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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

Thursday, July 1, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

**COPY**

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SECRET

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1 LOS ANGELES, CALIFORNIA, THURSDAY, JULY 1, 1971

2 9:45 A.M.

3  
4 THE COURT: We are proceeding in People against Steve  
5 Grogan. The defendant is here. The defendant's counsel is  
6 here. People's counsel is here. The jurors are in the jury  
7 box.

8 What was our last step?

9 THE CLERK: I think Mr. Weedman was inquiring of Mrs.  
10 Trivedi, sir. Is that not true?

11 MR. KATZ: That's correct.

12 MR. WEEDMAN: Yes.

13 THE COURT: Had we just called in the new juror, or had  
14 I passed him?

15 THE CLERK: Yes, you had passed.

16 THE COURT: All right. Go ahead then. That's right.

17 Mr. Weedman, weren't you about to start your  
18 examination?

19 MR. WEEDMAN: Yes, I believe so, your Honor. And we have  
20 a transcript here. I just thought I would perhaps take a look  
21 at that.

22 THE COURT: Go right ahead.

23 (Short pause.)

24  
25 ALICE TRIVEDI

26 BY MR. WEEDMAN:

27 Q Mrs. Trivedi, we left off yesterday talking about  
28 the death penalty. And am I correct now in assuming that you

1 would in a proper case at least consider the imposition of the  
2 death penalty?

3 A Yes.

The 2

1 Q If this trial should last some six to eight  
2 weeks, would that cause you a personal hardship?

3 A No.

4 Q And are you employed?

5 A Yes.

6 Q I have forgotten -- I am sorry, I apologize; I  
7 had asked that.

8 What is your occupation?

9 A I am a social worker with the Department of  
10 Adoptions.

11 Q Is there a Mr. Trivedi?

12 A Yes.

13 Q What does he do for a living?

14 A He is a hospital pharmacist.

15 Q Have you any close friends or relatives who are  
16 engaged in law enforcement?

17 A Friends, yes.

18 Q Is there anything about your friendship with persons  
19 in law enforcement that you think would interfere with your  
20 critically evaluating testimony that might come in here from  
21 police officers?

22 A No.

23 Q As a matter of fact, would it be fair to say,  
24 Mrs. Trivedi, inasmuch as you have friends in law enforcement,  
25 you probably know more than the average person that they are  
26 very human, just like the rest of us, capable of making  
27 mistakes --

28 MR. KATZ: Excuse me, your Honor; the question in its

1 form is argumentative.

2 MR. WEEDMAN: Yes, I think perhaps counsel is right.  
3 I will withdraw the question, your Honor.

4 Q Have you heard anything about the Manson family  
5 and about Charles Manson?

6 A Yes, I have.

7 Q Have you formed any opinion with respect to Charles  
8 Manson and the Manson family?

9 A Yes.

10 Q And would that opinion in any way, do you feel,  
11 interfere with your giving my client a fair trial here if,  
12 as we have suggested, the evidence may show that he is a  
13 member of the Manson family?

14 A No.

15 Q And how about that very close case that I have been  
16 talking about over and over and over again, do you think you  
17 would permit your opinion about Charles Manson and the Manson  
18 family to come into play in your mind to help you decide the  
19 evidence in this case?

20 A No.

21 Q Can we be assured -- in other words, will you  
22 promise us, indeed, that you won't permit that to happen if  
23 you are selected as a juror in this case?

24 A I do.

25 Q Have you heard pretty much all of the questions  
26 that I have asked the other prospective jurors?

27 A Yes.

28 Q Would your answers be substantially the same to

1 these questions?

2 A I believe so.

3 Q Is there anything, finally, about whatever opinion  
4 you may have about the lifestyle of members of the Manson  
5 family as distinguished from any criminality that makes you  
6 feel you would be prejudiced against my client in considering  
7 the evidence in this case?

8 A No.

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\*-

1           Q       Therefore, I am sure you appreciate as the other  
2 jurors have indicated that while one might well disagree with  
3 another's lifestyle, that of and in itself is no evidence of  
4 criminality, isn't that so?

5           A       That's true.

6           MR. WEEDMAN: Thank you. Thank you, your Honor.

7           THE COURT: Pass for cause, counsel?

8           MR. WEEDMAN: Yes, your Honor.

9                   Thank you.

10          THE COURT: Thank you. The People.

11          MR. KATZ: Yes, thank you.

12           Q       Mrs. Trivedi, I am a little bit concerned about  
13 some statements you made in regards to the death penalty  
14 yesterday. If you will, <sup>recall</sup> His Honor at the outset asked you the  
15 following question:  
16

17                   "Now, if you will put yourself at that  
18 position, you are about to vote on penalty.  
19 I am going to ask you this: at that time, would  
20 you automatically vote against the imposition  
21 of the death penalty without regard to any  
22 evidence that might have been developed at the  
23 trial of this case?

24           A       I think I would."

25           His Honor said:

26           "The answer is yes?"

27           You replied:

28           "Yes."



3-2

1 His Honor said:

2 "Is that correct?"

3 And you replied:

4 "Yes."

5 Do you recall those questions and answers?

6 A Yes, I do.

7 Q Now, in all fairness to the People, I am going to  
8 ask you to consider your feelings about the death penalty and  
9 consider whether or not such scruples that you hold that I am  
10 sure are deep-seated are such as to make you and to render you  
11 incapable from voting the death penalty without reference to  
12 the evidence in this case. Now, let me ask you this question:  
13 are your scruples concerning capital punishment such that  
14 regardless of the evidence in this case before you would you  
15 vote the death penalty? Not consider, vote the death penalty?  
16

17 A I don't know. I have never had this kind of  
18 experience before. But I don't believe in the death penalty.

19 Q All right. Now, let me ask you this. I take it  
20 that you have given some thought to the death penalty prior to  
21 today, is that correct?

22 A Yes, I have.

23 Q As a concerned and intelligent person I take it  
24 that you have evaluated the pros and cons concerning the right  
25 of the state to take the life of another person, is that right?

26 A Yes.

27 Q All right. Now, do you think that these thoughts  
28 concerning the death penalty are so deep-seated that they would  
preclude you automatically from voting the death penalty

1       irrespective of the evidence that would unfold during the  
2       course of this trial?

3           A       I think it's possible.

4           Q       All right. Now, I understand this is a very  
5       difficult question because you really don't know until you are  
6       thrown into that situation where you may be asked whether or  
7       not you should vote the death penalty. So all we can do is  
8       get you as you sit here now to project yourself some six or  
9       eight weeks from this date. And for purposes of my questioning  
10      conceive of a situation in which you are now together with the  
11      other 11 jurors. And you are now asked to vote the penalty in  
12      this case, that is, whether it should be life imprisonment on  
13      the one hand or death on the other hand. It is a very  
14      difficult and arduous situation to find yourself in. It is a  
15      very grave responsibility with which you are confronted if  
16      selected as a juror, you appreciate that?

17          A       (Nodding head affirmatively.)

18          Q       I am sorry. I can't hear you.

19          A       I said yes, I do.

20          Q       Yes. And as you sit here now and knowing your  
21      feelings concerning the death penalty, knowing how you think  
22      about it, knowing the arguments that you have for example  
23      against the death penalty, in all fairness and honesty do you  
24      really think that you would in the case before you vote the  
25      death penalty under some circumstances that you can conceive  
26      of?

27          A       No, I don't think I can.

28          Q       All right. I really appreciate your giving this

1 a lot of thought.

2 Let me try and rephrase it so the court understands you  
3 and I understand you and Mr. Weedman understands you. You  
4 recognize that there is a distinction between conceiving of  
5 some circumstances in which you feel some person, that is, some  
6 other juror, should invoke the death penalty on the one hand,  
7 and yourself personally participating in the death penalty and  
8 sending somebody to his death; is that correct?

9 A That's the problem.  
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1           Q       That's what I thought it was; so, in other words,  
2 what you are saying in response to Mr. Weedman's earlier  
3 question that you could possibly conceive of a case in which  
4 you -- in which the death penalty would be warranted, you  
5 were not saying that you, yourself, in such circumstances  
6 could personally vote that; is that correct?

7           A       That is true.

8           Q       So, as I asked the question, again, then, is it  
9 your state of mind as you sit here now that regardless of the  
10 evidence which would unfold during the course of the trial  
11 would you, yourself, be willing to vote the death penalty?

12          A       No, I couldn't.

13          Q       All right; so that is your state of mind?

14          A       Yes.

15          MR. KATZ: Thank you.

16                 I thank the juror for her candor and challenge this  
17 juror under 1073, subsection 2, and 1074, subsection 8 of the  
18 Penal Code.

19          MR. WEEDMAN: Well, I would request further questioning,  
20 then, of Mrs. Trivedi, your Honor, if I may.

21          THE COURT: You desire further questioning?

22          MR. WEEDMAN: Yes, your Honor.

23          THE COURT: All right.

24          BY MR. WEEDMAN:

25                 Q       Mrs. Trivedi, do you understand that the defendant  
26 is entitled to have someone in the jury room who is opposed  
27 to capital punishment?

28          MR. KATZ: Your Honor, I am going to object to the form

4-2

1 of the question as argumentative.

2 THE COURT: Let counsel examine.

3 You may examine; go ahead.

4 A Yes, I understand that and I have given a lot of  
5 thought to it. My concern is how I would feel and I don't  
6 feel that I could bear what I considered the guilt -- I could  
7 not do it and I am opposed to it. I don't feel that I would  
8 want to really participate.

9 Q BY MR. WEEDMAN: Surely, but we want to be careful,  
10 Mrs. Trivedi, in that you not try and prejudge this case.  
11 We are not asking you to do that; we couldn't possibly ask you  
12 to do that.

13 It is a theoretical examination into your attitude  
14 toward capital punishment. In other words, it is perfectly  
15 all right for you to carry into the jury room strong feelings  
16 against capital punishment. All that is required to be fair  
17 to the People is that you would at least consider the imposition  
18 of capital punishment in discussion with your fellow jurors  
19 and would not automatically, you see, irrespective of whatever  
20 evidence may be produced, vote against the death penalty.

21 Do you understand that?

22 A Yes.

23 Q Would you, irrespective of the evidence, automati-  
24 cally, no matter what is produced here, vote against it?

25 A I don't know.

26 Q Well, you don't know because you don't know what  
27 the evidence is --

28 MR. KATZ: Excuse me; I am going to object --

1. THE COURT: That is argumentative.

2. I will sustain the last; the last question sustained.

3. BY MR. WEEDMAN:

4. Q Perhaps you can tell us why you don't know?

5. A Well, I have certain ideas about the death penalty  
6. and about my feelings, but practice on the way people behave  
7. is very different from, very often, from what they think, and  
8. I think that I would be opposed to it. I have never had this  
9. experience before; I have never been confronted with this kind  
10. of decision to know, but I think that I am opposed to it.  
11. That's the only thing.

12. Q What remains, then, of course, is my earlier  
13. question: would you ignore all of the evidence that might be  
14. presented relative not only to guilt but also to penalty,  
15. ignore that and automatically vote against the death penalty  
16. or would you wait until you heard all of the evidence and then  
17. at least consider the evidence with an open mind as to whether  
18. or not life imprisonment is appropriate or if the death penalty  
19. is appropriate?

20. Which of those would you do?

21. A I don't know; I really don't know.

22. Q Well, do you think, Mrs. Trivedi, that you could  
23. consider relevant evidence, fair discussion of what penalty to  
24. impose, either the death penalty or life imprisonment, bearing  
25. in mind, as you have heard, the law expresses no preference,  
26. one for the other, it is up to you.

27. A I don't think I can impose the death penalty.

28. Q Under any circumstances?

1 A No, I don't.

2 MR. WEEDMAN: We have lost you, Mrs. Trivedi.

3 THE COURT: Is the matter submitted, gentlemen?

4 MR. KATZ: Submitted; and thank you.

5 THE COURT: I will accept the challenge for cause.

6 It is my feeling and my conclusion that the  
7 exception or excuse is justified under the doctrine of the  
8 Witherspoon case and also I find in addition that a challenge  
9 exists for cause under Section 2 of Section 1073 and Section  
10 8 of 1074. That is my conclusions.

11 I will excuse you. Thank you very much, lady.

12 THE CLERK: Michael A. Bailey, B-a-i-l-e-y.

13  
14  
15 MICHAEL A. BAILEY

16 BY THE COURT:

17 Q Mr. Bailey, have you heard everything I have said  
18 to the jurors up to this point?

19 A Yes, I have.

20 Q From the time we started picking of the jury for  
21 this case?

22 A Yes.

5-1

1 Q Now, did you hear me read the charge that has  
2 been filed against the defendant?

3 A Yes.

4 Q All right. Please assume that you have been sworn  
5 to try this case a juror and the case has been tried and that  
6 you with the other jurors went to the jury room to decide the  
7 question of guilty or not guilty. The jury as I have related  
8 could make a finding of not guilty which would conclude the  
9 matter in all its entirety. The jury could make a finding of  
10 guilty and then that would be followed by a finding of the jury  
11 of guilty first degree murder or guilty second degree murder.  
12 If the finding would be second degree murder, again, the matter  
13 is concluded as far as the jury is concerned. If the finding  
14 should be guilty of murder first degree then there will be a  
15 subsequent hearing in which the jury would make a finding of  
16 penalty, known as the penalty hearing.

17 The penalty would be found or set by the jury,  
18 either the death penalty or life imprisonment.

19 Now, if you will assume that only for the purpose  
20 of this question you have been sworn, you have heard the case  
21 and you are now, or have just concluded the death penalty  
22 hearing, and you are voting on the question of penalty. I will  
23 ask you this question: at that time would you automatically  
24 vote against the imposition of capital punishment without regard  
25 to any evidence that might be developed at the trial of the case?

26 A No.

27 Q Thank you.

28 Now, I will ask you a few more questions,



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1 Mr. Bailey. Do you feel that you could be fair and impartial  
2 to both the defendant and the People if you are selected to  
3 act as a juror in this case?

4 A Yes.

5 Q Do you know of any reason at all that during the  
6 trial of the case or now, that might bother or disturb you in  
7 any way so that because of the occasion or the urgency of the  
8 occasion your mind could be distracted to such an extent that  
9 you couldn't be fair and impartial regardless of what came  
10 along?

11 A No.

12 Q Do you know of anything that might interfere?

13 A No.

14 Q Thank you.

15 One last question or statement. There has been  
16 some discussion in the court with counsel and prospective jurors  
17 in which the name of Manson or some friends of Manson might  
18 testify. I am not trying to misquote it, but that's the  
19 substance of it. If any of those folks were brought in here  
20 as witnesses to testify could you view the testimony impartially  
21 and draw your conclusions based only on the facts? What did  
22 they testify to? Is it true or false what they testified to?  
23 And could you draw your conclusions impartially and not be  
24 prejudiced?

25 A Yes.

26 Q By anything that you might or might not feel about  
27 Manson or any of his friends?

28 A Yes.

5-3

1           Q       Put those things to one side and remember you are  
2 trying the defendant in this case, Mr. Grogan, who is the one  
3 on trial, not Manson and not any of his friends and not any of  
4 the witnesses are on trial, but Mr. Grogan is on trial and  
5 Mr. Grogan has a right, absolute right to be tried not by  
6 influence of any other person or factor, he must be tried on  
7 the question what are the facts? What is the law? Who is  
8 telling the truth and who isn't? And not be swayed by any  
9 other facts or incident; that is true, is it, Mr. Juror?

10           A       It is.

11           Q       In other words, the law and common sense repudiates  
12 what is sometimes called guilt by association. I have no idea  
13 what the testimony will be in this case. I just don't know  
14 whether there will be any connection or not between Mr. Grogan  
15 and Mr. Manson or any of their circle of friends. I don't know.  
16 But you mustn't be prejudiced by the doctrine certain people  
17 are associated together or not. If they are, you can't vote  
18 guilty by association or allow yourself to be influenced. The  
19 man is entitled to be tried on the facts and not on something  
20 his friend did or didn't do. Is that clear to you?

21           A       Yes.

22           Q       All right. You feel you could be governed basically  
23 by the doctrines as I have stated them to you? I have stated  
24 the legal doctrines rather crudely or clumsily. It could be  
25 better stated to you, but the man is entitled -- any defendant,  
26 not just this defendant, is entitled to be tried on the facts  
27 and not by influence with respect to other matters. You would  
28 do that, is that correct?

1 A Yes.

2 THE COURT: Defendant may inquire.

3 MR. WEEDMAN: Thank you, your Honor.

4 THE COURT: Yes, sir.

5 BY MR. WEEDMAN:

6 Q Mr. Bailey, would the length of trial here we have  
7 been talking about cause you any particular personal hardship?

8 A No.

9 Q What business or occupation are you in?

10 A Supervisor flight control, Western Airlines.

11 Q Are you the man that sits up in the tower?

12 A No.

13 Q Okay. That is more nerve-wracking than what we do  
14 around here.

15 With respect to the death penalty if you are  
16 convinced that my client has committed a kind of first degree  
17 murder we have also been talking about here would you go into  
18 the jury room and automatically vote for the death penalty?

19 A No.

20 Q You can appreciate that some people feel that way  
21 and that is, therefore, why I must ask the question?

22 A Uh-huh.

23 Q As you sit there now do you feel you have an open  
24 mind with respect to the imposition of the death penalty?

25 A Yes.

26 Q By that I mean you will wait until you hear some  
27 facts and evidence to determine if it is appropriate or not?

28 A Yes.

1 Q Right? Okay. Do you have any particularly strong  
2 feelings that the death penalty hasn't been used enough?

3 A No.

4 Q Do you have any feelings that it has been used too  
5 much?

6 A No.

7 Q Okay. So you are in the middle and both Mr. Katz  
8 and I can count on you, I take it, to stay there until you have  
9 heard the evidence respecting penalty at least?

10 A Yes.

11 Q Is there anything about the fact that Mr. Katz is  
12 asking for the death penalty in this case that makes you think  
13 it is more likely than not that my client is guilty?

14 A No.

15 Q So far as you are concerned you may well acquit my  
16 client, you may just as well acquit him as convict him as you  
17 sit there now, isn't that so?

18 A Yes.

19 Q And as Judge Call has so properly pointed out no  
20 one in legal contemplation at this point knows what the  
21 evidence is going to be in this case. But you understand that  
22 we have to at least explore possibilities with you even though  
23 what we say now is not evidence in the case?

24 A Yes.

25 Q Okay. Have you any quarrel with my responsibilities  
26 here?

27 A No.  
28

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1 Q And so we will be clear about it, what I mean  
2 by that is that some people, somehow, it seems, have so much  
3 faith in the government and so much faith, particularly, in  
4 a prosecuting agency that they feel defense lawyers are really  
5 obstructionists more than anything else.

6 You don't have any such feelings, do you, Mr.  
7 Bailey?

8 A No.

9 Q Even though it appears sometimes that we are  
10 obstructing the flow of evidence by objections, you appreciate  
11 that both Mr. Katz and myself have an obligation to try and  
12 shape the evidence as we have been trained and as we feel it  
13 should properly be shaped; and that neither Mr. Katz nor  
14 myself are just deliberately injecting, well, what has unfor-  
15 tunately been called obstructionist tactics into the trial?

16 A I understand.

17 Q Is there anything about what you have heard from  
18 either Mr. Katz or myself thus far that makes you feel that  
19 you couldn't give both sides a fair trial in the event you are  
20 selected as a juror?

21 A Not at all.

22 Q You feel that in the close case that I have talked  
23 about endlessly here now, if you are in the jury room during  
24 the guilt phase that you would allow any opinion that you may  
25 have formed about Charles Manson and the Manson family to creep  
26 into your deliberations?

27 A I would have to think about it, but I would  
28 endeavor to keep it out of my mind in a case such as that.

E-2

1           Q     What if that mythical juror nudges you and says,  
2     "Hey, Mr. Bailey, we have been in here five days, you can't  
3     seem to make up your mind. Doesn't your good common sense  
4     tell you that anybody who has ever been associated with  
5     Charles Manson is a bad actor and is guilty?"

6                     Would you buy that kind of an argument, even if  
7     you were really anxious to get out of there after five days?

8           A     No, I wouldn't buy that kind of an argument.

9           Q     What about your thinking if you were the one in an  
10    11-1 jury vote, would you change your vote merely because  
11    the other 11 jurors had voted against you or had voted in a  
12    way which was contrary to your opinion?

13          A     No.

14          Q     You would, naturally, as Mr. Katz has probably  
15    suggested, you would naturally sit down with your fellow  
16    jurors and consider the evidence; you would listen to them,  
17    you might even stretch your patience to do so, but that once  
18    you have made up your mind you are not going to change it,  
19    I take it, merely to speed up the process of arriving at a  
20    verdict, isn't that so?

21          A     That's right.

22          Q     And that's, of course, irrespective of which way  
23    you are going, whether you are one for guilty or one for  
24    not guilty?

25                     Yesterday I was questioning Mr. Dukes about the  
26    burden that the People have. Did I make myself clear enough  
27    so that you could understand the thrust of my questions to  
28    Mr. Dukes --

1 A Yes.

2 Q -- in that area?

3 In other words, do you understand and have no  
4 quarrel with the fact that essentially not guilty means not  
5 that my client has proven his innocence but it means that the  
6 People have not proven him guilty.

7 A Yes.

8 Q In other words, it is the other side of the coin  
9 of guilty.

10 Do you have any quarrel with that law?

11 A No.

12 Q Okay; so that while we obviously hope that it will  
13 not be this kind of situation, nonetheless if you come up, if  
14 you are in the jury room and you are not convinced beyond a  
15 reasonable doubt and to a moral certainty of my client's guilt  
16 I take it you are not going to convict him even though you have  
17 not been equally convinced of his literal innocence?

18 A Yes.

19 Q Okay.

20 Okay; another way of saying, then, that you have no  
21 quarrel with the law that says my client does not have to  
22 prove his innocence, I take it you have --

23 A No quarrel.

24 Q -- as you said all along, you have no quarrel  
25 with that? Okay.

26 Will you agree, however, that we don't conduct  
27 our ordinary affairs in life in this fashion; in other words,  
28 this is -- would you agree that this is a kind of unusual way

1 of evaluating, let's say, evidentiary material that comes to  
2 us?

3 A Yes.

4 Q Surely; so that you will appreciate, then, you  
5 appreciate then, do you not, that in everyday affairs we are,  
6 perhaps, not quite so critical, but that this critical  
7 evaluation of evidence is required when you are in the jury  
8 room.

9 You appreciate and understand that?

10 A Yes.



6a-1

1 Q Do you feel, finally, Mr. Bailey, that you would  
2 be able to sustain a rather demanding responsibility in this  
3 case of being that kind of a juror?

4 A Yes.

5 Q I don't know if you are or have been a church goer  
6 or not, but the thrust of my question really is, it is kind of  
7 like when one goes to church, one very often has the feeling  
8 that he sort of rises above the more basic feelings, I suppose;  
9 and in that same way will you be able to rise above, if need  
10 be, ordinary ways of looking at things and follow the court's  
11 instructions carefully with respect to how you must evaluate  
12 evidence in this case?

13 A I will try my best.

14 Q Surely, that's all we can possibly ask you to do.

15 One thing, finally, again, we don't know the  
16 extent of testimony in this case that may be coming from police  
17 officers, but do you have any attitude toward police officers  
18 that makes you think you could not give their testimony a fair  
19 and objective and impartial scrutiny?

20 A No.

21 Q I think you heard me use the term "artificial  
22 standards" and I am sure that you will make every effort not to  
23 apply such standards to anyone's testimony in this case; is  
24 that right?

25 A Yes.

26 THE COURT: Pass?

27 MR. WEEDMAN: I am sorry --

28 Q I think I neglected to ask you if there is a

6a-2

1 Mrs. Bailey and, if so, if she is employed, and if so, what she  
2 does.

3 A There is a Mrs. Bailey and she is a housewife.

4 MR. WEEDMAN: All right. Thank you.

5 Pass for cause, your Honor.

6 THE COURT: People?

7 MR. KATZ: Thank you.

8 Q Mr. Bailey, what general area of the city do you  
9 reside?

10 A Highland Park.

11 Q Mr. Bailey, will you agree with the proposition  
12 that some crimes, because of their very nature, are such that  
13 they are not committed in public and, therefore, there are no  
14 eyewitnesses to the perpetration of that crime?

15 A Yes.

16 Q And I take it, then, it doesn't surprise you that  
17 in the State of California a person can be convicted of murder  
18 in the first degree based wholly upon circumstantial evidence;  
19 is that correct?

20 A That's right.

21 Q Is it fair to say that this principle of law does  
22 not in any way, shape or form offend your sense of justice or  
23 fair play?

24 A That's right.

25 Q And do you adhere to the proposition that if a man  
26 be proven guilty beyond a reasonable doubt and to a moral  
27 certainty based wholly upon circumstantial evidence that the  
28 juror is duty bound to vote guilty?

1 A Yes.

2 Q And that would be so despite the fact that there  
3 was no evidence of eyewitness testimony concerning the killing  
4 or eyewitness testimony concerning having observed the body  
5 in death; is that correct?

6 A Yes.

7 Q Do you believe that it is possible, sir, under  
8 certain circumstances to hide a body so that it will never be  
9 recovered?

10 A Yes.

11 Q Now, do you think that because this is a murder  
12 case and because the People's case will be predicated wholly  
13 upon circumstantial evidence and because of a further fact that  
14 should there be a return of a first degree murder verdict that  
15 you would thereafter be obliged to go into the penalty phase of  
16 this trial to determine whether or not another human being shall  
17 live or die, that you might be tempted to compromise your  
18 verdict in the guilt phase solely to avoid the difficult area  
19 of penalty?

20 A No.

21 Q All right; so that what you are telling us that  
22 even though you are aware of the fact that once there is a  
23 return of a first degree murder verdict and you must make  
24 thereafter the determination of life or death, you would in no  
25 way compromise or let the penalty consideration enter into your  
26 deliberation as to the guilt or innocence of the defendant in  
27 the guilt phase; is that correct?

28 A Yes.

1           Q     You understand that you are not to consider in any  
2 manner, shape or form the penalty in this case during the  
3 deliberation on the guilt or innocence phase; is that correct?  
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5           A     Yes.  
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1                    You won't, therefore, let any consideration of  
2 the possible penalty in this case influence your verdict in  
3 the guilt phase, is that correct?

4            A        Yes.

5            Q        Now, do you believe in the principle that all  
6 persons should be equally treated under the law?

7            A        Yes.

8            Q        And in that connection I take it if you felt that  
9 a person was guilty of murder in the first degree you wouldn't  
10 let the fact of his evident youth in any way influence your  
11 verdict, is that correct?

12          A        Yes.

13          Q        I take it that you would not accord to this defen-  
14 dant, that is, give to this defendant some benefit you would  
15 not give to any other defendant who is sitting in his same  
16 circumstances, is that correct?

17          A        Yes.

18          Q        And then if based wholly on circumstantial evidence  
19 you have an abiding conviction to a moral certainty that the  
20 defendant is guilty of murder in the first degree you will  
21 unhesitatingly follow your obligation and vote guilty; is that  
22 correct?

23          A        Yes, under those circumstances.

24          Q        Yes. That always assumes that you have an abiding  
25 conviction to a moral certainty, isn't that correct?

26          A        Yes.

27          Q        I take it you will hold us to that burden of proof,  
28 is that right?

1 A Yes.

2 Q Merely because this case is based wholly upon  
3 circumstantial evidence, would that fact alone cause you to  
4 require the People to sustain a greater burden of proof than  
5 that required by law such as demonstration of that degree of  
6 proof which excludes all possibility of error?

7 A No.

8 Q All right. So in other words, whether the case is  
9 based on direct evidence or whether the case is based on cir-  
10 cumstantial evidence our burden remains the same, you under-  
11 stand that?

12 A Yes.

13 Q And whether or not this is a petty theft case or  
14 indeed even a misdemeanor traffic violation which is sometimes  
15 called a quasi-criminal offense, you would still <sup>hold</sup> us to the same  
16 burden which is proof beyond a reasonable doubt and to a moral  
17 certainty and no greater burden of proof; is that correct?

18 A Yes.

19 Q We have been talking about this presumption of  
20 innocence and in that connection his Honor very clearly explained  
21 that throughout the course of these proceedings, Mr. Grogan is  
22 clothed with that presumption and that remains all the way  
23 into the jury room until at some point of time you believe from  
24 all of the circumstances of the case that you have an abiding  
25 conviction to a moral certainty. At this time the presumption  
26 of innocence would be rebutted?

27 A Yes.

28 Q Now, if in fact this presumption of innocence was

1 conclusive, then there would be no trial because the case  
2 would be over; isn't that right?

3 A Yes.

4 Q So you recognize this presumption, however important  
5 it is, is a rebuttable one, isn't that right?

6 A Right.

7 Q If the People sustain their burden of proof we  
8 have rebutted that presumption, haven't we?

9 A Yes.

10 Q Now, we have talked about the distinction between  
11 the approving of capital punishment in the general sense and  
12 being able to personally participate in the death penalty  
13 verdict. And I take it in that connection you appreciate the  
14 distinction, is that correct?

15 A Yes.

16 Q And in the case before you, do you believe that if  
17 the case, that is, if the facts which unfold during the course  
18 of both phases of the trial, should we reach that phase, are  
19 such as to warrant in your mind, in your heart, in your  
20 conscience, the return of the death penalty verdict, would you  
21 be able to vote that verdict, that is, to personally participate  
22 in a death penalty verdict?

23 A If I decided that is the way I feel, I could  
24 participate.

25 Q All right. Can you conceive of circumstances --  
26 and I don't want you to tell me what they are -- but can you  
27 conceive of circumstances in which you would be willing to  
28 personally participate in a death penalty verdict?

1           A     Yes.

2           Q     All right. So in other words what you are saying  
3 is you have an open mind as to the issue of penalty in this  
4 case should we reach that phase and that the People as well  
5 as the defendant can get a full and fair and complete trial  
6 on the issue of the proper penalty in this case; is that  
7 correct?

8           A     Yes.

9           MR. KATZ: Thank you. Pass for cause.

10          THE COURT: All right. Now, gentlemen, is it People's  
11 peremptory?

12          MR. KATZ: Yes. May I have one moment, your Honor?

13          THE COURT: Yes. Thank you.

14                 (Short pause.)

15          MR. KATZ: Yes, your Honor. The People wish to thank and  
16 excuse Mr. Dukes.

17          THE COURT: Very well. Thank you very much.

18          THE CLERK: Mrs. Leona Michaels, M-i-c-h-a-e-l-s.  
19 First name spelled L-e-o-n-a.  
20

21                         LEONA MICHAELS

22          BY THE COURT:

23           Q     Well, now, lady, you have been in the courtroom  
24 since we started picking the jury in this case?

25           A     Yes, sir.

26           Q     And I would assume then that everything I have  
27 said to the jury you have heard?  
28

          A     Yes, sir.



1 Q Or anything I have said relative to the case?  
2 You heard me read the charge that has been filed against the  
3 defendant?

4 A Yes, sir.

5 Q All right. Now, let us assume that you have been  
6 sworn to try the case as a juror and the case has been tried.  
7 You go to the jury room with the jurors. Now, at that time  
8 you may have heard me say many times here the jury could make  
9 a finding of not guilty in which event the case would be fully  
10 concluded. It's all over. The jury could make a finding of  
11 guilty as charged.

12 If they should make a finding of guilty as charged  
13 then the jury would set the degree of the crime, first degree  
14 or second degree. If the jury set the crime at second degree  
15 the case is then concluded insofar as the jury is concerned.

16 If the jury should make a finding of first degree,  
17 then there would be, following that finding, there would be a  
18 penalty hearing for the purpose of the jury making a fixation  
19 or finding on penalty. What is known as the death penalty,  
20 or life imprisonment.

21 Now, we will assume you are on the jury and that  
22 the penalty hearing has just been concluded and you are in the  
23 jury room, you are about to vote on the penalty question.

24 Now, if you will assume that, I will ask you this  
25 question: at that time would you automatically vote against the  
26 imposition of the death penalty without regard to any evidence  
27 that might be developed at the trial of this case?

28 A Yes, I would.

1 Q The answer is yes?

2 A Yes, sir.

3 Q I will ask you further, I think you have answered  
4 it very honestly. Is there any question in your mind at all  
5 about it, that you wouldn't waver at all from that position?

6 A No, sir.

7 Q And I will repeat myself. So there can be no  
8 question, no matter what is testified to, no matter what the  
9 testimony is, you would definitely vote against the death  
10 penalty; is that a correct statement?

11 A Yes, sir.

12 THE COURT: Well, I think, gentlemen, I am going to  
13 excuse this lady.

14 MR. WEEDMAN: Yes, I agree.

15 THE COURT: I think the answers are very clear.

16 MR. KATZ: I agree, your Honor.

17 MR. WEEDMAN: I agree, your Honor. There will be no  
18 objection.

19 THE COURT: Thank you, lady. I will excuse you. Thank  
20 you for your honest answers.

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1 MR. KATZ: The court is stating the grounds.

2 THE COURT: Oh, yes. I will. I find that ground for  
3 excusing the juror exists for cause under the law set down by  
4 the Supreme Court in the Witherspoon decision. Also, in  
5 addition I find that for cause exists under subdivision 2 of  
6 section 1073 and subdivision 8 of section 1074 of the Code of  
7 Civil Procedure of the State of California.

8 Now, Mr. Clerk, if you will, call another juror.

9 THE CLERK: Miss Marie A. Torres, T-o-r-r-e-s.

10  
11 MARIE A. TORRES

12 BY THE COURT:

13 Q Now, I will ask you the same questions.

14 Have you heard everything that I have said to the  
15 jurors since we started the picking of the jury in this case?

16 A Yes.

17 Q Did you hear me read the charge that has been filed  
18 against the defendant in this case?

19 A Yes.

20 Q I am going to ask you to assume that you have been  
21 selected, sworn in and selected as a juror in this case. The  
22 case has been tried. You have gone to the jury room to  
23 decide the case. At that time the jury could vote not guilty  
24 which would conclude the case in its entirety. The jury could  
25 vote guilty as charged and then the jury would have to fix  
26 the degree of the crime, first degree or second degree. If  
27 the jury would make a finding of murder second degree the jury  
28 would be excused because that would conclude their duty in the

1 case. If the jury should make a finding of guilty first degree  
2 then there would be a subsequent penalty hearing held for the  
3 purpose of the jury arriving at the penalty, what is the  
4 penalty. And the penalty would be fixed or set by the jury as  
5 either the death penalty or life imprisonment.

6 Now, is that procedure all clear in your mind?

7 A Yes.

8 Q All right. Let's assume that you have been sworn  
9 as a juror now and you have had the penalty hearing, and you  
10 are in the jury room deciding on the penalty. I will ask you  
11 this question. At that time and place would you automatically  
12 vote against the imposition of the death penalty without regard  
13 to any events that might be developed at the trial of this  
14 case?

15 A No.

16 Q All right. Now, I will ask you this next question:  
17 do you feel that you could be absolutely fair and impartial in  
18 deciding this case if you are selected as a juror?

19 A Yes.

20 Q You realize you don't represent or act for either  
21 the People or the defendant, but you are a third wheel, you  
22 are a judge just the same as I am a judge except you judge  
23 the facts and I don't judge the facts; that is clear to you?  
24 I make decisions of law and instruct the jury and other duties,  
25 but I don't find guilty or not guilty, you understand that?

26 A Yes.

3-1  
1 Q And whatever the witness or witnesses testify to,  
2 the facts, you, the juror -- or the jury -- ultimately pass  
3 on the facts. You pass on the facts.

4 You say, "I believe this witness," or "I don't  
5 believe this witness" -- you, not I -- you, as well as other  
6 jurors.

7 Do you feel you would be fair and impartial in  
8 your decisions?

9 A Yes.

10 Q And that your primary, basic and only duty is to  
11 be fair and impartial and not swayed by any particular matter;  
12 do you understand that?

13 A Yes.

14 Q And so, therefore, we have discussed, the name of  
15 Manson has come into discussion or some of Manson's friends.

16 Now, I am not going to ask you whether you have  
17 made up your mind or you have got opinions or what you think  
18 of Manson or you don't. Whatever it is, could you put that to  
19 one side and remember your paramount duty is honesty in what  
20 are the facts, not being swayed.

21 If you allow factors to sway your judgment, then  
22 you are not honest in your stating that you will be a fair and  
23 impartial juror, if you are going to be swayed by what you  
24 think of Manson or what you don't think of him, don't you see?

25 Manson is not on trial, I've said that before; you  
26 are not convicting or finding guilty or not guilty of Manson,  
27 but another man, the defendant is being found guilty or not  
28 guilty; so, whatever you may think of any witness, I don't care

8-2

1 whether it is Manson or Smith or Johnson or anybody else, you  
2 must put your personal feelings to one side and determine this  
3 question, what is the witness testifying to that is true and  
4 what is the witness testifying to that is not true.

5 That is your decision; you understand that?

6 A Yes.

7 Q And you feel you could do that?

8 A Yes.

9 Q All right.

10 Is there anything at all that you think of that  
11 might come into your mind that would sway your judgment one  
12 way or the other by reason of which you couldn't maintain an  
13 open mind throughout the trial?

14 A No.

15 THE COURT: Thank you.

16 I will pass the juror.

17 MR. WEEDMAN: Thank you, your Honor.

18 Q Miss Torres, are you employed?

19 A Yes.

20 Q What do you do for a living?

21 A I work for a title insurance and trust company  
22 and I am a general clerk; I type and I file.

23 Q I see.

24 Do you have any relatives or close friends who  
25 are in law enforcement?

26 A No.

27 Q Is there anything about the testimony, if we  
28 should get any substantial testimony from police officers,

8-3

1 that makes you think that you should treat their testimony any  
2 differently than you would evaluate testimony from other  
3 witnesses?

4 A No.

5 Q Is there anything you have heard about this case  
6 so far that makes you think that you could not give both the  
7 People and my client a fair and impartial trial?

8 A No.

9 Q Is there anything about the fact that the People  
10 are urging that a murder has been committed here that you might  
11 find so unpleasant, perhaps offensive, that you could not give,  
12 again, both sides --

13 A No.

14 Q -- a fair hearing in the matter?

15 Okay.

16 With respect to the circumstantial evidence  
17 matters that Mr. Katz has been asking the other jurors, I  
18 imagine you heard his questions and the answers of the other  
19 jurors?  
20

21 A Yes.

22 Q Do you understand that despite the fact that you  
23 may utilize circumstantial evidence equally as well as direct  
24 evidence that you are also equally free to reject circumstan-  
25 tial evidence as you are to reject any other kind of evidence  
26 if it does not create a conviction in your mind that it is the  
27 truth?

28 A Yes.

Q In other words, by your answer I assume you are

8-4

1 telling us that just because there's been a lot of talk here  
2 about circumstantial evidence it doesn't mean that somehow,  
3 magically, it is any better than any other kind of evidence?

4 A Yes.

5 Q You understand that?

6 A Yes.

7 Q With respect to the death penalty, do you feel that  
8 if there was a conviction here, is charged, of murder in the  
9 first degree that you would automatically impose the death  
10 penalty; or would you wait until you hear all of the evidence  
11 in the case?

12 A I'd have to wait.

13 Q If the evidence should reflect a lifestyle on the  
14 part of my client which is different than your own or with  
15 which, at least, you do not agree, would you use that, alone,  
16 as evidence of my client's guilt?

17 A No.

18 Q You agree, then, Miss Torres, that you can have a  
19 defendant before you who, as a matter of fact, you may actively  
20 dislike because of the manner in which they live their lives  
21 and yet that is not evidence that they have committed a crime?

22 A No.

23 Q Do you understand, again, that the kinds of  
24 evidence Mr. Katz and I are talking about during the course of  
25 our questioning is not really evidence in this case; these are  
26 merely statements by counsel necessarily involving what might  
27 come to pass here?

28 A Mm-hm.



8-5

1           Q       That the only evidence you get in this case comes  
2 from the witness box and from exhibits, and so on?

3           A       Yes.

4           Q       And you likewise understand that this is true with  
5 respect to instructions that you have been hearing from Mr.  
6 Katz and myself?

7           A       Yes.

8           Q       That the ultimate giver of instructions is Judge  
9 Call, in this case.

10          A       Yes.

11          Q       And he's the one that will tell you what the law  
12 is and not Mr. Katz and not myself.

13          A       Yes.  
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8A

1 Q Miss Torres, you understand that in evaluating  
2 testimony of witnesses that you are entitled to take into  
3 account many, many things, and one of which is their appearance  
4 while they are testifying.

5 You understand that?

6 A Yes.

7 Q Will you, in a proper case, Miss Torres, and if  
8 my client should testify, be willing -- be willing -- not to  
9 be prejudiced because of the manner in which my client may be  
10 dressed here in court or in the manner in which his hair is  
11 cut or, if the case may be, the manner in which he may be  
12 shaved?

13 A You don't judge a book by its cover.

14 Q Surely; that's a marvelous answer, I wish I had  
15 thought of that.

16 Would you appreciate, Miss Torres, that my client  
17 is in custody and that he must be transported here back and  
18 forth from the County Jail, and that this may, indeed, add,  
19 unfortunately, to his appearance and, therefore, another good  
20 reason for not judging a book by its cover?

21 A I don't care where he sleeps.

22 Q Is there anything about the trial that would cause  
23 you a personal hardship?

24 A No.

25 Q And have you had any prior criminal jury experience?

26 A No.

27 Q Yes, and finally, I just wanted to touch on this  
28 one point: Have you had occasion to see Mr. Katz and myself,

8a-2

1 perhaps talking and perhaps even smiling and I suppose  
2 sometimes chuckling at one another during the course of your  
3 being out in the audience waiting to be called.

4 A I only see you inside here, but I don't pay  
5 attention to anything outside.

6 Q Well, in the event that you should see Mr. Katz  
7 and I acting in a very friendly fashion, will you understand  
8 that that has nothing whatever to do with his responsibility  
9 and his efforts on behalf of the People and has nothing  
10 whatever to do with my responsibility and my effort on behalf  
11 of my client in this case?

12 A Yes.

13 Q And do you appreciate that the reason I ask the  
14 question is that sometimes lay people will see opposing counsel  
15 out in the hall, even in the most serious case, laughing,  
16 and will you please not be offended if you should see me  
17 laughing or Mr. Katz laughing or, indeed, see me sharing,  
18 perhaps, an anecdote with the investigating officers and the  
19 investigator from the district attorney's office who are here?

20 A Uh-hmm.

21 Q This is no manifestation whatever of the serious-  
22 ness of this matter?

23 A Uh-hmm.

24 Q And my last question to you, Miss Torres, is  
25 do you understand and accept -- and I thank you for this,  
26 Judge Call -- the statement by Judge Call a few moments ago  
27 that you are not here as an advocate for either the People  
28 or for the defendant; that you are not here to espouse

8a-3

1 Mr. Katz' position or to espouse my position; you are here  
2 to evaluate all of the testimony that comes in and all the  
3 evidence that comes in?

4 A Yes.

5 Q You are not here as a partisan at all, that you  
6 are not here to cheer one side on as against the other, in  
7 other words, not like a football game -- although sometimes it  
8 may seem that way?

9 A All right.

10 MR. WEEDMAN: Thank you, Miss Torres.

11 Pass for cause.

12 THE COURT: People.

13 BY MR. KATZ:

14 Q Miss Torres, it is my turn at this juncture.

15 His Honor outlined, once again, and very clearly,  
16 and both counsel appreciate this fact, the function of a juror  
17 that is, you are a judge.

18 You understand that?

19 A Yes.

20 Q You are a judge of the facts and before you can  
21 determine what the facts are you have to listen to the  
22 testimony and then you have to make some very hard decisions  
23 as to who is telling the truth or as to what weight, if any,  
24 you will give to a given piece of evidence as it unfolds from  
25 the witness stand.

26 You understand that?

27 A Yes.

28 Q In that connection, there are a lot of people who

1 would rather not make any decisions.

2 I know, for example, when I go to a market and I  
3 am asked to get some bread, I will stand for 10 minutes  
4 looking at 500 different loaves and not knowing which bread  
5 to get or which preservative I should avoid, and, accordingly,  
6 I have a rough time making that kind of a decision, what  
7 kind of loaf of bread to get.

8 Here, if selected as a juror, you have a much more  
9 grave responsibility in that the decisions you will be making  
10 may, indeed, not only affect a person's freedom for a consider-  
11 able period of time but may also affect his future living  
12 habits, in that he may be sentenced to death.

13 You understand that?

14 A Yes.

15 Q So that if selected as a juror you would be charged  
16 with some very grave responsibilities; isn't that correct?

17 A Yes.

18 Q Are you willing to accept that?

19 A Yes.

20 Q Now, Mr. Weedman asked you a question concerning  
21 Mr. Grogan taking the stand.

22 You understand, again -- let me emphasize this --  
23 Mr. Grogan is not obliged to say anything in this courtroom.  
24 He is not obliged to get on that stand and prove his innocence.

25 The People have to prove his guilt beyond a  
26 reasonable doubt and to a moral certainty; you understand  
27 that?

28 A Yes.

1           Q       But if Mr. Grogan decides to take the stand,  
2 then I take it that you won't have the attitude that, well,  
3 he's the defendant testifying and, therefore, if he says he  
4 didn't do it I am going to adopt that, and I have a reasonable  
5 doubt, without evaluating his testimony in the light of the  
6 other objective evidence; is that correct?

7           A       Yes; everybody has to have a chance to prove  
8 that they are innocent.

9           Q       All right; but what I am saying is this, merely  
10 because the defendant is a defendant and he takes the stand,  
11 you are not going to treat him any differently than any other  
12 witness?

13          A       No.

9-1

1 Q In other words, you are going to apply the same  
2 standard in determining what weight, if any, you would give to  
3 his testimony, such as what is his motive for testifying and  
4 how does he testify, what is his demeanor while he testifies,  
5 and weigh his testimony in light of the other objective  
6 evidence before assessing what weight, if any, you will give  
7 to his testimony; is that correct?

8 A Yes.

9 Q All right. Now, let's jump to a police officer.  
10 There are some people, unfortunately, because of experiences  
11 in the past with law enforcement, that believe that officers  
12 suffer from what might be regarded as an occupational  
13 disability which obliges them to stretch the truth in order  
14 to secure a conviction. Do you believe that police officers  
15 do that?

16 A I don't know.

17 Q Well, let me ask you this. Do you think that a  
18 police officer, merely because he was a police officer, would  
19 be more likely than other persons to stretch the truth in  
20 order to secure a conviction?

21 A Yes, I guess he would know more about it.

22 Q Well, I don't think you understood the thrust of  
23 my question. That is my fault, Miss Torres. Let me rephrase  
24 it clearly. What I am driving at is some people have such  
25 deep-seated feelings against so-called policemen because they  
26 belong to what is loosely regarded as law and order or the  
27 establishment, that they believe that a police officer will  
28 get on the stand and say anything in order to secure a

9-2

1 conviction against the defendant. I take it you don't sub-  
2 scribe to that belief, do you?

3 A No.

4 Q All right. In other words, you are going to listen  
5 to his testimony and you are going to evaluate it in the light  
6 of the other evidence that unfolds during the course of the  
7 trial, isn't that right?

8 A Yes.

9 Q And you are going to weigh then his credibility by  
10 applying the same standards in assessing his credibility as  
11 you would any witness?

12 A Yes.

13 Q Regardless of the profession to which that witness  
14 belongs, is that right?

15 A Yes.

16 Q If you believe that the testimony of the police  
17 officer, for example, was reasonable, that it is logical, that  
18 it fits in with the other evidence, then you can accept it?

19 A Yes.

20 Q If you believe on the other hand it is not reason-  
21 able, that the testimony is stretched and tainted and poisoned,  
22 then you can reject it, you understand that?

23 A Yes.

24 Q That holds true with any witness, isn't that right?

25 A Yes.

26 Q Lastly then on this one point what you are telling  
27 me is that we don't have a witness who may be a police officer  
28 who starts out with two strikes against him merely because he



1 is a police officer, is that right?

2 A Yes.

3 Q All right. So what you are saying is that you are  
4 just going to look at the evidence?

5 A Yes.

6 Q And you are going to weigh that testimony and see  
7 whether or not it is logical to you, whether it meets with your  
8 common sense, is that right?

9 A Yes.

10 Q All right. It has been said and I asked Miss Cota  
11 about this, that women, or the distaff side are the weaker sex.  
12 And I don't believe that for a moment, judging from the scars  
13 I have on me.

14 A Yeah?

15 Q But sometimes women would rather not, it is said,  
16 make the decision whether a person should live or die. I am  
17 going to ask you to think very carefully about the next  
18 question I am going to ask before answering it. If you believe  
19 in your heart and your mind and your conscience based upon the  
20 evidence in this case that the death penalty is warranted  
21 would you be able to vote that conviction knowing that you  
22 would have to come back into this seat where you are sitting  
23 now and tell the court by your verdict that Mr. Grogan is  
24 sentenced to death? Can you do that?

25 A Yes, I could.

26 Q All right. Now, do you think that because of the  
27 evident youth of Mr. Grogan -- and you are rather youthful  
28 yourself --

1           A       Yes.

2           Q       -- that you would so identify with the defendant  
3 that you would be tempted to compromise your verdict in the  
4 guilt phase of the trial?

5           A       You mean just because him and I might be the same  
6 age that I would lean on him?

7           Q       Yes. Would you give him some benefit you would  
8 not give any other defendant based upon the evidence in this  
9 case and based upon the same circumstances?

10          A       No, I -- it wouldn't make no difference how young  
11 he is.

12          Q       All right. Now, if his Honor instructs you, as I  
13 am sure he will at the conclusion of the case, that your  
14 verdict can in no way be influenced by any sympathy you may  
15 have for the defendant, would you unhesitatingly follow that  
16 instruction?

17          A       You mean like if I started feeling sorry for him  
18 I would, like, vote him not guilty?

19          Q       Yes. In other words, you wouldn't do that in the  
20 guilt phase?

21          A       No.

22          Q       And the point I am making is that you may over a  
23 period of time notice the expression on Mr. Grogan's face. You  
24 may watch him, you may feel sympathetic towards him as the  
25 testimony unfolds in the case, but nevertheless from the  
26 evidence believe beyond a reasonable doubt and to a moral  
27 certainty that Mr. Grogan committed murder in the first degree,  
28 I take it that whatever sympathy you have for the defendant

1 will not influence your fair and impartial determination of  
2 his guilt or innocence, is that correct?

3 A No. I mean, you are telling me that -- tell me  
4 that again.

5 Q Yes, I will.

6 Do you think that you would permit the youthful  
7 appearance of Mr. Grogan in any manner, shape or form to  
8 influence your verdict in the guilt phase of this trial?

9 A No.

10 Q And whether or not Mr. Grogan is 20 years old, 19  
11 years old, 40 years old, 50 or 60, he will be treated the same  
12 as any defendant, namely, his guilt or innocence will be  
13 determined based upon the evidence in this case and only the  
14 evidence in this case, is that right?

15 A Yes.

16 Q You can be fair to the People in that regard, is  
17 that correct?

18 A Yes.

19 Q All right. Can you think of anything that has been  
20 raised by way of questioning by Mr. Weedman or myself which  
21 would render you incapable of being fair and impartial to both  
22 sides?

23 A No.

24 Q Do you think the People can get a fair trial on all  
25 issues including the proper determination of penalty should we  
26 reach that phase?

27 A Yes.

28 Q If you were sitting right here in this seat where

1 I am sitting?

2 A Yes.

3 Q Would you want to have 12 jurors of your same frame  
4 of mind sitting in judgment on this case and hear the People's  
5 case?

6 A Oh, yes.

7 Q And by the same token if you were in Mr. Weedman's  
8 seat would you want 12 jurors of your frame of mind to hear the  
9 defendant's case?

10 A Yes.

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1 Q So what you are saying is that you have a  
2 completely open mind as to the guilt or innocence of the  
3 defendant and assuming there is a first degree murder verdict  
4 you have a completely open mind at this time as to the proper  
5 penalty in this case?

6 A Yes.

7 Q Now, you heard his Honor state that there will  
8 be no eyewitness testimony to the killing, no production of  
9 the body or any parts thereof?

10 A Yes.

11 Q Would you refuse to vote the death penalty in  
12 this case irrespective of the evidence solely because the case  
13 rests on circumstantial evidence?

14 A You mean like if you don't show me the body?

15 Q Yes.

16 A Then if you are asking me for the death penalty?

17 Q Yes.

18 A Like I would tell you no?

19 Q Yes. What I am saying is that you don't know  
20 what the kind of circumstantial evidence is in this case.  
21 You don't know how strong our case is or how weak our case is,  
22 or indeed whether we even have a case; isn't that right?

23 A Yes.

24 Q What I am asking you without discussing any of  
25 the evidence in this case is that would you automatically  
26 refuse to vote the death penalty in a circumstantial evidence  
27 case solely because and irrespective of the evidence, this  
28 case being based upon circumstantial evidence?

9a-1

1 MR. WEEDMAN: I will object to the question, your Honor,  
2 because it is an inferential and improper statement of the  
3 law with respect to the options that the jury has in the  
4 penalty phase.

5 MR. KATZ: Your Honor, I would like to rephrase. I think  
6 it was poorly worded.

7 THE COURT: You withdraw it then?

8 MR. KATZ: Yes.

9 THE COURT: All right.

10 MR. WEEDMAN: I would appreciate it if the court would  
11 admonish the jury to disregard then, Mr. Katz' question and  
12 not draw any inferences from it with respect to the state of  
13 the law.

14 THE COURT: I will have to have a reading.

15 MR. WEEDMAN: I feel that will just reiterate the matter  
16 further.

17 THE COURT: Well, I will act in this fashion.

18 MR. WEEDMAN: All right, your Honor.

19 THE COURT: There will be a new question asked. Therefore  
20 I will ask the jury to disregard the last question propounded.

21 Reframe your question.

22 MR. WEEDMAN: Thank you, your Honor.

23 Q BY MR. KATZ: Now, it is your understanding based  
24 upon what his Honor stated to you at the very outset that this  
25 case will rest wholly upon circumstantial evidence, is that  
26 correct?

27 A Yes.

28 Q Now, irrespective of the evidence in this case,

9a-3

1 is your position such and your feeling such as you would  
2 automatically refuse to vote the death penalty, regardless of  
3 the kind of evidence adduced at this trial solely because we  
4 failed to produce a body?

5 MR. WEEDMAN: Your Honor, I will object to the question  
6 on the same ground. The jury has an absolute right --

7 THE COURT: Overruled. Let me get an answer.

8 MR. WEEDMAN: Excuse me, your Honor. I would like to be  
9 heard for the record. Perhaps we can approach the bench.

10 THE COURT: Step into chambers and bring the reporter.  
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1 (The following proceedings were had  
2 in chambers in the presence of the  
3 defendant and counsel:)

4 THE COURT: Now we are in chambers with the defendant.  
5 First, read the question as far as we got.

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

8 "Q Now, irrespective of the evidence  
9 in this case is your position such and your  
10 feelings such as you would automatically refuse  
11 to vote the death penalty regardless of the kind  
12 of evidence adduced at this trial solely because  
13 we failed to produce a body?"

14 MR. WEEDMAN: Your Honor --

15 THE COURT: I will listen to you. It calls for a prejudging  
16 of testimony, for one thing. I can't answer, if you ask me  
17 the question I can't answer it.

18 MR. KATZ: I said irrespective of the evidence.

19 THE COURT: You have got to follow the wording of the  
20 Supreme Court and take their crystallized treatment: "Would  
21 you vote automatically against the death penalty regardless  
22 or irrespective of any testimony at all?" Now, if the juror  
23 says "Yes, I would," that is the end of it. The juror  
24 says "No, I wouldn't," and you have got an answer to your  
25 question. Not a direct answer the way you want it, but you  
26 have got an answer to your question. Because she says, "No,  
27 I would not automatically vote against the death penalty."

28 So there in effect is an answer to your question.



1 But when you pinpoint it more you get into  
2 conclusionary matters that you can't answer.

3 MR. KATZ: Your Honor, may I be heard.

4 MR. WEEDMAN: Since it is my objection --

5 THE COURT: All right. Go ahead. Get your objection in.

6 MR. WEEDMAN: Thank you, your Honor.

7 THE COURT: Go ahead.

8 MR. WEEDMAN: I will object to the question, your Honor,  
9 because my understanding of the law is such that a juror may  
10 properly reject the death penalty merely because they are not  
11 convinced in this area that lies beyond the reasonable doubt  
12 necessary for guilt, that in fact a murder has -- that in  
13 fact that there has been a homicide. In other words the jury,  
14 as I understand the law in the penalty phase may properly  
15 reject the death penalty in a circumstantial evidence case.  
16 It is the kind of option that the law gives them.

17 THE COURT: Well, now, let's wait. Let's stop you right  
18 there and say you are correct. Won't assume you are or not.  
19 Suppose you are correct, that doesn't prohibit counsel from  
20 asking the question.

21 MR. WEEDMAN: It does because it is not a question then  
22 for cause, your Honor.

23 THE COURT: Well, but it may be groundwork for a peremptory  
24 challenge. I don't know. That is the reason for your voir dire,  
25 is to find out in substance whether you want that man or you  
26 don't, you see.

27 MR. WEEDMAN: I appreciate that, your Honor. Certainly,  
28 but what I think it does, it misleads the jury as to their

1 options in the penalty phase.

2 THE COURT: Well, I am more inclined to feel I don't  
3 agree altogether with -- I am not saying you are wrong. I  
4 don't necessarily agree with your argument, but my worry,  
5 disturbment is, if a juror can answer the question necessarily  
6 without prejudging the case because that answer depends on  
7 many factors that may be testified to.

8 Now, when a juror says, "I won't vote that  
9 penalty" now, you have got an answer. "I don't care what you  
10 put on."

11 But when the question is asked in the fashion  
12 "Well, if there is no body, if there is no body produced.  
13 Now, are you saying you won't vote for the death penalty?"

14 That is rather awkwardly stated, but that is what  
15 you are in substance asking. "If we don't prove a body,  
16 we don't establish a body?" But we have other testimony.  
17 We have circumstantial evidence. We have no body. Now, are  
18 you telling me -- you are talking to the juror -- "Are you  
19 telling me you won't vote, or are you stating you won't vote  
20 the death penalty?"

21 But there you get into suppositional matters.

22 MR. KATZ: Well, your Honor --

23 THE COURT: You get into matters of testimony. I know what  
24 I would say if you would ask me that question. I don't know.  
25 I have got to have that question.

26 MR. KATZ: That is a fair answer.

27 THE COURT: There is the stumbling block.

28 MR. KATZ: That is not a stumbling block. In fact I would

1 delighted to have that kind of an answer.

2 But as you recognized very astutely, first of all  
3 I would not attempt by reason of a negative answer to my  
4 question to exercise a challenge for cause under Witherspoon.  
5 All I am doing is trying to get a general feeling concerning  
6 the juror's state of mind.

7 THE COURT: Well, I would overrule counsel if you can  
8 phrase it in such -- I am not trying to stop you, but if you  
9 can get the supposition out of it.

10 MR.KATZ: May I --

11 THE COURT: Something like this. I don't know how to put  
12 it. Suppose "We, the People don't produce a body but suppose  
13 Mrs. Smith, we produce circumstantial evidence that convinces  
14 you beyond a reasonable doubt that the People have proven  
15 a case. Will you then vote, if you feel convinced to a moral  
16 certainty beyond a reasonable doubt even though we don't  
17 produce a body but we have produced circumstantial evidence,  
18 will you then vote for the death penalty?"

19 I think a question generally in that way because  
20 then you don't say what you are testing. You are assuming they  
21 have arrived beyond a reasonable doubt. You see what I am  
22 getting at?

23 MR. KATZ: Well, your Honor, again if you will look at  
24 the context of my previous question, even the questioning  
25 throughout the course of the last four or five days which  
26 the juror has heard, that question is premised on the fact  
27 that the jury has come in with a verdict of murder in the  
28 first degree, based upon circumstantial evidence which creates

1 in their mind an abiding conviction to a moral certainty  
2 of the truth of the charge. I don't think there is any ambiguity  
3 in that regard. Witherspoon is very interesting in this  
4 observation. Witherspoon says in the case before you,  
5 irrespective of the evidence would you automatically refuse  
6 to vote the death penalty?

7 Now, we are not talking about an invasion from Mars  
8 where somebody comes down from Mars and destroys the entire  
9 human race and you are asking an impossible hypothetical,  
10 whether they could conceivably vote the death penalty in that  
11 case. It is the case before them. The language is right in  
12 Witherspoon itself. The case before them is the case which  
13 involves circumstantial evidence. All I am asking them is  
14 in the case before them would they automatically refuse,  
15 irrespective of the facts established in this case, to consider  
16 or vote the death penalty.

10

10-1

1 THE COURT: But if we now quote the sentence --

2 MR. WEEDMAN: Thank you.

3 MR. KATZ: I am just saying irrespective of the facts.  
4 They don't know what it is; it is a general question.

5 I am not specifying what the nature of the  
6 circumstantial evidence is. I'm not specifying what the facts,  
7 if any, will be establishing the personal culpability and  
8 moral turpitude of the defendant.

9 I am merely saying, "In the case before, which is  
10 based wholly upon circumstantial evidence, would you auto-  
11 matically refuse to consider or vote the death penalty?"

12 THE COURT: Now, you can't answer that. I will tell you  
13 why again, because you don't know what your circumstantial  
14 evidence is and that's why I say you have to put a preface in  
15 there, "If after you have listened to the circumstantial  
16 evidence in this case, whatever it may be, and you feel that  
17 that circumstantial evidence shows the defendant guilty beyond  
18 a reasonable doubt and you have made a finding of guilty,"  
19 if you want to carry the steps forward -- or let's cull it down  
20 more than that: "Let us assume that nobody has shown in this  
21 case -- there is no human body established, but that we will  
22 have circumstantial evidence and that you are convinced beyond  
23 moral certainty and to a reasonable doubt that the People  
24 have established a case, now, because the People have only  
25 established this conviction by way of circumstantial evidence,  
26 would the fact that we only have circumstantial evidence, would  
27 that prohibit you from voting for the death penalty or not?"

28 MR. KATZ: I can ask the question that way; I have no

10-2

1 objection, because, again, you're putting --

2 THE COURT: I stated it so crudely, but -- go ahead.

3 MR. KATZ: All you are saying is that assuming that they  
4 find from the circumstantial evidence in this case that the  
5 defendant is guilty beyond a reasonable doubt and to a moral  
6 certainty, would they nevertheless --

7 THE COURT: "Would that, of itself; would that fact that  
8 there is no body proven but the conviction is based on  
9 circumstantial evidence -- now, at that point, roughly, would  
10 you vote guilty as charged but not vote the death penalty  
11 because the People have convicted on circumstantial evidence?"

12 MR. KATZ: Well, if your Honor please, I think that  
13 would probably be an improper question; I think counsel would  
14 have a valid objection.

15 All I am driving at is would they refuse, regard-  
16 less of the evidence in this case, to consider or vote the  
17 death penalty solely because the evidence is predicated on  
18 circumstantial evidence.

19 THE COURT: I think that you have to take a further  
20 assumption: you have to assume the evidence that is produced  
21 justifies the death penalty -- say that the evidence has  
22 produced justifies -- they can't exclude it -- that it justi-  
23 fies the imposition of the death penalty.

24 "In other words, if you feel the death penalty is  
25 justified by circumstantial evidence, would you impose the  
26 death penalty or would you refuse to impose it because it was  
27 circumstantial evidence produced?"

28 You have to draw another conclusion in there.

10-3

1 MR. KATZ: Well, if your Honor pleases --

2 THE COURT: Because the juror doesn't know, he has to  
3 answer you by saying "I have got to see, I have got to hear  
4 that circumstantial evidence."

5 MR. KATZ: That is a circular question because on the one  
6 hand you are saying, "If you feel that the evidence, that is,  
7 the circumstantial evidence justifies the death penalty verdict" --

8 THE COURT: Yes.

9 MR. KATZ: -- "then it must follow that we'll vote for it  
10 because you have asked the initial question, 'would they  
11 automatically vote against the death penalty irrespective of  
12 the evidence in this case because of any conscientious objections  
13 they may have in opposition to the death penalty.'"

14 THE COURT: Then, turn it around in this fashion and ask  
15 this question -- I think this is a proper question -- "Would  
16 you automatically" -- you have already covered it; the court  
17 has covered it -- "Would you automatically" -- you could put  
18 in the word "circumstantial."

19 "Would you automatically refuse to vote" -- put a  
20 conclusion -- "Let us assume you have voted guilty in the case,  
21 first degree; would you automatically refuse to impose the  
22 death penalty because the People's case rests on circumstantial  
23 evidence?"

24 Now, I think you have put it in that form --

25 MR. KATZ: That was the question that I have been  
26 asking --

27 MR. WEEDMAN: Excuse me, your Honor; I am wondering,  
28 because of the hour --



10-4

1 THE COURT: That was the question?

2 MR. KATZ: Yes, that's the question I have been asking  
3 throughout the trial.

4 THE COURT: I am not criticizing because -- I am going  
5 to take your objection --

6 MR. WEEDMAN: The jurors are hollering for a recess.

7 THE COURT: All right, give them a recess.

8 Is it all right if the clerk excuses them for a  
9 recess?

10 MR. WEEDMAN: Sure.



10-5

1 THE COURT: I will be inclined -- I will take your  
2 objection -- if you simply take the Witherspoon phraseology  
3 and set it on to the penalty hearing and preface it as saying,  
4 "Now, would you automatically refuse to vote for the death  
5 penalty if a conviction has been rendered and first degree is  
6 found, would you automatically refuse to vote the death penalty  
7 simply because, or because the People have produced circum-  
8 stantial evidence only?"

9 The juror says, "Yes, I would," there is your  
10 answer.

11 MR. KATZ: Right; and, again, I want to reiterate that  
12 I am not attempting by assuming that I elicit a negative  
13 answer -- that is, that the juror would not consider the death  
14 penalty under those circumstances -- to make a challenge at that  
15 time for cause under Witherspoon; so that is not my purpose.

16 Under the Love doctrine we are permitted to have  
17 general questioning concerning principles of law with which  
18 they will be confronted and, in essence, to have a little  
19 latitude in questioning not only for cause but for peremptory  
20 challenges.

21 MR. WEEDMAN: Your Honor, the question is acceptable to  
22 me only if your Honor would follow it with an instruction to  
23 this jury that the fact that the People's case rests substan-  
24 tially on circumstantial evidence is a factor which they may  
25 use properly to vote against the death penalty.

26 MR. KATZ: If your Honor please --

27 THE COURT: I would follow that up at a later time, not  
28 at this time; but I would permit, if you desire, the way it is

1 framed -- I have to ask for a rereading unless you want to  
2 restate it -- but I would sustain an objection unless it is  
3 substantially a restatement of the question as I have indicated,  
4 myself, here; that you use the words of Witherspoon, except  
5 you inject it as far as finding -- that you inject on the  
6 penalty question by insertion of the words 'circumstantial  
7 evidence.'

8 That actually answers your question, because if  
9 the juror could say, "Yes, if the People don't prove any more  
10 than circumstantial evidence I will not vote the death  
11 penalty," I mean, there is your answer. That is what you are  
12 seeking.

13 MR. WEEDMAN: Very well, your Honor.

14 MR. KATZ: That's correct, your Honor.

15 MR. WEEDMAN: I will object to the question, your Honor,  
16 for the record, on the ground --

17 THE COURT: That is all right.

18 MR. WEEDMAN: -- that it does call upon the juror to  
19 prejudge the evidence.

20 It is misleading to the juror with respect to the  
21 state of the laws to their options during the penalty phase  
22 and I think that it is prejudicially misleading.

23 THE COURT: Well, if it is asked --

24 MR. WEEDMAN: As far as my client's position is  
25 concerned, your Honor.

26 THE COURT: I would be inclined to overrule the objection  
27 if the wording of Witherspoon is used but carried into the  
28 question of circumstantial evidence.

1 MR. WEEDMAN: But, your Honor, Mr. Katz concedes that  
2 this is not a Witherspoon question and he also concedes that  
3 he is not asking it for cause.

4 THE COURT: I will just simply say -- I will sustain the  
5 objection unless it is asked in the fashion that I have -- I  
6 will sustain it to give you a specific ruling.

7 As stated, objection sustained.

8 MR. WEEDMAN: Thank you, your Honor.

9 THE COURT: All right.

10 MR. KATZ: May we have a few minutes?

11 THE COURT: Yes, take a short recess.

12 (Recess.)  
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(The following proceedings were had  
in open court:)

THE COURT: Well, gentlemen, we will proceed. People  
against Grogan. Defendant is here, counsel are here, the  
jury are in the jury box. You may proceed.

MR. KATZ: Thank you, your Honor.

Q Miss Torres, if at any time I ask a question that  
you don't understand because it is inartfully phrased, please  
say, "Mr. Katz, would you rephrase it?" and I will be happy  
to do so.

A Okay.

Q Because I have a habit of doing that on occasion.  
I want to direct your attention to the guilt phase  
of the trial. Let's put aside any consideration or discussion  
of penalty for a moment. Do you have any quarrel with the law  
in this State which says that a man can be convicted of murder  
in the first degree based wholly upon circumstantial evidence  
without production of an eyewitness to the killing or produc-  
tion of the body?

A No.

Q All right. And if you were convinced by this  
circumstantial evidence in this case beyond a reasonable doubt  
and to a moral certainty that Mr. Grogan was guilty of murder  
in the first degree would you be reluctant to return that  
verdict solely because the People failed to produce a body  
in this case?

MR. WEEDMAN: Excuse me, your Honor. I will object to  
the form of the question, particularly the word "reluctant."

11-21

I think the question is whether or not --

THE COURT: Read the last segment of the question, please.

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

"Would you be reluctant to return  
that verdict solely because the People  
failed to produce a body -- "

THE COURT: That is enough. I think if you strike the  
word "reluctant," that you could ask the question.

MR. KATZ: That is fair enough.

THE COURT: If you do that I will permit the question.

MR. KATZ: I have no objection. Let me re-ask it again  
in those terms.

THE COURT: Re-ask it then to be sure it is clear.

MR. KATZ: Surely.

Q You feel if convinced beyond a reasonable doubt  
and to a moral certainty based wholly upon circumstantial  
evidence that the defendant was guilty of murder in the  
first degree would you nevertheless refuse to vote a verdict  
of murder in the first degree solely because the People fail  
to produce a body in this case?

A I don't understand your question.

Q Miss Torres, do you understand that in this State  
a person can be convicted of murder in the first degree based  
upon circumstantial evidence; do you appreciate that?

A Yes.

Q All right. That means that we don't have to produce  
a body or an eyewitness to the killing or an eyewitness to having

1103

1 observed the body in death; do you understand that?

2 A Yes.

3 Q Our only burden in law is to prove the case beyond  
4 a reasonable doubt and to a moral certainty; do you understand  
5 that?

6 A Yes.

7 Q Now, if you were convinced beyond a reasonable  
8 doubt and to a moral certainty based upon circumstantial  
9 evidence, would you nevertheless refuse to vote guilty solely  
10 because we did not produce an eyewitness to the killing  
11 and solely because we did not produce the body?

12 A No.

12

The 12

Q All right.

So, in other words, you would not require the People to produce the body or an eyewitness to the killing before voting guilty, if we had created an abiding conviction to a moral certainty to the truth of the charge; is that correct?

A Yes.

Q And I take it, then, that you would not require the People to carry any greater burden in law than we are already required to do, is that correct, merely because the case rests upon circumstantial evidence; is that correct?

A Yes.

Q So, in other words, we don't have to prove to you and demonstrate that degree of proof which excludes all possibility of error, because such proof is rarely, if ever, possible; is that correct?

A Yes.

Q Just beyond a reasonable doubt and to a moral certainty; is that correct?

A Yes.

Q Now, going on to the issue of penalty, let me say this, again, and you have heard it time and time again but it is so important, in all fairness to the defendant: we never get to the issue of penalty unless the juror finds beyond a reasonable doubt and to a moral certainty that the defendant is guilty of murder in the first degree.

Do you understand that?

A Yes.

1           Q     Now, assuming for a moment you have heard all  
2 of the evidence in the guilt phase of the trial, you are  
3 selected as a juror, based upon a fair and impartial considera-  
4 tion of that evidence you find the defendant to be guilty of  
5 murder in the first degree; you are now in the penalty hearing,  
6 you have heard, perhaps, some evidence in mitigation of the  
7 offense, maybe some in aggravation of the offense, perhaps  
8 some evidence showing the background and the history of the  
9 defendant, what kind of human being he is.

10                     Do you think that you would automatically refuse  
11 to consider the death penalty in this case, irrespective of  
12 the evidence; or would you be willing to have an open mind  
13 and consider all of the evidence in this case with respect  
14 to what the proper penalty in this case is in your sole and  
15 absolute discretion?

16           A     I would have to hear what's going on, you know.

17           Q     And if you believed in your heart and your mind  
18 and your conscience that this case warranted the death penalty,  
19 could you vote the death penalty?

20           A     Yes, if I felt that, though, that that was the way  
21 it should be.

22           Q     All right.

23                     Let me ask you this question: you understand that  
24 a death penalty verdict cannot be returned in this case unless  
25 there is a unanimous verdict of all 12 jurors; is that correct?

26           A     Yes.

27           Q     So that you really can't blame the other 11 and  
28 say, "My gosh, they are voting for the death penalty, I'll go



1 along, it's their decision," you understand you can't do  
2 that?

3 A Yes.

4 Q Because if you withhold your vote, even though 11  
5 vote for the death penalty, there is no return of a death  
6 penalty; isn't that right?

7 A Yes.

8 Q So, in a sense, as we have mentioned before, you  
9 are voting as a jury of one with respect to what the penalty  
10 shall be in this case if we reach that phase; isn't that right?

11 A Yes.

12 Q Now, do you think you are up to making that kind  
13 of decision and determining whether or not in fairness to both  
14 sides the proper penalty in this case, in accordance with your  
15 absolute and sole discretion, is death or life?

16 A Yes, it's part of life; you have to make a decision.

17 Q And are you willing to accept that responsibility  
18 if selected as a juror?

19 A Yes.

20 MR. KATZ: Thank you, ma'am.

21 Pass for cause.

22 THE COURT: All right.

23 Now, both sides pass? I think we have got  
24 that far?

25 MR. KATZ: Yes, that's correct.

26 THE COURT: I have lost -- who is --

27 MR. KATZ: Defense peremptory, your Honor.

28 THE COURT: All right. Thank you.

1 MR. WEEDMAN: We will thank and excuse Mr. Ingold,  
2 your Honor.

3 THE COURT: Thank you.

4 MR. WEEDMAN: Thank you, Mr. Ingold.

5 THE COURT: Thank you, sir.

6 THE CLERK: Mrs. Willie R. Hancock, H-a-n-c-o-c-k.

7  
8 WILLIE R. HANCOCK

9 BY THE COURT:

10 Q Have you heard everything that I said to the jurors  
11 since we started picking the jury here a few days ago?

12 A Yes.

13 Q Did you hear me read the charge that has been filed  
14 against the defendant in this case?

15 A Yes.

16 Q Let's assume you have been selected and sworn in  
17 as a juror in this case and that the case has all been tried  
18 and you and the other jurors have gone to the jury room to  
19 decide whether the defendant is guilty or not guilty.

20 Now, let me put it this way, the jury may make a  
21 finding of guilty or not guilty; you understand that?

22 A Yes.

23 Q If the jury finds not guilty the case is concluded,  
24 it is all over.

25 If the jury finds guilty, then the jury also finds  
26 what degree; for instance, guilty murder second degree or first  
27 degree, the jury makes a finding of degree.

28 If the jury finds it is second degree murder then

1 the jury is excused, the case is concluded as far as the  
2 jury is concerned.

3 If the jury finds first degree murder, then the  
4 court must hold a further hearing, what is called a penalty  
5 hearing, and the purpose of that is for the jury to determine  
6 what the penalty is, whether it is the death penalty or  
7 whether it is life imprisonment.

8 Is that clear?

9 A Yes.

10 Q Now, let's suppose you are in the jury room there  
11 with the rest of the jurors and you are about to vote on the  
12 penalty question. I will ask you this question -- at that  
13 time you must, the jury must decide at that moment whether  
14 it is the death penalty or life imprisonment -- now, at that  
15 point I will ask you this question: would you automatically  
16 vote against the death penalty without regard to any evidence  
17 that might be developed at the trial of this case?

18 A Automatically, no.  
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Q Well, is it yes or no?

A No.

Q No. Thank you, lady.

Now, I will ask you some questions. Do you know of any reason that you could not be fair and impartial to both sides of this case, the defendant, the People -- or the People and the defendant? That you could not be absolutely fair and impartial if you are selected as a juror in this case?

A No.

Q Do you know of any reason that might upset you, annoy you or bother you so that you couldn't keep an open mind free of prejudice if you are a juror in this case?

A No.

THE COURT: Thank you.

I will pass the juror. You may inquire for the defendant.

MR. WEEDMAN: Thank you, your Honor.

Q Miss Hancock, would the estimated length of this trial cause you any personal hardship?

A Two months?

Q Yes.

A Starting when?

Q Well, it is hard for us to say but let's say starting now.

A No.

Q If it were to go beyond that for a couple more weeks -- we all hope that it does not, but if it should would that cause you a personal hardship?

13-2

1           A       No, I would like to be out by September 19th when  
2 school starts.

3           Q       Surely. I think both of us are confident that we  
4 will conclude by then.

5                   With respect to the death penalty do you feel you  
6 would automatically impose the death penalty in a first degree  
7 murder case?

8           A       Automatically?

9           Q       Yes.

10          A       No.

11          Q       So that you will wait, obviously then, until you  
12 hear whatever evidence may be introduced respecting the  
13 penalty phase, if it ever gets that far?

14          A       Yes.

15          Q       And I am sure like the other jurors you appreciate  
16 that this is the only chance we have to talk about the death  
17 penalty and the fact that we are talking about it doesn't mean  
18 that we are ever going to get there?

19          A       I understand that.

20          Q       Surely. Is there anything that you may have learned  
21 or read or heard about the Manson family, Charles Manson, that  
22 makes you feel you would be prejudiced against my client in  
23 this case if the evidence shows, as I have indicated, that my  
24 client is at least an associate or a member of or was a member  
25 of the Charles Manson family?

26          A       No.

27          Q       Okay. If it should develop that various prosecu-  
28 tion witnesses were associated with the Manson family would

13-3

1 you be so prejudiced against their testimony that you could not  
2 at least give a fair consideration?

3 A No.

4 Q So what you are going to do then as far as both  
5 sides are concerned is to eliminate anything that you may have  
6 learned outside this trial?

7 A Right on.

8 Q Right on. Okay.

9 Is there anything that would interfere with your  
10 giving the defendant a fair trial insofar as you may disagree  
11 with his lifestyle? The manner in which he chooses to live his  
12 life?

13 A I beg your pardon?

14 Q Let me start over again. You are familiar, of  
15 course, with the term hippie?

16 A Yes.

17 Q Okay. If the evidence convinces you that my client's  
18 lifestyle is one that might be loosely characterized as being  
19 a hippie lifestyle would that alone make you think that he  
20 committed a crime?

21 A No. That's emphatic.

22 Q Of course.

23 In evaluating the evidence, would evidence that my  
24 client, let's say, is or was a hippie prejudice you against my  
25 client so that you would resolve any doubts about the evidence  
26 against him?

27 A No.

28 Q So that my client then, as far as you are concerned,

13-4

1 is going to get a fair evaluation by you of the evidence  
2 without consideration of extraneous matters, matters which just  
3 have nothing to do with whether or not these witnesses are  
4 telling the truth, is that so?

5 A Yes. As far as I'm concerned, he will.

6 Q Okay.

7 Are you employed?

8 A No.

9 Q And what about Mr. Hancock, is he employed?

10 A Yes.

11 Q What does he do for a living?

12 A He is an engineer for McDonnell-Douglas.

13 Q Do you have any relatives or close friends who are  
14 in law enforcement?

15 A I have a couple friends, yes.

16 Q Okay. Is there anything about the fact that you  
17 have a couple of friends in law enforcement that makes you  
18 feel that you would adopt some artificial standard in  
19 evaluating the testimony here of police officers?

20 A No.

21 Q Okay.

22 A My friends aren't exactly police officers.

23 Q Oh, I see. What branch of law enforcement are  
24 they in?

25 A Probation department. I don't know if that's  
26 considered law enforcement or not. But they are with the  
27 probation department.

28 Q I think perhaps very loosely it might be. They

10-5

1 are involved certainly in dealing with persons who have been  
2 convicted of crimes or perhaps the case of juveniles?

3 A Juveniles.

4 Q Yes. Okay. But I take it there is nothing about  
5 that association that is going to interfere with your giving  
6 us a rather obvious, although not simply arrived at, objective  
7 consideration of the evidence?

8 A Right.

9 Q Okay. Have you had any prior criminal jury  
10 experience, Mrs. Hancock?

11 A No.

12 MR. WEEDMAN: Okay. I will pass for cause, your Honor.  
13 Thank you.

14 Thank you, Mrs. Hancock.

15 THE COURT: Go ahead.

16 MR. KATZ: No questions. I have had the benefit of the  
17 court and counsel's questioning.

18 THE COURT: Do both parties pass for cause now?

19 MR. KATZ: Yes.

20 THE COURT: All right. Then it's People's peremptory,  
21 isn't that correct?

22 MR. WEEDMAN: Yes, your Honor.

23 MR. KATZ: Yes.

24 THE COURT: All right.

25 MR. KATZ: People wish to thank and excuse Mrs. Hancock.

26 THE COURT: All right.  
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1 THE CLERK: Frank A. De La Cruz.

2 THE COURT: How do you spell that?

3 THE CLERK: D-e L-a C-r-u-z. The initial is A, isn't it,  
4 sir?

5 MR. DE LA CRUZ: Yes.

6 THE CLERK: Thank you.

7  
8 FRANK A. DE LA CRUZ

9 BY THE COURT:

10 Q Now, let's start again, Mr. Juror, here.

11 Have you heard all of the statements I have made to  
12 the other jurors since we started the picking of a jury here  
13 several days ago?

14 A Yes.

15 Q All right. Did you hear me read the charge that  
16 has been filed against the defendant in this case?

17 A Yes.

18 Q Let's assume that you have been selected as a juror  
19 and sworn in to try this case and that the case has been tried,  
20 and you have gone to the jury room to decide the question of  
21 guilty or not guilty. Now, at that time the jury could make  
22 a finding of not guilty, in which event the case is concluded  
23 entirely. The jury could make a finding of guilty as charged.  
24 The jury makes the finding of guilty, then they set the degree  
25 of the crime, murder first degree, murder second degree.

26 If the jury makes a finding of second degree murder  
27 then again the case is concluded as far as the jury is  
28 concerned. The jury is through with any further duties.

1           If the jury makes a finding of first degree murder  
2 then the jury must hold a -- the court and jury must hold a  
3 subsequent penalty hearing which follows right away after the  
4 trial. At the penalty hearing the jury will make a finding of  
5 penalty which must be either the death penalty or life  
6 imprisonment.  
7

8           Now, are those procedural matters clear in your  
9 mind?

10           A       Yes.

The 13

Q All right.

I will ask you if you will assume a situation or position where the penalty hearing has been held and you are in the jury room, you are about to vote on the question of the death penalty or life imprisonment.

I will ask you to assume that and I will ask this question: At that time will you automatically vote against the imposition of the death penalty without regard to any evidence that might be developed at the trial of this case before us?

A No.

Q Thank you.

Now I will ask this question: Do you know of any reason at all of any kind, no matter what your reason is, that you could not be fair and impartial if you are selected to try this case?

A No, I don't.

Q Is there anything during the course of the trial that might happen, if it does happen, that would disturb your calm thinking, that would upset you or annoy you so that you couldn't have an open and clear mind in the trial of this case?

A No.

THE COURT: Thank you.

I will pass you for cause.

Gentlemen, it is three minutes to 12; I won't ask you to go ahead and break it up.

Let's go to 2 o'clock.

13-2

1 Folks, if you will all return promptly so we  
2 can get under way, calendars are very crowded, and do not  
3 discuss the case or come to any opinion or conclusion.  
4

5 Thank you.

6 (A recess was taken until 2 p.m.  
7 of the same day.)  
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LOS ANGELES, CALIFORNIA, THURSDAY, JULY 1, 1971, 2:00 P.M.

THE COURT: Now, gentlemen, we have People against Grogan. The defendant is here, counsel for defendant is here, People's counsel is here, and all jurors are here.

Now, I believe the court has just completed the voir dire and passed for cause. Now, the defense, you were about to examine. Isn't that right? You were about to start and then I said we'll go over till 2, isn't that right, Mr. Weedman?

MR. WEEDMAN: Yes, your Honor.

THE COURT: All right. You go ahead.

BY MR. WEEDMAN:

Q Mr. De La Cruz, I confess I have forgotten precisely where we left off but have you formed any opinion with respect to anything you may have learned about Charles Manson and the Manson family that might interfere with your giving both sides a fair and impartial consideration of the evidence?

A Nothing.

Q Okay. Have you formed, however, any opinion at all with respect to the Charles Manson so-called family?

A No, just what I read in the papers. That's all. I just read when it first started and didn't follow it much after that.

Q Okay. Can we both be assured then that you will not, even if this matter comes down to a close case, even in that instance, that you will not utilize anything that is not presented to you right here in this courtroom in determining

the guilt or innocence of my client?

A Right.

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1 Q And I take it that in the event that you might  
2 even read or hear something during the course of this trial  
3 that is not presented to you here in court, you likewise would  
4 ignore that and utilize only what is presented here?

5 A Right; it wouldn't have nothing to do with this.

6 Q Surely; and you appreciate, Mr. De La Cruz, that  
7 this may be something that you will have to rather rigorously  
8 apply?

9 A Right.

10 Q In other words, it may be that you might read  
11 something in the newspapers during the course of this trial  
12 that might influence your judgment one way or the other.

13 Now, I am not talking about the defendant's  
14 position or the People's position necessarily; and that in  
15 such event you would just simply have to close your mind to  
16 it and listen to the evidence in this case?

17 A Yes.

18 Q I am sure you appreciate that newspaper stories  
19 are not always accurate, that, unfortunately, news items are  
20 very often cast for their -- really for their sales value;  
21 newspapers have to sell papers to stay in business -- so, in  
22 any event, will you concede that one very good reason, parti-  
23 cularly, for not considering newspaper articles and so on is  
24 the very distinct likelihood that they may not be entirely  
25 accurate?

26 A Right.

27 Q Is there anything about this case, Mr. De La Cruz,  
28 that makes you feel that you couldn't give both the People and

1 the defendant the kind of consideration of the evidence that  
2 we are both entitled to?

3 A No.

4 Q With respect to the death penalty are you one of  
5 those -- fortunately, I guess -- few persons who believe that  
6 the death penalty should be used more often?

7 A I never thought about it.

8 Q Now that I have asked the question, do you have that  
9 feeling at all?

10 A (Shakes head negatively.)

11 Q Do you bring in, if you are selected as a juror,  
12 any preconceived notions one way or the other as to either the  
13 guilt of my client, or, in that connection, to the kind of  
14 penalty that my client should suffer in this case, if any?

15 A No, I haven't thought anything about it.

16 Q So you have, then, I suppose, what could be  
17 characterized as the ideal qualities for a juror. You will come  
18 in, almost -- well, you will give us the benefit of your life  
19 experience and your background and your training insofar as it  
20 would help to evaluate evidence here; as far as the facts of  
21 this case are concerned you come here with a blank slate?

22 A Right.

23 Q And just as Judge Call has repeatedly and most  
24 properly pointed out, no one at this point, despite the  
25 questions Mr. Katz and I have been asking, no one at this point  
26 knows what the evidence is going to be and we are certainly not  
27 going to prejudge the evidence, are we, Mr. De La Cruz?

28 A Right.



Tke 17

1 Q Okay. Have you any friends or relatives who are  
2 in law enforcement?

3 A I have a brother-in-law who has been in for a  
4 little over a year, 12, 14 months. The sheriff.

5 Q He is with the sheriff's department?

6 A Right.

7 Q Is there anything about the fact that your  
8 brother-in-law is what, a deputy sheriff?

9 A Right.

10 Q That makes you feel you might tend to favor the  
11 prosecution in this case?

12 A No.

13 Q All right. I don't know how well you get along  
14 with your brother-in-law.

15 A I don't see him too often.

16 Q All right. Is there anything about the fact that  
17 your brother-in-law is a deputy sheriff that would in any  
18 way prejudice you against testimony of a police officer if  
19 such testimony is adduced here?

20 A No, sir.

21 Q All right. I take it, Mr. De La Cruz, that you  
22 will reject what I have been terming artificial standards in  
23 evaluating witnesses' testimony?

24 A Yes.

25 Q An example perhaps of an artificial standard would  
26 be all persons with deep, firm voices are telling the truth  
27 and all people that talk like I do are not telling the truth.  
28 That would be an artificial standard, wouldn't it?

1           A       Right.

2           Q       With respect to my client's appearance you will  
3 consider his manner of testifying and his interest in the case,  
4 if any just like you would for any other witness that testifies  
5 in this case, wouldn't you?

6           A       True.

7           Q       And you certainly, as I understand your answers,  
8 Mr. De La Cruz, wouldn't assume that my client is lying merely  
9 because perhaps his life was at stake here? You wouldn't  
10 automatically say, "Well, after all, the man is charged with  
11 the crime. Naturally he would lie to get out of it. Therefore,  
12 he must be telling a lie." You wouldn't follow that kind of  
13 reasoning, would you?

14          A       No.

15          Q       If a witness, which includes my client as well as  
16 any other witnesses here, if they are telling a story that you  
17 feel is inherently probable, it makes sense, it's told by a  
18 witness with some convincing force, it seems to have the ring  
19 of truth to you, you have duly considered it, then these are  
20 things that you will properly use in saying "Yes, I believe  
21 that witness's testimony." Isn't that correct?

22          A       If I thought he was telling the truth, yes.

23          Q       If you don't find those qualities -- and I don't  
24 mean to elucidate all of them -- there would be many, many  
25 things that you would lose in determining if the witness is  
26 telling the truth or not. But if you don't find those qualities  
27 to your satisfaction then I take it you will just simply  
28 reject that witness's testimony?

1 A Yes.

2 Q Is that so? And that is true irrespective of  
3 whether it is a defense witness or whether it is a prosecution  
4 witness?

5 A No matter who it is.

6 Q And as Judge Call I think very, very nicely put  
7 it, you are not here to act for the prosecution nor are you  
8 here to act for the defendant. You are here as what Judge Call  
9 termed a kind of a third wheel. You are an independent  
10 body. You are going to take the evidence that comes from  
11 both sides here. You are going to sift through it and evaluate  
12 it. You are not rooting for one side or the other, isn't  
13 that so?

14 A Correct.

15 Q In that connection, Mr. De La Cruz, I take it that  
16 you do not feel any obligation because of the prosecutor's  
17 effort here, you don't feel any obligation to convict in  
18 this case as you sit there now, do you?

19 A No.

20 Q Nor do you feel as you sit there now an obligation  
21 to acquit, isn't that so?

22 A No.

23 Q So that your obligation then, if we understand  
24 your responses is not to be an advocate for either side but  
25 merely to be an advocate for the truth as you see it?

26 A Correct.

27 Q Right. With respect to the matter of hardship I  
28 think I may have asked you that, forgive me if I am repeating

myself.

A No.

Q Would this trial cause you any hardship at all if it lasts six to eight weeks?

A Well, I read my contract and there is nothing in the contract that says anything about time. And I am pretty sure they do pay us no matter how long it takes. But I still could find out. I would still have to doublecheck.

Q Okay. Now, during the course of this trial Judge Call will, if you are selected as a juror certainly admonish the members of the jury that they are not to discuss this case with anyone nor are they to form any opinion, express any opinion on the matter until it is finally submitted to them. This case may of course generate some interest in your family if you are chosen as a juror.

Would you particularly be able to not be tempted to discuss it with your brother-in-law who is a deputy sheriff?

A I wouldn't.

Q Pardon?

A I wouldn't discuss it with him.

18-1

Q Okay. Bearing in mind that you'd be absolutely free to discuss it not only with him but with anyone at the conclusion of the trial, but during the trial you appreciate that you have to be sort of cloistered to some extent and you'll have to have a little distancing between you and anybody else as far as any discussion or expression of opinion, and so on goes during this trial?

A Right.

Q One thing, finally, Mr. Katz and I have both pointed out the absolute necessity from time to time for the lawyers here to make objections to the evidence.

You probably noticed that from time to time we don't even continue the objection here, we go into the judge's chambers and we hear it there.

Will you not speculate or try to guess as to the nature of the objection and the reason for the court's ruling in those matters, but merely accept the ruling as Judge Call makes it and not try and figure out what we were trying to keep out or what we were trying to put in evidence?

A Right.

Q In other words, will you permit the lawyers here to do their lawyering and not speculate and try and figure out what might possibly lie behind that?

A (Nods head affirmatively.)

MR. WEEDMAN: Thank you, Mr. De La Cruz.

THE COURT: People?

MR. KATZ: Thank you.

Q Mr. De La Cruz, what is your business or

18-2

1 occupation, please, sir?

2 A I am a forklift operator, General Motors.

3 Q And is your wife a housewife?

4 A Correct.

5 Q And what general area of Los Angeles --

6 A Highland Park.

7 Q I would hope that you are on friendly relations  
8 with your brother-in-law; is that correct?

9 A Oh, yes, we just -- he lives in San Fernando  
10 Valley and it has been around nine months since I have last  
11 seen him, and it might be another nine months before I see him  
12 again.

13 Q And the frequency with which you visit your  
14 brother-in-law has nothing to do with your feelings toward him  
15 or against him; is that right?

16 A No, he is a wonderful person.

17 Q In other words, what I am driving at, is because  
18 of this relationship you may have with your brother-in-law,  
19 this would in no way influence your ability to impartially  
20 weigh the testimony of, for example, police officers; is that  
21 correct?

22 A No, it wouldn't.

23 Q All right.

24 You recognize the fact that in your everyday life  
25 you use circumstantial evidence?

26 A Correct.

27 Q And, in other words, when some fact is made known  
28 to you you draw inferences from it, don't you?

18-3 1

A Correct.

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Q And based upon those inferences you act; is that right?

3

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A True.

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Q And, for example, if your wife came out of the bathroom smelling nice of Glean, having Glean freshly on her breath, you might assume from those facts that she had just brushed her teeth with Glean; is that right?

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A Right.

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Q So this is what we are talking, we are talking about using our common sense in evaluating proven facts and determining what inferences we draw; isn't that right?

13

14

A Correct.

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Q I take it, then, you have no quarrel with utilizing the same common sense in determining what weight, if any, you are going to give to the facts as they unfold during the course of the trial; is that correct?

18

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A Right.

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Q And if certain facts are proven to you you will be willing to draw certain reasonable inferences from those facts; is that right?

22

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A Correct.

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Q And if those reasonable inferences vote or point toward the guilt of the defendant and there are no other reasonable inferences that point to the innocence of the defendant, then you would be duty bound to accept the reasonable inferences pointing to the guilt of the defendant. You understand that?

1 A Correct.

2 Q And you have no quarrel with that proposition; is  
3 that correct?

4 A No quarrel.

5 Q Now, do you find that it offends your sense of  
6 fair play or morals that this state permits a person to be  
7 convicted of murder in the first degree based wholly on  
8 circumstantial evidence?

9 A No.

10 Q I take it that assuming we had convinced you  
11 beyond a reasonable doubt and to a moral certainty that the  
12 defendant had committed murder in the first degree, you would  
13 not require the People to produce a body or an eyewitness to  
14 the killing; is that correct?

15 A Right.

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Q Do you think your feelings concerning the decision in which you would find yourself were we to reach the penalty phase in the trial, were such that you would compromise your verdict in the guilt phase in order to avoid reaching the penalty phase?

Do you think you would do that?

A Would you please rephrase it?

Q Yes.

You understand that we don't get to the penalty phase of this trial unless and until there is a return of a first degree murder verdict.

Do you understand that?

A Right.

Q Now, in that connection, as his Honor has so clearly stated to us on many occasions, if, for example, you vote not guilty that ends it right there, isn't that correct?

A Correct.

Q If you vote, for example, second degree murder, we don't get to the issue of penalty because the jury has no further concern with this case.

You understand that?

A Correct.

Q The only time the jury becomes concerned with the penalty in this case is if and when they vote, based upon the evidence, a first degree murder verdict.

You understand that?

A Yes.

Q Now, my question to you is this, let's assume you

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1 felt from the evidence beyond a reasonable doubt and to a  
2 moral certainty, based upon circumstantial evidence, that the  
3 defendant was guilty of murder in the first degree but you  
4 knew that by voting for murder in the first degree you would  
5 have to go on to the unpleasant task of having to determine  
6 whether another human being would live or die, do you think  
7 that that knowledge would cause you to compromise your  
8 verdict and perhaps vote second degree or not guilty?

9 A No.

10 Q Do you believe the principle, sir, that all men  
11 are or should -- though they are not <sup>Be</sup> treated equally under  
12 the laws?

13 A Should be, right.

14 Q All right; and we know that, unfortunately, this  
15 is not always the case; but in this connection, I take it you  
16 will not give some benefit to Mr. Grogan by reason of his  
17 exterior -- that is, his youthful appearance -- that you would  
18 not give to any other person who is in his same circumstance;  
19 is that correct?

20 A Correct.

21 Q And if his Honor would instruct you that during  
22 the guilt phase of the trial your verdict may in no manner,  
23 shape or form be influenced by any factors such as sympathy, I  
24 take it that you will unhesitatingly follow that instruction;  
25 is that correct?

26 A Correct.

27 Q And despite whatever sympathetic feelings you may  
28 have for the defendant or whatever passion or prejudice you may

1 have against the defendant by reason of the evidence in this  
2 case, you will nonetheless base your verdict in the guilt  
3 phase solely upon the evidence; is that correct?

4 A Correct.

5 Q Now, you told us that you had not given much  
6 thought to the death penalty prior to being called for jury  
7 duty; is that correct?

8 A Correct.

9 Q Having heard us ask these questions repeatedly over  
10 the past four or five days, have you had a chance to think  
11 about the death penalty since that time?

12 A I have.

13 Q Have you asked yourself a question whether or not  
14 under certain given circumstances you could personally vote  
15 the death penalty?

16 A I guess I could if it was proven that he was guilty.

17 Q All right.

18 Now, let me clarify one thing: in all fairness to  
19 the defendant, it is not enough that he is proven guilty --

20 A Beyond a reasonable doubt.

21 Q -- beyond a reasonable doubt and to a moral certainty,  
22 because the law doesn't say that upon the return of a first  
23 degree murder verdict you are to vote death or life.

24 As a matter of fact, the law doesn't set any  
25 standards by which to determine the proper penalty in this case,  
26 but leaves to each juror at his sole and exclusive discretion  
27 and common sense the determination of what the proper penalty  
28 in this case is.

1 You understand that?

2 A (Nods affirmatively.)

3 Q I am sorry, sir, we have to have an answer.

4 A Yes.

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1           Q       I notice you are nodding in the affirmative but the  
2 court reporter has to take down your audible response. Now,  
3 Mr. De La Cruz, in that connection there may or may not be  
4 additional evidence which would be presented in the penalty  
5 phase of the trial and evidence might go to aggravation of the  
6 offense, it might go to mitigation of the offense, and it might  
7 show the history and background of the defendant, his lifestyle,  
8 what kind of person he is.

9                   Now, in that connection and after consideration of  
10 all of that evidence, if you believed in your soul and absolute  
11 discretion that this case warranted the return of the death  
12 penalty, could you vote the death penalty?

13           A       If it was proven, I could.

14           Q       All right. Now, let me ask you this. Would you  
15 before voting guilty, and regardless of the evidence, require  
16 the People to produce a body in this case?

17           A       No.

18           Q       All right. So what you are telling us is that if it  
19 is proven to your satisfaction beyond a reasonable doubt and to  
20 a moral certainty, even though the evidence is wholly circum-  
21 stantial, you would vote guilty in accordance with his Honor's  
22 instructions, is that correct?

23           A       Correct.

24           Q       All right. And I take it that you have an open mind  
25 on the issue of penalty so that both counsel for the People and  
26 counsel for the defendant can get a fair trial, is that right?

27           A       Right.

28           Q       Now, sir, with reference to the time of death, you

1 will note that his Honor at the outset the allegation that  
2 Mr. Donald Jerome Shorty Shea was murdered between August 16,  
3 1969 and September 1st, 1969. Assuming that you are convinced  
4 beyond a reasonable doubt and to a moral certainty that Mr.  
5 Shea was in fact murdered during that period alleged in the  
6 indictment, would you nevertheless require the People to prove  
7 the exact time and the exact date of the death before voting  
8 guilty?

9 A No.

10 Q All right. So long as we have proved and met our  
11 burden of proof, that is, that Shorty Shea was murdered by the  
12 defendant between the dates alleged in the indictment, namely,  
13 August 16, 1969 and September 1st, 1969, you would vote guilty,  
14 is that correct?

15 A Correct.

16 Q Any reason why you couldn't be fair and impartial  
17 to both sides, sir?

18 A None whatsoever.

19 MR. KATZ: Thank you, sir. Pass for cause.

20 THE COURT: Very well.

21 Now, let's see, gentlemen. Back to the defendant's  
22 peremptory.

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

24 Your Honor, we will thank and excuse Mr. Smith.

25 Thank you, Mr. Smith.

26 MR. SMITH: Thank you.

27 MR. KATZ: Thank you, Mr. Smith.

28 THE CLERK: Miss Marione Hagopian, H-a-g-o-p-i-a-n.

1 MR. KATZ: Sorry. Would you spell that again.

2 THE CLERK: Yes. H-a-g-o-p-i-a-n.

3 MR. KATZ: Would you spell the first name, please.

4 THE CLERK: Marione, M-a-r-i-o-n-e.

5 MR. KATZ: Thank you.

6 THE COURT: Thank you.

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MARIONE HAGOPIAN

BY THE COURT:

Q Now, lady, have you heard everything that I have said to the jurors since we started the picking of the jury in this case?

A Yes.

Q Did you also hear me read the charge that has been filed against the defendant by the People?

A Yes.

Q Now, let's suppose you have been accepted as a juror and you have been sworn in to try the case. The case has been tried and you have gone to the jury room. At that juncture the jury could make a finding of either not guilty or guilty.

If the jury makes a finding of not guilty then the case is entirely concluded.

If the jury makes a finding of guilty as charged then the jury will find on the degree. They will make a finding of either first or second degree murder.

If the jury finds second degree murder that concludes the case as far as the jury is concerned. They are through.

If the jury finds first degree murder then the jury must -- the court must hold a further subsequent hearing. The purpose of the hearing is that the jury will then after the hearing making a finding of penalty. It is called the penalty hearing. The jury must make the finding of the death penalty or life imprisonment.

Now, if you will assume that we have held the penalty hearing and you are in the jury room voting on the



1 question of what is the penalty. I will ask you this question;  
2 at such a time would you then, or at that time, would you  
3 automatically vote against the imposition of the death penalty  
4 without regard to any evidence that might be developed at the  
5 trial of this case before you?

6 A No.

7 Q Thank you.

8 Now, lady, I will ask you one or two more questions.  
9 Do you know of any reason at all that you could not be fair and  
10 impartial if you are selected to try this case as a juror?

11 A No.

12 Q You realize as a juror you might say you are an  
13 arbitrator, are a judge. There is no question about that,  
14 between the People and the defendant. And you find on the  
15 issues and the facts that are presented after the case is  
16 concluded, you decide the case. You decide the facts. You  
17 understand that? The jury decides the facts. And I am out of  
18 the case entirely as far as deciding the facts. I decide on  
19 the law but not the facts. That is the jury's duty and  
20 prerogative. You understand that?

21 A Yes.

22 Q So that is why both the court and counsel  
23 continually are asking, and very properly so, the question of  
24 the jurors basically which centers on whether you will be fair  
25 and impartial as a juror in deciding the facts. Do you feel  
26 you could do that?

27 A Yes.

28 Q Is there anything that might come up during the

1 course of the trial of this case that might inject itself into  
2 or disturb your mental frame of mind so that you would be  
3 annoyed or disturbed or could not keep an open and fair state  
4 of mind? Do you know of anything at all?

5 A It is possible because my mother is ill and if it  
6 was necessary for me to give her assistance and I wasn't able  
7 to get away, I am concerned that that would.

8 Q Well, let me try to cull it down to one word.  
9 Despite whatever might come up do you feel you could be fair  
10 and impartial throughout the trial of the case?

11 A Yes.

12 Q All right. Now, you understand, I discussed this  
13 before, that the witnesses that may be called at the trial --  
14 and I do not, as I have said before, I don't know who in the  
15 world is going to be called. I don't know. I don't know who  
16 the People will call and I don't know who the defendant will  
17 call, if he calls any. The defendant has an absolute right to  
18 call nobody. It is his business. He has those rights. The  
19 People don't have to call a witness either, as far as I know.  
20 There is no law that says you have got to call anybody. You  
21 do or you don't. That is beside the point.

22 No matter who is called, put it this way, no matter  
23 who is called by the People or the defendant you must remember  
24 that the witness, whether you like the witness or don't, or  
25 maybe hear him testify and there is something that he says  
26 that may disturb you, you must remember that you are not  
27 deciding the case because of the witness, that is, the reaction  
28 you get. It is on the truthfulness, what the law calls the

1 credibility. Your decision is based on the credibility of  
2 the witness. Is he telling the truth or not. You must, when  
3 the witness is called, you subtract or take out of his testi-  
4 mony part, all or none of his testimony. You may say, "I  
5 think everything he is saying is true," and on the other hand,  
6 you may say, "I don't believe anything he is testifying." Or  
7 you may say, "Well, there are some parts of that testimony that  
8 is true and some that isn't true."

9 Those are your problems. They are serious problems.  
10 but they are your problems nevertheless. They are not mine.  
11 They are yours as a juror, they are the jury's problems. So  
12 no matter what witness is called, whoever it may be, man or  
13 woman, and you do or you don't like any witness, or you have  
14 some feeling about the witness, can you put your feelings to  
15 one side and simply judge the testimony of the witness for  
16 its truthfulness, its credibility, or lack of truthfulness?  
17 Can you do that?

18 A Yes.

19 THE COURT: Thank you. I will pass this lady for cause.

20 Defendant may inquire.

21 MR. WEEDMAN: Thank you, your Honor.

22 THE COURT: All right.  
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1 BY MR. WEEDMAN:

2 Q Would you pronounce your name for us, please.

3 A Hagopian.

4 Q Is it Miss or Mrs. Hagopian?

5 A Miss Hagopian.

6 Q Are you employed?

7 A Yes.

8 Q What do you do?

9 A Administrative assistant in the engineering  
10 graduate studies office, UCLA.

11 Q All right. That is a long title, isn't it. Is  
12 there anything about the fact that this case should last as  
13 much as two months that is going to cause you any personal  
14 hardship?

15 A I am not sure. I noticed in the handbook that it  
16 says if you are called for jury duty you will be given the  
17 necessary time off for pay. Now, whether for two months, this  
18 is my third week. Beyond this whether I would be paid I am  
19 not sure. I think I would need to doublecheck.

20 And I am supporting myself and assisting my mother.  
21 So it would be important.

22 Q Yes. Is your mother's health such that you feel  
23 that perhaps it is imminent that you would have to perhaps be  
24 called away during the day to care for her?

25 A It is possible. Two years ago she was treated for  
26 breast -- received cobalt treatment for breast cancer. And  
27 recently she has had an inflammation of that area. She is  
28 under doctor's treatment and it could be possible. I don't  
know, she is not well.

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Q I see.

Well, perhaps that is a matter that we can resolve as we move along.

With respect to the death penalty, if there was an if -- there is a big "if" -- there is a finding here of murder in the first degree, do you feel that you would automatically impose the death penalty?

A No.

Q I take it, then, that it is not a matter of whether it is a first degree murder or not, it is a matter of listening to all of the evidence and maybe introduce it with respect to mitigation, if any, evidence of aggravation, if any, coupled with the facts that surround this case; those are the things that you use in determining penalty in this case?

A Yes, all together.

Q Surely, and you do appreciate, I am sure, from all of the questions that have been asked so far, that the law of the State of California expresses no preference whatever for the death penalty as against life imprisonment?

A Yes.

Q That is totally a matter within the discretion of the jurors and they may use any reason whatever to impose either of those sentences that they care to.

You understand that?

A Yes, I do.

Q Okay.

Miss Hagopian, if at the conclusion of the trial you find that the prosecution has produced, let's say, roughly

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2 ten times as many witnesses as the defendant, do you feel  
3 that the mere fact that the prosecution has more witnesses  
4 somehow, of and in itself, makes it more likely that my  
5 client is guilty?

6 A No.

7 Q And as a matter of fact, is your state of mind  
8 such that even if the prosecutor produces 100 witnesses, if you  
9 are not satisfied with respect to their testimony as to my  
10 client's guilt, that you would acquit him even though we  
11 didn't produce any witnesses at all?

12 A Yes.

13 Q And I take it that implicit in your answer to  
14 that question is an approval or an acceptance on your part  
15 of the rule that the People have the burden of proof here to  
16 prove guilt, if they can; that the defendant does not have  
17 the burden of proving his innocence in this case?

18 A Yes.

19 Q So that if you get to the point where you are not  
20 satisfied that guilt has been shown I take it that you will  
21 unhesitatingly acquit, irrespective of whether my client has  
22 proven to you his innocence?

23 A Yes.

24 Q And I take it, then, from your answer that you  
25 appreciate the fact that often it is not possible for a defen-  
26 dant -- not necessarily my defendant; this all remains to  
27 be seen -- but, in principle, you appreciate it is not always  
28 possible for a defendant to affirmatively go forward and  
prove his innocence?

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1 A Yes.

2 Q And you have no objection to the manner, then,  
3 in which the burden of proof must flow in this case?

4 A No.

5 Q Have you heard of the Charles Manson family?

6 A Yes.

7 Q And you have heard of the Tate-La Bianca murder  
8 trial?

9 A Yes.

10 Q Did you form any opinion as a result of hearing  
11 about those things, any opinion about the Manson family,  
12 members of the so-called Manson family?

13 A No strong opinions. I didn't follow it closely.

14 Q Will you be able to and will you, indeed, set aside  
15 any opinions you may have formed in connection with those  
16 matters in evaluating the evidence in this case?

17 A Yes.

18 Q Now, you have heard me over and over again talk  
19 about that close decision, that close case, if it should come  
20 to that in the jury room.

21 At that time do you think that you would even  
22 permit yourself to be swayed by another juror, as I have  
23 suggested earlier, that is would you listen to an argument  
24 that says, "Well, the evidence shows that Mr. Grogan certainly  
25 was with Charles Manson for a period of time and it is clear  
26 that in many ways his lifestyle was similar to that of  
27 Charles Manson's. Why quibble? He must be guilty."

28 Would you permit another juror to make that kind

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1 of argument to you?

2 A He could make the argument, but he wouldn't sway  
3 me.

4 Q All right.

5 You would let him say it, but you wouldn't pay any  
6 attention to it, right?

7 A Right.

8 Q Have you had prior criminal jury experience?

9 A Yes, it was a very short case that ended in a  
10 mistrial.

11 Q What kind of a case; what was the charge in that  
12 case?

13 A Sale of marijuana.

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20A.

Q I take it that you wouldn't utilize anything that you may have learned in that case, even though you may have learned some law, for purposes of this case?

A No.

Q You will wait until you hear the instruction from Judge Call as regards the evidence in this case?

A Yes.

Q And appreciate, further, that even some of those instructions may not be applicable here, but that is a matter that is entirely up to you with respect to certain of the instructions?

A Yes.

MR. WEEDMAN: Okay.

Thank you so much.

We will pass for cause, your Honor.

THE COURT: Thank you.

People?

MR. KATZ: Yes.

Q Miss -- is it Hagopian?

A Hagopian, yes.

Q Thank you; I just about got it out.

Would your experience in connection with the sale of marijuana be such as to cause you to be hesitant or reluctant to discuss the facts of this case with your fellow jurors if selected as a juror in this case?

A No; it was a very brief experience. The first witness wasn't even there, I think, three minutes and it happened; so it was almost something that I really didn't

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1 obtain any experience from that would be relevant to any  
2 other case.

3 Q In other words, the matter was not submitted to  
4 the jury for deliberations; is that correct?

5 A No.

6 Q I see.

7 Now, have you given any thought to the death penalty  
8 and capital punishment in general before being called as a  
9 juror?

10 A No.

11 Q Since you have been called for jury duty and since  
12 you came to this courtroom I take it you have, as a thinking  
13 individual, given some thought to capital punishment; is that  
14 correct?

15 A Yes.

16 Q And have you made an effort to examine your state of  
17 mind and your beliefs and feelings concerning capital punish-  
18 ment for the last four or five days?

19 A Yes, I have been thinking about it.

20 Q And can you tell us whether or not, without giving  
21 us your reason, whether you are generally opposed to capital  
22 punishment or noncommittal about capital punishment or believe  
23 that it is proper in some circumstances?

24 A I believe it is proper in some circumstances.

25 Q And I take it you recognize the distinction between  
26 believing abstractly that capital punishment is justified under  
27 certain circumstances and being able to personally participate  
28 in a death penalty verdict; is that correct?

A Would you please restate that.

Q Yes.

You recognize there is a distinction between saying, for example, that "It is all right for 12 other people to vote the death penalty because it looks like the circumstances warranted that verdict but I, myself, would not want to be amongst those 12 jurors and have to personally participate in the death penalty verdict."

Do you see the distinction between those two situations?

A Yes.

Q Now, in that connection have you asked yourself the question whether or not, you, yourself, could personally send another man to his death by reason of your vote for capital punishment?

A Yes, I have asked that question.

Q And do you believe that you could vote the death penalty; that is, to personally participate in a death penalty verdict and, in so doing, return to the jury seat where you are seated and by your verdict tell the court that the defendant is sentenced to death?

Could you do that?

A Yes.

Q Now, I think you'll agree that that kind of responsibility is certain<sup>LY</sup> a grave and a very serious one; isn't it?

A Yes.

Q And in a sense you are sitting as a jury of one in that without your vote for the death penalty there could be

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no return of a death penalty; isn't that right?

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A Yes.

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Q And in that sense you really can't blame 11 other people because without your vote there is no death penalty;

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isn't that right?

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A Yes.

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Q And so you would have to live with that judgment the rest of your life; isn't that right?

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A Yes.

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Q And that is a pretty awesome responsibility, isn't it?

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A Yes.

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Q Now, bearing that in mind and projecting yourself some six or eight weeks following the conclusion of the evidence in this case, if you felt in your heart and your mind and your conscience and in your sole and absolute discretion the case warranted the death penalty, could you vote the death penalty?

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A Yes.

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1 Q Now, you have heard our discussion concerning  
2 circumstantial evidence and I am sure you understood the  
3 colloquy in connection therewith.  
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5 Would your answers be substantially the same to  
6 the questions that have been previously posed to the other  
7 prospective members of the panel?

8 A Yes.

9 Q I take it you have no quarrel with the use of  
10 circumstantial evidence?

11 A No.

12 Q And you understand and recognize the fact that you  
13 draw inferences from proven facts in your everyday life, in  
14 your everyday existence; isn't that right?

15 A Yes.

16 Q And assuming for a moment that the People met their  
17 burden as required by law, based wholly upon circumstantial  
18 evidence, you would vote guilty; is that correct?

19 A Yes.

20 Q And you have no quarrel with the fact that a man  
21 can be convicted of murder in the first degree even though the  
22 People have not produced the body or an eyewitness to the  
23 killing; is that correct?

24 A Yes.

25 Q And I take it that does not offend your sense of  
26 justice or fair play; is that correct?

27 A No.

28 Q And if you were back in the jury room now and you  
were asked to deliberate on the guilt or innocence of the

1 defendant would you be willing to discuss the reasons for  
2 your conclusion in regard to the evidence with the other 11  
3 jurors?

4 A Yes.

5 Q And would you be willing to listen to their  
6 evaluation of the evidence?

7 A Yes.

8 Q And even though you felt originally that one of  
9 your conclusions was correct, if you were convinced by reason  
10 and logic and not by coercion or duress that your original  
11 position was wrong, would you put your pride, so to speak, in  
12 your hip pocket and adopt that conclusion which you believe  
13 to be reasonable?

14 A Yes.

15 Q And I take it you agree with the principle that  
16 in this courtroom the only issue here is the ascertainment of  
17 the truth; is that right?

18 A Yes.

19 Q And I take it that the defendant's exterior  
20 appearance, his youthful appearance, will in no way influence  
21 your verdict on the guilt or innocence phase; is that correct?

22 A That's correct.

23 Q Is there any reason why you couldn't be fair and  
24 impartial to both sides?

25 A No.

26 MR. KATZ: Thank you. I don't see any reason, either.

27 Pass for cause.

28 THE COURT: Now, I believe it is the defendant's, am I

1 correct -- or, People's?

2 MR. WEEDMAN: People's challenge, I believe, your Honor.

3 MR. KATZ: Your Honor, if it is convenient, I would ask  
4 for a recess at this time. It may save some time.

5 THE COURT: We will take a short recess, folks.

6 Do not discuss the case or come to any opinion or  
7 conclusion.

8 We will take a short recess. Thank you, folks.

9 (Recess.)  
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THE COURT: Now we are back in court in People against Grogan. The defendant is here, counsel for defendant is here, the People's counsel is here. And the jury is in the jury box. I believe it was People's peremptory.

MR. KATE: Yes, your Honor.

THE COURT: All right. Go ahead.

MR. KATE: People accept the panel as now constituted.

THE COURT: Very well.

MR. WEEDMAN: May I consult with my client?

THE COURT: Yes, indeed you may.

(Short pause.)

MR. WEEDMAN: Your Honor, we will thank and excuse Mr. De La Cruz.

THE COURT: All right.

THE CLERK: Walter E. Leser, L-e-s-e-r.

WALTER E. LESER

BY THE COURT:

Q Now, Mr. Juror, let me start back again. You have heard all of the statements that I have made to the other jurors, have you not?

A Yes, I have, your Honor.

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Q All right, and did you hear me read the charge that has been filed against the defendant in this case?

A Yes, I did.

Q Now, let's assume that you have been selected as a juror and the case has been tried and you have gone to the jury room with the rest of the jurors to vote on the question of guilty or not guilty.

Let's suppose that the jury -- let us put it this way -- that the jury at that time may vote not guilty, in which event the case is concluded entirely.

The jury may vote guilty, and if that is the case then they must make a finding of degree, first degree murder or second degree murder.

The jury makes a finding of second degree murder, as far as the jury is concerned the case is concluded.

If the jury makes a finding of first degree murder, then the jury has a further duty of finding or making the finding of that penalty, death penalty or life imprisonment; and that, for the purpose of doing that, a further hearing is then held, what is known as the penalty hearing.

Now, if you will put yourself in the position and assuming that we are up to the penalty hearing, the jury now goes to the jury room for the purpose of determining penalty of either the death penalty or life imprisonment.

Now, put yourself up to the point where you are going to vote on the question of the death penalty or life imprisonment. I will ask you this question: at that time would you automatically vote against the imposition of the death

1 penalty without regard to any evidence that might be developed  
2 at the trial of this case before you?

3 A Yes, I would, your Honor.

4 Q All right. Now I will take some more questions  
5 on that very point.

6 Is there any question at all in your mind of any  
7 kind that would sway you in your thinking that you would  
8 automatically vote against the death penalty, no matter what  
9 the evidence is?

10 Is that a positive conviction in your mind?

11 A Yes, it is, your Honor.

12 Q And you wouldn't change that conviction under  
13 any circumstances; is that correct?

14 A I would not; that is correct.

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1 THE COURT: All right. I am inclined to excuse the  
2 juror on that showing at this time, gentlemen.

3 MR. KATZ: Your Honor, there is a challenge under  
4 section 1073 subsection 2 and 1074.8.

5 THE COURT: I will excuse the juror. I do find that  
6 cause exists for the excusing of the juror under the holding  
7 of the Supreme Court in the Witherspoon. Also on the ground  
8 as set forth in the causes as set forth at section 1073  
9 subdivision 2 and also section 1074 subdivision 8. I do  
10 excuse you. Thank you very much.

11 Now, we will call another juror, Mr. Clerk.

12 THE CLERK: Excuse me, your Honor.

13 (The court and the clerk confer,  
14 not reported.)

15 THE COURT: Do you want a new panel in here before we go  
16 on? You better step up here, will you, please.

17 MR. KATZ: Yes, your Honor.

18 (Conference in chambers with both  
19 counsel and the defendant, not reported.)

20 (Recess.)  
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23a-1

(Conference in chambers with both  
counsel and defendant, not reported.)

(The following proceedings were had  
in open court:)

THE COURT: Now, gentlemen, first of all we have new  
jurors. And before that, we are in open court in People  
against Steve Grogan. The defendant is here, counsel for  
defendant is here. People's counsel is here and our former  
jurors with the exception of the one excused are back in the  
jury box. That is a correct statement, isn't it, gentlemen?

MR. WEEDMAN: Yes, it is.

Thank you.

THE COURT: Thank you.

MR. KATZ: Yes, your Honor.

THE COURT: Now, we have a new panel of jurors. Now,  
step number one, will you swear the jurors to answer questions.

THE CLERK: Yes, sir. Will the prospective jurors  
please stand and raise your right hands to be sworn.

Do you and each of you solemnly swear you will  
well and truly answer such questions that may be asked of you  
touching upon your qualifications to act as trial jurors in  
the cause now pending before this court, so help you God?

(The prospective jurors responded in  
the affirmative.)

THE CLERK: Thank you. Will you be seated, please.

THE COURT: Yes. Now, you will select a name and we will  
put him in the jury box.

THE CLERK: Called as prospective juror No. 6, Charles

23a-2

R. Winn, W-i-n-n.

THE COURT: Now, Mr. Winn, I have got a lot of things to say about the case. And for reasons indicated in just a minute I am going to go over until tomorrow morning at the regular time in advising you of the status of this case and how far we have advanced in the matter and all of the legal principles as well as the reading of the indictment to you tomorrow. And I might say, ladies and gentlemen, when I do speak to this gentlemen whose name has just been called I will in effect be talking to every one of you prospective jurors.

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24.

1 I want you to listen very carefully as I talk  
2 to this gentleman in the jury box so that when your name  
3 finally is called, if it is, I won't have to repeat everything  
4 I have said at considerable length.

5 Now, I am not going to go into that at this time  
6 because of the time elements that are involved.

7 This is a criminal action and I am going to adjourn  
8 a little early this afternoon, only because I don't want to  
9 be interrupted in what I have to say to this gentleman, and  
10 to adjourn at 4 o'clock will cut into what I have to say  
11 and I want to go into these matters very cautiously, very  
12 carefully, with full explanation; and that is the reason that  
13 I am going to go over at this time until tomorrow morning.

14 Now, I will say this, I am going to ask all of  
15 you, please be here promptly tomorrow morning at 9:30, right  
16 by 9:30.

17 Now, it does happen sometimes that the district  
18 attorney or maybe defense counsel could conceivably be tied  
19 up on some other matter for a few minutes and may or may not  
20 come in late. I don't say that he is or either of them is  
21 or that they won't. It is conceivable, but I don't think  
22 they will unless the pressure necessitates it; but I think  
23 it is fair to say that we will start on time at 9:30 and I'd  
24 ask everybody to please be here promptly at 9:30.

25 I will be here, so if anybody is kept waiting,  
26 I am waiting right along with you; but it is an honest excuse,  
27 an honest reason, if it has to be exercised; but I trust  
28 we'll all be ready to go at 9:30 and I will at that time advise

1 this juror whose name is called, as well as everyone of you,  
2 of the full status, the background, to a certain extent --  
3 the status and background so far as the trial of this case is  
4 necessary, with certain legal principles necessary to guide  
5 you on certain questions to the jurors; and we will proceed  
6 at that time tomorrow morning.

7 Now, I note as far as you folks are concerned  
8 that have just come in, you have heard, so far as I know,  
9 nothing about the case; there has been no interrogation, no  
10 questioning of anybody in here, no talking to this jury in the  
11 jury box because you weren't here, so you all start in new.

12 But, in no way discuss the matter, discuss the  
13 case. Remember, now you are under oath to answer questions  
14 and I am now directing you, do not discuss the case in any  
15 way at all or come to any opinion or conclusion till the  
16 matter, if you are selected as a juror, until it is finally  
17 put in your hands for your decision.

18 We will recess till tomorrow morning at 9:30  
19 in this courtroom right here, ladies and gentlemen.

20 Thank you very much.

21 (At 3:40 p.m., an adjournment was  
22 taken until 9:30 a.m. of the following  
23 day, Friday, July 2, 1971.)  
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