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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

Monday, July 12, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

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Official Reporters

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1 LOS ANGELES, CALIFORNIA, MONDAY, JULY 12, 1971

2 9:40 A.M.

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4 THE COURT: All right, we will go right ahead, folks.

5 People against Grogan. The defendant is here.
6 Counsel is here. People's counsel is here.

7 And I believe the defendant had just passed for
8 cause. You may proceed with your voir dire.

9 MR. KATZ: Had the defendant an opportunity --

10 THE COURT: Yes, I just read the transcript before I made
11 that statement.

12 MR. KATZ: Thank you, your Honor.

13
14 MABEL W. MCINTIRE

15 BY MR. KATZ;

16 Q Mrs. McIntire, there you are. It is Monday morning.
17 It is hard to find you.

18 You have been sitting probably for three or four
19 days listening to the questioning of both counsel and had
20 the opportunity not only to evaluate the questions but to
21 evaluate the responses given to those questions.

22 So that with that in mind I am not going to go
23 into too much detail. Let me ask you this question.

24 We have been talking about circumstantial evidence
25 day in and day out. Do you have any quarrel with the use of
26 circumstantial evidence to prove a person's guilt in a
27 criminal case?

28 A No.

1 Q And you understand as his Honor told you at the
2 outset that the People will not produce an eyewitness to the
3 killing or a body or any parts thereof or any eyewitness to
4 having observed the body in death, is that your understanding?

5 A I understand.

6 Q Despite that if you were convinced beyond a
7 reasonable doubt and to a moral certainty based upon circum-
8 stantial evidence that the defendant committed murder in the
9 first degree, how would you vote?

10 A Guilty.

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1 Q I take it it does not offend your sense of morals
2 or fair play to know that in this state a person can be
3 convicted of murder in the first degree based upon wholly
4 circumstantial evidence; is that correct?

5 A Right.

6 Q All right.

7 Now, with reference to the death penalty, I take it
8 you have given it some thought over the past several days; is
9 that correct?

10 A Yes.

11 Q And have you asked yourself the question whether or
12 not you, yourself, could personally participate in a death
13 penalty verdict?

14 A If necessary, yes.

15 Q All right; and I think you have probably asked
16 yourself whether or not you would be up to the unpleasant task
17 of taking another man's life by voting for the death penalty if
18 you felt that was the right thing to do, consistent with your
19 conscience; is that correct?

20 A Yes.

21 Q In that connection do you think that after hearing
22 all of the evidence in this case -- that is, the evidence in
23 the guilt phase and perhaps any additional evidence in the
24 penalty phase -- you felt that this case warranted the death
25 penalty, would you have the courage to vote your conscience
26 and vote the death penalty?

27 A Yes.

28 Q But you understand that you would have to come back

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1 into the courtroom where you are seated now and tell the court
2 by your verdict that Mr. Grogan is sentenced to death.

3 Do you understand that?

4 A Yes.

5 Q I take it you have accepted and acknowledged the
6 fact that you would be living with this decision the rest of
7 your life?

8 A Yes.

9 Q That is a pretty tough thing to do, isn't it?

10 A Yes.

11 Q Nevertheless, if you felt this was a case that
12 warranted the death penalty, would you vote the death penalty?

13 A Yes.

14 Q As you sit here now do you feel that you have an
15 open mind as to all of the issues in the case?

16 A Beg your pardon?

17 Q Yes, as you are seated here now do you feel that you
18 would have an open mind as to all of the issues in the case?

19 A Yes.

20 Q I take it, then, that we can count on you to
21 approach all of the decision-making problems in this case with
22 an open mind, unprejudiced by any opinions you may have; is that
23 correct?

24 A Yes.

25 Q And with reference to this factor of sympathy, I
26 take it you will not permit yourself to be influenced in the
27 guilt phase by way of verdict merely because of the evident
28 youth of the defendant; is that right?

1 A Yes.

2 Q And I take it that if the defendant is guilty, he
3 is guilty; if he is not guilty, you vote not guilty; is that
4 correct?

5 A Right.

6 Q That is regardless of how old he is or his exterior
7 appearance, right?

8 A Yes.

9 Q Any reason why you couldn't give both sides a fair
10 trial?

11 A No reason.

12 MR. KATZ: Thank you.

13 Pass for cause.

14 THE COURT: Pass for cause?

15 MR. KATZ: Yes, your Honor.

16 THE COURT: People, any challenge?

17 MR. KATZ: Yes. May I have a moment?

18 People wish to thank and excuse Miss Richards.

19 THE COURT: Very well.
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1 THE CLERK: John A. Brooks, B-r-o-o-k-s.

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3 JOHN A. BROOKS.

4 BY THE COURT:

5 Q Now, Mr. Juror, have you heard all of the state-
6 ments that I have made to the other jurors in the jury box
7 since you came in the courtroom?

8 A Yes.

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

11 A Yes.

12 Q Now, keeping that in mind I will ask you to assume
13 that you have been selected as a juror in this case and that
14 the jury has heard the case. You have gone to the jury room
15 to decide the question of guilty or not guilty.

16 At that time the jury could make a finding of
17 not guilty. The jury could make a finding of guilty.

18 The jury then, in such an event, would find on the
19 degree. First degree murder or second degree murder. If the
20 jury would make a finding of second degree murder that would
21 conclude any further duty from the jury.

22 If the jury should make a finding of first degree
23 murder then the court would hold a subsequent penalty hearing
24 and the purpose of that is for the jury then to decide on the
25 question of penalty.

26 The penalty would have to be set at either the
27 death penalty or life imprisonment. Now, if you will assume
28 you are at the position where you are voting on the death

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penalty I will ask you -- the death penalty or life imprisonment -- I will ask you this question.

At that time would you automatically vote against the imposition of the death penalty without regard to any evidence that might be produced at the trial of this case before you?

A No.

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

Now, before you answer when I say fair and impartial, you have two people that you must be fair and impartial with. The defendant and the People. Because you are the judge of their problems, of the matters that arise in this case. You are the judge of the facts.

And to both of those parties you must be fair and impartial. Do you feel you could do that?

A Yes.

Q Do you know of any reason at all that might arise during the course of the trial that could in any way disturb you emotionally or upset you so that you still could not be fair and impartial in the trial of the case?

A No.

THE COURT: Thank you very much.

Now, defendant may inquire for cause.

MR. WEEDMAN: Thank you, your Honor.

Q Mr. Brooks, what is your business or occupation?

A Civil engineer. I work for TWR.

1 Q Anything about the estimated length of this trial,
2 approximately eight weeks, that is going to cause you any
3 personal hardship?

4 A No.

5 Q Is there a Mrs. Brooks?

6 A Yes.

7 Q Is she employed?

8 A Yes.

9 Q What does she do?

10 A A computer analyst or computer programmer.

11 Q Have you had any prior criminal jury experience,
12 Mr. Brooks?

13 A No.

14 Q With respect to the matter of the death penalty
15 do you feel that following a first degree murder conviction
16 if we should ever get to that point, that you would automatically
17 impose the death penalty without regard to the evidence?

18 A No.

19 Q So you, like the other jurors, we can be assured
20 will have an open mind if the matter should ever get to the
21 penalty phase?

22 A Yes.

23 Q As you sit there now, do you have any preference
24 for one penalty or the other?

25 A No.

26 Q With respect to the business of any pretrial
27 publicity concerning Charles Manson and the Manson family, of
28 course, in another case not connected with this case as

1 Mr. Katz has pointed out, have you formed any opinions that
2 you think might interfere with your giving my client a fair
3 and impartial trial if the evidence shows that he is a member
4 or at least associated with, at one time, the Manson family?

5 A No opinions.

6 Q All right. I take it then that that other matter
7 didn't involve my client in the first instance, and is not
8 going to affect your judgment with respect to his guilt or
9 innocence in this case?

10 A Wouldn't affect my judgment.

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1 Q As I pointed out to most of the other jurors, we
2 anticipate that the prosecution will call vast many more
3 witnesses than the defendant.

4 Would that fact, alone, influence your judgment with
5 respect to guilt or innocence?

6 A No.

7 Q And finally, have you any quarrel at all with the
8 burden being on the People in this case to prove my client
9 guilty, if they can?

10 A No quarrel.

11 Q Okay; and would you, to test out that proposition
12 for just a moment, would you expect my client to prove his
13 innocence to you if the law tells you that he doesn't have to
14 prove his innocence to you?

15 A No.

16 MR. WEEDMAN: Pass for cause, your Honor.

17 Thank you, Mr. Brooks.

18 THE COURT: People?

19 BY MR. KATZ:

20 Q Mr. Brooks, it is quite apparent from your few
21 answers that you come from a highly technical family or background
22 and, as such, do you think you would apply any type of
23 mathematical formula in which to determine the guilt or innocence
24 of the defendant?

25 A No.

26 Q In other words, I don't mean this facetiously and I
27 not trying to embarrass you, Mr. Brooks; what I am suggesting
28 is we are dealing with human beings here; we are dealing with

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1 judgments of human beings and such, and I am sure you will
2 recognize that and apply your common sense to the facts that
3 are proven to you; is that right?

4 A Yes.

5 Q For example, you wouldn't say that, well, the
6 percentages are that 80 percent indicates that perhaps he is
7 guilty, but there is 20 percent ^{indicates} indicates that he is innocent.

8 You are not going to apply that kind of a formula;
9 is that correct?

10 A No.

11 Q All right.

12 In other words, you are going to require the People
13 to sustain their burden of proof in law, which is proof beyond
14 a reasonable doubt and to a moral certainty; is that right?

15 A Right.

16 Q You heard my discussion concerning circumstantial
17 evidence, did you not?

18 A Concerning the cookie jar?

19 Q Yes.

20 A Yes.

21 Q Apparently you weren't here for the pie example;
22 but, in any event, Mr. Brooks, do you have any quarrel with the
23 fact that the mother apparently, in the example, based on the
24 circumstantial facts, concluded Johnny took the cookie?

25 A No quarrel.

26 Q That was a real common sense evaluation of the facts
27 that were proven to her; is that right?

28 A Yes.

1 Q You agree, do you not, that in your everyday life
2 you also apply circumstantial evidence to facts proven to you
3 and draw inferences from them, do you not?

4 A Yes.

5 Q And you make value judgments and make decisions
6 based on these circumstantial facts; isn't that correct?

7 A Yes.

8 Q I take it you would have, especially as an engineer,
9 you would have no hesitancy, then, in using circumstantial
10 evidence in determining the truth of the People's allegations;
11 is that right?

12 A Right.

13 Q Does it offend your sense of morals or justice or
14 fair play to know that in this state a person can be convicted
15 of murder in the first degree based wholly on circumstantial
16 evidence?

17 A No.

18 Q I take it that you would not refuse to vote guilty
19 in a wholly circumstantial evidence case, assuming that that
20 case proved beyond a reasonable doubt and to a moral certainty
21 the guilt of the defendant, even though we had not produced a
22 body or an eyewitness to the killing; is that correct?

23 A I'm sorry, I'm kind of mixed up.

24 Q All right, let me backtrack for a moment; I put an
25 awful lot of things into that question.

26 Let's start out with this premise: I take it you
27 have no quarrel with the rule of law that says the People need
28 not produce an eyewitness to the killing or a body or any

1 parts thereof or an eyewitness having observed the body in
2 death in order to sustain a verdict of guilty of murder in the
3 first degree?

4 A I have no quarrel with those things.

5 Q Let's assume for a moment that the circumstantial
6 evidence in this case created an abiding conviction to a moral
7 certainty of the truth of the charge; i.e., that Mr. Grogan
8 committed murder in the first degree -- do you follow me so
9 far?

10 A Assuming?

11 Q Yes, you must assume that for the moment --
12 assuming that to be the case, I take it you would not refuse to
13 vote guilty of murder in the first degree solely because we had
14 not produced the body or any parts thereof or an eyewitness to
15 the killing or, indeed, an eyewitness to having viewed the body
16 in death; is that correct?

17 A I would not refuse.

18 Q Does it offend your sense of justice and fair play
19 to know in this state a man can be sentenced to death based
20 upon circumstantial evidence?

21 A No.

22 Q And have you given some thought to the death penalty
23 prior to being called for jury duty?

24 A Some.

25 Q Have you read any literature concerning the death
26 penalty?

27 A No.

28 Q Have you formed any fixed opinions concerning the

1 propriety of capital punishment in California?

2 A No.

3 Q Is it fair to say that at this time you have an
4 open mind and are neutral in regards to capital punishment in
5 California?

6 A Yes.

7 Q And can you conceive of circumstances in which you,
8 yourself, would vote the death penalty?

9 A Yes.

10 Q All right, Mr. Brooks, let me ask you this
11 question that I have asked other members of the panel.

12 You realize, do you not, that before a death penalty
13 verdict will issue in this court there must be the unanimous
14 vote of all 12 persons; isn't that correct?

15 A Yes.

16 Q And, therefore, in a real sense you are sitting as
17 a jury ^{of} one; isn't that correct?

18 A Yes.

19 Q Because if you say no with regard to the death
20 penalty, there is no return of the death penalty verdict; isn't
21 that correct?

22 A Right.

23 Q Is it fair to say if you had a state of mind at
24 this time that was so fixed with regard to the imposition of
25 capital punishment that under no circumstances will you vote
26 the death penalty, then the People could not get a fair trial;
27 isn't that correct?

28 A Correct.

1 Q And I take it that you are telling me that you
2 have an open mind concerning that issue; is that correct?

3 A I have an open mind concerning that issue.

4 Q Now, let me pose this hypothetical to you: we want
5 to assume there has been a return of a first degree murder
6 verdict in this case and that is based wholly on circumstantial
7 evidence; you are now in the jury room at this time after the
8 conclusion of the penalty hearing; you have heard all of the
9 evidence that has been presented in the penalty hearing; 11
10 jurors have cast their ballot for death, you are now asked to
11 cast your ballot whether for life or for death and you know
12 that if you vote for death you are going to live with that
13 judgment for the rest of your life.

14 You believe, however, in your heart and your mind
15 and your conscience this case warrants the imposition of
16 capital punishment. How would you vote?

17 A Death.

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Q All right. In other words, however distasteful the decision might be, if you felt that was consistent and a fair administration of justice, consistent with your conscience, you would have the courage to vote that conscience, is that correct?

A Yes.

Q And it has been mentioned, Mr. Brooks, that the decedent allegedly met his death between the dates August 16th, 1969, and September 1st, 1969.

Now, in this connection the law does not require us to prove the exact time of death, assuming that we prove beyond a reasonable doubt and to a moral certainty that Mr. Shea was murdered by the defendant between those dates. Would you refuse to vote guilty solely because we did not establish the exact time and day of death?

A No.

Q All right. And can you think of any reason, sir, why you could not be fair and impartial to both sides?

A No.

MR. KATZ: Thank you, sir.

Pass for cause.

THE COURT: Pass for cause.

Any peremptory by the People?

MR. KATZ: Yes. May we have a moment.

(Short pause.)

MR. KATZ: People wish to thank and excuse Miss Torres.

THE COURT: Very well.

THE CLERK: Mrs. Marion G. Avery, A-v-e-r-y.

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MRS. MARION G. AVERY

BY THE COURT:

Q Now, lady, have you heard everything the court has said since you came in with the rest of the jurors here the other day?

A Yes, sir.

Q You heard me read the charge that's been filed against the defendant in this case?

A Yes.

Q Now, I want you to assume you have been selected as a juror and sworn to try the case and that we have tried the case. The jury has 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 matter. The jury, on the other hand, could make a finding of guilty as charged.

If the jury decides guilty as charged then the jury would set the degree of the crime, first degree murder or second degree murder.

Now, if the jury finds second degree murder then that concludes the duty of the jury. They have no further obligations. They are excused.

On the other hand, if the jury makes a finding of first degree murder then the court proceeds to hold a penalty hearing with the same jury and after the penalty hearing is held then the court sends the jury back into the jury room to decide the question of penalty. The penalty must be either the death penalty or life imprisonment.

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Now, let us assume you are in the jury room deciding on the question of the death penalty or life imprisonment. Now, 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 case?

A No.

Q All right. And you realize, too, that while you say you would not automatically vote against the death penalty I understand your mind would be open. You have two choices, you can vote in your wisdom and reviewing the facts and reviewing the law, the juror has a right to exercise a judgment for the death penalty or for life imprisonment. What I am trying to get from you is you are not frozen one way or the other; is that a correct statement?

A That's correct.

Q I am not trying to unduly lead you, either. The People and the defendant want a juror whose mind is open. In other words, do I understand your mind is open, you wouldn't be one way or the other?

A That's right.

Q You might vote one way, you might vote the other.

A That is correct.

Q Is that about a correct statement?

A That's right.

Q Your mind is open?

A That's right.

Q Not frozen one way or the other?

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1 A No.

2 Q Now, do you feel that you could be fair and
3 impartial if you are selected as a juror in this case?

4 A I think so.

5 Q All right.

6 Do you know of any facts, anything that might arise
7 during the course of the trial that could terribly upset you,
8 annoy you, harass you or bother you in any way?

9 A Make me nervous.

10 Q Well, put the nervousness to one side. Anything
11 else?

12 A Well, no. I don't think so.

13 THE COURT: All right.

14 Defendant may inquire.

15 MR. WEEDMAN: Thank you, your Honor.

16 Q May I ask if you are employed?

17 A Yes.

18 Q What do you do for a living?

19 A I am a claims clerk for the Veterans Administration.

20 Q Is there something especially about this case that
21 makes you, Mrs. Avery, feel that you would be, oh, particularly
22 nervous sitting here as a juror and if so, what is that?

23 A Well, I don't know. I just rather go back to work.

24 Q Okay. Is that feeling of yours such that you think
25 it might interfere with your giving a very careful hearing to
26 all of the evidence here and listening to both sides and
27 thereafter listening to the court's instructions and then going
28 into the jury room and discussing the matter and so on?

1 A No, I don't think so.

2 Q All right.

3 I think you will agree that most people are a
4 little nervous when they come into a courtroom, whether they
5 be juror or lawyer for that matter, or defendant or what
6 have you.

7 So that then I take it that alone is not going to
8 interfere with your doing a good job for both sides here?

9 A No.

10 Q All right. Fine.

11 Is there anything about the death penalty prospect,
12 at least, that you think would cause you any problem such as
13 you could not give both sides a fair hearing in that regard?

14 A No, I don't think so.

15 Q Well, let me ask you this: supposing you did return
16 a first degree murder verdict here, would you automatically
17 vote the death penalty?

18 A No.

19 Q Irrespective of other evidence in the case?

20 A Automatically vote for it?

21 Q Yes.

22 A No. I wouldn't automatically vote for it.

23 Q Judge Call asked you if you would automatically
24 vote against it, and I am asking you the other side of the
25 coin.

26 A No, I wouldn't automatically.

27 Q Have you heard anything about the Charles Manson
28 or so-called Manson family?

1 A On the television and in the papers, that's all.

2 Q Very highly publicized case?

3 A That's right.

4 Q Wouldn't you agree?

5 Did you form any opinion as a result of that that
6 makes you feel it might interfere with your giving my client
7 a fair trial in this case if it is shown my client was
8 associated with Charles Manson?

9 A No. I don't think so.

10 Q All right.

11 It is clear that -- and Mr. Katz has already
12 mentioned this and I thank him for that -- it is clear of
13 course that my client had nothing whatever to do, was not
14 involved in those other matters; you appreciate that, of
15 course, do you not, Mrs. Avery?

16 A Yes.

17 Q By other matter that means the Tate-La Bianca case.
18 We anticipate the evidence here will show my client was in
19 one degree or another associated with Charles Manson and
20 other members of the Charles Manson family.

21 And you are telling us that even though you may
22 have read about that other case, that that is not going to
23 interfere with your judgment in this matter?

24 A That's right.

25 Q Is there anything at all about this case that you
26 think might substantially interfere with your giving both sides
27 a fair and complete hearing?

28 A Well, I don't really know anything about the case.

1 So I couldn't say that.

2 Q Well, you know it is a murder case?

3 A That's right.

4 Q You know that you are going to be called upon to
5 deal with circumstantial evidence?

6 A Yes.

7 Q For the most part here, rather than direct
8 evidence?

9 A That's right.

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1 Q The prosecutor is going to call upon you to find
2 that a man, number one, is dead, whose body cannot be produced.
3 Do you feel you would be able to listen to the evidence, the
4 circumstantial evidence in this connection?

5 A Yes.

6 Q And follow the court's instructions?

7 The prosecutor's theory of course goes beyond that
8 and also would ask you to believe through circumstantial
9 evidence not only is the man dead but that he died by an
10 unlawful means. That he was murdered, as a matter of fact,
11 again, with only circumstantial evidence.

12 Do you feel that you would be able to give the
13 People a fair hearing in that respect?

14 A Yes.

15 Q All right.

16 Now, the court will instruct you, Mrs. Avery, with
17 respect to some restrictions that concern the use, however, of
18 circumstantial evidence.

19 Do you feel you would be able to follow all of those
20 instructions?

21 A Yes.

22 Q Do you have any quarrel with a circumstantial
23 evidence restriction which says to you that where circumstantial
24 evidence is susceptible of two reasonable interpretations, one
25 of which points to the defendant's guilt, the other of which
26 points to his innocence, that you are obligated to adopt that
27 interpretation which points to his innocence?

28 Will that cause you any trouble?

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1 A No, I don't think so.

2 Q Okay. Mr. Katz has given some examples of
3 circumstantial evidence which I think are very good.

4 I attempted a kind of circumstantial evidence
5 illustration in the hope that it might clarify jurors' responses
6 with respect to following the law that I have just indicated to
7 you about equally reasonable interpretations, one pointing to
8 guilt and the other pointing to innocence.

9 Supposing you had a small child who was told to
10 stay out of the cookie jar. And the cookie jar was up on the
11 top shelf in the kitchen.

12 Now, if you came in there one day, into the
13 kitchen, and there is your small boy, and there is a broken
14 cookie on the sink and he is in the process of eating something,
15 and he has got cookie crumbs around his mouth, circumstantial
16 evidence, an inference would be that he has been in the cookie
17 jar. That would certainly be a reasonable inference.

18 And as a matter of fact, in view of that, there
19 wouldn't be any other reasonable inferences.

20 But suppose we alter that situation a little bit
21 and indicate that this child has a friend next door who has
22 free and unlimited access to all the cookies he wants. His
23 mother spoils him, you see.

24 So let's add to our example that you not only see
25 your little boy there obviously with a cookie in his mouth,
26 you also see the little boy next door running out the back
27 door with a handful of cookies. Now, you have two reasonable
28 inferences, one is your little boy went up and got the cookies

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1 out of the jar and the other reasonable interpretation is the
2 one which points to the possible innocence, of course, and it
3 is that he was provided with the cookies by the boy next door.

4 Do you understand my example?

5 A Yes.

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1 Q Now, with respect to the interpretation that points
2 to his guilt, that is a reasonable interpretation, certainly,
3 and the reasonable interpretation that points to his innocence,
4 do you think you would have any trouble following the law which
5 says you must follow the interpretation which points to his
6 innocence?

7 A No, I don't think I would.

8 Q All right; awkward as the example may be, I think
9 I like the example because, you know, mothers might not be so --
10 might not be so critical, mothers probably wouldn't follow the
11 law in this respect. I'm afraid that that little boy, you are
12 liable to get after him irrespective of whether the other little
13 boy gave him the cookies or not.

14 A Right.

15 Q But as a juror you can't do that; as a juror you
16 have to follow the law and you have got to say no, he didn't
17 break the law that you handed down and he is not guilty.

18 That wouldn't cause you any trouble, would it?

19 A I don't think so.

20 Q Is there anything about the fact that it is a murder
21 case that makes you feel that somehow because of the seriousness
22 of the charge, that my client is more apt to be guilty than not
23 guilty?

24 A No, just make me feel better not to be here.

25 Q Beg your pardon?

26 A Just would make me feel better not to be a juror.

27 Q As Mr. Katz has properly pointed out so many times,
28 it is a grave responsibility; but, then, the responsibility is

1 just as great, I submit, in other kinds of criminal cases even
2 if it is a petty theft case.

3 There is a grave responsibility on the part of a
4 juror to pass judgment on a fellow human being. It is not
5 always a desirable or pleasant task, I am sure you will agree.

6 Finally, of course, we expect that the prosecutor
7 will call vast number of witnesses, maybe 50, 60 witnesses --
8 I don't know; he knows -- and, of course, there is no way of
9 knowing precisely because that would change as the testimony
10 develops. We anticipate calling very few witnesses.

11 Does that fact, alone, make you think that my client
12 is more apt to be guilty just because the prosecutor has so
13 many more witnesses?

14 A No.

15 MR. WEEDMAN: We will pass for cause.

16 Thank you, Mrs. Avery.

17 THE COURT: People?

18 BY MR. KATZ:

19 Q Is there a Mr. Avery?

20 A Yes.

21 Q What does he do?

22 A He is a retired auto mechanic.

23 Q What general area of the town do you live in?

24 A Central city.

25 Q Mrs. Avery, we were discussing in your presence
26 over the past several days the fact that many people don't like
27 to make decisions, let alone decisions which will have awesome
28 consequences; and in that connection you realize, if selected

1 as a juror, you would be called upon to make some very grave,
2 some very deliberate, some very important decisions that will
3 affect the life of another human being; isn't that correct?

4 A That's right.

5 Q And only you know what your own personal constitu-
6 tion is, how your mind is made up, how emotional you are.

7 Do you think that this is the type of case in which
8 you could adequately perform your services as a juror if
9 selected as a juror, or do you think this is the kind of case
10 where you would say, "My gosh, I am so nervous, I don't want
11 to make this decision, it may affect the life of another human
12 being; I can't properly evaluate the evidence."

13 How do you think you would react to that?

14 A I don't think that I would be that nervous, but,
15 I mean, I would still be fair; I'd always try to be fair.

16 Q That's the right answer.

17 Now, as we carry this one step further, you
18 realize that we can never get to the issue of the proper
19 penalty in this case; i.e. death or life, until and unless
20 there is a return of a first degree murder verdict. Do you
21 understand that?

22 A Yes.

23 Q So, for example, if a jury reached a verdict of not
24 guilty, that ends it right there; if the jury returns a lesser
25 verdict, such as murder in the second degree, then the issue of
26 penalty is of no concern to the jury.

27 Do you understand that?

28 A Mm-hmm.

1 Q So it is possible and this has happened in the past,
2 some jurors become so nervous over the fact that they may be
3 called upon to determine whether a human being shall live or
4 not that they compromise their verdict in the guilt phase and
5 vote some lesser verdict, such as murder in the second degree,
6 even though the evidence warrants the return of a first degree
7 murder verdict.

8 Do you understand what I am saying?

9 A Yes.

10 Q So, in that connection, as you examine your own
11 emotional constitution and your own feelings about having to
12 make hard decisions, do you feel that if the evidence warranted
13 the return of a first degree murder verdict that, nevertheless,
14 you would vote some lesser verdict in order to avoid having to
15 make the decision of whether or not another human being shall
16 live or die, in the penalty phase?

17 Do you think that's a reasonable possibility?

18 A Well, I might be inclined to a little bit, but I
19 don't usually do that.

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1 Q Now, you understand this case is based solely
2 upon circumstantial evidence; is that correct?

3 A Yes.

4 Q And his Honor told you at the outset the People
5 aren't going to produce a body or an eyewitness to the killing
6 or an eyewitness to having observed the body in death; you
7 understand that?

8 A Yes.

9 Q Now, do you accept the rule of law in this State
10 which says that a man may be convicted solely upon circumstan-
11 tial evidence?

12 A Yes.

13 Q And I take it you understand we are not talking
14 about a petty theft case, as Mr. Weedman referred in the
15 example he gave; but, rather, we are talking about a murder
16 case, aren't we?

17 A That's right.

18 Q And however grave and serious decisions are in a
19 petty theft case, because they involve the liberty of another
20 human being, I think we can all agree that where you have to
21 make a decision of life and death that is even a graver and
22 more serious responsibility; isn't it?

23 A Yes.

24 Q I am sure if you were selected as a juror you
25 wouldn't take that responsibility lightly, would you?

26 A No.

27 Q And if you were convinced beyond a reasonable
28 doubt and to a moral certainty that Mr. Grogan murdered Mr. Shea

6a-1

1 and it was murder in the first degree, would you vote that
2 verdict?

3 A Yes.

4 Q All right; despite the fact that it was based
5 wholly on circumstantial evidence?

6 A Yes.

7 Q Do you have any quarrel with drawing reasonable
8 inferences from the facts that are proven to you?

9 A No.

10 Q All right; and I take it that you would give us
11 the benefit of your individual opinion in connection with
12 how you evaluate the evidence; is that correct?

13 A Yes.

14 Q You know that would require you going back in the
15 jury room and not only listening to the reasons that the other
16 jurors have for their conclusions, but you would be required
17 to give the reasons that you have for your conclusions; isn't
18 that right?

19 A That's right.

20 Q I take it you would want to do that, as an open-
21 minded juror; is that right?

22 A That's right.

23 Q For example, when you first returned to the jury
24 room, you thought conclusion A was correct, but you had some
25 opposing juror who said, "Look, Mrs. Avery, I don't think
26 conclusion A is correct, we think conclusion B is."

27 Would you want to listen to the reasons, how they
28 arrived at conclusion B?

6a-3

1 A That's right.

2 Q And if, for example, they convinced you by reason
3 and logic and not by coercion or duress that conclusion A
4 was wrong but conclusion B was correct, would you put your pride,
5 so to speak, in your hip pocket and adopt the reasonable
6 inference and the reasonable conclusion?

7 A Yes.

8 Q And do you agree with me that the only thing that
9 we are concerned with here is the ascertainment of the truth?

10 A That's right.

11 Q And with reference to the penalty do you think
12 that you would be able to vote a death penalty verdict if that
13 was a verdict consistent with your conscience in your sole
14 and absolute discretion?

15 A Yes.

16 Q All right, Mrs. Avery, we have been asking all the
17 other prospective members of the panel to project themselves
18 some six weeks or eight weeks from this date, at which time
19 you may be confronted with the decision of having to determine
20 whether or not Mr. Grogan shall live or die and it is a reason-
21 able possibility that you might be confronted with.

22 In that connection if you were asked to cast a
23 ballot for death or for life -- that is, to determine whether
24 or not Mr. Grogan shall live or die -- you have heard all the
25 evidence in the guilt phase and any additional evidence in the
26 penalty hearing, you have listened to the discussion of the
27 jurors, you now have 11 jurors who have voted for death;
28 you realize, as a jury of one, that there cannot be a return

1 of a death penalty unless and until you vote for the death
2 penalty, yourself.

3 You believe in your conscience this case warrants
4 a death penalty. How would you vote?

5 A I'd have to vote for death.

6 Q Now, just so we understand one another, the law
7 does not contemplate that a particular penalty shall follow
8 upon the return of a first degree murder verdict.

9 Do you understand that?

10 A I understand.

11 Q And the law won't tell you that the People have to
12 prove A, B, and C before a death penalty will issue or in the
13 absence thereof you must vote for life.

14 Do you understand that?

15 A Yes.

16 Q The law will set you afloat on a sea with an
17 uncharted course, armed only with your heart and your mind
18 and your conscience and that's the only criteria you will use
19 for determining the proper penalty in this case.

20 You understand that?

21 A Yes.

22 Q And if consistent with your conscience you felt
23 that this case deserved, warranted the death penalty, could
24 you vote that conscience and come back into seat No. 2,
25 where you are seated at this time, and tell the court Mr. Grogan
26 is sentenced to death by your verdict?

27 A Yes.

28 MR. KATZ: All right. Thank you.

Pass for cause.

THE COURT: Pass for cause?

Any peremptories by the People?

MR. KATZ: Yes, thank and excuse Mrs. Avery.

THE COURT: Thank you, lady.

THE CLERK: Bernard Schuchard, S-c-h-u-c-h-a-r-d.

MR. KATZ: The first name, Mr. Hogan?

THE CLERK: Bernard.

THE COURT: Is that paper for me?

MR. SCHUCHARD: It could be for you or for the counsel,
as far as my philosophy.

(Document handed to the court.)

THE COURT: Mr. Juror, this doesn't go to me as the
judge; this is comments that the Jury --

MR. SCHUCHARD: Yes, sir, that's right.

THE COURT: -- Commissioner has --

MR. SCHUCHARD: A very general form, but I thought it
might be helpful as to my --

THE COURT: As to your active participation -- this is
comments, just generalized comments.

I have no objection to counsel seeing it, if you
want to step up here.

MR. KATZ: Thank you.

(Unreported discussion between court
and counsel with the defendant in
chambers.)

7-1
1 (The following proceedings were had
2 in open court:)

3 THE COURT: All right.

5 BERNARD SCHUCHARD

6 BY THE COURT:

7 Q Now, Mr. Juror, you have been in here and have
8 heard everything I have said to the last assignment of jurors,
9 isn't that correct?

10 A Yes, sir, I have.

11 Q Now, did you hear me read the charge that's been
12 filed against the defendant?

13 A A very serious charge of murder, sir.

14 Q And I am going to ask you to assume that you have
15 been sworn to act as a juror in this case and we have tried the
16 lawsuit, tried the case, and you have gone to the jury room to
17 decide the question of guilty or not guilty.

18 Now, at that time the jury could bring in a verdict
19 of not guilty, which concludes the case entirely. There is
20 nothing more to be done by anybody.

21 The jury could bring in a verdict of guilty, and if
22 they do they must also make a finding of degree, first degree
23 murder or second degree murder.

24 If they make a finding of second degree murder, the
25 case is concluded so far as the jury is concerned. There is no
26 further trial of any kind held. It stands as second degree then
27 at that juncture.

28 However, if the jury should make a finding of first

7-2

1 degree murder then there is a subsequent penalty hearing held
2 and after the penalty hearing has been held the jury makes
3 a finding of the death penalty or life imprisonment.

4 Now, if you will assume that you are at the position
5 of voting either the death penalty or life imprisonment, I will
6 ask you this question.

7 Would you automatically vote against the imposition
8 of capital punishment without regard to any evidence that might
9 be developed at the trial of this case?

10 A I would say, sir, I would not do anything auto-
11 matically.

12 Q No, I want a yes or no.

13 A After giving a great deal of thought.

14 Q Is the answer yes or no?

15 A No.

16 Q All right.

17 Now, I will ask you this question, which is really
18 a recap of what I have just asked you.

19 Whether as a juror voting for the death penalty at
20 that time, as we have hypothetically set up, or life imprison-
21 ment, which is a matter for the juror to exercise one way or
22 the other, it is a matter that isn't fixed, cannot and must
23 not be fixed for the death penalty or against the death penalty,
24 it is an open matter that must be exercised in accordance with
25 your judgment after analysis of the facts, a comparison of the
26 statements of law, your discussion amongst all of the jurors,
27 then you vote your conviction.

28 But it is an open question, you understand that?

1 It is not fixed by law.

2 A Yes, sir.

3 Q Would you so do that, would you vote in that way
4 according to your dictates of your conscience?

5 A I would vote according to my dictates, yes, sir.

6 Q But you are not prejudiced for or against either?

7 A I would try not to be prejudiced.

8 Q Either alternative, that is what I want to get at.

9 A Yes.

10 Q Theoretically you could vote for the death penalty,
11 theoretically you could vote for life imprisonment, depending
12 upon your ultimate analysis in the case, is that what you would
13 do?

14 A Yes, sir. That is the law. That is what I would
15 do.

16 Q Do you know of any reason you could not be fair and
17 impartial to both the defendant and the People in this case?

18 A Well, somebody is going to get hurt, but I certainly
19 want to do my best.

20 Q I would like a yes or no, not a discussion, if you
21 don't mind.

22 A Yes, I would be.

23 Q And can you be fair and impartial if selected as a
24 juror --

25 A In my opinion I can be fair.

26 Q Let me finish. I am here to spend all the time that
27 is necessary, and I must have my questions answered first,
28 unless you can read my mind.

1 Let me finish the question.

2 Do you know of any reason in the world why you
3 could not be fair and impartial to both the defendant and the
4 People if you are selected as a juror in this case?

5 A No, I do not.

6 Q The answer is no?

7 A The answer is no.

8 Q Is there any situation you know of that might arise
9 that could upset you, disturb you, during the course of this
10 trial that might reflect itself in your judgment as a juror?

11 A I have no idea.

12 THE COURT: All right.

13 The defendant may inquire for cause.

14 MR. WEEDMAN: Thank you, your Honor.

15 THE COURT: Thank you.

16 BY MR. WEEDMAN:

17 Q Your name is pronounced Schuchard?

18 A It is a German name like Schumaker, Schmidt,
19 Schuchard.

20 Q Schuchard. May I ask what you do for a living,
21 sir.

22 A I am a schoolteacher, sir.

23 Q Where do you teach and what do you teach?

24 A I think some of the experience I have had might
25 have a bearing on the case. At the present time I am teaching
26 severely retarded children but my first experience was two and
27 a half years at the California Institution for Men in the
28 academic school for inmates.

1 Q Meaning you would be very, very familiar then --

2 A Yes, I am.

3 Q -- by and large with inmate populations?

4 A Yes.

5 Q In state prison?

6 A That's right.

7 Q Anything about that experience, Mr. Schuchard, that
8 makes you feel you couldn't give us a fair and impartial hearing
9 on the evidence?

10 A Well, the inmates have an award that they give to
11 a staff member, and I received the award two years in a row as
12 being the one who contributed most to the inmates' rehabilitation.
13 So I feel quite honored that way.

14 Q I think you should be, of course.

15 Would that kind of unusual insight into what
16 happens after a conviction and after a judge has deemed somebody
17 appropriate for state prison do you think that that would
18 interfere with your evaluating the evidence here?

19 A What would interfere?

20 Q Your experience, teaching?

21 A Well, we are all a product of our past environment.
22 And I would certainly think that our past plays a great part in
23 our future, yes.

24 Q Well, do you feel that would play such a part as
25 to prejudice you against the client or prejudice you against
26 the People?

27 A Well, my training was in welfare and treatment and
28 rehabilitation and not condemning people.

1 And the whole point is we are trying to salvage
2 humanity for society. That is our whole attitude toward crime.
3 It is a treatment program.

4 Q Yes, I understand. But you wouldn't equate
5 rehabilitation, necessarily, with society's not taking up that
6 person in the first instance, would you, and at least attempt-
7 ing to do something, perhaps, not to punish them, but at least
8 do something?

9 A I want to help our society.

10 Q Excuse me. At least doing something other than
11 turning him loose?

12 A Well, I have to hear the evidence to find out
13 whether he is in need of help.

14 Q Of course.

15 A That is what I mean.

16 Q All right.

17 I think you will agree, Mr. Schuchard, that some
18 persons, some persons just simply cannot bring themselves to
19 believe that the prosecutor would bring a case to trial unless
20 the person is actually guilty and that they have some kind of
21 obligations as a good citizen to go along with authority, to go
22 along with the prosecutor and vote guilty.

23 A Well --

24 Q There are such persons, don't you agree, Mr.
25 Schuchard?

26 A You are putting the situation now according to the
27 law, he is innocent and there is no argument about that.

28 Q Right.

1 A But in reality he is a medium custody person, a
2 suspect.

3 Q Certainly.

4 A I would say that his innocence as far as law does
5 not justify him to being left out without bail.

6 Q All right.

7 But that is a matter of convenience, isn't it?

8 A But as far as the law is concerned, I will go along
9 with that.

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1 Q All right. That is a rule of convenience?

2 A Yes.

3 Q It is a rule?

4 A A law of practicality.

5 Q A law of practicality. All right.

6 Still you wouldn't use that as evidence of his
7 guilt, would you?

8 A No, I will use the legal basis in the approach to
9 it.

10 Q All right.

11 So even though you understand that he is in custody
12 without bail because he is charged with murder?

13 A Yes.

14 Q And therefore to some extent he is a prisoner, he
15 is an inmate?

16 A Right.

17 Q Notwithstanding that you are not going to conclude
18 that he is more apt to be guilty than not?

19 A I will try on the basis of the law as it exists
20 today.

21 Q Okay.

22 We don't have too many jurors obviously, Mr.
23 Schuchard, with your background and quite frankly we don't
24 have too many jurors I would say, who have given this matter
25 the kind of thought it appears to me already that you have.

26 A I think it is a serious matter.

27 Q Certainly. Bearing in mind of course that you are
28 going to be called upon as a juror here to weigh testimony for

7a-2

1 reasonably, to weigh conclusions of course for reasonable-
2 ness, do you think that your mind is such that it might be
3 swayed more for the prosecution or more for the defense, or
4 do you think it is somewhere in the middle; or do you know at
5 all?

6 A Well, the court is a place where good communication
7 is necessary. And we have both sides and it depends on you
8 and the other counsel, the way you present your case and you
9 leave it up to me, and I will do the best I can to weigh it.

10 Q Okay. So we will get rid of what might be in the
11 bare pages of the transcript some equivocation -- and I am not
12 using that as a bad word, Mr. Schuchard -- some thoughtfulness
13 on your part that leads to not a hard yes or a hard no response
14 to somebody's questions, can you tell us simply then yes,
15 you will not be prejudiced against either side considering
16 the evidence?

17 A There is no human being without prejudice. But
18 I will certainly try to be as fair as I can to both parties.

19 Q Certainly. Then you know of none?

20 A I know of none.

21 Q I take it that should any arise you will obviously
22 do your best again to set it aside?

23 A Right.

24 Q Put it down.

25 Do you understand, Mr. Schuchard, that if the jury
26 makes a mistake as to fact, if they assume something has been
27 proven and it has not in fact been proven, that is to say,
28 it is not objectively the truth and the defendant is convicted

7a-3

1 as a consequence of that mistake, that there is no remedy
2 by appeal?

3 MR. KATZ: Excuse me, your Honor. I am going to object
4 to an argumentative and improper and inflammatory matter
5 brought before the jury.

6 THE COURT: I think it is argumentative. Do you desire
7 to reframe it or do you want a ruling?

8 MR. WEEDMAN: I think it is a perfectly proper question.

9 THE COURT: Read the question, please.

10 (The question was read by the reporter,
11 as follows:

12 "Q Do you understand, Mr. Schuchard,
13 that if the jury makes a mistake as to fact,
14 if they assume something has been proven and
15 in fact it has not been proven, that is to say,
16 it is not objectively the truth and the defendant
17 is convicted as a consequence of that mistake,
18 that there is no remedy by appeal?"

19 THE COURT: Well, I will sustain the objection. I will
20 sustain an objection to that question. It is speculative.
21 It is conclusional.

22 I can't accept the necessary conclusion of the
23 question. Sustained.

24 MR. WEEDMAN: Mr. Schuchard -- excuse me, your Honor.

25 THE COURT: The spirit of the question as it is given is
26 all right.

27 MR. WEEDMAN: I will try it again.

28 THE COURT: I think from a technical standpoint the

7a-4

1 objection is well taken.

2 Q BY MR. WEEDMAN: Mr. Schuchard, do you understand
3 that a jury cannot count on someone correcting mistakes?

4 A Right. And especially if you were dead, of
5 course, you couldn't change it.

6 Q Well --

7 A It would be -- we do have the governor who can
8 pardon him, and we do have higher courts. It just takes money
9 and it's not very practical.

10 We want to do the best job we can here.

11 Q I am just talking about the court's processes,
12 I just want to make sure that you understand that if this jury
13 makes a mistake that they cannot count on some appellate
14 court coming along and correcting their mistake.

15 A I agree very much with you.

16 Q You do understand this?

17 A Yes, I do.

18 Q All right, fine.

19 Is there anything about the circumstantial nature
20 of this case that you think will cause you any trouble in
21 evaluating the evidence?

22 A You didn't ask me the question whether I thought
23 the Tate La-Bianca trial was fair or not. And I think that was
24 probably fair.

25 Q I will get around to that.

26 A I mean I don't know the case. But if I find
27 any fault with what has gone on I haven't found any evidence
28 of a mistrial or anything like that.

1 Q But what about my question relative to circum-
2 stantial evidence? This case rests --

3 A Oh, I agree with the law as it stands, yes, sir.

4 Q In other words, you are not going to have any
5 difficulty dealing with circumstantial evidence?

6 A No, I will not, no.

7 Q Do you think you will have any trouble dealing
8 with some of the restrictions surrounding circumstantial
9 evidence?

10 A No.

11 Q That is the law requiring you to adopt the
12 reasonable interpretation which points to innocence even though
13 there may be an equally reasonable guilty interpretation?

14 A Do you mean the 50-50 thing?

15 Q Well, you have two reasonable interpretations,
16 to say they are equally reasonable I suppose that is just a
17 semantic device.

18 A I think the whole purpose is weighing it out and
19 it's weighed 50-50 proposition, give the benefit of the doubt
20 to the innocence is probably a good thing.

21 Q Sure.

22 A Yes, I agree with that.

23 Q Would you agree that long, hard, unhappy experience
24 with man judging man has led to the desirability of such a
25 rule? Benefit of doubt, presumption of innocence?

26 A Yeah, that's how we came by that.

27 Q Burden on the People?
28

1 A It's a good policy, right.

2 Q All right.

3 Now, what about the Tate-La Bianca case? Have
4 you formed any opinions about the People in connection with
5 the case?

6 A I understand you to say that they had a mistrial,
7 they didn't get justice or something. I feel -- I didn't
8 follow it very closely --

9 THE COURT: Well, wait a minute. I don't think we ought
10 to go into discussion as to what he thinks about it. He can
11 give his opinion or as to whether it would or would not affect
12 his judgment here. That I have no issue on, but to get his
13 personal opinions through the courtroom I don't think we
14 ought to do it.

15 MR. WEEDMAN: Very well, your Honor.

16 Q Mr. Schuchard, I am concerned that somewhere along
17 the line you got the impression that I had somehow criticized
18 the result of that case. What was your understanding of what
19 I had said in that connection?

20 A Did I find any fault with the Tate-La Bianca or
21 something?

22 Q You answered me by saying that you understood that
23 I had inferred --

24 A Let's say any knowledge of that would be --
25 would be wrong in this case. Each case is separate. I
26 understand that.

27 And whatever happened in that case doesn't happen
28 here.

1 Q Mr. Schuchard, just explore your thinking for
2 a moment. I want you to let me finish my questions because
3 you have thought a lot about this case, and we will communicate
4 very well indeed if we allow each other to finish.

5 I have interrupted you, too, so let me try to
6 finish.

7 Just to explore your state of mind now, would you
8 be surprised to learn that there have been prospective jurors
9 who have said, "No, I have such a strong opinion about the
10 Charles Manson family that I couldn't give anyone in any case
11 who was a member of that family a fair trial"?

12 A No, I wouldn't be a bit surprised.

7b-1

1 Q All right.

2 That is the reason for my question, then, you
3 appreciate that, don't you?

4 A Right.

5 Q It doesn't infer -- I hope it doesn't infer that I
6 felt that somehow there was something wrong with the decision
7 at the Tate-La Bianca case. But I don't know anything about
8 the Tate-La Bianca case as a lawyer.

9 We understand each other in that respect?

10 A Right. And each case is separate.

11 Q Yes, indeed.

12 A I will go along with that.

13 Q So you have answered my question with respect to
14 that this is a separate case?

15 A Right.

16 Q We ask a lot of dumb questions of prospective jurors.
17 I am sure you have heard some already in this courtroom.

18 A That is why I went ahead and tried to organize my
19 thinking to give it to the judge and to the counsel so that we
20 would have good understanding before I went into this, that I
21 am -- it is a serious thing. And a great responsibility on me.
22 I am doing the best I can.

23 And I just want you to understand my approach to it.

24 Q Well, we are very grateful for that.

25 A Somebody has got to be heard.

26 Q I wish we could have this kind of dialogue, if you
27 will, more often with prospective jurors, Mr. Schuchard. We
28 don't have the opportunity because I think most jurors really

7b-2

1 aren't used to this arena. If we could get them out in the
2 hall it would be another matter.

3 We don't find out as much as we would like to know
4 about prospective jurors, certainly.

5 I take it we can both be safe as Mr. Katz and I
6 can both feel safe, you are not going to use any artificial
7 standards in evaluating the evidence here; you are not going
8 to use the appearance of the defendant or you are not going to
9 use the appearance of counsel, you are not going to say all
10 police officers tell the truth, or all police officers don't
11 tell the truth, et cetera, et cetera, et cetera; you are not
12 going to use any of those silly standards?

13 A I will try not to generalize.

14 Q Pardon?

15 A I will try not to generalize.

16 Q I suspect, Mr. Schuchard, that if you were in a
17 situation where the vote was 11 to 1, irrespective of the
18 direction, that you certainly wouldn't change your mind merely
19 because the other 11 jurors were 11 against you?

20 A Not if I was convinced in his innocence -- or even
21 in his guilt.

22 MR. WEEDMAN: Or his guilt, surely.

23 We will pass for cause.

24 And thank you, Mr. Schuchard.

25 THE COURT: People.

26 BY MR. KATZ:

27 Q Mr. Schuchard, you have had a great deal of
28 experience in your career in dealing with the project of

7b-3

1 rehabilitating those wayward individuals, at least in the
2 judgment of society, who have offended our mores and
3 standards.

4 In that connection, do you believe, sir, that all
5 people can be rehabilitated?

6 A Motivation is a very important part, and some don't
7 want to be motivated.

8 Q All right.

9 So tying this in with the aspect of the imposition
10 of a capital verdict do you feel that your background is such
11 that you would always, regardless of the evidence, vote for
12 life because you feel somebody can be rehabilitated, or would
13 you have an open mind as to the proper penalty in this case,
14 and if you felt that the evidence showed such an egregious
15 crime, showed such moral culpability in connection with the
16 defendant's acts respecting the killing of Mr. Shea, that it
17 warranted the death penalty, could you vote the death penalty?

18 A You see, -- can I say what I --

19 Q No, you can answer any way you want.

20 A So long as we have our problems in the world, we
21 have a war and I was a soldier, and I had to take up a rifle
22 and all that -- I think all this is wrong, but our society hasn't
23 arrived to the point yet where we can just outlaw death. If
24 we could outlaw death of course maybe there wouldn't be some
25 murders to begin with.

26 But the way it is now I have to adjust to the world.
27 I cannot change the world.

28 And so in my last 10 years I have been trying very

7b-4

1 much to adjust to the world as it is, and I am speaking in
2 reference to the law as it is.

3 Now, the law is amendable. And there will be a
4 time probably, the Supreme Court is going to work on this.
5 But as it exists today I want to work within the law.

6 Q All right.

7 Now, there are some jurors who after having given
8 a lot of thought to our problems in society believe that the
9 jury system itself is on trial and not merely the defendant
10 who is before the given jury panel.

11 Do you believe that the jury room should be used
12 as a forum by which to discuss the wisdom or lack of wisdom of
13 the laws of the State of California?

14 A Well, if a man's life is at stake we are taking a
15 lot of time right now.

16 But this is a very important matter so I think that
17 we should devote a little time to an individual's life and also
18 to the betterment of society.

19 Right.

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8-1

1 Q In other words, for example --

2 A But when I said about the jury system might be on
3 trial, it may be reorganized so you could be on a 24-hour
4 basis. This whole facility is only used one-third of the time,
5 it could be used for 24 hours.

6 Q I see.

7 So, in other words, by that written comment, then,
8 you didn't mean that the jury room should be used as a forum
9 by which to discuss the propriety of the laws of the State of
10 California, as such; is that correct?

11 A That's correct.

12 I mean, you get down to business, you use the
13 facilities for more length of time, and, well, just work on
14 the efficiency, probably recording, and the technical --

15 Q Mr. Schuchard, we know that some people feel,
16 "My gosh, I don't like the sound of circumstantial evidence.
17 I know his Honor is going to tell me that under certain factual
18 findings I must apply the law of circumstantial evidence, but
19 I don't think I will because I just don't like the sound of
20 it."

21 Are you that kind of juror, even if you didn't like
22 circumstantial evidence, would you be willing to apply the law
23 his Honor will give you at the conclusion of the case?

24 A You have brought out an example of circumstantial
25 evidence one time and you said we didn't realize this was
26 circumstantial evidence. The example that you brought out
27 sounded very convincing to me and, of course, to say out and out
28 I will do this and I will do that, I cannot guarantee you

1 anything like that.

2 Q Yes, and we appreciate that response. It is a very
3 well thought out response.

4 What we are suggesting to you is this, we don't
5 want you to precommit yourself on what the facts are in this
6 case because no facts have been presented at this point. All
7 we are asking you to do is to accept the law as his Honor will
8 give it to you at the conclusion of the trial, regardless of
9 whether you think it is wise or unwise, and save it for the
10 legislative representatives to change the law if you feel it
11 is unwise.

12 Would you be willing to do that?

13 A I certainly would.

14 Q And you brought out a very, very good point, a
15 lot of people don't know what circumstantial evidence is and
16 if they were told the kind of things that constitute circum-
17 stantial evidence they'd say, "My God, this is direct evidence,
18 this is what I always thought direct evidence was," but we are
19 not even going into the kinds of circumstantial evidence.

20 I am satisfied with your statement that you would
21 be willing to follow the law of circumstantial evidence. Is
22 that your state of mind, sir?

23 A That's right.

24 Q You recognize in our everyday lives we certainly
25 act upon proven facts, don't we, and we make decisions based
26 on the inferences proven to us which affect the lives of others--

27 A Many of the things we know have been learned
28 indirectly.

1 Q Yes.

2 A For instance, we haven't seen an electron yet, I
3 don't believe, and we don't know the atom exactly, but this is
4 all indirect evidence.

5 Q Mr. Schuchard, have you given some thought, and I
6 am sure you have, to the death penalty prior to being called
7 for jury service?

8 A Yes, I have.

9 Q And have you read anything in regard to capital
10 punishment?

11 A Nothing that I can remember.

12 Q Any correctional material, as such, concerning --

13 A Nothing on the policy whatsoever.

14 Q And without telling me your reasons for, are you
15 generally opposed to capital punishment or do you think it has
16 its proper place here in California?

17 A Well, justice has evolved through the years, and,
18 as I say, if we are not up to the point of doing away with
19 capital punishment -- I remember during World War II, I think
20 they were trying to do away with it and there were some
21 despicable acts, and these people were such a danger to
22 themselves and to society that they postponed repealing
23 capital punishment for a long time; and I guess we can only
24 let time decide for us when to repeal it.

25 Q Have you asked yourself the question, Mr.
26 Schuchard, whether or not you, yourself, could personally vote
27 the death penalty?

28 A I'll make it even more specific. If you give me
the cyanide pills, I could put them in the pot.

The 8a

Q But that would be based upon a total consideration of the evidence?

A That would be based on the fact that it is legal and I were employed to do this, as a custody officer in a State system.

If nobody else could do this, I think I'd have the guts to do it.

Q All right.

What you are telling us is that you are going to listen to the evidence in this case; that is, the evidence in the guilt phase, and should we reach the penalty phase you'd be willing to listen to the evidence in the penalty phase before making a value judgment as to whether or not another person shall live or die; is that correct?

A See, it is not just my judgment, it is society's judgment.

Q But without getting into a philosophical discourse in this area, you understand that morally and personally you are involved in this decision; you can't say society is making its decision because capital punishment is on the books. You must accept the responsibility for the death penalty if it is at issue in this court when you are selected as a juror and you must live with that judgment for the rest of your life.

You appreciate that?

A I appreciate it.

Q And I take it that what you are saying is that you do have the courage to vote your conscience if you felt, based upon a full consideration of the evidence, the case

8a-2

1 warranted the death penalty, you would vote it; is that right?

2 A Right, if the case warranted it.

3 Q And as you sit here now do you have an open mind
4 concerning the proper penalty in this case, sir?

5 A For a murder?

6 Q Yes.

7 A Well, I'd have to take the directions of the judge,
8 because we have different degrees of it, you see.

9 Q All right, I appreciate that very much.

10 Now, his Honor explained to you that the law is
11 not going to tell you whether or not this is a death penalty
12 case, assuming there was a return of a first --

13 A I'd have to wait for the evidence, then.

14 Q All the law is going to tell you is that your
15 conscience will dictate the penalty in this case; isn't that
16 right?

17 A That's right.

18 Q And if you had a fixed mind concerning capital punish-
19 ment, such as would preclude you from voting the death penalty
20 in any circumstances, then, of course, you wouldn't make a
21 fair and impartial juror on that issue; isn't that right?

22 A Right.

23 Q So, I take it that you are telling us that you have
24 an open mind as to the proper penalty in this case; that you
25 have not heard the evidence yet and you will wait until you
26 have heard all the evidence in this case to determine the issue
27 of penalty; is that right?

28 A That is right, to the best of my ability.

8a-3

1 Q Do you think there is anything concerning your
2 beliefs about capital punishment or rehabilitation that would
3 cause you to automatically vote for life in each and every
4 situation following a return of a first degree verdict?

5 A As I tried to tell his Honor, I don't do anything
6 automatically.

7 Q What you are saying is you don't have any deep-
8 seated beliefs against the imposition of capital punishment;
9 is that correct?

10 A No, I do not, especially since it is the law.

11 Q All right; and is there anything you can think of
12 that has been discussed while you have been here which would
13 render you incapable of being fair and impartial?

14 A No.

15 Q All right, and is there anything that you'd like
16 to discuss with myself or Mr. Weedman which might affect
17 your ability to be fair and impartial, other than that document
18 which you submitted to the court?

19 THE COURT: Well, wait --

20 MR. KATZ: I will withdraw the question.

21 THE COURT: The question is out; I will have to strike
22 it.

23 MR. KATZ: I appreciate that, your Honor.

24 THE COURT: All right, ask your next question.

25 I want to say, again, I don't want to be presumptuous
26 in the way I said it -- my apology; it was rather an abrupt
27 statement by me.

28 MR. KATZ: I didn't take it as such, your Honor.

1 THE COURT: All right.

2 Q BY MR. KATZ: The issue of sympathy that we have
3 discussed before, you realize that the extraneous and
4 artificial factors many times can affect ability of a juror
5 to render a judgment based solely upon the merits of the
6 evidence; you recognize that?

7 A I do recognize it.

8 Q And as you so candidly indicated before, everybody
9 in this world has prejudices or preferences -- we are almost
10 born into the world with them, unfortunately -- but, in any
11 event, by the time we get to serving as a juror we have a lot
12 of prejudices and a lot of preferences; isn't that correct?

13 A That is true.

14 Q Do you think that with respect to the issue of
15 sympathy, that the evident youth of the defendant would cause
16 you to render a verdict not consistent with the evidence as
17 you find it to be?

18 A I hope that the verdict I render will be consistent
19 with the evidence.

20 MR. KATZ: Thank you, sir; I am sure it will.

21 Pass for cause.

22 MR. WEEDMAN: Your Honor, there is just one question,
23 in view of Mr. Schuchard's response to the death penalty, that
24 I would like to ask, if I may.

25 THE COURT: Go ahead.

26 8b

8b-1
1 Q BY MR. WEEDMAN: Mr. Schuchard, do you understand,
2 the
3 sir, that/legislature of the State of California, doesn't
4 express any preference for the death penalty --

5 A It is the law right now; correct?

6 Q Well, the legislature merely says that following a
7 conviction of a first degree murder that the jury shall fix
8 the penalty at either life imprisonment or death.

9 A That gives me more freedom, doesn't it?

10 Q Pardon?

11 A In other words, I have three choices, second
12 degree, first degree, life or death.

13 Q You left one out.

14 A Or a hung jury?

15 Q How about "Not guilty," Mr. Schuchard?

16 A Not guilty?

17 Q I am distressed that you left out that possibility.
18 That wasn't a deliberate omission on your part,
19 was it?

20 A No, sir.

21 Q We really are talking about penalty, so I take your
22 response in the light of penalty.

23 What I am really trying to understand is whether
24 you accept the idea that the legislature doesn't care what
25 penalty you impose --

26 A We have a Republican government and they represent
27 the people and they will take what we feed them and try to
28 enforce the laws. The needs change and arise, and so whatever
the people want they try to do for us. They care what the

8b-2

1 people think.

2 Q Well, I am talking about the legislature, meaning
3 the law as it now is fixed, Mr. Schuchard; I am not talking
4 about the governor.

5 Do you understand that the law expresses no
6 preference for the death penalty versus --

7 A Right.

8 Q -- life imprisonment?

9 A I understand that.

10 Q So that when we say it is the law, do we understand,
11 then, clearly that it is the law saying only that it is up to
12 the jury to decide?

13 A That is my understanding.

14 Q And that the matter is totally discretionary with
15 the --

16 A Jury.

17 Q -- jury?

18 A Yes, sir.

19 Q In other words, this legislature doesn't even give
20 us a hint --

21 A Right.

22 Q -- as to what kind of fact situation should lead to
23 the death penalty.

24 A The choice is up to us.

25 Q And it can be, apart from merely listening to the
26 evidence and considering it, it can be a capricious choice as
27 far as the legislature --

28 MR. KATZ: Excuse me, your Honor. I think that is a

1 misstatement of the law. They don't contemplate capriciousness
2 with reference to a man's life.

3 MR. WEEDMAN: They most certainly do.

4 MR. KATZ: Excuse me, your Honor; the law contemplates --

5 THE COURT: I will sustain the objection to the last
6 question, but I think this examination has been covered pretty
7 well on both sides, gentlemen.

8 Are there any peremptories?

9 MR. KATZ: Your Honor, this would be a convenient time for
10 a recess; it is 11 o'clock.

11 MR. WEEDMAN: Your Honor, I only have one more question,
12 so perhaps we could get that out of the way?

13 THE COURT: Go ahead.

14 Q BY MR. WEEDMAN: The word "capricious" apparently
15 was an unfortunate choice by me; but you understand, Mr.
16 Schuchard that you go into that penalty phase, and it gets
17 that far, that nobody is going to tell you how to do it nor
18 what to do, not even the legislature; it is entirely up to you,
19 individually, to make a choice and that you may base it upon
20 your own personal feelings about capital punishment, indeed, if
21 you care to. If you care to -- you are nodding --

22 A Well, I would imagine deliberation, we are free to
23 deliberate how we feel, we are not being censored in delibera-
24 tion?

25 Q Right, and that you may select --

26 A The only thing we are guided by is the law and the
27 instructions, instructions of the judge.

28 Q Right.

1 A We have to abide by that.

2 Q But I take it that you are ready to go into a
3 penalty phase if this trial gets that far, knowing --

4 A I better be or I shouldn't be sitting here.

5 Q -- knowing or appreciating the fact that you are
6 not going to have any guidelines as to what penalty to impose?

7 A Right; we will relieve you of the responsibility
8 of making the decision, that's all I can say.

9 You hand it to us, we'll do the best we can with
10 it and we'll relieve you or anybody else. We have the
11 responsibility; we'll do the best we can with it.

12 Q Well, I don't quite understand what you mean by
13 relieve us.

14 A I will relieve your Honor or anybody else to make
15 the decision; we 12 will make the decision.

16 Q That's right and you'll make it individually, of
17 course?

18 A That's right.

19 Q Not collectively.

20 A It can be 12 for or 12 against.

21 Q Or in the event that all 12 do not agree with
22 respect to the death penalty, then, of course, that jury will
23 have to be discharged and another --

24 A Unfortunately, that costs the people but that's
25 the way our system works, yes.

26 Q Is there anything about the length of this trial --

27 THE COURT: Gentlemen, I am going to close down. I
28 think there has been a long for cause on both sides.

1 Do the People have any challenge or not?

2 MR. KATZ: Your Honor, I was just going to ask for a
3 recess at this time.

4 MR. WEEDMAN: Yes.

5 THE COURT: Certainly; we'll have a short recess.

6 I'll ask the jury to not discuss the case or come
7 to any opinions or conclusions.

8 Thank you.

9 (Recess.)

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

THE COURT: Now, counsel, let's go ahead here. People
against Grogan. The defendant is here, both counsel are here.
The jury is back in the jury box. You may
proceed, gentlemen.

MR. WEEDMAN: Your Honor, both counsel, after some
consideration will stipulate that the juror, Mr. Schuchard,
be excused for cause citing Section 1073, subdivision 2,
your Honor.

THE COURT: Stipulate?

MR. KATZ: Yes, your Honor. So stipulated.

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

THE COURT: Thank you.

I will excuse you. Thank you very much.

MR. KATZ: Thank you, your Honor.

MR. WEEDMAN: Thank you, your Honor.

THE COURT: Call another juror.

THE CLERK: Mrs. Harriet E. Lazard, L-a-z-a-r-d.

MRS. HARRIET E. LAZARD

BY THE COURT:

Q Well, now, lady, let's start from the beginning
again. Have you heard everything that I have said since you
have come in with the last grouping of jurors?

A Yes, I have.

Q Did you hear me read the charge that's been filed

9-2

1 against the defendant?

2 A Yes, I have.

3 Q Now, let's assume you have been selected as a juror.
4 We have tried the case and the court has sent you out to the
5 jury room to decide the question of guilty or not guilty.

6 Now, let me say at that time the jury could make
7 a finding of not guilty and that would be the end of the case
8 entirely. If the jury made a finding of guilty then the jury
9 would make a finding of degree, guilty first degree murder,
10 guilty second degree murder.

11 If the jury made a finding of guilty second degree
12 murder the case so far as the jury is concerned, the case is
13 all concluded. If the jury should make a finding of guilty
14 first degree murder then there would be a further hearing held
15 called a penalty hearing. And at the end of the penalty hearing
16 the jury would go back to the jury room again to decide what
17 is penalty.

18 The penalty would be either the death penalty or
19 life imprisonment. That is for the jury to decide.

20 Now, if you were on the jury and were in the jury
21 room after the penalty hearing, you are voting on the question
22 of death penalty or life imprisonment I will ask you this
23 question:

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

27 A No.

28 Q All right. Now, I will ask you this question:

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1 Do you know of any reason at all that you could
2 not be fair and impartial if you are selected as a juror in
3 this case?

4 A No.

5 Q Do you have any situation that might disturb you
6 to such an extent you couldn't be free and impartial and your
7 mind clear and open? Anything coming up that could bother
8 you, worry you, annoy the life out of you, that you couldn't
9 be fair in your judgment?

10 A No.

11 Q All right.

12 Now, you understand in talking about this life
13 imprisonment or death penalty, that is a matter for the
14 individual juror at that time to vote upon, and the juror
15 may vote for the -- according to how you find on the facts,
16 what you think of the testimony, what you think the law is;
17 you will draw an ultimate conclusion -- this is your judgment --
18 either for the death penalty or life imprisonment; you under-
19 stand that?

20 A Yes.

21 Q And you would be willing to vote either way in
22 accordance with your own conscience and the facts and the law;
23 is that correct?

24 A Yes.

25 Q You wouldn't bar or rule out one or the other of
26 the two findings of either the death penalty or life imprisonment,
27 you wouldn't be arbitrary and say you are just going to vote
28 one way and not the other?

1 A No.

2 Q You would view both of the two alternatives as
3 possibilities, is that correct?

4 A Yes, that's correct.

5 THE COURT: Thank you.

6 Defendant may inquire.

7 MR. WEEDMAN: Thank you, your Honor.

8 Q Would you pronounce your name, please.

9 A Lazard.

10 Q Mrs. Lazard, are you employed?

11 A Yes, I am.

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

13 A I am intermediate clerk for the Department of
14 Public Social Services.

15 Q Is there a Mr. Lazard?

16 A No, there isn't.

17 Q Do you have children, Mrs. Lazard?

18 A They are adults.

19 Q Pardon?

20 A Adults. All grown.

21 Q All grown. All right.

22 Have you heard anything at all about this case so
23 far, Mrs. Lazard, that makes you feel that you would not like
24 to sit as a juror here?

25 A No.

26 Q Okay. You realize we are going to be talking about
27 an alleged murder?

28 A Yes.

1 Q Anything about the fact of such a heinous crime
2 that you think might interfere with your giving both sides
3 a fair and impartial consideration of the evidence?

4 A No, I don't think so.

5 Q It is estimated that the matter will last about
6 ten weeks. Would that cause you any personal hardship?

7 A No.

8 Q Have you any friends or relatives in law enforce-
9 ment?

10 A Oh, a couple of friends.

11 Q May I ask in what particular they are in law
12 enforcement?

13 A Oh, deputy sheriffs. Both of them.

14 Q Is there anything about that friendship that makes
15 you feel that you would be more apt to find one way or the
16 other in this case just because you have a couple of friends
17 who are deputy sheriffs?

18 A No.

19 Q Okay. Do you have any quarrel with the fact that
20 we are defending here, that is, that we are not just accepting
21 the charge but we are defending against it and we are going to
22 defend against it as vigorously as we can?

23 That's all right with you, isn't it, Mrs. Lazard?

24 A Yes.

25 Q Do you feel that merely because this charge has
26 been brought against my client that the chances are he must
27 be guilty or otherwise the prosecutor just wouldn't do such a
28 thing?

1 A No.

2 Q I am sure you appreciate that there are many cases
3 which are successful from a prosecution point of view, and
4 there are many cases which the district attorney's office
5 following due consideration comes up with not guilty? That's
6 no surprise to you, is it, Mrs. Lazard?

7 A No.

8 Q As you sit there now I presume it would be fair
9 to say that you don't know how this case is going to come out?
10 This could be not guilty, just as well as guilty?

11 A That's right.

12 Q Okay. If however this matter should get to a
13 first degree murder conviction do you feel you would auto-
14 matically impose the death penalty without regard to the
15 other evidence in the case?

16 A Would you say that again, please.

17 Q Yes. If this case results in a first degree murder
18 conviction would you automatically impose the death penalty
19 without regard to other evidence in the case?

20 A No.

21 Q So like the other jurors you will wait until you
22 hear all the evidence before you even begin to consider penalty
23 in this case?

24 A Yes.

25 Q Fair enough? You understand that the law of
26 California has no preference for one penalty as against the other
27 penalty?

28 A Yes, I understand.

1 Q And you are prepared to exercise your total and
2 absolute discretion in that connection if this matter should
3 get to a penalty phase then?

4 A Yes.

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1 Q Will you appreciate, Mrs. Lazard, that statements
2 of counsel here are not evidence in the case?

3 A Yes.

4 Q And that statements on the law from counsel, again,
5 are not to be used by you as law in this case, but that the
6 law comes to you from Judge Call and from no one else?

7 A I understand.

8 Q With respect to this business of this Tate-La Bianca
9 and the Charles Manson family, and understanding that my client
10 had nothing to do with that matter, but, nonetheless, the
11 evidence perhaps showing that he was associated with Charles
12 Manson, would that fact, alone, prejudice you against him so
13 that he couldn't have a fair trial here?

14 A No.

15 Q Now, what about a very close case, Mrs. Lazard, a
16 matter in which after you heard all of the evidence you really
17 can't make up your mind, perhaps several days have gone by in
18 the jury room and you have sifted through all the prosecution
19 witnesses' testimony, all the defense witness testimony and up
20 to this time you do not feel an abiding conviction to a moral
21 certainty that my client is guilty; do you think, then, that
22 you would use his association with Charles Manson, alone --

23 A No.

24 Q -- to convict him?

25 A No.

26 Q I take it, then, that you are just as prepared to
27 turn him loose as to convict him as you sit there now?

28 A Yes.

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1 Q And you wouldn't hesitate to turn him loose if you
2 were not convinced beyond a reasonable doubt that he was
3 guilty --

4 A Yes.

5 Q -- I am correct in that, am I not?

6 A Yes.

7 Q If the evidence shows, Mrs. Lazard, that my client's
8 way of living, his way of life is repugnant to you for any
9 reason, that it is a lifestyle that you do not approve of,
10 would you use that fact, alone --

11 A No.

12 Q -- to convict him?

13 You would have no hesitation, then, in turning him
14 loose, even if you didn't like him?

15 A That's correct.

16 MR. WEEDMAN: Thank you, Mrs. Lazard.

17 We will pass for cause, your Honor.

18 THE COURT: Thank you.

19 People?

20 MR. KATZ: Yes, thank you.

21 Q Mrs. Lazard, what general area of town do you reside
22 in?

23 A South central -- southwest Los Angeles, I am sorry.

24 Q Southwest?

25 A Yes.

26 Q Now, his Honor very patiently and very clearly at
27 the outset explained the People's burden of proof, which is,
28 namely, that we must prove the defendant's guilt beyond a

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1 reasonable doubt and to a moral certainty; in that connection
2 he talked about the presumption of innocence.

3 Do you recall his discussion concerning presumption
4 of innocence?

5 A Yes.

6 Q And that his Honor very properly pointed out the
7 fact that as he sits here now he is presumed to be innocent
8 and throughout the trial he is presumed to be innocent unless
9 and until that presumption is rebutted by evidence which
10 creates in your mind an abiding conviction to a moral certainty
11 of the truth of the charge.

12 You understand that?

13 A Yes.

14 Q I take it you don't subscribe to the belief that
15 this presumption of innocence is conclusive?

16 A No.

17 Q It is a rebuttable one; isn't it?

18 A Yes.

19 Q And if it were conclusive that means that there
20 would be no trial; isn't that right?

21 A Yes.

22 Q So you accept the fact that the People can meet
23 this presumption and in law it is contemplated that if they
24 prove their case beyond a reasonable doubt and to a moral
25 certainty, then you are duty bound to vote guilty; is that
26 correct?

27 A Yes.

28 Q That would be despite the presumption of innocence;

10-4

1 isn't that right?

2 Q So you understand that presumption of innocence
3 dissipates, it disappears when the People reach that stage of
4 the trial that they have presented good evidence which creates
5 in your mind an abiding conviction to a moral certainty to the
6 truth of the charge; is that right?

7 A Yes.

8 Q We have been discussing this aspect of circumstan-
9 tial evidence and in that connection I gave a little homely
10 cookie example and I take it that you recognize by that
11 example that you apply circumstantial evidence to your everyday
12 living habits, do you not?

13 A Yes.

14 Q And do you have any objection to drawing inferences
15 from facts that are proven to you?

16 A No.

17 Q I take it you have no objection to acting upon the
18 inferences that you draw from facts proven to you; is that
19 right?

20 A That's right.

21 Q And many times they affect our daily lives, what we
22 do in the future; isn't that right?

23 A That's right.

24 Q Now, here you will be called upon to draw some
25 inferences based upon circumstantial evidence which will be
26 presented to you. If these inferences, and I am talking about
27 the reasonable inferences, point to the guilt of the defendant
28 and there are no other rational or reasonable inferences

10-5 1 pointing to the innocence of the defendant, you would be duty
2 bound to convict the defendant if the reasonable inferences
3 created in your mind an abiding conviction to a moral certainty
4 of the truth of the charge.

5 You understand that?

6 A Yes, I understand.

7 Q Do you have any quarrel with the rule of law which
8 says that a man may be convicted of first degree murder based
9 on circumstantial evidence?

10 A No.

11 Q You understand, then, that the law does not require
12 the People to produce a body, an eyewitness to the killing or,
13 indeed, an eyewitness to having observed the body in death; do
14 you understand that?

15 A Yes, I understand that.

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1 Q Do you think you would require, nevertheless, the
2 People to produce a body or an eyewitness to the killing or
3 an eyewitness to having observed the body in death even though
4 we could prove beyond a reasonable doubt and to a moral
5 certainty that the defendant had murdered Mr. Shea?

6 A No.

7 Q Does it offend your sense of justice or fair play
8 to know that a person may be sentenced to death based upon
9 circumstantial evidence?

10 A No.

11 Q Have you given some thought to the death penalty
12 prior to being called for jury service?

13 A I didn't really think about it; I never thought I
14 would have to.

15 Q I take it, as all thinking people, though, the
16 subject matter has come to your attention at times and perhaps
17 you have listened to colloquies or discussions between various
18 persons who appear on radio shows or television shows, or
19 what have you; is that correct?

20 A Well, I really haven't.

21 Q Do you have any feeling one way or the other
22 concerning the death penalty?

23 A Not really.

24 Q Without telling me your reasons, are you opposed to
25 capital punishment in general?

26 A No.

27 Q All right,

28 I take it you believe, then, that capital punishment

1 has a proper place in our society; is that correct?

2 A Yes, I think so.

3 Q Have you asked yourself the question as to whether
4 or not you, yourself, could personally vote the death penalty,
5 bearing in mind you must live with that verdict the rest of
6 your life?

7 A Yes, since I have been in here.

8 Q And I take it that is kind of a pretty awakening
9 kind of question to have to pose to yourself, isn't it?

10 A Yes, it is.

11 Q And we don't know ourselves, what is inside
12 ourselves, many times, on how we think or how we feel or how
13 we will act in a given situation.

14 Have you tried to project yourself some six to
15 eight weeks from this date, assuming for a moment that there
16 has been a return of a first degree murder verdict, and you
17 now are asked to determine whether or not Mr. Grogan shall live
18 or die; have you tried to project yourself to that kind of
19 situation?

20 A Not really, but I have thought about it.

21 Q All right, and would you think about it now for a
22 moment so that I can ask you this question: assuming for a
23 moment there is a return of a first degree murder verdict,
24 assuming further you have heard not only the evidence in the
25 guilt phase but you have heard any additional evidence which
26 may be presented in the penalty phase of this trial, after
27 evaluating all of that evidence you feel that the proper verdict
28 in this case is one of death, 11 jurors have cast their ballot

1 in favor of death, you now are asked to cast your ballot.

2 You know that if you vote for the death penalty
3 you must accept responsibility for that verdict, because
4 without your vote there could be no return of a death penalty
5 verdict; you believe in your conscience and your sole and
6 absolute discretion this case warrants the death penalty,
7 how would you vote?

8 A For death.

9 Q And I am sure you have acknowledged the fact that
10 this would be a very distasteful and very difficult decision
11 to make; is that correct?

12 A Yes, it would be.

13 Q You think, nevertheless, that you would be up to
14 making that kind of choice if in your conscience this was the
15 right verdict?

16 A Yes.

17 Q We have to make some hard decisions in our daily
18 lives, do we not?

19 A Yes.

20 Q And many times it affects our childrens lives and
21 our lives and our loved ones; isn't that right?

22 A That's right.

23 Q And I take it that having had to make these kinds
24 of decisions, as we all have, you are willing to accept the
25 further responsibility in discharging your duty as a juror and
26 determine whether or not another human being shall live or
27 die in accordance with law; is that correct?

28 A Yes.

1 Q And we talked a little bit about this time of
2 death issue. In that connection it is alleged in the indict-
3 ment that Shorty Shea met his death between the dates August
4 16, 1969 and September 1, 1969.

5 You remember that we discussed the fact that the
6 People are not required to prove the exact time or date of
7 death; is that correct?

8 A Yes.

9 Q Now, would you require the People to prove the
10 exact time or date of death, assuming we had met our burden in
11 law?

12 A No.

13 Q And having children of your own, even though they
14 are grown at this time, and you know, as a mother, that we
15 many times allow our sympathy, which is quite understanding,
16 to enter into our ability to impartially weigh facts.

17 In that connection do you think, as you look at
18 Mr. Grogan now, you would permit the evident youth of Mr. Grogan,
19 his exterior, to in any way influence your judgment as to
20 guilt or innocence, based upon the merits of this case?

21 A No.

22 Q I take it you subscribe to the belief that all
23 persons are equally accountable under the law regardless of
24 age; is that correct?

25 A That's correct.

26 Q And if you were sitting right here in the chair in
27 front of me, the prosecutor's chair, and you wanted 12 impartial
28 jurors who hear and try all the issues in this case, including

1 that of the proper penalty in this case, would you be willing
2 to have 12 jurors in your present frame of mind sit in judgment
3 on this case?

4 A I think so.

5 MR. KATZ: I think so, too.

6 Pass for cause.

7 THE COURT: Any peremptory?

8 MR. KATZ: Accept the panel.

9 THE COURT: Accepted?

10 MR. KATZ: Yes, accept the panel.

11 THE COURT: Swear the panel to try this case.

12 THE CLERK: The jury panel please stand.

13 (The jury was sworn by the clerk.)

14 THE COURT: Be seated, please.

15 Now, I am going to take up the question of some
16 alternates in just a minute.

17 MR. KATZ: Yes.
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The 11

1 THE COURT: Now, I want to say just a few words to these
2 folks before we start. This will be very brief.

3 And what I am telling you now, ladies and gentlemen,
4 undoubtedly I will repeat in a short while when we get our
5 alternates. But I must impress on you right now at this very
6 moment certain things before I slip on them or forget. I
7 would rather repeat later than not say it now.

8 Now, each one of you 12 jurors right this very
9 minute are the 12 jurors with certain possible exceptions if
10 somebody should get a very serious or critical situation, the
11 court could, under proper circumstances only, permit an alter-
12 nate juror to take your place. That is another problem.

13 But in all probability you will serve right through.
14 I mean that is pretty much fixed. There must be very serious
15 and stringent circumstances before this court can excuse one
16 of you and bring in an alternate here which we will pick to
17 take your place.

18 So you are a member of this jury and you 12, with
19 some possible exceptions I have indicated, you 12 jurors will
20 determine all of the matters in this case right there.

21 Now, it incurs very, very serious responsibilities
22 and duties. Very serious.

23 You folks, as I have indicated, you take over the
24 responsibilities of judging this lawsuit. You are the judge,
25 and I am not the judge at all insofar as finding the question
26 of what are the facts. You take over. You might as well sit
27 right here as far as finding the facts. What are the facts
28 of the case.

11-2

Now, the responsibilities are, as I indicated, very serious. They are very great responsibilities. You must keep your minds open.

You do not represent the People. You do not represent the defendant. I will put myself right along with you, I am not a lawyer, you are not a lawyer. It isn't your business to take sides with somebody and say, "I am taking sides with the People or I am taking sides with the defendant or I am pushing somebody's case."

That is not permissible. It is not allowed. It is not your way to do it. You can't do it. That's all. You just can't do it.

This case stands or falls on the facts, what are the facts. Not who do you like the most. That is out. That has nothing to do with it. You must be fair, impartial and open-minded.

And remember, you are acting as a judge for both parties. You are a middleman. You have the responsibilities of the People and you have the responsibilities of the defendant in deciding guilty or not guilty. Remember that. You can't be partial.

You have a sworn responsibility to be impartial as far as the People and the defendant are concerned in arriving at a judgment in this case. Now, that incurs many other responsibilities.

You must not talk -- the court instructs you, you must not talk about this case to anybody at all. That's a big order. Don't talk about the case to anybody. That's an

11-3

1 instruction.

2 And that also includes, amongst yourselves. Don't
3 discuss it amongst yourselves. Now, the time will come when
4 you can discuss it amongst yourselves plenty. You can discuss
5 it all you want to, but that time does not arrive until the case
6 is tried and you go to the jury room to decide the question;
7 then you can talk about it and cast your ballot.

8 But up to that time do not talk about the case
9 amongst yourselves and at no time talk about the case with
10 anybody other than a juror and with the juror only when you
11 go to the jury room to discuss the matter.

12 Now, another thing, this business of keeping your
13 minds open is very critical and most important. And it comes
14 to test, it comes to an issue or problem to almost any
15 individual when you hear the testimony of any one witness,
16 for instance, or two witnesses or three or four or twenty or
17 five or one, or you see pictures or something, you start
18 to formulate opinions. The result is that unless you keep
19 your minds open, before you know it you may listen to the testi-
20 mony of one witness or more, whether they are for the People
21 or for the defendant, and you start to crystallize your think-
22 ing, either unconsciously or not, you crystallize it.

23 You must keep your minds open. Now, I am not saying
24 that if the testimony that is given is very important or sounds
25 credible, sounds truthful to you or if it sounds untruthful,
26 I am not saying you must forget it. I don't say that at all.
27 But I say make written notes of it or make mental notes of it
28 so that when you get to the jury room you can discuss it with

11-4

11a

1 other jurors. What I am saying is don't freeze your minds
2 and say "This is it. I have heard it. This testimony is con-
3 vincing." Maybe it is convincing but don't start to freeze
4 your minds on it. Put it to one side, keep your minds open
5 until you hear every bit of the testimony in this case,
6 plus any arguments of counsel plus instructions of the court,
7 and then go to the jury room when the case is completely
8 tried and cast your ballot. Keep the mind open.
9

11a

1 There are other matters that I will take up
2 in way of advice to you before we actually try the start
3 of the case. Those I guess basically cover the matter.

4 Gentlemen, do you want me to reread -- I know I
5 have alternates yet -- to reread -- I don't want to slip on
6 it -- the charges in this case, or is it stipulated that I
7 need not reread the indictment Count III to the jurors again?
8 Which do you want in that?

9 MR. KATZ: It is stipulated that the court need not.

10 THE COURT: How about you, Mr. Weedman?

11 MR. WEEDMAN: Yes, I will so stipulate, your Honor. Of
12 course I would always prefer the court despite --

13 THE COURT: Do you want a rereading or do you waive that
14 rereading of Count III of the indictment?

15 MR. WEEDMAN: We will waive that, your Honor. Certainly,
16 thank you.

17 THE COURT: All right.

18 Now, let's see if I hovered in a preliminary
19 manner certain situations here. I will advise you unless I
20 have made it clear to you, the hours of court, ladies and
21 gentlemen, I like very much if it is possible to start at
22 9:30. I assure you I will be here. I hope you will be here
23 promptly, ladies and gentlemen. We cannot proceed unless
24 every one of you is here.

25 And I have told counsel the same, they have some
26 problems as I have indicated that could exist. But I do hope
27 that we can start at 9:30.

28 And the hours will be 9:30 to 12, and 2 to 4.

11a-2

1 I am not saying I will, but I may have to move
2 those hours from 1:30 to 4. But I am not doing it at this
3 time. It is just a possibility. It is a hazard. I don't want
4 to do it if I can possibly avoid it.

5 So until you hear to the contrary the hours are
6 9:30 to 12, and 2 o'clock to 4. Never discuss the case with
7 any person or persons.

8 Now, that's enough for the moment on that question.
9 Now, we will pass to the alternate jurors in this fashion.
10 Let me get the penal code again.

11 Here we are. Section 1089. Now, Mr. Clerk, here
12 is a chance for you to make some notations in the Minutes.

13 And I will read this to the jurors because there
14 is nothing here you shouldn't know. I am reading from Section
15 1089:

16 "Whenever in the opinion of a judge
17 about to try a defendant against whom there
18 has been filed an indictment for a felony,
19 that the trial is likely to be protracted
20 the court may issue an entry to that effect
21 to be made in the Minutes of the court. And
22 thereupon immediately after the jury is impaneled
23 and sworn" -- that has been accomplished --
24 "the court may direct the calling of one or
25 more additional jurors in its discretion to
26 be known as alternate jurors."

27 That is the first paragraph. So, first thing,
28 Mr. Clerk, will you make this entry, pull it right out of the

code section:

"The court finds that the trial is likely to be a protracted one. And decides or comes to the conclusion there should be three alternate jurors called."

Do you think that is a fair estimate, gentlemen?

Three alternates?

12-1

1 MR. KATZ: Yes, Your Honor.

2 MR. WEEDMAN: Yes, I think that is satisfactory, your
3 Honor.

4 THE COURT: And therefore I conclude we should call
5 three alternates.

6 Now, let's see -- just one minute, please; you are
7 a little ahead of me here, Mr. Clerk.

8 All right, that is enough to go at the present
9 time. If you will, call three alternates, Mr. Clerk.

10 THE CLERK: Being called as prospective alternate juror
11 No. 1, Miss Meredith Dickerson, D-i-c-k-e-r-s-o-n.

12 Would you be kind enough to take the chair near
13 the drawing board, please.

14 As prospective alternate juror No. 2, Ivory J.
15 Bob, B-o-b.

16 You'd sit nearest the flag, please, sir.

17 As prospective alternate juror No. 3, Mr. Nathan
18 Levy, L-e-v-y.

19 MR. KATZ: Spell the last name, please.

20 THE CLERK: The last name is L-e-v-y, I beg your pardon.

21 THE COURT: Thank you, Mr. Clerk.

22 Now, I am going to talk to you gentlemen and this
23 lady. I take it you folks have heard everything that I have
24 said since you came into the courtroom with the last selection
25 or panel of jurors; is that correct?

26 You have been here and heard me talk. Have you
27 heard me read the charges that have been filed against the
28 defendant in this case?

12-2

(Alternate jurors indicate in
the affirmative.)

THE COURT: Now, you heard everything I have said. You are being called as alternate jurors, assuming that you are sworn in and selected as alternates; I will then read to you the powers and duties of alternate jurors.

I won't go into that until we get to the point of where the alternates are sworn in. I won't go further than I have to.

Has everything that I have said to the jurors since you have been in the courtroom, is it clear in your mind, the various times I have spoken and talked to the jurors here? You have heard what I said?

Now, I am going to ask you three jurors to assume that you have been sworn as alternate jurors and then I am going to ask you to assume that for some reason the court has exercised the unusual power that I have here and, for good cause excused -- only under very serious situations -- one or more of these trial jurors so that you, one of you at a time, would take the place of one of the regular jurors.

Let's assume we are up to that point and let's assume that you have heard all of the testimony in this case; you go to the jury room for the purpose of making a finding of guilty or not guilty.

At that time the jury, you and the other 11 jurors, 12 all together, the jury would make a finding of guilty or not guilty. If the jury should make a finding of not guilty, the case is concluded.

1 If the jury makes a finding of guilty as charged,
2 then the jury would make a finding of degree, guilty first
3 degree murder, guilty second degree murder. If the jury makes
4 a finding of guilty second degree murder, then there are no
5 further duties from the jury, they are excused.

6 If the jury makes a finding of guilty first degree
7 murder, then there is a penalty hearing held and at the
8 conclusion of the penalty hearing the jury goes back to the
9 jury room and makes a finding of penalty. The penalty must
10 be either the death penalty or life imprisonment.

11 Now, I am going to ask each of you three people
12 there if you were in the jury room voting on the question of
13 penalty, that is, the death penalty or life imprisonment, I
14 will ask each of you this question: at that time would you
15 automatically vote against the imposition of the death penalty
16 without regard to any evidence that might be developed at the
17 trial of this case?

18 MISS DICKERSON: No.

19 THE COURT: Your answer is "No"?

20 MISS DICKERSON: No.

21 THE COURT: Your answer is "No"?

22 MR. LEVY: Yes; my answer is "No," yes, sir.

23 THE COURT: Your answer is "No"?

24 You would vote against the imposition of the death
25 penalty?

26 MR. BOB: Yes.

27 THE COURT: That is your answer?

28 MR. BOB: Yes.

1 MR. LEVY: I am sorry.

2 THE COURT: I am talking to you, now.

3 MR. LEVY: Yes.

4 THE COURT: Would you automatically vote against the
5 imposition of the death penalty without regard to any
6 testimony?

7 MR. LEVY: No, sir.

8 THE COURT: Now, you are next. Would you, Mr. Juror,
9 vote automatically against the death penalty without regard to
10 any testimony that is given?

11 MR. BOB: Yes, I would.

12 THE COURT: Your answer is "Yes"?

13 MR. BOB: Yes.

14 THE COURT: Is that right?

15 MR. BOB: Yes.

16 THE COURT: Is there any question in your mind about it,
17 that you would automatically vote against the death penalty?

18 MR. BOB: I would vote against it, your Honor.

19 THE COURT: There is no question about it?

20 MR. BOB: That's right.

21 THE COURT: Is that a fair statement?

22 MR. BOB: That's right.

23 THE COURT: May I excuse this gentleman?

24 MR. KATZ: Yes, your Honor.

25 MR. WEEDMAN: Yes, your Honor.

26 THE COURT: I will excuse you, and I thank you.

27 Call one more alternate and then we'll recess.

28 THE CLERK: Being called as prospective alternate juror

1 No. 2, Peter M. Bryan, B-r-y-a-n.

2 THE COURT: Thank you very much.

3 Now, before I question you, Mr. Juror -- that is,
4 No. 2 you are -- we are up to 12 o'clock.

5 Let's recess now till 2 o'clock.

6 Now, remember, folks, do not discuss this case at
7 all in any way. If anybody talks to you, say, "I can't talk
8 about this case; the court has instructed me no, don't talk
9 about it," and don't come to any conclusions and just stop any
10 conversation and don't participate in it in any way.

11 We will recess till 2 o'clock. Thank you very much,
12 folks.

13 (The noon recess was taken to 2 o'clock
14 of the same day.)
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1 LOS ANGELES, CALIFORNIA, MONDAY, JULY 12, 1971

2 2:05 P.M.

3 - - - -

4 THE COURT: Now, first, People against Grogan. Defendant
5 is here. Counsel are both here and our jurors are here.

6 And our 12 jurors to try the case are in the jury
7 box. Do you desire a polling, or is that statement sufficient,
8 gentlemen?

9 MR. KATZ: Yes, that statement is sufficient, your Honor.

10 MR. WEEDMAN: That is sufficient. Thank you, your Honor.

11 THE COURT: All right. Now, we have the three alternates,
12 and this new gentleman right here.

13
14 PETER M. BRYAN

15 BY THE COURT:

16 Q So for the moment I will direct my question to you.
17 You are No. 2, alternate juror No. 2.

18 Have you heard all of the statements, the things
19 or principles that I have stated to the other jurors that were
20 in the jury box as well as to those folks in the back of the
21 courtroom?

22 A Yes, sir.

23 Q I will ask you to assume that you have been
24 selected as an alternate juror and that during the course of
25 the trial you, let us say, were placed in the position of a
26 regular full-fledged juror to try the case. And let's assume
27 that we completed the trial of the case and you are in the
28 jury room to vote guilty or not guilty.

1 First let me say the jury could vote not guilty
2 and that would conclude the matter entirely. If the jury
3 makes a finding of guilty as charged the jury must then make
4 a finding of the degree, guilty first degree murder or guilty
5 second degree murder.

6 Now, if the jury makes a finding of second degree
7 murder then at that juncture the jury has concluded all of
8 its services. On the other hand if the jury makes a finding
9 of first degree murder then the court holds a penalty hearing.

10 After the penalty hearing the jury goes back to
11 the jury room and votes on the question of penalty. The
12 penalty is either the death penalty or life imprisonment.

13 Now, if you will please assume that you are in the
14 jury room voting on the question of penalty. I will ask you
15 if at that time you would automatically vote against the
16 imposition of the death penalty without regard to any evidence
17 that might be developed during the trial of this case.

18 A Yes, sir.

19 Q The answer is yes?

20 A Yes, sir.

21 Q I will emphasize that. Is there any question at all
22 in your mind that you would vote against the imposition of the
23 death penalty?

24 A No question at all.

25 Q It is positive in your mind?

26 A Yes, sir.

27 THE COURT: Thank you.

28 May I excuse the gentleman?

1 MR. KATZ: Yes, your Honor.

2 MR. WEEDMAN: Yes, your Honor.

3 THE COURT: And thank you very much.

4 THE CLERK: Jack H. Waggoner, W-a-g-g-o-n-e-r. First
5 name Jack.

6
7 JACK H. WAGGONER

8 BY THE COURT:

9 Q Now, thank you. Be seated, Mr. Juror.

10 You are for the moment No. 2 proposed alternate.
11 Now, have you heard everything that I have said to the other
12 jurors?

13 A Yes, your Honor.

14 Q Since you came in? And you heard me read the
15 charge that has been filed against the defendant, the indictment?

16 A Yes.

17 Q Yes. Now, I will ask you to assume that you have
18 been selected as an alternate juror and for various reasons
19 you have been made a regular juror to try the case.

20 Now, after the case is tried the jury, let us
21 assume you were in the jury room now to vote guilty or not
22 guilty. The jury could make a finding of not guilty and the
23 case would be entirely concluded, all over with. The jury
24 excused.

25 The jury could make a finding of guilty as charged
26 and then they must set the degree, second degree murder or
27 first degree murder. If the jury finds second degree murder
28 then at that point there is no further duty or work from the

1 jury.

2 If the jury makes a finding of first degree murder
3 then the court holds a penalty hearing and after the penalty
4 hearing the jury goes back to the jury room to decide on the
5 penalty which must be either the death penalty or life
6 imprisonment.

7 I will ask you to assume that you are voting on
8 the question of penalty and I will ask you this question. At
9 that time would you automatically vote against the imposition
10 of the death penalty without regard to any evidence that might
11 be produced at the trial of this action?

12 A No, your Honor.

13 Q Thank you.

14 Now, I will ask you this question. Do you know of
15 any reason at all that you could not be fair and impartial to
16 both parties, the People and the defendant if you are selected
17 as a juror?

18 A I can't think of it now.

19 Q Thank you. Do you know of any problems or situa-
20 tions that might arise during the trial that would disturb
21 you or interfere with your fair and impartial thinking or
22 cloud your mind or weigh on your mind; do you know of any such
23 a situation that might arise during the course of the trial?

24 A Oh, possibly a health problem on the part of my
25 wife. These are all hypothetical.

26 I am just being honest. I can't think of anything
27 definite.

28 Q Well, that's all I am asking you. You don't

1 pinpoint any particular situations that are going to arise
2 or come up, do you?

3 A No.

4 THE COURT: All right. The defendant may inquire.

5 MR. WEEDMAN: Thank you, your Honor.

6
7 MEREDITH DICKERSON

8 BY MR. WEEDMAN:

9 Q Miss Dickerson, are you employed?

10 A Yes.

11 THE COURT: May I have you at the bench one minute,
12 gentlemen?

13 MR. WEEDMAN: Yes.

14 THE COURT: Just a second on a procedural matter.

15 (Short bench conference with both
16 counsel not reported.)

17 Q BY MR. WEEDMAN: Yes, Miss Dickerson. Will you tell
18 us what you do for a living?

19 A Key punch operator.

20 Q By whom are you employed?

21 A Department of Water and Power.

22 Q If this matter should last as much as ten weeks
23 is that going to cause you any personal hardship?

24 A No.

25 Q With respect to the death penalty matter,
26 Miss Dickerson, would you automatically impose the death
27 penalty following a first degree murder conviction?

28 A No.

14-1

1 Q With respect to the matter that I have mentioned
2 before, the business about my client having been associated
3 with Charles Manson, do you think you would be so prejudiced
4 against him because of that that you couldn't give him a fair
5 trial?

6 A I might be.

7 Q Pardon me?

8 A I might be.

9 Q You might be?

10 A Mm-hmm.

11 Q You might be?

12 A Mm-hmm.

13 Q All right.

14 You feel, then, that you have an opinion regarding
15 Charles Manson and the Manson family such that you think you
16 could be prejudiced against my client --

17 A Yes.

18 Q -- in connection with this matter?

19 MR. WEEDMAN: I would respectfully challenge Miss
20 Dickerson for cause, your Honor.

21 THE COURT: Will you read me the last statement?

22 (The record read as follows:

23 "You feel, then, that you have an opinion
24 regarding Charles Manson and the Manson family
25 such that you think you could be prejudiced
26 against my client?

27 "A Yes.")

28 THE COURT: I would be inclined to deny the challenge.

14-2

1 Manson is not on trial here, the defendant is on trial; he
2 could think -- well, I won't argue the question.

3 I don't think it necessarily shows a challenge for
4 cause as far as this case is concerned.

5 I will ask you this question:

6 Q Without asking you what your opinion is as far as
7 Mr. Manson is concerned, do you feel you could be fair and
8 unbiased in the trial of this case that we are engaged in the
9 trial of?

10 A No.

11 Q What is your opinion -- in the trial that we have
12 here, Mr. Grogan's case, People against Grogan, could you be
13 fair and impartial in the Grogan case, this case?

14 A No.

15 THE COURT: Do you want to say anything?

16 I understand that the answer is "No."

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

18 May I just ask one or two questions?

19 THE COURT: Is that all?

20 MR. KATZ: Yes.

21 THE COURT: Shall I proceed?

22 MR. KATZ: May I just ask one or two questions?

23 THE COURT: Do you have any question? I will accept the
24 challenge -- do you have any questions?

25 MR. KATZ: Yes, that's what I wanted to do.

26 Q Miss Dickerson, we appreciate the honesty with
27 which you are answering our questions, but I just want to
28 ascertain in my own mind that you understand it is all right

14-3

1 for you to come into this courtroom with certain prejudices so
2 long as you are able to put aside the prejudices and opinions
3 you may have formed by reason of what you have read or heard
4 or seen; and with that in mind, if his Honor instructed you to
5 put aside whatever opinion you may have formed of Mr. Manson
6 or the Manson family, as such, and to decide this case wholly
7 upon the merits of the evidence as it unfolds during the course
8 of the trial, could you do that?

9 A I would try to.

10 Q All right, that's a fair answer.

11 Let me ask you this, defense counsel is entitled to
12 have you examine your own state of mind at this time to
13 determine not only whether or not you would try to do so but
14 whether you, yourself, think you can do that because if you
15 can't think you can do that, then he would be entitled to a
16 challenge for cause.

17 Do you understand that?

18 A Mm-hmm.

19 Q So I'd like to ask you this question: do you think
20 that you could set aside any opinion you may have of Mr. Manson
21 or the family and judge the guilt or innocence of Mr. Grogan
22 based upon the evidence presented in this case?

23 A Well, I would try to. I wouldn't say I positively
24 could, but I would try.

25 Q Let's talk about that situation that Mr. Weedman
26 talked about on many occasions; that is, it is a very close
27 case and there is a lot of evidence both ways, evidence pointing
28 to the guilt of the defendant and evidence pointing to the

14-4¹ innocence of the defendant.

2 Do you think in that kind of situation where you
3 were in the jury room that you would be susceptible to the
4 kind of argument, "Well, Miss Dickerson, everybody knows that
5 Mr. Grogan is a member of the Manson family, he must have done
6 something, let's vote guilty."

7 Would that be your attitude, do you think?

8 A No.

9 Q So would it be fair to say you'd reject that kind
10 of argument as an argument for the guilt of Mr. Grogan, do you
11 think?

12 A Yes.

13 Q So do you think, as you examine your state of mind
14 now you could put aside what prejudices or feelings or opinions
15 or conclusions you have concerning Manson and the family and
16 judge the guilt or innocence of the defendant based upon the
17 weight, the merits of the evidence in this case?

18 Could you do that?

19 A I think so.

20 MR. KATZ: All right, thank you.

21 Your Honor, I don't think there is sufficient
22 cause.

23 THE COURT: Well, I will grant the challenge.

24 I will grant the challenge; I will excuse you.
25 Thank you.

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THE CLERK: Mrs. Margaret M. Marshall, M-a-r-s-h-a-l-l;
being called as prospective alternate juror No. 1.

MARGARET M. MARSHALL

BY THE COURT:

Q Now, lady, let's start here at the beginning,
somewhat,

Have you heard everything I have said to the
jurors since you were sent in here from the jury room?

A Yes.

Q You heard me read the charge that has been filed
against the defendant?

A Yes.

Q Now, let's assume that you have been selected as
an alternate juror and thereafter, for some reason, you have
been placed in the jury box as a regular juror and the case
has been tried and the jury has gone into the jury room to
decide the case.

Now, at that point the jury could find the defen-
dant guilty or not guilty. If they find the defendant not
guilty the case is entirely concluded.

If they find the defendant guilty, then the jury
must make a finding of guilty first degree murder or guilty
second degree murder. If the jury makes a finding of second
degree murder, then at that point the duties of the jury have
been completed, there is no further trial connected with the
matter, the jury is excused.

On the other hand, if the jury makes a finding

16a-2

1 of first degree murder, guilty of first degree murder, then
2 there is a subsequent penalty hearing held and after the
3 penalty hearing the jury goes back into the jury room and makes
4 a finding on penalty, which finding must be either the death
5 penalty or life imprisonment.

6 Now, I am going to ask you, if you will tell me,
7 if you are at the point where you are going to vote on the
8 question of the death penalty or life imprisonment, I will ask
9 you this question: at that time would you automatically vote
10 against the imposition of the death penalty without regard
11 to any evidence that might be established or developed during
12 the trial of this case?

13 A No.

14 Q All right.

15 Now I will ask you another question, lady. Do you
16 know of any reason at all why you could not be fair and impartial
17 if you are selected to try this case as a juror?

18 A No.

19 Q Do you know of any situation that might arise during
20 the trial that might so upset or disturb you that you couldn't
21 give your fair, balanced thought to the trial of this action?

22 A Yes.

23 Q The answer is "No"?

24 A No.

25 THE COURT: I will pass the juror --

26 MR. WEEDMAN: Forgive me, your Honor; I understood the
27 answer to be "Yes."

28 THE COURT: Oh, did you say "Yes"?

1 A Yes.

2 Q I beg your pardon.

3 All right, then, I will ask you -- I will repeat
4 my question in this fashion: you think it could disturb you to
5 the point where -- this is a repeat -- where you couldn't give
6 a fair, impartial judgment in the matter?

7 A Yes.

8 Q You do feel that way?

9 A Yes.

10 THE COURT: All right, you may inquire then.

11 Do you desire?

12 MR. WEEDMAN: No, I will pass the inquiry, your Honor.

13 THE COURT: How about the People, anything to ask, any
14 questions?

15 MR. KATZ: Yes, your Honor.

16 Q Mrs. Marshall, where angels fear to tread, if I
17 may just inquire, can you tell us, if it is not too personal,
18 the nature of the problem which would prevent you from being
19 fair and impartial.

20 A It is not personal at all. I go to work in September
21 and it is the length of trial.

22 Q With whom would you be employed?

23 A School board; Los Angeles School Board.

24 Q In what capacity, ma'am?

25 A Clerk-typist in the office.

26 Q When are you scheduled to commence your work?

27 A Well, around the first of September, maybe the tail
28 end of August.

1 Q I see; and, assuming for a moment that the trial
2 lasted till the very first part of September, would this cause
3 you to lose your job or your tenure with the board?

4 A Well, yes, in my particular work, yes.

5 Q And I take it that would cause you to be unable
6 to fully give us the benefit of your undivided attention; is
7 that correct?

8 A Yes.

9 Q Would you rather be excused?

10 A I really would.

11 MR. KATZ: I will stipulate.

12 THE COURT: Submitted by both parties?

13 MR. WEEDMAN: Yes, your Honor.

14 THE COURT: I believe the lady has indicated a for cause
15 challenge here, her testimony indicates.

16 I will excuse you; thank you, lady.

17 I find that there exists a challenge for cause
18 or excuse for cause, either way it wants to be placed, under
19 Section 1073, subdivision 2, and 1074, subdivision 8 of the
20 Penal Code.

21 Call another juror, Mr. Clerk.

15-1

1 THE CLERK: Mrs. Katherine Dobson, D-o-b-s-o-n.

2
3 KATHERINE DOBSON

4 BY THE COURT:

5 Q Now, lady, you have heard everything I have said
6 since the last complement of jurors came in?

7 A Yes.

8 Q And you heard me read the charge that's been filed
9 against the defendant. Let's assume you are selected as an
10 alternate juror and then let's take the assumption that for
11 some reason the court makes you a permanent, regular juror.

12 And the case is tried and you go to the jury room
13 to vote guilty or not guilty. At that time you, the jury, can
14 make a finding of guilty or not guilty. If they find the
15 defendant not guilty the case is concluded in its entirety.
16 If they make a finding of guilty then the jury would have to
17 make a finding of degree, guilty first degree murder or guilty
18 second degree murder.

19 If the jury makes a finding of second degree murder
20 the case is again concluded as far as the jury is concerned.

21 If the jury makes a finding of first degree murder
22 then the court holds an additional hearing called the penalty
23 hearing, at the conclusion of which the jury goes back to the
24 jury room to vote on the question of penalty. The jury may
25 establish a penalty of the death penalty or life imprisonment.

26 Now, if you are at the point there in the jury room
27 where you are voting on penalty I am going to ask you this
28 question. At that time would you automatically vote against

15-2

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

4 A No.

5 Q All right.

6 Now, do you know of any reason at all that you
7 could not be fair and impartial in this case if you are
8 selected as a juror?

9 A I don't feel that I would be a good juror for this
10 case.

11 Q Well, the answer is yes or no.

12 A Repeat the question.

13 Q You can't give an answer?

14 A I don't remember how you worded the question.

15 THE COURT: Well, do either counsel desire to inquire at
16 this point? I can't get an answer here.

17 MR. KATZ: I will stipulate to excuse *her*.

18 THE COURT: What about the defendant?

19 MR. WEEDMAN: We will stipulate, your Honor.

20 THE COURT: Well, I would excuse. If she can't give me
21 an opinion I can't guess for her.

22 I will excuse you. Thank you, lady.

23 Besides, it is not a matter of guessing, it is a
24 matter of sincere judgment.

25 I make a finding for cause under section 1073
26 subdivision 2; 1074 subdivision 8. We will call another juror.

27 THE CLERK: Mrs. Gertrude Stafford, S-t-a-f-f-o-r-d.
28

GERTRUDE STAFFORD

BY THE COURT:

Q Now, lady, did you hear everything I have said since you came in from the jury assembly room?

A Yes, I have.

Q And you heard me read the charge that's been filed against the defendant?

A Yes, I have.

Q I will ask you to assume that you have been selected as an alternate juror and for some reason or another the court has made you or placed you in as one of the regular jurors for some reason. And the case has been tried and you have gone to the jury room to decide the case.

Now, at that time the jury could make a finding of not guilty as charged, and that concludes the case entirely. On the other hand the jury could make a finding of guilty as charged and set the degree. If the jury sets the degree as second degree murder, guilty second degree, then that concludes the matter as far as the jury is concerned, with that finding of second degree murder.

On the other hand, the jury could make a finding of first degree murder, guilty first degree. And if the jury does that, then a further hearing is held right here called a penalty hearing. And at the conclusion of the penalty hearing the jury votes on penalty.

Let's assume you are voting on penalty, the death penalty or life imprisonment. I will ask you this question.

At that time would you automatically vote against

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

3 A No, I would not.

4 Q All right.

5 I will ask you this question. Do you know of any
6 reason at all that you could not be fair and impartial in the
7 trial of this case?

8 A No, I do not.

9 Q Do you know of any factual situation, something
10 that might happen that could disturb your peace of mind, upset
11 you, annoy you so that you couldn't be fair and impartial and
12 have an open mind during the trial of this case?

13 A No, I do not.

14 THE COURT: Thank you, lady.

15 Defendant may inquire.

16 MR. WEEDMAN: Thank you, your Honor.

17 Q Mrs. Stafford, in the even that this matter came
18 to a first degree murder conviction do you feel that you would
19 automatically impose the death penalty without regard to the
20 other evidence in the case?

21 A No, I would not.

22 Q All right.

23 Are you employed?

24 A No, I am not.

25 Q Have you been employed?

26 A Not for a long time.

27 Q What did you do when you were employed, Mrs.

28 Stafford?

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A I was a secretary.

Q Is there a Mr. Stafford?

A Yes, there is.

Q And what does he do for a living?

A He is retired.

Q What did he do before he retired?

A He was an electronics engineer.

Q By whom was he employed?

A Litton Industries.

Q Have you had any prior criminal jury experience?

A Yes, I have.

Q What kind of case or cases?

A Well, this time I haven't had any. But years ago I had various criminal cases.

Q All right.

I take it it's obvious that you wouldn't apply anything that you may have learned in those cases in order to arrive at a verdict in this case?

A It was a long time ago.

Q All right.

With respect to this business of this Tate-La Bianca case and the Charles Manson family and Charles Manson, if the evidence should show that my client was associated with Charles Manson would you be prejudiced against my client such that you couldn't give him a really fair trial here?

A I don't think so. The evidence would have to prove one way or the other in this particular case.

Q All right.

1 Well, let's just assume that part of that
2 evidence, however, was that he was indeed associated with
3 Charles Manson at one time. Would that of and in itself do
4 you think prejudice you so that you couldn't give him a fair
5 trial?

6 A No, I don't think so. It would have to be more
7 specific than that.

8 Q Well, let's say that it's merely that he is a
9 member of the Charles Manson family. Would that --

10 A No.

11 Q -- do you think prejudice you?

12 A No.

13 Q Is there anything about such an association that
14 you think might, standing alone, influence your judgment in
15 this case?

16 A Standing alone, no.

17 Q Okay. Would you have to be satisfied by clear and
18 convincing evidence that my client was guilty before you could
19 find him guilty?

20 A Yes, I would.

21 Q Supposing we had that close case we have talked
22 about here so much?

23 A Which case?

24 Q I am sorry. I will go on. We have had a close
25 case where you have been in the jury room, let's say, in the
26 guilt phase perhaps several days and can't really decide on
27 the evidence, can't really make up your mind.

28 Do you think that the mere fact of the association

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1 with Charles Manson would tip the scales in your mind to find
2 my client guilty?

3 A I don't think it should.

4 Q I quite agree. The question is whether it would,
5 whether you would permit it to come into your thinking or not.

6 A I would try to abide by the evidence presented in
7 this particular case as much as it is possible.

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1 Q And certainly since that other case, that Tate-
2 La Bianca case has nothing to do with this case, and as
3 Mr. Katz has pointed out my client was not involved in that
4 matter, it shouldn't have any bearing on this case, should it?

5 A No.

6 Q You are not going to permit it to have any bearing?

7 A No.

8 Q If you can possibly avoid it, you are going to
9 avoid it?

10 A That's right.

11 Q Okay. Do you feel that if you find yourself in
12 violent disapproval, just assuming now that you find yourself
13 in violent disapproval of my client's lifestyle, obviously
14 apart from any criminality, do you feel that that would
15 interfere with your giving him a fair trial here?

16 A I don't think so. I would try to base my verdict
17 on the testimony presented in this case, and that only.

18 Q Surely.

19 Well, of course some of the testimony that may come
20 in here will perhaps reflect his lifestyle. And that of other
21 witnesses, as a matter of fact, in this case. Do you feel that
22 you would be prejudiced against such witnesses' testimony or
23 my client's position in this case merely because they have
24 chosen to live their lives in a way which you perhaps don't
25 approve of?

26 A I would try to base my verdict or my findings on
27 just the evidence of this particular case, not anything in the
28 past that he may have done or any of the Manson family.

1 Q Okay.

2 A I would try to just stick to this case.

3 Q All right.

4 Well, of course, we are not -- my questions don't
5 even assume that there will be any evidence of what my client
6 may have done. There is no such evidence to my knowledge.
7 We are just talking -- you are only going to hear about things
8 that pertain to this particular case, I am sure, Mrs. Stafford.

9 But in any event you feel you could certainly set
10 those matters aside should they creep into your mind and keep
11 them out of the way, not let them interfere with giving both
12 sides, as a matter of fact, a fair trial?

13 A I would try very hard.

14 Q All right.

15 Is there anything at all about this case such that
16 if you were the defendant you wouldn't want someone judging you
17 with your state of mind?

18 A I want to get this right.

19 Q Yeah, I have got too many no's and double negatives
20 in there. Let me try again.

21 Supposing you were the defendant in this case would
22 you be willing to have someone on the jury who feels as you do?

23 A Yes, I would.

24 MR. WEEDMAN: All right. Fine.

25 Thank you.
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JACK H. WAGGONER

BY MR. WEEDMAN:

Q Mr. Waggoner?

A Yes.

Q In the event that this case did come to a first degree murder conviction would you automatically impose the death penalty?

A No.

Q Without regard to any other evidence?

A No.

Q May I ask what you do for a living?

A College professor.

Q Where and what do you teach?

A Harvey Mudd College, Claremont. Physics.

Q Is there anything at all about this case, Mr. Waggoner, that makes you feel you couldn't give both sides a fair trial?

A I can't think of it now.

Q If it should come up you will set it aside, and you will try to set it aside, I am sure?

A Do my best.

MR. WEEDMAN: All right, sir.

NATHAN LEVY

BY MR. WEEDMAN:

Q Am I pronouncing it correctly, Levy or Levvy?

A Either is correct. Levy.

Q Thank you.

1 Mr. Levy, what do you do for a living?

2 A I am retired.

3 Q What did you do?

4 A I am a former civil service employee, federal.

5 Q Of what sort?

6 A Post office department.

7 Q Okay. With respect to the issue of the death

8 penalty, would you automatically impose the death penalty

9 following a first degree murder conviction without regard to

10 any other evidence in the case?

11 A No, sir.

12 Q With respect to this business about Charles Manson

13 and the Manson family, have you formed any opinion in that

14 connection such that makes you feel you would be prejudiced

15 against my client if the evidence shows that my client was a

16 member of the Manson family?

17 A No, sir.

18 Q Is there anything at all about this case, Mr.

19 Levy, that makes you feel you couldn't give both sides the

20 kind of a trial that we are both entitled to here?

21 A Nothing.

22 Q Length of trial cause you any personal hardship?

23 A None, sir.

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JACK H. WAGGONER

BY MR. WEEDMAN:

Q It is a question I neglected to ask you, Mr. Waggoner.

A If it goes beyond September 15th then some of my colleagues will have to take over my teaching load.

Q Well, that might be a little reprieve for you for a time, actually.

A True. But I have a conscience.

Q Yes, I would appreciate that. You would like to be back if at all possibly by September 15th then?

A True.

MR. WEEDMAN: All right, sir. Thank you.

Pass for cause, your Honor.

THE COURT: People.

MR. KATZ: Yes, thank you.

GERTRUDE STAFFORD

BY MR. KATZ:

Q Mrs. Stafford, you are an experienced juror. Having had the privilege of serving in the past. You are now asked if selected as an alternate to perform perhaps the most difficult function that any juror can perform, that is, one of an alternate juror in a reasonably protracted trial.

Because, as his Honor will tell you, if selected as an alternate it will require you to pay every bit of attention to the evidence as the main panel will be required to give of itself, and indeed you will do so with the idea in

1 mind "I may be asked to fill one of those vacancies."

2 You understand that?

3 A Yes, I understand.

4 Q And it is easy to go along for the ride sometimes
5 and say, "Well, I don't think I will ever be called upon to
6 make the ultimate decision in this case so I will just take
7 scrippy notes or what have you and not pay attention."

8 You understand that if selected as a juror we would
9 want your solemn assurance that you would give us your
10 absolute and undivided attention with respect to the evidence;
11 would you do that?

12 A I would do exactly the same as though I were one
13 of the first 12.

14 Q That is a fine answer because that is exactly what
15 we are looking for.

16 You realize we don't know what is ahead of us, we
17 don't know whether or not one of the 12 regular members of the
18 panel will become sick or will have to be excused for some
19 other reason.

20 And we hope this isn't the case but we are
21 realistic enough to know that in the course of human affairs
22 this does happen quite frequently in protracted trials.

23 So we are going to ask you some of the same
24 questions that we had asked the other 12 members of the
25 regular panel.

26 And permit me, if you will, to inquire of your
27 state of mind concerning capital punishment. Have you given
28 capital punishment some thought?

1 A Yes, I have.

2 Q Have you read any literature concerning capital
3 punishment?

4 A Well, mainly editorials, that sort of thing.

5 Q The editorials, I suppose they gave opinions with
6 regard to the pros and cons?

7 A Yes.

8 Q Of retaining capital punishment in the State of
9 California, is that correct?

10 A Yes.

11 Q And have you formed any opinions or conclusions
12 concerning the propriety of capital punishment in California?

13 A I think there is a place for it.

14 Q And can you tell us whether or not, without giving
15 your reasons therefor, whether you are opposed to capital
16 punishment in general?

17 A I don't know just how to answer that. I believe
18 there is a place for capital punishment. But in general I
19 don't quite understand what you mean by that.

20 Q All right.

21 I think that's probably a fair answer to an
22 extremely confusing and ambiguous question.

23 I take it you have no deep-seated philosophical or
24 religious beliefs against capital punishment, is that correct?

25 A No.

26 Q You do recognize certain circumstances in which
27 you believe capital punishment is appropriate penalty, is that
28 correct?

29 A Yes.

1 Q Can you yourself conceive of circumstances in
2 which you would personally participate in a death penalty
3 verdict?

4 A Yes.

5 Q All right.

6 And you recognize the distinction between the two
7 situations we previously talked about, namely, the one where
8 a juror says, "I believe capital punishment is appropriate
9 under certain circumstances but let 12 others vote that verdict
10 because I don't want it on my conscience."

11 And the second situation, on the other hand,
12 whereby you are asked to personally participate in the death
13 penalty verdict. You recognize the distinction between those
14 two situations?

15 A Yes.

16 Q All right.

17 Now, you realize that the second situation is far
18 more difficult and traumatic, is it not?

19 A Yes.

20 Q In that connection have you asked yourself the
21 question, after hearing the dialogue day in and day out, whether
22 or not you could vote the death penalty yourself if called upon
23 to do so, and if it was consistent with your conscience?

24 A I believe I could if the testimony, you know,
25 demanded it, let us say.
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Q All right.

Let me ask you whether or not you understand the fact that in this State the law will not tell you which penalty is proper on the return of a first degree murder verdict.

A I understand.

Q All right.

So, in the sense the State isn't demanding anything, as such, the legislature doesn't demand anything, as such, but leaves it to each juror within his or her own mind, heart and conscience to determine the proper penalty in this case; you appreciate that?

A I understand.

Q Now, assuming that after considering all the evidence adduced both at the penalty phase and at the guilt phase you felt the case warranted the death penalty, would you have the courage and resolve to vote that conviction?

A Yes, I would.

Q All right -- and by "conviction" I mean your personal conviction as to the proper penalty.

A Yes.

Q And taking that hypothetical situation, there are 11 persons who having heard all the penalty phase, have now cast a ballot for death; you are now asked to cast your ballot either for life or death; you believe in your heart and your mind and your conscience this case warrants the return of the death penalty.

How would you vote?

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1 A If I believed the case warranted it, I would vote
2 for the death penalty.

3 Q Now, with respect to the death penalty, if you
4 were in my shoes as the prosecutor in this case, would you want
5 12 jurors of your same frame of mind sitting in judgment on
6 the proper penalty in this case?

7 A Well, I think I could be fair to both sides, as
8 far as that goes.

9 Q Right; that's the answer I'm looking for, so what
10 you are saying is you have no closed mind with respect to the
11 proper penalty in this case --

12 A No.

13 Q -- should that issue be submitted to you; is that
14 correct?

15 A No.

16 Q That is correct?

17 A That's right.

18 Q Thank you.

19 Now, with respect to this issue of circumstantial
20 evidence, do you have any quarrel with the law of this State
21 which permits a man to be convicted of murder in the first
22 degree based wholly on circumstantial evidence?

23 A No, I don't.

24 Q And I take it that you don't find it so abhorrent
25 to your conscience that you would not follow his Honor's instruc-
26 tions concerning circumstantial evidence; is that correct?

27 A I would follow the court's instructions. I can't
28 remember where you put the "No," but that's the answer.

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1 Q I appreciate that, but what I want to know,
2 do you think you would be fighting your conscience and saying,
3 "My God" --

4 A No.

5 Q -- "I just don't like circumstantial evidence
6 but, well, his Honor said that I should follow this; I think
7 I could follow it, but I'm not sure."

8 Would that be your attitude?

9 A No.

10 Q In other words, what you are saying is that you
11 are willing to follow the law unhesitatingly --

12 A That's right.

13 Q --as his Honor gives it to you, if it has applica-
14 tion to the facts?

15 A That's right.

16 Q And I take it, then, if you were convinced beyond a
17 reasonable doubt and to a moral certainty that Mr. Steve Grogan
18 committed murder in the first degree you would vote that verdict
19 despite the fact the People failed to produce a body or an
20 eyewitness to the killing or an eyewitness to having observed
21 the body in death; is that correct?

22 A Well, if this is in the court's instructions, that
23 is what I would do.

24 Q All right.

25 Let me ask you this question: does it offend your
26 sense of morals and fair play and sense of justice that a
27 person in this State can be convicted of murder in the first
28 degree even though the People have not produced the body or

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1 an eyewitness to the killing or an eyewitness to having
2 observed the body in death?

3 A No, I didn't know such was the case; I learned it
4 here, but since that is the law, it is the law.

5 Q All right, and is your answer, then, it doesn't
6 offend --

7 A No, no.

8 Q -- your sense of fair play?

9 A No.

10 Q Would you unhesitatingly follow his Honor's instruc-
11 tions in regard to circumstantial evidence?

12 A Yes, I would.

13 Q I take it you are not afraid to draw inferences
14 from facts proven to you; is that right?

15 A No.

16 Q And would you require the People to sustain a
17 greater burden of proof than that required by law merely because
18 and solely because our case rests wholly upon circumstantial
19 evidence?

20 A No.

21 Q All right.

22 You understand that whether this is a murder case
23 or a petty theft case or a robbery case or a forgery case our
24 burden is always the same in a criminal case, proof beyond a
25 reasonable doubt and to a moral certainty?

26 A Yes.

27 Q And in that connection the proof may be part circum-
28 stantial, it may be wholly circumstantial; it may be part

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1 direct, it may be wholly direct; but, in any event, we have
2 to sustain our burden of proof beyond a reasonable doubt
3 and to a moral certainty; is that correct?

4 A I understand that.

5 Q I take it in that connection you won't require us,
6 therefore, to demonstrate that degree of proof which excludes
7 all possibility of error and creates absolute certainty in
8 your mind; is that correct?

9 A No, just reasonable.

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Q Just reasonable; all right.

So that in circumstantial evidence, for example, you had two constructions from the evidence, one of which was reasonable and pointed to the guilt of the defendant, the other being unreasonable -- and I underscore "unreasonable" -- in pointing to the innocence of the defendant, you would adopt the reasonable inference if it created in your mind an abiding conviction to a moral certainty of the truth of the charge?

A Yes, I was.

Q Do you believe it impossible to secrete or hide a body so it can never be found?

A I don't think so.

Q All right.

So you recognize the fact that it is possible to hide a body?

A Yes.

MR. WEEDMAN: Excuse me, your Honor, I believe it is asking --

MR. KATZ: Yes, it is.

MR. WEEDMAN: -- I think it is asking the prospective juror to prejudge evidence in this matter.

THE COURT: Let me have the statement, if I may, at this point.

I am not trying to disrupt you at all.

MR. KATZ: Yes, your Honor, please do.

THE COURT: I think I should ask -- will you read the statement of Mr. Katz to the juror just prior to the answer that she gave? I believe it was "Yes."

16a-2

(Record read by the reporter.)

THE COURT: May I interrupt you again?

MR. KITZ: Certainly; please do, your Honor.

THE COURT: Because you are dealing with a layman.

MR. KATZ: Yes.

THE COURT: But the ultimate thinking must depend to a moral certainty, beyond a reasonable doubt; that's what I wanted to -- on whether she pulled that out of your question or not, if she understood that.

MR. KATZ: Yes.

THE COURT: That is what disturbed me.

MR. WEEDMAN: If I may, your Honor, since we are talking about it, perhaps it would be pertinent for your Honor to reinstruct with respect to circumstantial evidence.

I am concerned about the portion of the instruction which adds as a condition that such a conclusion must be irreconcilable with any other rational conclusion, and I think up till now it has been somewhat misleading.

I am not accusing counsel of that, of course.

MR. KATZ: Excuse me, your Honor; in connection with --

THE COURT: Finish your examination. Go ahead, I won't interrupt you.

I may advise the jury, I may read to them that statement in a few minutes.

Finish your examination.

MR. KATZ: In fact, I was going to ask your Honor to read fully all the circumstantial evidence instructions you read at the beginning, because I feel that only portions have been

16a-3

1 alluded to by both counsel and I think it is unfair --

2 THE COURT: Finish your examination, if you will, and
3 then we'll see where we are.

4 Q BY MR. KATZ: Mrs. Stafford, do you feel there is
5 any reason in the world as to why you could not be fair and
6 impartial to both sides?

7 A I know of no reason.

8 MR. KATZ: All right.

9 THE COURT: Maybe I will read.

10 Now, I want to say, ladies and gentlemen, if I
11 interrupt here and I may make this same point many times, this
12 is an interruption -- I don't like to interrupt either counsel;
13 I could just as easily interrupt the defendant as I happen to
14 be interrupting the People, and it is not done to disturb
15 or disrupt either counsel if I interrupt -- but, I am going
16 to read to these three alternate jurors, proposed jurors,
17 again the statement of the law, the sufficiency of circumstan-
18 tial evidence, which reads as follows.

19 I will read the whole instruction; then I will
20 try not to interrupt you again.

21 MR. KATZ: Thank you, your Honor.

22 THE COURT: (Reading)

23 "You are not permitted to find the
24 defendant guilty of the crime charged against
25 him based on circumstantial evidence unless the
26 proved circumstances are not only consistent
27 with the theory that the defendant is guilty
28 of the crime but cannot be reconciled with any

16a-4

1 other rational conclusion and each fact
2 which is essential to complete a set of
3 circumstances necessary to establish the
4 defendant's guilt has been proved beyond
5 a reasonable doubt. Also, if the evidence
6 is susceptible of two" -- t-w-o -- "reason-
7 able interpretations, one of which points
8 to the defendant's guilt and the other to
9 his innocence, it is your duty to adopt that
10 interpretation which points to the defendant's
11 innocence and reject the other which points to
12 his guilt."

13 Now, I am only talking of the law.

14 Q Is the statement as I read it to you, the law, is
15 that clear to you?

16 A It is clear to me.

17 Q Understand, I am not trying to tell you how you
18 decide on the facts; that's your business. This is a statement
19 of law that I am reading to you; you understand that?

20 A I understand it; I understand it.

21 Q And the statement in here, "If the evidence is
22 susceptible of two reasonable" balancing, "interpretations" --
23 they are balancing each other, two reasonables -- one of the
24 reasonable interpretations points to the defendant's guilt,
25 one of the reasonable interpretations points to his innocence --
26 and this is where they are balancing, not where one overbalances
27 the other -- then it is your duty, and this is the law speaking,
28 to adopt that interpretation which points to the defendant's

16a-5

innocence and reject the other which points to his guilt.

I understand.

16b

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Q You understand the law?

A Yes, I understand it.

THE COURT: I am sorry.

You go ahead.

MR. KATZ: Thank you.

Q Now, with respect to the instruction his Honor just read, you understand it is for you, the trier of fact, to determine what the facts are in this case; isn't that correct?

A Yes.

Q And so that while Mr. Weedman may argue that construction from the evidence which points to the innocence may, for example, be reasonable, it will be for you, in the final analysis, to determine whether or not that, in fact, is a reasonable construction; isn't that correct?

A Yes.

Q And can you think of any reason why you couldn't be fair and impartial to both sides?

A No. I think you have asked me that. I think you have, and I see no reason.

MR. KATZ: Yes; thank you very much.

JACK H. WAGGONER

BY MR. KATZ:

Q Mr. Waggoner, you have heard the questions that I have asked Mrs. Stafford. Would your answers be substantially the same?

A Not identical.

16b2

1 Ask them again.

2 Q All right.

3 First of all, with reference to capital punishment,
4 are you generally opposed to capital punishment?

5 A Not generally opposed, but perhaps more opposed
6 than many, in many instances.

7 Q I see; and you have heard us discussing various
8 aspects of this case in connection with our general questioning
9 of prospective jurors.

10 Do you think that this case would give you any
11 problem with respect to giving both sides a fair trial on the
12 issue of penalty?

13 A None.

14 Q And do you feel you have any deep-seated beliefs
15 concerning capital punishment that would prevent you from
16 voting the death penalty?

17 A Under certain circumstances, yes.

18 Q All right; and in connection with some of the
19 issues we have discussed, do you feel that you would automati-
20 cally vote against the death penalty without regard to the
21 evidence in this case?

22 A No.

23 Q So you are telling me that you would be willing
24 to listen to the evidence in this case and if the issue of
25 penalty was submitted to the jury and you were part of the
26 jury panel, you would give due consideration to both penalties;
27 is that correct?

28 A Yes.

16b-3

1 Have you asked yourself the question whether or
2 not you could personally vote the death penalty in accordance
3 with your conscience?

4 A Yes.

5 Q Can you?

6 A Yes, under certain circumstances.

7 Q All right.

8 Do these, the circumstances in which you would not
9 be willing to invoke the death penalty, do they have any
10 relation to this trial, as you understand it?

11 MR. WEEDMAN: Excuse me; I think it is asking Dr. Waggoner
12 to prejudge the evidence in this case, your Honor. He has
13 assured us he will consider the evidence.

14 MR. KATZ: I think I am entitled to ask the question,
15 your Honor; I am certainly not asking to --

16 THE COURT: Let me have the statement, Mr. Reporter.

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

19 "Q All right. Do these, the circum-
20 stances in which you would not be willing to
21 invoke the death penalty, do they have any
22 relation to this trial, as you understand it?")

23 THE COURT: You may answer the question.

24 MR. WAGGONER: Possibly, I think. I do not know how old
25 Mr. Grogan is, for instance; I know nothing about the circum-
26 stances involved in the case at all, so I have no idea as to
27 what I would do.

28 Q BY MR. KATZ: That's fine, because we're not asking

16b-4

1 you, as Mr. Weedman said, to prejudge the evidence, to
2 precommit yourself as to one penalty over the other.

3 You understand that?

4 A Correct.

5 Q All right.

6 Now, let's take the evident youth of Mr. Grogan
7 Do you think that that fact, in and of itself, would cause
8 you to compromise your verdict in any manner, shape or form
9 in the guilt phase of this trial?

10 A If he's young enough; I don't know how old he is.

11 Q Well, you understand that every person is equally
12 accountable under the laws of this State if he's regarded as
13 an adult in the eyes of the law?

14 A What about people whom psychiatrists --

17

17-1

1 THE COURT: No, let's don't re-pose a question, if you
2 will.

3 MR. KATZ: I will reframe it.

4 MR. WAGGONER: Sorry.

5 Q BY MR. KATZ: What I am driving at is this,
6 Mr. Grogan is here, that is, in the Superior Court in the State
7 of California. He is here to stand the charges of murder and
8 perhaps murder in the first degree. And the People are going
9 to attempt to prove a case of murder in the first degree against
10 Mr. Grogan.

11 Now, assuming that the evidence in this case
12 warrants, as a juror, based upon the facts, a finding of murder
13 in the first degree, would you nevertheless be tempted to
14 compromise your verdict in the guilt phase of this trial
15 because of the youthfulness of the defendant?

16 A I believe I would be able to overcome that
17 temptation but not 100 percent sure.

18 Q All right.

19 I thank you very much for your honesty in this
20 area.

21 Q You do recognize the fact that within human
22 frailties and thinking processes that we are moved and
23 motivated to do certain things because of beliefs we hold,
24 isn't that correct?

25 A Yes.

26 Q In that connection if we feel that there is a
27 young person whom we are sympathetic towards, that might affect
28 our ability to be fair and impartial and to fairly and fully

17-2

1 evaluate the evidence as it unfolds, isn't that correct?

2 A To an extent, yes. I have to agree.

3 Q Now, as you in your state of mind, do you think
4 that you could put aside the evident youth of the defendant and
5 judge his guilt or innocence based wholly upon the evidence in
6 this case, uninfluenced by such extraneous factors as how he
7 dresses, how his counsel dresses, how I dress or how young he
8 is; could you do that?

9 A Oh, 95 percent.

10 Q Okay.

11 Now, is there anything in regards to your being
12 in constant contact with young people, because you are a
13 professor, that would cause you to be unwilling to apply
14 unhesitatingly the law given to you by his Honor at the
15 conclusion of this trial because it may have application to
16 a youthful defendant?

17 A Well, until I hear at the end of things, what the
18 law would be I couldn't say for sure what my answer would
19 really be. There is a possibility both yes, both ways.

20 Q His Honor at the very outset explained that the
21 corpus delicti of the crime of murder doesn't mean a dead body,
22 it means two elements, you have to show death and it may be
23 shown wholly circumstantially. And you have to show death by
24 means of a criminal agent, that is, it is not caused by mistake
25 or accident or suicide.

26 Would you require, in order to sustain the corpus
27 delicti in this case, the People to present the body or any
28 parts thereof, or photographs of the body?

1 A I don't believe so.

2 Q All right.

3 And if his Honor told you that all the People need
4 prove with reference to the corpus delicti is death which may
5 be established circumstantially, and death caused by criminal
6 agency, would you follow that instruction?

7 A I believe so, yes.

8 Q All right.

9 And if you were convinced, based upon circumstan-
10 tial evidence that the defendant murdered the alleged decedent,
11 Shorty Shea, would you vote guilty despite the fact that the
12 People did not produce an eyewitness to the killing, or the
13 body, or any parts thereof?

14 A Depending on the nature of that circumstantial
15 evidence --

16 THE COURT: Let me stop you for a moment.

17 MR. KATZ: Yes, your Honor.

18 BY THE COURT:

19 Q If you felt convinced to a moral certainty and
20 beyond a reasonable doubt then you would vote guilty.

21 MR. KATZ: That is what I thought I said, your Honor.

22 THE COURT: Read the question, please.

23 (The question was read by the reporter
24 as follows:

25 "Q And if you were convinced, based
26 upon circumstantial evidence that the defendant
27 murdered the alleged decedent, Shorty Shea,
28 would you vote guilty despite the fact the

1 People did not produce an eyewitness to the
2 killing, or the body, or any parts thereof?"

3 MR. KATZ: You are right, your Honor.

4 THE COURT: Just add that in.

5 MR. KATZ: I certainly will.

6 Q If you were convinced beyond a reasonable doubt
7 and to a moral certainty based upon the circumstantial
8 evidence in this case that Mr. Grogan murdered Shorty Shea
9 would you vote guilty, despite the fact we fail to produce
10 the body or any parts thereof or an eyewitness to the killing?

11 A Yes.

12 Q I take it you have no quarrel with that rule of
13 law, is that correct?

14 A I am not absolutely certain about that. I do have
15 quarrel with the general validity of all circumstantial
16 evidence as applied to cases.

17 BY THE COURT:

18 Q Well, the big question is would you follow the law
19 as it now is or wouldn't you?

20 When I read the law to you and say, "This is the
21 law," would you -- you understand I am not -- the facts you
22 find as you want to, as you think is right.

23 A Right.

24 Q Would you accept the law the way the law is?

25 A I believe I would.

26 Q It is rather important to get a definite answer.
27 Are you able to tell me you would or would not accept the law
28 the way the legislature has written it right into our books,

1 or would you say, "No, I won't accept it"?

2 Now, let me get this clear. I am sorry to bother
3 you.

4 MR. KATZ: Oh, I appreciate your help, your Honor.

5 Q BY THE COURT: I am not trying to tell you you
6 have to agree with the law. I don't say that. But as long as
7 it is the law you have to follow it.

8 If you want to drive a hundred miles an hour down
9 the street -- I am not trying to be ridiculous -- you have a
10 right to feel that, but as long as the law says 25 miles an
11 hour you have to obey the law.

12 You see what I am trying to tell you?

13 A Certainly.

14 Q It is a duty you have. You can vote for certain
15 laws but as long as it is on the books that is where the
16 question comes in: will you follow the law the way the law
17 is written on the books, the way that it is in effect,
18 particularly as far as this case is concerned?

19 If the court reads to you certain law the question
20 is would you follow that law in applying the facts as you
21 find them, would you follow that law or would you disregard the
22 law? That is basically what the question is.

23 A I have respect for the law.
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2 Q Yes, I am not questioning your good motives.
3 I don't mean it that way. But counsel and the court is
4 entitled to an answer whether you would follow the law the
5 way it is written or not.

6 A I would try to, but if it hurt my conscience very
7 badly then I would be very tempted to not do that.

8 But since I don't know the circumstances --

9 Q You might not follow the law?

10 A There is a possibility.

11 Q There is a possibility.

12 A Might be very small possibility.

13 Q Well, let's put it this way, and I am not asking
14 you, you may have expressed it, but I am not asking -- let's
15 say that you have definite opinions for capital punishment or
16 against capital punishment. Let's say you have very definite
17 convictions. Make it religion. You have definite convictions
18 with one religion or another religion.

19 A Yes.

20 Q Now, again the question is this: would you follow
21 the law the way it is written or would, because of your personal
22 convictions, would you be tempted to pull away from the law the
23 way it is written in deciding the facts in the case and applying
24 the facts as you find them to be?

25 A Under certain circumstances I could see myself
26 pulling away but maybe these circumstances don't exist. I
27 just have no way of knowing at this time.

28 Q I see.

A Probably I would follow the law to the letter and

11a-2

1 there would be no problem. I just don't know what to anticipate,
2 that's all.

3 I can imagine things coming up where I would be
4 very tempted to.

5 Q Well, there could be situations where you would
6 be inclined not to follow the law; is that a correct statement?

7 A That's correct.

8 THE COURT: Thank you very much.

9 You go ahead.

10 Q BY MR. KATZ: Well, Mr. Waggoner, you are telling
11 us that despite the fact that a juror is dutybound to follow
12 the law, that you would not violate your conscience and follow
13 that law if your conscience dictated otherwise, is that correct?

14 A Well, if my conscience dictated otherwise of
15 course there would be a trial going on in my head, and that
16 jury would have to decide the outcome. And I would stick by
17 that decision.

18 Q All right.

19 Q So in other words in that situation you would not
20 follow the law even though his Honor instructed you that you
21 would be obliged to follow the law if it applied to the facts
22 as you found them to be, is that correct?

23 A Put me in jail. Right.

24 Q All right.

25 And I realize you are not making light of it.
26 And I am not making light of it.

27 But this is very important, for example ^{where} if such
28 feelings concerning circumstantial evidence as I mentioned

17a-3

1 before, there are jurors who have a feeling, "My gosh, they
2 are saying to convict a man not only of a criminal offense
3 but of murder in the first degree based upon circumstantial
4 evidence, there being no body or eyewitness to the killing.
5 It is against the grain of my conscience. I will not follow
6 his Honor's instructions."

7 Do you understand that kind of thinking?

8 A Yes.

9 Q All right.

10 Now, I am not trying to argue whether or not a
11 juror should think that way logically or rationally or other-
12 wise. I am only trying to examine your state of mind. Do you
13 have that kind of visceral feeling, if you will, concerning
14 circumstantial evidence to the point that you would not be
15 willing to follow the circumstantial evidence instructions his
16 Honor will give you at the conclusion of the case as applied
17 to the facts as you find them?

18 A Well, as applied to the facts as I find them,
19 that gives me some leeway, actually. So it's very difficult
20 to give an exact answer to that question.

21 Q You said it gives you some leeway. There is no
22 leeway as such when you are instructed that if you find, for
23 example, fact A to be true -- in other words you believe beyond
24 a reasonable doubt and to a moral certainty that fact A is
25 true?

26 A You see, those are the points, you see. Fact A is
27 true, fact B is true, fact C is true. Whereas quite possibly
28 in my mind it would be fact A would be 85 percent true and so

1 forth.

2 THE COURT: All right. But how about this matter? Let
3 me pose a question.

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

5 Q BY THE COURT: Suppose you find certain facts to
6 be true in your own mind. "I find certain facts to be true.
7 But I hesitate to apply those facts and enforce them the way
8 the law is written here."

9 Now, what would you do? Do you follow that question?
10 I am giving you the facts. I find certain facts are true. This
11 happened, this happened, this happened. But I don't want to
12 apply those facts as is written in the law but they must be
13 applied.

14 A Oh, if they are indeed facts. In other words, of
15 100 percent probability associated with each one, there is no
16 problem.

17 Q Well, I am still in a little dark here. Suppose
18 you find that any series of facts are true that you want to.

19 You make your own, in your own mind, your own factual
20 findings. "I find such and such and such is true." Then you
21 say "But the law is if certain things are true then a judgment
22 must go in such and such a way."

23 A Yes.

24 Q Because the law says that, would you apply the law
25 to the facts you find?

26 A I believe so.

27 Q You are not sure?

28 A Well, as I say, it depends on those circumstances.

1 Q There is a question mark?

2 A Yes.

3 MR. KATZ: Your Honor, I believe respectfully that based
4 upon Mr. Waggoner's very, very honest answers and thoughtful
5 answers to my questions, that he is biased. And there is a
6 challenge for cause under 1073, subsection 2.

7 THE COURT: Is there a challenge for cause there?

8 MR. KATZ: Yes.

9 MR. WEEDMAN: Well, I would like an opportunity to ask a
10 few more questions.

11 THE COURT: Yes.

12 Q BY MR. WEEDMAN: A moment ago I referred to you as
13 Dr. Waggoner --

14 THE COURT: Pardon me. I will let you go ahead.

15 Let's take a short recess and go right ahead.

16 Do not discuss the case, folks. We will proceed
17 in just a few minutes. Thank you.

18 (Recess.)

18-1

1 THE COURT: Now, let's see, gentlemen, we'll go right
2 ahead.

3 People against Grogan; defendant is here, counsel
4 are here, all jurors are here.

5 You may proceed.

6 Q BY MR. WEEDMAN: A few minutes ago I pointed out
7 that I had referred to you as "Dr. Waggoner."

8 Is that a correct appellation for you?

9 A Yes.

10 Q Dr. Waggoner, will you understand that the kinds
11 of laws that exist in physics, that is that kind of a physical
12 law may not be quite the same kind of law, though using the
13 same word, as we have in the legal business?

14 A Correct.

15 Q For example, if you were going to assume a kind of
16 Newtonian sort of world, then a law, I presume, would be action
17 and reaction; and from that you could make certain kinds of
18 more or less invariable deductions and inferences.

19 Is that so?

20 A Yes; Newtonian laws aren't correct, though.

21 Q I understand. They don't -- Newtonian laws don't
22 deal with the physical world as later discoveries have
23 determined it to be; isn't that so?

24 A Yes.

25 Q If you were given such a law -- given such a law
26 to use in this kind of Newtonian one-to-one sort of world, and
27 you were told by the judge that that's the law you have to use,
28 you see, then it might offend your good sense as a physicist;

18-2

1 but presumably, as a citizen -- I'm using this as an illustra-
2 tion -- presumably you would follow that law and go ahead and
3 use it?

4 A I could follow it and perform the calculation and
5 come up with a conclusion, yes.

6 Q All right.

7 Now, if you were instructed as a physicist that the
8 law of parsimony was the law that you were to follow, that this
9 is the kind of quote, law, I submit that is more, perhaps,
10 parallel to the kind of law that we have in the legal business,
11 you are free to utilize the law of parsimony in physics, I take
12 it.

13 A I don't know the definition of the term "parsimony."

14 Q All right; perhaps I am using something, then, that
15 you are not familiar with.

16 If I told you, as a physicist, that you should
17 adopt the simplest explanation rather than looking for something
18 that is infinitely more -- raise a metaphysical examination,
19 and so forth -- perhaps as an art form physicist you would use
20 this law of parsimony --

21 MR. KATZ: Objection, your Honor; I don't know what
22 parsimony is. I object, it is irrelevant and immaterial, and
23 this discourse is getting us no place.

24 THE COURT: Read the question again.

25 MR. WEEDMAN: May I say, your Honor, in response to
26 that that I am merely trying to clarify what I think may be
27 some semantic --

28 THE COURT: Reframe your question again. Restate it;

1 see where we are.

2 Q BY MR. WEEDMAN: Well, let's drop that kind of a
3 suggestion, if you will, perhaps in physics or in scientific
4 work -- if you are told here, Dr. Waggoner, that there is a
5 presumption of innocence, that's a kind of law.

6 Do you understand by that that it directs you to
7 do something, it directs you to handle evidence in a certain
8 way?

9 A Yes.

10 Q You can't derive any hard and fast -- you can't
11 make any predictions --

12 A No.

13 Q -- from that kind of a law.

14 Would you have any difficulty, do you feel,
15 Dr. Waggoner, in following the law, if it is given to you by
16 Judge Call, in that sense?

17 A Presumption of innocence, I am thoroughly in
18 agreement with it.

19 Q All right.

20 Would you say the same thing, then, with respect
21 to a law which told you that where there were two reasonable
22 inferences to be drawn from circumstantial evidence, one
23 pointing to the guilt and the other pointing to the innocence,
24 you must adopt that pointing to innocence, would you have any
25 difficulty applying that kind of law?

26 A If they are equally stated, no difficulty whatsoever;
27 innocence.
28

1 Q And if the law told you that you could not convict
2 on circumstantial evidence unless the proved circumstances were
3 not only consistent with a theory that the defendant had
4 committed the crime charged but also were irreconcilable with
5 any other rational conclusion, could you follow that kind of,
6 quote law?

18a 7 A Yes.

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1 Q I was hoping by these brief questions of you,
2 Dr. Waggoner, to hopefully, at least, clear up what, perhaps,
3 I thought was kind of some semantic confusion between the
4 physicist, yourself, about to be or at least potentially to
5 be selected as a juror.

6 Would your answer now be the same with respect to
7 the general question: can you follow the law, or will you
8 follow the law as given to you by Judge Call in connection
9 with this case?

10 A Basic problem, if I can be allowed to say, speak --

11 Q It is all right with me.

12 A -- is that until I know what the law is, I hate
13 to put myself on the line. That's what's bothering me.

14 Q Well, is this in the sense that there may be some --
15 you suspect that there may be some laws which are going to be
16 somehow imperative, that you are going to be forced to make
17 certain conclusions from these laws and you think that might
18 be repugnant to you in some way?

19 A I could see how that situation might come up;
20 very unlikely, but possible.

21 Q Have you any idea what kind of laws you could
22 possibly find offensive in this, which -- that is, to say, you
23 would be unable to follow?

24 A Well, you said there was no specific instruction
25 connected with giving the death penalty or life imprisonment,
26 so that's no problem.

27 Q Okay.

28 A It would just have to do with the weighing of

18a-2

1 circumstantial evidence, what weight factors --

2 Q Weight to be given, again, you see, the weight to
3 be given --

4 A Take the cookie case.

5 Q -- is up to you.

6 A Take the cookie case.

7 Q All right.

8 A As he stated it and I remember it, I would say
9 that there is -- I would say in view of the alternative, that
10 the boy's sister could have swiped the cookies and said, "Here,
11 take one," then took off, that while this would not be very
12 reasonable compared with the other assumption that the boy
13 actually was lying and took them, I would give a good bit of
14 weight to that possibility.

15 Q Right; you would find that, at least -- you would
16 find that at least a rational conclusion?

17 A As long as it is rational, yes.

18 Q Yes, you would find that a rational conclusion
19 which is not reconcilable with the People's theory in that
20 illustration --

21 A Yes.

22 Q -- that the boy stole the cookies?

23 A Yes.

24 Q Well, presumably you will be so instructed, Doctor.

25 A Yes.

26 Q So I take it you wouldn't have any trouble with
27 that particular kind of evidence?

28 A Depending on how unlikely the thing is, it is the

1 borderline situation there where you really draw the line,
2 the business of moral certainty, I am not absolutely certain
3 as to exactly what that means.

4 Q Yes.

5 A But I guess what it means --

6 Q Are you afraid, perhaps, that Judge Call will say to
7 you in substance, "You must" -- "You must divine the truth,"
8 you see, because he is not going to tell you that, you see --

9 A Right.

10 Q -- he is going to, by and large, I submit, in
11 talking about the court, now -- by and large, Dr. Waggoner,
12 will instruct you as to how you are to deal with this evidence,
13 see.

14 He is not going to tell you what conclusions to
15 draw; do you understand that?

16 A Right.

17 Q Do you think, now, in the light of this little dialog,
18 that you can follow the court's instructions?

19 A Oh, I am sure I can follow it, yes.

20 MR. WEEDMAN: Thank you, sir; that's all I have.

21 Thank you.

22 THE COURT: Is the matter submitted, your Honor?

23 Was there a for cause in there -- was there not?

24 MR. KATZ: No, I am going to withdraw my challenge for cause.

25 THE COURT: You withdraw the for cause?

26 MR. KATZ: Yes.

27 THE COURT: All right, then.

28 There is the next juror; go ahead.

1 MR. KATZ: Yes, I was questioning.

2 Thank you.

3
4 NATHAN LEVY

5 BY MR. KATZ:

6 Q That is Mr. Levy?

7 A Yes, sir.

8 Q Can you see me over here?

9 A Yes, sir.

10 Q Mr. Levy, you have heard the discussions that we
11 have had off and on concerning circumstantial evidence, have
12 you not?

13 A Yes.

14 Q Are you one of those jurors who feel that, "I don't
15 like the sound of circumstantial evidence and I have no intention
16 of following his Honor's instructions in regard to circumstantial
17 evidence"?

18 A No, sir.

19 Q Do you have any reluctance to fully utilize circum-
20 stantial evidence to draw reasonable constructions from facts
21 which are proven to you?

22 A No, sir.

23 Q If, in this case, the circumstantial evidence creates
24 in your mind an abiding conviction to a moral certainty of the
25 truth of the charge, would you vote guilty even though the
26 case rested wholly upon circumstantial evidence?

27 Did I go a little too fast?

28 A Just a little bit, please.

1 Q Let me back up.

2 A Repeat it, please.

3 Q You understand in this State the People can prove
4 the crime of first degree murder without producing a body?

5 A Yes, sir.

6 Q Or any part thereof or any eyewitness to a killing
7 or any eyewitness to having observed the body in death.

8 Do you understand that?

9 A (Nods head affirmatively.)

10 Q So that it is the intention of the People, if we
11 are capable of so doing, of proving the defendant's guilt
12 beyond a reasonable doubt and to a moral certainty based wholly
13 upon circumstantial evidence.

14 Do you understand that?

15 A (Nods head affirmatively.)

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

17 A Yes.

18 Q You see, when you shake your head the court
19 reporter didn't get down your response.

20 A I didn't realize that; I'm sorry.

21 Q Following this one step further, if the circumstan-
22 tial evidence in this case creates an abiding conviction to a
23 moral certainty that the defendant committed murder in the
24 first degree, would you hesitate, nevertheless, to vote guilty
25 of that charge solely because we had failed to produce a body
26 or any parts thereof or an eyewitness to the killing?

27 A No, sir.

28

19-1

1 Q All right.

2 I take it that you are fully willing to abide by
3 his Honor's instructions in connection with the use, that is,
4 the proper use of circumstantial evidence as applied to the
5 facts as you find them, is that correct?

6 A Yes, sir.

7 Q And I take it that it does not offend your sense
8 of justice or fair play to know that in this state a man may
9 stand convicted of murder in the first degree without an
10 eyewitness to the killing and without production of the body,
11 is that correct?

12 A Correct.

13 Q And do you think that because this case is a case
14 in which the People are seeking the imposition of the most
15 drastic verdict, that is, one of death, that you would be
16 caused to compromise your verdict in the guilt phase solely
17 in order to avoid having to make the decision of life or death
18 in the penalty phase?

19 A No, sir.

20 Q All right.

21 So that if the evidence established in your mind an
22 abiding conviction to a moral certainty of the truth of the
23 charges then you would vote guilty, despite the fact that you
24 knew you would then be placed in the very difficult position
25 of determining whether or not another human being should live
26 or die, is that correct?

27 A Yes, sir.

28 MR. KATZ: Mrs. Williams, are you comfortable? I notice

19-2

1 you are leaning out of the way. Let me move over here. This
2 is fine.

3 MR. LEVY: I can stand up, if you wish.

4 MR. KATZ: No, this is fine. I am more mobile than
5 *anybody*
6 everybody.

7 Are you fine?

8 JUROR NO. 1: I am fine.

9 MR. KATZ: Thank you.

10 Q With respect to the death penalty have you given
11 some thought to the subject before being called for jury duty
12 service?

13 A Yes, sir.

14 Q Have you read any literature concerning the
15 propriety or indeed the impropriety of capital punishment in
16 general?

17 A Over the past many years, yes, sir.

18 Q Mr. Levy, have you formed any opinion concerning
19 capital punishment in general, without giving us the reasons
20 therefor? In other words, are you opposed generally to
21 capital punishment or do you believe that it has its proper
22 place in society as we know it today?

23 A I believe in the latter suggestion.

24 Q All right.

25 I take it, then, you have also asked yourself
26 the question whether you, yourself, could personally join with
27 11 other jurors and vote the death penalty, is that correct?

28 A Yes.

Q Do you think that if the evidence in this case,

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1 that is, the evidence establishing the guilt of the defendant,
2 assuming it does -- and we have to assume for purposes of this
3 question there has been the return of a first degree murder
4 verdict and we have to assume that you have heard all of the
5 evidence in this case and you are back in the jury room, and
6 you are now evaluating all of the evidence again to determine
7 what the proper penalty is.

8 And in your heart and your mind and your conscience
9 you feel this case warrants the death penalty can you return to
10 the courtroom and vote the death penalty and tell the court,
11 "This is my verdict, one of death"?

12 A Yes, sir.

13 Q I take it you are willing to live with that
14 judgment for the rest of your life, is that correct?

15 A Yes, sir.

16 Q I am sure that you do not take this responsibility
17 lightly, but indeed recognize this to be, perhaps, the most
18 serious obligation you will ever have to carry in your life, is
19 that correct?

20 A That's correct, sir.

21 Q Any reason you couldn't be fair and impartial to
22 both sides?

23 A No, sir.

24 MR. KATZ: Thank you, sir.

25 Pass for cause.

26 THE COURT: Pass for cause.

27 Now, any peremptory or not?

28 MR. KATZ: Yes. The People wish to thank and excuse

1 Mr. Waggoner.

2 THE COURT: All right.

3 Thank you.

4 THE CLERK: Being called as prospective alternate juror
5 No. 2, please, Mrs. Virginia York, Y-o-r-k.

6
7 VIRGINIA YORK

8 BY THE COURT:

9 Q Now, lady, have you heard everything that I have
10 said since you came in from the assembly room?

11 A Yes, your Honor.

12 Q And have you heard me read the charge that has been
13 filed against the defendant?

14 A Yes.

15 Q The People have filed the charge against the
16 defendant of murder. You have heard me read that charge?

17 A Yes.

18 Q All right.

19 Now, I want you to assume that you have been
20 accepted as an alternate juror. Then I want you to assume that
21 later on during the trial you took the place of one of these
22 folks in the jury box and that the case has been all tried and
23 you have gone to the jury room to decide the case. You must
24 making a finding at that time of guilty or not guilty.

25 You understand that up to that point?

26 A Yes.

27 Q Now, at that point the jury could make a finding
28 of not guilty if they decide to. And if they did that the case

1 is all concluded.

2 The jury could make a finding of guilty. If the
3 jury finds the defendant guilty the jury must then go ahead
4 and make a finding of degree, first degree murder or second
5 degree murder.

6 Is that clear to you?

7 A Yes.

8 Q All right.

9 If the jury finds, fixes the murder as second degree
10 murder, then there is nothing else the jury does. That's the
11 end of the case as far as the jury is concerned, if they make
12 a finding of second degree murder.

13 But if the jury makes a finding of first degree
14 murder then another hearing, an additional hearing is --
15 something like a trial, but it isn't a trial, it is a hearing,
16 the law calls it a penalty hearing -- at the conclusion of the
17 penalty hearing the jury goes back in the jury room and deter-
18 mines the penalty, which must be the death penalty or life
19 imprisonment.

20 Now, I will ask you to assume that you are in the
21 jury room voting on the question of penalty and the question of
22 the death penalty or life imprisonment comes up for you to vote
23 on. I will ask, at that time when you are voting would you
24 automatically vote against the imposition of the death penalty
25 without regard to any evidence that might be produced at the
26 trial of this case before you?

27 A No.

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19a

1 Q All right. Now, I will ask you another question.
2 Do you know of any reason at all that you could not be fair
3 and impartial to both parties, the People and the defendant,
4 if you are selected to try this case as a juror?

5 A No.

6 Q Do you know of any facts at all that might come up
7 during the trial that might disturb you or upset you to such
8 an extent that you couldn't be fair and impartial, or your
9 mind might be burdened with problems that wouldn't let you have
10 an open, clear mind during the course of the trial?

11 A No.

12 THE COURT: Thank you.

13 The defendant may inquire.

14 MR. WEEDMAN: Thank you, your Honor.

15 Q Mrs. York, are you employed?

16 A No.

17 Q Have you been?

18 A Yes.

19 Q May I ask what you did when you were employed?

20 A I was an office manager for a large department store.

21 Q Is there a Mr. York?

22 A No, he is -- I am a widow.

23 Q What did Mr. York do for a living?

24 A He was in the furniture manufacturing business.

25 Q I see. It is estimated this trial will last perhaps
26 another two months. Will that cause you any personal hardship?

27 A No.

28 Q With respect to the death penalty if there is a

19a-2

1 finding of first degree murder in this case do you think that
2 you would automatically impose the death penalty without regard
3 to the evidence in the case?

4 A No.

5 Q With respect to the matter of Charles Manson and
6 the so-called Manson family have you formed any opinion in
7 those matters that you feel might interfere with your giving
8 my client a fair trial here in the event that the evidence
9 shows he is a member of the Manson family?

10 A No.

11 Q Okay. You feel that that would be something that
12 you would have to worry about if this turned out to be a very
13 close case in your thinking?

14 A Please repeat the question.

15 Q Let me try again.

16 "Supposing you are -- you do go to the jury room
17 and you are now deliberating the issue of guilt. And suppose
18 it is very, very close in your mind. You can't really make up
19 your mind whether my client is guilty or not guilty.

20 Do you think then that any opinion that you may
21 have about the Charles Manson family might come into play?

22 A No.

23 Q And affect your judgment of my client?

24 A No.

25 MR. WEEDMAN: All right.

26 Thank you, Mrs. York.

27 We will pass for cause, your Honor.

28 THE COURT: Pass for cause. The People.

19a-3

1 MR. KATZ: Yes. Thank you.

2 Q Mrs. York, have you given thought to the death
3 penalty prior to being called for jury service?

4 A Yes.

5 Q And have you read any literature and the like
6 concerning the propriety of capital punishment?

7 A No.

8 Q Have you engaged in any philosophical discussions
9 in regards to capital punishment?

10 A No.

11 Q And is it fair to say that at this time you are
12 neither for nor against capital punishment, or do you have
13 a leaning one way or the other?

14 A Would you repeat the question? I don't really
15 understand it, I don't believe.

16 Q Yes. Thank you.

17 Any time that you don't understand a question, please
18 don't guess at it but ask us to reframe it because we will be
19 happy to do so.

20 Mrs. York, as you sit here now without telling me
21 your reasons are you for or against capital punishment in
22 general?

23 A I can't answer that question. I just don't know
24 what to say.

25 Q Well, is it fair to say that you feel that under
26 certain circumstances capital punishment is justified?

27 A I suppose under certain circumstances. It would
28 depend on the evidence and everything.

1 Q All right.

2 We are talking abstractly now.

3 A Oh, I see.

4 Q Not trying to limit you to a specific factual
5 situation. In other words, what I want to know is do you have
6 a general opinion concerning capital punishment? You can answer
7 that yes or no.

8 A No.

9 Q All right. So in other words, you have an open mind
10 then in the abstract sense as to the propriety and the right of
11 the State to exact the death penalty in certain cases; is that
12 correct?

13 A Yes, that's correct.

14 Q All right.

15 I take it you would not automatically vote for
16 death nor would you automatically vote for life upon the return
17 of a first degree murder verdict without reference to the
18 evidence; is that correct?

19 A Correct.

20 Q Is it fair to say you have a full and open mind
21 concerning the proper penalty to be meted out in this case should
22 that issue be submitted to the jury?

23 A Yes.

24 Q And with reference to our discussion concerning
25 circumstantial evidence do you have any quarrel with the law in
26 this State that permits a person to be convicted of murder
27 based wholly upon circumstantial evidence?

28 A No.

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Q And I take it that you would not require the People to produce a body or an eyewitness to the killing or an eyewitness to having observed the body in death so long as the circumstantial evidence in this case created an abiding conviction to a moral certainty of the truth of the charge of first degree murder; is that correct?

A Correct.

Q And I take it it does not offend your sense of fair play and morals to know that in this state the law at least envisions that a death penalty can be returned in a wholly circumstantial evidence case; is that correct?

A Correct.

Q And is there any reason that you can think of as to why you could not be fair and impartial to both sides?

A No.

MR. KATZ: Thank you, ma'am.

Pass for cause.

THE COURT: Thank you.

Now, let's see --

MR. KATZ: Defense peremptory.

MR. WEEDMAN: We will thank and excuse Mr. Levy, your Honor.

THE COURT: No. 37.

MR. WEEDMAN: Yes, your Honor.

THE COURT: Yes, thank you very much; very much.

THE CLERK: Mrs. Edith J. Karnes, K-a-r-n-e-s.

EDITH J. KARNES

BY THE COURT:

Q Now, lady, have you heard all of the statements I have made to the jurors since you came into the jury room?

A Yes, sir.

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

A Yes, sir.

Q Let's assume that you have been accepted as an alternate juror; during the course of the trial the court places you in as a regular juror and the case has been tried and you go to the jury room to decide the case, guilty or not guilty.

At that point the jury could make a finding of not guilty, which concludes the case entirely; or the jury could make a finding of guilty as charged. If they do, they must set the degree, either first degree or second degree murder.

If the jury says or fixes the degree as second degree murder, then they are excused at that point. There are no further proceedings.

If the jury makes a finding of murder first degree, then a penalty hearing is held. After the penalty hearing is held the jury finds on the penalty, either finds the penalty to be the death penalty or life imprisonment.

Now, let's suppose you were up to the point where you are voting on penalty 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

1 any evidence that might be developed at the trial of this
2 case before you?

3 A No, sir.

4 Q Thank you.

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

8 A Yes, sir.

9 Q Do you know of any factual matter that might arise
10 that could so disturb you as a juror that you might not be fair
11 or impartial or, rather, that would cloud your mind so you
12 couldn't give an open mind to all of the procedures, the
13 testimony?

14 A Yes, sir.

15 Q Thank you, lady.

16 Defendant may inquire.

17 MR. WEEDMAN: Excuse me, your Honor; I believe Mrs.
18 Karnes answered "Yes" in response to your Honor's questions.

19 THE COURT: Oh, did you answer "Yes"?

20 Do you want to inquire then, at that juncture?

21 BY MR. WEEDMAN:

22 Q Would you tell us what that is, Mrs. Karnes?

23 A Yes, I feel I couldn't be fair and impartial to
24 this defendant because it is association or his alleged
25 association with the Manson family.

26 I was greatly disturbed over the victims in the
27 Manson trial. I don't think I could be fair.

28 Q Surely, and that is true even though you understand

1 that my client had nothing to do with that other matter?

2 A Yes.

3 Q He had nothing to do --

4 A I was hurt very much.

5 MR. WEEDMAN: We appreciate that.

6 Challenge for cause.

7 THE COURT: Should I rule?

8 MR. KATZ: I'd like to question Mrs. Karnes.

9 THE COURT: Go ahead.

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Tke 20a

1 Q BY MR. KATZ: Mrs. Karnes, you understand that
2 when we walk into a jury room we are armed with a lot of
3 prejudices and a lot of opinions we have gathered over the
4 course of our lives; you appreciate that?

5 A Yes.

6 Q And we certainly appreciate the honesty with which
7 you have met the questions posed by his Honor and Mr. Weedman.

8 In that connection all the law asks of you is
9 that you will put aside the opinions you have, put aside the
10 conclusions that you have gathered or gained by extraneous
11 matters such as publicity concerning other cases that have
12 nothing to do with this case, judge the defendant's guilt or
13 innocence based wholly upon the evidence in this case.

14 Do you understand that?

15 A Yes, I do.

16 Q So you may have a feeling that Mr. Manson, perhaps,
17 is one of the most grotesque human beings in the world, and yet
18 that will not prevent you from being a juror if you can put
19 aside that opinion, not let it spill over into Mr. Grogan if
20 there is an association shown between those two.

21 You understand that?

22 A Yes, I do.

23 Q Now, let me ask you this question -- of course,
24 you know your own thinking better than anybody else -- if his
25 Honor instructed you that if selected as a juror you would be
26 dutybound to put aside any opinions and conclusions you have
27 gained by way of publicity concerning other matters outside
28 this trial, would you do your best to do that and follow that

1 instruction?

2 A Yes, I would.

3 Q Now, my next question is, could you?

4 A I don't know. I would try, but I can't be sure.

5 Q Now, you understand that Mr. Grogan has nothing
6 whatsoever to do with the Tate-La Bianca proceedings?

7 A Yes, I realize that.

8 Q Mr. Grogan is entitled to the undivided attention
9 and to your individual opinion as to his guilt or innocence,
10 based wholly upon the evidence that unfolds during the course
11 of this, and I underscore "this" trial.

12 Do you appreciate that?

13 A Yes, I do.

14 Q Now, do you think you would be willing to listen
15 to the evidence, to weigh the evidence as the trier of fact if
16 selected as a juror and to impartially determine Mr. Grogan's
17 guilt or innocence based on the evidence in this trial,
18 uninfluenced by what Mr. Manson has done in any other trial?

19 A I would try.

20 Q Can you do it?

21 A I don't know if I can. I said I would try.

22 Q Well, do you have a doubt in your own mind as to
23 whether or not you would be capable of setting aside any opinions
24 you have of Charles Manson?

25 A Yes, I have doubts.

26 MR. KATZ: I think the challenge is well taken.

27 THE COURT: Do you stipulate?

28 MR. KATZ: Yes, I will stipulate.

1 THE COURT: All right, I will excuse you.

2 Thank you, lady.

3 THE CLERK: Mrs. Ethel J. McIntyre, M-c-I-n-t-y-r-e.

4
5 MRS. ETHEL J. MCINTYRE

6 BY THE COURT:

7 Q Now, lady, have you heard everything I have said
8 to the other jurors since you came in from the juryroom?

9 A Yes, your Honor.

10 Q You heard me read the charge that has been filed
11 against the defendant?

12 A Yes, sir.

13 Q I will ask you to assume that you have been selected
14 as an alternate juror and later during the trial you sit over
15 here and become one of the jurors.

16 Now, if you go to the jury room, let's assume the
17 case has been tried and you go to the jury room and decide
18 guilty or not guilty of murder. At that time the jury could
19 find the defendant not guilty.

20 Is that clear?

21 A Yes, sir.

22 Q On the other hand, the jury could find guilty; is
23 that clear?

24 A Yes, sir.

25 Q Now, if the jury says guilty they must find the
26 degree, first degree murder or second degree murder. If the
27 jury finds second degree murder, then the case is all decided
28 or determined as far as the jury is concerned.

1 If the jury says first degree murder, the court
2 must hold a penalty hearing and after the penalty hearing the
3 jury goes back in the jury room to find on the penalty, which
4 must be the death penalty or life imprisonment.

5 You follow me up to that point?

6 A Yes, sir.

7 Q Now, if you are voting on the question of penalty
8 and the question of the death penalty or life imprisonment
9 comes up for you to vote on, and I will ask you this question:
10 at that time would you automatically vote against the imposition
11 of the death penalty without regard to any evidence that might
12 be developed at the trial of this case?

13 A No, sir.

21-1

1 Q All right.

2 Do you know of any reason that you could not be
3 fair and impartial if you are selected as a juror in this
4 case?

5 A No, sir.

6 Q Do you know of any situation that might disturb
7 you or might arise during the trial that could upset you so you
8 could not be fair and impartial?

9 A No, sir.

10 THE COURT: Thank you.

11 The defendant may -- well, we are up to 3 minutes
12 of 4. I won't ask you to break into your statement unless you
13 can clear by that time. It is up to you.

14 MR. WEEDMAN: Well, I can try, your Honor.

15 THE COURT: All right.

16 Go right ahead.

17 BY MR. WEEDMAN:

18 Q Mrs. McIntyre, we have a Mrs. McIntire already on
19 our jury. Are you related to her at all?

20 A No, not at all.

21 Q Mrs. McIntyre, are you employed?

22 A Not at present. I am retired.

23 Q What did you do before you were retired?

24 A Formerly I was a teacher.

25 Q And what did you teach?

26 A English.

27 Q Is there a Mr. McIntyre?

28 A Deceased.

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1 Q What did Mr. McIntyre do for a living?

2 A Oral surgeon.

3 Q All right.

4 Is there anything that you have heard about this
5 case so far, Mrs. McIntyre, that makes you think you can't
6 give both sides the kind of --

7 A No, sir.

8 Q -- fair trial we are both entitled to here?

9 A No, sir.

10 Q That is true even though you find out that my client
11 was associated with Charles Manson and the so-called Manson
12 family?

13 A Yes, that's true.

14 Q Okay. I take it that following even a conviction of
15 first degree murder, if that should happen here, you are not
16 going to automatically impose the death penalty, are you,
17 without regard to the evidence?

18 A Not automatically.

19 MR. WEEDMAN: All right.

20 We will pass for cause.

21 Thank you, Mrs. McIntyre.

22 THE COURT: All right.

23 Do you want to inquire or shall I go over till
24 tomorrow.

25 MR. KATZ: May we defer to tomorrow.

26 THE COURT: All right.

27 Let the transcript show that the People are about
28 to voir dire alternate juror No. 3. The defendant passed for

2103 1 cause.

2 All right. Ladies and gentlemen, now, remember
3 very cautiously, the 12 of you are all sworn in to try this
4 case. Do not discuss it in any way at all or come to any opinion
5 or conclusion.

6 And to all of you I say the same thing. Do not
7 discuss this case at all.

8 And you are excused. Kindly return promptly at
9 9:30 tomorrow morning and we will go right ahead. Thank you.

10 (An adjournment was taken to Tuesday,
11 July 13, 1971, at 9:30 a.m.)
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