abhorrence or dread of ever
11 having to get to that penalty phase, having to make that heavy
12 decision, and they've indicated, some of them, that they might
13 let that dread influence the way they would vote in the guilt
14 phase, although in the guilt phase the jurors are not supposed
15 to consider penalty or punishment.

16 Do you think you would have that problem?

17 A. No.

18 THE COURT: Thank you. Mr. Negus.

19

20

EXAMINATION

21 BY MR. NEGUS:

22 Q. Mrs. Edwards, the judge is letting Mr. Kochis and
23 myself ask you most of the questions. We're not trying to pry
24 or embarrass you in any way.

25 A. Right.

26 Q. But the law requires we get your honest opinion
27 before we go any further.

28 You indicated to us that you don't remember

1 anything about the actual crime itself.

2 A. No, I don't -- I didn't -- I didn't read about it.

3 Q. But you had some vague knowledge about Mr. Cooper.

4 A. Yes.

5 Q. What was that?

6 A. Just what I heard, that's it.

7 Q. What did you hear?

8 A. That he had killed someone, that is it.

9 Q. Where did you hear that from, a friend or on the
10 newspaper, or what?

11 A. Just on TV, that is all.

12 Q. Did you have any knowledge as to, as to the case
13 that was in court, or did you know the case was coming to San
14 Diego before you showed up here?

15 A. No, I didn't.

16 Q. Based on what you heard, did you form your own
17 opinion as to whether or not he was guilty or innocent?

18 A. No.

19 Q. Did you get any impression of him from what you
20 heard briefly?

21 A. No, I didn't.

22 Q. What was your reaction when you found out that this
23 was the type of case that you were a prospective juror for?

24 A. Well, what did I find out?

25 Q. When you found out that you were involved in a
26 potential capital case, this particular case, when you walked
27 into court a couple weeks ago, how did you feel?

28 A. Oh, I didn't feel anything really.

1 Q. You didn't have any particular feeling about being
2 a juror on this case as opposed to a civil case or --

3 A. No.

4 Q. We're asking you some questions about the death
5 penalty. The law requires us to ask those questions before
6 there's even a determination of guilt or innocence before we
7 know there will be a penalty.

8 You understand that that's no indication that Mr.
9 Cooper is guilty or you are to supposed to vote one particular
10 way.

11 A. Yes, I do.

12 Q. What generally do you feel about the death penalty
13 in California. Do you think we should have it?

14 A. Well, maybe on some cases we should.

15 Q. What do you think about life imprisonment without
16 parole?

17 A. Yes.

18 Q. I believe in that.

19 Q. Have you made up your mind as to what particular
20 type of cases you think that we should?

21 A. No. No, I don't.

22 Q. You have no, no particular personal feelings which
23 would prevent you from following the law whatever it turns ought
24 to be --

25 A. No.

26 Q. -- did you?

27 A. Oh, okay.

28 Q. Do you belong to an organized religion?

1 A. No, I don't.

2 Q. So, your feelings on crime and punishment, are
3 those basically your own personal opinions rather than other
4 group?

5 A. Right.

6 MR. NEGUS: That's all I have.

7

8

EXAMINATION

9

BY MR. KOCHIS:

10 Q. Mrs. Edwards, to reiterate what Mr. Negus said, we
11 don't want to pry, but to evaluate you as a potential juror, the
12 only way we can to do it is ask questions and talk to you.

13 I'd like to start with an open-ended question. Do
14 you have an opinion one way or the other about the death
15 penalty?

16 A. No.

17 Q. We happen to have it in the laws, here on the books
18 in California, as the law.

19 What do you think about that?

20 A. Um, I feel I shouldn't dispute the law.

21 Q. Some people take an extreme viewpoint on it one way
22 or the other. For example, some feel, if you take another
23 person's life in each and every case you should forfeit your
24 life. Do you follow that category?

25 A. Huh-uh. No.

26 Q. Others feel that only God has the right to make
27 that type of decision, they don't have the right to make that
28 type of decision, and they would always vote for the life

1 without possibility of parole and never vote for the death
2 penalty. Do you fall into that category?

3 A. I don't think you should put God in it.

4 Q. Okay. Okay. Between the two penalties, life
5 without the possibility of parole and the death penalty, do you
6 have a preference for one or the other?

7 A. Life.

8 Q. Any particular reason?

9 A. No.

10 Q. There were two periods back in the 70's, I believe
11 first in 1974 and then again possibly in 1978 in which we had
12 death penalty-related issues on the ballot. People circulated
13 petitions, they gathered signatures, they voted one way or the
14 other, it was a subject of some controversy, some people took a
15 strong position one way or the other.

16 Do you recall circulating any petitions in either
17 one of those?

18 A. No.

19 Q. Did you ever sign any of the petitions?

20 A. No, I didn't.

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

23 A. Huh-uh, no.

24 Q. To make sure that there is no mistake, at the end
25 of every criminal case we poll the jury, the judge simply goes
26 down the aisle and he asks each juror if the verdict the clerk
27 has just read is in fact the way they voted.

28 If, in this case the jury determined that the

1 appropriate punishment was death, would you have any problem
2 indicating that in open court?

3 A. No.

4 Q. Likewise, once the jury is selected as the
5 foreperson, that person is required to sign and date the verdict
6 form.

7 If you were selected as a foreperson in this case,
8 and you and eleven other people determined that the appropriate
9 punishment was death, would you have any problem signing and
10 dating that verdict form?

11 A. No.

12 Q. What the law requires in the second trial, if we
13 get to the penalty phase, is that you base your decision only on
14 the evidence and the law.

15 The preference that you may have for life without
16 the possibility of parole, do you think that might affect your
17 decision in the penalty phase?

18 A. No.

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

20 THE COURT: Would you please kindly wait outside for a
21 minute and let us discuss it privately, and the bailiff will
22 inform you further. Thank you, ma'am.

23 Anything, counsel?

24 MR. KOCHIS: No.

25 MR. NEGUS: No.

26 THE COURT: Give her a return date, please, and bring in
27 the next juror.

28 THE BAILIFF: Tamara Richards.

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TAMARA RICHARDS

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

EXAMINATION

BY THE COURT:

Q. Good morning.

A. Morning.

Q. I thought I saw you balk just as you came through
the door.

We're the same people you saw before, but arranged
a little differently, designed around the table to put you a
little more at ease, and make it a little easier for you to
relax.

A. All right.

Q. You are Tamara Richards?

A. Correct.

Q. Has anything happened to you since we last saw you
that would complicate your ability to serve on this case?

A. Well, there is a problem. I found out from my
employer that they will only pay me for fifteen days. That was
something -- I thought I assumed that they would pay me the
whole time and I checked on it and that's all.

Q. For whom do you work?

A. IVAC Corporation.

Q. I am not familiar with that. What do they do?

A. They manufacture medical instruments up in La

1 Jolla.

2 Q. Is that a private firm?

3 A. We're owned by Eli Lily. It is a medical firm.

4 Q. And you are certain they will only pay you for
5 fifteen days.

6 A. Well, there is a provision in the policy that you
7 could, you can get -- it is possible to get a written approval
8 for a extension, but it is not certain how long that will last.

9 Q. From whom?

10 A. From upper management, director of personnel. That
11 is an awfully long time. I could ask them more specifically how
12 long they would pay me, if that is possible.

13 Q. What financial obligations do you have. You have
14 to support yourself and a bunch of children or what?

15 A. No. I have to work, though. My husband and I both
16 work and I have bills, car payments. I definitely have to work.

17 Q. You definitely have to have pay. I to have be
18 paid. Unless it is a severe financial hardship, I really won't
19 excuse for that purpose, so we will have you back again,
20 perhaps, providing you get through the rest of the questions
21 this morning, and in the meantime try and get that second level
22 approval, if you can.

23 A. Okay.

24 Q. Now, you have an excellent chance of lucking out.
25 On the other hand, you may not, you could be one of the sixteen.
26 So, once you tell your boss let's spin the wheel or something
27 like that, if it does happen, I would need it all the way. If
28 he turns you down, why then you can report that to us the next

1 time. If he grants it to you, we'd love to have the possibility
2 of using you. Fair enough?

3 A. Fair.

4 Q. Now, before I get into the real questions, I want
5 to remind you of something that I said before when I had my robe
6 on, namely, that it is a possible two phase trial. That is, in
7 the first phase we call the guilt phase, the jurors are only
8 concerned with guilt or innocence.

9 We could, depending upon the verdicts in that case,
10 have a second phase, we don't know that, but we might. If we do
11 go to a second phase, I said all this before, if we do go to the
12 second phase, further evidence could be presented on
13 circumstances in aggravation or mitigation, and then the jurors
14 would have only two choices to make. One, they would decide to
15 return a verdict indicating death by execution. On the other
16 hand, they could find that the most appropriate penalty would be
17 life imprisonment without the possibility of parole.

18 Question to you. Would you be able to fairly
19 consider both of those two possible verdicts if we do get to a
20 penalty phase?

21 A. Well, the death penalty is somewhat against my
22 religious upbringing. It is definitely against my --

23 Q. What organized religion do you belong?

24 A. Lutheran.

25 Q. Do you recall what church doctrine says in that
26 regard --

27 A. Perhaps it is more of a moral of my own, I'm not
28 real certain.

1 Q. I am not either. I wasn't aware that any of the
2 major religions had a church doctrine to the effect against the
3 death penalty.

4 A. It is more of a personal thing, I should have --
5 let me restate that. It is more of a personal thing.

6 Q. This is something of longstanding?

7 A. I'm sorry?

8 Q. Is it something of longstanding, some feeling that
9 you have had, that you have had for a long time?

10 A. Yes.

11 Q. You know, we're not giving you your druthers in the
12 case, were not asking you to apply the Richards law, or what you
13 would like the law to be, you would have to take an oath to
14 apply the law of the State of California which are made by your
15 legislators in Sacramento or to some extent by the People of the
16 State of California.

17 So, could you put your personal desires aside and
18 consider it and determine if it is appropriate and apply the
19 California law?

20 A. Yes, I could. Some deep very serious thought.

21 Q. You know, we're involved with very serious matters.

22 A. That's correct.

23 Q. Everybody who serves gives it very serious thought
24 and that's perfectly fine and appropriate.

25 But after giving it serious thought we would like
26 you to have an open mind to the extent that you could consider
27 both of the two possibilities. Can you do that?

28 A. Yes, I can.

1 Q. Would you make your decision then at the
2 appropriate time as to which of the appropriate penalties to
3 vote for in this case if we get to a penalty phase and make that
4 decision upon what you hear in court, and the evidence and
5 circumstances brought out at the trial?

6 A. Yes, I would.

7 Q. Some jurors, and you could be one of them, I don't
8 know, say, hey, judge, I feel so strong about the death penalty
9 that I would do everything I can to avoid having to make that
10 decision. If necessary, I will find perhaps an inappropriate
11 verdict back in the guilt phase to avoid ever having to get to
12 that second phase.

13 Do you think you might cop out, so to speak, like
14 that?

15 A. I don't think so.

16 Q. Would you tell us you would try not to?

17 A. I would try not to.

18 Q. And do your best to decide your responsibilities in
19 each phase in a fair and impartial manner under the law of the
20 state, letting the chips fall where they may. Can you do that?

21 A. Yes, I can.

22 Q. That's all I have at the moment.

23 Mr. Negus.

24

25

EXAMINATION

26 BY MR. NEGUS:

27 Q. Mrs. Richards, the judge is letting the lawyers ask
28 most of the questions. The purpose is not to pry or embarrass

1 you, but because we need to have your honest opinions before we
2 go further, and you've already expressed a lot of them in your
3 questionnaire that you you filled out for us.

4 You indicated that you had heard nothing, at least
5 at that time, about this, the particular incident.

6 After having gone to court afterwards, did that
7 refresh your recollection or had you actually heard nothing
8 about it?

9 A. I hadn't heard that much, then, of course
10 everybody, tried to tell me everything about it. I told them to
11 please not say anything to me.

12 Q. What had you heard before you actually came to
13 court?

14 A. Well, just that there were some killings in San
15 Bernardino, that is what I had heard.

16 Q. Had heard --

17 A. Had heard. That's really about it.

18 Q. Had you heard anything about Mr. Cooper, my client?

19 A. No.

20 Q. I take it based on the sketchy information that you
21 had, you hadn't formed an opinion one way or the other as to his
22 guilt or innocence.

23 A. No, I didn't really know anything about it, so I
24 didn't make any judgment.

25 Q. When you heard that this was the type of case that
26 you might be a juror on, what was your reaction?

27 A. Frightened, like I am right now.

28 Q. Why?

1 A. Because it is -- it would be quite overwhelming
2 just to go through all the details, and I'm not a real strong
3 person. That part -- that part of it would bother me. I mean,
4 just to sit and go through a whole series or details.

5 Q. The intellectual labor involved in sifting of the
6 facts?

7 A. The fundamental -- the unpleasantness, yes.

8 Q. If you had to, do you think that you could put that
9 out of your mind and handle it?

10 A. If I had to I suppose I could. I would definitely
11 try to.

12 Q. Do you have an opinion right now on whether we
13 should or should not have the death penalty in California?

14 A. No, I really don't have an opinion either way.

15 Q. Do you feel, however, that whatever the law is that
16 is articulated to you in court that you could sort of put your
17 own personal opinions aside and follow that particular law?

18 A. That's correct, I could do that.

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

20

21

EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mrs. Richards, I likewise have a few questions.

24 A. Sure.

25 Q. You mentioned to Judge Garner that you had, I
26 believe the term you used, you had a moral objection to the
27 death penalty.

28 Could you explain that to me or tell me why.

1 A. Well, it would be my thoughts about our -- that I
2 would be -- that I would be killing someone, and I find that
3 very -- that is just -- that's not my upbringing. That is not
4 the way I was taught.

5 Q. You would find that an unpleasant task?

6 A. Yes, I would.

7 Q. What do you think about being put in the position
8 where you would in effect sentence someone to death?

9 A. That would be very difficult. If I had to do it,
10 you know, I would, but I wouldn't -- it would be very
11 unpleasant.

12 Q. Some people that have strong feelings along that
13 line, when they're eventually placed into a position of having
14 to make the decision, they feel that they can't; they find it
15 such a serious decision that they can't make the decision one
16 way or the other.

17 Do you see that possibility existing with you?

18 A. Yeah. I have problems making decisions at the
19 time. Something -- I would be pretty -- I don't know, that
20 would be difficult, yes.

21 Q. What we require from jurors, if we get to the
22 second phase, is that they base their decision only on the
23 evidence and the law.

24 If we had a penalty phase in this case, at the end
25 of the case, based on the evidence and the law, and the
26 discussion with the other jurors you felt that under the law the
27 appropriate punishment in this case was the death penalty, what
28 would you do?

1 A. I would go -- I would make my decision according to
2 the law of the state. I would -- ultimately I would do that,
3 yes. It would be a lot of emotional -- it would be hard for me
4 but I would do it if that was the law.

5 Q. If you felt the appropriate punishment was death
6 you could vote that way?

7 A. I could. If it was the law I could do it. It
8 would be difficult but I could do it.

9 Q. Let me carry it one step further. The way the
10 system works is we let the jury make the decision, Judge Garner
11 won't make the decision, in fact he won't make a recommendation
12 to you at all, he will give you some guidelines, essentially a
13 laundry list of things you could consider in determining what to
14 vote for, life and death. Then it is up to the lawyers on
15 either side whether to present evidence, what type of a -- what
16 type of arguments to make.

17 Knowing that you really wouldn't have someone
18 recommending that you impose the death penalty, could you vote
19 for if it if you thought the guidelines required it?

20 A. Yes.

21 MR. KOCHIS: I have no further questions.

22 THE COURT: We'd like to discuss it privately, briefly.
23 If you'd wait outside the bailiff will give you further
24 instructions. Thank you very much for coming in.

25 PROSPECTIVE JUROR: Sorry I was so nervous.

26 THE COURT: Oh, I expect it.

27 Anything, gentlemen?

28 MR. KOCHIS: No, your Honor.

1 THE COURT: Yes. Have her back, please.

2 THE BAILIFF: Edward Pearson is next.

3

4

EDWARD PEARSON,

5 called as a prospective juror, having been previously sworn,

6 testified as follows:

7

8

EXAMINATION

9 BY THE COURT:

10 Q. Good morning, sir.

11 A. Morning.

12 Q. You are Edward Pearson?

13 A. That's correct.

14 Q. Mr. Pearson, we are the same people you saw once
15 before, but we've arranged things a little bit differently.
16 Hopefully, that will put you a little bit more at ease to answer
17 the hard questions we're going to put to you.

18 Has anything happened to you since we last saw you
19 that would complicate your ability to serve on this case?

20 A. Nothing that I can think of.

21 Q. Now, I want to remind you of what I told you before
22 before I ask the first question about the possible death
23 penalty.

24 Remember, I told you that there could be two phases
25 to this trial. The first phase, the jurors would be concerned
26 only with guilt or innocence. We don't know if we're going to
27 get to a second phase, but if we do then the jurors would have
28 further evidence and argument and instructions and then they

1 would retire to deliberate as to which was the most appropriate
2 penalty verdict to return, death on the one hand or life
3 imprisonment without the possibility of parole on the other.

4 Question: Mr. Pearson, if we do get to that
5 penalty phase will you be able to fairly consider both of those
6 two possible penalties?

7 A. Yes, sir.

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

11 A. Yes.

12 Q. You do not hold any preconceived idea one way or
13 the other at this time?

14 A. No.

15 Q. Some jurors feel a real abhorrence on having to
16 make that heavy decision down the road of a possible life or
17 death type penalty, and they have indicated they might be
18 inclined to vote for an inappropriate verdict back in the guilty
19 phase just to avoid ever having to go to a second phase.

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

21 A. No.

22 THE COURT: That's all I have.

23

24

EXAMINATION

25 BY MR. NEGUS:

26 Q. Mr. Pearson, the Judge is allowing the lawyers to
27 ask you most of the questions. We are not trying to pry or
28 embarrass you in any way, but we need your honest opinions about

1 some of these matters before we go forward.

2 You apparently had a vague recollection of having
3 heard something about this case before you came to court.

4 A. The day before I was impanelled -- I reported to
5 the -- the day I reported to court I happened to hear on the
6 radio driving down here that the Court was in the process of
7 selecting a jury, and I just vaguely triggered some recollection
8 sometime ago of something to do with a boat or something.
9 That's all I could recollect.

10 Q. You didn't have any -- didn't have any recollection
11 as to the details of the crime or anything of that nature?

12 A. None whatsoever.

13 Q. Did you have -- did you have any knowledge about
14 Mr. Cooper?

15 A. None whatsoever; didn't even recognize the name.

16 Q. So I take it you haven't formed an opinion one way
17 or the other as to his guilt or innocence?

18 A. No, I haven't.

19 Q. You smiled a little when I asked you that.

20 A. Well, Judge Garner said a few things three weeks
21 weeks ago that -- I just -- I would prefer not to mention what
22 it was. I was impressed with --

23 This is the first time I have been in a court. I
24 was very impressed with the whole proceedings and the judicial
25 system.

26 Q. Well, did something Judge Garner said lead you to
27 have a particular opinion about this case?

28 A. No, about myself.

1 Q. What do you mean?

2 A. He mentioned about reasonable doubt, and it just
3 kind of opened my eyes up and -- I'm not prepared to go into it,
4 a long philosophy on the courts. I don't know. I'm not that
5 experienced at --

6 THE COURT: Don't be afraid to speak candidly to --

7 PROSPECTIVE JUROR: I'm not afraid.

8 THE COURT: We urge you to be candid, sir, please.

9 PROSPECTIVE JUROR: You mentioned, your Honor, about one
10 of the witnesses had a different opinion as to what had
11 happened, something about a boy, and that kind of impressed me.

12 THE COURT: So when I described that four people had been
13 killed and there was a boy survived or something like that --

14 PROSPECTIVE JUROR: Right.

15 THE COURT: -- and that made an impact on you; is that
16 what you're saying?

17 PROSPECTIVE JUROR: No. The fact that the boy had said
18 that there were three other people that had allegedly --

19 THE COURT: I don't recall saying that.

20 PROSPECTIVE JUROR: You don't? Well, someone said that
21 in court.

22 THE COURT: Someplace else.

23 BY MR. NEGUS:

24 Q. Is it possible you heard that --

25 A. No. I did not read that. I heard it hear in the
26 court. Something about, somewhere I recollect that it was the
27 boy had said something about three other or four other white men
28 had allegedly committed the crime.

1 Q. Okay.

2 A. I thought I heard that in this court.

3 THE COURT: I don't believe so, not on the record anyhow.
4 You may have heard it from somebody speaking to you. I just
5 don't recall. But that's all right no great harm done other
6 people have heard that and other things about the case.

7 Go ahead, Mr. Negus.

8 BY MR. NEGUS:

9 Q. Well, did that cause you to have a particular
10 opinion about the case?

11 A. No. About the whole court proceedings. I have
12 been in the mind that when the prosecution goes in they
13 generally have a -- it's a very expensive and lengthy process,
14 so the prosecution would have fairly strong reason or evidence,
15 yet a person -- there is a conflict here.

16 Yet a person who says that they're not guilty
17 enough also a strong case.

18 So somewhere I had heard that about this -- I don't
19 know if that's true or not about the boy saying that. I don't
20 know. I thought I --

21 Q. We are not allowed to tell you, you know, what the
22 evidence is likely to be. Do you think that -

23 A. In other words, I have a -- I'm not confused. I
24 just have a complete open mind on this. Because of the
25 seriousness of it, I can't -- can't understand why a person if
26 he is complete guilty -- I mean not guilty, if there was
27 overwhelming evidence, yet on the other hand it's really quite
28 open.

1 Q. Well, I don't want to put words in your mouth, so
2 tell me if I'm saying wrong, but I think what I understand you
3 to be saying is that you came in here with a predisposition to a
4 belief that the prosecution had a case, but having heard that
5 you now have more of an open mind,

6 A. Not in this particular because I wasn't aware what
7 was going on, just in the courts in general.

8 Q. But you feel that right now you don't happen to
9 have that particular predisposition?

10 A. None whatsoever.

11 Q. We're asking you some questions about the death
12 penalty. And again, that's -- the law requires us to ask these
13 questions before we get into it and before a decision has been
14 made by a jury as to whether or not there is guilt or innocence.
15 The courts are not suggesting to you by us asking those
16 questions that you should find Mr. Cooper guilty or that he will
17 be found guilty.

18 Do you understand that?

19 A. Uh-huh.

20 Q. So, with that in mind I'd like to ask you, what is
21 your general opinion about the death penalty?

22 A. To be quite frank, I've never given it much
23 thought. What little thought I had to it was if it's first
24 degree murder, it -- life is probably to most of us the most
25 precious things we own, so it has to be taken in the most
26 serious consideration. And if it is a first degree,
27 premeditated, and I have no -- no objections to the death
28 penalty, but it has to be given very strong consideration. Like

1 I said earlier, it's the most precious things that a person
2 owns.

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

5 A. You know, I really hadn't thought about these
6 questions. I probably should have.

7 I think the nature of the crime, the circumstances
8 under which it was committed would dictate to that type of a
9 verdict.

10 Q. I'm not sure I understand exactly what you mean.
11 You mean you feel that some particular circumstances would
12 require life without parole as opposed to the death penalty?

13 A. Yes.

14 Q. Do you -- realizing you haven't thought about it
15 before that, do you have any particular opinion right now as to
16 what type of circumstances?

17 A. Well, it's very difficult. If a person was a real
18 true menace and would be -- and would pose a hardship on the
19 penal system, and you hear of crimes committed in the
20 penitentiaries, and if that person were of that nature, then I
21 would not recommend life imprisonment.

22 Q. So, if, for example, there was evidence presented
23 in this particular case which would show that the person wasn't
24 that kind of a menace, then you could go along with life
25 imprisonment?

26 A. Yes.

27 Q. Do you belong to an organized religion?

28 A. Catholic.

1 Q. Has the tenets of the church in any way influenced
2 your opinions on crime and punishment or the death penalty?

3 A. Not since I was 16.

4 Q. What do you mean by that?

5 A. They haven't influenced me. They did until when I
6 was 16, but that's --

7 Q. Thank you.

8 I have no other questions, Mr. Kochis.

9

10 EXAMINATION

11 BY MR. KOCHIS:

12 Q. Mr. Pearson, we happen to have the death penalty on
13 the books here in California; do you think that's something we
14 should have or it's unfortunate, we would be better off without
15 it?

16 A. I think we should have it on the books.

17 Q. Getting practical for a moment, how do you feel
18 about being one of the persons that would actually make a
19 decision in a particular case, in this case, whether someone
20 would be locked up or whether they would be put to death?

21 A. How do I personally feel about it?

22 Q. Right.

23 A. It doesn't -- it doesn't bother me and I would
24 consider it part of my civic duty to serve on the panel if I
25 were called to do so.

26 Q. So you don't see any problem with hearing all the
27 evidence, hearing the law, and making a decision if we get to
28 the penalty phase one way or or the other?

1 A. No.

2 Q. There was -- There were two separate periods during
3 the '70s in which we had death penalty related issues on the
4 ballot and people circulated petitions, they signed petitions, a
5 lot of people talked about it and formed opinions.

6 Were you involved in either one of those campaigns?
7 In, first of all, circulating petitions?

8 A. No, I was not.

9 Q. Signing petitions?

10 A. No, I was not.

11 Q. You smiled. Are you a person that doesn't get
12 involved that way?

13 A. I do a lot of travel and I go through airports and
14 I see these people coming up for or against some cause and I do
15 my best to ignore them.

16 Q. Did you take a strong position one way or the other
17 on the death penalty at that time?

18 A. I was not in a position to take a position.

19 Q. Some people who don't sit down and think about
20 things that involve their life on a day-to-day basis, for
21 example, and the death penalty is one of those, when they're
22 actually put in the position where they have to make that type
23 of decision and they started thinking about their feelings about
24 it, they feel it's such a heavy decision they can't make it one
25 way or the other. Do you see any thoughts along that line
26 yourself?

27 A. I mentioned earlier about my feelings about it.
28 Again, it's the most precious thing that a person owns and it's

1 a very serious decision to make, but in certain cases that
2 decision might have to be made.

3 Q. We poll the jury at the end of a criminal case to
4 make sure there's no mistake. The Judge simply goes down the
5 aisle and asks each juror if the verdict the clerk has just read
6 is in fact the way they voted.

7 If the jury returned a death verdict in this case,
8 would you have any problem indicating guilty in open court if
9 that's the way you voted?

10 A. Not at all.

11 Q. The jury also elects one of its members as the
12 foreman. That person, in addition to presiding over the
13 deliberations, dates and signs the verdict form.

14 If the jury picked you as the foreman and the jury
15 determined that the appropriate punishment was death, would you
16 have any problem dating and signing that verdict form?

17 A. No, I would not.

18 Q. Thank you.

19 I have nothing.

20 THE COURT: We would like a moment to discuss it
21 privately. I ask you to step outside. The bailiff will inform
22 you further. Thank you very much for coming in.

23 THE COURT: Anything, counsel?

24 MR. KOCHIS: No, your Honor.

25 MR. NEGUS: No.

26 THE COURT: Mr. Negus, you said no?

27 MR. NEGUS: Yes, I did say no.

28 THE COURT: Have him back, please.

1 THE BAILIFF: Cathy Ricketts is next.

2 THE COURT: Thank you.

3

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

7

8

EXAMINATION

9

BY THE COURT:

10 Q. Good morning. Are you Cathy Ricketts?

11 A. Yes, I am.

12 Q. Mrs. Ricketts, we are the same people you saw
13 before, but we are arranged a little bit differently in hopes
14 that you will settle back and relax a little bit and answer the
15 questions we are going to put to you.

16 Has anything happened to you since we last saw you
17 which would make it more difficult for you to serve on this case
18 in any way?

19 A. No.

20 Q. I want to remind you of something that I said
21 before before I commence asking questions of you.

22 I told you before that there could be two possible
23 phases of this trial. The first phase, the guilt phase the
24 jurors are concerned just with guilt or innocence. If we get to
25 a second phase, and we don't know whether we will or not because
26 we don't know how the first one will turn out, but if we get to
27 a second phase, then the jurors will have only two choices to
28 make. They would have to determine which of the two choices is

1 the most appropriate penalty in this case after hearing all the
2 evidence and the circumstances brought out at the two phases.
3 The two choices are death on the one hand or life imprisonment
4 without the possibility of parole on the other.

5 The question to you: If we do get to a penalty
6 phase will you be able to fairly consider both of those two
7 possible penalties?

8 A. Yes.

9 Q. Will you be able to personally vote for whichever
10 one of those then seemed most appropriate to you based upon the
11 evidence and the circumstances brought out?

12 A. I don't know.

13 Q. Do you feel some inclination to vote for one other
14 the other at this time?

15 A. No.

16 Q. Do you have your mind at all made up at this time
17 as to how you would vote?

18 A. No.

19 Q. My other question of you was simply would you make
20 up your mind which way to vote when it came time to and base
21 your decision upon the evidence and the circumstances brought
22 out at trial?

23 A. Yes.

24 Q. Some jurors have indicated that they might try very
25 hard to avoid having to get to a second phase just so they
26 wouldn't have to make that hard decision and they might find an
27 inappropriate verdict back in the guilt phase just to never have
28 to get down the road to the hard a life or death type decision.

1 Do you think you could be interested in doing such a cop out, so
2 to speak?

3 A. No.

4 Q. That's all I have.

5 Counsel.

6

7

EXAMINATION

8 BY MR. NEGUS:

9 Q. Mrs. Ricketts, the Judge is letting Mr. Kochis and
10 myself ask you most of the questions. We're not trying to pry
11 or embarrass you in any way.

12 A. Uh-huh.

13 Q. But the law requires that we have your opinions on
14 these matters before we go any further.

15 What had you heard about the crime that we're
16 involved with here before you came to court?

17 A. What had I heard?

18 Q. Yes.

19 A. Just what I read in the newspaper.

20 Q. What was that?

21 A. It was -- it was long ago. I'm trying to think.
22 That a family was brutally murdered, or, I'm trying to think.
23 It was so long ago I didn't really you know.

24 THE COURT: Well, he is testing your recollection, so try
25 and relate as much as you can.

26 PROSPECTIVE JUROR: Okay.

27 And then that the person was close to San Diego
28 that had done this, and then they found him on a boat. I don't

1 know. I really -- this is just sketchy.

2 BY MR NEGUS:

3 Q. Okay. I mean, it's not like a quiz. I'm just
4 basically interested in what you heard?

5 A. Yeah.

6 Q. Did you hear anything about the person's background
7 like where he was from, that sort of thing?

8 A. No.

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

11 A. What impression did I have? I was scared.

12 Q. Why? Because of what they said?

13 A. Uh-huh.

14 Q. Are you still scared?

15 A. A little.

16 Q. Did you -- did you form any impression as to
17 whether or not he was guilty or not?

18 A. No. Well, I the only thing when I read in the
19 paper was the little boy had said there were three people, three
20 white people and that's what confused me.

21 Q. Before you read that you had, what, thought he was
22 guilty and that made you doubt it?

23 A. Well, no, I didn't think he was guilty. I just
24 went along with what the news media was saying, you know, until
25 I read that, and then I, you know, I didn't know.

26 Q. You haven't heard any of that information from
27 the -- from the witness stand far as testimony is concerned. If
28 we -- if you are selected as a juror do you think that you could

1 sort of disregard whatever the newspapers may have thought about
2 the case and judge just the evidence we have in court --

3 A. Yes.

4 Q. -- determine for yourself based upon what you
5 actually hear in court --

6 A. Yes.

7 Q. -- what happened?

8 A. Yes.

9 Q. What was your reaction when you -- when you -- when
10 you first found out that you were going to be a juror in this
11 particular case, or a possible juror?

12 A. Oh, I was scared because this is my first time and
13 I thought I was going to get on a little tiny little
14 misdemeanor, little tiny thing. I have never been to a jury
15 duty before, so it was just scary. I was kind of nervous.

16 Q. Do you -- you were going to, if you were seated on
17 the jury, you will be up there behind yourself right now on one
18 of those chairs. We don't ask you too many more questions after
19 this.

20 A. Uh-huh.

21 Q. You just you sit an watch. Do you think you could
22 watch and pay attention without being scared after that?

23 A. Oh, yes. I think this is the worst right here.

24 Q. I'm sure it is. We are asking some questions about
25 the death penalty. Like the Judge explained, that's not because
26 you may ever have to make that decision, but the law requires us
27 to ask the questions even before guilt or innocence is decided.

28 You won't take the fact we are asking these

1 questions as any indication you are supposed to find Mr. Cooper
2 guilty, will you?

3 A. No.

4 Q. What's your general opinion about having the death
5 penalty in California? Do you think we should have it?

6 A. That's a hard one. No.

7 Q. Why not?

8 A. Well, that goes two ways. I mean, if a person's
9 guilty -- well, if you -- you have to have all the evidence in
10 front of you and be there to -- because I wouldn't say, yes, I'm
11 for it if they are not guilty. To me, I don't believe in the
12 death penalty.

13 Q. Okay. Well, the way it works is that you wouldn't
14 have to decide penalty as a juror until you had decided and
15 become convinced in your own mind beyond a reasonable doubt that
16 the person was guilty.

17 A. Right. Okay.

18 Q. Assuming that you had whoever did it here in court,
19 leaving aside who that is --

20 A. Okay.

21 Q. -- and you had found that that person had done the
22 crime and you were convinced of it, could you then, do you
23 think, apply whatever penalty was appropriate?

24 A. Yes.

25 Q. And there's only two choices at that point --

26 A. Right.

27 Q. -- life in prison without parole or the death
28 penalty --

1 A. Right.

2 Q. -- either one you could go along with depending
3 upon the evidence?

4 A. Yes.

5 Q. Basically the way that works, both sides are
6 permitted to produce evidence at that point in addition to what
7 you've already heard as far as -- as far as whether or not the
8 person did the crime or not, and some of the evidence -- some of
9 the types of evidence is received which would make it a more
10 serious multiple murder and others would make it one of the less
11 serious multiple murders, and so you would have to judge more
12 serious deserves the death penalty, less serious deserves life
13 in parole; do you think you could follow that kind of structured
14 decision?

15 A. Yes.

16 Q. Do you belong to an organized religion?

17 A. Yes.

18 Q. What one?

19 A. Catholic.

20 Q. Has the views of the church in any way influenced
21 your opinion on crime and punishment or the death penalty?

22 A. No.

23 Q. That's a matter of your own personal conscience?

24 A. Yes.

25 Q. Thank you.

26 That's all I have.

27

28

EXAMINATION

1 BY MR. KOCHIS:

2 Q. Mrs. Ricketts, I have a few questions. We won't
3 keep you much longer.

4 I'd like to talk to you in a general term first
5 about the death penalty, not focusing on this specific case or
6 any case.

7 A. Uh-huh.

8 Q. It's on the books here in California, but some
9 people feel no matter how guilty a person is the State shouldn't
10 have the right to take their life and we really shouldn't have
11 the death penalty.

12 Do you have any thoughts along that line?

13 A. I -- I really can't say. Like I'm saying before,
14 if I am on the jury I'd want to hear both sides.

15 Q. Well, if you're on the jury you will hear --

16 A. Right.

17 Q. -- all the evidence?

18 A. Right. But when it comes to the death penalty, I
19 think it's something inside of me that I would want to pick
20 whether I would go this way or that way, you know. I don't
21 want -- it's something that comes inside of me. Right now I'm
22 just -- like I thought about it, I kept thinking to myself I
23 don't know what I feel about it. I really don't. I've never
24 had to be in a situation like this or even really think about
25 it. So to be honest I can't answer that. I don't know.

26 Q. That's why we ask the questions and you're not
27 alone in your thoughts on it. One of the reasons we ask is that
28 some people have their mind made up one way or the other and

1 they feel that if you take another person's life your life
2 should be taken in every case regardless of what the evidence
3 is. You're not in that group of people?

4 A. No.

5 Q. Other people are in another group. They feel that
6 everybody's life is precious, including a defendant's life, and
7 no one has a right to take another person's life no matter what
8 the crime is like. And you're not in that group?

9 A. Right.

10 Q. The reason we ask some further questions is many
11 people, because they've never been confronted with the death
12 penalty, they don't have to deal with it it --

13 A. Yeah.

14 Q. -- so, they don't have to form an opinion about it.
15 Some of those people, when they're actually put in
16 the position that they have to make a decision --

17 A. Uh-huh.

18 Q. -- and they hear all the testimony and they sit in
19 court for a couple months and then the decision is given to them
20 to make, they feel, hey, this is so serious I can't make the
21 decision, let someone else make it but not me, I never realized
22 it would be this serious for me.

23 Do you see yourself as one of those people?

24 A. After being here for a couple of months.

25 Q. Right.

26 A. No.

27 Q. How do you feel about being put in a position where
28 you might have -- where you would have to decide if it got to

1 the penalty phase what to do with this defendant, whether to
2 sentence him to death or to vote for life without the
3 possibility of parole?

4 A. How would I feel?

5 Q. How do you feel about making a serious decision
6 like that?

7 A. How would I feel? I would just hope I'm doing the
8 right thing.

9 Q. Okay.

10 A. You know, I would take a lot of time and thought,
11 you know to it.

12 Q. We had the death penalty on the ballot twice in the
13 '70s. It generated a lot of discussion and debate. It was a
14 popular topic of conversation.

15 Were you involved at that time in either signing
16 petitions or circulating?

17 A. No.

18 Q. Did you take a strong position one way or the other
19 back then?

20 A. No.

21 Q. If at the end of the trial you're convinced that
22 based on the law and the evidence that the appropriate penalty
23 in this case would be the death penalty, could you vote that way
24 in the jury room?

25 A. Yes.

26 Q. And we ask the jurors in open court, we poll them
27 to make sure the verdict that the clerk has read is the correct
28 one.

1 If the jury determined that the appropriate
2 punishment was death, could you indicate that that's the way you
3 voted in open court?

4 A. Yes.

5 Q. Thank you.

6 I have nothing further.

7 THE COURT: We'd like to discuss it privately and the
8 bailiff will let you know shortly. If you would wait outside,
9 please. Thank you for coming in.

10 THE COURT: Anything, gentlemen?

11 MR. NEGUS: No.

12 MR. KOCHIS: No, your Honor.

13 THE COURT: Give her a return date please.

14 Counsel, have you had a chance to look over the
15 order with reference to extended coverage?

16 MR. KOCHIS: I have not.

17 MR. NEGUS: No, I haven't.

18 THE COURT: No rush at all. Let's take it up tomorrow
19 sometime.

20 MR. NEGUS: Okay.

21 (Noon recess.)

1 1 SAN DIEGO, CALIFORNIA, WEDNESDAY, OCTOBER 3, 1984 1:30 P.M..

2 --oo0oo--

3
4 THE BAILIFF: Gary Klein-Wassink.

5
6 GARY KLEIN-WASSINK

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. Is your total name Klein-Wassink?

15 A. Yes.

16 Q. We're the same people you saw once before but I am
17 dressed a little differently. We're gathered around the table
18 informally in the hope that it will be a little easier for you
19 to answer the hard questions we're going to put to you.

20 A. Yes.

21 Q. First, has anything happened since we last saw you
22 that would complicate perhaps your ability to serve on this
23 case?

24 A. No.

25 Q. Secondly, I want to remind you, when I told you
26 before about the two possible phases of this trial, the first
27 phase would be the guilt phase, and jurors would be concerned
28 only with guilt or innocence in that phase.

1 If we get to a second phase then the jurors would
2 be concerned only with which is the most appropriate penalty to
3 be given, death or life without the possibility of parole.

4 Do you recall some of that?

5 A. Yes, sir.

6 Q. My first question then basically is, if we do get
7 to a penalty phase, will you be able to fairly consider both of
8 those two alternatives?

9 A. Yes.

10 Q. Do you feel locked in one way or another at this
11 time?

12 A. No.

13 Q. Would you be able to then personally vote for one
14 or the other and make your decision depending upon the evidence
15 and the circumstances brought out at the trial --

16 A. Yes.

17 Q. -- as opposed to any state of mind you may have at
18 this time?

19 A. Yes.

20 Q. Some jurors have such a dread or concern about
21 having to make that hard decision in the penalty phase that they
22 candidly admit that that might cause them to cop out or to find
23 an inappropriate verdict back in the guilt phase just to avoid
24 ever having to get to that second stage.

25 Do you think you might be so inclined?

26 A. No, sir.

27 THE COURT: Thank you. Counsel.

28

EXAMINATION

1

2 BY MR. NEGUS:

3 Q. Mr. Wassink, the judge is allowing Mr. Kochis and I
4 to ask most of the questions, and we're not trying to pry or
5 embarrass you but the law requires us to try to do certain
6 things before we begin.

7 You didn't hear anything about this case before you
8 came to court.

9 A. No, sir.

10 Q. What was your reaction when you found out that this
11 was the type of case that you were being called to serve as a
12 juror on?

13 A. Really, nothing. I -- really it didn't matter
14 what type or what, I guess I really didn't have any reaction.
15 The length of time was, I guess, of some concern, once that
16 factor was mentioned, but I guess really it didn't matter. I
17 guess I knew it was a possibility being chosen for the supreme,
18 or this type of court versus a municipal court, or whatever.

19 Q. You didn't have any feelings then about sitting on
20 a murder case or anything of that nature?

21 A. No, sir.

22 Q. The death penalty has been mentioned by the judge.
23 The law requires us to ask you questions about the death penalty
24 before there is ever any determination of guilt or innocence.

25 And you understand that the fact that we have to do
26 this is no indication that Mr. Cooper is guilty or --

27 A. I understand.

28 Q. Okay. What is your general opinion about the death

1 penalty?

2 A. I feel in some cases it is probably the right
3 answer, in others I guess it is a bit final.

4 Q. Okay. What do you think about life imprisonment
5 without parole?

6 A. Again, I think it is one of the possibilities and
7 probably in certain situations the right answer, the right
8 results.

9 Q. Do you have any notions or have your own ideas of
10 your own what situations one is more appropriate than the other?

11 A. Not really until you know the situation.

12 Q. You happen -- some people might feel that, for
13 example, because there are children who are killed, as in this
14 particular case, that that always requires the death penalty or
15 because of some other reason that might always require life
16 imprisonment.

17 In this particular case do you have any such
18 feelings as that?

19 A. No, I don't, really don't, really didn't know there
20 was children involved.

21 Q. Would that make any difference to you?

22 A. No.

23 Q. Do you belong to an organized religion?

24 A. Yes.

25 Q. Which one?

26 A. The Reformed Church of America.

27 Q. Has your religion influenced your views on either
28 crime or punishment or the death penalty?

1 applying it in this case, if we got to the penalty phase, and
2 you heard the evidence, the penalty phase. and the arguments and
3 the law, and you felt under the law the appropriate punishment
4 was to vote for the death penalty, would you be able to do that?

5 A. I believe so, yes.

6 Q. When you say you believe so, do you have any
7 reluctance or hesitation?

8 A. No.

9 MR. KOCHIS: Fine. I have nothing else.

10 THE COURT: We'd like to have you wait outside for a
11 moment and give us a chance to discuss it privately. Thank you
12 for coming. The bailiff will let you know.

13 Anything?

14 MR. KOCHIS: Not from the People.

15 MR. NEGUS: No.

16 THE COURT: Give him a return date.

17 THE BAILIFF: Clyde Jones is the next juror.

1

18

19

CLYDE JONES

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.

26 A. Hi.

27 Q. You are Clyde Jones?

28 A. Yes, sir.

1 Q. Mr. Jones, we're gathered around in an informal
2 manner to make it a little more easier for you to relax and to
3 answer the harder questions.

4 A. Okay. Very good.

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

7 A. No.

8 Q. Were you born in Europe by any chance?

9 A. No.

10 Q. You make a 7 in a manner --

11 A. That's because of my handwriting.

12 Q. We're going to first remind you of some of the
13 things that I said before when I was on the bench, and then I
14 and the attorneys will have a few questions of you.

15 I told you before that there could be two phases to
16 this trial. One is the guilt phase, and depending upon how that
17 turns out we may go into a second phase, what we call the
18 penalty phase. If we do get into the penalty phase, the jurors
19 would then be faced with determining which is the most
20 appropriate penalty in this case.

21 A. Uh-huh.

22 Q. Namely, death or life imprisonment without the
23 possibility of parole.

24 If you serve on the jury, and we do get to a
25 penalty phase, would you be able to fairly consider both of
26 those two possible penalties?

27 A. Uh-huh, I think so.

28 Q. You have to answer yes or no.

1 A. Oh, yes.

2 Q. Would you be able to personally vote for either one
3 of them depending upon how the evidence and the circumstances
4 come out at trial?

5 A. Yeah.

6 Q. You don't feel locked into one or the other at this
7 time?

8 A. No.

9 Q. Would you have any trouble coming to that decision
10 or would you make any big effort to avoid ever having to get to
11 that phase?

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

13 THE COURT: Okay, Mr. Negus.

14

15

EXAMINATION

16 BY MR. NEGUS:

17 Q. Mr. Jones, the judge is allowing Mr. Kochis and I
18 to ask most of the questions. We're not trying to pry or
19 embarrass you in any way, but the law requires we get your
20 opinions on matters before we go any further.

21 A. Okay.

22 Q. You indicated that you had a fairly good memory of
23 what you had heard about this particular case.

24 Can you tell me first what you heard about the
25 crime itself?

26 A. As far as -- how do you mean?

27 Q. What did you hear about this particular crime?

28 A. Well, apparently he had broken out of jail, and

1 went to a house with a married couple and a small child, and if
2 I remember right I think he stayed there a day or so, and then
3 left, and I believe he went down to Mexico, didn't he?

4 Well, this is what I remember. And I believe he
5 was extradicted back to the United States.

6 Q. Okay. Did you hear anything about the
7 circumstances of his apprehension?

8 A. That, I don't remember, no.

9 Q. Do you remember hearing anything about the case
10 after it got to court?

11 A. No.

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

14 A. Yes, I did.

15 Q. How did you know that?

16 A. I believe it was in the media.

17 Q. Just before you came to court?

18 A. I think it was longer than that, wasn't it?

19 Q. Okay. Back in the spring sometime.

20 A. Yeah. I would say so. I can't remember real well.

21 Q. Do you remember any details about that?

22 A. No. I just knew that they couldn't get a fair case
23 up in L.A..

24 Q. Did you -- based on what you heard in the media,
25 did you form any impression of Mr. Cooper?

26 A. Somewhat.

27 Q. What was that?

28 A. Well, they made it sound like he was the murderer.

1 Q. In the press, you mean?

2 A. Uh-huh.

3 Q. You have to say yes.

4 A. Yes.

5 Q. Do you remember hearing anything about his
6 background, like where he was from, or anything of that nature?

7 A. No.

8 Q. Do you -- as you sit there now, leaving aside
9 whatever the press' opinion was, do you have an opinion as to
10 his guilt or innocence?

11 A. Um, I would say yes.

12 Q. What is the opinion?

13 A. That he's a murderer.

14 Q. Is that based on what you heard in the paper?

15 A. I am afraid so, yes.

16 Q. If you were asked to sit in this particular case,
17 we would ask you to take, make a promise that you could and
18 would put that opinion aside. And would you be able to make
19 that kind of promise?

20 A. Um, I would have to say no.

21 Q. Why is that?

22 A. Just from what I have heard and the extent of the
23 crime.

24 Q. So, you feel that based upon what you heard before
25 you came to court, that there would be just no way for you to
26 start fresh again and keep, keep an open mind until all the
27 evidence was in.

28 A. I don't believe -- think I'd be able to, no.

1 MR. NEGUS: I appreciate your candor. Thank you.
2 That's all I have.

3

4

EXAMINATION

5

BY MR. KOCHIS:

6

Q. I have a few questions --

7

A. Okay.

8

Q. -- so there is no misunderstanding in my mind.

9

When you read the newspaper, do you recall any of
10 the discussions about the evidence that linked this defendant to
11 the crime?

12

A. No. I mostly listen to the news on the TV.

13

Q. Do you remember if any of those issues were
14 discussed on TV?

15

A. Not that I can remember, no.

16

Q. So, essentially what you know from the TV is that
17 Mr. Cooper was charged with this particular crime.

18

A. Yeah. No evidence was brought forth.

19

Q. On the TV?

20

A. Uh-huh.

21

Q. Is that a yes?

22

A. Yes.

23

Q. Sorry.

24

Q. The way it works in our system of justice is we try
25 people in a courtroom and not on the television. Do you
26 understand that?

27

A. I understand that.

28

Q. What we need are twelve people who could hear the

1 evidence, listen to Judge Garner tell you what the rules of law
2 are that will govern your decisions, and then take the facts,
3 apply them to the law and reach a decision. Could you do that?

4 A. Um, in this particular case?

5 Q. In this case?

6 A. I really don't think I could.

7 MR. KOCHIS: Fine. I don't have anything else.

8 THE COURT: Give us a chance to discuss it privately for
9 a minute and wait outside, please. The bailiff will inform you.
10 Thank you for coming in.

11 Counsel, I am prepared to excuse him for cause.
12 Any objection? Hearing none he will be excused for cause.

13 So, inform him and bring in the next one.

14 THE BAILIFF: Julie Greer.

15

16

JULIE GREER

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

19

20

EXAMINATION

21 BY THE COURT:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. You are Julia Greer?

25 A. Uh-huh.

26 Q. No. 1, when you answer a question you have to
27 answer yes or no as opposed to uh-huh. Otherwise the machine
28 has a little trouble.

1 A. I'm sorry, I'm really nervous.

2 Q. We have deliberately tried to put you more at ease
3 by the way we have arranged it here. We're all sitting at the
4 same level in an informal manner because we are going to ask you
5 some hard questions and we'd like to have you relax, if
6 possible.

7 Has anything happened to you since you were last in
8 court which might complicate your ability to serve in this case?

9 A. No, sir.

10 Q. Next I want to remind you of some of the things
11 that I said before when I was on the bench about this being
12 possibly a two-phased trial. The first phase being the guilt
13 phase, and the jurors there are to be concerned only with guilt
14 or innocence.

15 The second phase being a penalty phase, and if we
16 get that far in the penalty phase in the trial there could be
17 other evidence and arguments and instructions and then the
18 jurors would have to make a decision as to whether the most
19 appropriate penalty is death by execution or life imprisonment
20 without the possibility of parole.

21 Question to you. If you serve, will you be able to
22 fairly consider both of those two possible penalties?

23 A. Yes, sir.

24 Q. Would you be able to personally vote for one or the
25 other depending upon the evidence and the circumstances brought
26 out at the trial and base your decision upon the evidence and
27 the circumstances?

28 A. Yes, sir. I think so.

1 Q. Some jurors have indicated a great fear or
2 abhorrence of having to make that heavy decision in the penalty
3 phase and they have admitted that they might try and
4 deliberately find an escape hatch or somehow avoid ever getting
5 there by finding perhaps an inappropriate verdict in the guilt
6 phase.

7 Do you think that you might be inclined to do such
8 a thing?

9 A. No.

10 THE COURT: Thank you so much. Counsel.

11

12 EXAMINATION

13 BY MR. NEGUS:

14 Q. Mrs. Greer, the judge is letting Mr. Kochis and I
15 ask most of the questions. We are not trying to pry or
16 embarrass you or anything, but the law requires that we get your
17 opinion before we go any further.

18 You had heard nothing about this particular case
19 before you came to court?

20 A. No, sir.

21 Q. When you heard the charges in court, did that
22 refresh your recollection?

23 A. The only thing that I remember -- I didn't remember
24 at the time, but I had a friend in school, in elementary school
25 named Kevin Cooper. he was a schoolmate in Ohio. I work nights
26 and I really don't listen to the news.

27 Q. So, the schoolmate, I take it, that is not my
28 client.

1 A. Oh, no.

2 Q. What was your reaction when you found out that this
3 was the type of case that you were being called to do your jury
4 duty on?

5 A. I was just surprised. I was nervous. I don't
6 understand, what do you mean?

7 Q. Well, did you have any feeling that you didn't
8 particularly want to be on this case?

9 A. No, sir.

10 Q. You did?

11 A. No.

12 Q. In this case as opposed to -- it's all the same as
13 far as you are concerned?

14 A. Yes.

15 Q. We're asking you some questions about your feelings
16 about the death penalty, and that's because the law requires us
17 to ask those questions prior to even beginning the guilt or
18 innocence phase of the trial.

19 And you don't, won't take the fact that we're
20 asking these questions as any indication that Mr. Cooper is
21 guilty, will you?

22 A. Right.

23 Q. What do you feel generally about the death penalty?

24 A. I don't think two wrongs make a right, but I guess
25 it is -- I have mixed feelings on it. I guess it all depends on
26 the circumstances.

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

3

1 A. I think that might be an alternative. I really
2 have mixed feelings on it.

3 Q. Based on the charges in this particular case, have
4 you made up your mind in advance as to one of those two
5 penalties?

6 A. No, I haven't.

7 Q. Do you belong to an organized religion?

8 A. Not necessarily. I am a protestant, but I don't go
9 to church regularly.

10 Q. Have your religious beliefs in any way influenced
11 your opinions about crime and punishment or the death penalty?

12 A. No, sir.

13 MR. NEGUS: That's all I have.

14

15

EXAMINATION

16 BY MR. KOCHIS:

17 Q. Mrs. Greer. I have a few questions.

18 You said you had mixed reactions about the death
19 penalty.

20 A. Uh-huh.

21 Q. Could you give me some idea what those mixed
22 reactions are?

23 A. I don't think that if somebody takes a life that
24 they should necessarily have their life taken because I don't
25 think that is right either. But -- I had this all thought out
26 before I came.

27 Q. Well you can take your time.

28 A. Thank you. I think that if somebody does something

1 like that, and it is premeditated, that maybe if the death
2 penalty is used people will think before they do things. You
3 know, think before they go out and murder somebody, you know,
4 think they can go murder somebody and just be put in prison and
5 and then get out 20 years later. I don't think that is right
6 either. So, I have done -- I have never really had to think
7 about it before.

8 Q. You are not alone. How do you feel about moving
9 away from the general and philosophical for a minute and getting
10 down to this case. What do you think about making the decision,
11 having to make --

12 A. I think I could do it. I would have to really
13 think about it, but I think it could do it.

14 Q. Some people, when they're actually confronted with
15 the decision, find that it is so serious to them they can't make
16 one or the other. they freeze, they balk, they don't want that
17 decision on their shoulders for the rest of their life.

18 Do you see yourself as that type of person?

19 A. At this point I don't, but, I don't know, maybe if
20 it came right down to it -- I honestly can't say. It is not put
21 in front of me right now. I don't think I would have a problem
22 but I can't say for sure.

23 Q. When you said two wrongs don't make a right, is one
24 of your gut reactions that the death penalty is wrong?

25 A. I don't -- maybe. I don't know if it is wrong or
26 not, just it doesn't seem right if, you know, somebody murders
27 somebody. why should they be murdered, too.

28 Q. Okay. Having that belief, if you got to the

1 penalty phase with the eleven other people, and you heard the
2 evidence from the trial on the guilt, and then the additional
3 evidence in the penalty, and you heard the arguments of the
4 lawyers, and the law, and you thought under the law that the
5 appropriate punishment in this case would be to vote for death,
6 could you do it?

7 A. I think so.

8 Q. When you use the phrase "I think so", is that just
9 because you haven't heard the evidence yet?

10 A. I haven't heard -- I haven't heard the evidence
11 and, um, it is hard to say, you know, right offhand. To me it
12 is hard to say. But if the evidence is really strong, they find
13 him guilty, it is something that is out of control, probably I
14 could.

15 Q. Okay. We poll the jurors at the end of the trial.
16 We go down the aisle and ask them if the verdict the clerk has
17 just read is in fact the way they voted.

18 If a death verdict was returned in this case, and
19 you were on the jury, would you have any problem saying in open
20 court that that was the way you voted?

21 A. No.

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

23 THE COURT: We'd like a chance to discuss it privately
24 briefly. Would you please wait outside, the bailiff will inform
25 you further. Thank you for coming in.

26 Anything, counsel?

27 MR. KOCHIS: No.

28 MR. NEGUS: No.

1 THE COURT: Please have her back and bring in the next
2 juror.

3 THE BAILIFF: Beth Anderson.

4 THE COURT: I did excuse Clyde Jones?

5 MR. NEGUS: Yes. He was our first one this morning,
6 Judge.

7

8

BETH ANDERSON.

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

11

12

EXAMINATION

13

BY THE COURT:

14

Q. Good afternoon, ma'am.

15

A. Good afternoon.

16

17 Q. Please have a seat. We're arranged a little
18 differently now than we were before, and we've gathered around
19 the table in an informal manner in hopes that you will be able
20 to be a little bit more relaxed to candidly respond to our
21 questions.

21

A. Thank you.

22

23 Q. Has anything happened to you since you were last
24 in, Mrs. Anderson, to complicate your ability to serve in this
25 case?

25

26 A. Well. I've had a little medical problem, but it's a
27 temporary thing.

27

28 Q. Okay. You wouldn't come back until, oh, a couple
weeks or so from now at the earliest, everything will be all

1 right then you hope?

2 A. Yes, I think so.

3 Q. When you were in before and I was on the bench with
4 the robe on I told you that this case could have two possible
5 phases, the guilt phase and the penalty phase.

6 In the guilt phase the jurors would be concerned
7 only with whether he's guilty or not guilty. If we get to a
8 penalty phase, and we don't know if we will, but if we do get
9 there, further evidence would be presented, the attorneys would
10 argue, the Judge would instruct, and the jurors would be faced
11 with which is the most appropriate penalty, death or life in
12 prison without the possibility of parole.

13 So I'm asking you now if you serve on this jury and
14 we do get to a penalty phase, will you be able to fairly
15 consider both of those two possible penalties?

16 A. I think so.

17 Q. Would you be able to personally vote for either one
18 of them, depending upon the evidence and the circumstances
19 brought out at the trial?

20 A. I think so.

21 Q. Some jurors have indicated that they would be so
22 concerned with having to make a heavy decision such as life or
23 death that they might be tempted to try and find an escape hatch
24 back at the guilt phase to avoid ever having to get to the
25 penalty phase.

26 Do you understand what I'm asking you?

27 A. I think so.

28 Q. Do you think you might be inclined to do that?

1 A. No, I don't think that that would affect me.

2 However, I feel it's fair to tell you that in
3 January of this year I had a TIA, if you know what that is.

4 Q. I don't.

5 A. It's a temporary stroke, and it was brought on by
6 stress. And it took only four hours to reverse itself, but --

7 Q. We don't want to perhaps jeopardize your health.
8 Have you been under a doctor's care?

9 A. Yes, I am. I see a doctor every two months since
10 then.

11 Q. This is probably as stressful a type of case that
12 you could serve on.

13 A. That's why I felt that it was fair to tell you
14 this. I didn't want to volunteer it in front of everyone
15 before.

16 Q. Sure. Do you think we should excuse you then?

17 A. It might be a little much for me.

18 Q. Would you give --

19 Counsel, do you have any questions?

20 MR. NEGUS: No.

21 MR. KOCHIS: No.

22 MR. NEGUS: That's fine.

23 THE COURT: Is it okay?

24 MR. KOCHIS: With me.

25 MR. NEGUS: Yes.

26 THE COURT: All right. Counsel have no objection and
27 sounds like good cause to me so we will excuse you, ma'am.

28 Thank you for coming in, and maybe they have another case for

1 you not quite so tough downstairs. Okay?

2 PROSPECTIVE JUROR: Thank you very much.

3 MR. NEGUS: Thank you, ma'am.

4 THE COURT: Counsel, the clerk has handed me a note
5 indicating that the juror that we had in this morning, No. 1,
6 Barbara Ferguson, is scheduled to come back on October 16th, and
7 she now requests the 17th or 18th, indicating she will be on
8 vacation and won't be back until the 16th. We can just make her
9 come back on the 16th or something. That doesn't sound like so
10 grievous a problem to me that she count avoid it unless you wish
11 to consider a deviation.

12 MR. NEGUS: She will be in the jury box when we start?

13 THE COURT: Yes.

14 MR. NEGUS: And we're due to start the 16th?

15 THE COURT: Yes.

16 MR. NEGUS: And she would -- wants to take a vacation
17 apparently between now and then. She otherwise won't be back
18 until the 17th.

19 MR. KOCHIS: I would prefer to leave it the way it is
20 because once we start deviating we're going to get into some
21 type of dispute.

22 THE COURT: I'm perfectly happy with that. It sounds to
23 me like she is only giving one day of vacation up.

24 So call her back and tell her that the case is
25 pretty tightly structured, we can't deviate at this time. We
26 are sorry.

27 All right. We will take a recess.

28 (Recess.)

1 THE BAILIFF: Tony Martinez.

2

3

TONY MARTINEZ,

4

called as a prospective juror, having been having been

5

previously sworn, testified as follows:

6

7

EXAMINATION

8

BY THE COURT:

9

Q. Good afternoon, sir.

10

A. Afternoon.

11

Q. Please be seated.

12

A. Thank you.

13

Q. Who is Chuck LeMelle?

14

A. That was my union representative at work. He had

15

the --

16

Q. Is this okay for me to open this, because it's

17

addressed to him?

18

A. Yes. He got that kind of mixed up.

19

Q. From Teledyne Ryan Aeronautical from James B.

20

Warner. Manager. Employee Relations, to The Superior Court.

21

"The labor agreement between Teledyne...and the

22

UAW. Local 506, only provides lost time pay up to a

23

maximum of 20 days for jury duty. Any amount of days

24

beyond 20 would create a financial hardship on our

25

employees family.

26

"We recognize the civic duty of our employees,

27

therefore, we could ask for a duty call which would

28

fall within the realm of four weeks."

1 Unfortunately you are not wealthy otherwise; is
2 that correct?

3 A. Right.

4 Q. Are you the sole breadwinner in your family?

5 A. Yes.

6 Q. Do you have a family?

7 A. I have a daughter and a wife.

8 Q. How would you get by if you had to serve for this
9 long case without pay beyond 20 days?

10 A. I could probably manage somehow.

11 Q. Have to go into debt for it?

12 A. Yes; uh-huh.

13 Q. Would it create for you a serious financial
14 hardship?

15 A. Yes, it would.

16 Q. Are you asking to be excused because of it?

17 A. Yes, I am.

18 THE COURT: Counsel, do you have any questions on it?

19 MR. NEGUS: No.

20 MR. KOCHIS: No.

21 THE COURT: Would you step outside and let us discuss it
22 for a minute, please.

23 I assume you make your usual objection, Mr. Negus.

24 MR. NEGUS: Yes. And I tried to perfect the other one I
25 thought of as well.

26 I also object to the employers being able to be the
27 one to pick and chose our jury.

28 I noted that with Mr. Cooke, who was in here

1 before, his employer told him that he should sit on the jury.
2 This employer is apparently telling the man he shouldn't.

3 The man is a minority, and I think that is a
4 further reason for it.

5 THE COURT: Would you object if a man's wife told him to
6 go do his civic duty? You don't have to answer that.

7 Do you wish to respond, Mr. Kochis?

8 MR. KOCHIS: No.

9 THE COURT: Counsel, I find abundant good cause for this.
10 I feel it necessary that we excuse him. I do so. Overrule your
11 objection.

12 This kind of a letter, when there is an objection
13 to the excuse, must be filed and maintained.

14 Next one.

15 THE BAILIFF: Harry Hobbs.

16
17 HARRY HOBBS.

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

20

21 EXAMINATION

22 BY THE COURT:

23 Q. Good afternoon, sir.

24 A. Afternoon.

25 Q. Are you Harry Hobbs?

26 A. I am.

27 Q. Mr. Hobbs, we are gathered around in an informal
28 manner around the table to hopefully put you a little bit more

1 at ease to answer the hard questions we are going to put to you
2 here in a few minutes.

3 First. has anything happened to you since we last
4 saw you to complicate your ability to serve on this case?

5 A. No, sir.

6 Q. Now, I want to remind you of what I told you before
7 when I had the robe on. I told all the jurors there could be
8 two phases to this trial.

9 The first phase would be a guilty phase, and there
10 the jurors are concerned only with whether he's guilty or not
11 guilty.

12 In the second phase, if we ever get to it and we
13 don't know if we will, but if we do, the jurors will be faced
14 with having to receive further evidence and argument from
15 counsel and instructions from the Court, and then they will
16 retire to deliberate on which is the most appropriate penalty to
17 impose in this case. You have only a choice of whether to
18 return a verdict indicating death or another verdict indicating
19 life imprisonment without the possibility of parole.

20 The question to you, sir: If we do get to a
21 penalty phase will you be able to fairly consider both of those
22 two alternatives?

23 A. I would say so.

24 Q. You don't feel that you've got your mind made up
25 one way or another at this time?

26 A. No. I want -- if I hear the case I want to hear
27 both sides.

28 Q. Will you then be able to vote for one side or the

1 other, one penalty or the other, depending upon how you find the
2 facts and the circumstances to be in this case?

3 A. Yes.

4 Q. Some jurors have a real fear or dread of having to
5 make that hard kind of decision and they indicate that they
6 might be looking for an escape hatch or a way to avoid ever
7 having to get to a second phase back in the guilt phase, even
8 though they are not supposed to consider penalty there.

9 Would you be so inclined? That's a difficult
10 question. You may not --

11 A. I think my determination would be determined a lot
12 on the case, how it --

13 Q. Okay. Do you have a strong --

14 A. My decision --

15 Q. -- compulsion against making the decision one way
16 or the other, sir?

17 A. I know that you'd have a man's life in your hands,
18 and it is -- it is a difficult decision.

19 Q. Sure. But could you do it if called upon?

20 A. I think so.

21 THE COURT: Mr. Negus.

22

23

EXAMINATION

24 BY MR.NEGUS:

25 Q. Mr. Hobbs, the Judge is letting Mr. Kochis and
26 myself ask you most of the questions. We're not trying to pry
27 or embarrass you in any way, but the law requires us to get your
28 personal opinions on some matters before we go any further.

1 When you first came to court, what do you remember
2 having heard in the media about this case before you got here?

3 A. Very little because I really don't -- I listen to
4 Paul Harvey during the day, watch the ballgame, Dallas,
5 Falconcrest, that's about all I watch of TV. The rest of the
6 time I'm spending my time out in my playpen and my workshop.

7 Q. Do you recall having heard that there was murders
8 in Chino?

9 A. I have recalled it since it was brought forth to
10 me, yes. Now, just like the case stands, I don't know if it's
11 before or after the escape or what it is.

12 Q. Okay. You do know that Mr. Cooper had escaped?

13 A. Did you know that before you came to court?

14 A. That was brought forth to me when I came to court
15 the last time. I didn't know that until then.

16 Q. Okay. Do you remember having heard anything about
17 Mr. Cooper in the media?

18 A. The name didn't ring a bell until it was brought
19 forth and, yes, that was the fellow on the radio or TV,
20 wherever. I picked it up at that I really, at that time, didn't
21 know until he had explained it to me.

22 Q. Had you heard anything about the case when it was
23 up in San Bernadino, that is, in the courts up there?

24 A. I remember that they was -- what I remember mostly
25 about it was that they was going to transfer it down hear
26 because of the fact that they didn't figure he could get a fair
27 trial up there.

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

1 were being asked to do your jury service on this type of case?

2 A. What was my reaction? I really don't know how to
3 answer the question. I had no reaction, just hearing his side
4 of the story and the other side of the story to make a decision
5 on it.

6 Q. As you sit there right now, do you think that you
7 favor one side or over the other in this particular case?

8 A. No, sir.

9 Q. We're asking you questions about the death penalty
10 because the law requires to us ask those questions before we
11 even get to the guilt or innocence. We may be just have been
12 wasting our time here because we may never get there.

13 Do you understand just us asking doesn't mean that
14 you are supposed to -- supposed to find Mr. Cooper guilty should
15 we get to that particular stage?

16 A. I don't find him guilty at all yet.

17 Q. What do you think in general about the death
18 penalty?

19 A. It is -- it's -- to me it's fair. When a man takes
20 a life, it's -- and is proven to take the life intentionally, he
21 has no right to do such a thing, and I think it's fair.

22 Q. What do you think about life imprisonment without
23 parole?

24 A. That -- like I said before, it stands to reason --
25 without parole -- it stands to reason how the story goes.

26 Q. Well, the way -- I'm not sure -- let me just
27 explain it a little bit.

28 The way that our legal system works is that if you

1 find somebody guilty of murder in California, the penalty
2 normally is not the death penalty. There are certain special
3 types of murder which the penalty may or may not be the death
4 penalty, depending upon other types of evidence.

5 Multiple murder where one are more than one person
6 is killed at a time is one of those special types of murder.
7 When you have somebody convicted of a multiple murder, then the
8 duty is on the -- we present to you evidence which makes it one
9 of the more serious multiple murders, and there may also be
10 presented evidence which might make it one of the less serious
11 multiple murders. And you have to sort of balance that evidence
12 off one against the t'other. You vote for life without parole
13 if it's a less serious multiple murder; death penalty if it's a
14 more serious multiple murder.

15 I guess what we are trying to find out now that all
16 multiple murders get the death penalty or all multiple murders
17 get life without parole.

18 Do you happen to be such a person?

19 A. No.

20 Q. You can decide back and forth based on the facts
21 and the evidence that you hear in the courtroom?

22 A. (No audible response.)

23 Q. You have to say yes or no?

24 A. Yes.

25 Q. Do you belong to any organized religion?

26 A. No.

27 Q. Has your opinion on the death penalty been
28 influenced by any particular group in society or your own

1 individual conscience?

2 A. Just my own individual conscience.

3 Q. Thank you.

4 I have nothing further.

5

6

EXAMINATION

7

BY MR. KOCHIS:

8

Q. Mr. Hobbs, what do you think about being put in a position where you might have to make this type of decision?

9

10

A. What do I think -- I think it's a major decision to make and I want to do what is right, what I see is right in my mind.

11

12

13

Q. Some people don't want to ever have to make that type of decision. Are you one of those people?

14

15

A. Well, it's not a pleasant decision to make. I mean, it's --

16

17

Q. Perhaps the way I asked it wasn't the best way.

18

19

20

21

Some people, when they are put in a position and they are picked to be on a jury and they get to the penalty phase, they actually start thinking about the magnitude of the decision. They feel it's so serious --

22

23

24

25

26

A. I have thought about it already, because I heard on the radio that they had got to 49 and I thought that percentagewise -- but I have to go back to what the story -- how the story is laid out and whether it was intentional or unintentional.

27

28

Now, four cases makes it pretty serious, which --

Q. My question is: Do you think once you hear all the

1 evidence and you hear the law you could make the decision one
2 way or the other?

3 A. Yes, I could make the decision and feel ease at
4 heart.

5 Q. Okay. You started to mention something and I don't
6 know if I caught it or the court reporter caught it, you
7 mentioned something about "I heard they got to 49."

8 A. Or 189, on the radio and that they had gone through
9 3 -- 206 I understand, and they had gotten down to 189.

10 Q. Okay.

11 A. So I just figured it out on a percentage base what
12 my chances would be of being on the case.

13 Seven percent? I mean, it all all goes through the
14 head.

15 Q. Well, if you look at it strictly on your
16 interpretation of the statistics, there's not much chance that
17 you'd get to serve. But the way we've set it up there's a
18 chance that you will eventually at least get in the box and the
19 lawyers will talk to you and make a decision whether or not you
20 will stay on the case.

21 Knowing that it actually might happen, do you still
22 feel comfortable that once you hear all the evidence you can
23 make a decision?

24 A. I do.

25 Q. Thank you.

26 I have nothing else.

27 THE COURT: Give us chance to discuss it briefly out of
28 your presence. If you wait outside the bailiff will instruct

1 you further. Thank you, sir.

2 Anything, counsel?

3 MR. KOCHIS: No.

4 MR. NEGUS: It appears that Mr. Hobbs didn't obey the
5 Court's admonition.

6 THE COURT: I didn't gather that. A number of people
7 have indicated that other people have tried to talk to them
8 about it and that they have sloughed them off or quieted them
9 down.

10 MR. NEGUS: He said he heard on the radio what the
11 numbers were, and he could only have heard that after you told
12 him because we didn't have those numbers before.

13 THE COURT: I've never had the numbers. Frankly, I
14 haven't kept that kind of record.

15 MR. NEGUS: It was brought -- the number 189, which is
16 the number which we are Witherspooning, was broadcast only
17 after --

18 THE COURT: All right. That's something less than a
19 challenge.

20 MR. NEGUS: Well, that was meant to be a challenge.

21 THE COURT: I'm sorry?

22 MR. NEGUS: It was meant to be a challenge.

23 THE COURT: Well, Mr. Negus, how can you surmise from the
24 fact that he mentions that he heard something that he
25 deliberately disobeyed the Court's order?

26 If I'm listening to the radio that could have come
27 out before I had a chance to turn it off or change stations.
28 You didn't ask him about that. I don't know for sure.

1 The challenge is denied. Give him a return date
2 and are please and bring in another.

3 THE BAILIFF: Elmer Kurbis is next.

4 THE COURT: Even if he did hear it, he did not indicate
5 it was the type of material that would prejudice him.

6

7

ELMER KURBIS,

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

10

11

EXAMINATION

12

BY THE COURT:

13

Q. Come in, have a seat. please. Good afternoon to
14 you.

15

Are you Elmer Kurbis?

16

A. Right.

17

Q. First, Mr. Kurbis, has anything happened to you
18 since we last saw you that would complicate your ability to
19 serve in this case?

20

A. No.

21

Q. We are gathered in an informal manner around the
22 table as opposed to my being on the bench and you in a witness
23 chair or jury box in hopes that that will relax you a little bit
24 more and make it easier for you to answer some of the hard
25 questions.

26

I remind you of what I told you before. that this
27 case could have two possible phases. I'm going to give you a
28 little preamble before we start asking the questions.

1 The first phase would be the guilt phase, and the
2 jurors would there be concerned only with whether Mr. Cooper was
3 guilty or innocent.

4 We could then go to a second phase, and we don't
5 know if we will, depending upon the verdicts in the first phase
6 we could go to a penalty phase and if so, further evidence would
7 be presented, counsel would get a chance to argue, I would give
8 you further jury instructions, and the jurors would determine
9 which is the most appropriate penalty that should be imposed,
10 death by execution on the one hand, life imprisonment without
11 the possibility of parole on the other.

12 My question to you now, Mr. Kurbis, is: If you
13 serve and if we do get to a penalty phase will you be able to
14 fairly consider both of those two possible alternatives?

15 A. Yes.

16 Q. Would you be able to personally vote for one or the
17 other, depending upon the evidence and the circumstances brought
18 out at trial?

19 A. Yes.

20 Q. Would you feel some desire to cop out or look for
21 an escape hatch in some manner in the guilt phase just to avoid
22 ever having to make that hard decision later on in the penalty
23 phase?

24 A. No.

25 Q. Thank you, sir.

26 That's all I have. Mr. Negus.

27

28

EXAMINATION

1 BY MR. NEGUS:

2 Q. Mr. Kurbis, the Judge is allowing Mr. Kochis and
3 myself to ask you most of the questions. We're not trying to
4 pry into your affairs or to embarrass you in any way, but the law
5 requires we get your personal opinions before we go any further
6 with the case.

7 You indicated in your questionnaire that you had
8 heard quite a bit about this case before you came to court?

9 A. Yes. I'm retired and I read a lot of newspapers
10 and watch television quite a bit.

11 Q. What do you recall about the crime itself?

12 A. Not an awful lot. That he was suspected of
13 breaking out of prison and killing a couple people.

14 Q. Do you remember any of the details as to who he was
15 supposed to have killed or?

16 A. A man, woman, and her -- one of their children.

17 Q. Did you hear any -- any stories about why the
18 authorities blamed Mr. Cooper for this?

19 A. I don't remember it, no.

20 Q. Did you hear anything about Mr. Cooper's
21 background, that is, where he is from, things of that nature?

22 A. No, except that he was in prison.

23 Q. Did you hear anything about his arrest?

24 A. Yes, I did.

25 Q. What did you hear about that?

26 A. Something -- it was something to do -- he was on a
27 boat and supposedly tried to rape somebody and he was caught
28 leaving the scene, or something like that.

1 Q. Did you hear anything about the case once it got to
2 court?

3 A. No.

4 Q. Did you know the case was coming down to San Diego
5 before you came down?

6 A. No, I didn't, no.

7 Q. What was your impression of Mr. Cooper based upon
8 what you heard in the paper?

9 A. I really didn't draw any conclusion at the time.

10 Q. Did you get any impression of him personally from
11 the --

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

13 Q. Did you ever form any opinions as to whether or not
14 you thought he was guilty or innocent?

15 A. At the time I imagined that he was guilty, yes, I
16 would imagine everybody thought that at the time.

17 Q. Has anything happened to change your opinion?

18 A. Well, no, not really, but I haven't heard anything
19 to the contrary.

20 Q. Do you still feel that way, then?

21 A. Until I hear evidence to, you know, against it, I
22 suppose I would, yes.

23 Q. In a criminal case the defense is not required to
24 put on any evidence, and the -- the prosecution has to prove the
25 case beyond a reasonable doubt, that is, they have to put in
26 enough evidence to convince you, make you morally certain of the
27 truth of the charges before you vote guilty.

28 Do you think you'd have any trouble doing that?

1 A. I don't think so.

2 Q. Well, am I starting at some sort of disadvantage
3 with you because you've come to an opinion of Mr. Cooper's
4 guilt?

5 A. At the time, yes, I did think he was guilty.

6 Q. Well, I'm asking you right now. If we start the
7 trial tomorrow would I be at a disadvantage?

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

9 Q. This supposed attempt rape, there's not going to be
10 any evidence of that in this particular -- in this particular
11 case. You will not hear any evidence as to whether it's true or
12 not. You will be asked not to speculate on that just assume it
13 wasn't there.

14 Do you think you could do that?

15 A. I think so.

16 Q. If you were -- if you were asked to serve as a
17 juror you would be asked to take an oath that you would well and
18 truly try the case which means you'd have to promise that you
19 could and would put aside your former opinion as to Mr. Cooper's
20 guilt.

21 Do you think you could take that oath?

22 A. Yes.

23 Q. What was your reaction when you first heard that
24 was the case that you'd be called as a juror for?

25 A. Well, kind of surprised really.

26 Q. Why were you surprised?

27 A. Well, I didn't know it was going to be here. I
28 knew it was going to be moved. I didn't know it was here.

1 Q. Did you have any particular feeling towards sitting
2 on this particular case an as opposed to any other case?

3 A. Well, it kind of overwhelmed me at first to be
4 involved in this.

5 Q. Because it was difficult and responsible?

6 A. Because it was a difficult case.

7 Q. The -- we've asked some questions and will probably
8 be asking more about the death penalty. The law requires us to
9 ask those questions before we ever -- before we have have any
10 determination as to guilt or innocence, sort of putting it
11 backwards as it were.

12 You wouldn't hold that against Mr. Cooper or take
13 that as any evidence of his guilt that we're asking these
14 questions about the the death penalty; is that correct?

15 A. Correct.

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

18 A. I believe in the death penalty in certain cases.

19 Q. What do you think about life imprisonment without
20 parole?

21 A. Well, that too. It depends on the case I imagine.

22 Q. Why do you believe in the death penalty?

23 A. Well, I believe sometimes it's needed in order to
24 deter certain people.

25 Q. Why do you think that life imprisonment without
26 parole is sometimes appropriate?

27 A. Well, to me that would be worse than the death
28 penalty, life in prison.

1 Q. When -- when you heard about this case originally
2 did you -- did you have a feeling that some particular penalty
3 was appropriate for this particular crime?

4 A. No, I didn't really think about it the time.

5 Q. Do you have any such opinion now one way or the
6 other?

7 A. No, I don't.

8 Q. Do you belong to any organized religion?

9 A. Lutheran.

10 Q. Have the opinions of your church in any way
11 influenced -- I said that backward.

12 Have the doctrines of your church in any way
13 influenced your opinions on crime or punishment or the death
14 penalty?

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

16 Q. They are based on your own individual conscience?

17 A. Uh-huh.

18 Q. You have to say yes or no.

19 A. Yes.

20 Q. Thank you.

21 That's all I have.

22

23 EXAMINATION

24 BY MR. KOCHIS:

25 Q. Mr. Kurbis, I have a few questions. I would like
26 to start on the topic perhaps of publicity.

27 We try people in this system in a courtroom not in
28 the newspaper. Do you understand that?

1 A. I understand that.

2 Q. In this case we need each juror to promise that
3 they will base their decision as to whether or not this
4 defendant did the murder only on what they hear in the
5 courtroom, only on the evidence and the law. Can you do that?

6 A. Yes, I can.

7 Q. And although we can't erase things from your mind,
8 the opinion you may have had about Mr. Cooper's guilt when you
9 first read the newspaper. can you put that aside when you listen
10 to the evidence in this case and decide for yourself whether he
11 really is guilty?

12 A. Yes.

13 Q. As the defense lawyer pointed out, we're not going
14 to get into any altercation that did or did not take place in
15 Santa Barbara between Mr. Cooper and anybody else.

16 Could you put the information you have aside about
17 that incident when you look at the evidence in this particular
18 case?

19 A. Yes.

20 Q. For. example if you're convinced beyond a
21 reasonable doubt after you've heard the evidence that this
22 defendant did the murders, could you vote for guilty?

23 A. Yes.

24 Q. And likewise, if my side doesn't live up to the
25 standard and you have a reasonable doubt after all the evidence
26 is in that this defendant did the murders, could you vote for
27 not guilty?

28 A. Yes.

1 Q. Mr. Negus asked you a number of questions about
2 your philosophy -- your philosophy about the death penalty.

3 To get practical for a minute, how do you feel about
4 being placed in a position in this case where you'd have to make
5 a serious decision like that, whether someone gets the death
6 penalty or, in your own words, something that's worse death
7 penalty, life without the possibility of parole?

8 A. I feel that throughout the trial I would hear
9 enough to make up my mind either way.

10 Q. Some people feel it's such a heavy decision they
11 can't make it. Are you one of those people?

12 A. No. I think I could make that decision.

13 Q. At the end of every criminal case we poll the jury
14 to make sure there's no mistake in the verdict. The Judge goes
15 down the row and asks each juror if the verdict the clerk has
16 just read is in fact the way they voted.

17 If in this case the jury determines that the death
18 penalty is the appropriate punishment, would you have any
19 problem indicating in open court that that's the way you voted?

20 A. No.

21 Q. Likewise, the law requires that one person be
22 selected as the foreman and that person dates and signs the
23 verdict form.

24 If the jury selected you as the foreman and the
25 jury determined that the appropriate punishment was death, would
26 you have any problem dating and signing that verdict form?

27 A. No.

28 Q. Thank you.

1 I have no further questions.

2 THE COURT: Mr. Kurbis, I'd like to have you wait outside
3 a minute to give us a brief time to discuss it privately, and
4 then the bailiff will inform you further. Thank you for coming
5 in, sir.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: Anything, counsel?

8 MR. NEGUS: Challenge for cause.

9 I believe that Mr. Kurbis at one point in time
10 based on the publicity form an opinion as to Mr. Cooper's guilt.
11 And he has heard stories in the newspaper about evidence which
12 is highly prejudicial which won't be admitted in this particular
13 trial and the case was transferred here over our objection.

14 I think that the Court has a duty in that
15 particular situation to insure us that we don't have jurors who
16 have been tainted by publicity, and I believe he has been.

17 THE COURT: Mr. Kochis.

18 MR. KOCHIS: I believe that his statements under oath
19 that he could base his decision on the evidence and the law
20 presented at this trial. In fact, he specifically said if he
21 wasn't convinced of this defendant's guilt beyond a reasonable
22 doubt he could vote not guilty and that he could put aside any
23 information he may have gathered from the newspaper in deciding
24 this case.

25 THE COURT: I thought he was both candid as well as very
26 emphatic about being able to be fair and to put aside what he
27 had heard before and not weigh it in the process.

28 The challenge is denied, so ask him to come back,

1 please.

2 THE BAILIFF: William Frank.

3

4

WILLIAM FRANK

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

7

8

EXAMINATION

9

BY THE COURT:

10 Q. Good afternoon, sir.

11 A. Morning. Afternoon.

12 Q. Are you William Frank?

13 A. Right.

14 Q. Mr. Frank, we're gathered around informally to put
15 you a little bit more at ease before we start firing hard
16 questions at you.

17 Has anything happened to you though since we last
18 saw you which might make it more difficult for you to serve in
19 this case?

20 A. No.

21 Q. Do you remember I was on the bench before a couple
22 weeks ago and I told you that this case could have two phases, a
23 guilt phase. and when the jurors determine whether he's guilty
24 or not, depending on the verdicts that come in, we could go to a
25 penalty phase.

26 Now, if we do go to a penalty phase, there would be
27 further evidence, argument of counsel and instructions of the
28 court, the jurors would then retire to deliberate, and decide

1 which is the most appropriate penalty: Death by execution on
2 the one hand, life imprisonment without the possibility of
3 parole on the other.

4 Do you remember I told --

5 A. Yes, I remember it.

6 Q. My question to you now, sir, is if you serve on
7 this case, and if we do get to a penalty phase, will you be able
8 to fairly consider both of those two alternative penalties?

9 A. Yeah.

10 Q. You don't have your mind made up as to their
11 appropriateness or not of one or the other at this time?

12 A. No.

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

16 A. Yes, depending on the evidence.

17 Q. Would that cause you any great anguish or concern
18 to be put in a position to have to make that kind of decision?

19 A. I don't think so, no.

20 THE COURT: Mr. Negus. Thank you.

21

22

EXAMINATION

23 BY MR. NEGUS:

24 Q. Mr. Frank, the judge is letting Mr. Kochis and
25 myself ask most of the questions. We're not trying to pry or
26 embarrass you in any way, but we need to have your honest
27 opinions before we go any further.

28 What had you heard about this case before you came

1 to court?

2 A. I vaguely remember about three months ago, my wife
3 mentioned it once to me, and I don't think I even looked in the
4 newspaper. I don't follow that stuff much, you know, murders
5 and all; I don't even watch TV.

6 Q. Had you heard anything about Mr. Cooper?

7 A. I didn't know his name when I came in here. I
8 didn't remember a name associated with the case.

9 Q. Do you have any impression of the person who had
10 been charged with this particular crime?

11 A. No, I didn't know what he looked like.

12 Q. What was your reaction when you found out that this
13 was the type of case that you were going to be sitting on?

14 A. Well. I don't know. Nothing, I guess. I was kind
15 of surprised it was a murder case. I thought that it was kind
16 of a big case. You know, I figured to get on some case where
17 people argue about money.

18 Q. Well, did you have any feelings one way or the
19 other about a murder case as opposed to a case where they argue
20 about money?

21 A. No.

22 Q. We're asking you some questions --

23 A. Because I guess this seemed like it was kind of
24 interesting, I have to admit. I mean, it is a big thing, a
25 murder case. I figured I'd go -- just get on some thing about
26 money, you know. Usually people arguing over money.

27 Q. We're asking you some questions about the death
28 penalty. The law requires us to ask those questions before you

1 even get to the question of guilt or innocence.

2 The fact we're asking about the death penalty, that
3 won't in any way suggest to you that you are supposed to find
4 Mr. Cooper guilty so we get to that particular question, will
5 it?

6 A. Oh, no.

7 Q. What's your general opinion about the death
8 penalty?

9 A. Well. I wouldn't want it -- give anybody a death
10 penalty until I really knew the circumstances if he really was
11 guilty. There'd have to be no doubt. Kind of depending on the
12 circumstances, too. People kill people, they don't always, I
13 don't think they always deserve the death penalty.

14 Q. What do you think about life imprisonment without
15 parole?

16 A. That is a rough one. I wouldn't want to be in
17 prison without parole either unless I knew the guy was really
18 guilty. You know, it is -- it is a long time; that's your life.
19 I think I really would have to know the evidence, you know.

20 Q. As you sit there right now, having heard there was
21 a charge of multiple murder, some kids were killed, another
22 little boy was very, very seriously injured, do you have any
23 particular feeling that whoever did this, leaving aside that
24 question, but whoever did this deserves any particular penalty
25 at this point in time?

26 A. Sounds pretty serious, you know. It could be a
27 death penalty in anything like that.

28 Q. Could be.

1 A. But I'd have to know for sure. How do I know the
2 guy did it? I understand this fellow broke out of prison.

3 Q. Okay.

4 A. Could be circumstances he broke out the same day
5 something happened, you know, and maybe they didn't even prove
6 that he was there. He could be sort of framed into it because
7 he broke out of prison. I'd have to see the evidence if this
8 guy really was the one who did it, and then --

9 Q. Go on. If I interrupted you, I didn't mean to.

10 A. Well. I don't know, after that I'd have to hear the
11 evidence.

12 Q. Basically what jurors are asked to do in a case
13 like this is do just that, hear the evidence first. If a
14 decision is made that somebody did do the crime, then that
15 particular person, then you are asked to choose the penalty then
16 for that particular person; you are asked to choose on the one
17 hand life imprisonment without parole; on the other hand, the
18 death penalty, depending upon the evidence which tends to make
19 it more serious or less serious that's presented to you. Do you
20 think you could to that?

21 A. Yes.

22 Q. You don't happen to have any particular feeling
23 that on this particular case that I am sure I am going to vote
24 for the death penalty if this man is guilty; I am sure to go to
25 life without parole if this man is guilty.

26 A. To be honest with you, though, I mean, they took
27 the death penalty off the law, didn't they? For quite awhile
28 you couldn't have the death penalty.

1 Q. That is true, now it is back again.

2 A. I think sometimes when it is necessary. But, I
3 sure have to know the circumstances. It's really serious. It
4 would be on my conscience to vote for a man to take his life
5 unless I really knew there was a reason for it. The
6 circumstances, I don't exactly know what they'd be until I hear
7 the case.

8 Q. That's fair. Do you belong to any sort of
9 organized religion?

10 A. Yeah.

11 Q. What church do you go to?

12 A. I go to the Self Realization Temple up in
13 Encinitas.

14 Q. Have the views of that particular church in any way
15 influenced your opinions on either crime or punishment or the
16 death penalty?

17 A. Well, I only been a member there about three years.
18 Before I was just a Protestant and before that I just joined the
19 church. I really can't say they changed views in any way. My
20 views have been pretty set all my life.

21 Q. They're basically based on your individual
22 conscience rather than religion?

23 A. Oh. I think my religious upbringing has something
24 to do with my views. Just being in society. I mean, I don't
25 want to go into philosophy here. it is hard for me to say. My
26 views are -- just a lot of things influenced my views.

27 MR. NEGUS: Okay, thank you.

28 I have nothing further.

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EXAMINATION

BY MR. KOCHIS:

Q. Mr. Frank, you were correct in the fact that we have had the death penalty for awhile and then we didn't have it and we voted on the issue again.

Back in the '70's, when we were deciding whether or not to have it, people circulated petitions and they gathered signatures, they debated about it, they took strong positions sometimes one way or the other.

Were you involved, first of all, in circulating any of the petitions?

A. No.

Q. Did you sign any of the petitions?

A. No.

Q. Did you take a position one way or the other at that time on whether we should have a death penalty here in California?

A. I can't remember. I don't think I was that involved in it, you know, interested. I guess maybe I should have been, but I sort of left it up to the law.

Q. Okay. Now that we have come the other way and we have the death penalty on the books, what do you think about that?

A. Well, one of the things -- sometimes I think it is necessary. I even heard of some -- read about some fellow who even wanted to die, they wouldn't give him the death penalty. I believe your spirit goes on. It is in the -- there's always a

1 chance to bail yourself out. There's life after death, I
2 believe. I don't believe there's only one shot.

3 Q. How do you feel about being one of a group of
4 twelve people that in this case, if you were selected, we had
5 got to the penalty phase, would decide whether Mr. Cooper got
6 the death penalty or got life without the possibility of parole?

7 A. How do I feel about making that decision?

8 Q. Right. I feel it is a very serious decision to
9 make and I would not want to give anybody the death penalty
10 unless I really thought there was reason for it. I have to go
11 by the evidence.

12 Q. Okay.

13 A. It'd be a big decision for me.

14 Q. Okay. As I am sure it would be for everybody who
15 thought about it.

16 Some people, when they're actually confronted with
17 it --

18 A. I really didn't understand your question. I know,
19 obviously taking somebody's life is a big decision. I don't
20 know what answer you want from me.

21 Q. There is no one answer I want, we're just trying to
22 understand.

23 A. Obviously I couldn't just take no importance in it,
24 I'd put myself in his position?

25 Q. Okay. Maybe I didn't ask the question the right
26 way. Let me try to explain.

27 Some people, when they're actually put in the
28 position after they hear all the evidence, and they realize

1 they're going to have to decide what to do with another person,
2 they feel the decision is so important, so serious that they
3 can't make it wouldn't way, or they freeze, they balk, then
4 won't decide --

5 A. No. no, sir that's not my problem.

6 Q. Do you feel that once you have heard all the
7 evidence and the law you could make the decision one way or the
8 other?

9 A. Uh-huh. Yep. Any doubt in my mind, I'd be for
10 him.

11 Q. Okay. The judge, in the guilt phase. is going to
12 give you what's called a reasonable doubt instruction and it is
13 rather a technical instruction, and he'll define what a
14 reasonable doubt is and what a reasonable doubt is not.

15 Could you follow the judge's instruction on the law
16 if it differs from, for example, your philosophy, your personal
17 philosophy about no doubt whatsoever?

18 A. Yes, I think so. No doubt whatsoever on a murder
19 trial. I thought that had to be beyond a shadow of a doubt on
20 murder trial?

21 Q. Judge Garner will give you instructions, he will
22 tell you that doesn't have to be beyond a shadow of a doubt.

23 A. For a death penalty?

24 Q. The first trial is simply guilt, whether he's
25 guilty or not. that's the one I'm talking about; it is somewhat
26 different in the penalty phase.

27 A. Okay. That's no problem.

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

1 THE COURT: Would you wait outside for us to discuss it
2 privately for a minute. Thank you for coming in, Mr. Frank.

3 Do you wish to be heard, gentlemen?

4 MR. KOCHIS: No.

5 MR. NEGUS: No.

6 THE COURT: Give him his card please.

7 That exhausts the panel for today. Resume in the
8 morning at 9:15.

9 ---oo0oo---

10

11 (Adjournment)

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INDEX OF PROSPECTIVE JURORS

	Examination
JERNIJAN, DAVID	1212
JONES. OWEN	1230
GREER BOBBY	1230
JOHNSON. ROBERTA	1238
AGUIRRE, CARMAN	1247
SCOTT. CARLA	1257
ARMAS, ARACELI	1259
ERVIN. MELVIN	1273
WOOD, WILLIAM	1284 ✓
VANKIRK, CHARLENE	1290
ANDRESS, IMOGENE	1299
HENDRY, GLENDA	1310
O'BRIAN, JULIA	1320
NOLTING, WARREN	1338
CARIAGA, MARY	1340
KOONTS - LYLE	1344

1 SAN DIEGO, CALIFORNIA, THURSDAY, OCTOBER 4, 1984 9:25 A.M..

2 --oo0oo--

3
4 THE COURT: Morning.

5 MR. KOCHIS: Morning.

6 MR. KOTTMEIER: Morning.

7 THE COURT: Okay.

8 THE BAILIFF: David Jernijan is the first juror.

9
10 DAVID JERNIJAN

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. Hi.

18 Q. You are David Jernijan?

19 A. That's me.

20 Q. A couple of things. First, we've arranged the
21 arrangements here sitting around the table in an effort to get
22 you more relaxed, at ease and be informal to answer some hard
23 questions.

24 And next I want to ask you if anything has happened
25 to you since we last saw you that might complicate your ability
26 to serve in the case.

27 A. No.

28 Q. And, thirdly. Mr. Jernijan, I want to remind you of

1 some of the things that I said on the bench.

2 Before I commence asking questions of you, I told
3 you this could be a case where there would be two phases. I
4 don't know if we will ever get to the second phase, but we
5 might. The first phase is called the guilt phase and there the
6 jurors are concerned only with the guilt or innocence of the
7 defendant.

8 The second phase. if we get to it, is called the
9 penalty phase, and there further evidence would be presented,
10 the attorneys would comment or argue, the court will instruct
11 you further on the law and guidelines, and then the jurors would
12 determine which is the most appropriate penalty in this case:
13 Death on the one hand, or life imprisonment without the
14 possibility of parole on the other.

15 My question to you now is, if you serve on this
16 case, and if we do get to a penalty phase, will you be able to
17 fairly consider both of those two possible alternatives?

18 A. Yes.

19 Q. Do you feel in any way locked into one or the other
20 at this time?

21 A. No.

22 Q. Would you be able to personally vote. Mr. Jernijan,
23 for one or the other, either the death or life imprisonment
24 without parole based upon the evidence and the circumstances
25 received during the trial?

26 A. Yes.

27 Q. Do you have a strong fear or concern about having
28 to make that hard decision if we ever get to that?

1 A. No, no fears, just, you know, it is -- that's a big
2 decision to make, so --

3 THE COURT: Okay. Mr. Negus.

4

5

EXAMINATION

6 BY MR. NEGUS:

7 Q. Mr. Jernijan, the judge is letting Mr. Kochis and
8 myself ask you most of the questions. We're not trying to pry
9 or embarrass you, but we have to have your honest opinions
10 before we go any further with you.

11 You indicated that you read, well, quite a bit
12 about this particular case from the media. Do you -- what do
13 you remember about the crime itself?

14 A. That they found a family, and I think it was one
15 other child that was cut up, dead, and at the time I think they
16 were looking for, I think, a couple of people that had escaped
17 from a prison, and from that the media was connecting, you know.
18 well, the people that escaped from the prison might have done
19 this crime.

20 Q. Do you remember having read or heard anything about
21 my client, Kevin Cooper?

22 A. Yes. Later on they started trying to connect him
23 with it. That's, you know -- and then they started a manhunt
24 looking for him.

25 Q. Do you remember how they tried to connect him with
26 the crime?

27 A. I kept -- well, I kept waiting for them to say
28 something about that, you know, well, what was it about him

1 that, you know, said, well, you know, he's the one that did it.
2 But they -- I don't really recall them saying anything that, you
3 know, actually said, hey, he's the one that did it.

4 You know, I don't recall any of them coming out
5 with any kind of eyewitness, or I got the feeling like they were
6 holding back on any kind of actual physical evidence, like
7 fingerprints or something like that. But I don't recall
8 anything else on that. you know, what connection it would be
9 between him and the crime.

10 Q. Do you remember hearing anything about Mr. Cooper's
11 background, like where he was, or anything of that nature?

12 A. No, other than that he had escaped from prison
13 here.

14 Q. What details do you remember about the manhunt?

15 A. I remember them bringing -- it seemed like they --
16 they were looking for him in a lot of different places, and then
17 they said, well, okay, we heard rumors that he's in San Diego,
18 then they placed him someplace near San Ysidro, and then -- it
19 seemed like everything kind of trailed off from there, and then
20 suddenly he materialized, I think, in Santa Barbara.

21 Q. Do you remember any of the circumstances about his
22 apprehension in Santa Barbara?

23 A. I believe he was working like a crew on a ship.
24 You know, a pleasure yacht.

25 Q. Do you remember why he was apprehended?

26 A. There was some sort of confrontation, but I can't
27 remember exactly what it was right at this time. You know,
28 there was some confrontation between him and the people, I

1 guess, that owned the boat or were living on the boat.

2 Q. After the case got into court, right after that,
3 for the next year did you see any of the stories about the
4 progress of the case through the courts in San Bernardino?

5 A. Oh, wait a second, I'm sorry. Now, I read that
6 somebody from the boat had gone ashore and then they saw a
7 picture of him and that's when they had called in the police
8 then. I'm sorry. I didn't mean to back up.

9 Q. That's fine. The next question was, we're
10 progressing through this step by step. When the case was in
11 court, do you recall any stories about that?

12 A. Other than them bringing it to San Diego, that's --
13 that is about it. Other than, you know, they have arrested him
14 and now he's coming to trial.

15 Q. When did you hear that it was coming to San Diego,
16 if you recall? I mean, was it just before you came into the
17 court as a juror. or was it sometime before that?

18 A. I believe I heard about it before I was called in
19 as a juror. But it was one of those things, oh, well. they're
20 going to go try the case here, you know, for -- I guess because
21 they were afraid of publicity or something like that. And it
22 was something that, you know, I just forgot about it.

23 Then I was called in for jury duty and shortly
24 after that it came out that, oh, they're going to be selecting a
25 jury so here I am.

26 Q. When you were downstairs in the jury room before
27 they first sent you up here a couple weeks ago, did you hear any
28 of the discussion down there amongst the various prospective

1 jurors about the case?

2 A. No. Actually I was -- I was trying to study at the
3 time. I'm taking a computer class, so I wasn't talking with
4 anybody.

5 Q. From what you heard in the media, have you formed
6 an impression about Mr. Cooper?

7 A. No, other than that, you know, he's -- you know,
8 he's -- he escaped from a prison, that is the only thing that I
9 had heard, and that was in Court that, you know, well, he's
10 pleaded guilty to that.

11 The rest of it -- maybe I should put it this way.
12 I don't always believe what I hear and read in the newspaper,
13 and on the news, which is part of why I listen to a lot of it,
14 because the general -- usually what I will get is just the
15 general gist of what is happening. I found listening to
16 different sources you'll -- you are going to get different
17 stories.

18 Q. So, basically then you haven't really made up your
19 mind about this case one way or the other, even though you have
20 a lot of knowledge about it?

21 A. That's about it. You know, I just I believe a
22 person is innocent until proven guilty. That is what this
23 country is is supposed to be based on. Anybody from, you know,
24 like little old me on up to, you know, The White House, that is
25 supposed to be the way that it is set up.

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

28 A. I said, oh, boy. I thought -- kind of thought

1 about, well, I've got good news for you, boss, and some bad
2 news. Because, you know, just because of the length of the
3 trial I thought, well, he knew that I was going on jury duty.

4 I figured that it was going to be, maybe you are
5 going to be out ten days, and then again I may be out six
6 months.

7 Q. Other than the length, did you have any opinion as
8 to this particular type of crime?

9 A. I don't understand. What do you mean?

10 Q. Did you feel like -- other than the length, which
11 is a burden on everybody, did you have a feeling like, oh, this
12 is not the kind of case I want to sit on, I'd rather be on an
13 auto accident, or it sounds interesting, or --

14 A. It sounds -- yes, it does sound interesting.
15 Thinking it all way the through, after I heard what the judge
16 had said at the beginning of, you know, okay, these are things
17 you are going to have to be considering. It is sort of like
18 this is really my first case that we have ever really sat on. I
19 always thought about, gee, if I ever could be a juror, you know,
20 this is a heavy one.

21 Q. Why did you want to be a juror?

22 A. It is just I have never been one and I just -- you
23 know, it is something that you've always heard about.

24 Q. I am sure that all us would like to have been, but
25 we never have either.

26 We're asking you some questions about the death
27 penalty. As the judge has explained, the fact that we're doing
28 that doesn't, doesn't lead to the conclusion that you will ever

1 have to make that decision. The law requires us to ask
2 questions about the death penalty before we ever even get a
3 determination of guilt or innocence. So, you may never have to
4 make this decision.

5 You won't take it that just because we're asking
6 those questions as any indication as a juror your duty is to
7 find Mr. Cooper guilty.

8 A. No, that's was already explained, you know. That
9 is the first part. You know, deciding what has happened.

10 Q. Okay. What is your general opinion about the death
11 penalty?

12 A. Well. murder, I don't like murder to start with,
13 and I'm not that fond of the death penalty either. But it is --
14 you know, that's the way that the law is set up. I just feel
15 like I won't, and to absolutely be sure before I say, you know,
16 the death penalty.

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

19 A. It is something that -- it has its place, but you
20 know, I -- I don't know how -- I don't know what -- I don't know
21 all the details actually of what has happened in the case. So,
22 I guess it depends on the case.

23 Q. Okay. Do you have any particular feelings that
24 this particular case, whoever is responsible --

25 A. Right.

26 Q. -- deserves a particular penalty?

27 A. No. I -- you know, the person that did it, why, I
28 don't know what all the details are, so -- maybe the death

1 penalty, maybe life imprisonment, it is -- I can't make a
2 judgment before I know what's happened so I can't say, you know,
3 well, one way or the other. This is -- I don't feel that -- I
4 don't know all the facts.

5 Q. Do you belong to an organized religion?

6 A. No. I was raised as a Catholic, but -- I kind of
7 disagree with some of the things that have been going on in
8 there so I don't -- I do believe in good.

9 Q. Have your religious beliefs in any way influenced
10 your opinions on crime and punishment or the death penalty?

11 A. No, no. Well, to a certain extent, you know, in
12 that with the death penalty you are taking somebody's life. But
13 I don't feel that that is something that God is going to say,
14 well, hey, you did something wrong,

15 Q. Okay. I guess what I am asking is, some people
16 feel that, that God's law influences what happens with their
17 decision should be in the courtroom and so I guess the question
18 I am asking you is, do you think that you will make your
19 decision basically on the law of the State of California or some
20 other law?

21 A. The law of the State of California.

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

23 PROSPECTIVE JUROR: I am sorry.

24 MR. NEGUS: That is all right.

25

26

EXAMINATION

27 BY MR. KOCHIS:

28 Q. Mr. Jernijan, I have some questions --

1 A. Yes.

2 Q. -- also about the death penalty. Let me, for a
3 minute -- we have it on the books here in California.

4 What do you think about being in a state that has
5 the death penalty on the books? Do you feel it is something we
6 shouldn't have to have, it is necessary in some cases, what do
7 you think about it?

8 A. I do feel that it is necessary in some cases,
9 but -- you know, that depends on the case so --

10 Q. Let's break that down for a moment.

11 Do you have any particular type of case that you
12 feel it is more appropriate than others, for example?

13 A. Um, well, what I understand with what I call first
14 degree murder. In other words, somebody thought about it and
15 then they did it. And I guess, you know, that's just automatic,
16 right cold blooded murder. then there is circumstances then for
17 it.

18 Q. Okay. Is there a particular reason that you would
19 be in favor of the death penalty in some cases?

20 A. I'm sorry. I just had a thought on what else you
21 just had asked. I guess it -- I guess it is sort of a question
22 of whether or not the person, the person, the criminal has
23 violated our laws, is it possible to correct that person.

24 Q. Rehabilitate him?

25 A. Rehabilitate. Okay. That is a factor in there in
26 regards to, you know, the death penalty.

27 Now, what was your question right after that?

28 Q. The second question was, in the cases where you

1 feel it might be appropriate, just taking the concept of the
2 death penalty. is there a particular reason or reasons that you
3 feel it is a good idea to have that as a punishment in some
4 cases?

5 A. Um, yeah. You know, if the person is not able to
6 be rehabilitated, or the crime is, you know, it is a first
7 degree type murder. then yes, that is -- you know, it is
8 something that I feel is necessary for a deterrent. Whether or
9 not it is a deterrent, I don't know.

10 Q. Okay. There were two periods back in the 70's in
11 which we had these death penalty type issues on the ballot.
12 People circulated petitions, they gathered signatures, there was
13 some debate about it, people talked a lot about it, whether we
14 should have it here in California or not, it was a subject of
15 some controversy.

16 Were you involved in either '74. I believe again in
17 '78, in circulating petitions as to whether we should have it or
18 not?

19 A. I have never circulated any petitions.

20 Q. Okay. Do you recall signing any?

21 A. I don't recall it. I probably did at the time.

22 Q. Did you think about the issue back at that time and
23 take a position one way or the other?

24 A. I really don't recall but if I had to guess I would
25 say that I probably had voted for it.

26 Q. The feelings that you have at this point about the
27 death penalty, are they essentially the feelings you had back
28 then or -- let me stop the question there.

1 A. I think so.

2 Q. How do you feel about if you are selected to be
3 being in a position where you actually have to make this type of
4 decision.

5 A. Like I said, it is a very weighty situation to have
6 to make. I do feel that I can make a decision, a fair decision.

7 Q. Okay. The reason I ask the question is some
8 people, when they think about it, and they realize they're
9 actually going to be placed in the situation where they may get
10 to the penalty phase. they freeze, or they balk, and they
11 realize they couldn't make that type of decision one way or the
12 other. they couldn't be fair to the prosecution or the defense.

13 Do you have any of those feelings?

14 A. No.

15 Q. Okay.

16 A. I am sure that I could make a decision one way or
17 the other.

18 Q. The first phase is, as you put it, just deciding
19 what happened, if this defendant did the murders or if someone
20 else did it, and the judge is going to give you an instruction
21 on reasonable doubt, and not being on a jury you probably
22 haven't heard what that consists of.

23 Could you follow Judge Garner's instruction on what
24 a reasonable doubt is?

25 A. I believe so.

26 Q. And you are not supposed to consider the issue of
27 penalty or punishment at all during what we call the guilt phase
28 of the trial or the first trial.

1 A. I understand that.

2 Q. Could you follow that instruction?

3 A. Yes.

4 Q. For example, some people, when they evaluate the
5 evidence and look at the law, come to the conclusion that, well,
6 under the law this defendant is guilty, but if I vote guilty
7 we're going to get to a penalty phase; we're going to have to
8 make a heavy decision that I won't, don't want to have to make,
9 and so I would vote not guilty just so I won't get there. Would
10 you be inclined to to that?

11 A. No, no. It is -- the way that the judge explained
12 it when we first came in made sense to me, in that you -- we
13 first have to sort out, you know, what happened and determine,
14 you know, guilt or innocence, and then from there figure out,
15 well. what's the penalty going to be.

16 Q. Okay.

17 A. I would much rather break it down to that myself.

18 Q. Okay.

19 A. Than have to try and weigh both of them at the same
20 time.

21 Q. Okay. Let's assume for the purpose of our
22 discussion that we -- the jury found this defendant guilty and
23 we got to the second trial, the penalty trial, and you heard all
24 the evidence and you heard the law, and you felt that in this
25 case the appropriate punishment was to lock this defendant up
26 for the rest of his life, to vote for life without the
27 possibility of parole. Could you do that?

28 A. Yes.

1 Q. Likewise, if you thought in this case the
2 appropriate punishment was to vote for the death penalty, could
3 you vote for the death penalty?

4 A. Yes.

5 Q. We poll the jurors at the end of the criminal case
6 to make sure there is no mistake, and Judge Garner goes down the
7 aisle and he asks each juror if the verdict the clerk has just
8 read is in fact their verdict in this case.

9 If you determined that the appropriate punishment
10 was death, would you have any problem indicating in open court
11 that is the way you voted?

12 A. No.

13 Q. Likewise, one of the twelve jurors is elected as
14 the foreman and that person is required to sign and date the
15 verdict form.

16 If, in this case, we got to the penalty phase, and
17 you and eleven other people determined that the appropriate
18 punishment was death. would you have any problem dating and
19 signing that verdict form?

20 A. No, I don't -- that's what, you know. that's what
21 we had decided on.

22 Q. Okay. You mentioned in your answers to Mr. Negus
23 that you weren't, I believe, overly fond of the death penalty.

24 A. Right.

25 Q. In spite of that personal feeling you may have, if
26 we got to the penalty phase in this case, could you reach a
27 decision based on the evidence and the law?

28 A. Yes.

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

2 THE COURT: Mr. Jernijan, we'd like to have you wait
3 outside for a minute while we discuss it privately, then the
4 bailiff will give you further instructions. Thank you for
5 coming in, sir.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Anything, gentlemen?

8 MR. NEGUS: No.

9 MR. KOCHIS: No, your Honor.

10 THE COURT: Have him back, please.

11 Counsel, before bringing in the other one, one of
12 our jurors called in this morning. Who was that?

13 THE CLERK: Our next juror, Joseph Basquez.

14 THE COURT: His wife called, according to the clerk, and
15 talked to the clerk, and Mr. Basquez was in the restroom at the
16 time, apparently, and he has seemed to gotten the flu, and they
17 didn't know what to do. But he can't come in today.

18 I would suggest that we call him back and tell him
19 to come in perhaps next Tuesday. Just pick a day next week,
20 hopefully he will be all right then.

21 MR. KOCHIS: I have no objection to that.

22 MR. NEGUS: Okay.

23 THE COURT: All right. Would you do that please

24

25

OWEN JONES

26 Called as a prospective juror, having been previously sworn,
27 testified as follows:

28

EXAMINATION

1

2 BY THE COURT:

3 Q. Good morning, sir.

4 A. Morning, sir.

5 Q. Mr. Jones, we're arranged informally at this time
6 in hopes it will put you a little more at ease and relaxed so you
7 can answer the hard questions we're going to put to you.8 Has anything happened to you since we last saw you
9 that would complicate your ability to serve?10 A. Well, I have had a lot of thought about the whole
11 thing and the medical problem -- November I had a heart attack,
12 February surgery, and was out for about four and a half months,
13 I'm now going to be out five months later for another six
14 months.15 It would be a bit of a problem at work. That means
16 I will be back on twelve hour days, in a situation that is
17 rather stressful, which I am supposed to avoid. That could be
18 tolerated, I guess.19 Q. If you did serve on this case, would you try to
20 work also?21 A. Sure. I worked while I had the heart attack. I
22 answered the telephone and had my secretary bring me home work.

23 Q. Who do you work for?

24 A. I work for the government. I am a one-man facility
25 engineer for a flag staff at North Island. We have some 20
26 commands under us. Nobody is there when I am missing.

27 Q. What kind of heart operation did you have?

28 A. Triple bypass. I've been plumbed.

1 Q. Have you discussed the possible service on this
2 case with your doctor?

3 A. No, I haven't. I know what he would say. I told
4 you about stress, and the other thing is the medication that I'm
5 on. I sit in the conference, you know, listening for 30, 40
6 minutes, and everything slows down and I start dosing. Just
7 have someone with a little cattle prod there to wake me up. It
8 is just --

9 THE COURT: I have heard of judges using cattle prods,
10 but I have never used one yet.

11 Counsel, do either of you have questions to ask Mr.
12 Jones?

13 MR. NEGUS: No.

14 MR. KOCHIS: I do.

15

16

EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mr. Jones, no one, perhaps with the exception of
19 your doctor, has a better idea of what your physical condition
20 is than you do. This would be a long trial, and some of the
21 evidence, the presentation of it would have an emotional impact
22 on the jurors and be stressful. the decision-making process
23 itself I would imagine for virtually everybody would be
24 stressful.

25 Do you think that would have an adverse effect on
26 your health?

27 A. I don't know. That is one of the things you can't
28 tell until it happens, whatever. I would say a year ago, no, it

1 would not. However, even after the heart attack I felt the
2 doctors were wrong, that I still had a bad case of indigestion
3 until they did an angiogram and found the blockages, then of
4 course my indigestion went away and it was a heart problem. So,
5 I don't know.

6 Q. What about the situation of you being a juror for
7 us from the the 9:30 until 4:00, and then --

8 A. I would go to the office.

9 Q. How would that long day effect your health?

10 A. Well. I'd be tired. It would be a long day.

11 Q. Are you asking to be excused?

12 A. I would rather not serve. However. if there is --
13 I mean, that's one of the duties. I'd rather have a short case,
14 something that would be more in the civil nature or something
15 that there is not the emotional and stress there.

16 MR. KOCHIS: Fine. I have nothing, your Honor.

17 THE COURT: When you say you know what the doctor would
18 say, tell us.

19 PROSPECTIVE JUROR: I feel that he would say you are
20 supposed to avoid stress. Of course, I don't any way. In the
21 working environment -- there is a certain amount of stress in
22 the working environment. To avoid stress you have got to retire
23 to the chicken farm and worry about the price of eggs.

24 THE COURT: Your job is normally stressful?

25 PROSPECTIVE JUROR: Yes, sir.

26 THE COURT: If you had to do much of the same amount of
27 work in a shorter period of time, stress would be magnified
28 somewhat?

1 PROSPECTIVE JUROR: It would be longer days, give me a
2 little more pressure.

3 THE COURT: Would you step outside and let us discuss it
4 privately and wait for further instructions. Thank you, sir.

5 MR. NEGUS: I would stipulate.

6 MR. KOCHIS: Can I have a moment.

7 THE COURT: Sure.

8 MR. KOCHIS: We would stipulate.

9 THE COURT: I appreciate that, counsel. The part of him
10 slowing down physically because of medication was perhaps the
11 more concern to us.

12 All right, excuse him for cause pursuant to
13 stipulation. Thank him and bring in the next.

14 THE BAILIFF: Bobby Greer.

15

16

BOBBY GREER

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

19

20

EXAMINATION

21 BY THE COURT:

22 Q. Good morning, sir.

23 A. Morning.

24 Q. Are you Bobby Greer?

25 A. Yes.

26 Q. Just a second.

27 Mr. Greer, first we have arranged things informally
28 around the table. This isn't usually the way we run court, but

1 this is done to put you a little more at ease to answer the hard
2 questions, okay?

3 A. All right.

4 Q. Next I want to inquire if anything has happened to
5 you in your life which would complicate it since we last saw you
6 about your ability to serve.

7 A. No.

8 Q. And, there, again, I remind you of some of the
9 things that I said before on the bench before we commence asking
10 questions about the death penalty and life without parole.

11 I told you on the bench, when you were in with the
12 other jurors, that this could be a case with two phases. We
13 don't know if we will ever get to the second phase, but if
14 certain verdicts are returned in the guilt phase. the first
15 phase, then we would go to the second phase on penalty.

16 If we do get to a penalty phase, there further
17 evidence would be presented to you after he had been determined
18 to be guilty, counsel would get a chance to comment on the
19 evidence, the court would give you further instructions,
20 guidelines, then the jurors would go back and deliberate on which
21 is the most appropriate penalty in view of all the circumstances
22 to render a verdict on.

23 In this case, there would two choices only. One
24 would be death by execution, the other life without the
25 possibility of parole.

26 Now, my question to you, Mr. Greer, is, if we do
27 get to a penalty phase, will you be able to fairly consider both
28 of those two possible penalties?

1 A. Yes.

2 Q. Do you feel in any way you are locked into one of
3 them to the exclusion of the other one at this time?

4 A. Well, I'd say life imprisonment, something like
5 that.

6 Q. Are you saying that you favor life imprisonment to
7 where you can't consider the death penalty?

8 A. Well, I would say yes.

9 Q. You have strong feelings against the death penalty,
10 sir?

11 A. Well, I just don't like -- you know, what I mean,
12 having nothing like that on my mind as far as death penalty or
13 something like that, so --

14 Q. Well, Mr. Greer, some jurors don't want to have to
15 get involved in the unpleasant work that goes on, work, in
16 general, apart from this type of case. But, you know, that is
17 the American way, we have to get you involved.

18 A. Right.

19 Q. So we are asking you to be a responsible person to
20 help us to resolve a difficult matter.

21 A. Right.

22 Q. Are you telling us that you -- it is just so
23 unpleasant that you simply, Mr. Greer, if you had your druthers,
24 you'd rather not serve? Is that what you are saying?

25 Are you saying, judge, I have such strong feelings
26 about this that I should, just couldn't be fair and impartial?

27 A. Not exactly, no. What I mean is, if they elect me
28 on the case I would want to do the best that I know how and --

1 Q. If you are on the case, and if we do get to a
2 penalty phase, will you be able to listen to the evidence
3 presented, accept the law that I law I give to you, and make up
4 your mind as to which of those two to vote for, death or life
5 imprisonment without parole based on the evidence and the
6 circumstances brought out at the trial?

7 Answer outloud, if you would.

8 A. Yes.

9 Q. By that you are telling me that you could vote for
10 one or the other.

11 A. Yes. Right.

12 Q. So, even though you have indicated a preference for
13 life imprisonment, are you telling us that you could, under some
14 circumstances, vote for the death penalty.

15 A. It is possible, yes. That's true, yes.

16 Q. It is possible that you could vote for it.

17 A. Yes.

18 Q. Some jurors tell us, Mr. Greer, that like you they
19 prefer not to vote for the death penalty. In fact, some of them
20 have such a grave concern about having to perform that
21 unpleasant task that they tell us that they might deliberately
22 find a way out of it and avoid ever getting to a penalty phase
23 by finding perhaps an appropriate verdict back in the guilt
24 phase just to avoid ever having to get to that second stage.

25 Do you think that you might be so inclined?

26 A. I would think so.

27 Q. Do you think you might be perhaps?

28 A. Sure.

1 Q. One of the ways that you could do that, of course,
2 would be to find the defendant not guilty in the first phase.
3 If the evidence convinced you that he was guilty, would you be
4 able to vote guilty?

5 A. Sure.

6 Q. Without regard to penalty?

7 A. Sure. Sure.

8 THE COURT: Mr. Negus.

9

10

EXAMINATION

11

BY MR. NEGUS:

12

Q. Mr. Greer, the judge, the law requires that we ask
13 questions about the death penalty before we get to the question
14 of guilt or innocence. Let me ask you just a few questions
15 about guilt or innocence.

16

A. Sure.

17

Q. Apparently you have heard something about this
18 particular case in the press.

19

A. Not too much of it, no. Very little.

20

Q. What can you remember about it from what you heard?

21

A. If I remember right, that he was staying with some
22 lady on a boat or something, working for her or something. So
23 that's the little bit I remember.

24

Q. Do you remember Mr. Cooper was on a boat?

25

A. Something like that, yes.

26

Q. Anything else about the case? Do you remember
27 anything about the crime or anything of that nature?

28

A. No. Not really, no.

1 Q. Did you know that the case was coming to San Diego
2 before we got here and you were called in?

3 A. Not really, no. No.

4 Q. Did you hear any of the discussions about the case
5 down in the jury room before the jurors were brought up here?

6 A. No.

7 Q. Have you made up your mind right now whether or not
8 Mr. Cooper is guilty or innocent?

9 A. Well, I couldn't decide on that myself, because
10 if -- I don't know all the evidence or whatever may be, so I
11 couldn't say one way or the other.

12 Q. Do you think that after you hear all the evidence
13 that you could be fair and make a just decision?

14 A. That is the way. I would want to be fair about it,
15 yes.

16 Q. Do you know any reason why you couldn't be?

17 A. Why I couldn't be?

18 Q. I can't read your mind. Some people have reasons
19 why they can't be fair, others don't. I am asking you, do you
20 know of any reason why you couldn't be fair in this particular
21 case?

22 A. Well, that is my game, I always try to be fair. I
23 wouldn't want to be unfair, I would always want to be fair about
24 the deal.

25 Q. If you had to choose a penalty sometime or other,
26 again, there would be evidence for you and instructions as to
27 how to treat that evidence and, again, it would just be a
28 question of being fair, balancing off the evidence.

1 Do you think you could do that?

2 A. Sure. Sure.

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

4

5

EXAMINATION

6 BY MR. KOCHIS:

7 Q. Mr. Greer, I have some questions.

8 A. Sure.

9 Q. Even though you have talked a little bit with the
10 judge, we ask everybody that comes in and talks to us if they
11 could, in their own words, tell us what they think about the
12 death penalty, whether they're for it, against it, they feel we
13 shouldn't have it, any of those types of thoughts.

14 A. Well, there isn't too much that I could say about
15 it. The debt -- if a person do something he should be able to
16 the pay the debt, you know what I mean?

17 Q. You mentioned that you wouldn't want that on your
18 shoulders for a long time, that type of decision.

19 A. Well, I guess if I was on the case I would have to,
20 you know what I mean, be one that I have to decide.

21 Q. You mentioned, I think, to Judge Garner, that you'd
22 prefer life without the possibility of parole as a punishment to
23 the death penalty. Do you recall that?

24 A. Yes, I recall that.

25 Q. Is there a reason or reasons why you would prefer
26 life without as opposed to voting for the death penalty, just in
27 the abstract?

28 A. Well, I just -- what I mean, it is just a feeling.

1 When I hear someone losing their life or getting killed or
2 something like that so --

3 Q. Okay. Is that a strong feeling within you, strong
4 belief?

5 A. Yes. Yes.

6 Q. So, if you didn't know anything else about the
7 case, would you be inclined to vote for life without the
8 possibility of parole as opposed to death if you had your way?

9 A. Well, it depends, you know, what I hear, how I hear
10 how things happened or something like that, then I would be able
11 to say it there.

12 Q. So, if you heard, for example, if you -- first of
13 all, in the guilt phase we're not supposed to consider the
14 penalty. Some people, because they think the decision is so
15 serious when they look at the evidence at the guilt phase, well,
16 they think based on the evidence this guy is guilty, but if I
17 vote that way then we will get to the penalty phase and I will
18 have to make a heavy decision which I'd rather not make, so I'll
19 vote not guilty so that I won't have to make that heavy
20 decision.

21 Is that something you might consider doing?

22 A. It is possible, yes.

23 Q. If we got to the penalty phase, and you heard all
24 the evidence, and you heard the law and you felt under the law
25 that this was an appropriate case for the death penalty, could
26 you vote for the death penalty?

27 A. Sure. Sure.

28 MR. KOCHIS: I have nothing else.

1 THE COURT: Nor do I. Would you kindly wait outside for
2 a minute and the bailiff will inform you. It will give us a
3 chance to discuss it privately.

4 Anything, gentlemen?

5 MR. KOCHIS: No.

6 MR. NEGUS: No.

7 THE COURT: Please give him a return date and bring in
8 the new juror.

9
10 ROBERTA JOHNSON,

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.

17 A. Good morning.

18 Q. You and I can preside at the end of the table here.

19 A. Oh, that's nice.

20 Q. We are gathered around in an informal manner to put
21 you a little bit more at ease to answer and consider the hard
22 questions we are going to put to you.

23 First, I should ask you, how is your daughter?

24 A. Well, she is, as of yesterday she was still
25 waiting, but hoping maybe it would be today.

26 Q. So, the birth is eminent then?

27 A. Eminent.

28 Q. Hopefully by whenever we schedule you for --

1 A. Well, my schedule is pretty predictable. She will
2 be in the hospital three days probably from sometime as late as
3 this weekend and then I'm planning to spend the week with her
4 following.

5 Q. I've yet to -- I've raised four children. I have
6 yet to have a grandchild, so I don't know firsthand.

7 A. It's a button-popping thing.

8 Q. Well, we wish you the best. Anything else happen
9 to you that might complicate your ability to serve in this case?

10 A. No; no. I do work but I have a nice arrangement
11 with my company. They usually check with me before they assign
12 me.

13 Q. Okay. Fine. Now I want to remind you of some of
14 the things that I said on the stand about the death penalty and
15 life without parole, and then I'm going to ask you some
16 questions and the attorneys will have a few questions for you.

17 A. Okay.

18 Q. Do you remember. I told you that this case could
19 have two phases, a guilty phase and a penalty phase. We don't
20 know if we'll ever get to the penalty phase depending upon on
21 you how the first stage comes out.

22 If we do get to a penalty phase, there the jurors
23 will hear further evidence, the attorneys would have a chance to
24 comment on that evidence, the Court would give you further
25 instructions and guidelines, and then you would have to make a
26 decision as to what the appropriate penalty in this case was,
27 death by execution on the one hand, or life imprisonment without
28 the possibility of parole on the other hand.

1 So now, ma'am, if we do get to a penalty phase and
2 you're sitting in the jury, will you be able to fairly consider
3 both of those two possible penalties?

4 A. I think I could.

5 Q. Would you be able to personally vote for one or the
6 other depending upon the evidence and the circumstances brought
7 out at trial?

8 A. Well, it's not something you would take lightly,
9 but I think I could make a decision.

10 Q. Okay. Well, what the question is particularly
11 designed to bring out, I suppose, is when I ask you could you
12 vote for one or the other. I'm really asking you do you feel
13 stuck on one of them to where you favor one over the other to
14 where you wouldn't be able to fairly consider the other
15 alternative?

16 A. I don't think so.

17 Q. Do you have a real strong aversion to it or fear of
18 having to make that kind of decision that might prevent you from
19 being a fair juror?

20 A. I don't think so.

21 Q. All right.

22 Mr. Negus, please.

23

24 EXAMINATION

25 BY MR. NEGUS:

26 Q. Mrs. Johnson, the Judge is letting Mr. Kochis and
27 myself ask you most of the questions. We are not trying to pry
28 into your affairs or embarrass you in any way.

1 A. I know.

2 Q. But we have to have your opinions on this before we
3 can go any further.

4 You indicated that you heard something in the news
5 media about Mr. Cooper; what do you recall having heard?

6 A. Not too much. The day I think before I came down
7 for jury duty I did see your picture in the paper. And then I
8 remembered that I had heard the name Kevin Cooper, but I really
9 don't know a lot about his situation.

10 And when the questionnaire asked if we remembered
11 about the Chino Hills, Chino Hills was not something I really do
12 identify with. It was -- as a matter of fact I associated him
13 with something else. Now I don't know if I was right about
14 that. I didn't check or look into it or ask anyone about it.

15 Q. Do you remember having heard about a crime in the
16 Chino area where a family was killed?

17 A. After I read the questionnaire I did remember
18 something about a family being killed.

19 And Chino, I lived in the Clairmont area out
20 towards San Bernadino, so Chino is a place I was vaguely
21 familiar with and it would stick in my mind but I don't remember
22 any details of the case at all.

23 Q. How long ago did you live in Clairmont?

24 A. Oh, quite a long time ago. I think we left there
25 in about 1969.

26 Q. Did you have any particular impression of Mr.
27 Cooper from what you -- the brief knowledge you had of him from
28 the news media?

1 A. You mean recently or --

2 Q. Any time.

3 A. Well. I guess I must have thought of the things
4 that were involved, how somebody could do that.

5 Q. Did you think that Mr. Cooper had done it?

6 A. I think in the media it was presented as though
7 there was strong suspicion of that.

8 Q. Did you adopt that as your own?

9 A. I don't think so.

10 Q. Do you have an opinion right now one way or the
11 other as to whether he did do it?

12 A. I really don't know that much about the
13 circumstances or anything about the case to really feel that I
14 could have an opinion.

15 Q. What was your reaction when you found out that this
16 was the type of case that were going to be a prospective juror
17 for?

18 A. Well, I thought it would be quite a responsibility;
19 and on the other hand I thought it would also be like jury duty
20 always is, a learning process, and a case like this, it would be
21 something that would be an experience that you wouldn't normally
22 have.

23 Q. Did you hear any of the discussion about the case
24 in the jury room before you were first brought up here a couple
25 weeks ago?

26 A. Oh, no. There was -- I was there alone, but I
27 didn't hear anybody talking about it at all in the jury room.
28 As a matter of fact, I didn't hear them talking about anything

1 except personal things really.

2 Q. We're asking you some questions about the death
3 penalty. As the Judge explained, that's not because we will
4 necessarily ever get to that because, but the law requires that
5 we ask these questions before the question of guilt or innocence
6 is determined.

7 The fact that we're asking these questions doesn't
8 suggest to you that he's guilty or anything, does it?

9 A. No, it doesn't. I would think everything has to go
10 into a plan.

11 Q. Okay. What is your general opinion about the death
12 penalty? Do you think we should have it in California?

13 A. I -- I don't have any -- I have firm convictions
14 about a lot of things. I don't have a firm conviction about the
15 death penalty.

16 I will tell you this quite honestly, that in my
17 feeling the death penalty isn't necessarily the worst thing that
18 could happen to someone. I think it would be very hard to serve
19 a life sentence without parole in jail.

20 Q. Do you think that feeling it would be very hard to
21 do, it would make it difficult for you to vote for life
22 imprisonment without parole?

23 A. No, I really -- I've thought about some of these
24 things because you said you were going to be asking about them,
25 but I feel that you would have to know the case in order to make
26 that kind of a decision. I don't think it's something you could
27 decide ahead of time.

28 Q. I guess -- I think you probably answered my next

1 question by your last answer. Let me just ask again.

2 I take it from what you said that you have not made
3 up your mind that whoever is responsible for this particular
4 crime deserves a particular penalty?

5 A. That's right, I haven't.

6 Q. Do you belong to an organized religion?

7 A. Yes, I do. I'm a Catholic.

8 Q. Have the views of the church or the tenets of the
9 church in any way influenced your opinions about crime and
10 punishment or the death penalty?

11 A. I know the church is at this point discussing their
12 attitudes and what their attitudes should be toward the death
13 penalty. They haven't to my knowledge, and I do read current
14 literature from the church, like the Southern Cross on a pretty
15 regular basis. It may be delayed news but I read it when I have
16 a chance. They have not come up with any recommendations I
17 don't think for the members of the church, and as such I haven't
18 really adopted any of their ideas that I've read. And I
19 don't -- I really don't think that the discussions about it in
20 the newspaper have really influenced me that much other than to
21 have me maybe give some more thought to it.

22 Q. So, that the -- and I think there is a debate in
23 the church about --

24 A. There definitely is at this point.

25 Q. Have you -- you haven't taken a side in that
26 particular debate?

27 A. I really haven't. My own feeling was I wasn't sure
28 which way they should go.

1 Q. Thank you.

2 I have no further questions.

3

4

EXAMINATION

5 BY MR. KOCHIS:

6 Q. Mrs. Johnson, there was a period about ten years
7 ago in which as citizens we went through somewhat the same
8 process the church is going through and we put this issue on the
9 ballot on two separate occasions. People circulated petitions;
10 they gathered signatures. It was a topic of a lot of debate;
11 people took positions one way or the other.

12 Do you recall being involved at that time in, for
13 example, circulating petitions on the issue?

14 A. On the issue of the death penalty?

15 Q. Right.

16 A. No. There -- I have lived out -- Well, I've lived
17 in San Diego about ten years and I normally vote in all
18 elections, but I don't remember --

19 Q. This issue?

20 A. -- specifically that issue. Now I have lived out
21 of the State at times, but I would think you said it was within
22 the general period, right?

23 Q. It was twice, once I believe in '74 and then again
24 possibly in '78.

25 A. Well, we were not here in '74 but we were here in
26 '78, and I don't remember specifically.

27 Q. So you didn't take a strong position one way or the
28 other at that time?

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

2 Q. Practically speaking, how do you feel about
3 possibly being placed in a position where you'd have to make
4 this type of decision?

5 A. Well, I don't think it would be easy. I think I
6 could make it. Somebody probably has to make it.

7 Q. The reason we ask is some people who haven't had
8 their feelings gel on this issue one way or the other, when they
9 are actually put in the position of having to make a decision
10 about an issue that they haven't resolved completely they feel
11 that they can't do it, they don't want the responsibility.

12 Do you see any thoughts like that a reaction in
13 yourself?

14 A. Quite honestly, no, I don't. You know if you've
15 never been through it you can't be absolutely sure, but I don't
16 really think I would have that difficulty.

17 Q. Okay. If in this case we got to the the penalty
18 phase and you heard the evidence on both sides and the arguments
19 and the law and you felt under the law that the appropriate
20 punishment was the death penalty, could you vote that way?

21 A. Yes, I could.

22 Q. We poll the jurors at the end of the case to make
23 sure there's no mistake in the verdict form that's been signed.
24 The Judge simply asks the jurors if the verdict the clerk has
25 read is in fact the way they voted.

26 If we got to the penalty phase in this case and you
27 and eleven other people determined that the appropriate
28 punishment was death. would you have any problem indicating in

1 open court that that's the way you voted?

2 A. I don't think so.

3 Q. Okay. Likewise one of the jury members is elected
4 the foreperson and that forperson is required to date and sign
5 the verdict form.

6 If in this case the jury decided that the
7 appropriate punishment was death, would you have any problem
8 dating and signing that verdict form if you were elected the
9 foreperson?

10 A. Well. if I voted for it I don't see why I should
11 have any reason not to sign it.

12 Q. Thank you.

13 I have no further questions.

14 THE COURT: We'd like to discuss it briefly in private.
15 Would you wait outside the bailiff will instruct you further.
16 Thank you very much and best wishes to your daughter.

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Anything, counsel?

19 MR. KOCHIS: No.

20 MR. NEGUS: No.

21 THE COURT: Yes. Give her a return date please.

22 All right we will have a few minutes before the
23 others come in. When did you reschedule Mr. Vasquez, was he the
24 one?

25 THE CLERK: Yes. For Tuesday morning at 9:14.

26 (Recess.)

27

28

CARMEN AGUIRRE.

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

3

4

EXAMINATION

5 BY THE COURT:

6 Q. Good morning.

7 A. Good morning.

8 Q. You are Carmen Aguirre?

9 A. Yes.

10 Q. To explain the reason why we're gathered around the
11 table, it's just an effort to be a little bit more relaxed,
12 maybe you can responds more easily to our questions.

13 Has neglect happened to you, ma'am, since we last
14 saw you that might complicate your ability to serve in this
15 case?

16 A. No.

17 Q. When I was on the bench and you were here with all
18 the other people I explained to the prospective jurors that the
19 case could be in two phases. The first phase would be a gility
20 or innocent phase. The second phase, if we get do it and we
21 don't know if we will. but that would be a penalty phase.

22 In the penalty phase further evidence can be
23 presented. The attorneys can argue the case. The Court would
24 instruct the jurors further. And then they would retire to
25 deliberate on which is the most appropriate penalty in this
26 case, and they would have only two choices, to return a verdict
27 indicating death or another verdict indicating life imprisonment
28 without the possibility of parole.

1 My first real question to you then is: If we do
2 get to a penalty phase, will you be able to fairly consider both
3 of those two possible penalties?

4 A. Yes.

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

8 A. Well, yes.

9 Q. Do you in any way feel that you have your mind made
10 up to favor one or the other at this time?

11 A. No.

12 Q. Do you really have any strong feelings of revulsion
13 or dread of having to make that hard decision?

14 A. No.

15 THE COURT: Mr. Negus, please.

16

17

EXAMINATION

18 BY MR. NEGUS:

19 Q. Mrs. Aguirre, the Judge is allowing Mr. Kochis and
20 myself to ask you most of the questions. We are not trying to
21 pry or embarrass you but the law requires us to get your
22 opinions.

23 A. Yes.

24 Q. You indicated in your questionnaire that you had
25 some knowledge about this particular case before you came to
26 court. What was that knowledge?

27 A. Well, just what I saw in the news. That's --
28 whatever they showed on the newscast.

1 Q. What of that do you remember?

2 A. What do I remember? Just that he had escaped and,
3 you know, what happened, the house nearby, you know, the
4 killings. I don't know, you know, too much details because I
5 really don't have time, you know, just what I see in the news at
6 night or when I get the newspaper. I just go over it.

7 Q. Do you remember in this particular instance whether
8 you got most of your information from the television or the
9 newspaper or the radio?

10 A. It was mostly from the television that they showed.

11 Q. Did you -- did you see any or do you remember
12 anything about Mr. Cooper's background?

13 A. No.

14 Q. Like where he's from or anything like that?

15 A. No.

16 Q. Did you see any stories concerning his arrest?

17 A. Know.

18 Q. Did you -- did you follow any of the stories about
19 the case when it got to court up in San Bernadino County?

20 A. No.

21 Q. Did you know it was coming down here before you got
22 here?

23 A. I didn't even know, just, you know, what I see in
24 the news mostly. In the paper, well, I just go over it because
25 usually, you know, the sales and stuff, children's, that's about
26 it.

27 Q. So you're not really looking for this particular --

28 A. No; huh-uh.

1 Q. Did you ever discuss it with anybody or talk to
2 anybody or hear --

3 A. No; huh-uh.

4 Q. -- hear anybody talk about it?

5 A. Just in my home, my daughter, but not really, you
6 know. discuss it, you know.

7 Q. Just mentioned it?

8 A. Just say, you know. what happened, that's -- that's
9 about it.

10 Q. Did you ever come to any opinion as to whether or
11 not Mr. Cooper was guilty or innocent of this particular --

12 A. No.

13 Q. -- crime.

14 Q. You haven't made up your mind --

15 A. No,

16 Q. -- about that at all?

17 A. No; huh-uh.

18 Q. What was your reaction when you found out that you
19 were a potential juror in this particular case?

20 A. What was my reaction?

21 A. Well, I don't -- I didn't really, you know, expect
22 you know, something that you hear, you know, or whatever. you
23 know.

24 Q. Did you have any particular feeling like, for
25 example, this is not the kind of case I'd want to be on, it's
26 too unpleasant. or I'd like to because it's really interesting,
27 any type reaction to this case?

28 A. Well, it's something you have to really, you know.

1 understand and think about, now. It's not just something
2 simple, you know.

3 Q. Do you think you have any doubt with your ability
4 to do that?

5 A. No.

6 Q. We're asking you some questions about the death
7 penalty. The law requires us to ask those questions before
8 guilt or innocence is decided, even though you may never have to
9 get to that particular stage.

10 You understand that the fact that we are required
11 to ask those questions now is no indication that Mr. Cooper is
12 guilty or you will ever have to make that decision?

13 A. Uh-huh.

14 Q. You have to say yes or no out loud because she has
15 to take it all down.

16 A. I got all confused. What was that again?

17 Q. I'm sorry. I spoke really too fast.

18 The fact that we are asking you questions about the
19 death penalty doesn't mean that Mr. Cooper is guilty; the law
20 requires us to ask those questions first; do you understand
21 that?

22 A. Yes.

23 Q. And you won't take it the fact that the Judge or
24 counsel, Mr. Kochis and myself, are asking you questions about
25 the death penalty is any indication that you should get to that
26 decision?

27 A. No.

28 Q. Okay. With that, what is your opinion about the

1 death penalty?

2 A. What is my opinion? Well, I know it's something
3 hard, you know, really hard. I can't really say -- I mean, I
4 have -- I'm not for it and I'm not against it. It's, you know,
5 I don't really think about it, you know.

6 Q. Have you ever considered life in prison without
7 parole as a penalty? Do you have an opinion on that one way or
8 the other?

9 A. Yes.

10 Q. What's that?

11 A. Well. -- Well, I think -- Well, depending upon the
12 circumstances, you know, I think life imprisonment without
13 parole, or the -- I guess you would say depending on the
14 evidence or whatever.

15 Q. Leaving --

16 A. I'm for it.

17 Q. Leaving aside the question of who did the crime, do
18 you have any particular feeling that whoever did it should get a
19 particular penalty, like the death penalty or life in prison
20 without parole?

21 A. Yes, depending on the crime.

22 Q. Have you made up your mind between those two
23 penalties for this particular crime?

24 A. No. I never even thought about it.

25 Q. In this particular crime there was two kids that
26 were killed and another young boy was very, very seriously
27 injured.

28 Do you have any particular feeling based upon the

1 fact that there's kids involved that some particular penalty
2 should be imposed?

3 A. Well, it's sad. You know, I feel bad about the
4 children, you know. I think it's something -- well, children,
5 you know.

6 Q. Well, I guess what I'm asking is some people --
7 most people have a reaction to children. Some people's reaction
8 is such that they feel so strongly about kids being involved
9 that it would make them unable to be fair.

10 Do you think you have that kind of reaction?

11 A. Well, I don't think I would be unfair. I myself,
12 you know, I love children,, you know. and when something does
13 happen to children sometimes it kind of hurts, you know.

14 Q. And that's natural and, you know, we're not trying
15 to, you know, suggest in any way you shouldn't have natural
16 human reactions; but you don't think that that would affect your
17 ability to be fair in this case?

18 A. No, I don't.

19 Q. Do you belong to an organized religion?

20 A. No.

21 Q. Has the -- has the views of any group outside of
22 your own individual conscience influenced your opinions on crime
23 or punishment or the death penalty?

24 A. Groups like what, any kind of group?

25 Q. Huh?

26 A. Any kind of group?

27 Q. Political groups.

28 A. No.

1 Q. Religious groups?

2 A. No.

3 Q. Anything of that nature?

4 A. No.

5 Q. Okay. Fine. I don't have any further. Mr. Kochis
6 has a few questions.

7 A. Oh, okay.

8

9

EXAMINATION

10 BY MR. KOCHIS:

11 Q. We are not done quite yet.

12 A. Okay.

13 Q. If we get to the penalty phase you'd have to make a
14 very serious decision. How do you feel about having to make a
15 real serious decision like that?

16 A. How do I feel? I think -- I think I -- if I had to
17 do a -- I would do it, you know.

18 Q. Okay. You mentioned that you really didn't have an
19 opinion, a strong opinion one way or the other about the death
20 penalty; do you recall that?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. She can't take down things in between yes and no,
25 that's why we ask.

26 A. Oh, okay.

27 Q. In California it's on the books. Some people feel
28 we should never have the death penalty; some people feel we

1 should have it in some cases; some people feel if you take
2 another person's life your life should always be taken.

3 Do your feelings fit in any one of those three
4 groups: Never, sometimes, or always?

5 A. I think sometimes.

6 Q. Okay. Some people who haven't come to a firm
7 diagnosis one way or the other about how they personally feel
8 about the death penalty, when they're put in a position where
9 they have to make that heavy decision feel they can't, it's just
10 too serious. and they freeze or they balk.

11 A. Uh-huh.

12 Q. Do you see yourself doing that in this case?

13 A. No.

14 Q. If, after you heard all the evidence and hear the
15 law, if you thought the appropriate punishment in this case was
16 the death penalty, could you vote for it?

17 A. Yes.

18 Q. To make sure there's no mistake with the vote, with
19 the ballot -- excuse -- me with the verdict form, The judge
20 polls the jury at the end of the trial. He will simply go down
21 the row and ask each and every one of you if the verdict the
22 clerk has just read is the way you voted back this in the jury
23 room.

24 If eleven other people and yourself thought that
25 this was an appropriate case for the death penalty and you voted
26 that way, would you have any problem indicating in open court
27 that that is the way you voted?

28 A. No.

1 Q. Thank you.

2 I don't have any further questions.

3 THE COURT: We'd like to discuss it in private briefly,
4 and ask you to step outside, and the bailiff will inform you
5 further. Thank you for coming in.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: Anything, gentlemen?

8 MR. KOCHIS: No.

9 MR. NEGUS: No.

10 THE COURT: Next one please.

11 THE BAILIFF: Carla Scott is next called.

12

13 CARLA SCOTT,

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. Morning.

21 Q. You are Carla Scott?

22 A. Yes, I am.

23 Q. We're arranged things a little differently here in
24 an effort to be more informal, maybe put you at ease a little
25 bit more so you can answer the hard questions.

26 A. Okay.

27 Q. Is there something that you've got to hand to me
28 there?

3
1 A. Yes, sir. It's a letter from my employer.

2 Q. Are there problems at work?

3 A. Well, the letter explains it. The nature of my job
4 and everything would entail my position having to be replaced in
5 this case --

6 Q. Let me read it a second.

7 A. Okay.

8 Q. Foodmaker. Incorporated, in San Diego. She works
9 in the payroll department since February of '79. She trains new
10 employees; very familiar with the system of procedure; maintains
11 programs and operates a small computer which produces paychecks
12 on a daily basis; services are critical; we have back-up for two
13 weeks; we could not have her absent from her job for an extended
14 period; it would be necessary to replace her.

15 They indicate that her training and job
16 requirements would prevent a temporary employee from stepping in
17 and taking over for her, and she would in effect not have a job
18 when she comes back.

19 I suggest you tell the people down there that it's
20 against the law to either terminate an employee because of
21 service on the jury or to discriminate against them. The labor
22 commissioner would enforce that law and assist you in enforcing
23 it.

24 A. They understand that, sir. but this is a position
25 that I've worked several years to attain, and they're trying to
26 aid me in continuing my development in that position.

27 Q. Are you the sole breadwinner of your family?

28 A. Yes, sir. I'm -- I live by myself. I'm

1 self-supporting.

2 Q. You value the job very highly I take it.

3 A. Yes, sir.

4 MR. NEGUS: Your Honor. I don't think there's a problem.

5 THE COURT: I beg your pardon?

6 MR. NEGUS: Mr. Kochis and I are agreed.

7 THE COURT: You would stipulate she may be accused?

8 MR. NEGUS: Yes.

9 MR. KOCHIS: Yes, so would I.

10 THE COURT: That permits me to excuse you, otherwise I
11 have some constraints. It really causes a problem. I have to
12 make a certain record.

13 PROSPECTIVE JUROR: I understand.

14 THE COURT: All right. Best wishes to you and your
15 employer. You may have to serve on a shorter case. He will
16 refer you back to the jury room, but thank you for coming in.
17 You are excused.

18 PROSPECTIVE JUROR: Thank you.

19 THE BAILIFF: Arceli Armas is next.

20

21 ARCELI ARMAS,

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

24

25 EXAMINATION

26 BY THE COURT:

27 Q. Are you Ms. Armas?

28 A. Yes.

1 Q. Good morning.

2 A. Good morning.

3 Q. To explain the arrangements here, this isn't
4 usually the way I sit in court, but we're trying to be informal
5 in hopes that you will be a little bit more at ease to answer
6 the questions that we put to you.

7 A. Okay.

8 Q. Has anything happened to you since we last saw you
9 to complicate your ability to serve in this case?

10 A. Well, I have a letter from my boss which it would
11 be kind of difficult for me to serve.

12 Q. Well, the kind of difficult we have to kind of
13 ignore unless it's really serious.

14 A. Yes, I understand.

15 Q. It would be serious for you?

16 A. Not very serious, I don't think so.

17 Q. From from Sweetwater Union High School District
18 "Jury Commissioner:

19 "Please be advised that Arceli Armas is a secretary
20 with the Sweetwater Union High School District and is
21 assigned to the Special Services District Office. Her
22 responsibilities include scehduling individualized
23 Education Planning meetings for approximately 300
24 handicapped students, maintaining appointment calendars
25 for two psychologists, typing psychological reports,
26 maintain psychological records, and handling office
27 telephone calls from Spanish-speaking parents."

28 She "has reported as requested, however, she is

1 concerned, as I am, that she may be placed on an extended
2 jury trial. While we can cover within the office for a
3 few days the prospect of having her gone for a week or
4 more would be devastating."

5 They ask in effect to have her excused from this
6 case.

7 What would happen if you got ill for sometime?

8 A. Well, nothing I can do about that. It's up to you.

9 Q. In another type of case I'm more quick to excuse
10 people, you know, if you were here on a burglary, robbery or
11 civil case or something like that, but in this particular type
12 of case I'm kind of leaning on people to --

13 You may luck out. You know, we are only after
14 about 16 out of over a hundred people. On the other hand I
15 can't easily excuse you.

16 They will pay you and you would be able to work one
17 day a week anyhow for them during the time that you serve on
18 this; is that correct?

19 A. Yes, sir.

20 Q. And there are other secretaries there that could
21 somehow fill in and help you?

22 A. Not really. Each secretary works for two
23 psychologists, each one of them, so they would have to ask for,
24 you know, an assistant for my position to help out. I think
25 that wouldn't be a problem. But I guess, you know, we are so
26 busy, you know, that I guess the other secretaries don't have
27 enough time to -- much time to be, you know, teaching the other
28 secretary how to do my duties.

1 Q. How far away -- let's see, you're in Chula Vista --
2 you work in Chula Vista?

3 A. Yes, sir.

4 Q. So that would pretty much eliminate the possibility
5 of your working even part time during the week. We don't start
6 here till 9:30. but that doesn't give you enough time really to
7 put in at your work.

8 What time do you normally go to work?

4 9 A. 7:30.

10 Q. Oh, you do?

11 A. Yes.

12 Q. Well, you could perhaps get in an hour or hour and
13 15 minutes each day if that would help you to kind of oversee
14 and supervise to some extent.

15 Takes you about 20 minutes from hear to Chula Vista
16 perhaps?

17 A. Well, I have been taking the trolley, sir, because
18 I live all the way in San Ysidro, so that's not a half an hour.
19 If I were to take the trolley every day I would have to get off
20 on Palomar, which is about three miles from where I would work.
21 That means I would have to walk unless I would leave my car
22 there.

23 Q. You do not drive a car normally?

24 A. No.

25 Q. Unless counsel stipulate I think that I think you
26 should go back and tell them that the mean old judge simply
27 wouldn't do it. and that based upon the criteria that I have to
28 follow it seemed to be not as deastating as they would indicate.

1 So let's move on to other matters.

2 Remember I told you before that this could be a
3 case of two possible phases. The first phase would be a guilty
4 phase. And the second phase, if we get to it, we don't know if
5 we will, but if we get to it, it would be called a penalty
6 phase.

7 In the penalty phase further evidence would be
8 presented. Counsel would get a chance to argue. The Court
9 would instruct you further on the principles of law and the
10 criteria to help guide you. But the jurors would make the
11 decision, and they would decide whether or not the appropriate
12 penalty should be death by execution or life imprisonment
13 without the possibility of parole.

14 Do you understand?

15 A. Yes, sir.

16 Q. Question: If we do get to a penalty phase and
17 you're serving on the jury, will you be able to fairly consider
18 both possible penalties, death or life imprisonment without the
19 possibility of parole?

20 A. No.

21 Q. Why not?

22 A. Okay. I am very -- kind of religious. I'm a
23 Catholic. And I don't feel that I would go for the death
24 penalty because I'm very strong about following the Lord's Ten
25 Commandments. And I feel that if -- I don't want to carry the
26 guilt of putting a person into the death penalty. That's -- I
27 just couldn't live with that. Life imprisonment I would go for,
28 but not the death penalty.

1 Q. Normally there's not a conflict between a person's
2 religion and the law of the State of California. I'm not sure
3 if there would be in this case. There may be in your own mind,
4 however, but we're required if you serve on this case to follow
5 the law of the State of California, and that law requires us to
6 consider and under some circumstances vote for a death penalty.

7 Could you do that?

8 A. I don't know. I would really have to really think
9 about it.

10 Q. Well, it's a serious thing to do.

11 A. Yes, I know.

12 Q. It's a hard thing to do. Everybody tell us that
13 and we know that. But nevertheless, you would have to take
14 another oath to well and truly try the case based upon the
15 evidence and the law that come out in court, and not what you
16 may construe out of the Bible or not what your religion or
17 church tells you if there's a conflict.

18 Do you think could you do that?

19 A. Yes, I think I could.

20 Q. Are you able to tell me truthfully that, Judge, in
21 some cases, I don't know what the circumstances are, but in some
22 cases I could vote for the death penalty?

23 A. Well, I have a very strong feeling about that, but,
24 yes.

25 Q. Would you be able to personally vote then for
26 either death or life without parole and make your decision based
27 upon the evidence and the circumstances brought out at trial?

28 A. Yes.

1 Q. Do you think, ma'am, that your strong feelings
2 about the death penalty would cause you to want to cop out or to
3 find an escape hatch or find perhaps an inappropriate verdict
4 back in the guilt phase just to avoid ever having to make that
5 hard decision in the second phase?

6 A. Well. no.

7 Q. So, if we make you serve, so to speak, you're
8 telling us that you would try to be fair and you could go either
9 way; is that what you're saying?

10 A. Yes.

11 Q. All right.

12 Mr. Negus, please.

13

14

EXAMINATION

15 BY MR. NEGUS:

16 Q. Mrs. Armas, Mr. Kochis and I are asking most of the
17 questions. We are not trying to pry or embarrass you in any
18 way, but we have to have your personal opinions before we can go
19 any further.

20 You indicated that you had heard a little bit about
21 this case before you came to court. Can you tell me what you
22 remember about it?

23 A. I just remember about some people getting killed,
24 watching TV. I was cooking dinner that day, and I just remember
25 about this person being -- they couldn't find this person at all
26 for a few days or weeks, I'm not too sure.

27 And it's kind of alarming having someone like that,
28 you know, thinking of all the killings that that person had

1 done, you know, it's very uncomfortable. I'm a very nervous
2 type person, and I can't sleep at night sometimes. And just to
3 think about that, not only him, but there's a lot of people
4 around out there, you know. it's really hard to -- I'm just a
5 very nervous person.

6 Q. Did you hear any stories about -- Did you feel
7 personally threatened in your home?

8 A. Yes, I was home. It's just that you never know
9 whose turn it might be or where you might be at and something
10 could happen to anyone just like to those people.

11 I do feel threatened sometimes and I live in a nice
12 neighborhood, but still you can live in the best neighborhood,
13 you know. and still things can happen.

14 Q. In this particular case did you form any opinion as
15 to whether my client, Kevin Cooper, was the person that was
16 responsible for these crimes?

17 A. Yes.

18 Q. What was that opinion?

19 A. I just -- I just thought that, you know, a person
20 when they get caught, it must be that. I mean, I leave
21 everything up to the Lord, and I know it's -- you know, it's
22 God's will whatever happens, so I just --

23 Q. Well. do you have a feeling that if you had -- in
24 this particular case, leaving aside the issue about the death
25 penalty, the first decision that would have to be made would be
26 did Mr. Cooper do this crime or not. And I would expect that in
27 that process Mr. Kochis would be trying to present evidence that
28 he did, and I would be presenting some evidence to you to combat

1 that. And you'd have to make up your mind whether or not he'd
2 proved beyond a reasonable doubt that Mr. Cooper was the one
3 that committed the crime. Do you think that you could do that
4 fairly or would you have a -- have a sort of predisposition to
5 find him guilty?

6 A. No. I think the Lord will guide me. And I know,
7 you know, correct what I feel is right, I wouldn't hide anything
8 or, you know. I will just leave it up to the Lord and I'm pretty
9 sure he will guide me through.

10 Q. Well, let me just ask you this: If you felt from
11 the evidence that there was a reasonable possibility that Mr.
12 Cooper was wrongfully accused, could you vote not guilty?

13 A. Yes.

14 Q. And whatever the evidence turned out to show, do
15 you think you could follow that -- follow the evidence in the
16 case?

17 A. Yes.

18 Q. This particular -- this particular crime involves
19 the murder of two children and the very serious injury of
20 another young boy.

21 You apparently work with children in your job?

22 A. Yes.

23 Q. Do you feel that there's anything about that
24 particular -- that particular type of crime which might make it
25 more difficult for you to be fair in this case?

26 A. No.

27 Q. So, basically if you did -- if you did serve you
28 would be able to be fair?

1 A. Yes.

2 Q. Thank you.

3 I have nothing further.

4

5

EXAMINATION

6 BY MR. KOCHIS:

7 Q. Mrs. Armas, you appear to be a very religious
8 person; is that true?

9 A. Yes.

10 Q. You appear to practice as well as belong to an
11 organized religion, is that correct, you practice it as well?

12 A. Well. I go to church ever Sunday but that doesn't
13 mean anything. I mean, I read my Bible and I've learned so
14 much, you know, and I'm just trying to go by the word of God,
15 and not that I'm just a religious fanatic, but I try to do my
16 best.

17 Q. I don't think we asked you which religion you
18 belonged to, did we.

19 A. No.

20 Q. Is there a particular --

21 A. I'm a Catholic.

22 Q. Okay. If you were selected as a juror, for
23 example, in the guilt phase, what we need is a promise from
24 twelve people that they'd hear -- they'd listen to all the
25 evidence with an open mind, listen to the law, listen to the
26 arguments of the attorneys, and then take the evidence and apply
27 it to the law and reach a decision.

28 Do you think you could do that?

1 A. Yes.

2 Q. What would happen in a situation where you've heard
3 all the evidence, you've heard the law, and you go back into the
4 jury room and you don't get any particular guidance one way or
5 the other from God? How would you handle that?

6 A. I'm pretty sure I will get a guidance from God.
7 There is no doubt about that. My faith is so strong in Him, and
8 He is the only one I depend on. And I mean -- I can't -- I
9 can't -- you know, no one will guide me. I'm pretty sure He
10 will.

11 Q. Well, how would you handle the situation where He
12 chose to leave this decision completely up to you and not to
13 give you any guidance one way or the other? What do you think
14 you'd do?

15 A. Well, like I said, my belief is very strong about
16 the death penalty. I just feel like when one of His
17 commandments is: "Thou shalt not kill." and even though, you
18 know, I would feel guilty to put a person through that --

19 Q. Okay.

20 A. -- even through I'm not doing it, but it's up to us
21 really to put him in the death penalty.

22 Q. Do you see, for example, if you voted for the death
23 penalty, do you see that in conflict with the Commandment:
24 "Thou shalt not kill."? "?"

25 A. Like I said, I will just go with what the Lord
26 says. If it's going to be my decision it's going to be Him
27 that's going to forgive me or not whether I have, you know, made
28 a mistake or not, and I guess I would have to go for that.

1 Q. It sounds -- initially it appeared that you thought
2 about the death penalty and you have a strong opposition to it
3 or a strong feeling.

4 A. Yes.

5 Q. Is it fair to say that between the two you'd
6 certainly prefer voting for life without the possibility of
7 parole as opposed to the death penalty?

8 A. Uh-huh.

9 Q. Is that a yes or no?

10 A. Yes.

11 Q. Okay. In the first trial all we have to decide is
12 who did it, did this defendant do the murders or did someone
13 else; you understand that?

14 A. Yes.

15 Q. Some people after they've heard all the evidence
16 and the law, they feel, well, you know, based on the facts this
17 guy did it and that's the way I'd vote if this was just any case
18 but if I vote for guilty we're going to be put in the second
19 trial where I have to decide whether or not to vote to execute
20 this man or not and that's a decision I don't want to have to
21 make, so I can get around that by voting not guilty and that way
22 no matter what the other people vote we won't have to get to
23 that second trial, someone else can make the decision later.

24 Do you think that might happen with you?

25 A. No.

26 Q. If you heard all the evidence in the penalty phase
27 and you heard the law, and you felt that under the law, not
28 necessarily under God's law, but under the law of this State,

1 under the law the appropriate thing would be to vote for death,
2 what would you do?

3 A. Well. I just don't want to repeat myself. I really
4 can't answer that right now. I would think I would have to go,
5 you know, along and see what would happen, you know, in the
6 trial, and I mean, it's too -- it's too early for me to answer
7 that.

8 Q. Let me ask you this question: If in your own words
9 you felt that the law of this State conflicted with God's law,
10 could you follow the law of this State?

11 A. I think God's law is more important than to follow,
12 you know, the law on this earth because I think -- I'm not a
13 person of the world. I don't know if you can understand me,
14 that I'm trying to follow the Lord and I, you know, it's
15 difficult, and I'm just -- like I said, I don't want to repeat
16 myself. it's very hard for me to make a decision on that.

17 Q. How do you feel being put in a position where you
18 have to decide whether someone lives or dies?

19 A. I just -- like I say, it's not up to me. I can
20 make the decision just by asking the Lord to help me, but I
21 don't think I can put a person to death.

22 Q. Thank you.

23 I have nothing else.

24

25

FURTHER EXAMINATION

26 BY THE COURT:

27 Q. We've had a number of people who belong in the
28 Catholic church, one lady had even consulted a priest since she

1 first came into court, and they've all indicated to me that they
2 know of nothing in the church dogma or the doctrine of the
3 church that is against the people voting for the death penalty
4 in certain circumstances. In other words, the church does not
5 say: "Thou shalt not kill." if you are sitting as a juror in a
6 court of law. And in general I suppose you could check that
7 out.

8 But let me make sure before I have you step out.
9 If you sat on this case and heard all of the evidence and the
10 evidence seemed -- and you discussed it with your fellow juniors
11 and it all seemed to indicate that the death penalty should be
12 imposed, could you so vote and would you so vote?

13 A. Yes, I would. I think I would have to talk to my
14 priest, but I'm pretty sure. Like I said, like if what you told
15 me right now is true, yes.

16 Q. If we have you come back you might want to do that
17 first, that is, before you come back in the next time.

18 We'd like a chance to discuss it privately. Would
19 you mind stepping outside for a minute, please.

20 PROSPECTIVE JUROR: Sure.

21 THE COURT: The bailiff will inform you further. Thank
22 you.

23 THE COURT: Anything, counsel?

24 MR. KOCHIS: No.

25 MR. NEGUS: No.

26 THE COURT: I didn't hear you.

27 MR. KOCHIS: I'm sorry. I have nothing.

28 THE COURT: Okay; fine. Then ask her to return, please.

1 MR. NEGUS: Could I request that the Court not tell them
2 about the stipulation unless Mr. Kochis and I ask.

3 THE COURT: Yes, that's a good point.

4 MR. NEGUS: Thank you.

5 THE COURT: I'm not trying to make you a heavy at this
6 time.

7

8

MELVIN ERVIN

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

11

12

EXAMINATION

13 BY THE COURT:

14 Q. Good morning.

15 A. Morning?

16 Q. Melvin Ervin.

17 A. Yes, sir.

18 Q. Mr. Ervin, we have arranged things informally
19 around the counsel table in hopes that you will be a little bit
20 more at ease and easily respond to our questions.

21 Has anything happened, sir, since we last saw you
22 that might complicate your ability to serve in this case?

23 A. No, sir.

24 Q. Before I ask you the next questions, I want to
25 remind you of some of the things that I said when I was sitting
26 on the bench. and you were here with the other people.

27 I told you that this could be a two-phased case.
28 We don't know if we will ever get to the second phase. it

1 depends on the verdicts in the first phase.

2 In the first stage, the first phase would be of
3 guilt or innocence, and it the jurors would simply determine
4 whether he is or is not guilty.

5 The second phase, if we get to it is a penalty
6 phase, and there. in that part of the trial, more evidence would
7 be received, the attorneys will get a chance to argue to you,
8 the jurors, again, the judge would give you instructions of law
9 and standards and guidelines perhaps, and the jurors would
10 retire once again to deliberate anew to determine which is the
11 most appropriate penalty to be imposed: Death by execution on
12 the one hand, life without the possibility of parole on the
13 other.

14 So, my question to you, sir, is, if you are
15 selected to serve, and if we do get to a penalty phase, will you
16 be able to fairly consider both of the two possible penalties?

17 A. Yes, sir.

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

21 A. Yes.

22 Q. You don't feel locked into one or the other at this
23 time, Mr. Ervin?

24 A. No, I don't.

25 Q. Do you have a strong aversion or dread of having to
26 make that type of hard decision?

27 A. No, sir, I do not.

28 THE COURT: All right. Mr. Negus, please.

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EXAMINATION

BY MR. NEGUS:

Q. Mr. Ervin, the judge is letting Mr. Kochis and myself ask you most of the questions. We're not trying to pry or embarrass you in any way, but the law requires we get your personal opinions before we go any further with the case.

You had told us that you, in your questionnaire, that you did have a vague memory of some of the events of this particular crime. What do you remember?

A. I remember reading about it in the paper when it first happened and shortly after that I then left the state, was out of state for two months, I completely forget even about it until I came back the last time.

Q. What do you recall having read in the paper when the crime first occurred?

A. A man escaped from Chino, I believe it was, and had supposedly killed several members of the family. The man was a veterinarian if I am not mistaken.

Q. Do you remember hearing that Mr. Cooper, where he was found, or anything of that nature?

A. No, I don't.

Q. Did you form any impression of Mr. Cooper from what you heard about him in the media?

A. Not really because I haven't -- I haven't heard that much.

Q. Did you know the case was coming to San Diego before you got down here for jury?

1 A. The day before I heard it. The day before I came
2 in.

3 Q. Was that on the television or --

4 A. No, my wife.

5 Q. Okay. Did anybody else besides your wife speak to
6 you about the case before you actually first got to court?

7 A. No.

8 Q. Did she tell you anything other than just you are
9 going to be on jury duty tomorrow, that might be the case,
10 something like that?

11 A. That's what it amounted to right there.

12 Q. What was your reaction when you found out that you
13 were a prospective juror in this particular case?

14 A. I had forgotten about the thing up to the point
15 where it didn't really make much of an impact on me at all.

16 Q. Do you have any particular feeling about sitting on
17 this particular type of a case as opposed to a civil case or
18 some other type of crime?

19 A. Not really. other than the fact that it might be of
20 long duration.

21 Q. We all think about that a lot.

22 We're asking you some questions about the death
23 penalty. That doesn't necessarily mean that we will ever get to
24 that stage, as the judge explained, and I hope you won't take it
25 as any indication that we will ever get there. because the law
26 requires us to ask these questions before you even decide guilt
27 or innocence.

28 A. I understand that.

1 Q. What, in general, is your opinion about the death
2 penalty?

3 A. In general? I have no real objection to it one way
4 or another. I think it probably has its place.

5 Q. What place do you think it has?

6 A. I would be inclined to lean towards it in cases of,
7 you know, premeditation. the long term type thing; coldly
8 calculated situation.

9 Q. What do you think about life imprisonment without
10 parole?

11 A. I don't -- can't say as I ever have really thought
12 about it. As concerns myself, I would much prefer the death
13 penalty if I were looking for anything like that.

14 Q. Do you think that you are of a particular frame of
15 mind that you would be inclined to impose the death penalty in
16 all cases of premeditated murder no matter what the various
17 circumstances of the crime were?

18 A. In all cases?

19 Q. Yes.

20 A. No, sir.

21 Q. Do you have any particular feelings in your own
22 mind as to how you would distinguish among those cases where you
23 would apply it and those where you wouldn't?

24 A. Well, as I say, I would be more inclined to apply
25 it in a well thought out premeditated situation.

26 Q. The first -- there's four counts of first degree
27 murder involved in this particular case. First, the murder of
28 the first degree that is charged is in fact the premeditated

1 killing. That is, it was premeditated, deliberated, thought
2 out, as you say.

3 So, if this -- anyone of those murders were found
4 to be true, would your own personal opinion be that that would
5 justify the death penalty?

6 A. Yes, sir, I believe so.

7 Q. What about circumstances of where there's a
8 multiple murder. Do you believe that that justifies the death
9 penalty in all cases?

10 A. No, not necessarily.

11 Q. What about where kids are involved?

12 A. Probably the same. Not necessarily.

13 Q. The basic law in our state is that not all
14 premeditated murders, according to the law of the state, deserve
15 the death penalty. There has to be something besides
16 premeditated murder, and in this particular case that something
17 besides would be multiple murders before the case even becomes
18 eligible for the death penalty.

19 Once the case becomes eligible for the death
20 penalty, then even not all of those cases get the -- are
21 deserving of the punishment of death, according to our law.

22 Depending upon the circumstances of a multiple
23 murder, do you think that you would be inclined, in a situation
24 where several premeditated murders were proven, to like always
25 vote for the death penalty no matter what other circumstances
26 were brought out?

27 A. No, sir. I don't believe so.

28 Q. What kind of circumstances do you think might

1 convince you to go the other way?

2 A. Against the death penalty?

3 Q. To vote for life without parole.

4 A. Well, I think probably any mental incapacity can be
5 shown might influence it.

6 Q. Do you belong to an organized religion?

7 A. No, sir.

8 Q. Have the views of any religious group or any own
9 personal religious philosophy influenced your opinions about the
10 the crime and punishment or the death penalty?

11 A. No, sir.

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

13

14

EXAMINATION

15 BY MR. KOCHIS:

16 Q. Mr. Ervin, to pick up for a moment where Mr. Negus
17 left off. Do you happen to be a lawyer?

18 A. No, I don't.

19 Q. Do you have any background in criminal law or
20 criminal procedure?

21 A. No, I don't.

22 Q. Have you ever even heard before of the
23 circumstances in aggravation or mitigation as they applied to a
24 death penalty case?

25 A. No, sir.

26 Q. Do you have any idea of what the laundry list
27 actually includes as to the factors on both sides?

28 A. No, I don't.

1 Q. That's Mr. Negus' job and my job to present those
2 factors if we get to that phase.

3 If we produce that type of evidence, could you
4 listen to it with an open mind?

5 A. I believe so.

6 Q. For example, if Mr. Negus chose to present certain
7 evidence on behalf of his client in a penalty phase, make
8 certain arguments in a penalty phase, could you listen to those
9 arguments and that evidence with an open mind?

10 A. Yes, sir.

11 Q. If my side, the prosecution, chose to present some
12 evidence in addition to what was presented at the trial in this
13 case, on Mr. Cooper's guilt, could you listen to that with an
14 open mind?

15 A. I believe so.

16 Q. Then, based on all the evidence that you have
17 heard, based on the law and the penalty phase, and based on
18 perhaps the arguments of the defense counsel, could you decide
19 what was the appropriate punishment in this case: Life or
20 death?

21 A. Yes, sir. I believe so.

22 Q. As Mr. Negus explained, statistically the general
23 majority of the premeditated murders in California, what is your
24 classic first degree murder case, they're not even eligible for
25 the death penalty. There has to be what we call a special
26 circumstance case before you are even eligible to have a jury
27 decide whether you spend the rest of your life in prison or
28 whether you vote for the death penalty.

1 Once you fall in the special circumstance category,
2 a jury may make the decision as to whether you spend the rest of
3 your life locked up or whether you are given the death penalty.

4 Do you understand all we have talked about?

5 A. Yes, sir.

6 Q. What we need is people who haven't, at this point,
7 made their mind up what penalty to give.

8 Have you made up your mind one way or the other as
9 to whether this is a life or death case?

10 A. No, sir.

11 Q. Would you have to hear all the evidence to make
12 your decision?

13 A. Yes, I would.

14 Q. You mentioned, your response to Mr. Negus question
15 about what your opinion of the death penalty was, you have no
16 real objection to it. That's, in some people's minds, a
17 negative way of stating a positive or the positive way of
18 stating a negative.

19 Do you have any some negative feelings about the
20 death penalty as a possible punishment?

21 A. No, sir. I don't believe so.

22 Q. Were you in California in the 70's? Did you live
23 here?

24 A. Yes, sir.

25 Q. The reason I ask is two separate times we had death
26 penalty-related issues on the ballot; people circulated
27 petitions, they gathered signatures, a lot of people took a
28 position one way or the other, whether it was a casual position

1 or strong position, there was a topic of conversation.

2 Do you recall being involved in either one of those
3 times, for example, in circulating petitions as to whether or
4 not we should have a death penalty here in California?

5 A. No, sir. I was not a registered voter in the state
6 at the time.

7 Q. Okay. Were you involved at all in any discussions,
8 take a position?

9 A. No, sir.

10 Q. The fact that we have the death penalty on the
11 books in California, what do you think about that? Do you think
12 that is something we should have sometimes to exercise, or it is
13 unfortunate, we should never have it. Do you have any feelings
14 along that line?

15 A. I think it should be on the books.

16 Q. One of the jury members is always elected as the
17 foreman, and that person presides over the jury deliberations.
18 They're also required to date and sign what's called the verdict
19 form, which is a piece of paper which memorializes the jury's
20 decision.

21 If the jury selected you as the foreman, and we got
22 to a penalty phase, and you and eleven other people thought that
23 the appropriate punishment was death, would you have any problem
24 dating and signing that verdict form?

25 A. No, sir. I don't believe so.

26 MR. KOCHIS: Thank you. That's all I have.

27 THE COURT: We'd like to discuss it privately for a
28 minute. If you could wait outside the bailiff will give you

1 further instructions. Thank you for coming in, sir.

2 Anything, gentlemen?

3 MR. KOCHIS: No.

4 MR. NEGUS: No.

5 THE COURT: Yes. Give him a return date, please.

6 We will resume at 1:30.

7 --oo0oo--

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9 (Noon recess)

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1 SAN DIEGO. CALIFORNIA, THURSDAY, OCTOBER 4, 1984 1:30 P.M..

2 --oo0oo--

3
4 THE BAILIFF: William Wood is the first juror.

5
6 WILLIAM WOOD 

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, sir.

13 A. Good afternoon, sir.

14 Q. William Wood?

15 A. That's correct.

16 Q. Mr. Wood, we have arranged things kind of
17 informally around the table in hopes that it will put you a
18 little bit more at ease to answer the hard questions we're going
19 to put to you.

20 Has anything happened to you, first of all, since
21 we last saw you, that could complicate your ability to serve on
22 the jury in this case?

23 A. No, none whatsoever.

24 Q. Before I commence asking you the questions about
25 the death penalty and life without parole, I want to remind you
26 that I told you before, when you were here with the other
27 people, that this case could have two phases, we don't know if
28 we will ever get to a second phase, we may, but we have to ask

1 you about it now.

2 The first phase is the guilt or innocence, that's
3 what all the jurors would be concerned with. If certain
4 verdicts are returned, then we could go into the second phase
5 where the the jurors will be concerned with penalty and further
6 evidence would be received.

7 At that time the attorneys would have a chance to
8 argue, I would give you further instructions of law and
9 guidelines to assist you, but the jurors would have to make the
10 decision as to whether the most appropriate penalty was death by
11 execution, on the one hand, or life imprisonment without the
12 possibility of parole on the other.

13 Now, sir, if we do get to a penalty phase and you
14 are on the jury, would you be able to consider both of those two
15 possible alternatives?

16 A. I do.

17 Q. You can do that?

18 A. I think I can do that.

19 Q. People can't do that if they have already got their
20 minds made up one way or another. At this particular time you
21 don't feel you have in any way; is that correct?

22 A. No.

23 Q. You would be able, Mr. Wood, to vote one way or
24 another, one or the other depending upon the evidence and the
25 circumstances brought out at the trial; is that correct?

26 A. That's right.

27 Q. Do you have any great fear or dread of having to
28 make such a heavy decision?

1 A. No.

2 THE COURT: Mr. Negus. Thank you.

3

4

EXAMINATION

5 BY MR. NEGUS:

6 Q. Mr. Wood, the judge is allowing Mr. Kochis and
7 myself to ask most of the questions. We're not trying to pry or
8 embarrass you in any way, but the law requires that we get your
9 personal opinions about matters before we go on.

10 You indicated you read, well, some of the details
11 of this particular case in the questionnaire you did for us.

12 What do you remember about it?

13 A. I wasn't discussing anything.

14 Q. What facts do you remember about the crime?

15 A. No facts other than when the judge was making --

16 Q. No facts --

17 A. No facts other than what were mentioned earlier.

18 Q. In the courtroom?

19 A. Yes.

20 Q. What you did you hear about Mr. Cooper?

21 A. Cooper came down from San Bernardino, and he were
22 charged with the crime. murder,

23 Q. Did you have any impression of him from what you
24 heard here in the newspapers or the television?

25 A. No.

26 Q. Do you have -- any do you have any feelings as to
27 whether or not he's guilty or innocent of this particular crime?

28 A. None whatsoever.

1 Q. What was your reaction when you found out that this
2 was the kind of case that you were being asked to be a juror on?

3 A. Frankly I don't want no part of it.

4 Q. Why not?

5 A. Do I have to answer that?

6 THE COURT: Well. it would, I am sure help us, because we
7 want to keep you if we can because -- you have to explain, yes,
8 sir. You must answer.

9 PROSPECTIVE JUROR: Well. I -- I'm one in favor of
10 capital punishment.

11 BY MR. NEGUS:

12 Q. You are in favor of capital punishment?

13 A. I don't want no part of it.

14 Q. Why do you not want any part -- or are you in favor
15 of capital punishment?

16 A. I figure if an individual take a life he should be
17 able to be executed himself by the gas chamber or electric
18 chair, not life imprisonment.

19 Q. You are against life imprisonment?

20 A. Right.

21 Q. What do you think about -- leaving aside the
22 question of punishment though, do you think that you have made
23 up your mind as to guilt or innocence? Can you be fair on guilt
24 or innocence?

25 A. I can't make up my mind as to innocent or guilty
26 because I haven't heard all the facts.

27 Q. Okay. Do you think that you have any particular
28 predisposition to vote guilty or not guilty in this particular

1 case?

2 A. None whatsoever.

3 Q. If Mr. Cooper didn't do it, you wouldn't have any
4 trouble voting not guilty?

5 A. If the facts were true, whatever the fact, I base
6 my judgment on that.

7 Q. Why don't you like life imprisonment without
8 parole?

9 A. I think an individual is killed, like I said,
10 should have been killed again. If Mr. Cooper killed somebody I
11 think they should give him electric chair or gas chamber.

12 Q. The judge -- if you are sitting on the jury?

13 A. Right.

14 Q. The judge will explain to you that in California
15 not all people who kill, according to our law, deserve to get
16 the death penalty, and you would be presented with sort of a
17 structured decision as to whether evidence favored the death
18 penalty or life without parole.

19 Do you think you could put aside your personal
20 opinions and follow the law as the judge gives it to you?

21 A. If that would be the law, I follow the law then.

22 Q. So, whatever your own personal opinion on it would
23 be, you, nonetheless, could follow the law and obey the judge's
24 instructions.

25 A. That's correct.

26 Q. Do you belong to an organized religion?

27 A. Yes, I do.

28 Q. Which one?

1 A. I am a Baptist.

2 Q. Have the views of your church influenced your
3 opinions on crime and punishment and the death penalty?

4 A. None whatsoever.

5 Q. It's based on your own individual conscience?

6 A. Right.

7 Q. Is there any reason, that you know of, that just
8 based upon what you know yourself that you couldn't judge fairly
9 in this particular case?

10 A. None.

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

12

13 EXAMINATION

14 BY MR. KOCHIS:

15 Q. Mr. Wood, I have a few questions then we will be
16 done with you.

17 We need twelve people who would promise us that if
18 we get to the penalty phase that they could base their decision
19 as to whether to vote for life without the possibility of parole
20 or the death sentence just on the evidence presented in this
21 courtroom and the law that Judge Garner will instruct you on.

22 Could you do that?

23 A. I could do that.

24 Q. If you thought, after you heard all the evidence,
25 the appropriate thing to do with Mr. Cooper was to lock him up
26 for the rest of his life and throw the key away, more or less,
27 could you vote for life without the possibility of parole?

28 A. Possibly I could.

1 Q. Likewise, if you thought the appropriate thing to
2 do in this case was to recommend that he could get the death
3 penalty, could you vote that way?

4 A. That's right.

5 MR. KOCHIS: I don't have any further questions.

6 THE COURT: We'd like to discuss it privately, Mr. Wood.
7 If you'd wait outside for a minute the bailiff will give you
8 further instructions.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: Thank you for coming in.

11 Anything, gentlemen?

12 MR. NEGUS: No.

13 MR. KOCHIS: No.

14 THE COURT: Give him a return date, please, and bring in
15 the next.

16

17 THE CLERK: Charlene Vankirk.

18

19 CHARLENE VANKIRK

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, ma'am.

26 A. Good afternoon.

27 Q. You are Charlene Vankirk?

28 A. Yes.

1 Q. I'm the same guy that was on the bench before but
2 we have arranged things a little more informally in hopes that
3 you will be a little bit more relaxed and more easily answer our
4 questions.

5 A. Uh-huh.

6 Q. First, has anything happened to you since you were
7 in a couple of three weeks ago that might complicate your
8 ability to serve in this case?

9 A. No.

10 Q. Next, I want to remind you of some of the things I
11 said then and then we're gong to ask you about your attitude
12 toward the death penalty and life without parole.

13 You remember I told you that there could be two
14 phases to this case. The first phase is what's called the guilt
15 phase and there the jurors are concerned only with guilt or
16 innocence, they don't even consider penalty.

17 The second phase, if we get there, and we don't
18 know if we ever will. but if we get there the jurors would be
19 only concerned with penalty.

20 Further evidence will be presented in mitigation
21 and aggravation; the attorneys get a chance to argue, the Court
22 would instruct further and give you guidelines, but then the
23 jurors would have to retire and make a decision and decide which
24 is the most appropriate penalty under all the circumstances:
25 Death by execution on the one hand, life imprisonment without
26 the possibility of parole on the other.

27 Do you remember I said words to that effect?

28 A. Uh-huh, yes.

1 Q. Would you answer yes or no, please.

2 A. Yes.

3 Q. My question to you now is, if we do get to a
4 penalty phase, and you are serving, would you be able to fairly
5 consider both of those two possible alternatives: Death and
6 life without parole?

7 A. Yes.

8 Q. Would you be able to personally vote for one or the
9 other, and make your decision based upon the circumstances and
10 the evidence brought out at trial?

11 A. Yes.

12 Q. You don't feel that you have your mind made up at
13 this time; is that correct?

14 A. No.

15 Q. I don't know enough about what it is.

16 Q. In general you don't strongly favor either death or
17 life without parole at this time.

18 A. No.

19 Q. Do you feel that in anyway you would have a real
20 serious dread or horror of making that kind of decision, the
21 responsibility of making a life or death type of decision.

22 A. No.

23 THE COURT: Okay. Mr. Negus.

24

25

EXAMINATION

26 BY MR. NEGUS:

27 Q. Mrs. Vankirk, the judge is letting Mr. Kochis and
28 myself ask most of the questions. We're not trying to pry or

1 embarrass you in anyway, but we're required by law to get your
2 honest opinions on these matters before we begin.

3 What had you heard about the case before you came
4 to court the first time?

5 A. The name, I'd heard, and that they suspected that
6 person of murder. That is about all I heard.

7 Q. Did you hear any reason why, about why they
8 suspected the person of murder?

9 A. No. That it was out of the San Diego area, but not
10 why.

11 Q. Did you hear anything about the case when it was in
12 court in San Bernardino County before we came down here?

13 A. No, I didn't know it had gone to court.

14 Q. What was your reaction when you came in and found
15 out that you were going to be a juror on this particular case;
16 were a prospective juror?

17 A. Very interested.

18 Q. Why?

19 A. To see what the court system is about.

20 Q. You have never been on jury duty before?

21 A. No, huh-uh.

22 Q. When -- did you have any particular opinions about
23 the case one way or the other? Did you have, or come to any
24 conclusions about the case yet based on the little bit that you
25 have heard?

26 A. No, I haven't heard enough to even think about it.

27 Q. Did you have any discussion with your fellow jurors
28 down in the jury room when the case first came up and you were

1 introduced to us in court?

2 A. No.

3 Q. We're asking you some questions about the death
4 penalty, and I hope you understand that by doing that the law
5 requires us to ask these questions before we even determine
6 guilt or innocence, and we may never even get to that particular
7 stage.

8 You won't assume that because we're asking you
9 questions about the death penalty that that means we will ever
10 get to that particular question, right?

11 A. Right.

12 Q. What, in general, is your opinion about the death
13 penalty?

14 A. My opinion?

15 Q. Yes, ma'am.

16 A. I think it is too satisfy the public, and not
17 really a form of personal punishment to a person because -- once
18 that's accomplished there is no more punishment, it is over.

19 Q. Do you think that -- do you think that we should
20 have it in California, in favor of having it?

21 A. I really don't understand it because I don't think
22 it is for the people that are involved, I think it is for the
23 people that feel hurt because of maybe a loss. So, I guess I
24 would say we don't need it, a death penalty.

25 Q. What do you think about life imprisonment without
26 parole?

27 A. I think that's punishment for someone that has done
28 something wrong.

1 Q. Do you think that you have any -- any particular
2 type of crimes that you think it is appropriate for or do you
3 have an opinion on that?

4 A. For?

5 Q. Life imprisonment without parole?

6 A. Definitely for murder.

7 Q. In this particular case, if you were to sit as a
8 juror, and you had to decide a penalty for whoever is
9 responsible for these crimes, the judge would instruct you that
10 there is some type of evidence which makes this a more serious
11 multiple murder. other types that makes it a less serious
12 multiple murder, you'd have to balance and weigh that evidence
13 at the end of the case and vote for the death penalty if it was
14 more serious, vote for life without parole if it is less
15 serious.

16 Q. Would you have any difficulty doing that?

17 A. No.

18 Q. You could be fair on both the issues of guilt and
19 innocence and on penalty?

20 A. I feel so, yes.

21 Q. Do you belong to an organized religion?

22 A. No.

23 Q. Have religious ideas or beliefs, of any sort,
24 influenced your opinions on crime and punishment or the death
25 penalty?

26 A. No.

27 Q. It is based on your own individual philosophy?

28 A. Yes.

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

2 PROSPECTIVE JUROR: Okay.

3

4

EXAMINATION

5 BY MR. KOCHIS:

6 Q. Mrs. Vankirk?

7 A. Miss.

8 Q. Miss, I'm sorry. Miss or Ms.?

9 A. Just Miss.

10 Q. We had two occasions in the '70's in which we had
11 death penalty-related issues on the ballot and people circulated
12 petitions, they gathered signatures, some people signed the
13 petitions and people voted one way or the other, there was a lot
14 of debate among people at that time as to whether we should have
15 a death penalty or not have a death penalty.

16 Did you get involved in that, in those elections
17 either circulating the petitions or signing them?

18 A. No.

19 Q. Did you take a strong position at that time one way
20 or the other about whether we should have a death penalty or
21 not?

22 A. No, I didn't.

23 Q. Your feelings that you feel we don't need it, is
24 that a strong feeling with you or --

25 A. No, it is just that I feel it should be proven if
26 something that strong should be enforced.

27 Q. Okay. Knowing that you have that feeling, if in
28 this case you were selected as a juror, when you looked at the

1 evidence in the penalty phase, for example, if we got to a
2 penalty phase, do you think that feeling you might have deep
3 down inside would affect the way you would evaluate the evidence
4 as to whether this defendant should get the death penalty or
5 life without the possibility of parole?

6 A. No, I think I can evaluate fairly.

7 Q. Objectively?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. He doesn't take those down in between.

12 How do you feel, getting specific for a moment,
13 about being put in a position in this case, for example, where
14 you'd have to make this type of decision?

15 A. How do I feel about it it?

16 Q. It is an open-ended question.

17 A. I haven't gotten to that point, so -- you know. I
18 haven't been in that stage where I have to make that decision,
19 so I really don't have an opinion on it.

20 Q. Okay. Putting aside for a moment the two possible
21 decisions you could have, if we got that far. which would be to
22 vote for death or life without the possibility of parole, some
23 people feel that regardless of what the evidence would show or
24 what the law is that such a heavy decision, they just don't want
25 to be responsible making a decision of that magnitude that's
26 going to affect another person for the rest of his or her life,
27 they just would avoid making that decision one way or the other.

28 Do you have any thoughts along that line?

4 1 A. I feel I can make a decision like that.

2 Q. Okay. So you would not be the type of person that
3 if we got to a penalty phase, some three or four months down the
4 line, you heard all the evidence, you would not be coming to us
5 and say, I just realize that it is so serious I can't decide one
6 way or the other.

7 A. No, I wouldn't do that.

8 Q. If, at the end of the penalty phase you felt that
9 based on the evidence that you had heard in both trials, and
10 based on the law, that under the law the appropriate punishment
11 would be to impose the death penalty, could you follow the law
12 and vote that way?

13 A. Yes.

14 Q. To take it a step further, the law requires that we
15 poll the jurors in open court, the judge simply asks each juror
16 if the verdict the clerk has just read is in fact the way they
17 voted.

18 So, there is no mistake in this case, if we got to
19 the penalty phase, and you and eleven other people decided that
20 the appropriate punishment was death. would you have any problem
21 indicating in open court that you had voted that way?

22 A. No, I wouldn't.

23 Q. To take it one additional step further, one person
24 is selected as the foreperson, that person, in addition to
25 presiding over the jury deliberations signs and dates the
26 verdict form, eventually it goes to the clerk.

27 If you were elected as the foreperson by the other
28 eleven jurors, and you and the other eleven people decided that

1 this was an appropriate case to recommend the death penalty be
2 imposed, would you have any problem dating and signing that
3 verdict form?

4 A. No.

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

6 THE COURT: We'd like to have you wait outside briefly
7 while we discuss it privately, then bailiff will give you
8 further instructions.

9 Anything, gentlemen?

10 MR. KOCHIS: No.

11 MR. NEGUS: No.

12 THE COURT: Give her a return date

13 THE BAILIFF: Imogene Adnress.

14

15 IMOGENE ANDRESS

16 Called as a prospective juror, having been previously sworn,
17 testified as follows:

18

19 EXAMINATION

20 BY THE COURT:

21 Q. Come have a seat. please.

22 Good afternoon. Are you Imogene Adnress?

23 A. I am.

24 Q. We're gathered in an informal manner around the
25 table, hopefully you will be a little bit more relaxed and at
26 ease that way rather than looking at a stiff black robe.

27 A. Yes.

28 Q. Has anything happened to you, ma'am. since we last

1 saw you that would complicate your ability to serve on this
2 case?

3 A. No, sir.

4 Q. I want to remind you of some of the things that I
5 said before, as a preamble to asking some questions of you about
6 the death penalty and life without parole.

7 Do you remember I told you when I was on the bench
8 that there could be two phases to this case. The first is a
9 guilt phase and the jurors there are concerned only with the
10 guilt or innocence. Depending upon the verdicts that are
11 rendered in that phase we could go to a second phase, we don't
12 know if we will or not, but we might get to a penalty phase.

13 If we get to a penalty phase, further evidence
14 would be presented, counsel would argue, the court would
15 instruct further on the law and give you guidelines to assist
16 you, but the jurors, in their deliberations, would have to
17 decide which is the most appropriate punishment applicable to
18 this case: Death. on the one hand, and life imprisonment
19 without the possibility of parole on the other.

20 Remember I told you words to that affect?

21 A. Yes, sir.

22 Q. My question to you now is, if you serve on this
23 case and you do get to a penalty phase, will you be able to
24 fairly consider both of those two possible penalties: Death and
25 life without the possibility of parole?

26 A. Yes, sir.

27 Q. Would you be able to personally vote for either one
28 of those and make your decision based upon the evidence and

1 circumstances brought out at the trial? You don't feel locked
2 into one or the other at this time.

3 A. No, I do not.

4 Q. Do you have any real dread or dismay about making
5 that kind of a heavy decision?

6 A. No, I do not.

7 THE COURT: Okay. Mr. Negus, please.

8

9

EXAMINATION

10 BY MR. NEGUS:

11 Q. Mrs. Andress, the judge is letting Mr. Kochis and
12 myself ask you most of the questions. We're not trying to pry
13 or embarrass you in any way, but the law requires we get your
14 opinions before we go any further.

15 What had you had heard about this particular case
16 before you came to court?

17 A. Well, what was written in the newspaper. I didn't
18 read the details too much, it came back in little bits and
19 pieces as I was filling out the -- but I think remember most of
20 the details.

21 Q. Can you sort of tell me what you can remember now?

22 A. What I remember of it?

23 Q. Yes.

24 A. That he came upon this home, and the manner that
25 the four people were killed. I remember that.

26 Q. What do you remember?

27 A. With a hatchet. And that one little boy survived
28 and was able to identify the person afterwards.

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

2 A. No.

3 Q. Do you -- have you formed any impression as to
4 whether or not he is guilty or innocent?

5 A. Well, I think I feel he's guilty at this point.

6 Q. Why do you --

7 A. Because it has been proven so. But by the things
8 that have been said. And if it is -- they are true, then he
9 certainly would be guilty.

10 Q. Is this a strong opinion of yours?

11 A. Yep, it is.

12 Q. That was based primarily on stories from the
13 newspaper or other sources for it?

14 A. No, the newspaper only.

15 Q. That would have been the Tribune?

16 A. Right.

17 Q. Mr. Cooper has pled not guilty to the charges of
18 murder, pled guilty to the escape, but not guilty to the charges
19 of murder, and the law requires that he be presumed to be
20 innocent. Can you do that?

21 A. That I -- repeat that, please.

22 Q. Can you presume that Mr. Cooper is innocent right
23 now? Do you think you'd be able to?

24 A. Not unless I hear more facts about it.

25 Q. So what you are saying is that if I were able to
26 produce enough evidence to change your mind, then you might be
27 able to vote not guilty, but as you sit there now --

28 A. Right.

1 Q. The law requires that for a juror to be fair and
2 impartial, according to the law, that the juror be able to put
3 all these matters out of their minds.

4 Are you telling me that you couldn't do that?

5 A. Do that again once more.

6 Q. The law requires that in order for there to be a --
7 for a person to be particularly qualified to sit on a jury, that
8 they be able to put whatever they know about the case out of
9 their mind and assume that the person is innocent at the
10 beginning.

11 A. I certainly would try.

12 Q. Okay. Can you tell me that you can and will do it?

13 A. No, I can't do that.

14 Q. Why not?

15 A. Well, because I know how -- how the evidence as
16 presented will effect me. It is hard. I can't predict exactly
17 how I am going to feel in the future. That's impossible, isn't
18 it?

19 Q. Well, what's your guess? Do you think that you can
20 ignore your strong feelings or do you think that they will stay
21 with you?

22 A. That would be very difficult.

23 Q. For you to ignore them?

24 A. Yes, it would.

25 Q. Have you ever sat as a juror before?

26 A. Never have.

27 Q. Do you think that given your strong feelings about
28 this particular case that you might be better able to be a fair

1 juror in a case where you hadn't formed such strong opinions?

2 A. Well, you're probably right. That is probably
3 true. It is very difficult for me to say exactly how I would
4 feel about it. But as of now I feel very strongly about it.
5 Maybe that's -- I could be persuaded otherwise, I don't know.

6 Q. In this particular case, leaving aside the question
7 of guilt or innocence, have you determined in your own mind that
8 any particular punishment is appropriate for it?

9 A. Well, I feel like that he induced death he should
10 suffer with the same penalty, if it is proven so.

11 Q. So, if there was proof of guilt you would feel that
12 you would reject life without parole for this particular --

13 A. Yes, I would.

14 Q. Is that also a strong feeling of yours?

15 A. Yes, it is.

16 Q. What is the basis of it?

17 A. Well, I just feel like it is the right thing. I
18 don't have -- I don't understand what you mean what basis for
19 it. If it is a strong feeling I have, that that's the penalty
20 for committing something like that, is to have the same apply to
21 the person who did it.

22 Q. I guess I am asking you -- my question wasn't very
23 well worded. What I meant to say is, why do you feel that, why
24 do you feel that way?

25 A. That is just the way I have been led to believe all
26 my life. That is just the way it is. I don't have any
27 particular reason why, it is just a feeling I have.

28 You mean education wise or --

1 Q. No, I was just -- you know, some people might feel
2 that way because of their religious beliefs, others because of
3 their social beliefs, others, that this crime so shocked them --

4 A. Right.

5 Q. That's what you feel?

6 A. Right.

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

8

9

EXAMINATION

10 BY MR. KOCHIS:

11 Q. I have a few questions, so there is no
12 misunderstanding in my mind.

13 The way our system works, we try people in a court
14 of law based on evidence and not in the newspapers. Do you
15 understand?

16 A. Right.

17 Q. So, we need a promise from people that if they sit
18 as a juror that they'll base their decision only on what they
19 hear in court, only the facts and the law, and not what they may
20 have read in the newspaper.

21 Could you give us that promise?

22 A. Yes, that's right, I can.

23 Q. Okay. So you apparently thought -- well, you have
24 heard some things about -- in the newspapers about this case.

25 A. Yes, I have.

26 Q. And most people who read the newspaper formulate at
27 least some opinion based on what they have read and you have, it
28 appears, have done that.

1 A. That's right.

2 Q. But what we need to know is, let's say we keep you
3 on this case as a juror and you hear the evidence.

4 What would you decide the case on: Would you
5 decide the case on what you hear in the court or what you heard
6 in the newspaper?

7 A. What I hear in court.

8 Q. If, for example, you heard some -- you heard some
9 things about the boy identifying this man as the attacker --

10 A. Right.

11 Q. -- and, if, for example, in this trial it was shown
12 that the boy never identified this man as the attacker, could
13 you not consider what you heard in the newspapers to determine
14 whether this man did it?

15 A. Oh, of course. if that's proven.

16 Q. Let me ask you this.

17 If, at the end of the first trial, the guilt trial,
18 based on all the evidence that you've heard and based on the law
19 you feel that the prosecution has proven that this man did the
20 crime beyond a reasonable doubt, could you vote for guilty?

21 A. Yes.

22 Q. Likewise, if at the end of the case you have heard
23 all the evidence on both sides, you have heard the arguments and
24 the law. you feel that my side has not proven beyond a
25 reasonable doubt that this is the man that did it, could you
26 vote for not guilty?

27 A. Under those circumstances, yes.

28 Q. If, for the sake of argument, twelve people agreed

1 that this man did the killing we would then go into the penalty
2 phase. into the penalty phase, and you would have to decide,
3 with eleven other people, whether the appropriate punishment to
4 recommend would be to lock this defendant up for the rest of his
5 life or to recommend that he be put to death.

6 Do you understand that?

7 A. Yes, I do.

8 Q. And, again, we would have to have your promise that
9 you could base your decision as to whether he should be locked
10 up for the rest of his life or put to death based upon what you
11 hear in the courtroom.

12 Could you give us that promise?

13 A. Yes, I could.

14 Q. If you felt, after you heard all the evidence on
15 both sides, that the best thing to do, the most appropriate
16 thing to do under the law was to lock this man up for the rest
17 of his life, could you vote that way?

18 A. Well, if it is proven that is, if that is the best
19 thing to do. I don't think that is very good idea, but --

20 Q. Well --

21 A. I guess that's the wrong answer.

22 Q. Strangely enough, in that phase if we don't prove
23 the ultimate issue one way or the other, depending -- on the one
24 hand his lawyer has a right to introduce certain evidence on his
25 behalf. the prosecution has the right to introduce certain
26 information, both sides get a chance to argue, the judge will
27 give you some guidelines, but then it will be completely up to
28 you and the eleven other people as to what is the most

1 appropriate penalty. The jury has a lot of discretion, and you
2 are going to have to decide based on the law and the facts what
3 is the most appropriate thing to do.

4 A. Right.

5 Q. If you feel it is the most appropriate thing to do,
6 to lock him up for the rest of his life, could you vote that
7 way?

8 A. I don't know what to answer on that one.

9 Q. Why not?

10 A. Because I don't think that is a good penalty.

11 Q. Okay.

12 A. But --

13 Q. Well. let me ask you this question. Two questions.
14 Some people have a feeling, have a strong feeling
15 one way or the other about the death penalty, they're kind of
16 against it, and they come in here and they tell us, or they
17 would say, I don't care what the evidence is I can't see taking
18 another person's life, I would vote to lock him up each and
19 every time. You are not in that group.

20 Do you feel that way, you would always vote for
21 life without the possibility of parole?

22 A. I don't know how to answer that question, that's --
23 that would be the next to the death penalty, wouldn't it?
24 That's the --

25 Q. Yes.

26 A. -- the alternative. And I suppose that would be if
27 one isn't possible the other one is the next.

28 Q. I didn't ask that in a very good way. Let me try

1 it again.

2 Some people fall into one of two groups, there's
3 three groups. On the one side are the people that say only God
4 or someone else has a right to take someone's life, and I could
5 never vote for the death penalty, I would always vote for life
6 without the possibility of parole. That is group one.

7 Group two says, I have to hear all the facts, I
8 have to hear the case and then I could vote for either life
9 imprisonment or the death penalty depending on which one would
10 be the best punishment in this case.

11 A. Right.

12 Q. The third group says, if this man is convicted of
13 killing four people, I don't care what the rest of the case is
14 about I am going to vote each and every time that he be put to
15 death.

16 So, of those three categories, do you fall into
17 anyone of them?

18 A. I must be in one or the other, that is it.

19 Q. That is not true. Those are three possible
20 outlooks I gave you.

21 Do anyone of those express your attitude?

22 A. The death penalty, if he is proven guilty. I must
23 always stay in one. you are saying?

24 Q. No, no, no. I didn't -- sometimes I have trouble
25 explaining it.

26 A. I have trouble understanding.

27 THE COURT: I don't think you need to belabor it.

28 Proceed if you -- but proceed if you wish.

1 MR. KOCHIS: Does the court have some indication?

2 THE COURT: Yes. I think that the lady would have
3 trouble being impartial.

4 MR. KOCHIS: I don't have any other questions then.
5 Thank you.

6 THE COURT: Nobody is blaming you for your attitude,
7 ma'am, but would you wait outside for a minute, let us discuss
8 it privately. Thank you for coming in, please.

9 MR. NEGUS: Cause on two grounds, both publicity and
10 death penalty.

11 THE COURT: I will grant the challenge. It appears that
12 she definitely is bias and prejudiced.

13 So, excuse her with our thanks and bring in the
14 next one.

15 THE BAILIFF: GLENDA HENDRY.

16

17 GLENDA HENDRY

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

20

21 EXAMINATION

22 BY THE COURT:

23 Q. Come have a chair, please.

24 You are Glenda Hendry??

25 A. Glenda.

26 Q. Hendry.

27 A. Yes.

28 Q. Good afternoon.

1 A. Good afternoon.

2 Q. I feel a compulsion to explain why we're gathered
3 around --

4 A. Please.

5 Q. -- in such a funny way. It is just designed to let
6 us converse on a more equal basis, and it puts you at least a
7 little more at ease to answer the hard questions we're going to
8 put to you.

9 A. Okay.

10 Q. Before I commence asking those hard questions I
11 want to remind you of some of the things I said when I had the
12 robe on sitting up there.

13 A. Uh-huh.

14 Q. This case could have two phases. We don't know if
15 we will ever get to the second phase, but we might. The first
16 phase the jurors will be concerned only with guilt or innocence.

17 Do you recall that, at the guilt phase?

18 A. Okay.

19 Q. Depending on your verdict, we could go into the
20 second phase wherein the jurors determine what the appropriate
21 penalty should be.

22 A. Uh-huh.

23 Q. If we get into that second phase. further evidence
24 would be presented by counsel, they would argue the case, I
25 would instruct the jurors on the law, and any guidelines that
26 might be of assistance to you, the jurors would then retire and
27 they would decide, hey, which one of those two is most
28 appropriate under all the evidence and the circumstances.

1 about these matters before we go any further.

2 A. I see.

3 Q. There is no really right and wrong answers.

4 A. Right.

5 Q. We want what you feel.

6 A. Thank you.

7 Q. You indicated to us in your questionnaire that you
8 had some knowledge of this case prior to your coming to court.

9 What do you remember about the case?

10 A. The only thing I do remember is just a vague
11 remembrance. I remember the little boy, the child.

12 Q. What do you remember about him?

13 A. That he -- that he got away, he escaped, that's
14 about as much as I can remember. And I don't -- I remember
15 something about a wound to his neck. That's all I can remember.
16 And I'm not even clear on that. That's about what I can
17 remember.

18 Q. Do you remember having heard anything about Mr.
19 Cooper?

20 A. No.

21 Q. Did you have any -- did you -- had you ever heard
22 the name?

23 A. I had heard the name, uh-huh.

24 Q. But no contact or anything associated with him.

25 A. No.

26 Q. Do you have any particular impression from the
27 newspapers as to his guilt or innocence?

28 A. No, huh-uh. It didn't phase me either way, you

1 know, completely oblivious to it. I didn't pay that much
2 attention to it.

3 Q. You don't follow crime news.

4 A. I do, but I didn't -- in everyday life -- it didn't
5 make that big an impression on me.

6 Q. Did you know the case was coming here to San Diego?

7 A. No, I did not.

8 Q. What was your reaction when you found out that this
9 was the type of case that you were, had been called to do jury
10 service on?

11 A. There, I have no opinion. It was just a case I was
12 assigned to.

13 Q. You didn't care between this or a civil case?

14 A. No. No.

15 Q. We're asking you some questions about the death
16 penalty, and that is because the law requires us to ask those
17 questions before jurors even determine guilt or innocence, sort
18 of backwards.

19 A. I see.

20 Q. You won't take from the fact that we are asking you
21 these questions about penalty that you will decide, you will
22 ever get to that, or Mr. Cooper will be found guilty, will you?

23 A. No.

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

25 A. I -- if a case -- I'm for the death penalty if, if,
26 you know, if it is meant for that person. You know, if it is
27 decided upon, you know, that would be fine. I'm for the death
28 penalty itself.

1 Q. Why?

2 A. I really couldn't put my finger on it. Just -- I
3 really don't have an opinion on that, I really couldn't tell you
4 why. I just believe in the death penalty for a person who has
5 committed a murder or so forth, and if it goes to the death
6 penalty, then I would be for that.

7 Q. Do you --

8 A. It depends on the information, you know, on the
9 trial itself.

10 Q. Okay. What do you mean by the trial itself. You
11 mean the guilt, whether the person is guilty or not, or the
12 circumstances of his --

13 A. The circumstances, right. The circumstances
14 surrounding the case itself, and, um, I really can't give you
15 anymore on that.

16 Q. At various times, if you are determining penalty,
17 you are asked to take in like the background of the person
18 involved. There is some things about the background which may
19 make it more serious, some things about the background, a
20 person's background that makes it less serious.

21 Do you think that you could take into account the
22 person's background as well as the actual crime itself in making
23 a determination as to penalty?

24 A. I don't think so.

25 Q. Why not?

26 A. I don't -- I don't think that his background has --
27 you know, has that much to do for me to prove his innocence or
28 his guilt. I do -- I think -- don't think his background has

1 that much to do with the crime he committed.

2 Do you understand what I am saying?

3 Q. Let me just tell you, give you a piece of
4 information then ask you to clarify what you mean.

5 A. Okay.

6 Q. In our criminal cases of this particular type, it
7 is a two-stage proceeding: There's -- first is the guilt or
8 innocence, and that you have indicated to me you don't have any
9 any particular feeling about this case one way or the other.
10 Then if you find somebody guilty, then there's a second stage.

11 A. I see.

12 Q. The second stage has to do with both the crime and
13 the person's background, both of which go into the sentencing
14 equation. Some people feel that multiple murder, kids being
15 murdered, things like that, they're automatically for the death
16 penalty. Other people are absolutely for life imprisonment
17 without parole.

18 The law wants jurors that can take into
19 consideration both the crime and the person's background and
20 depending upon the serious of that particular balancing
21 equation, vote for death or life without parole.

22 What I am asking you is, do you have your sort of
23 mind made up as to penalty in this particular case, or a case
24 involving multiple murder, or could you take into account the
25 person's background?

26 A. I understand what you are saying now. I could,
27 yes.

28 Q. So, if there was things about a person's background

1 which warranted it, then you could use that to choose the lesser
2 penalty, life without parole.

3 A. Yes. I understand, yes.

4 Q. If there was other evidence which was made it
5 stronger, you could possibly choose the death penalty.

6 A. Yes.

7 Q. It's sort of a structured decision between the two.

8 A. Right.

9 Q. Do you belong to an organized religion?

10 A. Yes.

11 Q. Which religion?

12 A. Fundamental Baptist.

13 Q. And have the views of your church influenced your
14 opinion on crime and punishment and the death penalty?

15 A. No.

16 Q. This is basically a matter of individual conscience
17 by yourself?

18 A. Yes.

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

20

21 EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mrs. Hendry, I have a couple questions.

24 Mr. Negus talked to you at some length about your
25 feelings about the death penalty and I think we understand what
26 those are.

27 Moving from the abstract to the specifics in this
28 case, what do you think about sitting as a juror in a case where

1 you'd actually have to decide, if we got to the penalty phase,
2 whether to vote for life or death? How do you take that?

3 A. Me alone as, you know, a person or as an individual
4 person --

5 Q. As an individual person.

6 A. It wouldn't -- say that again.

7 THE COURT: I'm not sure she understood.

8 PROSPECTIVE JUROR: Right.

9 BY MR. KOCHIS:

10 Q. I don't always ask it very well.

11 Let's me get back to it. Some people have a
12 feeling one way or the other about the death penalty. For
13 example, some people feel it should be on the books, some feel,
14 would come in here and say, hey, I feel it should be on the
15 books but I never want to be the one to make that decision to
16 vote one way or the other. I don't want to be the person to have
17 to push the button, in other words.

18 A. Uh-huh.

19 Q. If you were selected as a juror, what do you think
20 about actually having to make that decision one way or the
21 other?

22 A. That's a good question. I believe I could give it
23 fairly, a fair answer to that.

24 Q. Okay. One of the issues we try to cover, some
25 people feel that the decision is so serious they could never
26 make it, they would balk, or freeze.

27 Do you see yourself as that type of person?

28 A. No, no.

1 Q. Speculating somewhat, then, do you feel confident
2 that if we got to the penalty phase, once you heard all the
3 evidence and the law, that based on the law you would make what
4 you thought was the appropriate decision one way or the other?

5 A. Yes, I feel I could do that.

6 Q. If you thought, for example, that in this case the
7 appropriate punishment, based on everything you heard and the
8 law, was to recommend life without the possibility of parole,
9 could you vote that way?

10 A. Yes.

11 Q. And on the other hand if you thought that based on
12 the evidence and the law the appropriate punishment for this
13 case was to impose the death penalty, could you vote that way?

14 A. Yes.

15 Q. We poll the jury at the end of every criminal case,
16 and to make sure there is no mistake the judge simply asks each
17 juror in open court if the verdict the clerk has just read is
18 the way they voted.

19 If in this case the jury decided that the
20 appropriate punishment was death, would you have any problem
21 indicating in open court that that's the way you voted?

22 A. No, I wouldn't have any problem on that.

23 Q. Likewise, the way our system operates the jury
24 decides who the foreperson is going to be, and that person dates
25 and signs the verdict form.

26 If this jury selected you as a foreperson, and you
27 and eleven other people in deliberating thought this was an
28 appropriate case to impose the death penalty on, would you have

1 any problem dating and signing that verdict form?

2 A. No.

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

4 THE COURT: We'd like to discuss it privately for a
5 minute. Would you kindly wait outside and the bailiff will let
6 you know. Thank you for coming in.

7 Anything, gentlemen?

8 MR. KOCHIS: No.

9 MR. NEGUS: No, your Honor.

10 THE COURT: Okay. Give her a return date, please.

11

12 JULIA O'BRIAN.

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

15

16 EXAMINATION

17 BY THE COURT:

18 Q. You're an early bird.

19 A. No. I come in from North County. I had some
20 errands and I don't have time to go back and come in again, so I
21 thought I would wait around here.

22 Q. We are happy to accommodate you.

23 A. I appreciate that. That saves me an hour today.

24 Q. Are you Julia O'Brian?

25 A. Yes, sir.

26 Q. To explain why we are gathered around in kind of an
27 unusual manner, it's just to be more informal, put you at ease a
28 little bit so you can easily answer the hard questions put to

1 you.

2 A. They are going to be hard, huh?

3 Q. Yes, they are not easy questions.

4 Before I get to those questions I want to remind
5 you of whether some of the things I told you when I had the robe
6 on and you were in with the other people, I told you that this
7 could be a two phase trial.

8 On the one hand, the jurors are concerned only with
9 guilt or innocence. Depending upon the verdicts rendered there
10 we may or may not get to the second phase. which is called the
11 penalty phase, but we have to ask you about it now any how.

12 If there is a penalty phase further evidence will
13 be presented. After a conviction we will give you more
14 evidence. The attorneys will get a chance to argue pro and con
15 for you. The Court would give you some instructions and some
16 guidelines to help you in your deliberation. But the jurors
17 would make a decision then, which is the most appropriate
18 penalty to be imposed, death by execution on the one hand, life
19 imprisonment without the possibility of parole on the other.

20 My question to you now, Mrs. O'Brian, if you are
21 selected to serve on this jury and if we do get to a penalty
22 phase. will you be able to fairly consider both of those two
23 possibilities?

24 A. I'm sure I could.

25 Q. Would you be able to personally vote for death on
26 the one hand or for life in prison without parole on the other
27 and make that decision based upon what you hear in court of the
28 evidence and the circumstances?

1 A. Yes, sir.

2 Q. That question -- Those questions imply that you in
3 effect have an open mind. And you haven't got your mind made up
4 either on guilt or punishment at this time, is that fair?

5 A. I'm going to hesitate right there. I feel that if
6 I hear something to the contrary, I would certainly weigh that,
7 but reading the papers, then I again feel that I've made up my
8 mind a little but not so strongly that I wouldn't be open.

9 Q. Okay. I will let counsel inquire about that.
10 Before I get to that though I will ask you: Do you
11 have a strong feeling about having to make that a life or death
12 type decision one way or the other --

13 A. I very definitely believe in capital punishment;
14 but not only that, I feel strongly that the criminal should die
15 the same which his victim did. I mean, that's really -- I'm
16 from an era where we didn't have all this crime, and it just
17 upsets me when I see something like that going on. I just feel
18 like they could go the other way and stop it. Nobody is going
19 to keep doing things, you know, that --

20 Q. Have you gotten yourself into a box to where you
21 you couldn't consider the evidence and perhaps, if appropriate,
22 vote for life without parole?

23 A. There is a difference between considering the
24 evidence and somebody that's really guilty and feeling strongly
25 against that person.

26 THE COURT: Mr. Negus, I will let you take it --

27 PROSPECTIVE JUROR: In other words, I don't go around
28 thinking everybody's guilty, let's put it that way.

1 THE COURT: Even if he is found guilty, this is still an
2 open-ended question as to which is the most appropriate
3 punishment.

4 Mr. Negus, you may go ahead.

5

6

EXAMINATION

7

BY MR. NEGUS:

8

Q. Do you feel that you have made up -- let's just
9 take it --

10

You know something about this particular crime?

11

A. I read about it.

12

13

Q. Do you have a feeling that this -- whoever is
guilty of this particular crime, that that person deserves to
14 die?

15

16

17

18

A. That -- yes. If somebody -- as vicious as I
thought it was at the time, if I felt somebody was guilty of
that I would definitely feel they would -- I would go for the
capital punishment on that.

19

20

21

22

23

24

Q. Under -- under the law in California one's allowed
to bring in as part of that particular decision evidence about
the person's background, his character, that sort of thing,
which evidence can sometimes be taken in what we call
mitigation; that is, evidence which the law would require that
you weigh towards life imprisonment.

25

26

Do you think that you would always reject that type
of evidence and vote for capital --

27

28

A. No. But I would surely weigh it against the
victims -- you know, it wouldn't be just one-sided.

1 Well, I feel sorry for this poor person that did
2 something because of his background. It wouldn't be that cut
3 and dried.

4 I think I would weigh what he did because I
5 strongly feel that you can change yourself, regardless of how
6 your parents -- being a parent myself, you can -- they can ruin
7 children and children can be abused and whatever, but on the
8 other hand, the child can help himself also, I feel, and it's
9 not strictly up to -- that doesn't give anybody
10 the right to go out and hurt somebody else because of their
11 childhood.

12 Q. Well, I guess what I'm asking was, that we have --
13 there are some people that -- that come in and say that, by
14 gosh, they don't believe in the death penalty, no matter how
15 horrendous the crime they're going to -- they're going to vote
16 for life imprisonment. Other people come in and say a murder is
17 a murder and a person deserves to die.

18 A. I think I go along with that feeling, that a murder
19 is a murder and that you don't let them out in ten years to go
20 out and kill somebody else then come back in and, oh, poor soul,
21 you know --

22 I'm sorry. I'm very emotional about crime, more so
23 than I feel the criminal should not be put in jail, they should
24 have to work for their living and raise their own food and build
25 their own jails instead of taking it from the honest people that
26 haven't done a thing.

27 I feel it's so one-sided that this poor crime --
28 criminal, you know, and the crime he did, he has a reason for

1 it, no.

2 Q. There is no --

3 A. I think we are all at fault in promoting this.

4 Q. There's no right and wrong answers to the questions
5 that we are asking. We are basically just asking you that --

6 A. Okay. I'm trying to explain the best I can.

7 Q. I appreciate it.

8 A. More so than I feel that all this money that's paid
9 to the attorneys should go into psychiatry and whatever to help
10 these poor people that are misguided in their childhood.

11 You know, I mean it's an emotional thing with me.
12 But I still feel I can know right from wrong. I'm not going to
13 go around saying, "You are guilty. You are not guilty," based
14 on nothing. But on the other hand, if you're guilty I don't
15 have that much sympathy because did you something.

16 Q. Well, see that -- whether it's right or wrong, and
17 we don't make the laws, but what the law in California is,
18 rightly or wrongly, is that even if a person's guilty of
19 multiple murder, a jury can chose fairly between death and life
20 without possibility of parole, in some circumstances voting for
21 life without parole for multiple murder, other circumstances
22 voting for death for multiple murder. It is required to pick
23 between those two penalties because the voters have not seen
24 fit, or the judges have not seen fit to allow whatever having a
25 legal system where everybody who murders somebody gets killed.

26 Are you telling us that you're not that kind of
27 juror, that you would always go for the death penalty?

28 A. No. I'm telling you that I would go for the death

1 penalty unless you very strongly showed me that he should not
2 have -- I wouldn't go the other way. I would go for the death
3 penalty unless you could show me very strongly that he doesn't
4 deserve to die.

5 Q. We are not starting to --

6 A. That's it. I can't make it any clearer than that.

7 Q. So we are not starting at equal? You are not sort
8 of equally balanced between life imprisonment and the death
9 penalty?

10 A. I'm weighted towards the fact, again, that I feel
11 that the criminal should meet the same fate that he dealt out to
12 his victims. And I think that would stop a lot of crime. So I
13 go from that, and then well, if you're not, and I would wait and
14 go over to the other side of the pendulum based on what is
15 brought out.

16 Q. I appreciate, you know, your candor. And I just,
17 you know, part of it we have to -- the law -- the law requires
18 us to clarify your answers, to make -- people's thinking doesn't
19 always fit in legal categories, so we are trying to --

20 A. I'm not -- I don't go down the line, and I can't
21 see this way or that. I weigh what I hear. I weigh what I
22 hear. I think about what I hear. And I make my decisions
23 accordingly.

24 THE COURT: Try not to anticipate for a moment. Just
25 listen. These questions have been given a lot of thought, and
26 try and answer the specific question, please.

27 PROSPECTIVE JUROR: Okay.

28 BY MR. NEGUS:

1 Q. Well, I guess, you know, trying to get back to my
2 legal boxes again, if legal boxes don't fit, as you have, feel
3 free to tell me. But I'm hearing from you that you are not
4 fairly balanced between life -- between life and death. If the
5 person is guilty, unless there is overwhelming evidence
6 otherwise, you're going to vote for death?

7 A. I think that's accurate.

8 Q. Let me go back to what you said earlier.

9 You've heard something about this particular case.
10 What have you heard?

11 A. Well, I recall it was a father and a mother and a
12 child, and one child was not killed; and it was something that
13 he had escaped from an institution, I think it was four men, and
14 the one they found on the boat.

15 And I recall thinking that --

16 The picture was horrid in the paper.

17 If you will excuse me, you look much better now.

18 And whatever, but the picture in the paper was
19 really bad at that time. And I thought to myself, boy, that
20 animal. And, you know, I weighed what they said in the paper.
21 But on the other hand I could, again if I hear to the contrary
22 other -- I feel that I'm balanced enough that I can go -- based
23 on what I hear now. I was basing my decision at that time on
24 what I was reading.

25 Q. Can you put what you read out of your mind and just
26 start from blank?

27 A. Yes. I think so; I think so.

28 Q. So, on the issue at least of guilt or innocence,

1 you feel that whatever you may have felt in the past --

2 A. I think I would compensate for the facts that I
3 know that I had and to be fair because, I mean, this is
4 something you don't want on your conscience, somebody to be sent
5 to prison for something that you just guessed at. So I think
6 that I would definitely have to be convinced that it was one way
7 or the other, again, not the newspapers because I'm also aware
8 the papers come up with some really strange stories sometimes
9 that are not true.

10 Q. In a criminal case the burden of proof is on Mr.
11 Kochis and Mr. Kottmeier there to prove beyond a reasonable
12 doubt that the crime -- that Mr. Cooper is the one.

13 So that means that if a juror were to feel that
14 probably he did it, but none the less there is a reasonable
15 possibility or reasonable doubt that he did it --

16 A. So the weight then is on the reasonable doubt as to
17 whether you would -- what your definition of reasonable doubt
18 and what mine is.

19 Q. Well, the Judge would give you a definition, and
20 he'd tell you --

21 A. Okay. Well, I mean, you have that feeling, too,
22 also what you think reasonable doubt is. It could go strongly
23 one way or another.

24 Q. Well, the one legal phrases they use is abiding
25 conviction to a moral certainty of the truth of the charges.

26 So I suppose what I'm asking you is: Given the
27 strength of your feelings to begin with, if you got to a
28 situation where you felt that the evidence showed probably that

1 Mr. Cooper was guilty but you were not able to say so with an
2 abiding conviction to a moral certainty or beyond a reasonable
3 doubt, so it was probably but not beyond a reasonable doubt,
4 could you vote not guilty in that situation?

5 A. I think I could.

6 Q. So, you have enough sense at least as far as the
7 evidence is concerned to come up with a fair decision as to
8 guilt or innocence?

9 A. I think the way I could weigh is that when I saw it
10 in the paper I fell it was guilty, and when I saw him in court
11 there was a question in my mind as to whether somebody could
12 have done that. So I think I would weigh it, yes. I mean, for
13 that few minutes that we were in here I was already weighing it,
14 so I do feel I would consider what I heard.

15 Q. And just whatever evidence we had in court and not
16 anything else from outside or things people have told you or
17 previous opinions?

18 A. That's hard to determine. You know, I mean I think
19 I'm intelligent enough to know the difference; however, I
20 couldn't guarantee that my subconscious isn't going to then come
21 out and say one thing or another, you know. I have a strong --

22 THE COURT: Mr. Negus, unless Mr. Kochis establishes
23 something else I can come back to you later.

24 MR. NEGUS: Okay.

25 THE COURT: Wait a minute; just a minute.

26 MR. KOCHIS: I have a few questions. We are not done.

27 PROSPECTIVE JUROR: Oh, sorry.

28

EXAMINATION

1

2 BY MR. KOCHIS:

3

4 Q. We go both sides. We need twelve people that can
5 promise they would base their decision as to whether this
6 defendant did the murders on what they hear in the court and not
7 what they may have heard in the media. Can you give us that
8 promise?

8

9 A. I think so.

9

10 Q. Now, you mentioned that when you walked into court
11 you were it appears to me somewhat surprised at least by Mr.
12 Cooper's physical appearance.

12

13 A. Right; compared to what I had seen in the paper.

13

14 Q. Okay.

14

15 A. It wasn't that I knew. you know, him from before or
16 anything. It's just what I saw in the paper.

16

17 Q. Right. Let me ask you this question to start out
18 with.

18

19 Do you have any preconceived notion, for example,
20 that someone that comes to court in a coat and tie, in glasses,
21 and is groomed well, no matter what the evidence is that person
22 could not have done the crime?

22

23 A. No. I'm well aware that the attorneys advise you
24 how to dress in court very delicately, that you come into court
25 properly groomed and whatever. and you look your best, and so
26 that wouldn't be --

26

27 Q. A problem?

27

28 A. -- a problem with me.

28

Q. You've used one word a number of times in all the

1 different questions that I think even the Judge has asked you,
2 Mr. Negus has asked you, you used the term "weighing", and
3 that's essentially what the law requires.

4 For example, in the guilt phase you would be
5 required to take the evidence and to weigh it, you and eleven
6 other people. You actually decide who's telling the truth.
7 who's not telling the truth. And even if you believe a witness,
8 you are the ones that determine how much weight to give his
9 testimony.

10 Could you do that -- could you continue that
11 balancing thought process throughout the guilt phase?

12 A. I believe so because again, my conscience is very
13 strong and I can't feel that I would go against that if
14 something -- if I thought somebody really didn't do something.
15 I sure wouldn't -- couldn't bring myself to -- vote the other
16 way or just for prejudice or something.

17 Q. Let's say we get to the end of the guilt phase, and
18 we're going to some day, and you've heard all the evidence.
19 You've heard Judge Garner lecture you on the law, and he is the
20 expert and he will give you a definition both verbally and in
21 writing, usually, of what reasonable doubt consists of, and you
22 will be allowed to discuss that with the jurors, and you've
23 heard the arguments of the attorneys.

24 If based on the evidence, everything, you feel that
25 the State has proven beyond a reasonable doubt that this man did
26 the crime, could you vote for guilty?

27 A. Yes.

28 Q. Likewise on the other side of the coin, let's say

1 we've rested, you've heard everything, and based on the state of
2 the evidence and the law when you examined the evidence you have
3 a doubt and you examine it and you find that under the law it's
4 a reasonable doubt that this defendant is the one responsible,
5 could you vote not guilty?

6 A. Yes.

7 Q. Mr. Negus talked to you about your feelings about
8 the death penalty, and I likewise would like to talk to you
9 about that for awhile.

10 Again, we need twelve people to promise us that
11 they could engage in a weighing process, that they could, for
12 example, keep an open mind and if the prosecution chose to
13 present additional evidence at the penalty phase, evidence in
14 addition to this crime, could you keep an open mind and listen
15 to that?

16 A. Yes.

17 Q. Likewise if Mr. Negus chose to present some
18 evidence on behalf of his client, could you keep an open mind
19 and listen to it and evaluate it?

20 A. Yes.

21 Q. And then the law allows the jury again in the
22 penalty phase to decide what evidence they were going to place
23 some importance on, what evidence they would not.

24 Could you then take the evidence, take the law,
25 take the arguments of the lawyers, and decide what is the most
26 appropriate punishment in this particular case?

27 A. I think so.

28 Q. Now you mentioned to Mr. Negus that there are in

1 your mind the type of childhood you have doesn't always excuse
2 your conduct as an adult?

3 A. True. I believe that strongly.

4 Q. For example if. I was in this defendant's place and
5 I was the one on trial and you heard evidence that I had
6 murdered four people, and as my attorney, Mr. Kottmeier
7 introduced some evidence that I was spanked on one occasion as a
8 child and not allowed to go outside, that probably wouldn't sway
9 the opinion that you have that the appropriate punishment would
10 be death. would you agree?

11 A. Right; yes.

12 Q. But would you also agree that there are a lot of
13 other factors that might be quite a bit more serious than that
14 that you could listen to and consider whether or not that would
15 affect the appropriate penalty in this case?

16 A. I strongly feel that if a person has choices and
17 how he choses to go is important rather than to blame it on
18 society or his childhood or whatever. that's his choice and
19 that's the direction he wanted to go, he should be willing to
20 take the punishment for whichever path he has chosen to go.

21 Q. The Judge has an entire laundry list of factors
22 that you consider, factors in aggravation, in mitigation, and
23 what part of the instruction he gives you will ultimately depend
24 on what evidence the lawyers chose to introduce at the penalty
25 phase. So childhood is not the only factor on that list.

26 If there were other factors, and rather than bore
27 you now with all of them, that both sides offered, could you
28 keep an open mind and listen to all those factors?

1 A. I think so. I think I followed enough of that that
2 even foods I understand effects sometimes your thinking. They
3 had this experiment with children in the detention home and
4 changed their diets and their personality had a change. So
5 there are factors that change this.

6 But again, I feel strongly that the individual can
7 control it regardless. He's the one that choses to go that
8 direction.

9 Q. Let me ask you this: If we got to a penalty phase
10 and you and eleven other people engaged in this weighing
11 process, you heard all the evidence, you heard Judge Garner tell
12 you what the law is, and you listened to the lawyers state their
13 positions, if you felt that based on everything and based on the
14 law that the appropriate thing to do in this case is to
15 recommend that this defendant be locked up for the rest of his
16 life, could you vote that way?

17 A. I'd have difficulty there. I feel either he is
18 guilty or he is not. And if he is guilty he should be -- there
19 should be capital punishment.

20 Again, just to lock them up, I feel, what, they get
21 out in less than ten years, all of them. This latest survey
22 they had they are letting most of them out. I don't feel that's
23 fair to society. So they come out and they are smarter and they
24 know how to kill a few more people, and I can't see it.

25 I feel if he did it if he is guilty he should die.
26 If he didn't do it you should let him go.

27 But this bit about just a lifetime in prison I
28 don't go for.

1 Q. Let me touch on two things, and I won't take up
2 much more of your time.

3 If you were told that there's a difference -- if
4 Judge Garner tells you that there is a difference between life
5 without the possibility of parole and what is commonly referred
6 to as the straight life sentence which you are automatically
7 eligible for parole, and that in this type of case unless a
8 governor engaged in a specific act and pardoned this defendant,
9 commuted his sentence to life which would make him eligible for
10 parole, that if the governor didn't commute that he would stay
11 locked up for the rest of his life, would that make a difference
12 to you?

5
13 A. Yes, it would because I don't believe that he would
14 stay. There is that possibility that he will get out, the
15 governor will pardon him, society will feel sorry for him, and
16 they will conjure up enough public support, or they could
17 have -- even like they do in prison, like they do in prison,
18 have that prison break and get out anyway, or in prison where
19 they kill some of the prisoners and guards. So I don't go
20 along. I still feel if he did it, that's it. If they didn't,
21 that's it. But you don't go down that middle line.

22 Q. Okay. Then one last question.

23 A. I'm sorry.

24 Q. Are you saying then if Mr. Cooper is convicted, no
25 matter what the evidence is in the penalty phase, every time
26 you'd vote for the death penalty, you'd never vote for life
27 without the possibility of parole?

28 A. Oh, boy, you cornered me on that.

1 Yes. I think that would be just about it because I
2 don't -- I mean, I'd be very fair in judging whether he were
3 guilty because that would be on my conscience and I would want
4 to be sure that he was guilty. But on the other hand when it
5 came down to that if he were guilty, I don't think he has a
6 right to live, and that victim -- those victims had died and
7 then he's going -- there is the possibility, nine chances out of
8 ten, that he will be out killing somebody else eventually. I
9 don't vote for, I don't go for that.

10 Q. Thank you.

11 I have no further questions.

12 MR. NEGUS: Could I just ask one additional?

13 THE COURT: Go ahead.

14

15

FURTHER EXAMINATION

16 BY MR. NEGUS:

17 Q. When Judge Garner suggested that we let Mr. Kochis
18 have a few questions we were -- you were saying one thing to me,
19 and that was that you'd made up your mind at one point in time.
20 You started to change your mind, you thought you could put
21 everything out of your mind on guilt or innocence, now --

22 A. Right.

23 Q. Which is all I'm concerned about.

24 A. Right. That I think I would be very fair about
25 because I would surely not want it on my conscience that I sent
26 somebody that was not guilty to prison.

27 Q. You said something about an unconscious influence
28 on yourself at that point in time.

1 A. And that's where that line is. I feel that if he
2 did it, they don't have a right to live. I think that so strong
3 in me that I don't know whether I could control that. I would
4 still attempt to be fair about it.

5 Q. Okay. Do you mean that you would -- Well, do you
6 mean by that to say that if it came down to -- there was a
7 reasonable doubt in your mind but you thought probably they did
8 it you'd have trouble with the reasonable doubt standard?

9 A. No, not the reasonable doubt. I mean, if I were
10 sure that he did it, then I would have a problem.

11 Q. Okay. I'm -- let's forget about penalty for just a
12 second.

13 A. Okay; yeah. I would not have a problem at that
14 point then.

15 Q. No matter -- you could control your unconscious
16 impulses?

17 A. I think so.

18 Q. And be fair on guilt or innocence?

19 A. I think it's so important that my conscience
20 wouldn't bother me. Again I have a strong conscience. It goes
21 either right or wrong.

22 THE COURT: Would you please wait outside, let us discuss
23 it privately for a minute and we will inform the bailiff as to
24 how to instruct you further. Thank you for coming in, Mrs.
25 O'Brian.

26 MR. NEGUS: Could we take five minutes just to consider
27 that? This is so important.

28 THE COURT: I can't believe you are hesitating on this

1 one, Mr. Negus.

2 MR. NEGUS: I am.

3 THE COURT: All right. We will take the recess and give
4 us about ten minutes if you would, please.

5 MR. NEGUS: Judge, I think I made up my mind.

6 THE COURT: Everybody is still here. What do you wish to
7 do?

8 MR. NEGUS: We would submit a challenge.

9 THE COURT: Mr. Kochis.

10 MR. KOCHIS: I thought the Court had made their mind up
11 before I started.

12 THE COURT: I doubt if you could persuade me that this
13 lady would ever be fair, really. She shows such a great
14 predisposition and such depth of feeling, I think it's a good
15 challenge.

16 She will be excused for cause. So inform her.

17 Will take a ten minute recess.

18 (Recess.)

19 THE COURT: Net, please.

20 THE BAILIFF: Warren Nolting.

21

22

WARREN NOLTING,

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

25

26

EXAMINATION

27 BY THE COURT:

28 Q. Please have a seat, and good afternoon.

1 A. Good afternoon.

2 Q. You are Warren Nolting?

3 A. Yes.

4 Q. Mr. Nolting, I've deliberately arranged to have us
5 all sit down around the table informally in hopes that you will
6 be more relaxed and it will be easier to answer the hard
7 questions that we are going to put to you.

8 Before we commence asking those questions, two
9 things: One, has anything happened to you since we last saw you
10 to complicate your ability to serve in this case?

11 A. Not concerning the case. I'm self-employed and I'm
12 the sole employee and I'm pretty much -- I've been trying to
13 shut down and it's getting kind of difficult.

14 Q. What do you do?

15 A. I'm a carpenter. I'm a self-employed carpenter.

16 Q. That is, you do small contracting jobs --

17 A. Yes.

18 Q. -- home repairs, that sort of thing?

19 A. Yes. I have been trying to shut down. It's going
20 to be a hard one.

21 Q. Do you have a family?

22 A. My wife is dead, so I am by myself.

23 Q. So, you are solely supporting yourself then?

24 A. Yes.

25 Q. Well, could you perhaps somehow keep it going on a
26 half-time basis perhaps? You won't be working Friday or
27 Saturday here. and we will be needing you here only between the
28 hours of 9:30 and 4:00.

1 MR. NEGUS: We would stipulate.

2 THE COURT: Okay. I saw the message going between the
3 two of you.

4 And you are indicating it's a problem for you and
5 you'd like to be excused; is that correct?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Counsel have agreed to stipulate in your case
8 so the bailiff is probably going to send you downstairs, Mr.
9 Nolting, and see if they have a short one for you to serve on.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: Thank you very much, sir.

12 PROSPECTIVE JUROR: Thank you very much.

13 THE BAILIFF: Mary Cariaga is next.

14

15

MARY CARIAGA,

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

18

EXAMINATION

19 BY THE COURT:

20 Q. Good afternoon, ma'am.

21 A. Good afternoon.

22 Q. Are you Mary Cariaga?

23 A. Yes, I am.

24 Q. I've deliberately arranged to have us around the
25 table informally in hopes that you will be able to sit back and
26 relax to more easily answer the questions we are going to put to
27 you. Okay?

28 A. I will try.

1 Q. There are going to be some hard questions.

2 First, has anything happened to you since we last
3 saw you which would make it more difficult for you to serve in
4 this case?

5 A. I haven't had much sleep since then.

6 Q. Have you been worrying about it?

7 A. Yes.

8 Q. Why? Some particular emotional sympathies or
9 emotions that you feel you are particularly sensitive or what's
10 the difficulty?

11 A. I just don't want to be on the case.

12 Q. You know, I told everybody before that I can't give
13 people their druthers. The law won't permit me to.

14 A. I know. I know that.

15 Q. I can't just take volunteers, we have to do it by
16 random, this sort of thing. Amplify, tell me why. You have to
17 articulate it, explain.

18 Don't be afraid to speak.

19 A. I might be prejudiced.

20 Q. You feel that you've got your mind made up to some
21 extent?

22 A. Yes, I do.

23 Q. Is that based upon what you've seen on TV or read
24 in the papers?

25 A. A little of everything.

26 Q. Of everything, something in addition to that?
27 You've talked with people perhaps?

28 A. They've talked to me.

1 Q. About this case?

2 A. Yes. I told them I wasn't suppose to talk about
3 it, but --

4 Q. You mean since you were in court you've talked to
5 people about it?

6 A. Well. they talked to me about it. I told them I
7 couldn't talk about it, but they were passing their opinions and
8 one thing and another.

9 Q. You should tell them. "Hey, go fly a kite," or
10 something --

11 A. Well. I tried.

12 Q. -- till it's all over.

13 According to your questionnaire you remembered
14 absolutely nothing about the case. Wasn't that correct then?

15 A. What I had seen on TV -- see, my husband is
16 deceased. I don't watch TV any more for the simple reason there
17 is too much murder. shooting, and all kinds of things, and it
18 frightens me so I just don't -- and I don't get the paper any
19 more. I stopped that. We had received the paper for 43 years
20 and I don't even want to get that any more.

21 Q. Then all the information that you had about the
22 case has come from having people talk to you since you were last
23 in court?

24 A. Well. I did see something on TV about where they
25 showed the defendant on TV. I didn't particularly like what I
26 saw.

27 Q. We try to have our system of justice work from
28 matters that occur in court not what comes on TV or in the

1 newspapers; you understand that?

2 A. I understand that, yes.

3 Q. Can't you put that side and be a fair and impartial
4 juror like the rest of your citizens around here?

5 A. I don't know, to be honest. Also -- also, this
6 would -- the day of the court you gave us a chance to sit up and
7 talk. I froze. I couldn't speak, otherwie I would have stood
8 up and --

9 Q. What would you have told me then if you had not
10 froze?

11 A. Well. for one thing, I have been having trouble
12 with my hearing. The only reason I can hear you good now is I
13 just came from the doctor this morning, and whatever. Every
14 once in awhile I have trouble my sinuses closeup on me and it
15 effects my hearing.

16 Q. Well. does that happen to you very often?

17 A. About once a month, once every five weeks.

18 Q. How long does it last?

19 A. Till I go to the doctor.

20 Q. Does it seriously effect your hearing?

21 A. At times it has, yes, if I let it go too long. I
22 can't go that often to him because every time I go it costs me
23 \$50, \$60 each shot, and I'm on social security now, I don't have
24 that kind of money. My insurance doesn't pay unless I go in the
25 hospital.

26 Q. You don't work, ma'am?

27 A. No, I don't. I haven't been able to because I've
28 had a bum knee.

1 Q. Well, you've given me several problems: One, your
2 health; second, your hearing.

3 A. Yes.

4 MR. KOCHIS: We have a stipulation.

5 MR. NEGUS: True.

6 THE COURT: Would you stipulate?

7 MR. NEGUS: Yes.

8 THE COURT: You are in luck, ma'am. I really can't
9 excuse you sometimes until I get it down on the record here good
10 cause. but counsel have agreed that they would excuse you
11 without me pinning you down, so to speak. So why don't you
12 report back as the bailiff instructs you here, and thank you for
13 coming in.

14 Thank you for bringing her.

15 PROSPECTIVE JUROR: All right. Thank you.

16 THE BAILIFF: Lyle Koonts is next.

17 THE COURT: Counsel, what would I do without you here.
18 I'm struggling along trying to make the record clear.

19

20

LYLE KOONTZ,

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, sir.

27 A. Hello.

28 Q. Are you Lyle Koonts?

1 A. Sure am.

2 Q. Mr. Koonts, we've gathered around the table in an
3 informal manner to hopefully put you a little more at ease and
4 make it easier for us to converse and discuss some of the things
5 that are kind of hard subjects.

6 A. Okay.

7 Q. So, relax as best you can, then I want to ask you a
8 couple questions preliminarily.

9 One, has anything happened to you since we last saw
10 you are two or three weeks ago to complicate your ability to
11 serve in this case?

12 A. No, not a thing. I went back to work.

13 Q. Secondly, I want to remind you of some of the
14 things that I said when I was on the bench, that this could be a
15 two phase process. The first phase the jurors are concerned
16 only with guilt or innocence. and depending upon how the
17 verdicts are returned there will determine whether or not we
18 ever get to the second phase.

19 A. Uh-huh.

20 Q. If we do get to a second phase that will be called
21 the penalty phase, and there additional evidence would be
22 presented by the sides, counsel would get a chance to argue to
23 you and give you the benefit of their thinking, the Court would
24 instruct you as to the law and give you some guidelines to
25 assist you, but the jurors themselves would have to make the
26 decision after deliberation back in the deliberation room. And
27 your choice there would be -- choices would be very few.

28 On the one hand you could determine that the most

1 appropriate penalty, considering all the evidence and the
2 circumstances, is death by execution and give us that kind of
3 verdict. On the other hand, you could say the most appropriate
4 penalty is life imprisonment without the possibility of parole.

5 My question to you now is this: if you are selected
6 and if we do get to a penalty phase. will you be able to fairly
7 consider both of those two possible alternatives?

8 A. If it comes down to that, yeah I don't see why not.

9 Q. All right. In the penalty phase, if we get there,
10 would you be able to personally vote for either death or life
11 without parole, for either one of them and make your decision
12 based upon the evidence and the circumstances brought out at
13 trial?

14 A. Yeah.

15 Q. And not because of any preconceived ideas you hold
16 at this time?

17 A. It depends on the, you know, how the whole thing is
18 presented. In other words, each case is an individual case.

19 Q. Based upon what I told you or what other sources of
20 information have been given to you, do you have any opinion
21 about either guilt or penalty at this stage?

22 A. None whatsoever. It would depend on the case, you
23 know what happens.

24 Q. Okay. Do you have any great concern or dread of
25 having to make that life or death type decision, Mr. Koonts.

26 Q. Like some jurors just say, gee, judge, I just can't
27 do that sort of thing.

28 Do you have any such feeling?

1 A. No. If I'm part of the jury that's part of the
2 job.

3 THE COURT: That's all I have, Mr. Negus.

4

5

EXAMINATIN

6 BY MR. NEGUS:

7 Q. Mr. Koonts, the judge lets Mr. Kochis and I ask you
8 most of the questions.

9 A. Okay.

10 Q. We are not trying to pry or embarrass you, but the
11 law requires we get your opinions before we go any further.

12 A. Uh-huh.

13 Q. You told us in the questionnaire that you hadn't
14 heard about the case.

15 A. Right.

16 Q. After you filled out the questionnaire, did
17 anything happen to trigger your memory that maybe you had heard
18 about it or anything?

19 A. No.

20 Q. Had no knowledge about it whatsoever?

21 A. None.

22 Q. Did anybody talk to you about it in the jury room
23 before you came up here a couple weeks ago?

24 A. No.

25 Q. What was your reaction when you found out that this
26 was the type of case that you were a prospective juror on?

27 A. I was wondering if it was going to come to the
28 point where I was chosen, I would have to spend six months or

3
1 bnot, you know, the time and everything; but as far as I know
2 Sears will cover me. so I don't think that will be a problem.

3 Q. So the only concern you had was about your
4 employment and not about anything about the nature of the case?

5 A. No.

6 Q. You don't care about this case as opposed to a
7 civil case or any other kind of case?

8 A. It's just ten days. I've got to do it somehow.

9 Q. Okay.

10 THE COURT: Excuse me. Did you say it's just ten days?

11 PROSPECTIVE JUROR: Well, unless I get on something like
12 this, then you have to go until the end of the case obviously.

13 THE COURT: This is going to take a lot longer than ten
14 days.

15 PROSPECTIVE JUROR: Right. But his question was one case
16 as opposed to another case.

17 THE COURT: I'm sorry to interrupt, Counsel.

18 BY MR. NEGUS:

19 Q. We're asking you questions about the death penalty.
20 but as the Judge says that may be just a waste of time we may
21 never get that --

22 A. If it gets to that point.

23 Q. -- but the law requires to us to ask it.

24 What's your opinion about the death penalty? Do
25 you think we should have it in California?

26 A. I would say in some cases it's useful, yeah.

27 Q. Why?

28 A. Well. it depends on the case. Again, how can I put

1 that into words. I think you should have it as an option.

2 Q. What do you think about life imprisonment without
3 parole?

4 A. Rather than saying -- rather than saying that is
5 the only other alternative so that no matter what the case is or
6 no matter what the outcome is, the Judge or the jury in this
7 case only has one option.

8 Q. So, you think people should have both options?

9 A. In other words, you are giving society a choice
10 basically.

11 Q. Do you have any -- any particular predisposition
12 towards one of those choices or the other?

13 A. No.

14 Q. Doesn't matter to you in this particular case?

15 A. It is on -- well, it depends on the case. It
16 depends on when you get to that point, then you have to make
17 that decision at that point, but you can't make that decision
18 before you get to that point.

19 Q. Some people we talked to have made up their mind
20 that "X" kind of case. a case in which -- a case in which kids
21 are killed automatically deserves the death penalty; other
22 people come in and say, "No matter what, I'm for life without
23 parole," you're not that type of person? You haven't made up
24 your mind?

25 A. Depends on the case, yeah.

26 Q. And you don't have any particular type of case that
27 you think automatically deserves one penalty or the other?

28 A. No.

1 Q. Do you belong to an organized religion?

2 A. No, I'm not organized.

3 Q. Have any -- have any religious beliefs influenced
4 your beliefs on crime and punishment or the death penalty?

5 A. No.

6 Q. Just basically just a matter of your own individual
7 conscience?

8 A. That's right.

9 Q. Thank you. That's all I have. Mr. Kochis has
10 some.

11

12 EXAMINATION

13 BY MR. KOCHIS:

14 Q. I have a few questions.

15 A. Sure.

16 Q. You mentioned that you're in favor of having the
17 death penalty on the books to give society a choice more or
18 less.

19 A. Uh-huh.

20 Q. How do you feel about being put in the position
21 where you with would be one of the people exercising that
22 choice?

23 A. Uh-huh, that would be tough; that would be tough.
24 No way I can say that's an easy. That would be tough.

25 Q. Some people, when they are actually put in the
26 position, they have to make that tough decision, even after they
27 hear the evidence and the law they don't feel comfortable making
28 the decision one way or the other. In fact, they realize they

1 can't, it just too heavy, too serious. Do you have any feelings
2 along that line?

3 A. No -- well, I wouldn't say -- it would be tough,
4 but it wouldn't be impossible, especially if you are part of a
5 group of people. I would just in other words, just not strictly
6 my vote, you know, it's a group vote of the entire panel of
7 voters, right?

8 Q. Okay. You're right, but we still ask each juror to
9 promise us that they could give us their individual opinion.

10 A. Uh-huh.

11 Q. And it's not like football where you get lost in
12 the shuffle during a scrimmage.

13 A. Well, I'm saying it still would be tough even
14 though you are part of the group, it would be a tough decision
15 to make but it could be made.

16 Q. Do you feel comfortable if we get to the penalty
17 phase once you hear all the evidence about the case and all the
18 other factors and the law that you could make the tough decision
19 and make it one way or the other?

20 A. Once you got to that point, yeah, it could be done.

21 Q. For example, if we got to the -- let me stop for a
22 minute.

23 The first trial is the guilt trial and we just
24 determine if this defendant did it or some someone else.

25 A. Uh-huh.

26 Q. Some people, once they've heard the evidence and
27 the law, they feel that under the law I believe he did it, and
28 if it was just a regular case I'd vote guilty, but if I do that

1 that I'm going to get put in that second trial and I'm going to
2 have to make a really tough decision and may be faced with that,
3 I will vote not guilty and that way we will never get that far.
4 Would you have any tendency to do that?

5 A. I never thought of that; that didn't occur to me.

6 Q. Okay. Now that I've suggested it does that sound
7 like an unreasonable thing to do or a reasonable thing to do?

8 A. I would tend to look at the thing as two halves, in
9 other words.

10 Q. Okay.

11 A. There is -- there is two separate things that
12 you're doing.

13 Q. Okay.

14 A. I don't think any part of the second one would
15 influence what you're doing in the first one. It shouldn't
16 anyway.

17 Q. That's what the law is as a matter of fact.

18 If we get past the first half and we get into the
19 second trial, let's say, both sides presented some evidence and
20 we argued based on all the other evidence and based on the law
21 and the discussion you would have with other jurors that you
22 felt in this case the appropriate punishment would be to vote
23 for the death penalty, could you vote that way?

24 A. There is a lot of "if's" in that -- in that
25 statement. If I'm getting it the way you're presenting it,
26 you're asking me would I be able to make the decision once I get
27 to that point. I think the answer would be, yes.

28 Q. Okay, well, the reason we ask it is --

1 A. In other words, there is a lot of "if's in there:
2 If you are on the jury; if you -- the original part of the
3 trial, and then once you get through that part then to the
4 second part of the trial. So obviously I can't say how would I
5 would decide at that later point since I'm not even in the first
6 part yet, so that would be supposition, but I think a decision
7 could be made.

8 Q. Well, the reason -- maybe I should ask it another
9 way.

10 The reason we ask it is some people tell us that
11 even if we got to the penalty phase, once they heard all the
12 evidence in the penalty phase they would still always vote for
13 life without the possibility of parole and they would never vote
14 for the death penalty because for them it's too serious.

15 Do you have any feelings along that line?

16 A. No. It's a 50/50 choice; depends on how you feel
17 by the time you get to that point. In other words, after you've
18 already been through the trial, by that point you become
19 familiar with the entire case and you've got enough information
20 to make that second decision.

21 Q. Okay. Let's carry this -- the "if's" a step
22 further.

23 A. Okay.

24 Q. You would vote in the jury room and then afterward,
25 after a decision is reached, to make sure there's no mistake the
26 Judge polls all the jurors in open court. He goes down the
27 aisle and he asks every juror, and that would include you, if
28 the verdict the clerk has just read is in fact the way that you

1 voted.

2 A. Uh-huh.

3 Q. In this case if the jury returned a death verdict
4 and you were polled in open court, would you have any problem
5 saying in open court that's the way you voted?

6 A. Wouldn't it have to be unanimous?

7 Q. Yes.

8 A. Well, then you would just be repeating what --

9 Q. Well, we do it to make sure that the foreman hasn't
10 dated and signed the wrong verdict form. That from time to time
11 happens, so we ask all the jurors. And we also ask to make sure
12 that some of the jurors haven't been forced into making an
13 opinion one way or the other.

14 A. Oh, I see. Okay.

15 Q. So, we have them do it in open court.

16 In this case if the jury returned a death verdict
17 and you were part of the jury and we polled you in open court,
18 would you have any problem repeating out loud, as it were, the
19 verdict you had rendered in the jury room?

20 A. Again, that would be tough but it could be done.

21 Q. Okay. Why would it be tough?

22 A. Well, the whole thing would be rather tough. You
23 go through this several months of trial, and if it goes into the
24 second phase and then -- I'm just suppositioning, I've never
25 been in that position, but I would imagine that would be a tough
26 position to be in. Not impossible, but --

27 Q. But difficult?

28 A. Uh-huh.

1 Q. Is that yes or no? We have to have a yes or no for
2 the court reporter.

3 A. That was a yes.

4 Q. One last stiff question.

5 We select one person -- the jury selects one person
6 to be the foreman. That person, in addition to presiding over
7 the jury deliberations, is required to date and sign the verdict
8 form.

9 If the jury elected you as the foreman and you and
10 eleven other people decided that in this case the appropriate
11 punishment was death, would you have any problem dating and
12 signing that verdict form?

13 A. If they elected me I guess.

14 Q. You wouldn't have a problem?

15 A. Right.

16 MR. KOCHIS: I have nothing further.

17 THE COURT: We'd like to discuss you privately for a
18 moment. If you would step out in the hallway the bailiff will
19 instruct you further. Thank you very much for coming in.

20 PROSPECTIVE JUROR: Okay; uh-huh.

21 THE COURT: Anything, gentlemen.

22 MR. NEGUS: No.

23 MR. KOCHIS: No, your Honor.

24 THE COURT: Give him a return slip please. Counsel, we
25 resume not tomorrow but on Monday.

26 MR. NEGUS: Tuesday.

27 THE COURT: Tuesday. Monday is a holiday.

28 MR. NEGUS: Yeah.

1 THE COURT: What is Monday?

2 MR. NEGUS: Columbus Day.

3 MR. KOCHIS: Columbus Day. Even I believe the DA's
4 offices and the Public Defenders Offices are traditionally
5 closed in addition to all courts.

6 THE COURT: In addition to judges. Well, then it will be
7 Tuesday.

8 How many more days do we have the sequestered voir
9 dire?

10 MR. KOCHIS: Three and a half.

11 THE COURT: Is that all?

12 MR. KOCHIS: Yes. Okay. We are beginning to get to the
13 end of the tunnel. Enjoy your three-day weekend.

14 (Brief pause.)

15 THE COURT: Thus far we have had nothing off the record
16 and whenever --

17 Very briefly off the record Mr. Negus indicated he
18 is preparing a jury assistance card. And Mr. Kottmeier
19 indicated that it might be a good idea to post before the jurors
20 in large form a list of the witnesses. I think they are both
21 all right. Do you want do do that?

22 MR. KOTTMEIER: We could bring that Tuesday, let the
23 Court take a look at it and decide.

24 THE COURT: Sure, that might be helpful, although I doubt
25 if very many names are going to be recognizable at this
26 distance.

27 Okay. We will see you next Tuesday then.

28 (Adjournment.)