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

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

v. )

No. A 267861

STEVEN GROGAN, )

Defendant. )

REPORTERS' DAILY TRANSCRIPT

Friday, July 9, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

**COPY**

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1944

1 LOS ANGELES, CALIFORNIA, FRIDAY, JULY 9, 1971

2 9:40 A.M.

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4 THE COURT: Now, gentlemen, we will proceed in People  
5 against Steve Grogan.

6 The defendant is here. Defendant's counsel is  
7 here. People's counsel is here.

8 The jurors are in the jury box. Those that have  
9 been placed in the jury box at this moment are all here.

10 Now, ladies and gentlemen, for the benefit of all  
11 of you new jurors that are in the courtroom and the gentleman  
12 that -- where is our first juror? This gentleman here. Thank  
13 you. No. 10.

14 To bring you up to date, where we are in the  
15 examinations that have taken place in this case, I am going to  
16 speak to the juror who is in the jury box, No. 10. And I also  
17 am going to talk to every one of you folks that are in the back  
18 of the courtroom, just as though you were seated in the jury  
19 box.

20 So, if you will please listen carefully to every-  
21 thing that I say so that in the event your name is called and  
22 you are placed in the jury box it will not be necessary to  
23 repeat at great length everything that I am saying to all of  
24 you now.

25 I am going to start right from the start. Now, to  
26 start out with this is a criminal action. And insofar as we  
27 are concerned in this courtroom the case is the People of the  
28 State of California against Steve, S-t-e-v-e Grogan, G-r-o-g-a-n.

1           That is the name or what is called the caption in  
2 the case.

3           Now, Mr. Grogan, would you please stand up so these  
4 folks can see you.

5           (Defendant stands.)

6           THE COURT: And turn around if you will, too, please.

7           Thank you. You can be seated now.

8           Now, that is Mr. Grogan, the defendant in this case.

9  
10           CARL H. JAEGER

11 BY THE COURT:

12           Q       And I am speaking now for the moment to juror  
13 No. 10, although I am speaking to all of you also.

14           I will ask juror No. 10 do you know Mr. Grogan, the  
15 defendant in this case?

16           A       No, I do not.  
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1 THE COURT: Very well.

2 Now, the attorney for Mr. Grogan is Mr. Weedman,  
3 this gentleman right here.

4 Thank you.

5 Q Do you know Mr. Weedman in this case?

6 A No.

7 THE COURT: Mr. Katz is the deputy district attorney,  
8 represents the People in this case.

9 Thank you.

10 Q Now, do you know Mr. Katz?

11 A No, your Honor.

12 Q All right.

13 As I have said, this is a criminal case, this is a  
14 prosecution by the People of the State of California in which  
15 they are charging a certain criminal offense against the  
16 defendant in the way of what is termed an indictment by the  
17 Grand Jury.

18 Now, I am going to read to you --

19 Wait till I get through charging the jury, then you  
20 can talk all you want.

21 MR. KATZ: Thank you, your Honor.

22 Q BY THE COURT: I am going to read to you the charge  
23 that has been filed, or the indictment that has been filed by  
24 the People against the defendant. It reads as follows --first,  
25 let me start at the very inception.

26 The action is in the Superior Court of the State of  
27 California for the County of Los Angeles. The title, the People  
28 of the State of California, as I indicated, against Steve Grogan;

1 and the charge reads as follows, that is being preferred  
2 against the defendant:

3 "The said Steve Grogan is accused by  
4 the Grand Jury of the County of Los Angeles,  
5 State of California, by this indictment of  
6 the crime of murder in violation of section  
7 187, Penal Code of California, a felony,  
8 committed prior to the finding of this  
9 indictment and as follows, that between the  
10 16th day of August 1969 and the 1st day of  
11 September 1969 at and in the County of Los  
12 Angeles, State of California, the said Steve  
13 Grogan did willfully, unlawfully and feloniously  
14 and with malice aforethought murder Donald  
15 Jerome (Shorty) Shea, S-h-e-a, a human being."

16 That is the charge. The charge is murder, as I  
17 have read it to you, that is preferred against the defendant;  
18 and that is the action and the matter that we are proceeding  
19 in the picking of the jury to try.

20 Now, this being a criminal action there are certain  
21 basic statements of criminal law that I will give to you so  
22 that you may understand some basic principles of law, that you  
23 may have the principles before you as we proceed in the trial  
24 of this case; and many questions of the court or basically,  
25 counsel, will proceed along the lines of the instructions in  
26 the law, or instructions that I give to you.

27 In a criminal case -- in all criminal cases in the  
28 United States, irrespective of whether they are in this state

1 or some other state or federal prosecution -- there are certain  
2 underlying principles that apply to each criminal prosecution.  
3 One of the principles and the basic principle -- one of the  
4 basic principles is that every defendant in a criminal action  
5 is presumed to be innocent until such a time as the People may  
6 prove the defendant to be guilty.

7 That is the presumption that carries and protects  
8 every individual in the country, in the United States, and it  
9 protects the individual; he carries the presumption with him  
10 all the time, at every moment of his life. He carries the  
11 presumption of innocence; he is presumed to be innocent.  
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1 If a man walks down the street, you pass a man  
2 on a street or you, yourself -- to make it personal -- or  
3 me, or counsel -- you are presumed to be innocent of any kind  
4 of a crime. As you live, you walk, you go home, you go to  
5 your business, there is a presumption of innocence.

6 If anybody speaks of you to speak truly and properly,  
7 if he wants to talk of presumption you would say "That man,  
8 John Smith, is presumed to be innocent." That is a true  
9 statement.

10 An individual is not presumed to be guilty until  
11 he is proven guilty. He is presumed to be innocent.

12 In other words, the presumption of innocence  
13 carries with an individual at all stages of his life until  
14 there is some -- until a conviction or finding of guilty is  
15 made. In the absence of that, the constant presumption of  
16 innocence continues.

17 Now, that presumption of innocence is constant.  
18 By that I mean that if a -- I am talking in generalities --  
19 if an individual is arrested for any kind of a crime no  
20 matter what kind of a crime it is, the fact he is arrested  
21 or is taken in custody or taken to jail -- let's make it an  
22 automobile offense. He is given a ticket, what is commonly  
23 called a ticket. More properly a citation to appear in court.

24 Let's say he is physically taken to jail and  
25 booked. The presumption of innocence doesn't change at all.  
26 The man is still presumed to be innocent even though he may  
27 be arrested for an offense. He is presumed to be innocent.

28 And when the individual is taken to court or goes



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1 to court for trial the presumption doesn't change. He is  
2 presumed to be innocent. And the presumption of innocence  
3 continues until such a time as the jury may, if they do,  
4 because it is up to the jury to make a finding on any  
5 criminal charge, of guilty or not guilty.

6 Now, until the jury comes back with finding, if  
7 they do, guilty as charged, then the presumption of innocence  
8 immediately vanishes. It is gone. And he is found guilty.  
9 He is found guilty.

10 He is not presumed to be guilty. He is found guilty.  
11 That happens, that findings come with the voting of 12 of  
12 the jurors which find the defendant guilty of the crime  
13 charged. And then that presumption of innocence vanishes.  
14 It is gone, and the man is found guilty.

15 Now, that is substantially the basic principle  
16 on that particular point. Now, in this case we have before  
17 us, People against Grogan, after the indictment by the Grand  
18 Jury was rendered and filed in the superior court, the defen-  
19 dant was taken before the court. He appeared with counsel.  
20 The court either read or advised him of the charge, and a  
21 plea of not guilty was entered, which is a very proper plea.

22 That plea and that right is the right of everybody  
23 in the country. The moment you are charged with anything, no  
24 matter what it is, you have an absolute right to say not guilty.  
25 And that puts the case at issue. That means ready for trial  
26 subject to some preliminary matters when you plead not  
27 guilty. And the burden then falls on the People to prove  
28 their case, prove the man is guilty.

1           That is the job of the People. And in this case  
2 the defendant entered a plea of not guilty and the case was  
3 immediately set down on the calendar for a jury trial which  
4 is another absolute right of every individual. The right  
5 to a jury trial automatically comes with a plea of not guilty.

6           So this case was then set down for jury trial.  
7 And skipping over some of the time period, we are starting  
8 now to select a jury in the case for the trial of the matter  
9 charged upon by the People against the defendant.

10          Now, for the moment, getting on the question of  
11 proof I have just told you -- and the jurors, it is the duty  
12 of the People -- the responsibility of the People in a  
13 criminal case to prove the defendant guilty. When the case  
14 finally goes to the jury in the jury room, the jury must  
15 make a finding. They must, for instance, first of all, find  
16 the defendant guilty or not guilty.

17          Now, for the jury to find the defendant guilty  
18 they must arrive in their own minds, they must come to the  
19 conclusion which is a factual conclusion, the question the  
20 jury is presented with is basically -- very basically --  
21 there are many questions but basically have the People proven  
22 the defendant guilty of the charge? That is the big, main  
23 jury question.

24          If all of the jurors or the jurors individually,  
25 all of you, say "Yes, the People have proven the defendant  
26 guilty of the charge" -- suppose one of the jurors, Mrs.  
27 Smith or Jones says, "I think the People have proven the  
28 defendant guilty of the charge" and vote guilty. Another

1 juror says, "Well, I don't think the People have proven the  
2 defendant guilty of the charge" and votes not guilty.

3 Those are the individual jurors working. Now,  
4 there is a burden of proof in there, a burden of proof that  
5 the People must establish. The law sets up that burden that  
6 the People must assume or must meet in the question of  
7 proof, how much. The question -- let's boil it down some  
8 more. The question for the juror as he is in there debating  
9 is this: how much proof do the People have to produce before  
10 the juror votes guilty or not guilty?

11 The law says that the People must prove the  
12 defendant guilty to a moral certainty and beyond a reasonable  
13 doubt.  
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1 Now, there is a little more to that statement of  
2 law and I will read it to you in just a minute or so; but  
3 that culls it down pretty well. They must prove the defendant  
4 guilty to a moral certainty and beyond a reasonable doubt.

5 Once again, if they establish or meet that proof  
6 then the duty follows of the individual juror, or jurors, that  
7 feel that the People have met that amount of proof, the voting  
8 of guilty would be automatic; but it would also be automatic  
9 to vote not guilty if you don't feel that the People have  
10 proved the guilty beyond a reasonable doubt.

11 In other words, the problems arise in determining  
12 in your mind if the People have proven the defendant guilty  
13 beyond a reasonable doubt or have not. That's where the big  
14 discussions come in.

15 Now, that, however, is what is sometimes called the  
16 quantum or the amount of proof the People must produce to  
17 justify or sustain a finding or a conviction of guilty. The  
18 burden of proving the defendant guilty is always on the People.

19 The defendant never has to prove himself innocent,  
20 and that for one reason follows from the fact I have -- or  
21 principle I have just stated to you, that every defendant is  
22 presumed to be innocent until the People prove the defendant  
23 guilty; so there is no occasion for any defendant in any kind  
24 of a criminal action to go around proving himself not guilty.  
25 He is presumed to be not guilty.

26 You see, you follow that, do you, that principle?

27 A Yes.

28 Q The defendant in the courtroom -- this or any other

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1 courtroom, we don't have to singleize it here -- sits down  
2 and here is a jury to try him, he doesn't start in proving  
3 himself innocent; he is presumed to be innocent at all times.  
4 The burden is on the People to prove the defendant guilty, and  
5 they have to meet the amount of proof that the law requires to  
6 a moral certainty and beyond a reasonable doubt.

7 Now, in this case there are a number of other  
8 principles involved that will be presented more fully at a  
9 later time, but which I will touch upon at this time so that  
10 you will be somewhat aware of some of the problems or the law  
11 that will govern the case.

12 In this case the People are asking for -- and will  
13 contend for, and will put on testimony directed to a verdict  
14 of guilty of murder. The People will put on testimony directed  
15 to sustain their position that they are asking for a conviction  
16 of murder first degree.

17 People will further put on testimony to sustain the  
18 position of the People -- this is all for you to find out,  
19 whether the position has been met, those are the facts -- but  
20 this is the People's position and they will also request in the  
21 event there has been a finding of guilty and in the event  
22 that there is a finding of murder first degree, they are and  
23 will request, as a result of what is called a penalty hearing,  
24 if we get that far, the death penalty.

25 Now, those are the procedural steps that would be  
26 followed if the People are to sustain their various positions  
27 in the matter.  
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1 Now, let me back up again to give you more  
2 procedural steps -- and as I go through here I may be somewhat  
3 disjointed and step out of line in the sense that I am not  
4 taking a perfect continuity of my thinking because there are  
5 so many procedural matters that enter my mind as I talk along  
6 here.

7 Let's somewhat back up and give you this principle  
8 or these principles of procedure: when the case is tried, when  
9 this lawsuit is tried before you, let's say you are on the jury,  
10 the People put on their case, the defendant may put on  
11 evidence at that time if he desires; and then the case goes to  
12 the jury room and the jurors all go to the jury room to decide  
13 the question, is the defendant guilty or not guilty.

14 At that point the jury could vote not guilty and  
15 that would conclude the case in its entirety.

16 The jury could vote guilty of murder -- guilty --  
17 then the jury would make another finding; that is called the  
18 degree of the murder. The jury would make a finding of second  
19 degree murder or first degree murder.

20 If the jury should find the degree of the murder to  
21 be second degree murder, there is no further duty from the jury,  
22 the duties of the jury are completed, the jury having found,  
23 theoretically, murder second degree.

24 If the jury makes a finding of first degree murder--  
25 in other words, the verdict would read, "Guilty first degree  
26 murder" -- now if the jury makes that finding then there is an  
27 additional subsequent hearing, which is called a penalty  
28 hearing, that is held before you, the same jury; and at the

1 penalty hearing the jury -- not the judge, the jury -- finds  
2 what the penalty is.

3 There are two penalties that follow a conviction  
4 of murder, with the finding of first degree murder by the jury.  
5 There are two penalties that follow that, after the penalty  
6 hearing.

7 The jury then makes a fixation or finding of penalty,  
8 which must be the death penalty or life imprisonment, so that  
9 if the jury finds the defendant guilty as charged, fixes the  
10 degree first degree murder and the penalty hearing is held,  
11 then the question of penalty is determined by the jury, which  
12 is -- and I am repeating to constantly clarify it, if I can --  
13 the death penalty or life imprisonment. Those are the  
14 procedural steps as they go along.

15 Now, let's back up again here. As I have told,  
16 the charge in this case, the indictment by the Grand Jury,  
17 indicts or charges the defendant with murder.

18 In most, substantially all cases in which the charge  
19 of murder is made or preferred against an individual by the  
20 People -- now, I am speaking only in generalities -- the People  
21 in their attempt to prove -- remember, now, I am speaking now  
22 in broad terms -- a defendant guilty of murder, the People in  
23 their proof ordinarily will put on, in substantially all cases,  
24 will put on what is called, commonly, direct evidence or  
25 eyewitness testimony that an individual is dead and the body of  
26 the individual that is charged with having been murdered, in  
27 substance, has been seen and is a dead body.  
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1 And I am not trying to overlay it but I must  
2 get that thought over to you that in substance an individual  
3 or individuals in such a hypothetical case would take the  
4 stand and say in substance, to try to clarify it in your  
5 mind, substantially this: "John Smith is charged as having  
6 been killed or murdered by the defendant."

7 I am speaking in abstraction. "I know John  
8 Smith. This is the body of John Smith that is charged with  
9 having been murdered. I saw John Smith after he was dead  
10 or deceased. This is a picture of John Smith. I saw John  
11 Smith's picture. I saw this, I know this likeness to be  
12 the picture of John Smith who is deceased."

13 Or he may say "I saw John Smith deceased and  
14 this is a picture of him." In other words, there is proof  
15 or testimony of a dead person and that that person is the  
16 person charged with being killed or murdered. There is  
17 proof of the dead body, that literally a person saw the  
18 body dead.

19 Q Is that clear to you?

20 A Yes, your HONor.

21 THE COURT: That is generally what the People undertake  
22 and establish in an ordinary case of what we call homicide.  
23 Now, the law does not -- the law permits the proof of murder  
24 without necessarily the production or proof of the dead body  
25 by what is called direct evidence, by somebody who saw the  
26 dead body. There are other methods of proof.

27 And that is the situation that will be presented  
28 in this case. There will be no -- no one will take the stand



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1 for the People and say, "I saw" -- now, for instance, let's  
2 get right to the point.

3 The defendant is charged with the murder of Donald  
4 Jerome Shorty Shea. All right.

5 Nobody will take the stand and say, "I saw Shorty  
6 Shea dead. I saw the body of Shorty Shea and it was deceased."  
7 That testimony will not be here.

8 There is no visual observation "I saw Shorty Shea  
9 and took his picture, and here is the picture, and I saw  
10 him dead." That type of testimony, what is called direct  
11 testimony of the death of Shorty will not be presented by the  
12 People in this case.

13 But the People will rely on what is called cir-  
14 cumstantial evidence which the law permits to establish the  
15 death or the dead body of Shorty Shea. It will be done by  
16 what is called -- if it is done -- it will be attempted by the  
17 People by what is called circumstantial evidence rather than  
18 direct evidence.

19 Is that clear to you? You understand I am trying  
20 to carry on this thinking in as simple a fashion as I can  
21 and yet get to the point. Get to the principle involved.

22 It is a permissible type of evidence. The law  
23 does permit it to sustain convictions.

24 However, the strength of the testimony of the  
25 People -- the strength of any testimony, the strength of defen-  
26 dant's testimony if the defendant has witnesses or gives  
27 testimony -- that is, I don't know and that is the defendant's  
28 business. Remember that. It is always his business what, if

1 anything, he puts on, he has a right. He governs his own  
2 procedure in his own defense.

3 The strength of any testimony -- I am going back  
4 now to the People -- respecting the proof of the death of  
5 Shea, the truth, the credibility, the belief in the testimony  
6 produced goes right back to the jury. I am speaking only of  
7 the law. The law does permit circumstantial evidence,  
8 remember that. It is allowed.

9 The strength of that evidence, the truth of the  
10 evidence, "Is John Smith, who is testifying to circumstantial  
11 evidence, how much weight, if any, should the jury give to  
12 it" those are the factual matters for the jury. You find on  
13 the facts.

14 You say, "I believe such and such." You say, "I  
15 don't believe such and such."

16 I am speaking of the method, the procedure of cir-  
17 cumstantial evidence, is a permissible and proper method.  
18 The strength of the method is for the jury.

19 Q Is that clear, the distinction I am making there?

20 A Yes.

21 THE COURT: You follow me there? You look at the testimony.  
22 You are saying -- I am making a hypothetical case -- you are  
23 talking to the jurors there in the jury room and the case is  
24 given to you. You say, "Yes, I have listened carefully to all  
25 this evidence about circumstantial evidence. I have listened  
26 to all of it. I believe this" or "I don't believe this part  
27 of it. I accept this part of it. I accept all of it or I  
28 don't accept any of it. I accept certain segments of it, or

1 I don't accept it."

2 And you say to yourself, assuming you accept  
3 certain parts or all of it, then your next question is "Accept-  
4 ing what I do as correct, have the People proven the defen-  
5 dant guilty beyond a reasonable doubt?"

6 That is your final hurdle you must arrive at or  
7 come to.

8 Q Is that clear?

9 A Yes.

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1 THE COURT: The method is a lawful, permissible method.  
2 The strength of the testimony, the credibility of the testimony,  
3 the facts pulled out of the testimony are all matters for the  
4 jury to determine.

5 Q Is that clear to you?

6 A Yes, your Honor.

7 THE COURT: Now, let me reimpress this point again. The  
8 jury, the jurors and the jury makes the findings on the facts.  
9 I can tell you, and I do tell you, "This is the law. This is  
10 the law." Like I have said to you, circumstantial evidence is  
11 proper and lawful evidence.

12 But the weight to be given to the evidence, how  
13 strong is the evidence, how truthful is the evidence, of  
14 anything, not just circumstantial evidence, of any evidence --  
15 of any evidence no matter who produced it, the strength of it,  
16 the truthfulness of it, what facts do the jury believe to be  
17 true or not true, the factual matters are all for the jury.  
18 All for the jury.

19 The judge, I have nothing to do with the facts.  
20 The jury finds the facts. The jury finds the defendant guilty  
21 or not guilty. The jury finds on all of the factual issues and  
22 of what's known as the credibility. That is the honesty of  
23 the witness or witnesses that testify. That is all for the  
24 jury to determine.

25 In other words, when I speak of the circumstantial  
26 evidence it would be wrong for any juror to say "Well, the  
27 evidence is circumstantial evidence. I don't want anything to  
28 do with circumstantial evidence."

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2 Now, that the law doesn't permit. The law will  
3 permit you to look at the circumstantial evidence, and you can  
4 say "I don't believe the truth of that testimony." That's one  
5 thing.

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But to say, "I don't want anything to do with  
circumstantial evidence" is wrong because the law says it is  
a permissible method of proof. The question "What is the truth  
of what the witnesses have testified to; are they telling the  
truth or not?" that's another thing. That is for the jury to  
determine.

Q You understand the distinction there?

A Yes, I do.

THE COURT: Now, I am going to give you the presumption  
of innocence to guide you. Also a statement on circumstantial  
evidence and also the statement of law on what is called the  
proof or nominally stated the corpus delicti of a crime.

Now, let's start in here. Let's start with the  
statement on the presumption of innocence.

Now, here is what I will read to you. And I will  
probably have to affirm -- it may come up for a statement  
during the trial as well as any of these other principles of  
law. The doctrine of the presumption of innocence is as  
follows:

"A defendant in a criminal action is  
presumed to be innocent until the contrary  
is proved and in case of a reasonable doubt  
whether his guilt is satisfactorily shown,  
he is entitled to an acquittal. This

1 presumption places upon the State the burden  
2 of proving him guilty beyond a reasonable  
3 doubt. Reasonable doubt is defined as follows:  
4 it is not a mere possible doubt because every-  
5 thing relating to human affairs and depending  
6 on moral evidence is open to some possible or  
7 imaginary doubt. It is that state of the case  
8 which after the entire comparison and considera-  
9 tion of all the evidence leaves the minds of  
10 the jurors in that condition that they cannot  
11 say they feel an abiding conviction to a moral  
12 certainty of the truth of the charge."

13 Now, that is the statement of the law on reasonable  
14 doubt,

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Now, here is a statement, a definition or a statement of what I have just said, direct evidence and circumstantial evidence, gives you the distinction between the two. I will read it to you, as well as to all the jurors.

The testimony of a witness, or a writing or a material object or anything presented to the senses offered to prove the existence or the nonexistence of a fact is either direct or circumstantial. Direct evidence means evidence that directly proves a fact without an inference and which in itself, if true -- that's for the jury -- conclusively establishes that fact.

I am going to cut in on that and say, for instance, the witness on the stand says, "I saw the house; the house is a green house"; that's direct testimony, there is no inference to be drawn. A witness is telling you he saw a house, the house is green.

You may say to yourself, "The witness is telling the truth," or "the witness is not telling the truth." You see, there is where the jury comes in; you find the facts, but that is direct testimony, as I have indicated.

Now, circumstantial evidence: Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct

1 evidence and circumstantial evidence. Both direct evidence  
2 and circumstantial evidence are acceptable as a means of  
3 proof. Neither is entitled to any greater weight than the  
4 other.

5 Now, further -- that is a statement of law that  
6 I gave to you; again, the jury finds the facts.

7 Now, a statement on law respecting the sufficiency  
8 of circumstantial evidence. The jury is not permitted to  
9 find the defendant guilty of the crime charged against him  
10 based on circumstantial evidence unless the proved circum-  
11 stances are not only consistent with the theory that the  
12 defendant is guilty of the crime but cannot be reconciled  
13 with any other rational conclusion, and each fact which is  
14 essential to complete a set of circumstances necessary to  
15 establish the defendant's guilt has been proven beyond a  
16 reasonable doubt.

17 Also, if the evidence is susceptible of two,  
18 t-w-o, reasonable interpretations, one of which points to the  
19 defendant's guilt and the other to his innocence then it is  
20 your duty to adopt that interpretation which points to the  
21 defendant's innocence and reject the other which points to  
22 his guilt.

23 Now, that statement is based on where there are  
24 two, t-w-o, equally reasonable interpretations; the one  
25 balances the other -- do you follow the point, one balances  
26 the other, you don't know where to turn, then you turn to  
27 innocence; but that turn to innocence is where they balance  
28 each other. The other, where the one outweighs the other, that



1 is another situation.

2 Now, on the question of the corpus delicti that  
3 I touched upon, here is the statement of the law, gives a  
4 definition of corpus delicti respecting murder: the term  
5 corpus delicti as used in these instructions concerning murder  
6 does not mean the production of the body or any part thereof  
7 of the alleged deceased. Every crime, whether it be burglary,  
8 robbery or any other offense, requires the proof of a corpus  
9 delicti. The term corpus delicti means the proof of the  
10 essential elements of the particular crime with which a  
11 defendant may be charged. The corpus delicti of murder  
12 consists of two, t-w-o, elements; number one, proof of the  
13 death of the alleged deceased; number two, proof that the  
14 death of the alleged deceased was caused by some criminal  
15 agency. Either or both of these two, t-w-o, essential  
16 elements which constitute the corpus delicti of the crime of  
17 murder need not be proved by direct evidence but may be  
18 proved circumstantially or inferentially. It is not necessary  
19 in order to establish the corpus delicti for a murder that  
20 the body or any part thereof of the alleged deceased be  
21 produced, as such, nor that any witness be produced who  
22 has seen or found the body or any part thereof of the alleged  
23 deceased in death.

24 Now, that is the statement of the law. It is for  
25 the jury to determine the facts, what are the facts produced,  
26 where is the truth or where is not the truth, and apply it  
27 as against this principle.  
28

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Now, there are one or two other matters here.

In this case, as I have indicated, the People are asking for convictions of murder as charged, findings by the jury or fixations of murder first degree; and then further, they are asking, in punishment, for what is known as the death penalty. That's the People's -- what they are asking.

Now, in that connection I am going to ask you, as well as other jurors that may be called to the jury box, a question on what is called capital punishment, but probably carries more meaning to the layman, of the "death penalty."

Now, as I outlined very carefully, and I will repeat it, if you are selected as a juror you will hear all of the testimony in the case and then on the completion of the testimony you, with the other jurors will go to the jury room. The first thing that will occur, roughly speaking, is the vote-- the discussion of the jury respecting the facts and then voting on the question, guilty or not guilty.

Now, at that time if the jury makes a finding of not guilty, the case is entirely concluded, it is all through.

On the other hand, if the jury makes a finding of guilty as charged, then the jury would vote on the question of degree, first degree murder or second degree murder; that's up to the jury.

Now, if the jury makes a finding of guilty second degree murder, then that concludes all further proceedings in the case as far as the jury is concerned; you are excused, your duties are completed.

On the other hand, if the jury makes a finding of

6a-2 1 guilty of first degree murder, then a penalty hearing is held  
2 right after the trial and at the completion of the penalty  
3 hearing the jury goes back to the jury room to determine what  
4 is the penalty. The penalty, the finding of the jury, must be  
5 either one of two findings, either the death penalty or life  
6 imprisonment; that follows the finding of first degree murder.

7 Now, I am going to ask you to assume that we have  
8 held the penalty hearing, you are in the jury room, you are  
9 about to vote on the question of penalty, the death penalty or  
10 life imprisonment. And I will ask you this question:

11 Q At such a time would you automatically vote against  
12 the imposition of the death penalty without regard to any  
13 evidence that might be developed at the trial of this case  
14 before you?

15 A No, your Honor.

16 Q Now, I will ask you this question: if you are  
17 selected as a juror in this case do you feel that you could be  
18 fair and impartial, with an open mind, in the trial of this  
19 whole case, fair and impartial to the People, fair and impartial  
20 to the defendant and an open mind in this case?

21 Could you maintain that position or not?

22 A Yes, your Honor.

23 Q The answer "Yes"?

24 A Yes.

25 Q And then one further question: do you know of any  
26 fact or situation, anything that could occur during the trial of  
27 the case that could disturb you or upset you and so that your  
28 mind couldn't be free and clear and impartial?

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1 A No, your Honor.

2 THE COURT: All right, I will pass the juror for cause.  
3 Defendant may inquire.

4 MR. WEEDMAN: Thank you, your Honor.

5 Q Mr. Jaeger, may I ask you your business or occupa-  
6 tion, please?

7 A Yes, I am a licensed electrical engineer. I work  
8 for TRW Systems Group. I am presently a technical advisor  
9 on a defense systems satellite and, as such, I believe there  
10 may be some question regarding time --

11 Q Mr. Jaeger, we estimate that this trial will last  
12 as much as ten weeks.

13 When lawyers make an estimate like that, it might  
14 even go on a little longer, although we try to be as close as  
15 we can --

16 MR. KATZ: Excuse me, your Honor. I think Mr. Weedman  
17 has introduced two additional weeks at this point; it was six  
18 to eight weeks, now it is up to ten.

19 MR. WEEDMAN: I will withdraw that statement.

20 THE COURT: Restate your question.

21 Q BY MR. WEEDMAN: Mr. Jaeger, let's just stick with  
22 ten weeks, then --

23 A Let me just state --

24 Q Let me get the question out for the record --  
25 Mr. Jaeger, would that length of a trial cause you any personal  
26 hardship?

27 A Yes, it would.

28 Q All right, would you explain that for us, then.

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1 A A satellite has two critical periods, one in the  
2 spring and one in the winter, which is the reason I am serving  
3 now in the summer, in between seasons, if you will, of  
4 activity.

5 Beginning in August there is a critical period in  
6 which I will be required to be spending a good deal of time at  
7 Sunnyvale, at the Air Force test facilities.

8 Q Is this a job which cannot be handled by someone  
9 else?

10 A Not under present circumstances.

11 Let me explain: I have been on this program for  
12 approximately 18 months now and a good deal of this has been  
13 in preparation to obtain background and the capability to  
14 manage the operation of this type of a satellite; and, as such,  
15 it would be impossible to train someone else in the period  
16 between now and August to do the job that I am required to do.

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1 Q If I understand what you are inferring, Mr. Jaeger,  
2 certain particular management problems arise with respect to the  
3 operation of the satellite in August and you are the man who  
4 has been trained to deal with those matters at that time?

5 A That's correct.

6 Q How much does a satellite like this cost?

7 A Well, it is a 24 --

8 MR. KATZ: Too much.

9 MR. JAEGER: -- hour proposition and I would say -- I am  
10 trying to determine and think in my mind whether this is a  
11 classified subject or not --

12 Q BY MR. WEEDMAN: I see. Rather than trying to make  
13 the determination --

14 A -- according to the papers -- I would rather not get  
15 involved.

16 Q We will wait for the statistics to be published  
17 by the Times and not get involved.

18 A I believe you could find this information in  
19 periodicals, but that doesn't relieve me of my responsibility.

20 Q Surely, Mr. Jaeger; we understand.

21 I guess we all use large numbers and whenever I  
22 hear something about a satellite out there, it always seems  
23 like an enormously expensive matter.

24 The hardship would not be personal to you, it  
25 would be hardship to the program?

26 A I would say under today's circumstances it would  
27 probably cost me my job.

28 MR. WEEDMAN: Oh, I see.

1 Well, that being the case, Mr. Jaeger, I am sure  
2 that neither counsel want that to occur --

3 Your Honor, I would submit the matter, but I  
4 would urge that Mr. Jaeger be excused for hardship, if  
5 serving on this jury for ten weeks is going to cost him his  
6 job as an electrical engineer, your Honor.

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THE COURT: Well, I will ask the question again.

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Q Mr. Juror, do you feel that irrespective of the position that defense counsel has mentioned you could be fair and impartial in the trial of this action as far as both parties are concerned? Would it affect your judgment or would it sway you, or would your mind be free and clear and impartial?

Try to answer it yes or no.

A No, sir.

Q The answer is no?

A Yes.

Q The answer is no.

THE COURT: The answer is no. Do the People want to be heard on that?

MR. KATZ: Under the circumstances, no, your Honor.

THE COURT: Well, I will grant the request. I will excuse you, sir.

MR. JAEGER: Thank you, your Honor.

MR. KATZ: May we approach the bench with the court reporter.

THE COURT: Weren't you ready?

MR. KATZ: Yes. I have no objection to this gentleman being excused.

THE COURT: Yes. I will make a finding. I make a finding under the code sections 1073 subdivision 2 and 1074 subdivision 8. Also under Witherspoon, finding for cause exists to excuse the juror.

Now, we will call another.

MR. KATZ: Your Honor, may we approach the bench before



1 we call another one?

2 THE COURT: All right.

3 (The following proceedings were had  
4 in chambers:)

5 MR. KATZ: Your Honor, I am very much concerned with  
6 respect to Mr. Weedman's unilateral offer to excuse this juror  
7 in substance with my concurrence. It is one thing for me to  
8 make that decision and to make the decision without any  
9 extraneous pressures. But when the statement is made "I am  
10 sure Mr. Katz would be willing to do this" in front of the jury  
11 it leaves me with no other alternative but to go along with it.

12 I don't think Mr. Weedman did this maliciously or  
13 arbitrarily but I just want to bring it to the attention of  
14 the court at this time that I do not appreciate that kind of  
15 unilateral offer. I will always be happy to stipulate under  
16 these kinds of circumstances.

17 THE COURT: I think you can watch it, if you can.

18 MR. WEEDMAN: I understand perfectly and I am sorry, your  
19 Honor. I had meant by that that I felt that a challenge was  
20 certainly in order and I didn't want to be the one to take full  
21 credit in front of the jury.

22 THE COURT: All right.

23 MR. WEEDMAN: For the magnanimous gesture. I wanted  
24 Mr. Katz to share in that.

25 THE COURT: Fine.

26 MR. WEEDMAN: Next time I will approach the bench  
27 entirely.

28 THE COURT: All right. We will watch it.

1 MR. KATZ: May we have a short recess. Unfortunately  
2 there is a gentleman who has been trying to see me to relay  
3 a message from the district attorney's office.

4 THE COURT: All right. We will take a short recess right  
5 now.

6 (The following proceedings were held  
7 in open court:)

8 THE COURT: Now, ladies and gentlemen, we are going to  
9 take a short recess and we will proceed right away.

10 So remain right handy here. Do not discuss the  
11 case or come to any opinion or conclusion.

12 We will take a very short recess. Thank you.

13 (Recess.)  
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1 THE COURT: All right. Let's go right ahead, gentlemen.  
2 People against Grogan.

3 The defendant is here, counsel are both here and  
4 the jury is here.

5 Now, we will call another juror. Thank you.

6 THE CLERK: All right.

7 Being called as prospective juror No. 10, please.

8 Mrs. Carmen J. Reyes, R-e-y-e-s.

9  
10 MRS. CARMEN J. REYES

11 BY THE COURT:

12 Q Now, lady, have you heard everything that I have  
13 said this morning?

14 A Yes.

15 Q I have been talking quite a little while here  
16 for some time.

17 And I am going to ask you this question. I am  
18 going to ask you to assume if you have been selected as a juror  
19 and sworn to try this case as a juror and that we have tried  
20 the case. You have gone to the jury room to vote on the  
21 question of guilty or not guilty.

22 Now, you realize at that time the jury could vote  
23 not guilty. The jury could vote guilty.

24 Let's assume the jury has voted guilty for the  
25 purpose of my question. And then I will say to you the jury  
26 could make a finding of degree. If the finding is second  
27 degree murder, the case is concluded. The jury has no further  
28 actions.

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1 If the jury makes a finding of murder first  
2 degree then there must be held a penalty hearing for the  
3 purpose of the jury setting the penalty which must be either  
4 the death penalty or life imprisonment.

5 Now, are those procedural steps clear to you?

6 A Yes, sir.

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1 Q All right.

2 Now, I will ask you this question -- I'd ask you  
3 this question, assuming you are now voting on the penalty:  
4 at that time would you automatically vote against the imposition  
5 of the death penalty without regard to any evidence that might  
6 be developed at the trial of this case before you?

7 A No.

8 Q Thank you.

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

12 A No, your Honor.

13 Q And this last question, which is pretty much the  
14 same as the question I just asked you, do you know of anything  
15 that might arise during the trial of the case --

16 A No, your Honor.

17 Q You are guessing my mind: I don't know yet what I  
18 am going to say -- do you know anything that might arise during  
19 the trial of this case, any factual situation, any facts that  
20 might come up from the length of the trial, or anything that  
21 could disturb you so that you could not be fair and impartial  
22 in the trial of the case?

23 A Well, right now I would answer "No," but --

24 Q Well, try to give me a yes or no answer.

25 A No.

26 THE COURT: All right.

27 Defendant may inquire.

28 MR. WEEDMAN: Thank you, your Honor.

Q Mrs. Reyes, are you employed?

1 A I'm supposed to, September, when school opens.

2 Q What do you do or what will you be doing?

3 A Teacher's aide.

4 Q And is there a Mr. Reyes?

5 A Yes, sir.

6 Q What does he do for a living?

7 A He is a truckdriver.

8 Q With respect to this issue of the death penalty,  
9 Mrs. Reyes, if after -- let me back up a little bit.

10 I am sure you understand from Judge Call's instruc-  
11 tions that this trial could result in a penalty phase, that  
12 is to say, if there is a conviction of murder in the first  
13 degree, why, then, there will be another hearing after that,  
14 at which time the jury will undoubtedly listen to additional  
15 evidence and then the jury will retire to determine whether  
16 or not my client should suffer the death penalty, whether  
17 he should suffer life imprisonment.

18 I am sure you understand that --

19 A Yes.

20 Q From Judge Call's rather thorough comments to the  
21 jury?

22 Now, first of all, you understand that the only  
23 reason we are talking about the death penalty at this time  
24 is because there is, at least theoretically, such a possibility.

25 You understand that?

26 A Yes.

27 Q And you also, then, understand that we may never  
28 get to a penalty phase in this trial, as Judge Call has

1 explained. If you acquit my client, then obviously there  
2 is not going to be a penalty phase; if there is a conviction  
3 of any lesser offense than first degree murder, as Judge Call  
4 has pointed out, there would not be any penalty phase.

5 But, let's assume, however, for purposes of our  
6 questioning, since this is the only time we can bring up  
7 the subject, let's assume that you are now in a penalty phase.  
8 Would you automatically vote the death penalty if you are  
9 convinced that my client, of course, has committed murder  
10 in the first degree without reference to any other evidence  
11 in the case?

12 A Yes.

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1 Q You would vote for the death penalty?

2 A Yes.

3 Q All right. And that would be an automatic decision  
4 by you, if my client has committed murder in the first degree,  
5 is that so?

6 A Yes.

7 MR. KATZ: May I inquire, your Honor.

8 THE COURT: Well, do you want to inquire on that point?

9 MR. KATZ: Yes, your Honor.

10 THE COURT: I am not sure that the juror fully understands  
11 the significance of the word automatic.

12 MR. KATZ: That is my point, your Honor.

13 THE COURT: Would you inquire and let's see where we are.

14 MR. KATZ: Yes.

15 Q Mrs. Reyes, you understand that first of all,  
16 before we ever get to the issue of the penalty in this case,  
17 should we reach that issue, the jury must return a verdict of  
18 murder in the first degree, is that correct?

19 A Yes.

20 Q All right.

21 Now, there is a second phase of the trial known as  
22 the penalty hearing, or the penalty phase.

23 Now, during that phase of the trial there may be  
24 additional evidence that will be permitted. That is, there may  
25 be evidence, for example, in mitigation of the offense. The  
26 defense can show what type of person he is, what kind of  
27 background he has.

28 The People perhaps may show evidence in aggravation



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1 of the offense. You will be able to consider the circumstances  
2 surrounding the killing and upon which you predicated the  
3 return of a first degree murder verdict in the penalty phase.

4 Now, would you be willing to consider that  
5 additional evidence which may be presented in the penalty  
6 phase before making a decision as to whether or not another  
7 human being shall live or die?

8 A Oh, yes.

9 Q All right.

10 So I take it before making any decision in this  
11 case as to the proper penalty you would want to hear all of the  
12 evidence, wouldn't you?

13 A Yes.

14 Q And you understand, just so it's very clear, that  
15 there may be additional evidence presented in the penalty  
16 phase after you have heard the guilt phase; you understand that?

17 A Yes.

18 Q I take it you wouldn't go into the penalty phase  
19 not having heard the evidence with a fixed state of mind that  
20 you would automatically vote for the death penalty, would you?

21 A Oh, no.

22 Q All right. And in fact I take it that you would  
23 want to consider not only the circumstances surrounding the  
24 crime which were presented during the guilt phase of the trial,  
25 but you would want to hear all of the additional evidence, if  
26 any, presented in the penalty phase before determining what the  
27 proper penalty is in this case; is that right?

28 A Yes.

1 Q I take it you would have an open mind on that  
2 issue and would be willing to discuss your conclusion as to  
3 the moral culpability of the defendant with the other members  
4 of the panel, is that right?

5 A Yes.

6 Q If you believed in your heart and your mind and  
7 your conscience based on a consideration of all of the  
8 evidence then you would vote that conscience, be it in favor  
9 of life or death, is that right?

10 A Yes.

11 Q I take it you are not meaning to tell us that you  
12 would automatically, regardless of the evidence, upon the  
13 return of a first degree murder verdict, always vote for the  
14 death penalty; is that correct?

15 A Right.

16 MR. KATZ: Thank you.

17 I think that clarifies it.

18 THE COURT: Is there a for cause presented?

19 MR. WEEDMAN: Well, I would like to pursue the matter  
20 with Mrs. Reyes.

21 THE COURT: Do you want a ruling or not? Do you want me  
22 to rule on that?

23 MR. WEEDMAN: No, your Honor, I won't make any motion at  
24 this time.

25 THE COURT: All right, go ahead with your voir dire.

26 MR. WEEDMAN: Thank you, your Honor.

27 Q Mrs. Reyes, if following the guilt phase of this  
28 trial you are convinced in your heart and in your mind that my

1 client has committed a willful, premeditated, malicious  
2 killing of another human being without any justification or  
3 excuse would you then automatically impose the death penalty,  
4 irrespective of any other evidence in the case?

5 A Well, it would be according to how the instruction--  
6 either that or the life sentence.

7 Q As you of course -- as we begin to discuss this  
8 matter with you, Mrs. Reyes, we do understand that this is  
9 probably the first time you have ever been subjected to  
10 questioning in front of, gee, a whole courtroom full of people  
11 about the death penalty.

12 So, if you will bear with us, or bear with me, I  
13 would like to pursue the matter just a little further with you.

14 As you sit there now, in light of your answer to  
15 my earlier question about automatically imposing the death  
16 penalty, do you have any preference for the death penalty in  
17 a first degree murder case?

18 A Well, I am against it.

19 Q You are against what?

20 A The death penalty.

21 Q Against the death penalty. Okay.

22 But in answer to Mr. Katz' questions you, so we  
23 will be clear about it on the other side now, would you consider  
24 the imposition of the death penalty, should that subject be  
25 submitted to you for a decision?

26 A I would have to consider it.

27 Q Okay. In other words, as Mr. Katz has I believe  
28 determined from you, you would wait until you hear all of the

1 evidence in this case and then you would discuss it with your  
2 fellow jurors, and then you would make a decision with respect  
3 to whether or not my client should live in prison for life or  
4 whether he should die; is that correct?

5 A Yes.

6 Q Okay. Do you understand in this connection, Mrs.  
7 Reyes, that the law has no preference for one penalty as against  
8 the other penalty? That it is a matter which is totally and  
9 completely within the discretion of the jury?

10 A Yes.

11 Q Okay. Have you any prior criminal jury experience?

12 A No.

13 Q Okay. In our system of law, Mrs. Reyes, each side,  
14 that is, the People of the State of California and the  
15 defendant, each side is entitled to the individual opinion of  
16 each juror.

17 So that means when a vote is taken in the jury room  
18 it is not like voting for a candidate in a political campaign,  
19 it is merely a collection of individual opinions of each of  
20 the jurors.

21 And do you have any quarrel with that method of  
22 proceeding, that is, that it will be your individual opinion,  
23 not just a collective opinion that will determine the outcome  
24 of this case?

25 A No, I have no quarrel.

26 Q All right.

27 Supposing during the guilt phase of your delibera-  
28 tions the jury is in an 11 to 1 vote and you are the 1. You

1 are the one person who feels differently, whether it be for  
2 guilt or for innocence is not material.

3 But you are the one person who feels different than  
4 all of the other jurors. Would you change your mind merely  
5 because you want to somehow please or get along with the  
6 other jurors or, rather, would you stick to your opinion if it  
7 is fairly, conscientiously arrived at?

8 A I would have to be thoroughly convinced before I  
9 would make up my mind to change.  
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1 Q Surely; and the mere fact that you would be a  
2 minority of one, that, standing alone, wouldn't change your  
3 mind, would it?

4 A No.

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

7 A Yes, sir.

8 Q Would you tell us about them, please.

9 A I have a friend that is in LAPD.

10 Q All right.

11 A And I have relatives in the narcotics --

12 MR. KATZ: Federal narcotics agent?

13 Q BY MR. WEEDMAN: Okay; is he a local officer?

14 You said federal narcotics and not state narcotics?

15 A No.

16 Q What is his name?

17 A Gilbert Avila.

18 Q And is he stationed here in California?

19 A The last I heard he was in Santa Monica.

20 Q In Santa Monica, okay.

21 Is there anything -- what is the nature of that  
22 relationship, Miss Reyes, with Mr. Avila?

23 A My son's godfather's son.

24 Q I see.

25 Is there anything about the fact that you have a  
26 friend on the Los Angeles Police Department and a relative  
27 who is a federal narcotics officer that makes you feel that  
28 you could not fairly judge police officers' testimony in this

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case?

A No.

Q Do you think, Mrs. Reyes, because of the close friendship that you have, not only with one, but two policemen, that you would tend -- you would tend to accept the testimony here of any police officers just because they are police officers?

A No.

Q Are you sure about that, Mrs. Reyes?

A I am sure.

Q Can you assure us, Mrs. Reyes, that you do not have any -- that you wouldn't be tempted, please, to say, "Well, gee, here's a police officer testifying in this case; my good friend is a police officer, my other very good friend is a federal narcotics officer, and they are good people, they are hard working, dedicated people; therefore, on that basis, alone, I am going to believe every single thing I hear from a police officer in this case"?

A No.

Q Would you be tempted to do that, Mrs. Reyes.

A No.

Q Now, I asked you the question -- I don't want you to assume that we are going to hear from police officers with respect to any critical evidence here, we may or we may not, I don't know; they will be People's witnesses, if they do testify -- that is, they will be witnesses for the prosecution.

Mrs. Reyes, do you feel merely because my client has been charged with a crime here, that the chances are more likely than not that he is guilty?

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1 A No.

2 Q Are you prepared, Mrs. Reyes, are you prepared  
3 to acquit my client of this murder charge if you are not  
4 satisfied beyond a reasonable doubt and to a moral certainty  
5 that he is guilty?

6 A Yes.

7 Q During the course of this trial, Mrs. Reyes, it  
8 is very likely that the People will produce a great many more  
9 witnesses than the defense will, the actual figure may be  
10 as much as 20 to 1.

11 Would the mere fact that the prosecution produces  
12 so many witnesses -- that is, so many witnesses more than the  
13 defendant produces -- lead you conclude that my client is  
14 more likely to be guilty than not?

15 A No.

16 Q As a matter of fact, have you any quarrel, Mrs.  
17 Reyes, with the rule which doesn't require my client to  
18 produce any witnesses at all if he doesn't care to?

19 A No.

20 Q Have you any quarrel with the rule of law -- I  
21 don't anticipate this will develop, but I want to explore it  
22 with you, anyway -- have you any quarrel with the rule of  
23 law that gives my client an absolute right not to testify  
24 and that you are not to make any assumptions about his guilt  
25 from his not testifying?

26 A No.

27 Q Mrs. Reyes, have you heard of the Tate-La Bianca  
28 murder case?



1           A     Just slightly.

2           Q     And have you heard about the Charles Manson  
3 family, the so-called Manson family?

4           A     Yes.

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1 Q You have seen this on television, have you,  
2 perhaps?

3 A Yes.

4 Q And you have read about it in the newspapers?

5 A Just the first few weeks.

6 Q Do you know what the outcome of that trial was?

7 A No, I really don't.

8 Q Have you formed any opinion as a result of whatever  
9 you may have read or heard in connection with that trial  
10 about the so-called Manson family?

11 A Yes.

12 Q Okay.

13 Can you tell us what that opinion is?

14 A No.

15 Q I take it it is not a good opinion, however, would  
16 that be a fair statement?

17 A Well, it is good and bad.

18 Q You know, of course, that Charles Manson and other  
19 defendants, girls in that case, as a matter of fact, were  
20 charged with murder?

21 A Yes.

22 Q And that they were convicted; do you know that?

23 A Yes.

24 Q And do you know what the penalty was with respect  
25 to all of them?

26 A No.

27 Q Okay.

28 Do you know that Charles Manson was convicted of

1 murder in these cases even though he was not present at  
2 the time of the death of any of the victims in that case?

3 A Yes.

4 Q If during the course of this trial, Mrs. Reyes,  
5 you should learn that my client was a member of the so-called  
6 Manson family, or at least was associated in some way -- in  
7 some way, however loosely -- with Charles Manson, would you  
8 be prejudiced against my client so that it would interfere with  
9 your giving him a fair trial in this court?

10 A No.

11 MR.KATZ: Excuse me, there is an objection, unless it  
12 is stated solely for that reason. It is asking the juror to  
13 prejudge the evidence.

14 THE COURT: Read the question, Mr. Reporter.

15 (The pending question was read by the  
16 reporter as follows:

17 "Q If during the course of this  
18 trial, Mrs. Reyes, you should learn that my  
19 client was a member of the so-called Manson  
20 family, or at least associated in some way --  
21 in some way, however loosely -- with Charles  
22 Manson, would you be prejudiced against my  
23 client so that it would interfere with your  
24 giving him a fair trial in this court?"

25 THE COURT: Well, maybe you can reframe it a little better  
26 in there.

27 MR. WEEDMAN: May I submit, your Honor, that I, in all  
28 humility, your Honor, see nothing wrong that that question and

1 I think it is a highly pertinent question in this case,  
2 your Honor.

3 THE COURT: Well, let me ask a question.

4 MR. WEEDMAN: Thank you, your Honor.

5 Q BY THE COURT: If you are selected as a juror in  
6 this case you understand that your decision in this case must  
7 be strictly on the evidence and the testimony produced in this  
8 case and this trial?

9 A Yes.

10 Q And the law does not recognize nor is there such  
11 a thing as a guilt by association. It is what is the  
12 testimony in this case.

13 Is that clear to you?

14 A Yes.

15 Q Whether the defendant is or is not a friend or  
16 an acquaintance of Mr. Manson or somebody else, that is not  
17 an issue in this case, it doesn't affect this case; you have  
18 to go back to this testimony here, you can't say the defendant  
19 is a friend or isn't a friend -- I don't know -- but that  
20 hasn't anything to do with it, what you think of somebody  
21 else has no place in this case.

22 The question is what does this testimony produce,  
23 will your judgment be based strictly and entirely on the testi-  
24 mony in this case and not what you have heard or somebody has  
25 said about somebody else. The test is will your judgment be  
26 on the testimony in this case?  
27

28 A Yes.

THE COURT: I think that covers it.

1 MR. WEEDMAN: Yes, and I submit, very well.

2 Thank you, your Honor.

3 Q Mrs. Reyes, just following up on Judge Call's  
4 question of you, just one small step further, supposing you  
5 were in the jury room now and you are trying to figure out,  
6 based on everything you have heard in this trial, whether  
7 my client is guilty or not guilty.

8 Let's suppose you have been in there for several  
9 days and you just cannot make up your mind. Would you then,  
10 do you think, be tempted to use this opinion that you may have  
11 formed about the Manson family to influence your judgment?

12 A I don't know.

13 Q Okay.

14 Do you think that there is a likelihood of it,  
15 Mrs. Reyes, in all honesty here?

16 A I couldn't say.

17 Q Well, when you say you couldn't say --

18 A I would have to hear everything before I could make  
19 my decision.

20 Q Pardon me?

21 A I would have to hear and be --

22 Q We are not asking you, of course, to prejudge the  
23 evidence because we don't have any evidence, certainly not up  
24 to now.

25 Do you understand what I mean by that?

26 A Yes.

27 Q What I am asking you, though, is to tell us whether  
28 in your heart you feel that you would permit what you may have

1 learned about Charles Manson and the Manson family from  
2 this other case to influence your judgment here if these  
3 facts are very close?

4 A Could be.

5 Q It could influence your judgment? Okay.

6 So what you are telling us, then, Mrs. Reyes,  
7 and I appreciate your honesty and the fact that you are intro-  
8 specting about this, I am grateful for that; but so we'll  
9 be clear about it, are you telling us, then, that if this  
10 should be a close case in your mind that because of what  
11 you have learned of some other case you might conclude  
12 that my client is guilty?

13 A If it comes that close that I can't make up my  
14 mind, it could be.

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1 MR. WEEDMAN: Thank you so much, Mrs. Reyes. I appreciate your answers.

2 THE COURT: People.

3 MR. WEEDMAN: Your Honor, I would respectfully challenge  
4 Mrs. Reyes on the ground of implied bias under section 1073  
5 subdivision 2, your Honor.

6 THE COURT: Well, I pass the juror for cause.

7 You may proceed.

8 Were you through? I beg your pardon, were you  
9 through?

10 MR. KATZ: Mr. Weedman has no objection if I inquire on  
11 this narrow issue, with your Honor's permission.

12 THE COURT: All right. Go ahead.

13 Q BY MR. KATZ: Mrs. Reyes, Mr. Weedman has asked  
14 some very important, some very proper and some very pertinent  
15 questions in regards to each juror's ability to fairly and  
16 impartially evaluate the evidence as it unfolds during the  
17 course of the trial.

18 Now, all of us as human beings have preferences in  
19 life and prejudices that we carry throughout our lives.

20 But the law is not concerned with what preferences  
21 we have or what prejudices we have, unless we bring them  
22 into the courtroom with us and apply them so that we cannot  
23 impartially evaluate the evidence.

24 You appreciate that is the narrow issue with which  
25 we are concerned, is that correct?

26 A Yes.

27 Q For example, I have given this example on many  
28

11-2

1 occasions, I may have a preference for a red Porsche, for  
2 example. This is my car and if somebody tried to tell me that  
3 a Corvette is a better car I probably wouldn't listen because  
4 I like that 911S model of the Porsche.

5 And if there was a trial in which the only issue  
6 before the jury was which car is better, the Corvette or the  
7 Porsche, I would probably bring my prejudice into play in  
8 evaluating the evidence and still vote that the Porsche is  
9 better. You understand my example?

10 A Yes.

11 Q Now, bringing it home to this case, if, for  
12 example, you have some feelings in antipathy, an outrage for  
13 Charles Manson and the Manson family and those members who are  
14 loosely associated with the family, and that the evidence later  
15 unfolds and shows Mr. Grogan to be a member of that family, who  
16 perhaps subscribes to the philosophical tenets of Charles  
17 Manson, it would be unfair of you, solely because of that fact,  
18 to allow such feelings to enter into your deliberations of the  
19 evidence in this case and what weight you will give to the  
20 evidence, you understand that?

21 A Yes.

22 Q Mr. Grogan, in that sense, could not get a fair  
23 trial. So what I am asking you is this. Think carefully now.  
24 Can you set aside what opinions you may have of Charles Manson  
25 and the Manson family, what conclusions you have drawn by what  
26 you have read, heard or seen in connection with publicity  
27 emanating out of the Tate-La Biance case and perhaps other  
28 related cases, and judge the evidence in this case uninfluenced



11-31<sup>1</sup> by those factors impartially; or do you think, as you told  
2 Mr. Grogan -- or excuse me, Mr. Grogan's attorney, Mr.  
3 Weedman, that these other opinions and conclusions by reason  
4 of publicity you have been subjected <sup>to</sup> would enter into your  
5 ability to be fair and impartial to Mr. Grogan?

6 A Well, not exactly that. I mean if the evidence  
7 shows that there was some connection, that is what would make  
8 me decide, if I couldn't make up a decision.

9 Q Well now, you understand that the People are only  
10 permitted, as is the defendant, to introduce into evidence only  
11 relevant evidence, material evidence.

12 And in that connection his Honor told you that the  
13 function of his Honor is to determine what the rules are of  
14 evidence and thereby makes rulings which say, "Yes, you can  
15 get in this piece of evidence because it is relevant and  
16 material to some issue," or, "No, you cannot because it is  
17 prejudicial." You understand?

18 A Yes.

19 Q So assuming that there is some evidence that  
20 Mr. Grogan is a member of the family and knew Mr. Manson, or  
21 what have you, then you must assume that it was offered for  
22 some proper purpose.

23 Now, you may or may not accept the testimony. You  
24 may or may not reject the testimony. The point is that as the  
25 trier of fact, if his Honor permits the testimony to come in,  
26 you are permitted to consider it for the proper purpose for  
27 which it is offered; you understand that?

28 A Yes.

11-4

Q All right.

Now, my question to you, if you are in that close case where you can't decide one way or the other, is Mr. Grogan guilty, is he not guilty; and you knew that Mr. Grogan was a member of the family and some juror said to you, "Now, listen, Mrs. Reyes, let's get down to the nitty-gritty. You know that Mr. Grogan is a member of the family. You know he subscribes to the philosophical tenets of Mr. Manson. And that is enough. You know he probably did it."

You wouldn't say that, would you?

A I don't know. Really, I don't.

Q See, we have to have some feeling. I know you are answering this in your own mind as honestly as you can and you are not giving us the usual cliché answer that just comes tipping off one's tongue; you are thinking about it and you are introspective about it. We appreciate that.

I think Mr. Weedman, in all fairness to his client, has to have a little more assurance. In other words, he has to know whether or not you think you can handle that kind of situation and say, "Mr. Juror, or Mrs. Juror, that has nothing whatsoever to do with Mr. Grogan's innocence unless it is part of the evidence in this case."

You understand that?

A Yes.

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1 Q Now, as you sit here now think very carefully.  
2 Can you put aside what you have seen, read or heard concerning  
3 Charles Manson and the Manson family and judge Mr. Grogan's  
4 guilt based wholly upon the evidence in this case?

5 A Yes.

6 MR. KATZ: All right. Thank you.

7 THE COURT: Is the matter submitted? You have a for  
8 cause in there?

9 MR. WEEDMAN: Well, no. I would like to ask a few more  
10 questions.

11 THE COURT: All right. Go ahead.

12 Q BY MR. WEEDMAN: Mrs. Reyes, I apologize for  
13 putting you on the hot seat like this. And I hope you will  
14 understand.

15 Mrs. Reyes, despite everything now, really, that  
16 has been said to you by both Mr. Katz and myself, is it true  
17 that in a close case your judgment as to my client's guilt  
18 would be affected by your opinion of the Charles Manson family  
19 gained from matters that you have heard in connection with  
20 other cases?

21 A Well, I would have to hear this, like the judge  
22 says, what I hear, here in court. That I would have to wait  
23 for my evidence on that.

24 Q Well, of course, we are assuming now for purposes  
25 of my question that you have heard all the evidence and you  
26 can't make up your mind about it. You are having a hard time  
27 deciding not only who is telling the truth, but whether or not  
28 the evidence adds up to murder or not. You are having a hard

11a-2 1

time making up your mind.

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And you have given it a lot of thought. So my question again is don't you feel that your opinion about Charles Manson and the Manson family could then come into play and influence your judgment here?

6

A It could.

7

8

Q Well, is it just an imaginary possibility as far as you are concerned?

9

A Yes.

10

11

Q Or is it a substantial possibility that it really could happen to you?

12

A No, it's imaginary.

13

14

15

16

Q Is it imaginary like if someone should come running into the courtroom and say there is a Martian space ship out in front of the courthouse with little green men running out of it?

17

18

When I say something like that I always look at the door. You can never tell, I suppose.

19

20

21

Is it imaginary in that sense or do you think it is a kind of a possibility, Mrs. Reyes, that would interfere with my client having a full and fair day in court?

22

A Well, I would have to think it would.

23

24

Q Let me put it to you this way. Supposing you were the defendant in this case.

25

A Uh-huh.

26

27

Q Do you think you would be secure with someone who feels as you do, that is, secure in a fair trial?

28

A No.

1 Q With someone who feels as you do?

2 A No.

3 MR. WEEDMAN: All right. I will renew the challenge.  
4 Thank you.

5 MR. KATZ: Your Honor, I am willing to enter into a  
6 stipulation with Mr. Weedman. And we thank Mrs. Reyes, surely,  
7 for her candor and the honesty with which she answered all of  
8 the questions.

9 THE COURT: You do join in the stipulation.

10 MR. KATZ: Yes. I will join in the stipulation.

11 THE COURT: All right.

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

13 Call another juror.

14 THE CLERK: Mrs. Birdie M. Kemp, K-e-m-p.

15 MR. KATZ: First name?

16 THE CLERK: B-i-r-d-i-e, middle initial M., last name  
17 K-e-m-p.

18 MR. KATZ: Thank you.

19 THE CLERK: Yes.

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MRS. BIRDIE M. KEMP

BY THE COURT:

Q Now, lady, have you heard everything I have said this morning?

A Yes.

Q Now I am going to ask you to assume that you have been selected as a juror in this case and have been sworn to try the case. And assume also that the case has been tried.

You have gone to the jury room to decide the question of guilty or not guilty. At that time the jury could make a finding of not guilty and that would conclude the case.

The jury also in their judgment could make a finding of guilty.

And then the jury must make a finding of degree, first degree murder or second degree murder. Now, if the jury makes a finding of second degree murder then the jury is excused. They have completed their duty.

However, if the jury makes a finding of first degree murder then there is a further hearing held called the penalty hearing.

When the penalty hearing is through the jury goes to the jury room to decide the question of penalty. And the penalty is either the death penalty or life imprisonment.

Now will you please assume that you are in the jury room and the penalty hearing has been completed and you are voting on the question of penalty. Now, I will ask you at that time, if you will assume that situation and you are

1 voting on the question of either the death penalty or life  
2 imprisonment, I will ask you:

3 At that time would you automatically vote against  
4 the imposition of the death penalty without regard to any  
5 evidence that may be developed at the trial of this case?

6 A No.

7 Q The answer is no?

8 A Yeah.

9 Q Right?

10 A (Nodding affirmatively.)

11 Q All right.

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

15 A No.

16 Q Do you know of any situation or facts that might  
17 arise during the course of the trial that could disturb  
18 you or upset you, maybe the length of the trial, I don't  
19 know, anything that could bother you so that you couldn't  
20 be fair and impartial as a juror during this trial?

21 A I could be upset by the fact that my daughter  
22 will be coming back to my home in about a month, and there  
23 wouldn't be anybody there to take care of her.

24 Q Well, can you give me an answer, do you think that  
25 anything could arise that would prevent you from being fair  
26 and impartial?

27 A No.

28 THE COURT: All right. Thank you.

1 Defendant may inquire.

2 MR. WEEDMAN: Thank you, your Honor.

3 Q Are you employed, Mrs. Kemp?

4 A Yes, I am.

5 Q What do you do?

6 A I am supervisor for the Department of Public  
7 Social Services.

8 Q Is there a Mr. Kemp?

9 A Yes.

10 Q What does he do?

11 A He's employed by the City of Los Angeles in  
12 street maintenance.

13 Q Okay. It is estimated that this trial could last  
14 as much as ten weeks. It is a joint estimate of counsel.

15 Would that cause you any personal hardship,  
16 Mrs. Kemp?

17 A Yes.

18 Q Would you tell us about that, please.

19 A I wouldn't have a babysitter for my daughter who  
20 is coming back in less than eight weeks.

21 Q Well, you understand that the court session will  
22 be such that you will be free to leave every afternoon at  
23 around 4 o'clock.

24 A Then that's okay.

25 Q Would be all right. It is not the intention of  
26 anyone here that the jury be sequestered, that is that they  
27 be locked up for the night during the course of the trial.

28 A Okay.



1           Q       So you would be free to keep fairly regular  
2 hours during the trial days.

3           Okay. With respect to the matter of the death  
4 penalty, Mrs. Kemp, do you feel that following a first degree  
5 murder conviction, that is, a willful, premeditated, malicious  
6 killing of another person without any justification and  
7 without any excuse, that you would automatically impose the  
8 death penalty without regard to any other evidence?

9           A       No.  
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1 Q Have you any close friends or relatives who are  
2 in law enforcement?

3 A No.

4 Q Is there anything about the fact that my client has  
5 been charged and brought here to trial that makes you think that  
6 he is more likely than not to be guilty at this point?

7 A No.

8 Q I take it, then, that before you even begin to  
9 consider whether he did it or didn't do it, you are going to  
10 wait until you hear the evidence in this case?

11 A Yes.

12 Q And, indeed, you are going to wait beyond that and  
13 listen to Judge Call's instructions and then you are going to  
14 retire to the jury room and try to apply the instructions and  
15 join in discussion with your fellow jurors about the matter?

16 A Yes.

17 Q Mrs. Kent, have you any prior criminal jury  
18 experience?

19 A Yes.

20 Q Will you tell us what kind of a case that was; that  
21 is, what was the charge?

22 A Possession of stolen goods and grand theft and  
23 robbery.

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

25 A Yes.

26 Q I take it, Mrs. Kent, it is obvious that you won't  
27 apply anything that you may have learned in those cases in this  
28 case -- obviously, not the facts -- but will you also not,

1 apply whatever law you may have learned in that case into this  
2 case?

3 A Yes.

4 Q I take it from your experience as a juror that you  
5 obviously have no quarrel with the presumptions of innocence?  
6 Judge Call has read that instruction to you.

7 A No.

8 Q You have no quarrel with the necessity of each  
9 juror giving an individual opinion with respect to the evidence  
10 in this case?

11 A No.

12 Q With respect to any opinions that you may have  
13 about the Charles Manson family, anything connected with the  
14 Charles Manson family, do you feel that any such opinion would  
15 interfere with your giving my client a fair and impartial trial,  
16 based upon the evidence in this case?

17 A No.

18 Q I don't mean to suggest that my client was involved  
19 in any other cases. The evidence here may show that my client  
20 was an associate of Charles Manson's.

21 What about the situation, Mrs. Kent, that I  
22 discussed with Mrs. Reyes, the situation of a very close case,  
23 your having a difficult time making up your mind as to guilty  
24 or not guilty; do you feel then that any opinion you may have  
25 about the Manson family would influence your judgment?

26 A No.

27 Q Is there anything at all about this case that  
28 makes you feel that you would rather be doing something else

1 while this case was going on?

2 A No.

3 MR. WEEDMAN: Thank you, Mrs. Kent.

4 THE COURT: People, for cause?

5 MR. KATZ: Yes, thank you.

6 Q My apologies once again to the members of the panel  
7 that are presently seated.

8 It is necessary, Mrs. Kent, for us to go over some  
9 of the things that other people have heard for four or five  
10 days and perhaps almost two weeks.

11 Have you given some thought to the death penalty  
12 before being called for jury duty?

13 A Yes.

14 Q And have you read any literature concerning the  
15 death penalty?

16 A A little.

17 Q And have you had any <sup>IN</sup>formal discussion with some  
18 friends and relatives concerning the propriety of capital  
19 punishment, in general?

20 A No.

21 Q Based upon what you have read, heard and thought  
22 about concerning the death penalty, do you have any opinions  
23 one way or the other toward the death penalty?

24 A Yes.

25 Q All right.

26 Would it be a fair statement to say, after having  
27 thought about it and considering some of the pros and cons,  
28 you are generally opposed to the death penalty?

1           a       Yes.

2           Q       And you understand that in this case the People are  
3 asking for the death penalty should that issue be presented to  
4 the jury; that is, the issue of penalty?

5           A       Yes.

6           Q       And let me make it unequivocally clear at this time  
7 that in the event there is a return of a first degree murder  
8 verdict in this case and this issue of penalty goes to the  
9 jury, the People will deliberately prevail upon the jury to  
10 return the verdict of death in this case.

11                    You understand that?

12           A       Yes.

13           Q       And because of that disclosure do you feel that the  
14 People are ghoulish or bloodthirsty or do you feel any antipathy  
15 toward the People because of that?

16           A       No.

17           Q       And do you appreciate the distinction between  
18 believing that in some set of circumstances the death penalty  
19 is justified; that is, you wouldn't mind if 12 other people  
20 voted the death penalty, but, on the other hand, a situation  
21 whereby you would be asked to personally vote the death  
22 penalty -- do you recognize the distinction between those two  
23 situations?

24           A       Yes.

25           Q       I don't think it has been explained to you up to  
26 this point, but there can be no return of the death penalty  
27 verdict unless all 12 unanimously join in that verdict; you  
28 understand that?

1 A Yes.

2 Q That means that if 11 jurors voted for death and  
3 the 12th juror abstained or voted for life, there is no return  
4 of the death penalty verdict because it requires the unanimous  
5 vote of all 12 jurors.

6 Do you understand that?

7 A Yes.

8 Q Would it be fair to say that if you were of a  
9 state of mind concerning the death penalty that under no  
10 circumstances would you consider voting the death penalty,  
11 yourself, the People could not get a fair trial on that issue?

12 A No.

13 Q Well, I probably went a little bit too fast.

14 See if you can follow the question, if you will:  
15 would it be fair to say that if you were of a present state  
16 of mind that under no circumstances would you, yourself, vote  
17 the death penalty, then the People could never get a fair  
18 trial on that issue, if you were selected as a juror, isn't  
19 that right, because it takes a unanimous vote of all 12?

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20 A Mm-hmm.  
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1 Q So if your state of mind was, "I am not going  
2 to vote the death penalty, I don't care what Mr. Katz says  
3 about this case, I am just never going to vote the death  
4 penalty," and you were selected as a juror, we could never  
5 get a fair trial on that point; is that right?

6 A That's right.

7 Q So what I am doing, and you understand the spirit  
8 in which I am asking this, is to have you evaluate your own  
9 thinking, your own reasoning, your own approach to the problems  
10 in regards to the death penalty; and have you in your own  
11 mind resolved the question as to whether or not you could  
12 personally vote the death penalty if called upon to do so,  
13 consistent with your conscience?

14 You understand that is the ultimate question I  
15 am going to ask.

16 A Yes.

17 Q Now, bearing in mind that you need a unanimous  
18 vote of all the 12 jurors in order to effect the return of the  
19 death penalty verdict, you can't blame the other 11 jurors  
20 if you voted along with them and say, "Well, they voted the  
21 death penalty, that's their responsibility, I just went along  
22 with it."

23 You understand that you

24 A Yes, I understand.

25 Q So if you voted the death penalty along with the  
26 11 others you would have yourself to blame in that sense, or  
27 you would have to accept the responsibility for that death  
28 penalty verdict; is that right?

12a-2

1 A Yes.

2 Q Do you think you could live with that kind of  
3 decision for the rest of your life if you thought it was the  
4 right verdict?

5 A Yes.

6 Q Now, you realize in voting for the death penalty  
7 verdict you would be required to come right back into the  
8 seat where you are sitting now and tell the court by your  
9 verdict that Mr. Grogan is sentenced to death.

10 You understand that?

11 A Yes.

12 Q Now, let's suppose we are in this situation, we'll  
13 assume there's been a return of a first degree murder verdict,  
14 you have heard the evidence, therefore, on the guilt phase  
15 of the case. You have heard, perhaps, whatever evidence there  
16 is to be presented at the penalty phase which shows the back-  
17 ground and history of the defendant, what kind of human being  
18 he is, how has he reacted in a social context of things by  
19 way of his lifestyle, et cetera, any evidence in mitigation  
20 or aggravation of the offense and in your heart and your mind  
21 and your conscience you believe that case warrants the death  
22 penalty.

23 How would you vote?

24 A Guilty.

25 Q You'd vote guilty?

26 A I'm sorry, I'd vote for the death penalty.

27 Q Now, without telling me those circumstances, can  
28 you conceive of some circumstances in which you, yourself, would



12a-3

1 personally vote for the death penalty?

2 A No.

3 Q All right.

4 Are you telling us that as you sit here now you,  
5 yourself, can't envision any circumstances in which you,  
6 yourself, would vote the death penalty?

7 A Yes, I am telling you that.

8 Q All right. So, what you are saying is that  
9 regardless of the evidence to be produced in this case,  
10 under no circumstances would you, yourself, vote the death  
11 penalty; is that correct?

12 A That isn't what I said.

13 MR. WEEDMAN: Excuse me, your Honor; I will object to  
14 the question on the ground that it is leading and suggestive  
15 and argumentative.

16 THE COURT: Well, overruled.

17 I think we ought to have it -- overrule it;  
18 ask your question.

19 Q BY MR. KATZ: I asked you a moment ago, and perhaps  
20 you didn't understand my question, whether or not you could  
21 conceive of some circumstance in which you, yourself, would  
22 personally vote the death penalty and you said "No."

23 Was that a fair statement?

24 A Yes.

25 Q So what you are telling me is you cannot conceive  
26 of any circumstance in which you, yourself, would vote for  
27 the death penalty; is that right?

28 A Yes.

1 Well, yes -- I am only allowed to say yes or no?

2 Q No; please amplify at this time, because there is  
3 some confusion in this area.

4 A The only thing is, I can't think of anything;  
5 that doesn't mean that you can't present something.

6 Q All right, that's a fair statement.

7 Now, let's go on to this area of circumstantial  
8 evidence, if I may, for just a moment.

9 You heard his Honor tell you that the People do  
10 not contemplate producing any eyewitness to the killing, any  
11 body, any parts thereof or any eyewitness to having observed  
12 the body in death. You understand that?

13 A Yes.

14 Q Therefore the People, as a result of what has been  
15 referred to by his Honor as circumstantial evidence or indirect  
16 evidence, will attempt to prove the defendant committed murder  
17 in the first degree.

18 Do you understand that?

19 A Yes.

20 Q Do you understand that the law of this State permits  
21 a person to be convicted of murder in the first degree based  
22 wholly upon the use of circumstantial evidence without production  
23 of the body, without production of any eyewitness to the killing  
24 and without production of an eyewitness having observed the  
25 body in death.

26 Do you understand that?

27 A Yes.

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Q Do you have any quarrel with that principle of law?

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A No.

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Q All right; and do you understand that whether or not we are talking about a minor misdemeanor criminal violation, whether it is a petty theft, a little theft of something from a market, food or what have you, or whether it is a grand theft case, or whether it is receiving stolen property or robbery or murder, our burden of proof is always the same: we must prove the guilt of the defendant in each and every criminal case beyond a reasonable doubt and to a moral certainty.

You understand that?

A Yes.

Q Just because this is a murder case, that fact, alone, does not require us to sustain a greater burden of proof.

You understand that?

A Yes.

Q All right.

So, in other words, you won't hold us to some higher burden of proof, such as demonstration of that degree of proof which excludes all possibility of error and creates absolute certainty in your mind, will you?

A No.

Q All right.

Just you will require us to meet our burden of proof, which is to create in your mind by the evidence, properly introduced at the trial, an abiding conviction to a moral certainty of the truth of the charge; is that correct?

A Yes.

1           Q       Now, do you think you would require any greater  
2 degree of evidence because this case is solely circumstantial?

3           A       No.

4           Q       And do you have any objection or does it offend  
5 your sense of justice and fair play that a person can, in fact,  
6 in this State be convicted of murder in the first degree  
7 without production of a body and without production of an  
8 eyewitness to the killing?

9           A       No.

10          Q       And does it offend your sense of morals or justice  
11 or fair play that a person in this State may not only be  
12 convicted based wholly on circumstantial evidence but could  
13 further be sentenced to death?

14          A       No.

15          Q       All right; you stopped for a moment, and I  
16 appreciate that because you are giving some thought to these  
17 questions that I am rapidly firing at you.

18                 As you think about it, does it offend your sense  
19 of morals and fair play to know that a person in this State  
20 who stands convicted of murder in the first degree based  
21 wholly on circumstantial evidence can, indeed, be sentenced by  
22 the jury to death?

23          A       I don't like it, but that's the way it is.

24          Q       Now, you understand that in this State the law  
25 doesn't tell you what penalty is proper upon return of a first  
26 degree murder verdict?

27                 That is, the law does not favor life imprisonment  
28 over death or death over life; do you understand that?

1 A Yes.

2 Q In that connection, the law, therefore, won't give  
3 you any guideposts by which to determine which penalty is  
4 proper upon the return of a first degree murder verdict.

5 You understand that?

6 A Yes.

7 Q The only thing the law is going to tell you is that  
8 you are armed with your heart and your mind and your conscience  
9 and with your good common sense and judgment, and applying all  
10 of these things you will make the sole and absolute determina-  
11 tion as to what the proper penalty is in this case; is that  
12 correct?

13 Do you understand that?

14 A Yes.

13.

1 Q So that the People don't have to prove facts  
2 A, B, and C in order to get a death penalty or in the absence  
3 thereof, you will vote life; you understand that?

4 A Yes.

5 Q In that connection there is no burden upon the  
6 People to present any evidence whatsoever in the penalty  
7 phase of this trial before the return of the death penalty  
8 will issue; do you understand that?

9 A Yes.

10 Q Would you automatically, regardless of the evidence  
11 in this case before you, refuse to vote the death penalty in  
12 a circumstantial evidence case?

13 A No.

14 Q Going on to another subject, if I may, this issue  
15 of sympathy, you will be instructed by his Honor that you are  
16 not to permit your verdict to be influenced by any passion  
17 you may have against the defendant or any sympathy you may  
18 have for the defendant. Would you unhesitatingly follow that  
19 instruction?

20 A Yes.

21 Q I take it Mr. Grogan is in full view of you at  
22 this time as you are seated in the jury box?

23 A Yes.

24 Q Do you think that you would permit the evident  
25 youth of the defendant to affect your ability to impartially  
26 weigh the evidence in this case <sup>MAKE A</sup> determination of the merits  
27 of this case based upon the evidence?

28 A No.

1 Q All right.

2 And so that if you felt that the circumstantial  
3 evidence in this case created an abiding conviction to a moral  
4 certainty of the truth of the charge you would vote guilty  
5 regardless of the evident youth of the defendant, is that  
6 right?

7 A Yes.

8 Q I take it you are telling us you would not give  
9 to this defendant because of his youth some benefit which  
10 you would not give to any other person who was seated in  
11 that chair under the same circumstances, is that correct?

12 A Yes.

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

14 Pass for cause.

15 THE COURT: Whose peremptory is it?

16 MR. KATZ: With the People.

17 THE CLERK: Yes, sir.

18 THE COURT: Whose peremptory?

19 THE CLERK: The People.

20 MR. KATZ: People wish to thank and excuse Mrs. Kemp.

21 THE COURT: Very well.

22 THE CLERK: Clinton Lewis, L-e-w-i-s.

23 First name Clinton.

24 13a.

CLINTON LEWIS

BY THE COURT:

Q Now, I am going to ask you did you hear everything that I said to the jurors this morning?

A Yes, I did.

Q I am going to ask you to assume that you have been selected as a juror in this case and we have tried the case, and you have gone to the jury room to decide the case, guilty or not guilty.

Now, at that time the jury could make a finding of not guilty and that would conclude the case entirely. It would be all over.

On the other hand, the jury could make a finding of guilty. Now, if the jury makes a finding of guilty it must then set the degree, guilty of first degree murder or guilty of second degree murder.

If the jury makes a finding of guilty second degree murder then the case is again concluded. The jury is excused.

If the jury makes a finding of guilty first degree murder then there must be held another, a subsequent hearing or trial. It isn't so much a trial as a hearing. And at the expiration, at the conclusion of the hearing the jury goes back again to the jury room to decide the question of what is the penalty. The penalty the jury must set is either the death penalty or life imprisonment. The jury decides that.

Now, I will ask you if you will please assume that you have had the penalty hearing and you are in the jury room deciding the question of the penalty. Now, I will ask you at



1 that time on your voting, you are voting for the death penalty  
2 or capital punishment, I am going to ask you a question:

3 At that time would you automatically vote against  
4 the imposition of the death penalty without regard to any  
5 evidence that might be produced or developed during the trial  
6 of this lawsuit?

7 A Yes, I would.

8 Q The answer is yes or no?

9 A Yes.

10 Q The answer is yes?

11 A Yes.

12 Q Is that correct?

13 A Yes.

14 Q Is there any question in your mind you would vote  
15 against the death penalty? Is there any question at all you  
16 would vote against it?

17 You are satisfied you would vote against the death  
18 penalty, is that correct?

19 A Yes. That is what I am saying.

20 THE COURT: May I rule in the matter, gentlemen?

21 MR. KATZ: Yes, your Honor.

22 MR. WEEDMAN: Yes, your Honor.

23 THE COURT: I will excuse you and thank you very much.

24 MR. KATZ: Would the court makes its finding.

25 THE COURT: Oh, yes.

26 MR. KATZ: Thank you.

27 THE COURT: I make a finding for cause exists under the  
28 Witherspoon case and also under section 1073 subdivision 2 and

1 1074 subdivision 8.

2 Thank you.

3 MR. KATZ: Thank you, your Honor,

4 THE COURT: For cause exists.

5 Call another juror.

6 THE CLERK: Jerry N. Williams, W-i-l-l-i-a-m-s.

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JERRY N. WILLIAMS

BY THE COURT:

Q Now, Mr. Williams, have you heard everything that I have said this morning to the jurors?

A Yes, I have.

Q I will ask you to assume that you have been selected as a juror in this case. The case has been tried. The jury has gone to the jury room to decide the question of guilty or not guilty.

Now, at that time the jury could find the defendant not guilty and that concludes the case entirely.

The jury could make a finding of guilty. If the jury decides guilty then the jury must make a finding of degree, either first degree murder or second degree murder.

If the jury finds second degree murder then the jury is excused. There is no further jury action.

If the jury finds first degree murder then an additional hearing has to be held and at the expiration of the additional hearing the jury goes back to the jury room to decide on the question of penalty, what is the penalty. The penalty must be either the death penalty or life imprisonment. The jury decides that question.

Now, if you have had the penalty hearing and you are in the jury room voting on the question of the death penalty or life imprisonment I am going to ask you this question: at that time would you automatically vote against the imposition of the death penalty without respect or regard to any evidence that might be produced at the trial of the

13b2

1 case?

2 A I would vote against the death penalty.

3 Q You would vote against the death penalty?

4 A Right.

5 Q That is a correct statement?

6 A Right.

7 Q Is there any question in your mind about your  
8 feelings in the matter?

9 A No.

10 THE COURT: Thank you.

11 May I excuse this juror?

12 MR. KATZ: Yes, your Honor.

13 MR. WEEDMAN: Yes, your Honor. So stipulated.

14 THE COURT: Thank you, sir.

15 And I will make a finding that for cause exists  
16 under the Witherspoon case as well as Section 107.2 and 1074.8  
17 of the Penal Code.

18 We are after 12.

19 Well, call another juror, then, we will go to  
20 2 o'clock.

21 THE CLERK: Otis Wayne Wharton, W-h-a-r-t-o-n.

22 First name Otis.

23 THE COURT: All right. Now, ladies and gentlemen, we are  
24 slightly after 12 o'clock. Let's go over until 2 o'clock to  
25 proceed.

26 Do not discuss this case at all amongst yourselves  
27 or with anybody or person, or come to any opinion or conclusion.

28 And if you will kindly return promptly at 2

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o'clock, we will go right ahead at 2 o'clock.

Thank you.

(At 12 noon, a recess was taken until  
2 p.m. of the same day.)

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The 14.

LOS ANGELES, CALIFORNIA, FRIDAY, JULY 9, 1971

2 o'clock p.m.

THE COURT: Now, we are ready to go ahead, gentlemen,  
People against Grogan.

Defendant is here and counsel for defendant and  
the People are here and all jurors are back in the jury box  
and in the back of the courtroom.

OTIS WAYNE WHARTON

BY THE COURT:

Q Now, Mr. Juror, have you heard everything that  
I have said today since you came in the courtroom?

A Yes, sir.

Q I want you to assume that you have been sworn in  
to try this case as a juror and that the case has been tried  
and you have gone to the jury room to decide the case.

At that time the jury can make a finding of guilty  
or not guilty as charged. If the jury should make a finding  
of not guilty, the case is concluded entirely and it is all  
through.

On the other hand, if the jury makes a finding of  
guilty as charged, the jury then sets the degree of the crime,  
first degree murder or second degree murder. If the jury  
finds murder second degree, then there is no further action  
by the jury, their duty is all completed.

If the jury makes a finding of first degree murder,

1 then the court will hold a penalty hearing and after the  
2 penalty hearing is concluded the jury goes back into the  
3 jury room for the purpose of deciding what is the penalty.  
4 They must make a decision that the penalty is either capital  
5 punishment, death, or life imprisonment, two choices; one  
6 of the decisions must be made.

7 Now, I am going to ask you to assume that you  
8 have gone to the jury room after the penalty hearing, you are  
9 voting on the question of death or life imprisonment, and I  
10 will ask you this question: at that time would you automatically  
11 vote against the imposition of capital punishment without  
12 regard to any evidence that might be developed at the trial  
13 of this case before you?

14 A No, sir.

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Q Thank you.

Now, I will ask you one other question. If you are selected as a juror in this case do you know any reason at all that you could not be fair and impartial to both parties in the trial of this case and in your decisions?

A Yes, sir.

Q The answer is no?

MR. KATZ: The answer is yes, your Honor.

Q BY THE COURT: The answer is you could be fair and impartial? That is the answer? Yes, you could be fair and impartial?

A The answer is --

Q Well, give me -- the answer is yes?

MR. KATZ: I believe he said no, your Honor.

THE COURT: I can't get the answer. Do you have the answer, Mr. Reporter?

(The answer was read by the reporter  
as follows:

"A Yes, sir.")

THE COURT: All right.

Q Your head was behind this lady's hair and it makes it difficult for me to follow you.

A I am sorry.

Q Now, I am going to ask you another question that is very much the same.

Do you know of any situation or facts that could occur, any problems that could exist that might develop during the course of the trial that could upset you, disturb you so



1 that your mind couldn't be free and clear and would prevent  
2 you from getting a fair and impartial judgment?

3 Do you know of any such a situation?

4 A Yes, sir.

5 Q You do?

6 A Yes, sir.

7 Q Do you think that that situation would disturb  
8 you to such an extent you might not be able to render a fair  
9 and impartial judgment?

10 A Quite possibly, yes, sir.

11 THE COURT: Do you want to inquire, gentlemen?

12 MR. KATZ: Yes, your Honor.

13 MR. WEEDMAN: I will pass, your Honor.

14 THE COURT: All right.

15 BY MR. KATZ:

16 Q Mr. Wharton, you were part of the second panel?

17 A Yes, sir.

18 Q And then you heard all of the questions that we  
19 have been asking for days, is that correct?

20 A Yes, sir.

21 Q Mr. Wharton, may I inquire as to the opinion you  
22 have with reference to extraneous matter that you have in mind  
23 which would prevent you from being fair and impartial to either  
24 side?

25 A It would be my work only. It has nothing to do  
26 with the trial.

27 Q In other words, it has nothing to do with any  
28 publicity in connection with the Tate-La Bianca case and the

1 Manson family as such; is that right?

2 A That's right.

3 Q Where are you employed, sir?

4 A Atlantic Richfield.

5 Q Do they pay you for a certain number of days for  
6 jury service?

7 A They pay me all the time. I didn't ask about this,  
8 sir.

9 Q I see. What is it about your work that would cause  
10 hardship or render you incapable of fully and fairly evaluating  
11 the evidence in this case?

12 A I am a night maintenance supervisor, and conditions  
13 at this time are quite pressing.

14 Q Well, are you asking to be excused?

15 A I would like to be, sir.

16 MR. KATZ: All right.

17 I have no further questions.

18 THE COURT: Is the matter submitted, gentlemen?

19 MR. WEEDMAN: Yes, your Honor.

20 THE COURT: People submit?

21 MR. KATZ: Matter submitted.

22 THE COURT: I will excuse you for cause. Thank you very  
23 much.

24 MR. WHARTON: Thank you very much.

25 THE COURT: I will make a finding that a for cause exists  
26 for the excusing of the juror under Penal Code 1073, 1074,  
27 subdivisions 2 and 8 respectively.

28 You may call another juror.

1 THE CLERK: Miss Marie E. Schneider, S-c-h-n-e-i-d-e-r.

2  
3 MISS MARIE E. SCHNEIDER

4 BY THE COURT:

5 Q Now, lady, did you hear everything that I have  
6 said this morning and this afternoon up to this time?

7 A Yes.

16

16-1

Q Now, let's assume you are sworn in as a juror to try this case and we have had the trial and you go to the jury room to vote on the question of guilty or not guilty. At that time the jury could make a finding of not guilty and the matter would be concluded entirely.

The jury could make a finding of guilty. If that is the case, then the jury would find the degree, first degree or second degree. If the jury made a finding of second degree murder, then at that event there would be no further action by the jury.

However, if the jury made a finding of first degree murder, then there would be a penalty hearing in the case. After the penalty hearing the jury would go back to the jury room to decide the question of penalty. The penalty would have to be the death penalty or life imprisonment.

Now, let's assume we have had the penalty hearing and you are voting in the jury room, I will ask you this question: at that time would you automatically vote against the imposition of the death penalty without regard to any evidence that might be developed at the trial of this action?

A No.

Q All right.

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

A No.

Q Do you know of any factual situation that might arise during the trial that would disturb you or upset you in

16-2

1 such a way that you couldn't -- you might be disturbed and  
2 upset, your mind might not be open and free?

3 Do you know any situation as that that might  
4 exist?

5 A No, I don't.

6 THE COURT: Thank you.

7 Defendant may inquire.

8 MR. WEEDMAN: Thank you, your Honor.

9 Q Miss Schneider, are you employed?

10 A I am semi-retired.

11 Q All right, and what did you do before you were  
12 semi-retired?

13 A Well, I worked for a stock and bond broker; I still  
14 work three or four days a week in the morning.

15 Q What do you do for them?

16 A I'm a salesman.

17 Q Is there anything about the fact that this trial  
18 might last ten weeks that would cause you any personal  
19 hardship?

20 A No.

21 Q Have you any close friends or relatives who are  
22 in law enforcement?

23 A No.

24 Q Have you heard anything about Charles Manson and  
25 the Manson family and the Tate-La Bianca case?

26 A Well, newspaper and television.

27 Q Surely.

28 Did you agree that it was one of the most highly

1 publicized cases of perhaps all time?

2 A Yes, I would.

3 Q As a result of your reading and watching and on  
4 television and so on, reading about it and watching on  
5 television, did you form any opinion about the Charles Manson  
6 family?

7 A Well, yes.

8 Q And if the evidence should show here that my client  
9 was closely associated with Charles Manson, do you think you'd  
10 be prejudiced against my client?

11 A No.

12 Q What about the kind of, perhaps, close case that I  
13 have suggested to other prospective jurors, where after  
14 considerable deliberation you can't really make up your mind  
15 whether the People have proven a case or not, do you think an  
16 association with Charles Manson, because of what you have  
17 learned about some other case, would influence your decision  
18 as to my client's guilt?

19 A No, I don't think so.

20 Q Have you any prior criminal jury experience?

21 A Yes.

22 Q How many cases have you sat on?

23 A One.

24 Q What sort of a case was that?

25 A Child molesting.

26 Q Was that during your present tour as a juror?

27 A Yes.

28 Q I take it, then, particularly that experience,

1 Miss Schneider, you have no quarrel with the rule of presump-  
2 tion of innocence?

3 A No.

4 Q And I take it you likewise have no quarrel with  
5 our law which says that the burden is on the prosecutor to  
6 prove the case?

7 A No quarrel with it.

8 Q And I take it in that connection you will not  
9 expect my client to prove his innocence?

10 A I will not expect him to?

11 Q Yes.

12 A Yes.

13 Q Let me back up a little bit, okay?

14 I am sure you understand, or at least you have no  
15 quarrel with the idea that the burden is on the prosecutor  
16 here --

17 A Yes.

18 Q -- to show my client guilty?

19 A Yes.

20 Q That there is no burden on my client to prove his  
21 innocence here?

22 A No.

23 Q Let me put it to you this way: if you are so  
24 instructed by the court, would you follow that instruction?

25 A Yes, I would.

26 Q Okay.

27 Supposing after, just to test out this a little  
28 bit, if you will bear with me, Miss Schneider, supposing after

1 the conclusion of all of the evidence and after consideration  
2 of the instructions and deliberation with your fellow jurors  
3 you are just not really satisfied that the People have proven  
4 a case to a moral certainty and beyond a reasonable doubt; but,  
5 at the same time, you are not satisfied that my client  
6 absolutely, beyond any shadow of a doubt, didn't do it -- see  
7 what I mean?

8 In other words, you are kind of in the middle.  
9 The prosecutor hasn't really proven the case after all this  
10 effort and trouble, but by the same token my client, perhaps,  
11 has not shown you, for example, his whereabouts during this  
12 period of August 16 to August 29 of 1969.

13 Would you, in that case, acquit my client?

14 A Well, after I heard the evidence, I would.

15 Q All right.

16 In other words, you have heard the evidence, the  
17 People have not met their burden of proof, but by the same  
18 token, my client hasn't convinced you beyond a reasonable doubt  
19 that he is innocent; you'd acquit him, nonetheless, wouldn't  
20 you, Miss Schneider?

21 A I don't know.

22 Q Well, it is a tricky question I am asking, Miss  
23 Schneider; it is possibly the most difficult question counsel  
24 can pose to a prospective juror.

25 I am sure that you understand that the burden is  
26 with the People?

27 A That's right.

28 Q I'm sure you understand that there is no burden



1 upon my client to come in here and prove to you that he is  
2 innocent; okay?

3 There are probably a good many reasons for that  
4 rule, but it is a rule which is deeply engraved in our system  
5 of justice and I am sure the judge will so instruct you, and  
6 if he does so instruct you, of course, you have assured us that  
7 you will follow that instruction?

8 A That's right.

9 Q But instructions do not mean too much if we don't  
10 have some appreciation of the ramifications of these instruc-  
11 tions.

12 Would you, in the light of that instruction that  
13 my client is not -- is not required to prove his innocence --  
14 would you, in the situation that I have just talked about,  
15 nonetheless, somehow expect him to prove it, anyway?  
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1 MR. KATZ: Excuse me. I am going to object on the grounds  
2 it is totally ambiguous.

3 THE COURT: Give me a reading of the question.

4 MR. WEEDMAN: I will withdraw the question, your Honor.

5 THE COURT: All right. It is a little confusing.

6 Q BY MR. WEEDMAN: Miss Schneider, let's say that  
7 during the course of this trial that prosecution witnesses  
8 testify that my client made certain statements about the  
9 alleged offense but that you are not convinced about those  
10 statements. They are interesting and you'd give them due  
11 consideration but you are just not convinced in your heart  
12 to a moral certainty and beyond a reasonable doubt that  
13 they establish that my client is guilty. Okay?

14 A Yes.

15 Q All right. Now let's suppose that following that  
16 my client doesn't even testify. We don't even put on a  
17 defense.

18 Now, do you think you'd go ahead and convict or  
19 not?

20 A I don't think so.

21 Q All right. I am not trying to force an answer  
22 because it is a difficult area. But it is important to have  
23 jurors who understand and who accept without any reservations  
24 the idea that a defendant in a criminal case need not prove  
25 his innocence. For one reason it is not always possible.  
26 It is not always possible so the law doesn't make that demand  
27 on a defendant. They place the burden on the prosecution.

28 And you agree with that, do you not?

17-2

1 A Yes.

2 Q Okay. So that at the conclusion of all of the  
3 evidence in this case if you are not satisfied to a moral  
4 certainty and beyond a reasonable doubt of my client's guilt  
5 then you are going to acquit him, isn't that so?

6 A Right.

7 Q All right. And that would be true, wouldn't it,  
8 Miss Schneider, even though you still have a lingering doubt  
9 as to what actually may have happened last August of 1969?

10 A Yes.

11 Q All right.

12 Now, it may be in other affairs in life, in business  
13 affairs, in social affairs and it may have been indeed during  
14 other periods of history that where a man was accused of a  
15 crime he had to prove that he was innocent.

16 But do you understand, Miss Schneider, that that  
17 is not the situation?

18 A I understand.

19 Q In this case, or any other criminal case in this  
20 State and in this country at this time?

21 A I understand.

22 Q Okay. Does the mere fact, Miss Schneider, that the  
23 defendant has been arrested and charged by the Grand Jury make  
24 you feel that he is more, as you sit there now, that he is more  
25 apt to be guilty than not?

26 I am talking to you now about your state of mind as  
27 a prospective juror, not as just somebody out in the street  
28 reading a newspaper.

17-3

1 Do you think he is more apt to be guilty merely  
2 because he has been brought to this courtroom?

3 A I don't know.

4 Q I think you will agree that the prosecution has  
5 some evidence or they wouldn't be here?

6 A That's right.

7 Q Okay. But would you use, then, Miss Schneider,  
8 the mere fact of the accusation as evidence of his guilt?

9 A No.

10 Q All right. Well, I probably should have put it  
11 that way the first time around.

12 Is the fact that the prosecutor is asking for the  
13 death penalty something that makes you feel that on that basis  
14 alone my client is apt to be guilty than not?

15 A No.

16 Q I am sure you appreciate, Miss Schneider, that  
17 the district attorney brings many cases to trial. They win some  
18 and they lose some.

19 You do know that, certainly?

20 A Yes.

21 Q From the most ordinary experience?

22 A Yes.

23 Q So that don't you agree, Miss Schneider, that you  
24 can't really make any judgments about guilt at this stage  
25 merely because we are having a trial?

26 A That's right.

27 Q All right.

28 I take it that as a good juror, Miss Schneider, you

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1 are going to wait until you hear all of the evidence in  
2 this case?

3 A That's right.

4 Q And following all that evidence and the instruc-  
5 tions and deliberations if you are not convinced beyond a  
6 reasonable doubt and to a moral certainty of my client's  
7 guilty then I take it you will unhesitatingly acquit him.

8 There is no question about that, is there,  
9 Miss Schneider?

10 A No.

11 Q All right.

12 And can we count on you, Miss Schneider, to  
13 hold fast to that?

14 A Yes.

15 Q All right.

16 Finally, Miss Schneider, I take it that you don't  
17 feel that this is just somehow a formality that we are going  
18 through?

19 A Oh, no.

20 Q All right.

21 That as you sit there now my client is just as apt  
22 to be acquitted as anything else, isn't that so?

23 A Could be. That's right.

24 Q Okay. Is there anything at all about this case,  
25 Miss Schneider, that -- well, let's suppose you were the defen-  
26 dant over here.

27 Heaven forbid.

28 A Yes.

1           Q       But would you be satisfied to be judged by someone  
2 who has your present state of mind and attitude towards these  
3 matters in this case?

4           A       Yes.

5           MR. WEEDMAN: You would be.

6                 All right. Fine.

7                 Thank you, Miss Schneider.

8                 We will pass for cause, your Honor.

9           THE COURT: People.

10          MR. KATZ: Yes. Thank you.

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1 BY MR. KATZ:

2 Q Miss Schneider, if selected as a juror you would  
3 be required to make some rather difficult decisions. I think  
4 you agree with that statement, do you not?

5 A Yes, I do.

6 Q And many times in our everyday affairs we don't  
7 like to make decisions, especially where they affect other  
8 people's lives. And we try to avoid them.

9 But here you would <sup>NOT</sup> have the opportunity to avoid  
10 them if selected as a juror, isn't that correct?

11 A That's right.

12 Q As a matter of fact, you probably would agree that  
13 some of the decisions you would be called upon to make would  
14 be maybe the most important decisions you would ever have to  
15 make in your life concerning another individual's liberty and  
16 perhaps his life, isn't that correct?

17 A That's right.

18 Q And as you have been sitting here and responding to  
19 the questions do you feel that if selected as a juror you  
20 would accept the very grave, the very serious task of assisting  
21 us in arriving at the truth in this case, no matter how  
22 difficult the decisions and the ramifications of the decisions  
23 you had to make were?

24 A Yes.

25 Q All right.

26 And I think you recognize, as I think all of the  
27 people here in this courtroom do, that it is a privilege to  
28 serve as a juror in the American system, isn't that correct?

1           A       That's right.

2           Q       I take it that you certainly agree that the  
3 personalities of the attorneys or the defendant himself have  
4 no place in the courtroom as a criteria for determining the  
5 guilt or innocence of the defendant, isn't that right?

6           A       That's right.

7           Q       I take it that if selected as a juror you would  
8 unhesitatingly put aside what feelings you have, that is, in  
9 regards to passion or prejudice for or against the defendant  
10 and judge the merits of the evidence based upon your good  
11 common sense and judgment, is that correct?

12          A       That's right.

13          Q       Now, lot of people say, "Gee, circumstantial  
14 evidence. I don't like the sound of circumstantial evidence.  
15 My gosh, they are asking for a conviction based upon  
16 circumstantial evidence."

17                   Do you have that kind of feeling about circumstan-  
18 tial evidence?

19          A       No, if that's the way the law reads.

20          Q       You say no, if that's the way the law reads.

21                   Do you have any moral feeling or do you have any  
22 philosophical belief that it is kind of wrong for the State to  
23 ask for a conviction based wholly upon circumstantial evidence?

24          A       No.

25          Q       I see. I found from past experience many times a  
26 juror will say "Well, I don't like circumstantial evidence" and  
27 then they wouldn't have any idea what circumstantial evidence is.  
28 And when they are told that, for example, fingerprints, as



1 Mr. Weedman has mentioned <sup>in</sup> the past, or confessions are  
2 circumstantial evidence, they say, "My gosh, this is circum-  
3 stantial evidence? I thought that was direct evidence."

4 So you see, you don't know what circumstantial  
5 evidence is until his Honor will instruct you at the conclusion  
6 of this case, isn't that right?

7 A That's right.

8 Q So I take it you will have an open mind in this  
9 case as to the quality, the nature and the kind of circumstan-  
10 tial evidence that may unfold during the course of this trial,  
11 is that right?

12 A That's right.

13 Q All right.

14 And you are on the third panel, is that correct?  
15 You just came in with the new panel?

16 A Yes.

17 Q My apologies to the other members of the panel, but  
18 let me quickly give you a brief example of circumstantial  
19 evidence so you will get a feeling for how we apply it in our  
20 everyday lives.

21 I am going to go back to the situation with the  
22 mother who is greeted by her son Johnny at 3 o'clock just  
23 following school.

24 And Johnny asks the mommy whether or not he can  
25 have some cookies, and the mother says, "No, Johnny, it is too  
26 close to dinnertime, and I don't want you to spoil your  
27 appetite. So if you will be kind enough to go in and watch  
28 some television or do what you want until I call you for

1 dinner then perhaps after dinner you can have some cookies."

2 So Johnny kind of looks disappointed and he stands  
3 in the kitchen for a moment, and at the same time the phone  
4 rings and the mother has to leave the kitchen, and lo and  
5 behold she finds herself in the den where the phone is. She  
6 talks for about a minute, maybe a minute and a half and when  
7 she returns she sees the cookie jar there which was previously  
8 intact, no longer intact and the cover is off.

9 And Johnny is standing right there and Johnny  
10 doesn't have any cookies in his hands but he has got some  
11 cookie crumbs on his hands.

12 And the mother made these delicious jelly cookies  
13 and with a certain kind of Knott's Berry Farm jelly, and that  
14 jelly seems to be adhering right now to the lips and hands and  
15 portions of the cheeks of Johnny.

16 And the mother says, "Johnny, you took some cookies."

17 And Johnny said, "No, I didn't take any cookies.  
18 My sister Jane took the cookies. I saw her take the cookies."

19 His statement, "I saw her take the cookies" is  
20 direct evidence. It is eyewitness testimony. You may or may  
21 not believe it depending upon the credibility of the evidence.

22 But the circumstances indicate to the mother that  
23 Johnny is the one that in fact took the cookies because the  
24 crumbs underneath the fingernails and the jelly around the  
25 mouth and the cookie crumbs right there, and he is standing  
26 by the cookie jar, and there is no one else there.

27 Would you agree under those circumstances the  
28 reasonable inference to be drawn from the facts proven was

1 that Johnny took the cookies without permission?

2 A That's right.

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1 Q You see, we draw our inferences from facts that  
2 are proven to us in everyday life, don't we?

3 A Yes.

4 Q And I take it you are not hesitant at all to  
5 draw these kinds of reasonable inferences from facts that are  
6 proven to you; is that right?

7 A That's right.

8 Q And if, for example, we prove, based upon circum-  
9 stantial evidence, that the defendant murdered Shorty Shea,  
10 then you would unhesitatingly vote for guilty if it met our  
11 burden of proof as required by law; is that correct?

12 A Yes.

13 Q Now, did you understand his Honor's very careful  
14 explanation to you at the very beginning, when you came into  
15 the courtroom, the People will not produce the body of the  
16 decedent, will not produce an eyewitness to the killing, will  
17 not produce an eyewitness to having observed the body in  
18 death.

19 Now, would you require us to prove any one or  
20 all of those factors before voting guilty if you believe,  
21 based upon circumstantial evidence, that Shorty Shea met his  
22 death at the hand of Mr. Grogan?

23 Would you do that?

24 A Yes.

25 Q In other words, you'd require us to prove --

26 A Oh, no, no.

27 Q All right.

28 A No.

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Q You understand that we are not required in law --

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A That's right.

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Q -- to produce an eyewitness to the killing or the body of the decedent or any parts of the body of the decedent. All we have to do is meet the burden of proving the defendant's guilt beyond a reasonable doubt and to a moral certainty; is that correct?

8

A That's correct.

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Q Now, remember, we were talking about having to make difficult decisions, the kinds of decisions you would have to be making if called as a juror would be to draw inferences, hard inferences from facts that may be proven to you -- and let me backtrack for a moment.

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A As the trier of fact in this case you are the judge of the facts, you will be the sole and exclusive judge of the facts.

Q If you find that the facts are there you will not hesitate to draw reasonable inferences; isn't that correct?

A That's right.

Q And if reasonable inferences point to the guilt of the defendant and it is the only reasonable inference to point in the direction of the guilt, there being no reasonable inference pointing to the innocence of the defendant, and if that reasonable inference created in your mind an abiding conviction to a moral certainty of the truth of the charge, you'd vote guilty, wouldn't you?

A Yes.

Q In other words, you will unhesitatingly follow

1 his Honor's instructions as he will give them to you at  
2 the conclusion of this case; is that right?

3 A That is right. I will do what he tells me.

4 Q Do you have any quarrel, then, with the rule of  
5 law which says that a person may be convicted of murder in  
6 the first degree based wholly on circumstantial evidence?

7 A No.

8 Q I take it it does not offend your sense of fairness  
9 or justice; is that right?

10 A That's right.

11 Q Do you have any quarrel with the law in this  
12 State that permits a man to be not only convicted of murder  
13 in the first degree based on circumstantial evidence that  
14 permits him to be sentenced to death?

15 A No.

16 Q All right.

17 Now, let me ask you this question: before being  
18 called as a juror today did you give some thought to the death  
19 penalty?

20 A Yes, I did.

21 Q And have you read any literature in connection  
22 with the pros and cons of capital punishment?

23 A No, I never thought it would come up.

24 Q All right.

25 In other words, you never thought you'd become  
26 personally involved in this kind of situation?

27 A No, I never did; but I did today.

28 Q Have you asked yourself the question whether or not,

1 you, yourself, could personally join with 11 other jurors  
2 and vote the death penalty? Did you ask yourself that  
3 question?

4 A Yes.

5 Q How did you answer that question?

6 A Well, it is the law. I guess I would.

7 Q Now, let's backtrack for a moment because I want  
8 to make this unequivocally clear to every person in this  
9 courtroom.

10 The law will not tell you what penalty to invoke;  
11 do you understand that?

12 A I know; I understand that.

13 Q Now, upon the return of a first degree murder  
14 verdict the law will tell you that it is in your sole and  
15 absolute discretion, it is in your heart, it is in your mind,  
16 it is in your conscience to determine, based on the evidence  
17 in this case, and we hope it is not an arbitrary exercise of  
18 judgment, what the proper penalty is in this case.

19 You understand that?

20 A Yes.

21 Q So the law doesn't say at the point where there  
22 has been the return of a first degree murder verdict that the  
23 People have to prove anything else.

24 You understand that?

25 A Yes.

26 Q Now, and only you can answer this, yourself,  
27 knowing your own constitution, how you think about the death  
28 penalty, what your feelings are in regards to your ability to

1 vote a death penalty.

2 Do you feel that you, yourself, could vote the  
3 death penalty and return to the seat where you are sitting  
4 and tell his Honor by your verdict that the defendant is  
5 sentenced to death?

6 Pretty tough question, isn't it?

7 A Yes, it is.

8 Q Please give it some thought; I don't want you to  
9 just rush into an answer.

10 A I don't know. I can't tell you right now.

11 Q All right.

12 Now what I would like you to do is envision the  
13 following situation, if you will, and again, let me backtrack,  
14 in all fairness to the defendant; we don't get into the issue  
15 of penalty unless and until the jury returns a verdict of  
16 murder in the first degree. They may, for example, return  
17 not guilty; they may, for instance, return a lesser offense  
18 such as murder in the second degree.

19 Do you understand that?

20 A Yes.

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18a-1

1 Q So if there is a return of a first degree murder,  
2 then and only then are you concerned with the issue of penalty.

3 A Yes.

4 Q Let's backtrack for one moment.

5 Do you think that your views regarding the death  
6 penalty are such that if there is a return of a first degree  
7 murder verdict that you would then have to be compelled to  
8 render a decision as to whether another person would live or  
9 die, that you would thereby compromise your verdict in the  
10 guilt phase solely and only to avoid that difficult task of  
11 making the decision in the penalty phase?

12 Would you do that?

13 A No.

14 Q So, in other words, if the evidence in your mind  
15 established that the defendant was guilty of murder in the  
16 first degree, even though you knew you had to go on to the  
17 unpleasant task of determining whether the defendant had to  
18 live or die, you would abide by your duty as a juror and vote  
19 in accordance with the law and the facts as you find them;  
20 is that correct?

21 A That's right.

22 Q All right.

23 Now, what I am trying to do is have you envision a  
24 possible situation -- this is a real situation -- six weeks,  
25 eight weeks from this date. You have heard all the evidence  
26 in this case, defendant has been convicted by proof beyond a  
27 reasonable doubt and to a moral certainty of murder in the first  
28 degree; you have heard the evidence in the penalty phase, if

18a-2

1 any is presented, such as evidence that showed the background,  
2 the history of the defendant, what kind of a human being he is;  
3 perhaps evidence in mitigation or aggravation of the offense.

4 You are now called upon to vote; 11 jurors have  
5 voted for death, they have cast their ballot for death in  
6 their sole and absolute discretion. They say, "What about  
7 you, Miss Schneider? What are you going to do?"

8 You, yourself, objectively evaluating the evidence,  
9 feel this case warrants the return of the death penalty, but  
10 you know that without your vote the defendant can never be  
11 sentenced to death. You also know that you will live with  
12 that judgment for the rest of your life.

13 How would you vote?

14 A No.

15 THE COURT: Well, you have got -- I think your question  
16 calls for --

17 MR. KATZ: I will reframe that, your Honor.

18 THE COURT: -- a sense of prejudging.

19 MR. KATZ: No, I don't think it does, your Honor.

20 May I reframe it?

21 THE COURT: All right, better reframe it, then.

22 Start from scratch; reframe it.

23 MR. KATZ: Thank you.

24 MR. WEEDMAN: Excuse me for interrupting, and forgive me,  
25 counsel.

26 I wonder if we might approach the bench with  
27 respect to this general inquiry for a moment?

28 THE COURT: Well, the request denied.

1                   You go ahead with your statement.

2           MR. KATZ: Thank you, your Honor.

3           Q       Now, let's get in mind the understanding that each  
4 juror will be able to consider all of the evidence in this  
5 case; as a matter of fact, will be required to consider all  
6 the evidence in the case and evaluate it fully and thoroughly.

7                   You understand that?

8           A       Yes.

9           Q       So that once you have concluded the penalty phase;  
10 that is, the evidence presented in that phase, you will have  
11 before you the evidence that was produced during the guilt  
12 phase, which warranted the return of a first degree murder  
13 verdict, and any such evidence as may or may not be presented  
14 in mitigation or aggravation of the offense and evidence which  
15 shows the background and history of the defendant --

16           MR. WEEDMAN: Excuse me, your Honor; I will object to  
17 the question and I would prefer to state my grounds outside  
18 the presence of the jury, although I am perfectly willing to  
19 do it here, your Honor.

20           THE COURT: Well, I am a little disturbed. The question  
21 is getting pretty close to prejudgment here.

22                   Now, if the juror says that if in substance she  
23 will not automatically reject the death penalty, as indicated  
24 by the scope of the wording of the code section, of the  
25 Witherspoon case, it won't automatically be rejected, then,  
26 by inference, it can only be assumed that she would vote the  
27 death penalty in a proper case.

28                   You have got your answer right there, but when you

1 start to ferret it down, trouble arises.

2 MR. KATZ: Your Honor, I have never once indicated that  
3 the law demanded the death penalty; I have always fairly  
4 stated the fact that it is up to the juror --

5 THE COURT: I am not saying you are not --

6 MR. KATZ: I understand that, your Honor, but I think I  
7 am permitted to have the juror very realistically project  
8 themselves into the future, because they may, indeed, be  
9 confronted with this situation -- and ask themselves whether  
10 they have the courage and resolve to vote their conscience if  
11 that was the verdict they thought was proper.

12 THE COURT: That is not the way it was proposed --

13 MR. WEEDMAN: Now your Honor, I am going to object to  
14 counsel making a speech in front of the jury. It is improper.

15 THE COURT: I don't want to get into this; we are getting  
16 too far down the line on this; it is calling for prejudgment.

17 Of course, there must be a statement by the juror,  
18 any juror, that they will not automatically vote death, the  
19 death penalty, and disregard all the testimony in the case.

20 That is your basic premise, but when you get in  
21 and call for, in effect -- it is a prejudgment of facts.

22 MR. KATZ: Your Honor, all I am asking is this question,  
23 is a very simple question --

24 MR. WEEDMAN: May we approach the bench --  
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18b

The 18b

1 THE COURT: It is a very close question -- I am follow-  
2 ing your questioning very carefully.

3 Now, wait until I get this section here. My  
4 opinion is that this instruction to the juror should be read  
5 and the juror asked -- the only way to adequately get at the  
6 question -- and ask if the juror will follow that statement  
7 of law in arriving at a verdict. That is my opinion of the  
8 matter.

9 Now, you may have other answers to it and I'm  
10 not saying you don't; it could be.

11 MR. KATZ: Yes, your Honor.

12 THE COURT: You might frame it a different way, but I  
13 think the question should be approached with caution, the  
14 way it is propounded to the jury.

15 As a court, I am entitled to read this. Now,  
16 first let me say this to you, lady, let us assume --you remember  
17 this is an assumption only for the purpose of asking this  
18 question -- assume the defendant has been found guilty as  
19 charged; assume that a jury has found the degree to be first  
20 degree murder; assume the court has held a penalty hearing.

21 Q Now, assume you are in the jury room determining  
22 penalty; you follow up up to that point?

23 A Yes, I do.

24 Q Now, I am going to read you to a law that applies  
25 from that point on. It reads like this, exactly as I am  
26 stating it to you -- you are determining the question of penalty,  
27 the deathpenalty or life imprisonment -- now, this is the law:

28 "In arriving at this determination

18b-2

1 you should consider all of the evidence  
2 received here in court presented by the  
3 People and the defendant throughout the  
4 trial before this jury. You may also  
5 consider all of the evidence of the cir-  
6 cumstances surrounding the crime, as the  
7 defendant's background and history, of  
8 the facts in aggravation or mitigation of  
9 the penalty which has been received here  
10 in court. However, it is not essential  
11 to your decision that you find mitigating  
12 circumstances on one hand or evidence in  
13 aggravation of the offense on the other.  
14 It is the law of this State that every  
15 person guilty of murder in the first degree  
16 shall suffer death or confinement in the  
17 State Prison for life, at the discretion  
18 of the jury. If you should fix the penalty  
19 as confinement for life you will so indicate  
20 in your verdict. If you should fix the penalty  
21 as death, you will so indicate in your verdict.  
22 Notwithstanding facts, if any, proved in  
23 mitigation or aggravation in determining which  
24 punishment shall be inflicted, you are entirely  
25 free to act according to your own judgment,  
26 conscience and absolute discretion. That  
27 verdict must express the individual opinion  
28 of each juror."

1                   Now, that is the statement of the law. Will  
2 you follow that law if you get to that point in the case?

3           A       Yes, I will.

4           Q       As indicated, will you follow that?

5           A       Yes.

6           Q       That leads, according to your ultimate convictions  
7 there, a finding either one way or the other, will you follow  
8 your dictates as provided by law in arriving at any verdict  
9 on the question of the death penalty or life imprisonment?

10          A       Yes.

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1 THE COURT: Now, this is as close as you can come. You  
2 can proceed if you desire, Mr. Katz.

3 MR. KATZ: I appreciate your Honor's help. I appreciate  
4 your Honor reading the instruction.

5 THE COURT: I am not trying to disturb you. Both counsel  
6 are very fair in my view.

7 I want to say to every juror in the courtroom the  
8 fact I might interrupt either counsel during these proceedings--  
9 there may be many times -- is not to be taken in the wrong light  
10 or the wrong vein. I think both counsel are very qualified,  
11 eminent and conscientious gentlemen.

12 I want to make that statement. Don't let my  
13 butting in or disruption be construed as at all demeaning or  
14 hurting either counsel.

15 Go ahead.

16 MR. KATZ: Thank you, so much.

17 THE COURT: Yes.

18 Q BY MR. KATZ: Miss Schneider, you heard the  
19 instruction his Honor just read, is that correct?

20 A That's right.

21 Q I take it you understood it?

22 A Yes, I did.

23 Q You understood the law isn't going to give you any  
24 guideposts by which to determine what the proper penalty is in  
25 this case but rather will leave it up to your sole and  
26 absolute discretion and your conscience to determine based upon  
27 the evidence the proper penalty in this case; you understand  
28 that?



1 A Yes, I do.

2 Q All I am asking you is this question; let me  
3 preface it with this observation:

4 Do you appreciate the distinction between saying  
5 "Well, I believe that the death penalty is justified under  
6 certain circumstances," on the one hand, but "Let somebody  
7 else vote the death penalty. I don't want to become personally  
8 involved."

9 And having on the other hand to vote the death  
10 penalty or to become personally involved in such a judgment;  
11 do you see the distinction between those two situations?

12 A Yes.

13 Q You understand if called upon to determine the  
14 penalty in this case you would be in that latter or second  
15 situation, in which you have to involve yourself in that kind  
16 of judgment; you understand that?

17 A Yes.

18 Q All I am asking you is this. If in accordance with  
19 the instructions of law and in your heart and in your mind and  
20 in your conscience you believe that this case warranted the  
21 return of the death penalty, could you vote the death penalty?

22 A Yes.

23 Q Okay. And I am sure you agree with me that it  
24 would be certainly a very distasteful and very arduous and  
25 unpleasant task; isn't that correct?

26 A Very.

27 Q We have been talking, oh, sometime ago about this  
28 issue of the time of death. When his Honor first read to you

1 the indictment it was alleged that Mr. Shea met his death  
2 between the dates August 16th, 1969 and September 1st, 1969.

3 And in that connection, if you believe beyond  
4 a reasonable doubt and to a moral certainty that the defendant  
5 murdered Shorty Shea between those dates alleged in the  
6 indictment I take it you would not refuse to vote guilty  
7 solely because the People didn't show the exact date and time  
8 of the death, is that correct?

9 A Yes.

10 Q You understand by now that we are not required to  
11 prove the exact date and time of death, all we are required to  
12 show is that Mr. Shea met his death as charged in the Informa-  
13 tion, you understand that?

14 A Yes.

15 Q Within that broad period, August 16, 1969 to  
16 September 1st, 1969, you understand that?

17 A Yes.

18 Q And is there any reason why you feel you could  
19 not be fair and impartial to both sides?

20 A No.

21 Q All right.

22 And I take it you are willing to accept your  
23 responsibility if selected as a juror and to render and to  
24 make these kinds of difficult decisions that you have to make,  
25 is that correct?

26 A Yes.

27 MR. KATZ: All right.

28 Thank you, ma'am.

1 Pass for cause.

2 THE COURT: Thank you, gentlemen.

3 Now, defendant's peremptory, I believe.

4 MR. KATZ: Yes.

5 MR. WEEDMAN: Yes, it is, your Honor.

6 If I may have just a moment.

7 THE COURT: Yes, indeed.

8 (Defendant and counsel confer.)

9 MR. WEEDMAN: We will thank Mr. -- excuse me, your Honor.

10 (Defendant and counsel confer.)

11 MR. WEEDMAN: Just be another moment. Thank you, your  
12 Honor.

13 THE COURT: Yes, indeed. Go ahead.

14 No problem. Go ahead, take your time.

15 (Defendant and counsel confer.)

16 MR. WEEDMAN: We will thank and excuse Miss Schneider.

17 THE COURT: Very well.

18 You want to step up just one minute, gentlemen.  
19 Just the counsel.

20 MR. WEEDMAN: Yes, your Honor.

21 THE COURT: Just the two of you.

22 MR. KATZ: Oh, yes. Thank you.

23 (Conference at the bench with both  
24 counsel and defendant not reported.)

25 THE COURT: All right.

26 Call another.

27 THE CLERK: Yes, sir.

28 Kenneth Saltzman, S-a-l-t-z-m-a-n.

1 First name Kenneth.

2 THE COURT: Now, ladies and gentlemen, I am speaking to  
3 all jurors. We will take a short recess. Then we will go  
4 right ahead.

5 Do not discuss the case or come to any opinion or  
6 conclusion. We will proceed in just a few minutes. Thank you.

7 (Recess.)  
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1 THE COURT: Well, now, gentlemen, let's go right ahead.

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3 KENNETH SALTZMAN

4 BY THE COURT:

5 Q Well, Mr. Juror, let me go over the same factual  
6 situation that I have been.

7 You have heard everything that the court has said  
8 since you have been in the courtroom, is that correct?

9 A Yes.

10 Q Now, let's assume that you have been sworn to try  
11 the case. You are a juror. The case has been tried and the  
12 jury has gone to the jury room to decide the case, guilty  
13 or not guilty.

14 Now, if the jury makes a finding of not guilty  
15 the case is concluded entirely. If the jury makes a finding  
16 of guilty as charged then the jury finds or fixes the degree.

17 If the jury makes a finding of guilty second  
18 degree murder, no further action is required of the jury.  
19 The jury is excused.

20 If the jury makes a finding of guilty first degree  
21 then the court holds a subsequent penalty hearing for the  
22 purpose of determining what penalty. The penalty must be  
23 either the death penalty or life imprisonment.

24 Now, let's assume that the court's held the  
25 penalty hearing and you are in the jury room deciding the  
26 question of penalty.

27 Now, I will ask you this question: at that time  
28 would you automatically vote against the imposition of the

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

3 A Yes, I would.

4 Q Your answer is yes, you would?

5 A Right.

6 Q And I will ask for a reaffirmance in this way:  
7 Is there any question that you would change --  
8 I would rather state it this way.

9 Are you definite and positive that you would  
10 vote automatically against the death penalty, that is, you  
11 are sure of that?

12 A Yes, I am.

13 THE COURT: Thank you. I think this gentleman qualifies.

14 MR. KATZ: Yes, your Honor.

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1 MR. WEEDMAN: If I might have just one moment, your  
2 Honor.

3 THE COURT: All right.

4 MR. WEEDMAN: I wonder if I might have just a couple of  
5 questions of Mr. Saltzman, your Honor.

6 THE COURT: Go right ahead.

7 BY MR. WEEDMAN:

8 Q Mr. Saltzman, in connection with your answer I  
9 want to make sure that you understand that the law in Califor-  
10 nia does not express any preference for one penalty or the  
11 other.

12 A Yes.

13 Q And you understand that if you are called upon as  
14 a juror to go into the penalty phase that the defendant, as a  
15 matter of fact, has a right to have persons in that jury room  
16 who are opposed to capital punishment, if that be the case,  
17 opposed to the death penalty; but, in fairness to the People,  
18 the law merely requires that such person at least consider  
19 the imposition of the death penalty.

20 Do you understand all that?

21 A Yes.

22 Q And your answer, notwithstanding that, is the  
23 same?

24 A Yes.

25 Q Irrespective of any evidence produced in this case,  
26 you would automatically vote against the death penalty?

27 A Yes.

28 MR. WEEDMAN: Well, I agree, your Honor, that Mr. Saltzman

1 may be excused.

2 THE COURT: All right, I will excuse this gentleman.  
3 Thank you very much-- for cause, and I make a finding that  
4 cause exists under the Witherspoon case; also section 1073 and  
5 4, subdivisions 2 and 8 of the Penal Code.

6 Call another juror.

7 THE CLERK: Mrs. Dorothy Zlatcoff, Z-l-a-t-c-o-f-f.

8  
9 MRS. DOROTHY ZLATCOFF

10 BY THE COURT:

11 Q Now, lady, I will ask a few questions: have you  
12 heard everything I have said since you have been in the  
13 courtroom?

14 A Yes.

15 Q All right.

16 Now, let's assume you have been sworn as a juror  
17 in this case and the jury, after the trial, has gone to the  
18 jury room to make a finding of guilty or not guilty.

19 Now, at that time the jury could make a finding  
20 of not guilty and that would be the conclusion of the case  
21 entirely.

22 The jury could make a finding of guilty and if  
23 the jury made a finding of guilty the jury would then set the  
24 degree, first degree or second degree. If the jury makes a  
25 finding of second degree murder the case is again concluded,  
26 there being no further duties on the part of the jury.

27 If the jury makes a finding of first degree murder,  
28 then there would be a following or subsequent penalty hearing



1 and after the penalty hearing the jury would then go back  
2 to the jury room to determine penalty. The penalty would have  
3 to be either the death penalty or life imprisonment.

4 Now, will you assume that you are in the jury room  
5 at the penalty hearing, voting on penalty; I am going to  
6 ask you this question: at that time would you automatically  
7 vote against the imposition of the death penalty without  
8 regard to any evidence that might be developed at the trial  
9 of this case?

10 A No.

11 Q All right.

12 Now I will ask you this question: if you are  
13 selected as a juror in this case do you feel that you could  
14 be fair and impartial to both the People and the defendant  
15 in your position as a juror?

16 A No.

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1 Q Do you know of any factual situation, anything  
2 that could arise that would be a disturbing event that would  
3 upset you so you could not be fair and impartial in your duty  
4 as a juror?

5 A Yes.

6 Q You do?

7 A Yes.

8 Q What is that?

9 A I think that I cannot be a fair juror.

10 Q You feel it, would?

11 A I would not make a fair juror.

12 Q Well, do you feel it would put you in a position  
13 where you could not be fair and impartial?

14 A That's right.

15 THE COURT: Do you want to inquire, gentlemen?

16 MR. KATZ: Yes, your Honor.

17 MR. WEEDMAN: I will pass, your Honor.

18 THE COURT: Shall I act?

19 MR. KATZ: I wish to inquire, with your Honor's  
20 permission.

21 THE COURT: You want to speak?

22 MR. KATZ: Yes, may I.

23 THE COURT: Go ahead.

24 MR. KATZ: Thank you, your Honor.

25 Q Mrs. Zlatcoff, you understand that in a sense it is  
26 a privilege to serve as a juror and partake in the system of  
27 justice whereby a defendant is presumed to be innocent and that  
28 the burden is upon the State in this country to prove his

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1 guilt beyond a reasonable doubt and to a moral certainty; you  
2 understand that?

3 A Yes.

4 Q In that connection I hope you appreciate the  
5 spirit in which I ask some of the following questions in this  
6 area.

7 His Honor would instruct you, obviously, at the  
8 conclusion of this case, that you are not to suffer yourself to  
9 be influenced by any passion you may have against the defendant,  
10 for example, or any sympathy you may have for the defendant,  
11 but rather you are to judge the merits of this case based upon  
12 the evidence as you find it to be; you understand that?

13 A Yes.

14 Q And many times when we walk into a courtroom we are  
15 armed with a lot of prejudices, a lot of preferences that we  
16 may have for or against certain things, for or against certain  
17 people, for or against certain philosophies, if you will.

18 But the only thing that we require in law is that  
19 we can put aside these preferences and these prejudices so  
20 that we can fairly and impartially weigh the evidence; you  
21 understand that?

22 A Yes, I do.

23 Q So, for example, you may have a feeling -- and I  
24 don't know what the immediate problem is yet with you -- against  
25 Charles Manson and against the philosophical tenets preached  
26 by Manson and the lifestyle.

27 Nevertheless if you can set it aside and will give  
28 us your solemn assurance, if you will, and just judge the

1 evidence as it unfolds during the course of the trial, using  
2 your own conscience and your common sense to evaluate the  
3 evidence, then you qualify as a juror; you understand that?

4 A Yes.

5 MR. WEEDMAN: Excuse me, your Honor. I believe inasmuch  
6 as the prospective juror has not really indicated what is  
7 involved here --

8 MR. KATZ: I am just about to ask, Mr. Weedman.

9 MR. WEEDMAN: That I will object to counsel's intimating  
10 by his questions what those possible grounds may be. I think  
11 the proper question is merely to ask her.

12 MR. KATZ: That is my next question, your Honor.

13 THE COURT: All right.

14 Restate your position.

15 MR. KATZ: Yes. Thank you.

16 Q Now, with that background in mind and those  
17 observations, is there something about what has happened or is  
18 there anything that would cause you to be unable to give  
19 either the People or the defendant a fair trial?

20 A Yes.

21 Q What is that?

22 A I'm not sure that I would be able to erase from my  
23 mind all these, what I know about the previous cases.

24 Q You mean the Tate-La Bianca cases?

25 A Exactly. And I formed quite an opinion in my mind.  
26 I don't think in this case I would make a fair juror.

27 Q Let me ask you this. Do you appreciate the fact  
28 that Mr. Grogan was never charged with the Tate-La Bianca cases

1 and has nothing to do with these crimes, do you understand  
2 that?

3 A Yes, I do.

4 Q Are you telling us -- and I thank you for your  
5 candor and your honesty -- that you would judge Mr. Grogan's  
6 guilt or innocence based on guilt by association?

7 A Not by association, but I would not be able to put  
8 aside all the evidence -- not evidence, but the previous --  
9 and the connection with the crimes.

10 Q Let me see if I can understand you. Are you  
11 saying because of Mr. Grogan's association with Mr. Manson --

12 A Exactly.

13 Q The fact that the evidence would show that he is  
14 a member of the family, that this would cause you such  
15 prejudice against Mr. Grogan that you couldn't give him a fair  
16 trial?

17 A Yes.

18 MR. KATZ: Thank you for your honesty.

19 I agree with counsel.

20 THE COURT: Very well. I will excuse you, lady. Thank  
21 you very much.

22 THE CLERK: Mrs. Ophelia E. Fuller, F-u-l-l-e-r.  
23 First name spelled O-p-h-e-l-i-a.

24  
25 OPHELIA E. FULLER

26 BY THE COURT:

27 Q Now, is that Mrs. Fuller?

28 A That's right.

1 Q Mrs. Fuller. Thank you.

2 Now, Mrs. Fuller, you heard everything I have said  
3 here since you have been in the courtroom?

4 A Yes, your Honor.

5 Q All right.

6 Let's just suppose that you are sworn in and are  
7 a juror in this case and we have tried the case and you go to  
8 the jury room to decide the case. Let's put ourselves in that  
9 position.

10 Now, at that time the jury must make a decision,  
11 a finding of guilty or not guilty. If the jury makes a  
12 finding of not guilty the case is all over and through with.

13 If the jury makes a finding of guilty then the  
14 jury must make a finding of degree, first degree murder or  
15 second degree murder.

16 If the jury makes a finding of second degree murder  
17 the jury is excused. There are no further duties from the  
18 jury.

19 If the jury makes a finding of first degree murder  
20 then the court holds a further hearing, what is called a penalty  
21 hearing. And after that the jury goes back to the jury room  
22 to decide on penalty, either the death penalty or life  
23 imprisonment.

24 Now, let's assume you are in the jury room deciding  
25 penalty, whether it is the death penalty or life imprisonment.  
26 And I will ask you this question on your voting.

27 At that time would you automatically vote against  
28 imposing the death penalty without regard to any evidence that

1 might be produced in the trial of this action?

2 A No, your Honor.

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1 Q All right. Thank you.

2 I will ask you another question. If you are  
3 selected as a juror do you feel that you could be fair and  
4 impartial to both parties here in this case, the People and  
5 defendant?

6 A Yes, sir.

7 Q Do you know of any reason that might upset you or  
8 disturb you so that you couldn't be fair and impartial if  
9 you are selected as a juror?

10 A None that I can think of.

11 THE COURT: Thank you.

12 The defendant may inquire.

13 MR. WEEDMAN: Thank you, your Honor.

14 Q Mrs. Fuller, are you employed?

15 A No.

16 Q What about Mr. Fuller?

17 A Retired.

18 Q What did he do before he retired?

19 A He worked for International Laborers Union,  
20 Local 300.

21 Q Oh, I see, Local 300?

22 A Right.

23 Q Have you had any previous criminal jury experience,  
24 Mrs. Fuller?

25 A No.

26 Q So this is your first time, so obviously all this  
27 is very new to you?

28 A That's right.



22-2

1 Q With respect to this matter of the death penalty,  
2 Mrs. Fuller, will you understand that we are talking about it  
3 because the prosecutor is going to ask for the death penalty  
4 in the event that there is a murder conviction here and  
5 that, therefore, not only must talk about it but that this  
6 is the only time that we can talk about it?

7 I am sure you understand that, Mrs. Fuller?

8 A Yes.

9 Q And in that connection will you please understand,  
10 and I hope you understand, that merely because the prosecutor  
11 is asking for the death penalty that doesn't mean that my  
12 client is more apt to be guilty than not.

13 Do you have any quarrel with that proposition?

14 A No.

15 Q So far as you are concerned, Mrs. Fuller, as you  
16 sit there now, my client could well be acquitted; he could  
17 well be convicted; we don't know what the evidence is going  
18 to be as we are talking about the matter at this point.

19 A That's right.

20 Q So you won't get the idea, Mrs. Fuller, that merely  
21 because we are talking about the death penalty that somehow  
22 we are inevitably going to have a penalty hearing here?

23 A That's right.

24 Q Now, in the event, of course, and as I say, we  
25 must, of course, talk about it at this point -- in the event  
26 that there is such a penalty hearing, would you automatically  
27 impose the death penalty if you are convinced that my client  
28 has committed a willful and premeditated murder, without regard

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1 to the evidence produced both at the --

2 A No.

3 Q -- both in the case in chief and also during  
4 the penalty trial?

5 A No.

6 Q So, I take it, then, that you quite properly will  
7 listen to all the evidence before you even begin to make up  
8 your mind about penalty in this case?

9 A That's right.

10 Q Mrs. Fuller, since you have been in the room you  
11 have undoubtedly seen counsel make some objections.

12 Do you understand that each of us, not only are  
13 entitled to make objections at certain times but we are  
14 obligated to make objections; do you understand that?

15 A Yes.

16 Q And you won't hold that against me or even Mr. Katz,  
17 will you?

18 A No.

19 Q The fact that we make objections, and as Judge Call  
20 has pointed out to you, I take it that you will not draw any  
21 inferences from the judge's rulings with respect to these  
22 objections?

23 A No.

24 Q In other words, if I make an objection and the  
25 judge should sustain my objection, you don't draw any infer-  
26 ences about Mr. Katz from that, do you?

27 A No.

28 Q Or would you -- and likewise, if I object to

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1 Mr. Katz' question and the judge overrules me, you are not  
2 going to draw any inferences from that, are you?

3 A No.

4 Q Okay.

5 The People's case, Mrs. Fuller, it appears, will  
6 rest substantially on circumstantial evidence.

7 Do you have any quarrel with the rule of law  
8 which says that circumstantial evidence is just as good and  
9 it may be used by you equally with direct evidence?

10 A Yes.

11 Q Do you have any quarrel with that at all?

12 A No.

13 Q Now, Judge Call presumably will instruct you further,  
14 however, with respect to the use of circumstantial evidence.

15 If you are instructed you may not -- you may not  
16 convict a person on circumstantial evidence unless the proved  
17 circumstances are not only consistent with the prosecutor's  
18 theory of guilt, but also are irreconcilable with any other  
19 rational conclusion, will you follow that instruction?

20 A If I am so instructed?

21 Q Yes.

22 A Yes.

23 Q And should Judge Call -- and I presume he will --  
24 further instruct you that where circumstantial evidence is  
25 susceptible of two reasonable interpretations, one of which  
26 points to the defendant's guilt, the other which points to  
27 his innocence, that you are obligated to adopt that reasonable  
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1 interpretation which points to the defendant's innocence,  
2 will you follow such an instruction?

3 A If I am so instructed.

4 Q Surely.

5 I take it, Mrs. Fuller, that you won't assume  
6 that merely because we are now talking about circumstantial  
7 evidence that somehow we have magically raised circumstantial  
8 evidence to a more powerful position than direct evidence  
9 just because we are emphasizing it here in our discussion  
10 with the jury.

11 A No.

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1 Q Have you any quarrel or do you think you would  
2 have any problem with the law which says that each party here,  
3 both the People of the State of California, represented by  
4 Mr. Katz, and my client, the defendant, are entitled to the  
5 individual opinion of each juror?

6 A Do I have a quarrel?

7 Q Yes, do you have any quarrel with that?

8 A No.

9 Q Now, sometimes that can be tested somewhat  
10 dramatically in this fashion: supposing you are the only one  
11 out of all 12 jurors who feels, after due deliberation of all  
12 the evidence, a particular way, either guilty or not guilty,  
13 and all the other jurors are around you, all 11 people, feel  
14 the opposite way; in other words, it is an 11 to 1 situation.

15 Do you think Mrs. Fuller, that you would change  
16 your vote merely to get along with the other jurors?

17 A Not merely to get along, no.

18 Q Of course, you'd listen to them, listen to their  
19 arguments, their reasoning, maybe go back over the evidence,  
20 go back over the instructions; but if in the final analysis  
21 you were convinced either one way or the other, you wouldn't  
22 change it merely because you were a minority of one; am I  
23 correct in that?

24 A You are correct.

25 Q We hope that you don't find yourself in that position,  
26 obviously, but if you do, I take it that you would not succumb  
27 merely in order to arrive at a verdict or merely to, perhaps,  
28 be popular or to get along with the other people on this jury.

22a-2

1 That is so, isn't it?

2 A That's correct.

3 Q Mrs. Fuller, if the evidence should show that my  
4 client has a lifestyle, a manner and mode of living that you  
5 disapprove of, would you convict him merely because of that?

6 A Of course not.

7 Q You appreciate, then, don't you, Mrs. Fuller, that  
8 a person can live in a way that we find, if not distasteful to  
9 us, at least we certainly wouldn't do it ourselves.

10 We might disapprove of it very much, but that is  
11 no evidence that a man has committed a crime, is it?

12 A That's right.

13 Q Mrs. Fuller, with respect to this matter that we  
14 have talked about, we have touched upon here, the matter of  
15 the Tate-La Biance case, the Charles Manson family, is there  
16 anything about that in your mind that makes you feel you  
17 couldn't give my client a fair trial if the evidence shows  
18 that he was associated at one time with Charles Manson?

19 A No, there isn't.

20 Q And you understand that -- I hope you understand,  
21 as Mr. Katz has emphasized -- that my client has nothing to do  
22 with any of these other cases, that he is on trial here,  
23 however, for an alleged murder of one Shorty Shea.

24 You appreciate that, don't you, Mrs. Fuller?

25 A That's right.

26 Q And that is the only thing you are going to be  
27 called upon to decide here in this case, is that right?

28 A That's right.

22a-3

1 MR. WEEDMAN: We will pass for cause; and thank you,  
2 Mrs. Fuller.

3 THE COURT: All right. The People.

4 MR. KATZ: Thank you.

5 Q Mrs. Fuller, you recognize the fact, do you not,  
6 that certain crimes, because of their very nature, are not  
7 generally committed in public or in front of witnesses?

8 A That's right.

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tke 23

1 Q And you understand, therefore, that the law  
2 contemplates that the People may prove a crime by circumstan-  
3 tial evidence, that is, without eyewitness testimony?

4 A That's true.

5 Q Is that correct?

6 You heard my discussions and perhaps that little  
7 cookie example that I gave some moments ago in regards to  
8 illustrating to how we apply circumstantial evidence to our  
9 everyday lives, is that correct?

10 A That's correct.

11 Q I take it I daresay you probably in your everyday  
12 life somehow draw inferences from facts that are proven to  
13 you and act upon them, don't you?

14 A Right.

15 Q Sometimes we punish our children and sometimes  
16 we reward our children based upon facts proven to us; isn't  
17 that right?

18 A Yes.

19 Q Yet we didn't actually see our children perform  
20 these things, isn't that right?

21 A Right.

22 Q I take it you wouldn't hesitate at all to use your  
23 conscience and judgment and your common sense to evaluate  
24 properly the evidence in this case and if facts are proven to  
25 you, you wouldn't hesitate to draw reasonable inferences from  
26 them; is that correct?

27 A That's correct.

28 Q Mr. Weedman talked about this instruction -



1 concerning circumstantial evidence wherein we have two infer-  
2 ences, both of which are reasonable and one which points to  
3 the guilt of the defendant and the other pointing to the  
4 innocence of the defendant.

5 Under those circumstances you would be dutybound  
6 to reject that which pointed to the guilt of the defendant  
7 and accept that which points to the innocence.

8 However, in that same instruction his Honor will  
9 further instruct you that where you have two inferences to be  
10 drawn from the evidence, one which is reasonable and the  
11 other which is unreasonable, then you must adopt that which  
12 is reasonable; would you follow that instruction?

13 A If I am so instructed.

14 Q Yes. And if his Honor instructs you, for example,  
15 that if from the facts, for example, as you find them to be,  
16 the reasonable inference to be drawn from the facts points to  
17 the guilt of the defendant and creates in your mind an abiding  
18 conviction to a moral certainty of the truth of the charge,  
19 you will vote guilty, is that correct?

20 A That's correct.

21 Q Now, you have listened to a lot of discussion  
22 concerning circumstantial evidence and in that connection his  
23 Honor has told us there is going to be no body in this case,  
24 no parts thereof produced, there is going to be no eyewitness  
25 to the killing, or there is going to be no witness who will  
26 testify to having observed the body in death.

27 Mrs. Fuller, does that disturb you to the point  
28 that you could not fully and fairly evaluate the circumstantial

1 evidence in this case to determine whether or not we met  
2 our burden of proof as required by law?

3 A No.

4 Q All right.

5 And does it offend your sense of fair play and  
6 justice to know that the law here in this State permits a  
7 man to be convicted of murder in the first degree based wholly  
8 on circumstantial evidence?

9 A Would you state that again?

10 Q Surely. And I will go much slower.

11 Does it offend your sense of justice and fair  
12 play to know that in this State a person can be convicted of  
13 murder in the first degree based wholly upon circumstantial  
14 evidence, there being no production of a body or eyewitness  
15 to the killing?

16 A No.

17 Q All right.

18 And I take it you would follow the law in that  
19 connection if as the trier of fact and the sole and exclusive  
20 judge of the facts you determine with reference to the applica-  
21 tion of the applicable law, that the circumstantial evidence  
22 creates an abiding conviction to a moral certainty of the  
23 truth of the charge, then you would not hesitate to vote  
24 guilty even though we didn't produce a body; isn't that  
25 correct?

26 A I wouldn't -- I wouldn't hesitate.

27 Q Yes. Thank you.

28 You are so sharp you are ahead of me each time,

1 and I am beginning to feel it.

2 Mrs. Fuller, let's take this one step further.  
3 Let's suppose you know now that upon the return of a first  
4 degree murder verdict you would have to go on to the very  
5 difficult task of determining whether another human being  
6 shall live or die. Knowing that you are in the guilt phase  
7 and you have heard all the evidence and you are in the jury  
8 room and you are deliberating.

9 Do you think that because you have knowledge that  
10 if you voted for murder in the first degree, that that fact  
11 and that fact alone would cause you to compromise your  
12 verdict to a lesser degree such as second degree murder or  
13 voting for acquittal merely to avoid the difficult task of  
14 going on to the penalty phase?

15 A No.

16 Q All right.

17 So what you are saying is that regardless of the  
18 ramifications or the consequences of your voting for murder  
19 in the first degree, if that was the proper verdict in  
20 accordance with the facts as you find them to be and in  
21 accordance with his Honor's instructions, you would vote that  
22 verdict; is that correct?

23 A I think so.

24 Q All right.

25 That was a pretty compound and complex question,  
26 and I thank you for giving me the benefit of the doubt.

27 Now, do you think that you would permit yourself  
28 to be influenced by any sympathy you may have for the defendant

1 in connection with the determination of his guilt or innocence?

2 A No.

3 Q All right. And I think that you along with every  
4 other juror in this courtroom believes that all people should  
5 be treated equally under the laws, is that correct?

6 A Correct.

7 Q Whether a person is old or young or middle-aged or  
8 what have you, if that person committed the crime then under  
9 the law that should be the verdict; isn't that correct?

10 A Correct.

11 Q I take it then you will not accord the defendant,  
12 that is, give this defendant something you wouldn't give to  
13 any other defendant, that finds himself in the similar situation  
14 as Mr. Grogan, is that correct?

15 A That's correct.

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1 Q I take it you would not withhold the return of a  
2 verdict of murder in the first degree solely because of the  
3 evident youth of the defendant, is that right?

4 A No.

5 Q Is that right?

6 A That is right.

7 Q Yes. Thank you.

8 Now, have you given some thought to the death penalty  
9 before being called for jury duty?

10 A Yes.

11 Q And have you read any literature concerning the  
12 pros and cons of capital punishment?

13 A No.

14 Q All right. And without telling me your reasons for  
15 it, do you generally oppose capital punishment?

16 A Yes.

17 Q And would you say that your opinions concerning the  
18 death penalty are deep-seated or fixed, rather fixed?

19 A I think so.

20 Q And have you asked yourself this question, bearing  
21 in mind the distinction between accepting capital punishment in  
22 the abstract when somebody else is called upon to do it, on the  
23 one hand, and yourself having to be involved in a death penalty  
24 verdict -- do you recognize the distinction between those two  
25 situations?

26 Let me backtrack for a moment. Thank you, Mrs.  
27 Fuller.

28 In other words, it is one thing to say, "Well, I

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1 approve of capital punishment under certain circumstances,  
2 and fine, if 12 jurors want to vote that, that's okay."

3 But on the other, "I don't have the constitution  
4 or my beliefs are such that I would not personally participate  
5 in a death penalty verdict."

6 Do you see the distinction between those situations?

7 A Yes.

8 Q All right.

9 Now, what I am asking you is this.

10 Can you conceive of yourself in some circumstances  
11 in which you would vote the death penalty as a juror?

12 A That I would vote?

13 Q Yes, you, yourself.

14 A I wouldn't.

15 Q All right.

16 Are you telling us that regardless of the facts  
17 that would unfold during the course of this trial, that you  
18 would under no circumstances yourself vote the death penalty?

19 A That's right.

20 Q All right.

21 Is that a pretty firm and fixed opinion?

22 A That's right.

23 Q And you have no doubt in your mind as to that, is  
24 that correct?

25 A No doubt.

26 Q Just so I understand it, and the court understands  
27 that, you are telling us that regardless of the evidence in  
28 this case before you you would automatically vote against the

23a-3 1 death penalty yourself?

2 A Right.

3 MR. KATZ: Thank you so much for your honesty.

4 Challenge the juror under 1073.2 and 1074.8 of the  
5 code and the Witherspoon case.

6 THE COURT: She indicated at the inception that she would  
7 not automatically vote against the death penalty. I believe I  
8 asked the question twice and the answer was very clear.

9 MR. KATZ: I am only asking your Honor to re-ask the  
10 questions in view of the obvious inconsistency at this point.  
11 Certainly appreciate your help.

12 THE COURT: Do you have the notes, Mr. Reporter.

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

15 "Q Now, let's assume that you are in  
16 the jury room deciding penalty, whether it is  
17 the death penalty or life imprisonment. And I  
18 will ask you this question on your voting.

19 "At that time would you automatically  
20 vote against imposing the death penalty without  
21 regard to any evidence that might be produced  
22 in the trial of this action?

23 "A No, your Honor."

24 BY THE COURT:

25 Q You heard your answer there, did you, Mrs. Fuller?

26 A Yes.

27 Q Well now, you have found some confusion. As I  
28 understand it you told me you would not automatically vote

23a- against the death penalty without regard to the evidence. And  
4 am I correct that you -- I will ask you the question.

3 If you are voting on the death penalty I will ask  
4 you this question again. Would you automatically vote against  
5 the death penalty without regard to any evidence that might be  
6 produced at the trial of this case?

7 A I answered no.

8 Q All right. Well, I will take the answer no.

9 I will refuse the challenge.

10 MR. KATZ: Excuse me, your Honor. May I continue my  
11 questioning then?

12 THE COURT: Challenge is refused.

13 MR. KATZ: No, I appreciate that, your Honor. Based upon  
14 this juror's last response.

15 THE COURT: All right.

16 Q BY MR. KATZ: Mrs. Fuller, now, I am totally  
17 nonplussed or, if you will, confused. I just asked you a  
18 moment ago whether or not you, yourself, would automatically  
19 refuse, regardless of the evidence, to vote the death penalty,  
20 and you told me that you would.

21 A I misunderstood you. I am sorry.

22 Q Well, you misunderstood the judge or you misunder-  
23 stood me?

24 A I misunderstood the judge. I automatically oppose  
25 the death penalty.

26 MR. KATZ: Your Honor --

27 THE COURT: Well, I refuse. I refuse the request for  
28 cause unless there is a stipulation.



1 MR. KATZ: May I be heard.

2 THE COURT: All right.

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1 MR. KATZ: May I be heard for just one moment, your  
2 Honor?

3 The juror has indicated she misunderstood your  
4 question. All I am asking is for you to reframe the question  
5 and let the juror listen to it again, make sure she understands.

6 She said she understood my question, and unequiv-  
7 cally answered my question.

8 THE COURT: I don't know, she tells me "No," she would  
9 not.

10 MR. KATZ: If your Honor pleases, I did break down my  
11 question, I think, in very fundamental terms and I would ask  
12 your Honor once again to phrase the question and make sure  
13 Mrs. Fuller understands it.

14 I appreciate the court's indulgence,

15 Q BY THE COURT: Mrs. Fuller, if you are voting  
16 for the death penalty or life imprisonment, let's say you  
17 are voting on this question --

18 A Yes.

19 Q -- now, would you automatically vote against the  
20 death penalty without considering all of the testimony in the  
21 case?

22 A Would I vote against the death penalty?

23 Q Now, is the answer yes or no?

24 A Yes.

25 Q The answer is "Yes"?

26 A Yes.

27 Q Is that correct?

28 A That's correct.

1 Q Is there any question by defendant?

2 MR. WEEDMAN: No, your Honor. Thank you.

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

4 MR. KATZ: Thank you, your Honor.

5 THE COURT: I will excuse you, Mrs. Fuller. Thank you.

6 MR. KATZ: Would the court kindly make a finding.

7 THE COURT: Yes. I make a finding that cause exists  
8 under the code sections 1073 and 4, subdivisions 2 and 8.  
9 Thank you.

10 THE CLERK: Mabel W. McIntire, M-c-I-n-t-i-r-e;  
11 McIntire.

12 It is not indicated whether it is Miss or Mrs.

13 MRS. MCINTIRE: I'm divorced, so "Mabel McIntire," now.

14 THE CLERK: Mrs. Mabel W. McIntire now.

15  
16 MRS. MABEL W. MCINTIRE

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18 BY THE COURT:

19 Q Now, lady, have you heard everything that I have  
20 said to the jurors up to this point?

21 A I have.

22 Q I want you to assume that you have been selected  
23 as a juror and the case has been tried and that you and the  
24 other jurors have gone to the jury room to make a finding of  
25 guilty or not guilty.

26 Now, at that point the jury could make a finding  
27 of not guilty, and the case could be concluded. The jury  
28 could make a finding of guilty and then the jury would have  
to make a finding of degree, guilty murder first degree,

1 guilty murder second degree.

2 Is that clear to you up to that point?

3 A (Nodding affirmatively.)

4 Q Now, if the jury says guilty murder second degree  
5 then there is no further work by the jury, no further obliga-  
6 tion or duty; you are excused.

7 If the jury makes a finding of guilty murder  
8 first degree then the court must hold a penalty hearing  
9 and after the penalty hearing the jury goes back to the jury  
10 room to decide on penalty.

11 Are you clear up to that point?

12 A Yes, sir.

13 Q Now, at that time the jury must make a decision on  
14 penalty of either the death penalty or life imprisonment.

15 Have you got yourself stationed right there?

16 A Yes.

17 Q And you are getting ready to vote, all right.

18 Now I am going to ask you at that point would you  
19 automatically vote against the imposing of the death penalty  
20 without regard to any evidence that was produced in the case?

21 A Would I vote against --

22 Q Let's get an answer, yes or no.

23 A I don't understand, but I would vote guilty.

24 Q All right, let's try again --

25 A If they were guilty, I would vote --

26 Q Just listen to me, this is very serious.

27 You know what it is to vote automatically, just  
28 without thinking or discussing or considering the matter or

1 analyzing it with an open mind, or you just, for instance,  
2 as the question reads, vote, "I'm not for the death penalty;  
3 I'm not for the death penalty;" voting against it automatically  
4 and voting for life imprisonment.

5 To vote automatically against the death penalty,  
6 you would then vote for life imprisonment automatically.

7 Do you follow what I am saying?

8 A I think so.

9 Q Well, let's try it again --

10 A It sounds clear, what you said to that other woman.

11 Q Don't let your mind flop around. Listen to me  
12 more than that; listen to me; let's try it again.

13 I am asking you again, when you are voting would  
14 you just automatically vote against the death penalty or  
15 would you analyze the situation carefully, leaving yourself  
16 in a position where you might or might not vote or against  
17 the death penalty?

18 A Yes.

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1 Q Is that clear to you?

2 A Yes, I got it.

3 Q Would you, according to the dictates of your  
4 conscience and the facts and what the law is, would it be open  
5 in your mind -- in other words, would you consider both the  
6 death penalty and the life imprisonment and then cast your  
7 ballot, which could be either for the death penalty or for  
8 life imprisonment?

9 Would you leave it open so you might cast a vote  
10 either way?

11 A Yes.

12 Q Or would you just say, "I don't want the death  
13 penalty and I am not going to vote for it"; is that your  
14 position?

15 A No.

16 THE COURT: That's what I want to get at.

17 All right, I will pass the lady for cause.

18 You may proceed.

19 MR. WEEDMAN: Thank you, your Honor.

20 Q Mrs. McIntire, are you employed?

21 A No.

22 Q Have you been employed?

23 A Yes.

24 Q And what did you do when you were employed?

25 A I worked at Lockheed.

26 Q What did you do for them?

27 A I was a structure assembler general for 19 years.

28 Q And before you were divorced what did your husband

24a-2

1 do for a living?

2 A He was a Prudential insurance agent.

3 Q Have you had previous criminal jury experience,  
4 Mrs. McIntire?

5 A Yes.

6 Q And what kind of a case was that?

7 A Armed robbery.

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

9 A Just last Friday we finished.

10 Q I see.

11 Okay, I take it, Mrs. McIntire, that you wouldn't  
12 apply anything that you learned in that case in determining  
13 guilt or innocence --

14 A No.

15 Q -- in this case?

16 A No.

17 Q Okay.

18 Do you feel, Mrs. McIntire, that my client is more  
19 apt to be guilty than not merely because he has been charged  
20 with this terrible crime of murder?

21 A Do I feel that he might be?

22 Q No, not that he might be; but do you feel that he is  
23 more apt than not to be guilty merely because he has been  
24 charged here?

25 A No.

26 Q In other words, you are not going to make up your  
27 mind at all in this case until you have heard the evidence?

28 A Right.

24a-3

1 Q Okay; I am sure that's what you did in the other  
2 case; isn't that so?

3 A Right.

4 Q What about the fact that Mr. Katz is asking for the  
5 death penalty here, do you think that that's a kind of a clue  
6 that you should be able to use in determining whether or not  
7 my client is guilty?

8 A No.

9 Q In other words, you understand that the prosecution  
10 doesn't win all of its cases nor do they even get convictions  
11 in every case where they ask for the death penalty; isn't  
12 that so?

13 A That's right.

14 Q So you cannot properly conclude anything about the  
15 fact that my client has, number one, been charged; nor, number  
16 two, that the prosecution is asking for the death penalty?

17 A Right.

18 Q You agree with that, don't you?

19 A I do.

20 Q Mrs. McIntire, is there anything about the  
21 projected length of this trial -- that is, about ten weeks --  
22 that will cause you any personal hardship?

23 A It would be just personal; I'd be tired, probably.

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

26 A No.

27 Q Is there anything about the testimony of a police  
28 officer that you think should have some special attention



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1 merely because it is coming from a police officer?

2 A No.

3 Q I take it from your answer, then, that you would  
4 treat and evaluate the testimony of a police officer just like  
5 you would evaluate the testimony of any other witness?

6 A Right.

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1 Q Do you agree, Mrs. McIntire, that you cannot tell  
2 a book by its cover? By that I mean that you can't look at my  
3 client and tell whether he is guilty or whether he is not  
4 guilty?

5 A No, I can't.

6 Q Okay. I am sure you will agree that in the movies,  
7 why, they cast villians because we have a kind of a stereotype  
8 for what a villian should look like.

9 They cast the good guys because we have a stereo-  
10 typed notion about that.

11 You wouldn't permit anything like that to come into  
12 play in this trial, would you, ma'am?

13 A No.

14 Q The same thing I hope is true then with respect to  
15 defense counsel. You are not going to try and divine whether  
16 my client is guilty or not guilty merely because of the  
17 appearance of the lawyers in this case?

18 A No.

19 Q Okay. I am sure that you fully appreciate that  
20 this is no kind of a popularity contest between Mr. Katz and  
21 myself, that our presence here only has meaning insofar as we  
22 may ask questions of a witness and only insofar as those  
23 questions -- rather answers are responsive to the questions.

24 We have no other role to play here.

25 A No.

26 Q Okay. Now, since you have already had some jury  
27 experience do you understand that arguments of counsel are not  
28 evidence in the case?

1 A I do.

2 Q Okay. We have a right to argue the case, I am  
3 sure you appreciate that, but you understand that statements  
4 by counsel are not evidence at all in the case?

5 A That's right.

6 Q And again, since you have had this previous jury  
7 experience, you understand that opening statements by counsel,  
8 that is, a kind of summary before the jury of what counsel  
9 expects to prove, are likewise not evidence in the case?

10 A Yes, I understand that.

11 Q All right.

12 And you understand of course in that connection  
13 that such statements are not to be used by the jury in arriving  
14 at a verdict in the case?

15 A I do.

16 Q Okay. Is there anything about evidence tending to  
17 show that my client was associated with Charles Manson that  
18 makes you think that you couldn't give my client a fair and  
19 impartial trial based on the evidence in this case?

20 A No.

21 Q Do you feel, Mrs. McIntire, that if you were faced  
22 with the very close question, couldn't really, clearly, see  
23 that the People had proven their case, that you are undecided  
24 about it, do you think then that you would permit yourself to  
25 find my client guilty merely because he was associated with  
26 Charles Manson?

27 A No.

28 Q Understand that my client is as entitled to a fair

1 trial here as any other person in this country?

2 A Yes.

3 MR. WEEDMAN: All right.

4 Pass for cause. Thank you.

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

6 THE COURT: I think, gentlemen, let's make the notes for  
7 the reporter that the defendant has passed for cause on juror  
8 No. 10. The People are to examine.

9 I think we are up to 4 o'clock.

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

11 THE COURT: I wanted the notation in the record so we  
12 would know where we were.

13 Ladies and gentlemen, we will go over now until  
14 9:30 Monday morning.

15 Let me ask you all please to return promptly. It  
16 is very important we get going under way in time. Return right  
17 to this courtroom at 9:30 promptly Monday morning.

18 Do not discuss the case, folks, amongst yourselves  
19 or with anybody at all or come to any opinion or conclusion  
20 until it is finally placed in your hands.

21 Recess until 9:30 Monday morning. Thank you very  
22 much.

23 (An adjournment was taken to Monday,  
24 July 12, 1971, at 9:30 a.m.)  
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