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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

No. A 267861

STEVEN GROGAN,

Defendant.

REPORTERS' DAILY TRANSCRIPT

Friday, June 25, 1971

APPEARANCES OF COUNSEL:

(See Volume 1)

COPY

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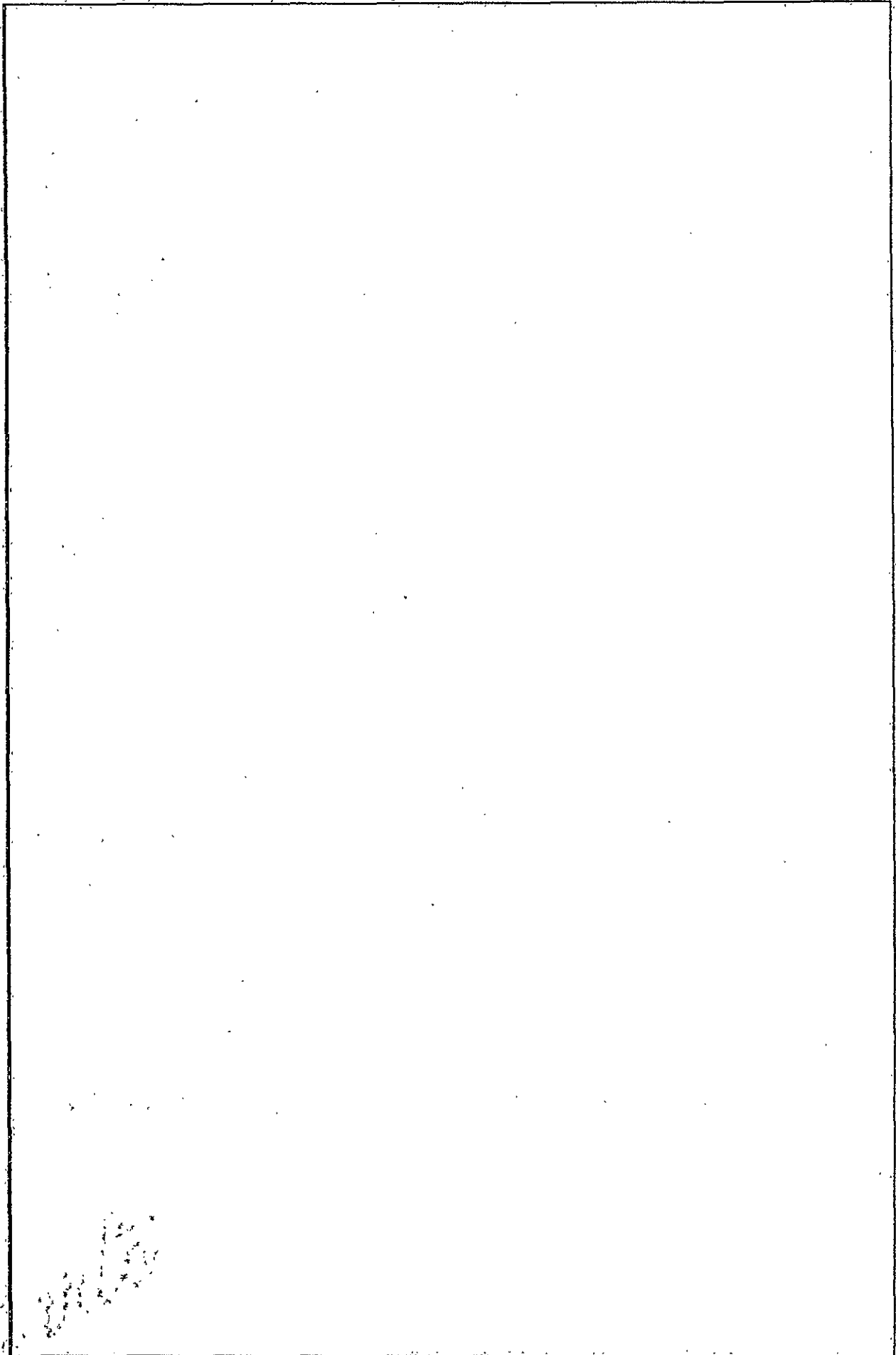
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VOLUME III:

Pages 201 to 387 inclusive

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ERASABLE

1 LOS ANGELES, CALIFORNIA, FRIDAY, JUNE 25, 1971

2 9:45 A.M.

3
4 THE COURT: Now, first we will proceed in trial with the
5 processing of the jury in People against Steve Grogan. The
6 defendant is here, defense counsel is here, deputy district
7 attorney is here.

8 Are you ready in that respect to proceed, gentlemen?

9 MR. WEEDMAN: Yes. Thank you, your Honor.

10 MR. KATZ: Yes. People are ready.

11 THE COURT: Thank you.

12
13 DONALD FERGUSON

14 BY THE COURT:

15 Q Now, Mr. Ferguson, I have here in front of me your
16 written communication to me that was given to the clerk in
17 which you have presented certain grounds that indicate that
18 undoubtedly, if you are held to jury service, undoubtedly
19 serious complications could result in my opinion that could
20 undoubtedly prohibit your full attention to this case, which
21 would be paramount. The case comes first. Is that correctly
22 stated? That is the way I analyze this communication.

23 A Yes.

24 Q What it says, you present true and serious problems
25 that you have?

26 A Yes.

27 THE COURT: I think your request is justified. It would
28 seem to me that in this case, particularly the case which is

1 a very important matter, and the People and the defendant are
2 both entitled to jurors that can give their full attention to
3 the case and not something plaguing them or bothering them that
4 pulls their attention away. Now, I think that the request is
5 justified. Now, speaking to the lawyers, counsel, I would be
6 inclined to excuse this gentleman. But before I make just an
7 arbitrary order, if there are any questions, any opposition
8 you have to my statement or any questions you want to ask of
9 the juror, either counsel has full liberty to do so.

10 MR. KATZ: The People would so stipulate that Mr. Ferguson
11 may be dismissed.

12 THE COURT: Well, do you want to accept the ruling, or do
13 you desire to interrogate? How about the defense?

14 MR. WEEDMAN: Yes, your Honor, the defendant will likewise
15 stipulate that Mr. Ferguson may be excused.

16 THE COURT: All right. Thank you. Then pursuant to
17 stipulation and the order of the court Juror No. 9, Mr.
18 Ferguson, is excused.

19 MR. FERGUSON: Thank you.

20 THE COURT: Now, Mrs. Rupe, I am going to let you speak
21 to the counsel when they question you, if you will, lady. Now,
22 first, we will get another juror.

Tke 2.

1 THE CLERK: Margie Welton, W-e-l-t-o-n.

2 THE COURT: Counsel, I think you have made the statement
3 to the jury, the time element involved probably would be
4 around, you are hazarding a guess, six to eight weeks; is that
5 probably a correct estimate?

6 MR. KATZ: Yes, your Honor.

7 THE COURT: So the jurors may want to know that again.

8 All right. Now, I will examine this lady
9 briefly, then you may proceed.

10 MR. KATZ: May we have the name? I am sorry, I didn't
11 get it.

12 THE CLERK: Yes; Margie Welton, W-el-t-o-n.

13 THE COURT: All right, you have got it?

14 Now, lady, I have -- First of all, Mr. Clerk,
15 please file this statement from Mr. Ferguson. Put it in the
16 file, would you, as the Court's exhibit, or by reference --
17 for identification.

18
19 MARGIE WELTON

20 BY THE COURT:

21 Q Now, lady, you were in the courtroom since we
22 started the trial in this case; isn't that right?

23 A Yes, your Honor.

24 Q And you have been in the back of the courtroom.
25 Have you listened to all the proceedings that have taken
26 place?

27 A Yes, sir.

28 Q Did you hear all of the statements that I have

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1 made to the other jurors in the jury box as well as to those
2 in the back of the courtroom?

3 A Yes, your Honor.

4 Q Did you hear me read the charges that have been
5 filed against the defendant in the case?

6 A Yes, sir.

7 Q Now, I am going to ask you to assume that you have
8 been selected as a juror in the case and you have tried the
9 case; the case has been tried, that you have been sent to the
10 jury room to decide the case with the other 11 jurors.

11 Now, at that juncture -- you understand the jury
12 could make a finding of not guilty; you understand that?

13 A Yes, your Honor.

14 Q Also, the jury could make a finding of guilty;
15 you understand that?

16 A Yes, sir.

17 Q And, incidentally, the finding must be the full
18 concurrence or finding of all 12 of the jurors. I am putting
19 that in so as to clarify this.

20 Now, for the purpose only of this question, let
21 us assume the jury has made a finding of guilty -- and I have
22 to make that assumption for the purpose of the question I am
23 going to ask -- assume they have made a finding of guilty.

24 Now, the jury follows up that finding of guilty
25 and sets the degree of guilt as second degree murder; that
26 concludes the case. It concludes the duties of the jury,
27 is a better way of putting it, in all respects the jury is
28 excused and, basically, the case is concluded, certainly, as

1 far as the jury is concerned it is concluded.

2 However, if the jury should make a finding of
3 guilty with first degree murder -- first degree -- then the
4 law says the court must hold a subsequent hearing before the
5 same jurors. The jury then in the hearing phase or what is
6 called the penalty phase determines the penalty. The jury
7 must determine whether the penalty is that of capital
8 punishment or life imprisonment.

9 That is clear to you?

10 A Yes, sir.

11 Q Now, I want you to assume you are in that situation
12 only for the purpose of answering this question -- of course,
13 you might have made findings of not guilty; these are all
14 assumptions -- I want you to assume you are voting or about to
15 on the question of capital punishment or life imprisonment,
16 then I will ask this question: At such a time that you are
17 about to vote would you automatically vote against the
18 imposition of capital punishment without regard to any evidence
19 that might have been produced or developed at the trial of
20 this case?

21 A No, sir.

22 Q All right, thank you.

23 Now, I will ask this additional question: if you
24 were selected as a juror do you feel that you could be fair
25 and impartial in the trial of this action?

26 A I'm not sure, your Honor.

27 Q The answer is "Yes," you could be fair and
28 impartial?

1 A I'm not sure.

2 Q No?

3 A I'm not sure that I could be.

4 Q Answer yes or no.

5 A No.

6 Q The answer is "No"?

7 A No.

8 THE COURT: Do you gentlemen desire further interrogation,
9 or shall I act?

10 MR. WEEDMAN: Well, no, your Honor, if that answer
11 reflects fully the way this prospective juror feels, why,
12 then, I think he should be excused.

13 THE COURT: Do you desire to question?

14 MR. WEEDMAN: No, I do not, your Honor.

15 THE COURT: Ready for me to act?

16 MR. KATZ: Respectfully, I don't think there is
17 sufficient record at this time.

18 THE COURT: Do you desire to question?

19 MR. KATZ: Yes.

20 Q That is Miss Welton, is it, ma'am?

21 A Yes.

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1 Q And I take it that you heard all of the questioning
2 that was propounded to the prospective members of the panel
3 yesterday and the day before?

4 A Yes, sir.

5 Q And some of the issues with which you would be
6 confronted if selected as a juror were outlined for you, is that
7 correct?

8 A Yes.

9 Q And have you given much thought to that, such as
10 circumstantial evidence and the possibility of having to make
11 a decision as to whether or not another person shall live or
12 die?

13 A Yes, I have given it a lot of thought.

14 Q And then considering those facts with which you
15 would be confronted if selected as a juror, is it your
16 absolute opinion at this time as you sit here now you could
17 not be fair and impartial to both sides?

18 A I'm afraid I might not give the defendant a fair
19 chance and I just wouldn't want to be put in that position.
20 I'm afraid I'm a little prejudiced in other words.

21 Q Is that because of what Mr. Weedman brought out,
22 the situation of Mr. Grogan and the Manson family?

23 A Yes.

24 MR. KATZ: All right. We thank you for being candid and
25 I would have no objection at this time.

26 THE COURT: I want to excuse you, and I want to thank you
27 for what you should do, that is to express yourself as you
28 have. You feel one way or the other, both the defendant and

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1 the People are entitled to a fair expression of any juror that
2 feels that he or she could not be fair and impartial. They
3 are bound to so state. It is only as you have done. We can't--
4 there is no need to have a trial otherwise. So I appreciate
5 your fairness in being candid in the matter. Thank you, lady.
6 You are excused.

7 THE CLERK: Franco Grimaldi, G-r-i-m-a-l-d-i.

8 MR. KATZ: What is the first name?

9 THE CLERK: Franco, F-r-a-n-c-o.

10 MR. KATZ: Thank you.

11

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FRANCO GRIMALDI

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BY THE COURT:

14

Q Now, Mr. Juror, I am going to repeat the same
15 questions I did to the last lady. Have you been in the court-
16 room at all times since we started the picking of the jury
17 for the trial of this case?

18

A Yes, sir.

19

Q Have you heard everything that I said to the jurors
20 in the jury box?

21

A Yes, sir.

22

Q Did you hear me read the charges that have been
23 filed against the defendant in this case?

24

A Yes, sir.

25

Q All right. I will ask you to assume that you have
26 been selected as a juror in this case and that the case has
27 been tried and the judge gives the case to the jury for a
28 decision. You have gone to the jury room to decide the case.

1 Now, at that juncture the jury could make a finding of not
2 guilty or the jury could make a finding of guilty. For the
3 purpose of my question only I am asking you to assume that the
4 jury made a finding, or makes a finding of guilty as charged.
5 Then the jury must make another finding of degree. If the
6 jury makes a finding of second degree murder that concludes the
7 case entirely insofar as the jury is concerned. If the jury
8 makes a finding of guilty first degree murder then there must
9 be a subsequent hearing, called the penalty hearing, in which
10 the jury determines the penalty. That is to say whether it is
11 capital punishment or life imprisonment.

12 Now, up to that point is that clear to you?

13 A Yes, sir.

14 Q Please assume that the jury is holding a penalty
15 hearing. You are about to vote on a question of penalty,
16 whether it is capital punishment or life imprisonment. And
17 I will ask you this question at that point: If you were so
18 voting would you automatically vote against the imposition of
19 capital punishment or the death penalty without regard to any
20 evidence that might have been developed at the trial of this
21 case?

22 A I would like to make a statement.

23 Q Well, first I wish you could give me an answer.

24 A No.

25 Q Yes or no?

26 A No.

27 Q Thank you. You will have a chance to speak more
28 in a minute. Do you feel that you could be fair and impartial

1 if you are selected to try this case?

2 A Well, at this point, yes.

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1 Q Well, the answer is yes?

2 A Yes.

3 THE COURT: All right. Thank you. I will pass the juror.
4 Now, we will go back and the People were examining. Am I
5 correct, for cause, on your voir dire?

6 MR.KATZ: Yes. Thank you, your Honor.

7 THE COURT: Then you go ahead.

8 MR. KATZ: Thank you.

9 THE COURT: Just continue right on now.

10 Q BY MR. KATZ: Before I continue with my discussion
11 of circumstantial evidence perhaps I can get to you,
12 Mr. Grimaldi -- is that correct?

13 A Yes, sir.

14 Q And ask you whether or not you have something in
15 your mind that you would like to tell us which may affect
16 your ability to be fair and impartial with respect to both
17 sides. Is there something you would like to tell us at this
18 time?

19 A Well, just about the death sentence. That would
20 be a very extreme case because I don't really believe that
21 anybody should take a life of any other person. And also
22 the fact stands in one State you've got -- you can be killed
23 for a crime. In another State you may not. In other words,
24 it is really not fair to the -- to the defendant because if
25 it would have been in another State it wouldn't -- would not
26 have to worry about his life.

27 Q Mr. Grimaldi, it is fair to say then prior to
28 coming here as a prospective juror you have given some

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1 considerable thought to the death penalty, is that right?

2 A Yes, sir.

3 Q Would it be a fair statement of your state of mind
4 at this time you are strongly opposed to capital punishment?

5 A Yeah, I am strongly opposed but I am not closed
6 mind on it. In other words, I don't know what the evidence
7 is or anything. But in the extreme I think if the defendant
8 showed he is -- no way he can be rehabilitated or in other
9 words at the extreme I would consider that.

10 Q Now, you understand that when we get to the
11 penalty phase and that assumes that there must be a return
12 of a first degree murder conviction, that the law will give
13 you no guidelines by which to determine whether this case or
14 any other case is a proper case for the imposition of the
15 death penalty; you understand that?

16 A Yes.

17 Q In a sense you are going to be set sail on an
18 uncharted course in the sea, armed only with your heart and
19 your mind and your conscience, and your absolute discretion
20 to determine what penalty should be given in this case, you
21 understand that?

22 A Yes, sir.

23 Q So that the People in the penalty phase, should
24 we reach that phase of the trial, need not prove A, B, and C,
25 and in the absence thereof it is automatically life, you
26 understand that?

27 A Yes, sir.

28 Q Now, as you sit here now I thank you for your

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1 being so honest with us.

2 Do you really think that in the case before you,
3 that is the case involving Mr. Steven Grogan, that you could
4 conceive of some situation in which you would personally vote
5 the death penalty?

6 A Well, yes. I don't see why not.

7 Q All right. So then you are not so unalterably
8 opposed to the death penalty that you would not only be
9 willing to give it full consideration but under some circum-
10 stances you would be willing to personally participate and
11 vote the death penalty, is that correct?

12 A Yes, sir.

13 MR. KATZ: Thank you.

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1 MR. KATZ: Now, if I may, ladies and gentlemen of the
2 jury, go back to some of the general propositions that we were
3 talking about yesterday, just before the recess yesterday. We
4 were talking about circumstantial evidence and I gave a little
5 example, a little homily example about a mother who made some
6 cookies.

7 Do all of you have that example in your minds at
8 this time?

9 (The prospective jurors indicate in
10 the affirmative.)

11 MR. KATZ: And I see affirmative nods; and did all of
12 you understand the illustration which showed on the one hand
13 the circumstantial evidence and the inference to be drawn
14 from the circumstantial evidence?

15 Did you all understand that?

16 (The prospective jurors indicate in
17 the affirmative.)

18 MR. KATZ: At the same time you also understood the
19 explanation that when Johnny said his sister Jane did it
20 because he saw Jane do it, that would be direct evidence, even
21 though you may not believe it, you may not find it credible.

22 Did you understand that explanation?

23 (The prospective jurors indicate in
24 the affirmative.)

25 MR. KATZ: Now, as his Honor has indicated, it is the
26 law of this state that any crime in the State of California
27 that is on the books may be proved fully by circumstantial
28 evidence.

1 Now, do any of you have any quarrel with that rule
2 of law?

3 (The prospective jurors indicate in
4 the negative.)

5 MR. KATZ: All right. Now, however, it has come to pass
6 and it has been my experience as a prosecutor, and I am sure
7 the experience of Judge Call and Mr. Weedman, the defense
8 attorney, that many persons will say, "Well, I think that's
9 all right; I think a man can be convicted based upon wholly
10 circumstantial evidence in some case other than a murder case,
11 but in a murder case I would want something more. I would
12 want an eyewitness to the killing; I would want the body to be
13 produced by way of photographs or have a witness state that
14 'I saw that body in death.'"

15 Now, do all of you understand that our burden of
16 proof is no greater in a murder case than it is in any other
17 criminal case; do all of you understand that?

18 (The prospective jurors indicate in
19 the affirmative.)

20 MR. KATZ: Now, is there anybody here on the panel at this
21 time that feels because this is a murder case you are going to
22 require the People to sustain a greater burden of proof than
23 that which we are already required to sustain under the law?

24 (The prospective jurors indicate in
25 the negative.)

26 MR. KATZ: All right. I see negative responses, which
27 indicates that you will hold us to the burden of proof required
28 by law, which is to prove in all cases the defendant's guilt

1 beyond a reasonable doubt and to a moral certainty.

2 Is that a fair statement?

3 (The prospective jurors indicate in
4 the affirmative.)

5 MR. KATZ: And you understand in that connection, even
6 though this is a murder case and even though there is no body
7 and even though there is no eyewitness to the killing, if we
8 create in your mind an abiding conviction to a moral certainty
9 of the truth of the charge -- that is, that there is a death
10 and that it was caused by a criminal agency and that Mr. Grogan
11 is responsible -- you would be duty bound under the law to vote
12 guilty even though the case rested wholly upon circumstantial
13 evidence.

14 Do you all understand that?

15 (The prospective jurors indicate in
16 the affirmative.)

17 MR. KATZ: Do any of you have any quarrel with that rule
18 of law?

19 (The prospective jurors indicate in
20 the negative.)

21 MR. KATZ: Now, his Honor, very, very carefully and
22 clearly, I believe, Tuesday, told you that in all crimes,
23 whether it is murder or any other kind of case, there is what
24 we call the corpus delicti of a crime, which doesn't mean a
25 physical body but means the essential elements of the offense,
26 and I know that because of television many people have the
27 mistaken impression that in a murder case it means the
28 physical body and the prosecution must produce the physical

1 body before we have established the corpus delicti of the
2 crime.

3 Now, his Honor instructed you and he will again
4 give you that instruction at the conclusion of this trial --
5 that is, at the conclusion of the evidence -- that the corpus
6 delicti of murder consists of two elements: One is the
7 establishment of the criminal -- the death of the decedent,
8 and it can be done by either direct evidence or circumstantial
9 evidence; and, secondly, that death has to be caused by a
10 criminal agency, which means that it wasn't caused by mistake,
11 accident or suicide; and if we prove those two things then we
12 have established the corpus delicti of that crime.

13 Now, if his Honor tells you that's all we need do
14 in connection with establishing the corpus delicti of the
15 crime and the evidence that is the circumstantial evidence
16 creates in your mind an abiding conviction to a moral certainty
17 that we have established the corpus delicti of the crime, will
18 you unhesitatingly follow that instruction?

19 (The prospective jurors indicate in
20 the affirmative.)

21 MR. KATZ: I take it, then, all of you are telling me
22 that you will not require the People, in order to establish
23 the corpus delicti of the crime, to produce a body or an
24 eyewitness to the killing; is that correct?

25 (The prospective jurors indicate in
26 the affirmative.)

27 MR. KATZ: Now, will all of you be willing, then, to
28 listen to the circumstantial evidence and to hear any

1 circumstantial evidence which may show the daily lifestyle
2 and habits of the alleged decedent named in the indictment,
3 Mr. Shorty Shea, and to evaluate in the context of all the
4 evidence to determine whether or not he suddenly disappeared
5 by reason of a criminal agency?

6 Will you all be willing to consider that?

7 (The prospective jurors indicate in
8 the affirmative.)

9 MR. KATZ: And, again, I want to make sure that you
10 understand I am not asking you to prejudge the evidence. You
11 may accept the evidence, you may reject it, but you are the
12 sole and exclusive trier of facts and you will have to deter-
13 mine what the facts are in this case.

14 Do you all understand that?

15 (The prospective jurors indicate in
16 the affirmative.)

17
18 GEORGE H. SMITH

19 BY MR. KATZ:

20 Q Now, if I may do this, Mr. Smith, you have heard
21 some of my statements concerning circumstantial evidence.

22 Let me ask you this question -- and before I
23 phrase it I am going to ask all of you persons that are seated
24 in the box and, indeed, you ladies and gentlemen behind the
25 railing, to have in mind the question I am going to ask and
26 think very carefully about it because I will ask each and every
27 one of you the same question.

28 Mr. Smith, if you were convinced beyond a reasonable

1 doubt and to a moral certainty by circumstantial evidence that
2 the defendant killed Shorty Shea and was guilty of murder in
3 the first degree, would you, nevertheless, refuse to vote that
4 verdict solely because the case rested on circumstantial
5 evidence?

6 A I would not.

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1 Q All right.

2 I take it, then, that you are telling us that
3 you would not require the People, in order to convict the
4 defendant, to produce evidence of the body or an eyewitness
5 to the killing; is that correct?

6 A Yes, sir.

7 Q And that we must assume for the sake of this
8 question that you are convinced beyond a reasonable doubt
9 and to a moral certainty by the circumstantial evidence
10 that the People have proved their case; is that correct?

11 A Yes.

12 Q And I take it, sir, that you have no quarrel,
13 then, with the rule of circumstantial evidence, is that
14 correct?

15 A That is correct.

16
17 ARNOLD J. MEJIA

18 BY MR. KATZ:

19 Q And Mr. Mejia, going on to you on this particular
20 subject, would your views be substantially the same concern-
21 ing circumstantial evidence?

22 A Yes, so long as you had overwhelming circumstantial
23 evidence.

24 Q Now, I am glad, again, that you introduced a new
25 word, "overwhelming."

26 Now, you realize that our burden in this case,
27 whether it is by way of circumstantial evidence or direct
28 evidence, only requires us to prove the case beyond a

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1 reasonable doubt and to a moral certainty, which is to say
2 that the People are not required to demonstrate that degree
3 of proof which excludes all possibility of error, for such
4 proof is rarely, if ever, possible. Do you understand that?

5 A I understand that, yes.

6 Q So that your using the word "overwhelming,"
7 and perhaps it was just a semantics problem between us at
8 this time, you will only require us to create that kind of
9 proof which creates ^{an absolute} a moral conviction to a moral certainty
10 of the truth of the charge; is that correct?

11 A Right.

12 Q You won't require us to demonstrate that degree
13 of proof which excludes all possibility of error; is that
14 correct?

15 A That's correct.

16 Q Now, do you have a feeling, sir, that, well,
17 circumstantial evidence is okay in a theft case or a forgery
18 case but, my God, they are trying to convict this man of
19 murder in the first degree in a murder case.

20 Do you have that kind of feeling?

21 A No.

22 Q All right. I take it, then, that you would be
23 willing to follow his Honor's instructions, which says in
24 part that circumstantial evidence is to be treated equally
25 with direct evidence as a reasonable means of proof?

26 A I understand that and I accept it.

27 Q And you accept it and you have no quarrel with it;
28 is that correct?

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1 A No.

2 Q And is it fair to say that if you were convinced
3 beyond a reasonable doubt and to a moral certainty, based
4 upon circumstantial evidence, that Mr. Grogan murdered
5 Mr. Shea, that you would vote guilty, irrespective of the
6 fact that we have not shown the body or any part thereof
7 or produced an eyewitness to the killing; is that correct?

8 A Correct.

9 Q Okay; and I take it you can be fair, then, and
10 fully, in evaluating the issue of guilt in this case; is
11 that correct?

12 A I feel so.

13
14 RICHARD I. INOUE

15 BY MR. KATZ:

16 Q Is that Mr. Inoue?

17 A Yes.

18 Q And, again, just on the issue of circumstantial
19 evidence for a moment, you heard the questions that I asked
20 the two other prospective members of the panel, did you not?

21 A Yes, I did.

22 Q Would your answers be substantially the same?

23 A Yes, it would.

24 Q Does it offend your sense of justice or fair
25 play that in this State a man can be convicted of murder
26 in the first degree without production of the body, without
27 an eyewitness to the killing and based wholly upon circum-
28 stantial evidence?

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1 A No.

2 Q And if you were convinced beyond a reasonable
3 doubt and to a moral certainty that the defendant in this
4 case murdered the decedent who was named in the indictment,
5 would you unhesitatingly vote guilty even though the full
6 case rested upon circumstantial evidence?

7 A No, I wouldn't -- what was the question again?

8 Q Let me rephrase it; it was rather a long question
9 and, again, if any of you ladies and gentlemen of the jury
10 do not understand my question, please ask me to reframe it,
11 because many times I don't understand my questions, they get
12 a little too long and too compound.

13 What I am asking you is this: assuming you were
14 convinced beyond a reasonable doubt and to a moral certainty
15 based wholly on circumstantial evidence that the defendant
16 murdered Mr. Shea, would you, nevertheless, refuse to vote
17 guilty solely because the People have not produced the body
18 or any parts thereof or any eyewitness to the killing?

19 A No, I would vote guilty if he was, you know,
20 guilty of the charges.

21 Q All right.

22 What I am saying is this, would you require,
23 irrespective of the evidence produced at this trial, the People
24 to produce the body or any eyewitness to the killing before you
25 would vote guilty?

26 A I wouldn't require it, no.

27 Q So you have an open mind as to the guilt or
28 innocence of the defendant and if the circumstantial evidence

1 created an abiding conviction to a moral certainty of the
2 truth of the charge you would vote guilty; is that correct?

3 A That is correct.

4 Q I take it you have no quarrel with the general
5 principle of circumstantial evidence which permits a man in
6 the State to be convicted of murder in the first degree; is
7 that correct?

8 A No, I don't have any.

9 MR. KATZ: Thank you, sir.

10
11 SIDNEY P. BATES

12 BY MR. KATZ:

13 Q That is Mr. Bates, is it?

14 A Right.

15 Q Mr. Bates, you have heard the questions in regard
16 to circumstantial evidence that I have propounded to the
17 other prospective members of the panel, have you not?

18 A Yes.

19 Q And in that connection would your answers be sub-
20 stantially the same?

21 A That's right.

22 Q And I take it you have no quarrel, then, with the
23 use of circumstantial evidence in a murder case; is that right?

24 A No, sir.

25 Q And do you appreciate the fact, sir, that whether
26 we are talking about a forgery or a petty theft case or a
27 robbery case or a murder case, in all cases the People have no
28 less or greater burden; but always must carry the burden of

1 proving the defendant's guilt beyond a reasonable doubt
2 and to a moral certainty.

3 Do you understand that?

4 A Yes.

5 Q I take it, then, that you would not require,
6 just because this is a murder case and just because the case
7 rests wholly upon circumstantial evidence, to demonstrate
8 that degree of proof which excludes all possibility of error;
9 is that correct?

10 A Yes, that's right.

11 Q All right; so long as we had created in your
12 own mind an abiding conviction to a moral certainty of the
13 truth of the charge you would be satisfied that we had met
14 our burden in law; is that correct?

15 A Right.

16 Q All right; and you heard the little cookie hypo
17 that I gave yesterday?

18 A Yes.

19 Q And did you understand the fact that the mother
20 had drawn an inference based on certain circumstances such
21 as the cookie crumbs and the crumbs underneath the fingernails
22 and the jelly around the mouth, and drew a deduction, an
23 inference from a fact that the child had taken the cookie
24 from the jar.

25 You understood that?

26 A Right.

27 Q In a sense we are going to be asking you to apply
28 your common sense to facts which may unfold during the course

1 of the trial and ask you to draw some inferences in making
2 decisions as to the ultimate facts in issue; isn't that
3 correct?

4 A Right.

5 Q And I take it that if accepted as a juror you
6 would be willing to accept that responsibility and make
7 those kinds of decisions which may, indeed, be difficult;
8 is that correct?

9 A I would.

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MR. KATZ: All right, sir. Thank you, Mr. Bates.

INEZ M. BELLES

BY MR. KATZ:

Q That is Mrs. Belles, is it?

A Right.

Q Mrs. Belles, you have heard the questions that I have asked the other prospective members of the panel in regards to circumstantial evidence. Would your answers be the same?

A Practically the same.

Q Practically?

A Exactly the same.

Q Okay, you understand that in this case, as his Honor so openly stated at the very beginning on Tuesday, there will be no body produced at this trial. There will be no eyewitness testimony to the killing. There will be no witness who will testify to having seen the body in death. Now, because of those factors would you be unwilling to consider the circumstantial evidence that will be presented during the course of this trial?

A No.

Q All right. If you are convinced beyond a reasonable doubt and to a moral certainty based upon the circumstantial evidence presented at this trial, would you nevertheless refuse to vote guilty because we had not produced the body or an eyewitness to the killing?

A No.

Q All right. So then you understand and you have no

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1 quarrel with the proposition and in the law, under the law of
2 the State of California a person may stand convicted of murder
3 in the first degree based wholly upon circumstantial evidence,
4 is that correct?

5 A Yes.

6 Q Do you believe, ma'am, that it is totally impossible
7 for a person, or a group of persons, to hide a body so that it
8 may never be recovered?

9 A Yes.

10 Q Do you believe it is impossible?

11 A Oh, no. I believe it is possible. Pardon me.

12 Q All right. Now, I take it then that you are
13 willing to wholeheartedly listen to all of the evidence, not
14 only all the People's evidence but the defense evidence, if
15 any, and from that make a fair and impartial determination as
16 to the guilt or innocence of the defendant?

17 A Yes, sir.

18 Q One point I would like to bring up with you and I
19 am not using you as a guinea pig as such, but we were discus-
20 sing the fact that a juror's verdict can in no way be
21 influenced by any sympathy you may have for the defendant in
22 the guilt phase or any bias or prejudice you may have against
23 the defendant, you understand that?

24 A Yes. Right.

25 Q I take it that you realize that prejudice and
26 sympathy in the guilt phase of this trial have nothing to do
27 with the ^{main}ascertaining of the truth, isn't that correct?

28 A That's right.

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1 Q So that as you look at the defendant and you note
2 his evident youth I take it that solely because of his youth
3 you would not give to him some benefit you would not give to
4 any other defendant, whether he is young or old, or black or
5 white or yellow, who is seated in his seat under the same
6 circumstances?

7 A That's right.

8 Q Is that correct? Do you believe and subscribe to
9 the tenet that all persons are equal under the law?

10 A Right.

11 Q And there is no doubt about that in your mind, is
12 that correct?

13 A Right.

14
15 DORA S. LEWIS

16 BY MR. KATZ:

17 Q Mrs. Lewis, you have been sitting patiently now
18 and listening to the questions I have asked the other five
19 prospective members of the panel. Would your answers be
20 substantially the same with regard to circumstantial evidence?

21 A Yes. I believe they would.

22 Q Okay. And I take it then that you have no quarrel
23 with the law which says that a person may be convicted of
24 first degree murder based solely upon circumstantial evidence
25 without production of the body or without production of an
26 eyewitness to the killing, is that correct?

27 A If that is the law.

28 Q Yes. Will you assume for a moment that that is the

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1 law?

2 A Okay. If that is the law then I agree with it.

3 Q All right, Mrs. Lewis, let me ask you this
4 question. Many jurors have a feeling that a law may be wise
5 or they may have a feeling that a law may be unwise. And we
6 have learned from past experience that sometimes the juror
7 will go into the jury room just before deliberation and start
8 talking about "Well, I don't like this law. I don't think it
9 should be on the books." Now, you won't let yourself fall in
10 that situation if you don't like a law and use the jury room
11 as a forum in which to discuss the propriety or impropriety of
12 the laws, is that correct?

13 A No, I will not.

14 Q And you understand, Mrs. Lewis, if chosen as a
15 juror you would be absolutely duty bound whether you like the
16 law or not to follow it in accordance with his Honor's
17 instructions, is that correct?

18 A This is correct.

19 MR. KATZ: Thank you, Mrs. Lewis.

20
21 ANGEL P. VICENTE

22 BY MR. KATZ:

23 Q Now, that is Mr. Vicente, is that correct, sir?

24 A That's correct.

25 Q Mr. Vicente, you have heard the questions in
26 regard to circumstantial evidence that I have asked the other
27 prospective members of the panel, have you not?

28 A I have.

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1 Q Would your answers be substantially the same?

2 A The same. No change.

3 Q All right. I take it that you have no quarrel
4 with the law that permits a man to be convicted of murder in
5 the first degree without the production of a body and without
6 the production of an eyewitness to the killing, is that correct?

7 A That's correct.

8 Q If you were convinced beyond a reasonable doubt
9 and to a moral certainty based upon circumstantial evidence
10 that the defendant in this case murdered the decedent named
11 in the indictment, I take it you would unhesitatingly vote
12 guilty, is that correct?

13 A Repeat that again.

14 Q Certainly. And I will go a little bit farther.
15 What I am asking you, Mr. Vicente, is this. Assuming for a
16 moment that based upon all the evidence produced at this trial
17 you were convinced beyond a reasonable doubt and to a moral
18 certainty that the decedent is dead and that the defendant in
19 this case, Mr. Grogan, murdered the decedent. You would
20 unhesitatingly vote guilty even though the People did not
21 produce the body of the decedent and even though the People did
22 not produce an eyewitness to the killing, is that correct?

23 A I would not, no. That is to say if the body is
24 not produced, and this is based on only circumstantial, I
25 would say that -- I guess I would in a way, I would say yes.

26 Q I am not sure I understand you. Let me backtrack
27 for a moment. I am glad you are raising something that may be
28 in your mind.

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1 THE COURT: Mr. Katz, may I make a suggestion that
2 might have led to some confusion.

3 MR. KATZ: Certainly, your Honor.

4 THE COURT: Your question is proper. I am not issuing
5 on the question.

6 MR. KATZ: Yes, your Honor.

7 THE COURT: The question was the fact that I don't
8 know if you impressed the juror with the importance of the
9 word "if." In other words, he first ought to be of clear
10 conviction that the testimony produced at the trial led
11 him to the conclusion of guilt to a moral certainty and
12 beyond a reasonable doubt. Then if that is the case would
13 the fact that there is no direct testimony of a physical
14 body, would that stop you at that point so that you would
15 not convict? That is substantially, but I don't -- I had
16 to think carefully as I followed you. That may have led --
17 now, if you possibly put it in that fashion you may get a
18 clear question.

19 MR. KATZ: Yes. If I may backtrack a bit.

20 THE COURT: All right.

21 Q BY MR. KATZ: Let me see if we understand one
22 another, Mr. Vicente.

23 Under the law of the State of California a person
24 may be convicted of murder in the first degree based wholly
25 upon circumstantial evidence. Do you understand that?

26 A I do.

27 Q Do you understand that?

28 A I do.

1 Q Do you have any quarrel with that ruling of law?

2 A No quarrel with that, no.

3 Q Do you also understand that under the law of this
4 State it is not necessary in order to convict a man of murder
5 that the People produce the physical body or any parts thereof
6 or an eyewitness to the killing. Do you understand that is
7 not necessary?

8 A Okay. Not necessary, right.

9 Q All right. If his Honor instructs you to that
10 effect will you follow that instruction?

11 A I would, yes.

12 Q Do you have any quarrel with that principle?

13 A No quarrel.

14 Q Now, I am going to ask the question that his
15 Honor very appropriately suggested. That is this. I want you
16 to assume you have heard all the evidence in this case and
17 it is wholly circumstantial evidence. And we haven't presented
18 any evidence of the body, that is, any remains of the body,
19 any photographs of the body in death. We haven't presented any
20 eyewitness testimony to the killing. But nevertheless from
21 all of the evidence you believe beyond a reasonable doubt and
22 to a moral certainty, that is, you have an abiding conviction
23 to a moral certainty that the defendant in this case murdered
24 Mr. Shea, the decedent named in the indictment. Would you
25 refuse to vote guilty in accordance with law because we did
26 not produce the body or an eyewitness to the killing?

27 A I would refuse, yes.

28 Q All right. So in other words, what you are telling

1 us is that before you would be willing to vote guilty in
2 this case you would require the People to produce the body
3 or an eyewitness to the killing, is that correct?

4 A I would say yes.

5 MR. KATZ: All right. I thank you for your candor
6 and I will challenge respectfully this juror under 1073,
7 subsection 2 on the grounds that he cannot be impartial on
8 all of the issues with which he is confronted.

9 THE COURT: Yes.

10 MR. WEEDMAN: Your Honor, I wonder if I might inquire.

11 THE COURT: Yes. Would you let counsel inquire.

12 MR. KATZ: Certainly.

13 THE COURT: You want to interrogate a minute.

14 MR. WEEDMAN: Yes, if I may, your Honor.

15 THE COURT: Yes. Then you voir dire until it is settled.
16 Then you go back to Mr. Katz.

17 MR. KATZ: Yes.

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1 Q BY MR. WEEDMAN: The only reason I am imposing on
2 for you for a moment, Mr. Vicente, is that I had raised this
3 generally yesterday, and I got the impression that from your
4 rather general response to it that it wouldn't make any
5 difference if the evidence was direct evidence or circumstantial
6 evidence in your mind. If I ask you that question now, what
7 would your answer be, in other words, does it make any differ-
8 ence to you whether the evidence is direct evidence or
9 circumstantial evidence in this case?

10 A Well, my answer will of course -- on the other --
11 on the other one, your question that I answered yes yesterday,
12 but I still say that -- that if a person is -- is accused and
13 there is direct -- of course I would say that he -- my answer
14 would be positive. But then on the other hand if there is no
15 evidence, clear-cut evidence then my answer will be not --
16 negative.

17 Q Well, let me just try a circumstantial evidence
18 situation on you and see what perhaps your reaction to it
19 might be. I am just going to conjure this up on the spot. I
20 haven't thought this through too well. But assume that there
21 is testimony in a trial that someone was seen walking along
22 the surf on a particularly stormy night and that there is
23 testimony that this person is not a good swimmer. And that
24 there is testimony that this person was never late for work.
25 And that this person was due to go to work the morning follow-
26 ing the time that they were seen walking along the beach. And
27 let's assume that there is testimony that they didn't show up
28 for work the next morning. Rather, that this person didn't

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1 show up for work the next morning. That this person was never
2 seen again. That there was testimony that portions of this
3 person's clothing was found floating half a mile out to sea.
4 Testimony that this person's wallet washed up on the beach near
5 where the person had last been seen. In other words, what I
6 am trying to give you is an illustration of a circumstantial
7 evidence case. You see, there is no direct evidence now that
8 this person has been -- is dead. Just all this circumstantial
9 evidence.

10 And of course the law, as you know, in California
11 now permits inferences to be drawn from that kind of evidence.

12 If it was that kind of a situation, Mr. Vicente,
13 do you think at least you would accept reasonable inferences to
14 be drawn with respect to whether or not such a person had
15 actually met his death?

16 A Yeah.

17 Q Or would you say "No, I am sorry. Nobody saw that
18 person drowned and the body never came back upon the beach.
19 Therefore I would never ever assume that that person was
20 dead"?

21 A Well, I would say I would accept reasonable, yes.
22 Reasonable doubt, yes.

23 Q Well, would you reject any consideration using the
24 example that I have given you that such person drowned?

25 A I would not reject it, no.

26 MR. WEEDMAN: Well, all right. Your Honor, I think
27 Mr. Vicente, if I may, your Honor, I think that in this
28 emphasis on murder and all, that perhaps makes it difficult to

1 answer the circumstantial evidence questions. I think Mr.
2 Vicente will consider circumstantial evidence.

3 MR. KATZ: May I just be permitted to ask a few
4 questions?

5 THE COURT: I think you have examined rather fully. Wait
6 just a minute.

7 MR. KATZ: Yes, your Honor.

8 THE COURT: There is merit to what you say, but I think
9 that probably the overall picture would -- presentation or
10 questioning would justify an exception for cause. I am inclined
11 to overrule your objection and excuse the juror. I will excuse
12 you for cause. Thank you very much for your honest statements.

13 MR. WEEDMAN: Your Honor, may we approach the bench
14 briefly.

15 THE COURT: Yes.
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(Proceedings in chambers, both counsel
and the defendant being present:)

THE COURT: Now, let me make a statement. We are in
chambers with the defendant and counsel. And you may proceed.

MR. WEEDMAN: Your Honor, just out of the presence of
the jury --

THE COURT: All right.

MR. WEEDMAN: -- I wish to express on behalf of my
client vigorous opposition to excusing this juror for cause.
I feel that the juror, even though his answers arguably were
somewhat equivocal, nonetheless he seemed finally to under-
stand the nature of the requirement of the use of circum-
stantial evidence and indicated that he would -- he would
consider and listen to such evidence, your Honor.

THE COURT: Well, I can understand your position and I
take no exception with the seriousness of your objection.
But I do think in my own mind there would seem to be a very
honest statement from the juror. It strikes me that way.
I don't think he is equivocating, he could take some learning
in the law like any of us. But the overall picture, analysis
to me is that he shows a for cause in there. He stated
several times clearly even after a revamping of the question
by the district attorney several times that he either couldn't
or wouldn't or didn't want to follow the instruction on
circumstantial evidence. It was very clearly answered.
And I think it goes to cause. And that is why I injected
the question there to make it clear, "First of all, Mr. Juror,
you have got to make up your mind. Have the People proven

1 the defendant guilty to a moral certainty and beyond a
2 reasonable doubt?"

3 I mean it is so interrelated, so many of the
4 questions here. Now, in doing so if you can make up your
5 mind to that point, to that degree, to that standard, will
6 you reject circumstantial evidence respecting the death
7 of the alleged victim? Would you reject it or not? Can
8 you make up your mind to that extent or can't you? Will
9 you reject circumstantial evidence in coming to that point?

10 That was the substance of what I tried to tell
11 the juror and substantially as stated in entirely different
12 fashion by the district attorney. And on several occasions
13 the answer came back clearly to the effect there must be
14 direct testimony of a deceased person or a proof of the death,
15 however we want to phrase it, to such an extent that I do
16 feel there is a for cause in there. And you have a serious
17 objection and it has merit. I just rule against you on it.

18 MR. WEEDMAN: Very well. Thank you, your Honor.

19 THE COURT: Yes. Thank you.

20 MR. KATZ: Thank you, your Honor.

21 (The following proceedings were
22 had in open court:)

23 THE COURT: Now we will call another juror if you will.

24 THE CLERK: Yes, sir. Richard G. Cooley, C-o-o-l-e-y.

25
26 RICHARD G. COOLEY

27 BY THE COURT:

28 Q Now, Mr. Cooley, I am going to ask you the same

1 preliminary questions I have asked the other jurors when
2 they have first been called back to the witness stand. And
3 let me say something to you to possibly -- it may or may not,
4 I hope it will -- help clarify some of the problems we are
5 facing here.

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1 Now, I may state it in entirely different fashion
2 than I have in the past or that the district attorney or
3 defense counsel may have posed the question.

4 I am going to use a corollary or another situation
5 in illustrating what to a certain extent could be the point
6 that is being presented in one way or another here to the jury.

7 In the trial of any lawsuit -- any lawsuit -- let's
8 stay on the criminal side, although the principles of it are
9 the same in a civil lawsuit -- certain legal principles are
10 presented to the jurors by which they must govern themselves
11 in arriving at certain facts.

12 The jurors may have personal feelings or convictions
13 one way or the other on the law. They may say to
14 themselves, "I don't like that law and I don't like any part of
15 it," or they may say, "I like the law the way the law is
16 written."

17 Now, a juror's feelings on whether he likes a law
18 or doesn't like the law does not mean that that juror will not
19 enforce the law. You see the distinction I am driving at?

20 Now, I am going to give you, with that as a starting
21 point, I am going to give you this-- this will strike home
22 to everybody: Back in the early thirties I used to try
23 hundreds of cases involving what are called -- were called
24 violations of the liquor laws. It is better known in the state
25 courts -- it was known as violations of the Wright Act, and in
26 the federal courts, violations of the Volstead Act; but it
27 all stemmed out of the Eighteenth Amendment, it was against the
28 law in the United States to own or possess intoxicating

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1 beverages over one-half of one percent alcohol per volume.

2 Now, every so often, or on many, many, many
3 occasions a person would be arrested for possession of alcoholic
4 beverages and charged with it in the state courts under the
5 Wright Act. Now, we would pick a jury and the question counsel
6 would often ask, and very properly so, "Well, Mr. Juror, the
7 defendant is charged with violation of the Wright Act. He is
8 charged with possessing alcoholic beverages. The law says it
9 is against the law to own alcoholic beverages."

10 Now, the question, to cull it down, of getting
11 into an argument, trying to pull you away from it, the
12 question is this, always, to the jury, some of the jurors in
13 answer to questions would say, "I don't like that law at all."
14 In fact, many, many, many jurors would say that.

15 Then there are jurors that would say, "Yes, I am
16 a prohibitionist."

17 Well, that is a side issue because you are not
18 trying the convictions of the juror. He is not on trial.
19 It is not a question of whether the law should be there or
20 shouldn't be there, it is there until it is knocked out, like
21 the prohibition laws were. The question to the juror is, or
22 the ultimate position of the juror must be, whether you like
23 a law or whether you don't like a law, will you, if the facts
24 prove a violation of the law, if the facts prove that that law
25 is violated or that a conviction is justified, will you enforce
26 the law? There is the question. That don't stop a man from
27 voting it in or out or any other way.

28 The question is, will you allow your feeling,

1 whether it is a good or bad law, will that stop you from
2 voting guilty or not guilty if the facts justify it? You have
3 got to get back to the facts, again, and you have got to wipe
4 out your personal feeling one way or the other, you see.

5 If you are trying a man because of a religious
6 belief, let us say you are a very, very devout member of some
7 religious organization, very devout, and here's a man over here
8 that believes just the other way than you do, he just doesn't
9 believe the way you do at all about divinity or religious
10 problems, the question is, well, can you put your own personal
11 thinking out and the way you feel about that religion and
12 pass on what the man is or isn't allowed to do in accordance
13 with the law.

14 Will you follow the facts, will you apply the facts
15 to the law as the law is written? Now, that's where we are
16 and that's why defendants present problems to a juror because
17 he constantly ties up in his mind, "I'm against that law,"
18 or for that law in answering counsel's question.

19 The question basically is will you apply this law
20 or not, will you accept the law as given to you by the judge
21 or won't you accept it? If you won't accept it, say so. Say
22 so, "The judge can say that, I won't follow it." Well, then,
23 say that; say that when the question is asked, don't hesitate.

24 "If the judge tells you this is the law, will you
25 follow the law?" and you say, "Well, if you accept me as a
26 juror, I can't follow that instruction, I can't follow it";
27 that's a fair enough answer and certainly for the purpose of
28 the jury it is fair enough, and the judge will say to you,

1 "Well, thank you," and I will excuse you and then another
2 juror will be picked and that is what counsel is, in some of
3 his questions, driving at, "Will you follow the law as the
4 court states the law to you, not if you like it or not, will
5 you follow it?"

6 I am just giving this in a generalization of
7 possible clarification of some of the serious questions that
8 are propounded either by the People or the defendant.
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RICHARD G. COOLEY

BY THE COURT:

Q Now, I am going to get back to you, Mr. Juror.

You have heard all of the questions I have asked, all of the statements I have made to the other jurors; is that correct?

A That's correct.

Q You have heard me read the charge of this case?

A Yes.

Q The indictment?

A Yes, I have.

Q I am going, for the purpose of this question, to ask you to assume when you take this case and go to the jury room, assume you are a juror, you have heard the testimony and you go to the jury room to decide the case, the jury can find not guilty, the jury can find guilty; that's up to the jury.

If the jury finds guilty as charged, they must make a finding of degree. If the jury finds second degree murder the duties of the jury are concluded in its entirety.

If the jury finds first degree murder, then there is a subsequent penalty hearing. At the penalty hearing the jury must determine whether the penalty is capital punishment or life imprisonment.

Is that clear up to that point?

A Yes.

Q All right.

Now, assume we are at the juncture; I will ask

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1 you, and you are voting on capital punishment or life
2 imprisonment, you are voting on it, I will ask you this
3 question: at that point would you automatically vote against
4 the imposition of the death penalty without regard to any
5 evidence that might be developed at the trial of this lawsuit?

6 A No, I wouldn't.

7 Q The answer is "No"; is that right?

8 A Yes, sir.

9 Q I am not trying to misquote you; the answer is
10 "No"?

11 A Yes, the answer is "No."

12 THE COURT: I will pass the juror for cause.

13 Where are we? I have lost myself -- let's see --
14 let's clear this man on that one point. If you desire, go
15 ahead on that one point, if you will, or do you want any
16 voir dire?

17 I guess we better go back. Let's clear voir dire
18 up to this point, then the People can go ahead.

19 You did pass the jury for cause. Now we have a
20 new juror, so let's go back and see where we are on your
21 clearance, if we will.

22 MR. WEEDMAN: Yes; thank you, your Honor.

23 As a matter of fact, there are two prospective
24 jurors whom I have not --

25 THE COURT: Is there another lady in there I have --

26 MR. WEEDMAN: Yes, Mr. Grimaldi.

27 THE COURT: All right. Take any you have not cleared
28 for cause; let's clear for a ruling one way or the other.

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1 MR. WEEDMAN: Surely, your Honor.

2 THE COURT: Otherwise we are going to be confused.

3
4 HAZEL RUPE

5 BY MR. WEEDMAN:

6 Q I believe, Mrs. Rupe, I believe you were going to
7 contact your employer?

8 Would you tell us what you found out?

9 A I talked to him and he is still opposed to me
10 serving any longer than 30 days. He said if it had been two
11 weeks longer he might have conceded, but should it go through
12 the six to eight weeks that will be approximately six weeks
13 beyond my 30 days.

14 Q And then what is your understanding then that
15 will follow as far as your employment is concerned if you
16 have to serve here for another two months?

17 A He did not say that he would take any action one
18 way or the other. However, I personally feel that he is going
19 to be an unhappy employer should I leave, and that possibly
20 since the question was asked us, that if we were in the place
21 of the defendant would we like to have someone sitting in the
22 jury in that circumstance, I feel that I would not want to.

23 Q You feel that because of this problem or possible
24 problem at work that you couldn't give both sides, perhaps,
25 your undivided attention?

26 A That's right; I do feel it would be a pressure
27 type thing.

28 MR. WEEDMAN: Well, I certainly accept that, Mrs. Rupe.

1 Perhaps on this one point, your Honor, perhaps
2 counsel would wish to inquire?

3 THE COURT: What about the People?

4 MR. KATZ: Yes, just to ask a few questions, that's it.

5 THE COURT: Do you want to stipulate?

6 MR. KATZ: I probably will; I just want to ask a few
7 questions.

8 THE COURT: All right, go ahead.

9 Q BY MR. KATZ: Mrs. Rupe, you understand, as I said
10 before, you are kind of running for office of juror against
11 your will; isn't that right?

12 A A little, yes.

13 Q And what counsel and the court are all concerned
14 with is the fact that we do get 12 impartial jurors who will
15 set fairly on this case and evaluate with open minds all of
16 the evidence; you appreciate that?

17 A Yes, I do.

18 Q And if we believe that we find someone such as
19 yourself, we feel privileged and delighted that you are
20 able to serve on this jury; you understand that?

21 A I understand that.

22 Q So it is in this spirit that I am asking you the
23 question. I realize you are in a difficult situation and
24 perhaps your life is complicated by the fact that you are
25 concerned about work, but I also note by your answers that
26 you are an extremely conscientious person and I am going to
27 ask you this question quite forthrightly, and ask you to
28 think about it before you answer: If against your will you

1 are elected to the office of juror, despite some of the
2 problems you have, would you do your very best and could you
3 put aside these problems and listen to the evidence as it
4 unfolds at the trial and give both sides the benefit of
5 your individual opinion?

6 A Yes, I feel that if that's the way it would be,
7 then I would give the best that I could while I was here.

8 Q All right.

9 Do you think -- and I am going to ask you this;
10 listen very carefully -- do you think that you, in fact,
11 are capable, if selected as a juror against your will, to
12 listen to the evidence and give both sides not only the
13 benefit of your individual opinion but to be fair and impartial
14 on all issues?

15 A Yes, I feel I could.

16 Q And would you, if selected as a juror against
17 your will?

18 A Yes, I would.

19 MR. KATZ: Thank you, your Honor. I am sorry, your Honor,
20 I cannot enter into a stipulation.

21 MR. WEEDMAN: I agree with counsel, your Honor. I don't
22 feel, with all due respect to Mrs. Rupe and the problem that
23 she has expressed, I don't believe there is sufficient cause.
24 I agree with Mr. Katz.

25 THE COURT: I think it goes more to a peremptory than
26 for cause. I think if counsel desires further exercising it
27 should be by way of peremptory rather than by for cause.

28 I am going to refuse her request. She passes for

1 cause as far as the court is concerned.

2 Now, does that clear your interrogation now?

3 MR. WEEDMAN: Well, no, I had Mr. Cooley and Mr. Grimaldi.

4 THE COURT: Go ahead, finish for cause, your voir
5 dire on this, wherever we were there.

6 You had cleared most, I believe; it was just this
7 lady?

8 MR. KATZ: And Mr. Grimaldi.

9 THE COURT: And this gentleman here?

10 MR. WEEDMAN: Yes, your Honor. Thank you.

11
12 FRANCO GRIMALDI

13 BY MR. WEEDMAN:

14 Q Mr. Grimaldi, would you suffer any personal
15 hardship if this trial should last for approximately two
16 months?

17 A No.

18
19 RICHARD G. COOLEY

20 BY MR. WEEDMAN:

21 Q Mr. Cooley, would you suffer any personal
22 hardship if this trial were to last --

23 A No serious hardship.

24 MR. WEEDMAN: All right, fine.

25 THE COURT: May I again interrupt you? I don't like to
26 make these interruptions.

27 I think we'll take a short recess and then go
28 ahead, a ten-minute recess.

1 Do not discuss the case or come to any opinions
2 or conclusions. We will proceed then. Thank you.

3 (Recess.)

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1 THE COURT: Now, gentlemen, we will go right ahead.
2 People against Grogan. Defendant is here, both counsel are
3 here. The jurors are in the jury box. You may proceed with
4 your voir dire.

5 MR. WEEDMAN: Thank you, your Honor.

6 THE COURT: Yes, indeed.

7
8 FRANCO GRIMALDI

9 BY MR. WEEDMAN:

10 Q Mr. Grimaldi, do you have any prior criminal jury
11 experience?

12 A Yes.

13 Q And was that during your present tour as a juror?

14 A Yes.

15 Q What kind of a criminal case was that, Mr.
16 Grimaldi?

17 A A marijuana case, possession of marijuana.

18 Q I see. Was there just that one case you have sat
19 on as a juror?

20 A Was the one case, but two defendants.

21
22 RICHARD G. COOLEY

23 BY MR. WEEDMAN:

24 Q Mr. Cooley, how about you, sir. Have you had any
25 prior criminal jury experience?

26 A I was on one criminal case but it was dismissed
27 after the opening statement for lack of evidence.

28 Q I take it with regard to Mr. Grimaldi and

7-2

1 Mr. Cooley, anything you learned naturally you are not going
2 to utilize in determining the evidence in this case?

3 A Yes, sir.

4 MR. GRIMALDI: Yes.

5 MR. WEEDMAN: That is a rather obvious question but I
6 must ask it, of course.

7

8 FRANCO GRIMALDI

9 BY MR. WEEDMAN:

10 Q Mr. Grimaldi, have you heard of the name Charles
11 Manson?

12 A Yes, sir.

13 Q And can you tell us briefly what your understanding
14 is of who Charles Manson is and what, if anything, he has done?

15 A The only thing I know, he was accused to murder
16 some people and was -- went in court and found guilty.

17 Q And do you know that he was sentenced --

18 A Yes, sir.

19 Q -- to death?

20 A Yes, sir.

21 Q In connection with that case?

22 A Yes, sir.

23 Q We anticipate that the evidence in this case,
24 Mr. Grimaldi, will show that my client is at least a friend of
25 Charles Manson's. If that is the case here do you feel that
26 you would be particularly prejudiced against my client?

27 A No, sir.

28 Q All right. Would you be able to set aside any

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1 opinion that you may have formed in connection with Charles
2 Manson in the Tate-La Bianca case?

3 A Well, I would put it aside but I got my opinions.

4 Q What opinion do you have, Mr. Grimaldi?

5 A I am confused. Well, but, I just think what they
6 they did wasn't right.

7 Q Well, I think that it is not right for anybody to
8 murder anybody. That is obvious, isn't it, of course.

9 Have you any opinion about persons who are
10 associated with Charles Manson? By that I mean people who are
11 his friends?

12 MR. KATZ: Excuse me, your Honor. There is an objection
13 unless there is an addendum "solely because of that fact"
14 because the evidence may --

15 MR. WEEDMAN: Yes. I will withdraw the question.

16 THE COURT: All right. You may withdraw the question.

17 MR. WEEDMAN: Yes. Thank you, counsel.

18 Q Do you feel, Mr. Grimaldi, then, that you would be
19 able to set aside this opinion in judging my client's guilt or
20 innocence?

21 A Yes, sir.

22 Q Now, supposing just to test that for a moment, if
23 I may, supposing as I have suggested to some of the other
24 prospective jurors that it is a very close case. I am talking
25 about the guilt phase now, that you may even have been in the
26 jury room for several days. There is evidence from the
27 prosecution, there is evidence from the defense and you have got
28 to sort it all out and weave a path through it all and mull it

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1 over. And by golly after several days you haven't made your
2 mind up. Would you then permit this opinion that you have
3 about Charles Manson and the Manson family to influence your
4 judgment in this case?

5 A Well, I don't know the evidence. But at this
6 moment I don't think so.

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1 Q If you were tempted to resolve issues in this case
2 by way of knowledge from the Tate-La Bianca murder case, do
3 you feel you would be able to resist that temptation?

4 A Well, in other words, if he had nothing to do with
5 it, I wouldn't. Let's see, how can I say it -- I mean, I
6 wouldn't try to judge him on something he has nothing to do
7 with, in other words. It all depends from the evidence.

8 Q Surely.

9 A I don't know what the evidence is going to be.

10 Q Surely. It is obvious, of course, that my client --
11 well, I should say it is obvious -- my client is not charged
12 in that other case; that's a case that has nothing to do with
13 my client; isn't that so?

14 A Yes.

15 Q My client is here charged with the alleged murder
16 of one Shorty Shea, nothing to do with the other case at all.

17 A Okay.

18 Q But the thrust of my question, Mr. Grimaldi, is,
19 you see there will be prosecution evidence against my client.
20 After all, we are not here just on a totally frivolous mission.
21 The prosecutor has evidence against my client. We have contrary
22 evidence. We have evidence for my client.

23 You understand that?

24 A Yes.

25 Q That's why we are here; and you are going to have
26 to make a decision, you are going to have to figure out, you
27 are going to have to arrive at some fact findings, as Judge
28 Call has already told you about, so the thrust of my question

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1 to you is whether or not during the process of fact finding
2 you would allow your feeling about that Tate-La Bianca case to
3 influence you?

4 A No, sir.

5 MR. WEEDMAN: All right, fine.

6
7 RICHARD G. COOLEY

8 BY MR. WEEDMAN:

9 Q What about you, Mr. Cooley, in this connection?
10 Have you any -- have you formed any opinion about Charles
11 Manson and the Manson family from anything that you may have
12 heard or read?

13 A What type of opinion are you looking for?

14 Q Well, I am looking, obviously, I am looking for a
15 negative opinion; that would be the one that would really be
16 most pertinent here, and I suppose the one we would expect to
17 find.

18 Have you formed any?

19 A Well, I don't believe in guilt by association, if
20 that is what you are after.

21 Q Well, fine, thank you, and I appreciate your using
22 that phrase. I think perhaps I should use it, because I think
23 it clearly states the kind of thing that I am interested in.

24 In other words, you are saying that merely because
25 of an association between Charles Manson and my client, that
26 doesn't mean guilt?

27 A That's correct.

28 Q Do you think, finally, in that connection,

1 Mr. Cooley, that you would be tempted at all in the kind of
2 close case that I have described for Mr. Grimaldi, to utilize
3 this guilt by association?

4 A No, I wouldn't.

5 Q And I take it that both you and Mr. Grimaldi will
6 promise -- will promise us here -- that you would not be so
7 tempted?

8 A That's correct.

9 MR. GRIMALDI: Sure.

10 MR. WEEDMAN: I am sure you both appreciate that it is
11 a matter of grave concern to defense counsel, particularly,
12 and to the defendant where there has been so much horrendous
13 publicity and coverage of this Tate-La Bianca case.

14 I am sure you both appreciate the necessity for
15 going into this matter.

16 Is there anything at all about this case,
17 Mr. Grimaldi, that makes you feel that you'd rather be
18 someplace else while this case is being decided?

19 MR. GRIMALDI: Well, no, I don't think so.

20 MR. WEEDMAN: And, as you sit there now you feel that
21 you are prepared and ready to go to work and give both sides
22 a fair and impartial trial?

23 MR. GRIMALDI: Yes, sir.
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1 MR. WEEDMAN: Mr. Cooley, I take it your answer would be--
2 I hope your answer would be the same to that question?

3 MR. COOLEY: Yes, sir.

4 MR. WEEDMAN: With respect to issues of law involving
5 circumstantial evidence, is there anything about those ideas --
6 that is, the idea and the law that circumstantial evidence is
7 just as good as direct evidence -- that offends you in any way,
8 Mr. Cooley?

9 MR. COOLEY: No, there isn't.

10 MR. WEEDMAN: And Mr. Grimaldi?

11 MR. GRIMALDI: No.

12 MR. WEEDMAN: You heard Mr. Katz' earlier questions and
13 discussions of circumstantial evidence, I take it, as well as
14 Judge Call's reading of the instructions of circumstantial
15 evidence.

16 MR. COOLEY: Yes.

17 MR. WEEDMAN: Is that so?

18 MR. GRIMALDI: Yes.

19 MR. WEEDMAN: You are prepared, then, to at least
20 consider circumstantial evidence for whatever value it may have
21 and not reject it merely because it is circumstantial evidence?

22 MR. GRIMALDI: Yes.

23 MR. COOLEY: Yes.

24 MR. WEEDMAN: I am correct in that, am I not?

25 MR. COOLEY: Yes.

26 MR. GRIMALDI: Yes.

27 MR. WEEDMAN: During the course of the trial, Mr. Cooley,
28 we may be hearing from police officers. Would you reject

1 artificial standards in evaluating the testimony of police
2 officers; and by artificial standards I mean, for example, all
3 police officers tell the truth or all police officers lie?

4 MR. COOLEY: I would treat them like anyone else.

5 MR. WEEDMAN: Surely.

6 / Mr. Grimaldi, would your answer be the same to
7 that?

8 MR. GRIMALDI: The same.

9 MR. WEEDMAN: Does the mere fact, Mr. Cooley, that my
10 client is charged with murder, murder most foul, so to speak,
11 does that fact alone make you think that he is more apt to be
12 guilty than not, or will you wait until you hear the evidence
13 in this case?

14 MR. COOLEY: Yes, I would wait for the evidence.

15 MR. WEEDMAN: So as you sit there right now, I take it is
16 a fair statement that you haven't the foggiest idea whether
17 he did it or he didn't do it?

18 MR. COOLEY: That is correct.

19 MR. WEEDMAN: Would your answers be the same to those
20 questions, Mr. Grimaldi?

21 MR. GRIMALDI: Not entirely.

22
23 FRANCO GRIMALDI

24 BY MR. WEEDMAN:

25 Q All right, let's hear from you, then.

26 A If he's been accused they must at least have some,
27 like you say, circumstantial evidence about the defendant. I
28 don't know if he is guilty or not, but he's over here for some

1 reason.

2 Q Oh, surely.

3 A As to what it is --

4 Q And I appreciate your saying that and I heartily
5 agree with you.

6 Surely, the district attorney's office is a
7 responsible agency of the government and they are not going to
8 come in here unless they have got something to present to the
9 jury; but my question is, is the mere fact that he's been
10 accused evidence in your mind?

11 A No.

12 Q Or will you wait until you hear some witnesses?

13 A I will.

14 Q In this case?

15 A I will wait to hear both sides' story.

16 Q And in that connection I am sure that you appre-
17 ciate many persons are brought before the bar of justice
18 charged with serious crimes and they are acquitted?

19 A Yes.

20 Q And by the same token, many persons are brought
21 before the same bar of justice and they are convicted?

22 A Yes.

23 Q You just don't know; the mere fact of the accusa-
24 tion, then, I am sure you will agree, is not going to help us
25 to determine the truth in this matter?

26 A Yes, sir.

27 MR. WEEDMAN: I will pass for cause and thank you both.

28 THE COURT: Thank you.

1 Now, you finish -- well, go ahead with your voir
2 dire.

3 MR. KATZ: Yes. Thank you very much, your Honor.

4
5 RICHARD G. COOLEY

6 BY MR. KATZ:

7 Q Mr. Cooley, you are now in the place of Mr.
8 Vicente, so let me pick up in regards to a particular subject
9 we have been discussing this morning, and that, namely, is the
10 one of circumstantial evidence.

11 Now, I take it you have been here throughout all
12 of the proceedings since Tuesday, in which Judge Call very
13 clearly and concisely read for you the law concerning
14 circumstantial evidence; is that correct?

15 A That's correct.

16 Q And you have heard some discussions both by
17 Mr. Weedman and myself in regards to the proper use of
18 circumstantial evidence; is that correct?

19 A That is correct.

20 Q And do you think that your answers would be any
21 different or would they be substantially the same to those
22 questions we posed to the other prospective members of the panel
23 in regards to circumstantial evidence?

24 A Yes.
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1 Q Yes. All right. And again let me say at the
2 outset, Mr. Cooley, it certainly is no sign of weakness nor
3 should a juror be embarrassed because he has a certain prefer-
4 ence or prejudice in regards to the law. As his Honor so
5 clearly told us this morning in a very vivid example that you
6 may have some preferences in regards to the law, you may
7 think it is wise or unwise. That in itself will not disqualify
8 you.

9 What we are concerned with, can you put these
10 opinions concerning the law aside. Put your own feelings aside
11 and unhesitatingly and unquestioningly follow his Honor's
12 instructions at the conclusion of the trial? You understand
13 that is the problem?

14 A Yes, I understand.

15 Q For example, to give you another example and for
16 the benefit of all jurors, I happen to have a preference for
17 strawberry ice cream as opposed to vanilla ice cream. I am
18 not being facetious when I say that is a preference or a
19 prejudice, if you will. You can call it a prejudice. It
20 really doesn't mean anything insofar as it concerns my ability
21 to be a good juror unless the issue before the court is which
22 is better, vanilla ice cream or strawberry ice cream, in
23 which case my preference or prejudice might be such as to be
24 unable to fairly and impartially weigh the evidence. Do you
25 understand that illustration?

26 A Yes, I understand.

27 Q All right. Now, in this case you may not like the
28 idea in California, for example, that a man may be convicted

9-2

1 of murder in the first degree and indeed subsequently
2 sentenced to death based wholly upon circumstantial evidence.
3 Now, my question to you is this. Do you have any quarrel
4 with the rule of law in California which says that a man
5 may be convicted of murder in the first degree without produc-
6 tion of the evidence and without production of any eyewitness
7 to the killing?

8 A No, I have no quarrel.

9 Q All right. And if you believed from all of the
10 evidence, that is, the circumstantial evidence in this case
11 that the defendant was guilty of murder in the first degree,
12 would you refuse to vote that verdict in accordance with the
13 law solely because the People failed to produce the body,
14 any parts thereof or an eyewitness to the killing?

15 A No, I wouldn't.

16 Q All right. So it is fair to say that you would not
17 require the People to produce the body or any parts thereof
18 or an eyewitness to the killing before you would be willing
19 to vote guilty in accordance with the law, is that correct?

20 A That is correct.

21 Q Is it also fair to say that you will not require
22 the People to sustain any greater burden of proof than that
23 already required by law solely because this is a circumstan-
24 tial evidence case?

25 A No.

26 Q All right. Now, I haven't had an opportunity,
27 Mr. Cooley, because you just were called to sit in Mr. Vicente's
28

9-3 1 seat, to talk to you about capital punishment. So let me
2 do so very briefly.

3 You understood my explanation yesterday that it is
4 impossible and there can be no return of a penalty verdict,
5 that is a death penalty verdict unless and until all 12 jurors
6 unanimously join in that verdict; is that correct?

7 A That is correct.

8 Q So that if 11 jurors, for example, voted for death
9 but you as the 12th juror voted for life there would be no
10 capital punishment, is that correct?

11 A That is correct.

12 Q Is it fair to say that if you were of a fixed mind
13 at this time that under no circumstances would you be willing
14 to consider a death penalty verdict regardless of the evidence
15 which unfolds during the course of this trial, that the People
16 could not get a fair trial on the issue of penalty?

17 A Would you repeat the question.

18 Q Yes. In other words, as you sit here now you are
19 of a state of mind that under no circumstances and regardless
20 of the evidence would you vote the death penalty, isn't it
21 a fair statement to say that the People couldn't get a fair
22 trial on the issue of penalty; is that right?

23 A Yes, that is a fair statement.

24 Q All right. Now, if you were seated in my seat
25 as a prosecutor charged with the responsibility of trying this
26 case which is predicated wholly upon circumstantial evidence,
27 would you want 12 jurors of your present frame of mind to sit
28 in judgment in this case?

9-4

1 A Yes, I think I would.

2 Q So what you are telling me is that not only can
3 you be fair to the defendant, you can be fair to the People,
4 is that right?

5 A Yes.

6 Q I take it you agree with the proposition that all
7 sides are entitled to the fair and impartial and open mind
8 of each juror; is that correct?

9 A Yes. I should hope so.

10 Q All right. And you do distinguish the situation
11 in which a person believes that capital punishment in some
12 instances is justified on the one hand and personally
13 participating in a death penalty verdict himself, do you
14 understand the distinction?

15 A No, I don't understand the question or the state-
16 ment you are making.

17 Q Yes. Let me rephrase the question.

18 Do you recognize the distinction between believing
19 that capital punishment in the abstract is justified under
20 certain circumstances on the one hand and personally voting
21 the death penalty and personally participating in the death
22 penalty on the other hand?

23 A Yes.

24 Q All right. Then I think we are in agreement that
25 the latter situation is a far more traumatic and difficult
26 experience, isn't that right?

27 A Yes.

28 Q Now, have you given some thought to the death

9-5

1 penalty prior to coming to jury service?

2 A Yes.

3 Q And do you have any feelings in regards to the
4 death penalty in general?

5 A Yes. I believe it is a deterrent against murder.

6 Q All right. Now, let me ask you this. Can you
7 conceive of circumstances -- and I don't want you to tell them
8 to me -- but can you conceive of circumstances in which you
9 can personally vote the death penalty?

10 A Yes.

11 Q All right. And I take it you can be fair and
12 impartial to both sides, is that correct?

13 A Yes.

9a

9A.

HAZEL RUPE

BY MR. KATZ:

Q Mrs. Rupe, we are back to you again and I hope that you don't hold any ill will or feeling towards me because we like you so much we are keeping you here at this time. Is that a fair statement?

A It is all right.

Q All right. Thank you. Now, getting back to this issue of circumstantial evidence you have heard the questions that I have asked the other prospective members of the panel. Would your answers be substantially the same?

A Yes, they would.

Q Just very briefly would you refuse to vote guilty for murder in the first degree solely because the People did not produce the body or the remains of the decedent or an eyewitness to the killing?

A No, I wouldn't.

Q All right. In other words, if you were convinced beyond a reasonable doubt and to a moral certainty based wholly upon circumstantial evidence that the defendant murdered the decedent then you would vote guilty regardless of the fact that we failed to produce the body or an eyewitness to the killing; is that correct?

A Yes, that's right.

Q Do you think you can be fair and impartial to the People in regards to the use of circumstantial evidence and will follow his Honor's instructions in that regard; is that correct?

1 A Yes, that's correct.

2 Q And I take it you have no quarrel with the law
3 that a person may be convicted of murder in the first degree,
4 is that correct?

5 A That's correct.

6 Q Do you believe, ma'am, that it is possible for a
7 person or a group of persons to bury a body so that it cannot
8 be found? Do you believe that is possible?

9 A Yes, it is possible.

10
11 FRANCO GRIMALDI,

12 BY MR. KATZ:

13 Q All right. Now, let me pass now to this next
14 gentleman, and that is Mr. Grimaldi, is it?

15 A Yes, sir.

16 Q Have I pronounced it right?

17 A Yes.

18 Q And I haven't had an opportunity to talk to you, I
19 don't think, about the death penalty. In that regard as I
20 understand it you are generally opposed to the death penalty,
21 is that correct?

22 A Yes, sir.

23 Q All right. Now, let me ask you this. As you sit
24 here now can you conceive of any case in which you could
25 personally vote the death penalty?

26 A Oh, yes.

27 Q All right. And as you sit here in the case before
28 you which involves Mr. Grogan, would you have an open mind

1 as to the proper penalty in the phase, should we reach that
2 phase of the trial?

3 A Yes.

4 Q And can you conceive of circumstances in this case
5 in which you might vote the death penalty?

6 A Well, I got to be frank. You said your case is
7 based on circumstantial evidence. Well, I don't believe that
8 this, without the body, I don't think that I will reach a
9 verdict to send this defendant to the -- to the death penalty
10 in this particular case, in this particular moment. While I
11 don't know how good are your arguments, but at this moment I
12 think that it would be very, very -- I mean almost impossible
13 for me to pass that judgment.

14 Q I thank you very much for your honesty. Let me
15 ask you this question. Now, you don't know what the evidence
16 in this case is at this point, isn't that right?

17 A Yes, sir.

18 Q We are not permitted nor are we obliged to discuss
19 that with you, do you understand that?

20 A Yes, sir.

21 Q What I am asking you is this, in a case in which
22 there is no body and in which there will be no eyewitness
23 testimony to the killing, would you automatically refuse to
24 consider the death penalty regardless of the evidence in this
25 case before you?

26 A To answer exactly the statement you made, I would
27 consider. Exactly in the way you said it.

28 Q All right. Let me ask you this: would you

1 automatically refuse however to vote the death penalty
2 irrespective of the evidence in the case before you which is
3 based wholly upon circumstantial evidence?

4 A When you use automatically -- I -- I cannot say no,
5 I would not pass the judgment. In other words, I could find
6 him guilty. When you use the word automatically, in other
7 words, we talk -- talking on anything.

8 Q We are not talking about the guilt phase. Assuming
9 for a moment Mr. Grogan has been convicted of murder in the
10 first degree. As his Honor has told you time and time again,
11 we may never get to that point. The jury may vote acquittal.
12 The jury may find some lesser verdict such as murder in the
13 second degree. It is only based on the assumption that there
14 is a return of a verdict of murder in the first degree that
15 we then become concerned in what we call the penalty hearing
16 to determine the proper penalty, whether it is life on the one
17 hand or death on the other hand. Do you understand that so
18 far?

19 A Yes.

20 Q So I want you to assume for the purpose of my
21 questioning that we have had a return of a first degree murder
22 verdict and we are in the penalty hearing. I am asking you
23 this: would you automatically vote life imprisonment on each
24 and every ballot in this case irrespective of the evidence
25 solely because this case is predicated upon circumstantial
26 evidence?

27 MR. WEEDMAN: May we approach the bench before that is
28 answered, your Honor.

1 THE COURT: We will go in chambers with the reporter.

2 (Proceedings in chambers with counsel

3 and the defendant present:)

4 THE COURT: We are in chambers with the defendant and
5 both counsel. Read the question first.

6 (The question was read by the
7 reporter, as follows:)

8 "Q So I want you to assume for the
9 purpose of my question that we have had a
10 return of a first degree murder verdict
11 and we are in the penalty hearing. I am
12 asking you this: would you automatically
13 vote life imprisonment on each and every
14 ballot in this case irrespective of the
15 evidence solely because this case is
16 predicated upon circumstantial evidence?"

17 MR. WEEDMAN: Your Honor, I think --

18 THE COURT: I don't want to cut you out --

19 MR. WEEDMAN: Yes, your Honor. I will object to the
20 question on the ground that it is asking the juror to prejudge
21 the evidence in this case. The juror has indicated already
22 that he will not automatically vote against the death penalty
23 if this case should get to that point. To ask this juror if
24 he would vote automatically against the death penalty if the
25 case is based on circumstantial evidence is not only asking
26 him to prejudge the evidence but is also irrelevant and
27 immaterial to the People's right to have persons who will
28 not automatically refuse to vote for the death penalty.

1 THE COURT: Well, I am disturbed possibly by the
2 same points, but in a little different fashion. May I read
3 back just a minute.

4 MR. WEEDMAN: Surely, your Honor.

5 MR. KATZ: I think I can save some time because I think
6 the objection is basically proper insofar as it serves as
7 a possible challenge for cause under 1073 subsection 2 and
8 1074, subsection 8. I would not challenge that juror for
9 cause under Witherspoon because of an answer to the effect
10 that he would not under those circumstances impose the death
11 penalty. It is just a foundational question. I agreed with
12 Mr. Weedman, I think he anticipated a challenge for cause.

13 THE COURT: I appreciate your statement but there is
14 still another problem. The question is assumptive. It assumes
15 something that can be covered in your question if it is
16 covered in a different way. Let me show you why it is
17 important. Read the last part of counsel's question.

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1 (The record was read by the reporter
2 as follows:

3 "Q Would you automatically vote for
4 life imprisonment on each and every ballot in
5 this case, irrespective of the evidence, solely
6 because --')

7 THE COURT: Right there, "irrespective of the evidence."

8 Evidence could be no evidence at all, or there
9 could be plenty of evidence. You should -- I am not trying to
10 be a schoolteacher -- the question, if it were corrected to
11 say, "If your conclusions of the testimony were such that
12 you were convinced beyond a moral certainty" -- "to a moral
13 certainty and beyond a reasonable doubt," then your question,
14 you see, you are assuming -- you are saying -- you don't show;
15 you don't put to the juror the fact that he may or may not make
16 such conclusions.

17 "If you conclude that the testimony is so," but you
18 are just assuming it does.

19 MR. KATZ: May I be heard, your Honor?

20 THE COURT: Yes.

21 MR. KATZ: I think your Honor has misconstrued --

22 THE COURT: Read it again.

23 MR. KATZ: No, if I may make this point, and I think it
24 will be obvious, I have already told them that they have to
25 assume that we are in the penalty phase and they have convicted
26 this defendant based on proof beyond a reasonable doubt and to
27 a moral certainty.

28 THE COURT: I agree to that.

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1 MR. KATZ: And predicated upon the evidence produced at
2 the guilt phase, so the assumption is built into this question;
3 so, I don't see the problem.

4 THE COURT: Then I think maybe a lack of clarity.

5 I'm not criticizing you, but I am somewhat
6 disturbed, though, with the jumping, in effect -- the testimony
7 produces so and so, the testimony is so and so -- if you carry
8 your same -- assuming that you want to put it that way, carry
9 your same premise forward, "If you are satisfied to a moral
10 certainty, beyond a reasonable doubt then would you refuse,
11 would you refuse to vote the death penalty?"

12 MR. KATZ: Fine.

13 THE COURT: We may be fighting shadows, may be picking
14 flaws, but it is rather an important point.

15 MR. KATZ: I will be happy to rephrase it, your Honor.

16 THE COURT: Fine, but you have covered it in your
17 preliminary question, in your preface, but to a layman it may
18 not be clear.

19 MR. KATZ: Thank you, your Honor. I adopt wholeheartedly
20 your suggestion.

21 (The following proceedings were held
22 in open court:)

23 THE COURT: All right, we are back in the courtroom. Go
24 ahead, gentlemen.

25
26 FRANCO GRIMALDI

27 BY MR. KATZ:

28 Q Mr. Grimaldi, I want you to assume that you have

10-3 1 heard the evidence in the guilt phase of the trial and based
2 upon that circumstantial evidence you are convinced beyond a
3 reasonable doubt and to a moral certainty that the defendant
4 committed murder in the first degree.

5 Do you follow me so far?

6 A Yes, sir.

7 Q And the jury has voted murder in the first degree--
8 do you follow me so far?

9 A Yes, sir.

10 Q Now, assuming that to be the case and that you are
11 now in the penalty hearing, during which both sides may present
12 additional evidence in aggravation or mitigation of the offense,
13 may show the defendant's background and circumstances surround-
14 ing the offense, would you have such a frame of mind as you
15 went into the penalty hearing that because the guilt phase and
16 the guilt of the defendant was based wholly upon circumstantial
17 evidence, that you would automatically refuse to consider a
18 death verdict, regardless of the evidence, not only in the guilt
19 phase but in the penalty phase of the trial?

20 A Well, the question is much better up here but I
21 still get confused with "automatically consider." If you
22 phrase it "automatically," I would say I would not automatically;
23 I would consider it.

24 Q All right, let me ask this, and I am not trying to
25 play a semantic game with you -- it is one thing to consider
26 and say "Yes, I will listen to the arguments of other people
27 because I am interested in other people and I'd like to know
28 why they come to a certain conclusion, but I will tell you one

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1 thing, I don't care what they say and how reasonable their
2 conclusions are, I still am going to stick to my guns and I am
3 going to stick to my conscience and under no circumstances
4 and regardless of their conclusions, regardless of the
5 evidence, will I vote the death penalty."

6 Now, using that as a backdrop, I want to ask you
7 this question, bearing in mind your very honest statement that
8 you strongly oppose capital punishment, and basically you feel
9 it is unequally applied and unfair, would you automatically
10 refuse to vote the death penalty in this case irrespective of
11 the evidence?

12 A No, sir.

13 Q All right. Thank you for your candor.

14 You understand, I am not trying to trap you into
15 anything.

16 A No, I want to be -- in other words, I try to be
17 open minded all the time; the only thing is I want to make sure
18 that you understand it would be very difficult for me to vote,
19 in other words.

20 Q Thank you very much for being so honest.

21 Now, let me ask you this, you realize, as we said
22 before, we don't get to the issue of penalty unless and until
23 there is a return of a first degree murder verdict.

24 Do you understand that?

25 A Yes, sir.

26 Q Do you think because of your strong and deep-seated
27 feelings concerning the death penalty that you might compromise
28 your verdict in the guilt phase in order to avoid having to

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1 make the difficult decision in the penalty hearing as to
2 whether or not a person shall live or die?

3 Take your time, please. That's a tough question.

4 A I don't understand why, if I believe and the guy --
5 this is why we have got 12 peoples over here -- if I believe
6 the guy shall not die and I will vote strongly for that because
7 of my belief, but if I can be convinced beyond any doubt it
8 is better for the society the defendant to be sent to the
9 chamber, I will be open minded.
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1 Q All right.

2 Mr. Grimaldi, I don't think you understood my
3 question. I am directing your attention to your ability to
4 render a fair and impartial verdict on the issue of the
5 defendant's guilt.

6 A Yes.

7 Q Now, what I am asking you then is this, and please
8 listen very carefully: because of your deep-seated opinion in
9 opposition to the death penalty and because you know that if
10 there is a return of a first degree murder verdict you will
11 be faced with the very grave and serious responsibility of
12 the penalty hearing which follows to determine whether or not
13 the defendant shall live or die, would these facts cause you
14 to compromise your verdict in the guilt phase of the trial
15 so that instead of voting for murder in the first degree,
16 even though you were convinced beyond a reasonable doubt and
17 to a moral certainty that that was the crime the defendant
18 committed, you would either vote acquittal, or for example,
19 murder in the second degree?

20 Would you do that?

21 A No, sir,
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1 Q All right. So what you are telling us, that you
2 will put aside any of your feelings concerning capital punish-
3 ment because they have no place whatsoever in the guilt phase
4 of this trial, and determine independently, impartially and
5 individually the proper verdict on the guilt phase; is that
6 correct?

7 A Yes, sir, I can.

8 Q And that will be uninfluenced by your feelings
9 concerning capital punishment and the knowledge that if you
10 vote for murder in the first degree you must then go on to
11 the penalty phase; is that correct?

12 A Yes, sir.

13 MR. KATZ: Thank you.

14
15 EDNA M. MULLINS

16 BY MR. KATZ:

17 Q Mrs. Mullins, now we are back to the circumstantial
18 evidence discussion we have been having with the other jurors
19 this morning.

20 Have you heard my questions?

21 A Yes.

22 Q And you heard the example that I gave yesterday
23 regarding the mother and Johnny and Jane?

24 A And the cookies.

25 Q And did you understand that?

26 A Yes.

27 Q Would your answers be substantially the same to
28 those questions concerning circumstantial evidence?

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1 A Yes, they would.

2 Q Do you have any quarrel with the law that says
3 a man may be convicted of murder in the first degree based
4 solely on circumstantial evidence without production of the
5 body and without an eyewitness to the killing?

6 A None.

7 Q If you were convinced beyond a reasonable doubt
8 and to a moral certainty based wholly upon circumstantial
9 evidence that the defendant murdered Shorty Shea, would you
10 unhesitatingly vote guilty?

11 A Yes, I would.

12 Q And I take it you would not require the People to
13 produce the body or any parts thereof or an eyewitness to the
14 killing; is that correct?

15 A No.

16 Q Is that correct?

17 A That's right.

18 Q Does it offend your sense of justice and fair play
19 that a person can be convicted of murder in the first degree
20 based on circumstantial evidence?

21 A I have heard it -- yes, they can.

22 Q Does it offend your sense of fair play and justice
23 to know that a man can be convicted of murder in the first
24 degree based wholly upon circumstantial evidence?

25 A No.

26 Q And you understand that the law gives no greater
27 weight to direct evidence or to circumstantial evidence but
28 accepts each for whatever convincing weight that it may carry

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1 and adopts each as a reasonable method of proof; is that
2 correct?

3 A That's right.

4 Q And will you follow unhesitatingly his Honor's
5 instruction which says that in all criminal cases, be it a
6 forgery case or a grand theft auto case or a rape case or a
7 robbery case or a murder case, that the People are only
8 obliged to prove their case beyond a reasonable doubt and to
9 a moral certainty; is that correct?

10 A That's right.

11 Q And I take it you won't hold us to any higher
12 degree of proof, such as that which demonstrates to your mind
13 absolute certainty?

14 I take it you won't require us to do that?

15 A I won't.

16 Q Just an abiding conviction to a moral certainty;
17 is that right?

18 A Yes.

19 Q You will challenge us to meet that burden, won't
20 you?

21 A Yes.

22 Q All right.

23 A Like I said yesterday, I am open-minded. I could
24 go either way.

25 Q Thank you very much.

26 A It depends on the evidence.

27 MR. KATZ: Thank you very much, ma'am.

28

FLORENCE BARDON

1
2 BY MR. KATZ:

3 Q Mrs. Bardon, we have been talking about circum-
4 stantial evidence this morning. Would your answers be sub-
5 stantially the same?

6 A Yes, they would.

7 Q Is it fair to say, now, that you all understand
8 that the corpus delicti of a murder case doesn't mean the
9 production of a body, the physical body, but it means that you
10 have to prove two elements; element No. 1 is the death, which
11 may be shown circumstantially; and, 2, that the death is
12 caused by a criminal agency.

13 You understand that?

14 A Yes.

15 Q And that if you were convinced beyond a reasonable
16 doubt and to a moral certainty based upon circumstantial
17 evidence, I take it that you would unhesitatingly vote guilty
18 if we had proved our case; is that correct?

19 A Right.

20 Q And that is even though we hadn't produced the body,
21 any parts thereof or eyewitness to the killing; is that correct?

22 A That's correct.

23 Q And does this principle of law which permits a man
24 to be convicted of murder in the first degree based wholly
25 on circumstantial evidence offend your sense of fair play at
26 all?

27 A No.

28 Q And do you think if you were sitting in the seat

1 right here as a prosecutor, knowing that you had to prove
2 your case wholly by circumstantial evidence, that you would be
3 willing to have 12 men and women in your present frame of
4 mind sit in judgment on this case?

5 A I do.

6 Q What you are saying is you can give not only the
7 defendant a fair trial but the People a fair trial; is that
8 right?

9 A I would try to.

10 MR. KATZ: Thank you so much.
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RUBY McCULLOUGH

BY MR. KATZ:

Q Mrs. McCullough, I have to ask you this: are you related to that fabulous athlete, Earl McCullough, from USC?

A No.

Q Have you been asked that question before?

A Yes.

Q Okay.

Now, you have heard the question that I have asked the other prospective members of the panel concerning circumstantial evidence; is that correct?

A Yes, I did.

Q By now it must become obvious that the People will not present a body or any parts thereof or any eyewitness to the killing; you understand that?

A Yes.

Q And knowing this, do you feel that you would be able to be fair and impartial to the People in the presentation of their evidence in this case?

A Yes.

Q Would you be willing to weigh and consider and listen to the circumstantial evidence which unfolds during the course of this trial?

A Yes.

Q And would you be willing to listen and hear and view and evaluate the circumstantial evidence which shows the lifestyle and the daily living habits of the decedent in this case in order to determine in your own mind as a trier

1 of fact whether or not the decedent's life terminated suddenly
2 by reason of a criminal agency?

3 A Yes, sir.

4 Q And I take it that you would -- you have watched
5 a lot of television shows, haven't you, concerning law?

6 A Yes.

7 Q And such shows as Judd for the Defense and
8 The Defenders and Perry Mason and the like; is that correct?

9 A Yes.

10 Q And while these shows are basically dramatic shows,
11 as such, I take it you wouldn't require the People to conform
12 to the high burden of proof that unfolds during the course of
13 these TV programs; is that correct?

14 A That's correct.

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2 Q And I don't have to be Hamilton Burger in order to
get a conviction, is that right?

3 A That's right.

4 Q All right. So what we are saying is that we are
5 going to judge the case solely upon the merits of the
6 evidence which unfolds during the course of the trial,
7 uninfluenced by any consideration as to myself, my own
8 personality or Mr. Weedman, is that correct?

9 A Yes.

10 Q And I take it you won't pick a champion in the
11 arena here because the only thing we are concerned with is the
12 ascertainment of the truth, is that a fair statement?

13 A Yes, it is.

14 Q Now, with reference to the death penalty, ma'am,
15 you appreciate the distinction between believing that the
16 death penalty is justified under certain circumstances and
17 being able to personally participate in such a verdict, is
18 that correct?

19 A Yes.

20 Q And you understand that you are sitting as a jury
21 of one if you reach the penalty phase in connection with the
22 determination of whether or not the defendant should live or
23 die, isn't that correct?

24 A Yes, it is.

25 Q And you know that if 11 people vote for death and
26 you vote for life there can be no death penalty, isn't that
27 right?

28 A Yes, that's right.

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1 Q And do you think if you believe in your sole and
2 absolute discretion and your heart and your mind and your
3 conscience that this case warranted the death penalty that
4 you would be able to vote the death penalty, come back into
5 the seat where you are sitting and by your verdict tell the
6 defendant for the crime of which he now stands convicted of
7 murder in the first degree he must die?

8 A I believe so.

9 Q Pardon me?

10 A I said I believe so.

11 Q I know that you hesitated and I am sure that
12 everybody would in your situation when asked such a question.
13 You realize this is a pretty grave responsibility with which
14 you would be confronted were you chosen as a juror, isn't that
15 right?

16 A Yes, it is.

17 Q And I take it you probably haven't given much
18 thought to the death penalty or whether you would be able to
19 personally participate in the death penalty verdict before
20 being selected as a juror here, is that right?

21 A No, not too much.

22 Q All right, now, as you sit here now, I want you to
23 project yourself some six to eight weeks and let's assume --
24 and I want to make this absolutely clear -- assume that there
25 is a return of a first degree murder verdict. And we are in
26 the penalty phase and you believe in your heart and your mind
27 and your conscience and in your sole and absolute discretion
28 this case warrants the death penalty, would you have the

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1 courage to vote that death penalty?

2 A Well, I don't know. I guess I would. I am not
3 sure, though.

4 MR. KATZ: All right. We can't ask for anything more
5 than that. Thank you, ma'am.

6 Now, going back, if I can, to Mr. Smith.

7
8 GEORGE H. SMITH

9 BY MR. KATZ:

10 Q I only have a few more subjects then to broach to
11 you members of the prospective panel. One of the issues I would
12 like to raise with you is that of conspiracy. And, Mr. Smith,
13 you are sitting there so sedately and nicely in that chair I
14 thought that I might ask you some questions in that regard.
15 Again, I have no quarrel with the statement that you have
16 indicated that you would unhesitatingly follow his Honor's
17 instructions which would be given to you at the conclusion of
18 the trial. But it is sometimes hard to know whether you can
19 follow an instruction when you don't know what the instruction
20 is going to be, isn't that right?

21 A Very true.

22 Q And sometimes we as lawyers, because we know our
23 cases, have an idea that his Honor will give certain instruc-
24 tions and we can therefore discuss them in a very general
25 sense with you. So in that spirit let me discuss the law of
26 conspiracy and see whether or not you have any quarrel with
27 the law of conspiracy which might be applicable in this case.

28 Now, conspiracy is the unlawful agreement between

11-4 1 two --

2 MR. WEEDMAN: Excuse me, your Honor.

3 MR. KATZ: I will reframe the question.

4 MR. WEEDMAN: Very well.

5 Q BY MR. KATZ: If his Honor's instruction to you at
6 the conclusion of the trial is conspiracy is an agreement
7 between two or more persons to commit a crime followed by an
8 overt act committed by one of the parties to effect the object
9 of the agreement would you be willing to follow that instruc-
10 tion?

11 A Would you repeat that, please.

12 Q Yes. If his Honor at the conclusion of the trial
13 instructs you that conspiracy is an agreement between two or
14 more persons to commit a crime followed by an overt act
15 committed by one of the parties to the conspiracy to effect
16 the object of the agreement would you follow the instruction?

17 A That sounds a little confusing to me.

18 MR. WEEDMAN: Excuse me, your Honor. We are getting over
19 in an area and the basis for my objection is that we are
20 getting over into a technical area of law.

21 THE COURT: It^{is}/somewhat assumptive. I don't say that
22 critically. It is a little assumptive of propositions of law.
23 If you will come in chambers I think your questions might be
24 asked if you change your preface a little bit.

25 MR. KATZ: May I touch upon it a different way?

26 THE COURT: If you will preface -- I can say it to the
27 jury myself. Counsel is asking you if I should at the conclu-
28 sion of the case give you instructions, one of which would be

1 as follows. Then he may attempt to phrase an instruction.

2 Let me say that is based on the fact that the court must accept

3 that a statement of law and that it is applicable to this case.

4 If you make it clear, counsel, the statement of law must be

5 based on what are the facts in this case. They may not even

6 sustain it, you see.

7 MR. KATZ: Yes, your Honor.

8 THE COURT: Make that clear.

9 MR. KATZ: Yes.

10 THE COURT: Then try your question and let's see where we
11 are.

12 MR. KATZ: All right.

13 MR. SMITH: Then I would answer the question I would
14 follow the instructions.

15 Q BY MR. KATZ: All right. You understand what his
16 Honor said?

17 A Yes.

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1 MR. KATZ: Let me make this clear to all you prospective
2 members of the panel that as a matter of fact you will receive
3 this in the form of the instruction at the conclusion of this
4 case and that is that you are not obliged to utilize every
5 instruction you are given unless it has application to the
6 facts as you find them to be.

7 Now, do all of you understand that?

8 (The prospective jurors indicate in
9 the affirmative.)

10 MR. KATZ: Now, for example, if the People proceed on a
11 theory of conspiracy and his Honor therefore reads some
12 instructions in connection with conspiracy you may or may not
13 apply those instructions depending upon whether or not you
14 find in fact there to be a conspiracy, do all of you understand
15 that?

16 THE COURT: May I amplify because that is so important.

17 MR. KATZ: Yes.

18 THE COURT: And I am not trying -- I will say this for
19 defense counsel, too: I am not trying to interrupt a statement
20 of either counsel to create problems. But at the very instant
21 it may present a very important situation.

22 MR. KATZ: I appreciate it, your Honor.

23 THE COURT: The jury finds on the facts, and these
24 questions counsel are asking you, most of them, are based
25 on the proposition that the jury does or does not find the
26 facts in such and such a fashion. In other words, you would
27 apply a principle of law, it would apply if you found certain
28 facts first. Then the law applies. It gets back to you.

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1 Before you work the law in there in many instances,
2 what are the facts? Then you say to yourself, "Well, these
3 are the facts." Then the instruction of law takes over.

4 Go ahead, counsel.

5 MR. KATZ: Thank you.

6 THE COURT: Rather awkwardly stated, but probably gets
7 to the point.

8 MR. KATZ: I think it is very clear, your Honor. I do
9 appreciate your assistance in this area.

10 So again we are all in agreement that you are not
11 going to apply an instruction unless it has application to
12 the facts as you believe them to have been fully established
13 to your satisfaction in accordance with law, does everybody
14 understand that?

15 (The prospective jurors indicate
16 in the affirmative.)

17 MR. KATZ: Let's assume for a moment and for the sake of
18 these questions the People have proceeded on a theory of
19 conspiracy, namely, that Mr. Grogan together with other people
20 murdered Shorty Shea.

21 MR. WEEDMAN: Excuse me, your Honor. I must object to
22 the question on numerous grounds. May we approach the bench.
23 I would appreciate it.

24 THE COURT: Well, let me have counsel's question.

25 (The record was read by the reporter
26 as follows:)

27 "Q Let's assume for a moment
28 and for the sake of these questions the People

1 have proceeded on a theory of conspiracy,
2 namely, that Mr. Grogan together with other
3 people murdered Shorty Shea."

4 THE COURT: Now read the objection.

5 (The record was read by the reporter as follows:)

6 "MR. WEEDMAN: Excuse me, your Honor.

7 I must object to the question on numerous
8 grounds. May we approach the bench. I
9 would appreciate it."

10 THE COURT: Yes. Now, just one minute. I think the
11 question as framed is probably -- I may save a little time or
12 not just saving time, but I think I could answer the objection.
13 It is assumptive of several situations that may or may not
14 arise. It may be covered possibly in some other fashion.
15 If the testimony is such and such would you do -- would you
16 follow the law in such and such respect? Something in that
17 fashion. You are asking an assumption of conspiracy. I can't
18 pass on that. I don't know. If you ask if they proceed upon --
19 but I think the way the question is framed at that point I
20 would be inclined to sustain an objection. I am not ruling
21 out you can't ask the question if you frame it in a little
22 different fashion.

23 MR. KATZ: Your Honor, if your Honor pleases, I asked
24 them to assume for purposes of my questioning that a conspiracy
25 in fact had been established.

26 THE COURT: All right. Let's step in chambers before
27 we argue any more here.

28 (The following proceedings were had

1 in chambers, with both counsel and the
2 defendant present:)

3 THE COURT: Now we are in chambers. Defendant is here.
4 Now, go ahead. Continue right on where you were.

5 MR. KATZ: Yes, sir.

6 THE COURT: You said that you had asked them to assume
7 as a preface to your question that a conspiracy had been
8 established. That is what you said. All right. Go on now.

9 MR. KATZ: For purposes of determining whether or not
10 they would be willing to apply the law insofar as it concerns
11 the law of conspiracy. Now, I have to make that assumption
12 in my question because otherwise they would not be permitted
13 to apply that instruction or to consider that instruction.
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1 THE COURT: Let's take the full question now, just like
2 you were speaking to the juror.

3 Restate the whole question and I will work out a
4 ruling here.

5 MR. KATZ: Assuming for a moment there was evidence
6 presented at this trial which supported a conspiracy, would
7 you be willing to apply his Honor's instructions concerning
8 the law of conspiracy which he will give to you at the
9 conclusion of the trial, and which have application to those
10 facts?

11 That is a preliminary question.

12 THE COURT: Now, may I stop you there, because there is
13 a problem right at that point. If that is your preliminary
14 question I think it should be based, first, on a reading to
15 the jury, in somewhat of this fashion, "I am going to read to
16 you an instruction that may or may not -- but may -- be read
17 to you by the court respecting conspiracy, which is as
18 follows," then read the statement of the law.

19 "Now, I will ask you to assume that the court
20 reads that. The judge may not read that to you, but I am going
21 to ask you to assume that he may read that to you. Now" --and
22 then ask your question -- "Would you follow that statement of
23 law if it so read to you?"

24 MR. KATZ: Your Honor, I'd be delighted to do it that
25 way. As a matter of fact, I wanted to do it that way; I thought
26 I might be stepping on your Honor's prerogative.

27 THE COURT: There is an intertreading in there, I
28 understand that.

1 MR. KATZ: So that's why I avoided it.

2 THE COURT: It is a touchy situation.

3 Now, I am not trying to stop your objection to the
4 question in any way.

5 MR. WEEDMAN: Well, your Honor, what instruction are we
6 talking about now that the prosecutor is going to read to the
7 jury? That, I am not clear about.

8 MR. KATZ: I have several instructions --

9 THE COURT: Let's have it. It is in --

10 MR. KATZ: I can get it.

11 THE COURT: All right. Go get it.

12 Go ahead, I'm following you right up here in the
13 instructions. Which one do you have?

14 MR. KATZ: 6.10, your Honor, conspiracy, overt act, and
15 6.11, joint responsibility. Here they are, your Honor.

16 In fact, I would ask your Honor to read it and I
17 think that will take some of the onus off myself as being an
18 advocate, as such. I think if your Honor reads it, then there
19 is no great importance or stress placed upon the fact that
20 this subject is now being broached and I think your Honor can
21 clearly explain to them that they may or may not be confronted
22 with a situation in which they will apply this.

23 THE COURT: Well, let me read it again; it has been so
24 long since I had one.

25 MR. WEEDMAN: Your Honor, may I make this observation
26 before we go into the instructions?

27 THE COURT: Go ahead.

28 MR. WEEDMAN: No conspiracy has been charged. Mr. Katz,

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1 however, in his questioning, is leading the jury to believe
2 that conspiracy is at issue here. Conspiracy is not at issue
3 in this case.

4 Mr. Katz has a right under the rules of evidence
5 to urge the admission into evidence of certain items on a
6 theory that they are the product of a conspiracy and therefore
7 admissible against my client, an exception to the hearsay rule.
8 This is not a matter of any concern for this jury.

9 THE COURT: Well, you may have --

10 MR. WEEDMAN: Unless my client is charged with
11 conspiracy I don't believe that any instructions relating to
12 conspiracy are even appropriate in this case.

13 MR. KATZ: Your Honor, may I respond to this?

14 THE COURT: Without answering the question, let me pose
15 a problem. Any one who aids or abets is a principal --

16 MR. WEEDMAN: That's correct.

17 THE COURT: Let's skip back to our basics; so, in
18 effect, you may have a conspiracy or the commission of a
19 crime among two or three people without the necessity of
20 charging conspiracy.

21 Isn't that correct?

22 MR. WEEDMAN: Yes, but you cannot convict someone of
23 conspiracy unless they are charged with conspiracy.

24 THE COURT: That would be so.

25 MR. KATZ: But you have to give an instruction concern-
26 ing that.

27 MR. WEEDMAN: I don't see why there has to be an
28 instruction concerning conspiracy when, at least, conspiracy

1 is not charged; why should the jury be instructed on conspiracy
2 when it is a matter of law?

3 THE COURT: That point entered my mind.

4 Do you have to go into questions of conspiracy?
5 Can't you handle that by saying that the law is that anyone
6 who aids or abets is a principal, or is a principal, and is
7 guilty, is a principal in the commission of the act -- wouldn't
8 that answer your question?

9 MR. KATZ: No, your Honor.

10 May I just throw this out, and I think that
11 counsel's -- though in good faith -- reasoning is wholly
12 falacious. First of all, the court must, sua sponte, of its
13 own accord, give every instruction of law with which the jury
14 might be confronted.

15 Now, they cannot, and they will be so instructed,
16 they cannot consider any statement made by alleged co-conspirator
17 or any act done by an alleged co-conspirator unless and until
18 there are two things shown: one, that there is, in fact, a
19 conspiracy between those persons and the defendant; and, two,
20 that those acts or declarations were made in the furtherance
21 of the object and design of the conspiracy; so, your Honor is
22 obliged, sua sponte, to give that instruction to guide the jury
23 as to whether or not they have found a conspiracy, even though
24 it is not charged, and whether or not the acts and declarations
25 which are going to be used against Mr. Grogan are admissible.

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1 MR. WEEDMAN: Well, we are going to -- all right. I
2 won't say anything right now.

3 THE COURT: Go ahead.

4 MR. WEEDMAN: No, I will submit it, your Honor.

5 MR. KATZ: That clearly is the law, your Honor; it would
6 be reversible error for your Honor to fail to give the
7 conspiracy instruction and aiding and abetting instruction
8 at the conclusion of the trial, based upon our theory, and I
9 also gave to your Honor the aiding and abetting instruction.

10 THE COURT: I have it right here.

11 MR. KATZ: I think, again, it would be better if your
12 Honor just read those instructions, that way I don't have to
13 misstate anything and it is better to come from the court,
14 and I will just ask a few questions in that area -- and I am
15 almost done on my voir dire, incidentally.

16 MR. WEEDMAN: You are saying, then, that the jury has to
17 make a finding of conspiracy before they may even move on to
18 questions of admissibility as against the defendant of state-
19 ments of a purported conspirator?

20 MR. KATZ: Yes, Mr. Weedman, but not with respect to
21 a special verdict.

22 MR. WEEDMAN: I am going to ask for a special verdict in
23 this case if we are going to get into this area. This is an
24 extremely critical area in this case and perhaps now is a good
25 time to talk about it.

26 This entire case, to my understanding, your Honor,
27 is based upon alleged statements that my client made to either
28 former members, so-called, of the Manson family, or to other

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1 persons who were closely associated with the Manson family.
2 There isn't a single confession, or at least, arguably, any
3 admission that is worth anything in this case made to any
4 responsible or substantial member of the community, including
5 police officers.

6 THE COURT: Well, let me ask you this question --

7 MR. WEEDMAN: So, therefore, your Honor, it is an extremely
8 close case, in my judgment.

9 THE COURT: Suppose the defendant made statements,
10 admissions, incriminating statements to a member of this
11 organization, "I did so and so; I did so and so"; those state-
12 ments stand or fall on the strength of the statement, itself.
13 What difference does it make whether there was a conspiracy
14 or not, because the only man charged is the defendant.

15 MR. KATZ: Well, your Honor --

16 THE COURT: What difference does it make?

17 MR. KATZ: I can answer that very easily. We are going
18 to produce and we are entitled to produce statements by
19 Charles Manson, statements by Bruce Davis, who are co-conspirators
20 to the killing of Shorty Shea. We are going to show their
21 conduct, effort to conceal a body, their efforts to hide
22 the products --

23 THE COURT: Stop there.

24 MR. WEEDMAN: Excuse me, your Honor --

25 THE COURT: Wait a minute, wait a minute, let's literalize
26 it.

27 You expect to show statements by members of the
28 organization, for instance -- give me an illustration -- saying

1 what, what other statements, as an illustration?

2 MR. KATZ: As an illustration, for example, Charles
3 Manson, knowing that Shorty Shea has been killed and
4 decapitated by Mr. Grogan, tells other people who are looking
5 for Shorty, "Go up to San Francisco; I sent him up to San
6 Francisco to get a job."

7 That is a statement showing consciousness of
8 guilt and it is in furtherance of the object of the conspiracy
9 to conceal the fruits of the killing and to conceal the fact
10 that Shorty Shea has met -- has terminated his life by
11 reason of a criminal agency.

12 MR. WEEDMAN: No, your Honor, I am going to oppose
13 vigorously --

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1 THE COURT: Give me a chance.

2 MR. WEEDMAN: I am sorry.

3 THE COURT: I am not making any rulings. I want to get
4 more of a background here. For instance, let's take Manson
5 out of it. Call him X. Mr. X is going to testify. Forget
6 Manson for the minute.

7 MR. KATZ: Yes, your Honor.

8 THE COURT: Mr. Manson or Mr. X would testify. What you
9 are seeking is testimony of X respecting the death of Shorty,
10 not statements -- not necessarily statements of this defendant.

11 MR. KATZ: That's correct.

12 THE COURT: Is that right? This is what I want to get
13 right.

14 MR. KATZ: Yes, your Honor.

15 THE COURT: In other words, X would get on the stand and
16 say there was a -- "Several of us were interested in killing
17 the deceased, Shorty," without mentioning the defendant's name.
18 Or "We took steps in the furtherance of that situation. We
19 sent this man away. We did this. John Smith bought a knife."
20 And yet the name of the defendant hasn't been brought in. That
21 is what you are getting at, is that right?

22 MR. KATZ: Would be one kind of piece of evidence.

23 THE COURT: One kind. And that is based on a conspiracy
24 being shown.

25 MR. KATZ: Yes. And that the statements are made in
26 the furtherance of the object and design of the conspiracy which
27 concludes with the concealment of the body, and the cases are
28 clear and I have California Supreme Court cases which permit

1 that. And I am prepared to show every foundation by way of
2 case law with regard to the admission of these statements.

3 MR. WEEDMAN: Well, your Honor, may I offer this as a
4 suggestion. In the ordinary case instructions are never read
5 by counsel to a jury. And I am not quarreling with that but
6 by and large there is a good reason for that because when we
7 get into voir diring a jury and we start talking about specific
8 instructions these lawyers, including myself, can just go wild.

9 THE COURT: I don't want to bite off the head further than
10 I have to or give rulings I don't have to yet.

11 MR. KATZ: Yes, your Honor.

12 THE COURT: You may have a lot of merit. Maybe defense
13 counsel has, too.

14 MR. KATZ: Yes.

15 THE COURT: Let's cull that question down. Can't we get
16 away from some of these problems. Try a restatement of your
17 question here. I will take your objection. Maybe we are no
18 further than we are now but let's try it.

19 MR. KATZ: May I have the instruction just a moment.

20 THE COURT: Certainly you can.

21 MR. WEEDMAN: Your Honor, may I make that suggestion --
22 forgive me for interrupting, counsel -- but it seems to me that
23 there is going to be a considerable amount of argument between
24 counsel to the court relative to the admissibility of certain
25 of these statements. And it seems to me that voir dire
26 properly is for cause. It is not to exercise any peremptory
27 challenges as is well known. I think that it is unfortunate.
28 I think that it is unfortunate to permit counsel, if the court

1 is inclined to do so, to belabor this conspiracy notion before
2 this jury, particularly because my client is not charged with
3 conspiracy.

4 THE COURT: Well, I am trying to sidestep it for the
5 moment.

6 MR. WEEDMAN: Conspiracy is kind of a dirty word, your
7 Honor.

8 THE COURT: Look, I tell you, it is 10 after 12. I will
9 bring you in here before we start. Let's recess because I
10 don't want to be pushed on a ruling. Let's go over until
11 2 o'clock.

12 MR. WEEDMAN: Certainly, your Honor.

13 THE COURT: Then we will proceed in here.

14 MR. WEEDMAN: Very well, your Honor.

15 MR. KATZ: Yes, your Honor.

16 THE COURT: Then I want to settle this question in here.
17 All right. We will go out and put the matter over to 2 and
18 then we will go ahead.

19 (The following proceedings were had
20 in open court:)

21 THE COURT: Now we are back in court. Ladies and
22 gentlemen we are 10 minutes after 12. We will recess until
23 2 o'clock. Please do not discuss the case in any way
24 whatsoever or at all or come to any opinions or conclusions.
25 We will recess till 2 o'clock and continue.

26 (The noon recess was taken to 2 p.m.
27 of the same day.)
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LOS ANGELES, CALIFORNIA, FRIDAY, JUNE 25, 1971, 2:00 P.M.

(The following proceedings were had in chambers,
both counsel and the defendant being present;)

THE COURT: We are in chambers here, defendant and counsel.

Now, I'd like to -- let me start at scratch
again with your proposition. I think we have got a problem
that may or may not be a problem and I am not going to rush
into any ruling that is going to -- until I at least have a
thorough chance to digest it.

Now, let's start with a little different premise.
I might say I have carefully gone through your instructions
here and taken the criminal instructions and gone through
the entire context on the criminal instructions.

Actually, I haven't had a conspiracy for five or
six years, to be honest about it, but I think I am pretty
well refreshed on it, fairly well.

Now, let's assume -- give the defendant a chair.

THE DEFENDANT: That's all right, I can stand.

THE CLERK: I offered him another one --

THE DEFENDANT: That's all right, I will stand.

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THE COURT: All right. You sit right there.

Now, let's just take a different situation. Let's say John Jones or John Smith is charged with a conspiracy. So you indict him or you charge him with a conspiracy. Let's say you don't supplement that in the second count with a crime being charged as distinguished from conspiracy but you stand on the crime of conspiracy which is a crime. That is as far as you go in your indictment or your information.

Now, in accordance with your instructions which correctly state the law you indict him and you set out there must be the charge of conspiracy alleged in your indictment. And there must be, in addition to that, at least one overt act charged in your indictment. Do you agree to that?

MR. KATZ: You mean with respect to a conspiracy charge?

THE COURT: Well, you must allege that John Smith and Mary Jane conspired to commit a crime, an illegal act. And that your indictment must contain in that indictment an allegation of at least one overt act and it must be proved. Isn't that correct?

MR. KATZ: Certainly if you are talking about formally charging a person with conspiracy.

THE COURT: Yes. That is right. That is correct, though?

MR. KATZ: That is a correct statement.

THE COURT: We are talking about charging for a minute.

MR. KATZ: Yes, your Honor. That is correct.

THE COURT: There has got to be a charge of conspiracy alleged in your indictment. Jones and Smith conspired to commit an unlawful act. You have got to charge that. In the commission

of that they committed an overt act which is substantially as follows: On such and such a time they did so and so. And in the summation or culmination of this conspiracy they did this overt act. That is very crudely stated but that is substantially it, isn't it?

MR. KATZ: Yes, your Honor.

THE COURT: To get your cart going, to at least as far as get by a demurrer you have got to get that in your indictment as far as that goes. Forget the trial. You have got to have that in your indictment. So to establish a conspiracy you have to then prove the conspiracy and you have to at least establish one overt act to get by a prima facie showing of conspiracy, and put yourself in the position for a finding by the jury ultimately of guilty or not guilty.

All right. Now, that is a situation where the conspiracy is charged right straight against the defendant. All right. Now, we have a situation here where the defendant -- we can talk in general parables -- a defendant is charged with a crime, not charged with conspiracy. Charged with murder.

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1 Now, the People propose under the general indict-
2 ment of murder to show or prove a conspiracy as a part of
3 your proof?

4 MR. KATZ: And/or aiding and abetting.

5 THE COURT: But you do, you want to prove, you are
6 attempting, you say you will prove a conspiracy?

7 MR. KATZ: Yes, your Honor.

8 THE COURT: That is what you are saying?

9 MR. KATZ: That's correct.

10 THE COURT: You are seeking no conviction on a
11 conspiracy, you are seeking only the guilty or not guilty on
12 the basic charge of murder?

13 MR. KATZ: Correct.

14 THE COURT: But you desire to prove, as part of your
15 proof of the People's case, you expect to show conspiracy of
16 this defendant and other people?

17 MR. KATZ: Yes, your Honor.

18 THE COURT: To commit an unlawful purpose or an unlawful
19 act; isn't that right?

20 MR. KATZ: Correct.

21 THE COURT: All right.

22 Now, and the purpose of showing a conspiracy is,
23 then, once having, if you can, proof that a conspiracy existed
24 between the defendant and other people not named in your
25 complaint or indictment, you have established that, then you
26 desire to show that certain members of the conspiracy or
27 partners in the conspiracy have made certain incriminating
28 statements that may incriminate themselves or not, but at anyway

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1 do incriminate this defendant in the commission of murder,
2 isn't that right, with which he is charged?

3 You expect to show by members of the conspiracy --
4 let's try it slow -- that by statements of members of the
5 conspiracy that they made statements that incriminate this
6 defendant in this case; is that right?

7 MR. KATZ: It is --

8 THE COURT: Do you follow me?

9 MR. KATZ: I follow what you are saying, but I am sorry
10 I am taking some issue with your "incriminating the defendant".
11 I am saying that any acts or declarations that are committed
12 in furtherance of the object and design of the conspiracy are
13 chargeable against all members of the conspiracy.

14 THE COURT: Right.

15 MR. KATZ: And if we show Mr. Grogan, by independent
16 evidence, to be a member of that --

17 THE COURT: They are applicable against this defendant?

18 MR. KATZ: -- that he is a member of that conspiracy,
19 he is responsible for all said acts.

20 THE COURT: In other words, the declarations by mouth
21 or the acts of the conspirators that are not in the presence
22 of this defendant in any way at all, once there is a showing
23 there is a conspiracy, a partnership to commit a crime or
24 whatever you want to call it, a conspiracy, that the statements
25 or the acts or the declarations of those conspirators in the
26 perpetration or continuation of the conspiracy, directed to
27 the crime, are admissible as against this defendant?

28 MR. KATZ: Precisely.

1 THE COURT: Is that right?

2 MR. KATZ: Precisely right.

3 THE COURT: That is a correct statement; and that would
4 be so, you contend, and under the law here, whether he is
5 present when this other member heard him talk or see what he
6 did -- that's correct, isn't it?

7 MR. KATZ: That is correct.

8 THE COURT: All right.

9 Now, this is where I am disturbed here -- the
10 information or the indictment here, of course, doesn't charge
11 a conspiracy; it charges murder.

12 MR. KATZ: That's correct.

13 THE COURT: Conspiracy is not charged against the
14 defendant. One overt act or more, which is a necessary element
15 of a valid indictment against a conspirator, is not charged;
16 that's right, isn't it?

17 MR. KATZ: That is correct.

18 THE COURT: And you are not seeking judgments of guilty
19 or not guilty, obviously, because there is no charge of
20 conspiracy in your complaint or in your indictment?

21 MR. KATZ: Judgment of not guilty with reference to
22 conspiracy.

23 THE COURT: Yes.

24 MR. KATZ: The answer to that is "Correct," we are not.

25 THE COURT: All right; but you are seeking without those
26 allegations whatsoever in the indictment to prove such a
27 conspiracy, to establish -- the proof of an overt act as
28 necessary to prove a conspiracy, you have to do that to prove

1 a conspiracy; then your declarations or admissions are
2 admissible; isn't that correct?

3 MR. KATZ: That is correct.

4 THE COURT: That's what -- I'm not trying to misquote it,
5 I am trying to follow the wording here.

6 MR. KATZ: That's correct, your Honor. I might remind
7 the court, however, that an overt act may, indeed, be proven
8 by a direct statement.

9 THE COURT: That's right.

10 MR. KATZ: In furtherance of the object and design of
11 the conspiracy.

12 THE COURT: That is covered in another instruction.

13 MR. KATZ: And it need not be a criminal act, per se.

14 THE COURT: That's right; that's not quite the point I
15 am driving at.

16 Now, here's what bothers me. Now, can you give
17 me law to the effect that acts or -- that a conspiracy may be
18 shown involving a defendant in which a certain specific crime
19 is charged, that in proving that specific crime, like murder,
20 as we have here, that the People, without alleging conspiracy,
21 may prove conspiracy and consequently must meet all of the
22 requirements of the proof of a conspiracy and that then those
23 declarations or statements or actions or whatever you want to
24 call it may be used against the defendant in a murder charge
25 such as we have here, where they are not the subject of an
26 indictment?

27 Do you follow me?
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1 MR. KATZ: My answer to that question is positively
2 and absolutely. And I think Mr. Weedman will agree that that
3 is the law of the State.

4 THE COURT: That it is the law that it is not necessary
5 to allege conspiracy in such a case as we have here to
6 nevertheless prove conspiracy and thereby make admissible
7 the acts or the declarations of the conspirators insofar as
8 they may incriminate the defendant.

9 MR. WEEDMAN: Well, your Honor, if I may, if I might
10 state my understanding.

11 THE COURT: All right. Go ahead.

12 MR. WEEDMAN: Frankly --

13 THE COURT: I am going to hold you up for a minute.

14 MR. WEEDMAN: Very well.

15 THE COURT: Now, where is the law on that? Where can
16 you show me law to that effect? It should be simple if that
17 is correct. I am not questioning you at all. It must be a
18 very common statement of law that sets conditions, that
19 conspiracy without being charged or alleged is the subject of
20 a prosecution where the conspiracy is charged, where the
21 unlawful agreement is charged, where the overt act is charged
22 which the law requires to convict. That it may nevertheless
23 be proved and established for the purpose of a separate
24 crime, commit murder, that those declarations or statements
25 of the conspirators are admissible without being the subject
26 of being charged in the indictment.

27 You follow me?

28 MR. KATZ: Yes, your Honor.

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1 THE COURT: What is the law on that?

2 MR. KATZ: I can say this, I even drafted a brief in
3 this connection some time ago on precisely this issue. I
4 never dreamed that this particular issue was in dispute
5 and I never thought and I still don't think Mr. Weedman is
6 taking an issue with respect to the fact that the People have
7 the power to prove a conspiracy although they haven't alleged
8 one in the indictment or in the Information or any other
9 kind of accusation. I can tell you all we need is within
10 at this time who has a treatise on Conspiracy or we can look
11 under the annotations under the conspiracy section and they
12 will set forth the proposition that the prosecution need
13 not allege or charge a conspiracy in the accusation in order
14 to prove the conspiracy during the course of the trial.

15 THE COURT: And thereby admit the individual statements
16 or declarations or acts of various members of the conspiracy.

17 MR. KATZ: Precisely.

18 THE COURT: Let's find it.

19 MR. WEEDMAN: I agree to that, your Honor. That is the
20 law. There is no question about that, that is the law.

21 THE COURT: All right. Now, you are satisfied on that.

22 MR. WEEDMAN: I agree as a general premise undoubtedly
23 it would apply, but I don't want to get in the position of
24 taking these statements before the jury without a clear-cut
25 consensus of the law.

26 MR. KATZ: I think what Mr. Weedman is trying to say,
27 and he certainly has every legitimate right to raise it, his
28 feeling is not that he takes issue with the proposition of the

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1 law we can prove a conspiracy without alleging it in the
2 accusation, but he believes there is no evidence based on the
3 People's case that would warrant proof or discussion of
4 conspiracy and therefore any mention of same before a jury
5 would be highly prejudicial to his client. Is that correct,
6 Mr. Weedman?

7 MR. WEEDMAN: Well, Mr. Katz is largely correct in that.
8 But the thrust of my objection goes perhaps even further
9 than that. If I might back up for just a moment and make
10 this observation, your Honor, we are talking now about a
11 rule of evidence that is a matter of law. The court must
12 first, after appropriate objection rule whether or not
13 statements of purported co-conspirators are admissible as
14 an exception to the hearsay rule against the nondeclaring
15 defendant, in this case my client.

16 THE COURT: That is the thing we are arguing right here.

17 MR. WEEDMAN: Right. So that it is not a question
18 initially for the jury to decide. It obviously would be
19 necessarily impossible for them to make a decision as to
20 whether or not there was a conspiracy for the purposes of
21 admissibility. That is a ruling which must be made by your
22 Honor.

23 THE COURT: Well, but the question would have to come
24 in. The district attorney would have to ask the question.
25 Your objection would come in. I have got to rule at that
26 time.

27 MR. WEEDMAN: Exactly. At that point if your Honor feels
28 that the People had made out even a prima facie showing of a

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1 conspiracy and the statements were made in clear furtherance
2 of the conspiracy and that the conspiracy had not ended as
3 far as my client is concerned, they would be admissible.

4 THE COURT: What you are saying is I have to determine
5 what is -- is there a sufficient showing of a conspiracy.
6 If I do make such a determination then theoretically the
7 objection would be overruled and the witness told to answer
8 the question. I pass on the question whether there is or is
9 not an adequate showing of a conspiracy, have the requirements
10 of law been met, which would be raised by your objection.

11 MR. WEEDMAN: Now --

12 THE COURT: Yes, but counsel is going in back of that,
13 as I understand it. He is saying -- would you -- I forget
14 just how he phrased it. But he is asking if I remember
15 "Would you consider such answers to those questions?"
16 Substantially wasn't that the question now? We have gone so
17 far from it.

18 MR. KATZ: Basically I am asking them whether or not if
19 your Honor so instructs --

20 THE COURT: To answer the question in effect.

21 MR. KATZ: That's right. In other words, would they follow
22 the law if your Honor so instructs them with respect to the
23 law of conspiracy.

24 THE COURT: Well, now, can't you get at the same thing --
25 I am not trying to tell you how to run your side of the
26 case -- can't you get at the same thing by pinpointing it
27 in this fashion: Can't you leave out your questions --
28 can't you cull it in such a fashion if there are questions

1 asked a witness respecting a conspiracy or objections made
2 to the admissibility of testimony respecting statements of
3 certain witnesses, and the court overrules the objection and
4 advises the witness to answer, would you consider those
5 answers? That is what you are saying, isn't it, to the
6 juror?

7 MR. KATZ: No, your Honor. As a matter of fact here
8 is what I had in mind. I think we can break it right down to
9 the specific issue I had in mind.

10 THE COURT: All right.

11 MR. KATZ: If, for example, the jury found a conspiracy
12 to exist based upon the facts of this case and assuming his
13 Honor instructed you to the following at the conclusion of
14 the trial that each member of the conspiracy is liable for
15 each act and bound by each declaration of any other member of
16 the conspiracy in furtherance of the object of the conspiracy,
17 would you unhesitatingly follow that instruction? That is
18 the only question I want to ask. That is a legitimate question
19 in that I am asking for the state of mind as to whether or
20 not they have a quarrel with that law of conspiracy.

21 If they find that it offends their sense of fair
22 play or justice and would not otherwise follow that instruction
23 then they should be disqualified under 1073, subsection 2
24 of the Penal Code.

25 MR. WEEDMAN: First of all, your Honor, if your Honor
26 permits this course of voir dire in this case then it seems
27 to me that it opens the door for such questioning with respect
28 to all instructions, with respect to all reasonably possible

1 instructions. And I would surely as Mr. Grogan's attorney
2 in this most serious of cases readily pursue that. And I
3 don't feel that is ultimately what your Honor wants in this
4 case, that is, a discussion by counsel with prospective
5 members of this jury of particular instructions.

6 And beyond that, your Honor, I am urging and I
7 am representing to the court in my judgment that this question
8 of admissibility of conspiratorial statements as exceptions
9 to the hearsay rule is a very close question in this case.
10 It is one on which I hope to be heard in argument extensively,
11 and quite frankly I have some reasonable expectation that
12 your Honor may agree with me in this connection.

13 Mr. Katz of course is advocating a different
14 position. I think that it is manifestly unfair to the defen-
15 dant for Mr. Katz to belabor in front of this jury panel
16 in this discussion of conspiracy. The word conspiracy to most
17 layment has a horrendous sound. Conspiracy is a separate
18 offense as we know and I think it is sufficient and will
19 protect the rights of the People if they merely inquire
20 "If you are instructed by the court with respect to any
21 issues of law will you follow those instructions?"
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18-1 1 THE COURT: Go ahead.

2 MR. WEEDMAN: Certainly the defendant wouldn't have any
3 right to pursue these matters in the ordinary course. I don't
4 see why the People would particularly --

5 MR. KATZ: May I respond to that?

6 THE COURT: Go ahead.

7 MR. KATZ: Because I think I can: if we were limited to
8 that rather innocuous question, "Would you unhesitatingly
9 follow all the instructions of law that his Honor will give
10 you at the conclusion of the evidence presented in this case?"
11 this would tell us absolutely nothing.

12 This is why your Honor has been so open and
13 permitted us to discuss this issue, for example, of circum-
14 stantial evidence, because until they know some of the general
15 principles with which they are confronted they don't know
16 whether or not they have a bias or prejudice which would
17 prevent them from being impartial on all of the issues with
18 which they will be confronted.

19 Now, let me give you one case in point, your
20 Honor --

21 THE COURT: Yes.

22 MR. KATZ: Here is the felony murder doctrine; many
23 people find it abhorrent to their sense of fair play and
24 justice that a man can be convicted of murder in the first
25 degree by an operation of law where a killing is accidental
26 and which occurs during the course and scope of a robbery or
27 attempted robbery.

28 Now, it is quite clear that all courts will permit

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1 the question whether or not they would be willing to follow
2 the rule concerning the felony murder doctrine if they were
3 charged by the court to follow such an instruction. Now, all
4 I am doing is comparing this, for example, with conspiracy.

5 There are people who feel that the doctrine of
6 conspiracy is totally unfair and they find it offensive to
7 their sense of fair play and justice. Now, all I am asking
8 them, and I want to make it clear I am not asking them to
9 prejudge the evidence, I am not even asking them to assume
10 that we will be able to prove to their satisfaction and in
11 the satisfaction of the eyes of the law that there is, in fact,
12 a conspiracy; but it is a legitimate issue with which they are
13 going to be confronted and ultimately they will have to make
14 the decision as to whether or not we have shown a conspiracy.

15 If your Honor has made the preliminary fact
16 determination, as I think your Honor will, that there is
17 sufficient evidence to go to the jury on that issue, so I have
18 to know what their state of mind is concerning generally the
19 law --

20 THE COURT: Well, let me --

21 MR. KATZ: -- of conspiracy.

22 THE COURT: Well, you may have covered it. Suppose it
23 were asked in this fashion, that the position of the defendant
24 is that -- the way it is presented it may over-accentuate the
25 position of conspiracy --

26 MR. WEEDMAN: That is precisely the essence of my
27 objection, your Honor.

28 THE COURT: Well, suppose it were asked in such a

1 fashion as this: suppose you were to say to the jury, this,
2 "The court may" -- now, I am just posing this; I could be way
3 off here, thinking out loud -- "The court may or may not
4 instruct you as to the law respecting conspiracy. Such
5 instruction would follow" -- let's try it again, let's back
6 up there.

7 "The court may or may not instruct you as to the
8 law respecting conspiracy."

9 Now, we stop there, period.

10 "If the court should instruct you respecting the
11 law of conspiracy, would you follow that law?"

12 Now, the word "unhesitatingly" is often used. It
13 is not a wrong word. It may be argumentative, a little, in
14 nature, "unhesitatingly will follow it."

15 "Would you follow that," actually is what you are
16 asking.

17 MR. KATZ: I have no objection at all, your Honor.
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1 THE COURT: All right. "Would you follow that law?"

2 Now, I think I will back you up, if you can follow it in
3 that fashion, because that will show the jury that there may
4 be conspiracy, there may not be conspiracy.

5 I think -- and I will take your objection, Mr.
6 Weedman; you can object to my ruling here -- unless the law
7 deems it objectionable, it does -- but I understood you were
8 objecting to my ruling. Don't ever hesitate to get your
9 objections in at any time, any place; you are entitled to that.

10 MR. WEEDMAN: I appreciate that, your Honor.

11 THE COURT: And I want you to get it in and consider it
12 as objected to, but I would probably go along with you if you
13 could word the question in that fashion.

14 MR. KATZ: I can word it precisely like that, but I would
15 like to indicate, then, "That with the above understanding,
16 if his Honor" --

17 THE COURT: Yes.

18 MR. KATZ: -- "instructed you at the conclusion of the
19 trial that each member of the conspiracy is liable for each
20 act and bound by each declaration of any other member of the
21 conspiracy in furtherance of the conspiracy, would you follow
22 that law?"

23 THE COURT: Well, now --

24 MR. WEEDMAN: Well, your Honor --

25 THE COURT: -- you get into possibly an argumentative --
26 there is nothing wrong with it -- it could be a debatable
27 situation, whether it is a surplusage or argumentative,
28 because --

1 MR. KATZ: Well, they don't know what the law of
2 conspiracy is, your Honor.

3 THE COURT: But they are not yet called upon to follow
4 it, either, you see. You are asking them to follow a certain
5 law that may not be given to them, or the court may not
6 direct them; and that's why I tried to couch it in a rather
7 generalized way.

8 MR. WEEDMAN: Your Honor, we have some very profound,
9 it seems to me, problems with respect to this area in this
10 trial. I don't believe, for example, that Mr. Katz can prove
11 the existence of a conspiracy through extrajudicial statements
12 of alleged conspirators; and from my study of the evidence
13 in this case, it may well be that Mr. Katz is never going to
14 be in a position to prove up a conspiracy.

15 But, in any event, I think I can properly represent
16 to the court that this represents a very large area of contention
17 between the defense and the prosecution.

18 I just, in the light of all of the problems in
19 this area, and my strong feeling that the conspiracy may never
20 be submitted to this jury, I just don't feel that it is proper
21 to fill their minds up with notions of conspiracy.

22 I can only add that if that occurred --

23 THE COURT: Let's back up.

24 MR. WEEDMAN: -- that there are so many other things
25 that I am going to want to talk about that I think it is
26 going to needlessly prolong the proper voir dire of this jury.

27 MR. KATZ: Your Honor, I just note that Evidence Code
28 Section 403.

1 THE COURT: Yes?

2 MR. KATZ: Which indicates that the court is obliged
3 to make the preliminary fact determination that there is
4 sufficient evidence to warrant the inference that a conspiracy
5 has been established and that the statements that purportedly
6 were made therein could be construed by the jury as having
7 been made in the furtherance of the object and design of
8 the conspiracy.

9 Now, there will be a further instruction following
10 the court's preliminary fact determination as to whether or
11 not there is sufficient evidence of a conspiracy to go to the
12 jury, stating that if they do not find that the statements
13 were made within the scope of the agency or conspiracy, then
14 they are instructed to disregard it; and here is the law
15 under 403 of the Evidence Code.

16 THE COURT: I concede your argument; your statement is
17 correct.

18 MR. WEEDMAN: Well, that is true, your Honor.

19 THE COURT: I am worried, again, about the purpose,
20 about the structure of your statement.

21 If your statement were more all-inclusive of the
22 statement you just gave me, if your question to the jury, you
23 see, it could be rephrased in some fashion --

24 MR. KATZ: I am not hardheaded. Maybe we can approach
25 it this way --

26 THE COURT: All right.

27 MR. KATZ: We also have a theory of aiding and abetting
28 and I think that Mr. Weedman, in all candor, has to admit that

1 that's one of the People's theories, in that every confession
2 and every statement we have indicates multiple persons who
3 are allegedly responsible for the killing of Shorty Shea,
4 and certainly Mr. Weedman will advise the court of the
5 confession, as it were, of Mr. Grogan, implicates not only
6 himself but other persons who participated in the killing
7 of Shorty Shea, assuming we are able to prove that fact.

8 Now, certainly we could be able to examine the
9 jurors' state of mind as to whether or not they will follow
10 the law of aiding and abetting and as to the state of mind
11 concerning that, and I can defer any questions concerning
12 conspiracy at this point, because if and when it comes up
13 and becomes relevant, then I am sure argument will take
14 care of that.

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1 MR. WEEDMAN: Your Honor, if the jury accepts those
2 alleged statements offered against my client as having been made
3 by him, if they accept those at face value then there is no
4 aiding and abetting theory necessary here.

5 My client's alleged statements make him a direct
6 participant in the death of Shorty Shea, if those statements
7 are to be believed. I don't think that any aiding and
8 abetting instruction is necessary at all.

9 MR. KATZ: May I just read to you, your Honor, the
10 aiding and abetting instruction --

11 MR. WEEDMAN: Let me just continue for the record, your
12 Honor, that I feel again that counsel is overemphasizing and,
13 in a sense, asking the jury to do two things, to prejudge the
14 case and to also begin to speculate against the People's
15 evidence; and I don't think that either of those things are
16 proper subject of voir dire.

17 THE COURT: Let's back up here, now, we are kind of
18 seeing how the jury is to get in their mind what he is saying --
19 let's just forget this for an instant, let's back up to your
20 conspiracy.

21 Now, will you restate -- I am sorry to keep
22 repeating, but we branch away and my memory is not so good I
23 can keep it in mind.

24 Read it again with a probable preface I gave you
25 there.

26 MR. KATZ: I would ask the prospective jurors: "That the
27 court may or may not instruct you as to the law respecting
28 conspiracy. If the court should instruct you respecting the

law of conspiracy, would you follow that law?"

Assuming I got an affirmative reply, I would ask him further, "If his Honor in connection with the law of conspiracy should instruct you that each member of the conspiracy is liable for each act and bound by each declaration of any other member in furtherance of the object of the conspiracy, would you follow that law if applicable to the facts as you find them to be?"

I see nothing wrong with that question, your Honor; it is the same as the circumstantial evidence question.

THE COURT: Now, if you put in there -- just let me think a minute here -- there should be a layman's statement in there, I think, something to the effect, "Remembering at all times that it is for the jury to determine from the facts whether or not the facts prove a conspiracy has been committed" -- now, I think if you put that in so that they know they are the boss of this and I am not running it, so to speak, or dictating their actions, I would permit it over counsel's objection.

MR. KATZ: I can definitely put that in.

THE COURT: Have that in there. I think that gives some defensive mechanism to counsel and his client and shows the jury, again, they are the boss of the facts, because they could be easily misled -- not deliberately, I don't mean it in that fashion -- that they have to do something or find it in a certain way, puts it right back, "You are the boss of this," I would be inclined to let you ask it in that question.

MR. KATZ: I definitely will do it that way, your Honor.

MR. WEEDMAN: May I inquire at this time of counsel just

1 how he expects to prove a conspiracy in this case?

2 It is not obvious at all to me.

3 THE COURT: Well, I tell you -- I can answer it only in
4 a partial fashion, without pushing counsel, and it is a fair
5 question.

6 Counsel may feel it is part of his case, it is his
7 book, it is his brief, that he doesn't want to divulge.

8 Now, I know many things are open through the pretrial,
9 to the review of the other counsel. It may be part of his case
10 history, I don't know, but if he takes in any testimony here
11 that is erroneous and I should permit it, I am in error, why,
12 of course, the appellate court would only reverse the case,
13 assuming he should win his case -- I mean, in some sense it
14 is something that would run this case right back again.

15 MR. WEEDMAN: No, your Honor --

16 THE COURT: That doesn't answer your question.

17 MR. WEEDMAN: No, but I often think of a trial as
18 artists sitting down to paint a picture. It is true we have
19 our brushes and we have our paints --

20 THE COURT: No question about it.

21 MR. WEEDMAN: -- but it seems to me any trial of any
22 importance, because for the current discussion between court
23 and counsel the law is not that obvious to anyone. I don't
24 care how many criminal matters they have participated in.

25 In this case, of course, I have had, to the best
26 of Mr. Katz' ability, I have had the copies and access to all
27 statements in the possession of the prosecution from all
28 witnesses they intend to call, and, indeed, from witnesses

1 they do not intend to call, so that I am satisfied that because
2 of the discovery motion and the voluntary offer on the part of
3 the People, that I am in possession of virtually all the
4 material that Mr. Katz is. I am not in possession, of course,
5 of his homework; that is, his own work product, his own notes
6 with respect to strategy, tactics and the like; but when I
7 asked the question how is Mr. Katz going to prove a conspiracy,
8 I don't mean to dip into his private thinking, I am offering
9 that question here because on the basis of what I have learned
10 about this case I don't believe that he is going to be able to
11 show conspiracy.

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1 THE COURT: Well --

2 MR. WEEDMAN: He is not going to be able to prove it by
3 using statements of my client.

4 THE COURT: I am inclined to overrule your objection if
5 it is worded substantially as I have indicated there. I think
6 that would give a fair leeway to both parties.

7 MR. KATZ: I think that is fair, your Honor.

8 THE COURT: Then I still will have to determine, of
9 course, these ultimate questions. We will have to sit down
10 and thrash them out at a later time here. I will proceed on
11 that basis and allow you to ask the question.

12 MR. KATZ: And again, your Honor, I will not belabor
13 the point.

14 THE COURT: I know. Both of you gentlemen have been I
15 think very fair and very forthright and very capable in your
16 representation of both parties here. I am just a third man
17 here.

18 MR. KATZ: Your Honor, it is my intention after asking
19 that question to give a very short example which has
20 absolutely nothing to do with this case so they can get a feel
21 for what we are talking about when we refer to a conspiracy.

22 THE COURT: Let's get that question in and then see
23 where we are.

24 MR. WEEDMAN: I wonder if your Honor would indulge me
25 and permit me at this time, since it is convenience and we
26 are in chambers and it is a Friday afternoon, to renew my
27 discovery motion which is presently on file with the hope that
28 your Honor would grant to me those items which are already

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1 enumerated in my discovery motion.

2 THE COURT: Will you enumerate here again. What was that
3 you wanted?

4 MR. WEEDMAN: Well, any statements in the possession of
5 the district attorney's office by any persons whom they expect
6 to call as witnesses in this case. Any statements in the
7 possession of the prosecution purportedly or allegedly made by
8 my client or any other persons accused.

9 THE COURT: But that has been given to you, I understand.

10 MR. WEEDMAN: Yes, indeed, your Honor. It is just that
11 this discovery motion was made about six or eight weeks ago and
12 it may be the prosecutor --

13 THE COURT: Has something new.

14 MR. WEEDMAN: Certainly. Has come into additional
15 material.

16 THE COURT: I would permit that.

17 MR. KATZ: Let me say this, and I think Mr. Weedman
18 knows how I feel about this. Whether or not Mr. Weedman has
19 a continuing motion or not I will deem it to be a continuing
20 motion.

21 MR. WEEDMAN: Fine.

22 MR. KATZ: Any time I come into additional information
23 which is either favorable to the prosecution or favorable to
24 the defense and has something to do with this case, Mr.
25 Weedman may be sure that he will have access to that informa-
26 tion.

27 MR. WEEDMAN: As Mr. Katz appreciates, I know, of course
28 it is necessary to make these kinds of things for the record

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1 and I should state for the record Mr. Katz provided us with
2 this material long before any formal discovery motion was made.
3 But it is necessary to make it for the record.

4 THE COURT: Well, that is cleared for the moment then.

5 MR. WEEDMAN: Yes. I appreciate that.

6 THE COURT: Let's move on as far as we have got here.

7 MR. KATZ: Yes. Thank you.

8 THE COURT: All right, gentlemen.

9 (The following proceedings were had
10 in open court:)

11 THE COURT: Now, gentlemen, we are back here in open
12 court. The People against Grogan. Defendant is here,
13 defendant's counsel is here. People's counsel is here. And
14 our jurors are in the jury box.

15 Now, you may proceed.

16 MR. KATZ: Thank you so much, your Honor.

17 THE COURT: All right.

18
19 GEORGE H. SMITH

20 BY MR. KATZ:

21 Q Mr. Smith, I believe you and I were having a little
22 interesting discussion concerning the law of conspiracy, is
23 that correct?

24 A I thought I answered it.

25 Q All right. Well, maybe I have a few additional
26 questions. Would you permit me to ask some questions?

27 A Yes, sir.

28 Q All right. Thank you. Now, I want to remind not

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1 only you, Mr. Smith, but all of you ladies and gentlemen who
2 are prospective jurors that if selected as members of the jury
3 you are the sole and exclusive determining parties as to what
4 the facts are in this case. You are the sole and exclusive
5 judges of whether or not the People have proved their case
6 beyond a reasonable doubt. Does everybody understand that?

7 (The prospective jurors indicate in
8 the affirmative.)

9 MR. KATZ: In that connection, ladies and gentlemen, if
10 for example conspiracy should be an issue with which you are
11 confronted ~~only~~ as a trier of fact you will make the final
12 judgment as to whether or not the People have proved suffi-
13 ciently to your satisfaction and in accordance with our burden
14 of law that there exists, in fact, a conspiracy.

15 Do you all understand that?

16 (The prospective jurors indicate
17 in the affirmative.)

18 MR. KATZ: Merely because his Honor may or may not read
19 you an instruction, assuming for a moment he will read you an
20 instruction in regards to conspiracy, in no way indicates that
21 his Honor, Judge Call, has an opinion that the People have
22 proved, for example, that there is in fact a conspiracy. Do
23 you all appreciate that?

24 (The prospective jurors indicate in
25 the affirmative.)

26 MR. KATZ: Carrying it one step further, as his Honor,
27 Judge Call, so many times and so ably has stated that he is the
28 judge of the law. You are the judge of the facts. So that

1 again with respect to the facts only you and solely you are
2 the judges of what the facts are. Is that fair?

3 (The prospective jurors indicate in
4 the affirmative.)

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GEORGE H. SMITH

BY MR. KATZ:

Q All right. Now, Mr. Smith, with that in the background the court may or may not instruct you with respect to conspiracy. You may or may not from the facts as the judge of the facts, determine whether or not there is a conspiracy. Now, assuming for a moment that you believe beyond a reasonable doubt and to a moral certainty that there is a conspiracy in this case and assuming for a moment that his Honor does instruct you in regards to the law of conspiracy, would you be willing to follow his Honor's instructions?

A I would follow to the best of my ability as far as fairness as to both parties.

Q All right. That is a fair statement. Now, if his Honor with this background in mind instructed you that each member of the conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy which is committed in the furtherance of the object and the design of the conspiracy would you be willing to follow that instruction?

A I would still weigh both parties and try to be as fair as I possibly could.

Q Did you understand my question, sir?

A I thought I did.

Q What I am asking you is that if you found that beyond a reasonable doubt to a moral certainty that Mr. Grogan and some others entered into a conspiracy to commit murder,

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1 for example, of Mr. Shea, and assuming for a moment that
2 his Honor instructed you in regards to the law of the
3 conspiracy, would you be willing to follow his Honor's
4 instructions which says that each conspirator is liable for
5 the acts and declarations of the other conspirators which
6 are said and done in the course and scope of the conspiracy?

7 A I would follow the --

8 THE COURT: Now, may I interrupt, counsel.

9 MR. KATZ: Yes, certainly.

10 THE COURT: Remembering at all times that you the jury
11 will make the finding, I will state the law but it is up to
12 you to find whether the statements are true or not. Do you
13 follow that additional statement? Statements are binding if
14 you find the statements were made.

15 (The prospective jurors indicate in
16 the affirmative.)

17 THE COURT: Statements are binding if the witness is
18 telling the truth. You may say "Well, the witness is making
19 statements. I don't believe those statements." The law then,
20 my statement of the law wouldn't be applicable because your
21 finding of the facts would negate it. Is that clear to you?

22 (The prospective jurors indicate in
23 the affirmative.)

24 MR. SMITH: Yes. That is the way I understand the
25 question as put to me. I may not have answered it exactly
26 the way you want it. But I would try to follow the instructions
27 the best, but I would also have to use my own judgment.

28 Q BY MR. KATZ: I appreciate that and I think you have

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1 answered it quite correctly ⁺very well. Let me ask you this
2 question. Before I do so let me give you a quick example
3 of what we are talking about when we refer to conspiracy.

4 MR. WEEDMAN: I am sorry to interrupt, counsel, but I
5 must object to any further questions particularly of Mr. Smith
6 inasmuch as he has already answered this question.

7 THE COURT: Wait a minute now. Before you go further
8 let me have the full statement of counsel.

9 (The record was read by the reporter as follows:)

10 "Q Let me ask you this question.

11 Before I do so let me give you a quick example
12 of what we are talking about when we refer to
13 conspiracy."

14 MR. KATZ: If your Honor pleases, you gave me an opportu-
15 nity of ^{giving} an example with respect to circumstantial evidence.

16 THE COURT: If you want to finish your statement in
17 chambers, you can. We may get into an argumentative situation,
18 I don't know. But I think you had better not state it here.
19 If you want to continue it I suggest you continue it in
20 chambers unless you withdraw it. It is up to you.

21 MR. KATZ: No, your Honor, I would like to continue the
22 discussion in chambers.

23 THE COURT: All right. Step in here.
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1 (The following proceedings were had
2 in chambers with both counsel and
3 the defendant present:)

4 THE COURT: Now we are in chambers. The defendant and
5 counsel. Read the question again.

6 (The reporter read back the pending
7 question, as follows:)

8 "Q Let me ask you this question.
9 Before I do so let me give you a quick
10 example of what we are talking about when
11 we refer to conspiracy."

12 THE COURT: Finish your question.

13 MR. KATZ: I want you to assume for a moment the following
14 set of facts and let me emphasize to you ladies and gentlemen
15 of the jury that these facts have nothing whatsoever to do
16 with the facts in this case, and you should not draw any
17 inferences that this example in any way touches upon the
18 subject matter in this case.

19 Let's assume, for example, that A, B, and C are
20 roommates. A mentions the fact that he would like to rape C,
21 an attractive female. B agrees that this would be okay with
22 him but that he did not wish to personally participate.
23 However, he would be willing to go along with A and help A
24 if necessary. He agrees that this is a good idea but does
25 not wish to be present at the scene when the rape takes place.
26 However, C drives A and B over to X's house, the intended
27 victim for the purpose of accomplishing the rape. Thereafter
28 A rapes X in the presence of B who watches while C remains

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1 right in the car.

2 Now, ladies and gentlemen of the jury, this is
3 an example of a conspiracy in which all parties would be
4 responsible and chargeable for the rape of X even though B
5 ^{DID} could not personally rape X and even though C was outside
6 and did not participate in the physical rape of X.

7 Now, understanding this example relating to the
8 law of conspiracy, do you have any quarrel with that operation
9 of law?

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19B.

1 THE COURT: State your objection.

2 MR. WEEDMAN: Yes, your Honor. I am objecting on the
3 ground, first of all, that it is improper voir dire because
4 he is using an example which has no relevancy or pertinency
5 on this matter. That is factually it is irrelevant.

6 He is also attempting to ask this jury to prejudge
7 evidence. And thirdly it is an argumentative kind of voir
8 dire. Now, I know that all attorneys are guilty of voir
9 diring a jury in areas that are not for cause. Every lawyer
10 worth his salt tries to sell his case a little bit during
11 voir dire. But this is such a blatantly improper example
12 of this that I must object to it particularly on that ground.
13 A discussion using an example of three defendants, a rape
14 case, just again belaboring the point and serves only to
15 prejudice my client in the eyes of this jury, your Honor.

16 THE COURT: Well, I would be inclined to sustain your
17 objection to that question.

18 MR. KATZ: May I be heard just for a moment, your Honor?

19 THE COURT: Yes.

20 MR. KATZ: Again, I am not trying to argue with the court
21 as such.

22 THE COURT: It is all right. Argue all you want.

23 MR. KATZ: It seems to me, your Honor, that merely to ask
24 the innocuous question "Having heard the instructions of law
25 that his Honor will give you at the conclusion of the trial
26 will you follow the law in discharging your duty as a juror,"
27 To which they will obviously answer in the affirmative, to me
28 that tells me nothing because generally speaking the juror has

19b-2

no idea of the kinds of legal issues with which they will be confronted during the course of the trial. Sometimes it is very helpful to give a very short example which has nothing to do with the case which illustrates that principle of law with which they will be confronted. I purposely talked about another kind of crime, for example, rape rather than murder. I talked about roommates. I talked about the fact that C was not even at the scene of the crime. As a matter of fact our evidence will indeed show if it is adopted by the jury that Mr. Grogan was not only there but he decapitated Mr. Shea and was a principal murderer in this case.

So I think if anything this example inures to the benefit of the defendant and not to the People.

THE COURT: Well, I'm inclined to stand by my ruling. Sustained. Objection sustained to that question.

MR. WEEDMAN: Thank you, your Honor.

THE COURT: All right. I am worried about the jury. We have held them here almost an hour. We had better give them a recess.

MR. WEEDMAN: Surely, your Honor.

THE COURT: I will recess them now in open court.

(The following proceedings were
had in open court:)

THE COURT: Now we are back in the courtroom. Defendant and counsel are here. The objection is sustained. You can ask your next question, Mr. Katz. But I think before you do we will take a short recess and come right back.

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Take a ten-minute recess and then we will
proceed. Do not discuss the case or come to any opinion or
conclusion. We are in a short recess. Thank you.

(Recess.)

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THE COURT: Now we are in session, People against Grogan;
2 and the defendant, both counsel are here and the jurors are
3 in the jury box.

4 You may continue.

5 MR. KATZ: Thank you.

6 I will move on to Mr. Mejia, if I may.

7 Just to digress for a moment, it obviously comes
8 to mind that during the various recesses you might see myself
9 talking with Mr. Weedman or Mr. Weedman talking with myself.
10 I hope you don't feel there is any type of wrongful collusion
11 between the two of us.

12
13 ARNOLD J. MEJIA

14 BY MR. KATZ:

15 Q Is that correct?

16 A Not at all.

17 Q Now, again, you understand that I have the utmost
18 respect for Mr. Weedman, I regard him as a friend, and yet I
19 am going to do the darnedest to present the best case in behalf
20 of the People; you appreciate that?

21 A Absolutely.

22 Q And at the same time Mr. Weedman is going to do
23 his very best for his client.

24 A Yes.

25 Q Now, we were talking about this law of conspiracy
26 and, again, let me reiterate once more the premise that you,
27 if selected as a juror, would be the sole and exclusive judge
28 as to whether or not there was sufficient facts to establish a

1 a conspiracy in accordance with law.

2 Do you understand that?

3 A Yes, I do.

4 Q Assuming for a moment that you found beyond a
5 reasonable doubt and to a moral certainty, based upon the
6 evidence in this case, that a conspiracy existed between
7 Mr. Grogan and others to murder Shorty Shea and assuming,
8 further, that his Honor read you some instructions concerning
9 the law of conspiracy, would you be willing to follow the
10 law as given to you by his Honor at the conclusion of the
11 case?

12 A I would.

13 Q And in that connection, if his Honor instructed
14 you that a conspirator is responsible for all of the acts and
15 declarations of a co-conspirator which are committed in the
16 furtherance of the object and the design of the conspiracy,
17 will you follow that instruction?

18 A Yes.

19 Q Any quarrel with that rule of law?

20 A No.

21 MR. KATZ: All right. Thank you.

22 Mr. Inouye, you heard the question that I asked
23 Mr. Smith and Mr. Mejia. Would your answer be substantially
24 the same, sir?

25 MR. INOUE: Yes, it would.

26 MR. KATZ: Mr. Bates?

27 MR. BATES: Yes.

28 MR. KATZ: I take it your answer, again, would be

1 substantially the same with regard to the law of conspiracy;
2 is that right?

3 MR. BATES: Right.

4 MR. KATZ: I am going to have to state again and look
5 and see Mrs. Belles' name.

6
7 INEZ M. BELLES

8 BY MR. KATZ:

9 Q Is that correct?

10 A That's correct.

11 Q And you heard the question that I have asked the
12 other prospective members of the panel concerning the law of
13 conspiracy.

14 Would your answers be substantially the same?

15 A The same.

16 Q I take it you have no quarrel with the rule of
17 law which says that once a conspiracy is shown that a co-
18 conspirator is responsible for all acts and declarations which
19 are committed in the object and scope of and in furtherance
20 of the conspiracy; is that correct?

21 A Yes, sir.

22 Q And his Honor would instruct you at the conclusion
23 of the trial -- that is, at the conclusion of the evidence --
24 you would follow the instruction; is that correct?

25 A Yes, sir.

26 Q And I take it this doesn't offend your sense of
27 justice or fair play to apply this principle of law to the
28 facts as you find them; is that correct?

1 A Yes, sir.

2
3 DORA S. LEWIS

4 BY MR. KATZ:

5 Q Mrs. Lewis?

6 A Yes, sir.

7 Q Did you hear the questions that I asked?

8 A Yes, sir, I have.

9 Q Would your answer be substantially the same --

10 A Yes.

11 Q -- in regards to the law of conspiracy?

12 A In regard to the law.

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MR. KATZ: Thank you.

RICHARD G. COOLEY

BY MR. KATZ:

Q That is Mr. Cooley?

Mr. Cooley, we have been talking about the law of conspiracy. Again, let me stress, because it is so very important to do so, you would be the sole and exclusive judge of the facts and you would not even consider an instruction, should his Honor give one, concerning the law of conspiracy unless there was sufficient evidence to establish in your mind beyond a reasonable doubt and to a moral certainty that a conspiracy existed.

You understand that?

A Yes, I do.

Q So, with that premise in mind, would you follow his Honor's instructions if he gave it to you with regard to the law of conspiracy?

A Yes, I would.

Q And do you have any quarrel with the rule of law which says that a member of a conspiracy is liable and bound by the acts and declarations of the other members of the conspiracy which are committed in furtherance of the object and the design of the conspiracy?

A No, I don't.

Q And I take it that doesn't offend your sense of justice or fair play, does it?

A No, it doesn't.

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HAZEL RUPE

2 BY MR. KATZ:

3 Q Mrs. Rupe, we are back to you again.

4 You heard the questions that I have asked the
5 other prospective members of the panel in this regard; would
6 your answers be substantially the same?

7 A Yes, they would.

8 Q And I take it this doesn't offend your sense of
9 justice or fair play to apply the rules of circumstantial
10 evidence as his Honor will give them to you; is that correct?

11 A That's correct.

FRANCO GRIMALDI

14 BY MR. KATZ:

15 Q And that's Mr. Grimaldi?

16 A Yes, sir.

17 Q My handwriting is so bad I keep changing your name
18 every time we come to you.

19 Now, you heard the questions that I asked in regard
20 to the law of conspiracy, did you not?

21 A Yes, sir.

22 Q Would your answers be substantially the same?

23 A Yes, sir.

24 Q I take it that you are willing to follow the rule
25 of law, if applicable to the facts as you find them; namely,
26 that a member of a conspiracy is liable and bound by all of
27 the facts and declarations of the other members of the
28 conspiracy which are committed in furtherance of the object and

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1 design of the conspiracy; is that correct?

2 A Yes.

3 Q And I take it that that does not offend your sense
4 of justice or fair play; is that correct?

5 A Yes, sir.

6 MR. KATZ: Thank you.

7
8 EDNA M. MULLINS

9 BY MR. KATZ:

10 Q Mrs. Mullins, you heard the questions that I have
11 asked each of the other prospective members of the panel in
12 regards to the law of conspiracy.

13 Would your answers be substantially the same?

14 A It would be the same.

15
16 FLORENCE BARDON

17 BY MR. KATZ:

18 Q And Mrs. Bardon, you have heard the questions that
19 I have asked in regards to the law of conspiracy.

20 Would your answers be substantially the same?

21 A Yes, they would.

22 MR. KATZ: Mrs. McCullough?

23 MRS. McCULLOUGH: Yes, they would.

24 MR. KATZ: Thank you very much.

25 Now, I just have, to your relief, just a few more
26 questions to ask of you and then I am going to sit down and
27 perhaps Mr. Weedman can talk a little bit more.

28 This may come as a surprise to you, but we lawyers

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1 get tired of asking the same questions and we lawyers get tired
2 of hearing ourselves talk; but you understand that this is a
3 serious business and both Mr. Weedman and myself are really
4 trying to do one thing and that is to secure 12 jurors who can
5 be fair and impartial to both sides, to hear openly and fairly
6 and fully all of the issues with which you will be confronted,
7 and I think you all agree that that's our purpose and you will
8 accept our questioning in that spirit; is that right?

9 (The prospective jurors indicate in
10 the affirmative.)

11 MR. KATZ: Now, it has been alleged in the indictment
12 which his Honor read to you on Tuesday that Shorty Shea has
13 allegedly met his death between the dates August 16, 1969 and
14 September 1st, 1969.

15 Now, assuming you believe beyond a reasonable doubt
16 and to a moral certainty that Shorty Shea did meet his death
17 within those dates alleged in the indictment, would you,
18 nevertheless require us to prove that he met his death at a
19 specific date at a specific time?

20 (The prospective jurors indicate in
21 the negative.)

22 MR. KATZ: I understand from your negative responses --

23 MRS. LEWIS: I didn't get the dates.

24 MR. KATZ: Yes, Mrs. Lewis?

25 MRS. LEWIS: I didn't get the dates.

26 MR. KATZ: Let me say that it is alleged in the indict-
27 ment which his Honor read to you on Tuesday that Shorty Shea
28 met his death between August 16, 1969 and September 1, 1969.

1 In that regard People's burden is only to prove
2 that within that time period Shorty Shea, in fact, met his death
3 by a criminal agency.

4 Now, would any of you, therefore, require the People
5 to prove that Shorty Shea met his death on a specific date at
6 a specific time, even though you were convinced beyond a
7 reasonable doubt and to a moral certainty that he, in fact, met
8 his death between the dates that are alleged in the indictment?

9 (The prospective jurors indicate in
10 the negative.)

11 MR. KATZ: I take it, then, that none of you would require
12 us to prove that Shorty Shea met his death at a specific date
13 and time other than to prove beyond a reasonable doubt and to
14 a moral certainty that he did meet his death by a criminal
15 agency between the dates alleged.

16 Is that a fair statement, now?

17 (The prospective jurors indicate in
18 the affirmative.)

19 MR. KATZ: Now, let me address, then, my last questions
20 to you members of the panel as a whole.

21 We have discussed this a little bit before and you
22 have had time to think about it and, incidentally, if there is
23 any question that you answered before and which you think you
24 might answer differently because you have had time to reflect,
25 don't feel afraid or embarrassed to raise your hand and say,
26 "Mr. Katz," or "Mr. Weedman, I think I have changed my mind on
27 it; I have given it more reflection and this is my present state
28 of mind."

1 Not only do we welcome that, but we feel it is your
2 obligation as a juror to do so.

3 Now, as you recall, all morning I have talked
4 about -- and yesterday -- I talked about the ability and the
5 willingness and the fortitude and the constitution, if you
6 believe in your heart and your mind and your conscience this
7 case warranted the return of a death penalty, whether or not
8 you could vote the death penalty.

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1 Now, having had some time to think about this
2 I want to ask all of you this question generally. I won't ask
3 it of you individually, but raise your hand if you would answer
4 it differently at this time.

5 You obviously know that in this case there will
6 be no eyewitness testimony to the killing. There will be no
7 production of the body. There will be no production of any
8 parts of the body, nor will there be any eyewitness testimony
9 to having observed the body in death.

10 Understanding this, is there anybody here who
11 would refuse to consider and fully and fairly evaluate the
12 circumstantial evidence that unfolds during the course of the
13 guilt phase of the trial to determine whether or not the
14 People have sustained their burden of proof?

15 (The prospective jurors indicate in
16 the negative.)

17 MR. KATZ: I see complete negative responses so I assume
18 that all of you then are willing to consider circumstantial
19 evidence in that regard.

20 Let me ask you the second question then.

21 If all of you were convinced beyond a reasonable
22 doubt and to a moral certainty based wholly upon circumstantial
23 evidence, there being no body, no eyewitness to the killing,
24 no eyewitness to having observed the body in death, would you
25 nevertheless vote guilty if you were convinced by the circum-
26 stantial evidence beyond a reasonable doubt and to a moral
27 certainty that Mr. Grogan murdered Mr. Shea? Would you all
28 vote guilty?

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1 (The prospective jurors indicate
2 in the affirmative.)

3 MR. KATZ: What you are saying then in effect is that
4 you would not require the People to produce the body, an
5 eyewitness to the killing or an eyewitness to having observed
6 any parts of the body before voting guilty, assuming we met
7 our burden of proof as required by law; is that correct?

8 (The prospective jurors indicate
9 in the affirmative.)

10 MR. KATZ: All right. Lastly, going into this issue of
11 capital punishment I am asking this of you as a whole: is
12 there any one of you who because this case rests wholly upon
13 circumstantial evidence would compromise your verdict in
14 the guilt phase, that is to say, would vote not guilty or
15 vote second degree murder solely to avoid the difficult issue
16 which would face you in the penalty phase? Would any of you
17 do that?

18 (The prospective jurors indicate
19 in the negative.)

20 MR. KATZ: All right. So then though you may be generally
21 opposed to capital punishment, even though you don't like
22 capital punishment on the books, nevertheless if you believed
23 beyond a reasonable doubt and to a moral certainty based upon
24 circumstantial evidence that the defendant is guilty of
25 murder in the first degree you would vote that knowing that
26 you would be required then to go into the penalty phase of
27 this trial; is that correct?

28 (The prospective jurors indicate

1 in the affirmative.)

2 MR.KATZ: Lastly, let me ask you this question because
3 I am getting tired of talking, and that is this: if you
4 believed in your heart and in your mind and your conscience
5 that this case before you, the case of People v. Steve Grogan,
6 warranted the death penalty, would you vote the death penalty?

7 (The prospective jurors indicate
8 in the affirmative.)

9 MR. KATZ: Do all of you feel as you sit here now you
10 can give the People a fair trial on the issue of penalty
11 should we reach that phase?

12 (The prospective jurors indicate
13 in the affirmative.)

14 MR. KATZ: Thank you very much, ladies and gentlemen
15 of the jury. I pass for cause.

16 THE COURT: Thank you. Now --

17 MR. WEEDMAN: Your Honor --

18 THE COURT: Well, the defendant had passed for cause.

19 MR. WEEDMAN: Yes, your Honor.

20 THE COURT: People pass for cause.

21 MR. WEEDMAN: I would appreciate one or two additional
22 questions, however, inasmuch as counsel has emphasized an
23 area.

24 THE COURT: Kind of a reexamination.

25 MR. KATZ: I have no objection, your Honor.

26 MR. WEEDMAN: Yes. I will be brief. Thank you, your
27 Honor.

28 THE COURT: Go ahead.

1 MR. WEEDMAN: I can't help, however, but -- excuse
2 me.

3 (Short conference between counsel and defendant.)

4 MR. WEEDMAN: I can't help but add to Mr. Katz's
5 expressed desire that I not do too much more talking in
6 observation of Thomas Jefferson's. He said it is the business
7 of lawyers to admit nothing, deny everything and talk by the
8 hour. I tend to agree with Thomas Jefferson in this connec-
9 tion, but I will try to be brief.

10
11 RICHARD G. COOLEY

12 BY MR. WEEDMAN:

13 Q Mr. Cooley, perhaps I can direct this at you and
14 I am sure the rest of you will listen. Do you understand in
15 the light of all this discussion of Mr. Katz's concerning
16 circumstantial evidence that if the circumstantial evidence
17 doesn't rise to a level where you feel an abiding conviction
18 to a moral certainty of its truth, that you are permitted
19 simply to reject it?

20 A Yes, I understand that.

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1 Q All right. In other words, I take it from your
2 answer that you don't feel that Mr. Katz' questioning and
3 observations have somehow raised the level of the power of
4 circumstantial evidence?

5 A No.

6 Q Is that correct?

7 A That is correct.

8 Q Right. In other words, it is still just plain old
9 circumstantial evidence then in your mind irrespective of
10 Mr. Katz' questions and comments concerning it?

11 A Right.

12 MR. WEEDMAN: And would that answer be substantially
13 the answer that you folks would give to that question?

14 (The prospective jurors indicate in
15 the affirmative.)

16 MR. WEEDMAN: We get a little worried on our side, you
17 know, where there is all this talk about this kind of evidence
18 that begins to worry us a little bit, and we hope that your
19 minds will come back, if they have drifted away at all, come
20 right back to dead center so that we have a fair trial to
21 Mr. Katz' position and an equally fair trial to my client's
22 position. This is what we both want in this case.

23 Finally, just a general question about instructions.
24 And I am sure the matter has been covered but I would like to
25 mention it just briefly.

26 Do you all understand and appreciate that the court
27 may well give you some instructions which simply by the time
28 you are finished with your deliberations have no application

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1 to anything in this case and that if that should occur, I trust
2 then that that will not come as a great shock and surprise to
3 you.

4 (The prospective jurors indicate in
5 the affirmative.)

6 MR. WEEDMAN: Am I correct in that? I see you are all
7 nodding affirmatively. So we will be clear about it, do you
8 all understand it is up to you to use those instructions which
9 you feel are applicable to the facts or the issues as you see
10 them to be. That for example you may be given a circumstantial
11 evidence instruction with respect to the admissibility of
12 certain evidence and you may after due deliberation say, "Well,
13 gee, that doesn't apply in this case." You all understand and
14 appreciate that?

15 (The prospective jurors indicate in
16 the affirmative.)

17 MR. WEEDMAN: And that the same thing is true with
18 respect to other kinds of instructions that you may receive in
19 this case. Is that so?

20 (The prospective jurors indicate in
21 the affirmative.)

22 MR. WEEDMAN: All right. Thank you all very much. I
23 will again pass for cause, your Honor. Thank you.

24 THE COURT: Both sides pass for cause, I take it.

25 MR. KATZ: Yes, your Honor.

26 THE COURT: Now, we get to the peremptory. The People
27 under the law are first. You may proceed.

28 MR. KATZ: Yes. The People wish to thank and excuse

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1 Mr. Inouye.

2 THE COURT: Very well. Thank you very much. You can
3 call another name, Mr. Clerk.

4 THE CLERK: All right, sir.

5 Henry Ollin, O-1-1-1-n.

6
7 HENRY OLLIN

8 BY THE COURT:

9 Q Well now, let me talk to you for a few moments,
10 Mr. Juror. Did you hear everything that I said to the other
11 jurors Wednesday and yesterday and today?

12 A Yes.

13 Q Did you understand everything that I said?

14 A Yes, I try.

15 Q Did you hear me read the charge that has been filed
16 against the defendant?

17 A Yes, I did.

18 Q I am going to ask you to assume that you have been
19 selected as a juror and the case has been tried and that you
20 have gone to the jury room to decide the case. Now, if you
21 put yourself at that position, at that point you could make a
22 finding, the jury could make a finding of guilty or not guilty.
23 That is clear to you?

24 A Yes.

25 Q If the jury should find not guilty that is the end
26 of the lawsuit, it is through. Is that clear?

27 A Yes.

28 Q If the jury finds the defendant guilty as charged

1 then the jury must make a finding of degree and if they make a
2 finding of guilty second degree murder that concludes the duty
3 of the jury. The jury is all through. You can go home. You
4 are through.

5 A Yes.

6 Q If the jury makes a finding of guilty first degree
7 murder then the court holds a further hearing, the purpose of
8 which is for the jury to decide on what is called penalty. Is
9 that clear?

10 A Yes.

11 Q And when the jury goes to the jury room to decide
12 the penalty it must make a finding of capital punishment, that
13 is, the death penalty, or life imprisonment. Is that clear?

14 A Yes.

15 Q Now, if you will please assume that you are in the
16 jury room with the jury and you are attempting to find on the
17 punishment, whether it is capital punishment or life imprison-
18 ment. Let's assume you are up to that point in the voting, is
19 that clear?

20 A Yes.

21 Q Now, I am going to ask you in your voting if you
22 would automatically vote against the death penalty without
23 regard for any evidence that might have been produced at the
24 trial or hearing in this case. Now, what is your answer?

25 A I would vote yes.

26 Q You would vote against the death penalty?

27 A Yes.

28 Q Have I correctly stated it?

1 A Yes.

2 THE COURT: All right. Do counsel desire to ask any
3 questions on that point? Defendant or People.

4 MR. WEEDMAN: Only just to perhaps clarify the response
5 because I am not quite sure what Mr. Ollin means, and I am
6 sorry, your Honor, perhaps I could just ask one or two
7 questions.

8 BY MR. WEEDMAN:

9 Q Mr. Ollin, are you opposed to capital punishment?

10 A Yes.

11 Q And you feel that there is no case in which you
12 would be willing to sit down and even consider the imposition
13 of the death penalty?

14 A Well, yes, I would. I'm opposed to capital punish-
15 ment. Death penalty.

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1 Q But is there any case at all in which you would at
2 least be willing, if you had to, to sit down and at least
3 consider the imposition of capital punishment?

4 A Yes, I would consider.

5 Q You would consider it?

6 A Yes.

7 Q In other words, you are telling us that even though
8 you are opposed to the death penalty, that nonetheless you feel
9 that there might -- there might -- be an appropriate case for
10 the death penalty?

11 A Yes.

12 Q And that if in this case it ever got to that stage,
13 which of course it may not, as Judge Call has pointed out, but
14 if you were selected as a juror and in this case you got to a
15 penalty phase, despite your feelings, Mr. Ollin, you would at
16 least discuss penalty with your fellow jurors?

17 MR. KATZ: Objection --

18 MR. WEEDMAN: -- at least --

19 MR. KATZ: Excuse me, counsel; finish your question.

20 Q BY MR. WEEDMAN: And at least consider the
21 imposition of the death penalty; is that correct?

22 A Yes, sir.

23 MR. KATZ: Well, the answer is in.

24 May I question?

25 THE COURT: Yes, indeed.

26 BY MR. KATZ:

27 Q Is that Mr. Ollin, sir?

28 A That's right.

1 Q Now, as I understand it, you are opposed to capital
2 punishment; is that right?

3 A Yes.

4 Q I'm sorry, I can't hear you. Can you speak up.

5 A Yes, sir.

6 Q And I take it that this is a strong opposition to
7 the death penalty?

8 A Yes.

9 Q And is it fair to say that you, yourself, would
10 never personally participate in sending another man to his
11 death; is that right?

12 A Yes.

13 Q Is that a fair statement?

14 A Yes.

15 Q And isn't it a fair statement, also, to say that,
16 irrespective of the evidence that unfolds during the course of
17 this trial you would under no circumstances personally vote for
18 the death of Steve Grogan; isn't that right?

19 A Yes.

20 Q And you understood my question; is that correct?

21 A Yes.

22 MR. WEEDMAN: Excuse me, your Honor; there will be an
23 objection to the question on the ground that it is,
24 unfortunately, leading and suggestive.

25 I think that -- I think it would be better to phrase
26 these questions to give Mr. Ollin an opportunity to express his
27 feelings rather than being lead into a particular answer.

28 MR. KATZ: If your Honor pleases, this is precisely what

1 Mr. Weedman did.

2 THE COURT: Well, overruled.

3 I will let the question and answer stand.

4 Is that all, gentlemen?

5 MR. KATZ: Yes, I have nothing further.

6 I thank Mr. Ollin for his candor and I would
7 respectfully challenge this juror under 1073, sub 4 of the Penal
8 Code and 1073, subsection 2 of the Penal Code.

9 MR. WEEDMAN: Well, if I may inquire further, your Honor,
10 because of the physical nature, now, apparently, of Mr. Ollin's
11 responses --

12 THE COURT: Well, there is a little -- not intentional --
13 but there is some equivocation in the answering of the juror.

14 MR. KATZ: Would your Honor further inquire --

15 THE COURT: I am rather inclined -- there may be some
16 question whether the court should arbitrarily, for cause,
17 exempt for cause or not.

18 MR. KATZ: May I ask your Honor to ask certain fundamental
19 questions again?

20 THE COURT: Well, I was going to ask one or two and see
21 where we get to.

22 MR. WEEDMAN: Why don't you do that, your Honor? Thank
23 you.

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HENRY OLLIN

2 BY THE COURT:

3 Q Now, Mr. Juror, listen carefully to what I say.
4 The counsel have covered this, but I kind of want to get
5 a restatement from you.

6 If you are in the jury room in the penalty hearing
7 we have talked about, you are voting, whether you are going
8 to vote for the death penalty or for life imprisonment, you
9 are in there talking about it and you are casting your vote.

10 Do I understand you correctly that no matter
11 what the testimony is, no matter what the facts are, that
12 under no condition at all would you vote for the death
13 penalty; is that correct?

14 A Yes, I won't vote.

15 Q You would not vote for the death penalty, no matter
16 what the facts testified to are; that is your opinion?

17 A Yes.

18 Q Have I correctly stated that?

19 A Yes, that's correct.

20 Q I don't want to overpress, but I want to restate
21 it again: there is nothing -- there is nothing that could
22 come out, there is nothing that could change your opinion
23 that you would not vote for the death penalty; is that
24 correctly stated?

25 A Yes, I will not.

26 THE COURT: Well, I think that --

27 MR. KATZ: People renew their challenge, your Honor.

28 THE COURT: -- that's a for cause. All right.

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1 MR. WEEDMAN: Your Honor, for the record I will object
2 to the challenge on the grounds that Mr. Ollin --

3 THE COURT: Put your objection in, Mr. Weedman.

4 MR. WEEDMAN: -- Mr. Ollin expressed to me, at least,
5 as I understand it, a willingness to participate in the penalty
6 phase and to at least consider the imposition of the death
7 penalty, your Honor.

8 THE COURT: All right.

9 MR. WEEDMAN: I think because he said that that he's not
10 a proper subject for a challenge in this case, despite the
11 other answers, your Honor.

12 THE COURT: I will overrule the objection.

13 MR. WEEDMAN: Thank you, your Honor.

14 THE COURT: Thank you, counsel.

15 Now, Mr. Juror, I will excuse you; thank you
16 for your honest statement.

17 MR. KATZ: Thank you, sir.

18 THE COURT: And, in excusing, I feel that the requirements
19 or the law set forth in Witherspoon, as well as the code
20 section 1073, subdivision 2 and 1074, subdivision 8, show
21 the proper instance in which the court may exercise a for
22 cause exception, or excuse the juror; I find for cause and
23 do so.

24 Now we will call another juror, please.

25 THE CLERK: Darlys M. Zumbrunnen, Z-u-m-b-r-u-n-n-e-n.

26 MR. KATZ: Spell the first name, please.

27 THE CLERK: D-a-r-l-y-s; middle initial M.
28

DARLYS M. ZUMBRUNNEN

BY THE COURT:

Q Now, lady, we will start again here.

Did you hear everything that I said to the jury starting last Wednesday and Thursday and today?

You heard everything that has been said?

A Yes.

Q Did you hear me read the charge that has been filed against the defendant in this case?

A Yes, I did.

Q Now, I want you to assume that you have been selected as a juror in this case; you have heard all the testimony, you have gone to the jury room to decide the case.

At that time you understand that the jury could make a finding of not guilty; is that clear?

A Yes.

Q The jury might also make a finding of guilty as charged, that is clear to you?

A Yes.

Q And if the jury makes a finding of guilty as charged they would make a finding of degree; the jury could find second degree murder. That is clear.

A Yes.

Q And if the finding is second degree murder the duties of the jury are all concluded.

If the jury makes a finding of first degree murder there would then be a subsequent penalty hearing.

You understand that?

1 A Yes.

2 Q At the penalty hearing the jury would make a
3 finding of the penalty, which would be one of two findings,
4 either capital punishment or life imprisonment.

5 You understand that?

6 A Yes.

7 Q Now, if you will put yourself in the position of
8 assuming you are in the jury room on the penalty hearing and
9 the question of voting on the question of capital punishment
10 or life imprisonment comes around and you are voting, I will
11 ask you this question: at that time would you automatically
12 vote against the imposition of the death penalty without
13 regard to any evidence that might be developed at the trial
14 of this case or hearing before you?

15 A No.

16 THE COURT: Now, I will pass the juror for cause at this
17 time, and defense counsel may examine.

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MR. WEEDMAN: Thank you, your Honor.

Q Is that Zumbrunnen?

A Zumbrunnen.

Q Is that Miss or Mrs. Zumbrunnen?

A Miss.

Q All right, Miss Zumbrunnen, would you automatically impose the death penalty upon a finding of guilty of murder in the first degree?

A No.

Q In other words, as you think ahead, if you ever got to the point, you have an open mind --

A Right.

Q As you sit there now with respect to the imposition of the death penalty in this matter?

A Yes.

Q If this trial should last the eight weeks that we have been talking about here, would that cause you any personal hardship?

A Yes, it would.

Q Would you tell us about that, please.

A Well, I called my employer last night to, you know, planning on this question, and I found out that I would have to take a leave of absence for the two months and they would probably have to bring in some temporary -- somebody to take over my job on a temporary basis; so I would not be paid for the two months.

Q And I take it you are self-supporting, then?

A No, I work for an advertising agency.

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1 Q But I meant, unless you work you don't eat; would
2 that be --

3 A Right, yes.

4 Q -- a rough way of putting it?

5 A Yes.

6 Q Would this leave of absence cause you to lose your
7 normal salary, then, for that two-month period?

8 A Yes, it would.

9 Q Well, are you asking to be excused on that basis?

10 A Yes, on that basis I would ask to be excused.

11 Q May I ask by whom you are employed?

12 A I am employed by Clinton E. Frank Advertising.

13 MR. WEEDMAN: I will submit the matter of hardship, your
14 Honor.

15 MR. KATZ: If counsel wishes to stipulate, the People
16 will stipulate.

17 MR. WEEDMAN: I will stipulate she may be excused, your
18 Honor.

19 THE COURT: I still pass for cause.

20 You go ahead -- any questions?

21 MR. KATZ: No questions.

22 THE COURT: All right, then, we are back to a Peremptory.

23 MR. WEEDMAN: Well, your Honor, I thought that with
24 respect to hardship that -- Miss Zumbrunnen had rather
25 indicated it was going to cost her, perhaps, her job and her
26 normal income; and there is no one to support her but herself.

27 I think that that would constitute a hardship,
28 your Honor.

1 THE COURT: I don't. It doesn't affect her for cause.
2 I think it is another matter.

3 I would be inclined to say it hasn't met the
4 requirements, but I don't think the indications are that her
5 judgment would be affected to such an extent that she couldn't
6 impartially judge the case; that's what I'm trying to say.

7 MR. WEEDMAN: I see; very well, your Honor.

8 THE COURT: So, you may continue.

9 Is there further examination?

10 Go right ahead.

11 MR. KATZ: Well, your Honor, excuse me -- unless Mr.
12 Weedman is done, I haven't had an opportunity to examine this
13 prospective juror.

14 THE COURT: You may proceed.

15 Overruled.

16 Now, finish your for cause.

17 MR. WEEDMAN: Yes, your Honor.

18 Q With respect to this matter of your employment, do
19 you feel that if you had to sit as a juror in this case for the
20 next couple of months that you would be able to give both sides
21 your undivided attention?

22 A No, I don't think I could.

23 Q Do you feel that you would be able to render a
24 fair and impartial decision in this matter with this employment
25 problem lurking in the background?

26 A No, I don't, because, unfortunately, jobs are too
27 hard to find these days.

28 THE COURT: Do you figure -- I am not trying to break in--

1 Q Do you figure that these conditions you have
2 related would impair your ability to give an absolute fair
3 and impartial consideration of this trial?

4 Do you figure it would affect you to that extent?

5 A Yeah, I think it would cause me undue worry.

6 Q You do figure that?

7 A Yes, I do, definitely.

8 THE COURT: All right, then, do you want to stipulate?

9 MR. KATZ: Yes.

10 THE COURT: Or do you want to be heard?

11 MR. KATZ: No, the People submit.

12 THE COURT: You stipulated?

13 MR. WEEDMAN: Yes, so stipulated.

14 THE COURT: Then I will excuse you. Thank you, lady.

15 THE CLERK: Mrs. Esther M. Pappenheim, P-a-p-p-e-n-h-e-i-m.

16 MR. KATZ: Would you spell that again?

17 THE CLERK: Yes, P-a-p-p-e-n-h-e-i-m.

18 MR. KATZ: Thank you.

19
20 ESTHER M. PAPPENHEIM

21 BY THE COURT:

22 Q Now, lady, have you heard everything that I have
23 said to the jury up to this time?

24 A Yes, I have.

25 Q And you heard me read the charge --

26 A Yes.

27 Q -- which has been filed against him, the
28 indictment?

1 Now, I will ask you to assume that you have been
2 selected as a juror in this case, that you have heard all of the
3 testimony and you have gone to the jury room to decide the case,
4 guilty or not guilty.

5 You understand that at that time the jury could find
6 either not guilty or guilty; is that clear to you?

7 A Yes, it is.

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1 Q Now, if the jury finds not guilty the case is con-
2 cluded. You understand that?

3 A Yes.

4 Q And if the jury finds guilty they would then make
5 another finding of degree. If they find second degree murder
6 the case is concluded so far as the jury is concerned. There
7 are no further hearings. It is concluded as far as the jury
8 is concerned. Is that clear to you?

9 A Yes, it is.

10 Q On the other hand if the jury finds guilty first
11 degree murder then there is another further hearing held before
12 the present jury. Before the jury that you are a member of.
13 And at that hearing, at the end of the hearing the jury would
14 determine the punishment which would be either capital punish-
15 ment or life imprisonment. Is that clear?

16 A Yes.

17 Q Now, if you will consider or assume that you have
18 reached that position where you are voting on a question of
19 penalty, or a question of capital punishment or life imprison-
20 ment I will ask you if you are at that position, would you
21 automatically vote against the imposition of capital punishment
22 without regard to any evidence that might have been developed
23 in the trial of this case?

24 A I would not.

25 Q The answer is yes?

26 A Yes.

27 Q Is there any question in your mind at all about
28 your answer that you automatically would vote against the

23-2

1 imposition of the death penalty? There is no question about
2 that, is that a correct statement?

3 A Yes, that is.

4 Q And no matter what the testimony is, no matter
5 what it is you still would say "I will not vote for the death
6 penalty"; is that correct?

7 A Yes, it is.

8 Q I am trying to get it clear.

9 A Yes.

10 THE COURT: That is why I am pinpointing it.

11 Now, gentlemen, I will go to the defendant. Do
12 you desire to examine on that question of the death penalty
13 from this juror?

14 MR. WEEDMAN: No, thank you, your Honor.

15 THE COURT: All right. People?

16 MR. KATZ: No, your Honor. The People respectfully
17 challenge the juror under 1073, subsection 2, and 1074,
18 subsection 8 of the Penal Code.

19 THE COURT: Yes. I find that for cause or cause exists
20 for which I excuse the juror under the Witherspoon holding.
21 Also under Section 1073, subsection 2, and 1074, subdivision 8
22 in which I find that exemptions for cause arise. I so conclude.
23 I excuse the juror. Thank you very much, lady.

24 THE CLERK: John R. Kaylor, K-a-y-l-o-r.
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JOHN R. KAYLOR

BY THE COURT:

Q All right. Now, Mr. Juror, have you heard everything that I have said to the jury in the jury box here since we started last Wednesday?

A Yes.

Q And I take it of course by your answer you heard me read the charge that has been filed against the defendant?

A Yes.

Q You heard me read that?

A Yes.

Q Now, I will ask you to assume that you have been selected as a juror. You have heard all of the testimony in the case. You have gone to the jury room and at that point you understand you could find not guilty. That is, the jury could make a finding of not guilty, you understand that?

A Yes.

Q The jury could also make a finding or has the right to make a finding of guilty; you understand that?

A Yes.

Q Now, let's assume for the purpose of the next question the jury makes a finding of guilty as charged. The jury then must make a finding of degree. If the jury makes a finding of second degree murder then the case again is concluded. that is to say as far as the jury is concerned there is no further hearing. That is correct?

A Yes.

Q If the jury finds guilty and sets the degree as

1 first degree murder there is another subsequent hearing
2 held called the penalty hearing at which the jury at the end
3 of the penalty hearing will make a finding on penalty which
4 must be either the death penalty or life imprisonment. Is
5 that clear to you?

6 A Yes.

7 Q Now, if you are in the jury and voting on penalty
8 whether it is the death penalty or life imprisonment I will
9 ask this question to you. At that time would you automatically
10 vote against the imposition of the death penalty without regard
11 to any evidence that might be developed at the trial of this
12 case before us?

13 A No.

14 THE COURT: All right. Now I will pass the juror for cause.
15 Defendant may inquire.

16 BY MR. WEEDMAN:

17 Q Mr. Kaylor, let me ask you something else. What
18 is your business or occupation, please?

19 A I work with the California State Division of
20 Highways, line supervisor.

21 Q Is there anything about the length of this trial
22 or possible length of this trial that would cause you any
23 personal hardship?

24 A Not in my work. If I may, my mother has been
25 convalescing since last December. She may pass away in this
26 length of time. On the other hand, she may not. This is up
27 to the court to decide. However, I am up against this matter.

28 Q You feel that you would like to be excused from

1 service?

2 A Not necessarily.

3 Q No, this is not the problem. It is not a matter
4 of wanting to be excused, it is just a matter that if it does
5 happen this way I would not want to infringe on the court.
6 I would not want the court to infringe on me.

7 Q Yes, indeed. I understand. Well, we certainly
8 hope that that tragic moment does not come to pass. But if
9 you feel that there is any possibility of its occurring,
10 Mr. Kaylor, then while I realize that you don't want to be
11 excused, at least would it be fair to say that you would like
12 to be excused because of something over which you have no
13 control?

14 A Well, yes.

15 MR. WEEDMAN: Well, your Honor, it appears that counsel
16 and I are willing to stipulate that Mr. Kaylor may be excused.

17 THE COURT: I think probably the stipulation is justified.
18 I will excuse you. Thank you, sir.

19 MR. KAYLOR: Thank you.

20 THE COURT: Yes, sir.

21 MR. KATZ: Your Honor, may counsel and I approach the
22 bench. I don't believe it is necessary to have the reporter
23 at all.

24 THE COURT: All right. Step right up, gentlemen.

25 (Conference in chambers with both counsel
26 and the defendant present; not reported.)

27 (The following proceedings were had in
28 open court:)

1 THE COURT: Now, we are back to a new juror, Mr. Clerk.

2 THE CLERK: Yes, sir. Lorenzo De La Paz, D-e L-a,
3 P-a-z, Jr. Lorenzo is the first name.

4
5 LORENZO DE LA PAZ, JR.

6 BY THE COURT:

7 Q Well, now, Mr. Juror, have you heard everything
8 that I have said to the jury starting last Wednesday? You
9 heard my statements to the jury?

10 A Yes, sir.

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1 Q And the other statements I have made yesterday and
2 today, you have heard all that?

3 A Yes, sir.

4 Q Did you hear me read the charge that has been filed
5 against the defendant?

6 A Yes, sir.

7 Q I ask you to assume that you have been selected as
8 a juror in this case and the case has gone to the jury for a
9 decision. At that point the jury could make a finding of not
10 guilty. Is that clear to you?

11 A Yes, sir.

12 Q Also the jury could make a finding of guilty. Is
13 that clear?

14 A Yes.

15 Q If the jury made a finding of not guilty the case
16 would be entirely concluded. If the jury makes a finding of
17 guilty they would then make finding of degree. Second degree
18 murder, they could find. If they make that finding the case is
19 again, as far as the jury is concerned, the case is concluded.
20 Is that clear?

21 A Yes, sir.

22 Q If the jury makes a finding of first degree murder
23 then the jury would make a subsequent finding based on a penalty
24 hearing and at the conclusion of the penalty hearing the jury
25 would then make a finding of penalty, which would be either
26 the death penalty or life imprisonment. That is clear?

27 A Yes, sir.
28

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24-1

1 Q Now, if you will, please, assume that you are on
2 the jury, you have held the penalty hearing, you are voting
3 on penalty, and I will ask you this question: at that time
4 would you automatically vote against the imposition of the
5 death penalty without regard to any evidence that might be
6 developed at the trial of this case?

7 A Yes and no.

8 Q Well, is the answer --

9 A May I elaborate?

10 Q No, I want -- tell me, if you would automatically
11 vote against the death penalty or not. What is the answer?

12 A There is no -- I can't answer yes or no. It is
13 both, actually.

14 THE COURT: Well, I can't get very far, either. You are
15 kind of holding hot and cold here.

16 Q You can't answer it "yes" and you can't answer it
17 "No," is that your answer?

18 A I will say "Yes," and may I elaborate on that?

19 THE COURT: Well, in a minute, you can, but I will let
20 you when we get to counsel. I am trying to get by the basics
21 by trying to get an expression.

22 Q Are there times or occasions or circumstances that
23 you might vote for the death penalty?

24 A Yes.

25 Q And there are, of course, times and occasions when
26 you would vote -- withdraw that, I don't want to make it leading--
27 are there times and occasions that you would vote for the death
28 penalty?

24-2

1 A Yes.

2 Q Are there times and occasions when you would vote
3 against the death penalty?

4 A Yes.

5 THE COURT: Well, I will clear you for cause and now
6 counsel may develop, if you desire.

7 BY MR. WEEDMAN:

8 Q Mr. De La Paz?

9 A Yes, sir.

10 Q Does that mean something like "peace" or --

11 A "Of the peace."

12 Q "Of the peace"?

13 A Literal translation.

14 Q Mr. De La Paz, would you, if you have to go into
15 the jury room on the penalty phase sit down with your fellow
16 jurors and consider whether you are going to impose life
17 imprisonment or whether you are going to impose the death
18 penalty?

19 A Yes.

20 Q If this trial -- forgive me, Mr. De La Paz, what
21 is your business or occupation, please?

22 We have been neglecting to ask that of many of the
23 jurors and it is something we ordinarily do at the outset.
24 Because of these other issues we haven't done so, but I will
25 try to remember that and ask you.

26 A Examiner for the Department of Motor Vehicles.

27 Q As such do you have close friends in law enforcement?

28 A No.

1 Q Do you have any relatives in law enforcement --
2 and I am not making a distinction between close friends and
3 relatives, but perhaps it is appropriate to ask it that way --
4 do you have any relatives in law enforcement?

5 A No.

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1 Q Is there anything about the fact that this trial
2 may last as much as eight weeks that would cause you any
3 personal hardship?

4 A No.

5 Q Is there anything about this trial that you have
6 heard so far that makes you think you can't give both sides
7 a fair and impartial trial?

8 A No.

9 Q Have you heard of Charles Manson, Mr. De La Paz?

10 A Yes.

11 Q Have you heard of the Manson family?

12 A Yes.

13 Q And what opinion, if any, have you formed about
14 Charles Manson and the Manson family -- or, if that is,
15 perhaps a difficult question to answer, perhaps you could tell
16 me briefly what you have heard or read about Charles Manson
17 and the Manson family.

18 MR. KATZ: I would object to the form of the question in
19 that the answer would poison the minds of the other prospective
20 jurors.

21 I think he can indicate whether or not he has an
22 opinion with reference to Mr. Manson, whether he would be thereby
23 prejudiced against Mr. Grogan.

24 THE COURT: Give me a reading of the question.

25 MR. WEEDMAN: I will withdraw the question.

26 THE COURT: All right. It would be better if you would.

27 Q BY MR. WEEDMAN: Is there anything you have read
28 or learned about Charles Manson that makes you feel you would

1 be prejudiced against my client if the evidence here discloses
2 that my client is a friend of Charles Manson?

3 A No.

4 Q You feel that anything you may have learned or
5 read about Charles Manson and the Manson family would be the
6 kind of thing that you would have a problem setting aside in
7 this case, in other words --

8 A No.

9 Q -- though you can set it aside you recognize that
10 it is something which you would have to actively do, if you
11 are a juror?

12 A No.

13 Q With respect to the questions, and I am sure you
14 heard them, of counsel relative to evidence of a conspiracy,
15 do you understand that you may well conclude in this case
16 if you have retired to the jury room that there is no conspiracy?

17 A Yes.

18 Q I take it, then, in that respect your mind is open
19 with respect to the evidence?

20 A Yes.

21 Q And that is true despite whatever inferences you
22 may have gained from my questions and whatever inferences as
23 to evidence you may have gained from Mr. Katz's questions?

24 A Yes.

25 Q Is there anything at all about the case, Mr. De La
26 Paz, that is such that if someone who feels as you do you would
27 not want such a person to -- well, let me start over again;
28 it is always that difficult question about putting yourself in

1 the shoes of the defendant.

2 Supposing you were the defendant in this case,
3 would you want someone who has your state of mind as you sit
4 there now to sit in judgment of you?

5 A Yes.

6 Q In other words, you are telling us in that rather
7 dramatic way that you can be fair to the defendant in this
8 case; is that so?

9 A Yes.

10 Q Have you had any prior criminal jury experience?

11 A No.

12 THE COURT: Pardon me, Mr. Weedman.

13 I think we are after 4 o'clock.

14 Let's recess till Monday morning, if you will.

15 Ladies and gentlemen, we will go over to Monday
16 morning at 9:30. You have been very diligent. If you will,
17 kindly return promptly at 9:30, we'll be under way.

18 Do not discuss the case or come to any opinion
19 or conclusion until it shall be finally given to you.

20 Thank you; we are in recess.

21 (At 4:01 p.m., an adjournment was
22 taken until 9:30 a.m. on Monday,
23 June 28, 1971.)
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