

8

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. A267861

STEVEN GROGAN,)

Defendant.)

REPORTERS' DAILY TRANSCRIPT

Tuesday, July 6, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

VOLUME VIII:

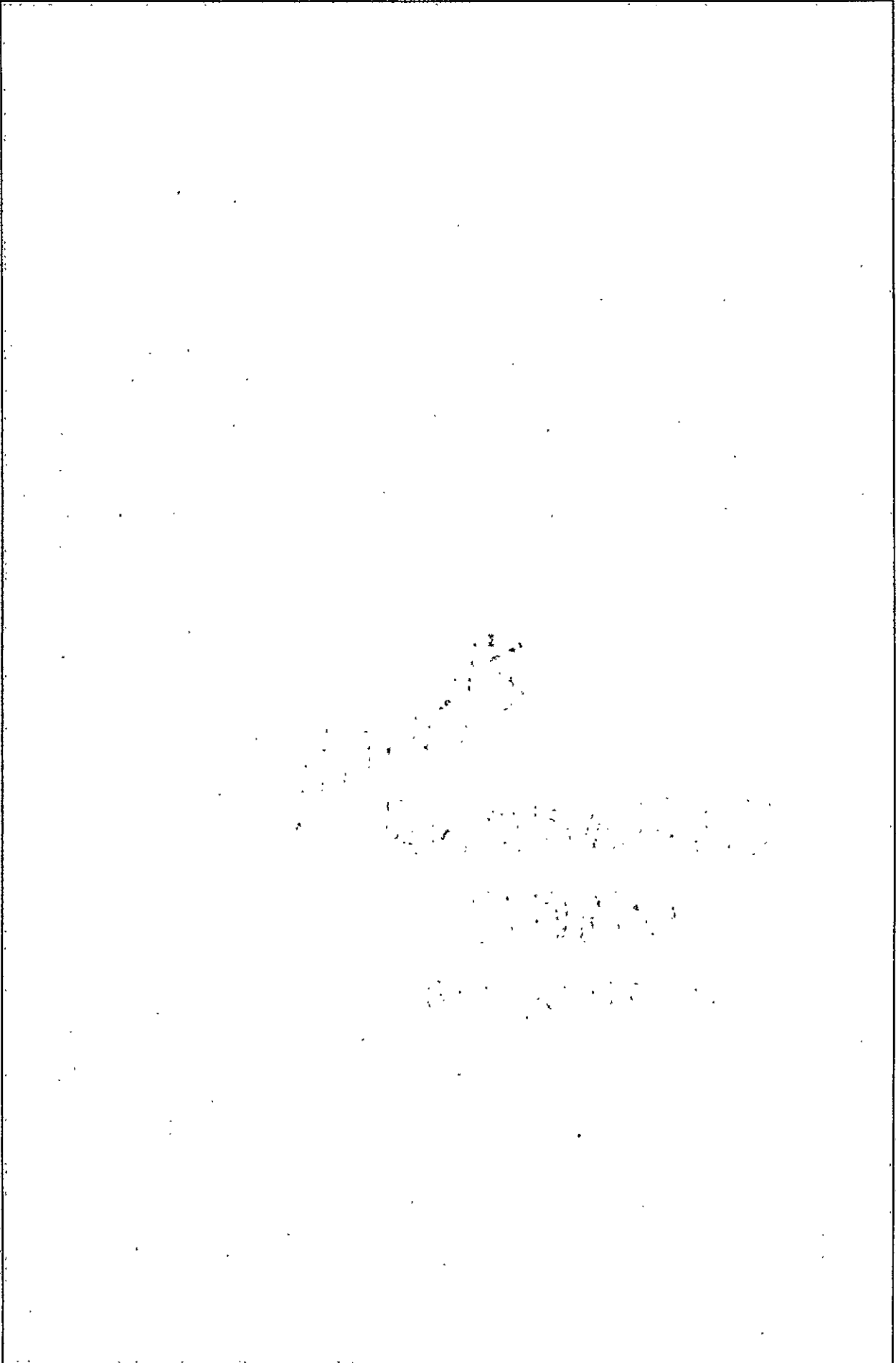
Pages 859 to 1032 incl.

Reported by:

VERNON W. KISSEE, C.S.R.
HAROLD E. COOK, C.S.R.
Official Reporter

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 LOS ANGELES, CALIFORNIA, TUESDAY, JULY 6, 1971

2 9:30 A.M.

3
4 THE COURT: Well now, gentlemen, we will proceed in
5 People against Grogan.

6 THE DEFENDANT: (Interrupting) Like to address the court
7 at this time, your Honor, with a motion.

8 THE COURT: All right. You can give it to the clerk.

9 THE DEFENDANT: (Handing) Giving it to the clerk.

10 THE COURT: Thank you very much.

11 THE DEFENDANT: As you can see that is a motion to proceed
12 in propria persona.

13 THE COURT: Wait a minute.

14 Defendant is here. Defendant's counsel is here.
15 People's counsel is here. The jury is here.

16 THE DEFENDANT: It is a motion to proceed in pro per.

17 THE COURT: Have you seen a copy of this?

18 MR. NEEDMAN: No, I have not, your Honor.

19 THE COURT: All right. Step in chambers and we will take
20 it up.

21 (The following proceedings were
22 had in chambers:)

23 THE COURT: We are in chambers. Defendant is here. Both
24 counsel are here, the sheriff is here. The defendant has
25 presented me a handwritten statement.

26 You can sit down, Mr. Grogan, if you want to.

27 It is addressed to me. In propria persona.

28 THE DEFENDANT: Let the record reflect --

1 THE COURT: Wait a minute. I will give you time to talk.
2 I want this statement for the transcript.

3 It is a motion to proceed in propria persona and
4 relieve acting defense counsel, setting forth the grounds,
5 affidavit or declaration.

6 I am reading it. You can show that statement in
7 the transcript.

8 (Short pause.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2-1

1 THE COURT: I have read the motion to proceed in propria
2 persona, relieving counsel, which consists of 3, 4, 5, 6 pages.

3 Then I have read the points and authorities in
4 support of the motion, pages 7, 8, 9, 10, 11 and 12, neatly
5 written, well prepared.

6 Now, first, counsel, I think you better read that
7 and the D.A., probably.

8 Sit down, I will listen --

9 THE DEFENDANT: I only had time to make two copies.

10 THE COURT: But they have got to see what you want here.

11 I will give you time to talk.

12 Tell the jury to take a short recess and don't
13 discuss the case and just stay handy here.

14 THE DEFENDANT: Is it all right if I smoke?

15 THE COURT: Sure, just be comfortable.
16
17
18
19
20
21
22
23
24
25
26
27
28

* 3

3-1

1 Take your time. Sit down, if you want to.

2 (Short pause.)

3 THE DEFENDANT: In Judge Malcolm Lucas' court --

4 THE COURT: Let them read it, first. They have got to
5 see what you are saying here. Then you can talk.

6 (Short pause.)

7 THE COURT: Have you read it, gentlemen?

8 MR. KATZ: Yes, your Honor.

9 MR. WEEDMAN: Yes.

10 THE COURT: All right. Sit down here, if you will.

11 Now, let's get another chair.

12 Now, what did you want to say, Mr. Grogan?

13 THE DEFENDANT: Well, as stated in my motion is what I
14 wanted to do, is relieve defense counsel and act in propria
15 persona, act as my own attorney, as buttressed by the case law
16 I have offered.

17 THE COURT: You can sit down. I have read, of course,
18 your petition. It is very neatly and well prepared. The
19 matter falls a great deal in the discretion of the judge. In
20 fact it probably is within my judgment. With probably some
21 exceptions the rulings of the court are substantially to the
22 point that where a defendant is charged, particularly with a
23 capital offense, and the People are demanding the death penalty,
24 that he should have competent counsel to represent him.

25 I will answer your questions in just a minute and
26 talk to you about it here in front of everybody. It is very
27 important you have a competent lawyer to represent you even
28 though no matter how much you think you may understand the

1 basis of the trial. It is something like a person that has
2 got to have a bad operation, trying to cut out his tonsils or
3 circumcise himself without a doctor of medicine there. He is
4 going to wind up in a bad position doing it. He has got to
5 have help and he can't do it alone.

3A

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3a-1

1 Now, let me tell you something, Steve. If I was
2 so unfortunate to be charged, even in a civil case, let alone
3 a criminal case, I wouldn't go in and try to defend myself.
4 And I have been in this law business for long before you were
5 born.

6 THE DEFENDANT: Forty years --

7 THE COURT: I will talk to you about this thing, I am
8 not going to crowd you. But I have been on the bench here
9 since 1931, on the Municipal Court a quarter of a century and
10 almost another quarter, 15 years in the Superior Court. That
11 is 40 years. And I will tell you, despite what you may think
12 of some of your friends or associates being in trouble, or the
13 fact that they may have been convicted, I am not answering
14 that. I am not defending it one way or the other. I am not
15 hanging my hat on that, on my own argument.

16 The point is that the worst thing you can do,
17 anybody can do, is try to defend yourself of these lawsuits.
18 It is deadly to do it. It is just deadly to get out there and
19 try to defend yourself. You should have a skilled lawyer.

20 Now, let me point out something else to you, too.
21 The fact that some friend of yours or acquaintance of yours,
22 however you want to put it, may have had a lawyer appointed by
23 the court and that lawyer used bad tactics or didn't effectively
24 represent his client doesn't mean that you are not well
25 represented. In other words, you go to a doctor and a doctor
26 may say to you, "Well, you do this, and you do this, and you
27 do this." And you do it and you wind up and you are a lot
28 worse off than before you went to the doctor. But that

1 doesn't necessarily mean that the other doctor over here
2 doesn't know what he is doing. In other words, you can't
3 balance services --

4 THE DEFENDANT: By somebody --

5 THE COURT: -- Unfortunate services against good services.
6 You can't do that. And you need, in the worst way, you need a
7 competent lawyer to represent you when the People are asking
8 the death penalty here. You just can't fool around with it,
9 if I can put it that way. You can't jump back and forth in the
10 matter.

11 Now, just let me say this about Mr. Woodman. I
12 think he has been in my court over the period of years, I think
13 I had him when he was over -- I spent six years in the
14 criminal courts and I left there in 1966, at the end of 1966
15 after six years. I think he was before me once. He could
16 have been there more, but I place him as being before me at
17 one occasion.

18 And he is a capable lawyer. And he is not an
19 insulting type of lawyer. He is cool-headed and he has got a
20 very good head on him. And he is a conscientious fellow. I
21 am telling you, whether you think it or not, he is.

22 THE DEFENDANT: I don't doubt Mr. Woodman's competence to
23 be a lawyer one second.

3b

Tke 3b.

1 THE COURT: Let me tell you this about Mr. Needman.
2 If I were to grant your request and say "You are discharged;
3 you are in, you try your own case," you would be losing one of
4 the best lawyers we have in the State. I am telling you something.
5 This is a good man here. And you mustn't bump him up against --
6 put him on a level with some of the folks that defended Manson.

7 Let me tell you something. You know who asked for
8 Kanarek in that case?

9 THE DEFENDANT: I know.

10 THE COURT: I will tell you who asked for him. Manson
11 asked for him, himself. He says, "I want Kanarek." The People
12 didn't force Kanarek on Manson.

13 THE DEFENDANT: I realize that.

14 THE COURT: He said "I want Kanarek to represent me."
15 Even the district attorney who is fighting Kanarek said "God
16 help you. Don't do that." That isn't exactly their words,
17 but they fought it, went to the Supreme Court on Kanarek.
18 The Supreme Court finally said, "Well, if Mr. Manson wants
19 Kanarek, he is entitled to the lawyer of his choice. So it
20 is Kanarek." That is how Kanarek, very roughly, got in there.
21 It wasn't the judge sitting on the bench saying, "This is the
22 lawyer that is going to represent you. That is Kanarek."
23 It wasn't the judge saying that. Only Manson made that request.

24 You can't use that as a stumbling block. Now,
25 this lawyer is a good man here, very capable man.

26 THE DEFENDANT: In the event then -- there is also the
27 law -- I can't find the case law but also says I can represent
28 myself with counsel assisting me. With his competent knowledge

1 assisting me, and then it would be me that would balance out.
2 I don't present myself to the court as a competent lawyer.
3 I am a layman before the law. And to me, my best knowledge
4 would have somebody who was familiar with law and counsel with
5 me, to help me, assist me during the trial. And he could
6 touch the finer points of law which I have gotten to lay my
7 hands on.

8 THE COURT: Well, whether a defendant knows the finer
9 points or even just knows the roughage of law, just the form of
10 it, is to a great extent beside the point. Because a man,
11 when he is under attack, when you are under attack, somebody
12 is attacking you, let us say, or forcing you as a defendant
13 and making demands on you, you can't try the case with a level
14 head. That is why you have got a judge up there and you try
15 to keep -- I do my best to keep out of the personal fights and
16 view it as a third party, which I should do.

17 And when you are under attack and you are defending
18 yourself you get so chewed up and even as a layman, you are
19 much worse because you are without any foundation at all.

20 THE DEFENDANT: That is if I have reactions.

21 THE COURT: To defend yourself --

22 THE DEFENDANT: If there is a reaction caused and I react
23 to that reaction, then I am caught up in that reaction. But if
24 I don't react to it and just look at it as it is, then there
25 is no sense in me, you know.

26 THE COURT: Well, I do have a great deal of discretion
27 there. The Supreme Court has particularly come down within
28 two years on cases in which the deathpenalty is in issue. And

1 the court has held -- and I can't give you the wording, my
2 memory isn't good enough to quote from memory -- but I can
3 give you the substance of it, that it is pretty much in the
4 hands of the trial judge whether he wants to force a defendant
5 or say "I discharge this lawyer, and you represent yourself."
6 When the death penalty is there.

7 The court holds it pretty much is in the hands of
8 the trial judge.

9 To be honest with you, I will put it this way, if
10 I were to grant your request and say to Mr. Weedman, "You are
11 through or discharged or out," I would be convinced I didn't
12 do the right thing by putting you out there before a jury.
13 They look like good jurors to me, but that isn't the point.
14 You are out there by yourself, you are alone. As a judge I am
15 accountable. I can't say in my rulings "Well, this defendant
16 doesn't -- he is not a lawyer. So therefore I have got to let
17 in certain testimony," or not -- or bend. I can't run the court
18 that way. I have taken an oath to obey the laws and the
19 Constitution, and I must enforce the law.

20 And if you sit out there as a layman, you don't know
21 where you are going. You don't know where to put your foot here
22 on these things. And the People make an objection, I have to
23 say, "Sustained. Don't answer the question," you see you have
24 got to have somebody that has a background in the study of law
25 to represent yourself.

26 THE DEFENDANT: Then you represent --

27 THE COURT: I am going to let you in on a secret. I am
28 going to tell you something here. This is going in the

1 transcript.

2 I said I never defended myself, I did defend
3 myself once, and believe me that is the only time I ever tried
4 it, I will tell you what happened to me when I did it.

5 It was back in 1926. It was about January or
6 February of 1927, and it was on a Saturday. And I had gone way
7 out into through Laurel Canyon and gone into the Valley,
8 San Fernando Valley for some purpose or other. And I was coming
9 back, and I was coming down Santa Monica Boulevard. It was
10 out in West Hollywood, though, Laurel Canyon is further east.
11 So I must have come down one of the other canyons.

3c.

36.
1 It was very rough. I think there was only one
2 canyon through. In any event, I was driving along with a
3 friend, a lawyer. Outstanding lawyer in town today, patent
4 lawyer. We were talking. All of a sudden a police officer
5 drove up alongside me and blew his siren and whistled me over.
6 I said, "What's the matter?" He said, "Well, you are driving
7 down here too fast," he said, "exceeding the limit. This is
8 a 25-mile business district. You are going 40 miles an hour,"

9 It was called 40 in the 25. Well, I said, "I don't
10 think I was going that fast." And I said "And besides that,
11 there is nobody on the street here. Your laws are based,
12 predicated on the fact that in substance if the highways are
13 clear and there is no one there and you are not endangering
14 anybody, you actually do have the right to exceed the speed
15 limit. It is a 40-mile zone. There is only a presumption that
16 you are breaking the law."

17 But I didn't want to argue with him. There was
18 nobody out here and I still wasn't convinced I was going 40
19 miles an hour. I was talking as we were going along.

20 He said, "Well, it doesn't make any difference.
21 Here is your ticket." So he wrote me out a ticket. I was
22 practicing law and had just been going a little while, and
23 I said, "Well, I am sure going to fight that. It is wrong.
24 I am going to go up and fight it myself." I said, "I will
25 fight this case myself."
26
27
28

4-1

1 So I came up on the return date, entered a plea of
2 not guilty, deposited, I think, a \$10 bail -- I was so
3 convinced I was right -- and we went right over to the trial
4 department and got the jury, and I was pretty green at that;
5 I hadn't been practicing very long.

6 So we got a jury finally impaneled, I was defending
7 myself, the city attorney was there, the jury went out to
8 lunch; they came back and found guilty as charged, speeding,
9 40 in a 25.

10 So, to make a long story short, I paid the fine;
11 but I learned a lesson, believe me. I decided that no matter
12 whatever happened again, ever, I don't care what it was,
13 criminal or civil, the courtrooms had seen the last of me
14 defending myself in any kind of a position. It is no good.

15 Now, I learned the hard way, and I am telling you
16 again, I can speak from experience; and from what I see,
17 basically, too, -- I am not hanging my hat on that little
18 incident that happened way back there in the twenties, that's
19 years ago -- but what I have seen in 40 years as a judge in the
20 court, it is simply devastating for a layman to go into court
21 and try to defend himself.

22 MR. KATZ: Your Honor --

23 THE COURT: I feel inclined, Mr. Grogan, I am inclined
24 to deny your request.

25 MR. KATZ: Your Honor, may I just ask the court --

26 THE COURT: Wait just a minute, if you don't mind.

27 I am inclined to deny it.

28 THE DEFENDANT: Will you consider --

4-2

1 THE COURT: Because another thing, too, if the Supreme
2 Court -- it might act to your benefit because -- everybody is
3 here, hears me talking -- if the jury should find you guilty --
4 I don't know what they will do; I tell them every day, "You
5 may find this man guilty, you may find him not guilty," so I
6 say the same to you, I don't know whether you are guilty; I am
7 not trying to pass on you.

8 Let's take the worst of it and say you are found
9 guilty and I deny your petition. Now you have got something to
10 go to the higher court on and say, "Listen, I told that trial
11 judge I wanted to defend myself, I wanted a trial here; the
12 trial judge wouldn't let me have it, and my reasons appear
13 there"; so you haven't hurt yourself.

14 THE DEFENDANT: The Supreme Court would overrule it --

15 THE COURT: You have got a review right there; but I am
16 inclined to deny your request.

17 THE DEFENDANT: Okay; would you allow acting pro se,
18 assistance of counsel?

19 THE COURT: No, I would refuse that. You can talk with
20 him all you want to; you can consult him; but I must act
21 through Mr. Weedman.

22 If he or you want time to talk to each other, you
23 will get the time. I am not here to crowd you, I am not going
24 to crowd you.

25 You can see that I am not trying to crowd anybody.
26 You talk to him all you want to; you are entitled to it, any
27 reasonable time you want you can have, but I am inclined to
28 deny the request.

4-3

1 Motion denied.

2 Let's go ahead, gentlemen.

3 MR. KATZ: Excuse me, your Honor, I was going to ask --

4 THE COURT: It is all over now.

5 THE DEFENDANT: I'd like to have all the points and
6 authorities and my motion incorporated on the record.

7 THE COURT: Well, I can't do any further than to file
8 them.

9 They are ordered filed.

10 THE DEFENDANT: There is no way I can get the points
11 unless I read them over into the record, can I?

12 THE COURT: I see what you mean, you want them in the
13 transcript?

14 THE DEFENDANT: Yes.

15 THE COURT: That isn't the proper place for them, but in
16 the absence of some kind of an argument where the reporter
17 would take them down, if you want to make the statement, go
18 ahead, I won't try to stop you.

19 Go ahead, now, you tell the reporter --

20 MR. WEEDMAN: Your Honor, it occurred -- excuse me --

21 THE COURT: Go ahead.

22 MR. WEEDMAN: It occurs to me that perhaps the reporter
23 might be ordered to copy Mr. Grogan's motion into the record.

24 We are going to have so many exhibits --

25 THE COURT: Can you do that?

26 THE REPORTER: Yes, your Honor.

27 THE COURT: All right. You take, Mr. Reporter, you take
28 this entire motion to proceed in propria persona, and all the

4-4

1 accompanying papers.

2 Frank, file this right now, this motion to proceed;
3 file this and put it in the file, make a minute entry on it,
4 "Motion denied."

5 Now I am asking the reporter to copy in the
6 reporters' transcript the motion, the declaration of Steven
7 D. Grogan, and all of it, every word of it; and also the
8 argument and points and authorities in support of the motion
9 and every bit of that, leaving out nothing, and showing it in
10 full.

11 That will do it better than your reading to him.

12 THE DEFENDANT: Fine; that's what I want.

13 THE COURT: You put your stamp on there, Frank.

14 MR. KATZ: Your Honor --

15 THE CLERK: Your Honor, sir, the district attorney is
16 trying --

17 MR. KATZ: Respectfully, I am not trying to argue with
18 the court, I merely want to point out to the court that this
19 matter had been fully heard and argued and ruled upon in this
20 file A 267861 on January 7, 1971.

21 THE COURT: But, irrespective, I will give him an entire
22 new de novo statement here. I am not criticizing any other
23 court; I am just simply acting de novo, entirely, in the
24 matter.

25 MR. KATZ: I appreciate that, your Honor; thank you.

26 THE COURT: Let's go ahead.

27 Get the jury back, Frank, and we'll go ahead.
28

311
4B

sh-4a-1

"Steven D. Grogan
1376-345 2300 C-22
441 Bauchet Street
Los Angeles, California 90012

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

PEOPLE OF THE STATE OF CALIFORNIA,)	CASE NO. A267861
)	
Plaintiff,)	MOTION TO PROCEED
)	<u>IN PROPRIA PERSONA</u>
-vs-)	<u>AND RELIEVE ACTING</u>
)	<u>DEFENSE COUNSEL</u>
STEVEN GROGAN,)	
)	
Defendant.)	

TO THE HONORABLE JOSEPH L. CALL, Department 52:
COMES NOW, Steve Grogan, defendant and respect-
fully move this Honorable Court to proceed in
propria persona within the above-entitled
criminal proceedings.

WHEREFORE, this motion is and will be based
upon the previous records, files and motions,
within the above-entitled action and all oral
argument presented at the time of the hearing
of this motion.

Dated this 6th day of July, 1971.

4a-2

1 DECLARATION OF STEVEN D. GROGAN

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 In support of my motion to proceed in propria
6 persona I the aforementioned defendant declare
7 the following:

8
9 That I can read and write and understand that
10 our constitutional rights including the
11 following:

12
13 I understand that I have the right to a speedy
14 and public trial, and that is a right to a
15 trial by jury;

16
17 I understand that I have the right to utilize
18 the process of this court to subpoena any
19 witness or any records that I may need in
20 my -- own behalf or in my defense;

21
22 I understand that I have the right to be
23 confronted in open court by all witnesses
24 who will be called to testify against me,
25 and that I have a right to cross-examine
26 those witnesses at the time of trial;

27
28 I understand that I have the right to testify

4a33

1 at the time of trial, but I cannot be
2 compelled to testify at the time of trial
3 unless I so desire;
4

5 I understand that I have the right to be
6 admitted to liberty on reasonable bail
7 pending trial;
8

9 I understand that I have the right to
10 represented by a lawyer at all stages of
11 the proceedings and, if I do not have the
12 funds to employ counsel, one will be
13 appointed for by the court; and if the
14 court grants me permission to proceed in
15 propria persona, I understand that I am
16 not entitled to have counsel appointed to
17 advise me at the time of trial;
18

19 Understanding all the above-mentioned
20 Constitutional Rights it is my desire that
21 I be granted permission by the Court to
22 proceed in Propria Persona and that by making
23 this request I am giving up the right to be
24 represented by a lawyer appointed by the
25 Court.
26

27 I am charged with the crime of murder in
28 violation of section 187 of the Trial Code

1 in 1 count in the indictment heretofore
2 filed in the above-entitled action.

3
4 I am aware that there are certain legal
5 defenses to the crime(s) that I am charged
6 with and they are as follows:

- 7 a. Insanity
- 8 b. Diminished capacity.
- 9 c. Unconscious at the time of the
10 act.
- 11 d. Self defense.
- 12 e. Alibi.
- 13 f. Former jeopardy.
- 14 g. Excusable homicide.
- 15 h. Intentional discriminatory
16 enforcement.

17
18 I am aware that the minimum sentence in
19 the event that I am found guilty of section
20 187 is life imprisonment and the maximum
21 sentence to which I could be subject to is
22 death.

23
24 I understand that if I am permitted to
25 represent myself it will be necessary that
26 I, without the assistance of appointed
27 counsel, to conduct my own trial consisting
28 of (but not limited to):

- 1 a. Making preliminary motions.
- 2 b. Impairment of jury.
- 3 c. Making an opening argument
- 4 (statement).
- 5 d. Cross-examining of the witnesses
- 6 for the prosecution.
- 7 e. Subpoenaing of and presenting my
- 8 own witnesses.
- 9 f. Making appropriate objections and
- 10 motions during the course of the
- 11 trial.
- 12 g. Preparing and presenting to the
- 13 Court proposed jury instructions.
- 14 h. Making the final argument.

15
16 I further understand that after trial
17 if I continue to represent myself in propria
18 persona, it will be necessary for myself,
19 without the assistance of appointed counsel,
20 to conduct all matters after trial consisting
21 of (but not limited to):

- 22 a. Conducting the insanity or death
- 23 penalty phases of the if applicable.
- 24 b. Representing myself at the time of
- 25 the probation hearing in the event
- 26 of conviction of a lesser included
- 27 offense.
- 28 c. Making appropriate motions after trial.

1 In support of my application to proceed in
2 propria persona, I offer the Court the following
3 biographical information:

4 STEVEN D. GOGAN;

5 a. Age: 20 Year of Birth: 1951

6 b. Education: 10th grade. Legal Ed. NONE

7 c. Employment experience: Spot welder,
8 musician, ranch hand.

9 I am aware that some of criminal proceeding
10 in that state of California take the following
11 form after arrest:

12 a. That an information is filed, the
13 defendant is arraigned and plea taken.

14 b. That prior to plea being taken the
15 defendant may elect to move under Section 995
16 of the California Penal Code.

17 c. That prior to trial the defendant
18 may move and exercise his right to a Discovery
19 proceeding(s).

20 d. That to trial the defendant may elect
21 after proper evaluation to move under Section
22 1538.5 of the California Penal Code, for the
23 suppression of illegally obtained evidence.

24 e. That the defenant may elect to
25 proceed by Court trial if, the District
26 Attorney consents or trial by jury.

27 f. That the defendant is allowed (20)
28 peremptory challenges (if a trial by jury)

1 and unlimited challenges for cause

2 g. That the defendant is further aware
3 that Hearsay may play an important part in any
4 criminal proceedings and is generally defined
5 as 'extra-judicial statement offered for the
6 truth of the matter contain therein'; that the
7 main exceptions to the Hearsay Rule:

8 1. reasonable cause for arrest.

9 2. admissions or confessions or state-
10 ments not in the best interest of the defendants
11 and alleged to the defendants (Miranda and
12 Escobedo rules must be complied with.).

13 3. res gestae (the thing speaks for
14 itself and the presence of defendant.)

15 4. self-serving declaration of the
16 defendant.

17 5. state of mind of person making the
18 statement(s).

19 6. testimony as to what was said or
20 written (admissibility may depend on purpose
21 for which offered that is not to prove
22 statement(s) or written document(s) true,
23 but only that in fact such document was written.)

24 7. dying declaration(s).

25 (There may be more technical exception
26 than the above listed, but are not applicable to
27 the matter in granting the defendant this motion
28 at this time.)

3
1 I know as a Constitutional right, I have
2 the protection of the Court, the Constitution
3 of the State of California and the Constitution
4 of the United States of America.

5 That I know the following pleas are
6 available to the defendant:

- 7 a. not guilty
8 b. guilty
9 c. not guilty, not guilty by reason of
10 insanity.
11 d. nolo contendere.
12 e. once in jeopardy (res adjudica)
13 f. a former judgment of conviction or
14 acquittal of the offense charged.

15 In closing the defendant respectfully
16 submit that he is familiar with the various objec-
17 tions that are available and is aware that a
18 motion to strike is both used as a remedy when
19 the answer is not responsive to the question
20 posed and where the situation should indicate
21 that the witness's answer is voluntary and
22 self-serving.

23 For the pages of the foregoing reason which
24 will be orally supplemented at the time this motion
25 is heard, the defendant, Steven D. Grogan, respect-
26 fully move to dismiss the appointed attorneys and
27 proceed in propria persona.

28 I, Steve Grogan, declare under the penalty

4
1 of perjury that the foregoing is true and
2 correct, except as to those matters which
3 I believe them to be true.

4 DATED this 6th day of July, 1971.

5 Respectfully submitted,

6 /s/ Steve Grogan

7 Steven D. Grogan

8 Defendant and Declarant.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5

1 "ARGUMENT AND POINTS AND AUTHORITIES IN SUPPORT
2 OF THIS MOTION

3
4 "As this Honorable Court know that due to
5 the great amount of publicity that I the defen-
6 dant has recieved prior to filing this information
7 the contentions of the defendant is that I find
8 it impossible to recieve a fair and impartial
9 trial within the County of Los Angeles, as f ar
10 as it is concerned, within the bounds of the news
11 media.

12 "Therefore, by the Court forcing counsel
13 upon this defendant I feel that I am being used
14 for nothing but publicity and that the appointed
15 counsel do not care if I am convicted or not, just
16 as so his name will appear within the news media
17 and his reputation will be built for furture clients.

18 "The defendant's aim is to prove that he is
19 innocent of the allededged orime(s) and the only
20 way that he (I) can possibly bring this into
21 light is by I the defendant representing myself
22 in Propria Persona.

23 "As the great English Jurorist, Lord Hershal
24 once stated "...it is not enough that the defendant
25 in crimial actions should recieve justice.... but,
26 he should be made to feel as if he is recieving it...."

27 "The defendant also knows that if he wishes
28 to represent himself it is his Constitutional right to

1 do so. I have this right to waive counsel if
2 I knowingly and intelligently elect to do so.
3 (People v. Maddox, 67 Cal. 2d. 647; People v.
4 Carter, 66 Cal. 2d 666)

5 If I wish to venture into the unknown,
6 I must be allowed to do so, if I am aware of
7 the dangers therein, I need not demonstrate that
8 I can meet them! (People v. Armstrong, 274 Cal.
9 App. 2d. 478) I am faully aware of the dangers
10 therein." The defendant Charles Manson has
11 suffered a conviction and sentence to die in the
12 gas chamber for seven counts of murder. Would
13 this have happen if he had been allowed to appear
14 and defend in proper person during the course of
15 his trial? He contends not.

16 I reliaxe the the Constitutional does not
17 force a lawyer upon a defendant (Johnson v. Zerbst,
18 304 U.S. 458) if I meet the requirements of
19 'knowingly and intelligently' of my waiver of
20 counsel (People v. Carter supra).

21 A defendant may waive counsel and choose to
22 represent himself if he or she has an intelligent
23 conception of the consequences of his act and
24 understands the nature of the offense(s), the
25 available pleas and defenses, an the possible
26 punishment. (In re Johnson, 62 Cal. 2d 325,335)

27 The attached declaration of the defendant
28 does nothing but show this Court that I the

1 defendant is within the prescribed require-
2 ments of the foregoing points and authorities.
3 The trial Judge is not required to demand that
4 the defendant in a criminal proceedings demonstrate
5 the accumen or the learning of a skilled lawyer
6 (People v. Harom, 54 Cal. 2d 9; People v. Linden,
7 52 Cal. 2d 1; People v. Addison, 256 Cal. App. 2d
8 18, 24; People v. Floyd, 1 Cal. 3d. 694 at 703)
9 (Emphasis added.) And it is error for a court to
10 deny a defendant the right to represent himself
11 if he elects to do so if he does waive counsel
12 with his 'eyes open' and understands the possible
13 consequences (People v. Maddox, *supra*; People v.
14 Ruiz, 263 Cal. App. 2d 216, 226-228).

15 As the Constitution provisions provide, the
16 defendant has the right to appear and defend in
17 person (U.S. Const. V Amendment) and the right to
18 conduct and manage his own case pro se. This is a
19 right arising out of the Federal Constitution and
20 not the mere product of legislation or judicial
21 dicision.

22 It is also quoted in several cases but the
23 defendant brings to this Court's attention the
24 case (People v. Crovedi, 65 cal. 2d. 199, 208,) with
25 emphasis added, that the court should keep to
26 a necessary minimum its interfrance with defendant
27 with the desire to defend himself.

28 Also, in Crovedi, *supra*, I should be granted

1 the right to defend myself in whatever manner
2 I deem best, using any legitimate means within my
3 resources.

4 As quoted in Walker v. Superior Court, 155
5 Cal. App. 2d 135 at page 140, the court held:

6 'The defendant, therefore, has the
7 constitutional right to compulsory right or process
8 for obtaining witnesses to testify in his behalf,
9 he also has the right...personally...to ascertain
10 what their testimony will be.'

11 1. Referring back to People v. Manson et al.
12 (NO. A253156 the defense counsels rested without
13 calling defense witnesses to testify in behalf to
14 the defendants during the course of the trial
15 (during the guilt phase). But, after the defendants
16 had been found guilty, defense witnesses were called
17 to give testimony whether or not the defendants
18 should recieve the death sentence. The defendant
19 in this instant case does not want this to happen
20 as it was done above.

21 Why should the defendant have to wait and
22 suffer a possible conviction and then present
23 witnesses during a penalty phase? I should have
24 the right to present witnesses during the guilt
25 phase as well. It is the law of this State that
26 I am entitled to as a matter of right and due
27 process to produce any witness who will give
28 testimony or edidence favorable to my defense.

1 (People v. Castiel, 153 Cal. app. 2d 653.)

2 The defendant as this Court knows is a
3 citizen within the State of California. Some
4 of the defense witnesses are afraid to come
5 forward because of the so-called 'legal tactics'
6 in the courtrooms. There are afraid of being
7 harrassed by the Courts and will not believe
8 anyone but the defendant that they wouldn't be.

9 But, by the defendant summoning them, they
10 will come forward, and give thier testimony in
11 proving the defendants innocence of the alleged
12 crime. These witnesses are within the meaning
13 of 'using any resources and legitimate means'
14 (Crovedi, supra.) The defendant would like to
15 piont out to this Court the case of Brady v.
16 Maryland, 10 L.Ed.2d 215, where the Supreme
17 Court of the United States held that the
18 suppression of evidence favorable to an accused
19 upon request (as this defendant is now doing)
20 violates the due process clause where the
21 evidense is material either to the guilt or the
22 punishment. (Emphasis added as to the guilt.)

1 It has been said within the Superior
2 Courts that defendants acting in propria
3 persona sometimes do not have the ability
4 to express themselves in front of a jury.
5 This defendant knows that it is one of his
6 Constitutional rights to let the prosecution
7 present his full case then rest; whereafter
8 the defendant is not required to on any
9 defense and may leave entirely his or her
10 question of guilt upon the jury with just
11 a simply form of argument. Who needs the
12 teacher of law to do this? Not saying that
13 the defendant within this instant case is
14 about to do this, but, if it was my choice,
15 I would be allowed to do this (See: People
16 v. Manson et al, supra.)

17 Also, the defendant would like to
18 bring the following two Superior Court case
19 (Los Angeles County, 1970) to this Court's
20 attention concerning two defendants repre-
21 senting themselves in propria persona. These
22 two cases are about two inmates who an
23 adequate representation during the courses
24 of the trial (according to the Superior Court)
25 and were both convicted of murder in the
26 first degree and sentenced to death in the
27 gas chamber in San Quentin State Prison.

28 Upon a reversal from the California

b.

1 Supreme Court concerning the penalty phase
2 both of these convicted inmates represented
3 themselves in propria persona in front of
4 the jury and recieved a life sentence.
5 Could it be that defendants that are in
6 jeopardy of loosing thier life would be
7 more apt to pay more attention to the
8 crimial proceedings then defendants the
9 are charged with a lesser crime? Was this
10 due to the presentation of a more and
11 complete defense than with or by members
12 of the California State Bar Association?
13 The two inmates in question are a black
14 man by the name of Earnest Sheppard III
15 and Jerry O'Brien a white man charged
16 with the slaying of a policeman, while in
17 the comission of a felony robbery. Both
18 of these defendants had what was called
19 adequate representation during the penalty
20 phase of thier proceedings. And yet, both
21 of them are now serving sentences that they
22 are eligible for parole in the future. Could
23 this be the reason why the Superior Courts of
24 Los Angeles tend not to let defendants repre-
25 sent themselves in propria persona? Because
26 they may be able to prove their innocence?

27 Because of the foregoing pages of points
28 and authorities the defendant contend that I

1 must be allowed to represent myself in propria
2 persona so that I will not be denied the due
3 process of law this is made available to them
4 through the United States Constitution which is
5 the Supreme Law of the Land.

6
7 PRAYER

8 Wherefore, the defendant within this
9 instant case respectfully prays this Honorable
10 Court to extend its wisdom and forbearance,
11 and to heed the spirit and dictum of the
12 Constitution and laws, buttressed by the case
13 law submitted in the foregoing pages and
14 grant this defendant his motion so that he
15 will be allowed to properly prepare an adequate
16 defense to the criminal charges now pending
17 against him

18 IT IS SO PRAYED!!!

19 Respectfully submitted,

20
21 /S/ Steve Grogan

22 Steve Grogan
23 Defendant and declarant.

24 Dated this 6th day of July 1971."

4B

(The following proceedings were had
in open court:)

THE COURT: All right, gentlemen, we will go ahead
in People against Grogan. The defendant is here, both counsel
are here; the jurors are in the jury box.

I believe you were in your voir dire; is that
right, Mr. Weedman?

MR. WEEDMAN: Yes, your Honor, that is correct.

THE COURT: All right.

GEORGE W. MCGREGOR

BY MR. WEEDMAN:

Q Mr. McGregor, I believe we left off talking with
you and we were talking about what you would or would not do
if you were called upon to decide the penalty in this case.

I'd like to reiterate one thing; I've said it so
many times, but it is so important and a number of days have
gone by since we last spoke; and it is, do you fully appreciate
the only reason we are talking about this, it is not because
this is going to necessarily go to the penalty phase but
merely because the district attorney is asking for the death
penalty and, therefore, this is the only opportunity we have
to discuss the issue of capital punishment.

I take it from your responses that you fully under-
stand and appreciate that as you all sit there now my client
is just as apt to be acquitted as not and that, therefore, this
matter would not go to a death penalty, or a penalty phase,
in any event -- consideration of the death penalty.

4b-2

1 I left off asking you generally under what circum-
2 stances you would automatically impose the death penalty; and
3 do I understand your answer, Mr. McGregor, that there are no
4 circumstances in which you would automatically impose the
5 death penalty?

6 A That's my answer.

7 Q Surely. In other words, you would wait until you
8 hear all of the evidence, all the evidence coming from the
9 guilt phase and any evidence either side may produce during
10 the penalty phase?

11 A Yes.

12 Q And do you understand, Mr. McGregor, that the law
13 of California does not express any preference for one penalty
14 against the other penalty; that is a matter that is entirely
15 within the discretion of the jury.

16 A Yes.

17 Q So that you will understand, then, and I take it
18 from your answers that you do understand that merely because
19 you are asked to go in and consider the death penalty doesn't
20 mean that you are expected somehow to return the death penalty?

21 A Yes.

22 Q The district attorney obviously is urging it; he
23 has been quite frank with us in saying that he is going to
24 prevail upon the jury to execute my client; but it should be
25 equally obvious that should it ever get to that point that
26 we have, we hope, prevailing arguments on the other side.

27 I am sure you are prepared to hear arguments from
28 both sides in this matter?

1 A Yes.

2 Q I take it, Mr. McGregor, that you are not going
3 to be a juror representing either the People or the defendant,
4 you are going to somehow be above the litigiousness of the
5 advocates here, that you are going to dispassionately weigh
6 and consider the evidence and not really be rooting for
7 either the prosecution or the defendant in this case?

8 A Yes.

9 Q In other words, you are not going to view this as
10 some kind of game where one side may be winning and the other
11 side losing and you somehow become involved in identifying
12 either with the side that seems to be winning or the side
13 that seems to be losing and you begin to root for that side;
14 you are not going to indulge in that kind of thing, are you,
15 sir?

16 A No.

17 Q And in that connection I am sure you appreciate
18 that this is no popularity contest between myself and Mr. Katz,
19 that this is not, we hope, a matter in which you will allow
20 any artificial standard to sway your judgment -- given examples
21 of artificial standards earlier: all policemen lie -- some
22 people believe that -- all policemen tell the truth; some
23 people believe that -- the lawyer with the winningest smile
24 should win the case because he's so attractive, then he's
25 probably urging a truthful case.

26 All such propositions are easy, I suppose, to
27 follow; but I take it that you will not follow any such
28 artificial standard; am I correct in that, Mr. McGregor?

1 A That's correct.

2 Q With respect to the problem of circumstantial
3 evidence, is there anything about such circumstantial evidence
4 that makes you feel that you could not with an appropriate
5 instruction, that you could not utilize it just as fully
6 as you could direct evidence?

7 A No.

8 Q Okay.

9 Furthermore, will you be prepared to wrestle with
10 the problem that may prove to be a little difficult in the
11 jury room, and that is as follows, that while you are permitted
12 to use circumstantial evidence equally with direct evidence,
13 you nonetheless are under an obligation where circumstantial
14 evidence is susceptible of two reasonable interpretations,
15 to follow the interpretation which points to my client's
16 innocence.

17 Do you have any quarrel with that?

18 A No.

19 Q In other words if, let's say, there are ten
20 discrete bits of evidence presented to you, circumstantial
21 evidence, each bit of circumstantial evidence has in it a
22 reasonable interpretation which points to my client's guilt,
23 it also has a reasonable interpretation which points to my
24 client's innocence: would you be able, do you feel, to follow
25 the law which requires that there be no adoption by you
26 of reasonable inferences which point to guilt when at the
27 same time there are reasonable interpretations which point
28 to innocence?

1 Would you have any trouble with that problem
2 as you go through the evidence in this case?

3 A I don't think so.

4 Q Okay.

5 A I think I can completely weigh the facts.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5-1

1 Q Now, Mr. McGregor, it may well be in the banking
2 business, you know, you handle the problems that come up there
3 in a little different way than you handle perhaps your
4 ordinary affairs. And by that I mean you are professionally
5 obligated to be, perhaps, a different Mr. McGregor than you are,
6 perhaps, in other life activities.

7 Will you appreciate that much the same duty evolves
8 upon you in this matter, that both sides expect you to rise
9 above, perhaps, the ordinary everyday modes and manners of
10 treating evidence and here to follow the court's instructions
11 scrupulously and to become for both sides something of an
12 extraordinary person; you appreciate the thrust of my question,
13 Mr. McGregor?

14 A Yes.

15 Q Do you feel that if you are selected as a juror in
16 this case that you will be able to rise to that level of the
17 duty that both sides here have a right to expect from you?

18 A I do.

19 Q Have you heard anything at all about this case that
20 makes you feel that you might have any thoughts or any opinions
21 which will be necessary for you to set aside in order to give
22 both sides a fair trial?

23 A No.

24 Q I don't know of a single trial lawyer who has ever
25 heard a prospective juror faced with the simple question "Will
26 you be fair and impartial?" ever say anything but yes. I think
27 each of us are convinced that we will be fair and impartial.
28 But do you agree that experience, particularly for thoughtful

5-2

1 people, teaches us that we have all kinds of biases and
2 prejudices which of course only come into play when an appro-
3 priate fact situation arises?

4 A That is true.

5 Q Will you, should you discover in your ownself, in
6 a very human way, of course, would you set aside any such bias
7 or prejudice, should you discover it bubbling up to the surface
8 in your mind and perhaps in your heart, in connection with the
9 evidence in this case? Will you set it aside?

10 A Yes, I would.

11 Q I take it you heard of Charles Manson and the
12 Manson family?

13 A Yes.

14 Q And if you are like most people who have had some
15 contact with the news media, this story, you have probably
16 formed an opinion, is that so, about Charles Manson and the
17 Manson family?

18 A Yes.

19 Q If the evidence in this case should show that my
20 client is associated with Charles Manson or was associated with
21 him, or indeed could be, broadly, but nonetheless fairly
22 described as a member of the Manson family, would you permit
23 the opinion that you have formed to infect your judgment with
24 respect to my client and the evidence in this case?

25 A No, I wouldn't.

26 Q Do you feel that one who was a member of the Manson
27 family must necessarily be guilty because other members of the
28 Manson family have been convicted of serious crimes?

5-3

1

A No.

2

3

4

5

Q Do you feel that the district attorney, being almost like Caesar's wife, above reproach, would not bring a case like this into the superior court unless the defendant was guilty?

6

A No.

7

8

9

Q In other words, you are going to wait and see if the People have a case, you are going to convict my client; if the People don't have a case you are going to acquit him?

10

A Right.

11

12

13

14

15

16

17

18

Q Finally, this matter of counsel making objections and counsel conferring with Judge Call during the course of the trial. If you are like most people, curiosity at least would compel you to want to know what is going on up there. Will you be able to cope with the awesome responsibility that you will have in evaluating the evidence here and nonetheless let the lawyers do their job, let us do our work without holding it against either side?

19

A Yes.

20

MR. WEEDMAN: Thank you, Mr. McGregor.

21

We will pass for cause.

22

THE COURT: Thank you. People.

23

MR. KATZ: Yes. Thank you.

24

25

26

27

28

Q Mr. McGregor, it must become obvious to you after all of this questioning over and over again that this case rests wholly upon circumstantial evidence. Is that correct?

A That's correct.

Q And I take it you understand as his Honor previously

1 indicated that the People do not contemplate ^{Presenting} ~~to present~~ any
2 body, any parts thereof, or any eyewitness to having observed
3 the body in death, you understand that?

4 A Yes.

5 Q So therefore it is incumbent upon the People,
6 because of the nature of the case, to prove its case, if they
7 are capable of so doing, by circumstantial evidence, you
8 understand that?

9 A Yes.

10 Q Now, is it fair to say that if you are of a mind
11 that in no way, manner, shape or form you would be willing to
12 consider circumstantial evidence as a reasonable means of
13 proof, then the People could not get a fair trial, is that a
14 fair statement?

15 A Yes.

16 Q All right. And I take it that you are not one of
17 those jurors who many times will say, "Well, I don't mind the
18 circumstantial evidence. That is okay. You can convict the
19 defendant of a traffic violation or petty theft case or
20 perhaps of a burglary case, but this is a murder case. I would
21 require more evidence. I want to have somebody tell me that
22 they observed the body in death. I want to have somebody tell
23 me that they saw the decedent killed." Are you that kind of
24 juror, sir, or would you be willing to evaluate the circumstan-
25 tial evidence in this case and to draw reasonable inferences
26 from the proven facts?

27 A I believe I would be able to evaluate the
28 circumstantial evidence.

1 Q All right. In that connection, Mr. McGregor, I
2 take it that you have no objection and would be willing to
3 draw reasonable inferences from facts that are proven to you,
4 is that correct?

5 A That's correct.

6 Q You do that in your everyday life, don't you?

7 A Yes.

8 Q In other words, it's merely a common sense
9 evaluation of the evidence and the ability to draw reasonable
10 deductions from the facts that are proven to you, isn't that
11 correct?

12 A Yes.

13 Q Now, if you believe beyond a reasonable doubt and
14 to a moral certainty that the People have proved that the
15 defendant committed murder in the first degree based wholly
16 upon circumstantial evidence, would you nevertheless be
17 reluctant to vote guilty?

18 A No.

19
20
21
22
23
24
25
26
27
28
5a

The Sa

1 Q All right. So what you are saying is that you
2 wouldn't require the People to produce a body or any eyewitness
3 to the killing or any eyewitness to having observed the body
4 in death before voting guilty if we had otherwise met our
5 burden of proof, is that correct?

6 A That's correct.

7 Q Does it bother you or disturb you, sir, that the
8 law in California permits a man to be convicted of murder in
9 the first degree based wholly upon circumstantial evidence?

10 A No.

11 Q Does that offend your sense of justice at all?

12 A No.

13 Q All right. Does it offend your sense of justice
14 that a man may indeed be sentenced to death based upon a
15 circumstantial evidence case?

16 A If that circumstantial evidence convinces me of
17 the crime.

18 Q That is the right answer. In other words, what
19 you are saying is that if you are convinced by the evidence,
20 be it direct or be it circumstantial evidence, that this case
21 warrants the death penalty, in your sole and absolute discretion
22 you would vote that; is that correct?

23 A Yes.

24 Q Now, and getting on to this penalty phase, assuming
25 we reach that phase of the trial, do you think that if in
26 your sole and absolute discretion this case warranted the
27 return of the death penalty that you would have the courage
28 and could so vote?

5a-2

1 A If the facts warranted that in my own mind.

2 Q All right. And without telling me what kind of
3 circumstances you may have in mind, can you conceive of
4 circumstances in which you would be willing to vote the death
5 penalty yourself?

6 A Yes.

7 Q In other words, you do recognize the distinction
8 we discussed earlier between believing in the abstract that
9 capital punishment is justified under certain circumstances
10 in California, and on the other hand personally voting, yourself,
11 along with 11 others, to return a death penalty verdict; do
12 you appreciate that distinction?

13 A Yes.

14 Q And in the latter situation it is a far more
15 traumatic situation, a far more difficult situation in which
16 you are faced; isn't that correct?

17 A That's correct.

18 Q It is fair to say that you can't blame the 11 others
19 if there is a return of a first degree murder verdict because
20 without your vote there can't be a death penalty verdict; isn't
21 that correct?

22 A That's correct.

23 Q All right. I said first degree murder verdict. I
24 really had reference to a death penalty as such. So that even
25 though 11 people vote for death and you vote for life, there
26 can be no issuance of the death penalty verdict in this case;
27 is that your understanding?

28 A Yes.

1 Q Let me pose this hypothetical situation to you.
2 Let's suppose you have been here for some six weeks, you have
3 heard all the evidence in this case, there has been a return
4 of a first degree murder verdict based upon proof which creates
5 in your mind an abiding conviction to a moral certainty of the
6 truth of the charge. You have now gone into the penalty phase
7 of this trial and you have heard, if any such evidence is
8 presented, evidence in mitigation of the offense, perhaps;
9 some evidence in aggravation of the offense; you have considered
10 the circumstances surrounding the commission of the crime and
11 you have learned something about the defendant as a person,
12 his history and background.

13 Assuming you are now asked to cast a ballot either
14 for death or for life. Eleven jurors have now voted for death.
15 You know there could still be no return of the death penalty
16 verdict unless you, yourself, vote based upon your sole and
17 absolute discretion the death penalty.

18 If you were convinced in your heart and your mind
19 and your conscience that this case here, the one against Mr. Grogan,
20 warranted the death penalty, how would you vote?

21 A If I am convinced that way I would vote that way.

22 Q All right. And you realize that you would be required
23 to come back in the seat where you are sitting and by your
24 verdict tell the defendant he must die under the law of the
25 State; you appreciate that?

26 A Right.

27 Q That is quite a distasteful situation, is it not?

28 A That's right.

1 Q I take it nevertheless you would be willing to
2 accept the responsibility as a juror and vote your conscience;
3 is that correct?

4 A That's correct.

5 Q All right. And do you think because of the evident
6 youth of the defendant that you would give this defendant some
7 benefit which you would not give to any other defendant in a
8 similar situation?

9 A No, I don't.

10 Q All right. I take it then you will not permit
11 your verdict in the guilt phase of this trial to be influenced
12 by any sympathy you may have for the defendant or any passion
13 or prejudice against the defendant; is that correct?

14 A That's correct.

15 Q Mr. McGregor, I discussed this perhaps in your
16 presence before. It is alleged in the indictment that Mr. Shea
17 met his death between the dates of August 16th, 1969, and
18 September 1st, 1969. You realize in this connection the People
19 are not required to prove the exact date and time of death,
20 isn't that correct?

21 A That's correct.

22 Q Assuming that we met our burden of proof and you
23 were convinced beyond a reasonable doubt to a moral certainty
24 that Mr. Shea was murdered between those dates, I take it
25 you would not require us to prove the exact time of death
26 before voting guilty, is that correct?

27 A That's correct.

28 Q Any reason why you could not be fair and impartial

1 to both sides?

2 A I don't believe so.

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

4 THE COURT: Pass for cause. Whose peremptory is it,
5 gentlemen?

6 MR. KATZ: I believe the People's?

7 THE COURT: The People.

8 MR. KATZ: We accept the panel.

9 MR. NEEDMAN: If I may have just a moment, your Honor.

10 THE COURT: All right.

11 (Short pause.-

12 MR. NEEDMAN: We thank and excuse Mr. Bates. Thank you,
13 Mr. Bates.

14 MR. BATES: Thank you.

15 THE COURT: Very well.

16 THE CLERK: August Bell, B-e-l-l.

17 THE COURT: Pardon me, what is the name?

18 THE CLERK: Bell, B-e-l-l.

19 THE COURT: Thank you.

6-1

AUGUST BELL

BY THE COURT:

Q Now, Mr. Bell, did you hear everything I said to the jurors in the jury box since you came into the courtroom here last Friday?

A Yes.

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

A Yes.

Q Now, I will ask you to assume that you have been selected as a juror and that you have heard all the testimony in the case and that you and all of the jurors have gone in the jury room to decide the case, guilty or not guilty. I want you to assume that.

Now, at that time the jury could make a finding of not guilty and if the jury should find not guilty that concludes the case entirely, the case is all through.

If the jury makes a finding of guilty, then the jury must make a finding of the degree, murder first degree, murder second degree. If the jury makes a finding of second degree murder, then the jury is through, there is no further trial or hearing of the matter.

If the jury makes a finding of first degree murder, then there is a further, another hearing, an additional hearing or trial -- it is called a hearing, a penalty hearing -- and at that penalty hearing the jury makes the finding of punishment, which would be the death penalty or life imprisonment. That's what happens if the jury makes a finding of

6-2

1 guilty first degree murder, then they find on the penalty,
2 they decide the penalty; is that clear to you?

3 A Yes, it is.

4 Q All right.

5 Now, I want you to assume that the jury is voting
6 on the question of the penalty, whether it is the death penalty
7 or life imprisonment, and I'm going to ask you, at that time
8 when the jury would be voting on the question of the death
9 penalty -- this is just assuming this; the jury could have
10 found not guilty -- but, let's assume the finding is guilty --
11 I am repeating for the purpose of getting this answer from
12 you -- I ask you to assume that the jury is voting on the
13 question of the death penalty or life imprisonment.

14 Now, at that time would you automatically vote
15 against the imposition of the death penalty without regard to
16 any evidence that might be developed in the trial of this
17 case before you?

18 A I'd wait till I hear all the evidence.

19 Q You understand the question?

20 A Repeat the question again.

21 Q All right.

22 If you are voting on the question of the death
23 penalty or life imprisonment you have a choice in there --

24 A Yes.

25 Q You are voting; you must vote, let us say, you
26 must vote either the death penalty or life in prison.

27 Would you at that time, if you were in that
28 position, would you automatically vote against the death

6-3

1 penalty, automatically vote against the death penalty without
2 regard to any testimony or evidence that might be produced in
3 the trial of this action?

4 A No.

5 Q All right.

6 If you are selected to try this case as a juror,
7 do you feel that you could be fair and impartial to both parties
8 in this, the People and the defendant in this case?

9 A Yes.

10 Q Would you have an open mind and not be prejudiced
11 in the case?

12 A Yes.

13 Q Do you know of any reason that would make you
14 prejudiced in any way, either against the defendant or against
15 the People?

16 A No.

17 Q Something that is going to make you prejudiced at
18 them?

19 A No.

20 THE COURT: All right.

21 I will pass the juror for cause.

22 Defendant may inquire.

23 MR. WEEDMAN: Thank you, your Honor.

24 THE COURT: Yes, sir.

25 BY MR. WEEDMAN:

26 Q May I inquire, Mr. Bell, what is your business or
27 occupation, please.

28 A Construction work at McDonnell-Douglas.

1 Q Is there a Mrs. Bell?

2 A Yes.

3 Q Is she employed?

4 A Yes, she works at Mt. Sinai Hospital, dietary work.

5 Q With respect to the possible matter of hardship,
6 would it cause you any personal hardship if this trial should
7 last as much as eight weeks?

8 A Yes, it would.

9 Q Would you tell us about that possible personal
10 hardship.

11 A Well, my job is only going to pay me for 20 days
12 on jury duty, so therefore any extended time over that I
13 wouldn't get paid by my job for any extended jury duty.

14 Q Do you have children?

15 A Yes, I do.

16 Q With respect to the matter of the death penalty, if
17 you should return a first degree murder conviction in this case,
18 do you feel that you would automatically impose the death
19 penalty without regard to the evidence in this case?

20 A No, I wouldn't.

21 Q Have you heard of Charles Manson and the so-called
22 Manson family?

23 A Yes.

24 Q Have you formed any opinion towards the Manson
25 family, as a result of hearing and perhaps reading about Charles
26 Manson and the Manson family?

27 A No, I haven't formed any opinion.

28 Q Is there anything that you have learned about the

1 so-called Manson family that you think would interfere with
2 your giving my client a fair trial, if you learned that he was
3 at one time a member of the Manson family?

4 A No.

5 Q Is there anything about this case at all, Mr. Bell,
6 that makes you feel that you couldn't give both sides a fair
7 and impartial hearing of all the evidence in this case?

8 A No, there isn't.

6a

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6A

1 Q Do you feel that somehow because the district
2 attorney's office has gone to all the trouble of bringing my
3 client to trial that you should sort of respect that effort
4 and feel obligated to convict my client?

5 A No.

6 Q You understand, then, obviously, that if you are
7 satisfied with the People's case, then you will convict my
8 client; but if you are not satisfied with the People's case,
9 as per the instructions given to you by Judge Call, then you
10 will acquit my client?

11 A Right.

12 Q Isn't that so?

13 A Yes.

14 MR. WEEDMAN: Thank you, Mr. Bell.

15 We will pass Mr. Bell for cause.

16 MR. KATZ: Thank you, your Honor.

17 Q Mr. Bell, I think you said that you are only paid
18 for 20 days; is that correct?

19 A Right.

20 Q And when did you commence jury duty?

21 A On the 22nd of June.

22 Q I see; so that your time and service is almost up;
23 is that correct?

24 A Right.

25 Q And assuming that you were not to receive pay for
26 six weeks to two months, would this work any financial
27 hardship on your family?

28 A Yes, it would.

6a-2

1 Q And would this affect your ability to support
2 and maintain your family?

3 A Yes, it would.

4 Q Do you have any children, sir?

5 A Yes, I do.

6 Q How many?

7 A One.

8 Q I see; and may I inquire as to the age of the child?

9 A The child is five months old.

10 Q I see; and do you think that you would be so
11 concerned about the fact that you were required to serve on
12 this jury panel, if selected as a juror for approximately six
13 weeks to two months without being paid, that this would somehow
14 affect your ability to weigh the facts in this case?

15 A I think it would, yes.

16 Q All right.

17 Do you think that you would be concerned about these
18 other problems, which are real problems, so that you couldn't
19 give us your full and undivided attention in evaluating the
20 evidence?

21 A I think it would, yes.

22 Q I take it, based upon that kind of concern, you'd
23 rather not sit on this case; is that correct?

24 A That is correct.

25 MR. KATZ: Your Honor, I think the juror has been very
26 candid and I believe that the juror has indicated that he cannot
27 be fair and impartial because of this other concern, so I will
28 respectfully challenge the juror.

6a-3

1 THE COURT: He answered very honestly he felt that he
2 could be fair and impartial. I think it goes more to peremptory
3 than for cause.

4 I am inclined to deny any motion for cause.

5 MR. KATZ: Your Honor, may I just ask the court to inquire
6 once again of the juror?

7 THE COURT: No, I don't think so.

8 MR. KATZ: Because I think we might have a clarification;
9 the court didn't go into the hardship at all --

10 THE COURT: I checked on him. I asked the question.
11 I passed him for cause. The others are matters for peremptory.

12 MR. KATZ: The People have no further examination; pass
13 for cause.

14 THE COURT: You are through with your examination?

15 MR. KATZ: Yes, sir.

16 THE COURT: Now, are there any peremptories by the People?

17 MR. KATZ: Yes, because of the aforesaid reason --

18 THE COURT: I pass him for cause.

19 Are you through with your examination?

20 MR. KATZ: Yes. The People thank and excuse Mr. Bell.

21 THE COURT: Thank you very much.

22 THE CLERK: Rosa Faye Jenkins, J-e-n-k-i-n-s.

23
24 ROSA FAYE JENKINS

25 BY THE COURT:

26 Q Now, lady, did you hear everything that I have
27 said to all of the folks in the courtroom, all of the
28 prospective jurors, since last Friday?

1 A Yes, I did.

2 Q And did you hear me read that charge that has been
3 filed against the defendant in this case?

4 A Yes.

5 Q Now, first I will ask you to assume that you have
6 been selected as a juror, that you have heard the testimony,
7 the case has been tried; you have heard the testimony, you have
8 gone to the jury room with the rest of the jurors to decide
9 the case. At that time the jury could make a finding of not
10 guilty, which would conclude the case entirely, defendant is
11 free; the case is concluded on the finding of not guilty --
12 or, the jury could make a finding of guilty as charged.

13 Now, if the jury makes a finding of guilty as
14 charged, the jury must find on degree, first degree or second
15 degree murder.

16 If the jury makes a finding of second degree
17 murder then the case is concluded, it's all over as far as
18 the jury is concerned.

19 If the jury makes a finding of first degree murder,
20 then the jury must -- the court must hold a further hearing;
21 you can call it a trial, if it makes it any clearer, but it
22 is generally called a hearing, after which the jury decides
23 on penalty.

24 So, to clear up your mind again, if the jury makes
25 a finding of guilty as charged, first degree murder, then the
26 jury must find on the penalty.

27 Is that clear to you?

28 A Yes, it is.

1 Q Now, if the jury finds on penalty the jury must
2 find either the death penalty or life imprisonment. That is
3 up to the jury; is that clear to you?

4 A Yes.

5 Q Now, will you please assume that you are on the
6 jury, we have held the penalty hearing, you were in the jury
7 room deciding on the question of penalty, what is the penalty,
8 you are deciding that.

9 Now, I will ask you at that time would you automati-
10 cally vote against the imposition of the death penalty without
11 regard to any evidence that might be developed in the trial
12 of this case?

13 A No, I wouldn't.

14 Q Thank you.

15 Now, I will ask you two or three more questions.
16 Do you feel that you could be fair, absolutely fair and impartial
17 with respect to both parties here, the People and the defendant,
18 if you are selected as a juror in this case?

19 A Yes.

20 6b
21
22
23
24
25
26
27
28

6b-1

1 Q Do you know of any reason in the back of your mind
2 or anyplace that may bother you or worry you or disturb you
3 that would upset you so that you couldn't have a clear mind,
4 your mind open to listening to the testimony and so that you
5 could not give a fair and unbiased judgment?

6 Do you know of anything that would upset you or
7 disturb you?

8 A No.

9 THE COURT: Thank you. I will pass the juror for cause.
10 Defendant may inquire.

11 BY MR. WEEDMAN:

12 Q Miss Jenkins, may I inquire as to your business or
13 occupation, if you are employed?

14 A I work for the United States Postal Service.

15 Q And what do you do for them?

16 A I am a distribution clerk.

17 Q Is there anything at all, Miss Jenkins, you have
18 heard while sitting out in the audience waiting for, perhaps,
19 your name to be drawn as a prospective juror, that makes you
20 feel that you couldn't give both sides a fair trial in this
21 matter?

22 A No.

23 Q Have you heard of Charles Manson?

24 A Yes.

25 Q And the Manson family?

26 A Yes.

27 Q And you undoubtedly heard that Charles Manson and
28 various members of the family were charged with murder?

6b-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A Yes.

Q That they were convicted of murder?

A Yes.

Q Sentenced to die?

A Yes.

Q You heard that Charles Manson was convicted of murder, numerous murders, even though he was not, himself, present during the course of the actual homicides that were involved?

A Yes.

Q Did you learn anything or form any opinions about the so-called Manson family that makes you feel that you would be, on that basis alone, more apt to convict my client than not if the evidence shows that my client was a member, so-called member of the so-called Manson family?

A No.

Q Is there anything at all about that case which you feel would influence your judgment in this case?

A No.

Q Most of the jurors that are presently in the box have heard me say this over and over again, and like Mr. Katz I will apologize in advance for repeating much of the same material; but assume, Miss Jenkins, that you are in the jury room and you have been in there a long time, several days, during the guilt phase and you are having a hard time making up your mind, you can't decide if the prosecution witnesses are telling the truth, can't decide whether the defense witnesses are telling the truth, you just can't make up your mind.

6b-3

1 Would you then, do you think, allow what you may
2 have learned about the Tate-La Bianca case and the Manson
3 family to make up your mind for you?

4 A No.

7

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL
RECEIVED
FBI
JAN 10 1975
FBI - LOS ANGELES

7-1
1 Q You feel that might be a problem for you to allow
2 this other material to intrude into your thinking as a juror in
3 this case?

4 A No.

5 Q I suppose you have heard the comments and questions
6 by both counsel relative to circumstantial evidence?

7 A Yes.

8 Q Would your answers be substantially the same as the
9 answers we have heard from the other prospective jurors with
10 respect to circumstantial evidence?

11 Let me just sum those up for you, perhaps, briefly.
12 Number one, I am sure you appreciate by now that the law in
13 California is such that circumstantial evidence is as good as
14 direct evidence?

15 A Yes.

16 Q Is there anything about that rule of law that
17 makes you feel that you could not use circumstantial evidence
18 in arriving at a verdict in this case?

19 A No.

20 Q And the second major inquiry, of course, was one of
21 mine, and it relates to whether or not you would follow the
22 rule of law which says that in a circumstantial evidence case
23 where the evidence infers two reasonable conclusions, one of
24 which points to guilt and one of which points to innocence, that
25 you must adopt that which points to innocence; have you any
26 quarrel or is there anything about that that makes you feel
27 you couldn't follow that instruction?

28 A No.

1 Q If during the course of the trial counsel and I
2 make objections to the evidence will you understand that we are
3 merely trying to shape the evidence as we feel the law requires
4 us to do it, and that we are not necessarily trying to hide
5 something from the jury; you understand that, and not hold
6 objections against us?

7 A Yes.

8 Q Bearing in mind that Judge Call is the one that is
9 going to rule on objections and if the law says it can come in,
10 then you are going to hear it and if the law says it shouldn't
11 come in then you are not going to hear it, is that fair enough?

12 A That's right.

13 Q Do you appreciate that while it looks like a game,
14 perhaps, to some it looks like a game or looks like a contest
15 between Mr. Katz and myself, that it is not really a contest,
16 that both of us are hammering away on behalf of our respective
17 clients in an effort to try and forge the truth in this matter.
18 And will you bear with us as we both move through this trial
19 if you are selected as a juror and kind of have faith in both
20 of us, that this is really what we are trying to do?

21 A Yes.

22 Q That we are not trying to pull the wool over your
23 eyes, either one of us, that we are not playing games, we are
24 not involved in shenanigans here, we both have evidence; we
25 both have a point of view and that we are both, of course,
26 going to try and persuade you that our view is correct. I
27 take it you have no quarrel with any of that and you will
28 understand and appreciate what both counsel are trying to do

1 in this case?

2 A Yes.

3 Q Okay. In that connection I am sure then that you
4 have no quarrel with Mr. Grogan's right to an attorney?

5 A No.

6 Q I asked that simple question, it is kind of a dumb
7 question I would submit, but I ask it because, Miss Jenkins,
8 there are, and I am sure you appreciate this, there are people
9 in this community who feel that because of, I suppose, problems
10 of their own, that merely because somebody is charged with a
11 crime that they ought to just plead guilty to it and stop
12 wasting the taxpayers' money for the trial. You don't feel
13 about it that way, do you?

14 A No.

15 Q You do then appreciate that not only are the People
16 entitled to their day in court but that indeed the district
17 attorney's office simply doesn't win all their cases, I am sure
18 you understand that?

19 A Yes.

20 Q Okay. Is there anything at all, Miss Jenkins,
21 about -- well, let me put it this way, is there anything that
22 we haven't asked about that you think we ought to know as far
23 as your qualifications for a juror are concerned?

24 A No.

25 MR. WEEDMAN: All right. Thank you, Miss Jenkins.

26 We will pass for cause, your Honor.

27 THE COURT: All right. Now, let's see where we are.

28 MR. KATZ: I haven't asked any questions, yet.

1 THE COURT: All right.

2 MR. KATZ: Thank you.

3 Q Miss Jenkins, I think the hardest thing in the
4 world for any human being to admit is that we have prejudices
5 because we all like to think of ourselves as being fair. And
6 in the legal sense when I am talking about prejudice I am
7 talking about coming into the courtroom with an opinion or
8 view which would render you incapable of fairly and fully
9 evaluating all of the facts in this case; do you understand
10 that?

11 A (Nodding head affirmatively.)

12 Q I can't hear you.

13 A Yes.

14 Q All right.

15 Now, in that connection, you may have a feeling or
16 belief or an opinion about some fact but unless that fact
17 becomes one in issue in this court, we are not concerned with
18 it; do you understand that?

19 A Yes.

20 Q So that you may have, for example, a belief that --
21 and indeed it is a prejudice or a preference, if nothing else,
22 if you like vanilla ice cream or strawberry ice cream, but we
23 are not concerned with that unless we have had a trial and the
24 issue is which was better, vanilla ice cream or strawberry
25 ice cream, then your opinion may enter into your ability to
26 impartially determine that issue; you understand that?

27 A Yes.
7a
28

7A

1 Q So relating that to circumstantial evidence for
2 a moment, there are many people, and it is nothing to be
3 ashamed of, but nevertheless they feel that "I just don't like
4 the sound of circumstantial evidence. I don't think I would
5 ever convict a man on circumstantial evidence. I want proof,"
6 even though circumstantial evidence is proof, "I want proof,
7 I want an eyewitness."

8 Are you that kind of juror?

9 A No.

10 Q All right. And you understand that in this case
11 there will be no body, no part of a body produced, no eyewitness
12 to the killing or a witness who will testify to having observed
13 the body in death; do you understand that?

14 A Yes.

15 Q You also appreciate the fact that many crimes of
16 their very nature and because of their very nature it is
17 necessary to rely wholly upon circumstantial evidence in order
18 to prove it; you appreciate that?

19 A Yes.

20 Q In other words, a lot of people don't go out and
21 tell their friends in public that "I am going to commit a
22 crime" and then proceed to commit the crime in front of a lot
23 of witnesses. Common sense tells you that is not the case;
24 isn't that correct?

25 A That's correct.

26 Q So in this case we are resorting solely to circum-
27 stantial evidence. Now, do you believe it is possible, ma'am,
28 for a body to be hidden so that it will never be recovered?

7a-2

1 A It can be.

2 Q If the People, based on circumstantial evidence
3 in this case prove beyond a reasonable doubt and to a moral
4 certainty that the defendant committed murder in the first
5 degree would you nevertheless refuse to vote guilty because
6 we have failed to produce a body?

7 A No.

8 Q All right. And does it offend your sense of fair
9 play and justice to know that in California a person can stand
10 convicted of murder in the first degree based wholly on cir-
11 cumstantial evidence without production of a body and without
12 production of an eyewitness to the killing?

13 A Does it offend me?

14 Q Yes.

15 A No.

16 Q All right. So in other words, you are willing to
17 accept the law in regards to circumstantial evidence and
18 follow it, is that right?

19 A Yes.

20 Q Mr. Weedman talked about a certain aspect of the
21 circumstantial evidence instructions his Honor will give you.
22 In that same instruction his Honor will also tell you that
23 where there are two inferences to be drawn from the circumstan-
24 tial evidence in this case, one which is reasonable and the
25 other which is unreasonable, you are dutybound to reject the
26 unreasonable inference and adopt the reasonable one; you
27 understand that?

28 A Yes.

7a-3

1 Q So that if the reasonable one points to the guilt
2 of Mr. Grogan and the unreasonable inference points to his
3 innocence and you are convinced by the reasonable inference
4 to an abiding conviction to a moral certainty of the truth of
5 the charge, you must vote guilty; do you understand that?

6 A Yes.

7 Q I take it you are willing to follow that rule of
8 law; is that correct?

9 A Yes.

10 Q Now, with respect to this issue of penalty should
11 we reach that phase of the trial do you have any quarrel with
12 capital punishment in general?

13 A No.

14 Q I take it your mind is fully open on the proper
15 penalty in this case should you be required to determine that
16 issue; is that correct?

17 A Yes.

18 Q And does it offend your sense of justice or fair
19 play to know that in California a man may be sentenced to
20 death based wholly upon circumstantial evidence?

21 A No.

22 Q All right. And I take it before determining what
23 the proper penalty will be in this case, assuming we reach the
24 penalty hearing, I take it you would be willing to listen to
25 what other additional evidence there was, such as evidence in
26 mitigation, if any, of the offense; evidence in aggravation
27 of the offense, if any; evidence showing the circumstances
28 surrounding the crime and the background and history of the

7a-4

1 defendant; you would listen to that and consider that
2 evidence, would you not?

3 A Yes.

4 Q If after considering not only that evidence but the
5 evidence upon which the guilt of the defendant was predicated
6 in the guilt phase of the trial you felt in your sole and
7 absolute discretion the case warranted the death penalty,
8 how would you vote?

9 A Repeat that question?

10 Q Yes. If after a consideration of all of the evidence
11 in this case, that is, the evidence in the guilt phase, the
12 evidence in the penalty phase, you felt in your sole and
13 absolute discretion the case warranted the death penalty,
14 how would you vote?

15 A For the death penalty.

16 Q All right. And you understand that if you are of
17 a state of mind as you sit here now that under no circumstances
18 would you be willing to personally participate in a death
19 penalty verdict, we could not get a fair trial on that issue;
20 isn't that fair?

21 A Yes.

22 Q All right. As you sit here now ^{IS IT} ~~isn't~~ your state of
23 mind that under no circumstances would you be willing to
24 participate in a death penalty verdict or on the other hand is
25 it your state of mind that under circumstances which you can
26 conceive of yourself you would be willing to personally
27 participate in a death penalty verdict?

28 A Will you repeat that?

7a-5

1 Q All right. In other words, as you sit here now
2 can you conceive of some circumstances in which you would be
3 willing to personally vote the death penalty? You don't have
4 to tell me what they are; I just want to know can you conceive
5 in your own mind some circumstances in which you feel the
6 death penalty was warranted, you would personally vote it?

7 A Yes.

8 Q All right. Now, his Honor will tell you that
9 during the guilt phase of this trial you cannot be in any way
10 influenced by such extraneous factors as the evident youth of
11 the defendant, how he looks in terms of his youth, his age,
12 but rather you must base your verdict wholly upon the evidence
13 in this case. Would you follow that instruction if his Honor
14 gives it to you at the conclusion of the case?

15 A Yes.

16 Q I take it then even though you may feel sympathetic
17 towards the defendant after observing him day in and day out
18 in this unfortunate situation for six to eight weeks,
19 nevertheless you would put that aside, that feeling aside,
20 and determine his guilt or innocence based just upon the
21 evidence; do you understand that?

22 A Yes.

7b

7b-1

1 Q Miss Jenkins, some people just don't like to make
2 decisions. It is a very difficult thing sometimes to make a
3 decision in a certain situation. I don't even like to go to
4 the store to buy a loaf of bread or buy a certain brand of milk
5 because I don't know which is better than the other. I become
6 confused and befuddled. I don't like to make that kind of a
7 decision.

8 If you become a juror you will be required to make
9 more grave decisions which may affect the defendant and indeed,
10 perhaps, his life, you understand that?

11 A Yes.

12 Q Are you willing to accept that kind of responsibility?

13 A Yes.

14 Q As you sit here now is there any reason you can
15 think of why you could not give both the People and the
16 defendant a fair trial?

17 A No.

18 MR. KATZ: Thank you.

19 Pass for cause.

20 THE COURT: Pass for cause?

21 MR. KATZ: Yes.

22 THE COURT: Now, let's see. It is --

23 MR. KATZ: Defendant's peremptory.

24 THE COURT: Defendant's peremptory, isn't it?

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

26 Thank and excuse Mr. Ragland.

27 THE CLERK: William Hampton, Jr., H-a-m-p-t-o-n.
28

1 WILLIAM HAMPTON, JR.

2 BY THE COURT:

3 Q Now, I will ask you a few questions, Mr. Juror.
4 Have you heard everything that I have said since you came in
5 the courtroom last Friday?

6 A Yes, I have.

7 Q And did you hear me read the charge that has been
8 filed against the defendant?

9 A Yes, I did.

10 Q I want you to assume that you have been selected as
11 a juror in this case and the case has been tried, and that you
12 and the other jurors go to the jury room to decide the case,
13 the question of guilty or not guilty. Now, at that time the
14 jury could make a finding of not guilty which would conclude
15 the case. It is all through.

16 The jury could make a finding of guilty. If the
17 jury makes a finding of guilty and they set the degree, the
18 jury must set the degree first degree or second degree when
19 they find the defendant guilty.

20 Now, if the jury makes a finding of guilty and sets
21 the degree as second degree then the duties of the jury have
22 been concluded. The jury is excused.

23 However, if the jury makes a finding of guilty
24 first degree then there must be another hearing held, a further
25 hearing or trial held in which the jury sets the penalty and
26 the jury must set a penalty on first degree murder, the jury
27 must set a penalty of death penalty or life imprisonment.

28 Now, if you will please assume that you are on the

1 jury and you are in the jury room and voting on the question
2 of penalty. Now, I will ask you at that time, you are voting
3 on penalty, if you would automatically vote against the
4 imposition of the death penalty without regard to any of the
5 evidence that might be developed at the trial of this case
6 before you?

7 A Yes, I would.

8 Q Your answer is yes?

9 A Yes.

10 Q I will ask you a further question. Is there any
11 question at all in your mind that you would automatically vote
12 against the death penalty; is there any question at all?

13 A No question.

14 THE COURT: Thank you. I think, gentlemen, I will excuse
15 this juror.

16 MR. WEEDMAN: Well, if I might have just one or two
17 questions, your Honor.

18 THE COURT: All right, go ahead.

19 MR. WEEDMAN: Thank you, your Honor.

20 Q Mr. Hampton, do you understand, sir, that the law
21 in California expresses no preference for the death penalty as
22 against --

23 THE COURT: Pardon me, Mr. Weedman. I am not trying to
24 interrupt you.

25 MR. WEEDMAN: Yes, your Honor.

26 THE COURT: Let's take a short recess and go right ahead.

27 Do not discuss the case, anyone, or come to any
28 opinion or conclusion. We will go right ahead in just a minute.
Thank you. We are at recess.

(Recess.)

The 8

1 THE COURT: Now, gentlemen, People against Grogan.

2 Defendant is present, both counsel are here; the
3 jurors are here.

4 You may proceed with your voir dire.

5 MR. WEEDMAN: Thank you, your Honor.

6 THE COURT: Go ahead.

7 BY MR. WEEDMAN:

8 Q Mr. Hampton, I left off by asking you, did you
9 understand that the law in California expresses no preference
10 either for the death penalty or life imprisonment, so that a
11 juror may properly carry with them into the penalty phase an
12 opposition to capital punishment.

13 Do you understand that?

14 A Yes, I do.

15 Q All right.

16 That means, then, obviously, that one may be strongly
17 opposed to capital punishment and still be a proper juror.

18 A I feel I could be in that vein.

19 Q Pardon?

20 MR. KATZ: Excuse me, your Honor; I move to strike the answer
21 for the purpose --

22 MR. WEEDMAN: I hadn't quite finished the question.
23 Counsel is correct; perhaps I could withdraw and start over again.

24 THE COURT: All right, withdraw it.

25 Q BY MR. WEEDMAN: The thrust of Judge Call's questions
26 to you, do you understand, is that in fairness to the People you
27 cannot go into the jury room with your mind already irrevocably
28 made up as to punishment.

8-2

1 Do you understand that?

2 A I do.

3 Q So that the law requires that you sit down with
4 your fellow jurors during the penalty phase and consider all
5 of the evidence in the case; in other words, the law requires
6 that you go into the jury room at least prepared, theoretically,
7 to impose the death penalty.

8 With all that in mind, do you feel that you could
9 consider all of the evidence in this case and not automatically
10 vote against the death penalty?

11 A No, I could not.

12 Q You could not do that?

13 A No.

14 Q So what you are telling us then, to be clear about
15 it, is that irrespective of the evidence you would not vote for
16 the death penalty; is that true?

17 A That is true.

18 MR. WEEDMAN: I agree with the challenge of Mr. Hampton,
19 your Honor.

20 MR. KATZ: 1072, sub 2, and 1074, sub 8 of the Penal Code.

21 THE COURT: Do you have a stipulation in there?

22 MR. KATZ: There is a challenge for cause, your Honor.

23 THE COURT: Was there a peremptory presented -- pardon
24 me; was there a for cause presented?

25 MR. KATZ: Yes.

26 MR. WEEDMAN: Yes, your Honor; I agree it is well taken.

27 THE COURT: I wanted to get it straight.

28 I will excuse the juror, and thank you very much,

8-3

1 sir. Thank you very much.

2 I will conclude there is a for cause shown,
3 grounds for under the Witherspoon case, also under subdivision
4 2 of 1072 of the Penal Code, and Section 8 of 1074 of the
5 Penal Code.

6 You can call another juror.

7 THE CLERK: All right, sir.

8 Mrs. Annie L. Oliver, O-l-i-v-e-r; first name is
9 Annie.

10
11 ANNIE L. OLIVER

12 BY THE COURT:

13 Q Lady, have you heard everything that I have said
14 to the jury since last Friday?

15 A Yes, I have.

16 Q And did you hear me read the charge that has been
17 filed against the defendant by the People?

18 A Yes, sir.

19 Q Now, I want you to assume that you have been
20 selected as a juror in this case and the case has been tried,
21 you have gone to the jury room to decide the question of guilty
22 or not guilty.

23 Now, at that time the jury could make a finding of
24 not guilty, which would conclude the case entirely; or the
25 jury could make a finding of guilty. If they find guilty they
26 must determine the degree of the guilt, first degree or second
27 degree.

28 If the jury makes a finding of the second degree,

1 then there is no further proceedings in the case as far as
2 the jury is concerned.

3 If the jury makes a finding of first degree murder,
4 then there is a subsequent or another, a further hearing held
5 called a penalty hearing, as a result of which the jurors must
6 vote and decide on the question of penalty, which must be
7 either the death penalty or life imprisonment.

8 Now, will you please assume that you have been
9 selected as a juror, as I have indicated, and that you are in
10 the jury room voting on the question of penalty, the death
11 penalty or life imprisonment.

12 Now, at that time I will ask you, if you assume
13 that factual situation, would you automatically vote against
14 the imposition of the death penalty without regard to any
15 evidence that might be developed at the trial of this case
16 before you?

17 A Your Honor, I believe I would be prejudiced.

18 Q Well, try to answer it first yes or no.

19 A Well, I'd try to follow the evidence.

20 Q Is the answer yes or no?

21 A Yes.

22 Q Yes or no?

23 A Yes.

24 Q "Yes"? All right.

25 Is there any question in your mind about it that
26 you would vote against the death penalty; is there any question
27 in your mind about it, automatically vote against it?

28 A No.

1 THE COURT: Well, I am prepared to act forthwith unless
2 either counsel wants to further inquire.

3 MR. WEEDMAN: No; thank you, your Honor.

4 THE COURT: I will excuse you. Thank you.

5 And I make a finding of for cause exists under the
6 Witherspoon case; also under section 1073, subdivision 2, and
7 1074, subdivision 8 of the Penal Code.

8 You may call another juror.

9 8a

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

8a-1

1 THE CLERK: Mrs. Hildegard Thale, T-h-a-l-e.

2 MR. KATZ: Spell the first name, please.

3 THE CLERK: H-i-l-d-e-g-a-r-d.

4
5 HILDEGARD THALE

6 BY THE COURT:

7 Q Now, lady, did you hear everything I have said to
8 the jurors since you came in last Friday?

9 A Yes, I have.

10 Q Did you hear me read the charge that has been filed
11 against the defendant in the case?

12 A Yes, I have.

13 Q I want you to assume you are a juror in the case,
14 the case has been tried, you go to the jury room to decide the
15 question of, first, guilty or not guilty. At that time the
16 jury can make a finding of not guilty; they can make a finding
17 of guilty.

18 If they make a finding of guilty, they decide the
19 degree, first degree or second degree murder. If they find
20 second degree murder the case is concluded entirely, the jury
21 is excused.

22 If the jury makes a finding of first degree murder,
23 then the court holds a penalty hearing for the purpose of the
24 jury deciding on the penalty of either the death penalty or life
25 imprisonment.

26 Now, will you please assume that you are on the
27 jury and that a penalty hearing has been held and you are in
28 the jury room with the jurors voting on the question of penalty.

8a-2

1 Now, I will ask you to assume that and to assume --
2 and then I ask you this question: at that time would you auto-
3 matically vote against the imposition of the death penalty
4 without regard to any evidence that might be developed in the
5 trial of this case before you?

6 A No, your Honor.

7 Q The answer, "Yes, your Honor?"

8 A No.

9 Q "Yes," is that the answer?

10 MR. KATZ: "No," your Honor.

11 THE COURT: "No"?

12 MR. KATZ: Yes, sir.

13 THE COURT: The reason I am having difficulty is because
14 the lady's hair is right in the way. There we are.

15 Q Now, is there any question in your mind as to what
16 you have told me; that is, you understand fully, when you get
17 to that time and place you can vote as you want to vote; the
18 question is would you automatically vote against the death
19 penalty?

20 Now, your answer is that is, "No," you would not
21 automatically vote against it without regard to the testimony;
22 was that your answer?

23 A Yes.

24 Q Now, do you know of any reason at all, of any kind,
25 that you could not be fair and impartial if you are selected to
26 try this case?

27 A Yes, sir, your Honor, I should mention that I have
28 a relative in the district attorney's office.

8a-3

Q Well, do you feel that it would prejudice you in some way?

A No, your Honor, it would not.

Q It would not prejudice you?

Would your mind be open and free and clear?

A Yes, your Honor.

THE COURT: All right, I will pass the juror.

You may examine for cause.

BY MR. WEEDMAN:

Q Is that pronounced Thale?

A Thale.

Q All right, Mrs. Thale; may I inquire who the relative is?

A Deputy District Attorney Melvin Thale.

Q I should have known how to pronounce your name.

A Right.

MR. WEEDMAN: I have no further questions, your Honor.

THE COURT: People?

MR. KATZ: Thank you, your Honor.

Q Mrs. Thale, is it fair to say that you have a reasonably good relationship with Mel?

A Yes, I do.

Q He's quite a guy, isn't he?

And in that connection do you think that any feelings you may have by reason of your relationship with Mr. Thale would enter into your ability to render a fair and impartial verdict in this case?

A I don't think so, no.

1 Q And I take it, on the other side of the coin, you
2 don't think that because Mel Thale is related to you, in any
3 way that you couldn't be fair to the People, do you?

4 That's the other side of the coin.

5 A I could be fair.

6 Q All right.

7 Now, I notice that you hesitated somewhat when
8 his Honor asked you the question whether or not you had such
9 scruples concerning the death penalty as would automatically
10 cause you, irrespective of the evidence, to refuse to vote the
11 death penalty.

12 I noticed that you gave it some thought. Was there
13 any question in your mind as to whether or not you could vote
14 the death penalty?

15 A No.

16 Q All right.

17 So, in other words, what you were saying is you
18 would want to hear all of the evidence in this case and if you
19 felt in your soul and absolute discretion this case warranted
20 the death penalty, you could vote the death penalty; is that
21 right?

22 A Yes.

23 Q Are you able to see Mr. Grogan from where you are
24 seated?

25 A Yes, I can.

26 Q Do you think that you would permit the evident
27 youth of Mr. Grogan to influence your verdict in the guilt
28 phase?

1 A No.

2 Q And if the People proved their case beyond a
3 reasonable doubt and to a moral certainty would you vote
4 guilty?

5 A Yes.

6 Q Now, you heard our colloquy and discussion with
7 other prospective jurors concerning the law of circumstantial
8 evidence, did you not?

9 A Yes.

10 Q Do you have any quarrel with the principle of law
11 that says a man can stand convicted of murder in the first
12 degree without production of a body and without an eyewitness
13 to the killing?

14 A No.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The 9s

1 Q All right. And you recognize the fact as an
2 intelligent woman, that you draw inferences from facts that
3 are proven to you in daily life; isn't that right?

4 A Yes.

5 Q I take it you would not hesitate to draw reason-
6 able inferences from proven facts in this court, is that correct?

7 A Yes.

8 Q If you felt that the inferences to be drawn were
9 reasonable and the inferences that were reasonable pointed to
10 the guilt of the defendant and there was no other reasonable
11 inference pointing to the innocence of the defendant you would
12 vote guilty in accordance with his Honor's instructions, is
13 that correct?

14 MR. WEEDMAN: Excuse me. I object --

15 MR. KATZ: Wait a minute. I haven't finished my question.
16 Excuse me.

17 MR. WEEDMAN: Oh.

18 Q BY MR. KATZ: Again I didn't get a chance to say
19 that also supposes that a reasonable inference creates in your
20 mind an abiding conviction to a moral certainty of the truth of
21 the charge. You understood that to be part of my question,
22 is that correct?

23 A Yes.

24 Q Apparently Mr. Weedman didn't. All right. So what
25 we are saying is this, that based on circumstantial evidence
26 if that evidence creates in your mind an abiding conviction to a
27 moral certainty of the truth of the charge, you would vote
28 guilty; is that right?

9-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A Yes.

Q If we didn't measure up to our burden of proof then of course you would vote acquittal; isn't that right?

A Yes.

Q That is the same as not proven; isn't that correct?

A Right.

Q Do you believe that because this is a circumstantial evidence case that you would require us to sustain a greater burden of proof than that already required by law? Such as would demonstrate that degree of proof which excludes all possibility of error? You wouldn't require us to hold or sustain that burden of proof, would you?

A No.

Q All right. You understand that whether we are talking about -- and I go back to the misdemeanor criminal violation of some kind, a petty theft case or we go to a forgery case, our burden in all criminal cases is the same, we must prove our case beyond a reasonable doubt and to a moral certainty. It doesn't matter whether the evidence is direct or circumstantial evidence or a combination of both, and doesn't matter whether we are talking about a murder case or a forgery case. All we have to do in all those cases is to present by way of proper evidence proof beyond a reasonable doubt and to a moral certainty; you understand that?

A Yes.

Q And his Honor tells you in that reasonable doubt instruction that we are not required to demonstrate that degree of proof which excludes all possibility of error because such

1 proof is rarely if ever possible, will you follow that instruc-
2 tion?

3 A Yes.

4 Q And is there any reason why you could not be fair
5 and impartial to both sides?

6 A No.

7 Q All right. I am going to ask you this last series
8 of questions, if I may.

9 I want you to assume for a moment that you are
10 selected as a juror in this case. Further, assume that you
11 have heard all of the evidence in the guilt phase and you along
12 with the other 11 members of the panel have voted guilty of
13 murder in the first degree, based upon circumstantial evidence.

14 You are now in the penalty phase and there may or
15 may not be additional evidence presented at that time. After
16 hearing the evidence you are now asked to cast a ballot as to
17 whether or not the defendant shall live or die. Eleven persons
18 now have cast their ballot in favor of death. You are now asked
19 to cast your ballot and you know that without your vote there
20 cannot be a return of the death penalty verdict.

21 In your heart and your mind and your conscience
22 you feel, however distasteful the task is, that this case
23 warrants the imposition of a capital verdict. How would you vote?

24 A The death penalty.

25 Q All right. And I take it you recognize this is
26 certainly an unpleasant situation in which to find yourself; is
27 that correct?

28 A Yes.

1 Q Nevertheless, you recognize your civic responsi-
2 bility as a juror if selected as a juror, to discharge your
3 duty as a juror and in performing a very valuable service to
4 the community; is that correct?

5 A Yes.

6 MR. KATZ: Thank you, ma'am. Pass for cause.

7 MR. WEEDMAN: Your Honor, if I may be permitted one more
8 question.

9 THE COURT: Yes. Let me say something.

10 MR. WEEDMAN: Yes, your Honor.

11 THE COURT: Then you can.

12 MR. WEEDMAN: Yes.

13 THE COURT: I won't cut you out.

14 Q Now, lady, what I am about to say has been covered
15 a number of times, quite a number of times by the court and by
16 counsel. And I am going to go back to the basics of our
17 evidence again for two or three questions.

18 In what is known as the direct evidence the jury
19 passes on the facts. The jury in substance says "We have heard
20 the testimony" or the individual jurors, after you go to the
21 jury room and the case is submitted to you, in discussing the
22 testimony from the witness stand or other types of evidence
23 will say, "I believe so and so is telling the truth." Or, "I
24 believe so and so is not telling the truth."

25 The jury passes on the facts. You understand that,
26 do you?

27 A

Yes.

28 Q

Is that clear to you?

1 A Yes, it is.

2 Q The evidence may be direct evidence where a person
3 gets on the stand, for instance, and says, "I saw an automobile.
4 It was a red automobile." I am trying to make it simple. The
5 eye observes that. It is called direct evidence. The jury
6 decides on the fact is it a red automobile or a green automobile?
7 And one of the jurors says, "That's a red automobile." The
8 witness on the stand said he saw it. It is red. He sees it.
9 That is direct evidence. And the jury finds on the facts,
10 what is the color? That is an illustration, you see?

11 A Yes.

9a

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

9a-1

1 Q Now, on circumstantial evidence the same fact may
2 or may not be proved, but it is up to the jury again. The law
3 says that circumstantial evidence is admissible to establish
4 or prove a fact. The jury still finds on the fact was the auto
5 red or was it green? Do you see? Whether it is circumstantial
6 evidence or direct evidence the jury finds on the facts. Is
7 that clear to you?

8 A Yes.

9 Q The jury finds on the question of guilty or not
10 guilty. Is that clear to you?

11 A Yes.

12 Q The People must prove the defendant guilty to a
13 moral certainty and beyond a reasonable doubt to establish their
14 case. That is up to the jury. And the jury says, or they say
15 "Yes, or no, the People have proven their case to a moral
16 certainty beyond a reasonable doubt" or the jury says, "No,
17 they haven't proven their case to a moral certainty and beyond
18 a reasonable doubt." The jury makes the findings of fact. Is
19 that clear to you?

20 A Yes.

21 Q And when the jury finds on the question of degree,
22 if they find the defendant guilty, they vote on degree. The
23 jury makes the findings. The jury discusses, one juror says,
24 "I think the facts indicate this kind of a degree." The other
25 juror says, "No, it is another kind of a degree."

26 That only happens if you first have all found the
27 defendant guilty, you understand that?

28 A Yes.

9a02

1 Q The jury might have said not guilty to start with,
2 your understand that?

3 A Yes.

4 Q And the same situation prevails if the jury makes
5 a finding of first degree murder on the penalty hearing. When
6 the question is for the jurors' voting penalty, is it the
7 death penalty or is it life in prison, the same factual
8 situation occurs. The evidence before the jury could be direct
9 evidence, it could be circumstantial evidence. Either method
10 of proof is proper evidence to produce, what the jury accepts
11 as true or false, is another question. Do you see what I am
12 telling you?

13 A Yes.

14 Q The jury finds on the facts. If it's circumstantial,
15 the jury says -- or the juror says, "I believe that circum-
16 stantial evidence" or, "I don't believe the circumstantial
17 evidence." If it is direct evidence the juror says, on the
18 penalty, "I believe that direct evidence" or, "I don't believe
19 that direct evidence."

20 Whether it is direct or whether it is circumstan-
21 tial, it is admissible evidence. But it gets right back to the
22 jury. The jury makes a finding based on it. Either one is
23 permissible. You understand that?

24 A Yes.

25 Q And furthermore the instruction I will give you,
26 and I have heretofore indicated the reason I am reaffirming
27 it is because both counsel have discussed it, and I want to
28 put a reaffirmation on what the law is, on the question of

1 circumstantial evidence. I have impressed you that it is
2 proper evidence. It may be produced either by the People or
3 by the defendant. It sustains any kind of a finding of fact
4 if the jury believes it. Is that clear to you?

5 A (Nodding head affirmatively.)

6 Q Now, the law says in governing circumstantial
7 evidence, here is what the judge tells the jury; and this is
8 the formal instruction:

9 "You are not permitted to find the
10 defendant guilty of the crime charged against
11 him based on circumstantial evidence unless
12 the proved circumstances are not only con-
13 sistent with the theory that the defendant is
14 guilty of the crime but cannot be reconciled
15 with any other rational conclusion. And each
16 fact which is essential to complete a set of
17 circumstances necessary to establish the
18 defendant's guilt has been proved beyond a
19 reasonable doubt."

20 Now, that is the law. The jury finds on the facts.
21 Is that clear to you?

22 A Yes.

23 Q Now, I will continue that instruction.

24 "Also, if the evidence is susceptible
25 of two, t-w-o, reasonable interpretations,
26 one of which points to the defendant's guilt
27 and the other to his innocence, it is your
28 duty to adopt that interpretation which points

1 to the defendant's innocence and reject the
2 other which points to his guilt."

3 That is when there is an equal balancing of
4 evidence between -- on the same point, when it is equal. One
5 doesn't weigh over, one doesn't have a preponderance. If they
6 both point equally, one of which points to the defendant's
7 guilt and the other to his innocence, and where they are
8 exactly equal then you must take as a matter of law the
9 finding of innocence because they are equally balanced.

10 But if one weighs, the scales tip, then you don't
11 take that statement of law. The scales tip in favor of one
12 construction as against the other, why then, you can't balance
13 them in that fashion and take the innocent presumption.

14 In other words, the ultimate finding is for the
15 jury. The factual finding is for the jury. Only when the two
16 presumptions, the two conclusions are equally balanced the
17 jury doesn't know where to turn, they are so equal, then you
18 go for the presumption, the finding of innocence. Is that
19 clear?

20 A Yes.

21 Q But in the final analysis on questions of penalty,
22 on the questions of degree, on questions of not guilty --
23 guilty or not guilty, the jury makes those determinations based
24 on the findings of the jury, they are findings of fact and
25 either direct evidence or circumstantial evidence will support
26 findings if the jury so concludes, on any of those factual
27 matters. Is that clear to you?

28 A Yes.

1 THE COURT: All right. Now, go ahead, gentlemen.

2 MR. WEEDMAN: I just wanted to ask one question.

3 Q What is the nature of the relationship with
4 Mr. Thale?

5 A My brother-in-law.

6 Q Your brother-in-law. All right. Thank you.

7 THE COURT: Had we passed for cause? Where are we here?

8 MR. KATZ: Yes. Pass for cause, your Honor.

9 MR. WEEDMAN: Your Honor, I wonder if we might approach
10 the bench just very briefly.

11 THE COURT: Yes. I tell you, you may. Now, I have two
12 very short matters I must conclude. It is hanging over, civil
13 business that I have on my desk here.

14 It is 11 minutes of 12. I am going to ask if I
15 can recess at this time till 1:30 and we will go right ahead,
16 then we will take up your matter at that time.

17 MR. WEEDMAN: Until 1:30?

18 THE COURT: Until 2 o'clock. Is that satisfactory?

19 MR. KATZ: Yes.

20 MR. WEEDMAN: Yes.

21 THE COURT: Ladies and gentlemen, kindly return promptly
22 and do not discuss the case or come to any opinion or conclusion.
23 We are at recess. Thank you very much.

24 (The noon recess was taken to 2 p.m.
25 of the same day.)
26
27
28

The 10

1 LOS ANGELES, CALIFORNIA, TUESDAY, JULY 6, 1971, 2:00 P.M.

2 - - -

3
4 (The following proceedings are had
5 in chambers:)

6 THE COURT: We are in chambers.

7 Counsel, the clerk, the defendant present.

8 MR. WEEDMAN: Your Honor, with respect to prospective juror
9 Mrs. Thale, I would respectfully challenge her for cause under
10 Section 1074 for implied bias; as well as 1073, subdivision
11 2, as well as for actual bias, simply because she has told us
12 she is the sister-in-law of Melvin Thale, who is a senior member
13 of the district attorney's office and has been, as long as I
14 have been practicing law, at least.

15 I think, your Honor, to have a juror who is that
16 closely related to a member of the district attorney's staff
17 really should, I think, cause the court to exercise its powers
18 in the matter and simply excuse her.

19 I think it is just asking too much for us to accept
20 her statement to that relationship would not influence her
21 judgment or decision in the case. I think it would be an almost
22 insurmountable obstacle for her thinking in this case, your
23 Honor, and especially, I would submit, the kind of case I
24 expect this to be.

25 THE COURT: What is your position in the matter?

26 MR. KATZ: Your Honor, number one --

27 THE COURT: You are opposing?

28 MR. KATZ: May I state the reasons?

10-2

1 THE COURT: Yes, go on.

2 MR. KATZ: Number one, our office consists of well over
3 400 deputies. This is the largest prosecution agency in the
4 world and, as such, I can't see how her relationship with one
5 of those 400, for example, could in any way affect her ability
6 to be fair and impartial.

7 Indeed, by way of her answers to our questions, she
8 indicated specifically and directly and unequivocally that her
9 relationship with Mr. Thale would in no way affect her ability
10 to be fair and impartial with respect to all the issues in
11 this case.

12 Now, under 1074 of the Penal Code, which pertains
13 to challenging for implied bias, for cause, it states in
14 paragraph 1: Consanguinity or affinity within the fourth
15 degree to the person alleged to be injured by the offense
16 charged or on whose complaint the prosecution was instituted
17 or to the defendant -- obviously that has no application.

18 Subsection 2 has no application.

19 Subsection 3 relates to a situation where prospective
20 juror, being a party adverse to the defendant in a civil action
21 or having complained against or having been accused by him in
22 a criminal prosecution -- again, that has no application.

23 If your Honor will look at all of the subsections
24 under 1074, 1 through 8, inclusive, you will find there is no
25 application whatsoever or is there a basis established by way
26 of the question and answers ^{of} to this prospective juror to
27 support excuse under 1074.

28 THE COURT: I am familiar with it; I have chewed them up a

1 lot.

2 MR. KATZ: Yes, I notice your Honor's notes in connection
3 with that section; but I think we are quite cynical, your
4 Honor, if we were to say merely because somebody has a relation-
5 ship or knows a person in the district attorney's office that
6 that in and of itself, without more, would serve as a basis
7 for ~~excuse~~ *excusal*.

8 This is a very large office, a very impersonal
9 office, and I don't know 70 percent of the deputies in this
10 office at this time; so I can't see how I can be influenced
11 by Mr. Thale, for example, because I have absolutely no contact
12 with Mr. Thale and he would not be able to impress upon me
13 anything which would prejudice the defendant's rights in this
14 case.

15 MR. WEEDMAN: Well, your Honor, I just note that --

16 THE COURT: Go ahead.

17 MR. WEEDMAN: -- Section 170 of the Code of Civil
18 Procedure, while it is not directly in point here, calls for the
19 disqualification of a judge when he is related to either party
20 or to an attorney of either party, by consanguinity or affinity
21 within the third degree.

22 I realize that that has no direct bearing here,
23 but certainly seems to me that where a judge would be disquali-
24 fied, I think that a juror would be certainly -- should certainly
25 be disqualified; otherwise I think it is a denial of equal
26 protection of the law. In other words, we have a juror here
27 who is related to a member of the district attorney's staff.

28 Now, the district attorney, of course --

1 THE COURT: Well --

2 MR. WEEDMAN: -- is the real party in interest here.

10a

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

11-1

1 THE COURT: Well, I will tell you what I am going to do.
2 I don't -- I have serious doubts, I don't mean that the
3 challenge isn't well taken, I don't mean that. I have serious
4 doubts if it legally presents a challenge for cause. Very
5 serious doubts. But I may be inclined to give you your
6 challenge at that. I am not trying to deviate from the pattern
7 I have attempted to set up, but I will accept the challenge.

8 MR. WEEDMAN: Thank you, your Honor.

9 THE COURT: And excuse the juror.

10 MR. KATZ: I am sure the record indicates it is over the
11 vigorous objection of the People. We feel that somehow -- and
12 I am not meaning to cast any aspersions upon the court's
13 integrity, and I know I have the utmost respect for the court,
14 but --

15 THE COURT: You have got a strong position, too, I
16 recognize the problems. And I am inclined to give the challenge.
17 However, I am not deviating, I trust, from my regular pattern
18 that I have tried to establish. I will accept the challenge.

19 MR. WEEDMAN: Thank you.

20 MR. KATZ: Thank you, your Honor.

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

23 THE COURT: Now, you had a challenge, is that right,
24 Mr. Weedman?

25 MR. WEEDMAN: Yes, your Honor.

26 THE COURT: I will accept the challenge and excuse the
27 juror. Thank you very much. Thank you, lady, very much.

28 Now we will call another juror.

11-2

1 THE CLERK: Yes, sir.

2 Ethelbert Reed, R-e-e-d. First name spelled
3 E-t-h-e-l-b-e-r-t.

4 MR. WEEDMAN: Miss or Mrs.?

5 THE CLERK: Well, it doesn't state.

6
7 ETHELBERT REED

8 BY THE COURT:

9 Q Now, lady, did you hear everything that I have
10 said? You have been here since Friday?

11 A Yes.

12 Q You came in with the second group of jurors. Have
13 you heard everything that I have said to the jurors in the jury
14 box?

15 A Yes, sir.

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

18 A Yes, sir.

19 Q I want you to assume that you have been selected
20 as a juror to try this lawsuit and that you have gone to the
21 jury room to decide guilty or not guilty. Now, at that point
22 you could find, the jury could make a finding of not guilty
23 which would conclude the case entirely, or the jury could make
24 a finding of guilty. If the jury finds the defendant guilty
25 then the jury must make a finding of degree, guilty of murder
26 first degree, guilty of murder second degree. Is that clear
27 to you?

28 A Yes.

1 Q Up to that point? If the jury makes a finding of
2 guilty of murder second degree then that concludes the case
3 entirely as far as the jury is concerned.

4 If the jury makes a finding of guilty murder first
5 degree then there must be a further hearing held, known as the
6 penalty hearing. And after that hearing the jury then
7 determines the penalty which is either the death penalty or
8 life imprisonment. Now, I want you to assume that we have
9 held the penalty hearing and you are on the jury and you are
10 voting on the question of what is the penalty.

11 Now, I will ask you this question. At that time
12 would you automatically vote against the imposition or
13 imposing the death penalty without regard to any evidence that
14 might be developed at the trial of this case?

15 A No, sir.

16 Q The answer is no?

17 A Correct.

18 Q Thank you.

19 I am going to ask you, if you are selected as a juror
20 in this case do you feel that you could be absolutely fair and
21 impartial in arriving at a judgment in the case?

22 A Yes.

23 Q And I will repeat the question in this fashion:
24 do you know of any reason at all during the course of the trial
25 of this case that might arise or that might enter into your
26 mind or might bother you or disturb you so that you couldn't
27 keep an open and fair mind and an open mind in the trial of
28 this action?

1 A No.

2 THE COURT: Thank you.

3 Defendant may inquire for cause.

4 MR. WEEDMAN: Thank you, your Honor.

5 Q Is that Miss or Mrs. Reed?

6 A Mrs. Reed.

7 Q Mrs. Reed, are you employed?

8 A I am.

9 Q What do you do for a living?

10 A I have a part-time job and this would be a hardship
11 on me because I do live alone and it is my -- I am the sole
12 support of my family.

13 Q I see. Are you supporting others than yourself?

14 A No.

15 Q May I ask what you do?

16 A I work at a distributing outfit and we distribute
17 the telephone directories. I am a supervisor. I manage a
18 station when they deliver the directory, hire the people and
19 instruct them and get the work done.

20 Q Is that something that you are presently, apart
21 from your jury duty, involved in?

22 A Yes. As a matter of fact work is coming up the
23 27th of July. I was in hopes I could get my time in on the
24 jury before the job starts.

25 Q And this is your sole income, is that correct?

26 A Uh-huh.

27 Q From this kind of employment?

28 A Except my Social Security check.

1 Q Except your Social Security?

2 A Uh-huh.

3 Q Well, I take it it is pretty obvious that you would
4 not be paid for jury duty?

5 A That's correct.

6 Q With this kind of employment, certainly?

7 A That's right.

8 Q So if this matter were to last a couple of months
9 you would lose, if our estimate is correct, perhaps five to six
10 weeks; is that so?

11 A Depending upon how long the jury took.

12 Q Yes.

13 A Yes.

14 Q For that period of time you would be without any
15 income except for what you are paid for as a juror, is that
16 correct?

17 A Yes.

18 Q I see. Are you asking to be excused on that basis,
19 Mrs. Reed?

20 A I would appreciate it.

21 Q Do you feel that in the event you were not excused
22 for any reason here that you would be so concerned about this
23 loss of income that you might not be able to give your full
24 attention to this trial?

25 A Well, truthfully I would try to adjust.

26 Q Well, do you think you would be able to adjust?

27 A I think so.

28 Q All right. So as far as you are concerned then

1 although it would cause you a hardship you don't feel that it
2 would interfere with your functioning as a juror here?

3 A I think not.

4 Q Pardon me?

5 A I think not.

6 Q All right.

7 Now, with respect to the death penalty, supposing
8 this matter in the guilt phase results in a finding of first
9 degree murder, willful, premeditated, committed with malice
10 aforethought, no justification for it, no excuse for it. Would
11 you then, do you feel, automatically impose the death penalty?

12 MR. KATZ: There is an objection, your Honor, on the
13 grounds it is asking this juror to prejudge the evidence.

14 THE COURT: Let me have the question, Mr. Reporter.

15 (The reporter read back the question
16 as follows:

17 "Now, with respect to the death penalty,
18 supposing this matter in the guilt phase results
19 in a finding of first degree murder, willful,
20 premeditated, committed with malice aforethought,
21 no justification for it, no excuse for it. Would
22 you then, do you feel, automatically impose the
23 death penalty?"
24

The 12

1 THE COURT: Well, I will sustain the objection because
2 it causes a prejudgment of the facts in the case, and that's
3 a question she can't -- "If you come to it, would you follow
4 the law that the testimony substantiates a conviction to a
5 moral certainty and beyond a reasonable doubt; would you so
6 vote or not? If you don't have that conviction" -- is as
7 close as you can come; but the way it is framed calls for a
8 prejudging of the testimony, I think.

9 I will sustain the objection.

10 I think you can reframe it.

11 MR. WEEDMAN: I'll try.

12 Q Mrs. Reed, if you should find that my client has
13 committed a willful, premeditated murder with malice aforethought,
14 without any justification or excuse, would you, without consider-
15 ing any other evidence with respect to penalty, automatically
16 impose the death penalty?

17 A No, sir.

18 Q You are telling us then, that you would wait and
19 hear all of the evidence in the case before making up your
20 mind with respect to penalty?

21 A That's correct.

22 Q What about a situation where the only evidence that
23 you have before you as far as penalty is concerned is the fact
24 of a willful, premeditated murder with malice aforethought?

25 MR. KATZ: There is an objection, your Honor, on the
26 grounds that it asks a prospective juror to prejudge the evidence
27 and precommit herself; indeed, if that were the only evidence
28 in the case, she could be permitted to have --

12-2

1 THE COURT: Let me have the question. Read the last
2 portion of counsel's question, please.

3 (The question was read as follows:

4 "Q What about a situation where the
5 only evidence that you have before you as far
6 as penalty is concerned is the fact of a
7 willful, premeditated murder with malice
8 aforethought?")

9 THE COURT: I am inclined to sustain the objection the
10 way it is framed.

11 I am inclined to sustain an objection the way it
12 is framed; see, you say, "What about" and there is some pre-
13 judging in there. You have to get at your point --

14 MR. WEEDMAN: Very well, your Honor.

15 THE COURT: I am not trying to disrupt you.

16 MR. WEEDMAN: No, your Honor.

17 THE COURT: But the way it is framed -- may I ask a
18 question in here without disturbing your trend of thought?

19 MR. WEEDMAN: Surely, your Honor.

20 THE COURT: Lady, I am not trying to say this is what
21 counsel is asking you; this is what I am asking you. Take it
22 as my question.

23 Let us assume that the jury is determining the
24 penalty question -- this is only an assumption, because you
25 may not get to that point --

26 A That's right.

27 Q All right; but, let's assume it for the purpose of
28 this question, the jury is deciding the question of life

12-3

1 imprisonment or the death penalty. Let's assume you have
2 been talking this over back and forth.

3 Now, this is the question that I am asking: at that
4 time would you just simply vote death penalty, death penalty,
5 no matter what the testimony is, or would you carefully consider
6 and analyze and think about all of the testimony to arrive
7 at your ultimate conclusion?

8 In other words, would you consider all of the
9 testimony produced at the penalty hearing before you make up
10 your mind and then make up your mind whether it is the death
11 penalty or whether it is life imprisonment?

12 Is your mind open or are you fixed and convinced
13 that there is going to be only one -- only one, no matter
14 what the testimony is -- are you just going to vote in one
15 way or are you going to keep your mind open and discuss the
16 matter with the other jurors before you make up your mind
17 how you are going to vote?

18 Is that what you would do?

19 A Yes.

20 Q I am not trying to lead you, but I am trying to get
21 that point over?

22 A I understand.

23 Q With the whole panorama, the whole testimony and
24 the penalty hearing testimony, would you take it with an open
25 mind, not a shut mind, but an open mind before you start
26 voting on penalty?

27 Your mind is open before we start fixing it or
28 freezing it, whether it is one way or the other; would you

12-4

1 keep your mind open, judge the testimony very carefully and
2 cautiously and then cast your ballot?

3 Isn't that the way you would do it; that's what
4 I am trying to get at and possibly I have sidetracked counsel
5 by putting it in that fashion.

6 I am not trying to disrupt your examination at all,
7 but it is important you get that position clear.

8 A I would keep an open mind.

9 Q Your mind would be open?

10 A That's right.

11 Q In that respect, is that a correct statement, lady?

12 A Correct, yes.

13 THE COURT: All right. Go ahead.

14 I am sorry.

15 MR. WEEDMAN: Thank you, your Honor.
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Q Mrs. Reed, is your state of mind with respect to
2 the death penalty such that following a conviction of murder
3 in the first degree of my client that you would require him,
4 through me and other witnesses, of course, to produce some
5 evidence in mitigation before you would not impose the death
6 penalty?

7 MR. KATZ: Excuse me, your Honor; again there is an
8 objection on the grounds that it asks the prospective juror
9 to prejudge the evidence. She may very well, under the circum-
10 stances --

11 THE COURT: Read the last question again, Mr. Reporter,
12 please.

13 (Pending question read by the reporter,
14 as follows:

15 "Q Mrs. Reed, is your state of mind
16 with respect to the death penalty such that
17 following a conviction of murder in the first
18 degree of my client that you would require him,
19 through me and other witnesses, of course, to
20 produce some evidence in mitigation before you
21 would not impose the death penalty?"

22 THE COURT: That calls for a prejudging. I am sure it
23 does.

24 I will sustain it on that ground.

25 Q BY MR. WEEDMAN: Mrs. Reed, are you -- well, let me
26 ask you this, how do you feel about capital punishment and
27 the death penalty?

28 MR. KATZ: Excuse me, your Honor; there is an objection

1 on the ground it calls for a philosophical discourse.

2 THE COURT: Read the question, please.

3 (The pending question was read by
4 the reporter as follows:

5 "Q Mrs. Reed, are you -- well, let
6 me ask you this, how do you feel about capital
7 punishment and the death penalty?"

8 MR. KATZ: Your Honor, just so the record is clear, I have
9 no objection --

10 THE COURT: I will sustain the objection.

11 MR. KATZ: -- if he inquires as to whether or not the
12 juror is opposed to capital punishment or ^{is} in favor of it.

13 THE COURT: Sustained.

14 Repeat your question.

15 Q BY MR. WEEDMAN: Are you opposed to capital punishment?

16 A No, sir.

17 Q Are you in favor of capital punishment?

18 A If necessary.

19 Q What do you mean by "if necessary"?

20 A If it is proven beyond any question in my mind I
21 would vote for the death penalty.

22 Q All right; and would you tell us what you mean by
23 "if proven"?

24 MR. KATZ: Excuse me, your Honor; I would object on the
25 grounds it calls for a philosophical discourse as to the
26 propriety or impropriety of capital punishment, in general.

27 THE COURT: I am inclined to sustain the objection. She
28 has stated her position "Are you opposed," that's all right, but

1 the rest, I think I will sustain the objection to.

2 MR. WEEDMAN: Excuse me, your Honor; I wonder if we
3 might have Mrs. Reed's answer read. I would appreciate that.

4 THE COURT: Just a minute, I am sorry -- go ahead.

5 MR. WEEDMAN: I wonder if we could have Mrs. Reed's
6 answer to my last question read, your Honor.

7 THE COURT: Give me the wording of the last question,
8 would you, Mr. Reporter, please.

9 (The record was read as follows:

10 "Q Are you opposed to capital punishment?

11 "A No, sir.

12 "Q Are you in favor of capital punishment?

13 "A If necessary.

14 "Q What do you mean if necessary?

15 "A If it is proven beyond any question
16 in my mind I would vote for the death penalty.

17 "Q All right; and would you tell us
18 what you mean by if proven?")

19 THE COURT: I think she has answered the question.

20 I don't want to get into a philosophical discussion,
21 with all due importance to it; I am inclined to feel that she
22 has answered the question.

23 The question is whether she will follow the law
24 as it is and be fair and impartial in arriving at the facts
25 and the conclusions.

26 I will sustain the objection. Sustained.

27 Q BY MR. WEEDMAN: Are there any kinds of cases,
28 Mrs. Reed, in which you conceive that you would, if you are

1 sincere and in good faith, obviously, automatically impose
2 the death penalty without regard to a consideration of the
3 evidence with respect to punishment?

4 MR. KATZ: Excuse me, your Honor; there is an objection
5 on the ground that the question, itself, is --
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13^{12a.}

1 MR. KATZ: Excuse me, your Honor. There is an objection
2 on the grounds that the question itself assumes that there are
3 certain facts and circumstances in which this prospective juror
4 would invoke the death penalty. Therefore, it is asking her to
5 prejudge the evidence in this case.

6 THE COURT: Well, I am inclined to sustain the objection
7 the way the question is framed. Sustained.

8 Q BY MR. WEEDMAN: Well, Mrs. Reed, would you impose
9 the death penalty in a proper case without regard to any
10 evidence that may be produced for you, apart from the fact of
11 guilty?

12 MR. KATZ: Excuse me, your Honor. There is an objection
13 on the grounds of ambiguity, what is proper. It is in the
14 sole and absolute discretion of the juror to determine the
15 circumstances in which he or she would determine the death
16 penalty.

17 THE COURT: Give me the question, Mr. Reporter.

18 (The reporter read the question as
19 follows:

20 "Well, Mrs. Reed, would you impose
21 the death penalty in a proper case without
22 regard to any evidence that may be produced
23 for you, apart from the fact of guilty?"
24
25
26
27
28

13-2 1

THE COURT: I will sustain the Objection. That calls for prejudging without the facts. I will sustain the objection the way it is worded.

MR. WEEDMAN: Thank you, your Honor.

THE COURT: Very well.

Q BY MR. WEEDMAN: Mrs. Reed, if you are chosen as a juror in this case and you do get to a penalty phase of the trial can the defendant be assured that you would consider, along with your fellow jurors, life imprisonment as well as the death penalty?

A Yes, sir.

Q And I take it then from your answer, Mrs. Reed, that as you sit there and should this matter get to a penalty phase you have no idea what penalty you would impose?

A That's correct.

Q Okay.

Have you heard of Charles Manson and the so-called Manson family?

A Yes, I have.

Q Have you heard this through reading of the newspapers?

A Yes, but not recently.

Q All right.

And of watching perhaps the matter on television?

A I have seen it.

Q And in discussing it with your friends and acquaintances?

A Uh-huh.

13-3

1 Q Have you formed any opinion based on all of this,
2 based on all of these things, about the Manson family?

3 A Not truly.

4 Q Well, have you formed any opinion of any kind about
5 the Manson family? In other words, what do you think about
6 them? Do you have any thoughts on the subject?

7 A Well, they must be guilty, they have been found
8 guilty, is all I can tell you.

9 Q What about with respect to other so-called members
10 of the Manson family? Have you any opinion with respect to
11 any of those persons?

12 A Mean people that have not been brought to trial
13 yet?

14 Q Yes.

15 A No, I formed no opinion on them.

16 Q Does that also include persons who, as far as you
17 know, are not awaiting any trial at all?

18 A That's right.

19 Q Do you feel, Mrs. Reed, in your heart that because
20 of the convictions of other persons, members of the Manson
21 family, that chances are that additional members who are
22 charged with serious crimes are probably guilty?

23 A No, sir.

24 Q Do you think that because of an association with
25 the Manson family that a person charged with a crime is more
26 likely to be guilty merely because of that association?

27 A I take the premise that they are innocent until
28 proven guilty.

13-4 1

Q Okay.

2 Do you recognize in your own mind, in your own
3 heart, a problem of any kind in this trial because of things
4 that you may have learned about Charles Manson, the Manson
5 family and of course the Tate-La Bianca trial?

6 A No, sir.

7 Q Pardon?

8 A No, sir.

9 Q No problem at all?

10 A No problem.

11 Q As far as you are concerned? Okay.

12 A Uh-uh.

13 Q What about the very close case that I have talked
14 about. Supposing you are in the jury room and it is a very
15 close case indeed in your mind. You can't really make up your
16 mind. Do you think then you would allow yourself to consider
17 matters which you learned from the Tate-La Bianca case?

18 A No, sir.

19 Q You feel you would be tempted to?

20 A I don't think so.

21 Q All right.

22 Any doubt in your mind about that, Mrs. Read?

23 A No.

24 Q Have you any previous jury experience?

25 A Many years ago.

26 Q Criminal? I am sorry?

27 A Many years ago.

28 Q Anything by way of criminal experience in your

1 present service as a juror?

2 A No.

3 Q I take it it is obvious that anything you may have
4 learned years ago you wouldn't apply in this case?

5 A Right.

6 Q Have you discussed, Mrs. Reed, this case with any
7 other members of the prospective jury panel?

8 A No.

9 Q And, of course, by that I mean have you discussed
10 any of the, what you conceive to be the background of this
11 case?

12 A No.

13 Q Have you mentioned it to any of your fellow
14 prospective jurors other than, you know, "Gee, that's
15 interesting," Or, "That's dull," or, "Those lawyers are taking
16 too much time" or something like that?

17 A No, sir.

18 Q Wouldn't be anything wrong with those observations.
19 I specifically mean now have any other prospective jurors --
20 I am talking about jurors out in the audience now -- discussed
21 this case factually with you at all?

22 A No.

23 Q Okay.

24 I take it that if you are selected as a juror in
25 this case that you would not permit yourself to consider any
26 evidence that should come to you, that is not part of the
27 evidence in this case?

28 A Correct.

1 Q And you would resist any argument that another
2 juror might make to you along those lines by saying, for
3 example, "Well, I don't know, Mrs. Reed, why you can't make
4 up your mind because after all this man is a member of the
5 Charles Manson family and therefore he must be guilty." You
6 wouldn't buy that kind of an argument, would you, Mrs. Reed?

7 A No.

8 Q Okay. Fine, Mrs. Reed.

9 If evidence is adduced here that my client lives
10 his life in a way that you disapprove of, apart of course from
11 any criminality, would you allow that to sway your judgment
12 with respect to his guilt or innocence?

13 A No, I wouldn't.

14 Q Would you be able to assure us that you are not
15 going to convict my client mainly because you disagree with
16 the way in which he has decided to live his life, apart from
17 criminality, that is?

18 A That's his business.

19 MR. WEEDMAN: All right. I will pass for cause, your
20 Honor.

21 THE COURT: Very well.

22 People?

23 MR. KATZ: Thank you, your Honor.

24 Q Mrs. Reed, you just had the opportunity ^{to} see our
25 system of jurisprudence unfold in your presence, so to speak.
26 You witnessed just a few moments ago a series of objections
27 interposed by myself to Mr. Weedman's questions. And in that
28 connection I hope you won't take the attitude that some lay

1 people do that I am trying to be a bad guy and I am trying to
2 interfere with proper questioning by Mr. Weedman; you won't
3 take that attitude, will you?

4 A No.

13a

13a

1 Q All right. And you understand that Mr. Weedman's
2 questions are sincerely asked and my objections are sincerely
3 interposed, and I may feel for one reason or another that
4 perhaps these kinds of subject matters should not be properly
5 raised at this time and, therefore, in good faith I interpose
6 an objection. Then his Honor sitting impartially will
7 determine whether or not the objection should be sustained or
8 it should be overruled; do you understand that?

9 A I do.

10 Q And merely because he either sustains my objection
11 or overrules my objection has nothing to do with the merits of
12 this trial, isn't that right?

13 A Uh-huh.

14 Q I hope you won't conclude because maybe I interpose
15 a few more objections than Mr. Weedman, at least at this
16 posture of the proceedings, that I am a heavy, if you will, or
17 a bad guy and we got to look out for the People and watch them;
18 you won't take that kind of attitude, will you?

19 A No.

20 Q I take it you understand that we are trying to do
21 our best to adhere to the rules of evidence and that is why we
22 interpose objections; do you appreciate that?

23 A Yes.

24 Q Now, do you have any quarrel with the rule of law
25 in regards to circumstantial evidence which permits a person to
26 be convicted of murder in the first degree based wholly upon
27 circumstantial evidence?

28 A No.

1 Q I take it that you are willing to apply the rules
2 of circumstantial evidence if they have application to the
3 facts as you find them?

4 A Yes.

5 Q And if you are convinced beyond a reasonable doubt
6 based solely upon circumstantial evidence, will you vote guilty
7 despite the fact that the People have failed to produce a body
8 or an eyewitness to the killing?

9 A Yes.

10 Q Do you have any quarrel with the principle of law
11 which permits, or the law in this state which permits a man to
12 be sentenced to death based wholly upon circumstantial evidence?

13 A No.

14 Q Do you think you can be fair and impartial to both
15 sides?

16 A I think so.

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

18 Pass for cause.

19 THE COURT: All right. Let's see, gentlemen. Whose
20 peremptory is it?

21 THE CLERK: The People's, sir.

22 MR. KATZ: I believe it is People's, your Honor.

23 THE COURT: All right.

24 MR. KATZ: Yes.

25 People wish to thank and excuse Miss Jenkins.

26 THE COURT: Thank you.

27 THE CLERK: Rose Lampel, L-a-m-p-e-l.
28

ROSE LAMPEL

BY THE COURT:

Q Now, lady, have you been in here ever since last Friday?

A Yes, I have.

Q When you were sent here. Did you hear everything that I said to the jurors?

A Yes, I did.

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

A Yes, I did.

Q If you will, please, assume you have been selected as a juror and the case has been tried. You have gone to the jury room to decide the case. The jury at that time could make a finding of not guilty, which would conclude the case entirely.

The jury could make a finding of guilty and then they must decide on the degree, either first degree or second degree.

Now, if the jury should decide guilty second degree then that concludes the case as far as the jury is concerned.

If the jury decides guilty first degree then there is a further penalty hearing held.

Assume that the penalty hearing has -- and at the penalty hearing the jury must make a finding of the death penalty or life imprisonment. Now, suppose, or assume that the penalty hearing has been held and you are in the jury room with the rest of the jurors deciding on penalty. Now, I will ask you, at that time when you are voting on the penalty would you

1 automatically vote against the imposition of capital punishment
2 or the death penalty without regard to any evidence that might
3 be developed at the trial of this case before you?

4 A No.

5 Q All right.

6 Now, I will ask you this. Do you know of any reason
7 why you could not be fair and impartial if you are selected to
8 try this cases as a juror?

9 A No.

10 Q And then this next question, or restatement of the
11 former question: do you know of any situation of facts during
12 the trial of this case that could arise or occur that might
13 upset you or disturb you, take your mind off the case, that
14 might prevent you from keeping your mind fair, free and open
15 during the entire trial?

16 A No.

17 THE COURT: Thank you.

18 Defendant may inquire.

19 BY MR. WEEDMAN:

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

21 A Lampel.

22 Q Miss or Mrs. Lampel?

23 A Mrs.

24 Q Are you employed, Mrs. Lampel?

25 A No.

26 Q How about Mr. Lampel?

27 A Yes.

28 Q What does he do for a living?

1 A He is a truck broker.

2 Q Does that mean he sells?

3 A No, he doesn't sell. He is a commission man. He
4 engages trucks to take produce and frozen products all over
5 the country.

6 Q I see. And have you had any prior criminal jury
7 experience?

8 A No.

9 Q Is there anything at all about the, well, somewhat
10 protracted length of this trial, we are estimating another,
11 perhaps, eight weeks, that would cause you any personal hard-
12 ship?

13 A No.

14 Q Is there anything you have heard or learned in your
15 own mind about this case so far that makes you think you would
16 rather be someplace else while this case is being decided?

17 A No.

18 Q What about this matter I have been asking the other
19 prospective jurors, the business of opinions formed about
20 Charles Manson and the Manson family, possibly affecting the
21 judgment of a juror in this case?

22 A I don't think so.

23 Q Would you have any problem in this matter, Mrs.
24 Lampel?

25 A No.

26 Q Is your feeling such about the death penalty that
27 you are willing and would indeed wait until you hear all of the
28 evidence in this case?

1 A Yes, I certainly would.

the 14

1 Q I take it as far as this case is concerned, you
2 have no preference as you sit there now for one penalty as
3 against the other penalty, if it should ever go that far?

4 A Yes.

5 Q And I am sure you appreciate that merely because
6 we are talking about the death penalty doesn't mean that this
7 matter is going to go that far?

8 A No.

9 Q Okay.

10 Are you friends with, close friends with, or do
11 you have any relatives who are in law enforcement?

12 A No.

13 Q With respect to the testimony of people in law
14 enforcement, would you give it the same critical judgment in
15 appraising its -- not necessarily its truthfulness, but its
16 relevancy, and so on, in this matter; would you give it the
17 same kind of judgment that you would give the testimony of
18 any other witness?

19 A Yes.

20 Q Now in the event that either the prosecution or
21 the defense, for that matter, should call as witnesses persons
22 whose lifestyles are, perhaps, markedly different than your
23 own and, indeed, whose lifestyles you disapprove of, would you
24 allow that fact, alone, to cause you to reject their testimony?

25 A No.

26 Q I take it, then, that you are going to listen to
27 the witnesses here carefully and apply reasonable intelligent
28 tests as nearly as you can?

1 A I would.

2 Q Supposing at the end of all of the evidence, after
3 careful consideration of the court's instructions, full
4 deliberation with your fellow jurors you just are not convinced
5 to a moral certainty and beyond a reasonable doubt of my client's
6 guilt, will you unhesitatingly acquit him?

7 A Well, if I were sure, yes, if I felt --

8 Q If you felt what, Mrs. Lampel?

9 A If I felt that there wasn't enough evidence to
10 convict him, yes, I would acquit him.

11 Q Surely. All right.

12 And would you do that apart from any notion that
13 the People have gone to all this trouble and expense and,
14 therefore, maybe the jury is somehow not doing its duty by
15 failing to convict?

16 A No.

17 Q That is a silly notion, isn't it?

18 A Yes.

19 Q Of course.

20 I take it, then, from that answer that the mere
21 fact that my client has been charged with this offense is no
22 evidence, as far as you are concerned, of his guilt?

23 A No.

24 Q And that by way of testing that proposition, if
25 no evidence was adduced here, why, he'd have to be turned loose;
26 isn't that so?

27 A True.

28 Q Finally, do you have any quarrel with the idea that

14-3

1 it is up to the People to prove guilt, if they can, it is
2 not up to the defendant to prove innocence?

3 A Yes.

4 Q In other words, if you are not satisfied with the
5 People's case I take it you are going to acquit my client
6 even though my client may not be able to prove his innocence?

7 A Well --

8 Q If that's the law, essentially as given to you
9 by Judge Call, will you abide by that law?

10 A Yes, if that's the law, yes.

11 Q I take it, then, that you are not going to sit back
12 and wait for my client to prove his innocence in order to say
13 to the People, "I am sorry, People, you have not proven your
14 case."

15 In other words, you are not going to ask my client
16 to make an affirmative showing of innocence here, are you,
17 if that's the law that is given to you?

18 A If that's the law, yes.

19 Q As you sit there now, do you feel you have any
20 trouble following such instructions from Judge Call?

21 A No.

22 Q Okay. Laymen obviously feel that often a trial is
23 an opportunity for the accused to prove he didn't do it, but
24 do you appreciate the fact that sometimes you can't really prove
25 it, that you didn't do it?

26 A Well, yes, that could be the case.

27 Q Bear in mind that in this case, and I imagine that
28 you heard Mr. Katz earlier on examination of the other jurors,

14-4

1 indicate that there is a pretty broad range of dates that are
2 involved here --

3 A Yes, two weeks.

4 Q -- about two weeks.

5 Would you concede, for purposes of my questioning,
6 that a person might not be able to account for their whereabouts
7 every single hour of every single day for two weeks?

8 A Quite possible.

9 Q And then in that kind of example, and I am not
10 asking you to prejudge any evidence here, but in that kind of
11 way it might be really impossible for a man to prove his
12 innocence; do you agree?

13 MR. KATZ: Excuse me, your Honor, I think that asks the
14 juror to prejudge the evidence in this case.

15 That is argumentative in form.

16 THE COURT: Well, the question is all right, I believe;
17 the only question in my mind is whether the witness may, again,
18 understand the basic premise of proof beyond a reasonable doubt.

19 I think the question is all right; but, lady, let
20 me ask you this, now, because it is very easy for a layman to
21 become confused, and the question can very properly and very
22 intelligently be put in one or two ways. It may in a layman's
23 mind sow confusion.

24 Q Now, the defendant is presumed to be innocent
25 right now; you understand that?

26 A Yes.

27 Q He is sitting there now, he is presumed to be
28 innocent.

14-5

14a

1 A Yes.

2 Q And if the People, for instance, should not put
3 on any testimony at all but just say, "We rest our case,"
4 and don't put on any testimony, and the court sends the jury
5 out to make a finding, the jury would have to find not guilty
6 because the People haven't proven anything.

7 You understand, I am building up hypothetical cases
8 only to try to put the point over; you follow me there?

9 A Yes, I understand.

10 Q Now, if the People put on their case, if they put
11 on their case --

12 A Yes.

13 Q -- and say, "We rest, that's our case," and the
14 defendant says, "Well, we rest, also; we rest," they haven't
15 put on anything -- this is hypothetical, you understand?

16 A Yes.

17 Q The jury goes to the jury room, the jury would say,
18 well, what is the testimony? Have the People proven the defendant
19 guilty beyond a reasonable doubt? And you see the defendant
20 under that situation hasn't put any testimony in at all,
21 you would have to pass on the People's case because the People
22 must prove the defendant guilty beyond a reasonable doubt.

23 Is that clear?

24 A Yes, I understand it.

25 Q So when you are in the jury room, even though the
26 defendant may not have put on any testimony at all, he is
27 surrounded by the presumption of innocence.

28 You understand that?

14-6

1 A Yes.

2 Q So the People must prove the defendant guilty;
3 so you are debating with the jury, you are debating the facts,
4 "Have the People proven the defendant guilty beyond a reason-
5 able doubt?"

6 A I understand.

7 Q Now, if you come to the conclusion with the other
8 12 -- of course, you can vote individually, it doesn't mean you
9 have to be in full agreement -- but in order to render a verdict
10 all 12 of you have to be in agreement -- if you feel the People
11 have proven the defendant guilty beyond a reasonable doubt,
12 then you would vote guilty; if you feel, if you factually
13 construe the facts that way, if you feel the People have proven
14 the defendant guilty beyond a reasonable doubt, your verdict
15 would be guilty and the presumption of innocence that covers
16 and protects the defendant would vanish.

17 Do you see?

18 A Yes.

19 Q But if the People have not proven the defendant
20 guilty beyond a reasonable doubt you'd vote not guilty and
21 the presumption of innocence stays right there, he's protected
22 with the presumption of innocence.

23 The People must overcome that; is that clear to you?

24 A Yes, Judge.

25 THE COURT: Now, if you will ask your question again, and
26 I appreciate --

27 MR. WEEDMAN: I appreciate your Honor making those state-
28 ments.

1 THE COURT: I hope I am not trying to disturb either
2 counsel by interrupting.

3 MR. NEEDMAN: Yes, thank you.

4 THE COURT: I am not trying to disturb either party.

5 Q BY MR. NEEDMAN: The questions, Mrs. Lampel, we
6 somehow sometimes rather jump ahead of ourselves and sort of
7 assume that the juror knows what the law is and we are asking
8 now that, "Are you sure you are going to be able to follow
9 the law?" So you are getting an education and you are also on
10 the hot seat at the same time.

11 I apologize for putting you in this awkward
12 position, although I think that your answers are certainly
13 more than responsive.

14 So we understand each other, that you are not going
15 to wait for the defendant to prove his innocence. If you are
16 going to wait for anything you are going to wait for the People
17 to prove their case, aren't you, and if they prove it, fine;
18 and if they don't prove it, then that's what not guilty means.
19 You understand that?

20 A Yes.

21 Q And you understand, then, that not guilty does not
22 necessarily mean that the defendant proved his innocence;
23 that it means the People have not proven him guilty beyond a
24 reasonable doubt to a moral certainty?

25 A I understand.

26 Q And finally, I think it is always an interesting
27 question, although I have asked it of several of the jurors
28 already: supposing after due deliberation the vote is 11 to 1,

14-8

1 and you are the one.

2 Would you be able to resist changing your vote
3 merely to get along with the other jurors?

4 A Well, I'd have to be thoroughly convinced in order
5 to change my mind.

6 Q Certainly, and just to go along with the majority
7 has nothing to do with convincing, does it?

8 A No.

9 Q That's not evidence or argument; that would have
10 no place in deliberations, would it?

11 A Not really, no.

12 MR. WEEDMAN: Thank you, Mrs. Lampel; we'll pass for
13 cause, your Honor.

14b

14b-1

1 THE COURT: People?

2 MR. KATZ: Thank you.

3 Q It is my turn, Mrs. Lampel.

4 Prior to being called for jury service had you
5 given some thought to the death penalty?

6 A A little.

7 Q I daresay that since being called to this courtroom,
8 Department 52, you have given it some considerable attention;
9 is that correct?

10 A Well, not too much over the weekend, I am sorry.

11 Q Have you given some additional thought, though, to
12 capital punishment in general?

13 A Yes.

14 Q And without telling me your reasons one way or the
15 other, are you generally in agreement that the death penalty
16 under certain circumstances is, in fact, justified?

17 A I am.

18 Q All right.

19 I take it you are not generally opposed to capital
20 punishment?

21 A Not completely opposed.

22 Q All right.

23 Do you have any deep-seated, religious, moral or
24 philosophical beliefs in opposition to capital punishment?

25 A No.

26 Q And you recognize the distinction, do you not,
27 ma'am, between believing that capital punishment is all right
28 in the sense that other people can invoke the death penalty,

1 but when it comes to me, I will not personally participate in
2 a death penalty verdict?

3 Do you recognize the distinction between those two
4 situations?

5 A Yes.

6 Q Have you asked yourself the question, whether or
7 not you, yourself, could vote the death penalty?

8 A Well, yes, I guess I could if I had to, the
9 circumstances were such.

10 Q All right.

11 You have heard me ask that question to each and
12 every juror, have you not?

13 A Yes.

14 Q And I take it that you have been thinking about that
15 question --

16 A Yes.

17 Q -- is that correct?

18 A Yes.

19 Q And as you sit here now can you conceive of
20 circumstances in which you, yourself, would vote the death
21 penalty, realizing that you would have to live with that
22 judgment for the rest of your life?

23 A Yes.

24 Q And I daresay that's a pretty distasteful and
25 difficult task, is it not?

26 A Yes.

27 Q But, nevertheless, if you felt in your own
28 conscience and, I underscore, in your absolute discretion that

1 in this case, People against Steve Grogan, warranted the death
2 penalty, could you vote that way?

3 A Yes, if it were necessary.

4 Q All right; you say "if it were necessary."

5 I take it you would be willing to listen to all of
6 the evidence, not only the evidence which unfolds during the
7 guilt phase, but the evidence which unfolds during the penalty
8 phase, if we reach that phase, to determine the proper penalty
9 in this case; is that right?

10 A Yes.

11 Q And however distasteful the task may be to you
12 after consideration of the background and the history of the
13 defendant, such evidence as is presented, after consideration
14 of the circumstances surrounding the crime and the moral
15 culpability, if any, of the defendant, you believed this case
16 warranted the death penalty, could you vote for the death
17 penalty and come back into that seat where you are sitting
18 right now and tell the court by your verdict the defendant is
19 sentenced to death?

20 A Yes.

21 Q Now, you heard me state unequivocally when you
22 first came into the courtroom that if we reached the penalty
23 phase of this trial the People will deliberately prevail upon
24 the jury to return a death penalty verdict; is that correct?

25 A Yes.

26 Q Do you hold any ill will or hostility, as it were,
27 towards the prosecution because I have made that candid
28 disclosure?

1 A No.

2 Q You understand what I am trying to do is get each
3 and every juror to look within their hearts and to look in
4 their head right now to determine whether or not if in six or
5 eight weeks they are called upon to pass upon the issue of
6 whether or not another person should live or die, that they
7 could fairly and squarely look at the issue?

8 You understand that's my purpose?

9 A Yes.

10 Q And with respect to the issue of circumstantial
11 evidence, are you one of those people who believe that circum-
12 stantial evidence may be all right in some lesser criminal
13 offense but in a murder case you would want eyewitness testimony,
14 or do you believe that you would be willing to consider
15 circumstantial evidence and draw inferences where warranted
16 and apply circumstantial evidence in accordance with his Honor's
17 instructions?

18 A Yes.

19 Q All right; so I take it that you have no bias or
20 prejudice against the use of circumstantial evidence in a
21 murder case; is that right?

22 A Right.

23 Q And I take it that you would not require the People
24 to produce a body or an eyewitness to the killing if you were
25 convinced beyond a reasonable doubt and to a moral certainty
26 by circumstantial evidence that the defendant committed murder
27 in the first degree, before voting guilty; is that correct?

28 A Correct.

1 Q Now, do you have any children, ma'am?

2 A Yes.

3 Q And may I just inquire as to whether or not your
4 children are the approximate ages of Mr. Grogan?

5 A Well, I suppose, since I don't know his age; but
6 I suppose they might be.

15

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The 15.

1 Q Do you think that because you have children that
2 apparently look the approximate age of Mr. Grogan that that
3 would in any way influence your ability to be fair and
4 impartial and to evaluate the evidence in the guilt phase?

5 A No.

6 Q In other words, you wouldn't identify with your
7 children and thereby have your verdict be influenced in the
8 guilt phase; is that correct?

9 A No.

10 Q That has nothing to do with the trial; is that
11 right?

12 A Nothing to do, no.

13 Q What I am saying is this, that you will not permit
14 yourself to be influenced by any sympathy you may have for
15 the defendant in the guilt phase of this trial; is that correct?

16 A Correct.

17 Q I take it you believe in the principle that all
18 persons are equal under the law; is that correct?

19 A Yes.

20 Q Unfortunately the laws are not always equally
21 applied, but we recognize within human frailties we do the best
22 we can; isn't that right?

23 A Right.

24 Q If you believe beyond a reasonable doubt and to a
25 moral certainty that Mr. Grogan, as young as he may be, is
26 guilty of murder in the first degree would you vote murder in
27 the first degree?

28 A If I really believed that, yes.

15-2

1 Q You realize that in a circumstantial evidence
2 case we are not required to sustain any greater burden of
3 proof than in any criminal case, namely, we must prove beyond
4 a reasonable doubt and to a moral certainty the truth of the
5 charge; is that correct?

6 A Correct.

7 Q I take it in that connection you will not require
8 the People to demonstrate that degree of proof which excludes
9 all possibility of error and creates absolute certainty in
10 your mind because such proof is rarely if ever possible; is
11 that correct?

12 A That's correct.

13 Q All right. And I take it you won't seize upon any
14 particular sentence in a given instruction his Honor will give
15 you but will take all of the instructions as a whole and apply
16 them to the facts as you find them to be; is that correct?

17 A Correct.

18 Q All right. Now, his Honor had indicated to you when
19 you first came into the courtroom that he will give the
20 instructions of law at the conclusion of the facts in this case.

21 You understand that?

22 A Yes.

23 Q You understand that you are the sole and exclusive
24 judge of what the facts are in this case, do you appreciate
25 that?

26 A Yes.

27 Q It is very important that we preface the subsequent
28 questions I am going to ask with these underlying remarks.

15-3

1 Now assuming you, as a trier of fact found that
2 there were facts sufficient to support a conspiracy and assuming
3 further that his Honor gave you instructions in regard to the
4 law of conspiracy, would you be willing to follow the law of
5 conspiracy as his Honor gives it to you contained in the
6 instructions and apply them to the facts as you find them to
7 be?

8 A Yes.

9 Q All right. And in that connection --

10 MR. WEEDMAN: Excuse me, your Honor. I wonder if we might
11 approach the bench in connection with this question.

12 THE COURT: Well --

13 MR. KATZ: Your Honor has already previously ruled.

14 THE COURT: Wait a minute. Let me have the question.
15 Just one minute.

16 MR. WEEDMAN: Well, if counsel wants to make that statement
17 in front of the jury then I may simply add an objection to
18 any questions of this jury relative to any purported or alleged
19 conspiracy on the grounds previously stated, your Honor.

20 THE COURT: Well, back up and give me the question, please.

21 (The question was read by the reporter,
22 as follows:

23 "Q It is very important that we preface
24 the subsequent questions I am going to ask with
25 these underlying remarks. Now, assuming you as a
26 trier of fact found that there were facts sufficient
27 to support a conspiracy and assuming further that
28

1 his Honor gave you instructions in regards
2 to the law of conspiracy, would you be willing
3 to follow the law of conspiracy as his Honor
4 gives it to you contained in the instructions
5 and apply them to the facts as you find them
6 to be?")

7 THE COURT: I think the question is all right. It doesn't
8 ask for finding one way or the other. The question says: "Will
9 you apply the facts in accordance with the law as given to you
10 by the court?" That is substantially the question. I think
11 it is a sound question.

12 He doesn't ask the juror to make a pre-finding of
13 facts. Whatever your facts are that you find them, whatever
14 they are, will you apply them as the law says you must? That
15 is what his question is. I think it is a good question. I will
16 overrule the objection.

17 MR. KATZ: Thank you, your Honor.

18 MR. WEEDMAN: Well, for the record may my objection, your
19 Honor, incorporate the remarks that were stated for the record.

20 THE COURT: Very well. It may be so understood.

21 MR. WEEDMAN: Thank you, your Honor.

22 THE COURT: Overruled. You may answer the question.
23 Is it clear?

24 MRS. LAMPEL: Yes.

25 THE COURT: You can answer the question of counsel.

26 MRS. LAMPEL: I think I answered.

27 Yes.

28 MR. KATZ: Thank you.

1 THE COURT: Let's take a five-minute recess, folks.
2 And we will go right ahead. Do not discuss the case, please,
3 anybody.

4 (Recess.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15a.

15a-1

1 THE COURT: People against Grogan.

2 Defendant is here, both counsel are here, the
3 jurors are in the jury box.

4 You may proceed.

5 MR. KATZ: Yes. Thank you.

6 Q Mrs. Lampel, we were discussing the subject matter
7 of conspiracy. In that connection it was understood, was it
8 not, that you are not to consider any instructions his Honor
9 may give in that regard unless and until you, as trier of the
10 fact, determine that we have by way of evidence established
11 beyond a reasonable doubt and to a moral certainty that
12 conspiracy has been established; you understand that?

13 A Yes.

14 Q Now, assuming that premise, if his Honor should at
15 the conclusion of the evidence in this case instruct you that
16 each member of a criminal conspiracy is liable for each act
17 and bound by each declaration of every other member of the
18 conspiracy if said act or said declaration is in furtherance
19 of the object of the conspiracy, would you follow that
20 instruction?

21 A Yes.

22 Q I take it you have no quarrel with the general
23 rules of conspiracy as his Honor has previously outlined them
24 to you when you first came into the courtroom, is that correct?

25 A That's right.

26 Q Can you think of any reason why you could not give
27 both sides a fair and impartial trial?

28 A No.

15a-2

1 MR. KATZ: Thank you.

2 Pass for cause.

3 THE COURT: Pass?

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

5 THE COURT: All right. Whose peremptory is it?

6 MR. KATZ: I believe it is defendant's, your Honor.

7 THE COURT: People?

8 THE CLERK: Defendant's, your Honor.

9 THE COURT: Oh. Thank you.

10 MR. NEEDMAN: We will thank and excuse Mr. Winn, your
11 Honor.

12 THE COURT: Very well.

13 THE CLERK: Milton S. Jinowsky, J-i-n-o-w-s-k-y.

14
15 MILTON S. JINOWSKY,

16 BY THE COURT:

17 Q Now, have you been in the courtroom since last
18 Friday when you were sent in?

19 A Yes, sir.

20 Q All right. Did you hear everything that I said to
21 the other jurors?

22 A Yes.

23 Q And did you hear me read the charge that has been
24 filed against the defendant?

25 A I did.

26 Q I will ask you to assume that you have been
27 selected as a juror and you have heard the case and the jury
28 went to the jury room to make a decision of guilty or not
guilty.

15a-31

1 The jury could make a finding of not guilty which
2 would conclude the case entirely. The jury could make a find-
3 ing of guilty and then the jury if they made a finding of
4 guilty, it would be necessary for them to fix the degree of
5 either first degree or second degree murder.

6 If the jury made a finding of second degree murder
7 there would be no further duty from the jury. They would be
8 excused.

9 If the jury made a finding of first degree murder
10 then the court would hold a subsequent penalty hearing and
11 at the penalty hearing the jury would make a finding of penalty,
12 either the death penalty or life imprisonment.

13 I will ask you to assume that there has been held
14 a penalty hearing and that you are voting or are about to vote
15 on the question of the death penalty or life imprisonment. And
16 I will ask you this question: at that time would you automati-
17 cally vote against the imposition of the death penalty without
18 regard to any evidence that might be developed at the trial of
19 this case before you?

20 A No, I wouldn't.

16

16-1

1 Q The answer is "No"; all right.

2 Now I will ask you this: do you know of any reason
3 that you could not be fair and impartial to the defendant and
4 to the People if you should be selected as a juror in this
5 case?

6 A No, there is no reason.

7 Q And I will ask you one more question that is pretty
8 much a repeat of that question: do you know of any reason or
9 any facts that might arise during the trial of the case, any
10 situations that might present themselves to you that might
11 upset you or disturb you or place you in a position where you
12 could not be fair and impartial and keep an open mind in the
13 case?

14 A No, sir.

15 THE COURT: Thank you.

16 I will pass the juror for cause.

17 Defendant may inquire.

18 MR. WEEDMAN: Thank you, your Honor.

19 Q Mr. Jinowsky, may I inquire as to your business or
20 profession, please.

21 A I am claims manager for Pacific Indemnity Company.

22 Q All right; and is there a Mrs. Jinowsky?

23 A No.

24 Q How long have you been employed in that capacity,
25 Mr. Jinowsky?

26 A 12 years.

27 Q Is there anything that you heard about this case
28 so far that makes you think that you couldn't give a fair,

1 objective appraisal to the evidence before you?

2 A No, there isn't.

3 Q I am sure, Mr. Jinowsky, you understand that this
4 is an adversary proceeding between Mr. Katz representing the
5 People and myself representing the defendant. In other words,
6 we, unfortunately, or fortunately -- perhaps unfortunately,
7 because sometimes we think it interferes with the truth finding,
8 fortunately, because this is the system that has been hammered
9 out through hard experience in our country -- and, nonetheless,
10 do you understand that we are really doing our best to protect
11 our respective clients here?

12 A Yes.

13 Q But from time to time it may appear to be, perhaps,
14 the fight that it really is between counsel here, even though
15 we are not literally going to come to blows; you appreciate
16 that?

17 A Yes.

18 Q I take it, Mr. Jinowsky, that you will not hold
19 that effort that Mr. Katz makes against him, or the effort that
20 I make against me or my client?

21 A No.

22 Q With respect to objections made by counsel, I take
23 it, then, in the light of your answer, that you at least accept
24 the fact that counsel have to make objections from time to time
25 and that you will not hold it against either one of us?

26 A That's right.

27 Q If you should have the thought during the course
28 of the trial, Mr. Jinowsky, that perhaps what Mr. Needman really

1 wants is not a fair and impartial jury, as such, but what he
2 really wants is to have his client acquitted by a fair and
3 impartial panel, you won't hold that, that subtle distinction,
4 against me, will you?

5 A No, sir.

6 Q And the same would be true if you divined that
7 Mr. Katz really wants a conviction here, but he wants a
8 conviction by a fair and impartial jury; you won't hold that
9 against Mr. Katz, either, will you?

10 A No.

11 Q With respect to any opinions that you may have
12 formed in connection with that widely publicized Tate-LaBianca
13 matter, will you be able to set aside any such opinion and
14 judge this case on the evidence that is produced right here in
15 this courtroom?

16 A Yes, I would.

17 Q With respect to evidence tending to show a lifestyle
18 on the part of my client which may be offensive to you, will
19 you not judge my client's guilt or innocence merely on the
20 basis of his lifestyle?

21 A No, I wouldn't.

22 Q In other words, if he has committed a crime and you
23 are satisfied that the People have so proved, then you are
24 going to convict him on the evidence in this matter; and if you
25 are not convinced, then you are going to acquit him?

26 A Right.

27 Q Okay; I take it that I can count on you to acquit
28 him if you are not convinced?

1 A That's right.

2 Q Miss Torres, a few days ago, I don't know if you
3 were here then, but I was asking her some sort of legalese
4 involved question in a remote, almost undecipherable fashion,
5 and she cut through all of that by saying, "You can't judge a
6 book by its cover," and I thought that was very profound,
7 indeed, and I am sure it was.

8 Do you agree with that proposition, as far as my
9 client is concerned, "You can't judge a book by its cover"?

10 A That's right.

11 Q You appreciate that my client is in the custody of
12 the sheriff's department, that he must be brought to this
13 courtroom each morning and must leave to go back to the jail,
14 and therefore his appearance might not be the kind of appear-
15 ance that he might enjoy were he not in such custody?

16 A That's right.

17 Q You won't hold that against him, will you?

18 A No.

19 Q Okay.

20 With respect to hardship, would an eight-week trial
21 cause you any personal hardship?

22 A No, it wouldn't.

23 Q Anything at all about this case, any feelings you
24 have about this case that you think that either counsel should
25 know about in order to determine whether or not you were going
26 to be a good juror for us?

27 A No, I have nothing.
28

The 17

Q I am sure then in light of everything that has been said you appreciate and are willing to act on the proposition that you are not here to root for the prosecution and you are not here to root for the defendant; you are here to appraise and sift through the evidence that is presented to you?

A Right.

Q If chosen as a juror will you understand that for a brief time in your life you and the other jurors will become the most important people in the world to my client and will you treat that responsibility with the kind of respect it is really due?

A Yes.

MR. WEEDMAN: Thank you, sir. Pass for cause, your Honor.

THE COURT: Thank you. People.

MR. KATZ: Thank you.

Q Mr. Jinowsky, in the course of your duties as claims manager of the Pacific Indemnity do you have the opportunity to come in contact in your daily work with attorneys?

A No.

It is claim procedures manager. It is the clerical operations.

Q I see. So then you wouldn't have the opportunity to on the outside, ask an attorney "What do you think of this guy Katz as a prosecutor? Or what do you think of this guy Weedman as a defense attorney?"

A That's right.

Q All right. So we know if you are selected as a juror we can reach you and we don't have to worry about what

17-2

1 other people may think of us as attorneys, is that right?

2 A That's right.

3 Q I take it in connection with the way I am dressed,
4 that for example you will not in any way have any prejudice
5 against the People because of the way I dress; is that right?

6 A That's right.

7 Q While it sounds like a silly question, oddly enough
8 I have found in the past there are specific jurors who have a
9 bent one way or the other towards conservative or liberal dress,
10 as it were, and they become prejudiced thereby. What I am
11 trying to say is that I take it you are not the kind of juror
12 that would judge the People's case or the defendant's case
13 based upon how the respective counsel dress; is that right?

14 A That's right.

15 Q I think that same holds true with respect to
16 Mr. Grogan; is that right?

17 A Yes.

18 Q You would, if then selected as a juror judge this
19 case then fairly and impartially on the evidence which unfolds
20 during the course of the trial; is that right?

21 A I would.

22 Q Prior to being called to the jury, have you given
23 some thought to the death penalty?

24 A Yes.

25 Q I am sure as a thinking person you have formed some
26 opinion concerning the death penalty; is that right?

27 A Right.

28 Q All right. Now without telling me your reasons, are

17-3

1 you generally opposed to capital punishment?

2 MR. WEEDMAN: Excuse me, your Honor. I will object to
3 the question. I can approach the bench if you like, your Honor.

4 THE COURT: Give me the question, please.

5 (The question was read by the reporter
6 as follows:

7 "Q All right. Now, without telling
8 me your reasons, are you generally opposed to
9 capital punishment?")

10 THE COURT: Now the objection.

11 (The objection was read by the reporter
12 as follows:

13 "MR. WEEDMAN: Excuse me, your Honor. I
14 will object to the question. I can approach the
15 bench if you like, your Honor.")

16 THE COURT: Well, I think it is a proper question. Yes
17 or not. The question "Will you follow the law in accordance
18 with the facts he arrives at?" is the question.

19 MR. WEEDMAN: Well, I think, your Honor, that the question
20 calls for a matter which is immaterial to any challenge for
21 cause. Mr. Jincowsky has already assured us that he will
22 consider --

23 THE COURT: Might go to peremptory. I don't know, there
24 might be many reasons that counsel might want to -- I think
25 it is a fair question. Now, counsel wants to -- you see,
26 without trying to argue, there may be many reasons that
27 counsel might or might not want to ask the various questions.
28 And a general voir dire, I shouldn't cut either counsel down on

1 it. I am inclined to overrule the objection and note your
2 exception.

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

4 MR. KATZ: Thank you, your Honor.

5 THE COURT: Indeed. You may proceed.

6 Q BY MR. KATZ: Without telling me your reasons so we
7 don't get into a philosophical discussion in regards to the
8 propriety or impropriety of capital punishment, are you
9 generally opposed to capital punishment?

10 A No.

11 Q All right. And I take it then that your views are
12 such concerning capital punishment that you could under certain
13 circumstances vote the death penalty consistent with your
14 conscience; is that correct?

15 A That's right.

16 Q You heard the discussion that I had with the other
17 prospective members of the jury with regards to two different
18 kinds of situation. Situation A "I believe capital punishment
19 is all right but I wouldn't want to personally participate in
20 it. Let the others vote the death penalty."

21 Situation B is "I am in the middle of it and I am
22 now asked to personally participate in the death penalty by
23 voting for the death penalty."

24 Do you see the distinction between those two
25 situations?

26 A Yes.

27 Q With reference to this situation B where you may
28 be asked to determine whether or not another human being will

1 live or die have you examined your state of mind and kind
2 of projected yourself some six or eight weeks from this date
3 and if we were to reach -- and I underscore it -- if we were
4 to reach the penalty phase you understand that the People
5 would be asking the jury to return a verdict of death; you
6 understand that?

7 A Right.

8 Q Now, that assumes that the jury returns a first
9 degree murder verdict. Only then is the jury concerned with
10 the proper penalty in this case; is that correct?

11 A That's right.

12 Q Now, as you project yourself six or eight weeks
13 and I am going to assume for the sake of this discussion we
14 have reached the penalty phase because there has been a return
15 of a first degree murder verdict, do you think that if the
16 evidence warranted it in your sole and absolute discretion
17 to return a death penalty that you would have the courage
18 to vote that death penalty, however distasteful that might be
19 to you?

20 A I would be able to.

21 Q All right. Then you understand that you would be
22 required as part of the jury to come back into the jury room and
23 tell the court this is my verdict, for example, Mr. Grogan is
24 sentenced to death under the law of the State; could you do
25 that?

26 A Yes.

27 Q At the same time, in all fairness to the defendant
28 I take it you don't have any hard opinions concerning the death

1 penalty so that you would automatically vote the death
2 penalty upon the return of a first degree murder verdict
3 without reference to the evidence in this case, do you?

4 A That's right.

5 Q You do not, I take it?

6 A I do not.

7 Q All right. I take it that you can give, then,
8 both sides a fair trial on the issue of penalty should we
9 reach that phase; is that correct?

10 A That's right.

11 17a
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17a-7

1 Q Is it a fair statement to say that if you were of
2 a state of mind that you would never vote the death penalty
3 then we could not get a fair trial in this case on that issue,
4 is that right?

5 A That's right.

6 Q And you are telling us you can give the People a
7 fair trial on that issue?

8 A Yes.

9 Q Thank you.

10 Now, with reference to circumstantial evidence, I
11 don't want to go over the questions I have asked the other
12 prospective members of the panel. I am sure you understood
13 them and heard them, is that correct?

14 A That's right.

15 Q Would your answers be substantially the same?

16 A They would be.

17 Q Is there anything you can think of by way of my
18 questioning, by the court's questioning, or by Mr. Weedman's
19 questioning which you would like to bring to our attention
20 and which you think might bear upon your ability to be fair
21 and impartial as a juror?

22 A I have none.

23 MR. KATZ: All right. Thank you.

24 Pass for cause.

25 THE COURT: Pass for cause?

26 MR. KATZ: Yes, your Honor.

27 THE COURT: Now, let's see, gentlemen. Is it defendant's
28 peremptory?

17a-2

1 MR. WEEDMAN: I believe so, your Honor.

2 MR. KATZ: Well, I'm not certain.

3 THE CLERK: No, it is People's.

4 MR. KATZ: In all fairness to counsel, I believe it is
5 the People.

6 MR. WEEDMAN: I believe it is the People's, yes.

7 MR. KATZ: People accept the panel.

8 THE COURT: Both accept?

9 MR. WEEDMAN: No, your Honor. We would thank --

10 THE COURT: I heard the People, then. I slipped on the
11 peremptory. It was the People's?

12 MR. KATZ: Yes, it was People's. We accept the panel.

13 THE COURT: All right.

14 MR. WEEDMAN: We would thank and excuse Mrs. Reed, your
15 Honor.

16 THE COURT: All right. Thank you.

17 THE CLERK: Miss Goldie J. Richards, R-i-c-h-a-r-d-s.

18
19 GOLDIE J. RICHARDS

20 BY THE COURT:

21 Q Now, Miss Richards, you came in Friday?

22 A Right.

23 Q With the new jurors. Have you heard everything I
24 have said since you came in?

25 A Yes, I have.

26 Q With the other jurors?

27 And did you hear me read the charge that has been
28 filed against the defendant in this case?

1 A Yes.

2 Q Now, if you are selected as a juror in this case,
3 let's assume the case has been tried and you go to the jury
4 room to decide the case with the other jurors. At that time
5 the jury could make a finding of not guilty which would conclude
6 the case entirely.

7 The jury could make a finding of guilty, and if the
8 jury makes a finding of guilty the jury next would have to
9 find the degree, first degree murder or second degree murder.

10 If the jury made a finding of second degree murder
11 then the case again would be concluded, at least there would
12 be no further duties from the jury.

13 And if the jury made a finding of first degree
14 murder then there would be a subsequent penalty hearing held
15 in which the jury after the hearing must make a finding on
16 penalty. The penalty would be either that of death or life
17 imprisonment. And that determination is in the hands of the
18 jury.

19 Now, if you will assume that you are in the jury
20 room deciding or voting on the question of penalty, I will ask
21 you this question: at that time would you automatically vote
22 against the imposition of the death penalty without regard to
23 any evidence that might be developed at the trial of this
24 case before you?

25 A Uh-uh.

26 Q The answer is no?

27 A Yes.

28 Q Thank you. Now, I will ask you this: do you have

1 any reason at all that you could not be fair and impartial to
2 both parties if you are selected as a juror in this case?

3 A No.

4 Q And I will ask you this question, in this fashion,
5 which is repeated in a little more detail: do you know of any
6 situation that could arise or problems that could arise during
7 the trial of this case that might disturb you or upset you,
8 make you or put you in such a position that you couldn't calmly
9 and carefully and with an open mind deliberate the case and be
10 fair in this case?

11 A You mean about the case?

12 Q Well, can you answer the question? I must have a
13 yes or no. Can you understand the question?

14 A Will you repeat it, please.

15 Q All right. Now, try to give me a yes or no.

16 A Repeat the question, please.

17 Q All right. Read the question to the juror. I want
18 you now -- I am not trying to confuse you. When you listen to
19 the reporter try to answer it yes, I can do so, or no, I couldn't
20 do so. I can be fair and impartial or not. Now, you listen to
21 the question.

22 (The question was read by the reporter
23 as follows:

24 "Q I will ask you this question in this
25 fashion, which is repeated in a little more
26 detail: do you know of any situation that could
27 arise or problems that could arise during the
28 trial of the case that might disturb you or

upset you, make you or put you in such a
position that you couldn't calmly and care-
fully and with an open mind deliberate the
case and be fair in this case?"

18

CONFIDENTIAL
JAN 11 1964
FBI - NEW YORK
FBI - NEW YORK

The 18

1 Q With all of that in mind, could you be fair
2 and impartial throughout the trial of this case and in deciding
3 the case?

4 A Yes.

5 THE COURT: Thank you. Defendant may inquire.

6 MR. WEEDMAN: Thank you, your Honor.

7 Q Miss Richards, would a protracted trial cause you
8 any personal hardship -- by protracted, I mean as much as
9 eight weeks?

10 A Yes, it would.

11 Q Would you tell us about that, please.

12 A Physically I think it would be disturbing to me.

13 Q And perhaps you would explain that a little bit
14 further for us.

15 A Well, it would just be hard on me physically, I
16 think, to sit on a trial that long.

17 Q Do you feel that physical difficulty would interfere
18 with your performance as a juror?

19 A I'm afraid it would.

20 Q Would it cause you any financial hardship?

21 A No.

22 Q Are you employed?

23 A No, I'm retired.

24 Q I see; and what did you do before you retired?

25 A I was in the cafeteria section of the Board of
26 Education.

27 Q Have you had prior criminal jury experience,
28 Miss Richards?

18-2

1 A No, I have not.

2 Q Are you related to or do you have any close
3 friends in law enforcement?

4 A I have one friend in the Police Department.

5 Q Well, is there anything about that friendship that
6 would interfere --

7 A No.

8 Q -- with your giving both sides a fair appraisal of
9 the testimony that might come from police officers here?

10 A No.

11 Q Have you heard anything or feel you have learned
12 anything about the so-called Manson family that might interfere
13 with your giving both sides a fair trial here?

14 A No.

15 Q Have you formed any opinion, Miss Richards, with
16 respect to the Manson family?

17 A You almost have to form an opinion, don't you, one
18 way or the other?

19 Q Probably so.

20 I'm sure you'll agree it was one of the most
21 highly publicized cases probably in modern times, and which
22 probably means of all time.

23 Would that opinion interfere with your giving a
24 fair, objective appraisal of the evidence that is introduced
25 in this case?

26 A No.

27 Q As I have asked so many times, would you permit
28 this opinion that you have to come into play in your decision

18-3

1 in this case?

2 A No.

3 Q I take it from your answer, then, Miss Richards,
4 that you are just as willing to acquit a member of the Manson
5 family as you would be to acquit anyone else?

6 A Sure, on the evidence.

7 Q Surely, if the evidence here warrants an acquittal
8 you are going to acquit, irrespective of Charles Manson or
9 no Charles Manson; is that correct?

10 A Right.

11 Q Apart from the hardship matter that you mentioned
12 to us, is there anything else about this case, such that you
13 would rather not serve as a juror?

14 A No.

15 Q Okay.

16 Have you any quarrel with the idea that the
17 defendant need not prove his innocence?

18 A No.

19 Q And I take it from your answer that you won't feel,
20 as the trial goes on and on, if you are selected as a juror,
21 that somehow the defendant will be expected by you to prove
22 his innocence; in other words, the things that you are telling
23 us now are the things that you are going to stick with --

24 A I do.

25 Q -- during the course of your tenure here as a
26 juror?

27 Is there anything at all about how you feel about
28 this matter that you think that either Mr. Katz or myself

18-4

1 should know about at this time in regard to your giving us
2 the kind of objective hearing that we both want here?

3 A No.

4 Q And will you, Miss Richards, during the course
5 of your consideration of the evidence, not look for hidden
6 and, if you will, mysterious little signs that might be
7 around the courtroom -- for example, Mr. Katz seems very happy
8 today, therefore Mr. Grogan must be guilty; or, Mr. Weedman
9 seems very unhappy today, therefore Mr. Grogan must be guilty;
10 things like that -- you will avoid that kind of silly --

11 A Certainly.

12 Q -- groping for an answer here; and as Mr. Katz has
13 suggested, not worry about counsel as individuals, but just
14 bear down on the evidence in this case.

15 A Yes.

16 MR. WEEDMAN: All right. We'll pass for cause. Thank you.

17 THE COURT: All right. Thank you.

18 The People.

18a

18a-1

1 Q Miss Richards, prior to being called for jury
2 service duty had you given thought to the death penalty?

3 A Yes, sir.

4 Q Can you tell us, without giving us your reasons,
5 whether or not you are opposed to capital punishment in general?

6 A I am not opposed.

7 Q And do you think, as you have heard the previous
8 discussions with other prospective members of the panel, that if
9 you were in such a situation as I have suggested; namely, that
10 you are in the jury room, there has been a return of a first
11 degree murder verdict, you have heard all of the evidence in
12 the guilt phase and the penalty phase and 11 jurors have voted
13 for death and you are now asked to cast a ballot with respect
14 to whether or not the defendant shall live or die, could you
15 cast that ballot for death if in your sole and absolute
16 discretion it warranted a return of the death penalty verdict?

17 A Yes.

18 Q So what you are saying is that you could personally
19 participate, yourself, in a death penalty verdict, realizing
20 that you'll have to live with that verdict for the rest of your
21 life; is that right?

22 A Right.

23 Q And I take it that you would be willing to accept
24 the responsibility of serving as a juror in this case if
25 selected as a juror, even though in a sense you are running for
26 this office of juror against your will; is that correct?

27 A Right.

28 Q Now, you heard the discussions concerning

1 circumstantial evidence.

2 Do you have any objection whatsoever with the
3 premise that a man may be convicted of murder in the first
4 degree based wholly upon circumstantial evidence?

5 A No.

6 Q I am sorry, I can't hear you.

7 A No.

8 Q And I take it that you would not require the People
9 to produce a body or an eyewitness to the killing so long as
10 we proved our case beyond a reasonable doubt and to a moral
11 certainty; is that right?

12 A No, that's right.

13 Q And is there anything you'd like to bring to my
14 attention or Mr. Weedman's attention or the court's attention
15 which might affect your ability to be fair and impartial?

16 A No.

17 Q And I take it you have heard the other question I
18 have propounded to the other prospective members of the panel.

19 Would your answers be substantially the same as
20 the majority?

21 A Right.

22 MR. KATZ: Thank you.

23 I pass for cause.

24 THE COURT: Pass for cause?

25 MR. KATZ: Accept the panel.

26 THE COURT: All right; now, gentlemen, we are back on the
27 peremptory --

28 MR. KATZ: People's peremptory, and the People accept the

1 panel.

2 THE COURT: All right; defendant's?

3 MR. WEEDMAN: We will thank and excuse Juror No. 1, your
4 Honor, Miss Hagopian.

5 THE COURT: Very well.

6 THE CLERK: Miss Beatrice Lee, L-e-e.

7
8 BEATRICE LEE

9 BY THE COURT:

10 Q Now, lady, have you heard everything I have said
11 since you came in the courtroom last Friday?

12 A Yes.

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

15 A Yes.

16 Q I will ask you to please assume that you have been
17 selected as a juror in this case and the case been tried before
18 you and the other jurors and you go to the jury room to decide
19 the case.

20 At that time the jury could make a finding of not
21 guilty; you understand that?

22 A Yes.

23 Q The jury might make a finding of guilty; you
24 understand that?

25 A Yes.

26 Q If the jury finds the defendant guilty they must
27 find the degree, murder first degree or murder second degree.
28 If the jury makes a finding of second degree murder then the jury

1 has no further duties.

2 If the jury makes a finding of first degree murder,
3 then there must be held a subsequent penalty hearing that
4 follows the trial right away afterwards; and at the penalty
5 hearing the jury then decides on the penalty which must be
6 either the death penalty or life imprisonment.

7 Is that clear, the procedural steps clear up to
8 that point?

9 A Yes.

10 Q Now, if you were on the jury and you had the penalty
11 hearing, you are voting on the question of life imprisonment or
12 the death penalty and you are voting on that question or just
13 about to vote on that, I will ask you this question: at that
14 time would you automatically vote against the imposition of the
15 death penalty without regard to any evidence that might be
16 developed at the trial of this case before you?

17 A No.

18 Q All right.

19 I will ask you if you know of any reason at all why
20 you could not be fair and impartial if you try this case as a
21 juror?

22 A No.

23 Q Do you know of any facts that might arise during
24 the course of the trial that would disturb you or upset you so
25 that you could not be fair and impartial as a juror in this
26 case?

27 A No.

28 THE COURT: Thank you.

1 Defendant may inquire.

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

3 Q Mrs. Lee, are you employed?

4 A Retired.

5 Q And what did you do before you were retired?

6 A I worked for a music studio.

7 Q What did you do there?

8 A In the office.

9 Q I see; and prior to that did you have other employ-
10 ment?

11 A No.

12 Q Is there a Mrs. Lee -- Mr. Lee, Mrs. Lee, I am
13 sorry.

14 A No.

15 Q I take it that you were, of course, married at one
16 time a Mr. Lee?

17 A Yes.

18 Q What did he do for a living?

19 A A photographer.

20 Q Is there anything -- Mrs. Lee, have you formed any
21 opinion or expressed any opinion about this case?

22 A No.

23 Q Have you expressed an opinion to the effect that
24 Mr. Grogan -- or, have you discussed an opinion -- let me
25 start all over again --

26 MR. WEEDMAN: Your Honor, I wonder if we might approach
27 the bench for just a moment? I'd appreciate it.

28 THE COURT: With the reporter?

1 MR. WEEDMAN: Yes, if we may, your Honor.

2 (The following proceedings were held
3 in chambers:)

4 THE COURT: We are in chambers; the counsel are here,
5 the defendant is here, reporter. Go ahead.

6 MR. WEEDMAN: Your Honor, the reason I am stumbling
7 around so much is that I was trying, debating what to do about
8 Mrs. Lee.

9 During, I believe the second day of jury selection
10 in this matter, I was seated on the ninth floor where the
11 cafeteria is, in a sort of lounge area that is immediately
12 opposite the elevators. As I was seated there and I had my
13 work papers out in front of me I was going through transcripts
14 and so on, Mrs. Lee sat down.

The 19

1 THE COURT: Now, that is this juror?

2 MR. WEEDMAN: Yes, your Honor. This juror Mrs. Lee
3 sat down with one of our former prospective jurors, Mrs.
4 Pappenheim. And they began talking. And I obviously didn't pay
5 much attention to them at first but pretty soon they began to
6 discuss this case. And one of them, and I have forgotten which
7 one it was, expressed the opinion that trials were a waste of
8 time. That criminal defendants should have some kind of a
9 brain operation and save the taxpayers money.

10 And the other party which was --

11 THE COURT: Now, where was this juror, right there?

12 MR. WEEDMAN: Yes, right there.

13 THE COURT: Yes. All right.

14 MR. WEEDMAN: Either she said it or she agreed with it.
15 The fact that Mr. --

16 THE COURT: I want to stop you.

17 MR. WEEDMAN: Yes, your Honor.

18 THE COURT: This woman, she was -- this was one of the
19 jurors that had been excused?

20 MR. WEEDMAN: Yes, your Honor.

21 THE COURT: From our trial? I say, from this trial?

22 MR. WEEDMAN: Yes, your Honor. That is Mrs. Pappenheim.
23 She sat, I think, in spot No. 3 for a short time and I believe
24 she indicated --

25 THE DEFENDANT: He was prejudiced.

26 MR. WEEDMAN: I believe she said she was prejudiced and
27 wanted to be excused.

28 THE COURT: Yes, I think I remember.

1 MR. WEEDMAN: Yes, That's right. Mrs. Pappenheim and
2 Mrs. Lee mutually discussed the facts that Mr. Grogan was a
3 member of the Manson family and they felt that people who
4 live like the people in the Manson family should be taken out
5 and be hanged by their thumbs.

6 THE COURT: Well, what about --

7 MR. WEEDMAN: I wouldn't want to embarrass her by going
8 into these matters, your Honor.

9 MR. KATZ: Well, I do appreciate the sincerity in which
10 Mr. Weedman has brought these matters to our attention but
11 nevertheless I cannot in good faith from the People's standpoint
12 accept the unilateral statement of Mr. Weedman. If there is an
13 evidentiary hearing requested, i.e., by that I mean that this
14 prospective juror Mrs. Lee be questioned by Mr. Weedman out
15 of the presence of the other jurors, I have no objection. And
16 if in fact he elicits even a portion of this I would be happy
17 to stipulate that this juror should be excused for cause.

18 But I don't want to do so based just upon Mr. --

19 MR. WEEDMAN: That is agreeable, your Honor, if Mr. Katz
20 doesn't want to believe me.

21 MR. KATZ: Excuse me. That isn't what I said.

22 MR. WEEDMAN: I would be very happy to sit on an evidentiary
23 hearing outside the presence of the other jurors.

24 MR. KATZ: The problem isn't that I don't believe Mr.
25 Weedman; the question is one of observation and the ability to
26 perceive, and I don't know whether or not it was Mrs. Pappenheim,
27 for example, who made these observations and subscribed to those
28 tenets, expressed by Mr. Weedman, and/or whether it was Mrs. Lee

19-3 1 who suggested these things. I would like to find out.
2 If in fact Mrs. Lee suggested these things or concurred in
3 them I would definitely stipulate this juror be excused.
4 But I don't think it is unreasonable to ask for an evidentiary
5 hearing whereby Mr. Weedman could elicit some of this material
6 out of the presence of the other jurors where neither Mr. Weedman
7 nor Mrs. Lee is embarrassed.

8 MR. WEEDMAN: I have no objection to that. Certainly,
9 perhaps we could reach Mrs. Pappenheim. I have no idea what
10 her address is or telephone number.

11 MR. KATZ: I am not asking for that.

12 MR. WEEDMAN: Well, I am, if I am going to establish it.

13 THE COURT: Well, I don't want to -- of course I think
14 from the statements as made I would say there is no question
15 of for cause existing. The question is whether it is necessary
16 for the court if there are questions on for cause in there,
17 if it is necessary to go ahead and examine or excuse. I
18 could to a certain extent move forward, and I am not demeaning
19 your position, either.

20 Now, I am not demeaning either counsel, you both
21 have got a side and you are conscientiously, I think, two
22 very conscientious attorneys and sometimes I rule against
23 both of you, maybe. But that isn't the point.

24 If I can move without taking the testimony I am
25 going to do it. Not without respect to what your position
26 is because I want to give all the time to try this case.
27 I am here for six years to try this case, if necessary. But
28 where I can move without taking time then I feel I should do it.

19-4

1 Now, I am inclined to feel that I probably am
2 in a position to exercise for cause and go ahead, move forward
3 without belaboring the point and taking a lot of testimony.

4 MR. WEEDMAN: I should add, your Honor, this was a matter
5 which I discussed informally at the time. I believe that very
6 day, with Mr. Katz, with his investigator. I think I mentioned
7 it to your bailiff -- I am sorry, to your clerk.

8 THE COURT: Well, I am almost tempted to move forward.

9 MR. KATZ: Excuse me, your Honor. That was just the
10 point. I have no recollection of Mr. Weedman discussing it
11 with me. Now, had it been brought to my attention I was just
12 going to say I would be happy right there to stipulate the
13 juror could be excused.

14 THE COURT: Well, I tell you, let's go over until
15 tomorrow at 9:30. But I undoubtedly will grant the request.
16 But let's go over until 9:30.

17 MR. WEEDMAN: All right. Thank you.

18 MR. KATZ: Thank you.

19 THE COURT: Thank you.

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

22 THE COURT: Now, gentlemen, we are up to 4:00 o'clock here.
23 Let's go over to 9:30 tomorrow morning. Let me admonish you
24 all do not discuss the case at all with anybody or come to any
25 opinion or conclusion. We will proceed at 9:30 tomorrow and
26 kindly be here promptly.

27 Thank you.

28 MR. KATZ: Thank you, your Honor.

195

1 MR. WEEDMAN: Thank you, your Honor.

2 (At 4:02 p.m. an adjournment was
3 taken until 9:30 a.m. of the
4 following day, Wednesday, July
5 7, 1971.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28