

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.

NO. A-267861

213

REPORTERS' DAILY TRANSCRIPT

Thursday, December 16, 1971

VOLUME 13

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

1 LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 16, 1971, 9:48 A. M.

2
3 THE COURT: All right. In the case of People versus
4 Davis, let's get the jury in.

5 (Recess.)

6 (Proceedings had on an unrelated matter.)

7 THE COURT: Ladies and gentlemen, from time to time, as
8 a juror, you'll hear matters that are on this Court's
9 calendar. The Court will tell you that these matters that you
10 hear while you are waiting here in court have nothing whatever
11 to do with this case.

12 You are not in any way to consider these matters
13 that you hear in determining any issue that you might be
14 called upon to determine in this case.

15 Do you all understand that?

16 (No negative response.)

17 THE COURT: You all understand that. And will you
18 follow the Court's instructions with respect to that and
19 ignore anything that you may hear while you are waiting to act
20 as jurors in this case?

21 (No negative response.)

22 MR. LATINER: Is your Honor going to call the other
23 matters at 11:00?

24 THE COURT: Yes. I'll call them at 11:00.

25 MR. LATINER: All right.

26 MR. PORTER: My matter, too, your Honor? Or --

27 THE COURT: Well, yes. It would have to be at 11:00,
28 because we have to -- the bailiff has problems in transporting

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1 prisoners at this time.

2 MR. PORTER: Yes, your Honor. I'll return at 11:00
3 o'clock, then. Thank you.

4 THE COURT: All right. The case of People versus Davis.
5 The record will show the defendant to be present. Both
6 counsel -- all counsel are present, and we are ready to
7 proceed.

8 As I recall, Mr. Stoker had just been called to
9 the box.

10 Is that right?

11 PROSPECTIVE JUROR NO. 5: That's right, your Honor.
12

13 VOIR DIRE EXAMINATION OF

14 VERNON R. STOKER

15 BY THE COURT:

16 Q Mr. Stoker, have you been present during all the
17 proceedings since the Court explained the nature of this case
18 to the prospective jurors?

19 A Yes, I have.

20 Q Would your answers be any different than the
21 majority have responded to the Court's questions of a general
22 nature?

23 A I think in two points, your Honor.

24 Q All right. Tell us what those are.

25 A One, regarding the death penalty.

26 And one, regarding the fact of whether or not I
27 could give a fair and impartial trial to this defendant.

28 Q All right. Let's begin with the second one.

1 Do you believe that you could not give a fair and
2 impartial trial to this --

3 A I don't think I could, your Honor.

4 Q Why is that?

5 A Well, at one time my wife worked for Gateway
6 Markets, and we were acquainted with the LaBi- --

7 Q Perhaps I'd better just inquire, before you get
8 too far, is it because of a relationship or an alleged
9 relationship with Charles Manson?

10 A Hmmm -- no. The fact that we were acquainted
11 with the LaBiancas.

12 Q I see. Well, do you understand that this charge
13 that I have read to you, this indictment, charges Mr. Davis
14 with two Counts of murder and a Count of conspiracy to commit
15 murder and robbery; and that the LaBianca -- the Tate-LaBianca
16 trial and those homicides have nothing whatever to do with
17 this indictment?

18 A Yes, I realize that, your Honor.

19 It's just a personal feeling.

20 Q Do you think that because of Mr. Manson's
21 conviction in the Tate-LaBianca cases, and Mr. Davis's
22 relationship with Mr. Manson -- or association with
23 Mr. Manson -- that you could not be fair and impartial?

24 A That's my feeling, your Honor.

25 MR. DENNY: I would then issue a challenge, your Honor,
26 under 1073 Subdivision 2.

27 THE COURT: All right. Thank you for getting right to
28 the point.

1 PROSPECTIVE JUROR NO. 5: I'm sorry, your Honor.

2 THE COURT: No, that's all right.

3 MR. DENNY: Thank you, Mr. Stoker.

4 THE COURT: And the Court thanks and excuses you,
5 Mr. Stoker.

6 Go to the jury assembly room, 15th floor, new Hall
7 of Records.

8 PROSPECTIVE JUROR NO. 5: All right, your Honor.

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1 THE CLERK: Mrs. Caroline Ramirez; C-a-r-o-l-i-n-e;
2 last name, R-a-m-i-r-e-z.

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4 VOIR DIRE EXAMINATION OF
5 CAROLINE RAMIREZ

6 BY THE COURT:

7 Q Mrs. Ramirez, have you been present during all
8 of the proceedings?

9 A Yes, your Honor.

10 Q Would your answers be any different than the
11 majority of jurors have responded to the questions of a
12 general nature?

13 A No, your Honor.

14 Q And can you -- would it be a hardship for you to
15 serve on this jury?

16 A Yes, your Honor.

17 Q Tell us about that.

18 A I inquired last Thursday --

19 Q Lift that up a little bit.

20 A All right.

21 Q All right.

22 A I inquired last Thursday about if they would pay
23 me for the extra two months, and they said it's not a policy
24 of theirs.

25 Q And who are "they"?

26 A United Merchants and Manufacturers.

27 Q What sort of an organization is that? Is it --

28 A Uh -- well, we -- sort of like a bookkeeping --

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1 we take care of the books for manufacturers --

2 Q And after --

3 A -- and of merchants.

4 Q And after I told you to inquire, you did inquire--

5 A Yes.

6 Q -- and found out that you would not be paid?

7 A Yes. It's not in their policy.

8 MR. KAY: We would stipulate that she could be excused
9 for hardship, your Honor.

10 MR. DENNY: So stipulate, your Honor.

11 THE COURT: Mrs. Ramirez, thank you very much.

12 PROSPECTIVE JUROR NO. 5: Thank you.

13 THE COURT: The Court does excuse you.

14 And would you report, then, to the 15th floor
15 of the New Hall of Records?

16 THE CLERK: Alfred Butler; A-l-f-r-e-d; last name,
17 B-u-t-l-e-r.

18
19 VOIR DIRE EXAMINATION OF

20 ALFRED BUTLER

21 BY THE COURT:

22 Q Mr. Butler, have you been present during all the
23 proceedings thus far?

24 A I have.

25 Q Would your answers be any different from the
26 majority of jurors who responded to the questions of a
27 general nature?

28 A No.

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

3 A No.

4 Q What type of work do you do, Mr. Butler?

5 A I beg your pardon?

6 Q What type of work do you do?

7 A Aircraft.

8 Q For whom do you work?

9 A North American Rockwell.

10 Q All right. And you have checked, and they will
11 pay you for the period of time that you serve as a juror?

12 A Yeah.

13 Q Um-hmm. And have you served as a juror before?

14 A Uh -- no, not -- two or three days ago, I
15 served on a civil case.

16 Q A civil case. And you will be careful to
17 distinguish between the two burdens of proof that you've
18 heard about many, many times during the course of this week
19 that you've been sitting here; is that correct?

20 A That's correct.

21 Q More than a week, isn't it?

22 A Yeah -- no; a week tomorrow.

23 Q Did you come in on Friday?

24 A Yeah.

25 Q Since that time, you have been present during
26 all the time that the panel has been in court; is that
27 correct?

28 A That's correct.

1 Q Is there a Mrs. Butler?

2 A No.

3 Q Are you related to or a friend of any law
4 enforcement officer?

5 A No.

6 Q And in what area do you reside?

7 A Central.

8 Q Central Los Angeles?

9 A Right.

10 Q What do you do for North American Rockwell?

11 A Structure assembly.

12 Q How long have you been so employed?

13 A 18 years.

14 Q Your answers -- you can't think of any respect
15 in which your answers would vary from the answers to the
16 questions that I put to the other jurors?

17 For example, have you or any close relative been
18 the victim of any crime of violence?

19 A Yes.

20 Q You have been?

21 A Not myself, no.

22 Q Tell us about that?

23 A Well, my brother -- and I have a son. My
24 brother, he was -- he shot at a guy; and my son, he was
25 accused of murder.

26 Q Your brother shot at a man?

27 A Yeah.

28 Q And your son was accused of murder?

1 A Yeah.

2 Q Is that in the same incident?

3 A No.

4 Q Or two separate incidents?

5 A No, two separate deals. I don't know the
6 details, because I wasn't there.

7 Q I see. Well, was your brother prosecuted as a
8 result of his shooting at this man?

9 A Yes.

10 Q Where was that?

11 A That was in Louisiana.

12 Q Was he convicted?

13 A Yes.

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1 Q Was the man killed?
2 A No.
3 Q Wounded?
4 A No.
5 Q He just shot at him and missed?
6 A Right.
7 Q And as a result of shooting at him your brother
8 was prosecuted?
9 A Right.
10 Q Did he serve time in state prison?
11 A Right.
12 Q How many years?
13 A Three.
14 Q And then, your son, you say your son -- what
15 happened to him?
16 A Yeah.
17 Q What happened to him?
18 A Oh, I don't know. I wasn't there. But what I
19 learnt, that they was a gang fight and one of the boys got
20 killed.
21 Q And was your son prosecuted?
22 A Yes.
23 Q For murder?
24 A Yes.
25 Q Where was that?
26 A Tennessee, Memphis.
27 Q And was he convicted?
28 A Yes.

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1 Q As a result of this conviction of your brother and
2 your son, do you believe that you have any prejudice against
3 the prosecution or --

4 A No.

5 Q Do you think that you could be fair and impartial
6 in spite of that, those prosecutions of your relatives?

7 A Yes.

8 Q Was there anything unfair, do you believe, in the
9 prosecution of either your brother or your son?

10 A Well, I don't know, but I didn't know the details,
11 you know, of it. All I know is what I heard, you know.

12 Q Do you remember that series of questions now that
13 I have put to jurors?

14 Would any of your other answers be different?

15 A No.

16 Q For example, have you been arrested for any offense
17 other than a minor traffic violation?

18 A Gambling.

19 Q Dice or cards or something?

20 A Dice, cards.

21 Q Anything else?

22 A No.

23 Q Do you have any prejudice against the police or
24 prosecution as a result of that, the gambling arrest?

25 A No.

26 Q More than once?

27 A More than what?

28 Q I mean, was it more than one arrest?

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1 A Oh, yeah, several times.

2 (Laughter.)

3 Q BY THE COURT: Shall I hold up fingers and you tell
4 me how many?

5 A Well, that wouldn't -- you'd have to hold up your
6 toes, too.

7 Q I'd have to go to toes, you say?

8 A Yeah.

9 Q Well, I won't do that.

10 Well, when was your most recent arrest?

11 A Oh, well, it's been about four years ago.

12 Q And was that by the gendarmerie, the police of
13 Los Angeles?

14 A Yes.

15 Q Well, do you harbor any resentment as a result of
16 these numerous arrests for gambling?

17 A No.

18 Q Do you think you can still be fair to the
19 prosecution?

20 A Yes.

21 Q Well, can you think of any reason why you
22 couldn't be fair and impartial at all?

23 A No.

24 Q Regarding the death penalty, do you have such views
25 about it that you couldn't be impartial in determining the first
26 phase of the case, the phase involving guilt or innocence?

27 A Beg pardon?

28 Q Do you have such views about the death penalty that

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1 you could not be impartial in determining the question of guilt
2 or innocence?

3 A No.

4 Q Or are your views about the death penalty such that
5 you would automatically refuse to impose it in any case?

6 A No.

7 Q In other words, you would vote against it in any
8 case regardless of the evidence?

9 A No.

10 Q Or would your views be such that you would auto-
11 matically, upon a conviction of murder of the first degree,
12 impose it, regardless of the evidence?

13 A No.

14 Q Would you be of such a state of mind that you
15 would never vote to impose the death penalty in any case?

16 A No.

17 Q Now, had you ever heard of this case before you
18 walked in here and heard me read the indictment?

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1 A Well, I heard of the Manson, but --

2 Q You never -- I mean, of this specific indictment,
3 wherein somebody is accused of the murders of Gary Hinman and
4 Shorty Shea, had you ever heard of that one?

5 A Well, I heard some of it on the news, but I
6 never paid too much attention.

7 Q Had you ever heard the name Davis before?

8 A No.

9 Q You have heard the name Manson Family?

10 A Yes.

11 Q And was it in connection with the Tate-LaBianca
12 trials?

13 A No, I don't -- I didn't pay too much attention
14 to it.

15 Q But somehow or other you had heard the name
16 Manson Family?

17 A Yeah.

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1 Q Well, would somebody who is a member of the
2 Manson Family be at any disadvantage in having you sit as a
3 juror?

4 A No.

5 Q You don't believe from the start that somebody
6 who is a member of the Manson Family is more likely to be
7 guilty than innocent?

8 A No.

9 Q You can be fair and impartial in spite of the
10 fact that the defendant, the evidence might show, is a
11 member of the Manson Family?

12 A Right, yeah.

13 THE COURT: All right. You may inquire, generally.

14 MR. DENNY: May we approach the bench, your Honor?

15 THE COURT: Yes.

16 MR. DENNY: I don't think we need the reporter.

17 (Whereupon, proceedings were had at the bench
18 among Court and counsel, outside the hearing of the
19 prospective jurors, which was not reported:)

20 (Whereupon, the following proceedings were
21 had in open court within the presence and hearing
22 of the prospective jurors:)

23 MR. DENNY: Your Honor, I'll pass questioning Mr.
24 Butler.

25 THE COURT: People?

26 MR. KAY: We'll pass.

27 THE COURT: Both sides pass for cause, then.

28 The next peremptory challenge would appear to

1 be with the defendant.

2 MR. DENNY: I think with the People, your Honor.

3 MR. KAY: No, with the defendant.

4 THE COURT: It is with the defendant. The last
5 challenge was of Mrs. Figueroa by the People. That was
6 seat No. 1, 2, 3, 4, 5. So that does leave the challenge
7 with the defendant.

8 MR. DENNY: Your Honor, we'll accept the jury as
9 presently constituted.

10 THE COURT: With the People.

11 MR. KAY: We'll thank and excuse Mr. Butler.

12 Thank you, Mr. Butler.

13 THE COURT: The Court thanks you and excuses you and
14 would you report to the jury assembly room, 15th floor.

15 PROSPECTIVE JUROR BUTLER: Where is that at?

16 THE COURT: It is the New Hall of Records, diagonally
17 across the street.

18 THE CLERK: Miss Ella M. Byquist, E-1-1-a, middle
19 initial "M", Byquist, B-y-q-u-i-s-t.

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21 VOIR DIRE EXAMINATION
22 OF ELLA M. BYQUIST

23 BY THE COURT:

24 Q Miss Byquist, were you present when the Court
25 explained the nature of this case and conversed with
26 prospective jurors?

27 A I have been here since last Friday.

28 Q Well, you don't have to say it in that tone of

1 voice, Miss Byquist.

2 (Laughter.)

3 Q BY THE COURT: Would your answers be any different
4 than the majority of the jurors have responded?

5 A No, they would be the same.

6 Q Can you think of any reason why you should not
7 serve in this case?

8 A No.

9 Q Would it be any hardship to you to serve in the
10 case?

11 A No.

12 Q Have you been a juror before in any type of
13 case?

14 A No.

15 Q What type of -- are you employed outside the
16 home?

17 A I am retired.

18 Q From what type of work?

19 A Uh, I was church secretary for 30 years.

20 Q In Los Angeles County?

21 A Uh, 24 years here, five years in Minneapolis.

22 Q And is there a Mr. Byquist?

23 A No, I am not married.

24 Q It is Miss Byquist, I'm sorry.

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

27 A No, I am not.

28 I am a casual friend of the Richard Buckley

1 family. Mr. Buckley is a Public Defender. But just casual.

2 Q Casual friend of --

3 A Mrs. Buckley, really.

4 Q -- Mrs. Buckley.

5 Do you think that would affect your judgment --

6 A No.

7 Q -- in the case?

8 A Not at all.

9 Q In what general area do you reside?

10 A Highland Park.

11 Q Would your answers -- have you reviewed those in
12 your mind, that series of questions that I put to the
13 prospective jurors?

14 A Yes. I would like to add this about the capital
15 punishment. For more than 20 years I have taught adult
16 Bible classes and every time that we have studied the Book
17 of Genesis, Exodus, Deuteronomy and the Gospel by Matthew,
18 this question has come up.

19 And I have studied it very much in preparation
20 for my lessons. And, of course, there's been much discussion
21 in the classes about it. I am for capital punishment. I
22 believe in capital punishment.

23 Q You believe that it should be on the books,
24 then?

25 A Yes.

26 Q As part of the law?

27 A Yes.

28 Q Well, let me ask you this: Are your views about

1 it such that you could not be fair and impartial in determin-
2 ing guilt or innocence?

3 A No, absolutely not. I would --

4 Q So on the issue of guilt or innocence, you could
5 be fair and impartial?

6 A Absolutely.

7 Q All right. Now, let's assume that a person is
8 guilty beyond a reasonable doubt of murder of the first
9 degree.

10 A Right.

11 Q Without regard to the evidence, would you
12 automatically vote to impose the death penalty?

13 A No, I would have to have the evidence. I would
14 have to be assured in my own heart and mind that that person
15 was guilty. I wouldn't just automatically --

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1 Q Well, you've already decided that. You see, I'm
2 giving you an assumption upon which you must --

3 A Well --

4 Q That you must take, that you are assured in your
5 own heart and mind.

6 A I have to be sure in my own heart and mind that
7 person is guilty.

8 Q Let's say that you are sure in your own heart and
9 mind that the person is guilty, and you've gotten beyond the
10 first phase and you're into the second phase now. There is a
11 distinctive break in the phases. I might even let you go home
12 for a while. And you come back and you start the second phase,
13 if that should happen; do you understand?

14 A I understand.

15 Q All right. Now, in the second phase, having found
16 that the defendant is guilty of murder of the first degree,
17 would your feelings be such concerning the death penalty that
18 you would automatically apply the penalty regardless of the
19 evidence?

20 A No, I think not.

21 Q Would you examine the evidence?

22 A I would.

23 Q In the first phase and examine the evidence in the
24 second phase, if any?

25 A Right.

26 Q And determine whether or not, in your own
27 discretion --

28 A Right.

1b-2

1 Q -- you should apply the death penalty or --

2 A Right.

3 Q -- grant life imprisonment?

4 A Right.

5 Q If you should grant life imprisonment, do you
6 realize this, that that would be a matter of your own
7 discretion as it would be if you should decide for the death
8 penalty?

9 A Right.

10 Q And you understand that you can examine all of the
11 evidence that's presented in the first phase or in the second
12 phase?

13 A Right.

14 Q If there is any?

15 A Right.

16 Q You understand that?

17 A Right.

18 Q Well, would your reaction -- you understand the
19 procedure now?

20 A I believe I do.

21 Q Now, you tell me, then. Let's see if you under-
22 stand.

23 A Well, if the evidence was so that I was convinced
24 in my own mind --

25 Q Beyond a reasonable doubt.

26 A -- beyond any doubt at all --

27 Q Not any doubt. But beyond a reasonable doubt.

28 A -- reasonable doubt that this person was guilty

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1 of murder --

2 Q Of the first degree.

3 A -- of the first degree, I would not hesitate to
4 say that I was for capital punishment.

5 However, if there were other evidences so that I
6 felt that in my own heart and mind that it should be life
7 imprisonment, I would be willing -- I would state that.

8 Q Well, I don't think I've quite clarified it for
9 you with all of this.

10 Your reaction, then, would be upon a conviction
11 of murder in the first degree to impose the death penalty?

12 A Yes. However, if -- supposing that in time that
13 this person had been -- during the time since the crime
14 occurred and the time that we were called upon, if he had or
15 she had repented or proved that they had had a change of heart
16 and mind, -- I know of some cases like that.

17 Q There are other factors that you would consider?

18 A Yes.

19 THE COURT: Without going any further, I think I'll
20 allow counsel to examine concerning the penalty, if you wish.

21 MR. DENNY: Thank you, your Honor.

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VOIR DIRE EXAMINATION

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BY MR. DENNY:

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Q Miss Byquist, is it your feeling, then, you would
have to have evidence from some source, at least, whether
presented by the People or the defendant himself, at the
penalty phase of the trial, having found him guilty, guilty

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1 beyond a reasonable doubt, you would then have to have some
2 evidence that he repented?

3 A Yes.

4 Q Of the crime?

5 A Yes.

6 Q Otherwise, you would automatically vote for the
7 death penalty, is that correct?

8 A Uh, if the evidence -- if I was convinced in my
9 own mind that the evidence was there, I would.

10 MR. DENNY: Thank you. I'll offer a challenge under
11 1073, Subdivision 2.

12 MR. MANZELLA: May I ask her a question?

13 THE COURT: It seems to be well taken.

14 MR. MANZELLA: Well, I would just like to ask one
15 question.

16
17 VOIR DIRE EXAMINATION

18 BY MR. MANZELLA:

19 Q Do you feel all persons convicted of first
20 degree murder should be sentenced to death?

21 A No, not at all.

22 Q If there's no evidence of repentance on the part
23 of the person convicted of first degree murder, do you think
24 then that all persons convicted of first degree murder should
25 be sentenced to death?

26 A Not necessarily.

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1 Q Why not?

2 A Well, because there could be some instances where
3 perhaps life would -- life imprisonment would prove more helpful
4 or would be more, to my way of thinking, would be more
5 advantageous to all concerned.

6 Q So you would consider all the evidence?

7 A Yes.

8 Q The background of the defendant, the circumstances
9 of the crime?

10 A That's right.

11 Q In determining which penalty to impose?

12 A That's right.

13 Q As you sit there now, for this defendant, assuming
14 he was convicted of first degree murder, do you favor life or
15 death for this defendant without hearing any of the facts in the
16 case?

17 A Well, since I am very much strong for capital
18 punishment, I presume I would just say capital punishment. But
19 I would have to have --

20 Q Thank you.

21 A I would have to have much, much evidence and much,
22 much pondering over it.

23 MR. MANZELLA: Thank you.

24 MR. DENNY: Renew the challenge, your Honor.

25 MR. KAY: We would object, your Honor.

26 THE COURT: Well, some of her answers would indicate
27 that she does not have that bias which would exclude her, but
28 others indicate to me that she does have, and the challenge is

1 good.

2 I'm going to lean toward the challenge and grant
3 it.

4 Miss Eyquist, thank you very much. The Court does
5 excuse you.

6 THE CLERK: Mrs. Leatrice Malach, L-e-a-t-r-i-c-e,
7 last name M-a-l-a-c-h.

8
9 VOIR DIRE EXAMINATION OF
10 LEATRICE MALACH

11 BY THE COURT:

12 Q Would you pronounce your name for me?

13 A Uh, Malach.

14 Q Malach?

15 A Uh-huh.

16 Q Miss Malach, have you been present during all the
17 proceedings thus far since last Friday?

18 A Yes.

19 Q Would your answers be any different than the
20 majority of the jurors that responded to the questions of a
21 general nature?

22 A No, they would be the same.

23 Q There would be no hardship to you to serve in this
24 case?

25 A No.

26 Q Can you think of any reason why you couldn't be
27 fair and impartial?

28 A No.

1 Q Regarding the penalty, the death penalty, do you
2 have such views about it that you could not be fair and
3 impartial in determining guilt or innocence?

4 A No, I could be fair.

5 Q In the first phase of the case?

6 A Yes.

7 Q In other words, you could be fair and impartial in
8 making a decision as to whether or not a person is guilty or
9 not guilty?

10 A Yes.

11 Q Of the accusations?

12 A Yes.

13 Q All right. Getting to the penalty itself, do you
14 have such views about the penalty that you would automatically
15 refuse to impose it regardless of the evidence?

16 A Well, I'd have to hear the evidence before I could
17 decide.

18 Q In other words, having heard the evidence, you
19 would be able to make a decision as to whether life imprison-
20 ment or death should be imposed, and you would not act auto-
21 matically to impose it?

22 A Huh-uh.

23 Q Or to refuse to impose it?

24 A No.

25 Q Is that correct?

26 A Yes.

27 Q I take it, then, you would not automatically, upon
28 a conviction of murder in the first degree, vote to impose the

1 death penalty?

2 A No.

3 Q And are your views such about the death penalty
4 such that you would never vote to impose it?

5 A If I had to, I would.

6 Q Well, you understand that you don't have to. That
7 the law does not prescribe that you have to impose the death
8 penalty upon a conviction of murder in the first degree. That
9 is a matter of discretion for the jury as to whether or not,
10 after they view all of the evidence, including the circumstances,
11 the crime or whatever evidence they may choose to view, to
12 accept from all of the evidence that's presented to them in
13 determining the issue, that it is just simply a matter of
14 really a juror's discretion; do you understand that?

15 A Yes.

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1 Q So that there's no compulsion -- upon a conviction
2 tion of murder of the first degree, there's no compulsion
3 in the law that you -- there's no compulsion in the law that
4 you apply the death penalty or vote for the death penalty;
5 do you understand?

6 A Yes.

7 Q Now, having that in mind, would your answer be
8 any different? Do you think that you could exercise your
9 discretion, and that you would not feel bound either way
10 in the beginning, to vote one way or the other?

11 A Yes. I couldn't decide which way I wanted to go.

12 Q Without looking at the evidence?

13 A Oh, you'd have to look at the evidence, yes.
14 Yes, that's the most important thing.

15 Q So, assuming that there is a conviction of murder
16 of the first degree, do you believe that you would act
17 automatically, either to refuse to impose the death penalty
18 or to impose the death penalty?

19 Would you act automatically, without regard to
20 the evidence, to vote either way?

21 A (No response.)

22 Q Do I confuse you with that sentence? Or that
23 question?

24 A (Smiling.)

25 Q Would you ever vote to impose the death penalty?

26 A If it was necessary, yes.

27 Q What do you mean by that?

28 A (No response.)

2-2

1 Q Would you explain that?

2 MR. DENNY: Well, your Honor, I think that's asking
3 her to state what types of cases she would impose the death
4 penalty. That's asking her --

5 MR. RAY: No.

6 Q BY THE COURT: Specifically, I am not asking you
7 if you can explain it otherwise -- if you can't, tell me.
8 I am not asking you for any particular type of case in which
9 you might impose the death penalty.

10 A Well, if I felt that he was guilty of the murder,
11 I would have to impose it.

12 Q That's what I felt that you might be referring
13 to.

14 A Yes. If I was absolutely sure he was guilty.

15 Q First, if you were not sure beyond a reasonable
16 doubt that a person was guilty of murder of the first
17 degree, would you vote him guilty?

18 A No.

19 Q So let's assume, for the purpose of this question,
20 that you are sure, beyond a reasonable doubt, --

21 A Yes.

22 Q -- that is, you are certain beyond a reasonable
23 doubt that a person was guilty of murder of the first degree.

24 A That's right.

25 Q And you've gotten past that stage in this
26 question.

27 Would you automatically, then, assuming that you
28 are at that stage of moral certainty -- beyond a reasonable

2-3

1 doubt -- would you then automatically vote to impose the
2 death penalty?

3 A Yes.

4 Q Without regard to any of the evidence, then,
5 upon a conviction of murder of the first degree, that would
6 be your feeling and your reaction?

7 A Well, the evidence would help me decide if he
8 was guilty or not. And then I would impose the death
9 sentence.

10 Q That's what I thought you meant.

11 A (Laughing.)

12 THE COURT: Any questions by counsel?

13 MR. DENNY: In view of the Court's questions -- her
14 answers to the Court's questions -- I think the defendant
15 would offer a challenge under 1073, Subdivision 2.

16 THE COURT: It appears to be well taken.

17 MR. KAY: No objection.

18 THE COURT: All right. The Court will excuse you,
19 then, Mrs. Malach.

20 Thank you very much. 15th floor of the New Hall
21 of Records, if you would, please.

22 THE CLERK: Walter L. Leathers; L-e-a-t-h-e-r-s.

23
24 VOIR DIRE EXAMINATION OF

25 WALTER L. LEATHERS

26 BY THE COURT:

27 Q Mr. Leathers, you have been present since last
28 Friday, and you've heard all the proceedings?

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A Yes, sir.

Q Would your answers be any different than the majority of jurors have responded to the questions of a general nature?

A Yes.

Q Give us those respects in which your answers would vary.

A Well, in regards to the capital punishment, I don't --

2a fls.

2a-1

1 Q Do you think that your views concerning capital
2 punishment would be such that you would automatically refuse
3 to impose capital punishment, without regard to the evidence?

4 A (No response.)

5 Q Would you automatically vote against it?

6 A Yes, sir.

7 Q Are your views about it such that you could never
8 vote to impose the death penalty?

9 A Yes.

10 Q In other words, do you feel so strongly concerning
11 the death penalty that you would never be able, regardless
12 of the evidence, to vote for it?

13 A Yes.

14 Q Are your views about it such that you could not be
15 fair and impartial in determining the first phase of the case,
16 the phase involving guilt or innocence?

17 A Yes.

18 Q Knowing that you would be required to go on to a
19 second phase and determine guilt -- strike that.

20 And knowing that you would have to go on to a
21 second phase, and determine life imprisonment or death, you
22 could not be fair and impartial on the first phase involving
23 guilt or innocence; is that what you are saying?

24 A Right.

25 Q So that your reaction would be automatic, in
26 voting against the death penalty in any case; is that
27 correct?

28 A Yes.

2a-2

1 MR. KAY: Your Honor, the prosecution would offer
2 challenges under 1073, Subdivision 2 of the California Penal
3 Code and 1074, Subdivision 8 as to Mr. Leathers,

4 MR. DENNY: Your Honor, may I inquire before the Court
5 rules on that?

6 THE COURT: I don't think it's necessary.

7 MR. DENNY: Well, there are a couple of questions, your
8 Honor, that I do think are required, as far as this record is
9 concerned.

10 THE COURT: The Court believes not. I think it's clear.

11 Mr. Leathers, you are excused. The Court grants
12 the challenge.

13 Thank you very much, Mr. Leathers.

14 MR. KAY: Thank you, Mr. Leathers.

15 THE COURT: 15th floor, Hall of Records.

16 THE CLERK: Clinton A. Jones; C-l-i-n-t-o-n; middle
17 initial A; last name, J-o-n-e-s.

18
19 VOIR DIRE EXAMINATION OF

20 CLINTON A. JONES

21 BY THE COURT:

22 Q Mr. Jones, have you been present since last
23 Friday and have you heard all of the proceedings?

24 A Yes.

25 Q Would your answers be any different than the
26 majority of jurors have responded to the questions of a general
27 nature?

28 A Hmm -- no, unless the death penalty was involved

1 in that questioning.

2 Q All right. Regarding the death penalty, then,
3 your views are such -- let me ask you: Are they such that you
4 could not be fair and impartial in determining the question of
5 guilt or innocence?

6 A Yes.

7 Q You mean that you would be inclined, in some way
8 or other, to be partial toward the death penalty or against
9 it?

10 A No, against it.

11 Q Against it?

12 A Yes.

13 Q And knowing, then, that you would be called upon to
14 determine life or death in a second phase, would your feeling
15 be such that you could not be fair and impartial in determin-
16 ing the first phase?

17 A Yes.

18 Q You couldn't look at the evidence fairly and
19 impartially in determining guilt or innocence, because you
20 would know that you would have to go on and determine guilt
21 or innocence later; is that correct? I mean, death or
22 life imprisonment later, --

23 A That's right.

24 Q -- is that right?

25 A That's right.

26 Q For example, you would be more inclined to find
27 a man not guilty, or guilty of some lesser offense than
28 murder of the first degree, in the first phase, because of

1 your feelings concerning the death penalty; is that what you are
2 saying?

3 A No, I don't believe in the death penalty. Is that
4 clear?

5 Q I know that, but --

6 A Oh.

7 Q -- can you be fair and objective in determining the
8 question of guilt or innocence? The question is -- presupposes
9 that you know what has been stated here since last Friday;
10 namely, that the trial may be divided into two phases.

11 The first phase is the phase involving guilt or
12 innocence: The question of whether, beyond a reasonable doubt,
13 Mr. Davis is guilty of these murders.

14 Now, assuming that you are involved only in the
15 first phase -- not in the second phase --

16 A What is the second phase?

17 Q -- for the time being -- the second phase, of
18 course -- and I'm surprised that you don't know it, if you have
19 been listening since last Friday -- is the phase involving
20 punishment, the question of life imprisonment or death.

21 A That's the --

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2b fol

2b-1

1 Q Now, I'm not inferring to any of you -- to you,
2 or to any of you who are in the room here as prospective
3 jurors -- that it will be necessary for you to decide the
4 question of life imprisonment or death, because you may
5 find -- it's quite -- it's possible that you may find that
6 the defendant is not guilty, or that he's guilty of some
7 lesser offense, other than murder of the first degree.

8 Do you understand?

9 A I think so.

10 Q You think so. Well, what I am asking is whether,
11 solely because of your feelings concerning the death penalty,
12 you would be inclined -- would your bias be in this direction?
13 That you would be inclined to find somebody guilty of a
14 lesser offense than murder of the first degree, even if the
15 evidence would be such that he could be found or should be
16 found guilty of murder of the first degree, simply because --
17 because of your feeling concerning the punishment? Concern-
18 ing the death penalty?

19 A Well, concerning the death penalty, I -- I
20 would be against it.

21 Q I assume that you are against the death penalty.
22 I see that I'm not getting across.

23 Would your views about the death penalty be such
24 that you would automatically refuse to impose it?

25 A Yes.

26 Q Regardless of the evidence?

27 A Yes.

28 Q Would you ever vote to consider the death penalty?

2b-2

1 A No.

2 MR. DENNY: May I inquire just a moment?

3 THE COURT: Yes, you can try.

4 MR. DENNY: Yes.

5
6 VOIR DIRE EXAMINATION

7 BY MR. DENNY:

8 Q Mr. Leathers --

9 A That isn't my name.

10 Q Oh, I'm sorry.

11 THE COURT: Mr. Jones.

12 MR. DENNY: I was looking at another sheet here. I'm
13 sorry.

14 PROSPECTIVE JUROR NO. 5: That's okay.

15 Q BY MR. DENNY: We have gone through an awful
16 lot of jurors in the last two and a half weeks, sir.

17 You understand that in the first phase of the
18 trial, we are only interested in your determination, if you
19 are seated as a juror, of the guilt or innocence of the
20 defendant of the charges of murder and conspiracy to commit
21 murder and robbery, and a third count of murder.

22 Do you understand that?

23 A Yes.

24 Q All right. Hold that microphone so we can all
25 hear, if you would, sir.

26 All right. Now, the evidence comes from the
27 witness stand; and at the close of the case, you'll hear
28 argument from counsel, and the Judge will instruct you as

2b-3

1 to the law, and then you'll go into the jury room and
2 deliberate.

3 A Yes, sir.

4 Q Now, no matter what your feelings are about the
5 death penalty, do you feel that you could honestly, fairly --
6 fairly deliberate as to the guilt or innocence of the
7 defendant in that phase of the trial, and bring back an
8 honest, fair verdict, consistent with the evidence and the
9 law, as to whether or not he's guilty or innocent?

10 A Well, now, can you state that question in fewer
11 words?

12 Q Yes. That's a reasonable request.

13 THE COURT: Yes, that appears to be a reasonable
14 request.

15 Q BY MR. DENNY: All right.

16 THE COURT: I think that's what confused him. I
17 used too many words.

18 MR. DENNY: That's possible, your Honor.

19 Q As far as determining whether this defendant is
20 guilty or innocent of murder, --

21 A Yes.

22 Q -- do you think you could listen to the evidence,
23 and make up your mind on that?

24 A Uh -- no. I -- this is the -- this concerns the
25 death penalty, and I could never agree to it, in case the
26 evidence pointed in that direction.

27 MR. DENNY: I have no further questions.

28 MR. KAY: Your Honor, the prosecution will offer to challenge

2b-4

1 Mr. Jones under Sections 1073.2 of the Penal Code and 1074.8
2 of the California Penal Code.

3 THE COURT: Well, the Court finds that he would auto-
4 matically refuse to impose the death penalty, regardless of
5 the evidence in the case.

6 I'm uncertain at this point about whether he
7 could be fair and impartial.

8 MR. KAY: Well, may I ask him one question, then?

9 THE COURT: Yes.

10
11 VOIR DIRE EXAMINATION

12 BY MR. KAY:

13 Q Mr. Jones, knowing that if you convicted a
14 defendant of first degree murder -- in this case, especially,
15 where the prosecution is asking for the death penalty --
16 knowing that if you convicted the defendant of first degree
17 murder, that you'd have to face the issue of deciding whether
18 or not he got the death penalty, would you convict him of
19 first degree murder? If the evidence showed that?

20 Would you, knowing that you'd have to face the
21 question of the imposition of the death penalty?

22 A No, I couldn't, because I don't approve of the
23 death penalty.

2c fls.

2c-1

1 THE COURT: I didn't hear that.

2 MR. KAY: He said he couldn't, because he doesn't
3 approve of the death penalty.

4 THE COURT: Was that your answer?

5 PROSPECTIVE JUROR NO. 5: Yes.

6 THE COURT: All right. Both challenges are good --
7 I mean, both grounds for challenge.

8 MR. KAY: Thank you.

9 THE COURT: So the Court does grant the challenge.

10 Thank you, Mr. Jones.

11 You are excused, to go to floor 15, the 15th
12 floor, New Hall of Records.

13 I'll take a short recess now.

14 During the recess, you are admonished that you
15 are not to converse amongst yourselves nor are you to permit
16 anyone else to converse with you on any subject connected
17 with this case, nor are you to form or express an opinion
18 on the matter until it is finally submitted to you, should
19 you be chosen as a juror.

20 I'll take a short recess, and then I'll call
21 those -- you may be excused for about 15 minutes. I have to
22 call a couple of other cases.

23 (Mid-morning recess.)

3 fls.

3-1

1 THE COURT: People versus Davis. Let's get the jurors
2 in.

3 All right, in the case of People versus Davis, the
4 record will show that the prospective jurors are present.

5 Have we selected another name for Mr. Jones? Had
6 we?

7 MR. KAY: No, we hadn't.

8 THE COURT: Pull another slip from the box, would you,
9 please?

10 THE CLERK: Mrs. Annie D. Burgess, A-n-n-i-e, middle
11 initial D, last name B-u-r-g-e-s-s.

12 THE COURT: The record should show that the defendant and
13 counsel are also present.

14
15 VOIR DIRE EXAMINATION OF

16 ANNIE D. BURGESS

17 BY THE COURT:

18 Q Mrs. Burgess, have you been present during all the
19 proceedings during the last week?

20 A Yes, I have.

21 Q Would your answers be any different than a majority
22 of jurors have responded to the questions of a general nature?

23 A No.

24 Q Would you know of any reason why you would not or
25 should not or could not sit on this jury as a fair and impartial
26 juror?

27 A No.

28 Q Would it be any hardship to you to serve as a juror

1 in this case?

2 A No.

3 Q Do you have such views about the death penalty that
4 you could not be fair and impartial in determining the question
5 of guilt or innocence in the first phase of the case?

6 A No.

7 Q Or are your views such concerning the death
8 penalty that you would automatically refuse to impose it
9 regardless of the evidence?

10 A No.

11 Q Or would you automatically impose it upon a
12 conviction of murder of the first degree?

13 A Yes.

14 Q In other words, once there's been a conviction of
15 murder in the first degree, regardless of the evidence that's
16 been established in the case, you would impose the death
17 penalty?

18 A Hmmm, no.

19 Q You would not?

20 A No.

21 Q So that you would not vote for the death penalty
22 automatically upon a -- simply upon a conviction of murder
23 of the first degree? You would look at the evidence to
24 determine whether, in your discretion, you should?

25 A Yes.

26 Q Have you served as a juror before in any type of
27 criminal case?

28 A No.

1 Q What type of -- are you employed outside the home?
2 A No.
3 Q Is there a Mr. Burgess?
4 A Yes.
5 Q What type of work does he do?
6 A Diesel mechanic or, O.N.C. Freight Lines.
7 Q A Diesel mechanic for R.N.C. --
8 A O.N.C.
9 Q O.N.C. --
10 A Freight Lines.
11 Q Are you a friend or relative of any law enforcement
12 officer?
13 A Yes.
14 Q Tell us about that.
15 A My son is a Sheriff and my daughter-in-law for
16 the Los Angeles Police Department.
17 Q So you have a son who is a Deputy Sheriff?
18 A Yes.
19 Q And your daughter-in-law works for the Los Angeles
20 Police Department?
21 A Both of them are employed -- well, they're
22 Sheriffs for the Los Angeles Police Department.
23 Q You can't be a Sheriff --
24 A Sheriff's department. I take it back. Sheriff's
25 department.
26 Q They both work for the Sheriff's?
27 A Yes.
28 Q And working for the Sheriff's Office, what does

1 your son do? Is he in a patrol car?

2 A Well, he's in the Academy now.

3 Q Oh, I see.

4 And your daughter-in-law?

5 A She has three years. She's in Sybil Brand.

6 Q Working in the jail there?

7 A Yes.

8 Q Well, do you think that relationship would affect
9 your judgment so that you would be unable to be fair and
10 impartial?

11 A No.

12 THE COURT: You may examine, Mr. Denny.

13
14 VOIR DIRE EXAMINATION

15 BY MR. DENNY:

16 Q Mrs. Burgess.

17 A Yes.

18 Q Got an idea what I might be asking you about?

19 A Slightly.

20 Q All right, ma'am.

21 How long has your son been connected with the
22 Sheriff's department?

23 A Five years.

24 Q And you say he is presently at the Academy?

25 A Yes.

26 Q Doing what?

27 A Well, he's going through training to be transferred
28 from one division to another.

1 Q What division had he been in prior to his entry into
2 the Academy this time?

3 A Oh, he was at the jail, the new jail.

4 Q And for how long had he been at the new jail, ma'am?

5 A Three years, I think.

6 Q When was he married, by the way?

7 A In 1960.

8 Q And I take it you see him at some regular
9 intervals?

10 A Yes.

11 Q And your daughter-in-law, also?

12 A Yes.

13 Q And is this daughter-in-law married to the son who
14 is a Sheriff?

15 A Yes.

16 Q And you have on occasion, I assume, discussed his
17 work with him?

18 A No.

19 Q He's never told you about any troubles he's had in
20 the jail or anything that he does in the jail?

21 A He refuses to.

22 Q You've questioned him about it?

23 A No, but he doesn't discuss his work.

3a fol

3a-1

1 Q He doesn't bring his work home?

2 A No.

3 Q I see. And your daughter-in-law, is she of the

4 same mind? She doesn't bring her work over when she visits

5 you?

6 A Right.

7 Q Do you know anything about what she does in the

8 jail?

9 A Hmm -- well, no, I really don't. I can't say.

10 Q You don't know whether she's in the custodial

11 section or whether she types?

12 A Oh, she's in the custodial section.

13 Q She is?

14 A Yes.

15 Q And do you know whether she has at any time had

16 any contact with any of the young ladies who have been known

17 as Manson Family members?

18 A No, I really don't.

19 Q She hasn't discussed that with you at all?

20 A No.

21 Q Her name is what, by the way?

22 A Rachel Marie.

23 Q Rachel Marie?

24 A Yes.

25 Q And your son's name is --

26 A Arthur Lee Burgess.

27 Q Arthur Lee?

28 A Yes.

3a-2

1 Q All right.

2 I take it you are rather proud of the fact that
3 he is a deputy sheriff?

4 A Yes.

5 Q And did you encourage him to go into that
6 profession?

7 A No.

8 Q Has he ever had any of his friends or associates
9 over socially to your home?

10 A Hmm, yes.

11 Q Is this on more than one occasion that you can
12 recall?

13 A No, only once.

14 Q Only once that you can recall?

15 A Uh-huh. That was sometime back and I really
16 don't recall the date or when.

17 Q All right.

18 I don't know whether you have been apprised of
19 the fact sitting here or whether it may have been before you
20 came in, but there are a number of deputy sheriffs who may
21 testify in this case, associates perhaps of your son.

22 Do you feel that that relationship is such within
23 the Sheriff's Department and your feelings about your son
24 and his association with the Sheriff's Department is such
25 that you might tend to give greater weight to the testimony
26 of those sheriff's officers who come in and testify because
27 they are sheriffs, than you would the testimony of any other
28 witness?

3a-3

1 A No.

2 Q If it came to a difference in the testimony
3 between a deputy sheriff or a sheriff's sergeant or a
4 sheriff's lieutenant and a lay witness, would you tend to
5 believe the sheriff, as against the lay witness?

6 A No.

7 Q Because of his connection with the Sheriff's
8 Department?

9 A No.

10 Q Have you previously worked at all, ma'am?

11 A Yes.

12 Q In what capacity?

13 A I did catering work.

14 Q Catering?

15 A Yes.

16 Q Work?

17 A Uh-huh.

18 Q Is this for a company?

19 A Yes.

20 Q And have you or any of the members of your
21 family ever been the victim of any sort of crime of any kind?

22 A No.

23 Q You seem to hesitate and look a little puzzled
24 at this point.

25 A I have to include in-laws and everybody. That's
26 the reason why I stopped to think about it.

27 Q All right.

28 A No.

3a-4

1 Q Having included all of them, the answer is still
2 no?

3 A As far as I know, yes.

4 Q All right.

5 Now, do you know if you or any member of your
6 family has ever been charged with any kind of offense other
7 than a traffic ticket?

8 A Yes.

9 Q And who is that?

10 A Oh, my brother-in-law, for illegal possession of
11 alcohol.

12 Q Is this sometime ago?

13 A Yes.

14 Q Or as a minor?

15 A Yes, before I knew him. But I heard about it
16 afterward.

17 Q Was this during Prohibition days you're talking
18 about?

19 A I don't know.

20 (Laughter.)

21 A But I have been into the family for 26 years.
22 It was before I met him that this happened.

23 Q All right. Any other skeletons going back to
24 Prohibition days?

25 A No, it won't go back that far. But my brother-in-
26 law's son --

27 Q And what problem did he have with the law?

28 A Illegal transportation of stolen goods across the

3a-5

1 state line.

2 Q And has this been recently?

3 A I think it was about seven years ago.

4 Q All right. Were you in any way involved in
5 that matter as a witness? Not as a defendant, ma'am, but
6 as a witness or did you know anything about it at the time
7 it occurred?

8 A No.

9 Q Was he convicted of that, do you know?

10 A Yes.

11 Q Did you feel that there was anything improper
12 or wrong in that particular conviction?

13 A No.

14 Q Did you know the facts of it?

15 A Well, I knew him.

3b fls.

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1 Q You figured, based on your knowledge of his
2 character, that he probably did it and a conviction then was
3 probably proper, then?

4 A Right, right.

5 Q But you weren't aware of the facts that led to that
6 conviction, is that right?

7 A No.

8 Q Now, concerning the death penalty, I was a little
9 bit confused by your answer and maybe you were confused by the
10 Court's question at the time, because the second answer seemed
11 a little different than the first. And we have to go back
12 again to this situation that I have inquired about on a number
13 of occasions.

14 But the judge asked you if, having found the
15 defendant guilty on whatever facts there were of first degree
16 murder, having considered the evidence and having been
17 convinced beyond a reasonable doubt of the defendant's guilt
18 so that you felt perfectly justified in voting guilty of first
19 degree, would you then automatically vote for the death
20 penalty?

21 A Yes.

22 Q That's what I thought you said and that's what you
23 meant?

24 A Yes.

25 Q All right. And that is because that person had
26 been found guilty of first degree murder, is that right?

27 In other words, that's why you would vote to
28 impose the death penalty, because you would have been

1 convinced that the person was guilty of first degree murder?

2 A Yes.

3 Q All right. And obviously this would be based on
4 your consideration of the evidence up to the point of first
5 degree murder, but then having found that person guilty of first
6 degree murder you would then, automatically, vote to impose the
7 death penalty; is that correct?

8 A No.

9 Q Well, see, now, we go back again.

10 A May I say something?

11 Q Yes, certainly.

12 A Because you said "my evidence."

13 Q Oh, I'm sorry. I'm sorry.

14 All of the evidence you had heard and considered,
15 not your evidence but the evidence that came from the witness
16 stand here.

17 A Uh-huh.

18 Q And that evidence had then convinced you beyond a
19 reasonable doubt and to a moral certainty that this defendant
20 was guilty of first degree murder, whether it was as an
21 accomplice or by the felony murder rule or willful, deliberate,
22 premeditated murder or any way first degree, at that point you
23 would say in the penalty phase of the trial that you would then
24 automatically vote to impose the death penalty?

25 A Yes.

26 MR. DENNY: Offer a challenge under 1073, Subdivision 2.

27 MR. KAY: May I question Miss Burgess just briefly?
28

VOIR DIRE EXAMINATION

BY MR. KAY:

Q I want to make sure that you understand this, because when you've answered Mr. Denny's questions, it looks like you are a little puzzled and I want to make sure you are absolutely sure of your answers before you give them.

What Mr. Denny said, the answer you gave, that in every case of first degree murder you would impose the death penalty; would you do that?

A No.

Q In other words, you'd have to look at the evidence? As Mr. Denny said, there are first degree murders and there are first degree murders. And you would have to determine in your own mind whether the fact of this particular first degree murder warranted the death penalty; is that true?

A Yes.

Q So, you wouldn't automatically vote for the death penalty in every case of first degree murder, would you?

A No.

Q I didn't think you would.

Your Honor, I think the record again should reflect that there seemed to be some confusion, at least on her facial expression, to Mr. Denny's questions.

THE COURT: Well, that's your opinion. I don't know whether the record should reflect that or not.

MR. KAY: Well, it seemed noticeable.

THE COURT: It seems Mrs. Burgess's answers would depend on who asked the last question as to what answer you get from

1 her.

2 Mr. Denny, do you want to ask her some more
3 questions?

4
5 VOIR DIRE EXAMINATION

6 BY MR. DENNY:

7 Q Don't shake your head, Mrs. Burgess, I do.

8 Mrs. Burgess, we do laugh at it, but I know you
9 consider it important and we all consider it important, and I
10 think all of us can afford to let off a little steam at those
11 times that are amusing, and we'll continue to do so. But this
12 is very important, and your state of mind is extremely
13 important at this point. And that's all we are trying to get
14 to.

15 And the Court has asked you, I have asked you,
16 Mr. Kay has asked you, and each time, as the Court says, you
17 seem to differ depending on perhaps how it is put to you.
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1 THE COURT: Do you still wish to offer the challenge?

2 MR. DENNY: Yes, I do.

3 THE COURT: All right, the Court will grant the
4 challenge.

5 MR. DENNY: Thank you.

6 THE COURT: All right, Mrs. Burgess, the Court will
7 grant the challenge. Thank you.

8 THE CLERK: Mrs. Burgess, here.

9 THE COURT: The 15th floor of the New Hall of
10 Records, if you will, please.

11 Pick another name.

12 THE CLERK: Mrs. Juanita R. Perry, J-u-a-n-i-t-a, last
13 name, P-e-r-r-y.

14
15 VOIR DIRE EXAMINATION OF
16 JUANITA R. PERRY

17 BY THE COURT:

18 Q Mrs. Perry, would your answers to the questions--
19 strike that.

20 Have you been present during all the proceedings
21 thus far?

22 A Uh, only to a certain extent, because of the fact
23 that I am definitely against capital punishment.

24 Q But you've been present during all of the
25 proceedings?

26 A Oh, yes, of course I have.

27 Q Now, let's get to the question of capital
28 punishment which you've raised.

3c-2

1 Are your views about the death penalty such that
2 you would never vote to impose the death penalty?

3 A I am afraid so.

4 Q In other words, regardless of the evidence, you
5 would vote against the death penalty in any case where there
6 is a conviction of murder of the first degree?

7 A Well, if at all possible -- I would not care
8 to weigh the evidence -- I'd have to be fair about that
9 part, but I wouldn't care to.

10 Q You're speaking of the first phase?

11 A Yes.

12 Q In the first phase of the case, the question of
13 guilt or innocence, you could be fair and impartial in
14 judging whether a man was guilty or not?

15 A Right, but I couldn't --

16 Q But getting over to the second phase now, what
17 were you going to say?

18 A I could hardly live with my conscience knowing
19 that I had sentenced anyone to their death. So I --

20 Q Well, to ascertain what your views are, then,
21 let me ask you a couple more questions.

22 Would you ever, in any case, vote to impose the
23 death penalty?

24 A Not if I could possibly help it.

25 Q Well, you know you can help it. It would be an
26 individual matter for you to determine. That it would be a
27 matter of your discretion.

28 So no one is forcing you in a situation where you

3c-3

1 are a juror, sitting on a penalty phase, to vote either way;
2 do you understand that?

3 A Yes. I couldn't lie about the evidence. If I
4 saw the evidence was such, whether it was for the defendant
5 or against the defendant, I'd have to vote truthfully
6 according to the way I saw it, which might lead to the
7 person's death even. But this is why, as I said, I --

8 Q In other words, what you are saying, you would
9 look at the evidence to determine whether or not you would
10 vote for the death penalty?

11 A Yes, I'm afraid I'd have to do that, too.

12 Q Now, getting to the question that I have asked
13 all of the jurors concerning the death penalty, and that is
14 this:

15 Would you have such views about the death penalty,
16 and have such conscientious objections to it that you would
17 automatically refuse to impose it in any case?

18 A Would that be left up --

19 MR. DENNY: Again, is that without regard to the
20 evidence?

21 Q BY THE COURT: Automatically, without regard to
22 the evidence, refuse to impose it?

23 A Oh, no.

24 Q Or would you be unable to impose the death
25 penalty in any case regardless of the evidence?

26 A If I had to view the evidence, I would have to
27 tell the truth, my true opinion of what I had seen, which
28 would lead to someone's death. And I wouldn't want it on my

1 conscience.

2 Q That's really confusing to me.

3 You would look at the evidence, but after having
4 looked at the evidence, would your reaction be to refuse to
5 put it on your conscience? In other words, to refuse to
6 vote for the death penalty?

7 A Well, I didn't know we had a choice of one way
8 or the other.

9 Q You certainly do. It is a matter of your
10 discretion.

11 A Oh, I thought that all we did was view the
12 evidence and vote and say whether we -- the person is guilty
13 or not guilty and that, then, after that, you would impose
14 the penalty, whichever way it might be.

15 Q I don't know where you have been for the last
16 week that you have that impression.

17 (Laughter.)

18 Q BY THE COURT: I think we have all mightily
19 tried to get this across.

20 And that is, that this case is possibly divided
21 into two cases, two phases.

22 The first phase is entirely separate from the
23 second phase.

24 The second phase being the question of the penalty
25 phase, wherein the question is put to the jurors as to whether
26 or not to impose life imprisonment or death.

27 The first phase is the phase in which the jury
28 determines guilt or innocence.

1 If the man is found guilty of murder of the
2 first degree, then, and only then, would it cause the jury
3 to go into the question of punishment, the second phase; you
4 understand?

5 A Yes.

3d fls.

3d-1

1 Q Do you think you understand now?

2 A I think so.

3 Q All right. Now, tell me what you've heard.

4 A We go through two phases. The first --

5 Q Go ahead.

6 A The first phase in which we weigh the evidence.

7 The second phase is as to whether or not --

8 Q You weigh the evidence for what purpose in the
9 first phase?

10 A For the purpose of seeing if it is murder in the
11 first degree, and no doubt to what extent. And then, after
12 that, we vote for life imprisonment or death, the death
13 penalty.

14 Q Right. By George, I think you have it.

15 (Laughter.)

16 Q BY THE COURT: That is the procedure.

17 Now, do you understand that in that second phase
18 that it is a matter of your total discretion as to whether or
19 not you vote for life imprisonment or death. And as I have
20 read to you, you may view all of the evidence, you understand,
21 all of the evidence that's been submitted in the case, whether
22 it is submitted in the first phase concerning the circumstances
23 of the killing or whether it is submitted in the second phase,
24 if there is any evidence submitted in the second phase; under-
25 stand?

26 A Yes.

27 Q Now, let's get back.

28 Assuming that you are in the second phase now, and

3d-2

1 that you are beyond the first phase completely.

2 Would you be of such an opinion concerning the death
3 penalty that you would automatically refuse to impose it?

4 A I don't really know.

5 Q Do you think that because of your opinions concern-
6 ing the death penalty that you would ever consider imposing
7 the death penalty?

8 A I might consider it. Uh, I don't know whether this
9 would be through an impassioned mind because of things that
10 I had seen and heard.

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1 Q Do you mean through things that you might have
2 read, heard and seen?

3 A No, no. I mean as evidence, or perhaps testimony.

4 Q Oh, I see. You weren't referring to anything
5 outside of the courtroom?

6 A No, no.

7 Q Any publicity?

8 A Oh, no.

9 Q But anything that you -- in other words, you
10 believe that in viewing the evidence, you might very well,
11 because of the nature of the evidence, impose the death
12 penalty?

13 A I might.

14 Q So, your reaction would not be automatic?

15 A No.

16 Q Did I ask you, would it be any hardship for you
17 to serve in this case?

18 A I'm a county employee.

19 There are many of us --

20 Q In what department do you work?

21 A The Department of Public Social Services,
22 eligibility worker.

23 Q And how long have you been so employed?

24 A With this department? Two years almost.

25 Q Did you work for the county before then?

26 A Yes. I've worked for the county for 24 years.

27 Q What have you done for them during that time?

28 A The auditor's office, the recorder's office.

1 Q And have you had jury experience before?

2 A Not until three weeks ago.

3 Q And did you serve in a criminal case?

4 A No, civil.

5 Q And you will be careful to distinguish between the
6 burdens of proof that you've heard so much about during the
7 course of this last week?

8 A Yes.

9 Q Is there a Mr. Perry?

10 A No. He has been deceased for some time.

11 Q Are you related to or a friend of any law
12 enforcement officer?

13 A No.

14 Q In what general area do you reside?

15 A Pardon?

16 Q In what general area do you reside?

17 A In West Los Angeles.

18 I forgot, I do have one nephew who is with the
19 Sheriff's department. I so seldom see him --

20 Q I see. How long ago was it that you last saw him?

21 A Oh, I see him about once or twice a year. I think
22 it might have been May or June, the last time I saw him.

23 Q Do you think that would affect your judgment in
24 this case?

25 A No. We've never -- I don't see him often.

26 Q Would you judge the credibility of a police
27 officer or a law enforcement officer on the same basis as
28 with any other witness?

1 A Yes.

2 Q You'd follow the Court's instructions in regard to
3 judging the credibility, and apply those criteria that the
4 Court gives you in judging the credibility of a police officer,
5 just as you would anyone else?

6 A Right.

7 THE COURT: Mr. Denny?

8
9 VOIR DIRE EXAMINATION

10 BY MR. DENNY:

11 Q Ma'am, I don't want to go over a good deal of what
12 the Court has already spent a good deal of time on, but I do
13 want to make sure that I understand some of the answers
14 that you've given.

15 I take it, from what you have said, that you would
16 honestly, truly and in accordance with the instructions of the
17 Court -- and your feelings of moral certainty that are
18 required here in this proof beyond a reasonable doubt -- have
19 no trouble whatsoever in determining the guilt or innocence of
20 this defendant, based upon the evidence that's presented in
21 the first phase of the trial; is that correct?

22 A I would do my best. I can't say that I would have
23 no trouble, because -- I mean, after all --

24 Q Well, obviously, there is going to be trouble in
25 resolving differences in testimony, if there perhaps are
26 inconsistencies. Or this business of reasonable doubt; or
27 circumstantial evidence, where there are two interpretations,
28 and one points to guilt and one to innocence, and both are

1 reasonable. You have to make that decision and choice along
2 the way as you go.

3 But from the feelings you've got now, do you feel
4 perfectly capable of resolving those issues along with your
5 fellow jurors, in arriving at a proper verdict of guilt or
6 innocence in this case; is that right?

7 A I am sure I could.

8 Q All right. Now, it is your present feeling that
9 you are not keen to impose the death penalty on anyone, but if
10 you had to do it, it would be a wrench to your conscience,
11 certainly; is that correct?

12 A That's very true.

13 Q But that under certain circumstances, either the
14 case itself, the facts of the case, or something about the
15 person charged with the offense or connected with the offense,
16 there are those circumstances in which you feel that the
17 evidence might be so horrendous -- as you say, "I think I
18 might impose it through an impassioned mind."

19 There might be something that would so affect
20 you emotionally that you would vote to impose the death
21 penalty, in that particular case -- or those particular cases;
22 is that correct?

23 A It's possible.
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1 Q All right. So that although you would not
2 automatically vote to impose the death penalty, neither would
3 you always refuse to impose it; is that correct?

4 A That is correct.

5 Q All right. Now, the prior jury experience that
6 you've had, ma'am, was this one civil case?

7 A Correct.

8 Q And what sort of case was that?

9 A Uh -- an auto accident case, in which the person
10 was seeking a certain amount of damages.

11 Q All right.

12 And did you return a judgment --

13 A Yes, we did.

14 Q -- in that case?

15 All right.

16 So that you got certain instructions of law,
17 and have gone through the process of jury deliberation?

18 A Right.

19 Q All right.

20 Now, as the Court said -- just a brief question
21 to you, but it's particularly important in this case -- you
22 did receive instructions on the burden of proof in that case;
23 is that correct?

24 A Right, um-hmm.

25 Q And you may recall the burden of proof being
26 by a preponderance of the evidence, --

27 A That's right.

28 Q -- is that correct?

4a-2

1 A Right.

2 Q In fact, a lawyer may have stood in front of
3 you, pretending that he was a scale or something, and showing
4 -- that is, during the course of the argument -- that just
5 might be preponderating of the evidence towards his side
6 (indicating) was enough to bring in the verdict for him.

7 Do you recall anything like that happening?

8 A Well, it took a little bit more than that.

9 Q Well, do you understand that in a criminal case,
10 it takes a lot more than that? It is beyond a reasonable
11 doubt, to a moral certainty. There's a lot heavier burden
12 put upon the People; do you understand that?

13 A Yes, I do.

14 Q And I take it you have no quarrel with the fact
15 that, in a criminal case, that an extra heavy burden should
16 be placed on the People? Before anybody would find a person
17 guilty of the commission of a crime, any crime; is that
18 correct?

19 A Right.

20 Q All right. And you'd have no trouble following
21 the Court's instructions and putting that burden on the
22 People and requiring them to live up to that; is that correct?

23 A Right.

24 Q All right. Now, ma'am, your husband was deceased
25 for sometime. What sort of work did he do prior to his
26 death?

27 A Post Office employee.

28 Q And in your County service, have you ever done

4a-3

1 any work at all for any of the various law enforcement agencies?

2 A No, I haven't.

3 Q Or have you had any connection with officers of
4 the law in the course of your work, on a regular basis?

5 A No.

6 MR. DENNY: Your Honor, I do have a few more questions,
7 but in view of the hour --

8 THE COURT: All right. Let's take a recess at this
9 time until 2:00 o'clock.

10 During the recess, you are admonished that you are
11 not to converse amongst yourselves nor with anyone else, nor
12 are you to permit anyone to converse with you on any subject
13 connected with the matter, nor are you to form or express any
14 opinion until the matter is finally submitted to you, should
15 you be chosen as a juror.

16 I'll see you all at 2:00 o'clock.

17 We are now in recess.

18 (Whereupon, at 12:04 o'clock p.m., an adjournment
19 was taken in this matter until 2:00 o'clock p.m.
20 of the same day.)
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1 LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 16, 1971, 2:15 P.M.

2
3 THE COURT: All counsel are present. The defendant is
4 present. All the jurors, prospective jurors are present. We're
5 ready to proceed.

6 Mr. Denny, you may proceed with Mrs. Perry.

7 MR. DENNY: May we approach the bench a moment, your
8 Honor?

9 THE COURT: Yes.

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

13 MR. DENNY: Your Honor, now that we've got everybody in
14 here, I'm just wondering if it might speed up things to question
15 Miss Perry separately on the publicity issue because I kind of
16 get the feeling that maybe if she survives that, as well as the
17 challenge I might have, the People might have one because of her
18 answers, you know, previously, might challenge her peremptorily,
19 and I think it would save time at least to get into the
20 publicity area not in front of the jurors. And if necessary,
21 I can ask her a few more general questions that I might have in
22 that connection. I think it would speed things up.

23 THE COURT: We'll give you that opportunity later, then.

24 MR. KAY: I want to question her. I'm not going to pass
25 questioning, because I don't at this point whether I am going
26 to make a peremptory challenge.

27 THE COURT: You don't know at this point whether you are
28 going to make a peremptory challenge?

1 MR. KAY: I'm not going to waive my right to question
2 her. If George wants to go right to publicity, that's fine,
3 but I don't want to waive my right to question her.

4 MR. DENNY: No, I assume they'll question her, too. But
5 if I can question her on publicity now, -- I've got just a
6 couple more questions I might ask her or might not, depending
7 on her answers.

8 THE COURT: All right, let's question her generally,
9 then, and then we'll get to publicity.

10 It is just a feeling you have that she may have
11 observed so much that she couldn't be fair and impartial?

12 MR. DENNY: No, no, this is not my feeling at all.

13 THE COURT: Oh.

14 MR. DENNY: My feeling is simply that --

15 THE COURT: You just felt there was a peremptory in the
16 offing and you wanted to speed things up?

17 MR. DENNY: Yes.

18 THE COURT: Apparently there isn't or at least there is
19 an indecision as to whether there is. Let's go ahead and you
20 can question her generally.

21 May I again remind the three of you, however, that
22 I think that the panel has pretty well observed what education
23 you've been able to --

24 MR. DENNY: Sneak by you.

25 THE COURT: -- sneak by me.

26 MR. KAY: I think we've cut it down a lot since you've
27 told us that yesterday afternoon.

28 MR. DENNY: I think we've all tried.

1 THE COURT: I think you have. I know you have.

2 (Whereupon, the following proceedings were had in
3 open court within the presence and hearing of the prospective
4 jurors:)

5 THE COURT: Very well, Mr. Denny, you may proceed.

6
7 VOIR DIRE EXAMINATION OF

8 JUANITA R. PERRY

9 BY MR. DENNY:

10 Q Mrs. Perry, I'm sorry, I did not get what your work
11 had been before you worked with DPSS?

12 A Uh, I was an auditor, the county auditor's office.
13 And I had been a recorder in the recorder's office prior to
14 that.

15 Q You have had training in bookkeeping, then, is that
16 it?

17 A No, I was not the real bookkeeper. We were doing
18 purchase orders and so forth, mileage claims.

19 Q Well, then, you don't have a background in
20 accounting, is that it?

21 A No.

22 Q All right. And how long were you in that particular
23 field?

24 A Uh, in the auditor's office, until almost two
25 years ago.
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1 Q And that was for how long, ma'am?

2 A Oh, about 22 years, I would say -- or 21, some-
3 thing like that. I'm not sure.

4 Q All right, fine.

5 I'm not sure that I asked you some of these
6 questions. Sometimes the lunch hour cuts off the train of
7 thought.

8 A Your last question, I didn't quite finish
9 answering it. Maybe I wasn't sure of what you said.

10 Did you ask me if, at any time, was it during my
11 work only, if I had anything to do with law enforcement
12 officers?

13 Q I think I did get into that, but I am interested,
14 of course, in not only your work situation, but any social
15 contacts you may have as well.

16 A Well, I'm engaged to a police officer, who is a
17 private investigator, as well as an inspector for Public
18 Utilities.

19 Q Now, I'm not quite sure that I understand -- you
20 say he's also a private investigator?

21 A Yes. He has his own business on the side.

22 Q Well, is he a member of the Los Angeles Police
23 Department --

24 A Retired.

25 Q -- or Sheriff's Department?

26 A Retired police officer.

27 Q Ah! And this is retired from LAPD?

28 A Yes.

1 Q And what rank did he retire as?

2 A Uh --

3 Q Or in?

4 A There was no -- he had been in the Traffic
5 Department.

6 Q Well, was he a sergeant?

7 A No, no.

8 Q How long had he been in the service, ma'am?

9 A 22 years.

10 Q And his name?

11 A Jarvis Reeves.

12 Q Now, do you know if he does work for criminal
13 defense attorneys, as a private investigator?

14 A I wouldn't say no, and I couldn't say yes,
15 because, for most anyone, he does investigations, when he
16 has time.

17 Q Well, what's his main line of work at the
18 present time, then?

19 A He's employed by the City of L. A. as Public
20 Utilities Inspector.

21 Q In that job, he does not carry a badge and a gun,
22 I take it, does he?

23 A No, he has to.

24 Q He does?

25 A Um-hmm.

26 Q He's still, then, what would be termed a --

27 A Law enforcement.

28 Q -- police officer or --

1 A Well, it isn't a police officer. But he has to
2 have a badge, and he has to carry a gun.

3 Q Um-hmm. Have you, during this association with
4 Mr. Reeves, had opportunities to discuss various and sundry
5 cases that he has worked on during the time you've known
6 him?

7 A Yes. I've helped him occasionally on his private
8 investigations.

9 Q All right.
10 Helped secretarially or going out on the
11 investigations themselves, or --

12 A Going on out, and making contacts occasionally,
13 if necessary.

14 Q Well, you mean actually interviewing people
15 or what?

16 A Getting information from them, by way of -- by
17 the telephone; and occasionally, going out on stake-outs.

18 Q Well, now, are these instances of stake-outs,
19 are these -- or, have these been in connection with domestic
20 cases or what type of cases?

21 A Uh -- some have been domestic; some have been
22 more for the sake of business, a person's business.

23 Q Well, do you mean to --

24 A To investigate people, to -- perhaps they're
25 doing something that a person doesn't want them to do,
26 when it comes to their business.

27 And to check and see if such is the case.

28 Q Well, again, is this the type of thing where

1 you'd be inside a business --

2 A Not necessarily.

3 Q -- during the day, watching an employee at work?

4 Or --

5 A No. When I have gone out, it has been in the
6 evenings.

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1 Q To see if somebody would go back and burglarize the
2 place or something like that?

3 A If they did that, yes.

4 And sometimes to see if a person was at a certain
5 location.

6 Q When they shouldn't be there?

7 A Well, or it could be vice versa.

8 Q All right. Or, if they're not there when they
9 should be there; is that right?

10 A That. And if they're there when they should be
11 there.

12 Q All right. Have you ever appeared in court as a
13 witness?

14 A No.

15 Q And have you gone out alone --

16 A No.

17 Q -- on this type of work?

18 A No.

19 Q You have always been --

20 A With somebody.

21 Q -- with Mr. Reeves or someone else?

22 A Yes.

23 Q Well, would you count yourself, then, as kind of a
24 semi --

25 A No, hmmm-mm.

26 Q -- law enforcement officer yourself?

27 A No. No, I would not.

28 Q Now, having in mind the fact that you have a rather

6a-2

1 close relationship with Mr. Reeves, who is obviously -- or,
2 has been aligned with law enforcement, as that term is
3 generally used, for the better part of his working life -- I
4 expect?

5 A Yes, sir.

6 Q (Continuing) -- do you have any feelings that
7 you, because of this relationship, might tend to favor the
8 prosecution in this case, over the defense?

9 A No, not because of that. I -- my mind might work
10 differently from someone who hadn't seen and heard so much,
11 perhaps -- not about this case, but about other cases.

12 Perhaps my mind might work a little different; I
13 don't know.

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1 Q Well, you have something in mind probably when you
2 say that as far as your mind working a little differently, what
3 do you mean by that?

4 A Perhaps I might go to something that someone else
5 might not notice or perhaps I might not jump as fast to a
6 conclusion, I don't know. That would be difficult to say
7 about someone's mind as a perhaps.

8 Q Well, are you saying, in other words, that perhaps
9 because of the work that you've had or the training or the
10 association with Mr. Reeves that you might not be inclined
11 to jump to a conclusion based on what might appear to be the
12 case?

13 A Yes.

14 Q And perhaps you'd want solid evidence before you
15 would form a conclusion, is that right?

16 A I think so.

17 Q Now, do you understand in this case that in
18 certain respects the People are going to be relying on
19 circumstantial evidence, not direct evidence?

20 And do you understand the examples that have been
21 given thus far in the instructions that the Court read?

22 A Yes.

23 Q I'll have to back that up, because I don't under-
24 stand that instruction. It is a hideous instruction, but it
25 is one that we're stuck with.

26 But there are certain examples that have been
27 given --

28 A I heard that, yes.

7-2

1 Q The mother and the kid in the cookie jar or, as
2 Mr. Kay said, the pen writing.

3 A Yes, an assumption.

4 Q All right.

5 Now, you're not saying that if sufficient
6 circumstantial evidence were presented and you believed that
7 that proved the case, that you would hesitate to vote guilt
8 just based on circumstantial evidence, are you?

9 A No, I couldn't say that, if most of the case is
10 based on circumstantial evidence.

11 Q You understand that circumstantial evidence is
12 sufficient to prove a case. If there are not this -- we don't
13 get into that situation where these two reasonable inferences,
14 one pointing to the guilt and the other to innocence, because
15 in that case you have to take that proving -- pointing to
16 innocence; you understand that?

17 A Right.

18 Q But if the only reasonable interpretation is pointing
19 to guilt and it is all via circumstantial evidence, you under-
20 stand somebody can be convicted on that? You understand
21 that?

22 A Yes, I do.

23 Q All right. Now, other than your association with
24 Mr. Reeves, do you have any other social contacts with people
25 in law enforcement?

26 A No. I know quite a few people in the Sheriff's
27 and police departments, but as far as associating closely with
28 them, I don't.

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1 I might see someone from time to time, run into
2 them socially, but not consistently.

3 Q Well, are these contacts that you got, special
4 contacts with people in the L.A.P.D., the Sheriff's department,
5 contacts you've developed of your own over the years or
6 contacts you've made as a result of your relationship with
7 Mr. Reeves or both?

8 A Well, both. I am a native daughter, so naturally
9 I know quite a few people here. And then, private investigators
10 I have met through conventions and so forth that I have
11 attended, them and their families.

12 Q Well, now, would you say having met an awful
13 lot of Sheriff's Deputies, L.A.P.D. officers and knowing --
14 knowing them, getting to know them, some as human beings,
15 other than just people with a badge and a gun, that you would
16 be inclined to give their testimony greater weight simply
17 because they did have a uniform?

18 A I am afraid not.

19 Q You realize that they are human and err?

20 A Yes, I do very much so.
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1 Q All right. By the same token, perhaps, having
2 seen errors on their part or whatever, do you feel that you
3 would give their testimony any less weight simply because
4 of the fact that they are a police officer?

5 A No, I don't think their rank as law enforcement
6 officers would have anything to do with my believing them or
7 not.

8 Q All right. You'd judge them by the same standards
9 that the Court would give you that you would apply to every
10 witness, is that right?

11 A I would certainly try to.

12 Q All right, ma'am.

13 I'll pass for cause on these issues, your Honor.

14 MR. KAY: Thank you, your Honor.

15 MR. DENNY: Oh, let me, if I may, your Honor, ask one
16 further question.

17 Q BY MR. DENNY: Ma'am, you did hear the questions
18 I have asked or have asked over the past week and a half or
19 so of the other jurors during the course of my voir dire
20 of them?

21 A Yes, I have.

22 Q And are there any questions that I asked of
23 them that caused you any cause, whatsoever, that your
24 answers might have been different than any of theirs; that
25 is, your fellow jurors sitting in the box with you now?

26 A I don't believe so.

27 MR. DENNY: All right, fine, pass for cause.
28

7a-2

VOIR DIRE EXAMINATION

BY MR. KAY:

Q Mrs. Perry, I want to ask you some questions concerning capital punishment now.

We've had a little two-hour break over the lunch time and I'm sure you thought quite carefully about this.

When you first came up and were seated as a juror, you made a pretty emphatic statement to the Court, to Judge Choate, against capital punishment.

And then, you seemed to change your position, at least that was my view of what you were doing. And I want to ask you a couple of questions in that regard just so I can understand if it is clear in your mind what we do here.

Who, in your opinion, makes a determination in this case as to whether or not Mr. Davis gets life or death, if Mr. Davis is convicted by the jury of first degree murder and conspiracy to commit murder?

A I was informed that the jury does.

Q Right.

And you understand that it is only the jury that makes that determination; do you understand that?

A Yes.

Q Now, you might have heard me talk to some of the other jurors earlier about the fact that in order to have a verdict imposing the death penalty, all 12 jurors must unanimously agree that this should be the verdict. And then, when they come out of the jury room, they're polled. Each

1 juror is asked individually, "Is this your verdict?"

2 A I understand.

3 Q The death verdict. And they have to answer
4 yes or no.

5 Now, knowing -- I take it that you realize that
6 it is within the absolute discretion of the jury as to
7 whether or not Mr. Davis gets life or death, if he is
8 convicted in the guilt phase of this trial, of first degree
9 murder; do you understand that?

10 A Yes, I do.

11 Q Your absolute discretion. It is not on the
12 Judge, it is not on Mr. Denny, Mr. Manzella or myself,
13 but the absolute discretion of each individual juror; do
14 you understand that?

15 A Yes, I do.

16 Q Now, realizing that it is in the absolute
17 discretion of each individual juror and that you apparently
18 have some strong feelings about this, and realizing that
19 you'd have this on your conscience the rest of your life,
20 do you feel you could vote for the death penalty in this
21 case?

22 A I don't want to, but if I am forced into it, I
23 could. But I really don't want to.

24 Q Well, who is going to force you?

25 A Well, I'd rather not serve on a case where there
26 is a death penalty, but, if I am kept as a juror, well, I
27 will do my best.

28 Q Well, you understand that it is within your sole

1 discretion. Nobody is forcing you. I mean, each juror has
2 to make up his or her own mind. I mean, there's nobody
3 that's going to twist your arm and say, "Hey, we're going
4 to beat you up if you don't vote for the death penalty."

5 I mean, it is your own decision.

6 Do you understand that? That nobody is going
7 to force you to do anything; do you understand that?

8 A Yes. As I stated to you, I would rather not
9 serve on a jury where there was such involved, just frankly.
10 That is the way I am telling you. I don't know any other
11 plainer words.

7b fls.

7b-1

1 Q Okay. Let me ask these questions of you:

2 Don't you feel that in the penalty phase of the
3 trial, knowing what you know about yourself and the way you
4 feel about the death penalty, don't you feel that -- that you
5 would automatically, no matter what the evidence was in either
6 the guilt or the penalty phase -- and I'm only talking about
7 the penalty phase now -- don't you feel honestly you would
8 automatically vote for life imprisonment?

9 A How can I say unless I saw and heard all of the
10 evidence. I don't know. But I don't want to be involved in
11 it, when it does involve another person's life. I don't think
12 I have the right to take another person's life.

13 Q Well, in other words, are you telling me that you
14 could vote for the death penalty?

15 A If I were placed in such a position where I had to
16 vote and honestly assess everything that had been said and
17 seen, I would be forced into that situation. But my belief
18 is that I do not have the right to take someone's life.

19 Q Well, again, -- and I know you are trying to answer
20 my question.

21 But, again, I am asking you, if we got into the
22 penalty phase of this trial --

23 A I told you, I would assess the facts.

24 Q Right.

25 A As truthfully --

26 Q And if you thought the facts in this case warranted
27 the imposition of the death penalty, would you, Mrs. Perry,
28 vote for that?

7b-2

1 A I told you I would be forced to if I believed that
2 the person was guilty, if the facts proved such or the evidence
3 was stacked that high against the individual. But I -- but what
4 I keep telling you --

5 Q I know, you don't want to.

6 A But if I was forced into it --

7 Q I understand you don't want to. But we have to go
8 a little further than that to determine whether or not you are
9 qualified to sit on this case.

10 I'm sure you've heard us question some of the
11 other jurors and, you know, I'm sure nobody really wants to sit
12 on a murder case or on a capital case, especially a capital
13 case, but somebody has to do it. And it is the responsibility
14 of those citizens who can conscientiously perform that duty to
15 sit on the jury and make that determination between life and
16 death, because that is the law of the State of California for
17 the conviction of first degree murder, conspiracy to commit
18 murder, there is a choice of punishments between life
19 imprisonment or the death penalty.

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1 So there has to be something more than just not
2 wanting to sit on the jury. If you are conscientiously
3 opposed to it, to the death penalty, so that you would never,
4 in any case, vote to impose the death penalty, then you would
5 not be qualified to sit on the jury, and I am sure you would
6 be excused.

7 But just not wanting to sit on it is legally not
8 enough to be excused.

9 A I said I was conscientiously opposed --

10 Q Well, are you --

11 A -- to sitting on such a jury.

12 Q Okay. Now, let me ask you this, then. Are you
13 so conscientiously opposed -- and you know your own state of
14 mind, certainly, a lot better than I do, or the judge or
15 Mr. Denny -- is your state of mind such, being conscientiously
16 opposed, that you would automatically vote against the death
17 penalty in the penalty phase of the trial?

18 MR. DENNY: Your Honor, I am going to object to this
19 question now. I think it's been asked about three or four
20 different times by Mr. Kay. It was asked by the Court a
21 number of times. It was asked by me.

22 I think it gets to -- it gets essentially to
23 badgering the prospective juror.

24 MR. KAY: Well, I object to Mr. Denny's comments. He's --

25 THE COURT: Well, gentlemen --

26 MR. KAY: -- hardly someone to talk about badgering
27 jurors.

28 THE COURT: I don't know about badgering. Let's hear

1 the question.

2 MR. DENNY: Do you mean the speech before it, or the
3 question, your Honor?

4 THE COURT: The question.

5 (Whereupon, the record was read by the reporter
6 as follows:)

7 "Q Okay. Now, let me ask you this,
8 then. Are you so conscientiously opposed --
9 and you know your own state of mind, certainly,
10 a lot better than I do, or the judge or
11 Mr. Denny -- is your state of mind such, being
12 conscientiously opposed, that you would auto-
13 matically vote against the death penalty in the
14 penalty phase of the trial?"

15 THE COURT: Well, it has been asked a number of times,
16 but I'll overrule the objection.

17 MR. KAY: Thank you, your Honor.

18 BY MR. KAY:

19 Q Did you hear the question?

20 THE COURT: You may answer it.

21 PROSPECTIVE JUROR NO. 5: (No response.)

22 THE COURT: Do you want Mr. Williams to read it to you
23 again?

24 PROSPECTIVE JUROR NO. 5: Yes, please.

25 THE COURT: Go ahead.

26 (Whereupon, the record was read by the reporter
27 as follows:

28 "Q Okay. Now, let me ask you this,

1 "then. Are you so conscientiously opposed --
2 and you know your own state of mind, certainly,
3 a lot better than I do, or the judge or
4 Mr. Denny -- is your state of mind such, being
5 conscientiously opposed, that you would auto-
6 matically vote against the death penalty in the
7 penalty phase of the trial?")

8 PROSPECTIVE JUROR NO. 5: No. As I have answered that
9 before, I would have to go by the facts and the statements that
10 are made, just like the other jurors, and give what is my
11 honest opinion as to who is guilty -- I mean, as to whether the
12 person is guilty or not guilty.

13 I would be truthful. But as I said -- and I'm
14 repeating, like you repeated to me -- I am conscientiously
15 opposed to anyone giving the death penalty, and especially
16 myself, because I have to live with my own conscience after-
17 wards.

18 BY MR. KAY:

19 Q Okay. Now, you talked about -- in the first part
20 of your answer, you talked about finding a person guilty or
21 not guilty.

22 Now, I understand that you can be fair, and there
23 would be no problem in the first phase of the trial.

24 But you understand, in the second phase of the
25 trial, it's not a question of finding the defendant guilty or
26 not guilty, because you have already found him guilty of
27 either first degree murder or conspiracy to commit murder,
28 at the first stage of the trial; do you understand that?

1 A (Indicating affirmatively.)

2 Q So at the second stage of the trial, the sole
3 question that you have to decide is whether or not he gets death
4 or life imprisonment; do you understand that?

5 A Yes.

6 Q Now, understanding that, do you feel, in your
7 conscience, that you could vote for the death penalty in the
8 second phase of the trial?

9 A It's according to what degree the person is found
10 guilty, is it not?

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1 Q Well, say that he's found guilty of first degree
2 murder in the first stage of the trial, and/or conspiracy to
3 commit murder -- because you don't get to the second stage
4 of the trial unless he has been convicted of one of those
5 two crimes in the first stage of the trial.

6 So, assume that he's been convicted of first
7 degree murder at the guilt phase of the trial. Then, you
8 move on to the penalty phase.

9 And in that penalty phase, the full question
10 that you have to determine is his punishment.

11 Does he get the death penalty? Is he sentenced
12 to die in the gas chamber in San Quentin? Or does he get
13 life imprisonment?

14 A Well, then, as the other attorney said, isn't
15 there -- aren't there many different kinds of first degree
16 murder?

17 Q That's right.

18 A So --

19 Q In other words --

20 A I guess we would be told that by the Judge,
21 and we would judge -- have to adjudge that, as to which
22 form of first degree murder we were going to make a
23 decision upon; isn't that correct?

24 Q No. In the penalty phase of the trial --

25 MR. DENNY: Well, that's certainly one element that
26 would enter into it, your Honor.

27 THE COURT: It's possible to so construct it. It
28 could be so interpreted.

8a-2

1 Go ahead, Mr. Kay.

2 Q BY MR. KAY: Okay. In the penalty phase of the
3 trial -- certainly, at the guilt phase of this trial, the
4 Judge will instruct you on different types of murder, even
5 different types of first degree murder.

6 But once we get into the penalty phase of the
7 trial, the Judge is basically going to instruct you that
8 it's up to your sole discretion as to whether or not Mr.
9 Davis gets life imprisonment or the death penalty.

10 He is not going to say, "If you find that Mr.
11 Davis committed a certain type of first degree murder, then
12 you should give him the death penalty."

13 Or, "If you find that he committed another
14 type of first degree murder, you shouldn't give him the
15 death penalty."

16 He is not going to give you any of those type
17 of instructions. He's just going to say, "Having found the
18 defendant guilty of first degree murder in the guilt phase
19 of the trial -- or conspiracy to commit murder -- it's now
20 up to your absolute discretion as to what punishment you
21 give him in the second phase."

22 He is not going to spell out any factors that
23 you should consider.

24 It's just solely up to you, to your own personal
25 discretion.

26 Do you understand that?

27 MR. DENNY: Well, your Honor, I'm going to object
28 to the question as assuming facts not in evidence at this

8a-3

1 point, because he's putting it in a positive future tense,
2 and I think he should at least say, "He may," not that,
3 "He will give you these instructions."

4 We are not there yet, and it's hypothetical.

5 MR. KAY: All right. Mr. Denny has made his argument.

6 Q And certainly, we are assuming that --

7 THE COURT: I think the objection is well taken.

8 The Court and counsel have no way of knowing
9 what the ultimate result will be in the first phase of the
10 case, as you know; and no inference is intended by the Court,
11 that the Court believes that the defendant is guilty of
12 murder of the first degree.

13 But the objection is well taken.

14 With that in mind, you may rephrase your ques-
15 tion.

16 MR. KAY: Yes, I will, your Honor.

17 THE COURT: It was more of a statement than a question.
18 Will you shorten it?

19 MR. KAY: Yes, your Honor.

20 BY MR. KAY:

21 Q Assuming the defendant is convicted of first
22 degree murder at the guilt stage of the trial -- that's
23 the first phase of the trial -- and if we move into the
24 second phase --

25 THE COURT: Well, excuse me, Mr. Kay.

26 MR. KAY: Yes?

27 THE COURT: Basically, what you are doing is instructing
28 the juror, and I think that we've instructed her in plenitude,

8a-4

1 so long as she's listened to what has occurred.

2 Do you understand the procedure that has been
3 described thus far?

4 PROSPECTIVE JUROR NO. 5: I think I do.

5 THE COURT: Well, from your answers, it does not appear
6 to the Court as though you understand.

7 PROSPECTIVE JUROR NO. 5: I told him that, should I be
8 on the jury, yes, I would have to vote the way that -- it
9 would either be life or death.

10 But -- that is, after the case has reached that
11 second phase there.

12 I've told him, also, that I'd rather not be
13 involved in such; but if I were, I would do my very best.
14 That's all I know.

8b fls.

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1 THE COURT: You understand that what all counsel -- both
2 counsel and Mr. Kay, in his last statement, and what the Court
3 has also stated to you, that it would be a matter of your
4 discretion, to determine whether or not life imprisonment or
5 death is imposed in the second phase, once you have passed the
6 first phase, and have found the defendant to be guilty of
7 murder in the first degree?

8 PROSPECTIVE JUROR NO. 5: Yes, I understood that.

9 THE COURT: And the Court has previously instructed you
10 in connection with that that, in arriving at the determination
11 as to whether or not you should impose life imprisonment or
12 death, you should consider all the evidence received here in
13 court, presented by the People and by the defendant, through-
14 out the trial before the jury; that you may also consider all
15 the evidence, the circumstances surrounding the crime, of
16 the defendant's background and history, of the facts in
17 aggravation or mitigation of the penalty which has been
18 received here in court.

19 However, it is not essential to your decision
20 that you find mitigating circumstances on the one hand or
21 evidence in aggravation of the offense on the other.

22 Do you understand?

23 PROSPECTIVE JUROR NO. 5: (Indicating affirmatively.)

24 THE COURT: I think that's clear.

25 BY MR. KAY:

26 Q All right. Now, just to get this clear, I'm
27 going to ask you one question. Knowing what the judge has
28 told you, knowing that at the second phase of the trial that

1 it's up to your sole discretion as to whether or not the
2 defendant, if he's convicted at the first stage, gets life or
3 death, could you conceive of yourself voting for the death
4 penalty?

5 A As I have told you, yes, if necessary.

6 Q You could. In your own conscience, you could do
7 that?

8 A It's not my conscience. It would be more of what
9 has been presented to me.

10 Q Right. Do you feel that any moral or religious
11 belief that you presently hold would prevent you from voting
12 for the death penalty?

13 A As far as my religion is concerned, it is against
14 my religion to be involved in such.

15 Q So do you feel that you would be going against your
16 religion if you voted for the death penalty?

17 A I do.

18 Q And knowing that, do you feel that you could vote
19 for the death penalty, still?

20 A In a case where someone's life is involved, and the
21 facts have been presented to us, I'm afraid I would have to
22 forget about the religion and vote the way that I think is just.

23 Q And you could do that?

24 A I would have to. I just said that.

25 Q And knowing that if you convicted the defendant of
26 first degree murder at the guilt phase of the trial, that you
27 would have to move into the second phase, the penalty phase,
28 would you even consider finding him guilty of less than first

1 degree murder to avoid the responsibility of making the
2 determination as to whether or not he suffered the death
3 penalty or got life imprisonment?

4 A No. I think I intimated as much.

5 (Pause in the proceedings while a discussion off
6 the record ensued at the counsel table between Mr. Kay and
7 Mr. Manzella.)

8 MR. KAY: We will pass for cause. Thank you,
9 Mrs. Perry.

10 THE COURT: I think we are at the point now where we
11 are about to examine Mrs. Perry --

12 MR. DENNY: May we approach the bench for a moment, your
13 Honor?

14 THE COURT: Yes.

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

18 MR. DENNY: Your Honor, you did not ask of her generally
19 whether she knows anything about the case that would prevent
20 her from being unfair.

21 And I wonder if you'd want to do that before
22 excusing them.

23 THE COURT: Well, I asked her whether her answers would
24 be the same to those general questions that I put to the
25 group.

26 But I'll ask her that, if you wish.

27 MR. KAY: Your Honor?

28 MR. DENNY: Well --

1 MR. KAY: Before we go back, your Honor, I would like to
2 cite Mr. Denny on the record for misconduct. His comments,
3 I feel, that I was badgering the witness, were certainly
4 un-lawyerlike.

5 And I feel that he should be admonished by the
6 Court in the future not to make such statements, --

7 MR. DENNY: Well --

8 MR. KAY: -- since I obviously was trying to do a
9 conscientious job in finding her state of mind.

10 MR. DENNY: Let me apologize to Mr. Kay. I did feel
11 that he was boring in a little bit heavily. I have done so
12 in the past, and I certainly apologize to him.

13 MR. KAY: I accept your apology, George.

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8c

1 THE COURT: All right. I don't think any admonition is
2 necessary.

3 MR. KAY: All right.

4 THE COURT: All right. I'll ask her the question as she
5 sits there.

6 MR. KAY: Thank you.

7 (Whereupon, the following proceedings were had in
8 open court, within the presence and hearing of the prospective
9 jury panel:)

10
11 FURTHER VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Mrs. Perry, I don't know whether I've got around
14 to talking to you about your jury experience.

15 Did I ask you about your jury experience?

16 A Someone did. Three weeks ago, I came in, and I
17 served on one case, a civil case, involving an auto accident,
18 damages.

19 Q And your husband does what type of work --

20 A Oh, no. He has been deceased for years.

21 Q That's right. He has been deceased. Twenty-six
22 years, or something like that?

23 A Something like that.

24 Q And we've covered your work.

25 A Yes.

26 Q Yes, I think we've covered all the preliminary
27 questions, except this:

28 Have you ever heard anything about this case, or do

1 you know anyone who is in any way involved in this particular
2 case?

3 A Not in this particular case; but about the Manson
4 Family, I think most people have, yes.

5 Q You are referring to the case -- the Tate-LaBianca
6 killings?

7 A Yes, the whole --

8 Q Wherein the Manson Family or Mr. Charles Manson was
9 involved?

10 A That, and the other previous murders.

11 Q We'll inquire of you about that later.

12 You've never heard of this case, however?

13 A Not to my knowledge.

14 Q And have you ever heard of Mr. Davis, Bruce Davis?

15 A Not to my knowledge.

16 Q Heard, seen or read about him?

17 A I may have. But if so, I don't recall the name.

18 Q All right. Now, you've heard of the Manson
19 Family. Would you, by reason of having heard, seen or read
20 about the Manson Family in the various publicity media, and
21 having spoken to friends or relatives, perhaps, about
22 Mr. Manson and the Manson Family, be of such a mind that you
23 could not be impartial towards somebody who is a member of the
24 Manson Family?

25 A I would try to be.

26 That's a hard question to answer because, seemingly,
27 in the beginning, of course, from newspaper reports, there was
28 quite a bit of racism involved.

1 And, naturally, being of the black race, I did feel
2 something about it, very strongly.

3 Q Do you think because of that aspect of racism
4 exhibited by the Manson Family -- or attributed, let's say, to
5 the Manson Family -- that a person who was a member of that
6 Family could not receive a fair trial from you?

7 A I don't really know, to be very truthful, whether
8 that would affect my thinking or not.

9 It might come into my mind; I'll be truthful with
10 you.

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1 Q You think you are uncertain about whether or not
2 you could lay that aside for the purpose of --

3 A I am a bit uncertain because if something else
4 came up, it would probably bring it back to my mind.

5 Q And you're uncertain whether your judgment --

6 A Right.

7 Q -- whether or not your judgment might be affected,
8 is that correct?

9 A That's very true.

10 THE COURT: Gentlemen, any questions? Shall we proceed
11 separately now?

12 MR. DENNY: Yes, I would like to, your Honor.

13 THE COURT: I'll excuse all of you, then, for a few
14 minutes to go to --

15 THE BAILIFF: Department 100, sir.

16 THE COURT: -- to Department 100.

17 And during the time that you are out of the
18 courtroom, with the exception of Mrs. Perry -- Miss Perry,
19 remember that the admonition is that you don't converse
20 amongst yourselves, nor with anyone about this case.

21 (Whereupon, the balance of the prospective
22 jurors retired from the courtroom, and the follow-
23 ing proceedings were had:)

24
25 VOIR DIRE EXAMINATION

26 BY THE COURT:

27 Q Well, you heard something about the Manson
28 Family's attitude towards blacks, is that it?

9-2

1 A Yes, I have.

2 Q What did you hear?

3 A That in the beginning, uh, they were to -- he
4 was to make it appear that the blacks had done these crimes,
5 committed these crimes in order to start, I suppose, a war
6 of some kind between the races. And at the time I think so
7 many of we blacks realized, heaven knows, we've got enough
8 troubles without that, because we can do enough ourselves,
9 each race can, you know, without deliberately starting something
10 worse.

11 Q So that's the substance of what you heard that
12 gives rise to this feeling on your part that you might not
13 be able to be objective?

14 A And then, I must admit, I was pretty horrified.
15 And I guess I was as frightened as other people were about
16 what had happened. I mean, it was hard for the mind to
17 grasp the horror of it.

18 Q Well, then, a person who is a member of the
19 Manson Family, who is associated with Charles Manson, would
20 be more or less associated, in your mind, so strongly with
21 Manson that you don't think that you could be fair and
22 impartial to him in making a judgment on the case?

23 A As I said, I would try. But I couldn't swear that
24 my mind wouldn't go back to that from time to time. And I
25 do realize that at one time, uh, I would have been afraid
26 to be in their presence because, uh, to me it was such a
27 crazy thing until I felt -- I just felt only insanity must
28 have been there and I would have been afraid of them.

9-3

1 Q Well, your best assessment of your state of mind
2 is, now, that you are uncertain about your ability to be
3 objective?

4 A I would try to be, but I am uncertain. As I
5 said, the mind is a funny thing. It can go back. When you
6 think you've got it under control, it isn't always true.

7 THE COURT: Gentlemen, any questions?

8 MR. DENNY: Yes, I would like to ask a few questions,
9 your Honor.

10 THE COURT: All right.

11
12 VOIR DIRE EXAMINATION

13 BY MR. DENNY:

14 Q Now, Mrs. Perry.

15 A Yes.

16 Q It seems that we're giving you the third degree
17 here. But I certainly appreciate the candor of your answers.

18 Ma'am, did you spend a good deal of time discus-
19 sing this matter of the Manson's black-white philosophy with
20 other people in the black community?

21 A Uh, I think among friends and family I believe
22 most of us did, because it was a bit shocking.

23 Q All right. And was this at or about the time
24 that Mr. Manson began -- or between the time of the trial
25 and the time he was arrested?

26 A I think it was at the time that they discovered,
27 uh, the murders and -- to be very frank, I'd be just as
28 frightened of a Black Panther group as I would be of that

9-4

1 group.

2 Q Well, I can understand that, too.

3 And the -- the problem is, now, you will be
4 sitting on -- if you are chosen as a juror -- you will be
5 sitting for, at least, two months on a case in which, perhaps,
6 the evidence is going to be shocking. And you said that you
7 were shocked at the evidence of these other murders and
8 frightened.

9 Now, do you feel that you might have some tendency,
10 as you sit here, to sort of relive that shock and fear or
11 fright to the point where it would cloud your ability to be
12 fair to Mr. Davis, assuming he is a member of the Manson
13 Family or was a member of the Manson Family?

14 A As I told you, it might. I would try not to,
15 but I can't say that that wouldn't come into my mind from
16 time to time, because discussing it daily, and perhaps
17 looking at the evidence and listening to people speak of it
18 daily, while, you know, listening to the evidence and all,
19 some things would no doubt come into my mind. And I had at
20 one time lived close to the Silver Lake area. I went to
21 junior high school in that area and I lived in Hollywood.
22 So, you see, the association could bring on some memories.

9a fls.

9a-1

1 Q Then, it would be your feeling that perhaps it
2 would be difficult because of all of this, that you have
3 seen, heard and read and the feelings that you have about
4 it, you're not certain that you could completely put it out
5 of your mind in listening to this evidence and determining
6 the guilt or innocence of Mr. Davis; is that right?

7 A I'm not certain I could. I personally would
8 not care to see anyone killed.

9 Q All right.

10 A Not even them.

11 But that isn't the way a trial is run. You have
12 to go by evidence. And I -- this is the way, if I were on
13 trial, I'd want it, evidence only.

14 Q So perhaps, are you telling us, that maybe if
15 you were on trial in Mr. Davis' place you would not want
16 a juror of your frame of mind to be judging you; is that
17 what you are saying?

18 A I wouldn't want someone who I thought might not
19 be fair to me. Now, this I definitely wouldn't want. I would
20 try to be fair, but as I say --

21 Q You're not sure that you could be fair?

22 A I'm not positive. I'd try, but that would be --

23 Q All right.

24 Well, your Honor, under the circumstances, I
25 would offer a challenge under 1073, Subdivision 2, and 1074.

26 MR. KAY: No objection. Thank you very much, Mrs.
27 Perry.

28 THE COURT: The Court grants the challenge. Thank you

9a-2

1 very much for assessing your abilities, Mrs. Perry. The
2 Court does excuse you. And would you go to the 15th floor
3 of the New Hall of Records, please.

4 PROSPECTIVE JUROR PERRY: All right, thank you.

5 THE CLERK: Jerry A. Stephens, J-e-r-r-y, middle
6 initial "A", last name S-t-e-p-h-e-n-s.

7 THE COURT: Hardship, penalty and the question of
8 publicity, if they're covered first, would eliminate a
9 number of people, wouldn't it, right on top?

10 MR. KAY: Right.

11 THE COURT: We do cover the first two subjects, but it
12 is difficult to get around to that question of publicity
13 the way I've been calling the matters or calling them in voir
14 dire -- sessions out of the presence of the other jurors on
15 the publicity.

16 But I think that the -- this case is not as
17 widely known, it is true, as the Manson case, and there are
18 some aspects of it which some jurors may not know which
19 would be disclosed if all of them were together during the
20 course of such examination.

21 Well, I suppose we'd better proceed as we have.

22 MR. DENNY: Yes, your Honor.

23 MR. KAY: Yes.

24
25 VOIR DIRE EXAMINATION
26 OF JERRY A. STEPHENS

27 BY THE COURT:

28 Q Your name, sir, is --

9a-3

1 A Jerry Stephens.

2 Q Mr. Stephens, have you been present since last
3 Friday, when the Court read the indictment and explained
4 the nature of this case?

5 A Yes, sir.

6 Q Would your answers be any different than the
7 majority of jurors have responded to the questions of a
8 general nature that I have put to them?

9 A Yes, sir, I believe so.

10 Q Would they be? In what way?

11 A Well, I read quite a bit about the Manson Family
12 and I don't think I could be a fair juror. --

13 Q All right. Let me --

14 A -- to a person.

15 Q A few questions about -- I interrupted you. Go
16 ahead.

17 A Well, anyone connected with the so-called Manson
18 Family I don't feel that I could objectively and very fairly
19 judge them because of my views of some of the things that were
20 -- the little innuendoes and things that were brought out
21 in the paper.

22 Q Some of the things that were said?

23 A Right, correct.

24 Q You think, then, that somebody who might be
25 associated with Mr. Manson, who might be a member of Manson's
26 group or Manson's Family would be more or less tarred with
27 the same brush as Manson?

28 A Uh, I tend to feel that way. Knowing, though,

1 however, that it wouldn't necessarily have to be true. It
2 isn't -- there is not always guilt just because of associa-
3 tion, but because of my personal views of that particular
4 group, it is an exceptional one.

5 Q Do you think that anyone who is associated
6 might tend to have the same views, might tend towards
7 criminality, and, therefore, you don't think you could be
8 fair to them in judging the evidence?

9 A In all honesty, yes, sir, that's my answer.

10 THE COURT: Any questions, gentlemen?

11 MR. DENNY: No, I would offer a challenge under 1073,
12 Subdivision 2, and 1076, your Honor.

13 The last one was also under the same section. I
14 think I said 1074. I meant 1076.

15 THE COURT: It is 1076. The Court grants the challenge.

16 Thank you very much for being so direct and
17 responsive in your answers.

18 PROSPECTIVE JUROR STEPHENS: Thank you.

19 THE COURT: 15th floor of the New Hall of Records,
20 Mr. Stephens.

9b fls.

9b-1

1 THE CLERK: Mrs. May K. Menard, first name is M-a-y,
2 middle initial K, last name M-e-n-a-r-d.

3 THE COURT: Menard, Menard?

4 THE CLERK: Menard.

5 THE COURT: Is it Mrs.?

6 THE CLERK: Mrs.

7
8 VOIR DIRE EXAMINATION OF

9 MAY K. MENARD

10 BY THE COURT:

11 Q Just take a seat there where the microphone is, if
12 you would, please, Mrs. Menard.

13 Mrs. Menard, you have been present since last
14 Friday and you've heard all the proceedings since that time,
15 have you not?

16 A I've been here since Wednesday.

17 Q Since Wednesday?

18 A Uh-huh.

19 Q You came in with a group before that, then?

20 A No, I came in on Wednesday.

21 Q Oh, were you -- let's see.

22 A On the 8th we came in.

23 Q You came in on the 8th of December?

24 A Uh-huh.

25 Q You've been -- you've heard the Court's explana-
26 tion of the nature of the case and you heard all of the -- all
27 of what transpired thereafter, is that correct?

28 A Yes.

9b-2

1 Q Would your answers be any different than the
2 majority have responded to the questions I have put of a
3 general nature to the group?

4 A No.

5 Q Would you have such views concerning the death
6 penalty that you would be unable to be fair and impartial
7 in determining the question of guilt or innocence?

8 A No.

9 Q Or would your views about the death penalty be
10 such that you would automatically vote against it regardless of
11 the evidence?

12 A No.

13 Q Or would you automatically vote for it, regardless
14 of the evidence?

15 A No.

16 Q Are you views about it such that you would never
17 be able to vote for the death penalty?

18 A No.

19 Q Have you heard of the Manson Family before?

20 A Yes, from what I've read in the papers.

21 Q Read in the papers and television reports?

22 A Oh, a little bit, yes.

23 Q And news reports over the radio occasionally?

24 A Uh-huh, yes.

25 Q Had you ever heard of this case or Mr. Davis?

26 A No.

27 Q Had you ever heard the name Shorty Shea or Gary
28 Hinman?

1 A Yes.

2 Q What do you know about each of those names? If you
3 will just report to us what you may have heard, seen or read
4 about each one of those names, that's what we want.

5 A Well, the only thing I remember is Hinman was one of
6 those that was supposed to have been murdered at the first time.
7 And, uh, I do remember something about Shorty Shea. And they
8 were looking for Hinman. And that's all I do remember.

9 Q Do you remember any of the alleged details of any of
10 the alleged -- either of the alleged killings?

11 A No.

12 Q Do you know about the Tate-LaBianca killings,
13 wherein several people were killed and Mr. Manson was one of the
14 defendants along with some girls who were members of the Manson
15 Family?

16 A Yes. Uh-huh.

17 Q Did you -- do you read a newspaper daily?

18 A No, I don't.

19 Q Do you listen to television or radio daily?

20 A Generally just the radio.

21 Q Have you heard anything about Mr. Manson in the
22 last six months?

23 A I don't believe so.

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10-1

1 Q Have you heard of any prosecution for this
2 indictment? This indictment involving Mr. Shea and Mr.
3 Hinman?

4 A No, I hadn't heard of it at all.

5 Q Do you think, in view of what you have heard
6 about the Manson Family, and about that Tate-La Bianca
7 trial -- about Hinman and Shea -- that you could be objec-
8 tive? Fair and objective in acting as a juror in this case?

9 A Yes, I believe so.

10 Q Would a person who is a member of the Manson
11 Family -- should the proof show, as we believe it might,
12 that Mr. Davis was a member of the Manson Family, or
13 associated with Mr. Manson -- would that evidence, because
14 of what you have heard, seen or read in the news media,
15 be such that you could not thereafter be impartial in
16 determining guilt or innocence? Or any other issue that you
17 might be called upon to make?

18 A No, sir.

19 Q If I were to instruct you that you were to set
20 aside anything that you might have heard, seen or read,
21 via the news media, or through conversations -- make your
22 mind a blank in respect to that; don't forget it, but set it
23 aside -- do you think that you could do that, and make a
24 judgment on any issue that you might be called upon to judge
25 in this case, independently of such matter?

26 A Yes, I believe so.

27 Q All right.

28 When you say, "I believe so," are you expressing

10-2

1 any doubt, or are you certain of your ability?

2 A I am certain, yes, sir.

3 Q And if I were to so instruct you, would you
4 follow that instruction?

5 A Yes, sir.

6 Q And will you be fair and impartial?

7 A Yes, sir.

8 Q Now, can you think of any reason whatever as to
9 why you could not be fair and impartial in this case? Or as
10 to why you should not sit on this case?

11 A No.

12 Q You have been a juror before?

13 A No, I -- well, I was on a case, but it was
14 resolved before we deliberated at all.

15 Q What type of case?

16 A It was a burglary.

17 Q Will you set aside whatever you might have learned
18 in any other case besides this case, and decide this case only
19 on its evidence?

20 A Yes, sir.

21 Q What type of -- are you employed outside the home?

22 A Yes. I'm a secretary.

23 Q For whom?

24 A It's Lawyers Title Insurance Corporation.

25 Q Lawyers Title. That's down on Spring Street,
26 isn't it?

27 A No. We are at Sixth and Westmoreland.

28 Q Sixth and Westmoreland. And have you ever served

10-3

1 as a legal secretary or acted as a legal secretary?

2 A I worked for two attorneys, about five years ago,
3 for just about -- oh, less than a year. I would -- they were
4 corporation attorneys, so --

5 Q They didn't practice criminal law?

6 A No.

7 Q How long have you been employed with Lawyers
8 Title? Five years?

9 A Five years.

10 Q And is there a Mr. Menard?

11 A No, I'm divorced.

12 Q Are you related to or a friend of any law
13 enforcement officer?

14 A No.

15 Q In what area do you reside?

16 A In the Wilshire -- Hollywood area, actually.

17 THE COURT: Mr. Denny?

18 MR. DENNY: Yes. Thank you, your Honor.

19
20 VOIR DIRE EXAMINATION

21 BY MR. DENNY:

22 Q Mrs. Menard, I am a little confused. I think we
23 all are, because we are all of the opinion that the last jury
24 panel came in last Friday, and you said Wednesday.

25 A Yes. I came in on the 8th.

26 Q Well, you mean that you started into jury duty --

27 A Yes.

28 Q -- on the 8th? But you came in here with the other

1 jurors --

2 A Yes, with the other jurors.

3 Q -- on Friday?

4 A Um-hmm.

5 Q Is that right?

6 A That's right.

7 Q And was it on the 8th that you sat in on the
8 civil case?

9 A Yes.

10 Q You were sent right away to a civil case?

11 A Yes, right.

12 Q And -- sorry; I was trying to get some information
13 during the time that the Judge asked you as to that.

14 Was that a case that went to a judgment or
15 verdict, or what?

16 A Well, they had selected the jury, and before we
17 really sat in, they resolved it.

18 Q It was settled?

19 A Um-hmm,

20 Q All right. Then you were sent over here?

21 A Yes.

10a fls.

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10a-1

1 Q All right. And you've had no prior jury experience
2 before that?

3 A No, hmmm-mm.

4 Q All right, ma'am. And insofar as your divorced
5 husband, what work was he doing at the time you were married?

6 A He was a draftsman, designing -- he worked for
7 architects, designing homes.

8 Q All right. Not hospitals?

9 A No, not hospitals.

10 Q All right. And to get down to the question of
11 publicity here, if we may, would you say that your source of --
12 or, your major source of news is the radio, then?

13 A Generally, yes. I -- sometimes I watch the news
14 at night; but generally, it's from the radio.

15 Q And is it a regular habit that you have, --

16 A Yes.

17 Q -- listening to the radio in the morning --

18 A Yes, in the morning.

19 Q -- and in the evening?

20 A Well, in the morning.

21 Q All right. And to your recollection, then -- well,
22 let me skip one back.

23 What station do you regularly listen to?

24 A KMPC.

25 Q All right. Is it your recollection that you have
26 heard no news reports or flashes concerning Charles Manson
27 within the last two months?

28 A No, I don't believe so. I can't recollect any,

10a-2

1 any reference to him lately.

2 Q All right. Or do you recall hearing anything about
3 any prosecutions for the alleged murders of Gary Hinman and
4 Shorty Shea during the last couple of months?

5 A No.

6 Q And insofar as the information that you previously
7 had concerning Mr. Shea, when was the last time you heard any-
8 thing about that?

9 A Well, I think it was right at the beginning, when
10 I read -- or heard -- discussed the details, more or less; but
11 I wasn't as interested -- that much interested in it to go into
12 it.

13 But it's been a long time.

14 Q Well, when you say you read or heard -- discussed
15 the details, that's what I'm interested in.

16 What details do you recall having --

17 A Just what the papers, the headlines, would say.

18 Q Well, what were those? What do you recall?

19 A About Shea, Shorty Shea?

20 Q Yes.

21 A I think the last I heard, they were looking for the
22 body -- digging for the body or something.

23 And I never did know if they found anything or
24 not.

25 Q Well, you heard Mr. Manzella and Mr. Kay say that
26 so far as that Count is concerned, they're not going to
27 present a body, or pictures of a corpse, or anybody who saw
28 him murdered; so, you can probably assume --

1 A Right.

2 Q -- that they haven't found him, obviously, --

3 A That's what I assumed.

4 Q -- assuming that there was a body.

5 Do you assume, based at this point on what you've
6 seen or heard -- seen, heard or read -- that there is a dead
7 body of Shorty Shea somewhere?

8 A Well, that's what's assumed from the papers.

9 Q Well, but is it your state of mind now that that is
10 a fact?

11 A No, of course not.

12 Q In other words, you don't know -- based on what
13 you've seen, heard or read, you don't have the feeling right
14 now that Shorty Shea is dead --

15 A No.

16 Q -- or is alive?

17 A No, I don't.

18 Q All right. And you are going to hold that frame
19 of mind, and that open frame of mind, until you are convinced
20 beyond a reasonable doubt, from evidence presented from the
21 witness stand, as to whether he's dead or alive; is that right?

22 A Yes.

23 Q Or whether he's dead? Because that's what you have
24 to be convinced of beyond a reasonable doubt in this case; do
25 you understand that?

26 A Yes.

27 Q All right. And you've used the expression a couple
28 of times, "Heard about it at the first" or, "the first time."

10b fol

1 You are referring to when the Tate and LaBianca --
2 A Yes.
3 Q -- murder news broke?
4 A That's right.
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1 Q All right. And as far as Gary Hinman, I think
2 you said, "Supposed to have been murdered at the first,"
3 or, "at the first time."

4 A Well, that's -- seems like that would be --
5 he was one of the names that I heard at that time.

6 Q All right. And I take it that at this time you
7 don't make any particular connection, in your own mind, as
8 to whether there's any so-called relationship or connection
9 between --

10 A No.

11 Q -- Mr. Hinman's death and the Tate and La Bianca
12 murders, --

13 A No.

14 Q -- is that right?

15 You understand that they are -- Mr. Davis is not
16 on trial for the Tate-La Bianca murders?

17 A Um-hmm.

18 Q But only for the alleged murders of Hinman and
19 Shea?

20 A I see.

21 Q All right. Now, do you feel there's anything
22 that you've seen, heard or read, at any time, about Mr.
23 Manson, the Manson Family, that would cause you to feel that
24 you just wouldn't want to sit on a case where a member of
25 the so-called Manson Family was a party to the trial?

26 A No, I don't.

27 Q All right. Do you feel you could be as fair to
28 Mr. Davis, assuming he was associated with Mr. Manson and the

10b-2

1 Manson Family, as you could be to any other defendant charged
2 with a similar crime?

3 A Yes, sir.

4 MR. DENNY: Your Honor, does the Court want us to go
5 ahead with the death penalty questions at this point?

6 THE COURT: Yes, I think so.

7 MR. DENNY: All right.

8 Q BY MR. DENNY: Ma'am, have you done any reading
9 concerning the death penalty?

10 A No, I haven't read anything about it. I have
11 had slight discussions with friends. But I have not taken
12 a stand either way on it.

13 Q You would not say, then, that you were schooled
14 in the lore --

15 A No.

16 Q -- or the literature that there is on either
17 side, --

18 A No.

19 Q -- is that right?

20 And you are at this point totally open-minded in--

21 A That's right.

22 Q -- your view as to whether it's good or bad, or
23 whether it should be imposed or not imposed in any particular
24 case; is that right?

25 A Yes, that's right.

26 Q Now, again, you heard one of the prior jurors --
27 I guess it was Mrs. Perry -- expressing some grave reserva-
28 tions that she had about taking the life of another person.

10b-3

1 And obviously, she did not relish that responsibility.

2 Do you feel the same way?

3 A Well, of course, I don't think anybody relishes
4 it.

5 Q That's certainly true.

6 A But I think that I would vote for it, if I felt
7 it necessary.

8 Q All right. And insofar as your state of mind,
9 if you found it necessary -- is it your state of mind --
10 again, going back very briefly to these situations where a
11 person might have been found guilty of first degree murder --
12 under varying circumstances, you'd have to consider the
13 evidence; but might be just a -- you know, willful, premedi-
14 tated, deliberated; it might be as an accomplice; it might
15 be under the felony-murder rule -- all of which I think
16 we've discussed at times -- it still ends up guilty of first
17 degree murder.

18 Would it be your feeling that, under those circum-
19 stances, and under the circumstances, simply, of, now, a
20 conviction of first degree murder, that you would then
21 automatically vote for the death penalty?

22 A No, sir.

23 Q You would consider all of the facts in the case,
24 and the facts of the defendant, his relationship to the case,
25 maybe his background, if this is brought out, all of those
26 things, before you would make the determination to have that
27 man executed; is that right?

28 A That's right.

1 Q All right. And have you, or any member of your
2 family, ever been a victim of a crime of any kind?

3 A No.

4 Q Or charged with any offense -- again, other
5 than traffic violations?

6 A No, sir.

7 Q There is going to be some evidence concerning
8 the use of drugs, perhaps, by some of the witnesses.

9 Do you have any feeling of -- such great feeling
10 of antipathy towards drug users, that you feel that that,
11 in and of itself, would be sufficient for you to completely
12 discount their testimony?

13 A Oh, no, sir.

10c-1

1 Q Or do you have -- or do you have any antipathy
2 toward drug users, such as would affect your ability to be fair
3 in judging their credibility?

4 A No.

5 Q Do you have any feelings whatsoever that there is
6 any reason why you could not be a fair juror, both to the
7 People and to the defendant in this case?

8 A No.

9 Q I don't have it in my notes, but I assume there
10 would be no hardship on you to serve; is that right?

11 A No. My employer understands.

12 MR. DENNY: All right. Fine. I'll pass for cause,
13 your Honor.

14
15 VOIR DIRE EXAMINATION

16 BY MR. MANZELLA:

17 Q Mrs. Menard, I would like to ask you just a few
18 questions. I've -- have you conversed with your employers, who
19 are lawyers, about the defense of criminal cases at all?

20 A They're not lawyers. It's title insurance.
21 Lawyers is just the name of it.

22 Q Oh. You have no lawyers working for the company?

23 A There is one attorney.

24 Q Because the Lawyers Title is nationwide. And I
25 think in Newark, my home town, there are lawyers working for
26 Lawyers Title.

27 I take it, then, you have no -- you have never
28 discussed problems or anything of that nature regarding the

1 defense of criminal cases?

2 A No. I work in the escrow department.

3 Q Okay. Well, no matter where you work, you've
4 never discussed it, --

5 A No.

6 Q -- is that right? Okay.

7 With regard to the death sentence, I take it from
8 your answers to everyone's questions so far that if you decided
9 that -- after Mr. Davis was convicted of first degree murder --
10 if you decided that for these crimes, that this defendant de-
11 served the death sentence, that you would be able to, and that
12 you would be willing to vote for the death sentence?

13 A Yes, sir.

14 Q All right. Mr. Denny touched on one other question
15 I want to inquire into, and this is with regard to Count III of
16 the indictment, which charges this defendant with the murder
17 of Donald Shorty Shea.

18 Knowing that we have not recovered a body, knowing
19 that we will not be able to produce an eyewitness to the
20 killing -- that is, someone who saw Mr. Shea's body in death --
21 I want to find out how you feel about that.

22 Now, does that make you lean towards the defense
23 side now? Without having heard any evidence in the case?

24 A Oh, no. I think I would want to listen to the
25 evidence.

26 Q All right.

27 A And weigh it.

28 Q Can you tell me that in your own mind right now,

1 even knowing what we have told you, that as to Count III, you
2 are neutral?

3 A Yes.

4 Q You don't lean towards the prosecution, and you
5 don't lean towards the defense?

6 A Yes, I am neutral at this moment.

7 Q Okay. In spite of the fact -- in spite of those
8 facts with regard to not having recovered a body, do you feel
9 that you would be willing to be convinced by the other
10 evidence, beyond a reasonable doubt, that Shea had been
11 murdered? And that this defendant was one of those who
12 murdered him?

13 A Yes, sir.

14 MR. MANZELLA: All right. Thank you, Mrs. Menard.

15 The People pass for cause.

16 THE COURT: Anything further?

17 MR. DENNY: No, your Honor.

18 THE COURT: Both sides pass for cause?

19 MR. KAY: Yes, your Honor.

20 MR. DENNY: Yes, your Honor.

21 THE COURT: The next peremptory is with the defendant.

22 MR. DENNY: We accept the jury as presently constituted.

23 MR. KAY: The People will thank and excuse juror No. 8,

24 Mr. Ross.
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1 THE COURT: Would you go back among the other jurors,
2 Mrs. Menard.

3 Let's see, should we have the whole panel in?
4 I think it goes faster --

5 MR. KAY: I think it goes faster this way.

6 THE COURT: First, we'll take a recess before we have
7 another juror in the box.

8 Who is the other juror?

9 Want to pick a name?

10 THE CLERK: Stanley H. Smith, S-t-a-n-l-e-y, middle,
11 initial "H", S-m-i-t-h.

12 THE COURT: All right, have Stanley Smith here in ten
13 minutes and we'll give everybody a break.

14 (Afternoon recess.)

15 THE COURT: This is Mr. Smith, who will be in seat No.
16 8, juror No. 8, is that correct, sir?

17 MR. MANZELLA: Yes.

18 MR. DENNY: Yes, your Honor.

19
20 VOIR DIRE EXAMINATION OF

21 STANLEY H. SMITH

22 BY THE COURT:

23 Q And, Mr. Smith, have you been present during all
24 of the proceedings since last Friday?

25 A Yes, sir.

26 Q And you've heard them all, have you not?

27 A Yes, sir.

28 Q Would your answers be any different than the

11-2

majority have responded to the Court's questions of a general nature?

A Of a general nature, no, or they would be the same.

Q Would be the same.

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

A No, sir.

Q Can you think of any respects in which your answers would be different to the questions that I put to the prospective jurors, those that I ran through in more or less a series?

A Uh, the only one would be on the capital punishment.

Q In respect to the death penalty, then, do you have such views about it that you feel you could not be impartial in determining guilt or innocence?

A I do. If I may answer in my own words --

Q Well, this is what -- we simply want to examine your mind now in connection with that question.

Considering the first phase of the case, do you believe that your views are such that you could not be fair and impartial in determining guilt or innocence?

A Uh, yes, in the respect that my belief which bears on this case, uh, if the party was accused of the crime of murder and there was a body, I could vote guilty. But by being no body, I could not bring myself to vote guilty or even on the death penalty, I couldn't do it if

11-3

1 there wasn't a body on circumstantial evidence.

2 Q In the first phase, then, you're expressing a
3 reservation about your ability -- well, you have no reserva-
4 tion. You're just saying you couldn't find anyone guilty
5 unless there was a body produced?

6 A Of first degree murder, no, I couldn't unless
7 there was a body.

8 Q Suppose somebody dissolved somebody in acid,
9 a person in acid?

10 A Well --

11 Q There was nothing left except a chemical or --

12 A Reversing my statement, then, on the first phase
13 of it, I probably could. But then voting -- when it came to
14 the death penalty, by not being a body there, I would always
15 have my doubt of whether there was actually a murder or not.
16 I just couldn't bring myself to do that. That's my belief.

17 Q I see.

18 Are your views generally about the death penalty
19 such that you would never vote to impose it?

20 A No, not never. No, if there was a body like that,
21 and I heard the evidence and it was -- I decided it was
22 beyond a reasonable doubt, I could vote for it. But --

23 Q You understand there are two counts here. Two
24 counts of murder alleged; you understand that?

25 A Yes, sir.

26 Q Now, understanding that there are two counts of
27 murder alleged, the first count alleges that the defendant
28 committed a murder of -- what's his name?

1 MR. DENNY: Gary Hinman, I believe, your Honor.

2 Q BY THE COURT: -- of Gary Hinman, and so far
3 there's been no disclosure as to what the evidence is, of
4 course, but there has been hints that there will be a body,
5 some evidence that there was a body in that case and that
6 homicide -- that alleged homicide.

7 A Yes. Well, if the evidence showed that he was
8 guilty beyond all reasonable doubt, I believe I could vote
9 the death penalty or --

10 Q Well, now, you've raised another problem by that
11 statement.

12 Would you automatically impose the death penalty
13 upon a conviction of murder of the first degree, assuming
14 there was a body?

15 A Not automatically, no.

16 Q You would look at the evidence to determine
17 whether or not you should vote the death penalty, is that
18 correct?

19 A Right.

20 Q Well, now, assume that -- you have stated to us
21 that your state of mind is such that you could find a person
22 guilty beyond a reasonable doubt based on circumstantial
23 evidence -- in effect, this is what you've said, based upon
24 circumstantial evidence, even though there's no body, you
25 could find somebody guilty of murder of the first degree;
26 is that right?

27 A Not on circumstantial evidence, no.

28 Q You could not?

1 A No, I could not.

2 Q You couldn't follow the Court's instructions with
3 respect to circumstantial evidence?

4 A Well, I've just never -- my belief, I never went
5 too strong on circumstantial evidence, no, sir.

6 Q You would not be able to follow the Court's
7 instruction?

8 A Well, I don't believe I could in that respect.

9 Q So that it would be impossible for you, so far
10 as you are concerned, to find somebody guilty of murder of
11 the first degree or of any degree, to find somebody guilty
12 of any crime based on circumstantial evidence?

13 A I don't believe I could, no, sir.

14 Q Well, in any event, with what we have estab-
15 lished at this point, you would automatically refuse to
16 impose the death penalty upon a conviction of murder of the
17 first degree of somebody if there was no body produced?

18 A Yes, sir.

12 fls.

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1 MR. DENNY: Well, your Honor, that -- that question
2 assumes that he is taking into account the evidence.

3 THE COURT: It assumes that he would --

4 MR. DENNY: That's one of the facts of evidence that he
5 has to --

6 THE COURT: It assumes --

7 MR. DENNY: -- would have to take into account.

8 THE COURT: It assumes that he would take into account
9 the evidence; that the evidence was circumstantial.

10 MR. DENNY: Well, but you -- you have got to ask him
11 whether he would automatically do it, without considering the
12 evidence.

13 Now, you are having him consider the evidence. And
14 one of the aspects of evidence you are considering is:

15 No body.

16 I think the question is improper, when you state it
17 that way.

18 The only question that's proper -- and that's been
19 -- you've held me to it -- is: "Would you refuse to impose the
20 death penalty, without consideration of the evidence? Would you
21 automatically refuse to?"

22 Now, he's saying he might refuse to, by considering
23 the evidence. That evidence, one of the aspects of the
24 evidence being: No body.

25 MR. MANZELLA: I don't know why we are --

26 MR. DENNY: And the question is improper.

27 MR. MANZELLA: I don't see why we are having arguments,
28 since there has been no challenge for cause made yet.

12-2

1 MR. DENNY: Well, I'm raising an objection to the
2 Court's question.

3 THE COURT: Yes, he is raising an objection to the
4 Court's question.

5 MR. MANZELLA: It's no more objectionable than many of
6 the other questions that have been asked here.

7 MR. DENNY: Well, I am objecting to the Court's --

8 THE COURT: By the Court, or by Counsel?

9 MR. MANZELLA: By everybody.

10 THE COURT: All right. I think -- I think the objection
11 is well taken.

12 BY THE COURT:

13 Q In a situation where you are called upon to
14 determine penalty, then, assuming that there was a body in the
15 case, you could find -- you could find for death?

16 A If the evidence showed beyond a reasonable doubt
17 that he was guilty, yes, if there was a body.

18 Q But your reaction would not be an automatic one?
19 Assuming that you did find that there was a murder of the first
20 degree?

21 A No, sir.

22 Q All right. Have you been a juror before?

23 A Uh -- one other time, with the exception of this
24 stretch.

25 Q Was that a criminal case?

26 A Yes, up in Kern County. It was a manslaughter
27 charge.

28 MR. MANZELLA: Excuse me, your Honor. In light of

12-3

1 Mr. Smith's -- some of his answers, may I inquire with regard
2 to his state of mind with regard to circumstantial evidence?
3 Now?

4 MR. DENNY: Well, I would like to take him in order,
5 your Honor.

6 THE COURT: Well --

7 MR. DENNY: I think the defense has the right to
8 question him first.

9 THE COURT: I think so. All right. You may.

10 MR. DENNY: Well, is the Court going to inquire on the
11 general --

12 THE COURT: Well, if you gentlemen wish to pursue this
13 aspect of it first, it might save time to just let you begin.

14 MR. DENNY: All right.

15
16 VOIR DIRE EXAMINATION

17 BY MR. DENNY:

18 Q Mr. Smith --

19 THE COURT: Or if you prefer, I'll ask him some
20 questions.

21 MR. DENNY: It might be helpful just to get the
22 general background, your Honor.

23
24 FURTHER VOIR DIRE EXAMINATION

25 BY THE COURT:

26 Q Mr. Smith, you have been a juror in a manslaughter
27 case in Kern County; is that correct?

28 A Yes, sir.

12-4

1 Q And what type of case was that?

2 A It was a boy of age 18, that had been drinking,
3 had a wreck on the highway, and --

4 Q A vehicle manslaughter?

5 A Right.

6 Q And you sat as a juror in that case?

7 A I did.

8 Q Was there a verdict in that case, without saying
9 what it was?

10 A Uh -- we recommended a year in jail.

11 Q Well, there was a verdict of guilty; is that right?

12 A Yes, right.

12a fol

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1 Q From what you have said, I judged that that was
2 the case.

3 What type of work have you done?

4 A I am a dispatcher for the Gas Company.

5 Q How long have you been so employed?

6 A 38 years.

7 Q Would you be able to set aside what you may
8 have learned from previous jury experience and decide this
9 case only on its evidence?

10 A Yeah, I think so.

11 Q Is there a Mrs. Smith?

12 A Yes, sir.

13 Q What type of work does she do?

14 A She's a housewife.

15 Q In what area do you reside?

16 A East L.A. -- or Montebello.

17 Q Are you related to or a friend of any law
18 enforcement officer?

19 A I have three nephews that are in the Service;
20 they're deputy sheriffs.

21 Q When you say "in the Service," do you mean
22 they are --

23 A Yeah.

24 Q -- deputy sheriffs in the County of Los Angeles?

25 A Yes, sir.

26 Q And do you know what -- do you see them often?

27 A No. Once or twice a year. I saw one of them
28 about two weeks ago.

12a-2

1 Q Are they in patrol cars or at desks or what?

2 A One of them is the deputy at the jail over --
3 I believe it's at Biscailuz Center, or the Academy.

4 One of them is in the car at Downey.

5 And since the riots, one of them has been
6 promoted to -- I don't know whether it's a bunco squad or
7 some other position; that, I don't know.

8 I only see those two over there maybe once or
9 twice a year.

10 Q The other one, you see how often?

11 A I've only seen him once in a year. And I went
12 two weeks ago -- they had twins, and my wife and I went over
13 to see them.

14 And this is the only time I've seen him in a
15 year.

16 Q Do you think your judgment would be affected by
17 that relationship in any way?

18 A No.

19 Q Or those relationships?

20 A No, sir.

21 Q Would you be more inclined to believe or disbe-
22 lieve a police officer, simply because of his status as a
23 police officer?

24 A The same as anyone else.

25 Q Do you have such views about the people who are
26 members of the Manson Family that you could not be impartial
27 in sitting as a juror in this case?

28 A Well, I've heard an awful lot about it, and read

12-3

1 it in newspapers and things, that -- that I -- I don't
2 believe I could be impartial.

3 The only thing, like I said, I couldn't --
4 excuse me -- I couldn't vote on the death penalty, if it
5 came to that, on one of these cases where there is no body.

6 That's the only thing that would bother me.
7 A life imprisonment case, I could vote on, but not the death
8 penalty.

9 THE COURT: I'll wait for just a moment until you
10 gentlemen are through.

11 MR. WEEDMAN: Excuse me, your Honor.

12 MR. DENNY: Your Honor, may I have just a moment to
13 speak with Mr. Weedman? It's rather important. If I can?

14 (Pause in the proceedings while a discussion
15 off the record ensued at the railing between Mr.
16 Denny and Mr. Weedman.)

17 MR. DENNY: I'm sorry, your Honor. Thank you very much.

18 BY THE COURT:

19 Q You stated to us, Mr. Smith, that because of
20 what you've heard, seen or read about the Manson Family,
21 that you would find it difficult to be impartial?

22 A Not difficult -- not difficult to be impartial,
23 no.

24 Q Well, you said you could not be impartial.
25 That means that you could not be fair, because of what you
26 had heard, read or seen about the Manson people.

27 Is that correct?

28 A Yes, that is correct.

12-4

1 Q And you -- you feel that you've read too much or
2 heard or seen too much, so that as a result, Mr. Davis, if
3 he should be -- if it should be established that he was a
4 member of the Manson Family, would have to overcome some sort
5 of a hurdle in your mind?

6 A It would. I don't know his background or a
7 thing. I never heard of him until I came in here.

8 I've read on the other --

9 Q Well, we have had --

10 A -- but I've had experience out in my camping
11 trips, in the summer, and things with hippies, which I
12 consider the Manson Family -- maybe I'm wrong there -- that
13 I've -- that I have not much use for them; and I have formed
14 an opinion on them, that I don't believe I could --

15 Q You don't --

16 A -- give it a fair verdict on it.

12b fls.

12b-1

1 Q Are you a camper?

2 A Pardon?

3 Q Are you a camper?

4 A Yes, sir.

5 Q Was most of your -- most of the time that you
6 have spent in your work been in Kern County?

7 A Uh -- five years ago, out of that 38 years,
8 I spent in --

9 Q In Kern County?

10 A In Kern and Kings County. I was sent down here
11 a little over five years ago to L.A.

12 Q Is Kings immediately north of Kern?

13 A Yes,

14 Q Are you somewhat familiar with the Kings and
15 Kern terrain up there?

16 A Yes. I am -- I started out there in the
17 Kettleman hills up there, which is Kings County, an oil
18 field town; and then down to Taft, which --

19 Q Well, do you think that if the -- if the evidence
20 should disclose that this gentleman is a member of the
21 Manson Family, that because of what you've heard, seen or
22 read, that you would find it difficult to be impartial,
23 then?

24 A I believe so, yes, sir.

25 THE COURT: Any questions?

26 MR. DENNY: I would offer a challenge to Mr. Smith,
27 under 1073, Sub. 2 and 1076.

28 MR. KAY: No objection.

12b-2

1 THE COURT: All right. Thank you, Mr. Smith. You
2 are excused.

3 And you are to report to the 15th floor of the
4 New Hall of Records -- well, the Clerk says it's late
5 enough so that you don't have to go there tonight. You
6 should report to Room 253, then, 9:00 o'clock in the morning.

7 PROSPECTIVE JUROR NO. 5: 9:00 o'clock tomorrow?

8 THE COURT: 9:00 o'clock.

9 PROSPECTIVE JUROR NO. 5: Thank you.

10 THE COURT: Thanks, Mr. Smith.

11 Do you want to call another name?

13 fls.

12 THE CLERK: Robert B. Arellanes; that's A-r-e-l-l-a-n-e-s.
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1 THE COURT: George V. Denny, III, is present.

2 MR. DENNY: Yes, your Honor.

3 I was held up by another Judge, your Honor. I
4 couldn't get away from him.

5 THE COURT: Mr. Kay and Mr. Manzella and the
6 defendant are all present.

7 Also Mr. Arellanes -- is that correct?

8 PROSPECTIVE JUROR ARELLANES: Arellanes.

9 THE COURT: -- is in the box.

10
11 VOIR DIRE EXAMINATION OF

12 MR. ROBERT B. ARELLANES

13 BY THE COURT:

14 Q Mr. Arellanes, were you present during all the
15 proceedings thus far?

16 A Yes, I have been, since Thursday.

17 Q Would your answers be any different than the
18 majority of the jurors responded to the Court's questions
19 put to the group as a whole?

20 A No.

21 Q Would not be any different.

22 You cannot think of any respects in which your
23 answers to that series of questions that I put right at
24 first to the panel --

25 A No, I can't.

26 Q Have you ever, for example, been the victim or
27 has anyone close to you been the victim of a crime of
28 violence?

13-2

- 1 A No.
- 2 Q Have you or anyone close to you been arrested
- 3 for an offense other than a misdemeanor traffic offense?
- 4 A None.
- 5 Q Would it be any hardship for you to serve in
- 6 this case?
- 7 A That it would.
- 8 Q Tell us why.
- 9 A I live off disability. I am disabled. I cannot
- 10 work. And I have a few peoples I teach organ.
- 11 Q You teach the organ?
- 12 A Yes. That is all I live -- if I get stuck in
- 13 this, I've had it.
- 14 Q Do you generally teach during the day?
- 15 A During the day, yes. A few younger people in
- 16 school, children -- or not children, but young people in
- 17 the evening.
- 18 Q Where do you do this, out of your home?
- 19 A At home.
- 20 Q You say in the evening?
- 21 A The afternoons my adult, daytime, and the younger
- 22 ones, school people in the evening.
- 23 Q I see. And this would be an economic hardship
- 24 for you?
- 25 A Very much so.
- 26 MR. DENNY: We'd stipulate to his excusal.
- 27 MR. KAY: So stipulated.
- 28 THE COURT: These gentlemen have agreed that they will

13-3

1 excuse you and the Court does excuse you. Thank you very
2 much, Mr. Arellanes.

3 PROSPECTIVE JUROR ARELLANES: Thank you.

4 THE COURT: Let's see, you need not report until
5 tomorrow at Room 253.

6 PROSPECTIVE JUROR ARELLANES: 253?

7 THE COURT: You know, the jury assembly room.

8 PROSPECTIVE JUROR ARELLANES: Oh, yes.

9 THE COURT: At 111 North Hill.

10 PROSPECTIVE JUROR ARELLANES: Uh-huh.

11 THE COURT: The courthouse.

12 MR. KAY: Thank you.

13 PROSPECTIVE JUROR ARELLANES: You are welcome.

14 THE CLERK: Mrs. Anita Salazar, A-n-i-t-a, last
15 name S-a-l-a-z-a-r.

16 MR. DENNY: Joyce, how many do we have left?

17 THE CLERK: Quite a few.

18 MR. DENNY: About 12?

19 THE CLERK: Oh, more than that.

20 THE COURT: Oh, yes, quite a few.

21 Good, maybe we won't have to go through the
22 litany again.

23
24 VOIR DIRE EXAMINATION OF
25 ANITA SALAZAR

26 BY THE COURT:

27 Q Mrs. Salazar, will you come forward, please.
28 Mrs. Salazar.

13-4

1 A Yes, sir.

2 Q You may be seated where the microphone is.
3 And the Court wishes to ask you whether or not you have been
4 present during all of the proceedings thus far since last
5 Friday?

6 A Yes, I have.

7 Q And you've heard the Court's explanation of the
8 nature of this case and heard the indictment read, is that
9 correct?

10 A Yes, sir.

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

13 A I think it will be. My daughter is expecting a
14 child the last of January and I have to be home.

15 Q Why is that? Are you the only one who would
16 care for her?

17 A Yes. And then, she has two other young children.

18 Q And your daughter is living at home, is it?

19 A Well, she lives in the apartment next to mine.

20 Q And you would be expected to take care of her
21 and the newborn child?

22 A Yes, plus the other two children that are home.

23 Q You're going to have your hands full late in
24 January.

25 A I have them now.

26 Q Wouldn't you rather be here in the jury box?

27 A Well, I would, if I didn't have that --

28 Q I understand. I was just trying to be facetious.

1 MR. KAY: Your Honor, we're willing to stipulate that
2 she be excused.

3 MR. DENNY: So stipulate.

4 THE COURT: Good luck to you, Mrs. Salazar, you are
5 excused.

6 PROSPECTIVE JUROR SALAZAR: Thank you.

7 THE CLERK: Mrs. Vera M. Merritt, V-e-r-a, middle
8 initial "M", last name M-e-r-r-i-t-t.

9 THE COURT: Mrs.?

10 THE CLERK: Mrs.

13a fls.

13a-1

1 THE COURT: Is this a larger panel, Joyce?

2 THE CLERK: No, it was 50.

3 THE COURT: The last one -- maybe it is just going
4 slower.

5 MR. KAY: Well, we weren't in session Monday. I
6 think that's why.

7 THE COURT: Is that the reason?

8 MR. KAY: That's why we have more at this time than
9 we had with the other panels at this time.

10 THE COURT: You may deposit your package there at any
11 seat, Mrs. Merritt.

12 Fine.

13
14 VOIR DIRE EXAMINATION OF

15 VERA M. MERRITT

16 BY THE COURT:

17 Q Were you present when the Court explained the
18 nature of this case and read the indictment, and have you
19 been at all of the proceedings thereafter?

20 A Yes, I have.

21 Q Would your answers be any different than the
22 majority have answered to the questions of a general nature
23 that I put to the prospective jurors?

24 A Yes, it would.

25 Q Tell us in what way?

26 A I do not believe in capital punishment.

27 Q Are your feelings about the death penalty such
28 that you would be unable to be fair and impartial in

1 determining guilt or innocence in the first phase?

2 A Yes.

3 Q In other words, knowing that in going -- knowing
4 that you would have to go into a phase wherein you would have
5 to determine death or life imprisonment, you would be unable,
6 in the first phase, to be impartial in determining guilt or
7 innocence, is that right?

8 A This is true.

9 Q You would be less likely, for example, to find
10 somebody guilty of murder of the first degree, even though
11 the evidence should be such that you should find somebody
12 guilty of murder of the first degree, because you would have
13 to go into that second phase; is that right?

14 A This is true.

15 Q And concerning your views, now, are they such
16 that you would automatically refuse to impose the death
17 penalty in any case?

18 A This is true. I could never impose the death
19 penalty in any case.

20 Q Regardless of the evidence?

21 A Regardless of the evidence, I could not do it.

22 Q Would you ever consider imposing the death
23 penalty in any case?

24 A No, I would never consider imposing the death
25 penalty.

26 MR. KAY: Your Honor, we would offer to challenge this
27 juror under Section 1073, Subdivision 2, and 1074, Subdivision
28 8 of the Penal Code.

1 MR. DENNY: Your Honor, I would like to ask a couple
2 of questions again before the Court rules on the challenge.

3 There --

4 THE COURT: I don't think it is necessary. I think her
5 state of mind is clear.

6 MR. DENNY: Well, your Honor, I'm not sure it is, and
7 I think by the Court's phraseology "phases," there may be
8 some confusion and I would like to clear it up, at least, if
9 I may.

10 Q BY THE COURT: You understand, Mrs. Merritt, the
11 phases that I have described in this case; that it is possible
12 that there would be two phases of the case?

13 A I understand that very well.

14 THE COURT: I think she does.

15 Q And in the first phase, then, I judge from what
16 you told us that you could not be fair in determining guilt
17 or innocence because of your feelings about the death penalty?

18 A This is true, I could not be fair.

19 MR. KAY: We'd renew our challenge, then. Thank you.

20 THE COURT: The challenge is granted.

21 Thank you, Mrs. Merritt for being so direct with
22 us. It saves time.

23 PROSPECTIVE JUROR MERRITT: Okay.

24 THE COURT: And you are excused to go to Room -- let's
25 see, to Room 253 tomorrow at 9:00 o'clock.

26 PROSPECTIVE JUROR MERRITT: That's the courthouse?

27 THE COURT: 111 -- yes, 111 North Hill.

28 PROSPECTIVE JUROR MERRITT: Tomorrow at 1:00 o'clock?

1 THE COURT: The courthouse at 9:00 o'clock.

2 PROSPECTIVE JUROR MERRITT: At 9:00?

3 THE COURT: At 9:00 o'clock, the courthouse, 111 North
4 Hill.

5 THE CLERK: Joseph T. Norris, N-o-r-r-i-s.

6 MR. DENNY: Your Honor, just to put it on the record,
7 I would like to -- there have been three that I know of, and
8 possibly four jurors, and I have thought to try to ask
9 questions on this particular issue.

10 Would they -- well, could we have him excused
11 until we ask him to come in?

12 THE COURT: Why don't you wait until after we take
13 him, if you don't mind.

14 MR. DENNY: All right.

15 THE BAILLIFF: Have a seat over there.

16
17 VOIR DIRE EXAMINATION OF
18 JOSEPH T. NORRIS

19 BY THE COURT:

20 Q Mr. Norris, have you been present during all of
21 the proceedings thus far since the Court explained the nature
22 of this case?

23 A Yes, I have, your Honor. There is one point I
24 would like to make.

25 Q Very well.

26 A That is, the initial swearing in, I wanted to
27 affirm but I wasn't asked to affirm, if it is --

28 THE COURT: Perhaps you can do it now.

1 PROSPECTIVE JUROR NORRIS: Real fine.

2 THE CLERK: You do solemnly affirm that you will well
3 and truly answer such questions as may be asked of you
4 touching upon your qualifications to act as a trial juror in
5 the cause now pending before this court, this you do under
6 the pain and penalty of perjury?

7 PROSPECTIVE JUROR NORRIS: I do.

8 BY THE COURT:

9 Q You've been present during all the proceedings
10 since the Court first called this case?

11 A Since last Friday.

12 Q Would your answers be any different than the
13 majority of the jurors have responded to the questions of a
14 general nature?

15 A Uh, they would in two respects.

16 Q Tell us what those are.

17 A One of them in respect to the, uh, uh, the matter
18 of capital punishment.

19 Q Regarding capital punishment, do you think, Mr.
20 Norris, that you could be fair and impartial in determining
21 the issue of guilt or innocence in spite of your feelings
22 about capital punishment?

23 A Uh, the way that --

24 Q I'm talking about the first phase of the case.

25 A I realize what you are referring to.

26 Could I state my mind on the way I see both
27 phases?

28 Q Well, we have certain things we want to know from

1 you first, and then we'll let you get to that point, if you
2 wish to. But right now --

3 A All right.

4 Q -- I want you to analyze your mind and your
5 thinking on it.

6 Do you think you could be fair in determining the
7 question of guilt or innocence?

8 A Of guilt or innocence?

9 Q Yes.

14 fls.

10 A Yes.

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1 Q All right. Now, going beyond that, assuming that
2 you are involved in the penalty phase, would your reaction,
3 because of your views concerning the death penalty, be an auto-
4 matic one, to vote against the death penalty, regardless of the
5 evidence?

6 A It's not a matter of how I view the death penalty,
7 per se. It's the fact that, in the first phase of the trial,
8 it seems to me that I'm asked to objectively view the
9 testimony and evidence, and to the best of my ability,
10 objectively to reach a decision of either guilt or innocence,
11 beyond a reasonable doubt and to a moral certainty.

12 Q Correct.

13 A All right. Now, the way I picture the penalty
14 phase is that assuming -- let's assume, for the sake of
15 argument, that a decision of guilt has been reached.

16 Q Guilt of murder of the first degree.

17 A Correct. And as I understand -- what I understand
18 from what that implies, it implies criminal intent, and malice
19 aforethought.

20 Q It may, yes.

21 A It may? Well, see, now, this is what I don't
22 understand. When -- for instance, Mr. Denny mentioned that
23 there are --

24 Q Well, there's a felony murder, in which a person
25 may have been killed in a robbery; and in the course of the
26 robbery, a -- killed somebody, whether accidentally or not.
27 Such a situation has been described by the Court and by counsel;
28 do you understand?

14-2

1 A Yes, I do, but --

2 Q Well, get on with your point. Go ahead. I'm
3 sorry to have interrupted you.

4 A My point is that -- okay. And in the penalty
5 phase, it seems to me that, assuming, of course, that I have
6 reached a decision of guilt, as far as first degree murder is
7 concerned, then I am asked to turn around and, it seems to me,
8 subjectively -- not objectively, but subjectively -- go through
9 the testimony and evidence again, and decide whether a man
10 lives or dies.

11 And quite frankly, based on that point, I don't
12 believe that I can, in conscience and in justice and in
13 objectivity, I couldn't participate.

14 Q Well, that's true. It's wholly a matter of your
15 discretion -- which is, however, based on your examination of
16 the evidence; do you understand?

17 A I'm not quite sure as to what your question is.

18 Q Well, you've heard me -- you've heard me read an
19 instruction now maybe two or three times, concerning the matter
20 of your discretion, and what you may consider in arriving at a
21 judgment as to life imprisonment or death, have you not?

22 A Yes, I have. But again, I can't emphasize enough
23 that if I make a decision, that the man is -- as far as I
24 can -- as far as I can tell, to a moral certainty and beyond a
25 reasonable doubt, that he is -- with malice aforethought and
26 the other terms used to describe this idea of murder in the
27 first degree -- I would feel that I would have to vote the
28 death penalty.

1 In other words, that it wasn't a matter of a man's
2 being kind of -- if you will, committing a murder inadvertently.

3 Do you understand what I am saying?

4 Q Well, no. I'm not quite sure, except that I think
5 that you are saying that you feel that if a man is found guilty
6 of murder of the first degree, you'd be obliged to vote for the
7 death penalty?

8 A To my understanding of what that implies, murder in
9 the first degree.

10 Q Well, that's not true. Even the most heinous
11 murder of the first degree results in the penalty phase,
12 wherein, the jurors have absolute discretion.

13 A Of course, they can look at the circumstances, as
14 I have said, surrounding the crime; anything that a juror picks
15 up by way of the evidence and utilizes to make a decision as to
16 life or death can be apparently utilized, because it is a
17 matter of discretion.

18 Do you understand?

19 A (No response.)
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14a fol

14a-1

1 Q When you said it was subjective, I suppose it is
2 subjective, in that the juror -- in that it is the juror's
3 discretion as to whether or not the penalty will be applied.

4 A Correct. I -- I couldn't do that, in conscience.

5 Q Then, would your vote --

6 A What I'm saying is that --

7 Q Let me get on to this question, please.

8 Would your vote then automatically -- would it be
9 an automatic reaction on your part to vote against the death
10 penalty, regardless of the evidence?

11 A Against the death penalty?

12 Q Yes.

13 A Assuming that a man was found guilty --

14 Q Assuming he was found guilty, yes.

15 A No. As a matter of fact, it would be the opposite.

16 Q It would be the opposite?

17 A Yes.

18 Q So that your reaction would be to vote for the
19 death penalty, upon a finding of guilty of murder of the
20 first degree?

21 A To my understanding of what that phrase implies
22 and means, yes.

23 Q Well, the Court hasn't fully defined murder for
24 you. But both counsel and the Court have more or less
25 paraphrased it for you.

26 And do you think you understand what murder of
27 the first degree is, as far as we have explained it to you?

28 A Utilizing that terminology, yes.

14a-2

1 Q Yes. And most surely, you do understand that
2 even pre-supposing that there is a murder of the first
3 degree, that it is a matter of discretion, left with the jury.

4 Do you think that that would resolve it in any
5 way for you?

6 A I don't see that if I've objectively found a man
7 guilty of murder in the first degree, that there is any
8 discretion on my part to go back on that evidence -- if you
9 will, review it -- and somehow subjectively -- I don't want
10 to use that term -- but playing the deity.

11 But you know, in a sense, deciding, "Well, we'll
12 give him a break this time."

13 I don't see that.

14 Q In other words, your feeling is more or less in
15 favor of the death penalty, assuming that there is a finding
16 of murder of the first degree?

17 A As I understand what the law states that murder
18 in the first degree means.

19 Q I see.

20 A In other words, if -- an intent, and really
21 understand, with malice aforethought, and a criminal intent
22 to deprive the man of his life -- or -- or a human being of
23 his or her life.

24 Q Well, of course, we have told you that a killing
25 which is willful, deliberate and premeditated, with malice
26 aforethought, is murder of the first degree?

27 A That's correct.

28 Q And we've also told you that a murder committed

1 in the course of a -- committed by torture, or a murder
2 committed in the course of a robbery, whether accidental or
3 whatever, it's still murder of the first degree.

4 Now, do you have that in mind?

5 A (No response.)

6 Q Well, I won't dwell on it too much. I'll let
7 counsel pursue it.

8 But if you -- if --

9 A I believe -- well, if I wasn't convinced that an
10 individual who is charged with -- or is being -- I shouldn't
11 say "charged with" -- the murder of another individual,
12 murder in the first degree, implying this premeditation --
13 in other words, I intend, in a sense, if you will -- as an
14 example, if I intend, and I say, "I am going to kill this
15 person," you know. And I -- without justification, just --
16 just engaging in self defense is one example --

17 Q Yes.

18 A As far as I am concerned, if I went ahead and
19 murdered that person, without justification for that, I'd
20 have to vote the death penalty.

21 THE COURT: I see your point.

22 Any questions?

23 MR. DENNY: No, your Honor. I would like to offer a
24 challenge under 1073, Sub 2.

25 THE COURT: I think it's clear that that would be --
26 as to what Mr. Norris' reaction would be upon a finding of
27 guilty of murder in the first degree. So, I'll grant the
28 challenge.

1 Thank you, Mr. Norris, for being so direct.

2 PROSPECTIVE JUROR NO. 5: Thank you.

3 MR. KAY: Thank you, Mr. Norris.

14b fls.

14b-1

1 THE COURT: The 15th floor -- no, go to Room 253, will
2 you, tomorrow morning at 9:00 o'clock?

3 PROSPECTIVE JUROR NO. 5: Yes, your Honor.

4 THE COURT: That's in the courthouse.

5 PROSPECTIVE JUROR NO. 5: All right.

6 THE COURT: Let's go on and see if we can -- off the
7 record.

8 (Whereupon, a discussion ensued off the record.)

9 THE CLERK: Hassel D. Hager; first name H-a-s-s-e-l;
10 middle initial D; last name H-a-g-e-r.

11 THE COURT: Hassen Hager?

12 MR. DENNY: Hassel.

13 THE CLERK: Hassel; H-a-s-s-e-l.

14 THE COURT: Oh.
15

16 VOIR DIRE EXAMINATION OF

17 HASSEL D. HAGER

18 BY THE COURT:

19 Q Are you Mr. Hassel Hager?

20 A Yes, sir.

21 Q Mr. Hager, you have been present since last
22 Friday, when the Court called this case and explained the
23 nature of the case?

24 A Yes, sir.

25 Q You can pick up that microphone alongside of you
26 there, if you would, please.

27 A Okay.

28 Q Would your answers be any different than the

14b-2

majority of jurors have responded to the Court's questions,
put to the group as a whole?

A Generally speaking, yes, sir. There's one or two
points on which perhaps I would --

Q All right. Let's get right to them. You tell us
what you had in mind.

A Relatives. My son is a member of the Department of
Justice.

Q In Washington?

A No, sir.

Q Locally?

A In Houston.

Q I see. He's what, with the Attorney General?

A No, special agent.

Q A special agent with the --

A With the FBI.

Q I see. With the Department of Justice.

How long has he been so employed?

A One year.

Q Is he also a lawyer?

A No.

Q What was his training?

A Engineer.

Q Do you think that would affect your judgment?

A No, sir.

Q Do you think you could be fair and impartial --

A Yes, sir.

Q -- in spite of that?

14b-3

1

A Yes, sir.

2

Q What was the other point?

3

A Oh, perhaps association. What do you call it?

4

Q The Manson Family?

5

A Yeah. And --

6

Q Did you read about the Manson Family during the course of that Tate-LaBianca prosecution?

8

A Somewhat. Not too much. But --

9

Q Do you think that somebody who, the evidence establishes, is a member of the Family, the Manson Family, by reason of what you read, would be suffering some prejudice if --

12

A Well, I would --

13

Q -- you were a juror?

14

A I would imagine so, yes, sir.

15

Q Do you think he'd have a considerable hurdle to overcome in your mind?

17

A Yes.

18

Q Because of what you had read?

19

A Yes, sir. Principally --

20

Q So that as you start out, it would be difficult for you to be fair and impartial to somebody who is accused of a crime, and who is also a member of the Manson Family?

23

A Yes, I believe so.

24

MR. DENNY: I would offer a challenge under 1073, Sub 2 and 1076, your Honor.

26

THE COURT: Thank you, Mr. Hager.

27

MR. DENNY: Thank you.

28

THE COURT: You saved us a lot of time by being as direct

14b-4

1 as you were.

2 MR. KAY: Thank you, Mr. Hager.

3 THE COURT: Room 253 -- that is the assembly room in the
4 courthouse -- if you would, Mr. Hager.

5 PROSPECTIVE JUROR NO. 5: Tomorrow?

6 THE COURT: Tomorrow morning at 9:00 o'clock.

7 PROSPECTIVE JUROR NO. 5: Thank you. Do I need the
8 little slip?

9 THE BAILIFF: No, sir.

15 fol

15-1

1 THE COURT: Call another name.

2 THE CLERK: Mrs. Monnie E. Dailey, M-o-n-n-i-e,
3 middle initial "E", last name D-a-i-l-e-y.
4

5 VOIR DIRE EXAMINATION OF

6 MONNIE E. DAILEY

7 BY THE COURT:

8 Q Mrs. Dailey, have you been present during all
9 the proceedings thus far?

10 A Yes.

11 Q Since I read the indictment to you?

12 A Yes, sir.

13 Q Would your answers be any different than the
14 majority of the jurors have responded to the questions of
15 a general nature in any way that you can think of?

16 A No, sir. No, sir.

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

19 A Yes, it would.

20 Q Tell us about that.

21 A About my work. I am the cook-manager at the
22 Bellgardens High School.

23 Q A cook-manager?

24 A Uh-huh.

25 Q What high school.

26 A Bellgardens High School. It is in the Montebello
27 School District.

28 Q You wouldn't be paid beyond the 20 days, is that

15-2

1 it?

2 A Well, it is just that the girls can do the work,
3 but they can't do the book work, my helpers, and I have to go
4 in early in the morning and do the ordering and stuff, and
5 then on the weekends I have to do my weekly reports. We have --

6 Q Is that what you have been doing?

7 A Uh-huh.

8 Q And would you be paid for the time that you were
9 serving?

10 A Well, they give me the difference from what I get
11 here. I have to send that in.

12 Q So it wouldn't be any financial loss to you, but
13 you don't know whether you could take it physically?

14 A I don't think I could stand up under the strain.

15 Q You'd have to be doing both jobs?

16 A Yes, uh-huh. That would be the main thing.

17 MR. DENNY: I would stipulate to her excusal, your
18 Honor.

19 MR. KAY: So stipulated.

20 THE COURT: These gentlemen have very kindly stipulated
21 that you may be excused. It does appear to me to be a hard-
22 ship to have to do both things.

23 You do it daily and also on the weekends?

24 PROSPECTIVE JUROR DAILEY: Yes. I don't have to go
25 in every morning, but so far I just missed about two mornings
26 going in at 6:30 and working until 7:30.

27 Q BY THE COURT: You would anticipate that same
28 routine would have to be --

1 A Yes, it would. They have to get substitute
2 helpers, but not a manager to do the book work.

3 Q In order to maintain your job there, you would
4 have to do that?

5 A Yes, I would.

6 THE COURT: It looks to me to be a hardship and I do
7 excuse you.

8 PROSPECTIVE JUROR DAILEY: Thank you very much.

9 THE COURT: Go to the jury assembly room in the
10 courthouse at 9:00 o'clock tomorrow.

11 PROSPECTIVE JUROR DAILEY: Thank you.

12 THE CLERK: Another one?

13 THE COURT: Yes.

14 THE CLERK: Mrs. Shirley Carter, C-a-r-t-e-r.

15 THE COURT: Carter?

16 THE CLERK: Yes.

17 THE COURT: Is that one of the jurors on the telephone?

18 THE CLERK: No, it was Tony. He must have gone down-
19 stairs.

20
21 VOIR DIRE EXAMINATION OF
22 SHIRLEY CARTER

23 BY THE COURT:

24 Q Miss Carter, have you been present during all
25 the proceedings thus far?

26 A Yes.

27 Q Since the Court read the indictment to you?

28 A Yes.

1 Q Would your answers be any different than the
2 majority of jurors have responded to the Court's questions
3 of a general nature?

4 A No.

5 Q Can you think of any respects in which your
6 answers would vary?

7 A No.

8 Q Would it be a hardship to you to serve in the
9 case?

10 A No.

11 Q Have you served as a juror before in any case?

12 A Last week just for a short while as an alternate
13 juror. But there was no decision.

14 Q What type of case?

15 A Fel -- felony.

16 Q Yes. Was it a burglary or robbery?

17 A Uh, child molesting.

18 Q And no other experience, then, as a juror?

19 A No.

20 Q Is there anything in the penalty phase or about
21 publicity that you may have heard, seen or read which you
22 believe at this time, just thinking about it very quickly,
23 which would eliminate you as a juror?

24 A No.

25 Q Do you think that you -- is there any reason that
26 you can think of as to why you couldn't be fair and impartial
27 in the case?

28 A No.

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Q All right.

Are you employed outside the home, Mrs. Carter?

A Yes.

Q What type of work do you do?

A I'm an eligibility worker. Uh, the Department of
Public Social Services.

15a fls.

15-a-1

1 Q How long have you been employed by the county?

2 A It will be five years next March.

3 Q And is there a Mr. Carter?

4 A I am separated.

5 Q I see. How long have you been separated?

6 A A year and a half.

7 Q What type of work did Mr. Carter do?

8 A Uh --

9 Q That was the problem, he didn't do any work?

10 A That was the problem.

11 Q I see. In what area do you reside?

12 A Mt. Washington.

13 Q Are your views about the death penalty such that

14 you could not be impartial in determining guilt or innocence?

15 A No.

16 Q Do you have such conscientious opinions concerning

17 the death penalty that you would automatically refuse to impose

18 it regardless of the evidence?

19 A No.

20 Q Or do you have such views about it that on a

21 conviction of murder of the first degree you would automatically

22 impose it without regard to the evidence?

23 Would you automatically impose the death penalty

24 upon a conviction of murder in the first degree regardless --

25 A No.

26 Q -- regardless of the evidence?

27 You would neither refuse to impose it or impose it

28 automatically without regard to the evidence?

15a-2

1 A That's right.

2 Q Or are your views such that you would never vote
3 to impose the death penalty?

4 A No.

5 Q Regarding the Manson Family, you have heard of
6 them?

7 A Yes.

8 Q Would your views about them be such that anybody
9 associated with them, as the evidence may disclose Mr. Davis
10 is, would suffer some disadvantage in having you as a juror?

11 A No.

12 Q Do you think that you would or could be fair and
13 impartial in determining the question of guilt or innocence
14 despite the fact that somebody might be a member of the Manson
15 Family -- that the defendant might be a member of the Manson
16 Family?

17 A Yes, I believe I could be impartial.

18 Q Have you heard anything good about the Manson
19 Family?

20 A I haven't read the news. I --

21 Q Well, you know that -- you know who Charles Manson
22 is?

23 A Yes.

24 Q And you know he was accused of several murders and
25 that the Manson Family or the members of the Manson Family,
26 some members of the Manson Family, the Court should say, were
27 involved in it?

28 A Yes.

15a-3

1 Q You heard that or read that?

2 A Yes.

3 Q All right. Now, having that in mind, what you have
4 heard, seen or read, could you be fair to somebody who -- whom
5 the proof would disclose was associated with Mr. Manson or
6 the Manson Family?

7 A Your Honor, I read only a scan of one newspaper
8 article when that first came out and I have not dwelled on it
9 since. So I don't have --

10 Q One needn't dwell on it to hear a great deal about
11 it.

12 Have you heard news reports from time to time over
13 the radio or over television?

14 A I don't have a television. I don't listen to the
15 radio.

16 Q Well, had you heard whether or not there was a
17 conviction in the case of Mr. Manson?

18 A I really hadn't followed it, sir.

19 Q Had you ever heard of Bruce Davis?

20 A No.

21 Q Had you ever heard of Shorty Shea?

22 A Not offhand.

23 Q Had you ever heard of Gary Hinman?

24 A No.

25 Q Have you ever heard of Spahn Ranch?

26 A Yes.

27 Q What do you know about Spahn Ranch?

28 A Uh, I believe that's where the Manson Family, uh,

15a-4

1 lived.

2 Q What do you know the term Manson Family to mean?

3 A I think Charles Manson had several friends with him.
4 He was living marginally.

5 Q Pardon?

6 A He was living marginally. That's what I understand.

7 Q What do you mean "marginally"?

8 A Well, he was --

9 Q Living from hand-to-mouth?

10 A Yes.

11 Q Scratching for a living, that type of thing?

12 A That's what it sounded like when I --

13 Q Well, knowing what you know about the Family, then,
14 you don't think that you would be prejudiced toward the
15 defendant who might be a member of the Family or the evidence
16 would disclose might be a member of the Family?

17 A I don't believe so.

18 Q Would you be able to set aside anything that you
19 might know now about the Manson Family, Charles Manson, or
20 this case, Mr. Davis, and anything that you might remember that
21 you don't recall now that you might recall in the future; do
22 you think that you have the ability to set aside such matter and
23 decide this case basing your judgment solely on the evidence in
24 the case?

25 A I would make every effort to do so.

26 Q I am sure that you would make an effort to do so.

27 Anyone charged with jury duty would make that effort. But what
28 I am interested in is whether or not you are capable of doing

15a-5

1 it. Whether you -- there are some people who, even though they
2 would like to, would not be able to do so. And they admit
3 that they've just read, heard and seen so much that they could
4 not set aside those things that they had heard in order to be
5 a juror in the case.

6 Is that your situation?

7 A No.

15b fol

15b-1

1 Q You feel as though you could set aside anything
2 that you may have heard, seen or read concerning such matters
3 and decide the case solely upon the evidence in the case?

4 A Yes, sir.

5 Q And would you decide any issue that you might be
6 called upon to decide solely upon the evidence and the
7 Court's instructions?

8 A Yes.

9 THE COURT: All right, we'll resume some questioning
10 of you, then, tomorrow at 9:30.

11 PROSPECTIVE JUROR CARTER: Thank you.

12 THE COURT: Don't talk about the case -- get the jurors
13 in.

14 THE BAILIFF: Yes, sir.

15 THE COURT: -- and don't talk about the case, nor
16 permit anyone to talk to you about it. See you tomorrow
17 morning at 9:30.

18 PROSPECTIVE JUROR CARTER: Thank you.

19 THE COURT: You needn't come up in the box, just
20 inside. I'm going to let you go right away.

21 I apologize for getting you on the freeway so
22 late this evening, ladies and gentlemen, but I wanted to see
23 whether or not we -- how far along we could get in it.

24 I'll excuse you now. Remember the same admonitions
25 prevail that have heretofore been given to you.

26 Don't discuss this case amongst yourselves or
27 with anyone, don't expose yourself to any publicity. Take
28 affirmative steps to keep from being exposed to any publicity

15b-2

1 of the type I've mentioned before.

2 Good night, I'll see you tomorrow morning at
3 9:30.

4 (Whereupon, the prospective jurors retired
5 from the courtroom, and the following proceedings
6 were had:)

7 MR. DENNY: Judge, before we recess, can I take up
8 two points?

9 THE COURT: Yes.

10 MR. DENNY: One --

11 THE COURT: Yes, you may.

12 MR. DENNY: Beg pardon?

13 THE COURT: Yes, you may.

14 MR. DENNY: Yes.

15 I've talked to Mr. Weedman and he has agreed that
16 we can set up a conference with his client, Mr. Grogan. He's
17 asked that it be sometime on or after the 23rd of December,
18 at which time Mr. Grogan is supposed to come up for motion
19 for new trial and sentencing.

20 And I would -- I've talked to Captain Carpenter
21 and he says that can certainly be worked out, no problem.
22 But I told him that I would apply to the Court for an order
23 permitting such a conference to be set up sometime in the
24 afternoon or evening during the regular attorney room
25 visiting hours of December 23rd. And he said he would like
26 to have such an order just in the file, so I would ask that
27 the Court make such an order.

28 THE COURT: All right, so ordered. I would permit you a

1 conference, then, with Mr. Grogan and his counsel.

2 MR. DENNY: No, I don't think Mr. Weedman --

3 THE COURT: With Mr. Grogan, then, in the company of
4 the defense.

5 On December 23rd, you say?

6 MR. DENNY: Yes.

7 THE COURT: December 23rd.

8 MR. KAY: My only question about that was, I was under
9 the impression that the 20th was the day of sentencing.

10 MR. DENNY: No, it was apparently put over to the 23rd.

11 THE COURT: The 23rd?

12 MR. DENNY: Yes.

13 The other thing is, your Honor, the questions I
14 have attempted to ask about three of the jurors here, the
15 Court has established by its questions that they would not
16 be able to determine the guilt or innocence fairly because
17 of their feelings in the -- because of their feelings about
18 the death penalty.

19 THE COURT: I assumed in not permitting you to go on
20 and ask questions that that was the subject that you wanted
21 to ask about.

22 MR. DENNY: Yes, it was. And -- and --

23 THE COURT: And in each case the Court felt that there
24 was no need to ask any further questions, because the Court
25 felt that the expression of opinion was clear and the
26 question was clear enough so that there wasn't any doubt
27 in my mind that they could not be fair and impartial in
28 determining guilt or innocence.

1 MR. DENNY: Well, the problem is --

2 THE COURT: Go ahead.

3 MR. DENNY: The problem is, there is doubt in my mind.
4 And I think as defense counsel for Mr. Davis that due
5 process requires that I be permitted, at least, to query them
6 on that particular subject. Because --

7 THE COURT: I don't think due process requires that at
8 all.

9 As a matter of fact, I think that the Court
10 could properly take over the entire voir dire on penalty. But
11 I've chosen not to do that.

12 However, I think where a juror's expression --
13 or a prospective juror's expression is very clear, that
14 there's no use in wasting time in asking further questions.

15 MR. DENNY: Well, your Honor --

16 THE COURT: And that's why I precluded you from asking
17 any further questions on the subject, on the subject you
18 wanted to ask them.

15c fls.

15c-1

1 MR. DENNY: In addition, I want to note to the Court
2 that I have not been permitted up to this time even to make an
3 offer of proof as to what I wanted to ask of those particular
4 jurors. I still feel that it is incumbent upon me to raise
5 the issue here, because I have raised it right from the
6 beginning, even back when we were jointly being tried together
7 with Mr. Manson and Mr. Grogan, and get the questions asked of
8 the jurors if they did not have to sit in the penalty phase of
9 the trial and only had to determine guilt or innocence,
10 without regard to the penalty, would they be able to do so.

11 Now, at the present time, the law may not be
12 settled on that point. But it is certainly incumbent upon me,
13 a defense attorney, at this stage of the evolution of
14 constitutional law to raise that point. There have been many
15 attacks made on the death penalty, on the constitutionality
16 of the death penalty, on the constitutionality of permitting
17 the juror to have completely free rein on the death penalty,
18 and I feel it is incumbent upon me, and I am attempting to
19 establish a record in case that record is necessary.

20 THE COURT: If that is the question you wanted to ask,
21 I would say that would be an improper question. The law of
22 this state is such that, as you know, that upon the conviction
23 they must go -- upon a conviction of murder first, they must
24 go into the penalty phase. And that's the way it stands.
25 And, so, I think the People have a right to inquire and the
26 Court has a right to inquire about their state of mind in
27 respect to the law as it now stands, not in respect to what
28 it might be if they did not have to decide penalty upon a

15c-2

1 conviction of murder of the first degree.

2 MR. DENNY: Well, your Honor, I feel that that issue has
3 to be raised somewhere at the appellate level.

4 Now, I'm making the offer of proof right now that I
5 want to attempt to get from the jurors that information. If
6 the Court is going to preclude me, the record is made at this
7 point.

8 THE COURT: Yes, I think it is.

9 MR. DENNY: And, secondly, I do feel that that
10 particular question is relevant to establishing the
11 foundation as to whether they really do mean, in answer to the
12 Court's question, that their feelings about the death penalty
13 would preclude them from finding of guilt or innocence in
14 the guilt phase of the trial.
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1 Because, I think the way the Court has put it,
2 in several cases, quite frankly, has been almost directive, so
3 that they will answer "yes."

4 And I -- I won't say that with Mrs. Merit,
5 because her answers were very definite, very sure, very
6 positive. But I've kept the slips of the other prospective
7 jurors in this case, where I did feel that further questioning
8 was necessary.

9 Mrs. Annette Kaufman was one.

10 Walter Leathers, the other.

11 Joe Restovich, the other.

12 William Hall. Betty Gaddy.

13 And Mrs. Jimmie Bowers.

14 And in each of those --

15 THE COURT: In each case, the Court, I think, asked the
16 question in more than one way, and I am convinced that in each
17 case, that each of those persons would not have been fair and
18 impartial in determining guilt or innocence.

19 But I think that you have made your record.

20 MR. DENNY: Thank you, your Honor.

21 THE COURT: Good night, gentlemen.

22 MR. KAY: Good night, your Honor. See you in the
23 morning.

24 (Whereupon, at 5:00 o'clock P. M., an adjournment
25 was taken in this case until 9:30 A. M. the following day,
26 Friday, December 17, 1971.)
27
28