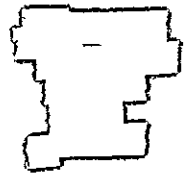


SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES



DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

BRUCE MCGREGOR DAVIS,

Defendant.

207
NO. A-267861

REPORTERS' DAILY TRANSCRIPT

Tuesday, December 7, 1971

VOLUME 7

APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney

BY: ANTHONY MANZELLA

and

STEPHEN R. KAY,

Deputies District Attorney

For Defendant Davis:

GEORGE V. DENNY, III

MARY LOU BRIANDI, CSR
ROGER K. WILLIAMS, CSR
Official Court Reporters

COPY

A-1
1 LOS ANGELES, CALIFORNIA, TUESDAY, DECEMBER 7, 1971 9:47 A.M.
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* * * *

4 THE COURT: All right. People vs. Davis.

5 All right. The record will show Mr. Davis to
6 be present, with Mr. Denny, and Mr. Kay for the People.

7 MR. KAY: Good morning, your Honor.

8 MR. DENNY: Good morning, your Honor.

9 THE COURT: And in the box is Mrs. Figueroa. And I
10 believe we stopped at the People's examination on voir dire,
11 on all subjects, so you may continue -- or, you may --

12 MR. KAY: We may commence.
13

14 VOIR DIRE EXAMINATION OF
15 MRS. AIDA FIGUEROA

16 BY MR. KAY:

17 Q Mrs. Figueroa, I had a statement down here that
18 I wasn't sure that you made, and I just want to ask you
19 about it, if I can get the exact wording that I put down.

20 I was going to ask you if this was basically
21 your statement.

22 In reference to the Tate-La Bianca murders, you
23 made a statement that you -- you thought -- you think it
24 probably wasn't right; was that your statement?

25 A No.

26 Q What was your statement on that?

27 A In reference to the --

28 Q Right, the Tate-La Bianca murders.

A-2

1 A Now, let's see.

2 What I read about it, you know --

3 Q Right.

4 THE COURT: I think I recall her statement as being --
5 I don't know whether she was referring to the Tate-La Bianca
6 murders, but I think Mr. Denny commented on it, too, saying
7 it was at least that, in response to her statement that what
8 they did was not quite right.

9 Q BY MR. KAY: Well, it was a major understatement.

10 I just wanted to get your state of mind as to
11 that. I mean, there's no doubt in your mind that it was
12 absolutely, positively wrong and horrible; is that true?

13 THE COURT: Well, that's really immaterial -- well,
14 it's not, in view of her comments. I'll withdraw my comment.

15 Go ahead.

16 MR. KAY: Thank you, your Honor.

17 PROSPECTIVE JUROR NO. 5: All I know is that I saw the
18 headlines, as murder, and -- well, you know, it was a murder;
19 and it was so many people concerned in it.

20 Q Um-hmm.

21 A But then it -- you know, I mean, you read head-
22 lines, or you see titles of murders and all that.

23 Q Um-hmm.

24 A But you never like to read the details. And then
25 after that, I saw the headlines months later, where it says
26 that he had been committed.

27 Q Convicted?

28 A Convicted.

A-3

1 Q Um-hmm.

2 A But you figure, well, they tried him, and he was
3 convicted, and that was that. I never gave it much -- much
4 thought. I mean --

5 Q But --

6 A That is, as to the case itself.

7 Q But what I am concerned about is, in your comment,
8 is the first thing that came to my mind when you made the
9 comment, is that maybe in some way or another you didn't think
10 it was wrong for one person to murder another person.

11 You don't think that, do you?

12 A That I don't think it's wrong for a person to
13 murder another?

14 Q That's right. You do think it's wrong?

15 A I do think it's wrong.

16 Q And there's no doubt about that, is there?

17 A No. No, I do think it's wrong.

18 Q All right. Now, let me ask you some general
19 questions here. I'll get my podium out here.

20 Now, you have been here ever since Monday of
21 last week; is that right?

22 A That's right.

23 Q You have suffered more than any of the jurors
24 who actually got seated, especially when that new panel came
25 in.

26 Let me ask you this about the death penalty.
27 You did hear the questions I asked of the other jurors about
28 the death penalty, didn't you?

A-4

1 A Yes, um-hmm.

2 Q Now, before you came into the courtroom last
3 Monday, did you ever think about the death penalty?

4 A Yes.

5 Q And in what aspects did you think of it?

6 A Well, because I had heard, you know, discussions
7 about it. I mean, I think it was at one time or another
8 quite a lot of discussion, where they tried to ban the death
9 penalty.

10 And in my opinion -- and the way I figure, I
11 mean, I think the death penalty should stay.

12 Q So I take it, then, that you have determined
13 in your own mind that you could impose the death penalty,
14 if you felt that the evidence in a particular case warranted
15 it, and you were sitting on the jury?

AA fls.

16 A Yes.
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AA-1

1 Q And you could -- you could personally participate
2 in a verdict of death. You understand, as I told the other
3 jurors, that all 12 jurors must agree, in order to vote the
4 death penalty for a defendant, --

5 A That's right.

6 Q -- and you are willing -- and realizing that the
7 imposition of the death penalty, the verdict of the death
8 penalty is within the sole discretion of the jurors, are
9 you willing to assume that responsibility?

10 A Yes.

11 Q And do you feel that any moral or religious
12 belief that you presently hold would prevent you from voting
13 for the death penalty?

14 A No, no.

15 Q And do you belong to or sympathize with -- I take
16 it that you probably don't, due to your earlier statement --
17 any organization --

18 A No.

19 Q -- that would be opposed to the death penalty?

20 A No.

21 Q And do you feel that any close friend or relative
22 that you have might oppose the death penalty, and might
23 attempt to exert some influence on you, to vote for life
24 imprisonment, if you were selected as a juror in this case?

25 A No, I don't have anyone.

26 Q And would you even consider finding Mr. Davis
27 guilty of less than first degree murder, due to a desire on
28 your part to avoid the responsibility of determining whether

1 or not Mr. Davis is sentenced to death or life imprisonment?

2 A To avoid the responsibility? No.

3 Q Can you think of any reason at all why you could
4 not or should not sit on this jury?

5 A No. If I had thought of one, I would have told
6 you a long time ago.

7 Q I am sure you would have, because you have had
8 a long time to think about it.

9 A That's right.

10 Q And is it your firm position that the People of
11 the State of California, whom Mr. Manzella and I represent,
12 are entitled to an equal and fair trial in this case with
13 the defense?

14 A Yes.

15 Q And do you have any sympathy at all for Mr. Davis,
16 because he is the defendant in this case?

17 A No sympathy or hate.

18 Q Right. In other words, you are completely neutral?

19 A That's right.

20 Q That's the way you should be.

21 Now, in the guilt phase of the trial -- and you
22 understand, I'm sure, by now that the separation between the
23 guilt phase and the penalty phase -- in the guilt phase, the
24 only issue is whether or not Mr. Davis is guilty or not
25 guilty of the three charges against him.

26 And you don't -- you can't even consider penalty,
27 the question of penalty or punishment, in the first phase.
28 Do you understand that?

1 A That's right.

2 Q And would you follow the Court's instructions on
3 that?

4 A I sure would.

5 Q Now, in this guilt phase, the People have the
6 legal burden -- which is our only legal burden in the guilt
7 phase -- we have the legal burden of proving Mr. Davis guilty
8 beyond a reasonable doubt.

9 Now, realizing that this and only this is our
10 burden -- proving him guilty beyond a reasonable doubt --
11 would you hold us to any higher burden of proof? In other
12 words, proving him guilty beyond all doubt, or to an absolute
13 certainty?

14 We don't have these burdens. And understanding
15 that, would you hold us to these higher burdens, when we
16 don't have them legally?

17 A If you don't have them legally?

18 Q Right.

19 A That's right, no.

20 Q In other words, you would only hold us --

21 A Yes.

22 Q -- to the one burden we have, --

23 A That's right.

24 Q -- of proving him guilty beyond a reasonable
25 doubt?

26 A That's right.

27 Q And you understand that the key phrase there is
28 "reasonable doubt"?

1 A Yes.

2 Q And also, Mr. Denny told you that if there are
3 two interpretations of the evidence, one -- both of which
4 are reasonable, and one points to guilt and one points to
5 innocence, that you must take the interpretation that points
6 to the defendant's innocence.

7 A That's right.

8 Q But again, you understand there that the key word
9 is "reasonable."

10 If you find that there's only one reasonable
11 interpretation of the evidence, and that points to his guilt,
12 in a case based on circumstantial evidence, then you must
13 convict him.

14 Do you understand that?

15 A Yes.

16 Q And will you follow the Court's instructions in
17 that regard?

18 A I sure would.

19 Q And you understand that the presumption of
20 innocence, which cloaks Mr. Davis at this point, lasts only
21 until his guilt is established beyond a reasonable doubt?

22 A That's right.

Ab fls.

AB-1

1 Q And have you or any of your close friends or
2 relatives ever been charged or accused of a crime?

3 A No, other than a traffic offense.

4 Q And has anyone you know ever testified for the
5 defense in a criminal case, you or any --

6 A No.

7 Q -- friends or relatives?

8 A No.

9 Q And I take it you haven't served on a jury before?

10 A Just Municipal; just two weeks.

11 Q And that was a long time ago, or --

12 A About three years, two --

13 Q Three years.

14 A -- and a half years.

15 Q And to any degree whatsoever, do you feel any
16 bias or prejudice against police officers?

17 A No.

18 Q And if you -- if the defendant, Mr. Davis, took
19 the stand and testified on his own behalf in this case, would
20 you judge his testimony by the same standards that you'd
21 judge the credibility of any other witness?

22 A That's right.

23 Q Have you ever studied law?

24 A No.

25 Q And do you have any relatives or close friends who
26 are either defense attorneys or private detectives?

27 A No.

28 Q Did you understand the distinction between direct

1 and circumstantial evidence?

2 A Yes.

3 Q And understanding that a defendant can be
4 convicted of first degree murder, based on circumstantial
5 evidence alone, do you feel that that's unfair? That the
6 law's unfair in that regard?

7 A No.

8 Q And would you follow the Court's instructions on
9 circumstantial evidence?

10 A I sure would.

11 Q And again, as I pointed out to the other jurors,
12 on both the Hinman and Shea murders, the prosecution will not
13 have eyewitness testimony to the two murders -- in other
14 words, somebody that was there and observed the murders.

15 Now, with this in mind, are you of the state of
16 mind that you would not convict Mr. Davis unless the prosecu-
17 tion produced eyewitness testimony?

18 MR. DENNY: Well, your Honor, I think that's asking her
19 to prejudge the evidence.

20 THE COURT: It does appear to --

21 PROSPECTIVE JUROR NO. 5: Yes.

22 THE COURT: -- be a question that --

23 MR. KAY: All right. I'll --

24 THE COURT: The objection is sustained.

25 MR. KAY: All right. I'll reframe the question.

26 Q In a criminal case, would you be of the state of
27 mind that you would not convict a defendant of a particular
28 charge unless the prosecution produced eyewitness testimony?

1 THE COURT: Well, that, again -- it may be a situation
2 in which she might very well demand eyewitness testimony. I
3 think it might be asking her to prejudge the facts in the case.

4 She can't know until she hears all the testimony.

5 MR. KAY: Well, okay. Let me rephrase the question this
6 way, then.

7 THE COURT: She may very well decide that there has to
8 be; on the other hand, she might determine that there has been
9 a sufficient quantum of proof to satisfy her beyond a
10 reasonable doubt. She couldn't say at this moment.

11 Q BY MR. KAY: All right. Let me say this. Would
12 you -- is your state of mind such that you would be willing to
13 keep an open mind in this case, about Mr. Davis's guilt or
14 innocence, even though the prosecution might not offer eye-
15 witness testimony to the murders? Would you keep an open mind
16 and would you allow yourself to be convinced beyond a reasonable
17 doubt of Mr. Davis's guilt?

18 A That's what I was going to tell you:

19 That you would have to really convince me.

20 Q Only beyond a reasonable doubt?

21 A That's right.

22 Q Right. And realizing that the People only have
23 that burden, merely to prove Mr. Davis --

24 A That's right.

25 Q -- guilty beyond a reasonable doubt, --

26 A That's right.

27 Q -- if we convinced you beyond a reasonable doubt
28 that Mr. Davis was guilty of the charges against him, would you

1 convict him, even though the defendant -- even though the
2 prosecution didn't introduce eyewitness testimony to the
3 murders?

4 A If the evidence was strong enough to convince me,
5 within -- without a doubt, in the case --

6 Q No, no. Beyond a reasonable doubt. Not without a
7 doubt. That's not the standard. Beyond a reasonable doubt.

8 A Beyond a reasonable doubt.

9 Q Do you understand that the prosecution doesn't have
10 the burden to convince you beyond a doubt, or beyond all doubt,
11 or beyond a shadow of a doubt, or to an absolute certainty.

12 Our only legal burden is to prove the defendant
13 guilty beyond a reasonable doubt.

14 A Beyond a reasonable doubt, that's right.

15 Q A doubt based on reason.

16 A That's right.

17 Q And not a mere possible doubt.

18 A That's right.

19 Q Or speculation. But a doubt based in reason. Do
20 you understand that?

21 A Yes.

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1 Q And will you follow again the Court's instruc-
2 tions in that regard?

3 A I will.

4 Q Under the law of the State of California, murder
5 committed in the course of a robbery is automatically murder
6 of the first degree. This is known as the felony murder
7 rule.

8 Do you feel that the law is unfair by taking the
9 discretion away from the jurors in such a case, by telling
10 them that if you find that a robbery has been committed and
11 that a murder has been committed in the course of this robbery
12 that it is automatically murder of the first degree.

13 Do you feel that that's unfair?

14 A No.

15 Q Will you follow the Court's instruction?

16 A I would.

17 Q In that regard?

18 A I would.

19 Q Now, as I told the other jurors in the murder of
20 Gary Hinman, the body of Mr. Hinman was recovered.

21 But in the murder of Donald Jerome Shea, the
22 prosecution will not be able to produce the body of Mr. Shea.

23 Because of the -- well, the law in the State of
24 California is such that the prosecution is not required in
25 a murder case to produce the body of the victim; you under-
26 stand that?

27 A Yes, uh-huh.

28 Q All we have to prove is that there -- that the

1-2

1 victim died and that the death was by a criminal agency.

2 In this case we're going to attempt to prove that
3 Mr. Shea was murdered; do you understand that?

4 A Uh-huh.

5 Q Do you quarrel with that law?

6 A No.

7 Q And will you follow the Court's instructions in
8 that regard?

9 A I would.

10 Q And you understand that where the body is found,
11 that there is direct evidence of the death, because the body
12 has been found.

13 And where the body has not been found, the law
14 allows the prosecution to admit circumstantial evidence to
15 show the death of the victim.

16 A Yes, I understand that.

17 Q And do you quarrel at all with that law?

18 A No.

19 Q And will you follow the Court's instructions
20 vigorously in that regard?

21 A That's right.

22 Q And does it offend your sense of justice and fair
23 play that in the State of California a defendant can be
24 convicted of first degree murder, although the body of the
25 victim of the murder has not been recovered; does that
26 offend your sense of justice and fair play?

27 A No. No.

28 Q Will you follow the Court's instructions on this?

1-3

1 A Yes, I would.

2 Q Now, if you believe that Mr. Davis was guilty of
3 first degree murder in Count No. III, I'm talking about the
4 murder of Donald Jerome Shea, if you believe that he was
5 guilty of first degree murder beyond a reasonable doubt --
6 and remember that's the prosecution's only burden of proof,
7 beyond a reasonable doubt; if you believe this, would you
8 vote to convict Mr. Davis of the murder of Donald Jerome
9 Shea, even though the prosecution could not produce his
10 body?

11 A If my -- if the evidence, like I say, were strong
12 enough, I would.

13 Q Well, if the evidence --

14 A Yes.

15 Q -- were strong enough to prove him guilty beyond
16 a reasonable doubt?

17 A Yes, that's right.

18 Q Which, again --

19 A Yes, yes, I would.

20 Q -- is the only legal burden; you understand that?

21 A Yes.

22 Q So, in other words, if we prove to you that Mr.
23 Davis was guilty of the murder of Donald Jerome Shea, beyond
24 a reasonable doubt, then you would vote to convict him even
25 though the prosecution could not produce --

26 A Yes.

27 Q -- Mr. Shea's body?

28 A Yes, yes.

1-4

1 Q And there's no doubt in your mind about that,
2 is there?

3 A No, no.

4 Q Would you automatically vote against the imposi-
5 tion of the death penalty in Count No. III, the murder of
6 Donald Jerome Shea, due to the sole fact that the prosecution
7 was unable to find Mr. Shea's body?

8 A Automatically?

9 Q Yes.

10 A No.

11 Q And will you promise me that when you go into the
12 jury room that you will be reasonable with all the other
13 jurors and discuss with them your views and let them discuss
14 with you their views?

15 A That's right.

16 Q And can you think of any reason at all why you
17 could not give the People of the State of California a fair
18 trial?

19 A No.

20 Q All right.

21 Thank you very much. I pass for cause, your
22 Honor.

23 THE COURT: All right.

24 MR. DENNY: Your Honor, I wonder, in view of a couple
25 of answers Mrs. Figueroa gave, I might not have the opportunity
26 to question her again?

27 THE COURT: All right, very well.
28

VOIR DIRE EXAMINATION

1
2 BY MR. DENNY:

3 Q Apparently, I didn't touch this subject with you,
4 Mrs. Figueroa, but you said you had heard some discussion
5 about abolishing the death penalty on one occasion or another;
6 is that correct?

7 A Yes, I believe at one -- I believe at one time
8 or another there was a discussion, and I listened to it.

9 Q Was this --

10 A But, I mean, it was on the radio, and there was
11 this discussion going on.

12 In my mind, you know, I tried to be on one side
13 and I tried to be on the other, and tried to -- tried within
14 myself as to how I would feel. And, according to some of
15 the things they said on one side, and according -- I -- I
16 would, if I was on a panel where we had to decide, and like
17 you say, if the evidence were -- where they were within a
18 reasonable doubt, I believe that I could go for the death
19 penalty. I was never against it.
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1a fls.

1a-1

1 Q Well, that's what I am trying to get you to say.
2 You think the death penalty should stay?

3 This is a position you have taken as a result of
4 some thinking you have done on it?

5 A Uh-huh. Uh-huh.

6 Q And perhaps the thinking that stemmed from this
7 radio conversation --

8 A Well, if -- let's put it this way, if we were
9 to vote for or against it --

10 Q For --

11 A -- I would be for it.

12 Q For retaining rather than abolishing the death
13 penalty?

14 A Yes, that's right.

15 Q And I take it you have reached these opinions on
16 the idea that there's some usefulness in having the death
17 penalty?

18 A In some cases.

19 Q Is that right?

20 A Yes.

21 Q And it is those cases that I am interested in
22 particularly.

23 A What cases in my mind, now, that's the --

24 Q That's right.

25 A Uh, well, like I said before, uh, it would have
26 to -- well, I can't think of it, really.

27 Q Well, for instance, there are many people who
28 feel that the death penalty should be abolished in every

1 respect except for the killing of a guard by a person who
2 is a life term, having already committed one murder,
3 something of that kind.

4 A (Nods head.)

5 Q Some people say, well, just have a death penalty
6 for treason. Something such as that.

7 But there are some people who feel, though, the
8 death penalth should be retained for anybody who has committed
9 first degree murder.

10 A Now, there, you hit it.

11 Now, I wouldn't automatically or -- and I don't
12 think in my mind that a person that has committed a murder --
13 I mean, the evidence -- I can't explain it.

14 Now, if a person goes out and commits a murder,
15 maybe not once, but twice, you know, -- I mean, we have them
16 all the time, right? I mean, you read about it, the head-
17 lines. You see this person was out. He has already committed
18 murder.

19 Well, they gave him the chance the first time.
20 Well, I don't think they should give him the chance the
21 second time.

22 Q So that in a case where a person has committed
23 murder, been convicted of it, spent time in prison and gotten
24 out, you feel if that person is convicted again that he
25 should be given the death penalty?

26 A That's right. That's right.

27 Q Now, what about a person who might be charged
28 with having committed two murders within a short period of

1 time of each other, and not having been convicted of one,
2 spent time in prison, and then released, and committing
3 another one, but within a short period of time a person
4 is charged with having killed two people.

5 A Uh-huh.

6 Q So there are --

7 A Well --

8 Q There are two dead people. Just the same as
9 there are two dead people in the first case that you talked
10 about. Just separated by a shorter rather than a longer
11 period of time.

12 A Well, the first time they let him go, right?
13 The second time he would be tried again.

14 Q Well, no --

15 A Well, I'm talking about the first time that I said --

16 Q But --

17 A But any other case, I would have to hear the
18 evidence, how these murders came about before I would
19 commit anybody to, uh --

20 Q To suffer death by execution?

21 A That's right.

22 Q So it is your feeling, then, even if a person
23 were charged with and found guilty of two, three, four
24 murders, let us say, all in the same trial, you'd still have
25 to determine all of the facts of that particular case?

26 A That's right.

27 Q Before you would say --

28 A That's right.

1 Q -- that person, because he's committed more than
2 one murder or because he's been found guilty of committing
3 more than one murder, he should automatically receive the
4 death penalty?

5 A No, not automatically.

6 Like in that case, still, I would have to know
7 more than that case to say I would commit myself and give
8 him the death penalty. Just because it is two or three
9 murders --

10 Q So far as you are concerned, because you have
11 thought about it and because you have done some thinking
12 about it, apparently, the only case in which you would feel
13 justified in automatically returning a death penalty conviction
14 would be a person who had killed once --

15 A That's right.

16 Q -- and had been in prison for it and had been
17 released and had killed again?

18 A That's right. That's the way I feel.
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1b fls.

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1 Q All right, just one more point, and this is
2 semantic and, again, if you will pardon the expression, it may
3 constitute game playing among the lawyers, but semantics are
4 the stock in trade of lawyers.

5 Mr. Kay has asked you do you understand the
6 prosecution's burden is only the burden of proving someone
7 guilty beyond a reasonable doubt. And that's all the burden.
8 That's the only burden. That's not the burden of proving him
9 guilty beyond all doubt or to a moral -- or to a certainty.

10 You understand that the burden is heavy on the
11 People? It is not a light burden. And it is beyond a
12 reasonable doubt and to a moral certainty.

13 A (Prospective juror nods head.)

14 Q The prosecutors seem to forget that last part.
15 Do you have any --

16 MR. KAY: Well, I'm going to ask that gratuitous comment
17 be struck.

18 THE COURT: Yes, that comment is stricken.

19 Q BY MR. DENNY: I'll put it this way.

20 Mr. Kay did not ask you whether you had any
21 quarrel with the proposition of the law that a defendant must
22 be found guilty beyond a reasonable doubt and to a moral
23 certainty; but you understand that that is the burden on the
24 prosecution?

25 A (Prospective juror nods head.)

26 Q And it is something over and above just beyond
27 a reasonable doubt, to a moral certainty, as part of it.

28 And will you apply that burden, that total burden

1 in judging the guilt or innocence of this defendant beyond a
2 reasonable doubt and to a moral certainty? That whole phrase
3 is the burden on the People.

4 And will you apply that standard, that entire
5 standard in determining whether the People have met that
6 burden in their case against this defendant?

7 MR. KAY: Well, again, your Honor, I'm going to have to
8 object. I believe to a moral certainty -- it is more of a
9 defining of reasonable doubt. I think reasonable doubt is --
10 maybe it would help if you could read the instruction to the
11 jury. But, again, I think that --

12 MR. DENNY: Well, I submit, your Honor, those words are
13 not gratuitous or definitive in nature, but additional to. And
14 the cases have so held.

15 THE COURT: The Court believes it is a proper question.
16 It is part of the definition, it is true, of reasonable doubt.
17 It is included within it, however, and since it is, it would
18 appear to be a proper question as long as the Court is going to
19 allow Counsel at all to query about the subject.

20 MR. DENNY: That is my last question on the subject,
21 your Honor.

22 THE COURT: It is that state of the case which leaves the
23 minds of jurors in that condition that they cannot say they
24 feel an abiding conviction to a moral certainty of the truth of
25 the charge. That defines reasonable doubt.

26 You will follow the Court's instruction so far as
27 you are able, will you not?

28 JUROR NO. 5: That's right. That's right.

1 And the question would be -- yes.

2 MR. DENNY: Yes.

3 Nothing further.

4 MR. KAY: Nothing further, your Honor.

5 THE COURT: Both pass for cause?

6 MR. KAY: Yes, your Honor.

7 MR. DENNY: Yes, pass for cause.

8 THE COURT: I think we decided instead of having the
9 whole panel in, that you'd prefer to, correct me if I am wrong,
10 prefer to proceed one by one. If you wish, we can have the
11 whole panel in. It is as you gentlemen choose.

12 MR. DENNY: I think it would be just as fast to proceed
13 one by one.

14 MR. KAY: It is all right.

15 THE COURT: Is that all right with you, Mr. Kay?

16 MR. KAY: That's fine. It would probably be easier for
17 the Court instead of having to bring the panel back and forth
18 all the time.

19 THE COURT: They're kind of wearing out the rug.

20 MR. KAY: Wouldn't want that to happen.

21 THE COURT: All right, having both passed for cause,
22 it is the peremptory challenge of the People.

23 MR. KAY: May we have just a moment, your Honor?

24 THE COURT: Yes, you may.

25 MR. KAY: The People will thank and excuse juror No. 9,
26 Mrs. Fetherree.

27 THE COURT: All right, Mr. Bailiff, will you tell
28 Mrs. Fetherree that she's excused?

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THE BAILIFF: Yes, sir.

THE CLERK: Frank Smith, S-m-i-t-h.

THE COURT: You may now retire to the group,
Mrs. Figueroa. Thank you very much.

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1 THE COURT: Did you find somebody out there with that
2 name, Mr. Kuczera?

3 THE BAILIFF: Yes, sir.

4 THE COURT: Where that microphone is, Mr. Smith.

5
6 VOIR DIRE EXAMINATION OF
7 FRANK SMITH

8 BY THE COURT:

9 Q Mr. Smith, you were present last Friday when the
10 Court explained the nature of this case, and instructed the
11 jurors concerning some of the law about the case?

12 A Yes, I was.

13 Q And you heard the questions that were put to the
14 prospective jurors who were in the box, did you not?

15 A Yes, I did.

16 Q All right. Would your answers be any different
17 than the majority of jurors have responded to the questions
18 that the Court has put of a general nature?

19 A No.

20 Q Would it be any hardship to you to serve on this
21 case?

22 A To my opinion, it wouldn't be. But there are --

23 Q It would not be?

24 A It would not be.

25 Q Very well.

26 A But to my work, I don't know.

27 Q What type of work do you do?

28 A I work for the Los Angeles County Flood Control.

2-2

1 Q Well, we had -- we had in one case a flood control
2 man who spent three months on a jury. He was a supervisor.

3 MR. DENNY: But it wasn't the rainy season, your Honor.

4 Q BY THE COURT: And it was not the rainy season,
5 that's right.

6 A Well, that's why I say --

7 Q What type of work do you do for the flood control?

8 A I am a water spreader.

9 Q A water spreader?

10 A Yes.

11 Q That sounds like you're kind of working against
12 flood control.

13 A No. That's trying to hold the water, to keep
14 all the water you can, before you dump it.

15 Q How do you hold water by spreading?

16 A Changing from one basin into another.

17 Q I see.

18 A Out of the river, when it comes in, you tries to
19 hold as much of it as you can, before you dump it to the ocean.

20 By that, you spread it from one basin to another.

21 Q Is there anyone else who can do your job?

22 A Yes, it is.

23 Q I wouldn't want a basin to overflow simply because
24 there was no one who new which valve to release.

25 When do you work, generally? During the day?

26 A Nights.

27 Q At nights. I suppose that on an emergency basis,
28 you could be procured by the Department of Water and Power, so

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1 long as you were not, say, in deliberations --

2 A Right.

3 Q -- on this case.

4 I think we'll let the Department of Water and Power,
5 then -- is it the Department of Water and Power that you work
6 for, or the County Flood Control?

7 A The County Flood Control.

8 Q I think we'll let them suffer your absence, with
9 thanks to you, too, Mr. Smith.

10 Have you done jury duty before on any case?

11 A No, I haven't.

12 Q And you have told us what type of work you do.

13 Do you work all over the county?

14 A No, just out at the O and M Division.

15 Q Which?

16 A O and M. Rio Hondo.

17 Q Is there a Mrs. Smith?

18 A Yes, it is.

19 Q And is she employed outside of the home?

20 A Yes, she is.

21 Q What type of work does she do?

22 A She is a presser for Michael's Sportswear.

23 Q In what area do you reside?

24 A In Glendale.

25 Q Are you related to or a friend of any law
26 enforcement officer?

27 A No, I'm not.

28 Q Do you know of any reason why you couldn't be fair

2-4

1 and impartial in this case?

2 A No, I don't.

3 Q Concerning the death penalty, are your views
4 about it such that you would automatically refuse to impose
5 it, regardless of the evidence?

6 A No.

7 Q Or on the other hand, would you automatically
8 impose it, regardless of the evidence? Automatically vote for
9 the death penalty upon a conviction of murder in the first
10 degree?

11 A No, I wouldn't.

12 Q Or are your views about the penalty such that you
13 could not be impartial in determining guilt or innocence?

14 A No.

15 Q About the publicity involving this case, have you
16 ever heard of Mr. Davis before?

17 A Not until I entered the courtroom.

18 Q That is, before you entered the courtroom, and I
19 read the indictment to you?

20 A I had not.

21 Q Had you ever heard the name Shorty Shea before,
22 the name mentioned in the third Count of the indictment, as a
23 victim?

24 A No, no more than on the news.

25 Q Well, that's what I'm interested in. Over the
26 news, what have you heard about Shorty Shea?

27 A Well, I would -- I think Shorty Shea was the one
28 that had never been found or -- a body never found, or --

2a fol

1 Q The body was never found.

2 And did you read where they were looking for him?

3 A No, I didn't get that far, because I -- in my
4 opinion, I thought that it was the case -- the case was all
5 closed and everything.

6 Q I see. Had you heard the name Gary Hinman --
7 heard, seen or read it -- before?

8 A No. If I did, I didn't pay any attention.

9 Q That is, before last Friday, when I read the
10 indictment?

11 A No, I hadn't heard.

12 Q So you had heard of this man who is alleged to be
13 the victim of a third Count here, Shorty Shea?

14 A Well, I had heard of somebody, but I didn't pay
15 too much attention, what was his name, you know.

16 After they said the Manson case, I just figured
17 that was the end of it.

18 Q Do you -- did you follow the Manson case, the so-
19 called Manson case, in the newspapers?

20 A No.

21 Q Do you know any person whom Manson is accused of
22 killing? Do you know the name of that person?

23 A No, I don't.

24 Q Do you know the name Tate? Sharon Tate?

25 A Well, I heard of it, but I mean, knowing it --

26 Q Well, whom do you know Sharon Tate to be?

27 A Well, I --

28 Q Have you heard that she was, for example, a victim

1 of a killing Manson did, or participated in in some way?

2 A No. I just heard of it over the news, at the --

3 Q Did you follow that Tate-LaBianca case --

4 A No.

5 Q -- in the press --

6 A No, I wasn't even interested in it.

7 Q -- or on the television newscasts?

8 A If it would come on, I'd probably look at it; and
9 after then, I didn't think no more of it.

10 Q What does the phrase Manson Family mean to you,
11 that term?

12 A To me, it means nothing.

13 Q Well, are they a hockey team or a baseball team?

14 A I wouldn't know.

15 Q A dance troupe? You don't know?

16 A I don't know.

17 Q You don't take the daily paper?

18 A No, I don't, Judge.

19 Q Where do you acquire most of your news -- most of
20 the news that you do acquire?

21 A Oh, over the TV or radio.

22 Q What -- do you watch television news regularly?
23 Every night, for example?

24 A No.

25 Q You have heard Charles Manson's name before?

26 A Yes, I've heard of it.

27 Q Well, what do you know about Charles Manson?

28 A No more than I heard over the news. I don't even

1 know which was the killer or which was the -- intended to be the
2 killer or who was the victim.

3 Q Well, when you say, "No more than what I heard over
4 the news," what we are interested in is what you heard over the
5 news.

6 A Well -- uh -- it seemed that it was so many
7 people killed in this, at that time.

8 Q Do you mean in that Tate-LaBianca case?

9 A (No response.)

10 Q That Tate case?

11 A Uh -- yes.

12 Q You don't recognize it by that name?

13 A No.

14 Q But there was some kind of a case wherein there
15 were a lot of people killed?

16 A Right.

17 Q And wherein Charles Manson was involved; is that
18 right?

19 A That's right.

20 Q Now, let me ask you this:

21 Could Mr. Davis -- if it's shown that he were
22 an associate of Mr. Manson's in some way, would he therefore --
23 would he thereby, as a result of what you have heard, seen or
24 read about Mr. Manson, would Mr. Davis be in a position where,
25 in reference to your feelings about Mr. Manson, that he would
26 be at a disadvantage to begin with in this trial?

27 A No, I don't think so.

28 Q Merely by reason of what you've heard, seen or

1 read, you wouldn't have Mr. Davis at any disadvantage in your
2 mind, would you?

3 A No.

4 Q If I were to instruct you that you were to set
5 aside whatever you may remember, that you don't remember now
6 about the Manson Family, or Charles Manson, or any of these
7 alleged killings, anything that you may have heard, seen or
8 read, or that you may remember, if you were instructed to set
9 this aside, could you do that?

10 A Yes, I could.

11 Q Not forget it, but set it aside for the purpose
12 of rendering a judgment based solely upon the evidence in this
13 case and the Court's instructions of law? Are you capable of
14 doing that?

15 A Yes, I am.

2b fol

1 Q And will you do that?

2 A I will.

3 Q And can you be fair and impartial in this case?

4 A I can.

5 THE COURT: You may examine.

6 MR. DENNY: Thank you, your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. DENNY:

10 Q Sir, do you read any newspaper at all?

11 A Occasionally.

12 Q And what paper?

13 A The Times.

14 Q Is this for any particular type of news?

15 A No, sir.

16 Q Just for the general news?

17 A Just the general news.

18 Q When some people grab the sports section and
19 throw the rest away, then you --

20 A That's the main part, the sports section.

21 Q Well, do you read -- get the paper just for the
22 sports section, generally, or do you get it for all the rest
23 of the news of the day that's in there?

24 A Mostly the sports section.

25 Q All right. And do you regularly watch any TV
26 news program?

27 I'm not sure whether the judge asked you this or
28 not. I don't want to repeat it if you had previously answered.

1 But did you answer that question; do you recall?

2 A I don't remember. But I do not, not regularly.

3 Q How about going to and from work, on the radio?

4 A Sometimes, if I got a little -- if my little radio
5 works, sometimes I turn it on. And sometimes I don't even
6 think of it.

7 Q All right. Well, you remember, don't you, a
8 couple of years ago now, when the initial publicity took
9 place of Mr. Manson and his connection with these murders
10 that you seem to recall?

11 A I do.

12 Q All right. Now, did you discuss that with your
13 friends or co-workers or anything at the time? That case, and
14 the murders that he was charged with?

15 A No.

16 Q Did you discuss it with anyone?

17 A No, because I wasn't even interested in it. I
18 mean, it didn't make me any difference, you know, one way or
19 the other; because I wasn't -- I mean, it didn't concern me
20 no way.

21 Q Is this based on the fact that news of any murders
22 doesn't particularly interest you, or --

23 A Hmmm -- not particularly.

24 Q Have you ever heard anything about Mr. Manson's
25 views concerning blacks and whites?

26 A No.

27 Q Do you know whether he has any such -- any views
28 at all concerning the black or Negro race?

1 A Not that I know of.

2 Q All right. You haven't heard any discussion about
3 this among your friends or fellow workers?

4 A No.

5 Q Now, the Manson Family, as the Court mentioned
6 that phrase, has received a good deal of publicity, both by
7 radio, TV and the newspapers.

8 I wonder if, by any chance, you had seen that in
9 newspaper headlines or heard it over the radio in the last
10 year or so?

11 A During the time it was going on, it -- I would get
12 news on the Manson case or -- you know, whoever's it was,
13 but I mean, to me, it was just a -- I mean, just a killing that
14 didn't concern me. And in fact, I thought it was all over
15 with.

16 Q Well, when you say you thought it was all over
17 with, do you mean the trial of Mr. Manson and those who were
18 being tried with him on these murders that happened a couple
19 of years ago, with Tate --

20 A Yeah, right.

21 Q The Tate murders?

22 A That's right.

23 Q Were you aware of the fact that she was a movie
24 star who was supposed to have been murdered by Mr. Manson and
25 some other people?

26 A Hmmm -- not exactly. I didn't even pay that any
27 attention, whether she was a movie star or what.

28 Q All right. Now, you do seem to have some specific

1 recollection of this fellow Shorty Shea, that was never found.

2 A Yes, I --

3 Q Is that right?

4 A I heard that he was missing, or that the body
5 wasn't found; but I didn't try to keep up with that.

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1 Q Well, do you recall specifically hearing about
2 efforts made by law enforcement agencies, by police to locate
3 him, to dig up ground to find the body, anything of that kind?

4 A No, I didn't hear that.

5 Q Well, based on that information which does seem
6 to have stuck in your memory concerning this, as you sit
7 there now, do you have a feeling that this fellow, Shorty Shea,
8 is more probably dead than alive?

9 A Uh, I really couldn't say whether I would feel that
10 he is more dead than alive because I don't know. I haven't
11 heard the evidence. I mean, I haven't paid too much attention
12 to it.

13 Q In other words, you are of the opinion that
14 evidence isn't presented by stories in the newspaper, it is
15 presented by witnesses in a court of law and that's what you
16 are going to base your decision on, if you sit as a juror in
17 this case, right?

18 A Right.

19 Q Where the prosecution is attempting to show that
20 Shorty Shea is dead, not merely more dead than alive, but
21 totally dead; you're not going to rely on anything you read in
22 the newspaper, but see whether the evidence is presented here
23 and the People meet the burden of proof in establishing that
24 death? Is that right?

25 A That's right.

26 Q And a death by criminal means, and then whether
27 Mr. Davis had anything to do with that death? And you're
28 going to have all of those facts presented or you're going to

1 judge whether those facts are adequately presented from this
2 witness stand and not from anything you read in the newspaper,
3 is that right?

4 A That's correct.

5 Q All right, sir.

6 I don't believe we got the area of town in which
7 you live?

8 A Uh, southwest.

9 Q In southwest Los Angeles?

10 A Right. It is on 18th.

11 Q Now, have you ever, sir, been employed in any job
12 in which you were associated in any way with law enforcement
13 officers of any kind?

14 A No, I haven't.

15 Q Now, you have been seated in here since Friday,
16 during those periods of time when the whole panel was in the
17 box and the prospective jurors were seated here beyond the rail,
18 is that correct?

19 A Yes, it is.

20 Q Now, Mr. Kay asked a number of questions; I asked
21 a number of questions. I don't want to go over all of those
22 questions, but I do want to ask you just a few questions, and
23 then ask you generally whether your answers would be any
24 different.

25 But insofar as the death penalty is concerned,
26 and you understand I am inquiring about that not because I
27 think you're going to have to impose it or even vote for it,
28 but because this is the only opportunity I get to talk to you

1 about it; do you understand?

2 A Yes.

3 Q All right. Have you done any thinking about the
4 death penalty before you came into this courtroom on Friday?

5 A No.

6 Q Well, have you ever had any kind of discussion with
7 anybody about whether the death penalty is a good thing, a bad
8 thing, whether it ought to be retained in California or gotten
9 rid of; any of those factors?

10 A No.

11 Q Have you ever read anything about the death
12 penalty, sir?

13 A Hmmm, I have read something, you know. Uh, it
14 seemed I read once where the death penalty was demolished
15 in the State of California.

16 Q Well, is that recently that you read something
17 about that?

18 A No. I'm just, ur -- I'm not definitely sure, but
19 it seemed that I did. I'm not definitely sure.

20 Q Well, you understand again whether you may have
21 read that at a time far distant or even recent --

22 A It would be a far distance, if I read it.

23 Q All right. That it is on the law books here in
24 California and if you are seated as a juror in this case, and
25 the People convince you by their evidence that the defendant
26 was guilty of murder in the first degree, or conspiracy to
27 commit murder, that then you would be in a position to have to
28 determine whether you were going to vote individually by your-

1 self to send this man, sitting next to me, to be executed by
2 lethal gas up in San Quentin. Do you understand that?

3 A Would you repeat that again, please?

4 Q I said you understand that in California the
5 death penalty is still on the law books?

6 A Yes.

7 Q So that if you are seated as a juror in this
8 case, and the People are able to present sufficient evidence
9 in the first phase of this trial on guilt or innocence to
10 convince you beyond a reasonable doubt and to a moral certainty
11 that the defendant is guilty, then, you would be required in
12 the second phase of such a case to determine whether you,
13 individually, would vote to send this man sitting next to me,
14 Mr. Davis, to be executed in the gas chamber by the administra-
15 tion of lethal gas.

16 Now, do you understand that that would be your
17 burden as a juror if you found him guilty of first degree
18 murder?

19 A Yes, I do.

20 Q You'd never had such a burden on you before, I
21 assume?

22 A No, I have not.

23 Q Now, there are some people who simply do not want
24 to take another man's life in their hand, another man's life
25 in their hands.

26 A That's understood.
27
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3a-1

Q All right.

Now, are you of such a mind that you do not want to be put in that position for any reason?

A No.

Q In other words, you feel that you could, if the evidence warranted it, look us all in the eye and say, "I vote to sentence that man to be killed by the State"; is that correct?

A Yes, I could.

Q On the other hand, sir, do you feel that if you conscientiously felt, on reviewing all the evidence, that this was not a death penalty case, a capital case, this was not a case in which conscientiously you could return such a verdict, that there would be anything wrong in your saying to everybody here and your friends outside, "No, I vote for life, a life sentence, not death"?

A That is right.

Q So that at this time you are not predisposed to vote either way; is that correct?

A That is correct.

Q And even if you were to find the defendant guilty of murder beyond a reasonable doubt, you are still not, just based on that finding of guilt, predisposed to vote either way?

A No.

Q For life or death?

A No.

Q All right.

3a-2

1 Now, do you have any feeling, sir, as you sit
2 there, that there is some type of case, some type of
3 murder which, in your mind, is so horrendous that if somebody
4 were to commit that particular type of murder, you would feel
5 compelled to vote for the death penalty?

6 A I don't feel that I would be compelled to vote
7 for a death penalty.

8 Q In other words, you can conjure up no situation --
9 Let me give you an example, for instance. I've
10 given a couple of examples before.

11 There are some people who feel any time a person
12 molests a child and kills a child in the process of molesting
13 a child, that that is such a hideous crime in their view
14 that that person should, must, would have to, and if they
15 had anything to do about it, would suffer the death penalty.

16 There are other people who feel, for instance,
17 that if a person is killed once and goes to prison and returned
18 from prison, and then killed again, that that person should
19 suffer the death penalty?

20 Now, can you think of any situation, sir, in
21 which you would say that because of the crime, the way the
22 crime was committed or the facts of the particular crime
23 that you have in your mind, because a person did that, he
24 therefore should suffer the death penalty?

25 A No, I don't feel that way.

26 Q You don't feel that way about any type of murder
27 at all?

28 A No.

1 Q As far as you're concerned you'd have to wait and
2 see what evidence was presented before you could say, "Well,
3 that is, in my opinion so bad, that the person who did that
4 should suffer death"?

5 A That is right.

6 Q Now, sir, there's some people who have referred
7 to the Manson Family as a bunch of hippies or something.
8 And there may be some testimony concerning hippies.

9 Do you have any particular feelings about hippies
10 in this day and age?

11 A No, I don't.

12 Q And there may be some evidence brought out in the
13 case concerning drugs and the use of various kinds of drugs.

14 What are your feelings at this point about those
15 who use drugs?

16 A Well, my feelings about them, if that's what they
17 want to use, that's their business. I mean, it has no effect
18 to me.

19 Q All right. In other words, you are not so
20 predisposed against someone who has used or maybe still is
21 using drugs --

22 A No.

23 Q -- that you would be unable to listen to their
24 testimony, for instance, and judge it by the rules that are
25 applicable to anyone else; is that right?

26 A That's right.

27 Q Now, on the issue of conspiracy, sir, which is
28 the second count in this indictment, the defendant being

1 charged there with conspiring with certain other people to
2 rob and kill Gary Hinman.

3 There's a term that's been used, "guilt by
4 association." And, frequently, where a conspiracy is
5 charged, this guilt by association seems to work on jurors.

6 Do you understand that the law says, "Mere
7 association of one person with other people who may have
8 committed a crime in and of itself is not sufficient to
9 make that person guilty of that conspiracy"; do you understand
10 that?

11 A Yes, I do.

12 Q Would you have any trouble at all, sir, in
13 following an instruction on that subject prohibiting you from
14 finding guilt merely by association?

15 A No, I wouldn't.

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1 Q And do you understand, also, even if one does:
2 an act which may contribute to the object of the conspiracy,
3 that in and of itself doesn't make a person guilty of that
4 conspiracy unless he has a certain criminal intent that goes
5 along with it; do you understand that?

6 A Yes, I do.

7 Q Would you have any trouble at all following that
8 rule of law?

9 A No, I wouldn't.

10 Q In other words, in this particular case, if the
11 People were to show simply that the defendant did some act
12 which furthered this alleged conspiracy to rob and perhaps
13 kill Gary Hinman, but that's all, they didn't show the guilty
14 intent, the criminal intent, the guilty knowledge that went
15 along with that act, then, you would have no trouble finding
16 him innocent?

17 A No, I wouldn't.

18 Q Now, do you have any feelings, sir, that if a
19 defendant charged with a criminal offense does not take the
20 stand and testify, that he probably has something to hide and
21 that, therefore, he's probably or, at least, more likely to be
22 guilty of the charge or charges against him?

23 A No, that's not necessary. I mean, that's not --
24 it would be to say that he was guilty because he didn't
25 testify.

26 Q All right. You understand that under the
27 constitution of the United States of America you are not
28 even allowed to draw any adverse inference from a defendant's

3b-2

1 not taking the stand, not testifying; do you understand that?

2 A Yes, I do.

3 Q And you wouldn't, if the defendant -- if I, as the
4 attorney, decide that the People's case is just so weak that
5 I don't feel that any further evidence is necessary, because
6 they haven't proven their case, and I don't put on evidence,
7 and I don't put on the defendant; you wouldn't say, well, the
8 People's evidence is weak, but the fact that the defendant
9 didn't testify, in my mind, makes up for some of that weakness
10 and fills in some of the gaps of the People's case?

11 A No.

12 Q All right, sir.

13 Now, Mr. Kay has asked several people whether they
14 would bring in a second degree murder or consider even
15 bringing in a second degree murder conviction instead of first
16 degree murder merely in order to avoid the duty and
17 responsibility that would fall on them of deciding life or
18 death if they voted first degree murder.

19 Have you heard that question asked?

20 A Yes, I have.

21 Q All right. And everybody thus far has said no,
22 that they would not. They would not do that. They wouldn't
23 bring in a second degree murder conviction just to avoid the
24 responsibility of determining life or death, which they'd
25 have if they voted for first degree. And that would be your
26 answer, too, I assume, wouldn't it?

27 A Right.

28 Q Well, the corollary to that is that if the

1 evidence only established second degree murder in a given case,
2 and I'm not saying that would be so in this case, but assuming
3 it did, under the instructions of the Court, and the evidence
4 showed second degree, and the Court told you what second degree
5 murder was, would you have any reluctance in voting second
6 degree murder if that's what the evidence and the law showed?

7 A No, I wouldn't have no --

8 Q You'd be doing your duty as a juror to bring in
9 that verdict, is that right?

10 A As far as I know, I would.

11 Q All right, sir.

12 THE COURT: Pass for cause?

13 MR. DENNY: Beg pardon?

14 THE COURT: Pass for cause?

15 MR. DENNY: Yes, I do, your Honor.

16 THE COURT: People.

17
18 VOIR DIRE EXAMINATION

19 BY MR. KAY:

20 Q Good morning, Mr. Smith.

21 A Good morning.

22 Q Mr. Smith, you were present, were you not, when I
23 questioned the panel of the jurors as a whole on Friday?

24 A Yes, I was.

25 Q And you were sitting out in the audience?

26 A Yes.

27 Q Now, Mr. Denny asked you the question as to
28 whether or not you had ever thought about the death penalty

1 before you came into this courtroom.

2 Now, I'm going to ask you the question:

3 Have you thought about it since you came into this
4 courtroom?

5 A No.

6 Q You haven't thought about it at all?

7 A No, not the death penalty. I didn't have no
8 reason to think of it at the time being.

9 Q In other words, you are totally convinced that if
10 you determine that this was the proper case that you could
11 impose the death penalty, is that right?

12 A Yes.

13 Q There's no doubt about that in your mind?

14 THE COURT: Excuse me, the Court will strike that
15 question and will tell the juror that there is no such a thing
16 as a proper case for the imposition of the death penalty.

17 The Court will ask each counsel not to use that
18 phrase, "proper case."

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3c-1

1 You understand from what I have said previously,
2 Mr. Smith, that there is no standard fixed, there is no
3 particular type or proper case in which a death penalty is
4 required or demanded by the State; you understand that?

5 JUROR NO. 9: Yes, I do.

6 THE COURT: That this is a matter of your discretion
7 as to whether or not the death penalty will be imposed?

8 JUROR NO. 9: Yes, I do.

9 THE COURT: You understand that?

10 Having that in mind, you may rephrase your
11 question.

12 MR. KAY: Thank you.

13 Q Mr. Smith, by the Judge's questions, and I'm
14 sure the questions you heard me ask the other jurors, you
15 realize that it is within the sole discretion of the jury
16 whether or not to vote for the death penalty or for life
17 imprisonment; you understand that?

18 A Yes, I do.

19 Q So, so to speak, if the jury determines in their
20 own mind -- and, remember, it is up to them. You're not
21 going to get any help in this case from the Judge, Mr. Denny
22 or Mr. Manzella or myself. It is going to be up to your
23 sole discretion whether or not you impose the death sentence
24 on Mr. Davis if you sit as a juror in this case; do you
25 understand that?

26 A Yes, I do.

27 Q And so when we speak of a "proper case," there
28 is no such thing in the law as a proper case. It is just what

3c-2

1 the jury determines.

2 You have to determine whether it is death or
3 life for Mr. Davis; do you understand that, sir?

4 A Yes, I do.

5 Q And do you feel that you could sit as a juror in
6 this courtroom and see Mr. Davis over there day after day for
7 the next two or two and a half months, and then if you felt
8 that the evidence warranted it in this case, you could come
9 back and, say, the middle of February, and tell Mr. Davis that
10 for the crimes he has committed that he must die; could you
11 do that, sir?

12 A Yes, I could.

13 Q And there's no doubt about that in your mind?

14 A No.

15 Q And I take it that you don't feel that any moral
16 or religious beliefs that you presently hold would prevent you
17 from voting for the death penalty?

18 A No.

19 Q And do you feel that any close friends or relatives
20 you have might be opposed to the death penalty and might try
21 and influence you to vote for life imprisonment if you are
22 selected as a juror in this case?

23 A No.

24 Q And, understanding, then, as the Judge explained,
25 and as I explained to you, it is within the sole discretion
26 of the jury whether or not to impose the death sentence on
27 Mr. Davis for these murders; are you willing to assume that
28 responsibility?

3c-3

1 A Yes, I am.

2 Q Can you think of any reason at all why you could
3 not or should not sit as a member of this jury?

4 A No further than my complaint about --

5 Q About your work?

6 A My work, that's all.

7 Q All right.

8 And is it your firm position that the People of
9 the State of California, who Mr. Manzella and I represent,
10 are entitled to an equal fair trial with the defense in this
11 case?

12 A Yes, it is.

13 Q In other words, as you sit there now, you have an
14 open mind and you don't favor one side over the other; is
15 that correct?

16 A That is correct.

17 Q Okay.

18 And do you have any sympathy for Mr. Davis because
19 he is a defendant in this case?

20 A No.

21 Q Now, in the guilt phase of this trial, and I'll
22 explain that to you again, hopefully you already understand
23 this, but this trial has a possibility of going into two
24 phases.

25 The first phase is the guilt phase.

26 And, the second phase is the penalty phase.

27 Now, in the guilt phase the only question you
28 decide is Mr. Davis' guilt or innocence on the three charges:

1 the murder of Gary Hinman, the conspiracy to murder Gary
2 Hinman, and the murder of Donald Jerome Shea.

3 Do you understand that?

4 A Yes, I do.

4 fls.

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1 Q And do you understand, in the first phase, you
2 can't even consider the question of penalty or punishment? Do
3 you understand that?

4 A Yes.

5 Q And would you follow the Court's instructions in
6 that regard?

7 A Yes.

8 Q Now, if Mr. Davis is convicted of first degree
9 murder, on either of both the murder of Gary Hinman and the
10 murder of Donald Jerome Shea, or if he's convicted of conspiracy
11 to commit murder -- which is Count No. 2 -- or if he's convicted
12 of all of those Counts, we'll move into the second phase, and
13 that's the penalty phase.

14 And in the penalty phase, the sole question which
15 you have to determine is whether or not Mr. Davis gets life
16 imprisonment or gets the death penalty on each Count of which
17 you've convicted him, of either first degree murder or
18 conspiracy to commit murder.

19 Do you understand that?

20 A (No response.)

21 Q In other words, you have to make a separate finding
22 of whether he gets life or death on each Count which you have
23 convicted him of -- assuming that you've convicted him of
24 first degree murder on that Count, or Count No. 2, conspiracy
25 to commit murder,

26 Do you understand that?

27 So, in other words if you -- say the jury convicted
28 him of first degree murder in the murder of Gary Hinman,

1 conspiracy to commit murder in the murder of Gary Hinman, and
2 first degree murder in the murder of Donald Jerome Shea,
3 Mr. Davis could be sentenced to death on all three of those
4 Counts; do you understand that?

5 A Yes.

6 Q In other words, you have to make an individual
7 determination on each Count: Does he get life or does he
8 get death on each individual Count.

9 Do you understand that?

10 A Yes.

11 Q Now, in the guilt phase of this trial, again, the
12 prosecution has the legal burden of proving the defendant
13 guilty beyond a reasonable doubt, and -- as Mr. Denny likes
14 to moralize -- to a moral certainty.

15 Do you understand that? That's our only legal
16 burden, proving the defendant guilty beyond a reasonable
17 doubt and to a moral certainty.

18 Do you understand that?

19 A Yes, I do.

20 Q All right. Do you understand that we don't have
21 the burden of proving the defendant guilty beyond a shadow of
22 a doubt or beyond all doubts, or to an absolute certainty.
23 That's too high. We don't have that burden.

24 Do you understand that?

25 A (No response.)

26 Q Sir?

27 A Well --

28 Q We only have the burden of proving the defendant

1 guilty beyond a reasonable doubt. Do you understand that?

2 A Yes.

3 Q And understanding that that and that alone is
4 the prosecution's burden of proof in this case, would you hold
5 us to any higher burden of proof, to any burden of proof
6 which we don't have under the law of the State of California?

7 A No.

8 Q In other words, a reasonable doubt is a doubt
9 based in reason.

10 A That's right.

11 Q And would you promise me, if you sat on this case
12 as a juror, that when you got into the jury room, that you would
13 be reasonable? Could you promise me that, that you would be a
14 reasonable juror?

15 A Yes.

16 Q All right. And you understand that, in all criminal
17 cases, whether the defendant's charged with running a red
18 light in an intersection, or going through a stop sign, or
19 burglary or robbery, the prosecution always has the same
20 identical burden of proof in the case?

21 In other words, proving the defendant guilty
22 beyond a reasonable doubt, to a moral certainty. Do you
23 understand that?

24 A (No response.)

25 Q The burden of proof is the same in all criminal
26 cases.

27 A Yes, I understand that.

28 Q All right. Now, realizing that, would you hold us

1 to any higher burden of proof because this is a murder case?

2 A No.

3 Q Okay. You realize that the prosecution always
4 has the same burden of proof in each case?

5 A Yes, I do.

6 Q Be it a murder case, a robbery, a burglary,
7 running a red light in an intersection? Do you understand
8 that?

9 A Yes.

10 Q Now, Mr. Denny has told some of the jurors -- I
11 don't think he brought it up -- I don't know if he told it to
12 you -- but that Mr. Davis is cloaked at this point with the
13 presumption of innocence.

14 Do you understand that? He is presumed innocent
15 at the start of the trial.

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16 A Yes.

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1 Q All right.

2 And the prosecution has to prove him guilty beyond
3 a reasonable doubt.

4 A Yes.

5 Q Now, you understand that Mr. Davis is only
6 presumed innocent until his guilt is proved beyond a reasonable
7 doubt?

8 A Yes, I do.

9 Q Yes. Now, have you or have any of your close
10 friends or relatives ever been charged with or accused of a
11 crime, other than a traffic offense? Be it a misdemeanor or
12 a felony?

13 A No.

14 Q And have you or has anyone you know ever testified
15 for the defense in a criminal trial?

16 A No.

17 Q You don't even know of anybody that's ever done
18 that?

19 A No.

20 Q And have you ever served on a jury before?

21 A No.

22 Q Would you give any less weight to the testimony
23 of a witness due to the sole fact that that witness was a
24 police officer?

25 A No.

26 Q And to any degree whatsoever, do you feel any bias
27 or prejudice against police officers?

28 A No.

4a-2

1 Q And you would judge their testimony by the same
2 standards that you'd judge any other witness' testimony?

3 A I would.

4 Q And if Mr. Davis -- if the defendant took the
5 stand in this case and testified in his own behalf, would you
6 judge his testimony by the same standards of credibility that
7 you'd judge other witnesses' testimony?

8 A I would.

9 Q And if you believed that Mr. Davis, when he took
10 the stand, was lying, would you reject his testimony?

11 A Uh -- I don't quite understand that.

12 Q If Mr. Davis --

13 THE COURT: Well, that's an improper question anyhow.

14 The Court will sustain its own objection to that
15 question.

16 Q BY MR. KAY: Have you ever studied law?

17 A No.

18 THE COURT: Will you follow the instructions, the
19 instruction I give you in respect to credibility, and in
20 respect to what course you may take in the event that you
21 believe a person to be lying on the witness stand?

22 PROSPECTIVE JUROR NO. 9: Uh --

23 THE COURT: Will you follow the Court's instructions?

24 PROSPECTIVE JUROR NO. 9: I would follow the Court's
25 instructions.

26 Q BY MR. KAY: Okay. You won't go wrong if you
27 follow the Court's instructions, if you remember that -- and
28 if you can understand them.

4a-3

1 Now, do you remember that I asked you -- and I
2 don't think I got an answer, because the Judge asked you a
3 question -- but have you ever studied law?

4 A No, I haven't.

5 Q Okay. And do you know any criminal defense
6 attorneys or private detectives?

7 A No.

8 Q And do you -- have you ever been represented by or
9 talked with any of the criminal attorneys that have represented
10 any member of the Manson Family in their various criminal
11 trials?

12 A No.

13 Q Now, did you understand the -- well, do you feel
14 in your own mind, now, that you understand the distinction
15 between direct evidence and circumstantial evidence, or would
16 you like me to give you an example?

17 A I feel that I understand it.

18 Q Okay. Are you -- are you sure you understand it?

19 A Now, I'm not definitely sure. But I figure that
20 I would follow the Court's rules; and if I didn't understand
21 it, I figure that I could ask someone; that I'd have permission
22 to say, if I didn't understand it, "Could I --" either you or
23 this other gentleman (indicating) -- would you explain that to
24 me? Or find someone to explain that to me?"

25 Q Okay.

26 A If I didn't understand it.

27 Q Now, do you understand that if -- while you are
28 seated as a juror, if you have any questions, you can either

1 ask Mr. Kuczera -- who is the bailiff over there (indicating),
2 or you can raise your hand and ask the Judge, or you can
3 submit it to him in writing, if you are a member of the jury;

4 Do you understand that?

5 A Yes.

6 Q So don't hesitate, if something's bothering you.

7 A I can.

8 Q Okay.

9 MR. DENNY: Well, your Honor, I would like to state
10 for the record, that if there are any questions of law or
11 questions of any kind, with all due respect to Mr. Kuczera,
12 those questions should be addressed to the Court and only to
13 the Court, and not to anyone else.

14 THE COURT: That's true. That is, the Court would
15 generally require a request in writing, presented through the
16 foreman to the Court, in response to any juror's question.

17 Q BY MR. KAY: Well, what I meant by "asking Mr.
18 Kuczera" is -- I mean, you could tell him you had a question.
19 You wouldn't be able to tell him what your question was,
20 but then the Judge could inquire of you what your question was.

21 But generally, just raise your hand, if you have
22 a question, because the -- or, when a foreman's elected, you
23 can go through him.

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1 But if you are seated there -- and one problem
2 you might face is that you might not be able to hear a witness,
3 or you might not be able to hear an attorney; and in that case,
4 you can always raise your hand and just say, yourself -- the
5 judge will call on you, and you'd say, "Well, I can't hear
6 Mr. Kay; he's not speaking loud enough."

7 Or, "I can't hear the witness. Could you put the
8 microphone closer, so the witness can speak into the micro-
9 phone?"

10 Because we want you to hear everything that goes
11 on in this courtroom.

12 Do you understand that?

13 A Yes.

14 Q As far as the evidence is concerned, or as far as
15 the attorneys go.

16 Now, understanding, in your own mind, the
17 distinction between direct and circumstantial evidence, would
18 you follow the Court's instructions, which would be that under
19 the law, direct and circumstantial evidence are entitled to
20 equal weight; that one's not to be favored over the other?

21 A Yes, I would.

22 Q Okay. And understanding that a defendant in a
23 murder trial can be convicted of first degree murder, based
24 on circumstantial evidence alone, do you feel that that's
25 unfair? Do you have any quarrel with that law? That he can be
26 convicted of first degree murder, based on circumstantial
27 evidence alone?

28 A I has no quarrel with that.

4b-2

1 Q All right.

2 And would you follow the Court's instructions --

3 A Yes.

4 Q -- on that?

5 A I will.

6 Q Now, under our law, a murder committed in the
7 course of a robbery is automatically murder of the first degree.
8 This is known as the felony murder rule. So, if you find that
9 a defendant has killed somebody in the course of a robbery, and
10 that he had the specific intent to commit that robbery, that he
11 is automatically guilty of murder in the first degree, do you
12 have any quarrel with that law?

13 A No, I don't.

14 Q And do you feel it's unfair, that the law takes
15 the discretion away from the jury in this case, as to the
16 degree of the murder?

17 A Yes, I do.

18 Q You feel that's unfair?

19 A Oh, no, no. That's not what I meant.

20 Q Okay. You understand that is the law, and you
21 would follow it, sir?

22 A Yes, I will.

23 Q All right. And again, as I told the other jurors,
24 when you were seated in the audience, that the prosecution was
25 able to recover the body of Gary Hinman, but we were not able
26 to recover the body of Donald Jerome "Shorty" Shea.

27 A Yes.

28 Q Do you understand that the prosecution is not

1 required in a murder case, in the State of California, to
2 produce the body of the victim; do you understand that?

3 A Yes.

4 Q And do you feel that that's unfair?

5 A No.

6 Q And would you follow the Court's instructions
7 in that regard?

8 A Yes.

9 Q And in this regard, where we have to prove only
10 that there was a death -- in other words, that the victim
11 died, and that he died by a criminal agency -- and in this case
12 we are going to attempt to prove that he died, and that he was
13 murdered -- in other words, that he was murdered; that he died
14 and that he was murdered.

15 Do you understand that, sir?

16 Do you understand, that's all we have to show in
17 regards to the way the victim disappeared? That he died, and
18 that his death was caused by a criminal agency?

19 In other words, that he was murdered. That we
20 don't have to produce his body, but merely to show that he
21 died, and that he died by a criminal agency;

22 Do you understand that?

23 A Yes, I do.

24 Q And would you follow the Court's instructions in
25 that regard?

26 A Yes, sir.

27 THE COURT: Let's see if we can move it along. We have
28 been at this voir dire for 50 minutes on this man.

1 Q BY MR. KAY: Now, if you believe that Mr. -- that
2 Mr. Davis was guilty of first degree murder, beyond a
3 reasonable doubt -- and again, that's the prosecution's only
4 legal burden --

5 THE COURT: I think you've covered that, Mr. Kay.

6 Q BY MR. KAY: (Continuing) -- would you vote to
7 convict him of that crime, even though Mr. Shea's body was not
8 recovered in Count No. 3?

9 A Yes.

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1 Q And my last question: Would you automatically
2 vote against the imposition of the death penalty, in Count
3 No. 3, the murder of Donald Jerome Shea, for the sole reason
4 that the prosecution was unable to recover Mr. Shea's body?

5 A No.

6 MR. KAY: Thank you very much.

7 May I pass for cause, your Honor?

8 MR. DENNY: May I ask one question?

9
10 VOIR DIRE EXAMINATION

11 BY MR. DENNY:

12 Q Sir, have you or any member of your family --
13 or any close friend or relative -- ever been the victim of
14 any type of crime?

15 A No.

16 MR. DENNY: Pass for cause, your Honor.

17 THE COURT: You may be excused, now, Mr. Smith. Report
18 to the group outside; would you, please?

19 (Whereupon, prospective juror No. 9 exited
20 the courtroom, whereupon the following proceedings
21 were had:)

22 THE COURT: That took over 50 minutes. I can't see
23 why I should have to endure this alone. I'm going to have
24 the balance of the panel in here, while you are asking these
25 questions, so that you will take the risk of boring them to
26 death, and perhaps that will keep you from -- both of you from
27 repeating and repeating.

28 MR. DENNY: Your Honor, before we take a break -- which

4c-2

1 I assume the Court is going to do -- I have not objected
2 three times to the question that has been asked by Mr. Kay
3 of some of the prospective jurors, concerning whether they
4 would judge the testimony of the defendant, if he takes the
5 stand, by the same standards that they'd judge the testimony
6 of any other witness.

7 I feel, however, that that question is improper,
8 in that it contemplates the necessity of the defendant's taking
9 the stand. I think it's a delicate balance here, but I do
10 feel that in view of the cases which state that no adverse
11 inference can be drawn from the defendant's failure to take
12 the stand, that that type of question --

13 THE COURT: Well, it's not -- it's not commenting on
14 a failure to take the stand. How do you say that it's
15 adverse?

16 MR. DENNY: Well, your Honor --

17 THE COURT: The Court thought about it. The Court
18 thought about the Griffin rule, at the time that the question
19 was first asked. But I can't see that it is objectionable
20 from that viewpoint.

21 How do you see that it might be?

22 MR. DENNY: Well, simply by placing in the juror's mind
23 the idea that the defendant should take the stand.

24 THE COURT: Oh, I don't think that --

25 MR. DENNY: Obviously, the questions that I have
26 asked on the subject indicate that he does not have to;
27 that they're to draw no inference if he does not.

28 THE COURT: I don't think the question has that inference,

4c-3

1 as I hear it.

2 MR. DENNY: Well, your Honor, I -- I do feel that it's
3 in a grey area, and I -- I'm just voicing my objection to it.

4 THE COURT: Oh, I think you've already gotten that
5 across, in front of the entire panel, and -- and several jurors,
6 to the effect that the defendant is not obligated to take the
7 stand, and that he may choose to rely on your advice, and to
8 allow the case to rest as it's left without his taking the
9 stand.

10 I can't see that the question is objectionable, --

11 MR. DENNY: Very well, your Honor.

12 THE COURT: -- from the standpoint you suggest, or from
13 any standpoint.

14 I'll declare the recess now, for ten minutes.

15 MR. KAY: Thank you.

16 THE COURT: Now, let's see if we can't generally speed
17 this up.

18 Off the record.

19 (Whereupon a discussion ensued off the record.)

20 (Mid-morning recess.)

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1 THE COURT: Good morning, ladies and gentlemen.

2 (Whereupon, there were murmurs of "Good morning,
3 your Honor," that were heard from the prospective jury panel.)

4 THE COURT: The record will show the defendant to be
5 present. All counsel are present, and all the prospective
6 jurors are in the box.

7 Both sides having passed for cause, it is the
8 peremptory challenge of the defendant.

9 MR. DENNY: Yes, your Honor.

10 We would like to thank and excuse juror No. 4,
11 Mrs. DuBois. And thanks for her extreme patience in sitting
12 through this ordeal.

13 THE COURT: Mrs. DuBois, thank you very much.

14 Does that --

15 THE CLERK: 15th floor.

16 THE COURT: 15th floor of the new Hall of Records.

17 JUROR NO. 4: Thank you.

18 THE COURT: Do you still have time left on jury duty?

19 JUROR NO. 4: I started just last week, last Monday.

20 THE COURT: You've got lots of time left.

21 JUROR NO. 4: Afraid so.

22 THE COURT: All right, thank you very much.

23 THE CLERK: Mrs. Dorothy D. Carpenter, D-o-r-o-t-h-y,
24 last name C-a-r-p-e-n-t-e-r.

25
26 VOIR DIRE EXAMINATION OF

27 DOROTHY D. CARPENTER

28 BY THE COURT:

1 Q Mrs. Carpenter, were you present when the Court
2 explained the nature of this case to prospective jurors when
3 the Court questioned prospective jurors?

4 A Yes, your Honor.

5 Q And you've been present since Friday, is that
6 it?

7 A Yes, your Honor.

8 Q All right. And would your answers be any
9 different than the answers of the prospective jurors to the
10 questions of a general nature that the Court put?

11 A No, your Honor.

12 Q Can you think of any respect in which your answers
13 might differ?

14 A No, your Honor.

15 Q Would it be any hardship for you to serve in this
16 case?

17 A No, your Honor.

18 Q Have you been a juror before?

19 A Yes, your Honor.

20 Q And in a criminal case?

21 A Yes, your Honor.

22 Q Would you state the nature of the criminal case
23 and without stating to us whether there was a finding of
24 guilty or not guilty, state to us whether there was a verdict?

25 A Well, it was four years ago, your Honor.

26 Q That's a long time back.

27 A Oh, yes, sir.

28 Q But this session of jury duty you had no experience

1 on a jury?

2 A No, your Honor.

3 Q Is that correct?

4 Now, in the criminal case -- in that criminal
5 case or those criminal cases in which you sat before, you heard
6 the instructions and you heard argument. Will you set aside
7 anything that you might have learned from those cases and
8 decide this case only from the evidence that's produced here
9 and what you hear in this case?

10 A Yes, your Honor.

11 THE COURT: Will all of you do that, who have had
12 previous experience as jurors in any case? Will all of you
13 do that?

14 THE PROSPECTIVE JURORS: Yes.

15 Q BY THE COURT: What type of work do you do,
16 Mrs. Carpenter?

17 A I'm a housewife.

18 Q And is there a Mr. Carpenter?

19 A He works at McDonnell-Douglas Aircraft.

20 Q What does he do for McDonnell-Douglas?

21 A He is a template maker. That's the patterns that
22 the parts are made from.

23 Q I know what a template is, Mrs. Carpenter.

24 (Laughter.)

25 A When I was on jury duty before, they asked me what
26 that consisted of.

27 Q BY THE COURT: Well, wait until we ask.

28 (Laughter.)

1 Q BY THE COURT: Are you acquainted with or
2 related to any law enforcement officer?

3 A No, your Honor.

4 Q Ever studied the law yourself?

5 A No, your Honor.

6 Q In what general area do you and Mr. Carpenter
7 reside?

8 A In the Silverlake area, sir.

9 Q Now, can you think of any reason why you couldn't
10 be fair and impartial in this case?

11 A No.

12 Q Concerning the death penalty, you've heard the
13 Court's explanation of the possibility of two phases in this
14 case?

15 A Yes.

16 Q And concerning your attitude toward the penalty,
17 is it such that you would automatically refuse to impose it
18 regardless of the evidence, should you be called upon to
19 determine life imprisonment or death?

20 A No, your Honor.

21 Q Or, on the other hand, would you automatically,
22 upon a conviction of murder in the first degree, impose it
23 without regard to the evidence? Would you automatically impose
24 the death penalty?

25 A No, your Honor.

26 Q Are your views such that you would never vote to
27 impose the death penalty?

28 A Oh, I would go according to the Court's

1 instructions.

2 Q Well, the Court's instructions will only tell you
3 that it is a matter of your entire discretion. And you may
4 look at the evidence in the first phase and the evidence in
5 the second phase, if any, and make your determination from
6 the evidence that's presented in the case, whether the first or
7 the second phase or both; do you understand that?

8 A Yes, sir.

9 Q And it will be entirely a matter for the jury's
10 discretion. You won't receive any help from the Court in
11 respect to instructions except that, if that's any help.

12 Now, do you understand that?

13 A Yes, sir.

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1 Q Understanding that, do you have any feeling that
2 you would never vote for the death penalty in any case?

3 A Oh, no, your Honor.

4 Q Or do you have such views about it that you could
5 not be impartial in determining what, -- in determining guilt
6 or innocence in this case, in the first phase?

7 A No, I have no partiality.

8 Q All right.

9 Now, we must ask you about publicity.

10 And I only did this, ladies and gentlemen to give
11 you a little exercise. So now you can go out again, if you
12 will, please. I'll call you again.

13 MR. DENNY: Your Honor, excuse me, before the jury
14 retires, could we approach the bench for a moment?

15 THE COURT: Yes, you may.

16 (Whereupon, the following proceedings were had
17 at the bench among Court and counsel, outside the
18 hearing of the prospective jurors:)

19 MR. DENNY: I am as anxious as the Court is to speed up
20 this procedure. And I wonder if perhaps it could be speeded
21 up and keep the jury here for a little bit, at least try it
22 perhaps, if --

23 THE COURT: Take all the phases but publicity?

24 MR. DENNY: All phases but publicity.

25 THE COURT: No one so far -- well, there have been two
26 or three excluded on publicity.

27 MR. DENNY: There have been some.

28 MR. KAY: Most of the people have been excluded on

5a-2

1 publicity. My own feeling is we would be wasting time, because
2 publicity, that's probably the area where most of them would
3 go, on their feeling toward the Manson Family.

4 THE COURT: I think I'll take Mr. Denny's suggestion
5 in connection with it, unless you wish to abandon --

6 MR. KAY: It is fine with me.

7 THE COURT: -- conducting it separately.

8 MR. DENNY: I don't feel we should abandon that from the
9 standpoint of publicity, but I wonder --

10 THE COURT: I notice, would say, that there does seem
11 to be -- seems to have been a waning of interest in the Manson
12 affairs. And I -- we have yet to find anybody who knew Mr.
13 Davis before he walked into this courtroom.

14 Go ahead.

15 MR. DENNY: I just wondered, perhaps, if the Court could
16 ask her the general question: If she feels that she has
17 seen, heard or read so much about the Manson -- the Manson
18 Family that she felt it would affect her ability to judge
19 the guilt or innocence of this man, and if he was a member
20 of the Manson Family, would that prejudice her. And if she
21 says no, then, perhaps we could go on with the general ques-
22 tioning, if she survives that.

23 THE COURT: All right, I think that's fair.

24 (Whereupon, the following proceedings were had
25 in open court within the presence and hearing of the
26 prospective jury panel:)

27 THE COURT: I'll retract the order directing you outside,
28 then.

5a-3

1 Q BY THE COURT: And I'll ask this question of you,
2 Mrs. Carpenter.

3 Mrs. Carpenter, have you heard, seen or read,
4 through the publicity media, or talked about with friends or
5 relatives, so much concerning the Manson Family and Charles
6 Manson that you could not be fair and impartial in judging
7 the guilt or innocence or in judging any issue in which Mr.
8 Davis might be involved, should it be established that he is,
9 in fact, a member of the Manson Family?

6 fls.

10 A No, your Honor.
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1 THE COURT: You could be fair and impartial?

2 PROSPECTIVE JUROR NO. 4: Yes, your Honor.

3 THE COURT: You may inquire.

4 MR. DENNY: Thank you, your Honor.

5 BY MR. DENNY:

6 Q Mrs. Carpenter, getting to the jury experience
7 that you did have, and realizing that it was sometime ago,
8 did you sit on any case involving murder?

9 A No, your Honor.

10 Q I'm not your Honor.

11 A I'm sorry.

12 (Laughter.)

13 Q BY MR. DENNY: I appreciate the title, but --
14 Now, did you sit on any case involving robbery,
15 or a charged robbery?

16 A No. It was narcotics.

17 Q Again, if I ask you questions concerning the
18 death penalty, you understand that I'm asking them in a
19 purely hypothetical sense, not stipulating or assuming that we
20 are going to even get to that area, from my standpoint, --

21 A Yes.

22 Q -- do you understand that?

23 But this is the one opportunity that we do have
24 to question you on your feelings.

25 Have you, at any time during the course of your
26 life, read anything about the death penalty, pro or con,
27 for retention or abolition, say?

28 A Just in the papers is all. I mean --

1 Q Well, have you read some articles in the papers
2 arguing the merits or demerits of the retention or abolition
3 of the death penalty, or have you simply read about those
4 instances where the State has executed someone?

5 A Well, I've just read about the penalty and the
6 executions, yes.

7 Q Not for sometime, I take it?

8 A No, not for sometime.

9 Q Now, have you ever discussed with anyone your
10 feelings about the death penalty?

11 A No, sir.

12 Q Would you say, up to the time that you came into
13 this courtroom, that you had actually formed any feelings,
14 one way or the other, about the death penalty?

15 A No. No, sir.

16 Q You've never had any occasion to think long
17 enough about it, or to study it to determine whether it's
18 good or bad, right or wrong, or what you would do if you were
19 called upon to determine whether someone should receive the
20 death penalty; is that right?

21 A No, I have never considered it.

22 Q And I take it, ma'am, that you have never been
23 in a situation where the fate of a man's life hung on your
24 vote?

25 A No, I haven't.

26 Q And do you have any qualms about accepting the
27 responsibility for determining whether, because of your vote,
28 a man may be executed by the administration of lethal gas in

1 the gas chamber in San Quentin?

2 A No, sir.

3 Q Would you feel, ma'am, assuming -- and again,
4 this is a hypothetical situation -- that there were a finding
5 of guilt of any of the charges in this case, and you had to
6 determine the guilt -- the penalty, that the only way that
7 you could do your duty as a juror, having found the defendant
8 guilty of first degree murder, would be to vote for the
9 imposition of the death penalty?

10 A Yes, sir.

11 Q Now, do you understand the question --

12 A Yes.

13 Q -- that I asked?

14 A Yes. If I voted for the death penalty, would
15 I stand by my vote? Is that what you meant?

16 Q No, not quite.

17 What I am saying is: If you were a member of this
18 jury, and sitting in the first phase of the trial you had been
19 convinced, beyond a reasonable doubt and to a moral certainty,
20 of the truth of the charge -- or charges -- that the
21 defendant was guilty of first degree murder, and you had
22 returned that verdict with your fellow jurors -- we've gotten
23 to that point; do you understand?

24 A Um-hmm -- yes, sir.

25 Q All right.

26 And then, you sat with those jurors to deliberate
27 what penalty was applicable, having found him guilty of first
28 degree murder, then would you feel that the only way that you

1 could do your duty as a juror would be to return a penalty
2 of death?

3 A Well, if it was found that he was, beyond a
4 shadow of a doubt, that would be the only verdict that could
5 be rendered.

6 Q In other words, is it your feeling that -- again,
7 taking your words; and we'll get to that a little bit later
8 -- but if you had found beyond a shadow of a doubt that he was
9 guilty of first degree murder, that you would then feel that
10 it was your duty to vote for the imposition of the death
11 penalty on him?

12 A Yes, sir.

6a Fla.

6a-1

1 Q Well, is it your feeling that anybody who is found
2 guilty of first degree murder should therefore suffer the
3 imposition of the death penalty?

4 A Yes, sir.

5 Q And is this feeling based on what you think the law
6 is, or just what your own emotional response --

7 A Well, according --

8 Q -- to the finding of guilt would be?

9 A It would be based on -- on according to the law.

10 THE COURT: You apparently haven't understood me, then,
11 Mrs. Carpenter.

12 What I've stated to you is that, upon a conviction
13 of murder in the first degree, then the jury goes into what's
14 known as the penalty phase, and it's entirely a matter of your
15 discretion, as I've stated to you before, as to whether or not
16 the death penalty should be imposed, or whether life
17 imprisonment should be the sentence.

18 That's assuming, right from the start, that a
19 man is convicted beyond a reasonable doubt -- not beyond a
20 shadow of a doubt, but beyond a reasonable doubt, he's
21 convicted of murder in the first degree, of whatever type of
22 murder of the first degree.

23 Do you understand?

24 PROSPECTIVE JUROR NO. 4: Yes.

25 THE COURT: Well, that's after you've finished with the
26 first phase of the case, and you are into the second phase,
27 when you are considering the question of the penalty. Do you
28 understand that?

6a-2

1 PROSPECTIVE JUROR NO. 4: Yes, sir.

2 THE COURT: I think it's clear now. If it's not clear,
3 you may ask me questions about it.

4 Is it clear in your mind as to what the procedure
5 is and what the law is?

6 The law is not to the effect that a person who is
7 convicted of murder in the first degree should suffer death;
8 rather, it is a matter which is left entirely to the discretion
9 of the jury to decide, in the penalty phase, as to whether the
10 evidence is such that, in the discretion of the jury, the man
11 should suffer death or life imprisonment.

12 Do you understand?

13 PROSPECTIVE JUROR NO. 4: No, I don't believe I do, sir.

14 THE COURT: Well, ask me a question.

15 PROSPECTIVE JUROR NO. 4: Well, I -- according to -- the
16 way I -- I understand that, if you -- if he's proven -- if a
17 person is proven, beyond a reasonable doubt, --

18 THE COURT: Proven guilty?

19 PROSPECTIVE JUROR NO. 4: -- proven guilty by a jury,
20 they naturally receive the sentence.

21 THE COURT: The sentence of death?

22 PROSPECTIVE JUROR NO. 4: Yes. If they're proven guilty,
23 yes.

24 THE COURT: No, that's not what I have told you. What I
25 have told you, now, is that upon that being the case -- upon
26 the jury finding him guilty beyond a reasonable doubt, and to a
27 moral certainty, of murder of the first degree -- then the
28 Court does not automatically take over, or the jury does not

6a-3

1 automatically take over and sentence him to death.

2 At that time, there is a second phase of the case,
3 in which evidence may or may not be presented.

4 You sit in the box just as you are sitting in the
5 box now, and you may or may not hear a -- may or may not hear
6 evidence. You may or may not hear argument from counsel, as
7 to why and why not, respectively, a man should receive life
8 imprisonment or death.

9 But in that second phase, it's left to the
10 discretion of the jury as to what the punishment shall be.

11 Now, do you understand?

12 PROSPECTIVE JUROR NO. 4: Yes, sir.

13 MR. DENNY: May I continue, your Honor?

14 THE COURT: You may.

15 BY MR. DENNY:

16 Q Well, Mrs. Carpenter, this feeling that you've
17 had -- or, this understanding that you've had about whether
18 the death sentence should then automatically, in effect, follow
19 a finding of murder in the first degree, is this an idea that
20 you've had for quite some time?

21 A No. I misunderstood up until now.

22 Q You were --

23 A I misunderstood your question.

24 Q Well, so that there would be no misunderstanding,
25 let me try to rephrase my questions, then, because it's
26 important to me to determine as best we can what your state
27 of mind is, what your understanding of the law is, and what
28 you would do based on that.

6a-4

1 Do you have some feeling, as you sit there, that
2 there is some type of case which, having found the defendant
3 guilty of that type of murder, you would automatically impose
4 the death sentence, because of your feelings that that was such
5 a terrible case?

6 A Oh, no. No, sir.
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1 Q Do you have -- is there any case that you can
2 think of, where, if a person committed that particular type
3 of murder, you would feel, "I must -- if I have my say about
4 it -- vote to give that person the death penalty."?

5 A Oh, no. No, sir.

6 Q Even a mass murderer of a hundred people, this
7 doesn't make you feel that that type of person should get
8 the death penalty?

9 A No.

10 Q Well, then, going back to the situation that
11 we've talked about, in this particular case, if the defendant
12 has been found guilty by you, and you are convinced that the
13 defendant is guilty of willful, premeditated, deliberate,
14 first degree murder, would you feel at that time that it was
15 your duty to bring in, in the penalty phase, a judgment of
16 death?

17 MR. KAY: Well, I'll object.

18 PROSPECTIVE JUROR NO. 4: No.

19 MR. KAY: I think it asks her to prejudge the evidence.
20 She might very well feel, at the end of the guilt phase of
21 the case, that it was her duty.

22 MR. DENNY: Well --
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7-1

1 THE COURT: Well, the answer may remain.

2 MR. DENNY: Well --

3 THE COURT: I think she understands it now.

4 MR. DENNY: All right.

5 Q BY MR. DENNY: So that, again, just to make
6 sure we are understanding each other, based on what the
7 Judge has told you since I last questioned you, you under-
8 stand that the mere finding of guilt of first degree murder
9 does not mean that the law requires you to vote for the
10 death penalty?

11 A Yes, I understand it now.

12 Q Do you feel that you would be doing your duty
13 as a juror if the circumstances were right in your view-
14 point and in your sole and utter discretion by voting
15 life imprisonment instead of the death penalty, even though
16 a person had been found guilty of first degree murder?

17 You understand that?

18 A Yes.

19 Q And if you felt it were such a case, that is, a
20 case in which the death penalty was not appropriate, and you
21 felt this was in your own being, would you have any reluc-
22 tance, any hesitancy at all, in returning a verdict of
23 life imprisonment?

24 A No.

25 Q And you would feel that you were doing your
26 proper duty as a juror in so doing; is that right?

27 A Yes.

28 Q Has anyone, either a friend, relative or close

1 personal association ever been the victim of any crime?

2 A No.

3 Q At all?

4 A No.

5 Q Or a crime of violence?

6 A No.

7 Q Now, there may be some evidence, ma'am, concerning
8 what we've referred to in recent times as hippies.

9 Do you have any feelings about the people who
10 might be described as hippies? Any feelings that because
11 they fit into this category of hippies, therefore, they must
12 be bad people?

13 A No.

14 Q Now, there also, maybe, in the course of the evidence
15 presented in this case, some testimony concerning people using
16 drugs of various kinds.

17 Now, some people automatically respond so
18 strongly to anybody using drugs that it clouds their vision
19 as to anything else. And they just simply turn red and would
20 not be able to look at the other factors that are involved in
21 judging the credibility of the witness, say, who has been --
22 has used drugs and admits using drugs. So that they couldn't
23 be fair in determining that phase of the case.

24 Do you have any such reaction?

25 A No.

26 Q To someone who uses drugs or is using drugs?

27 A No.

28 Q In other words, that might be one element that you

1 would take into account in determining whether they could
2 remember and relate what they supposedly remembered? One
3 element among a number of ones the Judge will give you in
4 how to judge the credibility of witnesses? It would not
5 automatically keep you from listening with an open mind to
6 their testimony; is that right?

7 A That's right.

8 Q Now, I asked a number of the jurors about whether
9 or not, because there are three counts here, they feel that
10 they could separately consider those three counts.

11 In effect, whether if they found the defendant
12 innocent of one count, by so doing they would sort of auto-
13 matically figure, well, he must be innocent of the other
14 counts.

15 Did you hear my questions to the other jurors on
16 that?

17 A Yes.

18 Q And I take it your answer would be the same as
19 theirs, that they wouldn't automatically do so?

20 A That's right.

21 Q And by the same token, and obviously I am most
22 interested in this, if they found the defendant guilty of
23 one count and they were convinced of his guilt on that one
24 count, that they wouldn't then, automatically, carry over to
25 the other counts and say, well, he must be guilty of that?
26 You wouldn't do that either?

27 A No.

28 Q Because the Court will instruct you, each count

1 must be considered individually and separately. Though you may
2 look at the totality of evidence, yet, certain evidence is
3 related only to one count and a certain count, and you must
4 look at the evidence relating to that particular count and
5 you must determine whether that evidence is sufficient to
6 prove the guilt of the defendant.

7 A Yes.

8 Q And you would be able to do that?

9 A Yes, sir.

10 Q And insist that the other jurors do that?

11 A Yes, sir.

12 Q Now, again, I've asked some of the jurors, that
13 it is particularly important to me to determine your own state
14 of mind, because some people are sort of bowed down or would
15 give in to the pressure of numbers against them, merely by
16 virtue of the number of people against them.

17 And it may be, in the course of your deliberations,
18 if you are seated as a juror in this case, that you would find
19 yourself in a minority; that is, perhaps, 11 to 1, even. All
20 of your fellow jurors against you. And you feel that you are
21 right and they are wrong. And obviously they feel that they
22 are right and you are wrong.

23 Would the mere fact that there were 11 of your
24 fellow jurors holding a view opposite than yours, cause you to
25 change your opinion, if you were not convinced of the merits
26 of their position?

27 A No.

28 7afls.

7a-1

1 Q By the same token, would you listen to what they
2 had to say to support their position?

3 A Yes.

4 Q Would you give them the benefit of what you had to
5 say to support your position?

6 A Yes, I would.

7 Q Do you, ma'am, have any feeling at all, a
8 defendant who is charged with a crime is probably more likely
9 to be guilty than innocent if he does not take the stand and,
10 in effect, defend himself?

11 A No.

12 Q You understand that by the constitution --

13 A Yes.

14 Q -- that he does not have to, and indeed you cannot
15 draw any inference against him, whatsoever, for his failure
16 to do so? You understand that?

17 A Yes.

18 Q And if, in this case it turns out that I, as his
19 attorney, feel that there's insufficient evidence and I don't
20 put on any evidence or I don't put him on the stand, you're
21 not going to make up any deficiency in the People's evidence
22 by my failure to call any witnesses or the defendant or any-
23 one to the stand; is that right?

24 A No.

25 MR. DENNY: All right, I'll pass for cause, your Honor.

26 THE COURT: People.

27 MR. KAY: Would this be a good --

28 THE COURT: Well, there are two or three minutes left,

7a-2

1 go ahead. Let's utilize it.

2 MR. KAY: All right, two or three minutes. I'll get
3 through my questions on the death penalty, with you,
4 Mrs. Carpenter, and then after lunch, I'll ask the questions
5 about the guilt phase of the trial.

6

7

VOIR DIRE EXAMINATION

8

BY MR. KAY:

9

Q Now, let me ask you this: Since you've been
10 in the courtroom, have you thought about the death penalty
11 and about whether or not you would want to sit as a juror and
12 assume the responsibility of deciding whether or not to vote
13 for the death penalty or life imprisonment for Mr. Davis?
14 Have you thought about that?

15

A No. I have just waited my turn to see if I was
16 called.

17

Q But you haven't thought about that at all and
18 mulled it over in your mind since you came into this courtroom?

19

A No.

20

Q Have you determined in your own mind whether or not
21 you could impose the death penalty on a defendant if you felt
22 that the evidence in the case warranted it?

23

A Yes, I have.

24

Q And what have you determined?

25

A I could.

26

Q And you're sure about that?

27

A Yes, sir.

28

Q No doubt at all about that in your mind?

7a-3

1 A No doubt at all.

2 Q And would you -- would you even consider finding
3 the defendant guilty of less than first degree murder -- in
4 other words, something like second degree murder or manslaughter
5 or even not guilty for the sole reason that you would want to
6 avoid the responsibility of determining whether or not the
7 defendant in this case, Mr. Davis, got the death penalty or
8 life imprisonment in the penalty phase of the trial; would you
9 even consider that?

10 A No.

11 Q Do you feel that any moral or religious belief that
12 you presently hold would prevent you from voting for the death
13 penalty in this case?

14 A No.

15 Q And do you now or have you ever belonged to any
16 organization, if there are any, -- I don't even know if there
17 are, but this is kind of a standard question -- any organiza-
18 tions which may be opposed to capital punishment?

19 A No.

20 Q Okay.

21 And you understand, now, as Judge Choate has told
22 you, that it is within the absolute discretion of the jury,
23 and each individual juror on the jury, as to whether or not the
24 defendant gets the death penalty or life imprisonment.

25 Do you understand that?

26 A Yes, I do.

27 Q That all twelve jurors must agree for either side.
28 In other words, all twelve must agree that he gets

7a-4

1 life imprisonment for him to get life imprisonment; or all
2 twelve must agree that he gets the death penalty for him to get
3 the death penalty?

4 If --

5 A Yes, I --

6 Q If all twelve don't agree, it is a hung jury and we
7 start all over again.

8 Do you understand that?

9 A Yes.

10 Q And do you feel that you have any close friends or
11 relatives who might be opposed to the death penalty, who
12 would try to influence you to vote for life imprisonment if
13 you sat as a juror in this case?

14 A No.

15 Q And you understand just to -- one thing that
16 Mr. Denny said -- this will be my last question, and I'll let
17 you go for lunch, if the judge will.

18 -- that at the end of the guilt phase of the trial,
19 that you might very well -- you can determine, it is within
20 your discretion to determine that based on the evidence that
21 you've heard at the guilt phase of this trial, on the murders
22 of Gary Hinman and Donald Jerome Shea, that you might very well
23 decide to give Mr. Davis the death penalty for that.

24 In other words, either side -- neither side has
25 the burden of putting on additional evidence in the penalty
26 phase of the trial. We can just get up and argue after you
27 come back with your first degree verdict. Neither side has to
28 put on any evidence. There's no burden on either side in the

7a-5

1 penalty phase of the trial; you understand that?

2 A Yes.

3 Q Okay.

4 Thank you very much.

5 All right, would it be all right if I continued
6 after lunch?

7 THE COURT: Yes.

8 You are admonished, ladies and gentlemen, those of
9 you in the box and beyond the rail, you are not to converse
10 amongst yourselves, nor with anyone else on any subject
11 connected with this matter, nor are you to form nor express any
12 opinion on the matter until it is finally submitted to you,
13 should you be chosen as a juror.

14 See you at 2:00 o'clock.

15 (Whereupon, at 12:02 the noon recess was taken.)

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LOS ANGELES, CALIFORNIA, TUESDAY, DECEMBER 7, 1971 2:14 P.M.

THE COURT: The record will show the defendant to be present; all counsel are present, and all the prospective jurors are present.

MR. DENNY: Your Honor, I would like to apologize to the Court and jury for being late and holding up everybody here. I was delayed.

THE COURT: It's rare that that happens in your case, Mr. Denny. Your apologies are accepted.

MR. DENNY: Thank you, your Honor.

MR. KAY: I believe I was about to commence --

THE COURT: Yes, you may continue your voir dire.

MR. KAY: Thank you, your Honor.

Is that me? I wondered, every time I moved the podium, why I heard the echo.

VOIR DIRE EXAMINATION OF (Continued)

DOROTHY D. CARPENTER

BY MR. KAY:

Q Mrs. Carpenter, I'm going to ask you a general question now, and you can respond to it any way you want.

Can you think of any reason why you should not or could not sit on this jury?

A No.

Q Any reason at all?

A No.

8-2

1 Q Is it your firm position that the People of the
2 State of California are entitled equally to a fair trial
3 with the defendant?

4 A Yes.

5 Q In other words, as you sit there, you don't favor
6 one side or the other at this point?

7 A No.

8 Q And do you have any sympathy for Mr. Davis, because
9 he's a defendant in this trial?

10 A No.

11 Q And did you hear the questions I asked the other
12 jurors about reasonable doubt, and about that being the
13 prosecution's burden of proof in the guilt phase of the trial?

14 A Yes.

15 Q And do you think you understood that?

16 A Yes.

17 Q Now, I notice that in the questioning of Mr. Denny,
18 you -- and I want to get your exact wording here, so I don't
19 misquote you -- you said, if we proved the defendant guilty
20 beyond a shadow of a doubt. I think you used that terminology.

21 Now, you understand, Mrs. Carpenter, that is not
22 our burden of proof?

23 A Yes, I do.

24 Q Now, it would almost be impossible for a prosecu-
25 tion in any case to prove a defendant guilty beyond a shadow
26 of a doubt, or to an absolute certainty, because when you
27 depend upon moral evidence and witnesses' testimony, you
28 just can't do that.

1 And so therefore, the law does not require the
2 prosecution to meet such a high standard. We have to just
3 prove a defendant guilty beyond a reasonable doubt and to a
4 moral certainty. Do you understand that?

5 A Yes.

6 Q And would you hold us to that burden, and nothing
7 higher?

8 A That's right.

9 Q And you understand that we have this burden in
10 all criminal cases, whether a defendant is charged with
11 running through a stop sign, which is a misdemeanor, or running
12 a red light or speeding on the freeway, or burglary or
13 robbery or rape or child molestation, or murder? That this
14 burden of proof for the prosecution is the same in every
15 criminal case, whether it be a felony or misdemeanor?

16 A Yes.

17 Q And will you hold us to any higher burden of
18 proof, because this is a murder case, rather than, say, a
19 robbery case, a burglary case, or even a traffic case?

20 A No.

21 Q And do you understand, at the beginning of a
22 criminal trial, a defendant is presumed innocent?

23 A Yes, I do.

24 Q And that's until the contrary is proven. And you
25 understand that this presumption of innocence lasts only
26 until the defendant is proven guilty beyond a reasonable doubt?

27 A Yes.

28 Q And you would follow the law in that respect?

1 A Yes.

2 Q And have you or any of your close friends or
3 relatives ever been charged with or accused of a crime, be it
4 a felony or a misdemeanor, other than a traffic offense?

5 A No.

6 Q And have you yourself, or do you know anybody who
7 has ever testified for the defense in a criminal case?

8 A No.

9 MR. DENNY: Your Honor, excuse me. I wonder if we might
10 approach the bench briefly. We don't need the reporter.

11 THE COURT: Yes, you may.

12 (Whereupon, proceedings were had at the bench
13 among Court and counsel, which were not
14 reported by the reporter.)

9 fls.

9-1

1 THE COURT: Go ahead, Mr. Kay.

2 MR. KAY: Thank you.

3 Q And, Mrs. Carpenter, my final question is: Do
4 you feel you could give the People of the State of California
5 a fair trial?

6 A Yes.

7 MR. KAY: Thank you very much.

8 I have no further questions.

9 Pass -- well, I guess -- we haven't done the
10 publicity yet, but we'll pass for cause.

11 THE COURT: Both sides having passed for cause, the
12 challenge is with the People.

13 MR. KAY: The People will thank and excuse juror No. 11,
14 Mrs. Melendez. Thank you very much.

15 THE COURT: Mrs. Melendez, thank you very much. The
16 Court appreciates your services. Your time is up as a juror?

17 JUROR NO. 11: Yes.

18 THE COURT: Pardon?

19 JUROR NO. 11: Yes.

20 THE COURT: Well, we appreciate -- when I say "we,"
21 the Court, the Superior Court, all the judges on the Superior
22 Court, appreciates your service. It is indicative to me that
23 you are a person of some responsibility that you will accept
24 jury duty, and for your last 30 days of service, the Court
25 does thank you. You are excused and thanks.

26 THE CLERK: Mrs. Mary B. Christian, M-a-r-y,
27 C-h-r-i-s-t-i-a-n.

28

VOIR DIRE EXAMINATION OF

MARY B. CHRISTIAN

BY THE COURT:

Q Miss Christian, have you been here since the Court explained the nature of this case and conversed with prospective jurors?

A Yes, I have.

Q Would it be any hardship to you to serve in this case?

A This is my second week. I understand -- I haven't proof, but I understand the company won't pay but for 30 days.

Q What company is that?

A Blue Shield. I'm with the physicians department.

Q Have you checked with them and found --

A I haven't been -- I haven't been back since I've been down here.

Q You haven't had an opportunity to call them and find out?

A No. When I left Friday, I -- the part I work in was closed. And I haven't called back.

Q Perhaps during the recess now, the coming recess, you could determine whether or not you will, in fact, be paid.

On what do you base your opinion that you will not be paid beyond the 30 days?

A I don't base my opinion -- I don't know for sure that they won't pay.

Q All right. Well, let's find out, then, before you are excused, before I excuse you on that ground of hardship.

1 The Court's impression is, from having talked to
2 other people who are from that office, who have served, that
3 they do pay beyond the 30 days.

4 Now, let's find out.

5 A All right.

6 Q Other than that, is there any hardship? Would
7 there be any hardship to you in serving?

8 A No, it wouldn't.

9 Q All right. Would your answers be any different
10 than the majority of the jurors have answered to the questions
11 that the Court put to the group, questions of a general
12 nature?

13 A No, they wouldn't.

14 Q For example, have you ever had a member of your
15 family or a close friend who has been the victim of a crime of
16 violence?

17 A Yes, I have.

18 Q All right. Well, that would be a different answer,
19 wouldn't it?

20 A That, that would.

21 Q All right. Tell us about that.

22 A Uh, sometime back my husband had a light stroke
23 and while he was in the hospital one of my sons that wasn't
24 living at home was in some type of conflict and they -- he was
25 on probation then.

26 Q Who was, the person --

27 A My son was.
28

1 Q Your son was?

2 A Yes. For a similar thing. So, he was convicted.

3 Q Your son was?

4 A Yes, he was.

5 Q Well, that's not the question I asked you.

6 I asked you whether you had a friend or a relative
7 who was the victim of the crime of violence.

8 A No.

9 Q Never had?

10 A No.

11 Q All right. Let's go back to your son. That's
12 another question.

13 You have had a member of your family convicted of a
14 crime, is that correct?

15 A Yes.

16 Q Do you think there was anything unfair in his
17 conviction?

18 A No, we -- we had tried to talk to the boy and we
19 wanted him back at home in school.

20 Q How old is he?

21 A He's 20 now.

22 Q Did that leave any resentment on your part toward
23 prosecution in general?

24 A No, it didn't.

25 Q Was there a trial in his case?

26 A Yes, it was.

27 Q Did you testify?

28 A No, I wasn't even in the country when they sentenced

1 my son. He had been in jail for some time.

2 Q I see.

3 A I was in Europe when they sentenced him.

4 Q Do you think, Mrs. Christian, that you could be
5 fair and impartial in spite of that -- in spite of that
6 conviction of your son?

7 A I think I could.

8 Q What's been your jury experience?

9 A I haven't had any previously.

10 Q No previous jury experience?

11 A (Shakes head.)

12 Q And you told us that you work for Permanente?

13 A No, I work for California Blue Shield in the
14 physicians department.

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1 Q I'm sorry, California Blue Shield, physicians
2 department?

3 A Yes, California Physician's Service, Coding Claims.

4 Q CPS?

5 A CPS.

6 Q In other words.

7 Do you work in the claims department?

8 A Yes, I do. On the -- in the Medi-Care department.

9 Q Do you make judgments as to whether a claim should
10 be honored or not, is that it?

11 A All claims are honored. There are some claims in
12 the Medi-Care department that you have to disallow certain
13 services, uh, due to diagnosis. But all claims are honored.

14 Q And you make that a part of your judgment, that
15 judgment as to whether or not this is a particular service
16 that will be paid for?

17 A Yes.

18 Q How long have you been engaged in that work?

19 A Five years.

20 Q And is there a Mr. Christian?

21 A Yes, it is. He's retired, plus he's had two
22 strokes. He isn't able to work.

23 Q He's retired from what kind of work?

24 A Higgman-Mitchell delivery man. Higgman-Mitchell,
25 of Houston, Texas.

26 Q Are you acquainted with or related to any law
27 enforcement officer?

28 A No, I am not.

1 Q And you live -- you and Mr. Christian live in what
2 general area?

3 A In the southwest section.

4 Q Can you think of any reason why you couldn't
5 be fair and impartial, and why you should not sit on this jury?

6 A No, I don't know of any.

7 Q Speaking of the death penalty, would you be of
8 such a mind concerning it that you would automatically refuse
9 to impose it in any case regardless of the evidence?

10 A No.

11 Q Or would you automatically, upon a conviction of
12 murder in the first degree, without regard to the evidence,
13 apply the death penalty or vote for the death penalty?

14 A No, I wouldn't.

15 Q So that your approach would be, even if there were
16 a conviction of murder in the first degree, assuming there were
17 a conviction of murder of the first degree, to look at the
18 evidence to determine whether, in your judgment and your
19 discretion, you should impose the death penalty or life
20 imprisonment; is that correct?

21 A Yes.

22 Q You've heard of Charles Manson?

23 A Yes, I have.

24 Q And the Manson Family?

25 A Yes, I have.

26 Q Would your views, because of what you have heard,
27 seen or read via the publicity media, the newspaper, tele-
28 vision, radio or talks with your friends or relatives concern-

1 ing Mr. Manson and the Manson Family, would your views be such
2 that you could not be fair and impartial to a person who --
3 or toward a person who may be a member of the Manson Family?

4 A No, they wouldn't.

5 Q Or even if a person were a member of the Manson
6 Family or associated with Charles Manson, you would not, by
7 reason of your views toward that Family, which you've
8 adopted one way or the other from the publicity media, you
9 would not be biased or prejudiced toward that person?

10 A No, I wouldn't.

11 Q Or biased against him or prejudiced against him;
12 is that correct?

13 A No, I wouldn't be.

14 THE COURT: All right, Mr. Denny.

15 MR. DENNY: Thank you.

16
17 VOIR DIRE EXAMINATION

18 BY MR. DENNY:

19 Q Mrs. Christian, if we dodge around
20 Mrs. Figueroa's head one way or the other -- and that's fine.

21 Ma'am, as far as your consideration of the death
22 penalty, have you spent any time up until the time that you
23 came into this courtroom and found you might be sitting
24 in what's known as a capital case or possible death penalty
25 case, had you spent any time ever reading anything about the
26 death penalty, pro or con?

27 A No, I haven't.

28

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1 Q And have you ever spent any time talking over with
2 anybody -- friend, relative, classmate -- any of the arguments
3 for or against the retention or the abolition of the death
4 penalty?

5 A No, I haven't.

6 Q Since you've come to the courtroom, have you
7 spent some amount of time thinking about the responsibility
8 that you might have by virtue of your single vote, in sending
9 a man to his death in the gas chamber?

10 A No, I haven't.

11 Q Well, you've answered the Judge a couple of
12 questions now, as to whether you would impose it or would not
13 impose it under certain circumstances.

14 Let me ask you to think about it now. And think-
15 ing about the seriousness of it and the gravity of it, would
16 you -- there are some people who, not out of religious con-
17 victions but just out of their own feelings, whatever the
18 basis of those feelings, simply would not feel that they could
19 take the life of another man in their hands and say, "I
20 sentence you to die and be killed by the State, be executed."

21 There are other people who feel that, yes, they
22 could do this.

23 Now, are you in the first category or the second
24 category?

25 A Well, I'm in the first, because I feel like I
26 could. I mean, I feel like I could, if it was a necessity
27 to do so.

28 Q A necessity to do so. All right. Now, let's get

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1 to the point of that type of case where you have gotten in
2 your mind it would be a necessity to do so.

3 Is there some kind of case that you can think of
4 where, in your opinion, because of the type of crime, or
5 because of the circumstances of the crime, you would feel that
6 it was a necessity to sentence a man to die?

7 A Well, I don't know of any, because I haven't
8 studied law, or -- and I haven't particularly paid any atten-
9 tion to any cases previously.

10 Q All right.

11 So that in this case -- and again, we are talking
12 about a hypothetical situation, as far as I am concerned;
13 because as far as I am concerned, we are not going to get to
14 it -- but assuming in this case the People have established
15 the defendant's guilt of murder in the first degree.

16 You would not feel that, simply by virtue of
17 having established his guilt of murder, and murder in the
18 first degree, that therefore he should suffer the death penalty;
19 is that correct?

20 A Not necessarily so.

21 Q Nor by the same token, would you assume that he
22 must necessarily be given life, a life sentence, if he were to
23 be found guilty of first degree murder; is that correct?

24 A No.

25 Q All right. In other words, it depends on a number
26 of circumstances, some of which you cannot even think of
27 right now; is that right? Before you would vote one way or
28 the other?

10-3

1 A Yes.

2 Q All right. Insofar as your son's conviction --
3 or convictions; I guess it is plural, you said? He was
4 already on probation for one, when he was convicted of a
5 particular offense?

6 A Yes. They were both about the same.

7 Q I'm sorry; I didn't get the last.

8 A They were both about the same.

9 Q About the same type of thing?

10 A Yes.

11 Q And was that any sort of crime of violence?

12 A No. He was riding in a stolen car.

13 Q All right. And did you have any feelings about
14 the police in connection with those arrests of your son?

15 A No, I didn't. When I returned from the hospital,
16 there was a note in the door, who to call. And I called them
17 and asked them what it was about, and they told me.

18 Q All right.

19 A And when he was apprehended, they let me know.
20 Other than that, I had no contact with them or no conference
21 with them.

22 Q So that in your mind, any dealings that you've
23 had with the police in respect to your son, at least, have
24 not influenced you against any police --

25 A No, it hasn't.

26 Q Has it, on the other hand, influenced you toward
27 the police, so that, for instance, if a policeman testified
28 you would believe his testimony as against a non-policeman,

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1 just because he is a policeman?

2 A No, it wouldn't.

3 Q Now, you've heard the questions that I asked the
4 other jurors in certain areas of law that I've discussed --
5 some questions about conspiracy, some questions about
6 accomplice, looking at accomplices' testimony with caution.

7 Do you remember those questions?

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8 A Yes.
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1 Q And questions concerning what you may have or
2 may not consider, from a defendant not offering evidence or
3 not taking the stand? Do you recall those questions?

4 A Yes, I do.

5 Q And would your questions -- would your answer or
6 answers to those questions be the same as the other jurors
7 who are presently in the box, if I were to ask you those
8 same questions?

9 A Yes, they would be.

10 Q And just specifically, insofar as this subject
11 of guilt by association, the mere fact that one may be
12 associated with people who are criminals, who commit crimes,
13 may from a layman's standpoint cause that person to feel
14 -- "Well, that person is guilty with the other people who
15 are criminals."

16 Now, do you understand, in law, that mere
17 association is not enough, in and of itself, to sustain any
18 charge against a defendant? Do you understand that?

19 A Yes, I do.

20 Q And if the evidence in this case as to any
21 particular count shows simply mere association, and no more,
22 would you have any reluctance in acquitting the defendant?

23 A No, I wouldn't.

24 Q Would you feel that you were doing your duty as a
25 juror in acquitting the defendant under circumstances of that
26 kind?

27 A Yes, I would.

28 Q And upholding your oath of office in so doing?

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1 A Yes.

2 Q Now, do you feel, for any reason whatsoever, that
3 you would not be as fair a juror in judging the guilt or
4 innocence of Mr. Davis as the type of juror you would want to
5 have sitting in the box if you were charged with the crime?

6 A Would you repeat that question?

7 Q Maybe I'll rephrase it instead of repeating it.

8 A All right. Thank you.

9 Q If you had 12 people sitting in the jury box who
10 felt like you feel, right now, do you think you'd have 12
11 fair jurors to try your guilt or innocence, if you were on
12 trial?

13 A Yes, I do.

14 MR. DENNY: Okay. We'll pass for cause, your Honor,
15 at this point other than the publicity issue.

16
17 VOIR DIRE EXAMINATION

18 BY MR. MANZELLA:

19 Q Mrs. Christian, I have just a few questions I
20 would like to ask you.

21 First of all, with regard to your son's charge,
22 you said that was riding in a stolen car?

23 A Yes, as far as I know.

24 Q And I take it some other boys were involved?

25 A The way they told it to me, yes, sir.

26 Q Did you talk to your son about the case at all?

27 A No. When I went to visit him, I asked him what
28 was his idea? And that was all, you know. And he just was

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1 reluctant. He didn't answer me direct.

2 Because I understand they were out of the state
3 when they were apprehended.

4 Q And there were some other boys involved --

5 A Yes, it was.

6 Q -- with him in that alleged auto theft?

7 Now, did you hear the questions that -- that Mr.
8 Kay asked with regard to Count III of this indictment? The
9 count which charges this defendant with the murder of Donald
10 Shorty Shea?

11 Did you hear the questions that Mr. Kay asked
12 about that count?

13 A Yes, I did.

14 Q And you know that the People will have to rely on
15 circumstantial evidence to prove the defendant's guilt of
16 that count; we will not be able to produce a body, and we
17 will not be able to produce an eyewitness to that killing.

18 Did you hear that and understand that?

19 A Yes, I did.

20 Q All right. Now, do you think it's unfair that a
21 person can be convicted of first degree murder, based upon
22 circumstantial evidence?

23 A No, I don't.

24 Q When you hear that no body has been found, and
25 if there is no eyewitness to the killing that the People will
26 be able to call as a witness, does that make you close your
27 mind to the case? And think that you don't want to hear
28 anything else; as far as you're concerned, you would have to

1 vote not guilty?

2 Or on the other hand, are you willing to wait,
3 listen to the evidence, and are you willing to be convinced
4 beyond a reasonable doubt that Donald Shea was in fact
5 murdered?

6 A Yes, I would be.

7 Q You would be willing to be convinced of that?

8 A Yes.

9 Q All right.

10 Mrs. Christian, you have been asked questions
11 with regard to whether or not you have any bias or prejudice
12 against this defendant, because of what you may have read,
13 seen or heard before this trial, in the newspapers, on
14 television, or over the radio.

15 I would like to ask you if you feel any sympathy
16 right now for this defendant, because he has been charged
17 with these two crimes, the murder of Gary Hinman and the
18 murder of Donald Shea?

19 A No, I don't.

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1 Q And if Mr. Davis testified, would you judge his
2 credibility by the same standard that you would judge the
3 credibility of any witness who testifies in the case?

4 A Yes, I would.

5 MR. MANZELLA: All right. Thank you, Mrs. Christian.

6 The People pass for cause, your Honor.

7 MR. DENNY: Your Honor, may we approach the bench a minute
8 with the reporter?

9 THE COURT: Yes, you may.

10 (Whereupon, the following proceedings were had at
11 the bench among Court and Counsel, outside the hearing of the
12 prospective jury panel:)

13 MR. DENNY: Judge, I've indicated, without the reporter
14 being present, that I was going to challenge peremptorily
15 juror No. 4.

16 THE COURT: Yes.

17 MR. DENNY: This, however, is before the opportunity
18 to examine her concerning publicity. And I -- frankly, I
19 doubt that I'm going to find that she knows much about the case,
20 from her answers to other questions. But I would like to be
21 given that opportunity --

22 THE COURT: To examine her?

23 MR. DENNY: Yes, to see if she's challengeable for
24 cause, before using a peremptory --

25 THE COURT: All right.

26 MR. DENNY: -- challenge on her. And I think as long as
27 we have got two of them in that category, now would be a good
28 time to shift to --

1 THE COURT: To cause the others to leave?

2 MR. KAY: Yes, that's fair.

3 THE COURT: All right.

4 (Whereupon, the following proceedings were had
5 in open court, within the presence and hearing of the
6 prospective jury:)

7 THE COURT: Ladies and gentlemen, we will ask you to
8 leave at this time, and go out in the hallway to wait until
9 we'll be calling you.

10 Don't converse about the case with anyone during
11 the time that you are outside.

12 Let's see. I'll ask Mrs. Carpenter and
13 Mrs. Christian to remain.

14 (Whereupon, the following proceedings were had at
15 the bench among Court and Counsel, which were not reported
16 by the reporter.)

17 (Whereupon, the following proceedings were had in
18 open court, within the presence and hearing of prospective
19 jurors Carpenter and Christian:)

20 THE COURT: Would you wait outside the door,
21 Miss Christian? We'll talk to Mrs. Carpenter alone.

22

23 VOIR DIRE EXAMINATION OF

24 DOROTHY CARPENTER

25 BY THE COURT:

26 Q Mrs. Carpenter, what we wish to know from you is
27 what you may have heard, seen or read from television, radio,
28 newspaper, from any source, about this case, prior to the time

1 that you came to the court on Friday, and I read the
2 indictment to you.

3 Do you understand?

4 A Have I read about it before?

5 Q Now, do you understand the question?

6 Do you understand what we want to find out?

7 A Yes.

8 Q All right. Had you heard about this case prior
9 to Friday?

10 A No, I hadn't.

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1 Q Had you ever heard the name Bruce Davis prior to
2 Friday?

3 A No.

4 Q Had you heard the name Charles Manson?

5 A Yes, I've heard that one.

6 Q And was that in connection with the Tate-La Bianca
7 matter?

8 A I just remember hearing the name. I don't know
9 what it was in connection with.

10 Q You don't know whether Charles Manson is a football
11 player, a ballet dancer or what?

12 A No, I don't.

13 Q Is that correct?

14 A That's correct.

15 Q Did you ever hear about a homicide involving
16 Sharon Tate?

17 A Yes, I heard about that.

18 Q What did you hear about that homicide?

19 A Well, I didn't pay that much attention to it,
20 your Honor. I mean, I heard about it, but -- it didn't
21 impress me in any way.

22 MR. DENNY: Your Honor, I think we can cut the examina-
23 tion short at this point. I would seek at this time to
24 exercise my peremptory challenge as to this juror.

25 THE COURT: Very well, thank you, Mr. Denny.

26 All right, Mrs. Carpenter, we'll ask you to
27 resume your place outside, then.

28 JUROR NO. 4: All right.

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1 THE COURT: Unless we -- let's see.

2 MR. DENNY: I think I can exercise it at this time,
3 your Honor, and have her excused.

4 THE COURT: Pardon me?

5 MR. DENNY: I expect -- it is my next challenge.

6 THE COURT: Do the People wish to have any further
7 examination of Mrs. Carpenter?

8 MR. KAY: Certainly not, if Mr. Denny is going to
9 exercise a peremptory challenge.

10 THE COURT: All right, the next peremptory is with the
11 defendant.

12 MR. DENNY: The defendant would ask to thank and
13 excuse juror No. 4, Mrs. Carpenter. Thank you, ma'am.

14 THE COURT: Thank you, Mrs. Carpenter. The Court
15 does excuse you. You are excused for the day. You need not
16 report until tomorrow -- well, let's see. She may get an
17 extra day, a day free, if she goes back to the 15th floor.

18 Go to the 15th floor of the New Hall of Records,
19 if you would, please.

20 Let's take another name.

21 Thank you, Mr. Denny.

22 I must say that that -- while the interest in
23 Mr. Manson or the Manson Family has waned considerably,
24 that's the first juror I know of who had not heard of Charles
25 Manson or the Tate-La Bianca case.

26 THE CLERK: Mrs. Carmen Gonzalez, C-a-r-m-e-n, last
27 name, G-o-n-z-a-l-e-z.

28 THE COURT: We don't need her in the box at this moment.

1 Let's call Mrs. Christian in.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Mrs. Christian, just take that seat where
4 the microphone is, will you, and take the microphone in hand.
5

6 VOIR DIRE EXAMINATION OF

7 MRS. MARY D. CHRISTIAN

8 BY THE COURT:

9 Q The Court wishes to inquire of you whether you
10 have previously, whether you had previously heard, seen or
11 read or talked about with anyone, the -- this case?

12 Have you heard, seen or read anything about this
13 case?

14 A Uh, when it first happened, none other than look-
15 ing at the headlines of a paper when we come out of work or --
16 and when I go home.

17 Q Well, when you say, "When it first happened,"
18 what do you mean by that?

19 A When it was first published in the newspapers.

20 Q How long ago?

21 A I can't recall when it happened.

22 Q I mean a month or --

23 A Oh, no, no.

24 Q Are you talking about the case involving Charles
25 Manson?

26 A Yes.

27 Q And wherein Sharon Tate was killed?

28 A Yes, yes.

1 Q And you're talking about the multiple killings?

2 A Yes.

3 Q In which Charles Manson and some other persons
4 were tried in this court?

5 A That's the one I'm speaking of.

6 Q That's the one you are speaking of?

7 A Yes.

8 Q What I am speaking of, however, is this indict-
9 ment that I read to you on Friday which has Mr. Manson as
10 a co-defendant with Mr. Davis.

11 A No, I know nothing of this case.

12 Q You never heard of this case?

13 A No.

14 Q Had you ever heard the name Davis?

15 A No, I hadn't.

16 Q Had you ever heard the name Gary Hinman?

17 A Yes, I had heard that over the news.

18 Q Pardon?

19 A I've heard that name over the news.

20 Q When was the last time you heard it, that you can
21 remember?

22 A It's been some time. I don't remember when.

23 Q Well, a month, days, weeks?

24 A Months.

25 Q Months?

26 A Yes.

27 Q And what do you know about that name?

28 A None, other than they were talking about it.

1 Q They who?

2 A The death of the -- the newscast.

3 Q Talking about Gary Hinman's death?

4 A Yes.

5 Q Well, what do you remember about what they said?

6 That's what we want.

7 A Really, I didn't pinpoint it. I was in the
8 kitchen cooking. I just happened to hear the news. My
9 husband had it on.

10 Q And you remember somebody saying that Gary Hinman
11 was dead?

12 A Yes.

13 Q Is that right?

14 11a fls. A Yes.

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1 Q All right. Now, you don't remember anything about
2 who was accused of the murder?

3 A No, because I didn't even know the man. I just
4 heard the name. Just associating the name.

5 Q I see.

6 Now, another name I want to ask you about is
7 Shorty Shea.

8 Before I read to you the third Count in this
9 indictment on Friday, had you heard the name Shorty Shea?

10 A Yes, in that same newscast.

11 Q Same newscast?

12 A Yes.

13 Q All right. Do you recall any of the facts con-
14 cerning Shorty -- this Shorty Shea news report?

15 A No. No, I don't.

16 Q Do you know the name Manson Family?

17 A Yes. Just --

18 Q All right. What do you know about that Manson
19 Family?

20 A All I know, just the name. That's all I am
21 associating it with, the name. Because I don't know one from
22 the other.

23 Q Well, are they -- what is the Manson Family to
24 you?

25 A To tell you the truth, I don't know.

26 Q You don't know whether they're a basketball team
27 or not?

28 A Well, I know they're not a basketball team.

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Q Well, then, what are they?

A I don't know.

Q Well --

A Just some type of leader. I don't know.

Q You associate the people with Charles Manson?

A That's all I can do.

Q All right.

Have you ever heard of anything of a racial nature involving the Manson Family, about the time of this Tate-LaBianca trial?

A No, I don't know.

Q Let me ask you this: You don't appear to know much about it, but you -- there may be something that's in your memory that you cannot now dredge up for us.

I will ask you whether or not you will set aside anything that you may remember later, and whether you will set aside -- not forget, but set aside anything that you may have learned about the Manson Family or this case or Charles Manson and decide this case independently, basing your judgment only on the evidence that's presented here and the Court's instructions of law; can you do that?

A Yes, I can.

Q Will you do that?

A I will.

Q Do you have any doubt about your ability to set aside such material that you may have heard, seen or read?

A No, I have no doubt.

Q Very well.

1 And will you be fair and impartial?

2 A I will.

3 THE COURT: Mr. Denny,

4 MR. DENNY: Yes.

5

6 VOIR DIRE EXAMINATION

7 BY MR. DENNY:

8 Q Mrs. Christian, you say that this newscast that
9 you heard and somewhat dimly remember, was a newscast in which
10 both Gary Hinman and Shorty Shea were mentioned within the
11 same program; is that correct, to the best of your knowledge?

12 A I guess so, because my husband have on the news
13 practically every evening, and if the kitchen door is open,
14 certainly I hear some of it. I don't know whether it was in
15 the newscast -- on the same newscast or not. But I do remember
16 hearing the names. I can't associate them with the same news-
17 cast, because I can't even recall nor a date.

18 Q Well, that's what I was going to get at.

19 And that is, does it seem to you that you recall
20 this newscast sometime recently, within, say, the last two
21 months or the last month; is it that fresh in your mind?

22 A No. No, it isn't that fresh because usually for
23 the last month or so I've worked overtime and when I come in,
24 I'm in a hurry. Usually I'll shut the door between the
25 dining room and the kitchen, if I am preparing dinner, to try
26 to keep some of the steam and smoke out.

27 Q I see.

28 Now, this gets a little into some of your earlier

1 answers, but I would like to relate it to this publicity
2 issue in just a minute.

3 You've said your husband has had a couple of
4 light strokes, is that correct?

5 A Yes, he has.

6 Q Is he essentially confined to the home?

7 A He's not paralyzed. He can walk. He can get
8 about, but his gait of ambulating is not like the normal
9 individual. He can't lift his feet as high as anyone else.
10 He kind of drags.

11 Q All right. Does he spend a good deal of time
12 watching TV?

13 A Yes, he does.

14 Q And watching the TV news?

15 A Yes, he does.

16 Q And does he discuss that with you, since
17 apparently you're off working in the kitchen?

18 A No. My husband's memory is so bad, I don't think
19 he would hardly remember it at the end of the day unless
20 something else come back to remind him of something.

21 Q I see. Now, have you ever read or heard anything
22 about Charles Manson's supposed philosophy about black people
23 or white people?

24 A No, I haven't.

11b fol

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Q And does the name Steven Grogan, does that ring a bell with you at all?

A No, no.

MR. DENNY: All right, I'll pass for cause.

THE COURT: Any questions, gentlemen?

MR. KAY: No questions on publicity, your Honor.

THE COURT: And I think that was the sole remaining inquiry for cause.

Both sides pass for cause?

MR. MANZELLA: Yes, your Honor.

MR. DENNY: Yes, pass for cause.

THE COURT: It is the People's peremptory challenge.

MR. KAY: No, your Honor, I believe we have to start questioning Carmen Gonzalez, because the defense exercised the peremptory and nobody has questioned Mrs. Gonzalez as of yet.

THE COURT: Correct. Correct. Let's have Mrs. Gonzalez in, and for the nonce, we will examine her, unless you gentlemen wish to do otherwise?

MR. KAY: That's fine.

MR. DENNY: That's fine. We can take publicity and general --

THE COURT: Yes.

Mrs. Gonzalez.

And you may rejoin the group, if you would, Mrs. Christian.

MRS. CHRISTIAN: Okay.

11b-2

VOIR DIRE EXAMINATION OF

MRS. CARMEN GONZÁLEZ

BY THE COURT:

Q Mrs. Gonzalez, we would like to inquire of you whether you were present when the Court explained the nature of this case and read the indictment?

A Yes.

Q Would it be any hardship to you to serve in this case?

A No.

Q What type of work do you do?

A I'm a palletizer operator at the American Can Company.

Q I don't understand that.

A It is a --

Q Get the microphone up.

A A palletizer is --

Q Palletizer?

A Right. You pack cans by layers.

Q So you put cans on pallets?

A Right.

Q And for what company?

A American Can Company.

Q Where is that?

A On Santa Fe Avenue in Vernon.

Q In Vernon?

A Yes.

Q Is there a Mr. Gonzalez?

11b-3

1 A No, I am divorced.

2 Q How long have you been doing this work?

3 A 29 years.

4 Q 29 years putting cans on pallets, is that right?

5 A Well, not really. I packed. I packed cans and
6 I worked on presses.

7 Q All right. Have you served as a juror before in
8 any type of case?

9 A No.

10 Q Are you related to or a friend of any law
11 enforcement officer?

12 A No.

13 Q In what -- in what area do you reside?

14 A On the southeast --

15 Q Southeast Los Angeles?

16 A Right.

17 Q Can you think of any reason why you couldn't be
18 fair and impartial in this case?

19 A No.

20 Q Would your answers be any different than the
21 majority of jurors have responded to the questions that I have
22 put to them as a whole or put to the individual jurors in
23 your group?

24 A No.

25 Q For example; Has anyone in your family ever been
26 the victim of a violent crime?

27 A No.

28 Q Or has anyone -- have you or anyone in your

1 family ever suffered an arrest?

2 A No.

3 Q Remember that series of questions that I asked?

4 You don't think of any answers wherein yours
5 would be different than the majority have responded; is that
6 right?

7 A Right.

8 Q All right. Regarding the death penalty, do
9 you have such views about it that you could not be fair and
10 impartial in determining guilt or innocence in the first
11 phase?

12 A No.

13 Q You understand what I am saying?

14 A Yes.

15 Q Now, understanding what I have said, now, and
16 talking again about the death penalty, would you have such
17 views about it that you would not be able to be fair in
18 judging any question that might be presented to you?

19 A Excuse me?

20 Q On the issue of guilt or innocence?

21 A No.

22 Q All right.

23 Do you have such views about the death penalty
24 that you would automatically refuse to impose it regardless
25 of the evidence?

26 A No. I'd have to make sure.

27 Q Make sure of what?

28 A That he was guilty.

1 Q That he was guilty?

2 A (Nods head.)

3 Q Well, do you understand that just because he's
4 guilty of the -- just because he's guilty, if he should be
5 guilty of murder of the first degree, it does not mean that
6 the law requires the imposition of the death penalty?

7 A No, I understand that.

8 Q You understand that?

9 A Yes.

10 Q And when you enter the second phase, then, it
11 becomes a matter of your discretion in the -- in that penalty
12 phase as to whether or not the death penalty is imposed,
13 and you can look at all of -- you may look at all of the
14 facts surrounding the case, --

15 A (Nods head.)

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1 Q -- all of the facts presented in the course of
2 the trial or you may look at none of them, depending on what
3 your discretion is, in order to make a determination.

4 Do you understand that?

5 A Yes.

6 Q All right.

7 Now, would you automatically refuse to impose the
8 death penalty regardless of the evidence, then?

9 A No.

10 Q Or would you, upon a conviction of murder in the
11 first degree, simply vote automatically for the death
12 penalty?

13 A No.

14 Q Would you look at the evidence before you made any
15 decision?

16 A Yes.

17 Q Have you heard, seen -- had you heard, seen or
18 read about this case before you came into court on Friday and
19 heard me read the indictment?

20 A No. I just heard, but I never paid attention to
21 it.

22 Q Had you heard of this particular indictment, this
23 allegation -- these allegations of crime?

24 A No.

25 Q You never had?

26 A (Shakes head.)

27 Q What had you heard? Had you heard about Charles
28 Manson's previous case, is that it?

11c-2

1 A No, I -- I never paid attention to it. I never
2 even heard it.

3 Q Had you ever heard Mr. Davis's name?

4 A No.

5 Q Had you ever heard the name Steven Grogan?

6 A No.

7 Q Bobby Beausoleil? Robert Beausoleil?

8 A No.

9 Q Have you heard the name Manson Family?

10 A I heard the name Manson Family but I never paid
11 attention to it. I wasn't interested in it.

12 Q Do you know who Charles Manson is?

13 A No.

14 Q In what connection did you hear the name Manson?

15 A Well -- like, friends in the rest-room or the
16 locker room.

17 Q Yes.

18 A And something happens, and -- but I didn't pay
19 attention to what they were saying.

20 Q Well, do you look at television news reports?

21 A No.

22 Q You don't.

23 Do you listen to the radio news reports?

24 A No, I don't.

25 Q Not even in Spanish?

26 A No, I don't.

27 Q You don't listen to Station KWKW, KWKW?

28 A No.

11c-3

1 Q No.

2 Well, how do you -- by what means do you learn
3 what's going on in the world, if you do?

4 A Well, I really don't, your Honor. I come home from
5 work and I have work to do and I occupy myself with my parrot and
6 my dishes or washing and getting ready for the next day. I'm
7 really too tired to listen to anything.

8 Q Do you speak Spanish, generally?

9 A No, I speak English, mostly.

10 Q With your fellow workers?

11 A No, it is all English.

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1 Q And around your home, you speak only English?

2 A Only to my father, to my -- my father's the only
3 one that talks Spanish.

4 Q He's the only one who talks Spanish to you; is
5 that right?

6 A No, I don't talk Spanish at all.

7 Q Well, have you conversed with your friends or
8 relatives and heard the name Charles Manson?

9 A No.

10 Q Do you know of any reason why you couldn't be fair
11 and impartial toward Mr. -- toward both sides? Why you
12 couldn't be fair toward both sides?

13 A No.

14 THE COURT: You may examine, Mr. Denny.

15 MR. DENNY: Thank you.

16 THE COURT: Mr. Duncan, what were you waiting for?
17 Anything I can help you with?

18 (Proceedings had on unrelated matters.)

19 THE COURT: All right. Back to Mrs. Gonzales.

20

21 VOIR DIRE EXAMINATION

22 BY MR. DENNY:

23 Q Mrs. Gonzales, I understand that your husband --
24 you are divorced; is that right?

25 A Yes.

26 Q And you live by yourself, then?

27 A Yes. No, well, I have a daughter in college, and
28 a son --

1 Q Well, do they live with you?

2 A Yes, but they're not -- they're not minors.
3 Well, my daughter is, she's 20.

4 Q There's a question of whether or not that's
5 a minor or not, at this day and age, with the laws that are
6 being passed. But we'll skip that.

7 Be sure to hold that microphone up to your mouth,
8 if you would, please.

9 Now, do they watch television in the home with
10 you?

11 A My daughter doesn't live with me. She's in
12 college.

13 Q And your son?

14 A And my son -- well, he reads, but -- but when a
15 man gets a hold of a newspaper, he doesn't come until he gets
16 ready.

17 Q Well, some do. He doesn't?

18 A No, he doesn't like to be bothered.

19 Q That's typical of a number of men, reading news-
20 papers.

21 And do I understand, then, that you simply have
22 sort of cut off yourself from the news of the day?

23 A Yes, I have. Ever since he went into the Service,
24 I just quit it, because I didn't like to hear it.

25 I look at TV. I mean, I have programs, like
26 Medical Center, or -- or Dr. Welby, or -- some of my favorite
27 programs, I do look at.

28 Q But they're not news programs or current events

1 programs, --

2 A No.

3 Q -- is that right? And you say "Ever since he went
4 into the Service." Is that your son you're talking about?

5 A Yes.

6 Q And how long ago was that?

7 A About five years.

8 Q So that you don't even get a paper, a newspaper,
9 yourself, on occasion and read it?

10 A No.

11 Q Or the Sunday paper and look at it?

12 A I look at the recipes.

13 Q All right. Well, where would you say you get any
14 news of the day?

15 A Oh, I hate to say this, but you know, you really
16 don't need any news of the day.

17 I mean, when you're working like I work, and you
18 come home and you're tired, and you have ironing to do, or to
19 get yourself ready for the next day, or my parrot or things I
20 have to do, I -- I don't really look into it.

21 THE COURT: Did you say your parrot?

22 PROSPECTIVE JUROR NO. 4: Yes. I have a parrot.

23 Q BY MR. DENNY: Well, you did say that you heard
24 something at one time discussed among your fellow workers
25 concerning these murders that occurred a couple of years
26 ago; is that right?

27 A I don't remember when, but -- you know, as you are
28 going by, or like -- I could be walking in the hall and hear

1 something.

2 But actually, I didn't say, "What happened?"

3 MR. DENNY: All right. I have no further questions on
4 that particular subject, your Honor.

5 I wonder if the Court wants us to go into the
6 death penalty and the other areas at this point.

7 THE COURT: Let's have the balance of the panel in before
8 we do that, gentlemen.

9 Do you want to ask Mrs. Gonzales anything about
10 publicity?

11 MR. KAY: No, your Honor.

12 MR. MANZELLA: No.

13 THE COURT: All right. Then let's --

14 MR. DENNY: Are we going to take a recess, your Honor?

15 THE COURT: Yes, I suppose. We'll take -- shall we take
16 just about five minutes?

17 MR. DENNY: That's fine.

18 THE COURT: And let's get the balance of the panel in.

19 You may be excused, Mrs. Gonzales. Don't talk
20 amongst -- don't talk with your fellow jurors or with anyone
21 about the case.

22 PROSPECTIVE JUROR NO. 4: Yes, sir.

23 (Mid-afternoon recess.)
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1 THE COURT: The record will show that all jurors are
2 present; that the defendant is present, and that all counsel
3 are present.

4 Gentlemen, you may examine Mrs. Gonzalez.

5
6 VOIR DIRE EXAMINATION OF
7 CARMEN GONZALEZ

8 BY MR. DENNY:

9 Q Mrs. Gonzalez, with the machines running, I'll
10 use this mike, instead of just talking -- because I've also
11 got kind of a scratchy throat -- and I hope you'll excuse me.

12 Now, you have been here since Friday and heard
13 most of the questions I've asked of the other jurors; is
14 that correct?

15 A Yes.

16 Q And often questions asked by one side or the other
17 bring to mind questions that have not been asked. Many of the
18 jurors have been asked whether they'd have any sympathy for
19 the defendant, because he was charged with a crime, and their
20 answers have been: No, that they wouldn't.

21 And I take it your answer would be the same;
22 is that correct?

23 A Yes.

24 Q And the reverse side of that coin is: Whether
25 you have any feelings against him at this point --

26 A No.

27 Q -- because he has been charged with a crime?

28 A No.

12a-2

1 Q In other words, the fact that there is in this
2 case an indictment, which has been returned by a Grand Jury,
3 you understand that's not evidence of his guilt, and that
4 piece of paper there -- and whatever's on that piece of paper
5 -- can't be considered by you as evidence at all; and you
6 would not do so or be swayed by the fact that that's there,
7 in existence, as a charge, would you?

8 A No.

9 Q Unless the People prove that charge, to the degree
10 that we've already talked about: beyond a reasonable doubt and
11 to a moral certainty?

12 A Yes.

13 Q All right, I was about to say, "This is a murder
14 case." This is a case in which two murders are charged.
15 And murder is never nice. Murder is always messy.

16 Now, there are some people who, sitting on a jury,
17 would tend to feel sympathy for the victim of the murder,
18 say, and this would automatically make them feel hostility
19 toward someone charged with that murder.

20 Now, you haven't heard how any murder is supposed
21 to have been committed or any alleged murder is supposed to
22 have been committed in this case, so you don't know the facts
23 yet, and I'm not asking you to prejudge the facts.

24 But I'll have to let you assume, at least, some
25 sort of nasty type of murder. And a person is dead because
26 of that.

27 And as counsel has mentioned, in the case of Mr.
28 Hinman, there is a body -- a dead body, and not a very nice

12a-3

1 dead body.

2 Now, do you think, as you sit there now, and as you
3 can feel now, knowing only that much, that you would have any
4 such feelings, knowing just that? Such feelings of sympathy
5 for the decedent there, the victim, --

6 MR. KAY: Well, I'm going to object to that as being
7 irrelevant, your Honor.

8 MR. DENNY: I haven't finished the question.

9 MR. KAY: Well --

10 MR. DENNY: It may or may not be.

11 THE COURT: Let Mr. Denny finish.

12 MR. KAY: I'm sorry. I thought he had finished.

13 MR. DENNY: No.

14 Q (Continuing) -- so that you would not be able to
15 be fair in judging this defendant's guilt or innocence, in
16 connection with the charge of that murder?

17 MR. KAY: I'll withdraw my objection.

18 Q BY MR. DENNY: Do you have any such feelings?

19 A No.

20 Q All right. Now, again, this concerns -- and I'm
21 not going to go over all of the things that I have gone over
22 before, with all of the other potential jurors, but there are
23 a couple of things that I am particularly interested in, as
24 far as you are concerned.

25 First, on this issue of guilt by association,
26 do you understand that "association" with even guilty people,
27 if that's all that the People can prove, is not enough to
28 make a person guilty of any offense charged against him; do

12a-4

1 you understand that?

2 A Yes.

3 Q And if the evidence in this case shows that Mr.
4 Davis did associate with people, even if you find that those
5 people were guilty of a crime -- but that's all it shows --
6 you would have no reluctance in voting to acquit him; is
7 that correct?

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8 A Yes.

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1 Q And if indeed, again, the evidence might show that
2 Mr. Davis did something that helped some people commit a
3 crime, but that he had no guilty knowledge or no guilty
4 intent or didn't share any criminal intent in so doing --
5 you understand that the law is that simply doing an act, but
6 without the requisite guilty knowledge, is not enough, in and
7 of itself, to convict someone of a crime?

8 Do you understand that?

9 A Yes.

10 Q So that if that's all that the People were able
11 to show in this case, in connection with Mr. Davis, would you
12 have any reluctance whatsoever in returning a not guilty
13 verdict?

14 A No.

15 Q Now, there have been some questions, too, as to
16 whether you would -- well, not specifically as to you, but as
17 to other jurors -- as to whether they would give any greater
18 or lesser weight to the testimony of a police officer, merely
19 he was a police officer.

20 That's fine. Thank you.

21 And thank you, Mr. Manzella.

22 And I take it your answer would be the same as
23 the other jurors'? That you understand police officers are
24 human; they can err; they can lie, just like any other
25 witnesses; is that correct, --

26 A Right.

27 Q -- as far as you are concerned?

28 And you'll judge their credibility by the same

1 standards as you judge the credibility of any other witness;
2 is that right?

3 A Yes.

4 Q And if people appear as witnesses for the
5 prosecution, or people appear as witnesses for the defendant,
6 I take it you won't automatically feel that witnesses appear-
7 ing for the prosecution are more likely to be telling the
8 truth than witnesses appearing for the defense, if any do
9 so appear? Or more likely to be lying? That's not in your
10 mind, is it?

11 A No.

12 Q All right. Now, as to this issue of the death
13 penalty, the Court asked you generally about your feelings
14 there.

15 Have you, before coming into this courtroom on
16 Friday, done any reading in the field on the subject of
17 either the retention or the abolition of the death penalty,
18 or the pros or cons for or against the death penalty?

19 A No.

20 Q Have you ever discussed it with anyone?

21 A No.

22 Q And since coming into the jury room, have you
23 given some -- a good deal of consideration to the questions
24 that other jurors have been asked to answer concerning their
25 views on the death penalty -- or, their ability to vote to
26 impose it, under certain circumstances?

27 Have you given any thought to that?

28 A No.

1 Q Well, would you give some thought to it now?

2 A Yes.

3 Q Because it's important to know how you feel
4 about this, and for those of us who are going to be trying the
5 case, to know how you feel about it.

6 Now, are you the type of person who simply, for
7 whatever reason, does not feel that you can take the life of
8 another person in your hands and, in effect, say, "Because of
9 my vote, you will die; you will be executed. Your life will
10 be taken by the State, by the administration of lethal gas
11 in the gas chamber."

12 Or do you feel that you could do that? That you
13 could take that person's life in your hands and, by your vote
14 and your single vote, cause him to be executed?

15 A If they proved it -- I mean, if the evidence said
16 it was so, and I was sure, myself, in my own mind.

17 Q Well, this is interesting, Mrs. Gonzalez, because
18 this is the second time you've given an answer very, very
19 similar to that -- the first time in response to the Court's
20 question, which was not quite that graphic -- but each time,
21 you've said, "If they proved it."

22 Now, what do you mean, "If they proved it"?

23 A Well, if he was actually guilty. If he did do
24 it, or whatever.

25 Q Well, "whatever" is very broad.

26 A Well, if there is evidence he did it, then I
27 could say yes.

28 Q All right. Then you could vote to impose it; is

1 that what you are saying?

2 A Yes.

3 Q If they had proved it beyond a reasonable doubt
4 and to a moral certainty, --

5 A Yes.

6 Q -- is that what you are saying?

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A Yes.

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1 Q Now, you understand that unless they prove the
2 charge, unless they prove that the defendant was guilty of
3 first degree murder, and unless they prove it beyond a
4 reasonable doubt and to a moral certainty, you must acquit the
5 defendant; do you understand that?

6 A Yes.

7 Q And that you would then never get to the second
8 phase of the trial, you would never get to a vote on life or
9 death as a punishment; do you understand that?

10 A Yes.

11 Q Now, assuming, then, that the People had
12 established -- and again this is a hypothetical situation,
13 but assuming that they have established that the defendant is
14 guilty and they have established it as far as you are concerned
15 beyond a reasonable doubt and to a moral certainty that he is
16 guilty of first degree murder, we'll assume willful, deliberate,
17 premeditated first degree murder.

18 Now, you're saying, then, you could vote to
19 impose the death penalty? You have told us that; is that
20 correct?

21 A Yes.

22 Q Would you do so automatically?

23 A If it was proven, like I told you. I mean, like
24 you said, if there was reasonable doubt, I don't really know
25 your words you use, but the way you put it at the end, I would.

26 Q Well, I want you to be very sure about the words
27 that I am using and that we are communicating.

28 A I understand you, but I can't use the words back on

13-2

1 you.

2 Q Well, use your own words, ma'am, because that's --
3 those are good enough tools in this courtroom.

4 But let me again ask you:

5 Assuming, now, that you had been convinced beyond
6 a reasonable doubt and to a moral certainty the defendant was
7 guilty of murder, willful, premeditated, deliberate murder in
8 the first degree.

9 You have said, then, you could impose the death
10 penalty; that is correct? Is that so?

11 A No, I wouldn't impose it.

12 Q If he were guilty of first degree murder?

13 A Yes.

14 Q Then, you said you could impose the death penalty
15 if he were guilty of first degree murder, is that correct?

16 A I don't understand the word "impose." That means --

17 Q Vote --

18 A -- against --

19 Q -- to give him --

20 No, I'm sorry, if you don't understand the word,
21 that's fine. Let me know and I'll change it.

22 A I don't understand the word "impose."

23 Q All right. If you had found with your fellow
24 jurors, that in your own mind you had found that he was guilty
25 of willful, premeditated, deliberate murder of the first
26 degree, then you stated you could vote the death penalty against
27 him?

28 A Yes.

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1 Q Is that right?

2 A Yes.

3 Q Would you do so automatically, having found him
4 guilty of willful, premeditated, deliberate murder in the first
5 degree?

6 A Yes, if it were -- yes.

7 I don't understand the last -- will you repeat what
8 you told me, the last there?

9 Q Yes.

10 I'm certainly not trying to trap you or use words
11 that you don't understand. So let me rephrase it again.

12 Let us assume that you are one of the jurors who
13 has heard all of the evidence and you've voted with your other
14 jurors that he is guilty of murder in the first degree, because
15 you are satisfied that the People have met their burden of
16 proof and that he is guilty. And you find him guilty of
17 willful, premeditated, deliberate murder in the first degree;
18 okay?

19 A Yes.

20 Q And so you are sure of that in your own mind; you
21 are convinced of it.

22 All right. Now, you have said a little earlier
23 that that being the case, you could vote for the death penalty
24 against him; is that right?

25 A Yes.

26 Q Would you vote for the death penalty against him
27 automatically, having thus found him guilty of murder in the
28 first degree?

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1 A Yes.

2 MR. DENNY: Well, your Honor, I do think that under the
3 circumstances, the challenge under 1073, Subdivision 2, is
4 in order.

5 MR. MANZELLA: May I inquire, your Honor, briefly?

6 THE COURT: Yes, you may inquire. It would appear to be
7 a good challenge, but the Court will allow you to inquire.

8 MR. MANZELLA: I'll withdraw my request.

9 THE COURT: The Court will grant the challenge. The
10 Court will excuse you, Mrs. Gonzales, and thank you very much.

11 Room -- let's see, it is not a room, it is the 15th
12 floor.

13 Well, you needn't report to the 15th floor.

14 When can she report for duty in Room 253?

15 THE CLERK: Tomorrow.

16 THE COURT: Would you report tomorrow at 9:00 o'clock,
17 Room 253?

18 MRS. GONZALES: All right.

19 THE COURT: That's the jury assembly room.

20 MRS. GONZALES: Yes.

21 THE COURT: Over at 111 North Hill.

22 Thank you.

23 Do you have more jury duty left?

24 MRS. GONZALES: Yes.

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13a-1 1 THE COURT: Pick another name for Mrs. Gonzalez'.

2 MRS.GONZALEZ: I don't need a ticket or paper?

3 THE COURT: Thank you, Mrs. Gonzalez.

4 THE CLERK: Paul Cohen, C-o-h-e-n.

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6

VOIR DIRE EXAMINATION OF

7

MR. PAUL COHEN

8

BY THE COURT:

9

Q Mr. Cohen, you have been present in the proceedings since Friday?

11

A Yes.

12

Q Would your answers be any different than the majority of the jurors have responded to the Court's questions put to the group as a whole or put to various individual jurors whom you've heard questioned?

16

A No.

17

Q Would it be any hardship to you to serve as a juror in this case?

19

A Yes.

20

Q Tell us about it.

21

A Uh, I've been unemployed for the past 13 or 14 months, and I've had approximately three months of work in the last year. So it would be about three months' work in the past 18 or 19 months.

25

When I accepted jury duty, I assumed I would put in approximately 20, or 30-days maximum, but this would make an additional hardship that I could not --

28

Q It would restrict you from finding a job?

13a-2

1 A Yes.

2 Q Looking for a job?

3 A Yes, right.

4 Q And you need the earnings in order to support
5 yourself and your family or yourself?

6 A Just myself.

7 Q I see.

8 Gentlemen?

9 MR. MANZELLA: So stipulate.

10 MR. DENNY: So stipulate.

11 THE COURT: The gentlemen have stipulated that you may
12 be excused. The Court agrees that would be an unusual hard-
13 ship, and, therefore, you are excused.

14 JUROR NO. 4: Thank you.

15 THE CLERK: Robert P. Credit, C-r-e-d-i-t.

16
17 VOIR DIRE EXAMINATION OF

18 ROBERT P. CREDIT

19 BY THE COURT:

20 Q Mr. Credit, were you present when the Court
21 explained the nature of this case?

22 A Yes, I was.

23 Q And questioned the prospective jurors?

24 A Yes, I was, your Honor.

25 Q Would your answers be any different than the
26 majority have responded to the questions of a general nature?

27 A No, they wouldn't.

28 Q All right. Would it be any hardship for you to

1 serve in this case?

2 A (Shakes head.)

3 Q Would you keep that microphone up so we can hear
4 you.

5 A No.

6 Q Where do you work?

7 A I work for water storage, Department of Water &
8 Power.

9 Q And have you had jury experience before?

10 A No, I haven't.

11 Q Is there a Mrs. Credit?

12 A Yes, there is.

13 Q What type of work does she do?

14 A At the present, she's a student.

15 Q In what institution?

16 A L. A. State.

17 Q What's she studying?

18 A Home Economics.

19 Q And have you any friends or relatives who are in
20 law enforcement?

21 A No, I haven't.

22 Q How long have you been employed by the Department
23 of Water & Power?

24 A Approximately 13 years.

25 Q In what area do you and Mrs. Credit reside?

26 A Southwest L. A.

27 Q You can think of no respect in which your answers
28 would vary from the answers given to the Court's general

1 questions?

2 A No.

3 Q By the other jurors?

4 A No.

5 Q All right. Talking about the question of penalty,
6 now, do you have such views about the death penalty that you
7 would automatically vote against it regardless of the evidence?

8 A No, I haven't.

9 Q Or do you have such views about the death penalty
10 that you would automatically vote for it, regardless of the
11 evidence?

12 A No.

13 Q Or are your views about the death penalty such
14 that you could not be fair and impartial in the first phase
15 of the case concerning guilt or innocence?

16 A No.

17 Q Can you think of any reason why you should not or
18 could not sit on this case, acting as a fair and impartial
19 juror?

20 A No.

21 THE COURT: Do you wish to examine, gentlemen, on
22 everything but the question of publicity?

23 MR. DENNY: Well, did the Court want to inquire
24 generally about whether he felt that by virtue of publicity
25 he could be fair?

26 THE COURT: Yes, I will.

27 BY THE COURT:

28 Q Have you previously heard of Charles Manson or the

1 Manson Family?

2 A Yes, I have.

3 Q Would your feelings, due to what you have heard,
4 seen or read from the publicity media, be such that you
5 could not be fair and impartial in deciding any issue presented
6 to you concerning a person who is a member of that Manson
7 Family?

8 A I don't think so, although I've heard quite a bit
9 about it, you know.

10 Q You think that you could or could not be fair and
11 impartial to a man who is associated or alleged to be
12 associated with Mr. Manson?

13 A I think I could be fair.

14 Q You think you could?

15 A Yes.

16 THE COURT: Go ahead, Mr. Denny.

17 MR. DENNY: Well, your Honor, could we approach the
18 bench just a moment?

19 THE COURT: Yes.
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13b fls.

13b-1

1 (Whereupon, the following proceedings were had
2 at the bench among Court and Counsel, outside the hearing of
3 the prospective jurors:)

4 MR. DENNY: Your Honor, I just think in this case where
5 he admits he knows quite a bit about it, it might be more
6 expeditious to examine him on the publicity issue.

7 MR. KAY: Seems reasonable.

8 MR. DENNY: First.

9 THE COURT: All right.

10 (Whereupon, the following proceedings were had in
11 open court within the presence and hearing of the prospective
12 jurors:)

13 THE COURT: All right, we'll excuse you ladies and
14 gentlemen to go out into the hallway, all except for
15 Mr. Credit, whom the Court will question about publicity.

16 Would you -- would somebody open both of those
17 doors so that you can move out of here faster.

18 And would you move out very quietly and quickly?
19

20 VOIR DIRE EXAMINATION OF

21 ROBERT P. CREDIT

22 BY THE COURT:

23 Q Well, Mr. Credit, what we wish to know from you,
24 what you may have heard, seen or read from television, radio,
25 the newspaper, talked with friends or relatives about this
26 case.

27 Have you ever heard of this case before Friday,
28 when I read the indictment to you?

13b-2

1 A Not really.

2 Q Had you ever heard the name Bruce Davis?

3 A I'm not positive.

4 Q Had you ever heard the name Gary Hinman?

5 A Yes, I've heard that one.

6 Q Tell us what you know or have heard about Gary
7 Hinman?

8 A Well, briefly, I'm not positive I've heard too
9 much, except I think when he's first -- when the whole trial is
10 about the Manson Family --

11 Q You mean when it was about the Tate-LaBianca
12 homicides or killings?

13 A Yes --

14 Q At that time?

15 A -- sometime in there. I'm not positive.

16 Q You recognize the names Tate and LaBianca?

17 A Sure, sure.

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14-1

1 Q Those were the persons who were victims, right, --

2 A That's right.

3 Q -- of a previous -- in a previous case involving

4 homicide?

5 A That's right.

6 Q Now, that's what you are talking about?

7 A That's right.

8 Q Now, at or about the time that case was being

9 tried, you were saying -- and I interrupted you; go ahead.

10 A Well, I think I read something about it. And I

11 work in a barber shop part-time; and in the course of it, you

12 know, we discuss a lot of different subjects.

13 And this was one of the subjects.

14 Q A barber shop is kind of a place where you do

15 discuss --

16 A That's right.

17 Q -- a great number of subjects in some detail,

18 sometimes.

19 A Correct. That's right.

20 Q So that you remember that Gary Hinman was whom?

21 A I'm not sure whether he's -- he was either a

22 musician or an actor; I'm not sure which one it was now.

23 Q Musician Gary Hinman was the way he was generally

24 referred to in the press.

25 Does that bring that back to your mind?

26 A Yes, sir.

27 Q And do you know him to have been -- what do you

28 know about him?

14-2

1 A Well, like I said, it's all general. Like one
2 was supposed to have been married to a black woman or some-
3 thing.

4 Q Do you know Gary Hinman to have been a member of
5 the Manson Family?

6 A Oh, yes. He was --

7 Q Or a victim, or a --

8 A I remember -- I thought he was -- No, I don't
9 remember the association. But there was a link between the two
10 parties, which would be the Manson Family and Jerry Hickman or --

11 Q The Manson Family and whom?

12 A And Jerry -- was it Hickman?

13 Q Gary Hinman?

14 A Hinman.

15 Q But you don't remember at this time whether you
16 heard of him as a victim of a homicide?

17 A I heard some place -- but it really isn't vivid.

18 Q How about the name Shorty Shea?

19 Until Friday, when I read that indictment, had you
20 heard that name?

21 A I had heard that name before, too. I heard that
22 before.

23 Q Now, in what connection had you heard that?

24 A Well, like I was saying, I really can't recall in
25 any great detail.

26 Q Well, now, you -- no, I'm not asking for detail.
27 I just generally want to know what you remember at this point.

28 A If I'm not mistaken, one -- either Hickman or the

1 other guy -- was married -- was either married to a black
2 woman, or -- and for some reason, it said, the barber shop
3 talk -- I don't know -- that that was one of the reasons why
4 he had been killed, because of his association with a
5 minority.

6 Q Do you work in principally a black barber shop?

7 A Right.

8 Q Was there some talk around that barber shop about
9 the Manson Family's attitude toward the Negro race?

10 A Right.

11 Q And generally, you heard that Manson was promoting
12 some trouble --

13 A That's right.

14 Q -- between the races?

15 A That's right.

16 Q Now, knowing that, and assuming, just for the
17 purpose of this question, that Mr. Davis could be shown -- it
18 could be shown he was a member of the Manson Family, do you
19 still think that you could be fair and impartial in making a
20 judgment about it?

21 A Uh -- no. Sometimes I think I could, and sometimes
22 I think I couldn't.

23 I think so.

24 Q That indicates to me that you are somewhat under-
25 tain about whether you could be fair in making a judgment
26 about it.

27 A There is a degree of uncertainty, yes.

28 Q Well, you understand, in order to -- in order to

1 permit you on this jury, I have to be certain -- and counsel
2 has to be certain, as well, -- that you will be fair and
3 impartial.

4 And I appreciate your being frank in assessing your
5 mind and your emotions about this point.

6 I can understand, with that racial issue, too,
7 that it might be difficult to be fair and impartial.

8 Am I stating your frame of mind correctly, in that
9 you cannot say at this moment that you can be completely fair
10 and impartial in judging a member of the Manson Family?

14 a fol

11 A Correct, your Honor.
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14a-1

1 MR.DENNY: Yes. Thank you, sir.

2 And I would offer a challenge under 1073,
3 Subdivision 2, and 1076.

4 THE COURT: I think that challenge is good, and the
5 Court grants the challenge and thanks Mr. Credit.

6 PROSPECTIVE JUROR NO. 4: Thank you.

7 THE COURT: Thank you, Mr. Credit.

8 MR. KAY: Thank you, Mr. Credit.

9 THE COURT: Mr. Credit, would you report to Room 253?

10 Have you found out when he can report? Can he
11 skip a day?

12 (Pause in the proceedings while a discussion
13 off the record ensued at the bench between the Court
14 and the Clerk.)

15 THE COURT: If you want to wait, you might not have
16 to go there tomorrow. Mrs. Holt will call there and find
17 out when your group is to report again.

18 You can wait beyond the rail there.

19 PROSPECTIVE JUROR NO. 4: Okay. Thank you.

20 THE COURT: Call another name for Mr. Credit.

21 THE CLERK: Mrs. Annie J. Hammond; A-n-n-i-e; last
22 name, H-a-m-m-o-n-d.

23 MR. DENNY: Judge, at least we are going through more
24 jurors today than we did yesterday.

25 THE COURT: Pardon me?

26 MR. DENNY: I say: At least we are going through more --

27 THE COURT: We are going through more than yesterday,
28 yes -- although that's not saying much.

14a-2

VOIR DIRE EXAMINATION OF
MRS. ANNIE J. HAMMOND

BY THE COURT:

Q Mrs. Hammond, would you just take your seat where that microphone is, please?

I've seen you in the jury panel each day, amongst the prospective jurors, since Friday; is that right?

A Yes.

Q And you heard the whole proceedings?

A I did.

Q Would there be any reason why you could not sit fairly and impartially as a juror in this case?

A No, sir.

Q Would it be any hardship to you to serve?

A No. I believe my work would -- they would go along with it.

Q What is the nature of your work?

A I work for the Los Angeles Chamber of Commerce.

Q I see. There will always be a Los Angeles Chamber of Commerce.

A That's right.

Q And you -- how long have you worked for them?

A Almost two years.

Q And what type of service have you had as a juror?

A I have had none.

Q Is there a Mrs. Hammond -- a Mr. Hammond, rather?

A No, there is not -- oh, yes, there is. But we are divorced.

14a-3

1 Q You are divorced?

2 A Yes.

3 Q What type of work did he do?

4 A He was in the furniture and the fixture business.

5 Q All right. And what do you do for the Chamber

6 of Commerce?

7 A I am in the Buyer's Service. That is a department

8 where we take 70 to 90 calls a day.

9 It's a two-girl office.

10 Q A Buyer's Service?

11 A Um-hmm.

12 Q Have you had any legal training?

13 A No, I have not.

14 Q Any business law at all?

15 A No.

16 Q Are you related to or a friend of any law

17 enforcement officer?

18 A No, I'm not.

19 Q In what general area do you reside?

20 A Wilshire.

21 Q About the death penalty, do you have such views

22 about it -- well, one thing, before I pass on to that.

23 Would your answers to the questions of a general

24 nature that I put to the jurors as a whole be the same?

25 A Yes.

26 Q Can you think of any question which would differ

27 from -- can you think of any answer that would differ from

28 the answers that I received generally -- or usually -- from

1 the jurors in response to those general questions?

2 A No.

3 Q Concerning the death penalty, then, would you
4 have such views about it that you would not be able to vote
5 for it; that you would automatically vote against it,
6 regardless of the evidence in the case?

7 A No.

8 Q Or would you automatically vote for it, regardless
9 of the evidence in the case, upon a conviction of murder of
10 the first degree?

11 A Yes.

12 Q In other words, if somebody were convicted of
13 murder of the first degree, your reaction in the penalty
14 phase would be to automatically impose the death penalty,
15 without regard to the evidence?

16 A Oh, no.

17 Q Then maybe you misunderstood me.

18 A Possibly.

19 Q You understand that in the second phase of the
20 case, if there is a second phase of the case, you would be
21 called upon -- you would be called upon to determine whether
22 life imprisonment or death should be imposed?

23 A Yes.

14b fls.

14b-1

1 Q At that time, it's a matter of your complete
2 discretion, as to -- and it must be an individual judgment of
3 each of the jurors in the box.

4 Do you understand that?

5 A Yes.

6 Q Now, just because there was a conviction of
7 murder in the first degree, that does not mean that you should
8 automatically impose the death sentence.

9 Do you understand that?

10 A Yes.

11 Q And you may impose it at that moment, depending
12 upon what you -- your view of the evidence is, or you may not;
13 do you understand that?

14 A Yes, sir.

15 Q And what I'm asking you is whether, in that second
16 phase, if there were a conviction of willful, deliberate,
17 premeditated murder -- as you've heard Mr. Denny phrase it --
18 murder of the first degree, you would automatically impose the
19 death penalty, without regard to the evidence?

20 Or would you look --

21 A No.

22 Q -- the evidence over and make a judgment, basing
23 it on --

24 A No, I would have to consider the evidence.

25 Q You would look at the evidence, whether it was
26 presented in the first phase or the second phase, and make a
27 determination from the evidence as to whether or not you should
28 impose the death penalty?

14b-2

1 A Yes, sir.

2 Q But of course, you understand that I'm not telling
3 you that you need to take any view or consideration of the
4 evidence; because I cannot say. You may disregard the evidence
5 completely and simply use your own discretion for whatever
6 reasons you may have, and thus impose life imprisonment or
7 death.

8 Do you understand that?

9 A Yes, sir.

10 MR. DENNY: Well, your Honor, I -- I'm not sure that
11 that states what the discretion is, because --

12 THE COURT: I'm not sure, either. But it's the full
13 discretion of the Court -- of the jury. And I don't know but
14 what --

15 MR. DENNY: Well, that leaves it up to a juror, then,
16 to impose the death sentence merely by virtue of a conviction
17 of murder in the first degree.

18 MR. KAY: Which they could do, if they wanted to. It's
19 up to their complete discretion.

20 THE COURT: Well, the Court cannot say that -- that a
21 juror should look at the -- and is obliged to look at certain
22 evidence, in order to make a determination, can he?

23 MR. DENNY: Well, I think it's a dangerous thing to --
24 to tell a juror that they can -- they don't have to listen to
25 the evidence at all, in order to determine whether to impose
26 the death penalty or not -- especially when you are asking
27 them, in another question, if they would automatically impose
28 it, without regard to the evidence, --

1 THE COURT: That's true.

2 MR. DENNY: -- by virtue of a finding of murder in the
3 first degree.

4 Because you are asking them whether in fact they
5 could do that, or telling them it's all right to do that,
6 by this other statement that you have just made.

7 THE COURT: That's true. It is inconsistent in that
8 respect, isn't it?

9 But the reason the Court put the last question to
10 Mrs. Hammond, the way it did, was because --

11 MR. DENNY: Oh, I understand how it came about. But I
12 am just asking the Court to correct it.

13 THE COURT: Pardon?

14 MR. DENNY: I said: I understand how it came about.
15 But I am just asking for the Court to correct it; because I --

16 THE COURT: All right. Let's hear from you as to how it
17 should be corrected.

18 MR. DENNY: Well, I don't want to usurp the Court's
19 position, but I --

20 THE COURT: Please do.

21 MR. DENNY: But -- to question her at this point --

22 THE COURT: I'll let you frame the question.

23 MR. DENNY: Well, thank you, your Honor.

24 BY THE COURT:

25 Q Well, my point is, Mrs. Hammond, that this is a
26 matter of your sole discretion. Now, it may be true what
27 Mr. Denny says, that you cannot disregard the evidence; that
28 you will have to rely on whatever evidence has been presented

1 by either side in the course of the trial, and in the penalty
2 phase, if any is presented in the penalty phase.

3 Do you understand that?

4 A Yes, sir.

5 Q But having regard to the evidence, and having
6 looked at the evidence, you understand that it's a matter of
7 your discretion to determine which of the pieces of evidence,
8 if any, that you may rely upon in applying your discretion?

9 A Yes, sir.

10 THE COURT: Does that free -- does that extricate it from
11 the problem which you suggested?

12 MR. DENNY: I think it's a step in the right direction,
13 your Honor.

14 THE COURT: All right. You may pursue it. Pursue it
15 further.

16 I'll strike the Court's previous -- the question
17 previous to the one that I just asked. I'll strike it, be-
18 cause I don't want to intimate to you that you should not in
19 any way look at the evidence.

14c fol

14c-1

MR. DENNY: Thank you, your Honor, very much.

May I inquire at this time?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. DENNY:

Q Since we are on the subject of the death penalty, although we generally go to the issue of publicity first, let me again try to get it squared away.

Now, initially, when you answered a question of the Court, I had the impression that you said, if there were a finding of first degree murder, then by virtue of that finding of first degree murder, you would then vote for the death penalty.

Now, was I mistaken?

A If we had -- if the evidence pointed that way, convinced me.

Q Well, that's what we are trying to get to. We assume that the evidence has pointed to the guilt of the defendant, and that you have heard all the evidence, and you are convinced by that degree that the law requires you to be convinced -- that is, beyond a reasonable doubt and to a moral certainty --

A Um-hmm.

Q -- that the defendant is guilty, and is guilty of this most terrible offense that we have on the books, about, murder in the first degree.

A Um-hmm.

14c-2

1 Q All right. So the evidence is there. You've
2 heard it, and you are convinced.

3 Now, you've found him guilty of murder in the
4 first degree. Having found him guilty of murder in the first
5 degree, would you then, by virtue of that verdict, because of
6 the return of that verdict of guilt, vote to impose the
7 death penalty?

8 A Yes, sir.

9 MR. KAY: Well, I'm going to object to that as asking
10 her to prejudge the evidence, your Honor. The question is --
11 she might very well decide to. But the question is: Will
12 she automatically do that at this stage?

13 THE COURT: I think that's probably right.

14 MR. DENNY: Well, again, it's preliminary, your Honor.
15 And I -- I --

16 MR. KAY: Well, but --

17 MR. DENNY: And I intend to get to that question,
18 phrased as Mr. Kay would like me to phrase it; but I think
19 I should have the opportunity to go step by step.

20 MR. KAY: Except that you have to ask the proper
21 question, even as a preliminary question.

22 THE COURT: I think that's correct.

23 MR. KAY: Thank you.

24 THE COURT: You may or may not --

25 BY MR. DENNY:

26 Q Well, having found the defendant guilty -- you
27 are convinced of his guilt, beyond a reasonable doubt and to
28 a moral certainty, and you have returned a verdict that he

14c-3

1 is guilty of murder in the first degree, willful, deliberate,
2 premeditated murder in the first degree -- then because you
3 have returned that verdict of first degree murder, having
4 found him guilty of first degree murder, would you then
5 automatically vote for the death penalty as the punishment
6 for that offense?

7 A There is no altern -- either that, or else --
8 or life imprisonment?

9 Q Yes, there is, you see.

10 A Um-hmm.

11 Q That's what the whole second phase of the case
12 is about.

13 A Um-hmm.

14 Q Whether the jury should vote life or death?

15 A Um-hmm.

16 Q But you see, there -- there are some people who
17 would never vote for death. If they found a person guilty
18 of murder in the first degree, they would never vote for
19 death.

20 A Um-hmm.

21 Q There are some people, having found a person
22 guilty of murder in the first degree, they would automatically
23 vote for death, just as those on the other side would
24 automatically vote for life.

25 A Um-hmm.

26 Q Now, I want to know if you fall in the category
27 where, having found him guilty of murder in the first degree,
28 you would automatically vote for the death penalty.

1 Would you do that?

2 A It would depend on the evidence.

3 THE COURT: Let me say this to you. I'll read to you
4 an instruction -- or paraphrase an instruction -- which will
5 be read to you in the event you should be a juror in the
6 second phase of the case, should we arrive at a second phase.

7 You understand that I am not in any way intimating
8 to you that I believe the defendant is guilty, in asking you
9 about this second phase, and about your opinions concerning
10 the death penalty; do you understand that?

11 PROSPECTIVE JUROR NO. 4: Yes, sir.

12 THE COURT: In the penalty phase, it's your duty to
13 determine which of the penalties provided by law should be
14 imposed on the defendant for the offense of which he has
15 been found guilty, murder of the first degree -- and we'll
16 assume it's murder of the first degree, for the purpose of
17 this instruction.

18 In arriving at this determination, you should
19 consider all of the evidence received here in court, presented
20 by the People and the defendant, throughout the trial, before
21 this jury.

22 You may also consider all the evidence and cir-
23 cumstances surrounding the crime, of the defendant's back-
24 ground and history, and of facts, in aggravation or mitigation
25 of the penalty, which have been received here in court.

26 However, it's not essential to your decision that
27 you find mitigating circumstances on the one hand, or evidence
28 in aggravation of the offense on the other.

1 Notwithstanding facts, if any, proved in
2 mitigation or aggravation, in determining which punishment
3 shall be inflicted, you are entirely free to act according
4 to your own judgment, conscience, and absolute discretion.
5 That verdict must express the individual opinion of each
6 juror.

7 The law itself provides no standard for the
8 guidance of the jury in selection of a penalty, but rather
9 commits the whole matter of determining which of the two
10 penalties shall be fixed to the judgment, conscience and
11 absolute discretion of the jury.

12 Now, do you understand what I've previously --
13 what we have previously talked to you about?

14 A (Pause.) In other words, the evidence is not
15 the sole decision, what you make your -- your final decision
16 on.

17 THE COURT: Well, the Court's expression to you was
18 an unhappy and an inept one, I think, in certain respects,
19 because the instruction that you will receive states that,
20 in arriving at your determination, you should consider all
21 of the evidence received here in court, presented by the
22 People and the defendants, throughout the trial before the
23 jury.

24 You may also consider all of the evidence of the
25 circumstances surrounding the crime, the defendant's back-
26 ground, history; and the facts, if any -- or evidence, if
27 any, in either aggravation or mitigation of the penalty.

28 Do you understand?

PROSPECTIVE JUROR NO. 4: Yes.

BY MR. DENNY:

15-1

1 Q Again, part of this voir dire process that we are
2 going through, is not only to determine your understanding
3 but to help and assist you in arriving at a position where
4 you can properly determine the guilt or innocence in the
5 other phase of the trial.

6 So I hope we are assisting you in this respect.
7 And I'm still anxious to know, now, having heard what the
8 Judge said, understanding that the determination of whether
9 a person should be voted life imprisonment or voted to be
10 executed, is entirely up to the jurors, still leaves us in
11 a situation where we don't want to have a juror who will
12 always exercise that discretion one way or always exercise
13 that discretion the other way; do you understand that?

14 A Uh-huh, yes.

15 Q Now, going back to the question I asked you a
16 little bit ago.

17 Is it your feeling, as you sit there now, that
18 having found a person guilty of first degree murder, you
19 would always, in effect, exercise your discretion by voting
20 for the death penalty?

21 A No, not always.

22 Q And I take it this means, then, that you would not
23 always vote for life imprisonment; is that right?

24 A That's right.

25 Q So, that as you sit there now, at this time, even
26 if a person is found guilty of first degree, willful,
27 premeditated, deliberated murder, your mind is open as to
28 which would be the proper penalty; is that correct?

1 A That's correct.

2 Q And you understand that the law doesn't say
3 which is the proper penalty?

4 A No.

5 Q All right.

6 Now, have you ever before thought about assuming
7 the responsibility of imposing the penalty of death on
8 another human being?

9 A Yes.

10 Q When had you most recently considered this?

11 A Well, just over the years, occasionally.

12 Q Would this be in the course of some conversation
13 on the subject of death penalty, perhaps?

14 A That's right, correct.

15 Q And have you ever done any reading in the field?

16 A No, I have not.

17 Q These discussions that you've had over the years,
18 are these with a particular individual or just --

19 A Just general conversation.

20 Q And have you taken any position one way or
21 another in the course of these conversations for or against
22 the death penalty?

23 A Hmm, not a definite one, no.

24 Q Well --

25 THE COURT: Excuse me just a minute, gentlemen.
26 Excuse me just a moment.

27 (Whereupon, there was a pause in the proceedings
28 while the Judge retired to chambers.)

1 THE COURT: You may continue.

2 MR. DENNY: Mary Lou, would you read the last -- where
3 were we --

4 (Whereupon, the last question and answer were
5 read by the reporter as follows:

6 "Q And have you taken any position one way
7 or another in the course of these conversations for
8 or against the death penalty?

9 "A Hmm, not a definite one, no.")

10 Q BY MR. DENNY: Did you hear the reporter just
11 reread that?

12 A Yes.

13 Q Well, when you say you did not take a definite
14 position one way or another, did your views change from time
15 to time or would you play the devil's advocate and take one
16 position one time and one the next or have you maintained a
17 fairly consistent viewpoint as to where you stand on this
18 issue of retaining or abolishing capital punishment, let's
19 put it that way?

20 A Well, in somecases I think it is justified.

21 Q So you think that it is proper to have it on the
22 statute books and to impose it in some cases; is that right?

23 A Yes, sir.

24 Q And in other cases it is your feeling that it
25 would not be justified, is that right?

26 A Yes, sir.

27 Q All right.

28 Now, getting to that point, and since you have

1 done some thinking about it, did you tell me you had done
2 any reading about it?

3 A No, I've done very little.

4 Q Just talk and discussion?

5 A That's right.

6 Q All right.

7 Taking those cases, now, and you say there are
8 some cases in which you feel it is justified, can you tell
9 us those cases, the types of cases in which you feel it is
10 justified?

11 MR. KAY: Well, I'm going to object to that.

12 THE COURT: The objection is sustained.

13 MR. KAY: Okay.

14 Q BY MR. DENNY: Well, put it this way: In those
15 cases where you say you've had discussions and you've taken
16 a position and you feel it is justified, would it be fair
17 to say, and tell me if it is not fair, but would it be fair
18 to say that your feeling would be that since it is justified
19 in those cases, if you were a juror sitting and determining
20 those cases, and determined that someone was guilty under
21 those circumstances, you would vote to impose the death
22 penalty?

23 A Yes, sir.

24 Q All right.

25 So, then, we want to know what are those cases
26 where you would vote to impose the death penalty, feeling
27 it justified? What are the types of cases?

28 A Well, the case you cited this morning, if -- if

15a fls.

1 someone had murdered a hundred people, a horrendous case,
2 I believe that would definitely be justifiable.
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1 Q All right. And you put it in the plural when
2 you were talking about it, so I assume there are some others.

3 Can you tell us the others that you have thought
4 about and that you would say that you would impose the
5 death penalty, having found a person guilty of that particular
6 type of murder?

7 MR. KAY: Well, your Honor, again I'm going to object.
8 I don't think that that's the question, which cases she
9 feels would be justified in -- I think what Mr. Denny is
10 getting at, would you automatically give the death penalty
11 in certain cases, not which ones she might feel it is
12 justified in.

13 MR. DENNY: Well, your Honor, she has answered that
14 she would impose those in the cases where she thought it was
15 justified and had reached that decision on.

16 MR. KAY: I --

17 MR. DENNY: I don't think they have to again use Mr.
18 Kay's catchwords each --

19 MR. KAY: I think the question is ambiguous.

20 MR. DENNY: I don't think it is ambiguous at all.

21 THE COURT: I think the objection is well taken.

22 Q BY MR. DENNY: Let's fit it within this little
23 formula.

24 And you have said that you have thought over
25 the years, and in discussions, and have reached conclusions,
26 that in some cases plural, some cases, the death penalty would
27 be justified; is that correct?

28 A Yes.

1 Q And in those cases, if you had anything to say
2 about it, you would vote to impose the death penalty?

3 A Yes, sir.

4 Q And you would automatically vote to impose the
5 death penalty, because those cases would warrant it; is that
6 right?

7 A Yes, sir.

8 Q All right.

9 Now, you mentioned one type of case, and that is
10 where somebody kills a hundred different people.

11 And in that case you would automatically vote to
12 impose the death penalty on a person found guilty of that
13 crime?

14 A Yes, sir.

15 Q All right.

16 Now, would you tell us the other cases in which
17 you would vote the same way?

18 MR. MANZELLA: It is not relevant on a challenge for
19 cause, your Honor.

20 THE COURT: Sustained.

21 MR. DENNY: It is, your Honor, if it comes within the
22 ambit of the facts of this case. And we can only tell by
23 asking her. I don't want her to prejudge the evidence by
24 telling her what the ambit of this case may be, but if she
25 tells us one, two or three circumstances, and circumstance
26 No. 3 comes within the ambit of what this case may be, then,
27 certainly it is relevant. And the only way we can tell if
28 it is relevant is to ask her which ones she has made this

1 decision --

2 THE COURT: Mrs. -- I think the objection is a good one.

3 Mrs. Hammond, would you automatically impose the
4 death penalty in any case, even these cases -- these
5 aggravated cases that you are talking about without looking
6 at the evidence?

7 JUROR NO. 4: No, I would not.

8 THE COURT: You understand that I struck the remark
9 I made that you need not look at the evidence, and I reinstructed
10 you in accordance with how I'll instruct the jury at the con-
11 clusion of the case?

12 JUROR NO. 4: Yes, sir.

13 THE COURT: That you will, as I understand it from what
14 you said, to both Mr. Denny and to the Court, not act
15 automatically in any type of murder; is that correct? Murder
16 or murders to impose the death penalty.

17 JUROR NO. 4: I'm not sure I know what you mean by act
18 automatically.

19 THE COURT: In other words, would you, without regard to
20 the evidence, and in any conviction of murder of the first
21 degree of whatever kind, would you vote for the death penalty?

22 JUROR NO. 4: Not unless the evidence warranted it.

23 THE COURT: I think the objection is well taken.

24 MR. DENNY: Well, your Honor, in the first place, I
25 don't think witherspoon and the cases in connection with
26 that talk about without regard to the evidence. I think the
27 Court is engrafting onto that language which is not there.
28 And, secondly, Mrs. Hammond very precisely and very honestly,

1 I think, has stated that there are cases in which she would
2 automatically vote to impose the death penalty. Among them,
3 a case in which -- obviously the evidence has showed or has
4 shown that the defendant killed 100 people.

5 Now, obviously you've got to consider the evidence
6 of that fact. And you assume that.

7 Now, let's say she finds -- she also has in mind
8 the fact that, where somebody stabs a person to death and
9 causes the person to die, and that is one of the cases,
10 killing by stabbing, in which she would automatically vote
11 for the death penalty.

16 fls.

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1 Certainly, we should be able to know that.

2 And that's what I am asking her. Obviously, she has got to
3 have taken into account the evidence that the defendant was
4 the one -- or involved in so doing.

5 So you can't say, "Without regard to the evidence,"
6 because she's arrived at that verdict by considering the
7 evidence.

8 But I am saying: The simple facts of the evidence,
9 that a person stabbed another person to death -- or, the simple
10 fact that somebody --

11 THE COURT: Do you want to go through the various
12 categories of murders?

13 MR. DENNY: No, I don't, your Honor. That's what I am
14 trying to avoid. All I want to run through is those cate-
15 gories of murders that she says would cause her, automatically,
16 to impose the death penalty.

17 And I think certainly, we have -- we have that
18 right.

19 THE COURT: Gentlemen?

20 MR. MANZELLA: Yes. We still object to the question,
21 on the grounds that by asking her for specific references
22 to specific facts of cases, Mr. Denny is asking her to
23 prejudge the case.

24 MR. DENNY: No, not at all.

25 MR. MANZELLA: And he is doing it -- all he is doing,
26 he is doing it by the back door instead of by the front door.

27 Instead of telling her the facts of this case,
28 he is asking her to tell him the facts of a particular case

1 she may have in mind, where she would impose the death
2 penalty.

3 MR. DENNY: Automatically.

4 MR. MANZELLA: And furthermore, Witherspoon did talk
5 about the term "without regard to any evidence which may be
6 introduced at this trial."

7 It's not something this Court engrafted onto the
8 rule. That's the rule of Witherspoon.

9 And that language is in the Witherspoon decision.
10 And the question, as asked by this Court, that incorporates
11 that language, is a proper question under Witherspoon.

12 MR. DENNY: Well --

13 MR. MANZELLA: And furthermore, the question asked by
14 Mr. Denny is not relevant to a challenge for cause -- although
15 it may be relevant to a peremptory challenge.

16 And the reason is that she has said that she
17 would not vote automatically in any case, without regard to
18 the evidence. She says that the evidence would have to
19 warrant it.

20 Therefore, by asking her what evidence would
21 warrant it, he's asking her to prejudge the case.

22 THE COURT: I think that's correct.

23 MR. MANZELLA: It seems clear.

24 MR. DENNY: Well, your Honor --

25 THE COURT: It's probably true. Because there may be
26 other factors in the -- in the course of the case, other
27 than the mode of death, which would enter into the juror's
28 judgment.

1 MR. DENNY: Well, your Honor, I am not asking her to
2 prejudice this case at all, but --

3 THE COURT: And your question is not complete, without
4 including all of the possible factors. It does ask her to
5 more or less prejudice.

6 MR. DENNY: Well, your Honor, this is a --

7 THE COURT: She has indicated that she would not, by
8 reason of any type of killing, vote, upon a conviction of
9 murder of the first degree, automatically to impose the death
10 penalty.

11 MR. DENNY: I take issue with that, your Honor. She
12 has --

13 THE COURT: She has, true. She has said that if she
14 found that the defendant had killed a hundred people, she
15 would vote automatically to impose the death sentence.

16 That is correct, isn't it, ma'am?

17 MR. DENNY: If the evidence was shown that the man had
18 killed the hundred people.

19 THE COURT: That's right?

20 PROSPECTIVE JUROR NO. 4: Definitely so.

21 MR. DENNY: All right.

22 THE COURT: All right, Mr. Denny. I would allow you
23 to pursue that course.

24 MR. DENNY: Thank you, your Honor.

25 BY MR. DENNY:

26 Q Now, that's a horrendous case, that you --

27 A That's right.

28 Q -- pose. And that's a horrendous case that I

1 posed, because I think that most people who believe at all in
2 the imposition of the death penalty would say, "Yes, if any
3 case deserved it, that case does."

4 And you have indicated there are some other
5 cases in which you feel that, by virtue of the particular
6 type of crime committed, the particular type of homicide,
7 you would automatically vote -- like the hundred death case --
8 to impose the death penalty.

9 Is that correct?

10 A To impose it, yes, sir.

11 Q All right. Now, could you tell us another such
12 type of case?

13 A (No response.)

14 Q In other words, I've given an example to some
15 people -- and this is the only example I'll use to refresh
16 your recollection -- of a child molester who kills a child
17 in the course of his molestation.

18 A Um-hmm.

15a fls.

1 Q And there are some people who would just auto-
2 matically, those facts having been shown, impose the death
3 penalty, automatically.

4 A That's right.

5 Q Now, I am not asking you necessarily if that is
6 your position, but are there any other cases --

7 A Well, that's exactly the type of case that I had
8 in my mind.

9 Q All right. Is there any other type of case?

10 A Well, I don't -- I don't like to name -- I don't
11 want to name cases. But the murder of a pregnant wife --

12 Q All right.

13 A -- is very severe, and very -- exceedingly cruel,
14 I would say.

15 Q All right.

16 A Now, I don't know what else you want me to -- to
17 give examples of.

18 Q Well, any other examples of any cases. And this is
19 a very good case in point. There are some people who would
20 just react exactly the same way, that if somebody is shown to
21 have killed a pregnant woman, that person should automatically
22 get the death penalty -- assuming they believe in the
23 imposition of the death penalty.

24 A Um-hmmm.

25 Q Are there any other cases -- that you have thought
26 of, wherein you would automatically vote to impose the death
27 penalty?

28 A Well, none that I can bring right to my mind. I am --

1 I imagine that there have been others; but right at this moment,
2 I can't think what they might be.

3 Q All right. Fine, ma'am. Then in all other cases of
4 first degree murder, you would have to weigh the evidence, in
5 order to make a determination as to which would be the penalty
6 that you thought was appropriate, depending on all of the
7 circumstances that the judge has described to you; is that
8 correct?

9 A Yes, sir.

10 Q All right. Now, I take it, since it was greatly
11 in the news, that -- and I'll mention it -- this murder of a
12 woman carrying a child would be a situation such as the Sharon
13 Tate murder?

14 A I didn't have that one in mind at the time, though.

15 Q Well, there was one recently where -- I think a
16 member of --

17 THE COURT: I don't think that's particularly material.

18 MR. DENNY: All right.

19 Q Do you have any feelings in connection with the
20 Tate killings, that a member of the Manson Family --

21 (Whereupon, the members of the prospective jury
22 panel commenced to file into the courtroom.)

23 MR. DENNY: Well, let me withhold the question on that
24 subject, your Honor.

25 (Pause in the proceedings while the members of the
26 jury panel filed into the courtroom.)

27 THE COURT: Ladies and gentlemen, I'm going to release
28 you for the evening. Come back at 9:30 tomorrow morning.

1 Everybody in?

2 9:30 tomorrow morning. Remember the admonition
3 that I have heretofore given you, that you are not to converse
4 amongst yourselves, nor with anyone else, on any subject
5 connected with the matter, nor form nor express any opinion on
6 it until it is finally submitted to you, should you be chosen as
7 jurors.

8 I'll see you tomorrow morning at 9:30.

9 MR. KAY: Your Honor, before they leave, did you want to
10 take care of that student's problem that we --

11 THE COURT: Oh, yes. Somebody is a student and has to
12 take an examination.

13 PROSPECTIVE JUROR GREENE: Yes, Virginia Greene.

14 THE COURT: Yes. Will you be doing that quite often?
15 Taking examinations in the next couple of months?

16 PROSPECTIVE JUROR GREENE: Yes, until the finals, which is
17 around January.

18 THE COURT: What kind of a course are you taking?

19 PROSPECTIVE JUROR GREENE: Psychology.

20 MR. DENNY: Is it during the day, or evening, or why the
21 afternoon examination?

22 THE COURT: Yes. We are curious about -- when do you
23 go to school? During the day?

24 PROSPECTIVE JUROR GREENE: 3:30.

25 THE COURT: Pardon?

26 PROSPECTIVE JUROR GREENE: From 3:30 to 6:30 on
27 Wednesday and Monday.

28 THE COURT: How are you performing jury duty, then?

1 PROSPECTIVE JUROR GREENE: Well, I just started Friday,
2 and I didn't have a class on Friday.

3 THE COURT: Oh, I see. Are you asking to be excused
4 completely from jury duty?

5 PROSPECTIVE JUROR GREENE: No, no, just for tomorrow.
6 And then maybe I could arrange it with the instructor.

7 THE COURT: Well, we couldn't have you absent, once
8 we started, you understand.

9 You'd have to be present during all the proceedings,
10 and we couldn't delay the proceedings until after your class
11 was over.

12 PROSPECTIVE JUROR GREENE: Well, I do plan to register
13 for the spring semester tomorrow.

14 MR. MANZELLA: Your Honor, Mr. Denny and I would be
15 willing to stipulate that she may be excused from this panel,
16 at least.

17 THE COURT: All right.

18 The attorneys have stipulated that you may be
19 excused from this panel. Whether you are excused from jury
20 duty, I'm not saying. You can take it up with someone else.

21 But at least for now, you are excused from this
22 panel. Report tomorrow at 9:00 o'clock to Room 253, if you
23 would, please.

24 PROSPECTIVE JUROR GREENE: All right. Thank you.

25 THE COURT: All right. And the rest of you, I'll see
26 you tomorrow morning at 9:30.

27 Remember the admonition. Don't talk amongst
28 yourselves or with anyone about this case.

1 (Pause in the proceedings while the members of the
2 prospective jury panel exited the courtroom.)

3 THE COURT: Go ahead, Mr. Denny.

4 MR. DENNY: Your Honor, I was going to ask the Court if
5 we might take the afternoon adjournment at this time? My
6 throat is giving me some difficulty. I don't know whether
7 I'm catching cold or what, but I have been fighting it most of
8 the afternoon.

9 THE COURT: All right.

10 MR. MANZELLA: That may be a sign that we should go on.

11 THE COURT: All right. We will take the afternoon
12 adjournment. And perhaps, if counsel are briefer tomorrow,
13 we will not have any throat ailments.

14 All right, Miss Hammond, remember the admonition
15 that I just gave the other jurors. And I'll see you tomorrow
16 morning at 9:30.

17 MR. KAY: At what time, your Honor?

18 THE COURT: 9:30.

19 MR. KAY: 9:30? Thank you.

20 THE COURT: We have a rather small calendar tomorrow.
21 We should be able to start promptly at 9:30.

22 (Whereupon, at 4:35 P. M., an adjournment was
23 taken in this matter until 9:30 A. M. of the following day,
24 Wednesday, December 8, 1971.)
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