

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

v.)

No. A 267861

STEVEN GROGAN,)

Defendant.)

REPORTERS' DAILY TRANSCRIPT

Wednesday, July 7, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

COPY

VOLUME IX:

Pages 1033 - 1160 incl.

Reported by:

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

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

1-1

LOS ANGELES, CALIFORNIA, WEDNESDAY, JULY 7, 1971

10:15 A.M.

(The following proceedings were had
in chambers:)

BEATRICE LEE

BY THE COURT:

Q You sit right down, will you, lady.

A Yes, sir.

THE COURT: Now, we are in chambers.

Do you have the file there?

THE CLERK: I will get it, Judge.

THE COURT: Thank you very much.

People against Grogan. And we are in chambers.
Thank you. And the defendant is here. The district attorney
is here, defense counsel is here and the reporters, the clerk
and the sheriff.

Q BY THE COURT: Now, lady, how do you spell your
name?

A L-e-e.

THE COURT: All right. Now, the juror is in chambers.

Q Lady, there has been some -- you understand I have
spoken at great length on and off and on and off since we have
been picking the jury, as I have indicated many, many times
since we started picking the jury in this case, it is of
course absolutely essential that a jury be picked to the best
of human ability that is open minded and fair. And the juror

1 must be fair to the two parties, the People and the defendant.
2 Must be without prejudice.

3 And it is very easy, particularly for any citizen
4 or layman as they read the accounts in the paper and hear
5 discussion and talk about people that may be on trial, to formu-
6 late opinions, very definite opinions respecting various people
7 on trial or various friends or associates of the people that
8 are on trial.

9 Now, the court was made aware of the fact -- and I
10 don't know how extensive my information may be -- that you had
11 expressed rather serious comments sometime prior to your being
12 sent into this courtroom, as I understand it, either respecting
13 the defendant here or some of his friends or associates. If
14 these statements are correct -- and I am not arguing about how
15 sincere or dedicated you are in your statements -- I am not
16 going into that, I am only going into the fact that the juror
17 that we have must be impartial and must not have expressed
18 opinions or convictions or remedies or what is the answer to
19 this problem or what should the people do. That I am not going
20 into. I can't debate it. I can't conduct a sermon. I am not
21 trying to.

22 But I am trying to get jurors, as well as the
23 counsel, whose mind is free and clear of convictions. Now, it
24 had come that you had made some assertions or statements of
25 rather a pronounced nature in this matter and I am going to ask
26 defense counsel if you would ask this lady what, for instance,
27 is in your mind. Would you, please.
28

Tke 2.

MR. WEEDMAN: Very well, your Honor.

THE COURT: All right.

Q BY MR. WEEDMAN: Mrs. Lee, I don't intend in any way to embarrass you; I am just going to ask you to search your own memory and help us out a little bit.

I'd like to direct your attention back to on or about June 24th, 1971; that was about the second day --

A First day upstairs, sitting upstairs?

Q Yes, upstairs.

A No, I hadn't been called down yet, Mr. Weedman. I had, well, let's say, fifth floor and a number of a room to go to.

Q I see.

A And that one lady that made the statement about Mr. Manson, I didn't agree with her; I thought it was a little too harsh.

Q That was Mrs. Pappenheim?

A No, that was that little thing that buzzes around down there and she was afraid she was going to be called over there; however, I don't think she was.

Q She never was, that little lady that was the third lady?

A Yes.

Q She was never on this jury panel, was she?

A No, I don't know her. She was in the ladies' room and she don't know me, but she said them to Mrs. Pappenheim.

Q Do you recall some remarks being made about defendants could be operated on by surgeons that know how to do

2-2

1 that?

2 A Yes, I said that.

3 Q You said that?

4 A I am guilty of that.

5 Q What did you say?

6 A And they are doing it, you know.

7 Q What did you say in that connection, Mrs. Lee,
8 do you know?

9 A Well, I said the surgeon had operated on a woman
10 and he struck the wrong place and her whole life went in
11 review before her; and he came out with a statement that he
12 could cure anybody, and a lot of people, you know -- Leopold
13 was rehabilitated.

14 Q Did you express a feeling --

15 A And things of that nature.

16 Q -- because I am just trying to place the partici-
17 pants in that conversation, did you express something in that
18 conversation that that would be a good idea for all criminal
19 defendants, that they should be --

20 A I didn't think I went that far --

21 Q I see.

22 A -- I thought we could try it out and see if
23 maybe we couldn't rehabilitate some of these men, because
24 some have been; some have become good citizens.

25 Q Did you indicate something along the line that
26 it would be a good idea to do that in view of having trials
27 for some of these criminals --

28 A No, you couldn't. First you'd have to see whether
they were guilty or whether they were innocent. It would be

1 impossible to eliminate the trial, I think; that, we need,
2 you know.

3 Q Does the name Mrs. Pappenheim, does that mean
4 anything to you?

5 A Yes.

6 Q She was the juror who was --

7 A Yes, I have her phone number. I know she's off
8 today, if you want to call her.

9 Q No, that's all right. Was she the third lady
10 that you --

11 A She was this third lady, the kind of heavy-set
12 lady; she was on this case. She disqualified herself.

13 Q That's right, she said she didn't think she could
14 give --

15 A She couldn't give a fair verdict.

16 Q -- a fair verdict, yes.

17 A Yes.

18 Q Well, was something said during that conversation
19 in which you were either present or participated between
20 Mrs. Pappenheim and the other lady whose name I do not know?

21 A I don't know her, either. Well, I know her
22 because she stands out. I saw her in the jury room about two
23 days later and I was way in the back and I avoided her.

24 Q Something to the effect that Mr. Grogan was just
25 part of this Manson family and --

26 A Well, I don't remember.

27 Q -- and what terrible, and, in substance, what
28 terrible and awful people they were?

1 A I didn't associate Mr. Grogan with Manson.
2 Somehow it didn't fit; and I didn't know until it was brought
3 up in the courtroom that he was associated.

4 Q Wasn't something said by either yourself or
5 Mrs. Pappenheim or this other lady in that connection, that
6 Mr. Grogan was part of the Manson family?

7 A I didn't hear it if it was. It may have been, I
8 am not denying it, but I know, as God is my judge, I never
9 knew this man until I saw him in the courtroom and he was
10 brought up that he was an associate of Manson's.

2a.

2a-1

1 Q Was there something said by one of you three
2 ladies to the effect that, or in substance, that members of the
3 Manson family and people of that general kind might be best
4 dealt with by taking them out and hanging them by their thumbs?

5 A I think that Mrs. -- whatever her name is -- that
6 little one, did say that; yes, she made a statement there that
7 I didn't think was right because she has never been hurt by the
8 family, why should she, it hasn't touched her life -- and it
9 shocked me, actually.

10 Q Do you recall anything else that was said --

11 A No, because --

12 Q -- about this trial?

13 A -- because she brought it in between our private
14 conversation, you know; she came right -- barged right in
15 there, you know, and --

16 Q She wasn't there throughout the entire conversation
17 between you and Mrs. Pappenheim, was she?

18 A No, she wasn't.

19 Q You recall that?

20 You recall that you gals all came in and sat down
21 next to me, perhaps, now that you think of it?

22 A Well, we didn't know who you were, you know, and
23 here we got down here and we saw you were the defense attorney
24 here, you see, all going to the same place.

25 Q But there had been some discussion about this, about
26 Mr. Grogan going on trial, isn't that so, at that time?

27 A Not because -- we didn't know; I didn't know this
28 man or his name or anything.

1 Q But wasn't there some discussion, even it was by
2 this other lady whose name we don't know about, about this
3 trial?

4 A No, it was about the Manson trial. She was afraid
5 she was going to be called over there and she may have been
6 called that day, I don't know. However, I found out this
7 morning that she's not on it, by another lady named Virginia,
8 and I was wondering about that trial and if they had selected
9 the jury; and she said no, the jury hadn't been selected over
10 there, so I saw her in there, so I figured she's not on the
11 case, that she was waiting for her name to be called, you see.

12 Q Now, weren't you a member of the very first panel
13 that was called in here?

14 A Yes, I've been sitting there since the first day.

15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tke 2

1 Q Yes. Now, that conversation, Mrs. Lee, the one
2 we are talking about that occurred after you were -- that
3 occurred after the first day's jury selection here, did it
4 not?

5 A No. No, because we came into court and I remember
6 distinctly Mr. Grogan sitting there, and a man next to me
7 was not on the panel any more saying he was Manson. And I
8 said, "No, I have seen Mr. Manson on TV. That is not Mr.
9 Manson."

10 So we sat there and waited. And waiting to find
11 out who this gentleman was and then the judge read the indict-
12 ment, his name, and then of course the name of the defendant
13 came up, that he was a Manson family member. But I do know
14 that we were waiting to come down and I said to her -- she said
15 she was apprehensive because some judge had asked her a question
16 and she said she wouldn't do that, and she got knocked off
17 because she wasn't for the defense.

18 So then I said to her, "Well, let's go down and
19 see what happens down there." And we didn't know from Adam that
20 it was going to be Mr. Grogan on trial.

21 MR. WEEDMAN: Your Honor, I wonder if perhaps it would
22 help my own recollection if I could take a look at the court's
23 file for just a moment and see when we did start jury selection.

24 MR. KATZ: June 23rd.

25 MR. WEEDMAN: If that was in the morning or afternoon.

26 MR. KATZ: It was in the afternoon. I think we had some
27 preliminary matters in the morning and I think your Honor
28 ordered the panel again for 2:00 p.m. on June 23rd, if my

1 memory serves me correctly.

2 THE COURT: I think so. I think it was 2:00 p.m.

3 MR. KATZ: Originally your Honor had contemplated --

4 THE COURT: Let me just kind of cut short for a minute.

5 MR. WEEDMAN: Yes, your Honor.

6 THE COURT: Do you want to ask any questions in here for
7 the district attorney? How about any questions at all?

8 MR. KATZ: Yes, if I may.

9 THE COURT: Anything you want to say?

10 Q BY MR. KATZ: Mrs. Lee, we thank you very much for
11 telling us about these things because as you can understand
12 defense counsel is quite concerned over anybody who might
13 express an opinion as to the guilt of Mr. Grogan at this time.
14 Especially in view of the fact that under our system of law
15 Mr. Grogan is presumed to be innocent, you understand that?

16 A That's correct.

17 Q That is a pretty worthwhile principle, isn't it?

18 A That's right, yes.

19 Q Mrs. Lee, let me ask you this. As you sit here now
20 and considering the discussions you had with this Mrs. Pappenheim
21 and this other little lady you described and perhaps other
22 persons, and what you have read, seen and heard about Charles
23 Manson and the Manson family, do you think that you could set
24 aside those beliefs or opinions or things that you have heard,
25 read and seen about Mr. Manson and the family and judge this
26 case solely upon the evidence?

27 A I could.

28 Q And as his Honor said to you, Mrs. Lee, in effect

1 as he will say to all jurors, you are not to and you are
2 dutybound not to consider anything you may have read, heard
3 or seen about the case or have previously discussed, but you
4 are to set all that aside and to judge anew the guilt or
5 innocence of Mr. Grogan, would you do that?

6 A Yes, I would.

7 Q Any doubt in your mind that you would be able to
8 do that?

9 A No doubt whatever.

10 MR. KATZ: Allright. I have no further questions along
11 this line.

12 THE COURT: Thank you very much. Well, will you step out
13 a few minutes. And don't go away, just be seated out there
14 if you will.

15 (Mrs. Lee is excused from chambers.)

16 THE COURT: Now, for the moment, Mr. Weedman, do you press
17 your motion for cause or not?

18 MR. WEEDMAN: Your Honor, I was hoping to find a minute
19 order for June 23rd that might reflect when jury selection
20 started. It was my impression that the jury panel was already
21 in the courtroom and admonished not to discuss this case in
22 any way amongst themselves. That it was thereafter that I
23 overheard this conversation between Mrs. Pappenheim, Mrs. Lee,
24 and this other little lady whose name I do not know.

25 MR. KATZ: Excuse me, Mr. Weedman, I think the transcript
26 would reflect that, wouldn't it? Volume I might reflect that.

27 THE CLERK: I have the minute order for June 23rd.

28 (Handing to counsel.)

1 THE COURT: Yes. Thank you very much.

2 MR. WEEDMAN: I will take a quick look at that.

3 (Short pause.)

4 MR. WEEDMAN: Yes.

5 MR. KATZ: The transcript will show it.

6 MR. WEEDMAN: Would you mind bringing it in?

7 MR. KATZ: Yes, I will.

8 (Short pause.)

9 MR. KATZ: Yes, your Honor. Volume I of the transcript
10 indicates that we had commenced proceedings on Wednesday,
11 June 23rd, 1971, at 11:30 a.m. wherein certain proceedings
12 were had in chambers outside the presence of any panel and
13 in the presence of the defendant, Mr. Grogan. Now, at some
14 point -- and I am referring now to approximately page 8 of
15 volume I of said transcript, the court indicated because it
16 was so close to 12 o'clock that you would instruct the jury
17 after swearing them in and cause them to return at 2 o'clock,
18 if I am reading this correctly.

19 Mr. Weedman, would you just check that and see if
20 I am accurate in that assessment?

21 (Handing to counsel.)

22 MR. WEEDMAN: Yes.

23 (Short pause.)

24 MR. WEEDMAN: Yes. According to that, your Honor, the
25 first jury panel that came over here was present in the
26 courtroom during the morning of June 23rd and it was -- and
27 they were of course instructed by your Honor not to discuss this
28 case.

1 THE COURT: Yes.

2 MR. WEEDMAN: It was during the noon hour of June 23rd
3 that I overheard the conversation and I recall that distinctly
4 because I had purchased this book and I was reading it.
5 This lady I would be willing of course to swear this under
6 oath, this lady with these other two women were discussing
7 this particular case immediately following their appearance
8 here as prospective jurors, and of course immediately follow-
9 ing your Honor's admonition not to discuss this case.

10 Mr. Grogan then, I submit, was known to this lady
11 as the sole defendant in this case. And by her own admission
12 Mr. Grogan's name was discussed up there on the 9th floor
13 during the noon hour.

14 3a
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3a-1

1 MR. KATZ: Your Honor, if I could make this observation.
2 Your Honor stated at page 8 of volume 1 of the transcript on
3 June 23rd, 1971:

4 "Now, I know there have been no questions
5 asked and no interrogation of any kind. But I
6 will instruct all jurors not to discuss the case
7 in any way at all amongst yourselves or anybody,
8 or any person whatsoever."

9 And there apparently, as I can understand from
10 what Miss Lee has told us, she did not discuss this case as
11 such, there apparently was some discussion concerning Charles
12 Manson and the family in general but there was no deliberate
13 effort or apparently any discourse concerning Mr. Grogan or the
14 merits of this case, or the so-called Shorty Shea killing. I
15 think that is what your Honor had in mind.

16 So I can't see any violation of an order that perhaps
17 would be somewhat ambiguous on its face.

18 MR. WEEDMAN: Oh, I am not suggesting that she is in
19 contempt of court or that there is a willful, knowing violation
20 of a direct order from your Honor. I am merely urging that here
21 we have a prospective juror who immediately following her first
22 appearance in court on this matter was upstairs volubly discussing
23 this case not only with another prospective juror, Mrs.
24 Pappenheim, but with a third lady, your Honor.

25 THE COURT: Well, I tell you, folks, there is so much
26 smoke that has been thrown up here I am almost inclined, if it
27 is necessary to use the word "sidestep" it, I will use the word
28 sidestep it and excuse her. I don't know how many, we have too

1 many jurors, and I am anxious to move forward, but I think
2 probably it is a situation where the court is justified under
3 the circumstances here and under the nature of the charges to
4 excuse the woman, accept the challenge for cause.

5 I think it is a debatable situation. And debatable
6 whether she -- she may have gotten into a kind of an over-the-
7 fence harangue there, like you would with the next door neigh-
8 bor over how green is the grass or something. But it could
9 have enough ramifications that I think everybody would be
10 better off just to sidestep it. I like that word because it
11 sure passes you by a lot of problems.

12 MR. WEEDMAN: I appreciate that, your Honor. It
13 certainly does.

14 THE COURT: Not altogether sidestep it but meet it head
15 on. But I do, it gets away from lots of problems.

16 MR. KATZ: I appreciate the sincerity with which your
17 Honor has ruled and the sincerity with which Mr. Weedman has
18 brought this matter to the attention of the court and counsel.
19 But respectfully, the People for the record would oppose
20 excusing this juror because of what we believe to be an
21 insufficient foundation at this time for cause.

22 THE COURT: Well, I think if I were the D.A. in your
23 shoes I probably would take the same position. I say it
24 seriously, but I do think I probably will grant the cause.

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

26 THE COURT: And move forward. Let's go ahead.

27 MR. WEEDMAN: Thank you.

28 MR. KATZ: Thank you, your Honor.

3a-3

1 THE COURT: Mr. Clerk, just tell the lady I have
2 excused her and to go back to the headquarters.

3 MR. KATZ: May the record reflect the court is granting
4 a defense for cause motion to excuse the lady.

5 THE COURT: Yes. That's correct.

6 MR. WEEDMAN: Thank you.

4-1

1 (The following proceedings were held
2 in open court:)

3 THE COURT: We will proceed, gentlemen. People against
4 Grogan.

5 The defendant is here, both counsel are here in
6 the courtroom and our jurors are back.

7 We have one vacancy, No. 1.

8 Will you call a juror, please, Mr. Clerk.

9 THE CLERK: Yes, your Honor.

10 MR. KATZ: Excuse me, your Honor, I don't think the
11 record reflects what transpired --

12 THE COURT: Pardon?

13 MR. KATZ: -- what transpired in chambers.

14 MR. WEEDMAN: We had a reporter in there, your Honor.

15 THE COURT: No. 1, for cause, contention of the defendant,
16 was accepted by the court and the juror excused; I thought it
17 appeared in our transcript.

18 In any event, it does now.

19 MR. KATZ: Thank you very much, your Honor.

20 THE COURT: Yes.

21 Now, we'll call a juror.

22 THE CLERK: Mrs. Fay Rockman, F-a-y R-o-c-k-m-a-n.

23 THE COURT: You come right around here, lady, and be
24 seated, please.

25 Did you get the name, Mr. Clerk?

26 THE CLERK: Yes, your Honor.

27

28

4-2

PAY ROCKMAN

1
2 BY THE COURT:

3 Q Now, lady, have you been in the courtroom ever
4 since you ^{were} sent in here as the second round or batch of jurors,
5 number of jurors?

6 A Yes, your Honor.

7 Q You have been in here, I believe that goes back --
8 well, with the coming of the second group of jurors, you have
9 been here ever since then?

10 A Yes, your Honor.

11 Q All right.

12 Have you heard everything that I have said to all
13 of the jurors?

14 A Yes, sir.

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

17 A Yes, sir.

18 Q Now, I want you to assume that you have been
19 selected as a juror to try this case.

20 Is that clear to you?

21 A Yes, sir.

22 Q All right; and that we have tried the case and I
23 want you to assume you have gone to the jury room with all of
24 these jurors to decide the question, guilty or not guilty.

25 That is clear?

26 A Yes, sir.

27 Q Now, at that time the jury could find the defendant
28 not guilty; that would finish the case entirely.

4-3

1 A Uh-hmm.

2 Q The jury could find the defendant guilty, say, "We
3 find the defendant guilty" --

4 A Yes.

5 Q -- if the jury finds the defendant guilty, then the
6 jury must set or find or fix the degree, first degree murder or
7 second degree murder.

8 Is that clear?

9 A Yes.

10 Q If the jury finds the defendant guilty of second
11 degree murder, then that ends, finishes up the duty of all the
12 jurors.

13 A Yes.

14 Q But if the jury makes a finding of guilty first
15 degree murder, then the jury has another hearing -- not a
16 full-fledged trial, you have tried the case -- but they have
17 what is called the penalty hearing, and after the penalty
18 hearing has been concluded the jurors go back to the jury room
19 again to decide on penalty.

20 You understand that?

21 A Yes.

22 Q The jury makes a finding and they determine penalty.
23 The penalty, the jury decides at that point, is either death
24 penalty or life imprisonment.

25 Is that clear?

26 A Yes.

27 Q All right.

28 Now, will you please assume that you are discussing

1 the question of penalty, you are about/ to vote on penalty, the
2 death penalty or life imprisonment; you are going to cast a
3 vote there.

4 Now I am going to ask you this question: at that
5 time would you automatically vote against the imposition of the
6 death penalty without regard to any evidence that might be
7 developed at the trial of this case before you?

8 A No, sir.

9 Q All right.

10 Now, I will ask another question, do you know of
11 any reason that you could not be fair and impartial if you are
12 selected to try this case?

13 A No, sir.

14 Q Do you realize that you, as a juror, are a judge
15 with the other jurors, that you, individually, are a judge;
16 you judge the facts, what are the facts, who is telling the
17 truth, who is not telling the truth; you pass on that and the
18 other jurors also pass on that question, and I have nothing to
19 do with the facts.

20 I have to run, let's make it simple, the legal
21 machinery, but not the fact machinery.

22 A Yes.

23 Q That is your duty, your job, all jurors.

24 That is clear?

25 A Yes.

26 Q Now, I am going to back up a minute. Every juror--
27 that means you -- must keep your mind open and unbiased and
28 unprejudiced.

1 You understand that?

2 A Yes, sir.

3 Q Do you know, if you are selected as a juror, do
4 you know of anything that might arise during the trial of this
5 case that would upset you and make you nervous or distract you,
6 would clog your mind, make you foggy so that you couldn't have
7 a fair and impartial frame of mind during this trial?

8 Do you know of anything that would disturb you
9 that way?

10 A I don't think so.

11 THE COURT: Thank you.

12 I pass the juror, and defendant may inquire.

4a

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The 4A

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

MR. WEEDMAN: Thank you, your Honor.

Q Mrs. Rockman, are you employed?

A No, I am retired.

Q And what did you do before you retired?

A I was an operator, men's suits, men's wear.

Q And what --

A An operator.

Q What is an operator, Mrs. Rockman?

A It means I was on the sewing machine, men's suits.

Q You actually made them?

A Yes, or parts of them -- not all of them.

Q I see.

Is there a Mr. Rockman?

A No; no, sir.

Q Is he deceased?

A Uh-hmm.

Q What did Mr. Rockman do for a living before he passed away?

A Well, that was a long time ago. We had our own business.

Q I see. So he worked, and you worked together?

A Uh-hmm.

Q Mrs. Rockman, is there anything about the estimated length of this trial, being about eight weeks, that is going to cause you any particular hardship?

A No, not really.

Q Have you had any prior criminal jury experience?

A No, sir.

4a-2

1 Q This will be your very first criminal case,
2 then, if you are selected?

3 A Yes.

4 Q Have you any relatives or close friends who are
5 in law enforcement?

6 A No, I haven't.

7 Q With respect to the death penalty, Mrs. Rockman,
8 have you prior to coming into court as a prospective juror,
9 given much thought to the matter of capital punishment and
10 the death penalty?

11 A No.

12 Q Is there anything about the fact that you might --
13 you might be called upon to consider penalty in this case --
14 that is, the death penalty or life imprisonment -- that makes
15 you feel that you would rather not serve as a juror in this
16 case?

17 A No.

18 Q Would you answer out loud, then the reporter can --

19 THE COURT: Speak up, please; keep your voice up.

20 MRS. ROCKMAN: Excuse me; no, sir.

21 Q BY MR. WEEDMAN: Mrs. Rockman, in any event, and
22 I must ask this question, of course: in the event that my
23 client is convicted of first degree murder, would you
24 automatically impose the death penalty, irrespective of any
25 other evidence that might be given to you relative to the
26 appropriate penalty?

27 A No, sir.

28 Q So, you, like the other jurors, and, for the most

4a-3

1 part, would not automatically do anything until you had heard
2 all of the evidence in this case?

3 A That's correct.

4 Q You are not one of those persons, are you,
5 Mrs. Rockman, who feels that the death penalty ought to be used
6 a little more often in the State of California -- are you?

7 A Well, I haven't given that any thought.

8 Q Do you feel that a person who commits a willful,
9 premeditated murder with malice aforethought ought to be
10 executed, necessarily?

11 A Well, if the evidence calls for it.

12 Q Well, supposing all that you have before you is
13 just the bare conviction that the defendant has committed a
14 first degree murder, let's say; let's assume that's all you
15 know about the case and that there is no further evidence,
16 then do you think that the death penalty would be inevitably
17 rendered by you?

18 MR. KATZ: Object to the form of the question, your Honor.
19 It is argumentative and asking the juror to prejudge.

20 THE COURT: I think, yes, I'll sustain the objection the
21 way it is framed.

22 MR. WEEDMAN: Very well, your Honor.

23 THE COURT: I think you can reword it to get to the point,
24 and get your point over.

25 Q BY MR. WEEDMAN: Mrs. Rockman, are there any
26 situations that you can readily visualize in which you would
27 automatically impose the death penalty, irrespective of any
28 evidence that might be given to you?

1 A No, I don't think so.

2 Q Would it be fair to say that, as you sit there
3 now, you really do have an open mind on the subject --

4 A Right.

5 Q -- of the penalty?

6 A Yes, I do.

7 Q So that both sides can count on your not having
8 either -- you haven't even started to even thinking about
9 making up your mind because you don't have anything in front
10 of you at all?

11 A That's correct.

12 Q And you are not going to do anything until you
13 do?

14 A Right.

15 Q Have you heard most of -- substantially all of the
16 questions that I have asked the other prospective jurors
17 who are members of the panel that you came in with?

18 A Yes, sir.

19 Q And as to my general questions would your answers
20 be substantially the same?

21 A Pardon?

22 Q Would your answers be substantially the same to
23 the questions that I have asked the other prospective jurors
24 that you heard here in the courtroom?

25 A Well, I don't know.

26 Q All right, let's go over just a few of those, then.
27 I take it that you are not going to hold the
28 appearance of my client against him in any way -- for example,

1 today he's dressed in a rather ragged blue suit that is
2 provided by the County Jail.

3 The fact that he is not all dressed up and wearing
4 a tie is not going to convince you that he's more apt to be
5 guilty, is it?

6 A Definitely not.

7 Q Certainly.

8 The mere fact that, if it should be, and probably
9 will be, that the prosecution will produce a great many more
10 witnesses than we will, that fact standing alone is not going
11 to make you think that my client is guilty?

12 A No, sir.

13 Q The fact that the prosecutor is asking for the
14 death penalty in this case doesn't lead you to conclude that
15 my client is, on that basis alone, more apt to be guilty,
16 does it?

17 A No, sir.

18 Q You appreciate that the prosecution often asks
19 for the death penalty and they end up with nothing, so you
20 can't tell anything at all from what the prosecutor is asking
21 for at this point, as far as evidence is concerned, don't you
22 agree?

23 A Yes, sir.

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

26 A Yes.

27 Q And you have read about the Tate La-Bianca case?

28 A Yes.

1 Q Have you formed any opinions about the so-called
2 Manson family that you think might interfere with your
3 evaluating the evidence that is presented to you in this
4 courtroom?

5 A No, sir.

6 Q Suppose the evidence should reflect that my client
7 was an associate of Charles Manson, lived there at the Spahn
8 Ranch and later at the Barker Ranch, and so on, things that
9 we have all heard so much about over the months: do you think
10 you'd be prejudiced against my client merely because of that
11 association?

12 A No, sir.

13 Q Can we count on you, Mrs. Rockman, to do the
14 following: if you are not convinced by the evidence that you
15 hear in this courtroom, that my client is guilty, will you
16 promise that you will just simply acquit him?

17 A Well, if the evidence calls for such a verdict.
18
19
20
21
22
23
24
25
26
27
28

5-1
1 Q All right, have you any quarrel, Mrs. Rockman, or
2 do you feel you would have any difficulty applying the rule of
3 law that says that my client does not have to prove his
4 innocence but rather the burden is on the prosecutor to prove
5 him guilty if he can?

6 A Yes.

7 Q Okay. So that if you are not satisfied with
8 respect to the People's case, you are not going to then look to
9 my client and say, "Well, come on, Mr. Grogan. You better
10 step up here and prove your innocence, man." You are not going
11 to ask us to do that, are you?

12 A (Shaking head negatively.)

13 Q Okay. Do you understand my question?

14 A No.

15 Q All right. Let me try and state it this way.

16 Supposing after the conclusion of all the evidence
17 you are satisfied that the People have certainly produced some
18 evidence that my client is guilty. I think we can fairly
19 assume that they are going to produce some evidence. That is
20 why we are here.

21 So the People have produced some evidence of my
22 client's guilt. But you are not satisfied beyond a reasonable
23 doubt and to a moral certainty that my client is guilty.

24 A Uh-huh.

25 Q All right. Now, in order for you to -- in order
26 for you --

27 MRS. RUPE: Sir, this man is ill.

28 THE CLERK: Your Honor, the juror is ill.

5-2

1 THE COURT: All right. Let's take a recess, ladies and
2 gentlemen. Take a short recess. Do not discuss the case.
3 Counsel better step in chambers with the defendant
4 here.

5 (The following proceedings were held
6 in chambers:)

7 THE COURT: We are in chambers. Defendant and counsel.
8 We have just had in open court one of the jurors, I believe it
9 is No. 9.

10 MR. KATZ: Mr. Killgore. E. Read Killgore.

11 THE COURT: No. 9, is that right?

12 MR. KATZ: Yes.

13 THE COURT: Apparently was seized with some kind of an
14 attack, the nature of which I do not know. And I adjourned
15 court as the transcript shows, and the sheriff and the clerk
16 took the juror in the jury room.

17 Did he indicate, Charles, what was wrong or not?
18 He didn't say what was the trouble?

19 THE BAILIFF: No, no indication. I notified the office
20 and they are sending a nurse.

21 THE COURT: Sending an ambulance up?

22 THE BAILIFF: Right away.

23 THE COURT: Well, I do think it is a case where we ought
24 to excuse this man.

25 MR. WEEDMAN: I agree, your Honor.

26 MR. KATZ: I agree, your Honor.

27 THE COURT: Don't you think so, for the People?

28 MR. KATZ: Yes.

5-3

1 THE COURT: And the defendant?

2 MR. WEEDMAN: Yes, we agree, your Honor.

3 THE COURT: All right. It appears in open court that the
4 juror is a sick juror. I will excuse the juror and we will
5 proceed to get a new juror in that place.

6 MR. WEEDMAN: Yes.

7 THE COURT: All right.

8 MR. KATZ: Your Honor, since we have already recessed the
9 jury may we take about five minutes.

10 THE COURT: Yes.

11 THE CLERK: Your Honor, I have the juror's name (handing.)

12 THE COURT: Thank you. The juror's name is E. Read
13 Killgore. Thank you.

14 THE CLERK: Yes, your Honor.

15 (Recess.)

5a-1

1 THE COURT: Now we are back in court. People against
2 Grogan. The defendant is here, both counsel are here, the
3 jurors are back in the jury box with the exception of juror
4 No. 9.

5 Now, I think if it is all right, gentlemen, I will
6 ask you, Mr. Weedman, before I pull in or call another juror,
7 will you complete your voir dire on this lady.

8 MR. WEEDMAN: Yes, your Honor.

9 THE COURT: I think it will give us a little clearer
10 record as we go along.

11 MR. WEEDMAN: Yes, your Honor.

12 Q Mrs. Rockman, just one thing finally.

13 Do you understand that both sides are entitled to
14 your individual opinion with respect to issues submitted to
15 you? In other words, as a juror you will not arrive at a
16 verdict just by a majority vote?

17 A No, sir.

18 Q All right. And I take it, Mrs. Rockman, that you
19 wouldn't change your mind with respect to either guilt or
20 innocence merely because the other jurors disagree with you?

21 A No, sir.

22 MR. WEEDMAN: All right. Thank you, Mrs. Rockman.

23 We will pass for cause, your Honor.

24 THE COURT: Thank you.

25 MR. KATZ: Yes. Thank you.

26 Q Mrs. Rockman, let me apologize at the outset. You
27 have heard so much questioning over the past few days and I
28 extend my sympathies to those people who are part of the original

1 panel because they have heard us ask these questions over and
2 over again. However, it is necessary in order to secure 12
3 impartial jurors to ask each of them certain individual
4 questions. You understand that?

5 A Yes, sir.

6 Q And unfortunately we just have to phrase these
7 questions over and over again until we are sure in our own mind
8 that the juror not only understands the principles with which
9 they are confronted during the course of the trial if selected
10 as a juror, but they have no bias or prejudice with regard to
11 those principles. Do you appreciate that?

12 A Yes, I do.

13 Q And I am getting awfully tired of hearing myself and
14 the questions over and over again, and so I certainly understand
15 your position, too.

16 Now, with respect to circumstantial evidence, do
17 you have any quarrel with the law in this state that permits a
18 man to be convicted of murder in the first degree based wholly
19 on circumstantial evidence?

20 A (Shaking head negatively.)

21 THE COURT: Speak up, lady, if you would.

22 MRS. ROCKMAN: I didn't understand that.

23 THE COURT: Thank you.

24 Q BY MR. KATZ: Yes. Do you understand that the law
25 of this state permits a man to be convicted of murder in the
26 first degree based wholly upon circumstantial evidence? That
27 means you don't have to produce an eyewitness to the killing,
28 you don't have to produce a body, you don't have to produce

1 any parts thereof or any eyewitness to having observed the
2 body in death. Do you appreciate that?

3 A Yes, I do.

4 Q Assuming you are convinced beyond a reasonable
5 doubt and to a moral certainty based upon circumstantial
6 evidence that the defendant committed murder in the first
7 degree you would be duty bound, as a juror, to vote guilty,
8 isn't that right?

9 A Yes, I would.

10 Q Do you have any quarrel with the rule of law in
11 this state which permits a person, a defendant to be convicted
12 of murder in the first degree based wholly upon circumstantial
13 evidence?

14 A Yes, I do.

15 Q I am not quite certain you understood my question.
16 Do you have a quarrel with the rule of law that
17 permits and authorizes a person to be convicted of murder in
18 the first degree based wholly upon circumstantial evidence?

19 A (Nodding head affirmatively.)

20 THE COURT: Speak up, lady.

21 MRS. ROCKMAN: Yes.

22 THE COURT: Thank you.

23 Q BY MR. KATZ: Well, again I am not sure you under-
24 stood it, and I am not trying to trap you into an answer
25 because your other answers to his Honor's questions and Mr.
26 Weedman's questions indicate you can be a fair and impartial
27 juror, and I seem to sense really that you can be. So let's
28 see if we understand one another.

1 Did you hear my example about the pies, concerning
2 circumstantial evidence?

3 A When, this morning? Right now?

4 Q No. Several days ago you were called as a juror
5 in the second panel.

6 A Uh-huh.

7 Q And at that time when I had my chance to give an
8 example of circumstantial evidence we talked about the fact
9 that in the desert we had this one refreshment stand. It was
10 a hundred miles from any metropolitan area.

11 A Uh-huh.

12 Q For example, there was no one around except two
13 people, one, the person who operated the little refreshment
14 stand.

15 A Uh-huh.

16 Q And the person who approached the counter on which
17 there were sitting three pies. And the person who approached
18 the counter said, "I would like to buy one of those pies. How
19 much are they?"

20 And the proprietor said, "Well, they are \$1.75
21 each."

22 And the person who inquired about the pies said,
23 "Well, that is too much money." And started to walk away. And
24 at that precise moment the proprietor turned his back away from
25 the counter, looking in the opposite direction and about 15
26 seconds, turned back to the counter and lo and behold he only
27 saw two of his pies.

28 And he looked and about 20 feet away he saw this

1 same gentleman who had inquired as to the price of the pies,
2 with one pie.

3 A Uh-huh.

4 Q And there was no one else around. And the pro-
5 prietor concluded, based upon the circumstantial evidence, that
6 that person who had initially inquired about the pies and who
7 now had the pie had taken the pie without his permission. Now,
8 you understand that example?

9 A Yes, I do.

Tke 6

1 Q That is what we are talking about when we are
2 talking about circumstantial evidence, facts which are proven
3 to you, namely, that the person first inquired about the
4 pies -- there were only two people in the desert within a
5 100-mile radius; that person is 20 feet from the counter and
6 he has the pie in his hands and the only other person there
7 is the proprietor who did not take it.

8 The reasonable inference is, now, that the other
9 person took the pie; isn't that right?

10 A Yes.

11 Q You have no objection, I take it, to drawing
12 reasonable inferences from facts that are proven to you; is
13 that right?

14 A Yes.

15 Q Now, you understand in this State the People do not
16 have to produce, again, a body in this case; that is, the body
17 of the decedent or any parts thereof or an eyewitness to the
18 killing or an eyewitness to having observed the body in death.

19 Do you understand that?

20 A Yes, I do.

21 Q Now, are you willing to accept the principle that
22 a person can be convicted of murder in the first degree
23 based wholly on circumstantial evidence?

24 A Yes, sir, I do.

25 Q I take it you have no quarrel, then, with the use
26 of circumstantial evidence in a criminal case; is that right?

27 A No.

28 Q Now, it has been explained to you that the burden

6-2

1 of the People in all criminal cases is proof beyond a
2 reasonable doubt and to a moral certainty; is that correct?

3 A Yes, sir.

4 Q Now, you understand that whether or not we are
5 talking about a misdemeanor traffic violation, a petty theft
6 case, a forgery case or any other kind of criminal case,
7 including a murder case, our burden is never increased, we
8 always have to sustain our burden beyond a reasonable doubt
9 and to a moral certainty.

10 Do you understand that?

11 A Yes, sir.

12 Q Do you think merely because this is a murder case
13 you would require the People to sustain a greater burden of
14 proof than that required by law?

15 A No.

16 Q All right.

17 In other words, you would ^{not} require the People to
18 demonstrate a degree of proof which excludes all possibility
19 of error and creates absolute certainty in your mind; is
20 that correct?

21 A Right; yes.

22 Q And so long as we had proved the case beyond a
23 reasonable doubt and to a moral certainty, you would unhesi-
24 tatingly vote guilty; is that right?

25 A Yes.

26 Q Now, with reference to the penalty phase, and I
27 underscore a big "if" at this point, we don't reach that point
28 unless and until there is a return of a first degree murder

6-3

1 verdict.

2 Now, assuming there is a return of a first degree
3 murder verdict, then the issue is submitted to the jury
4 based upon, perhaps, some additional evidence which may be
5 presented during the penalty phase and upon which you will
6 be asked to determine whether or not a person shall live or
7 die.

8 Do you understand that?

9 A Yes, I do.

10 Q Now, is it your understanding that there can be
11 no return of a death penalty unless all 12 jurors unanimously
12 vote for death?

13 A Yes.

14 Q All right.

15 So that if 11 people vote for life -- or, for
16 death, and one person votes for life, there is no death penalty;
17 isn't that right?

18 A Yes.

19 Q And in that connection, you wouldn't be able, if
20 a death penalty verdict was returned in this case, and you
21 were part of the jury, you couldn't say to the others, well,
22 it is their fault; they wanted to go vote death penalty,
23 I just went along with them, it's their fault.

24 You understand you couldn't say that?

25 A No.

26 Q Because you are sitting as a jury of one and without
27 your vote there could be no death penalty; isn't that right?

28 A Yes.

6-4

Q All right.

Now, prior to being called for jury service did you give any thought to capital punishment in general?

A No.

Q All right; as you sit here now, without telling me your reasons one way or the other, are you opposed to capital punishment or do you feel that under certain circumstances it is justified?

A I do feel it is justified under certain circumstances.

Q Right; and I am sure you are telling us that you would not automatically vote the death penalty without reference to the evidence; is that correct?

A Without reference to whom, sir?

Q Without reference to the evidence in this case?

A Oh, certainly not.

Q So what you would want to do is you would want to listen to the evidence in this case and then you would want to wait until any evidence, if any, was presented in the penalty phase; and then after you listened to the arguments of the other jurors and you made up your own mind, then and only then would you decide which way to vote in this case; is that right?

A Yes, sir.

6a

Tke 6a 1

Q Now, I want you to conceive of the following possibility: let's assume it is eight weeks from today and you have heard all the evidence in the case, there has been a return of a first degree murder verdict, you have heard all the evidence presented in the penalty phase of this trial; you are now asked to cast a ballot as to whether or not Mr. Grogan will live or die, 11 jurors now have voted for death, you are now asked to vote life or death.

In your conscience, in your heart, in your mind, you do feel the evidence warrants the return of the death penalty, how would you vote?

A I would vote yes.

Q All right. You understand that you would have to live with that decision for the very rest of your life; isn't that right?

A Uh-hmm.

Q And you would agree with me it would be a very difficult and distasteful decision to have to make; isn't that right?

A (Nodding head affirmatively.)

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

A Yes.

Q But, nevertheless, if you felt that in your sole and absolute discretion, based on the evidence in the case, it warranted it, you would be up to that task and would be able to vote that decision; is that right?

A That's right.

Q Now, it is alleged that Mr. Shea was murdered

1 between August 16, 1969, and September 1, 1969. In that
2 connection the People are not required to prove the exact
3 date of the death or the exact time of death. Will you,
4 nevertheless, require the People to prove the exact date and
5 time of the death, if we proved beyond a reasonable doubt
6 and to a moral certainty that Shorty Shea was murdered between
7 the dates alleged in the indictment?

8 A No, sir.

9 Q So, so long as you were satisfied beyond a
10 reasonable doubt and to a moral certainty that Mr. Grogan had
11 murdered Mr. Shea between August 16, 1969, and September 1,
12 1969, you would vote guilty even though we hadn't shown the
13 exact date and the exact time of the death; is that correct?

14 A Yes, sir.

15 Q Any reason why you couldn't be fair and impartial
16 to both sides, ma'am?

17 A None whatsoever.

18 MR. KATZ: Thank you. I don't think so, either. Pass
19 for cause.

20 THE COURT: Thank you, gentlemen.

21 Now, on our peremptories, I have lost --

22 MR. KATZ: It is with the People, I believe, but I think
23 we have --

24 THE COURT: Well, let's get this -- I'll call two in a
25 moment -- is there any peremptory on this lady?

26 MR. KATZ: No, I will accept the panel at this time.

27 THE COURT: I see what you mean.

28 Let me clear -- do you have any peremptory at this

1 point?

2 MR. WEEDMAN: Yes, your Honor.

3 THE COURT: If you exercise it, then I will pull two
4 jurors.

5 MR. WEEDMAN: We thank and excuse Mrs. Rupe, your Honor.

6 THE COURT: Thank you.

7 Now, Mr. Clerk, we will call two jurors, if you
8 will, please.

9 THE CLERK: Yes, your Honor.

10 MR. Kisui Fujimoto; first name, K-i-s-u-i; last
11 name, F-u-j-i-m-o-t-o.

12 THE COURT: No. 9, is this middle seat.

13 THE CLERK: Mrs. Lola Franco; L-o-l-a; F-r-a-n-c-o,
14 Mrs.

15 THE COURT: Now I am going to address myself principally
16 to you two new jurors whose names have just been called and
17 just seated.

18 Q Have you folks been in the courtroom -- you are
19 the second group that came in here; is that correct?

20 MRS. FRANCO: Yes.

21 MR. FUJIMOTO: Yes.

22 Q Have you heard everything that I have said to the
23 other jurors from the time that you came into the courtroom,
24 down to this point?

25 MR. FUJIMOTO: Yes.

26 MRS. FRANCO: Yes.

27 Q First, let's get back to this assumption; let's
28 assume -- you have heard me also advise the jurors, or read the

1 charge that has been filed against the defendant?

2 MRS. FRANCO: Yes.

3 MR. FUJIMOTO: Yes.

7 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

7-1

1 Q Let's assume with both of you folks that you have
2 been sworn to try this case and you are jurors. Let's assume
3 that the case has been tried and that you go to the jury room
4 to make a finding of either guilty or not guilty.

5 At that time the jury could make a finding of not
6 guilty which would conclude the case entirely. That is the
7 end of the lawsuit.

8 The jury could make a finding of guilty and if the
9 jury makes a finding of guilty then the jury must set the
10 degree, murder first degree or murder second degree. It is up
11 to the jury.

12 If the jury makes a finding of second degree murder
13 then once again the duties of the jury are through. You are
14 through on a finding, you are excused on a finding of second
15 degree murder.

16 However, if the jury makes a finding of first
17 degree murder then there is a next, a subsequent following
18 hearing called the penalty hearing, generally, at which, at
19 the conclusion of which the jury sets the penalty of either
20 the death penalty or life imprisonment. Now, let's assume
21 that we have held the penalty hearing, you are in the jury room
22 about to vote on the question of penalty. The death penalty or
23 life imprisonment. I will ask you both this same question:

24 At that time you are about to vote, would you
25 automatically vote against the imposition of the death penalty
26 without regard to any evidence that might be developed at the
27 trial of this case?

28 MRS. FRANCO: No.

29 MR. FUJIMOTO: No, your Honor.

7-2

1 Q What is your answer, lady?

2 MRS. FRANCO: No.

3 Q All right. And this gentleman, is it no?

4 MR. FUJIMOTO: No.

5 Q No?

6 MR. FUJIMOTO: No.

7 Q All right. Now, I will ask you another question.
8 Do either of you jurors know of any reason at all that you
9 could not be fair and impartial to both the People and the
10 defendant seated there, if you are selected to try this case
11 as a juror? Do you feel you could be fair and impartial? Is
12 that a correct statement?

13 MRS. FRANCO: I could if it didn't --

14 Q How about you, Mr. Juror?

15 MR. FUJIMOTO: I could be fair and impartial, your Honor.

16 Q All right. I will ask you this further question
17 directed to both of you folks. Do either of you prospective
18 jurors, do either one of you know of any reason at all, of
19 anything that might arise during the course of this trial that
20 would stop you or prevent you from keeping an open, unbiased
21 mind during this entire trial until you are excused? Do you
22 know of anything that could come up that would upset you,
23 disturb you from being -- exercising clear and unprejudiced
24 review or analysis of these facts?

25 MRS. FRANCO: The length of time.

26 Q You feel you could be the same way, fair and
27 impartial, Mr. Juror?

28 MR. FUJIMOTO: I could be fair and impartial, sir, yes.

1 Q You could be impartial?

2 MR. FUJIMOTO: Yes.

3 THE COURT: Is that right?

4 MR. FUJIMOTO: That is right.

5 THE COURT: I will clear both jurors.

6 Now, let's see, Mr. Weedman. You may want to take--
7 well, you can examine one at a time or both of them. Either
8 way you want to do it.

9 MR. WEEDMAN: All right. Thank you, your Honor.

10 THE COURT: All right.

11

12

LOLA FRANCO

13 BY MR. WEEDMAN:

14 Q Mrs. Franco, is there something about the length of
15 this trial that might cause you some personal hardship?

16 A Yes. I am the only support of my family and I
17 won't be able to serve eight weeks.

18 Q I take it you are telling us that you won't be
19 paid, is that the idea?

20 A Right.

21 Q Are you being paid for any portion of your jury
22 service?

23 A 20 days.

24 Q 20 days?

25 A 20.

26 Q May I ask where you are employed?

27 A Sears and Roebuck.

28 Q How many persons are you supporting in addition to

1 yourself?

2 A Two.

3 Q Two. Do you feel that because of that, that you
4 would not be able to devote the kind of attention to this trial
5 that we would really need here for you to be an effective
6 juror?

7 A Yes, I think that would affect my -- yes.

8 MR. WEEDMAN: Your Honor, perhaps to save time in the
9 light of Mrs. Franco's responses to the query of hardship it
10 does appear as though she --

11 THE COURT: Is that made in the form of a for cause
12 challenge?

13 MR. WEEDMAN: Yes, your Honor.

14 THE COURT: I would be inclined to deny the for cause
15 challenge. The juror has stated she could be fair and impartial.
16 I will overrule the challenge.

17 Q BY MR. WEEDMAN: Would you have any difficulty being
18 fair and impartial in the light of the fact that serving, say,
19 for eight weeks would cause you apparently this financial
20 difficulty?

21 A It would be, worrying about my obligations at home.

22 Q I see. May I ask who are the two other persons that
23 you are supporting?

24 A My two children.

25 Q What are their ages?

26 A 17 and 15.

27 Q Have you any other source of income other than the
28 job at Sears?

29 A No.

1 Q I see. Are either of the children working at all?

2 A Cutting lawns. But that's nothing.

3 Q I see. There is no one but yourself then that can
4 support the two children during this period of time?

5 A No.

6 Q I see. Okay. And you feel then that you could not
7 be fair and impartial, is that what you are telling us, if you
8 have to sit as a juror here for some eight weeks?

9 A Well, I wouldn't put my whole attention on it. I
10 would be worrying about home.

11 Q You think that would interfere with your being fair?

12 A I think so.

13 MR. WEEDMAN: Well, your Honor, I would respectfully
14 renew my motion.

15 THE COURT: Well, read the juror's last two statements.

16 (The record was read by the reporter
17 as follows:

18 "Q And you feel then that you could
19 not be fair and impartial, is that what you are
20 telling us, if you have to sit as a juror here
21 for some eight weeks?

22 "A Well, I wouldn't put my whole atten-
23 tion on it. I would be worrying about home.

24 "Q You think that would interfere
25 with your being fair?

26 "A I think so."

27 THE COURT: Well, you see, you put me in a position here,
28 lady. You told me you could be fair and impartial. That is the

1 time for you to make up your mind on that, when I ask you the
2 question. If you think you couldn't be fair and impartial
3 you should say, "No, I can't be." That is why I asked the
4 question. Now you told counsel very honestly it might impair
5 your better judgment.

6 I will accept your challenge. The juror is
7 excused.

8 Now, let's call another juror. I think it would be
9 better, rather than exhaust -- it gives a little easier
10 thinking and stops a jumping off back and forth if we fill this
11 other seat here.

12 MR. WEEDMAN: Surely.

13 THE COURT: Call another juror.

14 THE CLERK: Mr. Dave A. Flynn, D-a-v-e, middle initial A,
15 last name F-l-y-n-n.
16
17
18
19
20
21
22
23
24
25
26
27
28

7a

Tke 7a

DAVE A. FLYNN

BY THE COURT:

Q All right. Now, I will ask you, Mr. Juror, these basic questions. You have heard everything I have said to the jury?

A Yes

Q You heard me read the charge that has been filed by the People against the defendant in this case?

A Yes.

Q All right. Now, assume you are a juror in this case and we have tried the case. The jury has gone to the jury room to vote on the question of guilty or not guilty. At that time the jury could vote not guilty and this concludes the case entirely. The jury could vote guilty of murder and if the jury votes guilty then the jury fixes the degree, first degree murder or second degree murder. If the jury fixes the degree at second degree murder, then the jury is through, excused. They have completed their duties.

If the jury makes a finding of guilty of murder first degree murder, then there is a further hearing held by the court before the jury and after the hearing what is called the penalty hearing, the jury then goes back to the jury room to decide on penalty. And the jury then makes a finding of either the death penalty or life imprisonment.

Now, let's assume that we have held the penalty hearing, you are on the jury, you are voting in the jury room with the jurors on the question of the death penalty or life imprisonment. Let's say we are up to that point.

7a-2

1 Now, I will ask you this question: at that time
2 would you automatically vote against the imposition of the
3 death penalty without regard to any evidence that might be
4 developed at the trial of this lawsuit?

5 A No.

6 Q Thank you. Now, I will ask you another question,
7 Mr. Juror. Do you know of any reason at all that you could
8 not be fair and impartial to both the People and the defendant
9 or the defendant and the People, throughout the entire trial
10 of this action?

11 A No.

12 Q If you are selected?

13 A No.

14 Q Do you know of anything that might come up, any
15 problem that might suddenly come up that would bother you,
16 annoy you, disturb you so your mind wouldn't be free and clear
17 during the trial of this case?

18 A No.

19 THE COURT: Thank you. The defendant may inquire.

20 MR. WEEDMAN: Thank you, your Honor.

21 THE COURT: Yes, sir.

22 BY MR. WEEDMAN:

23 Q Mr. Flynn, what is your business or occupation,
24 please?

25 A Truck operator for the City of L.A.

26 Q For the City of Los Angeles?

27 A Yes.

28 Q Do you have any close friends or relatives who are

7a-3

1 in law enforcement?

2 A No.

3 Q Is there anything about the testimony of police
4 officers that you feel you wouldn't treat the same as you
5 treat testimony from any other witness?

6 A No.

7 MR. KATZ: Excuse me. I will object to the form of the
8 question. The question is whether they should apply the same
9 standards in assessing the credibility of any witness,
10 including police officers.

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

12 MR. WEEDMAN: I agree with counsel, your Honor.

13 THE COURT: Thank you.

14 MR. WEEDMAN: I will withdraw the question.

15 THE COURT: All right. You can reframe and restate it.

16 Q BY MR. WEEDMAN: Mr. Flynn, I take it from your
17 answer a moment ago to Judge Call, the prospect of serving
18 some eight weeks would not cause you any personal hardship?

19 A No.

20 Q All right. Sir, have you had any prior criminal
21 jury experience?

22 A No.

23 Q With respect to the matter of the death penalty,
24 would you, following a first degree murder conviction
25 automatically impose the death penalty without regard to the
26 evidence?

27 A No.

28 Q Have you heard about the so-called Manson family

1 and Charles Manson?

2 A Yes.

3 Q Have you formed any opinions with respect to them
4 that you feel might or would interfere with your evaluating
5 the evidence in this case?

6 A No.

7 Q Would you be able to set aside or would you set
8 aside any such possible temptation, particularly if this is
9 a close case? In other words, would you set aside any temptation
10 to even use anything that you may have learned in connection
11 particularly with the Tate-La Bianca case?

12 A I can have an open mind on it.

13 Q I take it you did read as most of us did, about
14 the Tate-La Bianca case?

15 A No, I didn't.

16 Q Did not. All right. Perhaps I better back up a
17 moment. Have you formed any opinion with respect to Charles
18 Manson and the Manson family?

19 A No, I haven't.

20 Q All right. So, Mr. Flynn, we really needn't go into
21 that matter as far as you are concerned here?

22 A That's right.

23 Q Okay. Is there anything at all about this case
24 that you have learned or that you have come to feel such that
25 you feel you would rather not sit as a juror?

26 A No.

27 Q For any reason at all? Are you prepared to go to
28 work and if you are selected as a juror and objectively,

1 obviously, fairly evaluate the evidence coming from both
2 sides?

3 A Right.

4 MR. WEEDMAN: I will pass for cause. Thank you, Mr. Flynn.

5 THE COURT: All right. The People.

6 Oh, you want to examine the other gentleman?

7 MR. WEEDMAN: Well -- very well, your Honor.

8 THE COURT: Whatever is easier for you gentlemen.

8-1

KISUI FUJIMOTO

BY MR. WEEDMAN:

Q Mr. Fujimoto, you have been here since last Thursday; is that correct?

A Yes, that's true.

Q Have you heard all the questions counsel and I have asked all the other prospective jurors since you have been here?

A I have.

Q Apart from the personal answers, that is, the matters of occupation and so on, would your answers be substantially the same as the answers we have already heard?

A I would like to be more specific on that.

Q All right.

May I ask your occupation, first of all?

A Engineer.

Q By whom are you employed?

A ITT.

Q What is that?

A International Telephone & Telegraph.

Q Oh, ITT, thank you.

Will they pay you for extended jury service?

A No, sir.

Q As far as you know -- pardon me?

A No, sir.

Q Will this cause you personal hardship if you have to be here for some eight weeks?

A Yes.

Q Well, will you describe that for us, please,

8-2 1 Mr. Fujimoto.

2 A I am the sole support of my family and I have a
3 wife and baby to support.

4 Q And have you no other sources of income?

5 A No, sir.

6 Q Do you feel that this financial hardship would
7 cause you to be distracted if you have to sit here for eight
8 weeks; that is, distracted from your function as a juror?

9 A No, it would not.

10 Q Pardon?

11 A I don't think it would cause any distraction in
12 terms of impartial and fair on my part, being impartial and
13 fair on my part.

14 Q But it would cause you a hardship, nonetheless, as
15 you describe it?

16 A Yes, because of -- very severe financial hardship.

17 Q Well, would this severe financial hardship have any
18 bearing or influence on your functioning as a juror in this
19 case?

20 A I don't think so.

21 Q All right.

22 With respect to the matter of circumstantial
23 evidence that we have -- both counsel and I have talked about
24 here so much -- do you have any quarrel with the idea or with
25 the law which says circumstantial evidence may be utilized by
26 you just as much as direct evidence may be?

27 A If it is the law, I will abide by it.

28 Q I take it that your answer would be the same with

1 respect to all of the law that you have to apply in this case?

2 A That is true.

3 Q That you'll apply the law irrespective of whether
4 you think it is a good law or whether you think it is a bad
5 law?

6 A That's true.

7 MR. WEEDMAN: I will pass Mr. Fujimoto for cause, your
8 Honor.

9 THE COURT: Very well.

10 People?

11 MR. KATZ: Yes, your Honor,

12 Q Mr. Flynn, what area of town do you live in, sir?

13 A Southwest.

14 Q And Mr. Fujimoto?

15 A It will be Pico and Western, so it would be central.
16

17 DAVE A. FLYNN

18 BY MR. KATZ:

19 Q Mr. Flynn, have you given some thought to capital
20 punishment prior to being called for jury duty?

21 A Yes.

22 Q And have you discussed the subject matter of
23 capital punishment in general with friends?

24 A No.

25 Q And without telling me your reasons, are you
26 generally opposed to capital punishment or do you believe that
27 it is justified under certain circumstances, or what?

28 A It is justified under certain circumstances.

1 Q And have you ever asked yourself the question,
2 Mr. Flynn, whether or not you could personally participate in
3 the death penalty verdict?

4 A Yes.

5 Q And how did you answer that question?

6 A I could.

7 Q And I am sure that in doing a lot of soul-searching
8 you realize it is a very difficult, arduous and very distaste-
9 ful task, is it not?

10 A True.

11 Q And I take it, nevertheless, you believe that there
12 are certain kinds of cases under certain circumstances which
13 warrant the return of the death penalty in conformity with your
14 own moral fiber and conscience; isn't that correct?

15 A That's right.

16 Q With reference to Mr. Grogan here, if you thought,
17 after hearing all the evidence in this case, that a death
18 penalty was warranted, could you have the courage to vote your
19 conscience and vote that death penalty?

20 A I could.

21 Q And if you were sitting in my seat -- of course,
22 I am standing behind it right now -- but if you were sitting
23 here as the prosecutor in this case and you wanted a juror who
24 had an open mind as to the proper penalty in this case and
25 could give the People a fair trial on whether or not the death
26 penalty was warranted, would you be willing to have 12 men and
27 women of your same frame of mind sit and hear all the issues
28 in this case?

1 A I could.

2 Q And you heard our discussion concerning circum-
3 stantial evidence, did you not?

4 A Yes.

5 Q And you recognize the fact, Mr. Flynn, that you
6 use circumstantial evidence in your everyday affairs, don't
7 you?

8 A Yes.

9 Q And really what we are talking about is applying
10 common sense to facts that are proven to you and drawing
11 reasonable inferences from those proven facts; isn't that right?

12 A Right.

13 Q Do you have any quarrel with the law that permits
14 a man to be convicted of murder in the first degree based
15 wholly upon circumstantial evidence?

16 A No, I haven't.

17 Q Does it offend your sense of justice or morals or
18 fair play that a person may be, indeed, sentenced to death
19 based wholly on a circumstantial evidence case?

20 A No.

21 Q All right.

22 Is there anything that you can think of that you
23 would like to bring to my attention or Mr. Weedman's attention
24 which might affect your ability to be fair and impartial on
25 all of the issues in this case?

26 A I can't think of any.

27 Q All right; and Mr. Weedman was talking a moment ago
28 with another prospective juror about the fact the evidence may

1 show association and what he termed a loose association
2 between Mr. Grogan and Mr. Manson and that Mr. Grogan, perhaps,
3 will be shown to have lived at Spahn Ranch in the desert with
4 Mr. Manson; and he asked the juror whether or not those facts,
5 in and of itself, would cause that juror to be prejudiced
6 against Mr. Grogan and the answer was, properly, no, it
7 wouldn't.

8 Now, you understand that his Honor determines what
9 evidence is admissible in this trial, according to the rules
10 of evidence.

11 You understand that?

12 A Yes, sir.

13 Q In that connection, his Honor is not going to let
14 in what we call immaterial or prejudicial evidence or non-
15 relevant evidence; and we have to abide by the rules of
16 evidence.

17 You appreciate that?

18 A Yes, sir.

8a

Tke 8 A

1 Q So that if a piece of evidence unfolds and
2 in conformity with his Honor's rulings, I take it you will be
3 willing to consider that evidence for the proper purpose
4 for which it is offered and in accordance with the applicable
5 instructions of law; is that correct?

6 A Yes.

7 Q And if we prove certain facts, such as association
8 between Mr. Grogan and Mr. Manson, you'll consider it for the
9 proper purpose for which it is offered, uninfluenced by
10 anything you may have read or heard or seen about Mr. Manson
11 or the Manson family; is that correct?

12 A Correct.

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

15 A No.

16 MR. KATZ: I know of none, either.

17 Pass for cause.

18 THE COURT: Thank you.

19 MR. KATZ: Let's see, we still have Mr. Fujimoto. Do you
20 want me to commence now, or did you want to --

21 THE COURT: You passed for cause on both, didn't you?

22 MR. KATZ: On Mr. Flynn.

23 THE COURT: Go ahead, if you want to -- unless you don't
24 want to.

25 MR. KATZ: I just have a few questions.

26 THE COURT: All right, go ahead.

27

28

8a-2

KISUI FUJIMOTO,

BY MR. KATZ:

Q Mr. Fujimoto, you heard the questions that I asked Mr. Flynn. Would your answers be substantially the same?

A I'd like to be specific on individual questions.

Q All right. I was afraid you'd say that.

All right, let's talk about circumstantial evidence; you understand, as his Honor said at the very outset, there will be no evidence of a body, there will be no eyewitness to the killing, there will be no eyewitness to having observed the body in death.

Do you understand that?

A I understand that.

Q Now, Mr. Fujimoto, there are certain crimes, because of their very nature, that are not necessarily committed in public; you understand that?

A I understand.

Q In other words, somebody doesn't go to a person and say, "I am going to commit a crime," and then commit it in public view.

You understand that?

A I understand that.

Q As a result of that the People must necessarily resort to what we call indirect or circumstantial evidence for the proof of that case.

You appreciate that?

A Yes.

Q And you appreciate the fact that under the law of

8a-3

1 this State we may actually convict a man of murder in the
2 first degree based wholly upon the indirect or circumstantial
3 evidence; is that correct?

4 A If it is the law, yes.

5 Q Yes.

6 Now, let me assure you at this point that it is
7 the law. Do you have any quarrel with that?

8 A No.

9 Q Now, if you were convinced beyond a reasonable
10 doubt and to a moral certainty, based wholly upon circum-
11 stantial evidence that the defendant murdered Shorty Shea,
12 would you refuse to vote guilty solely because we failed
13 to produce a body or an eyewitness to the killing?

14 A No.

15 Q All right.

16 I take it what you are telling us is that simply
17 you will not require the People to produce a body or an
18 eyewitness to the killing or an eyewitness to having observed
19 the body in death before voting guilty; is that correct?

20 A That's correct.

21 Q That assumes, of course, that our proof, our
22 proper proof, creates in your mind an abiding conviction to
23 a moral certainty of the truth of the charge.

24 You understand that?

25 A Yes.

26 Q Does it offend your morals and sense of fair play
27 that a man in this State may be sentenced to death based
28 wholly upon circumstantial evidence?

8a-4

1 A It is the law, then I will abide by it.

2 Q All right.

3 Now, let's backtrack for a moment: you understand
4 that when we reach the penalty phase of this trial, should
5 we reach that phase, the law doesn't say, "If the prosecution
6 proves A and B and C, it is a death penalty case," or in
7 the absence thereof it is life imprisonment.

8 Do you understand that?

9 A I understand.

10 Q The law does not favor one penalty over the other
11 upon return of a first degree murder verdict, but, rather,
12 leaves it to each juror in his sole and absolute discretion to
13 determine what the proper penalty is in this case.

14 Do you understand that?

15 A Yes, I understand.

16 Q So that when we say, "If it is the law, I will
17 follow it," it is not enough merely to say, "Okay, I recognize
18 that capital punishment is on the books in California, that
19 maybe it could be returned under certain circumstances";
20 you must be willing to state at this time that you, yourself,
21 can envision a case in which you could personally participate
22 in the death penalty.

23 You understand that?

24 A Yes.

25 Q Is it your frame of mind, sir, that there are
26 some cases in which you, yourself, could personally participate
27 in the death penalty verdict?

28 A Yes, I could.

1 Q And I think, as a thoughtful person, that you
2 recognize that would be a very difficult and distasteful
3 task; is that correct?

4 A That's correct.

5 Q You recognize you would live with that judgment
6 for the rest of your life?

7 A That's true.

8 Q And, nevertheless, knowing these facts, knowing
9 the tremendous emotional impact it may have on the rest of
10 your life, if you believed in your conscience that this case
11 warranted the death penalty, would you have the courage to vote
12 that conscience?

13 A Yes.

14 Q You understand after voting that verdict along
15 with 11 other jurors you have to come right back into this
16 seat where you are sitting and tell ^{the court} by your verdict Mr. Grogan
17 is sentenced to death under the laws of this State.

18 Can you do that?

19 A Yes.

20 THE COURT: Pardon me, I think we will go over until
21 2:00 o'clock.

22 I will ask all jurors, do not discuss the case
23 with anybody or amongst yourselves or come to any opinion
24 or conclusion in respect to this case. Recess to 2 o'clock;
25 kindly return promptly. Thank you.

26 (At 12 noon, a recess was taken until

27 2 p.m. of the same day.)
28

9-1

LOS ANGELES, CALIFORNIA, WEDNESDAY, JULY 7, 1971

2:25 P.M.

THE COURT: Well now, let's see where we are, gentlemen.

People against Grogan. Defendant is here, both counsel are here, People and defendant's counsel. The jurors are in the jury box.

And I believe the People were just finishing up, were you not, Mr. Katz?

MR. KATZ: Yes, I believe I had passed for cause, your Honor.

THE COURT: You passed for cause? You passed one.

MR. KATZ: I think you are correct, your Honor. I think I had a few more questions.

THE COURT: You said something like a few more questions, then I said well, maybe we better go to 2 o'clock.

MR. KATZ: Yes. Thank you.

THE COURT: All right.

KISUI FUJIMOTO

BY MR. KATZ:

Q I think I was talking with Mr. Fujimoto, is that correct?

A That's correct.

Q I remember you wanted some specific questions asked of you rather than asking the rather innocuous question, having heard the questions propounded to the other prospective members of the panel, would your answers be substantially the same?

1 Isn't that correct?

2 A That's correct.

3 Q All right. Now, we have talked about a number of
4 issues or subject matters, if you will, with which the jurors
5 may or may not be confronted during the course of the trial
6 if selected as a juror. And in that connection we have
7 discussed already circumstantial evidence. We have discussed
8 the openness of mind with reference to the proper penalty in
9 this case should the jury be called upon to make that deter-
10 mination. And a number of other issues.

11 Now, you understand that if selected as a juror
12 both sides are entitled to your individual opinion. Do you
13 appreciate that?

14 A Yes.

15 Q And it is more than a mere cliché in that we expect
16 of each juror to exercise his own individual opinion in arriving
17 at and assessing what weight, if any, to be given to the
18 evidence. You understand that?

19 A Yes.

20 Q In that connection, if after retiring to the jury
21 room, you have a belief that the evidence points one way, then
22 you are not obliged to change that opinion unless based upon a
23 consideration of the reasons given by the opposing jurors,
24 assuming they have an opposing view, you are convinced by
25 reason and logic their view is the correct one. You understand
26 that?

27 A Yes.

28 Q I take it you agree with the principle that this

1 courtroom and certainly the jury room should not be used as a
2 forum in which to discuss the propriety or impropriety of the
3 laws of California, is that right?

4 A That is true.

5 Q Whether or not you favor capital punishment or
6 whether you think it should be abolished is of no concern with
7 respect to arguing that kind of thing ^{with} in the jury, isn't that
8 right?

9 MR. WEEDMAN: Excuse me, your Honor. I will object to
10 this if counsel is referring to the penalty phase because that
11 might be extremely appropriate during the penalty phase.

12 THE COURT: Well, read the question, please, Mr. Reporter.

13 (The question was read by the reporter
14 as follows:

15 "Q Whether or not you favor capital
16 punishment or whether you think it should be
17 abolished is of no concern with respect to
18 arguing that kind of thing ^{with} in the jury, isn't
19 that right?"

20 THE COURT: I think it is a proper question. In other
21 words, I am debating it, I am thinking out loud. Counsel is
22 asking however you feel about the situation. I believe what
23 he is saying is no matter what your personal thoughts are,
24 will you follow the law and abide by your conclusions in the
25 facts and apply the facts to the law? That is substantially
26 it.

27 MR. WEEDMAN: Well, of course counsel's question I submit
28 is broad enough to cover the penalty phase and should a juror

1 wish to exercise his option, vote for life, then he may
2 certainly argue the propriety of the death penalty.

3 THE COURT: Read the question again.

4 MR. KATZ: Excuse me, your Honor. That is not only a
5 misstatement of law, I ask the jury be admonished to disregard
6 that statement.

7 (The question was read by the reporter
8 as follows:

9 "Q Whether or not you favor capital
10 punishment or whether you think it should be
11 abolished is of no concern with respect to
12 arguing that kind of thing ^{with} in the jury, isn't
13 that right?"

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

15 THE COURT: Yes.

16 MR. KATZ: The point is we are not to use this forum here,
17 this courtroom, this jury room to discuss the propriety or
18 impropriety of the laws of the State of California. A juror,
19 for whatever reason he or she may have, may vote the death
20 penalty or vote life imprisonment, as the case may be, based
21 upon the evidence in accordance with their sole and absolute
22 discretion.

23 However, they are not to say that the legislature
24 is unwise, for example, in having on our books capital punish-
25 ment. We are not to discuss the propriety of the laws or
26 whether or not, for example, circumstantial evidence should be
27 on the books, and the State should permit a first degree murder
28 conviction ~~be~~ predicated upon circumstantial evidence. They

1 are duty bound to follow the laws of the State.

2 THE COURT: Well, I agree with your statement. However,
3 I think for the sake of the layman it should be prefaced
4 something in this fashion: whether you are discussing the
5 question of guilty or not guilty, or whether you are discussing
6 the question of penalty in a subsequent penalty hearing, where
7 the jury could be discussing the question of the death penalty
8 or life imprisonment -- then your question. That wouldn't
9 change your thinking at all but if it were propounded in that
10 way I would have no objection.

The 10.

1 MR. KATZ: Yes, if your Honor please; for example, if
2 we were to argue, for example, that capital punishment is a
3 deterrent, that would be improper and the juror cannot go
4 into the jury room and start arguing that kind of argument
5 to the other prospective jurors; by parity of reasoning you
6 cannot argue anything pro or con with reference to ^{the} propriety
7 of capital punishment; you can say that the facts, based
8 upon my consideration of everything in the case, warrant the
9 return of the death penalty --

10 THE COURT: The question, then, is confusing because
11 it somewhat confuses me a little, myself.

12 Will you read the question again, Mr. Reporter?

13 MR. KATZ: I will withdraw it.

14 THE COURT: Reframe it; try to reframe it, then.

15 Q BY MR. KATZ: Let's go back, if we can, then, and
16 we will start out with the guilt phase of the trial.

17 For example, you may find yourself in this situation,
18 you are back in the jury room now and you have heard all the
19 evidence in the guilt phase and you are about to vote; some
20 juror says to you, "Well, Mr. Fujimoto, I don't know about
21 you, but I know what I feel about circumstantial evidence
22 and I don't like it. I don't care what they have proved in this
23 case, I am just not going to follow the law which obliges
24 me to convict on circumstantial evidence, even though it has
25 been proven beyond a reasonable doubt and to a moral certainty,
26 because I don't like circumstantial evidence."

27 You understand that kind of argument is totally
28 improper and out of place?

1 A That kind of argument would be improper, yes.

2 Q Yes.

3 Now, what I am driving at is once you are selected
4 as a juror and when I say "you," I mean collectively, the
5 jury ^{you} must give your solemn assurance that you will follow the
6 law whether you think it is wise or unwise.

7 You understand that?

8 A That is true.

9 Q And as the sole judge of the facts if you find
10 the facts apply to the law as his Honor gives them to you,
11 you are dutybound to follow the law even though you may think
12 it is unwise.

13 Do you understand that?

14 A I understand that.

15 Q So that if, for example, the circumstantial evidence
16 in this case created in your mind an abiding conviction to
17 a moral certainty of the truth of the charge you would be
18 dutybound to find the defendant guilty even though the case
19 rests wholly upon circumstantial evidence and even though we
20 produced no body or no eyewitness to the killing or no
21 eyewitness to having observed the body in death, you under-
22 stand that?

23 A Yes.

24 Q So that you would be dutybound to reject the kind
25 of argument that might be made, "Well, I don't like circum-
26 stantial evidence and I don't care what his Honor says about
27 it, I am not going to apply them to the facts as I found
28 them to be."

1 You understand that?

2 A Yes.

3 Q And that is all I am saying.

4 Now, with reference to discussing the penalty in
5 this case, should we reach that phase of the trial, I take it
6 you have an open mind on what penalty, if any, should be meted
7 out in this case; is that correct?

8 A That's true.

9 Q And you would be willing to listen not only to the
10 evidence in the guilt phase but listen to the evidence in the
11 penalty phase, which might include evidence in aggravation of
12 the offense, perhaps evidence in mitigation of the offense,
13 maybe evidence which shows the background and history of the
14 defendant, what kind of human being he is, and after considera-
15 tion of all these things would you have the willingness and
16 the open-mindedness to listen to the other jurors as to their
17 conclusions with regard to the proper penalty in this case?

18 A Yes.

19 Q But after considering all of it, would you, yourself,
20 render an individual opinion and make a value judgment as to
21 the proper penalty in this case, accepting full responsibility
22 for it?

23 A Yes.

24 Q And I take it you realize if you voted the death
25 penalty you must live with that and in your conscience for
26 the rest of your life; is that correct?

27 A Yes.

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

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.

MR. KATZ: Thank you, sir.

Pass for cause.

THE COURT: Pass for cause?

MR. KATZ: Yes, your Honor; pass for cause.

THE COURT: Now, where are we, whose peremptory is it, gentlemen?

I think the People --

MR. WEEDMAN: I believe it is the People's, your Honor.

MR. KATZ: I think so, your Honor.

People wish to thank and excuse Mrs. Rockman.

EX-10A

Tke 10A 1

2 THE CLERK: Mr. Joseph L. Robinson; J-o-s-e-p-h;
3 R-o-b-i-n-s-o-n.

4 JOSEPH L. ROBINSON

5 BY THE COURT:

6 Q Now, Mr. Juror, I am going to ask you if you have
7 heard everything I have said since you came in with the second
8 allotment of jurors who came in the other day.

9 A Yes, I have.

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

12 A Yes, I have.

13 Q Now, let's assume that you have been selected
14 as a juror and the case has been tried and you go to the jury
15 room with the rest of the jurors to decide the question of
16 guilty or not guilty. At that time the jury could make a
17 finding of not guilty, in which event the case is concluded
18 and all over; terminated.

19 The jury could make a finding of guilty. Now,
20 if the jury makes a finding of guilty, it must then make a
21 subsequent finding of guilty first degree or guilty second
22 degree murder.

23 If it makes a finding of guilty second degree
24 murder, then the jury is excused, there is no further duties
25 of the jury.

26 If the jury makes a finding of guilty first degree,
27 then a subsequent, and immediately, a penalty hearing or
28 subsequent trial is held right here before the same jury, as
a result of which the jury will find on the question of penalty.

1 whether the penalty is the death penalty or life imprisonment.

2 Now, let's assume you are up to that point
3 where they are passing on -- the jury is passing on what is
4 the penalty, I will ask you this question: at that time would
5 you automatically vote against the imposition of the death
6 penalty without regard to any evidence that might be developed
7 at the trial of this case before you?

8 A No, I wouldn't.

9 Q All right. Thank you.

10 Now I will ask you one more question: do you know
11 of any reason why you could not be fair and impartial, if
12 you are selected as a juror to try this case?

13 A No.

14 Q And one last question, that is pretty much the
15 same as the question I just asked you: do you know of any
16 reason at all, of any situation that might arise, or any
17 occurrence of any kind that might happen, anything that might
18 happen, if I can put it that way, during the course of the
19 trial that would disturb you or upset you so that you couldn't
20 be fair and impartial, your mind open during the course of
21 the trial?

22 A Not at this time.

23 THE COURT: Thank you.

24 All right. I pass the juror.

25 You may proceed.

26 MR. WEEDMAN: Thank you, your Honor.

27 Q Mr. Robinson, may I ask your business or occupation,
28 please?

1 A Pacific Telephone Company, switchman.

2 Q What does a switchman do?

3 A Emergency traces for certain agencies, like the
4 police department and places like that.

5 Q In that connection, do you have any friends who
6 are in law enforcement?

7 A No.

8 Q Do you have any relatives who are in law enforce-
9 ment?

10 A No.

11 Q If this matter should go the estimated ten weeks
12 or so, would it cause you a personal hardship, Mr. Robinson?

13 A Not to my knowledge.

14 Q Have you had any prior criminal jury experience?

15 A At this phase right here.

16 Q This is it?

17 A Right.

18 Q With respect to the death penalty, will you wait
19 until you hear all of the evidence in this case, if it should
20 ever get to the penalty phase, of course; would you wait until
21 you hear all the evidence in this case before you decide
22 whether you are going to impose either life imprisonment or
23 the death penalty?

24 A Most certainly.

25 Q I take it, then, from your answer that there is
26 nothing in your mind that says you are going to automatically,
27 without regard to the evidence, impose either one or the other?

28 A That's right.

1 Q You will wait -- with respect to any pretrial
2 publicity that you may have read or heard or seen regarding
3 Charles Manson and the Manson family and the Tate-LaBianca
4 case, have you formed any opinion with regard or respect to
5 those persons or that group?

6 A Yes.

7 Q And if it should develop, as I have indicated,
8 during this trial that my client is -- was associated with
9 Charles Manson, would that fact, alone, in connection with
10 your opinion, interfere with your giving my client a fair
11 and impartial trial based on the evidence that you hear
12 in this court?

13 A No, I don't think so.

14 Q All right.

15 Would your answers to the general questions that
16 I have asked the other prospective jurors be substantially
17 the same, Mr. Robinson?

18 A Yes, it would.

19 MR. WEEDMAN: I will pass for cause. Thank you.

20 THE COURT: All right. People.

11 21

22

23

24

25

26

27

28

11-1

1 Q BY MR. KATZ: Mr. Robinson, before being called to
2 serve on jury duty did you give some thought to the death
3 penalty in general?

4 A Yes, I have.

5 Q And have you discussed this matter with friends and
6 associates in a general, loose sense?

7 A Most certainly.

8 Q And have you read about the pros and cons of
9 capital punishment in literature?

10 A Yes, I have.

11 Q And after giving some thought, and without giving
12 us your reasons, do you generally oppose capital punishment?

13 MR. WEEDMAN: Excuse me, your Honor. I will object to
14 the question as one which is not material to an inquiry for
15 cause.

16 THE COURT: All right. Let me have the question, Mr.
17 Reporter.

18 (The question was read by the reporter
19 as follows:

20 "Q And after giving some thought,
21 and without giving us your reasons, do you
22 generally oppose capital punishment?")

23 MR. KATZ: If your Honor pleases, your Honor ruled on this
24 before.

25 THE COURT: Well, I think the way it is prefaced, the
26 objection is well taken. If you eliminate "without giving
27 some thought" -- do you generally oppose or approve, I think
28 probably is a proper question. It is a technical objection but

11-2

1 I think probably it is well taken.

2 MR. KATZ: I will reframe it, your Honor.

3 THE COURT: All right. Reframe it. You can ask the
4 same thing.

5 MR. KATZ: Surely.

6 Q Mr. Robinson, are you opposed to capital punishment
7 in general?

8 A In general, yes.

9 Q And would you say that your views concerning
10 capital punishment are firm or deep-seated?

11 A No. It is just not deep-seated, it has been
12 discussed and I am just not totally 100 percent for capital
13 punishment.

14 Q Right. What I am driving at is do you think that
15 your views and opinions concerning capital punishment are such
16 that you would never participate?

17 A No, I don't.

18 Q In a death penalty verdict?

19 A No, I don't.

20 Q All right. And have you asked yourself the
21 question whether or not you, yourself, under certain circum-
22 stances would be able to vote the death penalty?

23 A Since this trial, yes.

24 Q All right. And I take it you have heard my
25 questions over and over again propounded to the prospective
26 members of the panel in this regard, is that correct?

27 A That's correct.

28 Q You started thinking about that, is that right?

11-3

1 A That's right.

2 Q Can you conceive of circumstances in which you,
3 yourself, would in fact vote the death penalty in your sole
4 and absolute discretion?

5 A Under the law, yes.

6 Q All right. Now, you say under the law. Let me
7 just make sure we understand one another. Again the law will
8 give you no guideposts by which to determine which case warrants
9 the death penalty, you understand that?

10 A Uh-huh.

11 Q Sorry, I can't hear you.

12 A Yes, I understand what you are saying.

13 Q In other words, the law is going to set you afloat
14 on a sea with an uncharted course and you are going to be armed
15 only with your heart and your mind and your conscience to
16 determine whether or not this case warrants the imposition of
17 the capital verdict, do you appreciate that?

18 A Yes, I do.

19 Q And knowing that you have a certain general
20 disposition in opposition to capital punishment do you think
21 such disposition would prevent you from exercising your
22 absolute discretion in favor of the death penalty verdict?

23 A No, it doesn't.

24 Q Now, if you will just project yourself some six
25 or eight weeks from this date, for example, and assuming we
26 reach the penalty phase of this trial and that necessitates
27 the return of a first degree murder verdict, you have 11 jurors
28 and they cast a ballot for death. And now you are asked to

11-4

1 cast your ballot. And in your sole and absolute discretion you
2 believe from the evidence in this case that a verdict of death
3 was warranted. Would you have the courage to carry out that
4 conviction knowing that there could be no death penalty without
5 your vote?

6 A Most certainly.

7 Q And if you were sitting in my place at the counsel
8 table and you wanted to have 12 jurors who would have a fair
9 and open mind as to the proper penalty in this case, should
10 that issue be submitted to you, would you be willing to have
11 12 jurors of your same frame of mind sit in judgment on that
12 issue?

13 A Yes.

14 Q I take it your answer would be the same with
15 respect to the defendant?

16 A That's right.

17 Q In that regard, is that correct?

18 A Uh-huh.

19 Q You have heard the discussion in regards to
20 capital -- not capital punishment but circumstantial evidence,
21 have you?

22 A Yes, I have.

23 Q Do you have any quarrel with the rule of law which
24 permits a man to be convicted of murder in the first degree
25 based on circumstantial evidence?

26 A No, I don't.

27 Q I take it you would be willing to convict a person
28 of murder in the first degree based solely upon circumstantial

11-5

1 evidence, assuming that evidence created in your mind an
2 abiding conviction to a moral certainty of the truth of the
3 charge, is that correct?

4 A That's correct.

5 Q Therefore you would not, under those circumstances,
6 require the People to produce an eyewitness to the killing or
7 of the body of the deceased, is that correct?

8 A That's correct.

9 Q You have heard the other questions that I have
10 asked the other prospective members of the panel. Would your
11 answers be substantially the same?

12 A Yes, they would.

13 Q Anything you would like to say to me or to Mr.
14 Weedman which might in some manner, shape or form affect your
15 ability to be fair and impartial?

16 A No, unless you are taking my answer about capital
17 punishment different than I meant to give it to you. No, it
18 wouldn't.

19 Q Is there any way that you would feel that you would
20 like to amplify your answer in that regard?

21 A Yes.

22 Q Would you please do so.

23 A Well, the way I meant it was that although I am
24 generally opposed to capital punishment, if I have to decide a
25 case where capital punishment is the alternative, whether
26 it's -- if it comes to the death phase, then I think that my
27 general feelings would have no affect on my -- my feelings
28 during that phase.

11-6

1 Q I see. Well, you understand that you can take
2 into consideration your general feelings in regard to the
3 death penalty and there is nothing wrong with so doing?

4 A Right.

5 Q And you may decide to exercise your discretion at
6 that point in favor of life. The only thing that we require
7 here is that you don't have such deep-seated feelings in
8 regard to the death penalty that you would automatically on
9 each and every ballot and irrespective of the evidence vote
10 against the death penalty, you understand that?

11 A Yes.

12 Q So that all I am asking you is it's your state of
13 mind that you could give then the People a fair trial on the
14 issue of penalty, is that correct?

15 A Yes.

16 Q And I have asked some questions in regards to the
17 People's burden of proof and I take it you wouldn't require the
18 People to sustain a greater burden of proof in a circumstantial
19 evidence case than that which is required by law, is that right?

20 A No, I wouldn't.

21 Q You wouldn't require the People to demonstrate that
22 degree of proof which excludes all possibility of error and
23 creates absolute certainty in your mind, is that correct?

24 A That's correct.

25 Q Our only burden is to prove the case beyond a
26 reasonable doubt and to a moral certainty, is that fair enough?

27 A Yes.

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

11-7

1 THE COURT: Pass for cause, Mr. Katz?

2 MR. KATZ: Yes. Thank you.

3 Pass for cause.

4 THE COURT: Thank you. Now --

5 MR. KATZ: Defendant's.

6 THE COURT: Is it the defendant's peremptory?

7 MR. WEEDMAN: Yes, your Honor.

8 THE COURT: All right.

9 MR. WEEDMAN: Your Honor, in view -- well, we will thank
10 and excuse Mr. Fujimoto, your Honor.

11 THE COURT: All right.

12 THE CLERK: Mrs. Edith C. Jordan, E-d-i-t-h, middle
13 initial C, last name J-o-r-d-a-n.

14
15 EDITH C. JORDAN

16 BY THE COURT:

17 Q Now, lady, have you heard everything that I have
18 said to the jurors since you came in with the second group of
19 jurors?

20 A Yes, I have.

21 Q And did you hear me read the charge that has been
22 filed against the defendant in this case by the People?

23 A Yes, I did.

24 Q Now, for the moment then let's assume that you were
25 accepted as a juror and you have heard all of the testimony in
26 the case and the court sends you out to decide this case, guilty
27 or not guilty.

28 Now, let us assume, let us say the jury makes a

11-8

1 finding of not guilty. You understand that concludes the case
2 entirely?

3 A Yes.

4 Q You understand that?

5 A Yes.

12

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

Tke 12

1 Q On the other hand, the jury may make a finding
2 of guilty as charged.

3 That is clear to you?

4 A Yes.

5 Q Now, if the jury finds the defendant guilty as
6 charged, then the jury must make a finding of the degree,
7 first degree murder or second degree murder. If the jury finds
8 second degree murder, then the jury's duties are all concluded
9 and you are excused, you are through. However, if the jury
10 makes a finding of first degree murder, then there is a
11 subsequent penalty hearing held and at the conclusion of that
12 hearing -- it may be a little easier, even, to put a trial,
13 if that makes it any easier to visualize what happens --
14 before the same jury right there; then at the end of that
15 hearing or trial the court sends the jury back to the jury
16 room to decide the penalty.

17 The jury may decide the penalty to be the death
18 penalty or it may decide the penalty to be life imprisonment.
19 Now, that is entirely up to the jury. I, as a judge, have
20 nothing at all to do with it nor do I attempt to in any way
21 have anything to do with what the jury has todo with penalty;
22 just like you find as to who is guilty or not, that is your
23 duty and I have no right to even talk about it or infer any
24 way, and I certainly would make no effort to do so.

25 Now that we are back to the penalty hearing, let's
26 suppose you are voting on the question of the death penalty
27 or life imprisonment. Now I will ask you at this point this
28 question: if at that time you would automatically vote against

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

4 A No, I wouldn't.

5 Q The answer is "No"?

6 A No.

7 Q Thank you.

8 Now, the next question I will ask you, do you know
9 of any reason at all that you could not be fair and impartial,
10 if you are selected to try this case as a juror?

11 A No.

12 Q Thank you.

13 Now, one more question, which is substantially the
14 same question I have just asked you: do you know of any situa-
15 tion that might occur or anything that might happen during the
16 trial of the case that might disturb you or upset you in such
17 a way that you could not be fair and impartial in trying the
18 case, and would prevent you from keeping your mind open and
19 free and that you would remain in that position; that is,
20 no matter what would happen, if anything would, you would not
21 be disturbed and you could have an open mind in the trial of
22 the case?

23 Is there anything liable to happen that you know
24 of that would disturb you, upset you, prevent your undivided
25 attention to the testimony at the trial of the case?

26 A Not that I know of.

27 THE COURT: All right; thank you, lady.

28 The defendant may inquire.

MR. WEEDMAN: Thank you, your Honor.

1 Q Are you employed?

2 A Yes, I am.

3 Q May I ask what you do?

4 A Clerk for the Tax Assessor's office.

5 Q Pardon me?

6 A Clerk, Tax Assessor's office.

7 Q That is what I was afraid you said -- well --
8 and is there a Mr. Jordan, what does he do for a living?

9 A Steelworker.

10 Q Would this case cause you any personal hardship
11 if it were to last another eight weeks?

12 A No, I have been excused from my job for about two
13 months beginning with the first of the month.

14 Q Have you had any prior criminal jury experience,
15 Mrs. Jordan?

16 A No, I haven't.

17 Q With respect to the problem of the death penalty,
18 you understand, as we have been talking about it all along,
19 we are talking about it not to emphasize it so much but because
20 this is the only opportunity that we have to discuss that,
21 at least theoretically, we hope, theoretical possibility.

22 I take it that you would not impose either penalty,
23 if it ever gets to that point, without a full consideration of
24 all of the evidence that is introduced in this case?

25 A Yes.

26 Q That's correct, isn't it?

27 A Right.

28 Q Have you formed any opinion as a result of having

1 read anything about the Charles Manson family, that group
2 of persons?

3 A No, I haven't.

4 Q Is there anything you may have learned in connection,
5 or may have read or heard in that regard that might interfere
6 with your giving my client a fair trial based on just the
7 evidence in this case?

8 A No.

9 Q Is there anything at all about this case, Mrs.
10 Jordan, that makes you feel that you cannot just sit back and
11 not be an advocate for either side, but just sit back and
12 carefully and objectively go over the evidence?

13 A No.

14 MR. WEEDMAN: All right; thank you, ma'am, I have
15 nothing further.

16 THE COURT: People?

17 MR. WEEDMAN: Pass for cause, your Honor.
18
19
20
21
22
23
24
25
26
27
28

1 BY MR. KATZ:

2 Q Mrs. Jordan, before being called to serve upon
3 jury duty, have you given thought to the death penalty?

4 A Yes, I have.

5 Q And can you tell us, without giving us your
6 reasons therefor, whether or not you are opposed to capital
7 punishment in general?

8 A Yes.

9 Q And have you arrived at these thoughts after a
10 course of a lot of thinking and consideration of that issue?

11 A Yes.

12 Q All right; and do you think that your views are
13 such, in all candor, that they would prevent you from personally
14 participating in a death penalty verdict?

15 A They might be.

16 Q All right.

17 Now let me ask you if you will consider this situa-
18 tion, and I have posed this situation to each and every
19 prospective juror who has been asked to sit behind the railing --
20 that is, in the jury box -- first, let me preface this question
21 with this observation: you appreciate the distinction between
22 a belief that capital punishment under certain circumstances
23 is justified, and on the other hand, personally participating
24 and voting the death penalty, yourself; is that correct?

25 A Yes.

26 Q You see the distinction between those two?

27 What we are saying, on the one hand, is, "I approve
28 in general of capital punishment under certain circumstances,

1 but let somebody else do it," and, on the other hand, saying,
2 "My gosh, I am being asked to make the decision as to whether
3 or not another human being shall live or die. I don't want
4 to make that kind of decision, I can't make that kind of
5 decision."

6 Do you see the distinction between those two
7 situations?

8 A Uh-hmm.

9 Q All right.

10 Now, I want you to think very carefully about how
11 you feel about the death penalty. You know better than
12 anybody else.

13 With this in mind, do you think that you, yourself,
14 would be willing to vote the death penalty and live with that
15 verdict for the rest of your life?

16 A No, I wouldn't.

17 Q All right.

18 Is it a fair statement, after you have given it
19 some thought, that under no circumstance and regardless of
20 the evidence in this case before you, would you vote the
21 death penalty?

22 A Yes.

23 Q And is there any doubt in your mind as to that?

24 A No.

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

26 I thank the juror for her candor and challenge
27 for cause under 1073.2 and 1074.8 of the Penal Code.

28 MR. WEEDMAN: Well, your Honor, in view of Mrs. Jordan's

1 answers that -- that is, all of her answers, I would
2 appreciate a few more questions in regard to the death penalty.

3 THE COURT: All right.

4 Q BY MR. WEEDMAN: Mrs. Jordan, you understand that
5 the law expresses no preference either for the death penalty
6 or for life imprisonment.

7 Do you understand that?

8 A Um-hmm.

9 Q Would you answer out loud so the reporter can
10 write it down?

11 A Yes.

12a

12a-1

Q And you understand that the defendant is entitled to have persons on the jury during the penalty phase who, indeed, may well be opposed to capital punishment; but all the law requires, in fairness to the People, is that all of the jurors at least be willing to consider the imposition of capital punishment --

MR. KATZ: Excuse me, your Honor; I am going to object to that question with respect to the ambiguity of the ^{word} "consider"; they must be willing under certain circumstances to consider it.

THE COURT: Overruled.

Maybe you can reframe it a little bit differently. I think you might restate it a little differently, it might help some.

MR. WEEDMAN: I will try, your Honor.

Q You understand that it is solely within the absolute discretion of each individual juror in the penalty phase as to what punishment they are going to vote for?

A (Nodding affirmatively.)

Q And all the law requires is that you at least not automatically vote against capital punishment, irrespective of the evidence; do you understand that?

A Yes.

Q Are you telling us, Mrs. Jordan, that no matter what the evidence is you will automatically vote against the death penalty?

A Well, I'm against capital punishment, so I guess I would say "Yes."

12a-2

1 THE COURT: May I ask that again? I want to get that.

2 MR. WEEDMAN: Yes.

3 THE COURT: I am going to ask the same question counsel
4 did; there will be very little difference, it is to the same
5 point.

6 Q Now, you try and answer this yes or no, so we can
7 get a clean-cut answer, if you will: would you automatically
8 vote against the death penalty -- against the death penalty --
9 no matter what the testimony in this case was?

10 Would you just automatically vote against the
11 death penalty, no matter what the testimony or evidence in this
12 case was?

13 A No.

14 Q The answer is "No"; is that correct?

15 A Yes.

16 THE COURT: Well, I will deny the motion for cause on the
17 lady. Denied.

18 MR. KATZ: May I continue my questioning now?

19 THE COURT: Where were we?

20 MR. KATZ: I was questioning the juror.

21 THE COURT: The People.

22 BY MR. KATZ:

23 Q Mrs. Jordan, you have given several answers and I
24 am somewhat confused as to your state of mind concerning your
25 ability, your willingness under certain circumstances to
26 participate in the death penalty verdict.

27 Just for the sake of my own clarification, as you
28 examine how you think, how you feel about the death penalty,

12a-3 1 are you telling us that you would not automatically vote
2 against the death penalty or are you telling us that you would
3 automatically vote against the death penalty, irrespective of
4 the evidence?

5 What is your state of mind in that regard?

6 A I said I would not automatically vote against it.

7 Q So that means that you can conceive of circumstances
8 in which you could personally participate in a death penalty
9 verdict; is that what you are saying?

10 A Yes, it is.

11 Q And you have heard the discussion that I have had
12 with regard to circumstantial evidence; is that correct?

13 A Yes, I have.

14 Q And would your answers be substantially the same
15 as the other jurors who have answered those questions?

16 A Yes.

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

18 Pass for cause.

19 THE COURT: All right, now, gentlemen, let's see -- I
20 need some correction here -- but, back to People, are we, on
21 peremptory?

22 MR. KATZ: I believe it is the People's peremptory.

23 MR. WEEDMAN: That's correct.

24 THE CLERK: That's correct, your Honor.

25 THE COURT: Who is it?

26 MR. WEEDMAN: I believe it is the People.

27 THE COURT: All right.

28 MR. KATZ: Thank and excuse Mrs. Jordan.

29 THE COURT: Thank you, lady.

13-1

12

1 THE CLERK: Mrs. Evelyn F. Tucker, first name E-v-e-l-y-n,
2 middle initial F., T-u-c-k-e-r.

3 THE COURT: Thank you.

4
5 EVELYN F. TUCKER

6 BY THE COURT:

7 Q Now, Mrs. Tucker, I take it you have been here in
8 the courtroom at all times since you were sent over with the
9 second grouping of jurors?

10 A Yes.

11 Q The other day. Have you heard everything I have
12 said to the jury?

13 A Yes.

14 Q And did you hear me read the charge that has been
15 filed or preferred against the defendant in this case?

16 A Yes.

17 Q The indictment. Now, let's assume that you have
18 been selected as a juror in this case and you have tried the
19 lawsuit, you have tried the case. The court sends you to the
20 jury room with the other jurors to decide guilty or not guilty.
21 The jury could make a finding of not guilty at that time, which
22 would conclude the case entirely.

23 The jury could make a finding of guilty. If the jury
24 makes a finding of guilty then the jury must find the degree of
25 the guilt, murder first degree or murder second degree. That is
26 clear to you?

27 A Yes.

28 Q Up to that point. If the jury makes a finding of

1 second degree murder then that concludes the duties of the jury
2 in its entirety, you are excused and with thanks. However, if
3 the jury makes a finding of first degree murder then there must
4 be held a further, additional hearing called the penalty hearing.
5 And at that hearing the jury finds or directs what the penalty
6 will be, either the death penalty or life imprisonment.

7 Now, you are clear on the machinery up to that
8 point?

9 A Yes.

10 Q Now, let's assume that we are up to the point where
11 the jury is voting on the question of a penalty, either the
12 death penalty or life imprisonment. Now, I will ask you if at
13 that time you would automatically vote against the imposition
14 of the death penalty without regard to any evidence that might
15 be developed at the trial of this case before you?

16 A Yes, I would.

17 Q You would automatically vote against the imposition
18 of the death penalty, is that right?

19 A Right.

20 Q Is that correctly stated?

21 A That's correct.

22 Q Is there any question in your mind about your
23 feeling in the matter?

24 A No, there isn't.

25 THE COURT: Well, gentlemen, I think I will excuse this
26 lady.

27 I will excuse you and thank you very much, lady.

28 MR. KATZ: I take it the court, your Honor --

1 THE COURT: Then you can call another juror.

2 MR. KATZ: Yes, your Honor. I take it the court is
3 excusing the juror --

4 THE COURT: Yes, you are right. I should do that.
5 I forgot.

6 You can go, though, or you can stay if you want to,
7 lady.

8 The court finds that excuse for cause -- an
9 exemption for cause or exercising for cause exists under the
10 People against Witherspoon as well as code sections 1073
11 subdivision 2 and 1074 subdivision 8 of the Penal Code exists
12 and I so find.

13 Now, you can go ahead. Thank you very much.

14 THE CLERK: Yes, sir, your Honor.

15 Mr. Richard E. Oldaker, R-i-c-h-a-r-d, middle
16 initial E., last name spelled O-l-d-a-k-e-r.

17
18 RICHARD E. OLDAKER

19 BY THE COURT:

20 Q Now, I will ask you if you have been in the court-
21 room since you came over in the second assignment of jurors to
22 this court?

23 A Yes, sir.

24 Q Have you heard everything I have said while you
25 were in the courtroom?

26 A I have.

27 Q And you heard me read the charge that has been filed
28 against the defendant in this case?

1 A I have.

2 Q All right. Let's assume you have been selected as
3 a juror in this case and that the case has been tried. You go
4 to the jury room to decide guilty or not guilty.

5 At that time the jury can make a finding of not
6 guilty which would conclude the case entirely.

7 The jury could make a finding of guilty, and in that
8 event the jury would set the degree of the guilt. That would
9 be murder first degree or murder second degree.

10 If the jury makes a finding of second degree murder
11 then there is no further duties required of the jury, they are
12 excused.

13 If the jury makes a finding of first degree murder
14 then there is held right away a penalty hearing. And after the
15 penalty hearing the jury then determines what the penalty is
16 or directs the penalty. The direction is either that of death
17 or that is to say the penalty is either that of death, the jury
18 determines the penalty to be either death or life imprisonment.

19 Now, if you assume that you are in a position of
20 determining penalty, I will ask you if you would automatically
21 vote against the imposition of the death penalty without regard
22 to any evidence that might be developed at the trial of this
23 case before you?

24 A I would, yes.

25 Q You would not?

26 A I would.

27 Q You would. All right. Is there any question in
28 your mind about that feeling?

1 A No, sir.

2 THE COURT: Thank you.

3 Gentlemen, I think I will excuse this juror without
4 further questions.

5 MR. WEEDMAN: Yes, your Honor.

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

7 THE COURT: You are excused. I thank you very much.

8 And you can call another juror when you are ready.

9 MR. KATZ: Again, will your Honor state the grounds.

10 THE COURT: Pardon me?

11 MR. KATZ: Would your Honor kindly state the grounds
12 again.

13 THE COURT: Oh, yes.

14 MR. KATZ: Thank you.

15 THE COURT: You are right. I will have to have your
16 assistance here.

17 MR. KATZ: Thank you, your Honor.

18 THE COURT: The court finds that for cause exists and
19 excuses the juror under the doctrine of Witherspoon as well as
20 section 1073, subdivision 2 of the Penal Code and 1074,
21 subdivision 8 of the Penal Code.

22 All right. Go ahead, and we will call another
23 juror and we will take a short recess after you get the juror.

24 THE CLERK: Gretchen Sterling. Is that Miss or Mrs.,
25 please?

26 MRS. STERLING: Mrs.

27 THE CLERK: Mrs. Gretchen, first name spelled G-r-e-t-c-h-
28 e-n, last name spelled S-t-e-r-l-i-n-g.

1 THE COURT: Now, we have the lady in the jury box.

2 Let's take a short recess and we will go right
3 ahead.

4 Do not discuss the case or come to any opinion or
5 conclusion.

6 We will go ahead in just a few minutes.

7 Thank you.

14 8 (Recess.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The 14¹

THE COURT: Well, all right.

Now, gentlemen, we will proceed again; People against Steve Grogan. The defendant is here and both counsel are here and the jurors are back in the jury box.

Where is that new juror -- there we are.

MR. KATZ: Mrs. Gretchen Sterling.

GRETCHEN STERLING

BY THE COURT:

Q Now, lady, you are part of the second group of jurors that came in; is that right?

A Yes, I am.

Q Since the time that you arrived here have you heard everything I said to the jury in the course of these proceedings?

A Yes, your Honor.

Q Did you hear me read the charges that have been read against the defendant?

A Yes.

Q All right.

Now, I am going to ask you to assume that you have been selected as a juror in this case and the case has been tried, the jury goes to the jury room; at that time the jury may make a finding of not guilty as charged, which concludes the case entirely.

The jury may make a finding of guilty as charged, and if the jury finds the defendant guilty, then the jury must set the degree. It may set the degree second degree, it may

1 set the degree first degree. If the jury makes a finding
2 of second degree murder, that concludes the case entirely
3 as far as the jury is concerned.

4 If the jury makes a finding of first degree murder,
5 then there is a further hearing held called a penalty hearing,
6 in which the jury determines what the penalty is; and the
7 penalty at that time would be either the death penalty or
8 life imprisonment; that determination is made by the jury.

9 Now, if you will assume that you are in a position
10 where the penalty feature is being voted upon, I will ask
11 you this question: at that time, as a juror, would you
12 automatically vote against the imposition of the death penalty
13 without regard to any evidence that might be developed at
14 the trial of this case before you?

15 A No, I wouldn't.

16 Q All right.

17 Now I will ask you this further question: do you
18 know of any reason at all that you could not be fair and
19 impartial if you are selected to try this case as a juror?

20 A No, I don't.

21 Q You realize in being fair and impartial you must
22 be fair and impartial to both parties here -- we have two
23 parties; I am a third wheel, I am not a party -- but the
24 plaintiff and defendant, they are the two parties and you are
25 the judge.

26 You understand?

27 A Yes.

28 Q You judge the facts, you take over entirely, I am

14-3

1 out and you are in and you decide the facts in this case
2 and I will supplement the last question by adding a little
3 more to it; do you know anything at all that might transpire
4 during the course of the trial if you are a juror that would
5 upset you, annoy you, disturb you so that you could not be
6 free and impartial with an open and clear mind during the
7 trial of this case?

8 A No, I can't.

15

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

The 15

1 THE COURT: Thank you. The defendant may inquire.

2 MR. WEEDMAN: Thank you, your Honor.

3 THE COURT: All right.

4 BY MR. WEEDMAN:

5 Q Mrs. Sterling, are you employed?

6 A Yes, I am.

7 Q What, may I ask, do you do?

8 A I am a secretary for First Western Bank.

9 Q How about Mr. Sterling?

10 A Mr. Sterling is a supply man for Pacific Telephone.

11 Q Is there anything about the estimated length of
12 this trial that would cause you any personal hardship, that
13 is, about ten weeks?

14 A No.

15 Q Are you related to or do you have any close friends
16 in law enforcement?

17 A No.

18 Q Is there anything about the testimony of police
19 officers that you would treat differently than you would the
20 testimony of other officers -- other witnesses merely because
21 they are police officers?

22 A No.

23 Q One thing further. Have you any prior criminal
24 jury experience?

25 A No.

26 Q You understand, Mrs. Sterling, that the prosecution
27 of course has the burden of proof and that they will commence
28 the trial. That is, they will put on, as we understand, quite

15-2

1 a number of witnesses. And it isn't until the prosecution
2 has put on its case that the defense finally has an opportunity
3 to put on its case.

4 A Yes.

5 Q Okay. Will you particularly not even begin to
6 make up your mind about the evidence until you rather
7 obviously have heard both sides?

8 A That's correct.

9 Q Okay. And indeed not really begin to make up
10 your mind until you have heard the court's instructions and
11 until you have retired to the jury room?

12 A Yes.

13 Q And begun deliberations, of course. And will
14 you appreciate that during the course of the trial each side
15 has an opportunity to cross-examine witnesses produced by
16 the opposite side?

17 A Yes.

18 Q Okay. Will you understand that each of us,
19 Mr. Katz and myself, are obligated to cross-examine witnesses
20 that are produced here by the opposite side?

21 A Yes, I do.

22 Q Okay. Will you not hold it against either myself
23 or Mr. Katz because we appear to be perhaps by our questions
24 attacking a witness's credibility?

25 A No, I won't hold it against you.

26 Q Okay. Fine. Is there anything at all about this
27 case that makes you feel that you couldn't give my client the
28 kind of fair trial that he is entitled to and the kind of fair

1 trial that the People are entitled to?

2 A No, I don't think so.

3 MR. WEEDMAN: All right. Thank you so much. We will pass
4 for cause.

5 THE COURT: Thank you. People.

6 MR. KATZ: Yes, your Honor.

7 Q Mrs. Sterling, what about circumstantial evidence?
8 Do you think it is fair that a person can be convicted of
9 murder in the first degree based upon circumstantial evidence?

10 A I don't know if it is fair but California says
11 it is, so therefore I have to abide by it.

12 Q All right. Do you have any feelings moral or
13 otherwise, against the use of circumstantial evidence to support
14 a murder conviction?

15 A No.

16 Q Do you think it is unfair that the People are not
17 required, for example, to produce an eyewitness to the killing
18 or a body or any parts thereof?

19 A No.

20 Q All right. Do you accept wholeheartedly the
21 principle that in California a man may be convicted of murder
22 in the first degree without production of the body or an
23 eyewitness to the killing or an eyewitness having observed
24 the body in death?

25 A Yes, I do.

26 Q Do you believe that it is possible, for example,
27 to secrete or hide a body so that it may never be found again?

28 A Yes.

1 Q You understand that certain crimes by their very
2 nature are just not committed in public in front of witnesses;
3 you understand that?

4 A Yes.

5 Q The law contemplates therefore that the People can
6 prove a crime based wholly upon circumstantial evidence, is
7 that correct?

8 A Yes.

9 Q You heard the examples that we have given to
10 illustrate the principles of circumstantial evidence, have you
11 not?

12 A Yes, I have.

13 Q I take it you certainly understood them, did you?

14 A Yes.

15 Q You understand that in your everyday life you
16 yourself apply circumstantial evidence and draw inferences from
17 facts which are proven to you, isn't that right?

18 A Yes.

19 Q I take it you would have no hesitancy in drawing
20 reasonable inferences from facts that are proven to you in
21 the course of this trial if selected as a juror, is that
22 correct?

23 A That's correct.

24 Q If all of those reasonable inferences pointed to
25 guilt of the defendant and that was the only reasonable
26 inference, and that reasonable inference created an abiding
27 conviction to a moral certainty of the truth of the charge,
28 I take it you would properly discharge your duty as a juror and

1 vote guilty; is that right?

2 A Yes, I would.

3 Q Now, have you given some thought to the death
4 penalty prior to being called as a juror?

5 A Yes.

6 Q And have you discussed with your friends and
7 perhaps associates?

8 A Yes, I have.

9 Q And without telling us your reasons are you
10 generally opposed to capital punishment?

11 A No.

12 Q And do you believe that it is justified under
13 certain circumstances?

14 A Yes, it can be.

15 Q And do you believe you can be equally fair both to
16 the People and to the defendant with regard to the proper
17 penalty in this case should the jury be called upon to determine
18 that issue?

19 A Yes.

20 Q You realize as you sit here now if you had such a
21 state of mind that under no circumstances would you yourself
22 be willing to vote the death penalty, there could be no death
23 penalty in this case; is that correct?

24 A Yes, I understand that.

16-1

1 Q And it follows, therefore, that the People could
2 not get a fair trial on that issue if such issue was submitted
3 to the jury, is that correct, assuming that you had that state
4 of mind?

5 A All right, yes.

6 Q All right; but because without your vote, for
7 example, even though 11 voted for death, if you were of a
8 frame of mind that under no circumstance and regardless of the
9 evidence would you vote for death, then, of course, the People
10 cannot get a fair trial on the issue of the penalty; isn't
11 that right?

12 A Yes.

13 Q You heard me state at the outset when you first
14 came into the court that should we reach the penalty phase of
15 this trial the People will deliberately prevail upon the jury
16 to return a verdict of death in this case.

17 You understand that?

18 A Yes.

19 Q And by that candid disclosure do you hold any ill
20 will towards the prosecution or believe that we are blood
21 thirsty?

22 A No.

23 Q All right.

24 You understand that just like Mr. Weedman, who is
25 doing a fine job of representing his client, I am trying to do
26 the best I can in representing our side. You understand?

27 A Yes.

28 Q How about that mythical situation that we have been

16-2 1 posing to all of the jurors in connection with the death
2 penalty: you are in the jury room now, there has been a return
3 of a first degree murder verdict, you have heard all of the
4 evidence in the case, including, perhaps, some evidence in
5 mitigation, if any, or aggravation of the offense, further
6 evidence showing what kind of person Mr. Grogan is, his back-
7 ground, his history; and after consideration of all of these
8 and you believe in your sole and absolute discretion this
9 case warrants a return of the death penalty verdict, 11 persons
10 have now cast their ballot for death and you are sitting there
11 now and you are asked to vote, you know that if you vote that
12 you have only yourself to blame with respect to the death
13 penalty because there can be no return of the death penalty
14 without your vote, and you know that you have to live with
15 this for the rest of your life, could you vote your conscience
16 and vote the death penalty if you thought it was warranted?

17 A Yes, if I firmly believed in it.

18 Q All right.

19 Perhaps it is appropriate once again to mention
20 just very briefly in passing the fact that the personality of
21 the attorneys has absolutely nothing whatsoever to do with the
22 merits of this case; isn't that correct?

23 A Yes.

24 Q Because, unfortunately, as we go on day in and day
25 out and ask the same questions, you are probably asking, "Why
26 is Mr. Katz asking that same dumb question again?" and you are
27 getting tired of hearing these same questions; and we appre-
28 ciate that this can weigh very heavily on the people who have

1603 1 to listen day in and day out and I am sure you will agree with
2 me that we don't like to go on day in and day out asking the
3 same questions, but I am sure in that spirit you will judge the
4 case; that is, the guilt or innocence of the defendant, based
5 just on the evidence here, without regard to how I dress or how
6 I look or what posture I assume or how Mr. Weedman articulates.
7 In other words, those things are extraneous, artificial factors
8 that have nothing to do with the case; isn't that right?

9 A Yes.

10 Q And if the case warrants it, in your opinion, and
11 creates in your mind an abiding conviction to a moral certainty
12 to the truth of the charge, you will vote guilty even though
13 you may not like myself or, perhaps, an officer who may be
14 seated by me; is that correct?

16a 15 A That's right.

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q I am hoping that won't be the case, but I am just
2 suggesting this as a possible consideration.

3 Now, if his Honor instructs you that in the guilt
4 phase your verdict cannot be influence by any sympathy you may
5 have for the defendant or passion or prejudice against the
6 defendant, would you unhesitatingly follow that instruction?

7 A Yes, I would.

8 Q I take it you would not accord -- that is, give to
9 this defendant -- some benefit which you would not give to any
10 other defendant who has found himself in the same similar
11 circumstances; is that correct?

12 A That's correct.

13 Q In other words, you abide and believe in the
14 principle of law that says that all persons are equal under the
15 law; is that correct?

16 A That's right.

17 Q And can you think of any reason why you could not
18 be fair and impartial to both sides?

19 A No.

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

21 Pass for cause.

22 THE COURT: All right.

23 MR. KATZ: Defendant's peremptory, your Honor.

24 MR. WEEDMAN: Thank and excuse Mr. Jinowsky. Thank you,
25 Mr. Jinowsky.

26 THE CLERK: Mrs. Nettie E. Emanuel; N-e-t-t-i-e, middle
27 initial E., last name spelled E-m-a-n-u-e-l, Mrs.

28 THE COURT: Maxwell?

1 THE CLERK: Emanuel, your Honor; Mrs. Emanuel.

2
3 NETTIE E. EMANUEL

4 BY THE COURT:

5 Q Now, lady, you heard everything I said to the
6 jurors since you came in with the second group of jurors?

7 A Yes, sir.

8 Q Did you hear me read the charge that has been filed
9 against the defendant?

10 A Yes, sir.

11 Q Now, will you please assume that you have been
12 selected as a juror in this case and we have tried the case,
13 the jury goes to the jury room to make a finding of either
14 guilty or not guilty.

15 Now, at that time the jury could make a finding of
16 not guilty, and that would conclude the case entirely.

17 On the other hand, the jury could make a finding of
18 guilty as charged. If the jury makes a finding of guilty as
19 charged, the jury must set the degree, second degree murder,
20 first degree murder.

21 If the jury makes a finding of second degree murder,
22 then that would conclude the case as far as the jury is
23 concerned; no further proceedings as far as the jury is
24 concerned.

25 If the jury makes a finding of first degree murder
26 there are further proceedings, which is known as the penalty
27 phase of the trial; and as a result of the penalty hearing the
28 jury must make a finding on penalty, of either the death

1 penalty or life imprisonment.

2 Now, please assume that you are on the jury and we
3 are up to the position of having had the penalty hearing and
4 you are in the jury room deciding on the penalty.

5 Now, I will ask you to assume that situation and I
6 will ask if at that time you would automatically vote against
7 the imposition of the death penalty without regard to any
8 evidence that might be developed at the trial of this case
9 before you?

10 A No.

11 Q All right, thank you.

12 I will ask you this question: do you know of any
13 reason at all that you could not be fair and impartial if you
14 are selected to try this case as a juror?

15 A No.

16 Q All right, and one further question: do you know
17 of anything that might occur or any factual situation that might
18 arise or any problem that might arise to you during the course
19 of the trial that would disturb you or affect you so that you
20 couldn't be fair and impartial and keep your mind open during
21 the trial of this case?

22 A No.

23 THE COURT: Thank you.

24 Defendant may inquire.

25 MR. WEEDMAN: Thank you, your Honor.

26 Q Mrs. Emanuel, are you employed?

27 A Yes, I am.

28 Q May I ask what you do for a living?

1 A I work for the California Bank; I am a reconcile
2 account auditor, in the correspondent bank services.

3 Q Whatever that may be --

4 A It is a clerical job.

5 Q I am not derogating you at all -- I see; I suppose
6 lawyers should know something about that, but I don't know
7 the foggiest thing about that. Even my own checking account is
8 in bad shape.

9 A We do the checking on other banks that deal with
10 us; we balance the checking accounts with other banks to see
11 that we get what is due us and they get what is due them.

Tke 17

1 Q Now, the mere fact if you are selected that
2 you have a banker in the back row, Mr. McGregor of the Bank
3 of America wouldn't mean that you two might team up and
4 just by virtue of the fact that you are both in the banking
5 business, would you?

6 A No.

7 Q All right. Fine, okay, Mrs. Emanuel, first of all,
8 what about Mr. Emanuel?

9 A I am divorced.

10 Q I see. What did he do?

11 A He worked for Anchor Hocking Glass Company.

12 Q I see. Okay. Are you related to or do you have
13 any close friends in law enforcement?

14 A Yes, I have a son in Pittsburgh, Pennsylvania
15 who is a policeman.

16 Q Do you think that that relationship might --

17 A Oh, no.

18 Q -- make it difficult for you to fairly appraise
19 whatever testimony there may be here from police officers?

20 A No.

21 Q Okay. Do you understand that police officers can
22 be just as mistaken as the rest of us?

23 A Oh, sure.

24 Q They can also be as accurate as the rest of us?

25 A That's right.

26 Q You understand that one of the many tests that it
27 is appropriate to use in evaluating not only whether a witness
28 is telling the truth but the quality of the testimony is

17-2
1 their interest in the case?

2 A That's right.

3 Q If any. That is one of the things that you would
4 presumably reflect upon, would you not?

5 MR. KATZ: Excuse me, your Honor. I would object to
6 counsel picking specific characteristics that they may or
7 may not consider in regards to a person's testimony.

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

9 MR. WEEDMAN: To expedite, I will withdraw the question.

10 THE COURT: Do you want to revamp it?

11 MR. WEEDMAN: I will withdraw the question and go into
12 another area, your Honor.

13 THE COURT: All right.

14 Q BY MR. WEEDMAN: With respect to the death penalty
15 do you feel that there are some murder cases in which you
16 would automatically impose the death penalty irrespective of
17 the evidence?

18 A No.

19 Q Would you always, as far as you can tell, would you
20 always wait until you heard all of the evidence in a case before
21 you even began to make up your mind about penalty?

22 A That's right.

23 Q Okay. That would be the only fair thing to do,
24 I am sure you would agree?

25 A That's right.

26 Q Have you formed any opinion with respect to the
27 Charles Manson family or Charles Manson group based on anything
28 you may have heard or read or discussed?

17-3

1 A Not that would hinder my being a juror, I don't
2 think. I think everybody forms opinions. But I would have to
3 hear the testimony in this case to know.

4 Q I take it then that if you are not convinced that
5 the People have proven a case you don't care whether my client
6 is a member of the Manson family or not?

7 A That's right.

8 Q Have you had prior criminal jury experience?

9 A I have never been on a jury before in my life.

10 Q So this is all pretty new to you?

11 A This is all new to me.

12 Q Okay. I am sure then you will bear with both
13 counsel and appreciate that we both have a job to do here
14 and for example accept the matter that I was discussing
15 a moment ago with Mrs. Sterling, that it is necessary for us
16 to cross-examine most of the witnesses?

17 A Oh, yes.

18 Q And I am sure that you are going to wait, particu-
19 arly wait before you form any impression at all with respect
20 to a witness's testimony until you have heard the cross-
21 examination of the witness as well?

22 A Yes.

23 Q You appreciate that cross-examination is one way
24 in which we sometimes get between the lines of the testimony
25 on direct and very often the entire complexion of a witness's
26 testimony is changed when you have heard it all?

27 A That's right.

28 Q Finally, I take it that you will wait obviously,

17-4

1 wait until you hear all of the evidence in this case before
2 you begin to make up your mind about whether my client is
3 guilty or not?

4 A That's right.

5 Q Bearing in mind that because of the duration of
6 this trial you may hear nothing, essentially, but prosecution
7 witnesses, that may be all that you will hear for several
8 weeks. You won't really be hearing from us at all except by
9 way of cross-examination. Will you be able to wait until
10 you hear our side of this case?

11 A Oh, sure.

12 MR. WEEDMAN: All right. We will certainly pass for cause
13 and thank you, ma'am.

14 THE COURT: Very well. People.

15 MR. KATZ: Yes. Thank you.

16 Q Mrs. Emanuel, I am sure you recognize the fact
17 that many people in this world hate to make decisions?

18 A Yes, I do.

19 Q And sometimes it's easy to make decisions and
20 other times it's rather difficult; isn't that true?

21 A That's right.

22 Q And many times we have to make decisions we don't
23 like to make ~~and~~ because of the unpleasantness of the
24 consequences of making a decision, isn't that right?

25 A That's right.

26 Q And do you realize that if selected as a juror here
27 you would be asked to make perhaps some of the most important
28 decisions you have ever made in your life, isn't that right?

17-5

1 A That's right.

2 Q And as a matter of fact you may have to or be
3 called upon to make a decision as to whether or not another
4 person, that is another human being will live or die; isn't
5 that right?

6 A That's right.

7 Q There are some people that just would rather not
8 bear up to that kind of responsibility to that kind of
9 decision-making, and that isn't a sign of weakness at all,
10 it is just a preference that an individual person may have.

11 As you sit here now, do you think you would be
12 up to the responsibility of determining whether or not another
13 person should live or die if you were called upon to do so?

14 A Oh, yes.

15 Q All right. And prior to being called for jury
16 duty had you given some thought to the death penalty?

17 A Yes, I have.

18 Q And without telling me your reasons, are you
19 generally opposed to capital punishment or do you believe
20 that capital punishment is properly on the books in California?

21 A I think it is necessary in some cases.

22 Q All right. I take it by that answer you are not
23 telling us that you would automatically, irrespective of the
24 evidence, vote the death penalty; is that correct?

25 A No.

26 Q I take it that equally on the other side there are
27 circumstances which you can envision in which you yourself
28

17-6

1 would be willing to personally participate in the death
2 penalty verdict?

3 A That's right.

17a

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

17a-1

1 Q However distasteful it might be, is that right?

2 A (Nodding head affirmatively.)

3 Q Before making a decision as to whether or not
4 Mr. Grogan should live or die, assuming there is a return of a
5 first degree murder verdict and this is an issue presented to
6 you, would you wait to hear what other additional evidence in
7 mitigation or such evidence in aggravation of the offense and
8 perhaps evidence showing the background, the history of the
9 defendant before making a decision of the proper penalty in
10 this case?

11 A Yes, I would.

12 Q Would you be willing to discuss the propriety of
13 the death penalty, by that I don't mean the pros and cons of
14 capital punishment, but whether or not a death penalty is
15 warranted in this case, with the other jurors based upon the
16 evidence which unfolds during the course of this trial?

17 A Yes.

18 Q And we have had a very long discussion concerning
19 circumstantial evidence over the past four or five days.
20 Indeed with the first panel over the past two weeks. You heard
21 the examples that were given in that connection, is that
22 correct?

23 A That's right.

24 Q I take it you understood these examples?

25 A Yes.

26 Q You agree with the principle that you really apply
27 circumstantial evidence to your everyday daily affairs, don't
28 you?

17a-2 1

A Yes, I do.

2

3

Q You wouldn't be hesitant to draw reasonable inferences from facts that are proven to you, is that right?

4

A That's right.

5

6

7

8

Q If those reasonable inferences pointed to guilt of the defendant and they created in your mind an abiding conviction to a moral certainty of the truth of the charge you would not hesitate to vote guilty, is that correct?

9

A That's right.

10

11

12

13

14

15

Q I take it you have no quarrel with the principle that permits a person in this state to be convicted based wholly on circumstantial evidence without production of a body, eyewitness to the killing or an eyewitness to having observed the body in death, is that correct?

18 16

17

18

19

20

21

22

23

24

25

26

27

28

A That's right.

18-1

1 Q I take it you would not require the People to
2 produce such evidence in order to vote guilty, assuming that
3 the evidence otherwise met our burden in law; is that right?

4 A That's right.

5 Q And I don't know if this was asked of you: do you
6 have any children, na'am?

7 A Yes, I do, all grown.

8 Q And do you think that being a mother and knowing
9 what it is to raise children and everything, that you might
10 somehow allow sympathy to enter into your ability to impartially
11 weigh the evidence in the guilt phase of this trial or would you
12 set that aside, whatever sympathy you may have for Mr. Grogan,
13 and weigh the evidence impartially and vote in accordance with
14 the law as his Honor gives it to you at the conclusion of the
15 trial?

16 A I don't think that that would have any bearing on
17 the trial; I would go by the evidence.

18 Q All right.

19 In other words, whether Mr. Grogan is 80 years or
20 70 or 50 or 40 or 20, with respect to the guilt phase of this
21 trial you will judge his guilt or innocence based solely upon
22 the evidence; is that correct?

23 A That's right.

24 Q Any reason why you can't give both sides a fair
25 trial?

26 A No.

27 MR. KATZ: Thank you, na'am.

28 Pass for cause.

1 THE COURT: Now, let's see, the People's peremptory
2 challenge?

3 MR. KATZ: Yes; the People wish to thank and excuse
4 Mrs. Sterling.

5 THE CLERK: Mrs. Phyllis L. Jones; P-h-y-l-l-i-s, middle
6 initial L., Jones, J-o-n-e-s.

7 Mrs. Jones, your Honor.

8 THE COURT: Well, we are up to 4 o'clock, lacking a
9 minute or so, I don't think I will start at this time.

10 Ladies and gentlemen, let's recess till tomorrow
11 morning at 9:30; kindly return promptly as you have been.

12 Do not discuss the case or come to any opinion or
13 conclusion and we'll proceed tomorrow morning at 9:30.

14 Thank you.

15 (An adjournment was taken to

16 Thursday, July 8, 1971 at 9:30 a.m.)
17
18
19
20
21
22
23
24
25
26
27
28