

COURT OF APPEALS
FILED
LORAIN COUNTY

1

The State of Ohio May 13 8 57 AM '96

County of Lorain) SS:

CLERK OF COURT
IN THE COURT OF COMMON PLEAS

ENTERED

The State of Ohio,
9th APPELLATE DISTRICT
Plaintiff,)

96 CA006331

vs.)

NO. 95CR046838

Raymond Augustus Smith,)

Defendant.)

* * *

DEFENDANT'S

TRANSCRIPT OF PROCEEDINGS

* * *

APPEARANCES:

Appearing on behalf of the State of Ohio:

Gregory A. White,

Lorain County Prosecuting Attorney, by

Jonathan Rosenbaum,

Assistant County Prosecuting Attorney.

Appearing on behalf of the Defendant:

Harvey Bruner, Esq. and

Bret Jordon, Esq.

* * *

1 The State of Ohio)
2 County of Lorain) SS:

3 IN THE COURT OF COMMON PLEAS

4 The State of Ohio,)
5 Plaintiff,)
6 vs.) NO. 95CRO46838
7 Raymond Augustus Smith,)
8 Defendant.)

9
10 * * *

11
12 DEFENDANT'S
13 TRANSCRIPT OF PROCEEDINGS

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15 * * *

16
17 BE IT REMEMBERED, that on Tuesday, the 28th
18 day of November, 1995, being one of the regular days of
19 the September, 1995, term of said Court, before the
20 Honorable Kosma J. Glavas, the presiding Judge of said
21 Court, the above-captioned cause came on for trial upon
22 the Indictment filed herein.

23
24 * * *

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previously marked

P R O C E E D I N G S

(Whereupon, the following proceedings occurred out of the hearing of the prospective jurors.)

THE COURT: Is there anything you want to put on the record, Mr. Bruner?

MR. BRUNER: Yes, your Honor.

Of course, we filed a motion to suppress which you denied and I think our position is set forth in the motion.

With regard to the deposition of Michael Smith, however, I would like to put on the record a number of things.

I think it is clear from the deposition of Michael Smith that on June 16th, '95, when he was deposed, he was absolutely available for trial. He testified under oath that he would be available for trial. At that point in time a subpoena could have been issued by the Prosecutor's Office, by the police department, to assure his presence at trial.

They could have done a number of things to make sure his presence -- that he was present at trial. It seems rather odd that they are anticipating in June what is going to occur in November and it is my position that my client

1 at this point is being denied his right --

2 THE COURT: Do we know that
3 he is not going to testify?

4 MR. BRUNER: We do know that
5 he is not going to testify.

6 THE COURT: Why is that?

7 Because at the time that I allowed the
8 deposition to be taken it was not under
9 circumstances that he would not be here and
10 it is not giving a ticket to go someplace.
11 There ought to be a damn good reason.

12 MR. BRUNER: I was not a part
13 of the hearing as to why you allowed the
14 deposition.

15 My understanding was that it was taken
16 because he felt he was in danger. That was my
17 understanding.

18 THE COURT: Right.

19 MR. BRUNER: However, at the
20 deposition he testified directly that he would
21 be available for trial and would make himself
22 available for trial even though he felt
23 endangered.

24 At that time Mr. Rosenbaum was asked by, I
25 believe, Mr. Elwell, could we have his address

1 to stay in touch with him. That was denied to
2 us at that point so the defense, Mr. Elwell, Mr.
3 Lieux and myself have not been able to be in touch
4 with this individual, have not had the opportunity
5 to search for him.

6 They anticipated in June, even though he said
7 he would be available, that he would not be
8 available in November.

9 THE COURT: Do you know why he
10 is not available?

11 MR. BRUNER: I have no idea.

12 THE COURT: Do you know that he
13 is not available?

14 MR. BRUNER: We have been told
15 by Detective Leiby, myself and Mr. Jordan, and Mr.
16 Rosenbaum told us he is not available.

17 THE COURT: Why is that?

18 MR. ROSENBAUM: He fled. There is a
19 warrant for his arrest.

20 THE COURT: I will be honest
21 with you. When we allowed the deposition --

22 MR. ROSENBAUM: I don't understand
23 what is going on here.

24 THE COURT: Mr. Rosenbaum, let
25 me finish if you would, please.

1 When we allowed the deposition I made the
2 statement that the man was going to testify. If
3 for some reason -- it had to be a damn good reason
4 why he wouldn't -- you can't say, "Here is a bus
5 ticket to go to Texas" --

6 MR. ROSENBAUM: Who said that?

7 THE COURT: I said that.

8 MR. ROSENBAUM: He kept saying we
9 anticipated that he would not be here. Somebody
10 ought to ask him where he gets that from.

11 THE COURT: Let me finish.

12 Why is he not available?

13 MR. ROSENBAUM: I don't know. We
14 are prepared to say that on the record now if
15 somebody wants to go into that, but I am not
16 going to sit here and try to answer for why the
17 guy is not here today.

18 I am not going to try to answer for the guy
19 who has been intimidated by the Defendant and who
20 was threatened by the Defendant that he was going
21 to kill him.

22 I am prepared to offer testimony as to what
23 efforts we made to secure his presence. We cannot
24 do that. He is unavailable pursuant to the rules,
25 but his claim that we did not anticipate that he

1 would be here in July is a lie and the only people
2 that said that were the other defense lawyers..

3 THE COURT: The Court is
4 inquiring as to whether or not you may enlighten
5 the Court as to why he is not available period.

6 MR. ROSENBAUM: I cannot speak for
7 Mr. Michael Smith. I can tell you what we did to
8 try to get him here and that is all I have to do.

9 THE COURT: And what did the
10 State of Ohio do to try to keep him here?

11 MR. ROSENBAUM: We paid money to
12 relocate him in a safe place which he left. We
13 put him in contact with the probation officer and
14 set up appointments so he would report.

15 THE COURT: How long ago has he
16 been missing?

17 MR. ROSENBAUM: When did he leave?

18 DETECTIVE LEIBY: Four or five weeks
19 after the deposition.

20 THE COURT: I wish in the world
21 somebody would have let me know.

22 MR. ROSENBAUM: What would the Court
23 have done, your Honor?

24 THE COURT: I would have ordered
25 something to be done.

1 MR. ROSENBAUM: We obtained a
2 warrant for the arrest because he jumped probation
3 and we have been looking for him. Detective Leiby
4 has been in contact with all the known contacts.
5 They do not know where he is. We can't find him,
6 other than the Court getting in the car and
7 looking for him himself.

8 THE COURT: The Court wouldn't
9 do that. I think that the Court should have been
10 advised that this witness was not available, that
11 he left the jurisdiction period, don't you think?

12 MR. ROSENBAUM: I can tell you he
13 left the jurisdiction.

14 THE COURT: That he is places
15 unknown.

16 MR. ROSENBAUM: That is correct.

17 THE COURT: Don't you think the
18 Court should have known that?

19 MR. ROSENBAUM: No.

20 THE COURT: Why?

21 MR. ROSENBAUM: I don't think the
22 rule requires that.

23 THE COURT: Don't you think that
24 the Court should have known that?

25 MR. ROSENBAUM: No.

1 THE COURT: In light of the fact
2 what the Court said when it permitted the
3 deposition --

4 MR. ROSENBAUM: We can only make
5 efforts to put him in a safe place and get him
6 subpoenaed and get him to Court.

7 THE COURT: Did I say to you
8 that you guarantee it?

9 You don't, but don't you think the Court
10 should have been enlightened?

11 MR. ROSENBAUM: No. To be honest
12 with you we took all reasonable steps we could
13 to get him here.

14 THE COURT: Very well.

15 If you don't think the Court should have
16 been enlightened, that is fine and I appreciate
17 that statement. The Court is the one that is
18 going to have to make these decisions here and
19 the Court should have been informed ahead of
20 time to make these decisions.

21 MR. ROSENBAUM: Your Honor, as per
22 the defense brief, and we still hope to bring
23 this guy in if we can find him, per the defense
24 brief, if he is unavailable to testify at the
25 time of trial, it is incumbent upon the State to

1 prove we made all reasonable efforts to secure
2 his attendance.

3 We think the deposition is admissible.

4 THE COURT: Well, well, we will
5 see, Mr. Rosenbaum, whether that position is
6 available --

7 MR. BRUNER: Let me say for the
8 record --

9 THE COURT: (Continuing) -- is
10 admissible at this point and we can deal with it
11 at the time.

12 MR. ROSENBAUM: We should deal with
13 it now because if you deny it, it is a motion to
14 suppress. The State will appeal it.

15 THE COURT: I don't know that
16 you are entitled to it.

17 MR. ROSENBAUM: He filed a motion to
18 suppress prior to trial.

19 THE COURT: And I denied that at
20 that point knowing what I had said to the parties
21 earlier and having not been advised to the
22 contrary.

23 MR. ROSENBAUM: If the Court likes,
24 your Honor, I am not omnipotent. Maybe you wanted
25 to know that he fled. We are not so convinced

1 that he wouldn't turn up. We have done everything
2 to live up to the Court's ruling.

3 If the Court feels we should have told the
4 Court we can't find him --

5 THE COURT: At least advise the
6 Court that he is gone. He is gone. At this point
7 we don't know where he is at.

8 MR. ROSENBAUM: We don't.

9 THE COURT: When it happened,
10 the very least I think you could have done is
11 said, "Hey, this witness is gone."

12 The Court, I think, is entitled to that
13 information.

14 MR. ROSENBAUM: The Court has that
15 information at the time it is relevant and that
16 is now, with all due respect.

17 If we found him yesterday it wouldn't matter.

18 MR. BRUNER: Your Honor, let me
19 state for the record that we made this motion
20 because in our opinion Michael Smith is the key
21 witness in this case. He is the key witness who
22 has been deposed and cross-examined by other
23 counsel.

24 Albeit, they were my client's counsel six
25 months ago, five months ago. The jury is never

1 going to get an opportunity to hear him, see him.

2 THE COURT: They will hear him,
3 depending. The opportunity for them to hear will
4 be available to them if the Court makes that
5 decision.

6 MR. BRUNER: Correct. However,
7 they will not be able to observe him and my
8 client's confrontational rights are important.

9 The motion to suppress Mr. Rosenbaum talks
10 about goes to my client's statements. We filed
11 a motion in limine as to the deposition.

12 MR. ROSENBAUM: Your Honor, with
13 all due respect, that is a motion to suppress no
14 matter what he calls it. State versus Davidson --
15 he is asking for a part of the State's key witness
16 to be excluded from trial.

17 THE COURT: I denied that. That
18 ruling is on the record at the present time.

19 MR. ROSENBAUM: If you undeny it, it
20 may necessitate a mid-trial appeal, so I suggest
21 since this is a matter of contention that we deal
22 with it now.

23 We can call Detective Leiby to the stand.

24 THE COURT: That is denied,
25 let's continue. We have a jury standing outside

1 in the hallway.

2 Anything further, Mr. Bruner?

3 MR. BRUNER: Nothing, your Honor,
4 at this point.

5 THE COURT: Very well.

6 Tell the Bailiff to bring the jury in.

7 (Whereupon, the prospective jurors were
8 brought into the courtroom and the following
9 proceedings occurred.)

10 THE COURT: Good morning, ladies
11 and gentlemen.

12 Ladies and gentlemen, I thank you all for
13 arriving promptly and welcome you. I want to
14 apologize to you for a late start, but really it
15 is not a late start when we have that many people
16 to deal with and make sure that all of the lists
17 and things are proper and what have you in this
18 matter.

19 You have been brought here this morning to
20 be considered as prospective jurors in a criminal
21 case. This is the case of the State of Ohio
22 versus Raymond Augustus Smith, 95CRO46838.

23 I must say to you that the service rendered
24 by citizens of a community as jurors is probably
25 the single most important civic responsibility

1 that each of you has.

2 Just as this important citizenship right is
3 a heavy responsibility at times, it also creates
4 burdens and hardships. However, this procedure,
5 the right of trial by jury of a person charged
6 with a crime or crimes, is a most essential
7 difference between life in a free society and
8 life for those who live under the thumb of a
9 dictator or a totalitarian form of government.

10 Since we live in this great country we must
11 accept and assume greater responsibility, both for
12 our own conduct and for our freedom.

13 The duty to serve in a trial, to be a member
14 of a jury panel that decides the guilt or
15 innocence of a person charged with a crime or
16 crimes is most important.

17 Therefore, I urge each of you to look deeply
18 into your conscience and recognize that accepting
19 the hardships which service could require in a
20 case that might extend over a period of perhaps
21 three or four days is not only a noble calling,
22 but an absolute necessity.

23 The Defendant, the person charged in this
24 case, is Raymond Augustus Smith. He is seated at
25 the counsel table immediately behind the two

1 gentlemen and he is dressed in a gray suit with a
2 very colorful tie.

3 He is represented by Attorney Harvey Bruner
4 and he is dressed in the charcoal black suit and,
5 at this point, Mr. Bruner, you may introduce
6 yourself.

7 MR. BRUNER: I am Harvey Bruner.
8 Good morning, ladies and gentlemen.

9 THE COURT: In addition to Mr.
10 Bruner, he is also represented by Mr. Bret Jordan.
11 Mr. Jordan has a blue suit and a blue tie.

12 MR. JORDAN: Good morning. I am
13 Bret Jordan.

14 THE COURT: The State of Ohio in
15 this case is represented by Mr. Jonathan Rosenbaum
16 and Mr. Rosenbaum is seated on the opposite end of
17 the table in a dark blue suit.

18 MR. ROSENBAUM: Good morning, ladies
19 and gentlemen. My name is Jonathan Rosenbaum. I
20 am an Assistant County Prosecutor for this County
21 and with me today is Detective Al Leiby from the
22 Elyria Police Department.

23 MR. LEIBY: Good morning.

24 THE COURT: Thank you, Mr.
25 Leiby.

1 We are going to conduct a voir dire process
2 and you will be answering questions from me and
3 the attorneys. In addition, you have already
4 answered the questions on the questionnaires.

5 All of your answers have to be given under
6 oath, so I will ask you to raise your right hand
7 and Mrs. Ward is going to swear you in.

8 What you are swearing to is not only the
9 questions the attorneys and I are going to be
10 asking you, you are also swearing to the answers
11 you gave on the questionnaires. If anybody has
12 anything that prevents them from swearing, you can
13 remain seated and we will affirm you.

14 (Whereupon, all but one of the prospective
15 panel were sworn as a group.)

16 THE COURT: Those of you that
17 did not swear and need to be affirmed, would you
18 please stand at this point?

19 (Whereupon, one juror required the
20 affirmation.)

21 THE COURT: Ladies and
22 gentlemen, at this point I would like to read you
23 the Indictment in this case.

24 "The jurors of the Grand Jury of the State
25 of Ohio, within and for the body of the county

1 aforesaid, on their oaths, in the name and by
2 the authority of the State of Ohio, do find and
3 present, that the above-named Defendant, in the
4 County of Lorain, unlawfully on or about January
5 19th, 1994, did purposely and with prior
6 calculation and design, cause the death of Ronald
7 Lally in violation of Section 2903.01(A) of the
8 Ohio Revised Code, contrary to the form of the
9 statute in such case made and provided, and
10 against the peace and dignity of the State of
11 Ohio.

12 "Specification One to Count One: The jurors
13 of the Grand Jury further find and specify that
14 Raymond Augustus Smith had a firearm, other than
15 an automatic firearm, or a firearm equipped with
16 a firearm muffler or silencer, as defined in
17 Section 2923.11 of the Revised Code, to-wit: a
18 firearm on or about his person or under his
19 control, while committing the felony enumerated
20 in Count One.

21 "Specification Two to Count One: Ronald
22 Lally was a witness to an offense and was
23 purposely killed to prevent his testifying in
24 any criminal proceeding and the aggravated
25 murder of Ronald Lally was not committed during

1 the commission, attempted commission, or flight
2 immediately thereafter the commission or attempted
3 commission of the offense to which Ronald Lally
4 was a witness or Ronald Lally was a witness to an
5 offense and was purposely killed in retaliation
6 for his testifying in any criminal proceedings."

7 This is signed by the foreman of the Grand
8 Jury, Gregory A. White, Lorain County Prosecuting
9 Attorney, and Jonathan Rosenbaum, Assistant
10 Prosecuting Attorney.

11 Now, ladies and gentlemen, what I want you
12 to understand is that an Indictment which is what
13 I just read you is a charge set forth by the Grand
14 Jury of Lorain County and it is merely a charge.
15 Its an accusation against the Defendant.

16 Before you could ever consider anything with
17 respect to the Indictment, I want you to
18 understand the burden is on the Prosecutor to
19 prove each and every one of the elements of each
20 count of the Indictment beyond a reasonable doubt
21 before the Defendant can ever be found guilty of
22 any one or more of the offenses set forth in the
23 Indictment.

24 A plea of not guilty has been entered into by
25 the Defendant on each count of the Indictment

1 which now puts the burden on the Prosecutor to
2 prove.

3 Now, if the Prosecutor proves to the jury
4 each and every element of the aggravated charge
5 of murder plus the specifications, and that is
6 beyond a reasonable doubt, then and only then
7 would the jury be involved in the sentencing
8 process which we call the penalty phase of this
9 case.

10 If the jury is involved in the penalty phase
11 of this case there are three possible penalties
12 that might be considered, or will be considered
13 by the jury.

14 One possible penalty is a life sentence in
15 prison with parole eligibility after 20 years.

16 The second is a life sentence in prison with
17 a parole eligibility after a full 30 years and the
18 third possible penalty is the death penalty.

19 This is what we call a capital case and, as I
20 said, the only time a jury would ever be involved
21 in that sentencing process or the only time the
22 jury would be involved in considering the subject
23 of capital punishment is when, and only when, the
24 Prosecutor would prove to the jury, beyond a
25 reasonable doubt, each and every one of the

1 elements of aggravated murder with specifications
2 that I have read to you.

3 What I would like to do is go back a little
4 and give you an overview of our procedure involved
5 and let you know what you are in for as far as
6 time, and more specifically on the procedures in
7 a capital case.

8 Now, I have mentioned the possibility of two
9 stages in the proceedings. We have the first
10 stage of the proceedings which is called a trial
11 stage, a stage in which the Prosecutor is going
12 to present evidence.

13 The Defendant will, if he desires, also have
14 an opportunity to present evidence.

15 If, and only when, you would decide the
16 Defendant is guilty of the charge of aggravated
17 murder with specifications, and it has been proved
18 to you beyond a reasonable doubt, we would have a
19 second stage in the proceedings.

20 If you would determine that the Prosecutor
21 has not proved beyond a reasonable doubt each
22 and every one of the elements of the offense of
23 aggravated murder with specifications, or you
24 decide the Defendant is not guilty, but guilty
25 of a lesser included offense with respect to

1 that charge, then you will not be involved in
2 any penalty proceedings.

3 The sentence in that case would be totally
4 up to the Court.

5 So, if, and only when there would be a
6 guilty finding on the Indictment, the aggravated
7 murder with specifications, would you be involved
8 in the sentencing process.

9 It is my understanding in talking with the
10 attorneys, this trial probably will last three
11 days, possibly four?

12 MR. BRUNER: Correct, your Honor.

13 THE COURT: However, no one can
14 tell for certain at the outset of a trial whether
15 it will take one day or 30 days, so this is simply
16 a guesstimate based upon the experience of the
17 attorneys and the Court concerning matters of
18 this type.

19 Further, because of the nature of the
20 offenses, that of aggravated murder with
21 specifications, you can expect that at a given
22 stage in the proceedings, more precisely after
23 all the evidence has been presented and when
24 the jury retires to commence deliberations on
25 the Defendant's guilt or innocence, the jury

1 will then be kept together for some undetermined
2 period of time.

3 This keeping together as we call it is known
4 in the law as sequestration and it may include
5 staying together overnight. When, and if this
6 point in the trial is reached, the Court would
7 then have to attend to all the juries' personal
8 needs.

9 The sequestration will not occur, I repeat,
10 not occur until such time as the jury is
11 instructed to retire and commence deliberations
12 on the issues of guilt or innocence.

13 Once the jury has retired for this
14 deliberation, the jury may then have to remain
15 sequestered until the case is finally concluded
16 and no one can determine in advance how many
17 days of sequestration this might be.

18 As I mentioned, the guesstimate is that
19 the entire case will take three to four days.
20 The evidence part will take three or four days,
21 it could be less or more, and not likely to be
22 any longer, but you never know.

23 Keeping this in mind, I am now going to
24 put some general questions to all of you.

25 Does anyone have plans at this time to be

1 away from the country during the next week on
2 a planned trip which could not be cancelled or
3 postponed?

4 (No response.)

5 THE COURT: I take it by your
6 silence that you do not.

7 Does anyone have any illness in their family
8 at the present time or a personal situation which
9 is of such nature that they might expect some
10 emergency to arise within the next week or so?

11 A JUROR: My sister has
12 terminal cancer and she is close to death.

13 THE COURT: Okay.

14 THE JUROR: She lives in Lorain.
15 She is under hospice care within her own home.

16 THE COURT: Okay. Like we don't
17 know how long this will take, obviously you don't
18 either.

19 THE JUROR: Not really. It
20 could be two days, one day, four days.

21 THE COURT: You never know at
22 this point.

23 THE JUROR: Correct.

24 THE COURT: I think that maybe
25 under the circumstances, being that you do have

1 this situation occurring and possibly about to
2 occur, rather than have interruptions, we will be
3 having alternates in this jury if this person is
4 selected at this point, so I will keep you here.
5 In the event something comes up, notify us and we
6 will have alternates, but thank you for giving us
7 this information.

8 Does anyone have an employment situation
9 which is of such a nature that being away for a
10 period of approximately three or four days would
11 create a serious problem, recognizing that if you
12 give your employer reasonable notice of your call
13 to duty, you cannot be discharged and recognizing
14 further that all employers will probably be most
15 unhappy about your absence?

16 THE JUROR: I am the
17 self-proprietor and owner of a service business
18 in Lorain. Without my presence this business
19 can't be run.

20 THE COURT: Do you have any
21 other people working for you?

22 THE JUROR: A secretary
23 receptionist.

24 THE COURT: What would happen
25 if you got ill?

1 THE JUROR: Well, I have
2 insurance to cover that. If I became ill, then
3 insurance would take care of my rent and pay my
4 bills and so forth, but to take three or four or
5 even a week off would be pretty detrimental to
6 the business.

7 THE COURT: Three or four days
8 would not be that bad, knowing full well that you
9 will be going home today if you are selected and
10 if we do pick a jury today, you will be going home
11 this afternoon and tomorrow and the only time that
12 you would be even concerned for sequestration is
13 during your deliberation session.

14 THE JUROR: Taking into
15 consideration the question of how much time that
16 this could take up, it could be a potential
17 problem because it has not been planned for. I
18 may take a few days off for a vacation each year,
19 but I plan it ahead of time.

20 THE COURT: You were advised
21 that you had jury duty commencing on the 28th of
22 November some time ago.

23 THE JUROR: Considering the
24 time of year it is and everything, it is a hard
25 time.

1 THE COURT: Time of year
2 involved, I understand that, but unfortunately,
3 unfortunately the housework and the Court's work
4 and the business works and that type of thing go
5 on and you know, whether it is Christmas or New
6 Year's or whatever.

7 Counsel, please approach.

8 (Whereupon, the following proceedings
9 occurred at the bench out of the hearing of the
10 prospective jurors.)

11 THE COURT: How do you feel
12 about this?

13 We have plenty of jurors.

14 MR. BRUNER: Doesn't make any
15 difference to me.

16 MR. ROSENBAUM: Technically it
17 doesn't really matter, but I think she should
18 stay on and the lady that has the sister with
19 cancer should go.

20 THE COURT: I will remove
21 both of them at this point.

22 (Whereupon, the following proceedings
23 occurred back in the hearing of the prospective
24 jurors.)

25 THE COURT: Rose Marie, don't

1 let it be known that you and I went to school
2 together and I am doing a special favor for you.
3 It is not that. I am going to excuse you because
4 of your situation at this point.

5 THE JUROR: Okay.

6 THE COURT: And that is it. You
7 are done. Hopefully everything goes well with you
8 and I will be excusing you at this point.

9 Cynthia, I will excuse you also. Frankly,
10 this is done with the consent of both counsel, so
11 don't give me the full credit for it, and you,
12 too, Rose Marie, with the consent of both counsel.

13 THE JURORS: Thank you.

14 THE COURT: Under the
15 circumstances, it is tough to make a living today.
16 I recognize this and based upon this, even though
17 we are very difficult and hard nosed about
18 employment, in this instance we will make this
19 one exception for you and also excuse you.

20 THE JUROR: Thank you.

21 THE COURT: Counsel is hereby
22 instructed that Carolyn Neace is Number Two and
23 Barbara Elek is now Number Twenty-six.

24 Both of you ladies have heard -- there were
25 a few questions.

1 Have you heard the questions that the Court
2 posed to your other fellow jurors?

3 THE JURORS: Yes.

4 THE COURT: And would your
5 answers have been any different than what your
6 present fellow jurors have given?

7 THE JURORS: No.

8 THE COURT: Illness in the
9 family?

10 THE JURORS: No.

11 THE COURT: Busy maybe, but
12 nothing that you cannot devote your duty to this
13 case?

14 THE JURORS: No.

15 THE COURT: How about you,
16 Ma'am?

17 THE JUROR: No.

18 THE COURT: Everything would
19 be the same?

20 THE JUROR: Yes.

21 THE COURT: No plans for a
22 holiday or anything unfortunately?

23 THE JURORS: No.

24 THE COURT: Very well.

25 Anybody else at this point as far as

1 employment is concerned?

2 Ma'am, if you happen to get into the 28,
3 please bring that to our attention. That goes
4 for you, too, sir.

5 Primarily these questions are going to the
6 28 and then we will fill in any from there, but
7 if you happen to make the 28, please bring that
8 to our attention at the time, okay?

9 Thank you.

10 Does anybody have a doctor's appointment or
11 an appointment to enter the hospital or other
12 personal situations that might require attention
13 during the next week which cannot be postponed?

14 THE JUROR: I have an
15 appointment today at three o'clock that I set up
16 about two and a half months ago.

17 THE COURT: At three o'clock
18 with a doctor?

19 THE JUROR: Yes.

20 THE COURT: Is it an appointment
21 that you can't cancel?

22 THE JUROR: Not really. I had
23 to wait all this time to get in to see him.

24 THE COURT: Is it a life
25 threatening situation that you are going to see

1 him about?

2 THE JUROR: Not that I am aware
3 of right now.

4 THE COURT: It is none of my
5 business at this point.

6 Is it something that you could call and
7 cancel and make an appointment again because the
8 possibility is you may not end up in the final
9 14 at this point, so is it possible to cancel
10 the appointment if you are chosen at this point?

11 THE JUROR: I would probably
12 have to wait another two months to get in.

13 THE COURT: Maybe we can help
14 you a little bit on that.

15 THE JUROR: All right.

16 THE COURT: Other than that,
17 it is not life threatening?

18 THE JUROR: No.

19 THE COURT: Anybody else?

20 (No response.)

21 THE COURT: Does anybody have
22 any difficulty working a full day, Monday through
23 Friday, whatever?

24 A full day is eight to four or 4:30 with an
25 hour off for lunch and a break during the morning

1 and a break during the afternoon.

2 Anybody have any difficulty with being able
3 to put that kind of a day in at this point?

4 (No response.)

5 THE COURT: I take it that you
6 are okay on that.

7 Now, ladies and gentlemen, each of you have
8 filled out a questionnaire prior to today and
9 they have been in the possession of the Court.

10 Does anyone have or did anyone have problems
11 with those questionnaires?

12 (No response.)

13 THE COURT: I take it that you
14 did not.

15 Would anybody here either know the Defendant
16 or any of the attorneys seated at counsel table?

17 Besides you, sir, you are not in the 28 at
18 this point. If you make it, bring that to our
19 attention also.

20 I take it that nobody does.

21 Now, at this time I believe what I am going
22 to do, I pick my jury in a different manner which
23 is called the strike-off system. That is where I
24 have the 28 people seated.

25 However, the rest of you are still part of

1 this group and the 28 as they are, as indicated,
2 as your names were called and you appeared, any
3 people here in the entire group have any strong
4 feelings about capital punishment?

5 (Whereupon, the following prospective jurors
6 raised their hands: Juror No. 10, Juror No. 6, Juror
7 No. 16, Juror No. 14, Juror No. 15, Juror No. 28, Juror
8 No. 22, Juror No. 20, Juror No. 31, Juror No. 36, Juror
9 No. 34, Juror No. 37, Juror No. 33, Juror No. 39 and
10 Juror No. 44.).

11 THE COURT: Anybody else?

12 (No response.)

13 THE COURT: I will go further
14 as we go along. Some people feel that all murder
15 cases require capital punishment or that is the
16 only penalty. Those are at one end.

17 You are going to have to tell us under oath
18 that you can follow the law as I told you, you
19 understand, and if the facts justify and the
20 circumstances justify, you could find a verdict
21 that the Defendant's penalty could be imposed if
22 the facts and the law justify it.

23 You can sign it, sign the verdict knowing
24 full well that the death penalty would be imposed
25 or could you sign a verdict for one of the two

1 life sentences on the form?

2 I am going to ask the group as a whole.

3 Do any of you have any philosophical,
4 religious or moral feelings about the death
5 penalty and you do have some sort of philosophical
6 reasons one way or the other and we are going to
7 interview each one of you on an individual basis
8 to find out what that could be at this point.

9 Are your feelings that the death penalty is
10 such as you would automatically vote to impose it
11 in a case in which the Defendant has been found
12 guilty of murder?

13 Are your feelings about the death penalty
14 such as you would automatically vote to impose it
15 in a case in which the defendant has been found
16 guilty of murder?

17 Now, with the exception of the people who
18 already raised their hands, is there anyone else
19 here that would like to say anything to the Court
20 regarding their view on automatically voting for
21 the Defendant's guilt, given the three choices?

22 Life with parole after 20 years, life with
23 parole after 30 years or the death sentence.

24 Is there anybody that would like to express
25 any view regarding that aspect of this matter?

1 (No response.)

2 THE COURT: Those of you whose
3 names I have taken will be given an opportunity
4 to tell us on an individual basis yet this
5 morning.

6 Is it fair for me to assume, with the
7 exception of the people who already raised their
8 hands, it is fair for me to assume that under
9 the circumstances you folks would consider the
10 possible three sentences and be willing to
11 impose any one of the three, depending on the
12 circumstances or depending on what the evidence
13 may be?

14 (No response.)

15 THE COURT: I take it by your
16 silence that means that is correct. If you do
17 not agree with that, please raise your hand.

18 (No response.)

19 THE COURT: Ladies and
20 gentlemen, at this point there are people that
21 the Court feels need to be voir dired on a
22 specific basis. We will at this point do
23 this in private.

24 MR. ROSENBAUM: Could we approach?

25 THE COURT: Certainly.

1 (Whereupon, the following proceedings
2 occurred at the bench out of the hearing of the
3 prospective jurors.)

4 MR. ROSENBAUM: Are you planning to
5 ask if there is anyone that would automatically
6 vote against the death penalty, because I have
7 several of them that feel that way that did not
8 raise their hand.

9 You asked if they felt strongly. You asked
10 if they would vote for death. You never asked
11 if they would automatically vote against it.

12 THE COURT: Okay. Fine.

13 (Whereupon, the following proceedings
14 occurred back in the hearing of the prospective
15 jurors.)

16 THE COURT: I have been asked
17 to ask the question, would anybody here,
18 regardless of what the evidence would be,
19 automatically vote against the death penalty?

20 (Whereupon, two jurors responded in the
21 affirmative.)

22 THE COURT: Do I have your
23 name?

24 THE JUROR: Yes.

25 THE COURT: And I have your

1 name, sir?

2 THE JUROR: Yes.

3 THE COURT: We will be back to
4 you on an individual basis at this point.

5 At this point, ladies and gentlemen, I think
6 what needs to happen is that the rest of you, you
7 will be called individually to the room where we
8 will set this matter up and, ladies and gentlemen,
9 I think we will set this up in the jury room at
10 this point.

11 Tom, you go there, and we will invite from
12 this list people to come in to discuss this matter
13 with us and you will be asked questions at that
14 time by myself and by the counsel themselves so
15 that we can make a determination as to what your
16 position really is and what it could be in this
17 matter.

18 Based upon this, ladies and gentlemen, we
19 will have a very, very short recess to get
20 ourselves set up and then we will be doing the
21 questioning on an individual basis.

22 (Whereupon, a short recess was had.)

23 (Whereupon, the following proceedings
24 occurred in the jury room with the Defendant, defense
25 counsel, the Court, the prosecution and Mr. Leiby

1 present.)

2 THE COURT: Mr. Zilka, you
3 raised your hand, indicated that you had some
4 feelings as far as the death penalty is
5 concerned?

6 THE JUROR: That is correct.

7 THE COURT: Could you please
8 tell us what those feelings are at this point?

9 THE JUROR: I just -- I don't
10 believe it is right to take another person's life
11 no matter what they did. No one has that right,
12 I believe, morally.

13 THE COURT: Well, okay.

14 But could you follow my instructions at this
15 point?

16 Could you follow my instructions at this
17 point of the trial?

18 You recognize that there are two phases to
19 this trial?

20 THE JUROR: Yes.

21 THE COURT: This is the evidence
22 portion and the other is the mitigation portion.
23 At this point your only consideration is guilt or
24 innocence.

25 THE JUROR: Yes.

1 THE COURT: The penalty is not
2 -- you are not going to be thinking about it at
3 this point.

4 THE JUROR: Yes, I know.

5 THE COURT: But the death
6 penalty could, depending on the verdict of the
7 jury, be imposed in this matter.

8 THE JUROR: Yes.

9 THE COURT: And that would
10 concern you.

11 Could you follow the law as I will give it
12 to you?

13 THE JUROR: Yes.

14 THE COURT: Even though knowing
15 full well there could be a death penalty at the
16 end?

17 THE JUROR: Yes, sir, but I
18 would have trouble with the death penalty.

19 THE COURT: Mr. Rosenbaum?

20 MR. ROSENBAUM: Sir, do you
21 understand what the Judge says?

22 Could you follow the law means that the law
23 may require you to impose a death penalty in a
24 certain situation, so my question to you is,
25 are your views so strong that they would be

1 substantially -- they would substantially
2 interfere with your ability to consider the
3 death penalty as a possible punishment?

4 THE JUROR: Morally it is
5 wrong.

6 MR. ROSENBAUM: Because of that,
7 is that view so strong that you could not impose
8 death in this case even if you thought the law
9 and the evidence required it?

10 THE JUROR: It is hard to
11 answer that yes or no at this time. I mean, I
12 could follow the law.

13 MR. ROSENBAUM: But the law may
14 require you to impose the death penalty under
15 certain circumstances, so if that is the case,
16 could you follow the law or are your views
17 about the death penalty so strong that they
18 would substantially impair your ability to
19 follow the law?

20 THE JUROR: No, I don't think
21 so.

22 THE COURT: So, you are
23 saying even though you do not believe in the
24 death penalty, you could impose it if you
25 thought the law and the evidence in this case

1 required it?

2 THE JUROR: No, I don't think
3 I could do that.

4 MR. ROSENBAUM: So then your views
5 are so strong they are substantially impaired?

6 THE JUROR: Right, because I
7 do not think it is right.

8 MR. ROSENBAUM: Nothing further.

9 THE COURT: Mr. Bruner?

10 MR. BRUNER: Mr. Zilka, would
11 you agree that Mr. Smith is entitled to a cross
12 section of the community as his jurors?

13 THE JUROR: Yes, I do.

14 MR. BRUNER: Would you agree
15 that he is entitled to have people who have, and
16 obviously does, have people who favor the death
17 penalty and don't favor the death penalty?

18 THE JUROR: Yes.

19 MR. BRUNER: You wouldn't have
20 any problem judging him in a case that was a
21 lesser case, like a drunk driving or assault
22 case?

23 THE JUROR: No, I wouldn't.

24 MR. BRUNER: Something where the
25 death penalty wouldn't even be a possibility, you

1 wouldn't have a problem with that?

2 THE JUROR: No.

3 MR. BRUNER: In those cases you
4 would follow the law certainly.

5 Do you have any problem in following Judge
6 Glavas' instructions if that was this kind of a
7 case?

8 THE JUROR: Like a drunk driver?
9 No problem.

10 MR. BRUNER: Even a serious crime
11 that didn't require the death penalty, aggravated
12 robbery?

13 THE JUROR: Yes, I could follow
14 his orders.

15 MR. BRUNER: So you wouldn't have
16 any problem doing that?

17 THE JUROR: No.

18 MR. BRUNER: In this case would
19 you agree that whatever your instructions are from
20 Judge Glavas you should follow the instructions?

21 THE JUROR: I agree I should
22 follow those, yes.

23 MR. BRUNER: Now, you understand,
24 as the Judge explained to you, that they call
25 Phase One, which is now, there is really no

1 consideration as to the death penalty?

2 THE JUROR: Right.

3 MR. BRUNER: Do you understand
4 that?

5 THE JUROR: Right.

6 MR. BRUNER: It is more guilt or
7 innocence at this point?

8 THE JUROR: Right.

9 MR. BRUNER: You understand that
10 there are a number of outcomes in this case where
11 you would never have to be required to consider
12 the death penalty.

13 THE JUROR: Yes.

14 MR. BRUNER: For example, he
15 could be found guilty of a lesser offense.

16 You would not have any problem following the
17 law with that?

18 THE JUROR: No.

19 MR. BRUNER: He could be found
20 guilty of aggravated murder with prior calculation
21 and design with no specification which would not
22 require the death penalty.

23 You wouldn't have any problem with that?

24 THE JUROR: No, I would not.

25 MR. BRUNER: And whatever the

1 Judge told you as to the law in terms of penalty,
2 you wouldn't have any problem with that?

3 THE JUROR: No.

4 MR. BRUNER: Do you understand
5 that in a number of those instances you wouldn't
6 decide the penalty; do you understand that?

7 THE JUROR: Yes.

8 MR. BRUNER: The only time you
9 would be involved in that decision would be if
10 this jury convicted him of aggravated murder
11 with prior calculation and design with the
12 aggravated circumstances that Mr. Rosenbaum
13 will talk about.

14 Do you understand that?

15 THE JUROR: Yes, I do.

16 MR. BRUNER: That means that
17 all three have to be proven. Then the jury can
18 go either 30 to life, 20 to life or death.

19 Do you understand that?

20 THE JUROR: Yes, I do.

21 THE COURT: And you do agree
22 that he should have a cross section of the
23 community?

24 THE JUROR: Yes, sir, I do.

25 MR. BRUNER: Do you think then,

1 after all of those things, assuming he proved
2 that and we will talk about that in Court later
3 on, could you follow the instructions as to 20
4 to life, 30 to life or the death penalty?

5 THE JUROR: That is where I
6 have the problem is the death penalty. I think
7 as you were asking questions before about drunk
8 driving or assault, I have no problem with that.

9 As I put down in the questionnaire about the
10 death penalty, I just feel it is morally wrong.

11 MR. BRUNER: I think you have to
12 understand, as the Judge will tell you, that the
13 law only requires the death penalty where what
14 is known as aggravated circumstances outweigh
15 mitigating circumstances and that will be
16 presented to you after the first phase, if
17 that happens.

18 Could you follow the law as the Judge will
19 instruct you, assuming that the aggravated
20 circumstances outweigh the mitigating
21 circumstances?

22 Could you impose the death penalty knowing
23 that a cross section of the community should be
24 in his jury?

25 THE JUROR: Yeah, I think

1 everybody should have, you know, he should have
2 a cross section, so I think I could do that.

3 THE COURT: The question is, as
4 Mr. Bruner said, if the aggravating circumstances
5 outweigh the mitigating circumstances, could you
6 vote for the death penalty at this point?

7 That is the ultimate question.

8 MR. BRUNER: Right.

9 THE JUROR: Morally, no, I
10 couldn't do it.

11 MR. BRUNER: Even though the
12 Judge has instructed you and that way you
13 couldn't follow his instructions?

14 MR. ROSENBAUM: Your Honor, that
15 is not the question.

16 MR. BRUNER: That is my question.

17 MR. ROSENBAUM: It is not the
18 standard. The standard is, are his views
19 substantially impaired, not does he believe a
20 cross section of the community, not could he
21 follow the law, his views are substantially
22 impaired.

23 THE COURT: Under no
24 circumstances whatsoever would you be able to
25 vote for a death penalty?

1 THE JUROR: No, sir, I would
2 not be able to.

3 THE COURT: I don't want to
4 interrupt you, Mr. Bruner.

5 MR. BRUNER: I have nothing
6 further, your Honor.

7 MR. ROSENBAUM: I have nothing
8 further.

9 THE COURT: I think at this
10 stage, Mr. Zilka, this Court will, because of
11 your views to this point are that under no
12 circumstances could you vote for a death
13 penalty, this Court will excuse you as a juror
14 and thank you for your service.

15 Go about your business at this point.
16 There is no more jury duty. You are done.
17 This is a one shot affair.

18 THE JUROR: Sorry.

19 THE COURT: Nothing to be
20 sorry about. I think everybody here thanks you
21 for your candidness.

22 MR. BRUNER: We do thank you.

23 THE COURT: May I say, sir,
24 what we are trying to do is to reach a just
25 solution to this problem. That is why we are

1 in Court. We want jurors that are going to be
2 fair to the Defendant and going to be fair to
3 the State of Ohio and that is what we are
4 seeking and we thank you for your services.

5 MR. ROSENBAUM: Judge, the standard
6 is not, as the Court knows, under no circumstances
7 could you impose the death penalty. It is, are
8 the views so strong that he is subetantially
9 impaired.

10 THE COURT: Okay.

11 MR. ROSENBAUM: So I would ask that
12 we confine ourselves to that standard and I object
13 to any question, does he believe that the
14 Defendant should have a cross section of his
15 community.

16 That is a given. His views are irrelevant
17 and that is just an attempt to say, especially
18 coupled with the question, well, do you understand
19 that there are possible situations where you won't
20 have to impose the death penalty and that is a
21 subject to the jury being on this panel.

22 He is entitled to his views and you don't
23 have to pick death. That is not what we are here
24 for now.

25 MR. BRUNER: That is not the

1 purpose of that, your Honor.

2 THE COURT: I know what the
3 purpose was at this stage and I think this, that
4 ultimately we got down to it.

5 MR. ROSENBAUM: We didn't get down
6 to it. Fortunately for the State, this juror said
7 under no circumstances would he impose the death
8 penalty.

9 THE COURT: Well, at this point
10 -- well, all right.

11 Anything further that you want to put on the
12 record?

13 MR. BRUNER: No, your Honor.

14 THE COURT: Bring in Gladys
15 McDougal.

16 Good morning, Mrs. McDougal.

17 In the process of voir dire that we were
18 conducting in the courtroom, the question was
19 asked as to whether or not you had any strong
20 views towards the death penalty and you raised
21 your hand.

22 Could you please explain to us what your
23 feelings are as far as the death penalty is
24 concerned?

25 THE JUROR: Well, I feel if

1 you deliberately take a life, you should give
2 your life.

3 THE COURT: At this point?

4 THE JUROR: Yes.

5 THE COURT: Now, does that
6 feeling -- is that feeling that you have, would
7 that impair your judgment and impair your
8 following instructions that I may give you
9 regarding this matter?

10 Do you feel so strongly about that?

11 THE JUROR: Yes, I do. I
12 mean, like I say, an accident --

13 THE COURT: But you would
14 be willing to listen to the evidence that is
15 presented at this point and if there were a
16 life taken, consider the circumstances under
17 which the life was taken, consider the law in
18 the State of Ohio at this point?

19 Would it impair you from looking at it
20 from that point of view?

21 THE JUROR: I don't know, but
22 like I say, if you deliberately take a life,
23 that is my views, that is how I feel.

24 THE COURT: Mr. Rosenbaum?

25 MR. ROSENBAUM: Ma'am, let's say

1 that the State has proved to you, for the sake
2 of this conversation, that the Defendant
3 deliberately took a life and that one of the
4 capital sentences making the death penalty
5 possible have been proven and now you are
6 called upon to come back and decide what
7 penalty should be imposed, okay?

8 The Judge is going to give you the law
9 that says under certain circumstances you
10 must apply the death penalty, under certain
11 circumstances you can consider 30 to life and
12 under certain circumstances 20 to life, okay?

13 And there will be a procedure that you
14 will get.

15 Now, my question to you is, are your views
16 about the death penalty so strong that you would
17 disregard that procedure and only consider the
18 death penalty or would you do what the Judge
19 told you and consider all three in the procedure
20 fairly?

21 Do you understand that?

22 THE JUROR: Yes. I don't know
23 how to answer that.

24 MR. ROSENBAUM: Let me ask you
25 again.

1 Are you so in favor of the death penalty
2 that you could not fairly consider the other two
3 life sentences or could you follow the law which
4 gives you a procedure as to which of the three
5 to pick?

6 THE JUROR: I could follow the
7 law.

8 MR. ROSENBAUM: So, your views about
9 the death penalty are not so strong that it would
10 preclude you from considering or substantially
11 impair you from considering the two life
12 sentences?

13 Do you want me to rephrase that?

14 THE JUROR: No, I understand it.
15 I mean, maybe I could have my mind changed, but
16 that is how I always felt.

17 MR. ROSENBAUM: I understand how
18 your personal feelings are. The question is
19 today, if you get picked to be a juror, can you
20 put your personal feelings aside and apply the
21 law or are your feelings so strong that it will
22 impair you from considering anything other than
23 the death penalty?

24 THE JUROR: I can do that.

25 MR. ROSENBAUM: You are sure?

1 THE JUROR: Yes.

2 THE COURT: Okay. You do
3 understand that?

4 THE JUROR: Yes.

5 THE COURT: Mr. Bruner, you may
6 inquire.

7 MR. BRUNER: Mrs. McDougal, you
8 seem rather hesitant about that.

9 Can you, assuming Mr. Smith -- and that is
10 a big assumption because, as the Judge will tell
11 you, right now we are in the evidence stage --
12 we will talk about that later on, but can you,
13 assuming the State proves its case beyond a
14 reasonable doubt as to his guilt, as to the
15 specifications, as to him using a firearm which
16 was talked about here, and they prove that he
17 killed somebody with aggravated circumstances,
18 could you put him in prison for life or would
19 you want his death?

20 THE JUROR: I can put my
21 personal feelings aside and go with the law,
22 life, but I think -- I am not sure.

23 THE COURT: May I say this
24 to you, that the Defendant deserves more than I
25 think, I think, and the State deserves more than

1 I think, I think.

2 At this point you know we have to have as
3 positive an answer as we can from you.

4 Mr. Rosenbaum explained the situation, Mr.
5 Bruner explained the situation. There are
6 circumstances in the State of Ohio with taking
7 a life under certain circumstances.

8 If they fit, then I think the jurors have
9 to make sure that it fits and vote accordingly.
10 If it doesn't fit and it fits the other, 30 to
11 life or 20 to life, those are the other
12 possibilities, but there are categories that
13 do fit them into those possibilities at this
14 point.

15 Now, the point is, the point is this, if
16 your feelings are so strong in favor of capital
17 punishment that you cannot lay them aside and
18 bring in a verdict of 20 to life, 30 to life,
19 then that is the question.

20 Can you put your own strong feelings that
21 you may have towards the death penalty aside
22 and vote for another verdict if the law called
23 for it?

24 Am I putting it properly?

25 MR. BRUNER: You have to

1 understand that we want you to be fair to the
2 State and certainly fair to Mr. Smith and you
3 have to be able to agree with that verdict and
4 if you can't agree, you have to tell us.

5 THE JUROR: Maybe I can't.
6 Yes, I will be afraid to say yes and let my own
7 feelings get in the way.

8 THE COURT: Ma'am, we recognize
9 that you are a human being and subject to feelings
10 and what have you and this sort of thing. We
11 understand this, but we are also asking you and
12 you have told us that your views towards capital
13 punishment are strong in favor of it.

14 We are asking you, in spite of the strong
15 feelings, can you put them aside and vote for
16 what the law may call for and follow my
17 instructions?

18 THE JUROR: I am going to say
19 no.

20 THE COURT: You will not be
21 able to follow my instructions?

22 THE JUROR: No.

23 MR. ROSENBAUM: Your Honor, the
24 State concedes that she is substantially
25 impaired.

1 THE COURT: Okay. Thank you.
2 We will have to excuse you. Again, on this,
3 thank you very much for coming. You are excused
4 and you may go home.

5 THE JUROR: Thank you.

6 THE COURT: Kathleen Szippel.

7 Mrs. Szippel, the question that the Court
8 asked, did anybody have any strong feelings
9 regarding the death penalty, you raised your
10 hand to that.

11 Could you please tell the Court and these
12 gentlemen what those feelings are at this point?

13 THE JUROR: Yes, I am a Catholic
14 that does have a strong religion, but at the same
15 time I do feel that if somebody takes a life of
16 somebody else, they are deserving to die for that
17 crime.

18 They took a life and should not be allowed to
19 live their own life. Even if it is in prison for
20 20 years or 30 years, they did not allow the other
21 person to live and I do believe that when somebody
22 does get the death penalty, they should receive
23 the death penalty within a reasonable amount of
24 time and not sit in prison for a long time.

25 THE COURT: That is not the

1 THE JUROR: Okay.

2 THE COURT: Mr. Petkoff.

3 Mr. Petkoff, in response to a question posed
4 by the Court as to whether or not you had a strong
5 feeling regarding the death penalty, you indicated
6 that you did?

7 THE JUROR: Yes, sir.

8 THE COURT: Would you please
9 explain that to the Court, what your feelings are
10 to the Court and counsel?

11 THE JUROR: I believe that if
12 one human being takes another life, that he
13 should sacrifice his own.

14 THE COURT: Okay.

15 Those are your views?

16 THE JUROR: Yes.

17 THE COURT: Mr. Rosenbaum?

18 MR. ROSENBAUM: Do you believe
19 that in all murder cases?

20 THE JUROR: Yes.

21 THE COURT: What is murder to
22 you, then?

23 Let me ask you that.

24 THE JUROR: I believe it to
25 be the willful of taking someone's life, not

1 accidents. There is a willful taking of
2 someone's life.

3 MR. ROSENBAUM: All right. Let
4 me ask you this.

5 Do you understand that if you are a juror,
6 you have to follow the law, right?

7 THE JUROR: Yes.

8 MR. ROSENBAUM: And in the law,
9 the Judge will give you a procedure to consider
10 three penalties if we get that far in this trial.

11 One is the death penalty and there are two
12 life sentences.

13 Are your views about the death penalty so
14 strong that you could not put them aside and
15 follow the law and consider the other two
16 penalties fairly?

17 THE JUROR: I don't believe
18 so, no.

19 MR. ROSENBAUM: So you could put
20 your views aside and follow the law?

21 THE JUROR: No, I believe that
22 I would probably feel strongly for the death
23 penalty.

24 MR. ROSENBAUM: You are saying your
25 views about the death penalty are so strong that

1 you could not fairly consider any other penalty?

2 THE JUROR: Yes.

3 MR. ROSENBAUM: We consent.

4 MR. BRUNER: Thank you, sir.

5 THE COURT: Thank you, Mr.

6 Petkoff, we will have to excuse you at this point.

7 Mrs. Jenkins.

8 Mrs. Jenkins, in response to a question
9 posed by the Court you indicated that you had
10 some strong feelings regarding the death penalty.

11 Could you tell me and these gentlemen here
12 what those views are?

13 THE JUROR: My views on the
14 death penalty have always been the same, I feel
15 strongly that if somebody takes another life
16 that should happen to them.

17 I can't see putting them in jail and leaving
18 them there. I feel strongly about that.

19 THE COURT: Under all
20 circumstances?

21 THE JUROR: Yes.

22 THE COURT: I am not talking
23 accident.

24 THE JUROR: Willfully.

25 THE COURT: And you feel,

1 regardless of what the situation is, you feel
2 if a person has taken a life he should forfeit
3 his?

4 THE JUROR: I do, yes.

5 THE COURT: Is it so strong
6 that you cannot lay it aside and follow the
7 instructions of the Court if they were to be
8 given?

9 THE JUROR: I don't know. I
10 always have felt strongly about that.

11 THE COURT: Mr. Rosenbaum?

12 MR. ROSENBAUM: Ma'am, you
13 understand that people have personal views,
14 right?

15 THE JUROR: Right.

16 MR. ROSENBAUM: And if picked to
17 be a juror you may be called upon to put them
18 aside, correct?

19 THE JUROR: Uh-huh.

20 MR. ROSENBAUM: So, my question
21 to you would be, if the Judge gives you a
22 procedure that requires you to consider three
23 penalties in this case, the death sentence and
24 two life sentences, are your views so strong
25 that you could not fairly consider the two

1 life sentences or would you put them aside and
2 follow the law as the Judge gives it to you?

3 THE JUROR: I don't know. I
4 am afraid I would have to lean to the death
5 sentence in my own view.

6 MR. ROSENBAUM: Let me ask you
7 again, are you saying your views about the
8 death penalty are so strong that they would
9 substantially impair you from considering the
10 two life sentences?

11 THE JUROR: Yes.

12 MR. ROSENBAUM: Even though you
13 will take an oath to apply the law as the Judge
14 gives it to you?

15 THE JUROR: Yes.

16 THE COURT: You would not follow
17 the law?

18 THE JUROR: I don't think I
19 could honestly say that I could do that.

20 THE COURT: Very well. Thank
21 you.

22 We will excuse you at this point.

23 THE JUROR: Thank you.

24 THE COURT: Dionne Armstrong.

25 Mrs. Armstrong, in response to a question

1 posed by the Court you expressed -- you indicated
2 that you had strong views regarding the death
3 penalty?

4 THE JUROR: Uh-huh.

5 THE COURT: And could you tell
6 me and the gentlemen sitting here what those
7 might be?

8 THE JUROR: Well, I feel if
9 someone kills someone, I don't think another
10 person has a right to take their life because
11 they did something wrong. I think punishment
12 in other ways could do instead of the death
13 penalty.

14 THE COURT: Mr. Rosenbaum?

15 MR. ROSENBAUM: Let me ask you
16 this.

17 Are your views against the death penalty
18 so strong that you would be substantially
19 impaired from considering the death penalty?

20 THE JUROR: That is a tough
21 question.

22 THE COURT: You do have a
23 tough job to do.

24 THE JUROR: Right. Like I
25 said, I don't believe in two wrongs making a

1 right, so I mean -- if I had it -- oh, God,
2 that is hard.

3 MR. ROSENBAUM: Let me ask you
4 another way.

5 The Judge is going to give you a procedure
6 as to which of three penalties apply. One of
7 them is the death penalty, the other two are
8 life sentences, if we get to that part of this
9 trial.

10 THE JUROR: Uh-huh.

11 MR. ROSENBAUM: Are your views
12 about the death penalty so strong that you would
13 only consider the two life sentences?

14 THE JUROR: No, I would consider
15 it, but it would be hard.

16 MR. ROSENBAUM: Could you sign your
17 name to a piece of paper that condemns him to
18 death if the law and the evidence requires it?

19 That is what we are talking about.

20 THE JUROR: No, I couldn't kill
21 another person, no.

22 MR. ROSENBAUM: Could you sign your
23 name to a piece of paper condemning him to death
24 if you thought the law and the evidence required
25 it?

1 THE JUROR: Yeah, if the law and
2 the evidence required it.
3 MR. ROSENBAUM: You have to decide
4 that.
5 THE JUROR: Yes.
6 MR. ROSENBAUM: It is going to be
7 your name on that paper.
8 THE JUROR: Yes.
9 MR. ROSENBAUM: So, you are telling
10 me now that your views about the death penalty,
11 you would put them aside even though it is morally
12 wrong?
13 THE JUROR: I would look at it
14 as doing a job for law and order and justice.
15 MR. ROSENBAUM: So you are telling
16 me you could put your feelings aside and sign your
17 name to a piece of paper condemning him to death?
18 THE JUROR: Yes, for law and
19 order.
20 MR. ROSENBAUM: No matter how
21 morally wrong it was?
22 THE JUROR: Yes.
23 MR. ROSENBAUM: I have no other
24 questions.
25 MR. BRUNER: No question at all,

1 you could do that?

2 THE JUROR: Yes.

3 MR. BRUNER: And you would listen
4 to the Judge's instructions?

5 THE JUROR: Right.

6 MR. BRUNER: And you understand
7 that you may never get to that question?

8 THE JUROR: Right.

9 MR. BRUNER: That may be far
10 down the road, but if you get to it and the
11 Judge instructs you that way, you could follow
12 his instructions and follow the law and either
13 sign for death or life with 30 or life with 20,
14 depending on how he instructs the jury?

15 THE JUROR: Okay.

16 MR. BRUNER: You could do that?

17 THE JUROR: Yes.

18 THE COURT: Thank you, you may
19 return to the courtroom.

20 Mrs. Ellingworth.

21 Mrs. Ellingsworth, in response to one of the
22 questions that the Court posed to the panel you
23 indicated that you had some strong views regarding
24 the death penalty.

25 Could you please tell me and these gentlemen

1 here what those views may be?

2 THE JUROR: I have a hard
3 problem with another person judging, saying that
4 they can take the life of another person even
5 though they have committed murder.

6 Does that make sense?

7 I don't feel that one person can say, "You
8 deserve to die just because you committed murder."

9 THE COURT: Okay. In other
10 words -- let me ask you this question.

11 Would there be any kind of circumstances
12 that you would vote for guilty?

13 THE JUROR: I can't think of
14 one, no.

15 THE COURT: Mr. Rosenbaum?

16 MR. ROSENBAUM: Are you saying your
17 views are so strong that you are substantially
18 impaired from considering the death penalty in
19 this case?

20 THE JUROR: That is probably a
21 question that might put me back in that room,
22 right?

23 No, I cannot say that I would not keep an
24 open mind, but I have yet to --

25 MR. ROSENBAUM: I said substantially

1 impaired, not impossible.

2 Are your views so strong that it would
3 substantially impair you from considering the
4 death penalty?

5 THE JUROR: I would not want
6 that on my conscience.

7 MR. ROSENBAUM: Is the answer to my
8 question yes then?

9 THE JUROR: I guess I would have
10 to say yes.

11 MR. ROSENBAUM: I have no other
12 questions.

13 THE COURT: Even if I give you
14 instructions that whatever those would be, you
15 would not follow my instructions?

16 THE JUROR: I would follow the
17 instruction. I will not want to do it, but I
18 would follow instructions.

19 MR. ROSENBAUM: Look --

20 THE JUROR: I don't mean to be
21 difficult.

22 MR. ROSENBAUM: If the law -- his
23 instructions -- say you have to consider the death
24 penalty, can you do that?

25 THE JUROR: Yes.

1 MR. ROSENBAUM: So, your views do
2 not impair you from considering the death penalty?

3 THE JUROR: I am saying I would
4 not want to be put in that position.

5 MR. ROSENBAUM: Do you understand
6 what substantially impaired means?

7 THE JUROR: Explain to me what
8 you mean.

9 MR. ROSENBAUM: Do you know what
10 impaired means?

11 THE JUROR: Yes.

12 THE COURT: What, interfered
13 with?

14 THE JUROR: Interfered with.

15 MR. ROSENBAUM: Would your views
16 interfere with your ability to impose the death
17 penalty?

18 THE JUROR: Yes.

19 MR. ROSENBAUM: Even if the law
20 required it?

21 THE JUROR: If I was put on a
22 jury that had the death penalty and I was told
23 that if you find this person guilty he is going
24 to be put to death --

25 THE COURT: That is not what

1 will happen here.

2 MR. ROSENBAUM: There are three
3 penalties that you will have to consider, death
4 and two life sentences.

5 THE JUROR: Uh-huh.

6 MR. ROSENBAUM: Are your views so
7 strong that it would interfere with or impair
8 subetantially your ability to consider the
9 death penalty?

10 THE JUROR: No, I could impose
11 the death penalty and I don't agree with it, but
12 if I were put in a position as you said --

13 MR. ROSENBAUM: Look at him, could
14 you sign your name to a piece of paper condemning
15 him to death?

16 THE JUROR: No, I could not do
17 that.

18 MR. ROSENBAUM: Then you can't
19 consider the death penalty, can you?

20 THE JUROR: If you put it that
21 way, no. To me those were two different
22 questions.

23 You are asking me, can I sign my name to put
24 that man to death -- if you are asking me can I
25 sit on a jury where that may be possible, but I

1 am not making that decision and signing my name
2 to it, no.

3 MR. ROSENBAUM: That is what the
4 juror does.

5 THE JUROR: You said that I
6 would not have to make that decision. Signing
7 my name is making that decision.

8 MR. ROSENBAUM: If you are picked
9 here you will be on a jury -- possibly if it gets
10 to that point you will have to decide death or
11 two life sentences and the question is, are your
12 views about the death penalty so strong that it
13 would interfere with your ability to consider
14 the death penalty?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: I have no other
17 questions.

18 THE COURT: I have to excuse
19 you, Ma'am.

20 THE JUROR: Okay.

21 THE COURT: Mrs. Meszes.

22 Mrs. Meszes, in response to one of the
23 Court's questions you indicated that you had
24 some strong views about the death penalty?

25 THE JUROR: Right.

1 THE COURT: Would you tell
2 me and these gentlemen what those views are?

3 THE JUROR: Well, I just
4 believe that no one has the right to take the
5 life of another person, but I also believe in
6 the circumstances behind it and if this is
7 beyond a reasonable doubt and if it was
8 premeditated, there is some factors there.

9 THE COURT: What you are
10 saying is that you don't believe anyone has
11 the right to take another person's life?

12 THE JUROR: No, I don't
13 believe in that.

14 THE COURT: The law in the
15 State of Ohio prescribes under what
16 circumstances a death penalty may be sought.

17 THE JUROR: Right.

18 THE COURT: And also gives
19 you the opportunity if the circumstances call
20 for it to impose life sentences, too, if you
21 are a juror in this matter.

22 Are your views so strong against the taking
23 of a life that you would never consider the
24 death penalty?

25 THE JUROR: No, my views aren't

1 that strong.

2 THE COURT: Mr. Rosenbaum?

3 MR. ROSENBAUM: You feel the State
4 has the right to take a life, right?

5 THE JUROR: Well, in certain
6 cases.

7 MR. ROSENBAUM: After a trial?

8 THE JUROR: Yeah, in certain
9 things, I do believe that.

10 MR. ROSENBAUM: Are you in favor
11 of the death penalty or do you believe that no
12 one can take anyone's life, including the
13 government?

14 THE JUROR: Let's say I believe
15 in the death penalty.

16 MR. ROSENBAUM: So, you feel the
17 government could take someone's life after a
18 trial?

19 THE JUROR: Yes.

20 MR. ROSENBAUM: So, as I understand
21 it then, if the Judge gives you three possible
22 sentences in this case when he explains the law,
23 one is the death penalty, two others are life
24 sentences, could you carefully consider all
25 three?

1 THE JUROR: Yes, I would.

2 MR. ROSENBAUM: And make the
3 appropriate decision based upon the law and the
4 evidence?

5 THE JUROR: Right.

6 MR. ROSENBAUM: You did indicate
7 in Question No. 100 that you don't like to be
8 in judgment of people?

9 THE JUROR: No.

10 MR. ROSENBAUM: But that is not a
11 religious or moral thing, is it?

12 You just don't want to?

13 THE JUROR: It is more or less
14 I don't like to judge people. I don't like to
15 talk about people.

16 MR. ROSENBAUM: If called upon to
17 be a juror in this case, you would be doing that.

18 THE JUROR: I know.

19 MR. ROSENBAUM: You would apply the
20 law to the evidence?

21 THE JUROR: Yes, I would.

22 MR. ROSENBAUM: I have no other
23 questions.

24 THE COURT: Mr. Bruner?

25 MR. BRUNER: I am not sure where

1 are you standing.

2 Are you standing in favor of the death
3 penalty?

4 THE JUROR: I am not strongly
5 in favor, I am just in favor.

6 MR. BRUNER: So you understand,
7 Mrs. Meszes, you understand that at this point
8 in time you are not even considering that?

9 The first phase of the trial is the evidence
10 phase and we will discuss that later on with
11 everybody.

12 THE JUROR: Right.

13 MR. BRUNER: And that the only
14 time you would ever get to considering the death
15 penalty is after the State proves their case
16 beyond a reasonable doubt and proves prior
17 calculation and design and proves that
18 specification that they will talk about.

19 That is the only time that you, as a juror,
20 will have an opportunity to consider the three
21 sentences that Mr. Rosenbaum talked about.

22 Do you understand?

23 THE JUROR: Right.

24 MR. BRUNER: Will you have a
25 problem if the Judge instructs you -- for

1 example, in this case we will talk about
2 aggravated circumstances and mitigating
3 circumstances and if the mitigating
4 circumstances of this crime outweigh the
5 aggravated circumstances, would you have a
6 problem sentencing Mr. Smith to perhaps
7 life as opposed to signing a death penalty
8 warrant?

9 THE JUROR: No, I would not
10 have a problem. Again deciding what I feel in
11 my heart about the evidence I would weigh
12 everything and then whatever, you know.

13 MR. BRUNER: And you would
14 listen to the Judge's instructions, you
15 wouldn't have a problem with that?

16 THE JUROR: No, I would not.

17 MR. BRUNER: And after you
18 weighed everything in your heart and you felt
19 that 30 years to life or 20 years to life was
20 more appropriate than the death penalty, that
21 would impair your feelings about the death
22 penalty?

23 THE JUROR: No.

24 MR. BRUNER: Nothing further.

25 THE COURT: Thank you, Ma'am.

1 You may go back into the courtroom.

2 Mr. McNeely.

3 Mr. McNeely, in response to one of the
4 Court's questions you indicated that you had
5 some strong views regarding the death penalty?

6 THE JUROR: Yes.

7 THE COURT: Would you tell me
8 and these gentlemen here what those might be?

9 THE JUROR: The view is more
10 of a convenient-type case. I would say not so
11 much killing somebody for improper reasons, if
12 you go in and beat somebody with a ball bat or
13 if you for no reason beat them to death, you
14 should be put to death.

15 Those are my feelings. If there are
16 circumstances above and beyond his control,
17 something to that effect, then I do not believe
18 in the death penalty, but I am a firm believer
19 in it as far as if you go in and beat somebody
20 or kill somebody for no reason.

21 THE COURT: Depends on the
22 manner in which you do it?

23 THE JUROR: Yes, I guess that
24 is the best way.

25 THE COURT: Mr. Rosenbaum?

1 MR. ROSENBAUM: If it turns out
2 that there are certain criteria when you can
3 impose the death penalty and certain criteria
4 when you cannot, could you accept the law that
5 defines that?

6 THE JUROR: Yes.

7 MR. ROSENBAUM: And you will
8 consider death and the two life sentences if
9 the Judge tells you you had to do that?

10 THE JUROR: Yes.

11 MR. ROSENBAUM: So, you would not
12 automatically vote for the death penalty?

13 THE JUROR: No, I would not.

14 THE COURT: Nor would you
15 automatically vote for the other two?

16 THE JUROR: No.

17 THE COURT: Fine.

18 Mr. Bruner?

19 MR. BRUNER: Mr. McNeely, what
20 purpose do you think is served by the death
21 penalty?

22 THE JUROR: Purpose?

23 Satisfaction for the victim's family.

24 MR. BRUNER: So you feel that
25 putting another person to death for that murder

1 would --

2 THE JUROR: As again in certain
3 circumstances --

4 MR. BRUNER: (Continuing) --
5 satisfy the victim's family?

6 THE JUROR: Yes.

7 MR. BRUNER: You understand that
8 we are in phase one of the case, the evidence
9 phase, the State has to prove everything?

10 THE JUROR: Yes.

11 MR. BRUNER: Before you even can
12 consider the possibility of a death penalty?

13 THE JUROR: Yes.

14 MR. BRUNER: If the State proves
15 that Mr. Smith is guilty of aggravated murder
16 with prior calculation and design with the
17 specifications, do you think any other sentence
18 would be appropriate other than death?

19 THE JUROR: It would depend on
20 the facts I would say.

21 MR. BRUNER: Do you think that
22 your views would impair you from signing a
23 verdict that would give him 20 to life or 30
24 to life as opposed to death?

25 THE JUROR: No, I do not.

1 MR. BRUNER: Would you follow
2 Judge Glavas' instructions on that?
3 THE JUROR: Most assuredly.
4 MR. BRUNER: And your personal
5 views wouldn't impair you?
6 THE JUROR: No.
7 MR. BRUNER: I have nothing
8 further.
9 MR. ROSENBAUM: Nothing.
10 THE COURT: Thank you, sir.
11 You may go back in the courtroom.
12 Mr. Baker.
13 Mr. Baker, in response to one of the Court's
14 questions you indicated that you had some strong
15 views regarding the death penalty?
16 THE JUROR: Uh-huh.
17 THE COURT: Would you tell me
18 and these gentlemen what those views are?
19 THE JUROR: Basically religious.
20 I am a born again Christian and I don't believe
21 in taking a person's life.
22 THE COURT: It is a religious
23 feeling at this point?
24 THE JUROR: Mostly, yeah,
25 against my religion. We don't believe in it.

1 THE COURT: You wouldn't
2 under any circumstances, regardless of what
3 the situation is, vote for a death penalty?

4 THE JUROR: Probably not,
5 because I don't think we have the right to
6 take a person's life, only God has that right.
7 God said, "I will get revenge and I will get
8 even."

9 MR. ROSENBAUM: So you are telling
10 us that your views about the death penalty or
11 your religious views would impair you from
12 considering the death penalty?

13 THE JUROR: Yes.

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: Mr. Bruner?

17 MR. BRUNER: In any other kind
18 of a case, Mr. Baker, would you have any kind of
19 problem following the instructions of the Court?

20 THE JUROR: No.

21 MR. BRUNER: Aggravated robbery?

22 THE JUROR: No.

23 MR. BRUNER: Burglary, rape, or
24 anything like that?

25 THE JUROR: No, sir.

1 MR. BRUNER: And you would, in
2 fact, follow the Judge's instructions?

3 THE JUROR: Yes.

4 MR. BRUNER: But in a murder case
5 -- you are telling us that you understand there
6 are a couple of phases in this trial?

7 THE JUROR: I understand that.

8 MR. BRUNER: Assuming the State
9 proves their case beyond a reasonable doubt there
10 is another phase known as the penalty phase.

11 If you get to that point and the Judge would
12 instruct you on the factors in this case and death
13 could be one of the sentences and life 20 or life
14 30 could be one of the sentences, would you follow
15 the Court's instructions on the death issue or
16 would your views impair you from signing a
17 verdict form for the death?

18 THE JUROR: It would. I would
19 never vote for the death penalty.

20 THE COURT: We understand, sir.

21 THE JUROR: I am not against
22 incarceration.

23 THE COURT: We are all
24 appreciative of your candidness and thank you,
25 but I have to excuse you.

1 THE JUROR: Thank you.

2 THE COURT: Linda Lowery.

3 Ms. Lowery, in response to one of the
4 Court's questions you indicated you had strong
5 views regarding capital punishment?

6 THE JUROR: Yes.

7 THE COURT: Would you tell us
8 what those views are at this time?

9 THE JUROR: My feeling is that
10 if someone is proven beyond a doubt that he is
11 guilty of it, he should be put to death.

12 THE COURT: Does that view
13 prevent you from under any circumstances voting
14 for 20 to life or 30 to life?

15 THE JUROR: Yes, it does.

16 THE COURT: You would never
17 vote for something less than that?

18 THE JUROR: Not if they were
19 proven guilty beyond a doubt. They took the
20 life willfully.

21 THE COURT: Mr. Rosenbaum?

22 MR. ROSENBAUM: You say you are
23 a public official?

24 THE JUROR: Yes.

25 MR. ROSENBAUM: For what?

1 THE JUROR: LaGrange?

2 MR. ROSENBAUM: What do you do
3 there?

4 THE JUROR: For LaGrange I
5 am the Mayor's Secretary, Clerk of the Court.
6 I do the utility billing, just about everything.

7 MR. ROSENBAUM: And you are an
8 official somewhere else?

9 THE JUROR: I was just elected
10 to Clerk of the Carlisle Township.

11 MR. ROSENBAUM: Now, as a public
12 official you have to follow the law, right?

13 THE JUROR: Right.

14 MR. ROSENBAUM: Sometimes you don't
15 agree with the law?

16 THE JUROR: Sometimes, yes.

17 MR. ROSENBAUM: Now, the question
18 is, can you do that in this case in light of your
19 view of the death penalty and what I am driving
20 at is, the Judge is going to give you a procedure,
21 if we reach that point in this trial, that says
22 you have to consider three penalties and you can
23 only impose death under certain conditions and
24 two life sentences under certain conditions.

25 Can you put your personal feelings about

1 the death penalty aside and follow the law as the
2 Judge gives it to you?

3 THE JUROR: I am unsure. I have
4 had an aunt before I was born, years ago, who was
5 killed and the murderer was never found, so that
6 kind of comes into play.

7 MR. ROSENBAUM: So are you saying --
8 let me ask you the million dollar question.

9 Are your views about the death penalty so
10 strong that they would substantially impair your
11 ability to consider the other sentences?

12 THE JUROR: I believe so.

13 MR. ROSENBAUM: Nothing more.

14 MR. BRUNER: I have nothing,
15 your Honor.

16 THE COURT: Mrs. Lowery, we
17 will have to excuse you at this point.

18 THE JUROR: Okay.

19 THE COURT: Mrs. Gosselin.

20 Mrs. Gosselin, during an inquiry in the
21 courtroom you indicated that you had some
22 strong views regarding the death penalty?

23 THE JUROR: Well --

24 THE COURT: Correct?

25 THE JUROR: Yes.

1 THE COURT: Would you tell me
2 and these gentlemen what those views may be?

3 THE JUROR: Well, I feel, even
4 though I am a Catholic, and you know, God is the
5 only person that can judge, but I feel if a person
6 -- if I feel that person is truly guilty of really
7 seriously taking another person's life or
8 something that serious, I feel it is proved beyond
9 a reasonable doubt, that he should get the death
10 penalty in some cases.

11 THE COURT: If you had -- if we
12 ever get to that stage -- three possible choices,
13 one is the death sentence, another one is a life
14 with 30, life with 20, are your views on the death
15 penalty -- would they impair you from considering
16 the other two?

17 THE JUROR: No.

18 THE COURT: They would not?

19 THE JUROR: I don't think so.

20 THE COURT: Could you vote for
21 either one of the three if the evidence indicated
22 it?

23 THE JUROR: Yes, I could, but,
24 you know --

25 THE COURT: Let me say this to

1 you. I think before you go any further Mr.
2 Rosenbaum and Mr. Bruner will ask you some
3 questions. Both the State of Ohio and Mr. Smith
4 sitting down at the end of the table deserve an
5 answer something more than I think.

6 THE JUROR: Yes, I will say yes.

7 THE COURT: Mr. Rosenbaum?

8 MR. ROSENBAUM: So I understand,
9 even though you feel strongly about the death
10 penalty, if the Court gave you a procedure that
11 required you to consider three sentences, one
12 death, two life sentences, you could follow that
13 procedure?

14 THE JUROR: Yes, I could.

15 MR. ROSENBAUM: Could you sign your
16 name to a piece of paper condemning him to death
17 if you thought the law and the evidence required
18 it?

19 THE JUROR: Could I?

20 MR. ROSENBAUM: Yes.

21 THE JUROR: I don't know. I
22 have never had to do anything like this before.
23 This is the way I think sometimes.

24 MR. ROSENBAUM: Well, it is one
25 thing to be for the death penalty. It is another

1 thing to maybe have to take a step and carry it
2 out.

3 THE JUROR: I am not sure
4 because, you know, like I said, I am a Catholic.

5 THE COURT: But the question is,
6 I mean, you indicated earlier that if a person
7 takes a life and the circumstances warrant it, he
8 should give his life, but you could consider the
9 other two possibilities?

10 THE JUROR: Yes.

11 MR. ROSENBAUM: It is two different
12 things, being for the death penalty and having to
13 do it.

14 THE JUROR: Yes, it is.

15 MR. ROSENBAUM: Now, the question
16 is, maybe in a new light I want to ask you the
17 same question based upon your view of the death
18 penalty.

19 Could you sign your name to a piece of paper
20 condemning him to death?

21 THE JUROR: I don't know right
22 now.

23 THE COURT: Could you? Not
24 would you.

25 THE JUROR: Could I?

1 THE COURT: Would that be a
2 consideration that you could sign your name to?

3 MR. ROSENBAUM: Why do you not want
4 to do that?

5 What would be your concerns?

6 THE JUROR: Because this is
7 taking another person's life. I am getting myself
8 confused here.

9 MR. ROSENBAUM: Do you feel it is
10 wrong for you to take someone else's life?

11 THE JUROR: Maybe I do. Now
12 that I am listening to you I do feel that it is
13 like I said, God is the Judge and God is the only
14 one that can take a person's life.

15 MR. ROSENBAUM: So, do your views
16 subetantially impair your ability to consider the
17 death penalty in this case?

18 THE JUROR: Yes.

19 MR. ROSENBAUM: I have no other
20 questions.

21 THE COURT: Mr. Bruner?

22 MR. BRUNER: Let me ask you this.
23 You put on your form that if the crime is
24 serious, they should be put to death?

25 THE JUROR: I know.

1 MR. BRUNER: And Mr. Rosenbaum
2 is right, they are two different things, but as
3 a juror you are sworn to uphold the law.

4 THE JUROR: Yes.

5 MR. BRUNER: And to follow the
6 law.

7 THE JUROR: Right.

8 MR. BRUNER: As the Judge and
9 attorneys are certainly someone to uphold the law.

10 THE JUROR: Right.

11 MR. BRUNER: And police officers.

12 THE JUROR: Uh-huh.

13 MR. BRUNER: Would you have a
14 problem in this case -- you may never get to
15 decide that issue --

16 THE JUROR: Right --

17 MR. BRUNER: (Continuing) --
18 certainly the guilt or innocence has to be
19 decided. We will talk about that later. That
20 may never come up, what is called the second
21 phase of this trial, where the penalty is
22 decided.

23 Assuming it is death, if Mr. Smith is found
24 guilty of a lesser offense, you would never have
25 to consider that, you wouldn't have any problem

1 judging him?

2 THE JUROR: No.

3 MR. BRUNER: Assuming that the
4 State proved everything, that he killed another
5 person with prior calculation and design with a
6 firearm, with a specification that will be talked
7 about in Court, could you follow the Judge's
8 instructions or would your views impair that?

9 THE JUROR: I think I will
10 follow the Judge's instructions.

11 MR. BRUNER: Put another way,
12 assuming the State proves everything and all the
13 jurors decided unanimously that that happened,
14 could you sign your name to a verdict sheet that
15 the death penalty would be recommended for Mr.
16 Smith if the Judge instructs you that way?

17 THE JUROR: Yes, I think I
18 could.

19 MR. BRUNER: Do you know, you
20 have to be fair to the State and the government
21 and fair to Mr. Smith and if the Judge instructs
22 you that way would you have a problem doing that?

23 THE JUROR: If he told me to do
24 it --

25 THE COURT: I won't tell you

1 that.

2 MR. BRUNER: The Judge is never
3 going to tell you what to do. He is going to give
4 you the instructions as to what to do and the
5 choices you have to make.

6 THE JUROR: It is my choice.

7 MR. BRUNER: And if the choice
8 and if the law recommended it, could you sign your
9 name to that based upon his instructions?

10 THE JUROR: Yes.

11 MR. BRUNER: Nothing further.

12 MR. ROSENBAUM: So I believe you
13 understand, you will be given three choices if
14 it comes to that?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: One of those
17 involves death where you would have to sign your
18 name.

19 THE JUROR: Uh-huh.

20 MR. ROSENBAUM: Are your views so
21 strong that you could fairly consider that or do
22 they interfere with your ability to consider the
23 death penalty?

24 THE JUROR: Well, see, the only
25 thing that bothers me is the fact that I am a

1 Catholic.

2 MR. ROSENBAUM: You may be back in
3 this very same room, you know, for the sake of
4 this proof you feel the law and the evidence
5 requires it, now you have to deal with your
6 personal belief in God, right?

7 THE JUROR: Yes.

8 MR. ROSENBAUM: Are they so strong
9 that it is going to interfere with your ability
10 to carry out your duty as a juror and consider
11 the death penalty?

12 THE JUROR: No, I still think I
13 could do it if I felt it was such a serious thing.

14 MR. ROSENBAUM: Would it
15 substantially interfere with your ability to
16 consider the death penalty?

17 Not is it possible, could you give all three
18 penalties a fair shake?

19 THE JUROR: Yes, I think I can,
20 I will be fair, I will consider all three.

21 Is that what you mean?

22 MR. ROSENBAUM: Considering means
23 that you have the ability to impose any of the
24 three.

25 Can you?

1 THE JUROR: Yes.

2 MR. ROSENBAUM: In the face of God,
3 sign your name to a piece of paper condemning him
4 to death if you thought the law and the evidence
5 required it?

6 THE JUROR: No.

7 MR. ROSENBAUM: So, your views
8 interfere with your ability?

9 THE JUROR: Yes, yes.

10 MR. BRUNER: Maybe we are
11 confusing you or maybe not.

12 THE JUROR: No.

13 MR. BRUNER: As Mr. Rosenbaum
14 stated, there may come a time when you have to
15 make that decision.

16 THE JUROR: Right.

17 MR. BRUNER: In a lesser case
18 you wouldn't have any problem making the decision
19 as to guilt or innocence?

20 THE JUROR: Right.

21 MR. BRUNER: The penalty wouldn't
22 be your choice in a lesser case.

23 THE JUROR: Right.

24 MR. BRUNER: There seems to be
25 some question as to whether or not you said you

1 could fairly consider the death penalty.

2 THE JUROR: I know.

3 MR. BRUNER: Along with life 30
4 and life 20.

5 THE JUROR: Right.

6 MR. BRUNER: Those are the three
7 choices.

8 THE JUROR: Right.

9 MR. BRUNER: If eleven other
10 jurors said we are going along with the death
11 penalty, could you sign your name to it if you
12 felt that based upon the instructions and the
13 evidence it was necessary?

14 THE JUROR: Could I consider
15 that?

16 I could consider it, yes.

17 MR. BRUNER: Could you sign your
18 name to it if you felt it was necessary?

19 THE JUROR: I am not sure. I
20 don't know. Actually I am not feeling good today
21 so I am not myself.

22 MR. ROSENBAUM: Your Honor, again,
23 the question is substantially impair.

24 THE COURT: What we are trying
25 to do is try to be as fair as we can for everybody

as was indicated to you.

There are two phases to the trial. One is the trial and depending what is reached at the trial end as to whether we would go to phase two.

THE JUROR: Right.

THE COURT: Assuming that phase two that you and eleven other jurors voted a life was taken and this man is guilty of his charges, okay, sometime at a later time -- we will presume this is phase two which is what we call the mitigation phase -- and there will be evidence presented as to aggravating and mitigating circumstances.

Would you be willing to listen to this evidence that is brought in and if the aggravation phase outweighs the mitigation or outweighs the mitigation phase, would you be willing to vote for a death sentence?

Have I put it right?

MR. ROSENBAUM: If it is proved beyond a reasonable doubt.

THE JUROR: Yes.

THE COURT: You will?

THE JUROR: Yes.

MR. ROSENBAUM: I don't think you

1 asked the million dollar question.

2 THE COURT: Would you sign a
3 piece of paper --

4 MR. ROSENBAUM: Do her views
5 interfere with her ability to impose the death
6 penalty or consider it?

7 THE COURT: That is the ultimate
8 question.

9 Would it impair you, would you take that
10 under consideration and give it as much an
11 opportunity as you would the other two?

12 THE JUROR: Yes.

13 THE COURT: You would?

14 THE JUROR: Yes.

15 THE COURT: And you wouldn't
16 just shove it off?

17 THE JUROR: I don't think so.

18 MR. ROSENBAUM: Do your religious
19 views even remotely keep you from imposing the
20 death sentence?

21 THE JUROR: Well, you know I
22 don't believe in taking a life.

23 MR. ROSENBAUM: Well, you can't
24 consider the three fairly if one of them
25 interferes with your religious aspects and

1 the other two don't.

2 THE JUROR: I would have to
3 say no if you put it that way.

4 THE COURT: Mr. Bruner?

5 MR. BRUNER: Would your views
6 substantially, assuming the recommendation of
7 death, if the aggravating factors were proved
8 beyond a reasonable doubt over the mitigating
9 factors in this case --

10 THE JUROR: See, what I am
11 trying to say, explain myself, like I don't
12 believe in killing anyone. I don't believe in
13 anyone's life being taken.

14 If that person is such a bad person that
15 they are going to do something that awful to
16 another person, then I feel -- I feel that life
17 in prison --

18 MR. BRUNER: So you would
19 consider signing the death warrant?

20 THE COURT: In spite of your
21 beliefs?

22 MR. BRUNER: In spite of your
23 religious beliefs?

24 THE JUROR: Yes, I suppose.

25 MR. ROSENBAUM: I suggest we stop

1 and ask no more questions. I am challenging for
2 cause. I am saying she is substantially impaired.

3 THE COURT: I think we have
4 questioned you sufficiently at this point and I
5 am going to excuse you.

6 THE JUROR: Okay.

7 MR. BRUNER: Your Honor, could
8 I put on the record my exceptions to the last
9 challenge?

10 THE COURT: Please do.

11 MR. BRUNER: It is my feeling
12 that she answered that despite her religious
13 beliefs, that is, Mrs. Gosselin, she could, in
14 fact, sign a recommendation of the death penalty
15 for Mr. Smith.

16 She should not have been excused for cause.

17 If Mr. Rosenbaum wished to excuse her, he
18 could have used a preemptory.

19 THE COURT: The Court felt that
20 the previous interviewing went back and forth so
21 often that the Court had doubts as to what her
22 position was in the matter.

23 At one time she said yes and then no and the
24 Court granted the cause at this point.

25 MR. BRUNER: Thank you, your

1 Honor.

2 THE COURT: Mrs. Loughren.

3 Mrs. Loughren, in response to one of the
4 questions you indicated you had some strong
5 views regarding capital punishment?

6 THE JUROR: Yes.

7 THE COURT: Would you tell us
8 what those views are?

9 THE JUROR: I am against the
10 death penalty.

11 THE COURT: Under all
12 circumstances?

13 THE JUROR: Under all
14 circumstances.

15 THE COURT: And this is what,
16 moral, religious, or what?

17 THE JUROR: Religious and moral.
18 I couldn't see my being the person taking
19 someone's life.

20 THE COURT: Would that
21 substantially -- then under no circumstances do
22 you think that you would ever vote for a death
23 penalty?

24 THE JUROR: Under no
25 circumstances.

1 THE COURT: Mr. Rosenbaum?

2 MR. ROSENBAUM: No, your Honor, I
3 have no questions.

4 THE COURT: Mr. Bruner?

5 MR. BRUNER: No questions.

6 THE COURT: I will have to
7 excuse you at this point.

8 THE JUROR: Okay.

9 THE COURT: Greg Kocuba.

10 Mr. Kocuba, in response to one of the Court's
11 questions you indicated you have some strong views
12 regarding the death penalty.

13 Would you tell us what those views are?

14 THE JUROR: If it came down to
15 somebody murdering somebody else, I think they
16 should get the death penalty.

17 THE COURT: Mr. Rosenbaum, you
18 may inquire.

19 MR. ROSENBAUM: Sir, you understand
20 that the death penalty can only be imposed under
21 certain circumstances?

22 THE JUROR: Yes.

23 MR. ROSENBAUM: And the Judge will
24 give you the law if we get to that point in this
25 trial, that there are three choices, death and

1 two life sentences.

2 Would you consider the other two life
3 sentences and follow the law or will you
4 automatically vote for death no matter what?

5 THE JUROR: Yes, it depends on
6 what the circumstances were. I understand what
7 you mean.

8 MR. ROSENBAUM: Aside from the
9 circumstances of the crime there may be
10 circumstances that the law says that might be
11 different than whether you think the death
12 penalty should be imposed, right?

13 And if that is the case, can you follow
14 the law and consider the life sentences as well?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: Whatever the
17 procedure the Judge gives to you, you wouldn't
18 automatically vote death, you would follow the
19 procedures?

20 THE JUROR: Yes.

21 MR. ROSENBAUM: I have no other
22 questions.

23 THE COURT: Mr. Bruner?

24 MR. BRUNER: Do you understand,
25 as Mr. Rosenbaum said, the death penalty is not

1 automatic?

2 THE JUROR: Right.

3 MR. BRUNER: As a matter of fact,
4 you don't have to vote for it.

5 THE JUROR: Right.

6 MR. BRUNER: There is a phase
7 within the trial where you have to decide on the
8 guilt or innocence of the person first.

9 THE JUROR: Yes.

10 MR. BRUNER: Let's assume for the
11 moment, only assuming for these purposes, that Mr.
12 Smith is guilty of aggravated murder in your
13 opinion as he is convicted of that, he is guilty
14 of using a firearm, he is guilty of the
15 specifications in this case.

16 Would you sign any other verdict other than
17 death or is your view of the death penalty so
18 strong that you would have to and it would impair
19 you from signing any other verdict and considering
20 the life sentences?

21 THE JUROR: No, it wouldn't. I
22 wouldn't have to sign the death penalty.

23 THE COURT: You and eleven other
24 jurors found Mr. Smith guilty as charged, you
25 would?

1 MR. BRUNER: If the complete
2 charges, that being aggravated murder with prior
3 calculation and design with the specifications
4 with a firearm, that, in fact, the State has
5 proven him guilty beyond a reasonable doubt of
6 all of those things --

7 THE COURT: That happening,
8 okay, sometime at a later date, at a later time,
9 there will be a mitigation phase whereby
10 aggravated circumstances would be presented to
11 you and mitigating circumstances would be
12 presented to you, based upon that fact and your
13 feeling on the death penalty, could you consider
14 the life sentence under those circumstances?

15 THE JUROR: It would be hard,
16 yes, but I could. It would be hard.

17 THE COURT: When you say, "It
18 would be hard," tell us what you mean by that?

19 THE JUROR: Just the idea if it
20 was premeditated and everything like that.

21 THE COURT: Assuming that it was
22 premeditation and what have you, assuming that it
23 was at this point but yet there were some
24 circumstances presented, explained, okay, at the
25 mitigation phase, and that is what that is all

1 about at this point, could you consider the other
2 sentences or is your view so strong towards the
3 death penalty that you would not take those under
4 consideration?

5 THE JUROR: No.

6 THE COURT: You would not be
7 impaired for the other situations?

8 THE JUROR: I could vote for
9 life if the situations were there.

10 THE COURT: Continue if you
11 want, sir.

12 MR. BRUNER: So, in other words,
13 based upon what the Judge said, you will give full
14 consideration to the two life sentences and the
15 death sentence?

16 THE JUROR: Yes.

17 MR. BRUNER: Despite your views
18 you can put your views aside and be able to sign
19 a life sentence form as opposed to death?

20 THE JUROR: You are giving
21 different circumstances, too. He is going to
22 have other reasons that are going to be in there
23 to change the views.

24 This is not --

25 MR. BRUNER: As you will hear,

1 the mitigating circumstances wouldn't have much to
2 do with the premeditation. You are going to get
3 to this phase once that is proven and only if it
4 is proven, so what I am asking is, can you put
5 aside your view of the death penalty and you say
6 in here if the crime fits, use it.

7 Can you put aside your view of the death
8 penalty knowing that premeditation has been proven
9 already?

10 Can you sit here and sign a life sentence as
11 opposed to the death sentence or do you see your
12 views so impaired that you can only sign a death
13 sentence?

14 THE JUROR: I wouldn't say it
15 is impaired, I would be able to consider all.

16 THE COURT: Thank you, sir.

17 You may return to the courtroom.

18 Mr. Barnhart.

19 Mr. Barnhart, in response to one of the
20 questions you indicated that you had some strong
21 views regarding the death penalty?

22 THE JUROR: Yes, sir.

23 THE COURT: Would you please
24 tell us what those views are at this point?

25 THE JUROR: I specifically feel

1 if somebody takes someone else's life in a
2 premeditated manner, they should have the same
3 done to them.

4 THE COURT: Mr. Rosenbaum?

5 MR. ROSENBAUM: Do you understand
6 that the death penalty can't be imposed in all
7 cases, right?

8 THE JUROR: Yes.

9 MR. ROSENBAUM: And that the Judge
10 will give you a procedure to apply to decide what
11 the punishment would be?

12 THE JUROR: Yes.

13 MR. ROSENBAUM: And, therefore, if
14 we get to that point in the trial it will call
15 for the consideration of the death penalty and
16 one of two life sentences?

17 THE JUROR: Yes.

18 MR. ROSENBAUM: Are your views
19 about the death penalty so strong that you could
20 not consider the life sentences and follow the
21 procedure the Judge gives you?

22 THE JUROR: No.

23 MR. ROSENBAUM: Would your views
24 about the death penalty impair your ability to
25 follow the Judge's procedure and consider the

1 life sentences?

2 THE JUROR: No.

3 MR. ROSENBAUM: I have no other
4 questions.

5 THE COURT: Mr. Bruner?

6 MR. BRUNER: Mr. Barnhart, you
7 probably don't understand this completely.

8 The phase that Mr. Rosenbaum talked about,
9 this is the evidence phase and in the evidence
10 phase it is the burden of the State to prove him
11 guilty beyond a reasonable doubt that he did it
12 in a premeditated way, that there are
13 specifications involved.

14 You would never get the death penalty unless
15 and until you found beyond a reasonable doubt that
16 it was premeditated and the specifications were
17 involved.

18 Do you understand that?

19 THE JUROR: I think so.

20 MR. BRUNER: So, what you said
21 in the beginning, if someone kills somebody with
22 premeditation they should in return be put to
23 death, isn't that what you just stated earlier?

24 THE JUROR: Yes.

25 MR. BRUNER: So, when you get to

1 the phase of deciding the penalty on Mr. Smith, if
2 the evidence gets that far, do you understand that
3 in you deciding the penalty you would only decide
4 between the three, once you decided that there is
5 premeditation there are aggravating circumstances
6 or a specification, that it is proven.

7 Do you understand that?

8 I am trying not to confuse you.

9 THE JUROR: Yeah.

10 MR. BRUNER: You will only get to
11 that point once premeditation is proven, okay?

12 THE JUROR: Uh-huh.

13 MR. BRUNER: And what you said in
14 the beginning was in a premeditated fashion, if
15 they took a life they should be put to death?

16 THE JUROR: Uh-huh.

17 MR. BRUNER: So, what I am asking
18 you is, can you put aside your feelings about the
19 death penalty?

20 Does it really impair your judgment when you
21 sit here and he has already been proven guilty
22 beyond a reasonable doubt of a premeditated
23 murder, could you consider the two life sentences
24 or would your feelings in effect force you to sign
25 the death penalty?

1 THE JUROR: I would probably go
2 for the death penalty.

3 THE COURT: But the question is
4 this, would you consider the others?

5 THE JUROR: Yes, I would
6 consider the others.

7 THE COURT: All right. But
8 would your views on the death penalty impair you
9 from imposing those other sentences?

10 THE JUROR: I don't think it
11 would impair me, no.

12 THE COURT: You would give them
13 as good a shake as you would the death penalty?

14 THE JUROR: Yes.

15 THE COURT: That is putting it a
16 little differently, but you would give them equal
17 consideration as you would the death penalty and
18 make the determination as the law indicated?

19 You have this phase, you have the guilt or
20 innocence phase, and if you are a juror, you and
21 eleven others have signed your name to a piece of
22 paper that this man has done what he is charged
23 with.

24 Sometime at a later time you and those eleven
25 others will meet and there will be evidence

1 presented to aggravated and mitigating factors
2 and, based upon what that evidence is, you would
3 be asked to make a determination.

4 And the question is, sir, vote on the death
5 penalty. Would this impair you from considering,
6 not only considering, but from imposing, any one
7 of the other two life sentences?

8 MR. BRUNER: Judge, you put it
9 better than I could.

10 THE JUROR: Yes, it may.

11 THE COURT: It may?

12 THE JUROR: Yes.

13 MR. ROSENBAUM: I guess we are
14 asking you, are your views on the death penalty
15 so strong you can't follow the procedure the
16 Judge gives you that requires you to consider
17 all three penalties, or could you put your
18 feelings aside and do that job as a juror?

19 THE JUROR: I would try my
20 best to put them aside.

21 MR. ROSENBAUM: Will you have
22 difficulty doing that?

23 THE JUROR: Yes, I will.

24 THE COURT: I will have to
25 excuse you at this point.

1 THE JUROR: Okay.

2 THE COURT: Mr. Peters.

3 Mr. Peters, in regard to one of the questions
4 you indicated you had views on the death penalty?

5 THE JUROR: Yes.

6 THE COURT: Could you tell us
7 what those views are?

8 THE JUROR: Well, I believe that
9 something ought to be used to punish. I don't
10 mean taking another's life and things of that
11 sort, I feel it is not used often enough in this
12 country.

13 THE COURT: Mr. Rosenbaum?

14 MR. ROSENBAUM: Sir, I take it from
15 your questionnaire you are in favor of the death
16 penalty?

17 THE JUROR: Yes.

18 MR. ROSENBAUM: Do you understand,
19 if you are called upon to be a juror, you have to
20 apply the law as the Judge gives it to you, right?

21 THE JUROR: Yes.

22 MR. ROSENBAUM: No matter what your
23 personal views are?

24 THE JUROR: Right.

25 MR. ROSENBAUM: Now, if the Judge

1 gives you the procedure for which to determine
2 what punishment should be applied, could you
3 follow that?

4 THE JUROR: Uh-huh.

5 MR. ROSENBAUM: Now, do you
6 understand the death penalty can't be imposed in
7 every murder case?

8 THE JUROR: Yes.

9 MR. ROSENBAUM: And the Judge will
10 give you a procedure to determine what penalty
11 to apply in this case if it comes to that?

12 THE JUROR: Yes.

13 MR. ROSENBAUM: And in that
14 procedure there will be three to consider, two
15 life sentences and one death sentence.

16 Can you consider the two life sentences or
17 are your views about the death penalty so strong
18 that you would automatically vote for the death
19 penalty no matter what?

20 THE JUROR: It would depend on
21 what I heard between now and then.

22 MR. ROSENBAUM: Regardless of the
23 evidence, are you saying there are certain cases
24 that the evidence is so strong that you would not
25 follow the law and you would vote for the death

1 penalty no matter what?

2 THE JUROR: I said, if the
3 evidence to me felt that I felt that the death
4 penalty was there, I would vote for the death
5 penalty.

6 MR. ROSENBAUM: Regardless of what
7 the law says about it?

8 THE JUROR: I don't quite
9 understand your question.

10 MR. ROSENBAUM: You said to me,
11 so I understand you, if you think the evidence
12 requires the death penalty you would vote for
13 it?

14 THE JUROR: If that was an
15 option in the law, yes.

16 MR. ROSENBAUM: If the law says
17 that the death penalty is not an option, but
18 your personal views say that the death penalty
19 should be imposed, you would vote what?

20 THE JUROR: I would have to
21 follow the law.

22 MR. ROSENBAUM: So you would
23 consider the other penalties and the procedure
24 that the Judge gives to you?

25 THE JUROR: Yes.

1 THE COURT: Mr. Bruner?

2 MR. BRUNER: Mr. Peters, you
3 were kind enough to answer this question here
4 for us and in here it says, "Prisons are too
5 good -- should be hellish."

6 That is your feeling?

7 THE JUROR: Yes.

8 MR. BRUNER: It also says, your
9 views concerning the death penalty are that, "It
10 is good, make it swift, no appeals."

11 THE JUROR: Right.

12 MR. BRUNER: You feel it should
13 be swift because it is more human than leaving
14 the people in prison?

15 THE JUROR: Doesn't cost as
16 much.

17 MR. BRUNER: It costs too much
18 to maintain these people?

19 THE JUROR: Right.

20 MR. BRUNER: And the death
21 penalty is a deterrent, you feel, is that right?

22 THE JUROR: I feel it is.

23 MR. BRUNER: And you feel that
24 it should then be exercised more than it is?

25 THE JUROR: Right.

1 would impair you from life imprisonment or signing
2 those life sentences?

3 THE JUROR: Not if I were
4 convinced by the other eleven or twelve people on
5 the jury.

6 THE COURT: It is not a question
7 of being convinced by the other eleven people. It
8 is convincing yourself. You have indicated you
9 have strong views for the death penalty.

10 Would that impair you from imposing another
11 penalty such as 30 to life or 20 to life, any one
12 of the other two life sentences if you felt it was
13 so?

14 THE JUROR: I wouldn't use the
15 word "impair," but I think I would use the word
16 and say it would probably delay my decision on
17 anything else.

18 THE COURT: I have to use the
19 word "impair."

20 MR. ROSENBAUM: Substantially
21 impair.

22 THE COURT: Correct, Mr.
23 Rosenbaum.

24 THE JUROR: I would have to
25 say yes.

1 THE COURT: That your views
2 would impair you from considering any of the
3 other life sentences?

4 THE JUROR: Right.

5 MR. BRUNER: I would ask that
6 he be excused for cause, your Honor.

7 THE COURT: Mr. Peters, I am
8 going to have to excuse you on this matter.

9 THE JUROR: Okay.

10 (Whereupon, the following proceedings
11 occurred back in the courtroom.)

12 THE COURT: Ladies and
13 gentlemen, as you can surmise, counsel and the
14 Court have been working on attempting to obtain
15 fair and impartial jurors in this particular
16 case for the trial of this matter and we are
17 still in that process.

18 However, it is now reach 25 minutes after
19 twelve. I recognize that some people may be
20 having hunger pains as well as myself and what
21 have you and with that in mind we will take
22 our afternoon adjournment at this point,
23 recess I should say for lunch.

24 I know you might have some difficulty
25 getting service because you got a late start so

1 all of you return to this courtroom at quarter
2 to two. I will give you a little extra time for
3 lunch at this point; 1:45 we will reconvene and
4 commence further with the procedure of getting
5 a jury.

6 Instructions at this particular time are,
7 there may be something in the newspapers. Please
8 don't read anything. You don't know what the case
9 is about, but don't read anything about it at this
10 point. That is an admonition that I have given
11 you. It is something that will keep you impartial
12 and fair. That is what we are looking for,
13 impartiality and fairness to the State and to
14 the Defendant, both.

15 (Whereupon, a luncheon recess was had.)
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1 AFTERNOON SESSION, TUESDAY, NOVEMBER 28, 1995

2 (Whereupon, the Court resumed the bench and
3 the following proceedings occurred in the presence of
4 the prospective jurors.)

5 THE COURT: Just as an
6 explanation to what is happening, the people that
7 raised their hands have all been interviewed by
8 the Court and counsel as to their views.

9 There will be now, at this point, another
10 break because there are certain matters that
11 appeared on questionnaires and I think that
12 counsel have questions for them, to ask some
13 questions as far as some of the answers that
14 were given to the questionnaires.

15 MR. BRUNER: Can we approach
16 for one second?

17 THE COURT: Surely.

18 (Whereupon, the following proceedings
19 occurred at the bench out of the hearing of the
20 prospective jurors.)

21 MR. BRUNER: Leaving Mrs. Boyson,
22 who is a doctor's wife for awhile, why don't we do
23 her first to make a doctor's appointment?

24 THE COURT: The lady that had
25 the anxiety attack is here, but she is having

1 anxiety and I am going to excuse her. That is
2 No. 24.

3 MR. BRUNER: Fine.

4 THE COURT: With that, we will
5 recess again and we will continue the individual
6 interviews of certain of the jurors, depending
7 on how the questionnaires were answered.

8 (Whereupon, the following proceedings
9 occurred back in the hearing of the prospective
10 jurors.)

11 THE COURT: Ladies and
12 gentlemen, let me say this to you. Before you
13 get upset, please do not. There are certain
14 things that both counsel want to make sure that
15 they understand so that we end up, and both
16 counsel want, a fair and impartial jury, one
17 that is fair and impartial, not only to the
18 Defendant, but to the State, and that is, as
19 they say in the modern language, the bottom
20 line.

21 That is what we are after, so don't be upset.
22 Don't be concerned. There are just a couple of
23 questions that counsel need to ask at this point
24 and with that we will take a short adjournment and
25 we will invite the different people in to see us

1 at this point.

2 (Whereupon, the following proceedings
3 occurred back in the jury room.)

4 THE COURT: Mrs. Boyson, it is
5 my understanding that you answered one of your
6 questions in the voir dire about -- what was that
7 again?

8 MR. BRUNER: Kill them all, let
9 God sort them out.

10 THE COURT: Would you tell us
11 what you mean by that?

12 THE JUROR: Actually the
13 questionnaire was getting long and I really
14 didn't know what to say. As far as the death
15 penalty goes, I think for capital cases that
16 it should be used.

17 THE COURT: It should be used?

18 THE JUROR: Yes.

19 THE COURT: In all cases?

20 THE JUROR: I guess it would
21 depend on the circumstances.

22 THE COURT: Mr. Rosenbaum, do
23 you have any questions of this juror?

24 MR. ROSENBAUM: Are you saying then
25 that you could, if the Judge told you you had to

1 consider three penalties, one was death and two
2 were life sentences, that you would consider all
3 three?

4 THE JUROR: Yes, I could
5 consider all three.

6 MR. ROSENBAUM: And your views
7 regarding the death penalty would not make it
8 so that you're unable to consider the two life
9 sentences?

10 THE JUROR: No.

11 MR. ROSENBAUM: I have no other
12 questions.

13 THE COURT: Mr. Bruner?

14 MR. BRUNER: As Mr. Rosenbaum
15 said, if the State -- do you understand that the
16 first part of the case is the evidence part of
17 the case?

18 THE JUROR: Yes.

19 MR. BRUNER: We are not asking
20 this now, but if they prove that Mr. Smith killed
21 the victim with premeditation with specifications,
22 aggravated circumstances with prior calculation
23 and design, do your beliefs prevent you from
24 signing a verdict which would give him a life
25 sentence?

1 THE JUROR: No, I think I will
2 still believe in the death penalty under those
3 circumstances. I will go for the death penalty.

4 MR. BRUNER: Do your beliefs so
5 impair your belief about the death penalty that
6 it would impair your views that even if the Judge
7 instructed you that life -- 30 to life or 20 to
8 life was a possibility, could you follow his
9 instructions, or would your views override that?

10 THE JUROR: I think my views
11 would override that.

12 MR. BRUNER: So you could not
13 do it?

14 THE JUROR: No.

15 THE COURT: You could not follow
16 my instructions?

17 THE JUROR: I could follow your
18 instructions, but I would have -- what is the
19 question?

20 THE COURT: The question is
21 this.

22 Your beliefs as to the death penalty, are
23 they so strong that it would keep you from giving
24 consideration to the other two possible sentences?

25 THE JUROR: No, they are not.

1 THE COURT: You could consider
2 the other two possibilities?

3 THE JUROR: Yes, I could because
4 actually signing my name to something suggesting
5 somebody's death worries me. That is kind of
6 scary.

7 THE COURT: Scary may not be
8 the word, but certainly it is a awesome
9 responsibility.

10 MR. BRUNER: So again, under
11 those circumstances, even though you know those
12 things might be proven, you could sign your name
13 to 20 or 30 years to life as opposed to the death
14 warrant?

15 THE JUROR: Yes, I could.

16 MR. BRUNER: I have nothing
17 further.

18 THE COURT: Mr. Rosenbaum?

19 MR. ROSENBAUM: You have to forgive
20 me. Where are we with her, your Honor?

21 THE COURT: As far as this
22 prospective juror's position is concerned, that
23 she has views as to the death penalty, but she
24 could, with proper instructions and evidence,
25 she could put those aside and consider the

1 other two.

2 MR. ROSENBAUM: I have no other
3 questions on the death penalty issue.

4 THE COURT: Do you have other
5 questions?

6 MR. BRUNER: Well, let me quickly
7 look here.

8 I have no other questions, your Honor.

9 THE COURT: Thank you very much.
10 You may return to the courtroom.

11 Mrs. Neace.

12 Mrs. Neace, there has been some question
13 raised as to some of your answers on your
14 questionnaire.

15 THE JUROR: I knew there would
16 be.

17 THE COURT: This does not come
18 as a surprise to you?

19 THE JUROR: No.

20 MR. ROSENBAUM: Ma'am, you stated
21 you do not believe in the death penalty?

22 THE JUROR: I don't remember
23 that.

24 MR. ROSENBAUM: I don't believe in
25 the death penalty because the justice system is

1 not always fair with cases.

2 THE JUROR: Okay.

3 MR. ROSENBAUM: Would you be able

4 to vote for the death penalty in this case if you

5 think that the law and the evidence required it?

6 THE JUROR: No, sir.

7 MR. ROSENBAUM: Under no

8 circumstances could you vote for the death

9 penalty?

10 THE JUROR: No, sir. I have

11 already made up my mind.

12 MR. ROSENBAUM: You didn't feel the

13 need to raise your hand when the Judge asked if

14 you strongly feel --

15 THE JUROR: It depends on the

16 case.

17 MR. ROSENBAUM: In this case you

18 have made up your mind then?

19 THE JUROR: No, not this case.

20 I have not heard this case.

21 MR. ROSENBAUM: But you would not

22 vote for the death penalty under any

23 circumstances?

24 THE JUROR: I don't believe I

25 would.

1 MR. ROSENBAUM: I have no other
2 questions.

3 THE COURT: Mr. Bruner?

4 MR. BRUNER: You have to
5 understand that we are not admitting this or
6 anything else, this is an evidence phase of
7 the case.

8 If Mr. Rosenbaum and the State prove beyond
9 a reasonable doubt that Mr. Smith shot a victim
10 with prior calculation and design -- that means
11 a plan or premeditation -- with understanding
12 that that victim was a witness in a criminal
13 case, do you think you could bring yourself to
14 sign the death penalty warrant?

15 THE JUROR: No, sir. He has
16 a right to do the time for the crime.

17 MR. BRUNER: I have nothing
18 further.

19 THE COURT: Okay. Mrs. Neace,
20 this Court has to excuse you at this point.

21 THE JUROR: Okay.

22 THE COURT: You may go about
23 your business. Thank you very much.

24 Mrs. Dobrunz.

25 Mrs. Dobrunz, some of the answers on your

questionnaire have raised some questions as far as counsel is concerned.

Mr. Rosenbaum?

MR. ROSENBAUM: Ma'am, you are in favor of the death penalty?

THE JUROR: Yes.

MR. ROSENBAUM: Could you sign your name to a piece of paper condemning this man to death if you felt the law and the evidence required it?

THE JUROR: Yes.

MR. ROSENBAUM: Are you sure?

THE JUROR: If the evidence required it and I felt that it was reasonable.

MR. ROSENBAUM: If the Judge gives you the law and tells you when you can apply the death penalty and when you cannot and gives you a procedure to decide between three sentences, death and two life sentences, would you be able to follow the law?

THE JUROR: Yes.

MR. ROSENBAUM: Your views for the death penalty are not so strong that it would automatically preclude consideration under the life sentence?

1 THE JUROR: No.

2 MR. ROSENBAUM: Could I ask who in

3 your family saw a psychiatrist or a psychologist?

4 THE JUROR: My father.

5 MR. ROSENBAUM: I have no other

6 questions, your Honor.

7 THE COURT: Mr. Bruner?

8 MR. BRUNER: I have no questions.

9 THE COURT: Thank you, Ma'am,

10 you may return to the courtroom with your fellow

11 jurors.

12 Mr. Board.

13 Mr. Board, counsel would like to ask you some

14 questions regarding some of the answers on your

15 questionnaire.

16 Mr. Rosenbaum?

17 MR. ROSENBAUM: Sir, could you tell

18 us what your views are concerning the death

19 penalty?

20 THE JUROR: I don't know. As I

21 wrote down, I really don't know how I feel about

22 the death penalty. I really don't.

23 MR. ROSENBAUM: Looking at this

24 gentleman today -- do you see Mr. Smith there?

25 THE JUROR: Yes.

1 MR. ROSENBAUM: If you thought the
2 law and the evidence required it, could you sign
3 your name to a piece of paper condemning him to
4 death?

5 THE JUROR: No, I don't think
6 so.

7 MR. ROSENBAUM: I have no other
8 questions on this issue, your Honor.

9 THE COURT: Mr. Bruner?

10 MR. BRUNER: Mr. Board, if the
11 evidence was such that premeditated murder was
12 involved and you believed that happened and you
13 believed it happened to a government witness,
14 which would be an aggravated specification here,
15 could you listen to the instructions from the
16 Judge and, based upon your judgment, could you
17 be able to sign a death warrant?

18 THE JUROR: I think in my
19 questionnaire I said that I wasn't rigid in my
20 thinking if it could be proven to me beyond a
21 reasonable doubt.

22 MR. BRUNER: Would you listen
23 to the Judge's instructions in this case and
24 that is the only time you will get to that
25 decision and be fair to Mr. Smith and the State

1 and consider all three options?

2 You will have three options at this point,
3 death, two life sentences. There are two types
4 of life sentences depending on the aggravated
5 circumstances and the mitigating circumstances.

6 Do your views impair your judgment as to
7 whether you would sign or would you follow the
8 law as the Judge would give it to you?

9 THE JUROR: I would follow the
10 law.

11 MR. BRUNER: Could you then sign
12 a death warrant for Mr. Smith based upon the law?

13 THE JUROR: Yes, I think so.

14 THE COURT: Mr. Rosenbaum?

15 MR. ROSENBAUM: If the law says that
16 he is to die, you could carry that out?

17 THE JUROR: Yes.

18 MR. ROSENBAUM: You have changed
19 your mind then since?

20 THE JUROR: It is not a matter
21 of changing my mind, I am open to the death
22 penalty. The only problem I have ever had with
23 the death penalty is the ratio of whites and
24 blacks on death row.

25 MR. ROSENBAUM: What is that?

1 THE JUROR: I feel that there
2 are more blacks than whites.

3 MR. ROSENBAUM: As a result of that,
4 can you be fair to the State in this case?

5 Obviously the Defendant is black, right?

6 THE JUROR: Obviously, yes. If
7 it can be proven to me beyond a reasonable doubt,
8 yes.

9 MR. ROSENBAUM: That is the only way
10 we would ask you to do it.

11 THE JUROR: That is the only way
12 I could do it.

13 MR. ROSENBAUM: You have been
14 convicted of burglary?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: How long ago was
17 that, sir?

18 THE JUROR: I believe it was in
19 '88, '87 or '88, around in there.

20 MR. ROSENBAUM: And you served 90
21 days for that, is that right?

22 THE JUROR: I was given a 90-day
23 sentence, three years probation. I served a
24 year's probation and the court released me.

25 MR. ROSENBAUM: How do you feel you

1 were treated when that happened?

2 THE JUROR: I thought the Court
3 was merciful actually in what I could have gotten.

4 MR. ROSENBAUM: So, overall you
5 thought you were treated fairly?

6 THE JUROR: Yes, sir, I do.

7 MR. ROSENBAUM: No problem with the
8 fact that you were arrested or anything like that?

9 THE JUROR: No, I was in the
10 wrong.

11 MR. ROSENBAUM: Could you tell me
12 the name of the person in your family that
13 utilized the services of a psychiatrist or a
14 psychologist?

15 THE JUROR: Well, I have gone
16 to one and my wife has gone to one. That was for
17 the purpose of getting my marriage back on track.

18 MR. ROSENBAUM: Did it have to do
19 with your drinking?

20 THE JUROR: Yes.

21 MR. ROSENBAUM: I have no other
22 questions, your Honor.

23 THE COURT: Mr. Bruner?

24 MR. BRUNER: None.

25 THE COURT: Thank you, sir, you

1 may join your fellow jurors.

2 Mr. Samko.

3 Mr. Samko, counsel has some questions as to
4 some of the answers on your questionnaire.

5 Mr. Bruner?

6 MR. BRUNER: Your Honor, do you
7 want me to limit this to the death question at
8 this point?

9 THE COURT: To whatever your
10 questions are involved. If there is a question
11 raised as to this individual's position on the
12 death penalty, yes, raise it.

13 MR. BRUNER: You stated in
14 your questionnaire that you feel that convicted
15 criminals are treated like country club members,
16 is that your feeling?

17 THE JUROR: Well, in what I
18 have heard on the news and seen in different
19 television programs, I have heard at some
20 prisons they have like miniature golf courses.

21 MR. BRUNER: Have you ever
22 been to one?

23 THE JUROR: No.

24 MR. BRUNER: Your father was
25 a policeman and your grandfather?

1 THE JUROR: My grandfather was
2 a dispatcher.

3 MR. BRUNER: Have you ever been
4 to prisons to see them?

5 THE JUROR: Just once in Chagrin
6 Falls with two cells.

7 MR. BRUNER: Okay.

8 THE JUROR: I have never seen
9 another one.

10 THE COURT: Quite frankly, sir,
11 I can say to you in the years that I have been
12 connected with the legal system I have not ever
13 seen nor have I heard of a prison with a golf
14 course.

15 MR. ROSENBAUM: You have not had
16 much experience with the federal system then.

17 THE COURT: No, I have not.

18 MR. BRUNER: You put in the
19 death penalty portion of your questionnaire that
20 you are totally for it if the crime warrants it.

21 What type of crime?

22 THE JUROR: I would have to
23 consider all the evidence, what kind of -- if
24 it was premeditated murder or if it was murder
25 in self-defense.

MR. BRUNER:

Mr. Samko, if

this man, Mr. Smith, has been charged with a premeditated murder with prior calculation and design, as you will hear in the Judge's instructions, that in and of itself is not good enough to put you in a determination, but there are also aggravating circumstances.

What I am asking you is, if the State proves beyond a reasonable doubt all of those things occurred with prior calculation and design and the aggravating specifications, that being he was a government witness in a case, would you then -- would our views impair you from signing a life sentence for him as opposed to a death sentence?

THE JUROR:

I don't really

understand.

MR. BRUNER:

Let me explain what

I am talking about.

Right now is the evidentiary portion of the trial. That will be first and then, assuming -- you have to prove -- the State has to prove their case beyond a reasonable doubt.

If they don't you never have to get to the penalty portion of this case. If they do, you get to the penalty portion of this case.

1 What I am telling you is, he has been charged
2 with aggravated murder with prior calculation and
3 design, with aggravated specifications.

4 Now, assuming, without any evidence being
5 presented to you that he gets convicted of all of
6 that, assuming that he gets convicted of it, you
7 are one of the jurors, could you then review
8 everything and listen to the Judge's instructions
9 and give him life imprisonment as opposed to the
10 death penalty?

11 THE JUROR: Yes, I could under
12 those circumstances, but I don't know all the
13 evidence, so I would have to take everything
14 into consideration.

15 MR. BRUNER: You would listen
16 to the Judge's instructions, listen to the
17 evidence and make your decision then?

18 THE JUROR: Right.

19 MR. BRUNER: Your views don't
20 prevent you from giving him a life sentence?

21 THE JUROR: No, I could either
22 sign for life or death, all depends on everything
23 put together, the evidence, the circumstances,
24 everything.

25 I have to consider everything.

1 MR. BRUNER: Nothing further.

2 MR. ROSENBAUM: Sir, when you were
3 arrested for DUI, do you think you were treated
4 fairly?

5 THE JUROR: Yes, I do.

6 MR. ROSENBAUM: You have no problems
7 with that?

8 THE JUROR: No, I actually
9 turned myself in.

10 MR. ROSENBAUM: And you initialed
11 the answer to that question about your DUI and the
12 passing bad checks was for your dad?

13 THE JUROR: Right.

14 MR. ROSENBAUM: Is there something
15 you wanted to say?

16 THE JUROR: I don't know. My
17 mom and dad were divorced when I was young. I
18 didn't see my dad or talk to him that much, so
19 I don't know the whole circumstances under that.

20 I know he went to prison for it. For how
21 long he was in, I don't know.

22 MR. ROSENBAUM: So, it wouldn't
23 affect your judgment today in any way?

24 THE JUROR: No.

25 MR. ROSENBAUM: I have no other

1 questions.

2 THE COURT: Thank you, sir,
3 you may join your fellow jurors.

4 Mr. Brewer.

5 Mr. Brewer, some of the answers in your
6 questionnaire -- the lawyers would like to
7 question you further on some of the answers
8 that you have given.

9 Mr. Bruner?

10 MR. BRUNER: Yes, your Honor.

11 In your answer to the questionnaire it
12 says you are in favor of the death penalty,
13 they should use it more often.

14 Is that what you said?

15 THE JUROR: Yes.

16 MR. BRUNER: Do you feel there
17 are too many people on death row?

18 THE JUROR: I think the appeals
19 portion they have there, once a person is
20 sentenced, you know, have their sentence already,
21 that they shouldn't keep them there for years and
22 years and years on death row. I think that is
23 unjust.

24 MR. BRUNER: Now, what kind of a
25 case would you feel requires the death penalty?

1 THE JUROR: Any type of violent
2 crimes that require the death penalty be imposed
3 upon a person, like murder, rape, any number of
4 things.

5 MR. BRUNER: Even though rape in
6 the State doesn't require the death penalty you
7 feel that it should?

8 THE JUROR: Yes.

9 MR. BRUNER: And your feeling
10 in a murder case, if a person is convicted of
11 premeditated murder with prior calculation and
12 design with specifications, as Mr. Smith is
13 charged with, you feel that no sentence would
14 be appropriate other than death.

15 Is that correct?

16 THE JUROR: Well, I believe
17 out of the three things that would be assigned
18 to the person, but if the person -- it would
19 depend on the circumstances, I guess.

20 MR. BRUNER: What I am asking,
21 your views are strong about the death penalty?

22 THE JUROR: Yes.

23 MR. BRUNER: And if Judge Glavas
24 were -- we are only getting to this, understand
25 assuming the State proves their case beyond a

1 reasonable doubt in the first area of this case --

2 THE JUROR: Uh-huh --

3 MR. BRUNER: (Continuing) -- if
4 we should get to that area of the case where all
5 of the jurors and you being one vote that he is
6 guilty of all these things and then Judge Glavas
7 instructs you on the three possible penalties,
8 that being death, 20 years to life or 30 years
9 to life, could you reasonably give a fair shot to
10 those life sentences in view of the fact that you
11 already decided he committed premeditated murder
12 in view of your beliefs?

13 THE JUROR: I think in my views
14 the death penalty would be in order if it got to
15 that point.

16 THE COURT: Let me ask you this
17 question.

18 Do your views impair you to the point where
19 you wouldn't even consider the other two?

20 THE JUROR: No, I could consider
21 the other ones.

22 THE COURT: And would you
23 consider it a sentence of -- could you sentence
24 him to 30 to life or 20 to life?

25 THE JUROR: Depends on the

1 circumstances of what transpired to get it to
2 that point in the trial.

3 THE COURT: Even in this case,
4 eleven plus you have decided that this man is
5 guilty as charged, that he used a weapon, it was
6 premeditated and what have you and we get into
7 the mitigation phase of the trial, this is over a
8 week later, ten days later, whatever the case may
9 be, we come back and consider the other part and
10 at that hearing there is evidence presented
11 as to aggravation and evidence presented as to
12 mitigation, after that has been done could you
13 be willing to give equal time, as they say, to
14 the two life sentences as you would to the death
15 penalty?

16 THE JUROR: I would give it
17 consideration, yes.

18 THE COURT: You wouldn't be
19 substantially impaired to do it, you would
20 consider it, look at it, and possibly impose
21 it?

22 THE JUROR: Yes.

23 THE COURT: You could do that?

24 THE JUROR: Yes.

25 THE COURT: Mr. Bruner?

1 MR. BRUNER: Mr. Brewer, we
2 are asking you to be completely candid about it.
3 Seems to me that your views are strong about the
4 death penalty.

5 THE JUROR: Yes.

6 MR. BRUNER: You have to place
7 yourself in that position. It is hard, but in
8 all fairness I am asking you to do that.

9 Could you follow the Judge's instructions
10 even though you obviously are in favor of the
11 death penalty?

12 Knowing full well that you have convicted
13 this man of premeditated murder with
14 specifications, could you honestly search
15 your soul and say you will follow the Judge's
16 instructions or will you do what you believe
17 in and that is the death penalty?

18 THE JUROR: I believe the
19 Judge will interpret the law for us and tell
20 us what he believes should be imposed.

21 THE COURT: Sir, the Court
22 will not interpret the law at this point.
23 The Court will give you the law, the
24 interpretation is yours.

25 THE JUROR: Right.

1 THE COURT: The Court will not
2 interpret the law for you. I will give you what
3 the applicable law is in this case or what it
4 feels the applicable law is and the interpretation
5 is up to the individual jurors and their decision.

6 MR. BRUNER: The ultimate
7 question is, despite your views do you think your
8 views impair you so much about the death penalty
9 and people sitting on death row that religiously
10 if you search your soul you can say, "I will sign
11 a life warrant"?

12 THE JUROR: No, I can't do that.

13 THE COURT: I think the question
14 is, will it substantially impair your judgment in
15 the case, your views?

16 THE JUROR: No, I will consider
17 the three equally, I believe.

18 THE COURT: Mr. Rosenbaum,
19 anything further?

20 MR. ROSENBAUM: I have no questions.

21 MR. BRUNER: I don't have any
22 further questions. Thank you.

23 THE COURT: Mr. Brewer, I think
24 under the circumstances, as a result of some of
25 the answers --

1 MR. ROSENBAUM: Could I be heard on
2 this?

3 THE COURT: Yes, you may.

4 MR. ROSENBAUM: Let me ask you a
5 question then because I have heard nothing.

6 Do you understand the Judge is going to give
7 you a procedure to pick between three penalties?

8 THE JUROR: Yes.

9 MR. ROSENBAUM: You obviously feel
10 the death penalty is appropriate in premeditated
11 murder?

12 THE JUROR: Yes.

13 MR. ROSENBAUM: If the law would
14 tell you that it is not applicable, would you
15 impose it anyway?

16 THE JUROR: No.

17 MR. ROSENBAUM: You would follow
18 the law?

19 THE JUROR: Right.

20 MR. ROSENBAUM: So you could put
21 your personal feelings aside and follow the law
22 that the Judge gives you and return a verdict of
23 life, even though you might personally feel the
24 death penalty was required if the law says it is
25 not.

1 Is that correct?

2 THE JUROR: Yes. Like I say,
3 out of the three choices.

4 MR. ROSENBAUM: If the law requires
5 life --

6 THE JUROR: If it requires life,
7 instead of the death penalty, that is what it is.

8 MR. BRUNER: That choice, you
9 understand, is ultimately yours?

10 THE JUROR: Yes.

11 MR. BRUNER: The Judge gives
12 you the law, you may decide that the aggravated
13 circumstances outweigh the mitigating
14 circumstances or that there are even -- and
15 your views might hinder you and you may decide
16 to give him death because of your views.

17 That is what I am asking you. Do you think
18 that you can put those aside and follow the
19 Judge's orders to you?

20 Do you think that your views will cause you
21 to give him the death penalty automatically?

22 THE JUROR: Just my views would
23 not cause me to say, okay, the death penalty is
24 in order. It would have to come out in, you know,
25 out of the three choices.

1 THE COURT: And you will have
2 three choices as I have indicated.

3 You are strongly in favor of the death
4 penalty?

5 THE JUROR: Yes.

6 THE COURT: Regardless of how
7 strong you feel, okay, on that issue, feeling that
8 alone, are your beliefs on the death penalty alone
9 -- that will not keep you from considering and
10 imposing life sentences, would they?

11 THE JUROR: No.

12 THE COURT: You could do so?

13 THE JUROR: Yes, I do believe I
14 could.

15 THE COURT: I need a little more
16 than I believe.

17 Do you think you can?

18 THE JUROR: Yes.

19 THE COURT: Do you want to
20 inquire further?

21 MR. BRUNER: No, but I would like
22 to put some things on the record when we are done.

23 THE COURT: Okay. Very well.
24 Thank you, sir.

25 Under the circumstances --

1 THE COURT: At this point you
2 have your point on the record, Mr. Bruner, okay.

3 Mr. Vostko.

4 Mr. Vostko, some of the answers that you
5 posed -- that you gave on your questionnaire raise
6 some questions with the attorneys in this matter
7 and, Mr. Bruner, you may inquire.

8 MR. BRUNER: Mr. Vostko, it seems
9 to me that you are clearly, in your questionnaire
10 looks like you are in favor of the death penalty?

11 THE JUROR: Yes.

12 MR. BRUNER: Even though you
13 didn't raise your hand about feeling strongly
14 about it one way or the other, it says, "I am
15 for it, but it is not used enough"?

16 THE JUROR: Right. When
17 everybody makes such a big deal out of it in the
18 State of Ohio, when is the last time when anybody
19 was put to death if they were sentenced to death?

20 It is like, okay, you are sentenced to death,
21 say you are found guilty of something and
22 sentenced to death, but it never happens.

23 In some states, you know, it happens not
24 enough, but everybody makes such a big deal out
25 of it and why, if you are not going to use it.

1 It is there but nobody uses it. I don't know
2 if it is because of all of the appeals or what,
3 but some people are on death row for years and
4 years and years.

5 THE COURT: They are there, no
6 denying that.

7 THE JUROR: So why put them to
8 the death penalty, just put them for life in
9 prison.

10 MR. BRUNER: What I am asking and
11 maybe you answered it already, you understand this
12 is the first phase of the case and this is the
13 evidence phase and we have not even started that
14 other phase?

15 THE JUROR: Right.

16 MR. BRUNER: Assuming that the
17 State proves everything in the case against Mr.
18 Smith, premeditated murder with a gun, with
19 aggravated specifications, would you consider the
20 Judge's instructions on the two life sentences as
21 well as the death penalty?

22 THE JUROR: I guess if somebody
23 got real angry at that point and killed somebody
24 without really planning it out, no, I don't think
25 I want to see the death penalty imposed on it.

1 If somebody actually planned it out and
2 really wanted to do it and thought about doing it,
3 that is different, maybe they deserve the death
4 penalty.

5 MR. BRUNER: Okay. So you're
6 talking on a case-by-case basis?

7 THE JUROR: Yes.

8 MR. BRUNER: In some cases you
9 could look at the facts and the other you could --

10 THE JUROR: One name, like
11 Filiaggi.

12 MR. BRUNER: I wasn't the lawyer
13 on that case.

14 THE JUROR: Now, when you see
15 that on TV and the way he talks and everything
16 like that, somebody like that doesn't deserve to
17 live.

18 There is no way you can rehabilitate somebody
19 like that because of the way he acts.

20 MR. BRUNER: All right. This is
21 not the Filiaggi case and I am asking you whether
22 or not you can go along with the Judge's
23 instructions and look at the factors in the case
24 and aggravating and mitigating factors and bring
25 your decision to sign a life sentence as opposed

1 to a death sentence.

2 Is there anything that would preclude you
3 from doing that?

4 THE JUROR: I guess if it was
5 planned -- to me it was planned.

6 THE COURT: Listen to the
7 question.

8 If it was warranted -- in other words, a
9 life sentence was warranted, could you impose it
10 or would your beliefs in the death penalty be so
11 great --

12 THE JUROR: I don't know.

13 MR. BRUNER: You have to
14 understand, if there is an aggravated murder with
15 prior calculation and design, without prior
16 calculation, you wouldn't be considering the death
17 sentence. Even in a premeditated murder without
18 specifications, that is not your province.

19 Let's assume that they prove everything with
20 the specifications, could you bring yourself to
21 sign the 20 or 30 years to life as opposed to the
22 death penalty and you have to sign it and talk
23 about it?

24 THE JUROR: Right.

25 MR. BRUNER: Everything that you

1 do if you are a juror and you get to the ultimate
2 decision, it has to be a signed guilty verdict,
3 the verdict has to be signed and the sentence has
4 to be signed if you get to that point.

5 Do you understand me?

6 THE JUROR: Yes.

7 MR. BRUNER: It is not just
8 saying, "Yeah, I will do it"?

9 THE JUROR: Right. I don't
10 know.

11 MR. BRUNER: You can't answer
12 that?

13 THE JUROR: No.

14 MR. BRUNER: Does that mean you
15 couldn't bring yourself to sign a life sentence?

16 THE JUROR: I probably could.
17 Again, it would be like I said, if it was at that
18 time when somebody really got angry and killed
19 someone.

20 THE COURT: No, let's go to this
21 point.

22 Assuming that Mr. Smith is convicted and you
23 are one of the twelve jurors that signed the
24 verdict finding him guilty of the crimes that he
25 is charged with, then you go into the mitigation

1 stage.

2 Does your position on the death penalty so
3 keep you, substantially impair you from giving
4 consideration to the life sentences or would you
5 just go for the death penalty?

6 THE JUROR: I don't know.

7 THE COURT: You first said you
8 would like to take it into consideration,
9 depending on the circumstances and the case
10 involved..

11 THE JUROR: Right.

12 THE COURT: He was convicted
13 now of everything that he is charged with,
14 everything that he is charged with.

15 THE JUROR: Would I agree to
16 just life sentences instead of the death penalty?

17 THE COURT: No, could you give
18 it your consideration and possibly impose it or
19 would your views to the death penalty preclude
20 you from doing that?

21 THE JUROR: I see what you are
22 saying. No, if it did, I would be able to answer
23 that right away.

24 THE COURT: When you say no,
25 what do you mean?

1 You would not be able to give it
2 consideration?

3 THE JUROR: Yeah, I would.

4 THE COURT: And you would not be
5 impaired, substantially impaired from considering
6 those?

7 THE JUROR: No, because I am not
8 really dead set on the death penalty. Yeah, I
9 think it should be used, but I am not really dead
10 set that it has to be used.

11 THE COURT: You can continue.

12 MR. BRUNER: I don't have
13 anything further.

14 MR. ROSENBAUM: Sir, could you tell
15 me -- I take it both you and your wife saw a
16 psychologist or a psychiatrist?

17 THE JUROR: Yeah. Right now we
18 are going through a divorce. My wife just told me
19 two weeks ago. After 18 years of marriage she met
20 someone else and he is 24 years old. She is 37,
21 38.

22 THE COURT: You don't have to
23 tell us about that, sir.

24 MR. ROSENBAUM: That caused stress
25 in your life?

1 THE JUROR: Yes.

2 MR. ROSENBAUM: And that is why you
3 sought help?

4 THE JUROR: Yeah. I am taking
5 Prozac and this other stuff.

6 MR. ROSENBAUM: Would that interfere
7 with your judgment in this case?

8 THE JUROR: I don't think so. I
9 have been preoccupied with everything because my
10 divorce comes up on the 19th of December.

11 MR. ROSENBAUM: Could you pay
12 attention to the evidence in this trial?

13 It might be a welcome diversion.

14 THE JUROR: Yeah, really.

15 MR. ROSENBAUM: What do you think?

16 THE JUROR: Yes.

17 MR. ROSENBAUM: It is very important
18 to both of us that we get people to pay attention.
19 If your mind starts traveling off to a lot of
20 personal problems --

21 THE JUROR: No, it is pretty
22 much set, it is just a shock.

23 MR. ROSENBAUM: So you could pay
24 attention to all this?

25 THE JUROR: Yes.

1 MR. ROSENBAUM: The next question
2 is, what descriptive words or adjectives would
3 you use to describe yourself and you wrote,
4 "Liberal -- conservative"?

5 THE JUROR: Yes, sir.

6 MR. ROSENBAUM: Is that like you
7 are between the two?

8 THE JUROR: Yes, like when a
9 presidential election comes up, if you are
10 Democrat or Republican, it would be whoever is
11 the best choice would win.

12 MR. ROSENBAUM: So you are midway
13 between a liberal and a conservative?

14 THE JUROR: Yes.

15 MR. ROSENBAUM: That makes more
16 sense than being both at the same time.

17 I have no other questions.

18 MR. BRUNER: I have nothing.

19 THE COURT: Thank you, sir.

20 You may join your fellow jurors.

21 Mr. Foor.

22 Mr. Foor, some of the answers that you gave
23 to the questions on the questionnaire the lawyers
24 would like to question you a little about it.

25 Mr. Bruner?

1 MR. BRUNER: Thank you, your
2 Honor.

3 Mr. Foor, you talk about overcrowding in
4 jails.

5 Do you think that you will be more likely
6 to deliver the death penalty to somebody because
7 there is overcrowding in jails?

8 THE JUROR: No.

9 MR. BRUNER: Would you --
10 somebody was convicted of premeditated murder
11 with death specifications, could you listen to
12 the Judge's instructions and fairly decide whether
13 that person should get life in prison or the death
14 penalty?

15 THE JUROR: If the circumstances
16 were right, yes.

17 MR. BRUNER: I have nothing
18 further.

19 MR. ROSENBAUM: Could you tell me,
20 sir, who in your family consulted a psychiatrist
21 or a psychologist?

22 THE JUROR: My mother.

23 MR. ROSENBAUM: And when you had
24 your little brush with the law, how long ago was
25 that, sir?

1 THE JUROR: Oh, that was '85,
2 '84, '85.
3 MR. ROSENBAUM: How do you feel you
4 were treated?
5 THE JUROR: How was I treated?
6 MR. ROSENBAUM: Fairly, not fairly?
7 THE JUROR: Fairly.
8 MR. ROSENBAUM: I have no other
9 questions.
10 THE JUROR: Proper punishment
11 for the crime.
12 MR. BRUNER: Nothing further.
13 THE COURT: Thank you, sir.
14 You may join your fellow jurors.
15 Mr. Reams.
16 Mr. Reams, the lawyers have some questions
17 regarding some of the answers that you gave on
18 your questionnaire.
19 THE JUROR: Okay.
20 THE COURT: Mr. Bruner?
21 MR. BRUNER: Mr. Reams, you talk
22 about the death penalty. It says, "If convicted,
23 carry out sentence quickly, eye for an eye."
24 What type of case do you feel deserves that
25 eye for an eye?

1 THE JUROR: Well, any case.

2 MR. BRUNER: Any case?

3 Any case of murder, any case of what?

4 THE JUROR: I don't understand
5 the question.

6 MR. BRUNER: I don't mean to be
7 confusing you.

8 In a murder case that is proven beyond a
9 reasonable doubt and that is what you are going
10 to have to do, consider it here, when you get to
11 the penalty phase here in a murder case, someone
12 is proven or the State has proven beyond a
13 reasonable doubt that a premeditated murder
14 occurred with specifications that he is charged
15 with here, killing a government witness.

16 Could you consider anything other than the
17 death penalty for him?

18 THE JUROR: Yes.

19 MR. BRUNER: You could, despite
20 what you say, an eye for an eye?

21 You could consider something other than the
22 death penalty, you just wouldn't let that prohibit
23 you from giving him life in prison?

24 THE JUROR: I guess not. After
25 hearing the case, I don't know. That is a tough

1 question.

2 MR. BRUNER: Well, it is a tough
3 job.

4 THE JUROR: I know.

5 MR. BRUNER: So I would like to
6 have an answer to that if you can.

7 THE JUROR: If it were
8 premeditated and calculated murder --

9 THE COURT: Mr. Reams, let me
10 see if I can make that not easier, but a little
11 plainer.

12 Assume that Mr. Smith was convicted of
13 everything that he has been charged with and
14 you were one of the members of the jury that
15 did that, one of the twelve, then you went
16 into the mitigation phase, okay?

17 And in the mitigation phase there is
18 aggravation and mitigation is presented and
19 you make a determination you are for the
20 death penalty, is that correct?

21 THE JUROR: Yes.

22 THE COURT: Would your views
23 substantially impair you from taking into
24 consideration the two possible life sentences
25 that would go along with the death penalty?

1 THE JUROR: No.

2 THE COURT: You wouldn't
3 automatically say, "He is convicted, he has to
4 die"?

5 THE JUROR: No. Eye for an
6 eye, you are taking a life, whether you take
7 life imprisonment or the death penalty. I kind
8 of think of that as taking a life.

9 THE COURT: You are considering
10 life in prison as a life also?

11 THE JUROR: You have taken away
12 the life of freedom.

13 THE COURT: I mean, he is in
14 jail 20 years. After that he can get out.

15 Does that change your mind a little bit?

16 THE JUROR: A little.

17 THE COURT: But you do -- you
18 could still take into consideration and could
19 impose, knowing full well that that could happen?

20 THE JUROR: Yes.

21 THE COURT: I don't mean to
22 be arguing with you or putting you under
23 cross-examination, it is not my intention
24 to do that. We are trying to come down to
25 fairness all the way down the line, fairness

1 to both sides, to Mr. Smith and to the State.

2 THE JUROR: I am very
3 concerned with being fair.

4 THE COURT: And you feel you
5 could be?

6 THE JUROR: Yes. I do feel
7 like I could be fair.

8 THE COURT: Mr. Bruner?

9 MR. BRUNER: The fact that your
10 stepfather was a police officer, would that have
11 anything to do with it, any affect to your
12 fairness in this case?

13 THE JUROR: No. Actually, my
14 stepfather was -- he was a police officer, but
15 not a good one and it is an ex-stepfather and I
16 don't know exactly what happened to him after
17 he left, but I do know he was convicted of some
18 crimes.

19 MR. BRUNER: Anything having to
20 do with him affect your judgment in this case?

21 THE JUROR: No.

22 MR. BRUNER: Nothing further.

23 MR. ROSENBAUM: Sir, you indicated
24 that the law is not applied equally to everyone.
25 Could you explain that a little?

1 THE JUROR: Is not applied
2 equally to everyone?

3 MR. ROSENBAUM: Next to that, you
4 said, "Depends on who the crime is done against
5 and the type of crime."

6 THE JUROR: It seems that there
7 is almost a money situation. It always seems to
8 me if you can afford the right lawyers and such
9 that you can get out of things even when guilty.

10 MR. ROSENBAUM: And maybe even pay
11 police officers or something?

12 THE JUROR: I am aware that
13 that happens. I don't like it.

14 MR. ROSENBAUM: Would that affect
15 your judgment in this case one way or the other?

16 THE JUROR: No.

17 MR. ROSENBAUM: That is a concern
18 that you have that you could keep outside of
19 this trial, right?

20 THE JUROR: My concern is for
21 fairness and justice.

22 MR. ROSENBAUM: And you would try
23 to be fair and just to everyone?

24 THE JUROR: Absolutely.

25 MR. ROSENBAUM: And because some

1 people may have gotten off, you wouldn't convict
2 him?

3 THE JUROR: No.

4 MR. ROSENBAUM: Or vice versa?

5 THE JUROR: Not if I thought
6 for any reason he was not guilty.

7 MR. ROSENBAUM: I don't have any
8 other questions.

9 THE COURT: Mr. Bruner?

10 MR. BRUNER: Nothing.

11 THE COURT: Thank you, sir.

12 You may join the other jurors.

13 Mrs. Dakers.

14 Mrs. Dakers, some of the answers raised some
15 questions as far as the attorneys are concerned.

16 Mr. Bruner, you may inquire.

17 MR. BRUNER: You put down on your
18 questionnaire regarding the death penalty it
19 should be enforced if it can be proven. No one
20 disagrees with that.

21 Do you understand that it is on a
22 case-by-case basis?

23 THE JUROR: That is true.

24 MR. BRUNER: Do you have any
25 problem with assuming everything in this case is

1 proven and we are going to talk about that
2 tomorrow, but assuming everything in this case
3 is proven beyond a reasonable doubt, that Mr.
4 Rosenbaum has shown you everything beyond a
5 reasonable doubt and that premeditated murder
6 with prior calculation and design and there
7 were aggravated circumstances, could you --
8 and you will have at this point some choices
9 to make -- three options will be given to you
10 by Judge Glavas at a later time after a
11 conviction.

12 One of the options is the death penalty,
13 another is 20 to life or 30 years to life.

14 Will you look at everything or do your views
15 impair you from giving 20 or 30 years to life to
16 Mr. Smith at this point?

17 THE JUROR: If it is proven that
18 everything -- the case is brought there that shows
19 that he is guilty, I probably would go for the
20 death penalty.

21 THE COURT: Let me put it this
22 way to you.

23 You are one of the twelve that signed the
24 verdict that convicts Mr. Smith of everything that
25 he has been charged with.

1 Next phase -- that was the guilt or innocence
2 phase.

3 Phase Two, in three weeks or two days or
4 whatever the case may be, however later that is
5 called the mitigation phase.

6 At this point you are presented evidence of
7 aggravation and probably evidence of mitigation.

8 Do your views on the death penalty
9 substantially impair you from being able to give
10 20 or 30 years to life in prison, a 20 to 30 year
11 life, or would you say, "I convicted him, he is
12 guilty of this, he is going to get the death
13 penalty"?

14 THE JUROR: I don't know. It
15 would depend on how the case is presented, I
16 guess. I am not sure.

17 THE COURT: Assume that the case
18 has been presented well enough that you found him
19 guilty, one of the twelve that found him guilty?

20 THE JUROR: I don't know. I
21 can't answer that at this point. I don't know.
22 I think from my own belief, if it is guilty, then
23 it would be to the death penalty. I don't see
24 where I would let somebody off to be able to get
25 out again.

1 THE COURT: Mr. Bruner?

2 MR. BRUNER: So, your own views
3 would impair you from giving him a life sentence?

4 THE JUROR: I think so.

5 MR. BRUNER: And so much so that
6 you couldn't consider the life sentence, you would
7 have to give him the death penalty even though the
8 law would allow you to give him the two life
9 sentences?

10 THE JUROR: I believe so.

11 MR. ROSENBAUM: Let me ask you this.

12 If you found out, the Court tells you when
13 and only when the death penalty can be imposed, it
14 will give you a procedure as part of the law as to
15 when to impose one of three penalties, one is the
16 death penalty, two are life sentences, are you
17 going to vote for the death penalty if you feel
18 the law does not require it?

19 THE JUROR: No.

20 MR. ROSENBAUM: You could put your
21 personal feelings aside and follow the procedure
22 the Judge gave you?

23 THE JUROR: Yes.

24 MR. ROSENBAUM: Even if that
25 required voting for a life sentence that you

1 thought --

2 THE JUROR: Wasn't what I
3 wanted?

4 MR. ROSENBAUM: (Continuing) --
5 wasn't what you wanted?

6 THE JUROR: A good question.
7 I don't know.

8 MR. ROSENBAUM: Well, you have to
9 think about this. I realize it is new. If you
10 are chosen as a juror you have a duty to apply
11 the law.

12 THE JUROR: That is correct.

13 MR. ROSENBAUM: Can you put your
14 personal feelings aside or are they so strong
15 they will impair you from following the law?

16 THE JUROR: I don't know. I
17 am still thinking I feel really strong about
18 if someone has done something wrong --

19 MR. ROSENBAUM: Do you know what
20 substantially impaired means?

21 Your views are so far that it would interfere
22 with your ability to consider life sentences, so,
23 if you have to sit there, you are substantially
24 impaired, right?

25 THE JUROR: Right.

1 THE COURT: The Court is going
2 to have to excuse you, Mrs. Dakters.

3 THE JUROR: Thank you.

4 THE COURT: Mr. Hammond.

5 Mr. Hammond, some of the answers that you
6 gave the lawyers would like to question you a
7 little further on this.

8 Mr. Bruner?

9 MR. BRUNER: Mr. Hammond, you
10 said that we are too forgiving about violent
11 crime in your questionnaire?

12 THE JUROR: In some respects,
13 yes.

14 MR. BRUNER: Do you feel that
15 somebody that would get 30 years to life is
16 being forgiven for the crime?

17 THE JUROR: Depends on the
18 circumstances, depends on the evidence and that.

19 MR. BRUNER: You also put in
20 here that one of the problems is that we should
21 have public hangings?

22 THE JUROR: In my opinion, if
23 a person is proven guilty beyond a shadow of a
24 doubt, amongst myself and the other eleven jurors,
25 to me it is extremely cruel to allow someone to

1 stay in jail for 14, 15, 16 years and then put
2 the gentleman to death.

3 To me that is very cruel. If everything is
4 presented and all of us agree that the fact is
5 yes, he is guilty, yes, there is no slightest
6 amount of doubt in any way, shape, manner or
7 form, it should be taken care of within a week.

8 MR. BRUNER: Within a week?

9 THE JUROR: Within a week or
10 two.

11 MR. BRUNER: So your feeling is
12 that no matter what occurred here, if you are one
13 of the jurors who, after all of the evidence is
14 taken, agrees that Mr. Smith should be convicted
15 of aggravated murder with prior calculation and
16 design with a gun specification and with the
17 specifications that were talked about in the
18 Indictment, that your views would impair you
19 from giving him a life sentence as opposed to
20 a death sentence?

21 THE JUROR: No, no.

22 MR. BRUNER: What does that mean?

23 Could you give him a life sentence?

24 THE JUROR: It could be, yes.

25 If all the evidence, beyond a shadow of a doubt

1 was proven, and everybody has to agree to it, not
2 just one standout, not two standouts, no matter
3 what the number -- everyone on the jury agreed
4 to the fact that, yes, the gentleman or whoever
5 should be put away, yes.

6 If everybody agrees there should be 30 years
7 or 20 years, it should be all of us agreeing to
8 the same thing when it comes to such a situation
9 like this of a man's life being taken away from
10 him, whether it be incarceration or it be ended,
11 it is a very serious thing.

12 MR. BRUNER: I understand that.

13 What I am asking you is, there are two parts
14 to this case and no one explained that to you yet,
15 but I am going to explain it.

16 The first part is the evidence that you talk
17 about whether or not Mr. Smith is guilty.
18 Certainly as he sits here today he is not guilty.
19 There is no evidence before you.

20 Do you understand that the State in this case
21 is going to try to prove him guilty beyond a
22 reasonable doubt to all of the elements of the
23 crime and we will talk about that later on?

24 Let's assume that they have done that and you
25 have signed a guilty verdict along with the other

1 eleven people and at a later time, not that day
2 you convict him, but at a later time the Judge
3 sets the matter, a month or less down the road
4 where we will have what is known as a mitigation
5 hearing.

6 After that hearing you will be asked to
7 determine or recommend his penalty or sentence.
8 At that time you will have three choices and the
9 Judge will give them to you.

10 One is the death penalty, two is 20 to life,
11 three is 30 to life and no one can tell you what
12 your decision should be. You are going to
13 discuss it with your other jurors.

14 What I am asking you is, do your views on
15 public hanging and not letting people sit in
16 prison long, will that impair you from giving
17 a life sentence?

18 THE JUROR: No, sir.

19 MR. BRUNER: And you could
20 listen to the Judge's instructions?

21 THE JUROR: Yes.

22 MR. BRUNER: Despite your
23 feelings about him sitting in jail for years?

24 THE JUROR: To me it is cruel.

25 What I am stating is the fact, is the

1 gentleman is found guilty and we go through all
2 the litigation and they recommend a death penalty
3 and the Judge, okay, is to let that poor gentleman
4 sit in jail for a certain amount of years and then
5 do that to him, that is cruel.

6 MR. BRUNER: The Judge is going
7 to give you the law and then at some point in time
8 you, along with your fellow jurors, are going to
9 decide what the penalty is, what should be
10 recommended to the Court.

11 It is not him deciding. It is going to be
12 you deciding it.

13 What I am asking is, can you put aside your
14 views and give him a life sentence and follow the
15 Judge's instructions?

16 It will be your decision.

17 THE JUROR: Very possibly, yes.
18 I can't say absolutely, positively. I have no set
19 say right now that boom, I am going to do that,
20 but if the circumstances are such and the evidence
21 is such that the gentleman should get 30 years or
22 20 years, yes, I can make that decision.

23 THE COURT: Mr. Rosenbaum?

24 MR. ROSENBAUM: Sir, you indicated
25 or stated that you would impose the death penalty

1 if there was no slight amount of doubt or beyond
2 the shadow of a doubt.

3 If you learned that the Judge said the
4 standard is beyond a reasonable doubt, will you
5 accept that?

6 THE COURT: I will give you a
7 definition of what reasonable doubt is.

8 MR. ROSENBAUM: It is not quite as
9 high.

10 THE JUROR: Yes, I understand
11 that.

12 MR. ROSENBAUM: So, could you impose
13 a death penalty on the evidence if it convinced
14 you beyond a reasonable doubt?

15 THE JUROR: If I had no doubt
16 whatsoever.

17 MR. ROSENBAUM: It is less than
18 that.

19 THE JUROR: The slightest thing.
20 If there is doubt, then there is no way I could
21 convict a man of putting him to death.

22 MR. ROSENBAUM: The law permits a
23 juror or jury to convict and permits all three
24 punishments, including the death penalty.

25 If the State proves guilt beyond a reasonable

1 doubt, which is not as high as no doubt --

2 THE JUROR: I understand what

3 you are saying --

4 MR. ROSENBAUM: (Continuing) --

5 could you accept that?

6 THE JUROR: I believe so.

7 MR. ROSENBAUM: Could you return a

8 verdict of death if you thought the law and the

9 evidence required it, if proved to you only

10 beyond a reasonable doubt?

11 THE JUROR: Possibly, yes.

12 THE COURT: Well, I think, Mr.

13 Hammond, I need a little more than possibly.

14 Could you, if it was warranted, could you?

15 THE JUROR: Yes, sir.

16 MR. ROSENBAUM: Did someone

17 overhear you in the hall discussing that you

18 couldn't condemn a man to death based on a word

19 of two witnesses?

20 THE JUROR: No, sir. That

21 never came out of my mouth.

22 MR. BRUNER: I have nothing

23 further.

24 MR. ROSENBAUM: Nothing further.

25 THE COURT: Thank you, sir.

1 Please rejoin your fellow jurors.

2 Mr. Bixler.

3 Mr. Bixler, some of the answers that you
4 gave in your questionnaire, the lawyers would
5 like to ask you some questions.

6 THE JUROR: Certainly.

7 THE COURT: Mr. Bruner?

8 MR. BRUNER: Thank you, your
9 Honor.

10 Mr. Bixler, one of your problems is, there
11 aren't enough spaces for people convicted of
12 felonies in Lorain County, or I guess, Lorain
13 County Jail?

14 THE JUROR: What, sir, now?

15 MR. BRUNER: One of your answers
16 said that one of the problems with the justice
17 system is not having enough space for people
18 convicted of a felony in Lorain County.

19 THE JUROR: That is true, true.
20 That is the reason they are building another one.

21 THE COURT: Convicted felons
22 will not stay in Lorain County.

23 THE JUROR: This would be not a
24 maximum security. This is a minimum security,
25 right?

1 MR. BRUNER: It is not maximum,
2 that is called Lucasville.

3 THE JUROR: Whatever.

4 MR. BRUNER: You have in your
5 answer on your death penalty views, it says,
6 "Like the Bible says, eye for an eye."

7 THE JUROR: Yes, sir.

8 MR. BRUNER: Does that mean that
9 if you were to believe everything in this case,
10 all of the charges beyond a reasonable doubt, as
11 Mr. Rosenbaum has the burden of proving all those
12 charges, could you give any other sentence?

13 THE JUROR: Sir, I think you
14 have to be a little impartial always. I think you
15 are not guilty until -- you are innocent until
16 proved otherwise.

17 It is more or less the stature of whenever
18 you take another person's life, it is a terrible
19 thing, but maybe there is understanding
20 circumstances or something that may be a little
21 different, you know.

22 I ain't saying that everybody because they
23 commit a thing like that, they should be put to
24 death or anything like that.

25 MR. BRUNER: What I am asking

1 you is this.

2 Let's assume -- there is two parts to this
3 case --

4 THE JUROR: Uh-huh --

5 MR. BRUNER: The first part is
6 what you decide, the evidence.

7 THE JUROR: Uh-huh.

8 MR. BRUNER: And maybe you will
9 decide he is not guilty or if he is guilty, I am
10 saying that you are one of the twelve people who
11 find a verdict of guilty and as part of that
12 verdict you decide there was premeditated murder,
13 that the specifications are there, everything was
14 there that would allow you to take an eye for an
15 eye.

16 Would your views impair you from giving him
17 a life sentence at that point?

18 THE JUROR: I really don't know
19 to tell you the God's truth. I really don't know.

20 MR. BRUNER: Everyone talks about
21 an eye for an eye.

22 THE JUROR: Like I said before,
23 I feel as though, you know, everything is
24 impartial, but the fact is that I have to look
25 at both sides. There could be something that

1 happened, you know, or whatever.

2 I mean, I think it takes eleven other people
3 besides myself to decide on the verdict. It is
4 not maybe your individual self, you know, you have
5 other people, like it takes five people to play
6 basketball, not one person.

7 I think, you know, if everything, reasonable
8 doubt or whatever, as far as the law, sir, I would
9 go as much as I can by it. A lot of these
10 answers, I don't understand them. This is the
11 first time I have ever been called, Judge, even
12 though I am 63 years old, retired.

13 I don't understand a lot of these things.

14 THE COURT: I understand what
15 you are saying and it is not only a difficult
16 position, it is a difficult decision to be made.

17 THE JUROR: You look at the
18 gentleman, you wonder, you know.

19 THE COURT: But the point is,
20 what Mr. Bruner was indicating was that you
21 jurors who sign that Mr. Smith is guilty of
22 everything that he is charged with, okay --

23 THE JUROR: Yes --

24 THE COURT: Mr. Rosenbaum has
25 proven everything --

1 THE JUROR: Uh-huh --

2 THE COURT: (Continuing) --

3 sometime later, a week, ten days, whenever the
4 case is, we come to the mitigation phase. At
5 this point there is evidence presented for the
6 aggravation of this matter and also the
7 mitigation of this matter.

8 Now, your views regarding the eye for an
9 eye or the death sentence, do they substantially
10 impair you from giving consideration and possibly
11 imposing a life sentence?

12 THE JUROR: I understand what
13 you are talking about. Well, you know, I am
14 trying to figure out -- I can't tell you the word
15 or whatever, like I say, you have to be impartial
16 because you have to hear both sides of the story.

17 You know, there is everything, evidence
18 between these gentlemen and these gentlemen, they
19 are protecting all rights, everything has to be
20 put in. I really don't know.

21 I wrote this quickly. I wrote it quickly.
22 Maybe I made a mistake.

23 THE COURT: It is not a question
24 of whether you made a mistake. I think what we
25 are trying to do, Mr. Bruner and Mr. Rosenbaum

1 are trying to get twelve fair and impartial
2 people.

3 THE JUROR: Right.

4 THE COURT: Without any ifs,
5 ands or buts about it. They want to be able to
6 start on equal footing.

7 THE JUROR: Yes.

8 THE COURT: That is what they
9 are asking for and we are asking you as to whether
10 or not you feel, with the views that you have, you
11 could be one of those twelve people.

12 THE JUROR: I think so.

13 THE COURT: Mr. Bruner?

14 MR. BRUNER: That means you can
15 be impartial?

16 THE JUROR: Yes, I said I could
17 be impartial.

18 MR. BRUNER: I don't have
19 anything further, your Honor.

20 MR. ROSENBAUM: Let me ask you this.

21 The Judge is going to give you the law if we
22 reach the next phase of this trial.

23 In other words, you have convicted. There is
24 three possible sentences, death and two life
25 sentences.

1 Would you automatically go for death?

2 THE JUROR: No.

3 MR. ROSENBAUM: Or would you follow
4 the procedures of the Court?

5 THE JUROR: I would follow the
6 procedures Judge Glavas sets.

7 MR. ROSENBAUM: If the Judge gave
8 you the law and you felt that a death sentence
9 was not appropriate based on the law, but in your
10 heart you thought that was a rotten enough thing
11 that it should be death penalty --

12 THE JUROR: I don't think --
13 you take it from your heart really. You have to
14 go with the law, that is the reason why we abide
15 by the rules.

16 MR. ROSENBAUM: Nothing further.

17 THE COURT: Thank you, sir,
18 you may join your fellow jurors.

19 THE JUROR: Okay.

20 THE COURT: Mr. Henry.

21 Mr. Henry, some of the answers that you gave
22 on your questionnaire, the attorneys would like
23 to ask you some questions further on.

24 Mr. Bruner?

25 MR. BRUNER: I am looking for

1 the questionnaire, your Honor.

2 THE COURT: No. 41.

3 MR. BRUNER: I am past it.

4 Mr. Henry, you didn't answer whether or not
5 you are in favor of the death penalty.

6 Can you tell me what you think about it?

7 THE JUROR: I really don't have
8 an opinion.

9 MR. BRUNER: Does that mean you
10 will give it to somebody or you wouldn't give it
11 to somebody?

12 THE JUROR: I really don't know.

13 MR. BRUNER: Have you thought
14 about it at all?

15 THE JUROR: Not really.

16 MR. BRUNER: Have you ever been
17 involved in anything like this?

18 THE JUROR: No.

19 MR. BRUNER: In your
20 questionnaire it talks about you have pressing
21 business that you want to attend to.

22 What is that pressing business that might
23 interfere with your decision on this case?

24 THE JUROR: I don't even
25 remember putting that down.

1 MR. BRUNER: What pressing
2 business do you have?

3 THE JUROR: I run a small
4 company out of Eastlake, Ohio.

5 MR. BRUNER: And you can't
6 take time away from your company?

7 THE JUROR: I really don't
8 want to.

9 MR. BRUNER: Do you think that
10 you can be fair to Mr. Smith?

11 THE JUROR: I don't think so.
12 I told you that I know him.

13 MR. BRUNER: You know Ray Smith?

14 THE JUROR: Sure. I raised my
15 hand.

16 MR. BRUNER: How long have you
17 known Ray Smith?

18 THE JUROR: I raised my hand in
19 the room.

20 THE COURT: Do you know Ray?

21 THE JUROR: Yes, I grew up with
22 him.

23 THE COURT: Okay.

24 THE JUROR: I raised my hand.

25 THE COURT: And you feel that

1 your knowing of him will affect your judgment?

2 THE JUROR: Sure.

3 THE COURT: I will excuse him
4 on my own. I am sorry, I did not see your hand
5 go up, sir.

6 THE JUROR: I raised my hand
7 in the back of the room.

8 THE COURT: You should have
9 yelled. I am going to have to excuse you based
10 upon that, and thank you very much for coming.

11 THE JUROR: Okay.

12 (Whereupon, the Court resumed the bench in
13 the courtroom and the following proceedings occurred.)

14 THE COURT: Good afternoon,
15 ladies and gentlemen.

16 Ladies and gentlemen, it is now four o'clock,
17 okay, and don't feel -- I think a lot of you feel
18 as if nothing was done here, a lot was done, a lot
19 was done today. A lot of the questions have been
20 determined and I think that very quickly tomorrow
21 morning we will be able to have a jury and proceed
22 with the trial of this case.

23 I think counsel tends to agree with that
24 statement also.

25 MR. BRUNER: Yes, your Honor.

1 THE COURT: However, it would
2 take a substantial period of time to get to it
3 today and therefor with that and the hour being
4 four o'clock and it has been a long day and some
5 of you have had some pretty serious questions
6 asked of you and I am sure you are kind of
7 exhausted at this point, and because of that
8 we will take our evening recess.

9 Tomorrow we will reconvene and I will ask
10 you to be here at 8:30 in the morning if you
11 could. The Court has a very small matter to
12 take care of before we get started and we hope
13 to get started by a quarter to nine tomorrow
14 morning on this matter.

15 Therefore, we will adjourn this evening and
16 reconvene tomorrow. Most of you tomorrow will
17 be getting excused. My estimation is sometime
18 before noon. However, we still need you all.

19 Those of you who came up this afternoon
20 from downstairs, first thing we will do tomorrow
21 is swear you in as jurors as far as your
22 questionnaires are concerned and proceed to
23 fill in the blanks that we have on the jury.

24 Then we will proceed with the questioning
25 as necessary at this particular point.

1 Anything further from counsel?

2 MR. ROSENBAUM: Nothing.

3 MR. BRUNER: Nothing, your Honor.

4 THE COURT: Report downstairs
5 tomorrow morning and we will bring you up in
6 order.

7 (Whereupon, the trial in the above-entitled
8 matter was adjourned to reconvene on Wednesday, the
9 29th day of November, 1995, at 8:30 a.m.)

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Volume 2

No. 95 CRO 468388

The State of Ohio, Plaintiff,

vs. Raymond Augustus Smith, Defendant.

MORNING SESSION, WEDNESDAY, NOVEMBER 29, 1995

(Whereupon, the following proceedings occurred out of the hearing of the jury.)

THE COURT: Gentlemen, I want to discuss this with you before we proceed further with this matter and whether or not you are aware as to what happened yesterday.

The Lorain Journal, through their reporter, attempted to come into the voir dire room claiming that it was his right to listen to the sequestered voir dire that we conducted as far as the death penalty question was concerned and so forth.

In addition to the death penalty, other matters were discussed in the jury room which pertained to some of their answers they gave on the questionnaires.

This morning I received a letter from legal counsel for the Lorain Journal and their final request is that they respectfully request that this Court immediately open the voir dire proceedings to the public or, in the alternative, conduct such a voir dire by the Ohio and U. S. Constitution and what I am attempting to do here this morning is to comply with the latter part of their request which is a preclosure hearing

1 as required by the Ohio and United States
2 Constitution.

3 In particular they cite the authority of a
4 1986 case and I think in this instance that --
5 and I can read it and I can see that maybe there
6 is something that we should do, and that is what
7 I am doing at this point.

8 Yesterday -- I think I came in and I
9 indicated to the Journal that their request had
10 been made and without putting any words in
11 anyone's mouth, even though the opportunity was
12 not given to you, you both expressed to me your
13 feelings of putting on the record your objections
14 to having the newspaper present.

15 Is that correct?

16 MR. ROSENBAUM: Well, I would like
17 to briefly be heard on that issue for the record.

18 What the Court has recounted this morning is
19 accurate. I provided the Court State versus
20 Huertas where I had a similar experience with
21 the same paper years and years ago.

22 I believe the Court doesn't have to have a
23 hearing. It is a proceedings in order to provide
24 a record for review. I would like the record to
25 reflect that it is now five to nine.

1 The scheduled proceedings were to resume at
2 8:30. The Journal is not even here nor were they
3 here much of yesterday. In fact, I did not see
4 them, so their attempts to gain access to the
5 sequestered voir dire, I think, is belittled
6 by their absence.

7 I would also like to point out -- I think
8 Mr. Bruner would concur -- that we both agreed
9 that jurors are far more candid when the press
10 is not around. The purpose of a sequestered
11 voir dire in a case of this type of to examine
12 their innermost thoughts.

13 We have had jurors reveal to us that they
14 are alcoholics, that they are going through
15 divorces, their families may be devastated,
16 they are on medication for mental problems.

17 Question 97 calls for a list of anyone seeing
18 a psychiatrist or a psychologist and the burden is
19 enough on jurors to come to Court, to give up
20 their lives to meet their duty. It is a
21 tremendous burden to ask such questions about
22 that, but in the presence of the media I think
23 places an unfair burden on the jury and it is
24 not proper and in the interest of cases like
25 this where we want candid answers, I think

1 outweighs the presumption for openness.

2 That is within the discretion of the Court
3 and I think defense would join with me in asking
4 that this remain so.

5 THE COURT: Mr. Bruner?

6 MR. BRUNER: Your Honor, I
7 wholeheartedly agree with Mr. Rosenbaum although
8 that is not always the case.

9 On this particular case there is no question
10 that I agree with him totally and we would ask for
11 closure of the voir dire. I understand that the
12 Court is going to open the balance of it.

13 THE COURT: The balance will
14 remain open as in every other case that we have,
15 but the particular -- the law requires that once
16 a juror expresses a strong feeling towards the
17 death penalty, that they be individually voir
18 dired and given an opportunity to explain what
19 their positions are and in particular to see
20 whether or not their position is substantially
21 impaired to not consider the other possible
22 sentences and that is what the Court was
23 attempting to do.

24 MR. BRUNER: On behalf of the
25 defense, it is our position that these people

1 will not give us their innermost thoughts in
2 front of the media.

3 There were many embarrassing things
4 discussed by the jurors, many private things
5 that Mr. Rosenbaum and I feel that we should
6 know about and I think frankly for the protection
7 of the jurors mainly this should remain closed.

8 THE COURT: Thank you.

9 MR. ROSENBAUM: There is also one
10 other thing that I forgot to point out and that
11 is that the questionnaires, many of them, it says
12 in the question, the jurors can initial the
13 question if they desire to respond in private
14 and many of the questionnaires have that and
15 those jurors and the questionnaires have been
16 gone over.

17 THE COURT: Do you concur in
18 that?

19 MR. BRUNER: Absolutely, your
20 Honor.

21 THE COURT: Very well. Well,
22 gentlemen, I think both counsel have expressed
23 it as good as this Court could express its
24 position and this Court adopts the same position
25 as counsel has indicated and therefor it is making

1 a decision, based upon this preclosure proceeding
2 that was conducted here this morning, to continue
3 to keep that part of the voir dire closed and away
4 from the media.

5 MR. BRUNER: Thank you, your
6 Honor.

7 THE COURT: Anything further
8 from anybody?

9 MR. ROSENBAUM: I have nothing.

10 THE COURT: Thank you,
11 gentlemen. We will be bringing up the other
12 jurors and proceed with the voir dire at this
13 point.

14 (Whereupon, the prospective jurors were
15 brought into the courtroom and the following
16 proceedings occurred.)

17 THE COURT: Ladies and
18 gentlemen, I would like to thank you all for
19 coming here this morning, also for coming here
20 yesterday and quite honestly, I was just
21 informed about Mr. Barnes and the Court is very
22 appreciative. I understand he is very ill and
23 he has thrown up at this point and the Court
24 appreciates the fact that he came in in that
25 condition.

1 You are here this morning to be considered as
2 prospective jurors in a criminal case and this is
3 the State of Ohio versus Raymond Augustus Smith.

4 I will say to you and I will do this quickly
5 to all of you, that the service rendered by
6 citizens of a community as jurors is probably the
7 single most important civic responsibility that
8 each of you has.

9 Just as this important citizenship right is
10 a heavy responsibility, at times it also creates
11 burdens and hardships. However, this procedure,
12 the right of trial by jury of a person charged
13 with a crime or crimes is a most essential
14 difference between life in a free society and
15 life for those who live under the thumb of a
16 dictator or a totalitarian form of government.

17 Since we live in this great country we must
18 accept and assure great responsibility, both for
19 our own conduct and for our freedoms.

20 The duty to serve in a trial, to be a member
21 of a jury panel that decides the guilt or
22 innocence of a person charged with a crime or
23 crimes, is most important.

24 Therefore, I urge each of you to look into
25 your conscience and recognize that accepting the

1 hardship which service could require in a case
2 that might extend over a period of perhaps four
3 days is not only a noble calling, but an absolute
4 necessity.

5 The Defendant, the person charged in this
6 case, is Mr. Raymond Smith. He is seated at the
7 counsel table at the end. He is dressed in a
8 grey charcoal suit and a very colorful tie and
9 Mr. Bruner, if you would ask your client to stand.

10 Thank you, Mr. Smith.

11 He is represented by Mr. Bruner and, Mr.
12 Bruner, please introduce yourself and also your
13 co-counsel.

14 MR. BRUNER: Good morning, ladies
15 and gentlemen.

16 I am Harvey Bruner. I represent Ray Smith
17 and this is my co-counsel, Bret Jordan.

18 MR. JORDAN: Good morning.

19 THE COURT: The State of Ohio
20 is represented by Mr. Rosenbaum. Mr. Rosenbaum
21 is seated at this side of the table in the black
22 suit and the red tie.

23 Mr. Rosenbaum, would you stand, introduce
24 yourself and also Mr. Leiby at the counsel table?

25 MR. ROSENBAUM: Thank you, your

1 Honor. Good morning, ladies and gentlemen.

2 As the Judge said, my name is Jonathan
3 Rosenbaum. I am an Assistant Prosecutor for this
4 County and with me in this case is Detective Al
5 Leiby of the Elyria Police Department.

6 MR. LEIBY: Good morning.

7 THE COURT: Thank you, Mr.
8 Rosenbaum.

9 We are going to conduct a voir dire process
10 and you will be answering questions from me and
11 from the attorneys. In addition, you have already
12 answered questions to the questionnaire. All of
13 your answers have to be given under oath, so I'll
14 ask you to raise your right hand, stand, and Mrs.
15 Ward is going to swear you in.

16 What you are swearing to, and I want you to
17 understand what it is, is not only the questions
18 the attorneys and I are going to be asking you,
19 you are also swearing to the answers that you
20 gave on the questionnaires.

21 If anybody has anything that prevents them
22 from swearing, you may remain seated and we will
23 affirm you. Those to be sworn now, would you
24 please stand up and raise your right hands and
25 Mrs. Ward will administer an oath.

1 (Whereupon, the second group of prospective
2 jurors were sworn in a group.)

3 THE COURT: Is there anyone who
4 needs to be affirmed who did not take the oath?

5 (No response.)

6 THE COURT: Thank you.

7 At this point, ladies and gentlemen, I would
8 like to read you the Indictment in this case and
9 it is the State of Ohio versus Raymond Augustus
10 Smith, a true bill Indictment for Aggravated
11 Murder, 2903.01(A)(1); Specifications (2), Case
12 No. 95CRO46838.

13 "The jurors of the Grand Jury of the State
14 of Ohio, within and for the body of the county
15 aforesaid, on their oaths, in the name and by
16 the authority of the State of Ohio, do find and
17 present, that the above-named Defendant, in the
18 County of Lorain, unlawfully on or about January
19 19th, 1994, did purposely and with prior
20 calculation and design, cause the death of Ronald
21 Lally in violation of Section 2903.01(A) of the
22 Ohio Revised Code, contrary to the form of the
23 statute in such case made and provided, and
24 against the peace and dignity of the State of
25 Ohio.

1 "Specification One to Count One: The jurors
2 of the Grand Jury further find and specify that
3 Raymond Augustus Smith had a firearm, other than
4 an automatic firearm, or a firearm equipped with
5 a firearm muffler or silencer, as defined in
6 Section 2923.11 of the Revised Code, to-wit: a
7 firearm on or about his person or under his
8 control, while committing the felony enumerated
9 in Count One.

10 "Specification Two to Count One: Ronald
11 Lally was a witness to an offense and was
12 purposely killed to prevent his testifying in
13 any criminal proceeding and the aggravated
14 murder of Ronald Lally was not committed during
15 the commission, attempted commission, or flight
16 immediately thereafter the commission or attempted
17 commission of the offense to which Ronald Lally
18 was a witness or Ronald Lally was a witness to an
19 offense and was purposely killed in retaliation
20 for his testifying in any criminal proceedings."

21 This is signed by the foreman of the Grand
22 Jury, Gregory A. White, Lorain County Prosecuting
23 Attorney, and Jonathan Rosenbaum, Assistant
24 Prosecuting Attorney.

25 Now, ladies and gentlemen, what I want you

1 to understand is that an indictment is a charge
2 set forth by the Grand Jury of Lorain County and
3 it is merely a charge. It is an accusation
4 against the Defendant.

5 It is not and cannot be considered for any
6 other purpose. It informs the Defendant that he
7 has been charged with a crime and that is it.
8 Nothing more, nothing less, and before you could
9 ever consider anything with respect to the
10 Indictment, I want you to understand the burden
11 of proof is on the Prosecutor to prove each and
12 every one of the elements of each count of the
13 Indictment beyond a reasonable doubt before the
14 Defendant can ever be found guilty of any one or
15 more of the offenses in the Indictment.

16 The plea of not guilty has been entered into
17 by the Defendant on each count which now puts the
18 burden on the Prosecutor to prove.

19 Now, ladies and gentlemen, if the Prosecutor
20 proves to the jury each and every element of
21 the aggravated charge of murder plus the
22 specifications, and that is beyond a reasonable
23 doubt, then and only then would the jury be
24 involved in the sentencing process which we
25 call the penalty phase of this case.

1 If the jury is involved in the penalty phase
2 of this case, there are three possible penalties
3 that might be considered or will be considered
4 by the jury.

5 One possible penalty is life sentence in
6 prison with parole eligibility after 20 years.

7 The second is life sentence in prison with
8 parole eligibility after a full 30 years and the
9 third possibility is the death penalty.

10 This is what we call a capital case. As I
11 said, the only time the jury would ever be
12 involved in the sentencing process or the only
13 time that the jury would be involved in
14 considering the subject of the capital punishment
15 is when and only when the Prosecutor would have
16 proved to the jury beyond a reasonable doubt each
17 and every one of the elements of Aggravated Murder
18 with specifications that I have read to you.

19 What I would like to do is to go back and
20 give you an overview of the procedure involved
21 and let you know what you are in for as far as
22 time and more specifically on the procedures
23 in a capital case.

24 Now, I have mentioned the possibility of
25 two stages. We have the first stage which is

1 called the trial stage, which is what we are
2 about to embark on after we have completed the
3 selection of the jury.

4 At this stage it is where the Prosecutor
5 presents his evidence to you for your
6 determination. The Defendant will, if he
7 desires, also have an opportunity to present
8 evidence.

9 If, and only when, you decide the Defendant
10 is guilty of the charge of Aggravated Murder
11 with specifications, and it has been proved to
12 you beyond a reasonable doubt, we would have a
13 second stage in the proceedings.

14 If you determine that the Prosecutor has
15 not proved beyond a reasonable doubt each and
16 every one of the elements of the offense of
17 Aggravated Murder with specifications or you
18 decide the Defendant is not guilty but guilty
19 of a lesser offense with respect to that charge,
20 you will not be involved in any penalty
21 proceedings.

22 The sentence in that case would be up to
23 the Court. So, if, and only when, there would
24 be a guilty determination on the Indictment of
25 Aggravated Murder with specifications would you

1 be involved in the sentencing proceedings.

2 My understanding, in talking with counsel,
3 is that this trial could possibly now go through
4 Friday at this point, okay? However, no one can
5 tell for certain at the outset whether it will
6 take one or 30 days.

7 We thought that this stage could have been
8 completed yesterday, but it was not, so we are
9 proceeding again this morning.

10 Because of the nature of the offense and the
11 complicity you can expect after all the evidence
12 has been presented and when the jury retires to
13 commence deliberations on the Defendant's guilt
14 or innocence, the jury will then be kept together
15 for some undetermined period of time which,
16 keeping together, as we call it in the law,
17 sequestration and it may include staying
18 together overnight.

19 When and if this point in the trial is
20 reached, the Court would have to attend to
21 all the jurors' personal needs. This will
22 not occur, not occur, until such time as the
23 jury is instructed to retire and commence
24 deliberations on the issues of guilt or
25 innocence.

1 Once the jury has retired for their
2 deliberations the jury may have to remain
3 sequestered until the case is concluded and
4 no one can determine how many days this may be.

5 As I mentioned, the guesstimate is that
6 this trial will probably take till Friday.
7 The evidence part of the case will probably
8 take till then. It could be less or more, not
9 likely to be any more.

10 Keeping this in mind, I am going to put a
11 few questions to all of you.

12 Does anyone have plans at this time to be
13 away from the country during the next week on a
14 planned trip which could not be cancelled or
15 postponed?

16 (Whereupon, one of the jurors raised their
17 hand in the affirmative.)

18 THE COURT: And tell us something
19 about that, would you please?

20 THE JUROR: We have a paid
21 vacation from Saturday to Saturday.

22 THE COURT: This coming
23 Saturday?

24 THE JUROR: Yes.

25 THE COURT: I could say this to

1 you at this point. It is the Court's plan and
2 intention to seat 14 people. There will be two
3 alternates and if, per chance, this situation
4 does occur, you probably can go on, go on the
5 trip because we will substitute one of the
6 alternates for you at this point depending on
7 when you get the case, okay?

8 If you get it sometime on Friday, chances
9 are that we might excuse you at that point and
10 put in an alternate in your place. If you get
11 it on Thursday, we might be able to get it done.

12 Do you understand, sir?

13 THE JUROR: I understand that.

14 THE COURT: Anybody else?

15 (No response.)

16 THE COURT: Does anyone have
17 any illnesses in their family at the present time
18 or personal situations which is of such a nature
19 that they might expect some emergency to arise
20 within the next week or so?

21 (No response.)

22 THE COURT: Does anyone have an
23 employment situation which is of such a nature
24 that being away for a period of approximately one
25 week would create a serious problem, recognizing

1 that if you give your employer reasonable notice
2 of your call to duty you cannot be discharged and
3 recognizing further that all employers will
4 probably be most unhappy about your absence?

5 (No response.)

6 THE COURT: Does anybody have
7 a doctor's appointment or an appointment to enter
8 the hospital or other personal medication
9 situation which might require attention during
10 the next week or so and which absolutely cannot
11 be postponed?

12 (No response.)

13 THE COURT: Again, I am glad
14 you are all healthy.

15 Does anyone have any difficulty working a
16 full day Monday through Friday from approximately
17 8:30 in the morning until roughly 4:30 in the
18 afternoon with comfort and lunch breaks of
19 course?

20 (No response.)

21 THE COURT: Now, each of you
22 have filled out a questionnaire prior to today
23 and they have been in the possession of the Court.

24 Does anyone have or did anyone have any
25 problems with any questions on the questionnaire?

1 (No response.)

2 THE COURT: It has probably been
3 so long you don't remember at this point.

4 Anybody here know either the Defendant or any
5 of the attorneys seated at counsel table?

6 (No response.)

7 THE COURT: How about Mr. Leiby?

8 (Whereupon, Linda Murray raised her hand in
9 the affirmative.)

10 THE COURT: Your name, please?

11 THE JUROR: Linda Murray.

12 We attended high school together.

13 THE COURT: I am not going to
14 ask how long ago that was.

15 Is that the extent of your relationship?

16 THE JUROR: We had a few dates.

17 THE COURT: Okay. How do you
18 know Mr. Leiby now other than that?

19 THE JUROR: Occasionally, once
20 a year we run into each other at a Fourth of July
21 celebration or something.

22 THE COURT: Does the fact that
23 you know Mr. Leiby from high school and further
24 that you had gone out together -- and I take it
25 that was during high school -- would that affect

1 you as being a fair and impartial juror here
2 today?

3 THE JUROR: I don't believe so.

4 THE COURT: I need a little
5 more than, "I don't believe so."

6 THE JUROR: I don't think
7 that it would affect me. I know that I am a
8 very honest person and I think of all my
9 responsibilities in life, I take them seriously.

10 THE COURT: I am sure that you
11 do.

12 If, per chance, you were to decide against
13 the position that Mr. Leiby has taken in this
14 matter, could you see him tomorrow and look him
15 in the eye and still be friends?

16 THE JUROR: Yes.

17 THE COURT: You could be
18 friends?

19 He may not want to be.

20 THE JUROR: It is up to him.

21 THE COURT: You could do that?

22 THE JUROR: Yes.

23 THE COURT: And you feel
24 comfortable -- if you were selected as a juror,
25 would you feel comfortable sitting in a case

1 that he is involved in?

2 THE JUROR: Yes, I would.

3 THE COURT: Anybody else here
4 know anybody else?

5 (No response.)

6 THE COURT: Anybody here in this
7 group feel strongly about capital punishment one
8 way or the other?

9 (Whereupon, various jurors raised their hands
10 in the affirmative.)

11 THE COURT: Anybody else?

12 (No response.)

13 THE COURT: Very well. I think
14 at this stage then, ladies and gentlemen, we will
15 have to take a short recess. The rest of you
16 relax and counsel and the Court will be asking
17 these people specific questions regarding their
18 views at this point.

19 This will take a little time. You can roam
20 around if you would like, go out into the
21 hallways. Don't stray too far. If some of you
22 feel the urge that you need to have a cigarette,
23 you can do it right outside the front door of
24 the building if you feel like.

25 And with that, we will take a short recess

1 and we will be asking the people who raised their
2 hands to come into the jury room for more specific
3 questions.

4 Now, let me say this to you. Don't work
5 yourselves up into a tizzy or a dither regarding
6 having to do this. It is something that the law
7 requires us to do and requires us to do it in a
8 private session.

9 (Whereupon, the following proceedings
10 occurred in the jury room.)

11 THE COURT: Mrs. Reed, counsel
12 has had the opportunity to go over the
13 questionnaires that we received and they have
14 some questions that they would like to explore
15 further as to some of the answers that you gave
16 on your questionnaire at this point and that is
17 why you are here. Relax. Don't get excited.

18 Mr. Bruner, would you proceed, sir?

19 MR. BRUNER: I am sorry, Mrs.
20 Reed, I couldn't read your handwriting totally
21 in your answer to your views concerning the
22 death penalty.

23 It says, "I am for it. If a defendant
24 killed someone they need the death penalty
25 because it will not --" I guess you are

1 saying it doesn't pay for him to sit in jail
2 as opposed to anything else?

3 THE JUROR: Right.

4 MR. BRUNER: Do you understand
5 in this case that there is an evidence phase and
6 that is what we are doing first?

7 THE JUROR: Yes.

8 MR. BRUNER: And the State has
9 to prove the case beyond a reasonable doubt and
10 assuming that happens, if they prove Mr. Smith
11 guilty of everything that the Judge talked about
12 yesterday, you weren't up here until this morning,
13 that is Aggravated Murder with prior calculation
14 and design with a gun specification and with
15 aggravated circumstances, that being the victim
16 was allegedly a government witness.

17 They prove all those things beyond a
18 reasonable doubt, are your views so strong about
19 the death penalty that you would have to give him
20 death?

21 THE JUROR: No, it depends on
22 all the evidence that is brought into the case to
23 see what happens.

24 MR. BRUNER: So you will listen
25 to the Judge's instruction about that?

1 THE JUROR: Yes.

2 MR. BRUNER: And he has an
3 opportunity to get life in prison as opposed to
4 the death penalty.

5 You would consider that equally?

6 THE JUROR: Yes.

7 MR. BRUNER: With the other
8 people involved as well?

9 THE JUROR: Yes.

10 MR. BRUNER: You also, I notice
11 -- and I don't mean to ask you any embarrassing
12 questions, but I have to ask you some -- your
13 brother was in prison?

14 THE JUROR: Yes, he was in
15 prison for rape.

16 MR. BRUNER: Is that going to
17 affect your judgment here?

18 THE JUROR: No.

19 MR. BRUNER: As to whether or
20 not he was in prison?

21 THE JUROR: No, it will not.

22 THE COURT: Do you feel he was
23 treated fairly?

24 THE JUROR: Yes, he was fairly
25 treated.

1 MR. BRUNER: You spent one night
2 in jail?

3 THE JUROR: A former boyfriend
4 got in trouble and I took the blame for it.

5 MR. BRUNER: And you were on two
6 years' probation?

7 THE JUROR: Yes, but I got off
8 in one.

9 MR. BRUNER: Did the system treat
10 you fairly?

11 THE JUROR: Yes.

12 MR. BRUNER: Did you have any
13 problem with the law enforcement people?

14 THE JUROR: No, sir.

15 MR. BRUNER: Or your attorney?

16 THE JUROR: No.

17 MR. BRUNER: Did you have an
18 attorney represent you?

19 THE JUROR: Yes, I did.

20 MR. BRUNER: Do you feel that
21 he did a decent job for you?

22 THE JUROR: Yes.

23 MR. BRUNER: I don't have
24 anything further.

25 THE COURT: Mr. Rosenbaum?

1 MR. ROSENBAUM: I have no questions.
2 THE COURT: Thank you, Ma'am.
3 You may return with your other jurors.
4 Mr. Dull.
5 Mr. Dull, good morning.
6 THE JUROR: Good morning.
7 THE COURT: How are you, sir?
8 THE JUROR: Fine, thank you.
9 THE COURT: Mr. Dull, in
10 response to the Court's question as to whether
11 or not anybody had any strong views as far as
12 the death penalty is concerned, you raised your
13 hand.
14 Would you please tell the Court and these
15 gentlemen what your views are as far as the death
16 penalty is concerned?
17 THE JUROR: Well, in the event
18 of a murder committed purposeful as in an
19 execution of some sort, I feel that justification
20 would be for the person who is guilty of that,
21 that they be put to death.
22 THE COURT: In other words, you
23 are not against the death penalty?
24 THE JUROR: No, I am not.
25 THE COURT: Per se?

1 THE JUROR: No.

2 THE COURT: And you are at least
3 for it?

4 THE JUROR: Yes.

5 THE COURT: In certain
6 circumstances?

7 THE JUROR: Yes.

8 THE COURT: Let me ask you your
9 position as far as the death penalty is concerned.
10 Would it impair you from considering the
11 death penalty or any other sentence for a case of
12 this nature?

13 For example, there are three possible
14 sentences. Death, parole after 30, parole after
15 20.

16 THE JUROR: Right.

17 THE COURT: Are your feelings
18 so strong about the death penalty that you will
19 not give consideration to the other two if found
20 guilty of everything as charged?

21 We will get into the mitigation phase. At
22 this point is where the decision would be made
23 as to the penalty.

24 THE JUROR: I understand the
25 question.

1 THE COURT: Would it be so
2 drastically impaired that you would not give
3 consideration to the other two possibilities?

4 THE JUROR: No, I don't think
5 drastically impaired.

6 THE COURT: You would give
7 consideration to the other two?

8 THE JUROR: I could, yes.

9 THE COURT: And could you come
10 with a sentence of any of the other two sentences?

11 Could you vote for a life imprisonment with
12 parole after 30 years or life imprisonment with
13 parole after 20 years under the circumstances?

14 THE JUROR: I could.

15 THE COURT: Mr. Rosenbaum?

16 MR. ROSENBAUM: So, if I understand
17 you correctly, sir, if the Judge gives you a
18 procedure to follow under the law as to what
19 sentence to impose and even though this was a
20 premeditated murder, if the law said that life
21 sentence was appropriate, you could vote for the
22 life sentence?

23 THE JUROR: Yes, I could.

24 MR. ROSENBAUM: I have no other
25 questions.

1 THE COURT: Mr. Bruner?
2 MR. BRUNER: Mr. Dull, you
3 understand that this is a two phase process.
4 You are a teacher at Westlake High School?
5 THE JUROR: Yes, I am.
6 MR. BRUNER: I don't know if
7 you ever taught government or anything of that
8 nature.
9 THE JUROR: No.
10 MR. BRUNER: Always English?
11 THE JUROR: Yes.
12 MR. BRUNER: It is a two-step
13 process. The first phase is to determine the
14 guilt or innocence of Mr. Smith.
15 THE JUROR: Right.
16 MR. BRUNER: And at that point
17 in time the State has the burden of proving
18 everything beyond a reasonable doubt.
19 Do you understand that?
20 THE JUROR: Yes, I do.
21 MR. BRUNER: And in the second
22 process, as the Judge has already explained to
23 you, the only time you would consider the death
24 penalty is if the State has proven him guilty
25 beyond a reasonable doubt of premeditated murder

1 with the specifications that the Judge discussed
2 today with you.

3 In your questionnaire you put down that
4 anybody who commits premeditated murder or a
5 violent crime should be put to death.

6 At this point in time you would have already
7 convicted him of premeditated murder?

8 THE JUROR: Right.

9 MR. BRUNER: At that point in
10 time you will have a decision that the three
11 choices the Judge will give you could be imposed,
12 one being the death penalty, one being 20 years
13 to life, the other being 30 years to life.

14 Do you really believe in your deepest thought
15 that you could give a fair shake to the life
16 imprisonment after hearing the instructions on
17 the law in spite of your views?

18 THE JUROR: Well, I can't
19 predict what I will do at that time.

20 MR. BRUNER: Let me put it
21 another way.

22 Do you feel that your views would
23 substantially impair you from giving consideration
24 to Raymond Smith getting 20 or 30 years to life as
25 opposed to the death penalty?

1 THE JUROR: I don't think they
2 would substantially be impaired, no.

3 MR. BRUNER: You also put in
4 Question No. 90, when they asked you about a
5 defendant testifying, I am sure that as a teacher
6 you understand the Constitution?

7 THE JUROR: Yes, I do.

8 MR. BRUNER: I remember teachers
9 telling me about the Constitution.

10 THE JUROR: Yes.

11 MR. BRUNER: And part of that
12 situation is that you have a right to remain
13 silent?

14 THE JUROR: Right.

15 MR. BRUNER: That is one of the
16 privileges of our Constitution, but your feelings
17 are that you don't like the law that a defendant
18 doesn't have to testify.

19 "I think the prosecution should have the
20 right to place the defendant on the stand for
21 examination."

22 Despite that being not what the Constitution
23 says, do you have a real problem with that law?

24 THE JUROR: Well, maybe I can
25 give you a response to why I answered the way I

1 did.

2 To be honest with you, I got this
3 notification the day that the verdict from the
4 O. J. Simpson trial came out and I was not very
5 confident about the judicial system at this point
6 and maybe some of that answer was as a result of
7 that frustration that I had as a result of that
8 verdict.

9 THE COURT: Let me ask a
10 question if I may.

11 MR. BRUNER: Sure, your Honor.

12 THE COURT: Do you still have
13 any spillage from the O. J. decision on your mind?

14 THE JUROR: No.

15 THE COURT: May I say to you
16 that the O. J. decision was a decision of a court
17 in California and I think that is all I am going
18 to say about that.

19 THE JUROR: I understand that.

20 THE COURT: That was a decision
21 that occurred there period. That was another
22 decision that occurred in California, obviously
23 occurred not in the State of Ohio. That just
24 happened to be the case.

25 THE JUROR: Sure.

1 THE COURT: And I take it you
2 didn't like it, but there is people who do and
3 I understand that at this point and that is the
4 only thing that I can say.

5 It was a case, high profile, no question
6 about it in this instance, and this is very
7 serious because a couple hundred years ago our
8 forefathers wrote out a piece of paper known
9 as the Bill of Rights.

10 On that paper was just this, and I am sure
11 you don't want to scrap that.

12 THE JUROR: No.

13 THE COURT: That may be your
14 views about the defendant, but a person does
15 not have to take the stand because he has that
16 Constitutional right.

17 THE JUROR: I understand that.

18 THE COURT: And I don't know
19 that you are ready to scrap that at this point
20 either.

21 THE JUROR: No, I am not.

22 MR. BRUNER: I don't have
23 anything further.

24 MR. ROSENBAUM: Nothing.

25 THE COURT: Thank you, sir.

1 You may return to the other jurors.

2 Mr. Resar.

3 Mr. Resar, when the Court -- in response
4 to one of the questions as to whether or not
5 you had any strong feelings towards the death
6 penalty, you raised your hand?

7 THE JUROR: Yes.

8 THE COURT: Could you tell me
9 and the gentlemen here what your feelings are
10 on the death penalty?

11 THE JUROR: I am not for the
12 death penalty.

13 THE COURT: And you have strong
14 feelings towards it?

15 THE JUROR: I think so.

16 THE COURT: Now, sir, are your
17 feelings that strong that it would substantially
18 impair you from considering the other possible
19 sentences involved?

20 Let me go further at this point and give you
21 a little better explanation rather than hit you
22 between the eyes with a question like that.

23 Assume that this case, and you know there
24 are two phases in this type of a trial -- No. One
25 is the guilt or innocence phase and once that has

1 been established we may proceed with the
2 mitigation or the sentencing phase.

3 THE JUROR: Yes..

4 THE COURT: If and only when
5 the jury makes a determination that there will be
6 guilt beyond a reasonable doubt on all the charges
7 made, then we go into the second phase, and that
8 could be a day later, a week later, ten later or
9 whatever the case may be, whenever that can be
10 fit into everybody's schedule at this point.

11 At this point you will take into
12 consideration three possible sentences as far as
13 this is concerned. Evidence will be presented in
14 aggravation and in mitigation of this individual
15 and after that finishes you will have the penalty
16 of three choices, one, death, parole after 30 and
17 parole after 20.

18 Now, are your views towards and in favor of
19 the death penalty so strong that it would
20 substantially impair you from giving full
21 consideration to the other two sentences?

22 Do you understand my question?

23 THE JUROR: Yes, I do understand
24 it. Yes, I would have to say yes.

25 THE COURT: It would

1 substantially impair you?

2 THE JUROR: I think so, if it
3 was found guilt without a doubt.

4 THE COURT: Mr. Rosenbaum?

5 MR. ROSENBAUM: Sir, first of all,
6 you said you could impose the death penalty
7 without any reasonable doubt.

8 If the standard were --

9 THE JUROR: I may have wrote
10 that wrong.

11 MR. ROSENBAUM: It is not beyond any
12 doubt. Whatever the law is, you will apply it?

13 THE JUROR: Right.

14 MR. ROSENBAUM: If it turns out that
15 standard is less than what you thought, would you
16 have a problem with it or do you think it has to
17 be very, very high?

18 THE JUROR: I think it would
19 have to be higher, talking murder.

20 MR. ROSENBAUM: Would you accept the
21 standard that the Court gives you even if you felt
22 it wasn't quite as high as you thought it should
23 be?

24 THE JUROR: If the Court gave me
25 standards I will abide by those, yes.

1 MR. ROSENBAUM: If it is higher than
2 what you thought it would be, you wouldn't lower
3 it either, right?

4 THE JUROR: No.

5 MR. ROSENBAUM: Now, the Judge will
6 define for you a procedure on what penalty is
7 appropriate, whether it would be life or one of
8 the two life sentences or death.

9 Now, if you, in your heart, felt it was
10 appropriate but you learned that really it should
11 be one of the two life sentences, could you pick
12 one of the two life sentences and follow the law?

13 THE JUROR: Yes, I would follow
14 the law.

15 MR. ROSENBAUM: So, your views
16 aren't so strong that you could not follow the
17 law as the Judge gives it to you and consider the
18 life sentences if that is what the law required?

19 THE JUROR: Okay. Yes.

20 THE COURT: Would you or could
21 you?

22 That is the question.

23 MR. ROSENBAUM: That is what we are
24 trying to find out.

25 Do you feel so strongly one way or the other

1 that you couldn't follow what the Court tells you
2 is the procedure?

3 Could you, as a juror, put aside your
4 personal feelings and follow the law?

5 THE JUROR: Personally I feel I
6 am for the death penalty. I would have to go with
7 that if I could, yes.

8 MR. ROSENBAUM: If you could?

9 THE JUROR: Yes.

10 MR. ROSENBAUM: If the law allows --
11 if it is a legal choice within the procedure the
12 Judge gives you, that is okay, but if it is not,
13 will you follow the law or vote for the death
14 penalty anyway?

15 THE JUROR: I would follow the
16 law.

17 MR. ROSENBAUM: Sir, on Question No.
18 97, "Have you or any member of your family or
19 close relative consulted a psychiatrist or a
20 psychologist," you answered yes?

21 THE JUROR: Correct.

22 MR. ROSENBAUM: Could you tell me
23 who that person is?

24 THE JUROR: That was me.

25 MR. ROSENBAUM: Could you tell me

1 why, please?

2 THE JUROR: About ten years or
3 more I was in business with my family and that
4 was starting to go down and I was doing a ton of
5 work putting in 70 hours a week, seven days a
6 week, and it just got to the point where it got
7 to me.

8 I was having trouble sleeping and I was
9 having -- just not getting along with my one
10 family member who was with me in it and just
11 losing a lot of sleep and having trouble with
12 things and I decided I better talk to somebody.

13 MR. ROSENBAUM: Do you take any
14 medication now?

15 THE JUROR: No, there was
16 never anything involved. It was a matter of
17 since it was a family business and it was hard
18 to talk to any family, I wanted to talk to
19 somebody who could be objective as far as
20 that would go.

21 MR. ROSENBAUM: You are out of
22 that business now?

23 THE JUROR: Yes, that was
24 the pool business. I think that was on the
25 questionnaire. I have been out of that. My

1 brother took that on his own and I got out of
2 it.

3 MR. ROSENBAUM: You indicated your
4 brother-in-law is a lawyer?

5 THE JUROR: Yes.

6 MR. ROSENBAUM: What is his name?

7 THE JUROR: Tom Higgins.

8 MR. ROSENBAUM: Where is he at?

9 THE JUROR: He is a lawyer.

10 He passed the Ohio Bar but he works in Columbus
11 for a bank so he is more of a corporate lawyer
12 right now.

13 THE COURT: Doesn't have his
14 own practice?

15 THE JUROR: No, he does not.

16 MR. ROSENBAUM: No other questions.

17 THE COURT: Mr. Bruner?

18 MR. BRUNER: You also said Judge
19 Ewers is your cousin?

20 THE JUROR: Yeah, Raymond Ewers
21 out of Lorain.

22 THE COURT: Raymond or Bob?

23 Raymond is the son.

24 THE JUROR: Robert, I am sorry.

25 MR. BRUNER: Are you close with

1 him?

2 THE JUROR: No, I don't see him
3 hardly at all.

4 MR. BRUNER: You understand that
5 the only time you would consider the death penalty
6 is after the Aggravated Murder has been proven
7 beyond a reasonable doubt?

8 THE JUROR: Right.

9 MR. BRUNER: That is the only
10 time you would think about it?

11 THE JUROR: Correct.

12 MR. BRUNER: That is the only
13 time you would have the right to make a
14 recommendation to the Court?

15 THE JUROR: Right.

16 MR. BRUNER: Could you look me
17 in the eye and tell me that your feelings about
18 the death penalty don't impair your decision on
19 whether to give him life or death?

20 THE JUROR: On whether to give
21 him life or death?

22 MR. BRUNER: Right. Once it has
23 been proven that he committed a premeditated
24 murder with specifications, you are sitting there,
25 you could give him death, you could give him life.

1 Could you give a fair shake to the life
2 imprisonment or would your feelings about the
3 death penalty substantially impair you from that?

4 THE JUROR: I would probably go
5 for the death.

6 MR. BRUNER: That is not what I
7 asked you.

8 I asked you would your feelings substantially
9 impair you from following the Judge's instructions
10 and you have a decision here, you can go either
11 way based upon instructions.

12 Would they impair you from considering the
13 life sentences for Mr. Smith?

14 That is what this is all about.

15 THE JUROR: Yeah, I would say
16 yes.

17 THE COURT: You would not
18 consider the other two possibilities?

19 Is that what you are saying?

20 THE JUROR: Right. If the other
21 one of death was given to me along with the other
22 two, I would go for the death.

23 THE COURT: But that is not the
24 issue.

25 MR. BRUNER: What I asked you

1 was, I know you would probably go for the death
2 and I think sitting in front of you, that is what
3 you would do.

4 Your feelings, do they impair you from
5 considering the life sentences and if they do,
6 tell me so?

7 THE JUROR: Yes.

8 THE COURT: Anything, Mr.
9 Rosenbaum?

10 MR. ROSENBAUM: I guess the standard
11 is substantially impaired.

12 Do you feel that your views are so strong you
13 could not follow the law and consider the life
14 sentences?

15 THE JUROR: See, the way I take
16 your questions is following the law and I would
17 not be given the other.

18 MR. ROSENBAUM: No, the law is going
19 to give you a procedure that includes three
20 scenarios and only if certain criteria are met
21 can you impose the death penalty.

22 THE JUROR: Okay.

23 MR. ROSENBAUM: Even if it is a
24 premeditated murder, not all premeditated murders
25 are punishable by death, so you are going to be

1 given a situation, if we get to that phase, where
2 there is a conviction of guilt on a premeditated
3 murder you are going to have three choices.

4 THE JUROR: Right.

5 MR. ROSENBAUM: You can only impose
6 the death under certain conditions. If those
7 conditions are now met, would you vote for the
8 death penalty anyway or can you return a vote
9 for life sentence?

10 Do you understand what I am saying?

11 THE JUROR: You are saying if
12 the conditions were not met I wouldn't have to
13 think about death?

14 MR. ROSENBAUM: Three choices there
15 all at one time.

16 If your head tells you the choices aren't
17 met you could vote for guilt on the death penalty
18 and no one would be the wiser, so you have three
19 choices at once.

20 Are your feelings so strong about the death
21 penalty that you can't evaluate all the criteria
22 and render the appropriate punishment and consider
23 life, or are you going to vote death no matter
24 what when you get in there?

25 THE JUROR: That is hard to

1 answer, to be honest with you.

2 MR. BRUNER: I will move that
3 he be excused.

4 THE COURT: Let me go further
5 at this point.

6 You were one of the twelve people who sat
7 as a juror and you found the Defendant guilty of
8 all charges. You signed that and the next phase
9 now is to determine what the penalty is going to
10 be as a sentence of this finding and it is going
11 to be made by you and the other eleven who made
12 the finding.

13 THE JUROR: Right.

14 THE COURT: Once you have made
15 the decision that he is guilty of all the charges
16 of which he is charged, which is premeditated and
17 using a weapon and what have you and so forth,
18 and this type of thing, based upon your views of
19 the death penalty, would you be so substantially
20 impaired as to not even consider imposing life
21 sentence after 30 or 20 years?

22 THE JUROR: No, I would have
23 to go with the death if all those things you just
24 said are there.

25 THE COURT: Let me say this to

1 you, sir.

2 I am going to give you instructions --

3 THE JUROR: Right.

4 THE COURT: (Continuing) -- but

5 I am not going to say what you have to do. You
6 have to make that determination. I won't tell
7 you what decisions to make.

8 THE JUROR: I understand that.

9 THE COURT: Now, again, your
10 position is --

11 THE JUROR: If all the
12 conditions were met of the premeditated --

13 THE COURT: You have already
14 voted guilty.

15 Would it automatically be death sentence?

16 THE JUROR: Yes, I would have
17 to say yes.

18 THE COURT: Thank you, sir.

19 I have to excuse you at this point.

20 THE JUROR: Sorry.

21 THE COURT: That's fine.

22 Nothing to be sorry about.

23 Mrs. Mason.

24 Mrs. Mason, in response to the Court's
25 questions as to whether anybody had any strong

1 feelings about the death penalty, you raised
2 your hand?

3 THE JUROR: Yes, I did.

4 THE COURT: Would you please
5 tell us what those feelings are?

6 THE JUROR: I felt -- very
7 frankly, I do not believe in the death penalty.

8 THE COURT: You do not believe
9 in it?

10 THE JUROR: No.

11 THE COURT: Period, under any
12 circumstances?

13 THE JUROR: Well, maybe under
14 some circumstances, but I do not believe in it.

15 THE COURT: May I say to you --

16 THE JUROR: Please --

17 THE COURT: (Continuing) --
18 that the State of Ohio kind of feels the same
19 way as you do because only under certain
20 circumstances the State of Ohio allows the
21 death penalty, does not allow it for all
22 circumstances.

23 THE JUROR: This is what I
24 feel in my heart.

25 THE COURT: Okay.

1 Mr. Rosenbaum?

2 MR. ROSENBAUM: Will you look
3 at the Defendant, please?

4 If you felt the law and the evidence
5 required it, could you sign your name to a
6 piece of paper that would condemn him to
7 death?

8 THE JUROR: No.

9 MR. ROSENBAUM: Under any
10 circumstances, you personally, if you are
11 picked as a juror, could not do that to
12 another human being?

13 THE JUROR: No.

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: Mr. Bruner?

17 MR. BRUNER: Let me ask you,
18 if it was a lesser case you wouldn't have a
19 problem finding him guilty beyond a reasonable
20 doubt and following the law, I presume?

21 THE JUROR: Right.

22 MR. BRUNER: In this case you
23 have strong feelings about the death penalty.

24 If Mr. Rosenbaum and the State proved in
25 the first phase of this case that Mr. Smith

1 shot a person with prior calculation and design
2 in a premeditated fashion and that person was a
3 government witness and that is one of the
4 specifications that the State of Ohio requires
5 death for, or can require death for, do you think
6 that you could sit here and deliberate with the
7 other jurors, listen to the Judge's instructions,
8 discuss it with them and discuss the life
9 sentences, assuming it was appropriate, and the
10 death sentence, assuming it was appropriate, and
11 sign your name to the warrant, based upon those
12 discussions?

13 THE JUROR: Yes, I could.

14 MR. BRUNER: Do you feel then
15 that your feelings about the death penalty
16 under that scenario that I just described
17 would substantially impair you from signing
18 a death warrant after everything was done
19 that I just talked about?

20 Could you do it?

21 THE JUROR: Yes.

22 THE COURT: You could sign
23 a death warrant?

24 THE JUROR: No.

25 MR. BRUNER: What I asked was,

1 could you follow the Judge's instructions, you
2 have no problem with that?

3 THE JUROR: No.

4 MR. BRUNER: Yes, you could
5 follow the law, is that right?

6 THE JUROR: Yes, I could follow
7 the law.

8 MR. BRUNER: Let's assume that
9 the law gives you a number of choices and you
10 are sitting here with all the jurors, twelve of
11 you, and you are one of the twelve who decided
12 that he committed this crime beyond a reasonable
13 doubt and all the requirements are met, every one
14 of them, could you sit here after hearing the law
15 from the Judge and given a reasonable opportunity
16 and listen to other jurors about the death penalty
17 as well as the life sentences and then join them
18 in signing a death sentence if all those things
19 were met?

20 That is down the road, do you understand
21 that?

22 THE JUROR: Yes.

23 MR. BRUNER: Could you do that?

24 THE JUROR: I don't think I
25 could sign the death penalty.

1 THE COURT: You don't think
2 you could sign the death penalty, is that what
3 you said?

4 THE JUROR: Yes.

5 THE COURT: That you don't
6 think you could sign the death penalty verdict?

7 THE JUROR: But after listening
8 to everything --

9 MR. BRUNER: You said that under
10 some circumstances it might be justified?

11 THE JUROR: Right, I did say
12 that.

13 MR. BRUNER: Even though you
14 don't believe in it, do you think that your
15 views would substantially impair you from
16 applying the law as the Judge gives it to you?

17 Could you, in fact, despite your beliefs,
18 after hearing all the evidence and everything
19 is proven beyond a reasonable doubt, sign that
20 death warrant?

21 THE JUROR: I don't want to
22 say yes and I don't want to say no.

23 MR. ROSENBAUM: Your views are
24 so strong you are substantially impaired --

25 THE COURT: From being able

1 to make that decision?

2 THE JUROR: But after hearing
3 all of the --

4 THE COURT: Okay. Let me do
5 it this way.

6 THE JUROR: I want to say yes
7 after hearing everything.

8 THE COURT: You will have heard
9 everything because this will be Phase No. Two of
10 the case. No. One is the guilt or innocence --
11 that is one phase. And the second phase is the
12 determination of what punishment is appropriate,
13 okay?

14 And the same jury that makes the
15 determination of guilt or innocence makes
16 the determination of what sentence will be
17 appropriate under the circumstances.

18 Now, in order to get to the second one,
19 you will have had to -- the prosecution will
20 have proven to you as a juror, and you are
21 one of the twelve, that this individual did
22 everything that he is charged with, everything,
23 okay?

24 Premeditation, government witness, firearm,
25 okay, okay, and you would have said yes, he is

1 guilty at this point.

2 Now, you come into the mitigation phase.
3 Can you sign a death warrant or can you sign a
4 life sentence for 30 years or 20 years and I will
5 not tell you, I will give you instructions, but I
6 will not tell you which one to sign.

7 You have to make that decision. I am going
8 to say if such and such exists, this is
9 appropriate, such and such, this is appropriate.
10 You make the determination what exists and which
11 one would be appropriate.

12 I can't give it to you much more simpler
13 than that.

14 Are you in a position -- do your views
15 substantially impair you from taking into
16 consideration the death penalty?

17 THE JUROR: Yes, I would be
18 able to sign like for a death sentence.

19 THE COURT: Could you sign
20 the death sentence?

21 That is the question at this point. We
22 know you are against it, but are you so much
23 against it that you wouldn't sign it if the
24 circumstances called for it?

25 THE JUROR: I am against it,

1 but I would sign.

2 MR. ROSENBAUM: I think we have
3 asked you a different set of questions.

4 The question is, are your views against
5 the death penalty so strong that they would
6 substantially interfere with your ability to
7 sign the death penalty?

8 Not under the worst circumstances in the
9 world, could you sign it if you are picked as
10 a juror and you come back to the room, would
11 your concerns about killing another human being
12 substantially interfere with your ability to
13 sign that paper?

14 THE JUROR: No.

15 MR. ROSENBAUM: So you are saying
16 that you could?

17 Look at him. If you are picked as a juror,
18 could you come back to this room, if the State
19 proves its case, and be one of the twelve people
20 that have to say he dies?

21 If you have a hard time answering that
22 question, you have to ask yourself do your views
23 substantially interfere with that possible duty
24 as a juror. That is what it is going to boil
25 down to.

1 THE JUROR: I don't want to
2 hold everybody up.

3 THE COURT: No, no, not at all,
4 we are here to -- the bottom line, Ma'am, is to
5 make sure that we get jurors that will sit in
6 judgment of this case for the entire proceedings
7 that are fair to the Defendant and that are fair
8 also to the State of Ohio.

9 That is it. Nobody in this room wants you
10 to do anything more or anything less than that.

11 MR. BRUNER: Mr. Rosenbaum's
12 questions will only come back long after --

13 MR. ROSENBAUM: It has nothing to
14 do with it.

15 MR. BRUNER: It has a lot to do
16 with it.

17 MR. ROSENBAUM: It doesn't matter
18 if it is a month from now or tomorrow.

19 MR. BRUNER: I am not talking
20 about time, I am talking about evidence.

21 MR. ROSENBAUM: For the purpose of
22 this question, we have convicted him and now we
23 are at the second phase.

24 Do you feel so strongly about the death
25 penalty or having to put someone to death that

1 you can't give the State a fair shake?

2 In other words, your views would
3 substantially interfere with imposing any one
4 of the three options?

5 You have to search your soul to decide if
6 you can be one of those people. Not even can
7 do that.

8 THE JUROR: No, I cannot.

9 THE COURT: You cannot put
10 someone to death?

11 THE JUROR: No.

12 THE COURT: I have no choice
13 but to excuse you at this time. Thank you very
14 much for coming.

15 THE JUROR: You are welcome.

16 THE COURT: Mr. Kajganich.

17 Mr. Kajganich, in response to one of the
18 Court's questions you indicated that you had
19 strong views about the death penalty?

20 THE JUROR: Yes, I do, sir.

21 THE COURT: Could you tell
22 us what those views are at this point?

23 THE JUROR: I feel that if
24 a person takes the life of another person and
25 it is proved without a doubt, that he should

1 pay the death penalty.

2 THE COURT: Under all
3 circumstances?

4 THE JUROR: Yes, sir, but I
5 want to reiterate that it must be proven
6 without a doubt.

7 THE COURT: Let me give you
8 this scenario. It is a scenario that is going
9 to happen.

10 No. One, you are a member of a jury, twelve
11 people who have come back and indicated that the
12 State of Ohio has proved every element of the
13 crime that is charged against this individual
14 which includes taking a life, as they say,
15 premeditated murder, prior calculation and
16 design.

17 He was a government witness, everything
18 else that the State of Ohio said he did, they
19 prove it beyond a reasonable doubt --

20 THE JUROR: Yes --

21 THE COURT: That is the guilt
22 or innocent phase. That is what we are involved
23 in at this stage.

24 At a later date, not important how long
25 that is, but it will be a matter separate, a

1 determination -- we have the mitigation phase
2 where evidence of aggravated mitigating
3 circumstances are presented and as a result
4 you will be given an opportunity to make a
5 determination that the death penalty should
6 be considered or life after 30 years, life
7 after 20 years.

8 Now, the question is, do you, sir -- are
9 your feelings about the death penalty so strong
10 -- you have already voiced your verdict -- you
11 have been a juror that determined his guilt --

12 THE JUROR: Yes --

13 THE COURT: (Continuing) --
14 beyond a reasonable doubt, beyond a reasonable
15 doubt has to be.

16 THE JUROR: Yes, sir.

17 THE COURT: Are your views so
18 strong that it will substantially impair you
19 from considering the other possible sentences?

20 THE JUROR: Yes, they are.

21 THE COURT: You would not even
22 think about them?

23 THE JUROR: No.

24 THE COURT: Would it be an
25 automatic thing?

1 THE JUROR: Yes.

2 THE COURT: Mr. Rosenbaum?

3 MR. ROSENBAUM: No matter what the
4 law says, you would vote for the death penalty?

5 THE JUROR: Yes, sir.

6 MR. ROSENBAUM: See you.

7 THE COURT: Sir, I have to
8 excuse you on that basis.

9 THE JUROR: Okay.

10 THE COURT: Mrs. Davis.

11 Mrs. Davis, in response to one of the Court's
12 questions you indicated that you had strong views
13 regarding the death penalty?

14 THE JUROR: Uh-huh.

15 THE COURT: Would you tell me
16 and the gentlemen what those views are?

17 THE JUROR: Well, I just believe
18 that no person has the right to take the life of
19 anyone else under any circumstances.

20 THE COURT: How about the State
21 of Ohio?

22 You said no person. Do you believe the State
23 of Ohio has that right?

24 THE JUROR: I figured them as
25 the people.

1 MR. ROSENBAUM: I have no questions.

2 MR. BRUNER: Let me ask you this.

3 If you were one of the jurors who, after all
4 of the evidence was presented, and that is what we
5 are talking about, we hear all the evidence being
6 presented, the State has proven their case beyond
7 a reasonable doubt as to Mr. Smith, proven that he
8 shot the victim that you heard about this morning,
9 that he did it with prior calculation and design,
10 that he did it with the specification that the man
11 was a government witness and the State requires or
12 can require the death penalty in that situation,
13 despite your beliefs, would you listen to the
14 Judge's instructions and do you, yourself, believe
15 that your feelings would impair you from making a
16 decision with the other jurors to follow the law
17 and consider the death penalty as well as the
18 life sentences?

19 Would your views impair you along with the
20 other jurors from signing a death warrant?

21 THE JUROR: Yes, they would.

22 THE COURT: Thank you, Mrs.

23 Davis, you may go home.

24 THE JUROR: Thank you.

25 THE COURT: Thank you for

1 coming.

2 Cathleen Fairbanks.

3 Mrs. Fairbanks, in response to one of the
4 questions the Court posed to the panel, you
5 indicated that you had strong feelings about the
6 death penalty?

7 THE JUROR: Uh-huh.

8 THE COURT: Would you tell me
9 and these gentlemen here what those are?

10 THE JUROR: Before I was kind
11 of impartial about the death penalty and now I
12 have two small children and I feel that if
13 something ever happened to them, if somebody --
14 if they were ever a victim, I feel strongly that
15 I would be for the death penalty for the person
16 that did something to my children.

17 THE COURT: That is
18 understandable at this point, somebody close to
19 you, not only your children?

20 THE JUROR: Right.

21 THE COURT: Now, let me ask you
22 this question.

23 You are a member of a jury and you recognize
24 the type of case that we are involved in has two
25 phases?

1 THE JUROR: Right.

2 THE COURT: And you are a member
3 of a twelve jury panel that will be selected who
4 voted that Mr. Smith was guilty as charged.
5 Everything in the Indictment was proven by the
6 prosecution and you voted him guilty.

7 Sometime later, and it could be any time,
8 there will be a second phase of this matter, the
9 same twelve will be recalled back to make a
10 determination as to what would be an appropriate
11 sentencing, having already found premeditated
12 murder, prior calculation and design, and
13 everything involved.

14 Could you -- and now you are in the
15 mitigation phase where there will be evidence
16 presented to aggravation and mitigation -- and
17 after that is over, could you make a determination
18 that you could vote for the death sentence or that
19 you could vote for the 30 to life or 20 to life,
20 parole after 20 or parole after 30, okay?

21 Or are your views regarding the imposition of
22 the death penalty so strong that it substantially
23 impairs you from considering the other choices?

24 Do you understand my question?

25 THE JUROR: No. The last

1 part --

2 THE COURT: You will be given
3 instructions, okay, that if this fits, then so and
4 so, and if this fits, then so and so. You are not
5 going to be told which one to accept.

6 If it fits and if it fits, would you impose
7 -- the question to you now is, are your views so
8 strong for the death penalty that you would say
9 death penalty no matter what?

10 THE JUROR: No.

11 THE COURT: Mr. Rosenbaum?

12 MR. ROSENBAUM: Would you consider
13 the death penalty for crimes that were not
14 considered against your children if the law
15 said you should?

16 THE JUROR: Would I?

17 MR. ROSENBAUM: You said you
18 believe in the death penalty if the crimes are
19 against your kids.

20 THE JUROR: I know -- when I
21 look at the question again, I know I couldn't
22 put -- I wasn't for it because looking at my
23 point, if something happened to my family, I
24 would be for the death penalty.

25 MR. ROSENBAUM: But this case

1 doesn't involve your family. If it involved
2 your family you wouldn't be a juror.

3 THE JUROR: Right.

4 MR. ROSENBAUM: The question is
5 -- will you look at him?

6 Could you sign your name to a piece of
7 paper that condemns him to death?

8 Look at him.

9 THE JUROR: If he was found
10 guilty, yes.

11 MR. ROSENBAUM: You are sure of
12 that?

13 THE JUROR: Yes.

14 MR. ROSENBAUM: Okay. Now, you
15 indicated on Question No. 100 that you are not
16 able to pass judgment on people.

17 As a juror you will be required to do that,
18 make a decision on the law and the evidence that
19 you hear, right?

20 THE JUROR: Uh-huh.

21 MR. ROSENBAUM: Can you do that?

22 THE JUROR: Yes, I can.

23 MR. ROSENBAUM: Will you tell me
24 who in your family consulted a psychiatrist or
25 psychologist?

1 THE JUROR: My aunt.

2 MR. ROSENBAUM: I have no other
3 questions.

4 THE COURT: Mr. Bruner?

5 MR. BRUNER: I have one question,
6 your Honor.

7 Question 90, you said that you feel that the
8 Defendant should testify to tell his side of the
9 story?

10 THE JUROR: Uh-huh.

11 MR. BRUNER: When a defendant
12 doesn't testify it assumes as though he is hiding
13 something. We have all been taught about the
14 Constitution --

15 THE JUROR: Uh-huh.

16 MR. BRUNER: One thing it says,
17 and mainly, is that a person has the right not
18 to testify against himself.

19 THE JUROR: Uh-huh.

20 MR. BRUNER: That means that a
21 defendant can remain silent and you can't really
22 make anything of that as a juror.

23 Can you put the fact that he might not take
24 the stand aside and listen to the instructions of
25 the Judge regarding the Constitution?

1 THE JUROR: If he instructed
2 him not to testify --

3 THE COURT: No, no.

4 MR. BRUNER: He may testify, I
5 am saying if he doesn't testify, could you still
6 find him not guilty?

7 THE JUROR: Yes.

8 MR. BRUNER: Based upon the
9 instructions the Judge gives to you?

10 THE COURT: Let me say to you,
11 the instructions that you will receive from me
12 is that the Defendant does not have to take the
13 stand.

14 THE JUROR: Right.

15 THE COURT: He has a
16 constitutional right not to testify.

17 THE JUROR: Okay.

18 THE COURT: And if he doesn't
19 take the stand, there is nothing that attaches
20 to that.

21 THE JUROR: Right.

22 THE COURT: The instruction
23 goes on and says if he does take the stand he
24 is governed by the same rules and regulations
25 as anybody else.

1 If he does not take the stand, would you
2 hold that against him?

3 THE JUROR: No.

4 MR. BRUNER: I have no other
5 questions.

6 MR. ROSENBAUM: I have no questions.

7 THE COURT: Thank you, Ma'am.

8 You may join your fellow jurors.

9 Mrs. Criss.

10 Mrs. Criss, in response to one of the
11 questions that the Court asked as to whether
12 anybody had any strong views regarding the death
13 penalty, you raised your hand indicating that you
14 did have.

15 THE JUROR: Yes.

16 THE COURT: Would you tell me
17 and these gentlemen what those views are?

18 THE JUROR: I just feel that
19 nobody has the right to say whether somebody
20 should die, call it a religious belief, my own
21 heart, whatever, I could not sit down and sign
22 a piece of paper telling somebody that somebody
23 has to do that.

24 THE COURT: You cannot do that?

25 THE JUROR: No.

1 MR. ROSENBAUM: I have no questions.
2 THE COURT: Mr. Bruner?
3 MR. BRUNER: Under any
4 circumstances?
5 THE JUROR: Under any
6 circumstances.
7 MR. BRUNER: Nothing further.
8 THE COURT: Thank you very much
9 for coming and you may go, Ma'am.
10 THE JUROR: Thank you.
11 THE COURT: Mr. Bradley.
12 Mr. Bradley, counsel, as a result of some of
13 the answers that you gave, would like to question
14 you further regarding this matter and, Mr. Bruner,
15 you may proceed, sir, if you would.
16 MR. BRUNER: Well, there is a
17 couple things.
18 You're cousin to Jack?
19 THE JUROR: Yes.
20 MR. BRUNER: Are you friendly
21 with Jack, do you know him well?
22 THE JUROR: No.
23 MR. BRUNER: Are you close to
24 him?
25 THE JUROR: No.

1 MR. BRUNER: Would anything Jack
2 has done affect you in any way?

3 THE JUROR: No.

4 MR. BRUNER: One way or the
5 other?

6 THE JUROR: No.

7 MR. BRUNER: Do you like him?

8 THE JUROR: Sure. I see him at
9 weddings, funerals, things like that.

10 MR. BRUNER: Did he ever talk to
11 you about any of his cases here?

12 THE JUROR: No.

13 MR. BRUNER: In your views on the
14 death penalty you talk about eye for an eye, tooth
15 for a tooth. If someone can kill, they don't
16 deserve to live.

17 That is what your questionnaire says, sir.

18 THE JUROR: Yes.

19 MR. BRUNER: If you mean to put
20 it another way, I don't know.

21 Let's assume for the moment that Mr.
22 Rosenbaum has proven his case beyond a reasonable
23 doubt and you are one of the twelve jurors sitting
24 here.

25 At this point as the Judge will tell you

1 there will be a phase where you determine his
2 innocence or guilt and let's assume that you have
3 already done that, you have signed a guilty
4 verdict, that Mr. Smith had killed the victim
5 here in a premeditation fashion with a
6 specification that he was a government witness.

7 You decided that along with the other jurors.
8 Come back a week later to determine his penalty.
9 That would be your province at that point. You
10 wouldn't decide it if you had not decided all
11 the other things.

12 Do your views substantially impair you at
13 this point from listening to the Judge's
14 instructions in giving a fair shake to life
15 imprisonment as well as the death penalty or
16 would you just sign for death at this point?

17 THE JUROR: Well, I would
18 have to listen to the Judge, see what he had
19 to say.

20 THE COURT: The Judge is not
21 going to tell you what to do.

22 MR. BRUNER: Let's assume that
23 the law gives you the choice and he reads you
24 the law and gives you that choice that you walk
25 into this room and, based upon the aggravating

1 factors and the mitigating factors, you have a
2 choice to make between death on one side, life
3 imprisonment on the other.

4 Do you think personally that your views
5 would impair you from signing life for Mr. Smith,
6 substantially impair you?

7 THE JUROR: I don't know how to
8 answer that.

9 MR. BRUNER: Well, if you don't
10 know, then maybe you are substantially impaired.

11 THE JUROR: Probably. Like I
12 put on there, I believe in the death penalty.

13 MR. BRUNER: What I am asking is,
14 do you feel so strongly that when you walked in
15 here to make that choice, if you had that choice
16 to make, do you think you are so substantially
17 impaired that you would only vote the death
18 warrant?

19 THE JUROR: No, I don't think
20 so. I don't think I would.

21 MR. BRUNER: You have to answer
22 a little better than that.

23 THE COURT: We need a little
24 more than that. Mr. Smith and the State of Ohio
25 deserve nothing less than that.

1 MR. BRUNER: Are you so strongly
2 in favor -- you are here alone. I would like to
3 know if you really believe in your heart that you
4 could walk in there and look at all the
5 circumstances, having that choice, and you could
6 say, "I am going to give him life as opposed to
7 death."

8 THE JUROR: Depending on the
9 circumstances. I would say if he is proven guilty
10 beyond a reasonable doubt, then I believe that he
11 would deserve to die.

12 THE COURT: But the point is,
13 and I think you were given that scenario, for you
14 to get to that position to make a decision as to
15 whether he should live or die, you have already
16 made the decision that he is guilty of the crimes
17 charged.

18 THE JUROR: Yes.

19 THE COURT: Beyond a reasonable
20 doubt.

21 THE JUROR: Then he should die.

22 THE COURT: Your feelings are
23 that strong that he should die and you wouldn't
24 give any consideration about the other two
25 possibilities?

1 That is the question. Is it that strong that
2 your ability to consider the others is so impaired
3 that you would not be able to make that
4 consideration?

5 THE JUROR: I could probably
6 make that consideration.

7 THE COURT: Yes, I am sure
8 probably all of us could one way or the other.
9 Would it be an automatic death sentence for you
10 at this point, having previously found him guilty
11 as charged?

12 THE JUROR: Yes.

13 THE COURT: It would be
14 automatic?

15 THE JUROR: I would think so.

16 THE COURT: You wouldn't give
17 any consideration to the other aspects of this?

18 THE JUROR: No.

19 MR. BRUNER: I would ask that
20 he be excused.

21 MR. ROSENBAUM: Let me ask you this.

22 Do you understand that in Ohio not all
23 premeditated murders get the death penalty?

24 THE JUROR: No, I don't
25 understand the law.

1 THE COURT: Mr. Rosenbaum, let
2 me explain.

3 The law says under certain circumstances you
4 can get the death penalty and other circumstances
5 you cannot.

6 MR. ROSENBAUM: So there is
7 aggravated murder for anybody that plans to kill
8 somebody and then there are certain circumstances
9 in which aggravated murder could suffer the death
10 penalty.

11 Now, your personal views, I take it that all
12 aggravated murder with premeditation should suffer
13 the death penalty?

14 THE JUROR: Yes.

15 MR. ROSENBAUM: However, if picked
16 as a juror and you hear the law and you realize
17 there are certain criteria that must be met before
18 the death penalty can be rendered, could you apply
19 those criteria and disregard your personal
20 beliefs?

21 That is the question here.

22 THE JUROR: Yes.

23 MR. ROSENBAUM: So, even if the
24 State proved that there was a heinous, terrible
25 premeditated murder and you were given these

1 criteria and you found that it did not call for
2 the death penalty, could you pick the other two
3 sentences?

4 THE JUROR: Yes.

5 MR. ROSENBAUM: So, your personal
6 views about the death penalty would not preclude
7 you from considering those two life sentences and
8 following the law as the Judge gives it to you,
9 is that correct?

10 THE JUROR: That is correct.

11 MR. BRUNER: Mr. Bradley, I
12 understand it might not preclude you from
13 considering the life sentence, but I think what
14 I am really after is that if you walked into
15 this room and the Judge gave you the instructions
16 and the law says, well, under those circumstances
17 it is your decision -- based upon his instructions
18 it is your decision you can give him death or 30
19 to life or 20 to life or whatever it turns out to
20 be, that the law doesn't preclude you from giving
21 him death is what I am saying and the Judge says,
22 "Okay, jurors, all twelve of you have that
23 decision to make."

24 And you walk back into this room, do you
25 really believe that your views would not impair

1 you substantially, impair you from giving him the
2 life sentences that we talked about?

3 THE JUROR: Yes.

4 MR. JORDAN: Yes, what?

5 THE JUROR: I could base it
6 judged on like you said, what the Judge said,
7 you could go either way.

8 MR. BRUNER: That is not what I
9 asked you. What I asked you, you have to give
10 me an answer on.

11 What I asked you was, you have that choice.
12 You are walking from that room over to here and
13 you had that choice, based upon the instructions,
14 you are totally for the death penalty, you said
15 it in the questionnaire?

16 THE JUROR: Under certain
17 circumstances.

18 MR. BRUNER: We have already made
19 those circumstances.

20 THE JUROR: I don't know what
21 the circumstances are here.

22 MR. BRUNER: I understand that,
23 Mr. Bradley. We are going to talk about that
24 shortly.

25 What I am asking you is, assuming that all

1 the circumstances are made that qualify, in your
2 judgment, for the death penalty, okay, and the
3 Judge gives you instructions that allow you to
4 walk in here and say, "I make a decision to give
5 him the death penalty, I make a decision to give
6 him life," that you have, that decision is up to
7 you and others.

8 He doesn't preclude you in his instructions
9 from giving the death penalty as you walk in here.

10 What I am asking you is, do you feel that
11 your views will substantially impair you from
12 giving Mr. Smith the life sentence at this point?

13 THE JUROR: No, I don't think
14 so.

15 THE COURT: We need a little
16 more than, "I don't think so," sir.

17 THE JUROR: You asked me what
18 I thought.

19 MR. BRUNER: Do you think that
20 you could sign a life sentence warrant?

21 THE JUROR: Yes.

22 MR. BRUNER: Despite your views
23 that everybody who is convicted of that crime
24 should be put to death?

25 THE JUROR: I don't know what

1 the crime is.

2 THE COURT: It makes no
3 difference what the crime is, the crime is of
4 such a nature that the State of Ohio provides
5 a death penalty for it and in order to have
6 reached this position as to whether he should
7 be given life or death, you have already made
8 the decision that the State of Ohio proved its
9 case beyond a reasonable doubt. Now, you have
10 made that decision.

11 Now, can you make this decision that if
12 the circumstances indicate that you can give
13 him life or is your position so substantially
14 impaired that you could only vote for the death
15 sentence?

16 You have already made the decision he is
17 guilty beyond a reasonable doubt, that has been
18 done.

19 THE JUROR: Well, if he is
20 guilty beyond a reasonable doubt, then I think
21 he should die.

22 MR. ROSENBAUM: That is what you
23 think. What if the law is otherwise?

24 THE JUROR: If the law says
25 otherwise --

1 MR. ROSENBAUM: Then you will spare
2 him?

3 THE JUROR: Yes.

4 THE COURT: But the law is going
5 to say that you can -- it is not going to say that
6 you should.

7 MR. ROSENBAUM: I kind of differ
8 with the way of your questioning. The law is
9 going to indicate what it is, the duty to put the
10 death penalty. There is guidance for him.

11 THE COURT: The law is not going
12 to tell you you must do this. You have to make
13 that decision.

14 THE JUROR: I think that the
15 time to make that decision is when the case is
16 over.

17 MR. ROSENBAUM: The question is,
18 now can you fairly consider all three penalties
19 based upon the law, based on what the Judge gives
20 you?

21 THE JUROR: I think I could,
22 yes.

23 THE COURT: Mr. Bruner?

24 MR. BRUNER: Your Honor, I don't
25 know if I want to do this in front of Mr. Bradley.

1 I think in all fairness to Mr. Smith and the
2 things we have done and based on some vacillation,
3 I am going to ask that he be excused.

4 MR. ROSENBAUM: Are we going to
5 argue this right now?

6 THE COURT: Let's have Mr.
7 Bradley leave the room and we will argue it.

8 MR. BRUNER: No sense in asking
9 any more questions.

10 (Whereupon, Mr. Bradley stepped from the room
11 and the following proceedings occurred.)

12 MR. BRUNER: He indicated a
13 number of times that if he walked in here he would
14 vote for the death. After Mr. Rosenbaum put it
15 another way saying the law will give him criteria,
16 it will, but despite that guidance it will be his
17 choice, and a number of times he went back and
18 forth.

19 He would vote for the death, he would follow
20 the instructions, he might not vote for death. I
21 would ask, in view of the Court's rulings on a
22 couple other jurors, because of vacillation, he
23 be excused.

24 MR. ROSENBAUM: I argue to the
25 Court he did not vacillate when it was properly

1 explained to him. Obviously his personal views
2 are strong, but no one ever asked till I did if
3 he would put them aside.

4 I don't see the answers as vacillating. If
5 they did, I would concede. He says he is willing
6 to follow the law as the Court gives it to him and
7 he would consider the life sentences based on a
8 procedure you give him.

9 MR. BRUNER: Your Honor, the
10 other vacillating jurors were also willing to
11 follow the law.

12 MR. ROSENBAUM: Only when they
13 understood what the law was.

14 MR. BRUNER: One very similar
15 to this situation was excused on the other side,
16 against the death penalty, and I would request
17 that he be excused at this point.

18 THE COURT: The Court is going
19 to have to make a decision on the matter and it
20 will make the decision to excuse Mr. Bradley.

21 Mr. Rosenbaum, you have your exceptions to
22 that ruling.

23 We will now return to the courtroom and
24 start the regular voir dire and we will notify
25 Mr. Bradley he is free to go.

1 (Whereupon, the following proceedings
2 occurred back in the courtroom in the hearing of the
3 prospective jurors.)

4 THE COURT: Good morning, ladies
5 and gentlemen.

6 Ladies and gentlemen, as you can see, your
7 ranks have been depleted to some extent and we are
8 now ready to proceed with what I call the second
9 phase of this proceedings at this stage.

10 Each party, ladies and gentlemen, are
11 entitled to jurors who approach this case with
12 open minds and agree to keep their minds open
13 until a verdict is reached.

14 Jurors must be as free as humanly possible
15 from bias, sympathy or prejudice and not be
16 influenced by preconceived evidence either as
17 to the law or the facts.

18 You are all undoubtedly qualified to serve
19 as jurors. However, there may be something that
20 may disqualify you in this case.

21 The Court is going to address its questions
22 at this point to the 28 people involved, the 13
23 in the box, five against the wall and the ten in
24 the front row, going to be primarily addressing
25 its questions to those folks. Those in the back,

1 please listen to the questions as they are
2 presented and if, per chance, you are to take the
3 place of any one of those 28, you will be asked
4 as to whether or not you heard the questions and
5 what your answers would be to that particular
6 question.

7 These questions, ladies and gentlemen, are
8 not designed at this point to pry into your
9 personal affairs. They are to discover if you
10 have had any knowledge of the case, if you have
11 any preconceived notions that you cannot lay
12 aside or if you have had any experiences in your
13 personal or family lives that may cause you to
14 identify yourselves with either party.

15 These questions are necessary to assure each
16 party a fair and impartial jury and most of you
17 have probably heard me make some statements
18 regarding fairness and impartiality.

19 Ladies and gentlemen, as they say in the
20 modern language, that is the bottom line, that
21 is the bottom line. That is what counsel seek
22 and that is what the Court seeks.

23 Mr. Smith and the State of Ohio deserve no
24 less than fairness and impartiality. Counsel can
25 ask for no more than that they be able to start

1 from ground zero and that is what we are after, is
2 fairness and impartiality to the Defendant and to
3 the State of Ohio.

4 Now, the Court is going to ask you some
5 questions and after the Court asks these questions
6 -- they are going to be in general to the entire
7 panel -- counsel will also have their opportunity
8 to ask you questions and then we will proceed from
9 there.

10 Now, ladies and gentlemen, were any of you on
11 the Grand Jury that returned the Indictment in
12 this case?

13 Not likely, but certainly possible.

14 (No response.)

15 THE COURT: I take it by your
16 silence that you were not.

17 Were any of you subpoenaed to be a witness in
18 this case?

19 Again, not likely, but certainly possible.

20 (No response.)

21 THE COURT: Again, I take it by
22 your silence that you were not.

23 Do any of you have any litigation presently
24 pending?

25 That is, are you either a plaintiff or a

1 defendant in a case at this time?

2 Are you being sued or are you suing?

3 (No response.)

4 THE COURT: I take it again by
5 your silence that you are not.

6 Have any of you ever been involved in any
7 litigation of any kind?

8 Have you ever been sued or have you ever
9 sued?

10 MRS. PAVLIK: Yes.

11 THE COURT: What kind of case,
12 when was this?

13 THE JUROR: About 16 years ago.

14 THE COURT: What type of case
15 was that?

16 THE JUROR: Property that we had
17 purchased from a builder and built a home on. It
18 was settled for \$50.

19 THE COURT: Satisfied in the
20 manner in which it was handled?

21 THE JUROR: Yes.

22 THE COURT: The fact that you
23 were involved in a litigation of some sort, albeit
24 it civil, affect you as being fair and impartial?

25 THE JUROR: Not at all.

1 MRS. ARMSTRONG: Small claims court.
2 THE COURT: How long ago?
3 THE JUROR: About eight years
4 ago.
5 THE COURT: Against you or for
6 you?
7 THE JUROR: For.
8 THE COURT: You brought it
9 yourself?
10 THE JUROR: Yes.
11 THE COURT: Satisfied with the
12 way it was handled?
13 THE JUROR: Yes.
14 THE COURT: I am not going
15 to ask you the results. They could have been
16 favorable. At this time it is a small claims
17 court and that has to be a civil matter and the
18 degree of proof necessary in a civil matter,
19 albeit small claims, is much less than the
20 degree of proof in this case and you do
21 understand that?
22 THE JUROR: Yes.
23 THE COURT: The fact that you
24 were involved affect you as being fair and
25 impartial in this matter?

1 THE JUROR: No, it would not.
2 THE COURT: You could still be
3 fair and impartial?
4 THE JUROR: Yes.
5 MRS. DOBRUNZ: Small claims court
6 about 20 years ago.
7 THE COURT: Civil again?
8 THE JUROR: Yes.
9 THE COURT: You brought it?
10 THE JUROR: Yes.
11 THE COURT: Satisfied with the
12 way it was handled?
13 THE JUROR: Yes.
14 THE COURT: The fact that you
15 were involved and again the same thing, the
16 degrees of proof are much different in these
17 cases. It is a civil matter and the degree of
18 proof in this case is much greater than the
19 degree of proof necessary in a civil case.
20 The fact that you were involved affect you
21 as being fair and impartial here today?
22 THE JUROR: No.
23 THE COURT: You could still
24 be fair and impartial?
25 THE JUROR: Yes.

1 MR. FOOR: Bought a house.
2 THE COURT: How long ago was
3 that?
4 THE JUROR: Five years.
5 THE COURT: And you were sued
6 or you sued?
7 THE JUROR: We sued to get the
8 basement fixed.
9 THE COURT: Did you go to court?
10 THE JUROR: No.
11 THE COURT: Settled out of
12 court?
13 THE JUROR: Yes.
14 THE COURT: Satisfied in the
15 manner?
16 THE JUROR: Yes.
17 THE COURT: Again, that was a
18 civil matter as opposed to this being criminal.
19 Affect you as being fair and impartial here
20 today?
21 THE JUROR: No.
22 THE COURT: You could still be
23 fair and impartial?
24 THE JUROR: Yes.
25 MRS. HAMILTON: A real estate case

1 about ten years ago. We were sued. Settled out
2 of court.

3 THE COURT: Were you satisfied
4 in the manner in which it was handled?

5 THE JUROR: Yes.

6 THE COURT: Affect you as being
7 fair and impartial here?

8 THE JUROR: No problem.

9 THE COURT: And you recognize
10 that it is a different type of case, degrees of
11 proof are different?

12 THE JUROR: Yes.

13 MRS. VASITAS: Civil case versus
14 the City of Cleveland Water Department.

15 THE COURT: How long ago?

16 THE JUROR: Three years.

17 THE COURT: Did it go to court?

18 THE JUROR: No, settled out of
19 court.

20 THE COURT: Satisfied with the
21 way it worked?

22 THE JUROR: Yes.

23 THE COURT: Again, a civil
24 matter?

25 THE JUROR: Yes.

1 THE COURT: Probably over an
2 amount paid on a bill?
3 THE JUROR: Yes.
4 THE COURT: Affect you as being
5 fair and impartial here today?
6 THE JUROR: No.
7 THE COURT: Degrees of proof
8 would have been different anyway. This is a
9 criminal matter.
10 Do you understand that?
11 THE JUROR: Yes.
12 MRS. ELEK: Small claims five
13 months ago.
14 THE COURT: You brought it or
15 they brought it?
16 THE JUROR: I did.
17 THE COURT: Has it been
18 determined?
19 THE JUROR: Yes, it has.
20 THE COURT: Satisfied with the
21 way it was handled?
22 THE JUROR: Yes.
23 THE COURT: Affect you as being
24 fair and impartial?
25 THE JUROR: No.

1 THE COURT: And again, you
2 recognize that this is a criminal case and that
3 was a civil matter and the degrees are different?

4 THE JUROR: Yes.

5 THE COURT: Anybody else?

6 MR. MC NEELY: My wife sued an
7 employer about five years ago.

8 THE COURT: Did it go to court?

9 THE JUROR: No.

10 THE COURT: Settled out?

11 THE JUROR: Yes.

12 THE COURT: Are you satisfied
13 with the way it was handled?

14 THE JUROR: Yes.

15 THE COURT: Although you may not
16 be the important person, was your wife satisfied?

17 THE JUROR: Right.

18 THE COURT: Again, affect you as
19 being fair and impartial here today?

20 THE JUROR: Does not affect me.

21 THE COURT: And again, you
22 recognize that these are two different types of
23 cases, this is criminal and those were civil?

24 THE JUROR: Yes.

25 THE COURT: And the degree of

1 proof in a criminal matter is much greater.

2 Do you understand that?

3 THE JUROR: Yes.

4 THE COURT: Anybody else?

5 (No response.)

6 THE COURT: Do any of you --

7 I think I have asked this question before but I

8 will ask it again -- do any of you know Mr.

9 Bruner, Mr. Smith or Mr. Jordan?

10 (No response.)

11 THE COURT: Do any of you know

12 Mr. Rosenbaum or Mr. Leiby?

13 (No response.)

14 THE COURT: Very well. Thank
15 you.

16 Have any of you seated in the jury box ever
17 served as jurors before?

18 MRS. COOK: Petit Jury and Grand
19 Jury.

20 THE COURT: Both?

21 THE JUROR: Yes.

22 THE COURT: How long ago were
23 you a petit juror?

24 Were you in this Court?

25 THE JUROR: No, sir.

1 THE COURT: What Court was that?
2 THE JUROR: Judge McGough.
3 THE COURT: But in this
4 courthouse?
5 THE JUROR: Yes.
6 THE COURT: Were you a member of
7 the panel?
8 THE JUROR: I was an alternate.
9 THE COURT: Never really went to
10 decision?
11 THE JUROR: No.
12 THE COURT: The fact that you
13 served on a jury as an alternate affect you as
14 being fair and impartial here today?
15 THE JUROR: No.
16 THE COURT: What type of case
17 was that?
18 THE JUROR: Rape.
19 THE COURT: Criminal matter.
20 Judge McGough explained the degree of proof
21 necessary before you were excused?
22 THE JUROR: Yes.
23 THE COURT: And you know what
24 the degree is, degree of proof in a criminal
25 case is the same, beyond a reasonable doubt.

1 THE JUROR: Yes, sir.

2 THE COURT: Do you understand
3 that?

4 THE JUROR: Yes.

5 THE COURT: The fact that you
6 served but did not really reach a decision, you
7 could be fair and impartial?

8 THE JUROR: I believe so.

9 THE COURT: I need a little
10 more than, "I believe so."

11 THE JUROR: I can.

12 THE COURT: Okay.

13 THE JUROR: Also, on Grand Jury
14 five years ago.

15 THE COURT: And for those of you
16 who don't know that Grand Jury is determination as
17 to whether or not there is probable cause to bring
18 a charge and a petit jury is what we have here, is
19 a person who makes determination as to guilt or
20 innocence.

21 Grand Jury does not make guilt or innocence
22 determinations, but determines whether or not
23 there is probable cause to bring the case.

24 THE JUROR: Right.

25 THE COURT: Still be fair and

1 impartial?
2 THE JUROR: Yes.
3 THE COURT: Anybody else served
4 on a jury?
5 MRS. GORKA: For Judge Harris.
6 THE COURT: Had to be this Court
7 then.
8 THE JUROR: Yes.
9 THE COURT: Did you actually
10 serve on a panel?
11 THE JUROR: Yes.
12 THE COURT: Did you go to
13 decision?
14 THE JUROR: Yes.
15 THE COURT: Were you the
16 forelady?
17 THE JUROR: No.
18 THE COURT: Criminal matter,
19 civil?
20 THE JUROR: Criminal.
21 THE COURT: What type of case
22 was it?
23 THE JUROR: It was a DUI for a
24 man that had killed a woman.
25 THE COURT: Manslaughter type

1 thing?

2 THE JUROR: Right.

3 THE COURT: And you participated
4 in the decision making process?

5 THE JUROR: Yes.

6 THE COURT: The fact that you
7 served on a jury and made a decision, okay, would
8 part of the decision making affect you as being
9 fair and impartial here this morning?

10 THE JUROR: No.

11 THE COURT: It was a criminal
12 matter?

13 THE JUROR: Yes.

14 THE COURT: And the degree of
15 proof is the same?

16 THE JUROR: Correct.

17 THE COURT: Anybody else?

18 MR. BOARD: Two times, one in
19 Cuyahoga County when I lived there, one in Lorain
20 County.

21 THE COURT: How long ago in
22 Cuyahoga?

23 THE JUROR: Nine years.

24 THE COURT: And did you actually
25 serve?

1 THE JUROR: Yes.
2 THE COURT: And were you the
3 foreman?
4 THE JUROR: No.
5 THE COURT: Did you participate
6 in the decision making process?
7 THE JUROR: Yes.
8 THE COURT: What type of case
9 was that?
10 THE JUROR: Murder.
11 THE COURT: Capital?
12 THE JUROR: I would think it
13 was. It was with a gun, yes.
14 THE COURT: Did you have a
15 second phase to it or was it --
16 THE JUROR: We just decided
17 guilt or innocence, didn't go any further.
18 THE COURT: Didn't have to?
19 THE JUROR: No.
20 THE COURT: The fact that you
21 served on a jury of that nature, would that
22 affect you as being fair and impartial here
23 today?
24 THE JUROR: No.
25 THE COURT: You could still be

1 fair and impartial?
2 THE JUROR: Yes.
3 THE COURT: Degree of proof is
4 the same?
5 THE JUROR: Yes.
6 THE COURT: Anybody else?
7 MR. REAMS: I was on a panel but
8 I never served.
9 THE COURT: On a panel and never
10 served?
11 THE JUROR: Right.
12 THE COURT: Would that affect
13 you?
14 THE JUROR: No.
15 THE COURT: Anybody else?
16 MS. BISGROVE: Like him.
17 THE COURT: Anybody else?
18 (No response.)
19 THE COURT: Have any of you ever
20 been the victim of a crime?
21 MRS. BRYSON: I was a victim of a
22 crime about seven or eight years ago.
23 THE COURT: Can you tell us
24 about the crime?
25 THE JUROR: I was robbed at

1 gunpoint while I was in the car.

2 THE COURT: Where was that?

3 THE JUROR: In San Diego,

4 California.

5 THE COURT: Did they ever catch
6 the person?

7 THE JUROR: No, they did not.

8 THE COURT: Are you satisfied
9 with the way the law enforcement handled the
10 matter?

11 THE JUROR: Yes, they did the
12 best they could.

13 THE COURT: You are satisfied?

14 THE JUROR: Yes.

15 THE COURT: The fact that you
16 were involved in that kind of a situation affect
17 you as being fair and impartial in this case here
18 today?

19 THE JUROR: No, I don't think
20 so.

21 THE COURT: I need more than
22 that.

23 THE JUROR: It would not affect
24 my judgment.

25 THE COURT: Thank you very much.

1 Anybody else? Yes, sir.

2 THE JUROR: I had something
3 taken out of a truck.

4 THE COURT: You had something
5 taken out of the truck?

6 THE JUROR: They asked for
7 money.

8 THE COURT: Were you there when
9 they took it?

10 THE JUROR: Yes.

11 THE COURT: It was a force
12 thing?

13 THE JUROR: Yes.

14 THE COURT: How long ago was
15 that?

16 THE JUROR: Over 15 years ago.

17 THE COURT: Ever catch them?

18 THE JUROR: I don't know.

19 THE COURT: Did you report it?

20 THE JUROR: I reported it, but
21 that was all that was required.

22 THE COURT: Satisfied with the
23 way the law enforcement handled it?

24 THE JUROR: Yes.

25 THE COURT: Affect you as being

1 fair and impartial here today?
2 THE JUROR: No.
3 THE COURT: You could still be
4 fair and impartial?
5 THE JUROR: Yes.
6 THE COURT: Yes, Ma'am.
7 THE JUROR: My children were
8 being harassed on the phone by a man.
9 THE COURT: Telephone
10 harassment?
11 THE JUROR: Yes.
12 THE COURT: When?
13 THE JUROR: Six years ago.
14 THE COURT: Did they ever catch
15 them?
16 THE JUROR: Yes, they did.
17 THE COURT: Were you satisfied
18 and you are Mrs. Hartlaub?
19 THE JUROR: Yes.
20 THE COURT: You could still be
21 fair and impartial?
22 THE JUROR: Yes.
23 THE COURT: Anybody else?
24 MRS. HAMILTON: I was mugged.
25 THE COURT: How long ago?

1 THE JUROR: It has been about
2 two years ago.
3 THE COURT: Are you upset about
4 that now?
5 THE JUROR: No.
6 THE COURT: Doesn't bother you
7 thinking about it?
8 THE JUROR: He turned himself
9 in.
10 THE COURT: Are you satisfied
11 with the way law enforcement handled the matter?
12 THE JUROR: Yes.
13 THE COURT: Could you still be
14 fair and impartial in this case?
15 THE JUROR: Yes.
16 THE COURT: In spite of that?
17 THE JUROR: Yes.
18 THE COURT: Anybody else?
19 (No response.)
20 THE COURT: Have any of you or
21 members of your family ever been a member of the
22 police department, military police, air patrol
23 or shore patrol?
24 MR. BREWER: I was a member of
25 the Assault Youth Unit on shore patrol when I

1 was in the Navy. I am retired from the Navy 25
2 years.

3 THE COURT: Was that your
4 official duty or was that a special duty under
5 instructions, so to speak?

6 THE JUROR: Duty under
7 instructions.

8 THE COURT: You had another job
9 while in the service?

10 THE JUROR: Yes.

11 THE COURT: The fact that you
12 served in some capacity with law enforcement,
13 albeit in the military, affect you as being fair
14 and impartial here today?

15 THE JUROR: No.

16 THE COURT: It would not affect
17 you?

18 THE JUROR: No.

19 THE COURT: You could still be
20 fair and impartial?

21 THE JUROR: Yes.

22 THE COURT: Thank you.

23 MRS. ARMSTRONG: My grandfather was
24 chief of police in Sheffield Lake when I was very,
25 very young.

1 THE COURT: Your grandfather
2 still alive?

3 THE JUROR: No, he is not.

4 THE COURT: The fact that in
5 your family there was a member of law enforcement,
6 a chief of police of a department, whatever size
7 it might be, affect you as being fair and
8 impartial?

9 THE JUROR: No, it would not.

10 THE COURT: You could still be
11 fair and impartial?

12 THE JUROR: Yes.

13 THE COURT: In spite of the
14 fact that your family has a background in law
15 enforcement?

16 THE JUROR: It would not
17 affect me.

18 MR. SAMKO: My father was a
19 police officer and grandfather was a police
20 dispatcher.

21 THE COURT: Where?

22 THE JUROR: In Chagrin Falls
23 and South Russell.

24 THE COURT: And you grew up in
25 a family -- your father --

1 THE JUROR: Mom and dad were
2 divorced.

3 THE COURT: I remember now what
4 you said before. You lived with your mom.

5 THE JUROR: Right.

6 THE COURT: And I recall a
7 conversation about that.

8 Would that affect you as being fair and
9 impartial here today?

10 THE JUROR: No.

11 THE COURT: You could still
12 be fair and impartial regardless of what your
13 feelings may be on that matter?

14 THE JUROR: Yes.

15 MR. HAMMOND: My grandmother was
16 deputy sheriff in Mingo County, West Virginia,
17 retired about eight years ago. All she did was
18 answer the phone.

19 THE COURT: Albeit that was
20 your grandmother, she was just answering the
21 phone, but a member of law enforcement.

22 Would that affect you as being fair and
23 impartial?

24 THE JUROR: No, sir.

25 THE COURT: You could be?

1 THE JUROR: Yes.

2 THE COURT: Anybody else?

3 A JUROR: My husband's cousin
4 is a member of the Sheriff's Department in Lorain.

5 THE COURT: And who is that that
6 is on the Sheriff's Department?

7 THE JUROR: Dennis Cavanaugh.

8 THE COURT: This is an Elyria
9 Police Department case so the Sheriff's Department
10 is not involved in this matter; is that correct?

11 MR. ROSENBAUM: Yes, there is
12 possibly one deputy or two could be witnesses, but
13 in a very minor part.

14 THE COURT: Okay. The fact that
15 you have a relationship that is this close affect
16 you as being fair and impartial here today?

17 THE JUROR: No.

18 THE COURT: You could look those
19 people in the eye if you were a member of a panel
20 and decided against what you felt they felt?

21 THE JUROR: Yes.

22 THE COURT: You could?

23 THE JUROR: Yes.

24 THE COURT: Next?

25 MR. BOARD: Brother-in-law with

1 Elyria Police Department.

2 THE COURT: What is his name,
3 please?

4 THE JUROR: Kurt Smith.

5 THE COURT: Okay.

6 THE JUROR: I have a cousin with
7 the State Highway Patrol.

8 THE COURT: And his name?
9 THE JUROR: Board.

10 THE COURT: Local?
11 THE JUROR: Yes, at the Elyria
12 Post.

13 THE COURT: The fact that this
14 is an Elyria Police Department case and you have
15 a cousin who is a member of the Elyria Police
16 Department --

17 THE JUROR: My brother-in-law.

18 THE COURT: (Continuing) --
19 affect you as being fair and impartial?

20 THE JUROR: No, it wouldn't.

21 THE COURT: Could you look your
22 brother-in-law in the eye if you were to decide
23 against the Elyria Police Department in this
24 matter if you were a member of this jury?

25 THE JUROR: I don't know if I

1 understand the question.

2 THE COURT: Could you decide --
3 if you decided against what he felt was right --

4 THE JUROR: Yes, I feel I could.

5 THE COURT: (Continuing) -- you
6 could still be fair and impartial?

7 THE JUROR: Yes.

8 THE COURT: The fact that he is
9 a relative of yours wouldn't affect your decision
10 one way or the other?

11 THE JUROR: No.

12 THE COURT: Anybody else?

13 MR. REAMS: My mother's
14 ex-husband was a cop in Wellington ten years ago.

15 THE COURT: What is the name?

16 THE JUROR: Goddard.

17 THE COURT: Ten years ago?

18 THE JUROR: He is no longer a
19 member of law enforcement, not that I know of.

20 THE COURT: The fact that you
21 had a relationship of some sort that way affect
22 you as being fair and impartial here?

23 THE JUROR: No.

24 THE COURT: You could still be
25 fair and impartial?

1 THE JUROR: Yes.

2 MRS. HAYDIN: My grandfather was
3 a police officer in Pennsylvania when I was very
4 small. He is deceased now and it would not affect
5 me. I can be fair and impartial in this matter.

6 MRS. BRYSON: I have a cousin who
7 is on the auxiliary police and his brother works
8 at one of the jails out in Grafton.

9 THE COURT: Auxiliary policeman?
10 They help out the regular policemen. In
11 spite of that could you be fair, the fact that you
12 have a cousin and you have another person in law
13 enforcement affect you as being fair and impartial
14 here?

15 THE JUROR: It would not affect
16 me.

17 THE COURT: You could still be
18 fair and impartial?

19 THE JUROR: Yes, sir. I don't
20 see them very often.

21 THE COURT: Anybody else at this
22 point?

23 (No response.)

24 THE COURT: Now, ladies and
25 gentlemen, is there anyone here whose native

1 language is not English?

2 (No response.)

3 THE COURT: I take it by your
4 silence that there is not.

5 Is there anyone here who has to take
6 medication at a specific period of the day?

7 MRS. ELEK: I am a diabetic.

8 THE COURT: When do you have
9 to take your medication?

10 THE JUROR: With my meals.

11 THE COURT: So, in other words,
12 you would be medicated if you came in the morning?

13 THE JUROR: Right.

14 THE COURT: And you would have
15 to be medicated at noon?

16 THE JUROR: Exactly.

17 THE COURT: And then you
18 medicate afterwards?

19 THE JUROR: Correct, sir.

20 THE COURT: Chances are you can
21 take care of that on your own if you are selected?

22 THE JUROR: Yes.

23 MRS. COOK: I take blood
24 pressure pills.

25 THE COURT: How often, Ma'am?

1 THE JUROR: In the morning.

2 THE COURT: If you are selected
3 you will have been medicated before you come here?

4 THE JUROR: Yes.

5 THE COURT: And that would be
6 sufficient?

7 THE JUROR: Yes.

8 THE COURT: Anybody else in the
9 front row?

10 MR. DIXLER: Diabetic. I take a
11 pill when I get up in the morning and after my
12 supper I take one. It won't bother me at all.

13 THE COURT: You will have been
14 medicated before you come and after you leave?

15 THE JUROR: Definitely.

16 THE COURT: Anybody else?

17 (No response.)

18 THE COURT: I want to tell you
19 that that wouldn't excuse you. We would make
20 sure you got a glass of water to take the
21 medicine.

22 Is there anyone here who has young children
23 at home who may require your attendance?

24 This case could go till Friday.

25 (No response.)

1 THE COURT: And this case could
2 go -- I am not saying it would end up -- in an
3 overnighter for some of you folks, for the
4 jurors that would be selected, okay?

5 Thank you.

6 Does anyone here have a problem hearing me?

7 (No response.)

8 THE COURT: Thank you.

9 Now, do any of you know any reason why you
10 cannot sit as a juror here today?

11 MRS. VASITAS: I am not saying I
12 can't, I was getting concerned on the time limit.
13 I am a teacher and administrator of a preschool.
14 I made arrangements, you know, a long time ago
15 with the sub.

16 I go home yesterday afternoon and they don't
17 have a sub. They have to close the school down.

18 I was here. I was having trouble. It is
19 not that I can't.

20 THE COURT: If you were not
21 able to be there a substitute could not be found
22 they would have to close the school down?

23 THE JUROR: Right. It is state
24 certified. That is what the rule is.

25 In other words, I can't have anybody come in

1 and substitute.

2 THE COURT: You can't pick
3 anybody off the street?

4 THE JUROR: No, they have to go
5 through fingerprint, take a whole thing.

6 THE COURT: Do you feel that
7 somebody could be found?

8 THE JUROR: Well, I planned for
9 it. I feel it is their problem, but I do feel
10 responsible, but I know that I have a duty
11 because I was concerned about it.

12 I felt like saying something yesterday and
13 I felt like --

14 THE COURT: This is why we are
15 having these things, because quite honestly we
16 want your mind here and we want you totally here
17 and we don't want your mind, your body here and
18 your mind someplace else.

19 THE JUROR: Right.

20 THE COURT: That is the
21 important thing at this point.

22 Do you feel that you can sit here and
23 concentrate on the evidence presented and make
24 a determination and a decision in this case
25 with what you have pending?

1 THE JUROR: Yes, I worry about
2 it when I go home. I could put my attention on
3 it.

4 THE COURT: As long as you can,
5 thank you for bringing it to our attention.

6 Anybody else?
7 (No response.)

8 THE COURT: Mr. Rosenbaum, you
9 may inquire, sir.

10 MR. ROSENBAUM: Thank you.

11 Let me ask you something, sir.

12 What do you think the most important power
13 of a juror would be?

14 MR. SAMKO: To finding the
15 innocence or guilt of the Defendant.

16 MR. ROSENBAUM: And how do you go
17 about doing that?

18 Is there an important quality that you
19 should have when you do that?

20 THE JUROR: Take all of the
21 evidence that is presented.

22 MR. ROSENBAUM: But even before
23 that, what quality would you want to have in a
24 juror if you were either party in this case?

25 THE JUROR: Somebody with an

1 open mind.

2 MR. ROSENBAUM: Fair?

3 THE JUROR: Fair.

4 MR. ROSENBAUM: Do we all agree on
5 that?

6 (Whereupon, all of the jurors nodded in the
7 affirmative.)

8 MR. ROSENBAUM: And to be fair, you
9 would, in carrying out all your duties as a juror.

10 Is one of those duties, do you think would be
11 applying the law to the evidence as you hear it,
12 correct?

13 THE JUROR: Yes.

14 MR. ROSENBAUM: Could you envision
15 what would happen if you didn't apply the law as
16 the Court gives it to you, Ma'am?

17 MRS. ROZGA: Yes.

18 MR. ROSENBAUM: What would be some
19 of the consequences of that?

20 THE JUROR: You could put
21 somebody behind bars, in prison, that shouldn't
22 be in if you don't weigh all the evidence given
23 you.

24 MR. ROSENBAUM: I am taking about
25 the law the Judge is going to give you, the law.

1 What would happen if you didn't follow his
2 direction as to what the law is?

3 THE JUROR: You would --

4 MR. ROSENBAUM: Same thing would
5 happen, correct?

6 Innocent persons would go to jail?

7 THE JUROR: Correct.

8 MR. ROSENBAUM: Do you see the
9 opposite, a guilty person could go home if you
10 don't agree with the law as the Judge gives it
11 to you?

12 Do you think that you can change the law
13 as a juror?

14 THE JUROR: Do I think that I
15 can change the law as a juror?

16 MR. ROSENBAUM: Say you have heard
17 all the evidence in this case and you hear the
18 law and you think, for whatever reason, that is
19 off the wall, that is not right.

20 Can you fix that as a juror?

21 THE JUROR: No.

22 MR. ROSENBAUM: How would you fix
23 that, Ma'am, Ms. Bisgrove, right?

24 THE JUROR: Right.

25 MR. ROSENBAUM: What would you do

1 about fixing that?

2 THE JUROR: I think I would
3 state my opinion.

4 MR. ROSENBAUM: Where?

5 THE JUROR: Once everybody is
6 there.

7 MR. ROSENBAUM: Can you do that as
8 a juror or are you bound by the law that the Judge
9 gives to you?

10 THE JUROR: If I can't, I can't.

11 MR. ROSENBAUM: If you don't agree
12 with what he says, what could you do about that as
13 a juror?

14 THE JUROR: I can decline myself
15 and step out.

16 MR. ROSENBAUM: Do you think you can
17 disqualify yourself once you get in there?

18 The answer is, you can't do anything as a
19 juror, right?

20 You have to make that as a voter some other
21 day.

22 Do you understand that?

23 THE JUROR: Yes.

24 MR. ROSENBAUM: Now, what would
25 happen -- and the reason I ask this question is

1 everybody swears to uphold the law and then
2 sometimes you hear afterwards a juror come out
3 and say, "I think he did it, but I didn't want
4 to vote guilty."

5 They violated their oath of office as a
6 juror then, right?

7 THE JUROR: Right.

8 MR. ROSENBAUM: So you are to put
9 your personal feelings aside in there?

10 THE JUROR: Yes, sir.

11 MR. ROSENBAUM: Some of the
12 questions you were asked about capital punishment
13 or for or against it, if you couldn't put your
14 personal feelings aside, you are excused, right?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: Do you think that
17 people would be treated equally under the law if
18 jurors have a right not to follow the law?

19 MRS. PAVLIK: No.

20 MR. ROSENBAUM: If they don't
21 follow the law, then the next juror that faces
22 the same crime will not be treated under the
23 law, will they?

24 The next defendant, or the victim, correct?

25 THE JUROR: Right.

1 MR. ROSENBAUM: So, what do you
2 think, if jurors don't apply the law as the Judge
3 gives it to you, it does to your right to vote?

4 THE JUROR: Takes it away.

5 MR. HAMMOND: Kills it.

6 MR. ROSENBAUM: We all elect
7 people who have a system to pass laws, the Judge
8 interprets it and gives it to you and if your
9 opinion as a juror is not the same and you don't
10 apply the law, then you have destroyed everything,
11 right to vote, because it doesn't matter what the
12 legislature passed, you changed it.

13 The buck stops with everybody, buck stops
14 here. To make the system of justice work, you are
15 going to get the law and the facts and you have to
16 put it together and if you deviate from that, you
17 have really destroyed our system of government.

18 Now, if you get in there and part of the law
19 the Judge is going to give you is what the State's
20 standard of proof is, and that has been determined
21 by the legislature, and that is proof beyond a
22 reasonable doubt, we are all bound by that.

23 The Judge is going to give you that law. He
24 is going to define that. If you decide, well,
25 that is too lenient, you can't adjust your

1 verdict and vote guilty, right?

2 Likewise, if it is too strong you can't do
3 the opposite, right?

4 THE JURORS: Right.

5 MR. ROSENBAUM: Now, a lot of you
6 in the questionnaires have said that you are for
7 the death penalty if the case is proved beyond
8 any doubt or beyond a shadow of a doubt.

9 Now, that is not going to be the law. The
10 Judge is going to say the State has to prove its
11 case beyond a reasonable doubt, correct?

12 If you require the State to prove a case
13 beyond a shadow of a doubt, have you rewritten
14 the law?

15 THE JUROR: Have I rewritten
16 the law?

17 MR. ROSENBAUM: Right. If the law
18 is beyond a reasonable doubt and you put me to
19 the test to beyond any doubt, have you rewritten
20 the law?

21 THE JUROR: No.

22 MR. ROSENBAUM: Well, you have,
23 really. You changed it.

24 THE JUROR: Yes, but I have not
25 rewritten the law.

1 MR. ROSENBAUM: As it applies to
2 this case, the law is beyond a reasonable doubt,
3 right?

4 You changed the burden of proof and that
5 would be wrong. You can't decrease the State's
6 burden either.

7 Is there anyone here who feels they cannot
8 vote for death if they feel the law and the
9 evidence requires it?

10 If the State proves its case beyond a
11 reasonable doubt, is there anyone here that
12 feels it has to be beyond any doubt before you
13 would consider the death penalty?

14 (No response.)

15 MR. ROSENBAUM: So, you can all
16 accept that law despite what you wrote in the
17 questionnaires?

18 That is a high standard and it should be
19 a high standard.

20 Is there anyone here that cannot sit in
21 judgment of their fellow man for religious or
22 moral reasons?

23 (No response.)

24 MR. ROSENBAUM: Is there any reason
25 that you cannot pay attention?

1 The Judge touched on this. Is there anything
2 troubling you or bothering you or your health that
3 prevents you from paying attention the next couple
4 of days, work, health, home, your job?

5 I take it everything is going to be okay?

6 In other words, if either party has an
7 important witness on the stand and your attention
8 roams, you may miss a very important point, right?

9 That is why we ask these questions. If you
10 are distracted for any reason, we would like you
11 to tell us now.

12 (No response.)

13 MR. ROSENBAUM: Is there anyone
14 here that knows anyone who has been arrested for
15 a crime and you feel that they were treated
16 unfairly by anyone in that situation?

17 (No response.)

18 MR. ROSENBAUM: Now, is there anyone
19 whose point of view regarding the death penalty in
20 this case has changed from yesterday?

21 In other words, you have gone home, you have
22 thought about it and you have re-evaluated your
23 position on the death penalty?

24 (No response.)

25 MR. ROSENBAUM: Now, I would like

1 to ask each of you a question regarding that.

2 Sir, could you look at the Defendant, please?

3 Could you sign your name to a piece of paper
4 condemning him to death if the law and the
5 evidence required it?

6 MR. SAMKO: I could.

7 MR. ROSENBAUM: You are sure?

8 THE JUROR: Yes.

9 MR. ROSENBAUM: How about you, sir?

10 Could you sign your name to a piece of paper
11 condemning him to death if you felt the law and
12 the evidence required it?

13 MR. KOCUBA: Yes.

14 MR. ROSENBAUM: It is a big
15 responsibility, isn't it?

16 THE JUROR: Yes.

17 MR. ROSENBAUM: How about you,
18 Ma'am?

19 MRS. REED: Yes.

20 MR. ROSENBAUM: Could you be one
21 of twelve people that voted to take his life?

22 THE JUROR: Yes.

23 MR. ROSENBAUM: Could you, Ma'am?

24 MRS. PAVLIK: Yes, I could.

25 MR. ROSENBAUM: How about you?

1 MRS. ROZGA: Yes.
2 MR. ROSENBAUM: Mr. Hammond?
3 THE JUROR: Yes, sir.
4 MR. ROSENBAUM: Mrs. Bryson?
5 THE JUROR: Yes.
6 MR. ROSENBAUM: Mr. Bixler?
7 THE JUROR: Yes.
8 MR. ROSENBAUM: How about you?
9 MR. BREWER: Yes.
10 MR. ROSENBAUM: Do you think you
11 could do that?
12 THE JUROR: Yes.
13 MR. ROSENBAUM: Mrs. Gorka?
14 THE JUROR: Yes.
15 MR. ROSENBAUM: Mrs. DiFranco, you
16 said you were mixed on the death penalty. No
17 one really talked to you about that.
18 Do you think at this point could you sign
19 your name to a piece of paper condemning him to
20 death?
21 It is a big decision, isn't it?
22 THE JUROR: Yes, sir. I can't
23 say positively, without hearing everything, I
24 don't know.
25 MR. ROSENBAUM: Can you envision in

1 your mind circumstances where you might do that?

2 THE JUROR: Yes, I guess. I
3 do really have mixed feelings on that.

4 MR. ROSENBAUM: Well, could you
5 impose the death penalty if you thought the law
6 and the evidence required it?

7 Just for the sake of this question, assume
8 we are beyond the trial, the State met its burden,
9 we have proven him guilty of murder.

10 Now you are required and you feel the law and
11 the evidence requires you to go back in that room
12 and vote for a death penalty.

13 It comes down to a personal decision, doesn't
14 it?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: Could you sign your
17 name to a piece of paper condemning him to death?

18 THE JUROR: I honestly don't
19 know.

20 MR. ROSENBAUM: How about you, sir?

21 MR. BARSAN: Yes.

22 MR. ROSENBAUM: Can you look at him
23 and say that?

24 THE JUROR: Yes.

25 MR. ROSENBAUM: Mrs. Armstrong?

1 THE JUROR: Yes.
2 MR. ROSENBAUM: How about you,
3 Ma'am?
4 THE JUROR: Yes.
5 MR. ROSENBAUM: How about you,
6 Ma'am?
7 MRS. FRAWLEY: Yes.
8 MR. ROSENBAUM: Mr. Foor?
9 THE JUROR: Yes.
10 MR. ROSENBAUM: You could do that?
11 THE JUROR: Yes.
12 MR. ROSENBAUM: How about you?
13 THE JUROR: Yes.
14 MR. ROSENBAUM: And you, sir?
15 THE JUROR: Yes.
16 MR. ROSENBAUM: Mrs. Hamilton?
17 THE JUROR: Yes.
18 MR. ROSENBAUM: Could you do that?
19 THE JUROR: Yes.
20 MR. ROSENBAUM: Mrs. Messee?
21 THE JUROR: Yes.
22 MR. ROSENBAUM: Do you think that
23 you could do that?
24 THE JUROR: Yes.
25 MR. ROSENBAUM: Mr. Reams?

1 THE JUROR: Yes.
2 MR. ROSENBAUM: You are Mrs.
3 Bisgrove?
4 THE JUROR: Right.
5 MR. ROSENBAUM: Could you sign
6 your name to a piece of paper condemning this
7 man to death?
8 THE JUROR: Yes.
9 MR. ROSENBAUM: Mr. Board?
10 THE JUROR: Yes.
11 MR. ROSENBAUM: Mrs. Elek?
12 THE JUROR: Yes.
13 MR. ROSENBAUM: You were a little
14 weak on your questionnaire.
15 Could you condemn him to death if you thought
16 the law and the evidence required it?
17 THE JUROR: Yes.
18 MR. ROSENBAUM: How about you,
19 Ma'am?
20 THE JUROR: Yes.
21 MR. ROSENBAUM: It gets down to a
22 personal thing. It is easy to put it on a piece
23 of paper. I am asking if you can walk the walk?
24 THE JUROR: Yes.
25 MR. ROSENBAUM: How about you, sir?

1 You have expressed concerns to the death
2 penalty?

3 THE JUROR: Yes, I do.

4 MR. ROSENBAUM: Ma'am?

5 THE JUROR: Yes.

6 MR. ROSENBAUM: If I could have a
7 moment to go through some of your questionnaires.

8 Mrs. Pavlik, you indicated that you had some
9 concern about how the police officers do their
10 job.

11 Is that a result of the O. J. case?

12 THE JUROR: At the time, yes,
13 I guess it was. I don't really remember the
14 question.

15 MR. ROSENBAUM: What are your
16 thoughts about whether the police carefully and
17 completely investigate crimes and you answered,
18 "I have my doubts but certainly hope that this
19 is done for all cases."

20 THE JUROR: I certainly hope
21 they do, based on the evidence.

22 MR. ROSENBAUM: Did you have an
23 unfavorable impression of police officers as a
24 result of that case?

25 THE JUROR: No.

1 MR. ROSENBAUM: Do you realize that
2 some do good jobs, some don't?

3 THE JUROR: Probably like any
4 other job or person.

5 MR. ROSENBAUM: Are you prejudiced
6 in any way as a result of the O. J. verdict?

7 THE JUROR: No, I am not.

8 MR. ROSENBAUM: Mrs. Bryson, you
9 indicated you were or were not satisfied with
10 the services the police provided you during
11 your robbery?

12 THE JUROR: I was satisfied.

13 MR. ROSENBAUM: Okay.

14 THE JUROR: They did the best
15 job they could do.

16 MR. ROSENBAUM: You feel that the
17 system is not working?

18 THE JUROR: Just from what you
19 see on TV and read in the papers, doesn't seem to
20 be; otherwise we wouldn't --

21 MR. ROSENBAUM: Have as many crimes
22 as we do now?

23 THE JUROR: Yes.

24 MR. ROSENBAUM: Mrs. Hamilton, were
25 you satisfied with the services the police

1 provided you during your mugging?

2 THE JUROR: Yes, absolutely.

3 MR. ROSENBAUM: Why did the guy
4 turn himself in?

5 THE JUROR: There were a few
6 other instances and apparently he was a homeless
7 person and he eventually just turned himself in
8 to the police. I never had to go to Court.

9 MR. ROSENBAUM: Mrs. Meszes, you
10 indicated that you do not like to be in judgment
11 of people?

12 THE JUROR: Right.

13 MR. ROSENBAUM: This is pretty much
14 the ultimate test of that, isn't it?

15 THE JUROR: Well, you know it
16 got to the point where I was tired of answering
17 questions and what have you and it got to the
18 point that --

19 MR. ROSENBAUM: Do you want to sit
20 in this case?

21 THE JUROR: Yes, I do.

22 MR. ROSENBAUM: Would you like to
23 be chosen?

24 THE JUROR: I have never sat.

25 MR. ROSENBAUM: So you would like

1 to be chosen?

2 THE JUROR: Right.

3 MR. ROSENBAUM: Ms. Bisgrove, would
4 you tell me the name of your personal friends who
5 are law enforcement officers?

6 THE JUROR: Castleman in Lorain,
7 both of them, Rebar, Captain Rivera, Pittak --

8 MR. ROSENBAUM: Who was the last
9 one?

10 THE JUROR: Pittak.

11 MR. ROSENBAUM: Who do you know from
12 Wellington?

13 THE JUROR: Right now I can't
14 think of them.

15 MR. ROSENBAUM: Why is it that you
16 know all the policemen?

17 THE JUROR: Because I work at
18 the hospital.

19 MR. ROSENBAUM: I don't know if you
20 like hang around the cop bars or what?

21 THE JUROR: I don't work at
22 EMH so I don't know that many Elyria and we get
23 a bunch in the stress lab.

24 MR. ROSENBAUM: Mrs. Elek, you
25 stated that your brother-in-law's son was killed?

1 THE JUROR: Correct, by a truck
2 driver.

3 MR. ROSENBAUM: How long ago was
4 that, Ma'am?

5 THE JUROR: Just a little over
6 two years.

7 MR. ROSENBAUM: And I take it the
8 person that did that was prosecuted?

9 THE JUROR: He was killed also.

10 MR. ROSENBAUM: He was killed also.

11 So, were you satisfied with whatever
12 involvement the police had there?

13 THE JUROR: Very much so.

14 MR. ROSENBAUM: I have no other
15 questions, your Honor.

16 THE COURT: Pass for cause?

17 MR. ROSENBAUM: Yes.

18 THE COURT: Thank you.

19 Counsel, please approach.

20 (Whereupon, the following proceedings
21 occurred at the bench out of the hearing of the
22 prospective jurors.)

23 THE COURT: Let's break for
24 lunch and then we will start with you.

25 MR. BRUNER: Thank you.

1 (Whereupon, the following proceedings
2 occurred back in the hearing of the prospective
3 jurors.)

4 THE COURT: Ladies and
5 gentlemen, it is five minutes after twelve.
6 At this point it has come to the noon hour.
7 Somebody needs to be medicated, as I
8 remember, at noon or what have you.

9 Based upon that we will take our luncheon
10 recess at this point.

11 Now, the admonitions which I have not given
12 you at this stage, I will give you at this time,
13 is that you not discuss any phase of this case
14 amongst yourselves, do not permit anyone to
15 discuss it with you or in your presence.

16 It is your duty not to form or express any
17 opinion on the case until it is finally submitted
18 to you. You are instructed not to read, view or
19 listen to any reports in the newspaper, radio or
20 television on the subject of this trial.

21 Do not permit anyone to read or comment upon
22 them to you or in your presence.

23 News reporters are not in the courtroom
24 throughout the trial so their impressions are
25 incomplete and at times inaccurate. You may

1 consider and decide this case upon the evidence
2 received at the trial.

3 If you should acquire any information from
4 any outside source, you must disregard it.

5 With that, we will adjourn for lunch and
6 reconvene at 1:30.

7 (Whereupon, a luncheon recess was had.)
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